

1 **WATCHTOWER BIBLE AND TRACT**  
2 **SOCIETY OF NEW YORK, INC.**

3 **LEGAL DEPARTMENT**

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11 "Defendant Doe 3, Supervisory Organization")

12 **SUPERIOR COURT OF CALIFORNIA**  
13 **COUNTY OF SAN DIEGO**

14 **JOHN DORMAN, INDIVIDUALLY, AND** )  
15 **JOEL GAMBOA, INDIVIDUALLY** )

16 **Plaintiffs,** )

17 **v.** )

18 **DEFENDANT DOE 1 LA JOLLA CHURCH,** )  
19 **DEFENDANT DOE 2 LINDA VISTA** )  
20 **CHURCH, AND DEFENDANT DOE 3** )  
21 **SUPERVISORY ORGANIZATION,** )  
22 **DEFENDANT DOE 4, PERPETRATOR,** )  
23 **AND DOES 5 THROUGH 100, INCLUSIVE** )

24 **Defendants.** )

Case No.: 37-2010-00092450-CU-PO-CTL

**DEFENDANT WATCHTOWER BIBLE**  
**AND TRACT SOCIETY OF NEW**  
**YORK, INC.'S MEMORANDUM OF**  
**POINTS AND AUTHORITIES IN**  
**OPPOSITION TO PLAINTIFFS'**  
**MOTION TO ALLEGE PUNITIVE**  
**DAMAGES**

DATE: December 2, 2011

TIME: 10:30 a.m.

JUDGE: STEVEN R. DENTON

DEPT.: C-73

TRIAL DATE: January 27, 2012

COMPLAINT FILED: May 20, 2010

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1 **I. INTRODUCTION**

2 Plaintiffs' Motion to Allege Punitive Damages should be denied as to Defendant  
3 Watchtower Bible and Tract Society of New York, Inc. (hereinafter "Watchtower") because: (1)  
4 If a claim for punitive damages is added to the complaint at this late date, Watchtower will be  
5 prejudiced because a continuance of the January 27, 2012, trial date will be required, additional  
6 experts will have to be retained, previously served designation of expert witnesses will have to  
7 be amended, and expense for trial preparation will be increased; and (2) Plaintiffs have failed to  
8 demonstrate the existence of sufficient evidence to establish a *prima facie* right to recover  
9 punitive damages against Watchtower in accordance with section 425.14 of the California Code  
10 of Civil Procedure and section 3294 of the California Civil Code.

11 **II. STATUS OF THE CASE**

12 The trial in this matter is scheduled for January 27, 2012. The law and motion and  
13 discovery cutoff date is December 23, 2011. The second expert witness exchange will take  
14 place by November 18, 2011. Watchtower and the other defendants currently have motions for  
15 summary judgment scheduled to be heard on December 16, 2011, at 10:30 a.m. This motion to  
16 allege punitive damages filed on November 7, 2011, is scheduled for hearing on December 2,  
17 2011, only two weeks before defendants' motions for summary judgment.

18 **III. PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT TO PLEAD**  
19 **PUNITIVE DAMAGES SHOULD BE DENIED**

20 **A. General Law on Motions to Amend Complaint**

21 "Although courts are bound to apply a policy of great liberality in permitting  
22 amendments to the complaint at any stage of the proceedings, up to and including trial, this  
23 policy should be applied only '[w]here no prejudice is shown to the adverse party.'" (*Magpali*  
24 *v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 487 (citations omitted).) "A different result  
25  
26  
27  
28

1 is indicated '[w]here inexcusable delay and probable prejudice to the opposing party' is shown."  
2 (*Id.* (citing *Estate of Murphy* (1978) 82 Cal.App.3d 304, 311).)

3  
4 Where a party was aware of the facts giving rise to the basis of the claim, a court is  
5 justified in denying a motion to amend the complaint sought after a long, unexcused delay or  
6 where there has been a lack of diligence. (*See Hulsey v. Koehler* (1990) 218 Cal.App.3d 1150,  
7 1159; *Record v. Reason* (1999) 73 Cal.App.4th 472, 486-487.) Furthermore, where an  
8 amendment would necessitate the continuance of a trial or would require an increased burden on  
9 discovery, the amendment is properly denied. (*See Magplai, supra*, 48 Cal.App.4th at pp. 486-  
10 488; *P & D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345.) This  
11 amendment to add a claim for punitive damages will require a continuance of the trial and  
12 increase the burdens of discovery to Watchtower and other defendants.

