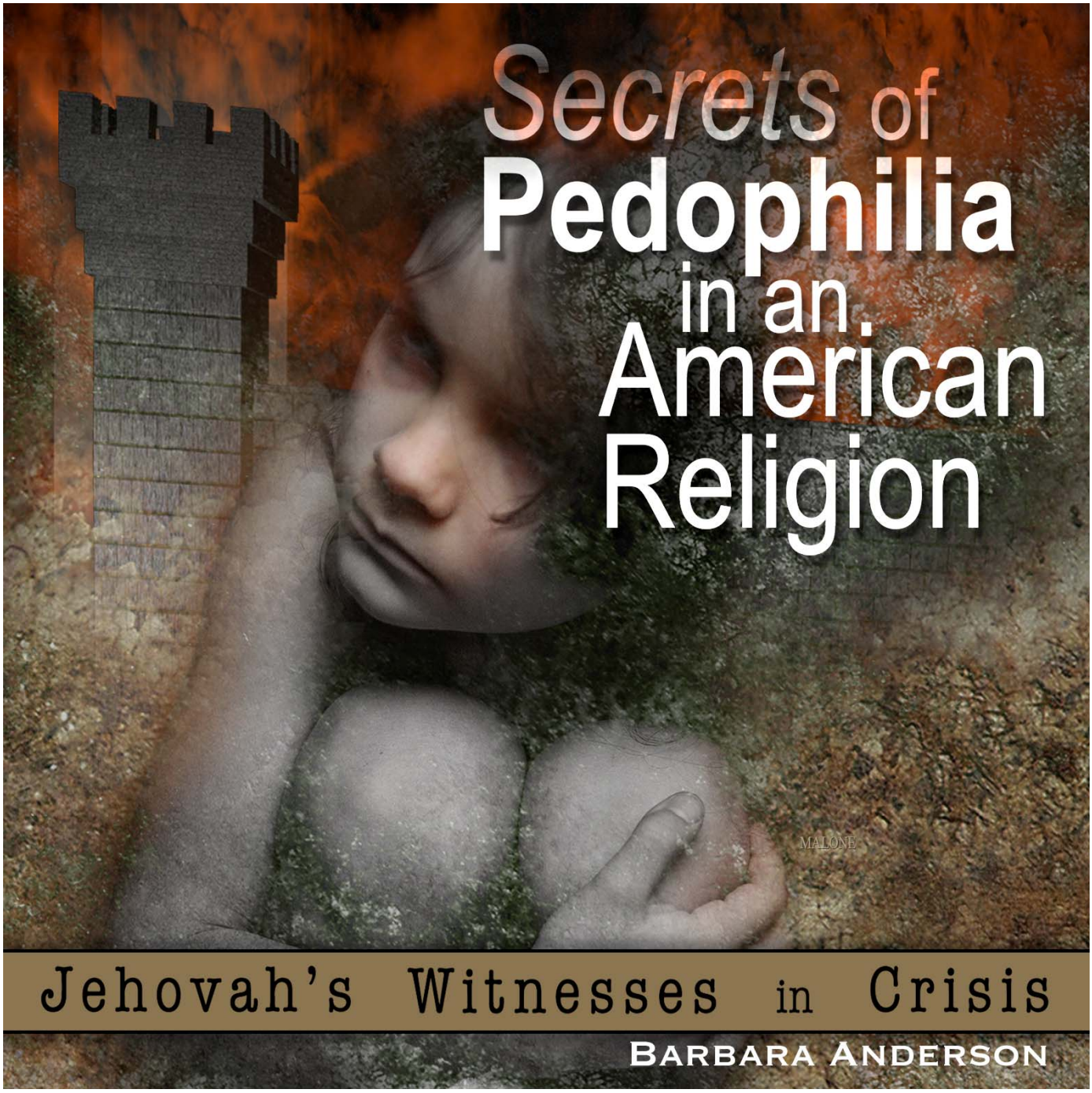

Court Documents

Morley et al

vs

Jehovah's Witnesses

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CASE # 030431
CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LINN
Filed: February 20, 2003

LEANNA MORLEY, JESSICA SCHROEDER and CHRISTINA VIZENOR, Plaintiffs,
v.
NORTH ALBANY OREGON CONGREGATION OF JEHOVAH'S WITNESS, INC., NORTH BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES, WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ET AL. Defendants.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

030431

LEANNA MORLEY, JESSICA SCHROEDER and CHRISTINA VIZENOR, Plaintiffs, v. NORTH ALBANY OREGON CONGREGATION OF JEHOVAH'S WITNESSES, INC., f/k/a ALBANY OREGON COMPANY OF JEHOVAH'S J WITNESSES, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, WATCHTOWER ENTERPRISES, L.L.C., WATCHTOWER FOUNDATION, INC., WATCHTOWER ASSOCIATES, LTD., KINGDOM SUPPORT SERVICES, INC. CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, RELIGIOUS ORDER OF JEHOVAH'S WITNESSES, THE WATCHTOWER GROUP, INC. AND NORTH BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES, INC., Defendants.	CASE NO. _____ COMPLAINT (Sexual Battery of a Child; Vicarious Liability; Negligence; Fraud; Ratification; and Alter Ego Not subject to Mandatory Arbitration *Jury Trial Requested*

Plaintiffs allege

GENERAL ALLEGATIONS

I.

PARTIES

1.

Plaintiff LEANNA MORLEY is a resident of Albany, Oregon.

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2.

Plaintiff JESSICA SCHROEDER. is a resident of Eddyville, Oregon.

3.

Plaintiff CHRISTINA VIZENOR is a resident of South Dakota.

4.

Defendant NORTH ALBANY OREGON CONGREGATION OF JEHOVAH'S WITNESSES, INC. f/k/a ALBANY OREGON COMPANY OF JEHOVAH'S WITNESSES, INC. is a corporation organized and existing under the laws of the State of Oregon. At all material times, it maintained its offices at Kingdom Hall Building, 303 Grand Prairie Road SE, Albany, Linn County, Oregon 97321.

5.

Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation organized and existing under the laws of the State of New York, with offices at 25 Columbia Heights, Brooklyn, New York 11201-2483, has conducted business within the State of Oregon through its agents and alter egos.

6.

Defendant WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation organized and existing under the laws of the State of Pennsylvania, with offices at 1630 Spring Run Road Extension, Coraopolis, Pennsylvania 15108, has conducted business within the State of Oregon through its agents and alter egos.

7.

Defendant WATCHTOWER ENTERPRISES, INC., a limited liability company organized and existing under the laws of the State of New York, with

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offices at 25 Columbia Heights, Brooklyn, New York 11201, has conducted business within the State of Oregon through its agents and alter egos.

8.

Defendant WATCHTOWER FOUNDATION, INC., a corporation organized and existing under the laws of the State of New York with offices at 25 Columbia Heights, Brooklyn, New York 11201, has conducted business within the State of Oregon through its agents and alter egos.

9.

Defendant WATCHTOWER ASSOCIATES, LTD., a corporation organized and existing under the laws of the State of New York, with offices at 147 Holiday Drive, Westbury, New York 11797, has conducted business within the State of Oregon through its agents and alter egos.

10.

Defendant KINGDOM SUPPORT SERVICES, INC., a corporation organized
and existing under the laws of the State of New York with offices at 98 Montague Street, Brooklyn, New York 11201, has conducted business within the State of Oregon through its agents and alter egos.

11.

Defendant CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of New York with offices at 100 Watchtower Drive, Patterson, New York 12563-9204, has conducted business within the State of Oregon through its agents and alter egos.

12.

Defendant RELIGIOUS ORDER OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of New York with

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offices at 25 Columbia Heights, Brooklyn, New York 11201-2483, has conducted business within the State of Oregon through its agents and alter egos.

13.

Defendant THE WATCHTOWER GROUP, INC., a corporation organized and existing under the laws of the State of Pennsylvania with offices at 196 E. Butler Avenue, Chalfont, PA 18914, has conducted business within the State of Oregon through its agents and alter egos.

14.

Defendant NORTH BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of Washington, has conducted business within the State of Oregon through its agents and alter egos.

15.

The Defendant entities are collectively referred to herein as the "WATCHTOWER DEFENDANTS" because each is the alter ego of each other and operate as a single business enterprise.

II.

JURISDICTION AND VENUE

16.

Plaintiffs have been damaged in an amount exceeding the minimum jurisdictional levels of this court.

17.

Venue is proper in Linn County, Oregon because Defendant NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC. has its principal place of business in Linn County and because some of the acts or omissions that give rise to Plaintiffs' claims occurred in Linn County.

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III.

SUMMARY OF FACTS

A. WATCHTOWER DEFENDANTS' ORGANIZATION AND CHAIN OF COMMAND

18.

The WATCHTOWER DEFENDANTS' organization has a hierarchical structure in which the GOVERNING BODY sits at the top of a strict chain of command that extends over each individual and Defendant entity in the organization. These individuals and entities act as agents, servants and alter egos of each other. Authority for any actions by the organization or its members must derive from the GOVERNING BODY, which has absolute authority over every person and all matters in the organization and its worldwide operations. The GOVERNING BODY is a small group of men who operate out of various entities within the hierarchical structure.

19.

All of the Defendants are the agents and servants of each other and are vicariously liable for each other's acts. The WATCHTOWER DEFENDANTS are so organized and controlled and their affairs are so conducted that they are alter egos of each other and operate as a single business enterprise.

B. VICARIOUS LIABILITY OF THE WATCHTOWER DEFENDANTS

20.

Through its hierarchical structure, the WATCHTOWER DEFENDANTS assume complete responsibility for the development, protection and discipline of its membership, especially the children of members. All male members, whether Elders, Ministerial Servants, Pioneers and/or Publishers, are appointed and empowered by the GOVERNING BODY to carry out this responsibility.

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21.

To further their goals, the WATCHTOWER DEFENDANTS authorize male members to develop relationships of trust with women, children and families and to assume the role of counselor and advocate for any problems that might arise, including claims of child abuse. It is the responsibility of the Elders and those higher up in the chain of command, all the way up to the GOVERNING BODY, to decide if abuse has occurred and how it should be handled.

22.

At all material times, the WATCHTOWER DEFENDANTS have prohibited the above victim and/or accuser from warning others or speaking about the matter to anyone under penalty of discipline. Victim/accusers are not permitted to report suspected abuse to outside authorities or to other Publishers within the organization, despite secular laws and duties regarding the reporting of sexual abuse. Violation of this policy can lead to severe sanctions.

C. **DON SERJEANT**

23.

From at least 1955 until the date of his death, the WATCHTOWER DEFENDANTS vested Don Serjeant with the leadership authority of a male Publisher within the WATCHTOWER DEFENDANTS' organization and at all times held him out to be in good standing.

24.

As early as 1962, if not before, Don Serjeant began sexually molesting and physically abusing his daughter, Suzan. Suzan finally complained to the Elders of Defendant BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES, where Don Serjeant was a Publisher in good standing and Suzan was a participant as a

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member of his family. Suzan described to the Elders of Defendant BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES the repeated sexual and physical abuse by Don Serjeant and asked for their help. The Elders of Defendant BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES told Suzan not to discuss the matter with anyone else and that they would take any and all necessary action . The Elders of Defendant BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES reported Suzan's complaint to Don Serjeant whereupon Don Serjeant beat her for talking to the Elders. Despite their knowledge and representations, the WATCHTOWER DEFENDANTS did nothing to assist Suzan, to protect Suzan or other young girls from further abuse, to discipline Don Serjeant or to warn others of the threat he posed. The WATCHTOWER DEFENDANTS made no report to law enforcement authorities or others. Instead, the WATCHTOWER DEFENDANTS continued to promote Don Serjeant as a Publisher in good standing in the organization, aiding, abetting and ratifying the abuse of Suzan and other young victims within the organization.

25.

At some time prior to 1984, Don Serjeant moved to Albany, Oregon and joined Defendant NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, where the WATCHTOWER DEFENDANTS continued to promote Don Serjeant as a Publisher in good standing, despite the WATCHTOWER DEFENDANTS knowledge that he was sexually and physically abusing young children. The WATCH TOWER DEFENDANTS made no effort to warn families of Defendant NORTH ALBANY CONGREGATION that a sexual predator was in their midst and that their children were at risk. Beginning sometime after 1978 for a number of years until 1989, Don Serjeant repeatedly sexually abused his

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granddaughter, Plaintiff CHRISTINA VIZENOR who was born on September 3, 1977. From 1984 through 1989, Don Serjeant repeatedly sexually abused Plaintiff LEANNA MORLEY, a participant in Defendant NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES. Plaintiff LEANNA MORLEY was approximately 9 years old when the abuse began. Beginning in 1986, Don Sergeant also began repeatedly sexually assaulting Plaintiff JESSICA SCHROEDER who was also a participant in Defendant NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES. Plaintiff JESSICA SCHROEDER was approximately 6 years old when the abuse began.

26.

In about 1989, Plaintiff LEANNA MORLEY'S father found a journal which graphically depicted Don Serjeant's sexual abuse of his daughter. He gave the journal to the WATCHTOWER DEFENDANTS through the Elders of Defendant NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES. The WATCHTOWER DEFENDANTS did nothing about the sexual abuse described in the journal except to punish Plaintiff LEANNA MORLEY. The WATCHTOWER DEFENDANTS told Plaintiff LEANNA MORLEY'S family that they were not to report the abuse to anyone, not even law enforcement authorities or other Publishers.

27.

For three decades, the WATCHTOWER DEFENDANTS knew or should have known that Don Serjeant was sexually molesting and physically abusing young children. Nevertheless, the WATCHTOWER DEFENDANTS allowed Don Serjeant to continue as a Publisher in good standing, entrusting him with the welfare of numerous young girls in the WATCHTOWER DEFENDANTS' local

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congregations, whom he sexually molested. The WATCHTOWER DEFENDANTS failed to notify anyone that Don Serjeant was molesting or had sexually molested young children. They further failed to take any steps to protect these young victims from his abuse. Instead, they knowingly concealed this information from Plaintiffs and others. The WATCHTOWER DEFENDANTS also aided, abetted and ratified the abuse by disciplining the victims who dared to report the abuse to the WATCHTOWER DEFENDANTS, further increasing Don Serjeant's power over them.

28.

Plaintiffs and their families sought the advice and protection of the WATCHTOWER DEFENDANTS and told them about the abuses perpetrated by Don Serjeant. The WATCHTOWER DEFENDANTS assumed the role of advocate and counselor to Plaintiffs and their families and instructed Plaintiffs and their families to keep the abuse matters within the WATCHTOWER DEFENDANTS' organization and not to disclose the abuses to any other publishers or outside authorities. They even punished those who dared to complain. Thus, the WATCHTOWER DEFENDANTS aided and abetted the perpetrator and ratified his conduct, causing further damage to Plaintiffs.

29.

The WATCHTOWER DEFENDANTS did not report the abuse to law enforcement authorities nor did they warn any other members of the NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC. or any other congregation, that a dangerous sexual predator was in their midst. They did not act to help Plaintiffs or their families deal with the trauma and actively prevented them from obtaining help from trained and appropriate resources. They also took

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no steps to discipline or otherwise hold Don Serjeant accountable for his conduct or to assist him in addressing his propensities.

30.

Don Serjeant used the authority of his position in the WATCHTOWER DEFENDANTS' organization to sexually abuse Plaintiffs. The WATCHTOWER DEFENDANTS directly and vicariously caused foreseeable harm to Plaintiffs by, among other things:

a. aiding, abetting and ratifying the abuse of children by Publishers and Elders;

b. blaming, humiliating, sanctioning and/or disciplining victims/accusers of sexual abuse instead of the perpetrators

c. negligently failing to report such sexual abuse, including the abuse by Don Serjeant, to law enforcement and governmental child welfare agencies and requiring that Publishers not make such reports.

d. negligently failing to warn Plaintiffs, their families, and others of the risk of Don Serjeant's abuse after they knew or should have known of Don Serjeant's propensities to use his position of leadership to engage in acts of sexual abuse.

e. negligently failing to train its Elders, volunteers, appointed overseers and other associated individuals to prevent, identify, investigate, respond to or report child abuse.

f. negligently failing to adopt adequate policies and procedures for the protection of children and other publishers and/or to implement and comply with such procedures that did exist.

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g. failing to properly investigate matters brought to the WATCHTOWER DEFENDANTS' attention involving child sexual abuse and/or suspicions of child sexual abuse.

h. negligently allowing Don Serjeant to move between congregations as a Publisher in good standing after the WATCHTOWER DEFENDANTS knew or should have known of his propensities to use his position of leadership to engage in acts of sexual abuse of children.

i. negligently failing to provide child abuse victims and their families with any assistance in coping with the trauma of abuse and preventing Plaintiffs and their families from reporting the abuse to outside authorities and obtaining outside help to deal with the trauma of abuse.

j. concealing from Plaintiffs and their families that the WATCHTOWER DEFENDANTS had information that Don Serjeant was abusing young children.

k. negligently failing to undertake a sexual offender evaluation, provide sexual offender treatment and/or obtain psychiatric evaluation and treatment of Don Serjeant after they knew or should have known of his propensities to use his position of leadership to engage in acts of sexual abuse.

l. negligently failing to properly supervise Don Serjeant as a Publisher in the organization or to monitor his activities after they knew or should have known of his propensities to use his position of leadership to engage in acts of sexual abuse.

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31.

Plaintiffs did not discover and could not have discovered through the exercise of reasonable diligence their injuries that resulted from the abuse or the causal connection between their injuries and the wrongful conduct of the WATCHTOWER DEFENDANTS until less than three years before the filing of this lawsuit.

CAUSES OF ACTION

COUNT I

RESPONDEAT SUPERIOR

32.

For a number of years, beginning in 1984, as an agent and alter ego of the WATCHTOWER DEFENDANTS, Don Sergeant repeatedly committed sexual battery upon the persons of the Plaintiffs in the State of Oregon. Each of the WATCHTOWER DEFENDANTS was in the chain of command and acted pursuant to the authority granted to them as agents and the alter ego of the GOVERNING BODY and each other, utilizing such leadership and authority to carry out and/or aid, abet and ratify the sexual abuse of Plaintiffs. The WATCHTOWER DEFENDANTS are therefore liable for the sexual battery of Plaintiffs under the legal theory of *respondeat superior*.

COUNT II

COMMON-LAW NEGLIGENCE

33.

At all material times, WATCHTOWER DEFENDANTS assumed a duty to protect Plaintiffs from sexual predators within the WATCHTOWER DEFENDANTS' organization. The WATCHTOWER DEFENDANTS further knew or should have known that Plaintiffs were at risk of foreseeable harm by

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Don Serjeant, but failed to act to protect them from said harm. The WATCHTOWER DEFENDANTS breached their duty to the great harm of Plaintiffs.

34.

As a direct result of the negligent conduct of the WATCHTOWER DEFENDANTS Plaintiffs have suffered the injuries and damages described herein.

COUNT III

NEGLIGENT HIRING, RETENTION AND SUPERVISION

35.

At all material times, the WATCHTOWER DEFENDANTS knew or should have known of Don Serjeant's propensities to use his position as a male publisher to engage in acts of sexual abuse. The WATCHTOWER DEFENDANTS failed to adequately investigate, discipline, evaluate, treat, supervise and otherwise monitor the conduct of Don Serjeant who was under their control. They therefore negligently hired, retained and supervised Don Serjeant in the organization at a time when they knew or should have known of his propensities to engage in acts of sexual abuse against Plaintiffs and other young children. The WATCHTOWER DEFENDANTS also failed to adequately train and supervise the Elders of the local congregations to whom they had entrusted the responsibility of investigating, evaluating and handling all reports or suspicions of child abuse. Plaintiffs have suffered grave harm due to Defendants' negligent hiring, retention and supervision

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COUNT IV

AGGRAVATED NEGLIGENCE

36.

The behavior of the WATCHTOWER DEFENDANTS set forth above demonstrated a conscious indifference to the safety and welfare of Plaintiffs entitling Plaintiffs to amend and seek damages under O.R.S. 18.535.

37.

As a direct result of the aggravated negligent conduct of the WATCHTOWER DEFENDANTS, Plaintiffs have suffered the injuries and damages described herein.

COUNT V

BREACH OF FIDUCIARY DUTY

38.

The WATCHTOWER DEFENDANTS placed themselves in a position of trust and confidence with Plaintiffs. The relationship between Plaintiffs and the WATCHTOWER DEFENDANTS' organization was fiduciary in nature and imposed on the WATCHTOWER DEFENDANTS a duty to act in Plaintiffs' best interest.

39.

Because of this special relationship between the Plaintiffs and the WATCHTOWER DEFENDANTS, Plaintiffs and their families placed their trust and confidence in the WATCHTOWER DEFENDANTS that they would not harm Plaintiffs or fail to warn Plaintiffs of potential harm. Further, Plaintiffs and their families placed their trust and confidence in the WATCHTOWER DEFENDANTS that they would protect Plaintiffs from harm.

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40.

The above acts and/or omissions by the WATCHTOWER DEFENDANTS, either independently or in conjunction with each other constitutes a breach of the fiduciary duty owed to Plaintiffs by WATCHTOWER DEFENDANTS.

41.

As a direct result of the conduct of the WATCHTOWER DEFENDANTS Plaintiffs have suffered the injuries and damages described herein.

COUNT VI

***NEGLIGENCE PER* SE and COMMON-LAW NEGLIGENCE: FAILURE TO REPORT SUSPECTED CHILD ABUSE**

42.

The WATCHTOWER DEFENDANTS had a duty, under Section 419B of the Oregon Revised Statutes and the common-law, to report the abuse or suspected abuse of children.

43.

The WATCHTOWER DEFENDANTS deliberately and negligently failed to report to law enforcement the abusive conduct of Don Serjeant prior to the abuse of Plaintiff. Further, the WATCHTOWER DEFENDANTS failed to report abuse of Plaintiffs by Don Serjeant to law enforcement. The WATCHTOWER DEFENDANTS thereby violated Section 419B of the Oregon Revised Statutes intended to safeguard and enhance the welfare of abused children. Plaintiffs were members of the class of persons Section 419B was designed to protect and were injured as a result of The WATCHTOWER DEFENDANTS' violation of the statute. Such violation constitutes *negligence per se*. The WATCHTOWER DEFENDANTS' failure to report also constitutes common-law negligence. The

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WATCHTOWER DEFENDANTS asserted their authority over both Plaintiffs and their abuser, Don Serjeant, creating a special relationship of trust and confidence and power over Plaintiffs. In the context of this special relationship and the uneven balance of power, the WATCHTOWER DEFENDANTS assumed a duty to handle all reports of child abuse and prevented Plaintiffs and their families from reporting the abuse to, or seeking help from, sources and authorities outside the WATCHTOWER DEFENDANTS' organization. The WATCHTOWER DEFENDANTS, with conscious disregard for the welfare of Plaintiffs, violated that duty to Plaintiffs' detriment.

44.

As a direct result of the WATCHTOWER DEFENDANTS' failure to report Don Serjeant's abuse to law enforcement, Plaintiffs were deprived of Oregon's victim assistance program that would have provided for counseling and care that would have decreased the harm to the Plaintiffs from the effects of the abuse.

COUNT VII

FRAUD AND FRAUDULENT CONCEALMENT

45.

After receiving reports that Don Serjeant was abusing young girls, the WATCHTOWER DEFENDANTS, with the intent to keep the information from Plaintiffs, other victims similarly situated and the community-at-large, willfully concealed that information. The WATCHTOWER DEFENDANTS materially misrepresented to Plaintiffs and their families that Don Serjeant was a Publisher in good standing with authority to instruct Plaintiffs in spiritual, ethical and moral matters and that he was to be obeyed. The WATCHTOWER DEFENDANTS further materially misrepresented that they would act in their

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best interest. The WATCHTOWER DEFENDANTS failed to disclose that they knew of Don Serjeant's propensities to use his leadership position to sexually abuse Plaintiffs and others and that they were doing nothing to protect them. Plaintiffs did not know of the falsity of Defendants' representations, were entitled to rely upon them and did in fact rely upon them to their serious injury and harm.

COUNT VIII

RATIFICATION

46.

Upon learning that its agent, Don Serjeant had sexually abused Plaintiffs and others, the WATCHTOWER DEFENDANTS failed to take any steps to discipline or otherwise hold Don Serjeant accountable for his actions and continued to maintain that Don Serjeant was a Publisher in good standing with the organization until his death. The WATCHTOWER DEFENDANTS have thereby ratified Don Serjeant's conduct in sexually abusing Plaintiffs and others. The WATCHTOWER DEFENDANTS are thus liable in damages to Plaintiffs.

COUNT IX

ALTER EGO AND SINGLE BUSINESS ENTERPRISE

47.

The WATCHTOWER DEFENDANTS are organized and controlled and their affairs are so conducted that they are in fact mere instrumentalities and alter egos for each other and liable for each other's acts. Alternatively, the WATCHTOWER DEFENDANTS were all engaged, at all material times, in a single business enterprise and are liable for each other's acts.

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COUNT X

NEGLIGENT USURPATION OF INVESTIGATORY FUNCTION

48.

Section 419B of the Oregon Revised Civil Statutes (and predecessor provisions) requires officials to perform specific responsibilities to carry out the policy of the statute described in Section 419.005 (and its predecessors). The WATCHTOWER DEFENDANTS assumed these duties and responsibilities, but negligently failed to perform them.

49.

As a direct result of the WATCHTOWER DEFENDANTS' negligent conduct, Plaintiffs have suffered the injuries and damages described herein.

DAMAGES

50.

As a result of Defendants' acts, Plaintiffs have incurred and will continue to incur costs for medical expenses, counseling and psychological treatment, have lost earning capacity and have suffered and will continue to suffer extreme, permanent emotional distress and psychological harm with accompanying physical manifestations, embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life, and economic damages of $(amount to be inserted prior to trial) and non-economic damages of $4,000,000 as to each Plaintiff.

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WHEREFORE, Plaintiffs demand judgment against Defendants individually, jointly and severally in an amount for economic damages of $(amount to be inserted prior to trial) and non-economic damages of $8,000,000, plus costs, disbursements, and whatever relief the court deems just and equitable.

NELSON & MacNEIL, P.C.

By: James G. Nelson OSB #74230
Of Attorneys for Plaintiffs

SUBMITTED BY:
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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA MORLEY, JESSICA SCHROEDER and CHRISTINA VIZENOR, Plaintiffs, v. NORTH ALBANY OREGON CONGREGATION OF JEHOVAH'S WITNESSES, INC., f/k/a ALBANY OREGON COMPANY OF JEHOVAH'S J WITNESSES, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, WATCHTOWER ENTERPRISES, L.L.C., WATCHTOWER FOUNDATION, INC., WATCHTOWER ASSOCIATES, LTD., KINGDOM SUPPORT SERVICES, INC. CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, RELIGIOUS ORDER OF JEHOVAH'S WITNESSES, THE WATCHTOWER GROUP, INC. AND NORTH BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES, INC., Defendants.	CASE NO. 030431 PLAINTIFF'S FIRST AMENDED COMPLAINT (Sexual Battery of a Child; Vicarious Liability; Negligence; Fraud; Ratification; and Alter Ego Not subject to Mandatory Arbitration *Jury Trial Requested*

Plaintiffs allege:

GENERAL ALLEGATIONS

I.

PARTIES

1.

Plaintiff LEANNA MORLEY is a resident of Albany, Oregon.

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2.

Plaintiff JESSICA SCHROEDER is a resident of Eddyville, Oregon.

3.

Plaintiff CHRISTINA VIZENOR is a resident of South Dakota.

4.

Defendant NORTH ALBANY OREGON CONGREGATION OF JEHOVAH'S WITNESSES, INC. f/k/a ALBANY OREGON COMPANY OF JEHOVAH'S WITNESSES, INC. is a corporation organized and existing under the laws of the State of Oregon. At all material times, it maintained its offices at Kingdom Hall Building, 303 Grand Prairie Road SE, Albany, Linn County, Oregon 97321.

5.

Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation organized and existing under the laws of the State of New York, with offices at 25 Columbia Heights, Brooklyn, New York 11201-2483, has conducted business within the State of Oregon through its agents and alter egos.

6.

Defendant WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation organized and existing under the laws of the State of Pennsylvania, with offices at 1630 Spring Run Road Extension, Coraopolis, Pennsylvania 15108, has conducted business within the State of Oregon through its agents and alter egos.

7.

Defendant WATCHTOWER ENTERPRISES, INC., a limited liability company organized and existing under the laws of the State of New York, with

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offices at 25 Columbia Heights, Brooklyn, New York 11201, has conducted business within the State of Oregon through its agents and alter egos.

8.

Defendant WATCHTOWER FOUNDATION, INC., a corporation organized and existing under the laws of the State of New York with offices at 25 Columbia Heights, Brooklyn, New York 11201, has conducted business within the State of Oregon through its agents and alter egos.

9.

Defendant WATCHTOWER ASSOCIATES, LTD., a corporation organized and existing under the laws of the State of New York, with offices at 147 Holiday Drive, Westbury, New York 11797, has conducted business within the State of Oregon through its agents and alter egos.

10.

Defendant KINGDOM SUPPORT SERVICES, INC., a corporation organized and existing under the laws of the State of New York with offices at 98 Montague Street, Brooklyn, New York 11201, has conducted business within the State of Oregon through its agents and alter egos.

11.

Defendant CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of New York with offices at 100 Watchtower Drive, Patterson, New York 12563-9204, has conducted business within the State of Oregon through its agents and alter egos.

12.

Defendant RELIGIOUS ORDER OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of New York with

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offices at 25 Columbia Heights, Brooklyn, New York 11201-2483, has conducted business within the State of Oregon through its agents and alter egos.

13.

Defendant THE WATCHTOWER GROUP, INC., a corporation organized and existing under the laws of the State of Pennsylvania with offices at 196 E. Butler Avenue, Chalfont, PA 18914, has conducted business within the State of Oregon through its agents and alter egos.

14.

Defendant NORTH BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of Washington, has conducted business within the State of Oregon through its agents and alter egos.

15.

The Defendant entities are collectively referred to herein as the "WATCHTOWER DEFENDANTS" because each is the alter ego of each other and operate as a single business enterprise.

II.

JURISDICTION AND VENUE

16.

Plaintiffs have been damaged in an amount exceeding the minimum jurisdictional levels of this court.

17.

Venue is proper in Linn County, Oregon because Defendant NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC. has its principal place of business in Linn County and because some of the acts or omissions that give rise to Plaintiffs' claims occurred in Linn County.

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III.

SUMMARY OF FACTS

A. WATCHTOWER DEFENDANTS' ORGANIZATION AND CHAIN OF COMMAND

18.

The WATCHTOWER DEFENDANTS' organization has a hierarchical structure in which the GOVERNING BODY sits at the top of a strict chain of command that extends over each individual and Defendant entity in the organization. These individuals and entities act as agents, servants and alter egos of each other. Authority for any actions by the organization or its members must derive from the GOVERNING BODY, which has absolute authority over every person and all matters in the organization and its worldwide operations. The GOVERNING BODY is a small group of men who operate out of various entities within the hierarchical structure.

19.

All of the Defendants are the agents and servants of each other and are vicariously liable for each other's acts. The WATCHTOWER DEFENDANTS are so organized and controlled and their affairs are so conducted that they are alter egos of each other and operate as a single business enterprise.

B. VICARIOUS LIABILITY OF THE WATCHTOWER DEFENDANTS

20.

Through its hierarchical structure, the WATCHTOWER DEFENDANTS assume complete responsibility for the development, protection and discipline of its membership, especially the children of members. All male members, whether Elders, Ministerial Servants, Pioneers and/or Publishers, are appointed and empowered by the GOVERNING BODY to carry out this responsibility.

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21.

To further their goals, the WATCHTOWER DEFENDANTS authorize male members to develop relationships of trust with women, children and families and to assume the role of counselor and advocate for any problems that might arise, including claims of child abuse. It is the responsibility of the Elders and those higher up in the chain of command, all the way up to the GOVERNING BODY, to decide if abuse has occurred and how it should be handled.

22.

At all material times, the WATCHTOWER DEFENDANTS have prohibited the above victim and/or accuser from warning others or speaking about the matter to anyone under penalty of discipline. Victim/accusers are not permitted to report suspected abuse to outside authorities or to other Publishers within the organization, despite secular laws and duties regarding the reporting of sexual abuse. Violation of this policy can lead to severe sanctions.

C. **DON SERJEANT**

23.

From at least 1955 until the date of his death, the WATCHTOWER DEFENDANTS vested Don Serjeant with leadership authority within the WATCHTOWER DEFENDANTS' organization and at all times held him out to be in good standing.

24.

As early as 1962, if not before, Don Serjeant began sexually molesting and physically abusing his daughter, Suzan, who was seven years old at the time. Suzan finally complained to the Elders of Defendant BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES, where Don Serjeant was a

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leader in good standing and Suzan was a participant as a member of his family. Suzan described to the Elders of Defendant BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES the repeated sexual and physical abuse by Don Serjeant and asked for their help. The Elders of Defendant BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES told Suzan not to discuss the matter with anyone else and that they would take any and all necessary action. The Elders of Defendant BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES reported Suzan's complaint to Don Serjeant whereupon Don Serjeant beat her for talking to the Elders. The Elders were informed of this and other beatings. Despite their knowledge and representations, the WATCHTOWER DEFENDANTS did nothing to assist Suzan, to protect Suzan or other young girls from further abuse, to discipline Don Serjeant or to warn others of the threat he posed. The WATCHTOWER DEFENDANTS made no report to law enforcement authorities or others. Instead, the WATCHTOWER DEFENDANTS continued to promote Don Serjeant as a leader in good standing in the organization, placing him in positions of control and supervision over children and they thereby aided, abetted and ratified the abuse of Suzan and other young victims within the organization.

25.

At some time prior to 1984, Don Serjeant moved to Albany, Oregon and joined Defendant NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, where the WATCHTOWER DEFENDANTS continued to promote Don Serjeant as a leader in good standing, and placed him in positions of authority with supervision and control of children, despite the WATCHTOWER

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DEFENDANTS' knowledge that he was sexually and physically abusing young children. The WATCH TOWER DEFENDANTS made no effort to warn families of Defendant NORTH ALBANY CONGREGATION that a sexual predator was in their midst and that their children were at risk. Beginning sometime after 1978 for a number of years until 1989, Don Serjeant repeatedly sexually abused his granddaughter, Plaintiff CHRISTINA VIZENOR who was born on September 3, 1977. From 1984 through 1989, Don Serjeant repeatedly sexually abused Plaintiff LEANNA MORLEY, a participant in Defendant NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES. Plaintiff LEANNA MORLEY was approximately 9 years old when the abuse began. Beginning in 1986, Don Sergeant also began repeatedly sexually assaulting Plaintiff JESSICA SCHROEDER who was also a participant in Defendant NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES. Plaintiff JESSICA SCHROEDER was approximately 6 years old when the abuse began. The WATCHTOWER DEFENDANTS' agent, Don Schroeder, had access to each of the Plaintiffs due to his leadership position in the organization.

26.

In about 1989, Plaintiff LEANNA MORLEY'S father found a journal which graphically depicted Don Serjeant's sexual abuse of his daughter. He gave the journal to the WATCHTOWER DEFENDANTS through the Elders of Defendant NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES and asked the WATCHTOWER DEFENDANTS to address this abuse by their agent, Don Serjeant, who was a leader in the organization. The WATCHTOWER DEFENDANTS did nothing about the sexual abuse described in the journal

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except to punish Plaintiff LEANNA MORLEY. The WATCHTOWER DEFENDANTS told Plaintiff LEANNA MORLEY'S family that they were not to report the abuse to anyone, not even law enforcement authorities or other Publishers. The abuse of Plaintiff Jessica Schroeder continued after 1989.

27.

For three decades, the WATCHTOWER DEFENDANTS knew or should have known that Don Serjeant was sexually molesting and physically abusing young children. Nevertheless, the WATCHTOWER DEFENDANTS allowed Don Serjeant to continue as a leader in good standing, entrusting him with the authority to supervise and control children in the WATCHTOWER DEFENDANTS' local congregations, many of whom he sexually molested. The WATCHTOWER DEFENDANTS failed to notify anyone that Don Serjeant was molesting or had sexually molested young children. They further failed to take any steps to protect these young victims from his abuse, but instead continued to place their agent, Don Serjeant, in positions of supervision and control over children. They also knowingly concealed this information from Plaintiffs and others. The WATCHTOWER DEFENDANTS also aided, abetted and ratified the abuse by disciplining the victims who dared to report the abuse to the WATCHTOWER DEFENDANTS, further increasing Don Serjeant's power over them.

28.

Plaintiffs and their families sought the advice and protection of the WATCHTOWER DEFENDANTS and told them about the abuses perpetrated by their agent, Don Serjeant. The WATCHTOWER DEFENDANTS assumed the

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role of advocate and counselor to Plaintiffs and their families and instructed Plaintiffs and their families to keep the abuse matters within the WATCHTOWER DEFENDANTS' organization and not to disclose the abuses to any other publishers or outside authorities. They even punished those who dared to complain. Thus, the WATCHTOWER DEFENDANTS aided and abetted the perpetrator and ratified his conduct, causing further damage to Plaintiffs.

29.

The WATCHTOWER DEFENDANTS did not report the abuse to law enforcement authorities nor did they warn any other members of the NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC., or any other congregation, that a dangerous sexual predator was in their midst. They did not act to help Plaintiffs or their families deal with the trauma and actively prevented them from obtaining help from trained and appropriate resources. They also took no steps to discipline or otherwise hold Don Serjeant accountable for his conduct or to assist him in addressing his propensities. Instead, they continued to allow him to act as their agent, with control and supervision over children.

30.

Don Serjeant used the authority of his position in the WATCHTOWER DEFENDANTS' organization to sexually abuse Plaintiffs. The WATCHTOWER DEFENDANTS directly and vicariously caused foreseeable harm to Plaintiffs by, among other things:

a. aiding, abetting and ratifying the abuse of children by leaders in the organization;

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b. blaming, humiliating, sanctioning and/or disciplining victims/accusers of sexual abuse instead of the perpetrators

c. negligently failing to report such sexual abuse, including the abuse by Don Serjeant, to law enforcement and governmental child welfare agencies and requiring that Publishers not make such reports.

d. negligently failing to warn Plaintiffs, their families, and others of the risk of Don Serjeant's abuse after they knew or should have known of Don Serjeant's propensities to use his position of leadership to engage in acts of sexual abuse.

e. negligently failing to train its Elders, volunteers, appointed overseers and other associated individuals to prevent, identify, investigate, respond to or report child abuse.

f. negligently failing to adopt adequate policies and procedures for the protection of children and other publishers and/or to implement and comply with such procedures that did exist.

g. failing to properly investigate matters brought to the WATCHTOWER DEFENDANTS' attention involving child sexual abuse and/or suspicions of child sexual abuse.

h. negligently allowing Don Serjeant to move between congregations as a leader in good standing and placing him in leadership positions with authority over children after the WATCHTOWER DEFENDANTS knew or should have known of his propensities to use his position of leadership to engage in acts of sexual abuse of children.

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i. negligently failing to provide child abuse victims and their families with any assistance in coping with the trauma of abuse and preventing Plaintiffs and their families from reporting the abuse to outside authorities and obtaining outside help to deal with the trauma of abuse.

j. concealing from Plaintiffs and their families that the WATCHTOWER DEFENDANTS had information that Don Serjeant was abusing young children.

k. negligently failing to undertake a sexual offender evaluation, provide sexual offender treatment and/or obtain psychiatric evaluation and treatment of Don Serjeant after they knew or should have known of his propensities to use his position of leadership to engage in acts of sexual abuse.

l. negligently failing to properly supervise Don Serjeant as a leader in the organization or to monitor his activities after they knew or should have known of his propensities to use his position of leadership to engage in acts of sexual abuse.

31.

Plaintiffs did not discover and could not have discovered through the exercise of reasonable diligence their injuries that resulted from the abuse or the causal connection between their injuries and the wrongful conduct of the WATCHTOWER DEFENDANTS until less than three years before the filing of this lawsuit.

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CAUSES OF ACTION

COUNT I

RESPONDEAT SUPERIOR

32.

For a number of years, beginning in 1984, as an agent and alter ego of the WATCHTOWER DEFENDANTS, Don Sergeant repeatedly committed sexual battery upon the persons of the Plaintiffs in the State of Oregon. Each of the WATCHTOWER DEFENDANTS was in the chain of command and acted pursuant to the authority granted to them as agents and the alter ego of the GOVERNING BODY and each other, utilizing such leadership and authority to carry out and/or aid, abet and ratify the sexual abuse of Plaintiffs. The WATCHTOWER DEFENDANTS are therefore liable for the sexual battery of Plaintiffs under the legal theory of *respondeat superior*.

COUNT II

COMMON-LAW NEGLIGENCE

33.

At all material times, WATCHTOWER DEFENDANTS assumed a duty to protect Plaintiffs from sexual predators within the WATCHTOWER DEFENDANTS' organization. The WATCHTOWER DEFENDANTS further knew or should have known that Plaintiffs were at risk of foreseeable harm by their agent, Don Serjeant, whom the WATCHTOWER DEFENDANTS had placed in leadership positions with supervision and control over children, but failed to act to protect them from said harm. The WATCHTOWER DEFENDANTS breached their duty to the great harm of Plaintiffs.

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34.

As a direct result of the negligent conduct of the WATCHTOWER DEFENDANTS, Plaintiffs have suffered the injuries and damages described herein.

COUNT III

NEGLIGENT HIRING, RETENTION AND SUPERVISION

35.

At all material times, the WATCHTOWER DEFENDANTS knew or should have known of Don Serjeant's propensities to use his position as a leader in the organization to engage in acts of sexual abuse. The WATCHTOWER DEFENDANTS failed to adequately investigate, discipline, evaluate, treat, supervise and otherwise monitor the conduct of Don Serjeant who was under their control. They therefore negligently hired, retained and supervised Don Serjeant in the organization at a time when they knew or should have known of his propensities to engage in acts of sexual abuse against Plaintiffs and other young children. The WATCHTOWER DEFENDANTS also failed to adequately train and supervise the Elders of the local congregations to whom they had entrusted the responsibility of investigating, evaluating and handling all reports or suspicions of child abuse. Plaintiffs have suffered grave harm due to WATCHTOWER DEFENDANTS' negligent hiring, retention and supervision of their agent, Don Serjeant, and Elders of the local congregations.

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COUNT IV

AGGRAVATED NEGLIGENCE

36.

The behavior of the WATCHTOWER DEFENDANTS set forth above demonstrated a conscious indifference to the safety and welfare of Plaintiffs, entitling Plaintiffs to amend and seek damages under O.R.S. 18.535.

37.

As a direct result of the aggravated negligent conduct of the WATCHTOWER DEFENDANTS, Plaintiffs have suffered the injuries and damages described herein.

COUNT V

BREACH OF FIDUCIARY DUTY

38.

The WATCHTOWER DEFENDANTS placed themselves in a position of trust and confidence with Plaintiffs. The relationship between Plaintiffs and the WATCHTOWER DEFENDANTS' organization was fiduciary in nature and imposed on the WATCHTOWER DEFENDANTS a duty to act in Plaintiffs' best interests.

39.

Because of this special relationship between the Plaintiffs and the WATCHTOWER DEFENDANTS, Plaintiffs and their families placed their trust and confidence in the WATCHTOWER DEFENDANTS that they would not harm Plaintiffs or fail to warn Plaintiffs of potential harm. Further, Plaintiffs and their families placed their trust and confidence in the WATCHTOWER DEFENDANTS that they would protect Plaintiffs from harm.

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40.

The above acts and/or omissions by the WATCHTOWER DEFENDANTS, either independently or in conjunction with each other, constitutes a breach of the fiduciary duty owed to Plaintiffs by WATCHTOWER DEFENDANTS.

41.

As a direct result of the conduct of the WATCHTOWER DEFENDANTS, Plaintiffs have suffered the injuries and damages described herein.

COUNT VI

***NEGLIGENCE PER* SE and COMMON-LAW NEGLIGENCE: FAILURE TO REPORT SUSPECTED CHILD ABUSE**

42.

The WATCHTOWER DEFENDANTS had a duty, under Section 419B of the Oregon Revised Statutes and the common-law, to report the abuse or suspected abuse of children.

43.

The WATCHTOWER DEFENDANTS deliberately and negligently failed to report to law enforcement the abusive conduct of Don Serjeant prior to the abuse of Plaintiff. Further, the WATCHTOWER DEFENDANTS failed to report abuse of Plaintiffs by Don Serjeant to law enforcement. The WATCHTOWER DEFENDANTS thereby violated Section 419B of the Oregon Revised Statutes intended to safeguard and enhance the welfare of abused children. Plaintiffs were members of the class of persons Section 419B was designed to protect and were injured as a result of The WATCHTOWER DEFENDANTS' violation of the statute. Such violation constitutes *negligence per se*. The WATCHTOWER DEFENDANTS' failure to report also constitutes common-law negligence. The

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WATCHTOWER DEFENDANTS asserted their authority over both Plaintiffs and their abuser, Don Serjeant, creating a special relationship of trust and confidence and power over Plaintiffs. In the context of this special relationship and the uneven balance of power, the WATCHTOWER DEFENDANTS assumed a duty to handle all reports of child abuse and prevented Plaintiffs and their families from reporting the abuse to, or seeking help from, sources and authorities outside the WATCHTOWER DEFENDANTS' organization. The WATCHTOWER DEFENDANTS, with conscious disregard for the welfare of Plaintiffs, violated that duty to Plaintiffs' detriment.

44.

As a direct result of the WATCHTOWER DEFENDANTS' failure to report Don Serjeant's abuse to law enforcement, Plaintiffs were deprived of Oregon's victim assistance program that would have provided for counseling and care that would have decreased the harm to the Plaintiffs from the effects of the abuse.

COUNT VII

FRAUD AND FRAUDULENT CONCEALMENT

45.

After receiving reports that Don Serjeant was abusing young girls, the WATCHTOWER DEFENDANTS, with the intent to keep the information from Plaintiffs, other victims similarly situated and the community-at-large, willfully concealed that information. The WATCHTOWER DEFENDANTS materially misrepresented to Plaintiffs and their families that Don Serjeant was a leader in good standing with authority to instruct Plaintiffs in spiritual, ethical and moral matters and that he was to be obeyed as an agent of the organization with

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supervisory authority over children. The WATCHTOWER DEFENDANTS further materially misrepresented that they would act in their best interest. The WATCHTOWER DEFENDANTS failed to disclose that they knew of Don Serjeant's propensities to use his leadership position to sexually abuse Plaintiffs and others and that they were doing nothing to protect them. Plaintiffs did not know of the falsity of Defendants' representations, were entitled to rely upon them and did, in fact, rely upon them to their serious injury and harm.

COUNT VIII

RATIFICATION

46.

Upon learning that its agent, Don Serjeant had sexually abused Plaintiffs and others, the WATCHTOWER DEFENDANTS failed to take any steps to discipline or otherwise hold Don Serjeant accountable for his actions and continued to maintain that Don Serjeant was a leader in good standing with the organization, with authority to supervise and control children, until his death. The WATCHTOWER DEFENDANTS have thereby ratified Don Serjeant's conduct in sexually abusing Plaintiffs and others. The WATCHTOWER DEFENDANTS are thus liable in damages to Plaintiffs.

COUNT IX

ALTER EGO AND SINGLE BUSINESS ENTERPRISE

47.

The WATCHTOWER DEFENDANTS are organized and controlled and their affairs are so conducted that they are, in fact, mere instrumentalities and alter egos for each other and liable for each other's acts. Alternatively, the

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WATCHTOWER DEFENDANTS were all engaged, at all material times, in a single business enterprise and are liable for each other's acts.

COUNT X

NEGLIGENT USURPATION OF INVESTIGATORY FUNCTION

48.

Section 419B of the Oregon Revised Civil Statutes (and predecessor provisions) requires officials to perform specific responsibilities to carry out the policy of the statute described in Section 419.005 (and its predecessors). The WATCHTOWER DEFENDANTS assumed these duties and responsibilities, but negligently failed to perform them.

49.

As a direct result of the WATCHTOWER DEFENDANTS' negligent conduct, Plaintiffs have suffered the injuries and damages described herein.

DAMAGES

50.

As a result of Defendants' acts, Plaintiffs have incurred and will continue to incur costs for medical expenses, counseling and psychological treatment, have lost earning capacity and have suffered and will continue to suffer extreme, permanent emotional distress and psychological harm with accompanying physical manifestations, embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life, and economic damages of $(amount to be inserted prior to trial) and non-economic damages of $4,000,000 as to each Plaintiff.

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WHEREFORE, Plaintiffs demand judgment against Defendants individually, jointly and severally in an amount for economic damages of $(amount to be inserted prior to trial) and non-economic damages of $12,000,000, plus costs, disbursements, and whatever relief the court deems just and equitable.

DATED this 23rd day of April, 2003.

NELSON & MacNEIL, P.C.

By: James G. Nelson OSB #74230
Of Attorneys for Plaintiffs

SUBMITTED BY:
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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA MORLEY, JESSICA SCHROEDER, and CHRISTINA VIZENOR, Plaintiffs, v. NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC., et al., Defendants.	Case No. 03-0431 **DEFENDANTS' ORCP 21 MOTIONS AND SUPPORTING MEMORANDUM OF LAW** **(ORAL ARGUMENT REQUESTED)**

CERTIFICATE OF COMPLIANCE WITH UTCR 5.010(1)

Pursuant to UTCR 5.010(1), counsel for defendants conferred with counsel for plaintiff in good faith concerning the issues in dispute herein, but the parties were unable to resolve their disputes.[1]

REQUEST FOR ORAL ARGUMENT

Defendants request oral argument of these Motions and estimate that 1 hour will be required. Official court reporting services are requested.

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[1] The term "defendants" as used in these Motions refers only to the defendants for whom defense counsel has accepted service.

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DEFENDANTS' SEVEN MOTIONS

(1) Pursuant to ORCP 21A(8), defendants move to dismiss this action with prejudice because it fails to state ultimate facts sufficient to constitute any claim for relief. Plaintiffs (who are all now adults) allege that when they were minors and members of a local Jehovah's Witnesses' congregation, a religious entity, they were sexually abused by another member of the congregation, Don Serjeant. Plaintiffs contend that defendants knew that Mr. Serjeant had allegedly abused other persons before plaintiffs, but failed to warn them about it or report it to the secular authorities. As a matter of law, however, organizations (including churches) do not have a duty to protect their members from each other, even assuming they had prior notice of a member's alleged propensity to sexually abuse minors. Also, the First Amendment to the U.S. Constitution, as well as the "free exercise of religion" clauses of the Oregon Constitution, prohibit this type of inquiry by a secular court into the "correctness" of a church's beliefs, policies, and disciplinary practices.

(2) Pursuant to ORCP 21A(8), defendants move to dismiss with prejudice plaintiffs' sixth claim for relief, a claim for "Failure to Report Suspected Child Abuse" as required by ORS Chapter 419B, because it fails to state ultimate facts sufficient to constitute a claim for relief. ORS 419B.010, which requires certain persons to report suspected child abuse, does not provide for a civil cause of action when it is allegedly violated. Also, it does not apply to defendants because of its clergy privilege exception.

(3) Pursuant to ORCP 21A(8), defendants move to dismiss plaintiffs' tenth claim for relief, entitled "Negligent Usurpation of Investigatory Function," which is also based on defendants' alleged violation

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of ORS 419B.010. No such claim for relief is recognized in Oregon.

(4) Pursuant to ORCP 21A(8), defendants move to dismiss plaintiffs' first claim for relief, entitled "*Respondeat Superior*," because "*Respondeat Superior*" is not an independent cause of action.

(5) Pursuant to ORCP 21A(8), defendants move to dismiss plaintiffs' eighth claim for relief, entitled "Ratification," because "Ratification" is also not an independent cause of action.

(6) Pursuant to ORCP 21A(8), defendants move to dismiss plaintiffs' ninth claim for relief, entitled "Alter Ego and Single Business Enterprise," because this is also not an independent cause of action.

(7) Pursuant to ORCP 21E and 18B, defendants move to strike plaintiffs' request for unspecified economic damages from the First Amended Complaint because a specific amount of alleged economic damages is not stated in violation of ORCP 18B, which provides that such an amount "shall" be stated in the operative Complaint.

These Motions are based on ORCP 21 and 18B, the Court's file, and the following Memorandum of Law.

MEMORANDUM OF LAW

A. Introduction and Summary of Allegations

This is a childhood sex abuse action arising from the alleged sexual abuse of plaintiffs, members of a Jehovah's Witnesses' congregation, by an alleged member of the congregation, Don Serjeant (who is deceased). Plaintiffs have associated two sets of Texas lawyers who specialize in suing the Jehovah's Witnesses' church around the country, and who drafted the 20-page First Amended Complaint asserting 10 claims against 11 defendants. See First Amended Complaint at p. 20.

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Plaintiffs allege that other persons previously reported to church "Elders" that Mr. Serjeant had sexually abused other minors, including his own daughter, but that, pursuant to church "policy," defendants did not report this alleged abuse to secular authorities or other church members. Rather, the church allegedly directed that this matter would be handled internally pursuant to church policy. Plaintiffs allege that Mr. Serjeant was then placed in unspecified positions of "leadership" and "authority" within the church that allowed him to sexually abuse plaintiffs, and that defendants improperly "held him out to be in good standing."

Plaintiffs contend that the church defendants knew or should have known that Mr. Serjeant had abused other children before plaintiffs, but failed to warn other Jehovah's Witnesses' members, including plaintiffs and their families, about his dangerous propensities. Plaintiffs claim that defendants had a policy of concealment concerning Mr. Serjeant's alleged sexually abusive conduct. Plaintiffs also claim that the elders of the church congregation told the persons who reported Mr. Serjeant's alleged prior abuse not to talk about his alleged abuse to anyone, and that they knew he had abused other children before plaintiffs, but yet did not warn other church members about his prior abuse. See First Amended Complaint.

Significantly, plaintiffs seek to make defendants' alleged religious beliefs, policies, and disciplinary practices a basis for secular liability by alleging that, through their religious "policy" of not reporting sexual abuse to secular authorities, defendants "failed to adequately investigate, discipline, evaluate, treat, supervise and otherwise monitor the conduct" of Mr. Serjeant, which allegedly resulted in plaintiffs being sexually abused by him. Id. at ¶¶ 22, 35. Plaintiffs allege that defendants

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"assume complete responsibility" for "the discipline of its membership." Id. at ¶ 20. Plaintiffs further allege that church elders have the responsibility to "decide if abuse has occurred and how it should be handled." Id. at ¶ 21.

Plaintiffs contend that defendants prohibit alleged abuse victims from warning others or speaking about the abuse to anyone "under penalty of discipline," even though "secular laws" require the reporting of such abuse, and that violation of this religious "policy can lead to severe sanctions." Id. at ¶ 22. Plaintiffs also seek to hold defendants liable for allegedly "failing to adopt policies and procedures for the protection of children" relating to sexual abuse. Id. at ¶ 30(f).

Plaintiffs assert 10 claims against defendants in their First Amended Complaint: (1) "*Respondeat Superior*;" (2) Common law negligence; (3) "Negligent hiring, retention, and supervision;" (4) "Aggravated" negligence; (5) Breach of fiduciary duty; (6) "Negligence *Per Se* and Common Law Negligence: Failure to Report Suspected Child Abuse;" (7) Fraud and Fraudulent Concealment; (8) "Ratification;" (9) "Alter Ego and Single Business Enterprise;" and (10) "Negligent Usurpation of Investigatory Function."

B. Argument in Support of the Seven Motions

(1) This action should be dismissed because organizations, including churches, do not have a duty to protect their members from each other, and the First Amendment prohibits an inquiry into the "correctness" of church beliefs and disciplinary policies.

In Oregon, the "existence of a duty is a question of law for the court." Cook v. School Dist. UH3J, 83 Or App 292, 295, (1987). Even assuming the truth of plaintiffs' allegations

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matter of law, organizations (including churches) do not have a duty to protect their members from each other. Also, the "free exercise of religion" clauses in the U.S. and Oregon Constitutions preclude this secular court from inquiring into the "correctness" of church beliefs, policies, and disciplinary practices. Therefore, this action should be dismissed with prejudice.

No Oregon appellate opinion addresses the precise issue of whether a church has a duty to protect its members from each other, or whether the types of claims plaintiffs assert are barred by the "free exercise of religion" constitutional clauses, and it is thus appropriate to consider decisions from other jurisdictions addressing these issues. Donaca v. Curry County, 77 Or App 677, 680, 714 P2d 265 (1986), rev'd on other grounds, 303 Or 30, 734 P2d 1339 (1987) (stating that because "this is a case of first impression, we look to other jurisdictions to see how they have resolved similar claims").

The court's decision in Bryan R. v. Watchtower Bible and Tract Society of New York, Inc., 738 A2d 839 (Maine 1999), cert. denied, 528 US 1189 (2000), a similar childhood sex abuse case also against the Jehovah's Witnesses' church and its elders that was dismissed at the pleading stage, is on point. A copy of the Maine Supreme Court's decision in Bryan R. is attached for the Court's convenience.

In Bryan R., the plaintiff (Bryan) alleged that Larry Baker, an adult member of his local Jehovah's Witnesses congregation, sexually abused him during plaintiff's adolescent years. Plaintiff's stepfather and two other adults were elders and members of the "judicial body" of the congregation. Plaintiff and his family were also members of the congregation. Just like the present case, plaintiff alleged that prior to the abuse of plaintiff, Baker

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molested a different member of the congregation (also a minor), and the elders of the congregation knew that Baker had molested this child before plaintiff was abused. Plaintiff alleged that the elders did not, however, alert the members of the congregation to Baker's misdeeds. Id. at 842.

Baker was formally "demoted" and "privately rebuked" by the church elders for his prior abuse of the other child, but was later allowed to resume activities as a church member. Plaintiff alleged that Baker was then able to "earn his trust and confidence" because "the church placed Baker" (an adult) "in a position of leadership and respect."[2] Plaintiff claimed that Baker molested him over a 3-year period while plaintiff was a teenager and lived next door to Baker. Plaintiff alleged that his stepfather (one of the church elders) allowed Baker to spend time alone with plaintiff at his home, even though his stepfather was aware of Baker's prior molestation of another child who belonged to the same congregation. Id.

Plaintiff sued Baker, the Jehovah's Witnesses church, and its elders for his alleged emotional harm, which he claimed necessitated psychiatric hospitalization. Plaintiff obtained a judgment against Baker. Plaintiff also asserted claims against the church and its elders for breach of fiduciary duty (based on the allegation that he was owed a fiduciary duty "as a member of the congregation"), intentional infliction of emotional distress, and negligent infliction of emotional distress. Those claims were dismissed by the trial court for failure to state a claim, however, and that was the sole ruling appealed. Id. at 842-43.

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[2] Similarly, in the present case, plaintiffs allege that defendants held out Mr. Serjeant "to be in good standing," and he was given unspecified "leadership authority" within the church. (First Amended Complaint at ¶ 23.)

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On appeal, the Maine Supreme Court affirmed. The court in Bryan R. examined plaintiff's Complaint "in the light most favorable to plaintiff" to determine if it alleged facts that would entitle plaintiff to relief pursuant to a valid cause of action, noting that the legal sufficiency of a Complaint is a question of law. Id. at 843.[3] The court recognized that plaintiff did not allege that Baker held a "clerical" position (such as a priest, minister, or pastor); did not allege that the church affirmatively placed Baker in a position of control and supervision of children (such as a Sunday school teacher); and did not allege that the church knowingly placed Baker in a position where he could sexually abuse children in a church setting. Rather, much like the present case, plaintiff alleged that Baker was "able to earn" his trust and confidence "because of his position of power and ***authority*** in the church," and asserted that the church cloaked "Baker with power and respect," thereby negligently allowing Baker "to gain Bryan's trust." Id. at 843 and n. 3 (emphasis added). Like the present case, the court held that these "allegations place Baker in a relationship to Bryan that was not different in quality from any other member in good standing of the church." Id. at 843.

Thus, just like the present case, in Bryan R., "the crux of Bryan's claim is that the church, because of an alleged special relationship with its members, has a duty to protect its members from each other, at least when the

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[3] Oregon applies the same test. Natkin & Co. v. H.D. Fowler Co., 128 Or App 311, 313, 876 P2d 319 (1994) (when reviewing the granting of an ORCP 21A(8) motion to dismiss, "we assume the truth of all allegations, as well as any inferences that may be drawn from them, and view them in the light most favorable to the nonmoving party. We determine whether the complaint states a claim as a matter of law") (citations omitted).