13  
14 **B. Plaintiffs Have Unreasonably Delayed Bringing this Motion for Leave to  
15 Add a Claim for Punitive Damages**

16 Code of Civil Procedure section 425.14 provides that "[n]o claim for punitive or  
17 exemplary damages may be pleaded against a religious corporation or religious corporation  
18 sole" unless permitted by court order after the plaintiff brings a motion to amend the complaint.

19 While it is true that Watchtower is a religious corporation or religious corporation sole,  
20 plaintiffs' delay in filing its motion to amend to allege punitive damages is inexcusable and will  
21 prejudice Watchtower if allowed by the court at this late date.

22 Plaintiffs' original complaint filed on May 20, 2010, pled sufficient facts to pursue a  
23 claim for punitive damages. The original complaint alleged that defendants La Jolla Church and  
24 Linda Vista Church were aware that the perpetrator, Gonzalo Campos, was providing plaintiff  
25 Joel Gamboa with Bible instruction through defendant Linda Vista Church and that Campos had  
26 been reprovved for his conduct of sexually abusing boys but continued to allow Campos access to  
27 Gamboa. (See, ¶ 5.4 of plaintiffs' original complaint.) Plaintiffs further alleged that Campos  
28

1 could not have been appointed an elder or ministerial servant without Watchtower's approval,  
2 and despite knowledge of Campos' dangerous and exploitive propensities, Watchtower  
3 negligently failed to supervise Campos or warn plaintiffs and their families, and Watchtower  
4 negligently hired and/or retained Campos in the position of trust and authority as a ministerial  
5 servant or elder, where he was able to commit acts of molestation against the plaintiffs. (See ¶¶  
6 5.5, 19 and 23 of Plaintiffs' original complaint.)  
7

8 Plaintiffs attached various letters and other documents to its motion as Exhibits 1, 5, 7,  
9 and 11-21, in support of their claim to amend their complaint to seek punitive damages. Those  
10 documents were produced to the plaintiffs by defendant Watchtower on October 11, 2010  
11 (plaintiffs' Exhibits 1, 7, 13, and 20), and on July 13, 2011 (plaintiffs' Exhibits 5, 11-12, 14-16,  
12 18-19, and 21). (Watchtower Exhibit U (hereinafter "WE"), Watchtower's Responses to  
13 Plaintiffs' Request for Production of Documents.) Plaintiffs have also attached portions of  
14 depositions taken on February 7, 8, and 9 of 2011, in support of their motion. (See plaintiffs'  
15 Exhibits 8, 9, and 10.)  
16

17 In summary, the plaintiffs knew most of the facts upon which they base this motion to  
18 amend to add a punitive damages claim at the time they filed their original complaint on  
19 May 20, 2010. Thereafter, on October 11, 2010, documents were produced by Watchtower  
20 which plaintiffs contend confirm their allegations. Depositions taken February 7, 8, and 9, 2011  
21 (10 months ago), provide further details in support of plaintiffs' allegations in their original  
22 complaint. Further, other documents which plaintiffs rely upon were produced by Watchtower  
23 on July 13, 2011.  
24

25 Plaintiffs' delay in failing to pursue this amendment to allege a claim for punitive  
26 damages is inexcusable since such an amendment could have been made a year ago, following  
27 Watchtower's October 11, 2010, production of documents, or at the latest, following  
28

1 Watchtower's July 13, 2011, production of documents. There is no justification for the  
2 plaintiffs to wait 9 more months after these depositions, until approximately 3 weeks before the  
3 discovery cutoff and law and motion cutoff, to have this issue decided by the court. Plaintiffs  
4 should have filed this motion to amend to allege a claim for punitive damages a year ago.  
5

6 Thus, the court should deny plaintiffs' motion as against Watchtower on the grounds that  
7 plaintiffs have been guilty of inexcusable delay in seeking this amendment.

8 **C. Watchtower Will Suffer Severe Prejudice if Amendment to Allege Punitive**  
9 **Damages is Permitted**

10 If this amendment is permitted, Watchtower will suffer severe prejudice. There will be a  
11 need to continue the January 27, 2012, trial to permit Watchtower to study its exposure for  
12 punitive damages. Watchtower will also have to re-interview or re-depose witnesses that have  
13 already been deposed to obtain further details as a result of this change in exposure to  
14 Watchtower. The first expert witness exchange occurred on October 28, 2011. Since there was  
15 no claim of punitive damages at that point in time, no experts were designated by Watchtower  
16 on the issue of punitive damages. The expert witness designation filed by Watchtower will need  
17 to be amended to address this new issue. In addition, additional experts may need to be retained  
18 to address the punitive damage allegation, including but not limited to experts to value the assets  
19 of Watchtower. The need to retain additional experts will increase Watchtower's pre-trial and  
20 trial expenses.  
21

22 Watchtower would ordinarily file a motion to strike or a motion for summary  
23 adjudication on the punitive damages claim. However, since the law and motion cutoff date is  
24 set for December 23, 2011, Watchtower will be precluded from bringing such motions if this  
25 amendment is permitted at this late date.  
26

27 Therefore, it is respectfully submitted that plaintiffs' motion should be denied for  
28 inexcusable delay as well as the prejudice that will be suffered by Watchtower, if it is granted.

1 **IV. BACKGROUND FACTS OF CASE**

2 Plaintiff John Dorman alleges that he was sexually abused by Gonzalo Campos  
3 (“Campos”) on several occasions between the years 1983 and 1984. (WE B, Deposition of John  
4 Dorman at pp. 35:10-42:15.) Plaintiff Joel Gamboa alleges that he was sexually abused by  
5 Campos between the years 1988 to December 1994. (WE C, Deposition of Joel Gamboa at  
6 pp. 7:23-24; 35:22-23; WE D, Deposition of Gonzalo Campos at p. 78:8-15.) The bases for  
7 Plaintiffs’ Motion to Allege Punitive Damages are their assertions that Watchtower had advance  
8 knowledge that Campos had committed sexual abuse. The evidence, however, simply does not  
9 support Plaintiffs’ allegations.

11 **A. Relevant Facts About Jehovah’s Witnesses**

12 At baptism, every one of Jehovah’s Witnesses—men, women, boys, and girls—becomes  
13 a congregation member, also known as a “publisher,” and is considered an ordained minister of  
14 the good news. (WE A, Ashe Affidavit, ¶ 5; WE E, *The Watchtower*, December 1, 1975, p. 705,  
15 706, 728-734 “What Does It Mean to Be a ‘Minister?’”) Thus, within the Jehovah’s Witnesses’  
16 faith, the term publisher or ordained minister simply refers to a rank and file congregation  
17 member. (WE A, Ashe Affidavit, ¶ 5.) Appointed elders are the individuals who have the  
18 authority and responsibility for the spiritual supervision and care of a congregation, including  
19 teaching, confessions, spiritual advice, and discipline involving congregation members. (WE A,  
20 Ashe Affidavit, ¶ 6; WE E, *The Watchtower*, December 1, 1975, p. 705, 706, 728-734 “What  
21 Does It Mean to Be a ‘Minister?’”) A male congregation member who is already a ministerial  
22 servant may be appointed to serve as an elder if he meets the Scriptural qualifications outlined at  
23 1 Timothy 3:1-7 and Titus 1:5-9. (WE A, Ashe Affidavit, ¶ 7.) A male congregation member  
24 may be appointed to serve as ministerial servant if he meets the Scriptural qualifications as  
25 outlined at 1 Timothy 3:8-10, 12, 13. (WE A, Ashe Affidavit, ¶ 7.)



1           Jehovah's Witnesses—men, women and children—are well known for their public  
2 ministry which they carry out on behalf of their God Jehovah. However, they are not required  
3 by Watchtower or any other legal entity or congregation elders to engage in their personal  
4 public ministry, or to fill out forms or make reports related to their personal public ministry.  
5 (WE A, Ashe Affidavit, ¶ 8.) Furthermore, congregation members are not approved to represent  
6 the congregation, Watchtower, or any legal entity when they engage in their public ministry.  
7 (WE A, Ashe Affidavit, ¶ 8.) As the United States Supreme Court recognized in *Murdock v.*  
8 *Pennsylvania* (1943) 319 U.S. 105, Jehovah's Witnesses "claim to follow the example of Paul,  
9 teaching 'publicly, and from house to house.' Acts 20:20. They take literally the mandate of  
10 the Scriptures, 'Go ye into all the world, and preach the gospel to every creature.' Mark 16:15.  
11 In doing so they believe that they are obeying a commandment of God." (*Id.* at p. 108.)  
12

13           Before Jehovah's Witnesses begin their public ministry, they often meet for about 10 to  
14 15 minutes with a small group of other congregation members. This meeting is known as a  
15 meeting for field service and is conducted by an elder or ministerial servant. (WE A, Ashe  
16 Affidavit, ¶ 9.) On those few occasions when an elder or ministerial servant is unavailable, a  
17 baptized male (or a baptized female if a baptized male is unavailable), will conduct the brief  
18 meeting for field service. (WE A, Ashe Affidavit, ¶ 9.) There is no requirement to attend a  
19 meeting for field service before participating in the public ministry. (WE A, Ashe Affidavit, ¶  
20 10.)  
21