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church and its agents are aware of a potential danger posed by a member. Because the church elders knew of Baker's propensity to abuse children, Bryan argues that they had an independent duty to protect him from Baker." Id. at 843-44.[4]

The court in Bryan R. then addressed plaintiff's argument as it applied to his breach of fiduciary duty claim. The court noted that whether "a defendant owes a duty of care to a plaintiff is a matter of law for the court." Id. at 844.[5] The court then held that there "does not exist a general obligation to protect others from harm not created by the actor," and "the mere fact that one individual knows that a third party is or could be dangerous to others does not make that individual responsible for controlling the third party or protecting others from the danger." Id. (citing Restatement (Second) of Torts § 314 (1965)) (footnote omitted). Thus, "in the absence of the requisite relationship, there generally is no duty to protect others against

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[4] The court in Bryan R. recognized that Maine recently amended its child abuse reporting statute to add clergy to the list of mandated reporters, but noted that plaintiff did not raise that issue in the trial court, and the amendment to the statute was enacted long after the facts alleged in the Complaint took place. Thus, the court did not consider the effect of Maine's reporting statute. Bryan R., 738 A2d at 843, n. 3. As discussed below, Oregon's child abuse reporting statute does not provide for a civil cause of action if it is violated, and, even if violations of it were relevant to common law liability, as a matter of law, defendants do not have a duty to protect church members from each other. Moreover, as also discussed below, the "free exercise of religion" clauses of the U.S. and Oregon Constitutions preclude defendants from being held liable, even assuming Oregon's child abuse reporting statute was violated. In addition, as also shown below, defendants were not required to report Mr. Serjeant's alleged prior abuse due to the clergy-penitent privilege exception to the reporting statute. See ORS 419B.010(1) and OEC 506.

[5] As noted, Oregon also holds that the "existence of a duty is a question of law for the court." Cook, 83 Or App at 295.

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harm from third persons." Id. at 844-45 (citation omitted).

The court then determined whether the relationship between plaintiff and the Jehovah's Witnesses church, including its elders, was a "special relationship" that constituted an exception to the general "no duty" rule. The court stated that "in order to determine whether the church owed Bryan a duty of care to protect him from other members of the church, we must determine whether a special relationship, reviewable by the secular courts, exists between a church and its members in this context. Bryan asserts that such a relationship does exist, and he refers to it as a 'fiduciary' relationship." Id. at 845. The court noted that plaintiff based "the alleged fiduciary relationship on the 'substantial trust and confidence' he placed in the church, and alleges that the church breached its fiduciary duty to him when it failed to warn him about Baker and failed to exert some type of control over Baker's actions." Id.[6]

The court in Bryan R. then held that based on "the facts alleged in the complaint, we conclude that Bryan has failed to plead a fiduciary relationship with sufficient particularity, and ***we decline to recognize a general common law duty on the part of an organization such as a church to protect its members from each other.***" Id. (emphasis added).

The court in Bryan R. then held that the "allegation that Bryan placed 'substantial trust and confidence' in the elders of the church and trusted them 'to protect him and guide him' does not set forth the factual

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[6] Similarly, plaintiffs in the present case allege that they "placed their trust and confidence" in defendants; that the relationship between plaintiffs and defendants "was fiduciary in nature" and was a "special relationship;" and that defendants' alleged conduct "constitutes a breach of the fiduciary duty" owed to plaintiffs by defendants. (First Amended Complaint at ¶¶ 38-40.)

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foundations for a special responsibility on the part of the church. Such vague and nonspecific allegations are wholly insufficient to make out a claim of a special relationship between the organization and its members." Id. at 847.

The court then held that, just like the present case, "***the complaint does not allege that there were aspects of Bryan's relationship with the church that were distinct from those of its relationships with any other members, adult or child, of the church***. The creation of an amorphous common law duty on the part of a church or other voluntary organization requiring it to protect its members from each other would give rise to 'both unlimited liability and liability out of all proportion to culpability.'" Id. (citations omitted; emphasis added). The court thus concluded that even "accepting the facts as alleged in the complaint, the [trial] Court did not err in dismissing that portion of the complaint which depended upon the imposition of a generalized fiduciary duty on the part of the church to protect members of its congregation from other members." Id.

The court in Bryan R. then addressed plaintiff's intentional infliction of emotional distress claim. Plaintiff alleged "that the church knew of Baker's propensity to harm children, that it failed to announce Baker's misdeeds to the congregation," and that "through its agents" (the elders), it devised a plan to address Baker's transgressions that was "woefully inadequate" to protect against future harm to other minor members of the church, including plaintiff. Plaintiff further alleged that the church's "decision to allow Baker to resume a position of leadership and respect within the church constituted acts that were sufficiently extreme and outrageous that they exceeded all possible bounds of decency." Id.

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The court stated that it did "not lightly dismiss the harm caused by the sexual abuse of children, nor do we misapprehend the enormity of that harm if inflicted in the context of religious activities," but noted that (as in the present case) "plaintiff does not allege that Baker molested him during any of the church's activities." Id. at 848 and n. 11.[7] The court held that on "these facts, however, we conclude that the effort to hold the church responsible, in addition to the wrongdoer himself, would require direct inquiry into the religious sanctions, discipline, and terms of redemption or forgiveness that were available within the church in the context of this claim, an inquiry that would require secular investigation of matters that are almost entirely ecclesiastical in nature." Id. at 848.

The court in Bryan R. held that "[s]tate courts may not interfere in matters concerning religious doctrine or organization. A religious organization's decisions and actions when providing advice, counsel, or religious discipline to its members will be based on the particular religious beliefs of the organization, and thus, like the decisions and actions with respect to the organization's government, cannot by themselves form the basis for secular liability. ***Allowing a secular court or jury to determine whether a church and its clergy have sufficiently disciplined, sanctioned, or counseled a church member would insert the State into church matters in a fashion wholly forbidden by the Free Exercise Clause of the First***

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[7] Plaintiffs in the present case also do not allege that any of their alleged abuse by Mr. Serjeant occurred during church activities or on church property, nor do they allege that Mr. Serjeant held any official title or position within the church at the time of any of the alleged abuse. See First Amended Complaint. Rather, just like the plaintiff in Bryan R., plaintiffs only allege that Mr. Serjeant held an unspecified position of "leadership" and "authority" within the church. Id. at ¶ 23.

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Amendment." Id. (citations omitted; emphasis added). The court thus held that the trial court properly dismissed the intentional infliction of emotional distress claim against the church and its elders. Id.

Finally, the court in Bryan R. addressed plaintiff's negligent infliction of emotional distress claim. The court held that only "where a particular duty based upon the unique relationship of the parties has been established may a defendant be held responsible, absent some other wrongdoing, for harming the emotional well-being of another." Id. The court held that it had "never recognized a relationship between churches and their members of the type that would give rise to a duty to avoid psychic injury to those members, and we could not do so without inquiring into the ecclesiastical relationship whose components are not within the purview of the secular courts. The court did not err in dismissing Bryan's claim of negligent infliction of emotional distress." Id. at 849 (citation omitted). The court thus affirmed the trial court's dismissal of the Complaint against the Jehovah's Witnesses' church and its elders. Id.

This Court should reach the same result reached by the Maine Supreme Court in the Bryan R. decision. Plaintiffs' allegations show that they ask the Court to find a generalized duty of an organization to protect its members from each other. See First Amended Complaint. However, the "mere fact that one individual knows that a third party is or could be dangerous to others does not make that individual responsible for controlling the third party or protecting others from the danger," and plaintiffs' "complaint does not allege that there were aspects of [their] relationship with the church that were distinct from those of its relationships with any other members, adult or child, of the church. The creation of an amorphous

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common law duty on the part of a church or other voluntary organization requiring it to protect its members from each other would give rise to both unlimited liability and liability out of all proportion to culpability." Bryan R., 738 A2d at 845-47 (citations omitted).

Plaintiffs also seek to have this secular court (and, later, a jury) interpret, critique, and rule on the propriety of church doctrine, religious purposes, discipline, and, ultimately, the "correctness" of the church's religious beliefs and policies. As noted, plaintiffs seek to make defendants' religious beliefs and policies a basis for secular liability by alleging that, through their religious "policy" of not reporting sexual abuse to secular authorities, defendants "failed to adequately investigate, ***discipline***, evaluate, treat, supervise and otherwise monitor the conduct" of Mr. Serjeant, which allegedly resulted in plaintiffs being abused by him. (First Amended Complaint at ¶¶ 22, 35 (emphasis added).) Plaintiffs further seek to hold defendants liable because they allegedly "did nothing" to "discipline Don Serjeant or to warn others of the threat he posed." Id. at ¶ 24. Plaintiffs also allege that defendants "took no steps to ***discipline*** or otherwise hold Don Serjeant accountable for his conduct or to ***assist him in addressing his propensities***." Id. at ¶ 29 (emphasis added). Plaintiffs further contend that defendants are liable because they allegedly "failed to take any steps to discipline or otherwise hold Don Serjeant accountable for his actions." Id. at ¶ 46.

However, "allowing a secular court or jury to determine whether a church and its clergy have sufficiently ***disciplined***, sanctioned, ***or counseled*** a church member would insert the State into church matters in a fashion wholly forbidden by the Free Exercise Clause of the First

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Amendment." Bryan R., 738 A2d at 848 (emphasis added).

Oregon follows the same rule: "Civil courts can no longer inquire into questions of church doctrine." Decker v. Berean Baptist Church, 51 Or App 191, 197, 624 P2d 1094 (1981). See also Paul v. Watchtower Bible and Tract Society of New York, Inc., 819 F2d 875 (9th Cir), cert. denied, 484 US 926 (1987) (Jehovah's Witnesses' practice of "shunning" disassociated members is protected conduct under the First Amendment and the Washington State Constitution which cannot give rise to civil liability).[8]

As in Bryan R., plaintiffs' admitted theory of liability "would require direct inquiry into the religious sanctions, discipline, and terms of redemption or forgiveness that were available within the church in the context of this claim, an inquiry that would require secular investigation of matters that are almost entirely ecclesiastical in nature," which the First Amendment and the Oregon Constitution prohibit.[9]

Therefore, as in Bryan R., even assuming the truth of plaintiffs' allegations, plaintiffs cannot recover from defendants because, as a matter of law, defendants did not owe plaintiffs a duty to protect them from another church member. Also, the First Amendment to the U.S. Constitution, as well as the "free exercise of religion" clauses of the Oregon Constitution, bar the

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[8] The U.S. Supreme Court also holds that civil courts are inappropriate forums for resolving disputes over religious doctrines and teachings. Presbyterian Church v. Hull Memorial Presbyterian Church, 393 US 440, 449 (1969).

[9] The First Amendment provides, in relevant part, that "Congress shall make no law" prohibiting "the free exercise" of religion, and this Amendment applies to the states pursuant to the Fourteenth Amendment. Cantwell v. Connecticut, 310 US 296, 303 (1940). The Constitution of Oregon's "free exercise of religion" clauses are contained in Article 1, Sections 2 and 3.

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claims against defendants.[10]

The Court should note that on April 21, 2003, Benton County Circuit Court Judge Locke Williams granted a similar motion to dismiss in another case involving alleged sexual abuse of a Jehovah's Witnesses' member by another church member in Davidow v. Watchtower Bible & Tract Society of New York, Inc., Benton County Circuit Court Case No. 02-10345. A copy of Judge Williams' Letter Opinion is attached as Exhibit A for the Court's review.

As the Court can see, defendants' First Amendment argument was accepted by Judge Williams in the Davidow action. Defendants submit that Judge Williams' well-reasoned opinion on this issue should be followed by this Court as well, and this action should be dismissed.[11]

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[10] As noted, plaintiffs make a vague (and repeated) allegation in the First Amended Complaint that Mr. Serjeant was placed in a "position of supervision and control over children," as well as "leadership positions with authority over children," but do not allege what these positions were or how any such control was exerted over any plaintiff. See First Amended Complaint. In any event, even if these allegations were clarified, they do not change the fact that courts do not recognize a broad duty to protect church members from each other. Also, it would violate the First Amendment to hold defendants liable for the alleged "incorrectness" of their religious beliefs, policies, and practices concerning how to discipline Mr. Serjeant for his alleged actions. See Bryan R., 738 A2d at 848.

[11] As the Court will see, Judge Williams in the Davidow action granted 3 of the defendants' 4 motions, denying only the motion to dismiss the plaintiff's claim based on ORS 419B.010, Oregon's child abuse reporting statute. As explained below, defendants respectfully disagree with that portion of Judge Williams' rulings, and request that plaintiffs' claims based on ORS 419B.010 also be dismissed.

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(2) Plaintiffs' claim for "failure to report suspected child abuse" as required by ORS Chapter 419B should be dismissed because that statute does not provide a civil cause of action for violations of the statute.

Plaintiffs' sixth claim for relief is entitled "Failure to Report Suspected Child Abuse," and is based on the allegation that the church defendants failed to report the alleged abusive conduct of Mr. Serjeant to law enforcement as required by ORS 419B.010. (First Amended Complaint at ¶¶ 42-44.) However, whether the label of the claim is "negligence *per se*" or "common law negligence," ORS Chapter 419B does not provide a civil cause of action for violations of the statute, and, therefore, this claim should be dismissed with prejudice.

The Oregon Legislature knows how to provide a civil cause of action for violations of a statutory duty. See, e.g., ORS 659A.885(1)-(2) (authorizing "any person claiming to be aggrieved by an unlawful practice specified in subsection (2)," which includes statutes such as ORS 659A.030, which prohibits sex discrimination and other unlawful employment practices, to "file a civil action in circuit court" seeking damages for a violation of the statute, as well as "reasonable attorney fees at trial and on appeal").

However, no civil cause of action was provided for violations of ORS Chapter 419B, and ordinarily, when the Oregon "legislature includes an express provision in one statute, but omits such a provision in another statute, it may be inferred that such an omission was deliberate." Oregon Business Planning Council v. LCDC, 290 Or 741, 749, 626 P2d 350 (1981).[12]

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[12] ORS 419B.010(1) states, in relevant part, that any "public or private official having reasonable cause to believe that any child with whom the official comes in contact has suffered abuse or that any person with whom the official comes in contact has abused a child shall immediately report or cause

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This Court also cannot "insert what has been omitted" from a statute, "whether by design or default," even if it thinks a civil cause of action was "mistakenly omitted" from ORS Chapter 419B (and there is no reason to reach that conclusion). Deluxe Cabinet Works v. Messmer, 140 Or App 548, 553, 915 P2d 1053, rev. denied, 324 Or 305 (1996); Fernandez v. Board of Parole, 137 Or App 247, 251-53, 904 P2d 1071 (1995); ORS 174.010.

Every state has a child abuse reporting statute, and all of the statutes classify the crime as a misdemeanor. However, there are 7 states that also expressly create civil liability for injuries proximately caused by the failure to report child abuse, and Oregon is not one of those seven states. (The seven states that expressly create civil liability for injuries proximately caused by failing to report suspected child abuse, in addition to providing that failing to do so is a misdemeanor, are Arkansas, Colorado, Iowa, Michigan, Montana, New York, and Rhode Island.) Indeed, this shows why no Oregon case holds that ORS 419B.010 allows for a civil cause of action if it is violated.[13]

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a report to be made in the manner required in ORS 419B.015. Nothing contained in ORS 40.225 to 40.295 [provisions of the Oregon Evidence Code relating to privileges] shall affect the duty to report imposed by this section, except that a psychiatrist, psychologist, clergyman or attorney shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295." ORS 419B.010(3) provides that a "person who violates subsection (1) of this section commits a Class A violation. Prosecution under this subsection shall be commenced at any time within 18 months after commission of the offense." Thus, while this statute expressly provides for a criminal penalty for its violation, it does not provide for a civil cause of action.

[13] ORS 419B.025 provides that anyone "participating in good faith in the making of a report of child abuse and who has reasonable grounds for the

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This also shows why the overwhelming majority of courts nationwide hold that a person who is subject to a childhood abuse reporting statute ***cannot*** be held civilly liable for failing to report the suspected abuse as required by the statute if a civil cause of action is not expressly contained in the statute. See Borne v. Northwest Allen County School Corp., 532 NE2d 1196 (Ind App 1989) (recognizing that Indiana's reporting statute, like Oregon's statute, contains "no express indication of any legislative intent to impose civil liability for failure to report," although it provides that an individual who fails to report commits a misdemeanor, and thus holding that the statute did not confer "a private right of action" for its violation); Marquay v. Eno, 662 A2d 272 (NH 1995) (holding that New Hampshire's reporting statute "does not support a private right of action for its violation because we find no express or implied legislative intent to create such civil liability," and thus "***a violation of the reporting statute does not constitute negligence per se***") (emphasis added); Valtakis v. Putnam, 504 NW2d 264 (Minn App 1993) (holding that Minnesota's reporting statute did not create a private right of action because, like Oregon's statute, while it provides that a violation of the statute is a misdemeanor, there "is no mention of a civil

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making thereof shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making or content of such report. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from such report." See also McDonald v. State ex rel Children's Services Division, 71 Or App 751, 694 P2d 569, rev. denied, 299 Or 31 (1985) (pursuant to the statutory predecessor to ORS 419B.025, the defendants were held immune from liability to the plaintiffs for reporting their belief that plaintiffs' child had suffered abuse). However, nowhere in ORS Chapter 419B does it state that a person who does ***not*** report suspected child abuse may be held civilly liable for violating ORS 419B.010. Rather, the only punishment (or "remedy") provided is the criminal violation contained in ORS 419B.010(3).

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cause of action for failure to report nor is a civil action implied," and a "statute does not give rise to a civil cause of action unless the language of the statute is explicit or it can be determined by clear implication"); Cechman v. Travis, 414 SE2d 282 (Ga App 1991), cert. denied (Ga 1992) (Georgia's reporting statute "does not expressly create a civil cause of action for damages in favor of the victim or anyone else," and "no private cause of action is impliedly created thereby," and thus holding that plaintiff could not assert a civil claim for violating the statute); Thelma D. v. Board of Education of City of St. Louis, 669 F Supp 947 (ED Mo 1987) ("the Missouri child abuse reporting statute creates a duty owed to the general public, not to specific individuals, and consequently the statute does not support a private cause of action in favor of individuals") (citing Doe "A" v. Special School Dist. of St. Louis County, 637 F Supp 1138, 1148 (ED Mo 1986)).

Also, even assuming that ORS 419B.010 did authorize a civil cause of action for its violation, or that this statute gives rise to negligence *per se* liability, plaintiff's allegations show that defendants did not violate this statute. A "public or private official" that is required to report suspected child abuse includes a "member of the clergy." (ORS 419B.005(3)(h).) However, a "member of the clergy *** shall not be required to report such information communicated by a person if the communication is privileged" under OEC 506 (also codified as ORS 40.260). (ORS 419B.010(1).)

OEC 506(2) provides that a "member of the clergy may not be examined as to any confidential communication made to the member of the clergy in the member's professional character unless consent to the disclosure of the confidential communication is given by the person who made the communication." A "confidential communication" for purposes of OEC 506

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is defined as "a communication made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication." (OEC 506(1)(a).) This "privilege allows and encourages individuals to fulfill their religious, emotional or other needs by protecting confidential disclosures to religious practitioners." (1981 Conference Committee Commentary to OEC 506 (cited in Oregon Rules of Court, State, 2002 at p. 117).)

What plaintiffs' own allegations show is that, even assuming *arguendo* that defendants received notice that Mr. Serjeant, a church member, sexually abused other children before plaintiff, defendants received the alleged reports of Mr. Serjeant's alleged prior abuse within the confines of the church and its activities. Plaintiffs contend that, pursuant to church policy, alleged victims "are not permitted to report suspected abuse to outside authorities" or other church members, and that when the alleged abuse of a prior alleged victim was reported to the elders of the church, they told this alleged victim "not to discuss the matter with anyone else and that they would take any and all necessary action." (First Amended Complaint at ¶¶ 22, 24.)

Plaintiffs also allege that it "is the responsibility of the Elders and those higher up in the chain of command" to "decide if abuse had occurred and how it should be handled." Id. at ¶ 21. Plaintiffs further allege that when plaintiff Leanna Morley's father reported to the church elders that Mr. Serjeant allegedly abused her, they told her family "that they were not to report the abuse to anyone." Id. at ¶ 26. Plaintiffs further allege that defendants instructed plaintiffs and their families "to keep the abuse matters within" the church. Id. at ¶ 28.

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What plaintiffs' own allegations show, therefore, and assuming their truth for purposes of argument, is that defendants learned of Mr. Serjeant's alleged abuse within the confines of confidential church communications. Such "private communications" are privileged pursuant to OEC 506, and are thus exempt from the child abuse reporting statute. (ORS 419B.010(1).)

Indeed, plaintiffs do not allege that any reports of Mr. Serjeant's alleged prior abuse were ***not*** made in the context of the church, or that any such report to the church was intended to be "disclosed" to the public at large, the exceptions to OEC 506. See First Amended Complaint.

In addition, OEC 506(3) provides that even "though the person who made the communication has given consent to the disclosure, a member of the clergy may not be examined as to any confidential communication made to the member in the member's professional character if, under the discipline or ***tenets*** of the member's church, denomination or organization, the member has an absolute duty to keep the communication confidential." (Emphasis added.)

Plaintiffs allege that the "organization of Jehovah's Witnesses" has a "***policy***" which requires that suspected abuse of church members ***not*** be reported to secular authorities or to other church members, and that accusations of abuse are to be handled internally through specific church-mandated procedures. (First Amended Complaint at ¶¶ 22, 24, 26, 35 (emphasis added).)

Therefore, plaintiffs admit that, even assuming that "the person who made the communication has given consent to the disclosure" (such as Mr. Serjeant, another church member who reported their alleged prior abuse

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to the church, a plaintiff, or a plaintiff's family member), a member of the Jehovah's Witnesses' clergy may not be examined as to any such "confidential communication" because, "under the discipline or tenets of the member's church, denomination or organization, the member has an absolute duty to keep the communication confidential." (OEC 506(3).)

"A statement of fact in a party's pleading is an admission that the fact exists as stated." Moore v. Drennan, 269 Or 189, 193, 523 P2d 1250 (1974). This admission by plaintiffs relating to defendants' alleged religious "policies" (or "tenets") concerning not disclosing allegations of abuse is an additional reason why defendants are exempted from the child abuse reporting statute pursuant to ORS 419B.010(1).[14]

Therefore, pursuant to ORCP 21A(8), in the event this entire action is not dismissed for the separate reasons stated above, because ORS 419B.010 does not provide a civil cause of action for violations of the statute, and, as a matter of law, defendants are exempted from this statute, plaintiff's sixth claim for relief should be dismissed with prejudice.

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[14] Also, even if plaintiffs' allegations did not show that defendants were exempted from Oregon's child abuse reporting statute, requiring such reporting, and holding defendants civilly liable for failing to do so, would violate the "free exercise of religion" clauses in the First Amendment and the Oregon Constitution. See Bryan R., 738 A2d at 848 ("A religious organization's decisions and actions when providing advice, counsel, or religious discipline to its members will be based on the particular religious beliefs of the organization, and thus, like the decisions and actions with respect to the organization's government, cannot by themselves form the basis for secular liability. Allowing a secular court or jury to determine whether a church and its clergy have sufficiently disciplined, sanctioned, or counseled a church member would insert the State into church matters in a fashion wholly forbidden by the Free Exercise Clause of the First Amendment.").

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(3) Oregon does not recognize a claim for "Negligent Usurpation of Investigatory Function."

Pursuant to ORCP 21A(8), defendants move to dismiss plaintiffs' tenth claim for relief, entitled "Negligent Usurpation of Investigatory Function," which is also based on defendants' alleged violations of ORS 419B.010. No such claim for relief is recognized in Oregon.

(4) "*Respondeat Superior*" is not a recognized claim for relief.

Pursuant to ORCP 21A(8), defendants move to dismiss plaintiffs' first claim for relief, entitled "*Respondeat Superior*," because it is also not a recognized claim for relief. A party can be held vicariously liable for a tort based on the principle of *respondeat superior*; however, "*respondeat superior*" is not a tort in and of itself. "Under the doctrine of *respondeat superior*, an employer is liable for an employee's ***torts*** when the employee acts within the scope of employment." Chesterman v. Barmon, 305 Or 439, 442, 753 P2d 404 (1988) (emphasis added). However, the "doctrine of *respondeat superior* is not an independent cause of action." Id. at 449 (Jones, J., dissenting).

Therefore, plaintiffs' first claim for relief should be dismissed with prejudice pursuant to ORCP 21A(8).

(5) "Ratification" is not a recognized claim for relief.

Pursuant to ORCP 21A(8), defendants move to dismiss plaintiffs' eighth claim for relief, entitled "Ratification," because it is also not a recognized claim for relief. While allegations of ratification can be used to hold a party liable as part of another tort, "ratification" is not a tort in and of

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itself. No Oregon case holds that "ratification" of another's allegedly tortious conduct (such as defendants' alleged ratification of Mr. Serjeant's alleged sexual abuse) is an independent cause of action.

Therefore, plaintiffs' eighth claim for relief should also be dismissed with prejudice.

(6) "Alter Ego and Single Business Enterprise" is also not an independent cause of action.

Pursuant to ORCP 21A(8), defendants move to dismiss plaintiffs' ninth claim for relief, entitled "Alter Ego and Single Business Enterprise," because this is also not an independent cause of action. This may be a claim for relief recognized in Texas (which likely explains why plaintiffs' Texas-based lawyers assert it), but no Oregon case recognizes it as an independent cause of action.[15]

Therefore, plaintiffs' ninth claim for relief should also be dismissed with prejudice.

(7) ORCP 18B states that the amount of requested damages "shall" be stated in the operative Complaint, and plaintiffs' request for unspecified economic damages should thus be stricken.

Finally, pursuant to ORCP 21E and 18B, defendants move to strike plaintiffs' request for unspecified economic damages ("amount to be inserted prior to trial") from paragraph 50 and the Prayer of the First Amended Complaint.

ORCP 18B, which addresses what a pleading asserting a claim for

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[15] See Procter & Gamble Co. v. Amway Corp., 280 F3d 519, 530 (5th Cir 2002) (referencing "Texas's 'alter ego' or 'single business enterprise' theory").

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relief "shall contain," provides, in relevant part, that "if recovery of money or damages is demanded, the amount thereof ***shall*** be stated." (Emphasis added.) Therefore, pursuant to ORCP 18B, a Complaint "***must*** specify the amount of money damages the party seeks." Lovejoy Specialty Hospital v. Advocates for Life, 121 Or App 160, 167, rev. denied, 318 Or 97-98 (1993), cert. denied, 511 US 1070 (1994) (emphasis added).

The policy behind ORCP 18B's requirement that the specific amount of damages requested "shall be stated" in the Complaint was explained by Oregon's Council on Court Procedures: "The amount claimed by the plaintiff may determine whether a claim is being made in excess of insurance coverage and whether an insured must retain a separate attorney. *** The simplest way to have the record clearly show the amount claimed [is] to have the plaintiff include all damages in the complaint." Council on Court Procedures, 1990 Staff Comment to ORCP 18 (cited in Oregon Rules of Civil Procedure 1999-2000 Handbook at p. 57).

ORCP 18B thus reflects Oregon's decision "to retain fact pleading as opposed to notice pleading, i.e., to retain a requirement of fairly specific description of facts as opposed to adopting the less specific fact description allowable in federal courts." Council on Court Procedures, Staff Comment to ORCP 18 (cited in Oregon Rules of Civil Procedure 1999-2000 Handbook at p. 56).

The rule contained in ORCP 18B also goes hand-in-hand with the rule that a "verdict must not exceed the amount alleged and prayed for in the complaint." Lovejoy Specialty Hospital, 121 Or App at 167. This rule cannot be given effect if plaintiffs are allowed to violate ORCP 18B by failing to specify the amount of economic damages requested in their

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operative Complaint.

Also, if plaintiffs are unable to provide a specific amount for their alleged economic damages, that is an additional reason to dismiss this claim because the existence and amount of plaintiffs' claimed "damages must be established with reasonable certainty," and if "the trier of fact must resort to speculation, conjecture, or surmise, a claim of damages will fail." Newell v. Weston, 150 Or App 562, 582 (1997), rev. denied, 327 Or 317 (1998); see also UCJI 5.01 (a jury "must not engage in guesswork or speculation").

Therefore, pursuant to ORCP 21E and 18B, the Court should strike plaintiffs' request for unspecified economic damages from paragraph 50 and the Prayer of the First Amended Complaint.

DATED: May 21, 2003.

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Supreme Judicial Court of Maine.

BRYAN R.
v.
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.

Docket No. Cum-98-531.

Argued May 4, 1999.
Decided Oct. 18, 1999.

Parishioner, who alleged that he was sexually abused during his adolescent years by adult member of his church, brought action against adult member, the church, and its elders, alleging breach of fiduciary duty, negligent infliction of emotional distress, and intentional infliction of emotional distress. The Superior Court, Cumberland County, Calkins, J., dismissed parishioner's complaint against church and its elders for failure to state a claim, and he appealed. The Supreme Judicial Court, Saufley, J., held that: (1) parishioner failed to plead a fiduciary relationship with sufficient particularity for purposes of his breach of fiduciary duty claim, and (2) parishioner did not state claim against church for negligent infliction of emotional distress.

Affirmed.

West Headnotes

[1] Appeal and Error 919
30k919

On appeal, Supreme Judicial Court would take material allegations of complaint as admitted because matter was presented to the Superior Court on defendant's motion to dismiss.

[2] Appeal and Error 863
30k863

[2] Appeal and Error 919
30k919

In reviewing the trial court's dismissal of a complaint, Supreme Judicial Court examines the complaint in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to a valid cause of action.

[3] Pretrial Procedure 678
307Ak678

Legal sufficiency of a complaint challenged for failure to state claim is a question of law. Rules Civ.Proc., Rule 12(b)(6).

[4] Negligence 1692
272k1692

Whether a defendant owes a duty of care to a plaintiff is a matter of law for the court, and in determining whether a duty exists, court must ascertain whether the alleged wrongdoer is under any obligation for the benefit of the particular plaintiff.

[5] Negligence 210
272k210

[5] Negligence 282
272k282

There does not exist a general obligation to protect others from harm not created by the actor, and fact that the actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose upon him a duty to take such action. Restatement (Second) of Torts § 314.

[6] Negligence 220
272k220

Mere fact that one individual knows that a third party is or could be dangerous to others does not make that individual responsible for controlling the third party or protecting others from the danger.