22  
23           **B. Gonzalo Campos**

24           In 1980, at the age of 17, defendant Gonzalo Campos was baptized as one of Jehovah's  
25 Witnesses, and became a member of the Linda Vista Spanish Congregation (hereinafter "Linda  
26 Vista"). (WE D, Deposition of Campos at pp. 15:25-16:5.) Campos was a member of Linda  
27 Vista from the time he was baptized until he moved to the newly formed Playa Pacifica Spanish  
28

1 Congregation (hereinafter "Playa Pacifica") about November 1986.<sup>1</sup> (WE D, Deposition of  
2 Campos at pp. 15:25-16:5; 19:18-20:3.) Campos never served as a ministerial servant or elder  
3 in Linda Vista. (WE D, Deposition of Campos at pp. 16:23-17:4.) Campos was appointed as a  
4 ministerial servant in Playa Pacifica on December 22, 1988. (WE R, Circuit Overseer Report  
5 dated December 14, 1992; WE A, Ashe Affidavit, ¶ 10.) Later, Campos was appointed as an  
6 elder in Playa Pacifica on June 23, 1993. (WE S, Circuit Overseer Report dated June 19, 1995,  
7 p. 2; WE A, Ashe Affidavit, ¶ 10.)

9 In summary, Campos held no position of authority in any congregation during the time  
10 Dorman alleges he was abused (1983-1984). Furthermore, no matter how hard plaintiffs try to  
11 make it appear that when Campos was baptized he was in some type of appointed position of  
12 authority or responsibility, he simply became a rank and file congregation member at baptism.  
13 (WE A, Ashe Affidavit, ¶ 5.) Thus, Campos was not an agent of Watchtower or any  
14 congregation at the time of Dorman's abuse.  
15

### 16 C. Watchtower Had No Notice of Campos' Misconduct

17 In about 1982, when Arturo Jemio was about 12 years old, he felt his pants being pulled  
18 down while he was sleeping, and when he awoke he saw Campos kneeling next to the bed, but  
19 he was not aware of Campos touching him inappropriately. He believed Campos attempted to  
20 abuse him. (WE F, Deposition of Arturo Jemio at pp. 10:3-7; 15:10-18.) Arturo's mother  
21 learned of this incident the same night, and she promptly told elders in Linda Vista that Campos  
22 had tried to abuse her son. (WE G, Deposition of Marina Ayllon at pp. 12:2-18; 14:3-15:8; WE  
23 H, Deposition of Jesus Montijo at pp. 9:1-9; 22:5-14; 36:2-5; 36:13-16; 37:3-6; WE I,  
24 Deposition of Justino Diaz at pp. 7:22-24; 17:3-22; 29:6-10; 32:1-3.) When the Linda Vista  
25

26  
27 <sup>1</sup> When Campos first began associating with this new congregation its name was La Jolla Spanish Congregation.  
28 However, shortly after February 14, 1994, the name was changed to Playa Pacifica Spanish Congregation. (WE T,  
Letter to Watchtower dated January 28, 1994.) Thus, to avoid confusion, this congregation is referred to as Playa  
Pacifica throughout.

1 elders spoke with Campos, he lied and did not admit to any attempted molestation, and no  
2 judicial committee was formed because there were not at least two witnesses or a confession to  
3 Campos' attempted molestation of Arturo. In fact, Campos was never the subject of any judicial  
4 committee between 1982 and 1986 while he was a congregation member in Linda Vista. (WE  
5 D, Deposition of Campos at pp. 24:14-16; 25:15-25; 26:1-7; 27:17-28:13; WE H, Deposition of  
6 Jesus Montijo at p. 38:15-25; WE I, Deposition of Justino Diaz at p. 19:3-15; WE J, Deposition  
7 of Ramon Preciado at pp. 61:15-18; 61:22-62:12; WE K, Deposition of Dennis Palmer at p.  
8 50:10-23.)  
9

10 On November 25, 1986, Luis Rivera was appointed as an elder in Playa Pacifica—  
11 Mr. Rivera had never served as an elder in the Linda Vista Congregation. (WE L, Deposition of  
12 Luis Rivera at pp. 46:7-10; 114:5-22; 140:11-15; 141:2-9; 141:25-142:6.) At some point in time  
13 between November 1986 and June 1995, Luis Rivera met with elders Dennis Palmer and Justino  
14 Diaz, with Campos present, to discuss accusations against Campos that had been reported to  
15 Justino Diaz by a child's parent. These three elders asked Campos about the 'allegations,' and  
16 Campos denied any wrongdoing and said that it was just "horseplay." (WE L, Deposition of  
17 Luis Rivera at pp. 78:9-79:9; 83:22-84:20; 94:22-95:6.) This meeting was *not* a judicial  
18 committee. (WE L, Deposition of Luis Rivera at pp. 83:22-84:2.)  
19