[7] Negligence 220
272k220

Certain relationships are protective by nature, requiring the defendant to guard his charge against harm from others; nonetheless, in the absence of the requisite relationship, there generally is no duty to protect others against harm from third persons.

[8] Negligence 282
272k282

In instances of nonfeasance, rather than misfeasance, and absent a special relationship, the law imposes no

duty to act affirmatively to protect someone from danger unless the dangerous situation was created by the defendant.

[9] Negligence 220
272k220

Only when there is a special relationship may the actor be found to have a common law duty to prevent harm to another caused by a third party.

[10] Negligence 220
272k220

There is no duty to control the conduct of a third person as to prevent him from causing physical harm to another unless a special relation exists between the actor and the other which gives to the other a right to protection. Restatement (Second) of Torts § 315(b).

[11] Fraud 7
184k7

One standing in a fiduciary relation with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation.

[12] Negligence 220
272k220

[12] Religious Societies 30
332k30

There is no general common law duty on the part of an organization, such as a church, to protect its members from each other.

[13] Religious Societies 31(4)
332k31(4)

Parishioner, who alleged that he was sexually abused during his adolescent years by adult member of church, failed to plead a fiduciary relationship with sufficient particularity for purposes of his breach of fiduciary duty claim against church; parishioner's allegation that he placed substantial trust and confidence in church elders and trusted them to protect him did not set forth factual foundations for a special responsibility on part of church, and such vague and nonspecific allegations were insufficient to make out claim of special relationship between church and its members.

[14] Fraud 7
184k7

Although a fiduciary duty may be based on moral, social, domestic, or merely personal duties, it does not arise merely because of the existence of kinship, friendship, business relationships, or organizational relationships.

[15] Fraud 7
184k7

Fiduciary duty will be found to exist, as a matter of law, only in circumstances where the law will recognize both the disparate positions of the parties and a reasonable basis for the placement of trust and confidence in the superior party in the context of specific events at issue.

[16] Pleading 18
302k18

Because the law does not generally require individuals to act for the benefit of others, the factual foundations of an alleged fiduciary relationship must be pled with specificity; simple recitations of a trusting relationship will not suffice for identifying a fiduciary duty.

[17] Pretrial Procedure 685
307Ak685

To survive a motion to dismiss a claim for breach of fiduciary duty, the plaintiff must set forth specific facts constituting the alleged relationship with sufficient particularity to enable the court to determine whether, if true, such facts could give rise to a fiduciary relationship.

[18] Pleading 18
302k18

Plaintiff's recitation of the basic elements of a fiduciary relationship could not substitute for an articulation in the complaint of the specific facts of a particular relationship for purposes of plaintiff's breach of fiduciary duty claim.

[19] Constitutional Law 84.5(7.1)
92k84.5(7.1)

[19] Damages 50.10
115k50.10

Parishioner who alleged that he was sexually abused during his adolescent years by adult church member did not state claim against church for intentional

infliction of emotional distress; effort to hold church responsible would require direct inquiry into church's religious sanctions and discipline, and allowing secular court to determine whether church sufficiently disciplined church member would insert state into church matters in a fashion wholly forbidden by free exercise clause of the First Amendment. U.S.C.A. Const.Amend. 1.

[20] Religious Societies ⚿14
332k14

State courts may not interfere in matters concerning religious doctrine or organization.

[21] Religious Societies ⚿30
332k30

Religious organization's decisions and actions when providing advice, counsel, or religious discipline to its members will be based on the particular religious beliefs of the organization, and thus, like the decisions and actions with respect to the organization's government, they cannot, by themselves, form the basis for secular liability.

[22] Constitutional Law ⚿84.5(7.1)
92k84.5(7.1)

[22] Constitutional Law ⚿84.5(10)
92k84.5(10)

Allowing a secular court or jury to determine whether a church and its clergy have sufficiently disciplined, sanctioned, or counseled a church member inserts the state into church matters in a fashion wholly forbidden by the free exercise clause of the First Amendment. U.S.C.A. Const.Amend. 1.

[23] Damages ⚿49.10
115k49.10

Although it is no longer necessary for a plaintiff to plead or prove the existence of a separate tort in order to assert a claim for negligent infliction of emotional distress, a plaintiff must nonetheless demonstrate that the defendant owed him a duty of care and must prove the breach of that duty of care by the defendant.

[24] Damages ⚿49.10
115k49.10

Parishioner who alleged that he was sexually abused during his adolescent years by adult church member did not state claim against church for negligent infliction of emotional distress; courts had never recognized relationship between churches and their members of the type that would give rise to a duty to avoid psychic injury to those members, and courts could not do so without inquiring into ecclesiastical relationship, whose components were not within the purview of the secular courts.

[25] Damages ⚿49.10
115k49.10

Only where a particular duty based upon the unique relationship of the parties has been established may a defendant be held responsible, absent some other wrongdoing, for harming the emotional well-being of another.

***842** Michael J. Waxman (orally), Portland, for plaintiff.

Bruce C. Mallonee (orally), Rudman & Winchell, LLC, Bangor, and Paul D. Polidoro, Patterson, NY, for Watchtower and others, defendants.

Frederick C. Moore (orally), Robert C. Robinson, Daniel Nuzzi, Robinson Kriger & McCallum, Portland, for the Roman Catholic Bishop of Portland, amicus curiae.

Paul C. Catsos, Thompson & Bowie, Portland, did not file briefs for additional church defendants.

M. Michaela Murphy, Daviau Jabar & Batten, Waterville, did not file briefs for Baker.

Before WATHEN, C.J., and CLIFFORD, DANA, SAUFLEY, and ALEXANDER, JJ.

SAUFLEY, J.

[¶ 1] Bryan R. alleges that he was sexually abused during several of his adolescent years by Larry Baker, an adult member of his church. He has obtained a judgment against Baker, but his complaint against the church and its elders was dismissed by the Superior Court (Cumberland County, *Calkins, J.*) for failure to state a claim. He appeals from the judgment dismissing the claims against the church defendants. We affirm the judgment.

I. BACKGROUND

[1] [¶ 2] Because this matter was presented to the Superior Court on the church's motion to dismiss, we

take the material allegations of the complaint as admitted. *See McAfee v. Cole,* 637 A.2d 463, 465 (Me.1994). The following facts were alleged in Bryan's complaint:

[¶ 3] The Watchtower Bible and Tract Society is a New York-based nonprofit corporation, better known as the Jehovah's Witnesses. It is a religious organization. When the events at issue occurred, Robert Wells, Pat LaBreck, and Bryan's stepfather were "elders" and members of the "judicial body" of the Augusta congregation of the church, Larry Baker was an adult member of the church, and Bryan R. and his family were members of the congregation.

[¶ 4] At some time in the past, also while Larry Baker was an adult member of the church, he molested a minor member of the congregation identified as "John Doe." The elders of the Augusta congregation knew that Baker had molested John Doe. Wells, LaBreck, and Bryan's stepfather, in their roles as the judicial body of the Augusta congregation, decided on the following response to Baker's actions: (1) they demoted Baker from "ministerial servant" to "baptized entry level member"; (2) they "privately rebuked" Baker; and (3) and they temporarily "forbade Baker from having any contact with minor members" of the church. The defendants did not alert the members of the church to Baker's misdeeds. [FN1]

> FN1. Bryan alleges that among the options available to the defendants upon discovering Baker's misdeeds were: (1) "kick[ing] him out" of the Watchtower Society; (2) publicly rebuking him for his actions; (3) requiring him to undergo "professional evaluation for sexual impulse control"; (4) and requiring him to undergo "professional treatment for sexual impulse control." Bryan alleges that the defendants took none of these steps.

[¶ 5] Eventually, Baker was allowed by the defendants to resume activities as an ordinary member of the church. Bryan alleges that Baker was able to earn his trust and confidence because the church placed Baker in a position of leadership and respect. Bryan was molested by Baker from 1989 through 1992 while Bryan was a teenager and lived next door to Baker. He alleges that his stepfather, who was aware of Baker's history, nonetheless allowed Baker to spend time alone with Bryan at his home. As a result of Baker's repeated sexual abuse, Bryan suffered significant emotional harm necessitating psychiatric hospitalization.

***843** [¶ 6] Bryan filed this action against Baker, the church, and its elders to recover damages for the injuries he suffered as a result of Baker's assaults on him. In count I of his complaint, he alleged that each of the defendants breached a fiduciary duty owed to him as a member of the congregation; in counts II and III, he alleged that the defendants were liable to him for negligent infliction of emotional distress and intentional infliction of emotional distress. Count IV contained Bryan's claim against Baker for battery, and in count V. Bryan alleged that his stepfather was individually liable for negligence. The stepfather was later dismissed from the action pursuant to a joint motion filed by the parties, thereby resolving count V.

[¶ 7] The Watchtower Society, Robert Wells, and Pat LaBreck filed a motion to dismiss each of the claims against them. After a hearing, the Superior Court granted the motion, concluding that Bryan had failed to state a claim, relying on *Swanson v. Roman Catholic Bishop of Portland,* 1997 ME 63, 692 A.2d 441. Bryan's appeal from that judgment was remanded for lack of finality because the claims against Larry Baker had not yet been adjudicated. The Superior Court, based on a stipulation of the parties, entered judgment against Baker. After the entry of judgment against Baker, Bryan appealed from the court's judgment dismissing the claims against the church defendants. Baker did not appeal the judgment against him.

II. DISCUSSION

A. Standard of Review and Claims Asserted

[2][3] [¶ 8] In reviewing the trial court's dismissal of a complaint, we "examine the complaint in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief" pursuant to a valid cause of action. *McAfee,* 637 A.2d at 465, *quoted in Hamilton v. Greenleaf,* 677 A.2d 525, 527 (Me.1996). "The legal sufficiency of a complaint challenged pursuant to M.R. Civ. P. 12(b)(6) is a question of law." *Hamilton,* 677 A.2d at 527.

[¶ 9] Before examining the claims asserted by Bryan, it is instructive to address those claims that he does not assert. He does not allege that Baker was an agent or employee of the church. Nor does he claim that Baker occupied any clerical position such as priest, minister, or pastor. *Cf. Swanson,* 1997 ME 63, ¶ 13, 692 A.2d at 445. [FN2] Moreover, the complaint does not allege that the church affirmatively placed Baker in a position of control and supervision of children, such as a Sunday school teacher or youth coordinator, or that the

church knowingly placed Baker in a position where he could sexually abuse children within a church setting. Rather, Bryan alleges that Baker was "able to *earn* [Bryan's] trust and confidence" because of his position of power and authority in the church. [FN3] These allegations place Baker in a relationship to Bryan that was not different in quality from any other member in good standing of the church.

FN2. Because Baker is not alleged to have been an employee or agent of the church, we are not called upon to determine whether the "balancing of interests" we referenced in *Swanson* may require a different result when a child, rather than an adult, is injured by an agent of the church. *Swanson,* 1997 ME 63, ¶ 13, 692 A.2d at 445.

FN3. He also argues that the church allowed Baker to lead "Field Ministry Excursions" which included Bryan, thereby implying that by cloaking Baker with power and respect, the church negligently allowed Baker to gain Bryan's trust.

[¶ 10] The crux of Bryan's claim is that the church, because of an alleged special relationship with its members, has a duty to protect its members from each other, at least when the church and its agents are aware of a potential danger posed by a member. Because the church elders knew of Baker's propensity to abuse children, *844 Bryan argues that they had an independent duty to protect him from Baker. [FN4] He addresses that duty through three separate counts. We address each count in turn.

FN4. Had the clergy members of the church learned of Baker's assault on Joe Doe more recently, they would have had a statutory duty to report that information to the Department of Human Services and to the appropriate district attorney's office, unless the information was obtained during confidential communications. *See* 22 M.R.S.A. § 4011(1)(D) (Supp.1998). Bryan did not raise this issue before the Superior Court, and the amendment adding clergy to the list of mandated reporters was not enacted until long after the facts alleged in the complaint took place. *See* P.L.1997, ch. 251, § 1 (effective Sept. 19, 1997) (adding "clergy members" to the list of those responsible for reporting child abuse).

B. Breach of Fiduciary Duty

[4] [¶ 11] Bryan bases his first theory of liability on an alleged duty on the part of the church to protect him from the actions of dangerous third parties. Whether a defendant owes a duty of care to a plaintiff is a matter of law for the court. *See McPherson v. McPherson,* 1998 ME 141, ¶ 8, 712 A.2d 1043, 1045; *Fish v. Paul,* 574 A.2d 1365, 1366 (Me.1990). In determining whether a duty exists, we must ascertain whether the alleged wrongdoer is " 'under any obligation for the benefit of the particular plaintiff.' " *Trusiani v. Cumberland & York Distribs., Inc.,* 538 A.2d 258, 261 (Me.1988) (quoting W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 53, at 356 (5th ed.1984)).

[5][6] [¶ 12] There does not exist a general obligation to protect others from harm not created by the actor. "The fact that the actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose upon him a duty to take such action." restatement (Second) of Torts § 314 (1965). In other words, the mere fact that one individual knows that a third party is or could be dangerous to others does not make that individual responsible for controlling the third party or protecting others from the danger. [FN5]

FN5. In limited circumstances, courts have recognized that an actor may have a duty to warn third parties of the dangerous propensities of another when the actor has a special relationship with the dangerous person and the person threatened is a specific, foreseeable, and identifiable victim of the dangerous person's threats. *See, e.g., Tarasoff v. Regents of Univ. of Cal.,* 17 Cal.3d 425, 131 Cal.Rptr. 14, 551 P.2d 334, 345 (1976); *Thompson v. County of Alameda,* 27 Cal.3d 741, 167 Cal.Rptr. 70, 614 P.2d 728, 734-35 (1980) (declining to extend holding in *Tarasoff* when neither a special relationship existed nor had a specific individual been threatened); *Brenneman v. State,* 208 Cal.App.3d 812, 256 Cal.Rptr. 363, 367 (following *Thompson* in holding that "public entities and employees have no affirmative duty to warn of the release of an inmate with a violent history who has made nonspecific threats of harm directed at nonspecific victims"); *Leonard v. Latrobe Area Hospital,* 425 Pa.Super. 540, 625 A.2d 1228, 1232 (1993) (following *Thompson,* finding "no common law rule that imposes a duty on a psychologist or psychiatrist to warn a non-patient of a patient's dangerous propensities"). *But see, e.g., Perreira v. State,* 768 P.2d 1198, 1201 (Co.1989) (holding that psychiatrist has duty to third

parties to exercise due care in treatment and release of committed patients).

[7] [¶ 13] Indeed, at early common law, inaction or nonfeasance was seldom actionable. As commentators have noted, "[l]iability for nonfeasance was ... slow to receive recognition in the law." KEETON, *supra,* § 56, at 373. Over decades, however, courts have come to recognize a duty on the part of certain groups to protect others from harm caused by third parties. "Certain relationships are protective by nature, requiring the defendant to guard his charge against harm from others." *Id.* § 56, at 383. [FN6] Nonetheless, "in the absence ***845** of the requisite relationship, there generally is no duty to protect others against harm from third persons." *Id.* § 56, at 385.

FN6. Among those who have been held in certain circumstances to have a duty of care to protect others from harm by third parties are: innkeepers and proprietors of similar establishments, *see Brewer v. Roosevelt,* 295 A.2d 647, 651 (Me.1972); *Schultz v. Gould Academy,* 332 A.2d 368, 371 (Me.1975); *Tenney v. Atlantic Assocs.,* 594 N.W.2d 11, 17 (Iowa 1999); jailers, *see Harrison v. Ohio Dep't of Rehabilitation & Correction,* 90 Ohio Misc.2d 32, 695 N.E.2d 1248, 1253 (1997); and schools, *see Hill v. Safford Unified Sch. Dist.,* 191 Ariz. 110, 952 P.2d 754, 756 (1997).

[8][9][10] [¶ 14] Even with the emergence of expanded liability for nonfeasance, that principle has remained clear--in instances of "nonfeasance rather than misfeasance, and absent a special relationship, the law imposes no duty to act affirmatively to protect someone from danger unless the dangerous situation was created by the defendant." *Jackson v. Tedd-Lait Post No. 75,* 1999 ME 26, ¶ 8, 723 A.2d 1220, 1221. Only when there is a "special relationship," may the actor be found to have a common law duty to prevent harm to another caused by a third party. [FN7] There is simply "no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless ... a special relation exists between the actor and the other which gives to the other a right to protection." restatement (Second) Of Torts § 315(b) (1965). [FN8]

FN7. We do not address herein duties created by statute. *See, e.g., Davis v. Monroe County Bd. of Educ.,* 526 U.S. 629, 119 S.Ct. 1661, 1666, 143 L.Ed.2d 839 (1999) (recognizing a statutorily imposed duty on the part of schools to protect children from abuse by other children or adults).

FN8. *Accord Gragg v. Wichita State Univ.,* 261 Kan. 1037, 934 P.2d 121, 128 (1997) (holding that corporate sponsors of fireworks on a university campus had no duty to control conduct of third party); *Hoff v. Vacaville Unified Sch. Dist.,* 19 Cal.4th 925, 80 Cal.Rptr.2d 811, 968 P.2d 522, 527-29 (1998) (holding that a school had no duty to protect pedestrian from student); *cf. J.E.J. v. Tri-County Big Brothers/Big Sisters, Inc.,* 692 A.2d 582, 584-85 (Pa.Super.Ct.1997) (holding that an organization had no duty to warn of potential danger from sexual abuse of one of its volunteers where injured child was not associated with organization's programs).

[11] [¶ 15] Therefore, in order to determine whether the church owed Bryan a duty of care to protect him from other members of the church, we must determine whether a special relationship, reviewable by the secular courts, exists between a church and its members in this context. Bryan asserts that such a relationship does exist, and he refers to it as a "fiduciary" relationship. "One standing in a fiduciary relation with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation." *Id.* § 874. He bases the alleged fiduciary relationship on the "substantial trust and confidence" he placed in the church, and alleges that the church breached its fiduciary duty to him when it failed to warn him about Baker and failed to exert some type of control over Baker's actions.

[¶ 16] Thus, we are presented with two questions: first, whether we would recognize a cause of action against a voluntary social or religious organization for breach of a fiduciary duty to protect the organization's members from each other. Put another way, we must determine whether a voluntary organization such as a church has a special relationship with its members that gives rise to a duty to protect those members from a class of third parties--other members of the organization. Second, we are asked to determine whether such a cause of action could be maintained against a church in light of the free exercise protections contained in the First Amendment.

[12][13] [¶ 17] On the facts alleged in the complaint, we conclude that Bryan has failed to plead a fiduciary relationship with sufficient particularity, and we decline to recognize a general common law duty on the part of an organization such as a church to protect its members from each other. Accordingly, we do not

reach the constitutional issue.

[¶ 18] We begin by addressing the identification of a fiduciary relationship. ***846** Bryan has not provided any support for his assertion that a religious organization has a fiduciary relationship with its members that requires it generally to protect those members from other members of the church who may present a danger. Nor have we ever found a fiduciary relationship to exist in the circumstances presented here. We recognize, as have many courts, that it is often difficult to articulate exactly what proof is required to establish the existence of a fiduciary relationship in particular circumstances. [FN9] A fiduciary relationship has been described as "something approximating business agency, professional relationship, or family tie impelling or inducing the trusting party to relax the care and vigilance ordinarily exercised." *L.C. v. R.P.*, 563 N.W.2d 799, 801-02 (N.D.1997) (internal quotation and alterations omitted).

> FN9. The term "fiduciary" is "one of the most ill-defined, if not altogether misleading terms in our law." *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.*, 10 F.Supp.2d 138, 149 (D.Conn.1998) (internal quotation omitted). One court offered the following explanation:
>
> Some of the indicia of a fiduciary relationship include the acting of one person for another; the having and exercising of influence over one person by another; the inequality of the parties; and the dependence of one person on another. Fiduciary duty arises, for example, between attorneys and clients, guardians and wards, and principals and agents.
>
> *Doe v. Hartz*, 52 F.Supp.2d 1027, 1059 (N.D.Iowa 1999) (internal quotations omitted).

[¶ 19] We have described the salient elements of a fiduciary relationship as: (1) "the actual placing of trust and confidence in fact by one party in another," and (2) "a great disparity of position and influence between the parties" at issue. *Morris v. Resolution Trust Corp.*, 622 A.2d 708, 712 (Me.1993). A fiduciary relationship has been found to exist in several categories of relationship, including business partners, *see Rosenthal v. Rosenthal*, 543 A.2d 348, 352 (Me.1988), families engaged in financial transactions, *see Estate of Campbell*, 1997 ME 212, ¶ 9, 704 A.2d 329, 331- 32, and corporate relationships, *see Moore v. Maine Indus. Servs., Inc.*, 645 A.2d 626, 628 (Me.1994); *Webber v. Webber Oil Co.*, 495 A.2d 1215, 1224-25 (Me.1985).

[14][15] [¶ 20] We have noted, however, that a "general allegation of a confidential relationship is not a sufficient basis for establishing the existence of one." *Ruebsamen v. Maddocks*, 340 A.2d 31, 35 (Me.1975). As with any duty, its existence must be informed by "the hand of history, our ideals of morals and justice, the convenience of administration of the rule, and our social ideas as to where the loss should fall." *Trusiani*, 538 A.2d at 261. Although a fiduciary duty may be based on "moral, social, domestic, or [ ] merely personal [duties]," *Ruebsamen*, 340 A.2d at 34, it does not arise merely because of the existence of kinship, friendship, business relationships, or organizational relationships. A fiduciary duty will be found to exist, as a matter of law, only in circumstances where the law will recognize both the disparate positions of the parties and a reasonable basis for the placement of trust and confidence in the superior party in the context of specific events at issue. [FN10] A court, therefore, must have before it specific facts regarding the nature of the relationship that is alleged to have given rise to a fiduciary duty in order to determine whether a duty may exist at law.

> FN10. Relationships "will not give rise to a *confidential relation* ... unless there is evidence of superior intellect or will on the part of the one or the other, or of trust reposed or confidence abused." *Ruebsamen*, 340 A.2d at 35 (emphasis added).

[16][17] [¶ 21] Thus, because the law does not generally require individuals to act for the benefit of others, the factual foundations of an alleged fiduciary relationship must be pled with specificity. Simple recitations of a trusting relationship will not suffice for identifying a fiduciary duty. In order to survive a motion to dismiss a claim for breach of fiduciary ***847** duty, the plaintiff must set forth specific facts constituting the alleged relationship with sufficient particularity to enable the court to determine whether, if true, such facts could give rise to a fiduciary relationship. *See Clappison v. Foley*, 148 Me. 492, 497, 96 A.2d 325, 328 (1953); *see also Gibson v. Brewer*, 952 S.W.2d 239, 245 (Mo.1997) (en banc).

[18] [¶ 22] The allegations set out in Bryan's complaint do not provide the "sufficient particularity" required in pleading a fiduciary relationship. *See Ruebsamen*, 340 A.2d at 35. Instead, the facts alleged by Bryan as constituting a fiduciary relationship simply reiterate the basic elements of a fiduciary relationship. Recitation of those basic elements cannot substitute for

an articulation in the complaint of the specific facts of a particular relationship. The allegation that Bryan placed "substantial trust and confidence" in the elders of the church and trusted them "to protect him and guide him" does not set forth the factual foundations for a special responsibility on the part of the church. Such vague and nonspecific allegations are wholly insufficient to make out a claim of a special relationship between the organization and its members.

[¶ 23] Finally, the complaint does not allege that there were aspects of Bryan's relationship with the church that were distinct from those of its relationships with any other members, adult or child, of the church. The creation of an amorphous common law duty on the part of a church or other voluntary organization requiring it to protect its members from each other would give rise to "both unlimited liability and liability out of all proportion to culpability." *Cameron v. Pepin,* 610 A.2d 279, 283 (Me.1992); *see also Jackson,* 1999 ME 26, ¶ 8, 723 A.2d at 1221 (finding no special relationship between the American Legion and a "regular customer" except as created by the Maine Liquor Liability Act, 28-A M.R.S.A. §§ 2501-2520 (1988 & Supp.1998)); *Hughes v. Beta Upsilon Bldg. Ass'n,* 619 A.2d 525, 527 (Me.1993) (finding no duty to prevent spectator from injuring himself during fraternity activities).

[¶ 24] Accordingly, accepting the facts as alleged in the complaint, the Superior Court did not err in dismissing that portion of the complaint which depended upon the imposition of a generalized fiduciary duty on the part of the church to protect members of its congregation from other members.

C. Intentional Infliction of Emotional Distress

[19] [¶ 25] Bryan next claims that the defendants may be responsible for intentionally inflicting emotional distress upon him. If allowed to proceed, Bryan would be required to demonstrate that the church's conduct was "so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious [and] utterly intolerable in a civilized community." *See Finn v. Lipman,* 526 A.2d 1380, 1382 (Me.1987). In addition, he would be required to demonstrate that the church, through this specific conduct, intentionally or recklessly inflicted emotional distress, or was certain or substantially certain that emotional distress would result. *See id.; see also Davis v. Currier,* 1997 ME 199, ¶ 5, 704 A.2d 1207, 1209; *Colford v. Chubb Life Ins. Co.,* 687 A.2d 609, 616-17 (Me.1996).

[¶ 26] In support of his claim, Bryan alleges that the church knew of Baker's propensity to harm children, that it failed to announce Baker's misdeeds to the congregation, that, through its agents, it devised a plan to address his transgressions, and that this plan was "woefully inadequate" to protect against future harm of minors, including minor members of the church. Bryan asserts that the church's failure to excommunicate Baker, its failure to shun him, and its eventual decision to allow Baker to a resume a position of leadership and respect within the church constituted acts that were sufficiently extreme and outrageous that they exceeded all possible bounds of decency.

***848** [¶ 27] We do not lightly dismiss the harm caused by the sexual abuse of children, nor do we misapprehend the enormity of that harm if inflicted in the context of religious activities. [FN11] On these facts, however, we conclude that the effort to hold the church responsible, in addition to the wrongdoer himself, would require direct inquiry into the religious sanctions, discipline, and terms of redemption or forgiveness that were available within the church in the context of this claim, an inquiry that would require secular investigation of matters that are almost entirely ecclesiastical in nature. [FN12]

> FN11. Bryan does not allege that Baker molested him during any of the church's activities.
>
> FN12. The *amicus* provides multiple examples of differing principles applied in various religions to determine whether and under what circumstances a church can or should discipline its members and what methods of discipline, counseling, and spiritual guidance are available.

[20][21][22] [¶ 28] State courts may not interfere in matters concerning religious doctrine or organization. *See Swanson v. Roman Catholic Bishop of Portland,* 1997 ME 63, ¶ 7, 692 A.2d 441, 443. A religious organization's decisions and actions when providing advice, counsel, or religious discipline to its members will be based on the particular religious beliefs of the organization, and thus, like the decisions and actions with respect to the organization's government, cannot by themselves form the basis for secular liability. *See id.* ¶ 12, 692 A.2d at 445 (quoting *Pritzlaff v. Archdiocese of Milwaukee,* 194 Wis.2d 302, 533 N.W.2d 780, 790 (1995) and *Schmidt v. Bishop,* 779 F.Supp. 321, 332 (S.D.N.Y.1991)). Allowing a secular court or jury to determine whether a church and

its clergy have sufficiently disciplined, sanctioned, or counseled a church member would insert the State into church matters in a fashion wholly forbidden by the Free Exercise Clause of the First Amendment.

[¶ 29] The Superior Court did not err in dismissing that portion of Bryan's complaint asserting a claim of intentional infliction of emotional distress against the church and its elders.

D. Negligent Infliction of Emotional Distress

[23][24] [¶ 30] Although it is no longer necessary for a plaintiff to plead or prove the existence of a separate tort in order to assert a claim for negligent infliction of emotional distress, a plaintiff must nonetheless demonstrate that the defendant owed him a duty of care and must prove the breach of that duty of care by the defendant. *See Devine v. Roche Biomed. Labs., Inc.,* 637 A.2d 441, 447 (Me.1994). The removal of the necessity for a plaintiff to allege an underlying tort or physical impact did not create a new cause of action, but simply removed the barriers that prevented plaintiffs from proceeding with claims already recognized in Maine, when the only damage suffered was to the psyche. *See id.*

[25] [¶ 31] In examining the scope of this tort, we have declined to apply a pure foreseeability analysis to determine when a duty arises. *See Cameron v. Pepin,* 610 A.2d 279, 284 (Me.1992). Only where a particular duty based upon the unique relationship of the parties has been established may a defendant be held responsible, absent some other wrongdoing, for harming the emotional well-being of another. *See, e.g., Bolton v. Caine,* 584 A.2d 615, 618 (Me.1990) (holding that a physician-patient relationship gives rise to a duty to avoid emotional harm from failure to provide critical information to patient); *Gammon v. Osteopathic Hosp. of Me.,* 534 A.2d 1282, 1285 (Me.1987) (holding that a hospital's relationship to the family of deceased gives rise to a duty to avoid emotional harm from handling of remains); *Rowe v. Bennett,* 514 A.2d 802, 806-07 (Me.1986) (holding that the unique nature of psychotherapist-patient relationship gives rise to a duty of care to the patient).

***849** [¶ 32] We have never recognized a relationship between churches and their members of the type that would give rise to a duty to avoid psychic injury to those members, and we could not do so without inquiring into the ecclesiastical relationship whose components are not within the purview of the secular courts. *See Swanson,* 1997 ME 63, ¶ 7, 692 A.2d at 443. The court did not err in dismissing Bryan's claim of negligent infliction of emotional distress.

The entry is:

Judgment affirmed.

738 A.2d 839, 1999 ME 144

END OF DOCUMENT

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA MORLEY, JESSICA SCHROEDER and CHRISTINA VIZENOR, Plaintiffs, vs. NORTH ALBANY OREGON CONGREGATION OF JEHOVAH'S WITNESSES, INC., f/k/a ALBANY OREGON COMPANY OF JEHOVAH'S WITNESSES, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, WATCHTOWER ENTERPRISES, L.L.C., WATCHTOWER FOUNDATION, INC., WATCHTOWER ASSOCIATES, LTD., KINGDOM SUPPORT SERVICES, INC. CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES RELIGIOUS ORDER OF JEHOVAH'S WITNESSES, THE WATCHTOWER GROUP, INC., and NORTH BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES, INC. Defendants.	CASE NO. 030431 PLAINTIFFS' RESPONSE TO DEFENDANTS' ORCP 21A(8) MOTIONS TO DISMISS

COME NOW Plaintiffs LEANNA MORLEY AND JESSICA SCHROEDER and file PLAINTIFFS' RESPONSE TO DEFENDANTS' ORCP 21A MOTIONS TO DISMISS and in support thereof show the following:

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I.
INTRODUCTION

The Watchtower Defendants present only two arguments in support of their attempt to dismiss all of Plaintiffs' claims. These two arguments are articulated by the Watchtower Defendants as follows:

> This action should be dismissed because organizations, including churches, do not have a duty to protect their members from each other, and the First Amendment prohibits inquiry into the 'correctness' of church beliefs and disciplinary policies.