20 The first time Dorman told anybody about his abuse by Campos was during spring break  
21 1994, when he was about 16 years old—a decade after the abuse had stopped. (WE B,  
22 Deposition of John Dorman at pp. 50:4-14; 52:1-8.) Thereafter, on about April 20, 1994,  
23 Watchtower received the letter from Dorman's parents which alleged that Campos had abused  
24 their son. (WE M, letter from Oregon elders to Watchtower dated April 13, 1994, attaching  
25 Dorman's parents' letter dated April 11, 1994; WE A, Ashe Affidavit, ¶ 11.) Watchtower then  
26  
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28

1 wrote to the elders in Playa Pacifica on June 9, 1994, requesting that they investigate these  
2 allegations. (WE N, June 9, 1994, letter from Watchtower to Playa Pacifica elders.)

3         Thereafter, Campos engaged in a series of lies and manipulations to hide Dorman's  
4 allegation from most of the Playa Pacifica elders and to cause those few elders who learned of  
5 the allegation to believe that his sexual abuse of Dorman had been handled by a Linda Vista  
6 judicial committee in 1986, and that the judicial committee found him to be repentant and  
7 privately reprovved him. (WE D, Deposition of Campos at pp. 62:18-63:22; 126:3-8; 157:10-  
8 158:18; WE L, Deposition of Luis Rivera at pp. 129:2-131:10; WE O, Deposition of Edward  
9 Chavez at p. 24:16-18; 25:16-21; 32:17-20; 33:5-10.) For example, Campos himself wrote the  
10 March 29, 1995, letter from the Playa Pacifica elders to Watchtower, falsely stating that there  
11 had already been a 1986 judicial committee that handled the matter, so as to try and stop  
12 Watchtower's and the Playa Pacifica elders' investigation of Dorman's allegation. (WE D,  
13 Deposition of Campos at pp. 55:18-19; 56:24-57:16; 63:7-10; 63:18-22; 117:21-25; 126:3-8;  
14 157:1-14; 158:4-18; 164:7-165:3; 166:20-25; WE Q, March 29, 1995, letter from Playa Pacifica  
15 elders to Watchtower.)

16         However, during the investigation of Dorman's allegation, the Playa Pacifica elders  
17 discovered that Campos had also sexually abused Joel Gamboa and a judicial committee was  
18 formed. (WE O, Deposition of Edward Chavez at p. 19:18-20:10; 23:13-19.) The first time that  
19 Gamboa told anyone about his abuse by Campos was in 1995, after the abuse had stopped. (WE  
20 C, Deposition of Joel Gamboa at pp. 35:24-36:5.) Campos finally confessed—for the first  
21 time—to the elders on his judicial committee that he had sexually abused Arturo Jemio, John  
22 Dorman, and Joel Gamboa. (WE D, Deposition of Campos at pp. 65:13-66:8.) As a result,  
23 Campos was disfellowshipped (expelled) from the congregation on June 9, 1995, for the sexual  
24 abuse of Joel Gamboa. He was not disfellowshipped for his sexual abuse of Jemio and Dorman  
25  
26  
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28

1 because, as noted above, the elders on Campos' judicial committee were deceived by Campos to  
2 believe that his sexual abuse of Dorman and Jemio had been previously handled by the Linda  
3 Vista elders. (WE D, Deposition of Gonzalo Campos at pp.62:18-63:22; 126:3-8; 157:10-  
4 158:18; WE P, Notice of Disfellowshipping of Campos dated June 9, 1995.)

5  
6 **V. DISCUSSION**

7 **A. Punitive Damages Claims Against Watchtower**

8 Plaintiffs do not have sufficient evidence to establish a *prima facie* right to recover  
9 punitive damages under section 425.14. The basic elements of such claims are set forth in  
10 section 3294 of the Civil Code, which provides in pertinent part:

11 § 3294. Exemplary damages; when allowable; definitions

12 (a) In an action for the breach of an obligation not arising from contract,  
13 where it is proven by clear and convincing evidence that the defendant has been  
14 guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual  
15 damages, may recover damages for the sake of example and by way of punishing  
16 the defendant.

17 (b) An employer shall not be liable for damages pursuant to subdivision (a),  
18 based upon acts of an employee of the employer, unless the employer had  
19 advance knowledge of the unfitness of the employee and employed him or her  
20 with a conscious disregard of the rights or safety of others or authorized or  
21 ratified the wrongful conduct for which the damages are awarded or was  
22 personally guilty of oppression, fraud, or malice. With respect to a corporate  
23 employer, the advance knowledge and conscious disregard, authorization,  
24 ratification or act of oppression, fraud, or malice must be on the part of an  
25 officer, director, or managing agent of the corporation.

26 (c) As used in this section, the following definitions shall apply:

27 (1) "Malice" means conduct which is intended by the defendant to  
28 cause injury to the plaintiff or despicable conduct which is carried on by  
the defendant with a willful and conscious disregard of the rights or safety  
of others.

(2) "Oppression" means despicable conduct that subjects a person to  
cruel and unjust hardship in conscious disregard of that person's rights.

(3) "Fraud" means an intentional misrepresentation, deceit, or  
concealment of a material fact known to the defendant with the intention  
on the part of the defendant of thereby depriving a person of property or  
legal rights or otherwise causing injury.

(Civ. Code, § 3294(a)-(c) (emphasis added).)

1           Thus, in order for a corporation like Watchtower to be held liable for punitive damages  
2 the offending conduct “must be on the part of an officer, director, or managing agent of the  
3 corporation.” (Civ. Code, § 3294(b).) Here, the conduct alleged by plaintiffs was not  
4 performed by “an officer, director, or managing agent” of Watchtower. Further, plaintiffs must  
5 provide evidence that “the employer had advance knowledge of the unfitness of the employee  
6 and employed him or her with a conscious disregard of the rights and safety of others or  
7 authorized or ratified the wrongful conduct for which the damages are awarded or was  
8 personally guilty of oppression, fraud, or malice.” (*Id.*) Plaintiffs have not established advance  
9 knowledge or any malicious or oppressive conduct by Watchtower, or that it acted with  
10 conscious disregard of the rights or safety of others.  
11

12           **B.       Punitive Damages Can Only be Given if the Actions Were Done by an**  
13                   **Officer, Director, or Managing Agent of Watchtower**

14           The California Supreme Court stated in *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563,  
15 that “[t]he entire basis of the doctrine of vindictive [punitive] damages is that the *person*,  
16 himself, *who is sued* has been guilty of recklessness or wickedness which amounts to a  
17 criminality that should be punished for the good of society, and as a warning to the individual;  
18 but to award such damages against the master for the criminality of the servant is to punish a  
19 man for that of which he is not guilty.” (*Id.* at p. 569 (emphasis in original) (citations omitted).)  
20 “An award of punitive damages against a corporation therefore must rest on the malice of the  
21 corporation’s employees.” (*Cruz v. Homebase* (2000) 83 Cal.App.4th 160, 167.) A corporation  
22 thus avoids punitive damages for the acts of its “low-level employees which does not reflect the  
23 corporate ‘state of mind’ or the intentions of corporate leaders.” (*Id.*) Thus, section 3294  
24 requires that the complained of behavior “must be on the part of an officer, director, or  
25 managing agent of the corporation.” (Civ. Code, § 3294(b).)  
26  
27  
28

1 The employee must be “sufficiently high in the corporation’s decision-making hierarchy  
2 to be an ‘officer, director or managing agent.’” (*Gelfo v. Lockheed Martin Corp.* (2006) 140  
3 Cal.App.4th 34, 63). The term “managing agent” includes “only those corporate employees  
4 who exercise substantial independent authority and judgment in their corporate decisionmaking  
5 so that their decisions ultimately determine corporate policy.” (*White, supra*, 21 Cal.4th at  
6 pp. 566-567.) “‘Corporate policy’ is the general principles which guide a corporation, or rules  
7 intended to be followed consistently over time in corporate operations. A ‘managing agent’ is  
8 one with substantial authority over decisions that set these general principles and rules.” (*Cruz,*  
9 *supra*, 83 Cal.App.4th at p. 167-168.) It is not enough that the individual has the ability to hire  
10 or fire employees to qualify as a managing agent, rather, he must have “substantial discretionary  
11 authority over decisions that ultimately determine corporate policy.” (*White, supra*, 21 Cal.4th  
12 at p. 573.)  
13  
14

15 Although the determination of whether one is a managing agent is often a question of  
16 fact, when there is insufficient evidence in the plaintiff’s favor as a matter of law, the punitive  
17 damages claim will not be allowed to go to a jury. (*See Gelfo, supra*, 140 Cal.App.4th at p. 63.)  
18