(Defendants' ORCP 21 Motions and Supporting Memorandum of Law, p. 5)

While those two arguments might provoke some interesting debate before this court, neither argument has anything to do with **this case.** This is **NOT** a case about whether organizations, including churches, have a duty to protect their members from each other. This is also **NOT** a case about whether the First Amendment prohibits inquiry into the correctness of church beliefs and disciplinary policies. Instead, this **IS** a case about two young girls who were seriously injured by the crime of sexual abuse as a result of their affiliation with an organization entrusted with their care. It **IS** additionally about an appointed agent of that organization who used his position of trust and authority within that organization to criminally sexually abuse children entrusted to his care by that organization. It **IS** further a case about that organization's negligence and fraud in covering up the abuse and, at the same time, continuing to appoint the abuser to positions of trust and authority after the organization knew of their agent's propensity to use his position in the organization to sexually abuse innocent children. Finally, this **IS** a case about this nation's and the state of Oregon's compelling state interest in protecting its children from the crime of sexual abuse through the application of secular laws designed to hold accountable

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those responsible for such abuse. Nothing in Plaintiffs' First Amended Complaint attacks the Watchtower Defendants' religious beliefs. Surely, the Watchtower Defendants are not arguing that their religious beliefs condone the crime of sexual abuse. However, even if they were to make such a brazen argument, that would not justify dismissing Plaintiffs' claims on First Amendment grounds. It has never been the law of the United States or the State of Oregon that religious organizations or persons may engage in or support unlawful conduct under a claim that their religious doctrine compels them to do so. *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 879, 110 S.Ct. 1595, 1600, 108 L.Ed. 2d 876 (1990). "We have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the state is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition." *Id.* "Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices....Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself." *Reynolds v. United States*, 98 U.S. 145, 166-167, 25 L.Ed. 244 (1879). "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public". *Cantwell v. Connecticut*, 310 U.S. 296, 306, 60 S.Ct. 900, 904, 84 L.Ed. 1213 (1940)

Plaintiffs are asking this court to enforce secular laws against the Watchtower Defendants, who happen to be entities that make up a religious organization, just as this court would enforce those same secular laws against any other individual or organization who violated them. Consistent with the decision of the United States

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Supreme Court in *Cantwell* and the other United States Supreme Court decisions cited above and herein, this court should rule that nothing in the First Amendment even remotely implies that, under the cloak of religion, persons and organizations may, with impunity, foster, protect, aid and abet the perpetration of the heinous crime of child sexual abuse. Therefore the First Amendment presents no bar to Plaintiffs' claims.

II.
SUMMARY OF THE FACTS

Plaintiffs have pled that the Watchtower Defendants are liable for the known criminal conduct of their appointed agent, Don Serjeant, who used the authority of his appointed position in the Watchtower Defendants' organization to sexually abuse Plaintiffs and others while they were vulnerable children under the care of the Watchtower Defendants' organization. Plaintiffs have also pled that the Watchtower Defendants knew about Don Serjeant's propensity to use his authority to abuse children and not only continued to place him in positions of trust and confidence with authority over children, but also covered up his and their conduct by, among other things, failing to report it to authorities or to warn others in their congregations. Under Oregon law, those pleadings articulate viable claims for sexual assault, common law negligence, negligent retention and supervision, gross negligence, negligence *per se*, breach of fiduciary duty, fraud, fraudulent concealment, and negligent usurpation of investigatory function. Plaintiffs seek to hold the Watchtower Defendants liable for each of these causes of action both directly and under the theories of *respondeat superior*, ratification, alter ego and single business enterprise.

Because the Watchtower Defendants cannot prevail if this, and similar cases being brought against them, reach the evidentiary phase, they have engaged in a

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nationwide strategy to defeat the claims of their abused victims at the pleading stage. In pursuing dismissal at the pleading stage, the Watchtower Defendants here, as in other cases, take the position that child abusers, such as Don Serjeant, are simply other members in the congregation. They then argue that a religious organization has no duty to protect its members from each other. They also take the position that they have no way of foreseeing the ongoing abuse of children by these child molesters and therefore cannot be held accountable for refusing to take any steps to protect subsequent victims. Finally, the Watchtower Defendants argue that their religious beliefs justify their participation in this crime and that therefore they are protected by the First Amendment.

Plaintiffs ask the court to consider the injustice of allowing the Watchtower Defendants to succeed with this strategy before Plaintiffs had the opportunity to engage in meaningful discovery. Plaintiffs were young children at the time that the acts complained of were perpetrated against them. They know that Don Serjeant held one or more leadership positions as an agent of the Watchtower Defendants and that that gave him authority over them. They also know that he used that position of authority to abuse them. They pled their case as specifically as they were able at the time, without having had the opportunity to discover either the particulars of Don Serjeant's exact appointed position(s) within the organization, or the details of the Watchtower Defendants' participation in, and ratification of, their abuse. Given what they have been able to discover recently in the public domain, without the aid of formal discovery in this case, the argument that the Watchtower Defendants have presented to this court is disingenuous at best.

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Plaintiffs have learned that Don Serjeant was at least a Ministerial Servant.[1] A Ministerial Servant is an appointed leadership position in the Jehovah's Witness "church." The Jehovah's Witnesses do not ordain clergy in the way the Catholic or Protestant churches do. In fact, male members of the organization often hold more than one leadership position at a time and move from one position of authority to another within and between various congregations. Male members are appointed to these various leadership positions through the chain of command that reaches all the way up to the Governing Body.[2] Plaintiffs have attached, as Exhibits A, B, C, D and E, several documents that establish not only this appointment procedure, but also the authority and trust that is commensurate with the appointment to a leadership position in a local congregation, sometimes referred to as a "Kingdom Hall".

EXHIBIT A is a Directive authored by the Watchtower Defendants. In this directive, the Watchtower Defendants admit not only that the position of Ministerial Servant is an appointed leadership position in their organization, but also that the position of Ministerial Servant is a fiduciary position of trust and confidence. This Directive also articulates the Watchtower Defendants' keen awareness that individuals who have abused children in the past are likely to do so again and therefore, such individuals cannot be placed in positions of leadership in the congregation without putting other children at risk. This Directive, authored by the Watchtower Defendants reads in part:

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[1] Plaintiffs are in the process of amending their Complaint to reflect this and other information they have discovered.

[2] In *Davidow*, referenced by the Watchtower Defendants, Plaintiffs' counsel originally included a great deal more detail about the Watchtower Defendants' structure and the various positions of leadership within the organization. When the Watchtower Defendants moved to strike these details as extraneous and irrelevant, Plaintiffs' counsel removed them. Now in this case, having succeeded in getting Plaintiffs' counsel to remove the details, the Watchtower Defendants complain that there is not enough detail! Therefore, Plaintiff's counsel is in the process of amending the First Amended Complaint to add back such detail.

> Those who are appointed to privileges of service, such as elders and ministerial servants, are put in a position of trust. One who is extended privileges in the congregation is judged by others as being worthy of trust. This includes being more liberal in leaving children in their care and oversight. The congregations would be left unprotected if we prematurely appointed someone who was a child abuser as a ministerial servant or an elder. In addition, court officials and lawyers will hold responsible any organization that knowingly appoints former child abusers to positions of trust, if one of these thereafter commits a further act of child abuse.

EXHIBIT B is also a Directive authored by the Watchtower Defendants. This Directive outlines the procedure used in documenting claims about a "known" child abuser and passing that information on to other congregations to which the molester is transferred. That information is kept in closed files and not shared with the congregation. In this Directive, the Watchtower Defendants also admit that the positions of Pioneer, Ministerial Servant, Elder and other similar positions are appointed positions with "privileges in the congregation." This Directive reads in part:

> An individual 'known' to be a former child molester has reference to the perception of that one in the community and in the Christian congregation....In view of his past, people in the community would not respect him, and the brothers might even stumble over his appointment....
>
> What should elders do when a former child molester moves to another congregation? ...our policy is always to send a letter of introduction when a publisher moves to another congregation. *It is imperative that this be done when one who is known to be a child molester moves.* The secretary should write on behalf of the elders to the new congregation's body of elders and outline this publisher's background and what the elders in the old congregation have been doing to assist him Any needed cautions should be provided to the new congregation's body of elders. This letter should not be read to or discussed with the congregation....The elders should send a copy of this letter to the Watchtower Bible and Tract Society in one of the "Special Blue" envelopes....
>
> It may be possible that some who were guilty of child molestation were or are now serving as elders, ministerial servants, or regular or special pioneers. Others may have been guilty of child

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> molestation before they were baptized. The bodies of elders should not query individuals. However, the body of elders should discuss this matter and give the Society a report on anyone who is currently serving or whom formerly served in a Society-appointed position in your congregation who is known to have been guilty of child molestation in the past.

EXHIBIT C is another Directive authored by the Watchtower Defendants which acknowledges that the appointment of an individual to assigned duties in the congregation, even minor ones, places such a person in a position of leadership and thereby puts children at risk if those given assigned duties are former child molesters. This Directive reads in part:

> ...Therefore, in the best interest of the congregation and its members, neither the local congregation nor the Society should be viewed as delegating authority or position to one who is a known child molester.
>
> ...Hence, you should not extend to him any specific responsibility that could be construed as an assigned duty, even though some assignments might be considered minor. He should not be used to handle accounts, literature, magazines, subscriptions, or territories. Nor would he be used as an attendant, microphone handler, to operate sound equipment, to represent the congregation in prayer, or to present "Announcements" on the Service Meeting. He would not be used as the reader at the Congregation Book Study or Watchtower Study, nor conduct a meeting for field service. It would be advisable not to have a book study in his home. And, he would not qualify to auxiliary or regular pioneer....

EXHIBIT D is an excerpt from the 1999 deposition of Edward L. Burke in a civil child abuse case styled *Churchfield v. Fitzwater, Case No. C1 12898, Third Judicial District Court of Nevada, in and for the County of Lyon.* At the time the deposition was taken, Mr. Burke was an elder with the Watchtower organization and was represented by an attorney for the Watchtower organization. Mr. Burke's testimony indicates that the position of Ministerial Servant is a position that requires "reinstatement". He also was questioned regarding a number of documents that

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referred to the position of Ministerial Servant as an appointed position. Mr. Burke testified in part as follows:

> Q As a general proposition, I've learned in this case that when a member of one Jehovah's Witnesses moves, a letter of introduction goes with them to their new congregation, is that right generally?
> A I think it has – you have to write the secretary normally.
> Q The letter goes to – the new congregation gets a letter from the old congregation?
> A Right.
> Q And if they've been an elder or a ministerial servant, there will be a recommendation in the letter generally about whether or not they should be—
> A Reinstated.
> Q reinstated?
> A Right.
>
> (Burke Deposition, p.12, lines 3-22; See also pp 37-38, lines 2-25 and 1-8 discussing documents)

EXHIBIT E contains excerpts from an elders' handbook published by the Watchtower Defendants' organization. This handbook, entitled "Pay Attention to Yourselves and All the Flock," contains an entire section on the grooming and training of male members for recommendation and appointment to leadership positions, including that of Ministerial Servant.

Plaintiffs believe that the above exhibits are just the tip of the iceberg of evidence that supports their claim. Plaintiffs have pled viable causes of action under Oregon law and merely ask for the opportunity to prove their case. This is not, as the Watchtower Defendants argue, a case about a mere member in the Watchtower Defendants' organization who molested another member without any knowledge or control on the part of the Watchtower Defendants. This is a case about a recognized and appointed leader in the local congregation, Don Serjeant, who was placed in a position of authority over women and children by the Watchtower Defendants. Don Serjeant then used his position of authority with the Watchtower Defendants to

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obtain access to and sexually abuse the Plaintiffs. The Watchtower Defendants knew about Don Serjeant's propensity to use his position of authority in the organization to abuse young children, but continued to place him in positions where he could commit these crimes, all the while hiding what they knew. Under Oregon law, the Watchtower Defendants are thus responsible for the injuries suffered by Plaintiffs.

III.
SUMMARY OF THE LAW

A. Oregon Law Supports the Viability of Plaintiffs' Claims.

The above facts, as pled, state viable claims under Oregon law. Plaintiffs are not aware of a single Oregon Court of Appeals or Oregon Supreme Court decision that supports the Watchtower Defendants' arguments for dismissal. To the contrary, *Lourim v.Swenson*, 328 Or. 380, 977 P.2d 1157 (Or. 1999) (attached as Exhibit H) and *Erickson v. Christenson*, 99 Or. App. 104, 977 P.2d 1157 (1989) (attached as Exhibit G), are directly on point and support the viability of Plaintiffs' claims as pled.

1. *Lourim v. Swenson*

In *Lourim v.Swenson*, 328 Or. 380, 977 P.2d 1157 (Or. 1999), the Oregon Supreme Court determined that the Boy Scouts of America could be held vicariously liable for the sexual abuse of a boy scout by a volunteer troop leader, even though the organization had no prior knowledge that the volunteer troop leader was a child abuser. It was sufficient that the organization had failed to screen this volunteer before allowing him to act as a leader. *Id.* at 384. The plaintiff alleged that the perpetrator used his position as a volunteer troop leader to gain access to and develop a trust relationship with the plaintiff and his family. The plaintiff also alleged that the organization had the authority to control the troop leader's activities as a troop leader. There was no allegation that the assaults occurred on Boy Scout property or

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during organized Boy Scout activities. The plaintiff merely alleged that the troop leader's position allowed him access to the victim and created the framework for developing a trust relationship that the troop leader then abused. *Id.* at 386. The court found this allegation sufficient to state a claim for vicarious liability under a theory of *respondeat superior*. Specifically, the court stated that:

> Accepting the allegations in the complaint as true and drawing all reasonable inferences in the plaintiff's favor, a jury reasonably could infer that the sexual assaults were merely the culmination of a progressive series of actions that involved the ordinary and authorized duties of a Boy Scout leader. Additionally, a jury could infer that, in cultivating a relationship with the plaintiff and his family, Swensen, at least initially was motivated by a desire to fulfill his duties as troop leader and that, over time, his motives became mixed. A jury also reasonably could infer that Swenson's performance of his duties as troop leader with respect to plaintiff and his family was a necessary precursor to the sexual abuse and that the assaults were a direct outgrowth of and were engendered by conduct that was within the scope of Swenson's employment. Finally, a jury could infer that Swenson's contact with plaintiff was the direct result of the relationship sponsored and encouraged by conduct that was within the scope of Swenson's employment." *Id. at* 386-387.

The court went on to say that it was unnecessary for the plaintiff's complaint to contain specific allegations of the typical duties of a scout leader or what it was that Swenson, the child abuser, was directed to do. It was enough that the plaintiff alleged that the abuser engaged in certain acts while in a leadership capacity and that the plaintiff was injured thereby. *Id.* at 388.

2. <u>*Erickson v. Christenson*</u>

The Oregon Court of Appeals reached a similar conclusion in *Erickson v. Christenson*, 99 Or. App. 104, 977 P.2d 1157 (1989), refusing to dismiss claims against a religious organization for the sexual abuse perpetrated by its agent against a child parishioner. Contrary to the Watchtower Defendants' arguments that the case currently before **this** court is one of first impression in Oregon, the Oregon Court of

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Appeals found that the plaintiff in *Erickson* had stated viable causes of action for negligent supervision, breach of fiduciary duty, intentional infliction of emotional distress, and *respondeat superior* and that such claims did not violate the Free Exercise clause of the First Amendment.

Like the plaintiff in *Erickson*, Plaintiffs in **this** case have alleged that Don Serjeant was placed in a position of trust and confidence over the Plaintiffs by the Watchtower Defendants and that Don Serjeant used that position to abuse them (*Erickson*, 99 Or. App. at 107; First Amend Pet., p.6, lines 16-20; p. 7, lines 13-18, 21-24; p.8, lines 1-16; p.9 lines 5-11; p.10, lines 17-20; p.11 lines 17-22; p.12, lines 13-16; p.14, lines 7-16; pp. 17-18, lines 20-24, 1-7). Plaintiffs here, as in *Erickson*, have pled a claim for breach of confidential relationship. (First Amend. Pet., p.5, lines 20-24, p.6, lines 1-7, pp. 7-12, p.15, lines 12-13). Such a claim is distinct from a claim for clergy malpractice and thus survives a First Amendment challenge. (*Erickson*, 99 Or. App. at 108.) That confidential relationship arises not because Don Sergeant was a leader in a religious organization, but because he was a leader who had established a relationship of trust and confidence with and over the children, including plaintiffs and their families. (*Erickson*, 99 Or. App. at 108). The Watchtower Defendants' own documents establish that a "Ministerial Servant" is in a position of trust and confidence.

As in *Erickson*, Plaintiffs in **this** case have also asserted a claim for *respondeat superior* liability for sexual assault. This is a viable claim with respect to a religious organization whose agent has sexually abused a child where it is alleged, as it is here, that the agent used his position in the church to carry out the abuse. (*Erickson*, 99 Or. App. 109; First Amend. Pet. pp. 6-12, p. 13 lines 1-12). Plaintiffs in **this** case, as in *Erickson*, have also alleged that the Watchtower Defendants are liable for negligent

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hiring, supervision and retention of their agent, Don Serjeant, because they knew or should have known that he had used his position in the past to take advantage of parishioners. (First Amend. Pet. pp 6-12, p.14, lines 7-21) According to the *Erickson* court, "These allegations, if proven, would make it reasonable for the trier of fact to infer that the risk of harm to plaintiff was reasonably foreseeable." (*Erickson*, 99 Or. App. at 109) The *Erickson* court also found that allegations, like those against the Watchtower Defendants in this case, that a religious organization failed to investigate claims of their agent's sexual misconduct, failed to remove him or to warn parishioners of his misuse of his position and "failed to supervise him adequately, would make it reasonable for the jury to infer that it created the risk of harm to plaintiff. The complaint states a claim for negligent supervision." (*Erickson*, 99 Or. App. at 109).

B. Neither the *Bryan* Decision nor the *Davidow* Order Provide a Basis for Dismissing Plaintiff's Claims.

1. Neither *Bryan* nor *Davidow* are binding on this court.

In an attempt to avoid the clear precedent in Oregon law for recognizing the viability of Plaintiffs' claims, the Watchtower Defendants urge this court to consider two non-authoritative decisions. These two decisions are: an opinion from Maine, in a case styled, *Bryan R. v. Watchtower Bible and Tract Society of New York, Inc.*, 738 A2d 839 (Maine 1999), and an order by Benton County Circuit Judge Locke Williams dismissing certain claims in a case styled *Davidow v. Watchtower Bible & Tract Society of New York, Inc.* Benton County Circuit Court Case No. 02-10345. Plaintiffs respectfully disagree with the reasoning of both decisions. Plaintiffs also disagree that either decision should be considered by this court in deciding this case. As discussed in detail below, the *Bryan* decision is based on Maine, not Oregon law, and represents an

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anomaly in the case law when compared to the majority of jurisdictions who have permitted such claims to proceed. While the order of Judge Locke in the *Davidow* matter is from an Oregon trial court, it is merely an order of partial dismissal that has not been reviewed on appeal and therefore cannot provide any authority for this court. Furthermore, it is a decision of only one Oregon trial court. Plaintiffs have reason to believe that a trial court in Multnomah County, Oregon in a matter styled *Cause No. 98-1208640; Jeremiah Scott v. Church of Jesus Christ of Ladder Day Saints; In Multnomah County, Oregon (Civil)*, issued at least one ruling in which the court held that a church does have a duty to protect its members from the sexual abuse of other members. (See the news reports attached as Exhibit F - Plaintiffs are in the process of obtaining copies of that court's opinions from the court clerk and will forward them to this court and opposing counsel as soon as obtained by Plaintiffs.)

2. Neither *Bryan* nor *Davidow* support dismissal of Plaintiffs' claims in this case.

Even if this court were inclined to consider the *Bryan* decision and/or the *Davidow* order, neither provides a basis for dismissal in **this** case. Upon careful reading, this court will see both that these decisions are based on facts distinct from the facts before this court and also that the facts in **this** case are indeed the very set of facts that the *Bryan* and *Davidow* courts said would support viable claims against the Watchtower Defendants.

This is a case about the criminal sexual abuse of Plaintiffs by an agent of the Watchtower Defendants' organization who was placed in a position of supervision and control over children despite the Watchtower Defendants' knowledge of his propensity to use that position of authority to sexually abuse those in his charge.

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Both the *Bryan* decision and the *Davidow* order find such claims to be viable against a religious organization.

Plaintiffs have pled that "the WATCHTOWER DEFENDANTS vested Don Serjeant with leadership authority within the WATCHTOWER DEFENDANTS' organization and at all times held him out to be in good standing." (First Amend. Pet. p.6). Plaintiffs have further pled that "the WATCHTOWER DEFENDANTS continued to promote Don Serjeant as a leader in good standing, and placed him in positions of authority with supervision and control of children, despite the WATCHTOWER DEFENDANTS' knowledge that he was sexually and physically abusing young children." (First Amend. Pet. p. 8). Plaintiffs have also pled that "The WATCHTOWER DEFENDANTS' agent, Don Serjeant, had access to each of the Plaintiffs due to his leadership position in the organization." (First Amend. Pet. p. 8) Again, Plaintiffs allege that "For three decades, the WATCHTOWER defendants knew or should have known that Don Serjeant was sexually molesting and physically abusing young children. Nevertheless, the WATCHTOWER DEFENDANTS allowed Don Serjeant to continue as a leader in good standing, entrusting him with the authority to supervise and control children in the WATCHTOWER DEFENDANTS' local congregations, whom he sexually molested." (First Amend. Pet. p. 9). Plaintiffs' petition seeks, among other things to hold the WATCHTOWER DEFENDANTS liable for "negligently allowing Don Serjeant to move between congregations as a leader in good standing and placing him in leadership positions with authority over children after the WATCHTOWER DEFENDANTS knew or should have known of his propensities to use his position of leadership to engage in acts of sexual abuse of children." (First Amend Pet. p. 11). These facts, as alleged in Plaintiffs' First Amended

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Complaint, are exactly the kind of facts that both the *Bryan* decision and the *Davidow* order found to be decisively absent in **those** cases.

3. *Bryan* supports the viability of Plaintiffs' claims.

In *Bryan,* the Maine court found it critical in dismissing the plaintiff's claims that the plaintiff had **not alleged** that the perpetrator of the abuse was an agent or employee of the Watchtower organization. The court also found it decisive that the plaintiff in *Bryan* did not allege that the church affirmatively placed the perpetrator in a position of control and supervision of children or that the church knowingly placed the perpetrator in a position where he could sexually abuse children. *Bryan,* 738 A.2d at 743. The *Bryan* court summarized the case as follows: "The crux of Bryan's claim is that the church, because of an alleged special relationship with its members, has a duty to protect its members from each other, at least when the church and its agents are aware of a potential danger posed by a member." *Id* at 844. That is not the claim before this court. Plaintiffs are alleging that the WATCHTOWER DEFENDANTS are responsible for the tortuous and criminal conduct of their agent whom they appointed to a position of authority over children with knowledge that he had used that position in the past to abuse children within the WATCHTOWER DEFENDANTS' organization.

4. *Davidow* supports the viability of Plaintiffs' claims.

Similarly, in the *Davidow* order of dismissal, Judge Locke highlighted the facts that were, in his opinion, critical to a viable claim and that were, in his opinion, decisively missing from the facts alleged in the *Davidow* petition. Specifically, Judge Locke stated, "Similar to the Plaintiff in Bryan R., the Plaintiff in this case does not allege that McKenzie was an agent or employee of the church. Nor does the Plaintiff allege that McKenzie occupied any position of authority, such as a church elder.

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Plaintiff does not allege that the church affirmatively placed McKenzie in any position of control or supervision of children or that the church knowingly placed McKenzie in a position where he could sexually abuse children within a church setting." (*Davidow* Order, p. 3, paragraphs 1 & 2). While Plaintiffs respectfully disagree with the dismissals in the *Bryan* and *Davidow* opinions, Plaintiffs in **this case** have alleged the very facts the *Bryan* and *Davidow* courts found decisively lacking.

5. Plaintiffs' claims do not run afoul of the First Amendment.

Relying on the *Bryan* decision and the *Davidow* order, the Watchtower Defendants also argue that this Court may not hold them liable for their wrongful conduct relating to the crime of child abuse because to do so would violate the First Amendment of the United States Constitution and the Free Exercise clause of the Oregon Constitution. In analyzing this argument, the court should remember that *Bryan* was fundamentally a claim for negligent and intentional infliction of emotional distress. The *Bryan* court found that that claim, as pled, improperly attacked the religious beliefs held by the Watchtower organization. Plaintiffs in this case have not asserted any claims for infliction of emotional distress. However, even if they had, the *Bryan* decision conflicts with Oregon law. The Plaintiff in *Erickson v. Christenson* asserted, among other claims, a claim for intentional infliction of emotional distress against a church organization for the performance of pastoral duties and the procedures and policies it followed in dealing with the plaintiff's claims against the abuser. In permitting that claim to go forward despite a First Amendment challenge, the court stated:

> Plaintiff's last claim is that ALC-NPD was negligent in its performance of pastoral duties. In essence, she alleges that, after she initiated a church complaint against Christenson, ALC-NPD undertook the role of her advocate and counselor; that, in that role, it required her to 'proceed through a confrontational process in order to have Bryan

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> Christenson removed from his pastor position'; and that despite Christenson's voluntary admission to a sexual dependency unit, it continued to require her to 'confront and oppose the church congregation,' causing her extreme emotional distress....Under F*azzolari v. Portland School Dist. No. 1J, supra,* plaintiff's allegations are sufficient to state a claim for negligence.

(*Erickson v. Christenson*, 99 Or. App. at 110-111).

The *Erickson* decision reflects not only Oregon law, but also the position of the United States Supreme Court and the majority of jurisdictions in the United States regarding the ability of religious organizations to hide behind the First Amendment as a way of avoiding their responsibility to obey secular law, especially when there is a compelling state interest at issue. The Florida Supreme Court recently summarized the position of these courts as follows: "The issue presented in this case is whether the First Amendment bars a third-party tort action against a religious institution grounded on the alleged tortuous conduct of one of its clergy. We conclude that the First Amendment does not provide a shield behind which the church may avoid liability for harm caused to an adult and a child parishioner arising from the alleged sexual assault or battery by one of it clergy and accordingly approve the Third District's decision. **We thus join the majority of both state and federal jurisdictions that have found no First Amendment bar under similar circumstances."** *Malicki v. Doe*, 814 So.2d 347, 351(Fla. 2002)(emphasis added). By way of example, Plaintiffs refer this court additionally to the following decisions: *Davis v. Beason*, 133 U.S. 333 (1890); *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *United States v. Lee*, 455 U.S. 252 (1982); *Bob Jones University v. United States*, 461 U.S. 574 (1983); *Bollard v. California Province of the Society of Jesus*, 196 F.3d 940, 947-48 (9th Cir. 1999); *Martinelli v. Bridgeport Roman Catholic Defendants*, 196 F.3d 409 (2nd Cir. 1999) (Evidence of religious teachings and tenets, submitted not to determine their validity, but to establish the factual

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predicates of a civil cause of action is properly allowed and does not violate the First Amendment.); *Sanders v. Casa View Baptist Church*, 898 F. Supp. 1169 (N.D. Texas 1995)(First Amendment does not bar claims of professional negligence and breach of fiduciary duty brought by church member against a minister); *Isely v. Capuchin Province*, 880 F. Supp. 1138 (E.D. Mich. 1995)(First Amendment does not bar a claim for negligent supervision by student who was victim of sexual abuse); *Nutt v. Norwich Roman Catholic Defendants*, 921 F. Supp. 66 (D. Conn. 1995)(Free Exercise Clause of the First Amendment does not bar claim for negligent employment based upon alleged sexual abuse by a priest); *Moses v. Defendants of Colorado*, 863 P.2d 310 (Colo. 1993)(First Amendment does not bar an adult parishioner's claims against bishop and diocese for breach of fiduciary duty and negligent hiring and supervision grounded on sexual relationship between parishioner and priest); *Destanfano v. Gabrian*, 763 P.2d 275 (Colo. 1988)(First Amendment does not bar parishioner's claims for breach of fiduciary duty and negligent hiring and supervision grounded on sexual relationship with church leader); *Alberts v. Devine*, 479 N.E.2d 113 (Mass. 1985); *Smith v. O'Connell*, 986 F. Supp. 73 (D.R.I. 1997)(First Amendment does not bar minor's claims for negligent supervision against church for sexual molestation by a priest); *Smith v. Privette*, 495 S.E.2d 395 (N.C. 1998)(Adult's claim of negligent retention and supervision against church arising out of inappropriate sexual acts by minister was not barred by First Amendment); *Mrozka v. Archdiocese of St. Paul and Minneapolis*, 482 N.W. 2d 806 (Minn. Ct. App. 1992)(First Amendment does not bar imposition of punitive damages against a church based upon priest's sexual abuse of a child); *Konkle v. Henson*, 672 N.E. 2d 450 (Ind. Ct. App. 1996)(First Amendment does not bar claims for negligent hiring and supervision against church for sexual molestation); *Byrd v. Faber*, 565 N.E.2d 584 (Oh. 1991)(Negligent hiring and supervision claims

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brought by sexually abused child was not barred by the First Amendment); *Kenneth R. v. Roman Catholic Defendants of Brooklyn*, 654 N.Y.S.2d 791 (1997)(Child's negligent supervision and retention claims against diocese is not barred by First Amendment); *Bear Valley Church of Christ v. Dubose*, 928 P.2d 1315 (Colo. 1996)(First Amendment does not bar child's various tort claims against pastor and church for "pattern of inappropriate touching".); *Bivin v. Wright*, 656 N.E.2d 1121 (Ill. Ct. App. 1995); *F.G. v. MacDonell*, 696 A.2d 697 (N.J. 1997)(First Amendment does not bar claim against church for negligent supervision of minister for inappropriate sexual contact); *Martinez v. Primera Assemblea de Dios, Inc.*, No. 05-96-01458, 1998 WL 242412 (Tex. Ct. App. May 15, 1998)(First Amendment does not bar parishioner's negligence claims against church based upon allegations that church elder sexually assaulted her); *C.J.C. v. Corporation of the Catholic Bishop of Yakima*, 985 P.2d 262 (Wash. 1999)(First Amendment does not bar minor sexual abuse victim from bringing tort claims against priest and church.); *Doe v. Hartz*, 970 F. Supp. 1375 (N.D. Iowa 1997)(First Amendment did not bar negligent supervision claim against church brought by adult for improper sexual contact by priest.).