19 As a matter of law, the Linda Vista and Playa Pacifica elders in this case were not  
20 managing agents of Watchtower since they did not have “broad discretionary powers and  
21 exercise substantial discretionary authority” over Watchtower’s corporate activities. (*White,*  
22 *supra*, 21 Cal.4th at p. 577.) Furthermore, a congregation elder’s supervisory capacity, or a  
23 limited sphere of authority over congregation members, does not make him Watchtower’s  
24 managing agent. (*See Cruz, supra*, 83 Cal.App.4th at p. 168.) Nor does his authority as a  
25 member of a judicial committee to disfellowship or otherwise discipline congregation members  
26 make him Watchtower’s managing agent. (*See White, supra*, 21 Cal.4th at pp. 566-567 (“the  
27 mere ability to hire and fire employees” is not enough to qualify as managing agent).) In short,  
28

1 plaintiffs cannot prove that congregation elders possessed the requisite authority to affect  
2 Watchtower's business and corporate policies so as to be considered its managing agents.

3 **C. Watchtower's Officers and Directors Did Not Ratify Campos' Sexual Abuse**

4 The facts in this case do not support the theory of ratification for purposes of punitive  
5 damages. "For purposes of determining an employer's liability for punitive damages,  
6 ratification generally occurs where, under the particular circumstances, the employer  
7 demonstrates an intent to adopt or approve oppressive, fraudulent, or malicious behavior by an  
8 employee in the performance of his job duties." (*College Hospital, Inc. v. Superior Court*  
9 (1994) 8 Cal.4th 704, 726.) "The issue commonly arises where the employer or its managing  
10 agent is charged with failing to intercede in a known pattern of workplace abuse, or failing to  
11 investigate or discipline the errant employee once such misconduct became known." (*Id.*) "The  
12 mere notification of the principal of the claim of the injured person is not enough. There should  
13 be, in addition to this, time and opportunity for investigation." (*Edmunds v. Atchison, Topeka*  
14 *and Santa Fe Ry. Co.* (1917) 174 Cal. 246, 250.)

17 In this case, as noted above, after Dorman's abuse by Campos was reported to  
18 Watchtower in April 1994, it wrote to the elders in Playa Pacifica requesting that they  
19 investigate. Despite Campos' lies to the elders that the allegation had previously been handled  
20 by the Linda Vista elders in 1986, when Campos was a rank and file congregation member in  
21 Linda Vista, the Playa Pacifica elders continued to investigate. Their investigation resulted in  
22 the removal of Campos as an elder and his being disfellowshipped in June 1995 for the abuse of  
23 Gamboa, who did not inform the elders of his abuse until shortly before June 1995. In  
24 summary, Watchtower not only investigated the sexual abuse allegations against Campos, but  
25 Campos was disfellowshipped and removed as an elder. These facts simply cannot support  
26 ratification for the purposes of punitive damages with respect to either plaintiff, Dorman or  
27 Gamboa.  
28



1 Furthermore, with respect to plaintiff Dorman, as set forth above, Campos was a rank-  
2 and-file member of the Linda Vista Spanish Congregation, and not an employee or agent at the  
3 time he abused Dorman in 1983 to 1984. Since the ratification theory relies on an  
4 employer/employee relationship, or at the very least a principal/agent relationship, ratification  
5 cannot be used to save Dorman's claim for punitive damages. (*See Murillo v. Rite Stuff Foods,*  
6 *Inc.* (1998) 65 Cal.App.4th 833, 852.)  
7