Each one of the above jurisdictions found no burdening of First Amendment liberties in the pursuit of claims against religious organizations for tortuous conduct arising out of sexual misconduct of one of the organization's agents. Plaintiffs' claims are consistent with those for which the majority of courts have found no such burden.[3]

Even when the pursuit of claims against a religious organization burdens First Amendment freedoms, those claims are not barred by the First Amendment where

[3] Plaintiffs acknowledge that the *Davidow* court dismissed its claims for negligent performance of assumed duty, but it did so without any discussion. Plaintiffs respectfully disagree with the *Davidow* decision based upon the above law.

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the pursuit of those claims is supported by a compelling state interest. In *United States v. Lee*, 455 U.S. 252 (1982), the United States Supreme Court considered whether or not the state could interfere with the Amish community's religious beliefs against the payment of taxes without violating the First Amendment. The United States Supreme Court held that the Amish could be required to pay social security taxes despite the fact that the payment of such taxes burdened Amish religious beliefs. The Court stated:

> We therefore accept appellee's contention that both payment and receipt of social security benefits is forbidden by the Amish faith. Because the payment of the taxes or receipt of benefits violates Amish religious beliefs, compulsory participation in the social security system interferes with their free exercise rights. The conclusion that there is a conflict between the Amish faith and the obligations imposed by the social security system is only the beginning, however, and not the end of the inquiry. Not all burdens on religion are unconstitutional. See, *e.g.*, *Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944); *Reynolds v. United States*, 98 U.S. 145, 25 L.Ed. 244(1879). The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest. *Thomas v. Review Bd. Of Indiana Employment Security Div.* 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981); *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 828, 28 L.Ed.2d 168(1971); *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963).

Id. at 257-258. Plaintiffs do not believe that the enforcement of secular laws against child abuse in anyway burdens the Watchtower Defendants' religious beliefs. Even if it did, however, the State of Oregon has a compelling state interest in protecting its children from the heinous crime of child sexual abuse.

The Watchtower Defendants argue that this court is precluded from inquiring into Plaintiffs' claims because "plaintiffs seek to make defendants' alleged religious beliefs, policies, and disciplinary practices a basis for secular liability by alleging that, through their religious 'policy' of not reporting sexual abuse to secular authorities, defendants 'failed to adequately investigate, discipline, evaluate, treat, supervise and

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otherwise monitor the conduct' of Mr. Serjeant." (Defendants' Motion, p.4) The court should note that the portions quoted from Plaintiffs' First Amended Complaint say nothing about the Watchtower Defendants' religious beliefs. The Watchtower Defendants have interjected their religious beliefs in an effort to raise a non-existent "red herring". Plaintiffs are not asking this court to interpret or judge the propriety of church doctrine, the correctness of beliefs, or the appropriateness of religious conduct as religious conduct. Plaintiffs are asking this court to enforce neutral principles of law, equally applicable to religious and non-religious members of our society, regarding the crime of child abuse and the duties incumbent upon one in a position of influence and power, who knows about and takes action with respect to that abuse. Failure to fulfill these duties is a violation of the secular law for which a religious organization may be held liable, regardless of religious beliefs or practices to the contrary. *See, Erickson v. Christenson*, 99 Or.App. 104, 781 P.2d 383 (Or.App. 1989); *Employment Division v. Smith*, 494 U.S. at 879.

The Watchtower Defendants' rely on a single Oregon case, *Decker v. Berean Baptist Church*, 51 Or. App. 191, 624 P.2d 1094 (1981), for the proposition that Plaintiffs' claims are barred by the First Amendment and the free exercise clause of the Oregon Constitution. *Decker* does not apply to Plaintiffs' claims. *Decker* involved a request for the Oregon Court of Appeals to resolve a dispute over the correct interpretation of church doctrine in order to decide which faction of a church had the right to exercise control over church property. The Oregon Court of Appeals correctly held that under the First Amendment, it could not resolve intra-church disputes over that issue. This court is not being called upon to inquire into and resolve a dispute about the correct interpretation of church doctrine. Plaintiffs are asking this court to apply the neutral laws of tort liability for negligence, breach of

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fiduciary duty, fraud, and ratification for the Watchtower Defendants' wrongful conduct arising out of the crime of child abuse.

The United States Supreme Court, the Courts of Oregon, and the state courts in the majority of other jurisdictions agree that First Amendment constraints (and similarly constraints under state free exercise clauses) only prohibit inquiry into purely ecclesiastical matters. Such constraints do not prohibit the application of neutral principles of law to disputes between parties even though one or more of the parties is a religious organization and may be acting pursuant to religious beliefs. See e.g. *Employment Div. Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990); *Reynolds v. United States*, 98 U.S. 145 (1879); *Jones v. Wolf*, 443 U.S. 595, 604 (1979); *General Council of Finance and Administration of the United Methodist Church v. Superior Court of California*, 439 U.S. 1369 (1978); *Maryland and* Virginia *Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.* 396 U.S. 367 (1970); *Davis v. Beason*, 133 U.S. 333 (1890); *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Bob Jones University v. United States*, 461 U.S. 574(1983); *Christenson v. Erickson*, 99 Or. App. 104, 781 P.2d 383 (Or. Ct. App 1989); *Martinelli v. Bridgeport Roman Catholic Church*, 196 F.2d 409 (2nd Cir. 1999); *Moses v. Defendants of Colorado*, 863 P.2d 310 (Colo. 1993); *Smith v. O'Connell*, 986 F.Supp. 73 (D.R.I 1997); *Byrd v. Faber*, 565 N.E.2d 584 (Oh. 1991); *Bivin v. Wright* , 656 N.E. 2d 1121 (Ill. Ct. App. 1995); *F.G. v. MacDonell*, 696 A.2d 697 (N.J. 1997); *Sanders v. Casa View Baptist Church*, 898 F.Supp. 1169 (N.D. Tex. 1995); *Malicki v. Jane Doe*, 814 So.2d 347, 365 (Fla. 2002). To hold otherwise would place religious institutions in a preferred position over secular institutions, "a concept both foreign and hostile to the First Amendment." *Malicki*, 814 So.2d 347 (Fla. 2002).

The Watchtower Defendants argue that Plaintiffs' references to the Watchtower Defendant's practices of refusing to report or discipline the offender and

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punishing the victim rather than offering them aid require an impermissible intrusion into their religious practices. In making this argument, they rely on *Bryan* and a single Ninth Circuit case styled, *Paul v. Watchtower Bible and Tract Society of New York*, 819 F.2d 875 (9th Cir. 1987). In *Paul*, the Ninth Circuit held that it was prohibited from analyzing the validity of the religious practice of "shunning" under the First Amendment. Plaintiffs are not asking this court to rule on whether or not the Watchtower Defendants may engage in the practice of shunning or other religious practices. Instead, Plaintiffs reference that practice and others to establish the context in which their secular claims against the Watchtower Defendants, arising out of the crime of sexual abuse, must be understood. Establishing this context does not violate the Watchtower Defendants' First Amendment and state Free Exercise rights and privileges. See e.g. *Martinelli v. Bridgeport Roman Catholic Diocesan*, 196 F.2d 409, 431 (2nd Cir. 1999) (Evidence of religious teachings and tenets, submitted not to determine their validity, but to establish the factual predicates of a civil cause of action is properly allowed and does not violate the First Amendment.); *Moses*, 863 P.2d 310 (Colo.1993)(Extensive inquiry into the internal workings and controls of the Episcopal Church did not implicate the First Amendment as the court was not required to interpret or judge the religious doctrine behind such practices. Instead, the evidence established the factual context out of which the dispute arose.); *Rashedi v. General Board of the Church of the Nazarene*, 54 P.3d 349 (Az. 2002)(Inquiry into church structure and religious documents on purely secular terms did not violate the First Amendment as such was necessary to establish the factual context of the dispute.); *JC2 v. Grammond*, 232 F.Supp. 1166 (D.Or. 2002)(Examination of a number of the church's cannons did not violate the First Amendment as the court was not called upon the evaluate the correctness of these cannons.); *General Council on Finance and*

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Administration of the United Methodist Church v. Superior Court of California, 439 U.S. 1369 (1978) (First Amendment does not bar secular disputes involving the conduct of a religious organization that results in external, secular harm, such as the physical and sexual abuse and exploitation that occurred in this case).

III.
PLAINTIFFS HAVE PLED VIABLE CLAIMS FOR COMMON LAW NEGLIGENCE, NEGLIGENT SUPERVISION AND RETENTION, BREACH OF FIDUCIARY DUTY, NEGLIGENCE PER SE AND FRAUD

Oregon recognizes claims for common law negligence: in the absence of a duty, based on forseeability of harm to Plaintiff; based on a duty arising out of a special relationship between the parties; for negligent performance of an assumed duty; and for negligent hiring, supervision and retention. See e.g. *Erickson v. Christenson*, 99 Or. App. 104, 781 P.2d 383 (1989); *Fazzolari v. Portland School District No. 1J*, 303 Or. 1, 734 P.2d 1326 (1986); *Stewart v. Jefferson Plywood Co.*, 255 Or. 603, 469 P2d 798 (1981); *Buchler v. State*, 316 Or. 499, 853 P.2d 798 (1991) *Peterson v. Multnomah County School District No.* 1, 64 Or. App. 81, 668 P.2d 385 (1983). Oregon also recognizes that violation of a statute may constitute negligence *per se* or may establish one or more elements of common law negligence. *Harris v. Sanders*, 142 Or. App. 126, 919 P.2d 512 (1996). Additionally, Oregon recognizes a cause of action for fraud and fraudulent concealment. Plaintiffs have stated a cause of action under each of these theories of negligence, breach of fiduciary duty, and fraud as recognized by the courts of Oregon.

A. Negligence – Breach of Duty to Warn of Foreseeable Harm.

In deciding the Watchtower Defendants' Motion to Dismiss, this court need only determine whether, under Oregon law, Plaintiffs have stated a claim for negligent failure to warn. Plaintiffs have alleged that the Watchtower Defendants failed to warn them and their families of a known and specific danger of sexual abuse

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by their agent, Don Serjeant. Under Oregon law, the Watchtower Defendants had a duty to warn which they negligently failed to fulfill.

Oregon courts have repeatedly upheld a general negligence standard under which a person, who knows or has reason to know of a specific danger presented by a third party to a person in the plaintiffs' position, is under a duty to warn. See e.g. *Buchler v. State*, 316 Or. 499, 515-516, 853 P.2d 798 (1991); *Erickson v. Christenson*, 99 Or. App. 104, 781 P.2d 383 (1989); *Fazzolari v. Portland School District No. 1J*, 303 Or. 1, 734 P.2d 1326 (1986); *Stewart v. Jefferson Plywood Co.*, 255 Or. 603, 469 P2d 798 (1981).*McAlpine v. Multnomah County*, 166 Or. App. 472, 999 P.2d 522 (2000). This duty to warn exists independent of any special relationship or status between the parties. *Id.* Where the wrongful conduct of a defendant is a "failure to warn, the risk of harm is not the harm itself,.... It is, instead, the chance that someone will predictably be exposed to danger if no warning is made." *Buchler*, 316 Or. at 505.

Plaintiffs allege that they were children under the care of the Watchtower Defendants' organization and that the Watchtower Defendants placed their agent Don Serjeant in a position of authority over them, despite the Watchtower Defendants' knowledge that Don Serjeant had previously used the authority of that position to sexually abuse children in the organization. As a result, and as the Watchtower Defendants foresaw or should have foreseen, Don Serjeant used his position as the Watchtower Defendants' agent to abuse Plaintiffs. Plaintiffs' complaint sets forth the tight controls that the Watchtower Defendants exercise over their membership and their appointed leaders, as well as the exclusive nature of the organization with respect to outsiders. These tights control establish that Plaintiffs were in the class of persons who were at particular risk of the known and specific danger of being abused as young, vulnerable children in the organization. Plaintiffs

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assert that the Watchtower Defendants affirmatively placed their agent, Don Serjeant, in a position of authority with the knowledge that he would likely abuse other children in the organization and then failed to warn Plaintiffs and others of this known danger. As a result, Plaintiffs were seriously injured. Plaintiffs have thus pled facts that, if proven, satisfy each of the elements necessary to establish negligent failure to warn under Oregon law.

B. Negligence – Breach of an Assumed Duty to Protect and Render Aid.

Under Oregon common law, one who undertakes to render services to another for the protection of that person, is subject to liability to the other in negligence for harm resulting from his failure to exercise reasonable care to perform the undertaking, if the failure to exercise care increases the risk of harm or the harm is suffered because of the other's reliance on the undertaking. *Peterson v. Multnomah County School District*, 64 Or. App. 81, 668 P.2d 385 (1983); See also, Restatement (Second) of Torts, Section 323 (1965).

Plaintiffs have alleged that the Watchtower Defendants took it upon themselves to deal with the abuse of children in their organization rather than report it to authorities and encourage outside trained assistance for the victims. They have also alleged that they sought the advice of the Watchtower Defendants and were instructed not to report it to authorities and not to seek outside help, but to leave it in their hands. Plaintiffs' allegations are that they relied upon the Watchtower Defendants' assumption of responsibility for resolving the abuse against them and that the Watchtower Defendants' failure to take any action on their behalf, other than to silence them, caused them grave harm. The assumption of this duty and their fiduciary relationship with Plaintiffs as children in the organization is admitted by the Watchtower Defendants in the documents attached hereto as Exhibit A-C. Plaintiffs

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have thus stated a cause of action for negligent performance of an assumed duty to protect and render aid. Such a cause of action is recognized by Oregon common law and is not addressed by the *Bryan* decision.

C. Negligence and Breach of Fiduciary Duty- Breach of a Duty Arising Out of a Special Relationship.

Under Oregon law a special relationship of trust and confidence exists when there is confidence reposed on the one side with resulting superiority and influences on the other such that there is dominance by the one in whom trust is reposed. *United States National Bank of Oregon v. Miller*, 74 Or. App. 405, 703 P.2d 246 (1985); *Geiger v. Palmer*, 249 Or. 123, 437 P.2d 750 (1968). Where such a relationship exits, the superior party to the relationship has a fiduciary duty to act in good faith and with due regard to the interests of the other. *Starkweather v. Schaeffer*, 262 Or. 198, 205, 497 P.2d 358 (1972). Violation of that duty to the harm of the one to whom it is owed constitutes actionable negligence and breach of fiduciary duty.

Plaintiffs have alleged facts, which if proven, demonstrate both a duty arising out of the special relationship of trust and confidence with the Watchtower Defendants and the Watchtower Defendants' violation of that duty to their great harm. As alleged, the Watchtower Defendants exercise absolute control over the moral, spiritual and educational development of members and their children. They then train and appointment male leaders to positions of authority and instruct members, especially children, to obey these leaders in all matters. Failure to comply with the Watchtower Defendants' instructions results in dire circumstances for members. As part of this control, the Watchtower Defendants assume responsibility for the welfare of members and their children, forbidding any resort to outside resources. In particular, they assume and insist on full responsibility for the

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investigation, determination and resolution of all claims of child abuse among their membership. They are the sole resource to which vulnerable women and children are permitted to turn for protection and help in overcoming the trauma. These allegations articulate facts sufficient to demonstrate a special relationship of trust and confidence that is fiduciary in nature. This relationship of special trust and confidence is acknowledged by the Watchtower Defendants' own documents, a mere sample of which are attached hereto as Exhibits A-C. Plaintiffs' allegations are that, at the Watchtower Defendants' bidding, Plaintiffs obeyed and trusted the leaders that the Watchtower Defendants placed in authority over them – an obedience and trust that was grossly violated by one known by the Watchtower Defendants to be a child molester, but whom the Watchtower Defendants told the Plaintiffs to obey anyway! Plaintiffs' allegations are also that at the Watchtower Defendants' bidding and instruction, Plaintiffs turned to "their" Elders for advice and support and that the Watchtower Defendants negligently provided that advice and support to Plaintiffs' grave detriment.

D. Negligence *Per Se* – Violation of ORS Chapter 419B

1. Plaintiffs have stated a claim for Negligence *Per Se* and Common-law Negligence arising out of the violation of ORS 419B.

Citing law from jurisdictions outside the State of Oregon, the Watchtower Defendants seek to dismiss Plaintiffs' allegations of negligence for the Watchtower Defendants' criminal conduct in failing to report the abuse as required by ORS 419B. The Watchtower Defendants' sole argument is that the reporting statute does not create a private cause of action for damages. While that issue has never been directly addressed by Oregon courts, its resolution is not necessary to Plaintiffs' claims.

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Plaintiffs allege that the Watchtower Defendants' failure to comply with the reporting statute constitutes negligence *per se* and common law negligence.

Under Oregon law, a statute can be used to establish a claim of negligence *per se* or one or more elements of a claim for common law negligence if: defendants violated the statute; plaintiff was injured as a result of the violation of the statute; plaintiff was a member of the class of persons the statute was designed to protect; and the injury is the type that the statute was enacted to prevent. *Torres v. Pacific Power and Light*, 84 Or. App. 364 *rev. dismissed* 304 Or. 1, 740 P.2d 792 (1987)

The Oregon Supreme Court has determined that a statute may form the basis of a negligence *per se* claim even if the statute itself does not create a civil cause of action. *Shahtout v. Emco Garbage Company, Inc.*, 298 Or. 598, 695 P.2d 897 (1985). Violations of statutory rules by themselves provide the element of negligence with respect to those risks that the rules are meant to prevent, unless the violator shows that his conduct in fact did not violate the rule under the circumstances. *Id.* at 600, citing *Barnum v. Williams*, 264 Or. 71, 504 P.2d 122 (1972). ORS Chapter 419B establishes a standard of care that the Watchtower Defendants failed to meet. It is thus properly invoked to establish Plaintiffs' allegation of negligence *per se* and as establishing one or more elements of common law negligence claim. See, *Harris v. Sanders*, 142 Or. App. 126, 919 P.2d 512 (Or. App.-1996); *Bellikka v. Green*, 306 Or. 630, 762 P.2d 997 (1998).

The Oregon Supreme Court has already determined that there is a common law duty to warn of foreseeable harm. See e.g. *Fazzolari v, Portland School District No. 1J*, 303 Or. 1, 734 P.2d 1326 (1987); *Buchler v. Oregon Corrections Div.*, 316 Or. 499, 853 P.2d 798 (1993). The Watchtower Defendants' own documents admit the fiduciary relationship between appointed leaders and children. The reporting statute further

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defines that duty in making it a criminal offense not to report child abuse or suspicions thereof by persons in the Watchtower Defendants' position. The State of Oregon has also determined that one who assumes a duty to render aid and protection to another is liable for negligence in fulfilling that duty. Here again, the statute articulates a standard of care in requiring that the Watchtower Defendants report abuse so that the victim may receive the assistance needed to prevent further harm from the abuse. The Watchtower Defendants' failure to report the abuse of Plaintiffs, as well as prior abuse, prevented Plaintiffs from receiving the assistance intended by the statute. Their assumption of that duty makes the Watchtower Defendants liable for failing to provide such aid. The statute further articulates a standard to which those in fiduciary relationship to another are held.

2. No Privilege Bars Plaintiffs' Claims.

The Watchtower Defendants argue that even if Plaintiffs have stated a claim for negligence *per* se and common law negligence based upon the Watchtower Defendants' violation of ORS Chapter 419B, their claims must be dismissed because the Watchtower Defendants are relieved of any obligation to report abuse and suspected abuse under OEC 506 and ORS 419B.010(1). The Watchtower Defendants base this argument on an assumption that because Elders in the local congregations had notice of Don Serjeant's abuse of children both prior to, and respecting, Plaintiffs , that notice must have come in the form of a confidential and therefore privileged communication. The Watchtower Defendants' argument is erroneous and the mere assertion of it does not constitute grounds for dismissal.

Under OEC 506 and ORS Chapter 419B.010(1), the Watchtower Defendants are entitled to protect as privileged only those communications which are both confidential AND made within the context of a clergy member's professional

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capacity. Even then, the privilege may be waived by the communicant unless there is a religious tenet which imposes an absolute duty of nondisclosure. None of these elements exist in this case.

Contrary to the Watchtower Defendants' argument, the allegation that reports of abuse were made to an Elder is not an admission that such reports were confidential. To be confidential, the communication must first be intended as such. There is nothing in Plaintiffs' complaint that constitutes an admission that the notice to the Watchtower Defendants, either prior to that abuse of Plaintiffs or regarding it, was intended by the communicant to be kept private and not further disclosed. The Watchtower Defendants cannot turn a communication into a confidential one simply because it was communicated to an Elder in an organization that doesn't want anyone else to know about allegations of child abuse. The issue is the intent of the communicant, not the intent of the organization. There is also nothing in Plaintiffs' complaint that alleges either that the notice of abuse was made to Elders of the local congregations in their professional capacity as defined by the statute or that it is a religious tenet of the Jehovah's Witnesses to never report child abuse. The allegation that the Watchtower Defendants have adopted a policy of concealment to protect them from their own wrongdoing is not equivalent to an admission by Plaintiffs that pursuant to the tenets of the Jehovah's Witnesses' religion, Elders have an absolute duty to keep evidence of child abuse secret. Furthermore, that policy is now available in the public domain both in the form of documents and the testimony of former elders and other leaders and members who are horrified by the Watchtower Defendants' policies in harboring and supporting known child molesters. (See Exhibits A-C, by way of example only) Therefore, the Watchtower Defendants cannot rely on the statutory provision that precludes waiver where an absolute duty of

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nondisclosure is imposed as a basic religious tenet. The alleged privileged nature of the communications at issue is at least a fact issue to be determined once discovery in this case has been completed.

Finding no support in Plaintiffs' allegations for the proposition that notice was received pursuant to a privileged communication not subject to waiver, the Watchtower Defendants try to turn the standard around by arguing that because Plaintiffs have not alleged something, they have admitted it. That is an absurd argument. It is the claim as alleged that this court must evaluate in deciding a Motion to Dismiss. The Watchtower Defendants cannot turn reports of child abuse into privileged communications simply by arguing that they must have been privileged since Plaintiffs didn't allege that they weren't. They don't have to. Plaintiffs' claims may not be dismissed simply because the Watchtower Defendants allege both that the notice was received as a privileged communication of child abuse and that, under their tenets, the Watchtower Defendants have an absolute duty to never report it. The burden of establishing the privileged nature of the communications and if privileged, that the privilege has not been waived belongs to the Watchtower Defendants. See, e.g. *Goldborough v. Eagle Crest Partners, Ltd.*, 105 Or. App. 499, 805 P.2d 723 (Or. App. 1991); *Weil v. Inv./Indicators, Research & Management, Inc.*, 647 F.2d 18, 25 (9th Cir. 1981). Since the Watchtower Defendants have not met that burden, this court has no grounds for dismissing Plaintiffs claims as based on privileged communications.

E. Plaintiffs have pled viable claims for fraud and fraudulent concealment.

Under Oregon law, the elements of fraud are: a material misrepresentation that the speaker knew was false when made or was ignorant of the truth; made with the intent that it be acted upon by a person who had the right to rely on its truth and who was ignorant of its falsity; and that person relied upon the misrepresentation and

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was injured thereby. *Williams v. Philip Morris, Inc.*, 182 Or. App. 44, 48 P.3d 824 (Or. App. 2002). A defendant may be liable for fraud for a misrepresentation that creates a false impression even though it is impossible to identify the specific misrepresentation on which a person relied. *Id.* Silence or nondisclosure may be a basis for a fraud action. *Caldwell v. Pop's Homes, Inc.*, 54 Or. App. 104, 634 P.2d 471 (Or. App. 1981). Where fraud is based upon actual concealment, as opposed to simple nondisclosure, a duty to speak is not required. *Id.* A fraudulent misrepresentation may be accomplished by conduct, as well as spoken or written words. *Pennebaker v. Kim*, 126 Or. 317, 269 P. 981 (Or. 1928). Plaintiffs have pled a viable claim for fraud and fraudulent concealment based upon the above law.

IV.
PLAINTIFFS HAVE PROPERLY SET FORTH CLAIMS AGAINST THE WATCHTOWER DEFENDANTS UNDER THE LEGAL THEORIES OF *RESPONDEAT SUPERIOR*, RATIFICATION, ALTER EGO AND SINGLE BUSINESS ENTERPRISE, AS WELL AS NEGLIGENT USURPATION OF INVESTIGATORY FUNCTION

The Watchtower Defendants seem to think that criticizing the "artfulness" of Plaintiffs' pleadings constitutes grounds for dismissal. Unfortunately for them, lack of artfulness is not a basis for dismissing pleadings under Oregon law. *See, e.g. Bradbury v. Teacher Standards and Practices Commission*, 328 Or. 391, 977 P.2d 1153 (1998)(It is the nature of the conduct complained of and the characteristic of the action that identifies the tort, not the particular language utilized in the complaint.). Plaintiffs' attorneys have merely tried to be sure that the Watchtower Defendants are on notice of each of the legal theories under which Plaintiffs seek to hold them liable. Therefore, in addition to citing direct liability for common law negligence, negligent hiring, supervision and retention, aggravated negligence, fraud and fraudulent concealment, breach of fiduciary duty, negligence *per se*, and negligent usurpation of

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investigatory function, Plaintiffs have also articulated the additional legal theories under which each of the Watchtower Defendants are liable for the tortuous conduct of each other and their agents.

A. *Respondent Superior*

Under Count I, Plaintiffs have asserted claims that "as an agent and alter ego of the WATCHTOWER DEFENDANTS, Don Sergeant, repeatedly committed sexual battery upon the persons of the Plaintiffs....The WATCHTOWER DEFENDANTS are therefore liable for the sexual battery of Plaintiffs under the legal theory of *respondeat superior.*" Plaintiffs have therefore asserted a cause of action against the WATCHTOWER DEFENDANTS for sexual battery.

B. Ratification

Plaintiffs have also asserted claims for sexual assault, negligence, fraud, breach of fiduciary duty, and the like, based on a theory of "ratification." Specifically, Plaintiffs assert "....The WATCHTOWER DEFENDANTS have thereby ratified Don Serjeant's conduct in sexually abusing Plaintiffs and others." Under Oregon law, "ratification" is a recognized theory for holding persons responsible for the tortuous conduct of others. *See, e.g. Paragano v. Gray*, 126 Or.App. 670, 676-678, 870 P.2d 837 (1994) (A person may be bound by his agent's act, even if unauthorized, if the person later ratifies or accepts the act. Ratification occurs when the principal, knowing of the act, fails to repudiate it.); *Kneeland v. Shroyer*, 214 Or. 67, 94, 328 P.2d 753 (1958) (Ratification of an unauthorized transaction may be inferred from a failure to repudiate it.); *Stroud v. Denny's Restaurant, Inc.*, 271 Or. 430, 532 P.2d 790 (1975)(A principal may be held liable in compensatory and punitive damages for acts of an agent which are ratified by the principal).

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C. Alter Ego and Single Business Enterprise

Plaintiffs ask that the court ignore the cheap shots that the Watchtower Defendants continue to take at the Plaintiffs' attorneys, which do nothing to inform the court or otherwise advance the resolution of this litigation. Plaintiffs respond to the Watchtower Defendants' challenge by stating that Plaintiffs have properly set forth the legal theories of *alter ego/single business enterprise* by which they seek to hold each of the Watchtower Defendants liable for the torts of the others as specifically articulated throughout their First Amended Complaint. This theory of liability is recognized under Oregon law. See, *Wakeman v. Paulson*, 257 Or. 542, 480 P.2d 434 (1971); *Epton v. Mskee Investment Co.*, 180 Or. 86, 93 P.2d 418 (1946); *Murray v. Wiley*, 169 Or. 381, 127 P.2d 112 (1942). Again, even if Plaintiffs have not expressed these theories as artfully as they might have, that is not a basis for dismissal under Oregon law.

D. Negligent Usurpation of Investigatory Function

Plaintiffs have also specifically and legitimately set forth a claim for "negligent usurpation of investigatory function". This is but another basis upon which the Watchtower Defendants are liable to the Plaintiffs for their negligent conduct. Rather than merely articulate that the Watchtower Defendants were negligent, Plaintiffs have sought to identify each of the ways in which they were negligent. Here, Plaintiffs articulate specifically that under Oregon law, Plaintiffs would have received the benefit of state officials carrying out the duties and responsibilities articulated under Section 419B of the Oregon Revised Civil Statutes had the Watchtower Defendants reported the child abuse of their agent, Don Serjeant. By assuming the duties of investigating and acting upon claims of child sexual abuse themselves in place of these state officials, the Watchtower Defendants had an obligation to perform those

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duties with care and in the best interests of the Plaintiffs. Instead, they negligently performed the duties they had assumed, to the Plaintiffs' detriment. They are therefore liable to the Plaintiffs for the injuries Plaintiffs sustained as a result of the negligent performance of duty which they usurped. See *Peterson v. Multnomah County School District*, 64 Or. App. 81, 668 P.2d 385 (1983); See also, Restatement (Second) of Torts, Section 323 (1965).

E. Economic Damages

The Watchtower Defendants complaint that Plaintiffs have not set forth a specific amount claimed as economic damages. Plaintiffs are in the process of attempting to calculate an accurate estimate of such damages and will amend to reflect that estimate. These economic damages include, among other things, costs for past and future counseling, mediations, and loss of past and future earnings due to incapacity and/or dysfunction caused by the trauma of sexual abuse.

WHEREFORE, PLAINTIFFS move this court to deny the Watchtower Defendants Motions to Dismiss and for such further relief to which the may be entitled.

DATED this 12th day of June, 2003.

NELSON & MacNEIL, P.C.

By: _____
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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing PLAINTIFF'S RESPONSE TO DEFENDANTS' ORCP 21A(8) MOTIONS TO DISMISS on the date indicated below to the attorney at the address listed herein by:

[X] Mail with first-class postage prepaid, deposited in the U.S. mail at Albany, Oregon

[ ] Hand Delivery

[X] Facsimile Transmission to Fax Number 503-295-0915

[ ] Overnight Delivery

Ronald E. Bailey
Bullivant Houser Bailey
300 Pioneer Tower
888 SW 5th Avenue
Portland, OR 97204-2089

DATED this 13th day of June, 2003.

NELSON & MacNEIL, P.C.

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CONFIDENTIAL TO ALL BODIES OF ELDERS - July 20, 1998

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WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

25 COLUMBIA HEIGHTS BROOKLYN, NEW YORK 11201-2483, USA PHONE (718) 625-3600

July 20, 1998

CONFIDENTIAL TO ALL BODIES OF ELDERS

Dear Brothers:

We are here providing, for your future reference, information that was presented at the l5-hour supplementary course for congregation elders on certain serious matters.

Child Molestation: The Society's letter to all bodies of elders dated March 14, 1997, page 2, paragraph 5, states: *"[Give the Society a report on anyone who is currently serving or who formerly served in a Society-appointed position in your congregation who is known to have been guilty of child molestation in the past.* " Reports indicate that some elders think this direction does not apply if before his baptism the person sexually abused a child. However, even in such a situation, the elders should write the branch office. This is true even if what occurred was many years ago. If any body of elders has not yet reported such a matter, they should immediately do so. Furthermore, any correspondence put in the confidential congregation file about an individual accused of child molestation, proven or otherwise, should be marked "Do Not Destroy" and be kept indefinitely.

In the Kingdom Ministry School Supplementary Course for Congregation Elders there was a panel discussion in Unit 5b, "USE DISCERNMENT IN HANDLING SERIOUS MATTERS." This portion of the course addressed questions related to the problems associated with child abuse. Question 6 to the panel asked: "What factors should be considered in determining what congregation privileges, if any, a former child molester can enjoy?" The answer included the statement: "There are also legal considerations." Some have inquired about how and why legal considerations should affect our recommendations of those who have been guilty of child abuse in the past.

Those who are appointed to privileges of service, such as elders and ministerial servants, are put in a position of trust. One who is extended privileges in the congregation is judged by others as being worthy of trust. This includes being more liberal in leaving children in their care and oversight. The congregation would be left unprotected if we prematurely appointed someone who was a child abuser as a ministerial servant or an elder. In addition, court officials and lawyers will hold responsible any organization that knowingly appoints former child abusers to positions of trust, if one of these, thereafter, commits a further act of child abuse. This could result in costly lawsuits, involving dedicated funds that should be used to further the Kingdom work. So, legal considerations must also be weighed along with the degree of notoriety, the extent of the misconduct, how many years ago the sin occurred, and how the brother is now viewed by the congregation and people In the community including those he victimized.

Scriptural Freedom to Remarry: The 1991 Kingdom Ministry School textbook, page 135, paragraph 1, describes a situation where an adulterous mate unilaterally obtains a divorce over the objection of the innocent mate. In such a case, the guilty one is not free to remarry.

What if the innocent mate consents to the divorce by signing the divorce papers? Does this free the guilty mate to remarry? Yes, Jesus' counsel at Matthew 5:37 applies here: "Let your *Yes* mean Yes, your *No,* No." If the innocent mate, perhaps in an effort to protect herself financially or to obtain custody of children, agrees to a divorce obtained by her adulterous husband, the adulterous one is then free to remarry. Although the innocent one may claim forgiveness, by signing the divorce papers she indicates her rejection of the adulterous mate. Since she has rejected that one, she holds no further claim on him, and he is Scripturally free to remarry .

Another situation involving the Scriptural freedom to remarry is where an unscriptural divorce is obtained and then, some time later, one of the mates commits fornication. In such a case, does either one have a Scriptural basis to remarry?

If a man takes the initiative and divorces his mate without a Scriptural basis and his divorced wife later commits adultery, both are free to remarry. This is because, by his previous unscriptural action of divorcing his wife, the husband has given evidence of his wanting to reject her. What is stated in the 1991 Kingdom Ministry School textbook, page 135, paragraph 6, applies: *"A person who commits adultery after having been divorced by his or her mate on unscriptural grounds would be Scripturally free to remarry, since he or she had already been rejected by the mate that obtained the divorce.* " However, the converse is not necessarily true.

If the one who initiated the unscriptural divorce later commits adultery, that one is still obligated to confess to the mate, although they are legally divorced. The innocent mate must be given the opportunity to determine whether to forgive or not. However, in both cases, the one committing adultery would need to meet with a judicial committee.

While the principles outlined above should prove helpful in handling inquiries from publishers about the Scriptural freedom to remarry , the elders should always exercise extreme caution when providing an answer. They should never inform a publisher that there appears to be a basis for Scriptural freedom to divorce and remarry , *unless conclusive evidence has been established* (1) that adultery was committed, (2) that the innocent mate has rejected the guilty one, and (3) that a legal, final divorce has been obtained. Because of the numerous factors involved in such matters, in many cases it will be best to write the Society. When doing so, always provide as many details as possible, including the names of the individuals involved. The Society will then provide the needed assistance.

When a divorced brother or sister wishes to remarry , the elders should kindly request to see the divorce papers to make sure that that one is legally free to do so. They should also determine that it has been established that both parties involved are Scripturally free to remarry . (Matt. 19:9) This will help servants of Jehovah to preserve the cleanness of the congregation and avoid entering adulterous marriages. Always review the Society's letter to all bodies of elders.

TO ALL BODIES OF ELDERS July 20, 1998 Page 3

dated May 15, 1988, regarding. guidelines on wedding procedures before agreeing to solemnize any marriage.

Please be assured of our prayers on your behalf as you endeavor to fulfill your weighty responsibilities as shepherds of the flock. We send herewith a warm expression of our Christian love and best wishes.

Your brothers,WTBS

P .S. to Body of Elders: At the next meeting of the entire body of elders, the presiding overseer

should have this letter read and should have each elder make the following notations in the margins of his personal copy of the 1991 Kingdom Ministry School textbook:

On page 93, next to paragraphs 10-11: See the Society's letters dated July 20,1998; March 14, 1997; August 1,1995; February 3,1993; March 23,1992; and July 1,1989.

On page 135, next to paragraphs 1-6: See the Society's letter dated July 20,1998.

CONFIDENTIAL TO ALL BODIES OF ELDERS - March 14, 1997

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WATCHTOWER

BIBLE AND TRACT SOCIETY OF NEW YORK, INC. 25 COLUMBIA HEIGHTS BROOKLYN, NEW YORK 11201-2483 USA PHONE (718) 625-3800

March 14, 1997

CONFIDENTIAL TO ALL BODIES OF ELDERS

Dear Brothers:

A matter of serious concern was addressed in the article "Let Us Abhor What Is Wicked," published in the January I, 1997, issue of *The Watchtower*. This concern involves the purity of Jehovah's organization in these last days. It is our responsibility to protect the flock of God from these threatening influences.-Isa. 32: 1, 2.

We wish to take necessary steps that will help protect the congregation, especially our children, from the unwholesome practices that are constantly worsening in the world. We are grateful that the truth has limited the spread of child sexual abuse in Jehovah's organization.

WHO IS A 'KNOWN CHILD MOLESTER '?

What is child molestation? *Webster's Ninth New Collegiate Dictionary* defines "pedophilia" as "sexual perversion in which children are the preferred sexual object." (See "Questions From Readers" in *The Watchtower* of February I, 1997, page 29.) Deuteronomy 23:17, 18 condemns such practices as "detestable." (See the footnotes to verses 17 and 18 in the *Reference Bible*. Also, it would be helpful to see the footnote on page 10 of the October 8, 1993, issue of *Awake!)* In harmony with these references, we are herein discussing sexual perversion in which children are the object of sexual abuse, including fondling by an adult. We are not discussing a situation wherein a consenting minor, who is approaching adulthood, has sexual relations with an adult who is a few years older than the minor. Rather, we are referring, for example, to situations in which it is established by a congregation judicial committee that an adult brother or sister has been guilty of sexually abusing a young child or has been sexually involved with a nonconsenting minor who is approaching adulthood.

Who is a known child molester? The January 1, 1997, *Watchtower* article "Let Us Abhor What Is Wicked" mentions on page 29 that a man "known to have been a child molester" would not qualify for privileges in the congregation. An individual "known" to be a former child molester has reference to the perception of that one in the community and in the Christian congregation. In the eyes of the congregation, a man known to have been a child molester is not "free from accusation" and "irreprehensible," nor does he have "a fine testimony from those on the outside." (I Tim. 3: I - 7, 10; 5 :22: Titus I :7) In view of his past, people in the community would not respect him, and the brothers might even stumble over his appointment.

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PROTECTING OUR CHILDREN

What can we do to protect our children and preserve the cleanness of Jehovah's organization? The primary responsibility for protecting our children rests upon the parents. Fine suggestions for parents can be *found* in the January 22, 1985, *Awake!* article "Child Molesting- You *Can* Protect Your Child." Other articles that parents do well to consider are those in the October 8, 1993, *Awake!* entitled "How Can We Protect Our Children" and the December 1, 1996, *Watchtower* entitled "Parents, Find Pleasure in Your Children," specifically pages 13 and 14, paragraphs 18 and 19.

What can the elders do to help protect our children? The elders should be alert to the activity of any who are known to have molested children in the past. Individuals who have manifested a weakness in this regard should be sensitive to their need not to be alone with children. They should refrain from holding children or displaying other forms of affection for them. It would be appropriate for elders to give kindly cautions to any who are doing things that may be a temptation or a cause for concern to others in the congregation.-I Cor. 10:12,32.

What should elders do when a former child molester moves to another congregation? As outlined in the February 1991 *Our Kingdom Ministry* "Question Box" and the August 1, 1995, letter to all Bodies of Elders, our policy is always to send a letter of introduction when a publisher moves to another congregation. *It is imperative that this be done when one who is known to have been a child molester moves.* The secretary should write on behalf of the elders to the new congregation's body of elders and outline this publisher's background and what the elders in the old congregation have been doing to assist him. Any needed cautions should be provided to the new congregation's body of elders. This letter should not be read to or discussed with the congregation. This information should be kept in the congregation's confidential files where it can be reviewed by any elder. The elders should send a copy of this letter to the Watchtower Bible and Tract Society in one of the "Special Blue" envelopes.

PRIVILEGES OF SERVICE IN THE CONGREGATION

In the January 1, 1997, issue of *The Watchtower,* the article "Let Us Abhor What Is Wicked" stated on page 29: "For the protection of our children, a man known to have been a child molester *does not qualify for a responsible position in the congregation. Moreover, he cannot be a pioneer or serve in any other special full-time service.* " We have had a number of inquiries asking how this applies in the congregation, and this is being given consideration.

It may be possible that some who were guilty of child molestation were or are now serving as elders, ministerial servants, or regular or special pioneers. Others may have been guilty of child molestation before they were baptized. The bodies of elders should not query individuals. However, the body of elders should discuss this matter and give the Society a report on anyone who is currently serving or who formerly served in a Society-appointed position in your congregation who is known to have been guilty of child molestation in the past.

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In your report please answer the following questions: How long ago did he commit the sin? What was his age at the time? What was the age of his victim(s)? Was it a one-time occurrence or a practice? If it was a practice, to what extent? How is he viewed in the community and by the authorities? Has he lived down any notoriety in the community? Are members of the congregation aware of what took place? How do they and/or his victim(s) view him? Has he ever been disfellowshipped, reproved, counseled, or otherwise dealt with? If he has moved to another

congregation, please identify the congregation to which he has moved. Was that congregation advised of his past conduct of child molestation, and, if so, when? [If you have not advised them, this should be done now, and you should send a copy of your letter to the Society in a "Special Blue" envelope.] This information should be sent to the Society along with any other observations that the body of elders has. Please send this to the Society in the "Special Blue" envelope so that the factors involved may be given due consideration; this information is not to be made available to those not involved.

Jehovah has been blessing the efforts of his people to get the vital Kingdom-preaching and disciple-making work done. Isaiah 52: 11 states: "Keep yourselves clean, you who are carrying the utensils of Jehovah." We must be ever vigilant to demonstrate to Jehovah that we want to keep the organization he uses in these last days fit for this all-essential trust. May Jehovah bless your efforts to that end.

Your brothers, WTBS

P.S. to Body of Elders: A meeting of the body of elders should be arranged to read and discuss this letter together. **This letter is confidential and should not be copied but should be kept in the congregation's confidential file.** Elders should not discuss this information with others. It is provided so that you can appropriately apply the spirit of the Scriptural information in the January 1, 1997, *Watchtower* article "Let Us Abhor What Is Wicked."

A Letter From The Watchtower Bible and Tract Society about the deletion of an elder

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

25 COLUMBIA HEIGHTS. BROOKLYN. NEW YORK 11201-2483. U.SA PHONE (718) 560-5000

BODY OF ELDERS

Dear Brothers:

We have given consideration to your letter dated xxxxxx xx,xxxx, regarding Brother xxxx. Enclosed you will find an S-52 form showing the deletion of Brother xxxxxx as an elder.

For good reason, the January 1,1997, issue of The Watchtower, page 29, states: "A dedicated adult Christian who falls into the sin of child sexual abuse reveals an unnatural fleshly weakness. Experience has shown that such an adult may well molest other children. True, not every child molester repeats the sin, but many do. And the congregation cannot read hearts to tell who is and who is not liable to molest children again. (Jeremiah 17:9) Hence, Paul's counsel to Timothy applies with special force in the case of baptized adults who have molested children. 'Never lay your hands hastily upon any man; neither be a sharer in the sins of others. , (I Timothy 5:22) For the protection of our children, a man known to have been a child molester does not qualify for a responsible position in the congregation." Therefore, in the best interest the congregation and its members, neither the local congregation nor the Society should be viewed as delegating authority or position to one who is a known child molester.

Now that we have given careful and prayerful consideration to all the factors in the case of Brother xxxxx xxxxx, we believe that what is stated in the foregoing applies to him. Hence, you should not extend to him any specific responsibility that could be construed as an assigned duty, even though some assignments might be considered minor. He should not be used to handle accounts, literature, magazines, subscriptions, or territories. Nor would he be used as an attendant, microphone handler, to operate sound equipment, to represent the congregation in prayer, or to present "Announcements" on the Service Meeting. He would not be used as the reader at the Congregation Book Study or Watchtower Study, nor to conduct a meeting for field service. It would be advisable not to have a book study in his home. And, he would not qualify to auxiliary or regular pioneer. Whereas he could volunteer to assist with general care of the Kingdom Hall where he attends meetings, he could not be approved to work on other Kingdom Halls or Assembly Halls. He may give student talks on the Theocratic Ministry School and share in non-teaching parts on the Service Meeting, provided that his doing so will not be offensive to those in the congregation who know of his past wrongdoing.

Please be reminded of the following direction that appears in the Society's March 14, 1997, confidential letter to all bodies of elders regarding known child molesters: "Individuals who have manifested a weakness in this regard should be sensitive to their need not to be alone with children. They should refrain from holding children or displaying other forms of affection for them. It would be appropriate for elders to give kindly cautions to any who are doing things that may be a temptation or a cause for concern to others in the congregation." (1 Corinthians 10:12,32) This would include not allowing children (other than his own) to spend the night in his home, not working in field service with a child, not cultivating friendships with children, and the like.

After a number of additional years have gone by, you may wonder whether certain privileges can

be extended to this brother. If he has continued to build a commendable record, if there are no complaints either by his victim(s) or by relatives, and if the body of elders concludes that no one would find fault with his being given extra privileges of a minor nature in the congregation, you may write the Society and make known your observations and recommendations, indicating how you feel he can be used in the congregation. Explain clearly what the current feeling is toward him on the part of the one(s) he wronged and by relatives, and how the congregation views him now. Direction from the Society should be obtained before certain privileges are extended to him.

Along with this letter we send you our warm Christian love. Your brothers,

Watchtower Bible and Tract Society

Of New York,Inc.

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CASE NO. CI 12898
DEPT. NO. I

THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON
--oOo--

RICHARD CHURCHFIELD and LEZLY CHURCHFIELD, husband and wife, and LEZLY CHURCHFIELD as Guardian Ad Litem for their minor child, TINA L. CHURCHFIELD,

Plaintiffs,

vs.

DANIEL STEVEN FITZWATER and LYNNE FITZWATER; YERINGTON KINGDOM HALL OF JEHOVAH'S WITNESSES, an unknown entity; WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a New York corporation; and DOES 1 through X, inclusive,

Defendants.

DEPOSITION OF

EDWARD L. BURKE

THURSDAY, MARCH 18, 1999

RENO, NEVADA

Reported by: CAROL HUMMEL, RPR, CCR #340
— Computer —

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APPEARANCES

FOR THE PLAINTIFFS:
TERZICH & JACKSON
Attorneys at Law
By: MILOS TERZICH, ESQ.
1470 Highway 395
Gardnerville, Nevada

FOR THE DEFENDANTS:
ERICKSON, THORPE & SWAINSTON
Attorneys at Law
By: JOHN ABERASTURI, ESQ.
99 West Arroyo Street
Reno, Nevada
AND
MARIO MORENO, ESQ.
Associate General Counsel
Watch Tower Bible and Tract Society of Pennsylvania
100 Watchtower Drive
Patterson, New York

ALSO PRESENT:
Richard Churchfield

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ATTORNEY'S NOTES/CORRECTIONS BY WITNESS

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RENO, NEVADA; THURSDAY, MARCH 18, 1999; 9:00 A.M.

-oOo-

EDWARD L. BURKE
having been duly sworn by the notary public, was examined and testified as follows:

EXAMINATION

BY MR. ABERASTERI:

Q Sir, would you state your full name for the record, please.

A My full name is Edward L. Burke.

Q Would you spell your last name for the --

A B-u-r-k-e.

Q Mr. Burke, we discussed briefly off the record, but just so we're clear, you're here to give your deposition today in the matter of a lawsuit that's been filed by Mr. Churchfield, who's here, and his family, against the Watch Tower Bible and Tract Society, and the local congregation of Jehovah's Witnesses in Yerington. Is that your understanding?

A I understand that.

MR. TERZICH: And Mr. Fitzwater.

BY MR. ABERASTERI:

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Q I'm sorry. Also named as a defendant are Mr. and Mrs. Fitzwater, who are not represented at this deposition. Is that your understanding?

A Right.

Q Have you ever given a deposition before?

A No.

Q Just a couple of things on the record to make sure that we're of the same mind. First of all, the record itself. The court reporter is taking down everything that we say here in the room, so because of that there are a couple of things that are important.

First of all, to use regular words in responding to questions. It's difficult to type out shakes of the head and uh-huhs and huh-uhs, so if you fall into that, as people do often, and say something like uh-huh, I might say, "Does that mean yes?" I'm not being thick, I'm just trying to make sure the record is correct.

A Yes or no.

Q Second is in order to read the record later on, it's important that you let me get to the end of my question before you start your answer. In regular conversation we always have an idea where we're going, and we kind of talk over each other. That doesn't type out very well either, so it just makes it

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clearer. And I will try to let you finish your answers before I start my questions. Okay?
A All right.
Q The last thing is this is not designed to be an unpleasant process, it's designed to get the information that you have. So if there comes a point in time you need a break, for whatever reason, just let us know, and we'll gladly accommodate you if it's the appropriate time.
Where do you live?
A Elko, Nevada, Cittridge Canyon.
Q How do you spell Cittridge?
A C-a-t-t -- C-i-t-t-r-i-d-g-e.
Q And how long have you lived in Elko?
A Five years.
Q How old are you?
A 74.
Q With whom do you live?
A By myself.
Q Are you working or retired?
A Retired.
Q What did you do for pay before you retired, what work did you do last?
A I was a superintendent for Tibbles Construction in Yerington.

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Q How long --
MR. TERZICH: Excuse me, what construction?
THE WITNESS: Tibbles.
BY MR. ABERASTERI:
Q How long were you with Tibbles Construction?
A Eighteen years.
Q And have you been retired for the same five years that you have been living up in Elko?
A Yeah.
Q Before moving to Elko, where did you live?
A Yerington.
Q Did you live in Yerington for 18 years?
A Right.
Q Were you a member of the Yerington congregation of Jehovah's Witnesses while you lived in Yerington?
A Yes, I was.
Q How long have you been a Jehovah's Witness?
A About 32, 33 years, something like that.
Q Where were you originally baptized?
A At Springfield, Oregon.
Q I've been given to understand that there's

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actually two congregations in the Yerington area, is that correct, an English congregation and a Spanish language congregation?
A Right.
Q I presume from the way you're talking, you were a member of English congregation, correct?
A Right.
Q While you lived in Yerington did you ever serve as an elder in that English congregation?
A Yes, I did.
Q And approximately when did you become an elder?
A 1983, I believe, or '2. I don't know which for sure.
Q '82, '83, somewhere in there?
A One of them, yes.
Q About how long did you serve?
A About ten years.
Q And again, are you a little bit unsure about the actual date when you stepped down from being an elder?
A I don't know for sure what the date was.
Q But if we said the early '90s, we would be pretty close to being right?
A Pretty close.

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Q During the time that you were an elder, did you know Mr. Churchfield, who is here at the table with us?
A Yes.
Q And obviously you lived in Yerington for a few years after you finished your service, is that correct?
A Right.
Q Did you also know Daniel Fitzwater?
A Yes.
Q How did you come to know Daniel Fitzwater?
A Through the congregation.
Q Had you known Mr. Fitzwater before he moved into Yerington?
A Not before he originally -- well, I don't know. He moved in and out, so I don't know.
Q You didn't know him when you were living up in Oregon, for example?
A No.
Q You only knew him in Yerington?
A In Yerington.
Q And you said that Mr. Fitzwater moved in and out of town a couple of times, is that correct?
A Couple three times, if I remember.
Q Did you meet him through the congregation

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as opposed to through work or --
A Yes, the congregation.
Q Did there come a point in time when Mr. Fitzwater was recommended to be an elder?
A Yes.
Q How did that work?
A Well, I had received a letter from where he was down in Georgia recommending him to be an elder, recommending him as an elder here, so I went on that assumption.
Q And when you received that letter, is that something that he brought with him when he moved back into town from Georgia?
A That I don't recall whether he mailed it to me or whether he brought it back.
Q That was a bad question.
But he had been living in town and moved away to Georgia --
A Right.
Q -- is that correct?
And then later moved back into town, into Yerington?
A Right.
Q And during the time that he was coming back into town from Georgia, you were the elder or an

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elder in the congregation?
A Yes, I was the presiding officer.
Q As a general proposition, I've learned in this case that when a member or one of Jehovah's Witnesses moves, a letter of introduction goes with them to their new congregation, is that right generally?
A I think it has -- you have to write the secretary normally.
Q The letter goes to -- the new congregation gets a letter from the old congregation?
A Right.
Q And if they've been an elder or a ministerial servant, there will be a recommendation in that letter generally about whether or not they should be --
A Reinstated.
Q -- reinstated?
A Right.
Q And that's what we're talking about with Mr. Fitzwater here?
A Right.
Q You obviously had known this gentleman before just because he had been in your congregation?
A Right.

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Q Did she attend meetings at the Kingdom Hall?
A Yes.
Q How would you describe Dan Fitzwater's relationship with Dawn, his stepdaughter, at the time you knew him?
A Nothing out of the ordinary that I can remember.
Q You don't recall whether or not he attended to her specially, put his arms around her a lot, had her sit on his lap, or anything like that?
A At the meetings once in a while she would sit on his lap.
Q Just once in a while?
A I never paid that much attention, you know.
Q I believe you stated that you were asked if you and Dan Fitzwater were good friends, and I believe you stated Dan would not be a friend, "not the type of man I would want as a friend." Do you remember that?
A That's right.
Q Why do you say that?
A He's just not my type, just not the type of man I would have for a friend. Spiritual brother,

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yes.
Q But why do you say that?
A Well, I guess I just never clicked with him.
Q Did you feel he was too controlling?
A Well, he tried to be from time to time.
Q With you?
A Well, I don't know whether he ever tried it with me or not.
Q Did you particularly like him outside of the congregation?
A Well, we associated once in a while. Not outside the congregation we surely didn't.
Q In 1979 do you recall that Dawn was going over questions for baptism around the time after they moved to Yerington in '79?
A No, I'm not aware of that at all.
Q Were you aware -- did you become aware that Dawn, Dan's stepdaughter, was placed in foster care in approximately 1983?
A I wasn't aware of that either.
Q You weren't?
A No.
Q You were there in 1983?
A Right.

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Q And you were an elder?
A That's just when I became an elder, yeah.
Q Did you ever become aware in 1983 or thereabouts that Dawn had made allegations against Dan as to him improperly touching her?
A No, wasn't aware of that.
Q Did you become aware that Dawn no longer lived with Dan and his wife at any time?
A No.
Q So according to your memory, Dawn lived with Dan and his wife Lynne up until the time you left Yerington?
A Well, let's see. They had moved away and came back. I don't recall of anything like that.
Q Well, our records show that the Fitzwaters moved to Florida in 1983. Were you aware of that?
A I was aware of that.
Q And was Dawn with them at that time?
A That I don't recall.
Q That apparently from there Dan moved to Hazlehurst, Georgia?
A I was aware of that.
Q Back in 1990 he moved back to Yerington. Do you recall that?
A Yes.

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Q Did you know this was the third time that he had moved back to Yerington?
A I recall something like that, third or fourth time.
Q Do you recall any discussions or talk among the members of the congregation about possible allegations against Dan Fitzwater regarding the fact that he improperly touched Dawn prior to October of 1992?
A No, I wasn't aware of that fact either.
Q Do you recall that Dawn stopped coming to the Kingdom Hall in the early '80s before they moved to Florida?
A No, I wasn't aware of that either.
Q You and Dan were elders together for about six months?
A Something like that, yeah.
Q During that time did he ever confide in you as to any potential problems that he had with his stepdaughter Dawn?
A No, he never did.
(Exhibit 1 marked.)
BY MR. TERZICH:
Q Let me show you what's been marked as Exhibit 1 and ask you to identify that.

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A That he was recommended in -- let's see. Okay.
Q Do you recognize that document?
A Yes.
Q This is the document where Dan Fitzwater was recommended to become an elder in 1990, is that correct?
A Right about that date, yeah.
Q Is that the date that's at the top there?
A Okay.
Q At the very top there it says, "The Governing Body has approved the recommendations on the reverse side as indicated by the Watchtower Society stamp below." Is there a reverse side to this document?
A I don't recall whether there was or not.
Q I believe we discussed this before with another witness, and I have never been provided with a reverse side.
MR. ABERASTERI: I don't know. This is all that's in the file. I think there is two possibilities; one, that this is both sides copied on one page, which I think is the most likely possibility, that this is the obverse side, but we don't have any other documents, at least at this point, and we

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continue to look. Obviously the recommendation is on this document right here.
BY MR. TERZICH:
Q I believe you testified when Mr. Aberasteri was questioning you that you were the presiding overseer at this time?
A That's right.
Q I notice at the top it says presiding overseer is Frank Cardoza, and you were the secretary. Is that error?
A No, that is correct. It's Frank in there about that time, yeah.
Q So you were not the presiding overseer?
A No, not while we built the Kingdom Hall.
Q Now, the typewritten part there where it says comments of circuit overseer, that would have been typed in by?
A Rainer.
Q By Rainer?
A Uh-huh.
Q By your name it says name and date of appointment of elders in the congregation, Edward L. Burke, 2-11-87. That's an incorrect date, is it not?
A I believe that is incorrect.
Q Because you were an elder in '82 or '83?

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A Right.
Q Do you know who typed this document?
A No.
Q Down at the bottom it says Gilbert Hernandez, Jr., and Gilbert Hernandez, Sr. Why would they be mentioned on this form?
MR. ABERASTERI: There at the bottom where it says ministerial servants in the congregation, and they are identified as the three gentlemen.
THE WITNESS: Yeah.
MR. TERZICH: Juan Berumen is crossed out on my --
THE WITNESS: Juan Berumen.
BY MR. TERZICH:
Q Would Gilbert Hernandez, Jr. and Senior have joined in that representation?
A I don't believe so. I don't remember.
Q Do you know why their names would be appear on this form?
A No, I don't.
MR. ABERASTERI: Other than the fact that they are identified as ministerial servants on the form?
THE WITNESS: That would be the only thing.

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MR. ABERASTERI: Were they ministerial servants at the time?
MR. TERZICH: Wait just a minute. It's my deposition, if you want to cross-examine him afterward --
MR. ABERASTERI: You're confusing him, it says why they're there, they're listed as "Names and date of appointment of ministerial servants."
MR. TERZICH: You can point that out when you're questioning him. When I question I don't want you interrupting with other questions like you did before, please.
BY MR. TERZICH:
Q Did you do an independent investigation of Dan Fitzwater before you recommended him to be an elder?
A Just myself and Frank from when we talked things over. I mean, all the information we had.
Q What was the information that you had?
A Good recommendation. I mean, we had nothing against him.
Q You had a letter from Hazlehurst, Georgia which said he was in good standing?
A Right.
Q And that letter recommended him to be an

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elder, do you recall?
A As far as I know, it did.
Q Other than that, receiving that letter from Hazlehurst, Georgia, did you do an independent investigation before you recommended him to be an elder?
A Well, by his works and his actions and so forth. We didn't set up a committee to check him out or anything like that.
Q Did you interview Dan or question him about his past before you recommended him?
A Just what he had done when he had been gone down there in Hazleton, (sic).
Q Did you or any of your committee talk to Dan Fitzwater before you recommended him as an elder?
A Yes. And the circuit overseer too.
Q And you had conversations with him about his past?
A Just from what his works were in the congregation. What he was, he was recommended a circuit overseer down there in Hazleton, (sic), where he is at in Georgia, and I believe he was a presiding overseer in one of the congregations.
Q Did you contact the Hazlehurst, Georgia congregation elders or the overseer regarding Dan's

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service there?
A No.
Q Were you aware that he had a problem in the Hazlehurst congregation, but they claimed it was cleared up?
A No, I'm not aware of that.
Q Did you know that Lynne and Daniel -- excuse me. Did you know Danielle Fitzwater?
A Uh-huh.
Q Yes?
A Yes.
Q Did you know that Lynne -- whether or not Lynne or Daniel had emotional problems while in Hazlehurst?
A No, I'm not aware of that.
Q Did you ever hear the name Metzger?
A No.
Q So if I understand you correctly, you didn't even make a telephone call to the Hazlehurst elders or the overseer with regard to Dan Fitzwater before you recommended him?
A No.
Q Were you involved in recommending Lee Le Gros as an elder?
A No.