8 **D. There Was No Conscious Disregard or Malice by Watchtower**

9 "Malice" is defined as conduct "intended by the defendant to cause injury to the  
10 plaintiff," or "despicable conduct which is carried on by the defendant with a willful and  
11 conscious disregard of the rights or safety of others." (*College Hospital, supra*, 8 Cal.4th at p.  
12 725 (emphasis in original)). "Oppression means 'despicable conduct that subjects a person to  
13 cruel and unjust hardship in conscious disregard of that person's rights.'" (*Lackner v. North*  
14 (2006) 135 Cal.App.4th 1188, 1210.) A plaintiff must therefore prove that "the defendant was  
15 aware of the probable dangerous consequences of his conduct, and that he wilfully and  
16 deliberately failed to avoid those consequences." (*Mock v. Mich. Millers Mut. Ins. Co.* (1992) 4  
17 Cal.App.4th 306, 329.) Furthermore, "[t]he mere carelessness or ignorance of the defendant  
18 does not justify the imposition of punitive damages.... Punitive damages are proper only when  
19 the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which  
20 decent citizens should not have to tolerate." (*George F. Hillenbrand, Inc. v. Ins. Co. of N.*  
21 *America* (2002) 104 Cal.App.4th 784, 815 (citations omitted).)  
22  
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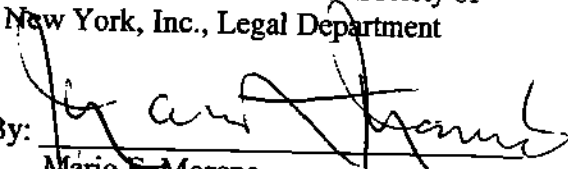
24 In this case, Watchtower's conduct did not show malice or an indifference to plaintiffs'  
25 rights. As already noted above, after Watchtower received notice regarding Campos' alleged  
26 sexual abuse in April 1994, an investigation of the allegations resulted in Campos being  
27 disfellowshipped and removed as an elder in June 1995, despite Campos' lies and manipulations  
28 in his effort to stop the investigation.

1 Thus, the facts in this case simply to do not support a finding of malice or disregard for  
2 plaintiffs so as to support plaintiffs' motion to add a punitive damages claim against  
3 Watchtower.

4 **VI. CONCLUSION**

5 Watchtower respectfully requests that this court deny plaintiffs' request to amend the  
6 complaint to plead a claim for punitive damages against Watchtower on two valid grounds:  
7 First, plaintiffs' inexcusable delay in seeking to amend the complaint to add this claim will  
8 cause Watchtower to suffer prejudice as a result of an amendment at this late date. Second,  
9 plaintiffs' motion does not meet the requirements of Section 425.14 and Section 3294 to state  
10 and demonstrate a triable punitive damages claim against Watchtower because: (1) the conduct  
11 alleged by plaintiffs was not performed by "an officer, director, or managing agent" of  
12 Watchtower, and (2) plaintiffs have not established that Watchtower's conduct was malicious or  
13 oppressive or that Watchtower acted with conscious disregard of the rights or safety of others.  
14  
15

16 DATED: November 16, 2011

17 Watchtower Bible and Tract Society of  
18 New York, Inc., Legal Department  
19 By:   
20 Mario F. Moreno  
21 Attorney for Defendant Watchtower  
22 Bible and Tract Society of New York,  
23 Inc. (sued as "Doe 3, Supervisory  
24 Organization")  
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28

**PROOF OF SERVICE**  
**DORMAN et al. v. DOE 1, LA JOLLA CHURCH et al.**  
**CASE NO. 37-2010-00092450-CU-PO-CTL**

STATE OF NEW YORK, COUNTY OF PUTNAM:

I work in the County of Putnam, State of New York. I am over the age of 18 and am not a party to the within action; my business address is 100 Watchtower Drive, Patterson, NY 12563.

On November 16, 2011, I served the following document(s) described as DECLARATION OF MARIO F. MORENO IN SUPPORT OF DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF THEIR OPPOSITION TO PLAINTIFFS' MOTION TO ALLEGE PUNITIVE DAMAGES; DEFENDANT WATCHTOWER'S LODGMENT OF FOREIGN CASES IN SUPPORT OF THEIR OPPOSITION TO PLAINTIFFS' MOTION TO ALLEGE PUNITIVE DAMAGES; DEFENDANT WATCHTOWER'S LODGMENT OF EXHIBITS IN SUPPORT OF THEIR OPPOSITION TO PLAINTIFFS' MOTION TO ALLEGE PUNITIVE DAMAGES; DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION TO ALLEGE PUNITIVE DAMAGES on all interested parties to this action as follows:

By placing  the original  true copy thereof enclosed in sealed envelopes addressed as follows: **PLEASE SEE ATTACHED SERVICE LIST.**

**BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Watchtower Legal Department's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Patterson, New York, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

**BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to see attached service list ~~for delivery to the above address(es).~~


**BY FAX:** I caused the above-referenced document to be transmitted via facsimile from Fax No. (845) 306-0709 to Fax No. \_\_\_\_\_ directed to \_\_\_\_\_. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

**BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee(s).

[State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

[Federal] I declare that I am employed in the office of a member of the bar of \_\_\_\_\_ this court at whose direction the service was made.

1 Executed on November 16, 2011 at Patterson, New York.

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**SERVICE LIST**  
**DORMAN, et al. v. DOE I, LA JOLLA CHURCH, et al.**  
**CASE NO. 37-2010-00092450-CU-PO-CTL**

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