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Q You were not?
A No.
Q You had already stepped down?
A Uh-huh.
Q That's yes?
A Yes.
Q Do you know Lee Le Gros?
A Yes.
Q When did you first meet him?
A I think he was on an official trip down in Yerington, and he come to the congregation, if I remember right.
Q That was before he moved to Yerington?
A Right.
Q Do you know whether he and Dan knew each other before Lee Le Gros moved to Yerington?
A The best of my knowledge he didn't.
Q But you just happened to meet him fishing?
A Right.
(Exhibit 2 marked.)
BY MR. TERZICH:
Q This is a test.
A This is a test?
Q I'm going to show you Exhibit 2, and ask you to the best way you can if you can write the years

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that you know that any of these people were elders in the Yerington congregation. Do you have a pen?
A No.
Q You can use that one. Let me help you out. How about Luther Kanning, did you know what years he was an elder in the Yerington congregation?
A Well, I know he was an elder there in '77 when I moved there, but that's all.
Q Can you write down 1997 then.
A '77.
Q Excuse me, 1977, sorry. And you don't know how long he was an elder?
A No.
Q How about Allen Zaring?
A He never was an elder that I know of. Not while I was there. I guess he was before I got there.
Q How about Charles, Charlie or Charles Kattnig?
A Yeah, he was an elder.
Q Do you remember what years?
A No, I sure don't.
Q How about Jim Johnston?
A Yes, I know he was in '77.
Q Do you remember how long he was an elder?
A Oh, boy. No, I can't recall.

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I'm sorry if these are a little disjointed.

FURTHER EXAMINATION

BY MR. ABERASTERI:

Q One of the last questions you were asked was where you heard about the problems with Mr. Churchfield -- or excuse me with Mr. Fitzwater, and you told us about reading the stuff in the paper that your friend brings up when he comes up on the truck?

A Yeah.

Q You also had an occasion where Mr. Churchfield gave you a call?

A Right.

Q And in that call he told you about the allegations against Fitzwater, did he not?

A Briefly. We didn't have too long a conversation.

Q Just to make that clear.

A Uh-huh.

Q Going back to the time that Mr. Fitzwater was recommended to be an elder, and you've seen the document that was presented to you at that time, or in the time that you continued to serve as an elder, did you have any information or any concerns about Mr. Fitzwater with regard to sexual impropriety toward children?

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A No.

Q At the time that Mr. Fitzwater became an elder, was he asked the standard questions about whether or not there was anything in his life or background which would preclude his service as an elder?

A Right. He was asked that question, yes.

Q And that's relative to the question --

A Yes.

Q -- that elders, proposed elders, are asked?

A Right.

Q Does that question include any allegations or problems that they might have had in their past?

A Right.

Q At the time that Mr. Fitzwater was recommended to be an elder you had received contacts from the Georgia congregation, is that correct?

A Yes, we did.

Q And the recommendation that he be allowed to serve as an elder --

A Right.

Q -- is that correct?

The document that we have seen, Exhibit 1, which is that recommendation sheet, includes some

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typing that was done, the comments of the circuit overseer. If you could look back at Exhibit 1 there.

A Yes, at the top there.

Q And the first sentence of that document is "Brother Daniel Fitzwater comes to us with fine recommendation from Hazlehurst, Georgia as an elder."

A Right.

Q When he said served here some years ago, he was, in fact, a member of the congregation and served in the congregation prior to this recommendation, is that right?

A As an elder?

Q No, in the congregation?

A Yes, he was in the congregation.

Q Every congregation member, every Jehovah's Witness serves, is that correct?

A Right.

Q That's one of the key tenants of your participation as a Jehovah's Witness?

A Yes.

Q You, in fact, knew Mr. Fitzwater before he moved back to town when he had lived there back in the '70s when you were there?

A When I first met him back then.

Q And then the other comments are comments

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made by the circuit overseer relative to his service mindedness and things like that, is that correct?

A Right.

Q And he was unanimously recommended by the elders, which was you and Mr. Cardoza?

A Right, Cardoza and myself.

Q Where is Charlie Kattnig now, as far as you know?

A In a rest home, as far as I know, down in Vegas.

Q How old is he?

A 80-some years old, if he's still alive. Last I heard, he was. I don't know.

MR. ABERASTERI: Thank you, sir. That's all I have.

MR. TERZICH: Just a couple more.

FURTHER EXAMINATION

BY MR. TERZICH:

Q You said that standard questions asked of prospective elders, include Dan Fitzwater, is there anything in your past that you should reveal to us that may affect our recommendation or some words to that effect -- how was the question phrased?

A Is there any reason they would be disqualified as a servant, if there was anything.

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That's asking whether there's any reason he cannot serve as an elder servant. Just how it was worded, I don't recall for sure.

Q His answer was there was nothing?

A Yeah, nothing in his past.

Q And you have since learned that that was not true?

A Yes.

Q Going back to Exhibit 1, it says -- where it says, "He served here some years ago," then the third sentence says, "The brothers are familiar with him and have seen his family grow spiritually strong." Did you feel that he and his family had grown spiritually strong?

A Well, I can't recall, because he was in and out up until that time. What he was doing right at that time, he seemed to be making good progress.

Q Was Dawn with him at that time?

A Dawn?

Q Dawn.

A No.

Q In 1990?

A No, she was living in Reno here.

Q How about Danielle?

A Danielle was living with him, yeah.

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Q So when you're saying the family grows spiritually strong, who were you referring to?

A Those right there, Danielle and his wife and himself.

MR. TERZICH: That's all I have.

MR. ABERASTERI: Nothing further.

(Deposition was concluded at 10:55 A.M.)

-oOo-

I, EDWARD L. BURKE, hereby declare under penalty of perjury that I have read the foregoing pages 1 through 72, that any changes made herein were made and initialed by me; that I have hereunto affixed my signature.

Dated: _____

_____

EDWARD L. BURKE

(If signed before a notary public, have notary public fill out page 74.)

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STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, CAROL HUMMEL, a notary public in and for the County of Washoe, State of Nevada, do hereby certify:

That I was personally present for the purpose of acting as notary public and Certified Court Reporter in the matter entitled herein; that the witness was by me duly sworn;

That said transcript which appears hereinbefore was taken in verbatim stenotype notes by me and thereafter transcribed into typewriting as herein appears to the best of my knowledge, skill and ability and is a true record thereof.

CAROL HUMMEL, CCR #340

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STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, _____, a notary public in and for the County of _____, State of _____, do hereby certify:

That on the _____ day of _____, 19____, before me personally appeared the witness whose deposition appears herein;

That the deposition was read to or by the witness;

That any changes in form or substance desired by the witness were entered upon the deposition by the witness;

That the witness thereupon signed the deposition under penalty of perjury.

DATED: At _____ this _____ day of _____, 19____.

_____
NOTARY PUBLIC

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OFFICER'S ACTIONS RE SIGNING OF DEPOSITION _____
PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE _____

DATE

LETTER SENT TO WITNESS

4-2-99 AT DIRECTION OF COUNSEL ORIGINAL WAS SENT TO: Mr. Aberasteri

WITNESS SIGNED DEPOSITION ORIGINAL SENT TO: _____

OTHER ACTIONS

_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____

Your own *family* has special needs.

Christian husbands have as their primary God-given responsibility the care and salvation of their families. (*w*59 9/15 pp. 548-54)

Occasionally, those in the congregation demand time and attention that an elder should rightfully give to his family. Shepherding begins at home. (*w*83 9/1 pp. 234; *w*66 5/1 pp. 271-2)

Aiding the brothers in these ways takes time and effort.

Elders are understandably limited in what they can do.

Love for the whole association of brothers will prompt us to do what we can to help those in need. (2 Cor. 8:1-12)

Help Your Brothers to Make Progress

Consider areas in which you should endeavor to make progress. (1 Tim. 4:12-15)

Set goals for yourself continually.

Help brothers who have the potential to become ministerial servants make progress in that direction.

Brothers who are regular publishers and demonstrate a desire to be used can be given certain assignments to perform around the Kingdom Hall.

Before being appointed as an elder or a ministerial servant, a brother must be "tested as to fitness first." (I Tim. 3:10)

Your being alert to give qualified brothers something to do in the congregation will provide an opportunity for such testing and will give them added training.

Giving due consideration to their exemplary conduct, activity in the ministry, and fine spiritual outlook, the elders can determine what would be best for these brothers.

Keep in mind that not all have the same abilities or circumstances, so be discreet in assigning brothers things to do. (1 Cor. 12:4-7; *w*68 4/1 p. 209)

According to what is needed and appropriate, encourage reliability, industriousness, modesty, and humility. (Prov. 9:8b, 9)

UNIT 1 (b)

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In order for you to get better acquainted with these brothers, you may wish to visit with them occasionally in their home or have them come to yours.

Accompany them in the evangelizing work.

Help them to progress in the field ministry by application of *Kingdom Ministry* suggestions, and help them to find pleasure in sharing the good news with others.

Teach them to show interest in their brothers, taking others with them in field service as often as possible.

They may need to set a better example in encouraging their wife and children in this activity.

Be generous in giving commendation to these brothers when progress is made; it is a powerful force that often motivates persons to continue progressing. (1 Cor. 11:2)

If a brother is lacking certain qualifications needed by a ministerial servant, it would be a kindness to speak with him about the matter and give practical suggestions that might help him to develop the needed qualifications.

Train ministerial servants who are reaching out for the office of overseer.

A brother may need experience in shepherding.

Provide training by taking him along on certain shepherding calls.

After a call you might ask him how he would have handled certain things that came up.

This may enable you to see how he reasons.

You may be able to help him improve his ability to exhort.

After he has expressed himself, you might explain to him why you handled the situation as you did.

A brother may need greater discernment in the practical application of Bible principles.

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"Pay Attention to Yourselves and to All the Flock"

Suggest that he regularly read the Bible and certain past *Watchtower* articles and Society publications.

The body of elders may extend greater teaching privileges to capable ministerial servants who make fine advancement and meet the requirements.

>From time to time, encouragement and counsel should be given to these brothers.

Although our sisters will never be ministerial servants or elders, they need help to make progress also.

Some may be encouraged to share in auxiliary or regular pioneer service.

Adequate field service arrangements should be made for the sisters when you are not able to be with them.

Consider other ways in which you can encourage and help your sisters, including single parents.

Urge sisters to become more effective in developing and conducting Bible studies.

Periodically, elders should meet together to consider what can be done to help others advance.

Since you have many responsibilities, look for occasions when you can combine one activity with another and thus accomplish both at the same time.

An example of this would be arranging to work in the

field service with a publisher who needs spiritual encouragement.

Give other examples.

Joyful Results

Congregation members feel secure as they benefit from the concern, assistance, and protection of loving overseers working with them. (Compare Ezekiel 34:11-16.)

Servants of Jehovah are glad to cooperate and exert themselves vigorously in his work. (Rom. 12:11, 12)

Many are motivated to imitate the faith of loving overseers as they see how the overseers' conduct turns out. (Heb. 13:7)

Jehovah is honored by those who devotedly imitate him.

UNIT 1 (b)

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Court of Appeals of Oregon.

Christine E. ERICKSON, Appellant,
v.
Bryan W. CHRISTENSON; Luther Memorial Church, Portland, Oregon; American Lutheran Church, North Pacific District, Respondents,
and
American Lutheran Church, Defendant.

A8710-06662; CA A49695.

Argued and Submitted April 14, 1989.
Decided Oct. 25, 1989.

Church parishioner sued pastor, her church, and the district office of the church's denomination, seeking recovery for intentional infliction of emotional harm allegedly caused by pastor's mentally manipulating her and seducing her through counseling relationship. The Circuit Court, Multnomah County, Lee Johnson, J., dismissed complaint for failure to state claims, and parishioner appealed. The Court of Appeals, Rossman, J., held that: (1) claim of intentional infliction of emotional harm was not invalid as being essentially restatement of abolished claim of seduction; (2) claim was not barred on First Amendment grounds, as being essentially claim of clerical malpractice which would require for proof impermissible government examination of validity of religious beliefs and interference with access to clerical counseling; (3) complaint stated claim against church for liability for torts of pastor under respondeat superior doctrine; (4) complaint stated cause of action against church for negligent supervision of pastor; and (5) complaint stated cause of action against district office of denomination for negligence in requiring parishioner to seek removal of pastor through confrontational process involving rest of church, causing her emotional harm.

Reversed and remanded.

West Headnotes

[1] Damages 50.10
115k50.10 Most Cited Cases

Claim by church parishioner against her pastor for intentional infliction of emotional harm through pastor's alleged abuse of confidential relationship by mentally manipulating her to have close contact and sexual relations with him was not invalid by reason of being equivalent to abolished tort of seduction; parishioner had alleged that pastor's actions made her unable to trust other adults, to trust authority and deal with religion and her faith in God, and if claims were true resulting harm to parishioner stemmed from pastor's misconduct of his position of trust and not from seduction.

[2] Constitutional Law 84.5(10)
92k84.5(10) Most Cited Cases

[2] Religious Societies 30
332k30 Most Cited Cases

Claim by parishioner that pastor had inflicted intentional emotional harm upon her was not invalid under free exercise and establishment clauses of First Amendment because it was essentially claim of clerical malpractice which would require for proof development of community standards as to proper pastoral conduct which in return would involve permissible government inquiry into validity of religious beliefs and interference with clerical counseling; parishioner had claimed breach of confidential relationship rather than any elements of clerical malpractice. U.S.C.A. Const.Amend. 1.

[3] Religious Societies 30
332k30 Most Cited Cases

Church would be liable to parishioner, on theory of respondeat superior, if parishioner established claim that pastor had abused confidential relationship between himself and parishioner by mentally manipulating her to become dependent upon him and coercing and manipulating her to have close contacts and sexual relations with him.

[4] Religious Societies 30
332k30 Most Cited Cases

Parishioner accusing church of negligent supervision of pastor who allegedly abused confidential relationship with her and manipulated her into having close contact and sexual relations with him stated cause of action; parishioner alleged that church knew or should have known pastor was not adequately trained as counselor and that he had used and misused his position in past to take advantage of parishioners and people he counseled.

[5] Religious Societies 31(4)
332k31(4) Most Cited Cases

Dismissal of complaint in response to motion to **dismiss** for failure to state ultimate facts **sufficient** to state claims was not warranted in case where parishioner of church accused district office of church's denomination of negligent supervision of pastor who mentally manipulated her into having sexual contact with him; nothing in complaint supported contentions on which dismissal was granted, that district office was merely administrative department of denomination and lacked capacity to be sued, and that claim was barred by two-year statute of limitations. ORS 12.110(1).

[6] **Religious Societies** 31(4)
332k31(4) Most Cited Cases

Parishioner suing district office of her church's denomination stated claim for negligent supervision of church's pastor who allegedly manipulated her into having sexual relations with him; parishioner alleged that after she initiated church complaint against pastor district office undertook role of her advocate and then forced her to proceed through confrontational process involving congregation in order to have pastor removed from his position, causing her extreme emotional distress.

****384 *104** David R. Nepom, Portland, argued the cause and filed the briefs for appellant.

I. Franklin Hunsaker, Portland, argued the cause and filed the brief for respondent American Lutheran Church, North Pacific Dist. With him on the brief were Chrys A. Martin, Lisa E. Lear and Bullivant, Houser, Bailey, Pendergrass & Hoffman, Portland.

David J. Edstrom, Portland, argued the cause and filed the brief for respondent Bryan W. Christenson.

Ralph C. Spooner, Salem, argued the cause and filed the brief for respondent Luther Memorial Church. With him on the brief was Spooner & Much, Salem.

Before RICHARDSON, P.J., JOSEPH, C.J., and ROSSMAN, J.

***106** ROSSMAN, Judge.

Plaintiff brought this action against her pastor (Christenson), the church that employed him (Luther Memorial) and the American Lutheran Church, North Pacific District (ALC-NPD), [FN1] alleging four claims for injuries sustained after Christenson allegedly manipulated her and seduced her through a counseling relationship. The trial court granted defendants' motions under ORCP 21 A to dismiss for failure to state ultimate facts sufficient to state claims, ****385** and plaintiff appeals. We reverse and remand.

FN1. Pursuant to the stipulation of plaintiff and American Lutheran Church (ALC), the trial court entered an order dismissing claims against ALC without prejudice. The court incorporated that order into its judgment dismissing plaintiff's claims against all defendants.

In reviewing a motion to dismiss for failure to state a claim, we are limited to the facts stated in the complaint. *Richards v. Dahl*, 289 Or. 747, 752, 618 P.2d 418 (1980). We accept as true the allegations and all reasonable inferences that may be drawn from them. *See Overbay v. Ledridge*, 97 Or.App. 292, 294, 776 P.2d 29, *on reconsideration* 98 Or.App. 148, 778 P.2d 981 (1989). A pleading that contains an allegation of material fact as to each element of the claim for relief, even if vague, is sufficient to survive a motion to dismiss. *Mazurek v. Rajnus*, 253 Or. 555, 557-58, 456 P.2d 83 (1969). We discuss plaintiff's claims against each defendant in turn.

Plaintiff's claims against Christenson are for "breach of fiduciary duty" (which we treat as a claim for breach of a confidential relationship) and intentional infliction of severe emotional distress. [FN2] Her allegations may be summarized: (1) In 1970, when plaintiff was age 13, Christenson established a confidential relationship with her, acting as her pastor, counselor, confessor, advisor, friend, teacher and surrogate father. (2) Christenson abused that relationship by "mentally manipulating" her to become dependent upon him and by "coercing and manipulating" her to have close contact and sexual relations with him for his own purposes; he continued to exercise dominion and control over plaintiff until the fall or winter of 1986, and attempted to manipulate the relationship until ***107** May, 1987. (3) Defendants' failure to advise plaintiff of the improper relationship prevented her from obtaining professional help. (4) As a result of Christenson's misuse of his position, plaintiff suffered sexual abuse, extreme emotional distress, physical illness, loss of sleep and memory, clinical depression and loss in her "ability to trust other adults, to trust authority, and * * * in her ability to deal with religion and her faith in God."

FN2. Although plaintiff has characterized her claim as one for "outrageous conduct," it is actually for intentional infliction of severe emotional distress. *Patton v. J.C. Penney Co.*, 301 Or. 117, 119 n. 1, 719 P.2d 854 (1986).

[1] Christenson argues that those allegations actually state a claim for seduction, a cause of action that was abolished in 1973. Or.Laws 1973, ch. 640. We disagree. In *Spiess v. Johnson*, 89 Or.App. 289, 748 P.2d 1020, *aff'd by equally divided court* 307 Or. 242, 765 P.2d 811 (1988), we considered the sufficiency of a complaint alleging that a psychiatrist from whom a couple had sought psychiatric counseling for the wife had become sexually intimate with her during the course of treatment. The defendant argued that the husband's claim for intentional infliction of severe emotional distress was actually for the abolished torts of criminal conversation and alienation of affections. We rejected that argument, noting that the different claims were distinguishable by the nature of the loss that they alleged. 89 Or.App. at 294, 748 P.2d 1020.

The tort of seduction provided recovery for damage to character and reputation, as well as for mental anguish and pecuniary losses. *See Breon v. Hinkle*, 14 Or. 494, 500, 13 P. 289 (1887). By contrast, plaintiff's claim alleges that Christenson misused his position as pastor and counselor to abuse her sexually, causing her not only emotional distress but also "loss of ability to trust other adults, to trust authority, and * * * in her ability to deal with religion and her faith in God." Accepting the allegations as true, the harm to plaintiff stemmed from Christenson's misuse of his position of trust, not from the seduction as such. Plaintiff has stated a claim.

In her second claim against Christenson, plaintiff has claimed losses due to intentionally inflicted severe emotional distress, as opposed to losses related to character or reputation. The mere fact that sexual intimacy was the means of inflicting that distress does not convert her claim into one for seduction. *See Spiess v. Johnson, supra*, 89 Or.App. at 294, 748 P.2d 1020. Moreover, the character of Christenson's relationship with plaintiff is relevant both to the degree of culpability required ***108** to impose liability and to whether his conduct ****386** was so offensive as to be outrageous. *Hall v. The May Dept. Stores*, 292 Or. 131, 137, 637 P.2d 126 (1981); *Torgeson v. Connor*, 86 Or.App. 179, 181, 738 P.2d 994 (1987). Because plaintiff has alleged a confidential relationship, proof of her other allegations would permit the jury to infer that Christenson's actions exceeded the limits of social toleration, that they were done with the knowledge that they would cause her grave distress and that they in fact caused her severe emotional distress. That is sufficient to state a claim for intentional infliction of emotional distress. *See Torgeson v. Connor, supra.*

[2] Christenson argues that plaintiff's claims are barred by the First Amendment. According to him, her claim for "breach of a fiduciary duty" actually is a claim for clerical malpractice, a cause of action that requires developing a community standard of care. Because imposing such a standard would involve examining the validity of religious beliefs and could interfere with access to clerical counseling, he argues, it violates both the Free Exercise and Establishment Clauses of the First Amendment. Similarly, he contends, because plaintiff's seduction could not be considered "outrageous" were it not for the fact that he is a pastor, plaintiff's claim of intentional infliction of emotional distress penalizes him for exercising his religion.

Christenson's arguments misconstrue the nature of plaintiff's claims. First, regardless of how plaintiff designated her claims, a claim for breach of a confidential relationship is different from a claim for clerical malpractice. Plaintiff's complaint alleged the existence and breach of a confidential relationship; it did not allege the elements of malpractice. Moreover, plaintiff's claim for outrageous conduct is not premised on the mere fact that Christenson is a pastor, but on the fact that, because he was *plaintiff's* pastor and counselor, a special relationship of trust and confidence developed.

[3] Plaintiff's claims against Luther Memorial are that it is vicariously liable for the torts allegedly committed by Christenson and that it was negligent in supervising him. "Under the doctrine of *respondeat superior*, an employer is liable for an employee's torts when the employee acts within the scope of employment." *Chesterman v. Barmon*, 305 Or. 439, 442, 753 P.2d 404 (1988). An employe's act is within the scope of the ***109** employment if it occurs substantially within the time and space limits authorized by the employment, the employe is at least partially motivated by a purpose to serve the employer and the act is of a kind which the employe was hired to perform. *Chesterman v. Barmon, supra*, 305 Or. at 442, 753 P.2d 404. Plaintiff has alleged that, in the exercise of his duties as a pastor, Christenson established a confidential relationship with her and caused her harm by abusing that relationship. Confining our analysis to the four

corners of the complaint, we conclude that it alleges that she sustained harm from acts performed within Christenson's scope of employment. [FN3]

FN3. Luther Memorial argues that it cannot be held liable under a theory of *respondeat superior,* because Christenson's seduction of plaintiff is neither the kind of act that he was hired to perform nor motivated by a desire to serve the employer. As previously noted, however, the gravamen of plaintiff's complaint is not simply that Christenson seduced her but that he abused his position as her pastor to do so. Because the alleged wrongful act was improper performance of pastoral counseling duties, whether it occurred within the scope of employment is a factual issue.

[4] With respect to her claim for negligence in supervision, Luther Memorial argues that plaintiff has failed to allege facts showing that its "conduct unreasonably created a foreseeable risk to a protected interest of the kind of harm that befell the plaintiff," as required by *Fazzolari v. Portland School Dist. No. 1J,* 303 Or. 1, 17, 734 P.2d 1326 (1987). However, in her amended complaint, plaintiff has alleged that Luther Memorial knew or should have known that Christenson was not adequately trained as a counselor and that it knew or should have known that he had misused his position in the past to take advantage of parishioners and counseled persons. These allegations, if proven, would make it ****387** reasonable for a trier of fact to infer that the risk of harm to plaintiff was reasonably foreseeable to Luther Memorial. Similarly, her allegations, if proven, that Luther Memorial employed and directed Christenson to counsel parishioners, failed to investigate claims of his sexual misconduct, failed to remove him or to warn parishioners of his misuse of his position and failed to supervise him adequately following his nervous breakdown or to direct him to seek expert advice to deal with his abusive behavior would make it reasonable for the jury to infer that it created the risk of harm to plaintiff. The complaint states a claim for negligent supervision. It follows that plaintiff's ***110** claims against Luther Memorial should not have been dismissed. [FN4]

FN4. Relying on *Norwest v. Presbyterian Intercommunity Hosp.,* 293 Or. 543, 652 P.2d 318 (1982), Luther Memorial asserts that plaintiff has alleged only emotional injury, an insufficient basis for a claim for ordinary negligence. In alleging sexual abuse, physical illness, lost sleep and losses in memory and concentration, however, plaintiff has alleged more than emotional injury.

[5] Plaintiff repeated her claim of negligent supervision against ALC-NPD, alleging the same facts and adding that ALC-NPD supervised Luther Memorial and that the agents and employes of ALC-NPD supervised Christenson. ALC-NPD responds that, because it is merely an administrative department of ALC, it lacks the capacity to be sued, that plaintiff's claim is barred by the two-year Statute of Limitations in ORS 12.110(1) and that, because it was not Christenson's employer, but simply an unincorporated division of ALC with only a tenuous connection to Luther Memorial and Christenson, it could neither have created nor foreseen the risk of harm to plaintiff.

ALC-NPD's contentions are premature. Nothing on the face of the complaint permits a determination that ALC-NPD is not a proper party or that, as a matter of law, plaintiff's alleged injuries occurred more than two years before the commencement of her action. *See* ORCP 21 A(9). Plaintiff has alleged sufficient facts to withstand a motion to dismiss.

[6] Plaintiff's last claim is that ALC-NPD was negligent in its performance of pastoral duties. In essence, she alleges that, after she initiated a church complaint against Christenson, ALC-NPD undertook the role of her advocate and counselor; that, in that role, it required her to "proceed through a confrontational process * * * in order to have Bryan Christenson removed from his pastor position"; and that, despite Christenson's voluntary admission to a sexual dependency unit, it continued to require her to "confront and oppose the church congregation," causing her extreme emotional distress. Those allegations, taken as true, would permit a trier of fact to make the inference that ALC-NPD's conduct unreasonably created a foreseeable risk of harm to plaintiff. Under ***111** *Fazzolari v. Portland School Dist. No. 1J, supra,* plaintiff's allegations are sufficient to state a claim for negligence. [FN5]

FN5. Characterizing plaintiff's claim as one for "clerical malpractice," ALC-NPD argues that recognizing such a cause of action would require the court to develop a standard of care for pastoral counseling, an

> undertaking which inevitably would violate the First Amendment and Article I, sections 2, 3, and 5 of the Oregon Constitution. However, plaintiff's complaint alleges simple negligence. Although the First Amendment or Oregon Constitution may provide ALC-NPD with an affirmative defense at some later stage of the proceeding, which we need not and do not decide here, it does not provide a basis for dismissal at this stage.

Reversed and remanded.

781 P.2d 383, 99 Or.App. 104

END OF DOCUMENT

Supreme Court of Oregon.

Daniel LOURIM, Petitioner on Review,
v.
John SWENSEN, Defendant,
and
Cascade Pacific Council, Boy Scouts of America, an Oregon non-profit corporation; and the Boy Scouts of America, a congressionally chartered corporation, authorized to do business in Oregon, Respondents on Review.

(CC C95-1000CV; CA A92903; SC S44383)

Argued and Submitted Sept. 10, 1998.
Decided April 8, 1999.

Former Boy Scout brought action against Boy Scouts of America (BSA) and former volunteer, alleging he was sexually assaulted by volunteer 30 years earlier. The Circuit Court, Washington County, Michael J. McElligott, J., dismissed former Boy Scout's negligence and respondeat superior claims, and he appealed. The Court of Appeals, 147 Or.App. 425, 936 P.2d 1011, affirmed, and former Boy Scout appealed. The Supreme Court, Gillette, J., held that: (1) allegations were sufficient to state claim against BSA for vicarious liability based on doctrine of respondeat superior, and (2) action was "based on conduct that constitutes child abuse," within meaning of statute extending limitations period for such actions.

Affirmed in part, reversed in part, and remanded.

West Headnotes

[1] Appeal and Error ⇐916(3)
30k916(3) Most Cited Cases

[1] Pretrial Procedure ⇐679
307Ak679 Most Cited Cases

In determining the sufficiency of plaintiff's complaint, Supreme Court accepts all well-pleaded allegations of the complaint as true and gives plaintiff the benefit of all favorable inferences that may be drawn from the facts alleged; conclusions of law alone, however, are insufficient. Rules Civ.Proc., Rule 18.

[2] Master and Servant ⇐329
255k329 Most Cited Cases

Complaint is sufficient to state a claim for vicarious liability based on the doctrine of respondeat superior if the allegations that it contains, if true, would establish that the employee's acts were committed within the scope of his or her employment.

[3] Master and Servant ⇐302(1)
255k302(1) Most Cited Cases

Three requirements that must be met to establish that an employee's conduct was within the scope of employment, for purposes of establishing claim for vicarious liability based on the doctrine of respondeat superior, are: (1) the conduct must have occurred substantially within the time and space limits authorized by the employment; (2) the employee must have been motivated, at least partially, by a purpose to serve the employer; and (3) the act must have been of a kind that the employee was hired to perform.

[4] Assault and Battery ⇐18
37k18 Most Cited Cases
(Formerly 80k12)

Allegations that former volunteer performed his duties as troop leader to manipulate and sexually assault former Boy Scout were sufficient to state claim against Boy Scout of America (BSA) for vicarious liability based on conduct of former volunteer, under doctrine of respondeat superior.

[5] Master and Servant ⇐329
255k329 Most Cited Cases
(Formerly 80k12)

Allegations that Boy Scouts of America (BSA) authorized and directed former volunteer's actions as troop leader and that volunteer sexually assaulted former Boy Scout while acting as troop leader were sufficient to allege master- servant relationship between volunteer and BSA, as was required to impose liability on respondeat superior theory against BSA for sexual assault, even though complaint did not contain specific allegation setting forth typical duties of a troop leader or what, specifically, volunteer was directed to do as a Boy

Scout leader.

[6] Master and Servant ⚿300
255k300 Most Cited Cases

One can be a servant, for purposes of imposing liability on master under respondeat superior theory, even though the service is performed gratuitously.

[7] Master and Servant ⚿301(1)
255k301(1) Most Cited Cases

Relevant inquiry in determining whether a master-servant relationship exists for respondeat superior purposes is whether the master has the right to control the actions of the servant.

[8] Limitation of Actions ⚿95(4.1)
241k95(4.1) Most Cited Cases

Even though liability of Boy Scouts of America (BSA) was based on doctrine of respondeat superior, former Boy Scout's action against BSA for sexual abuse by former volunteer troop leader was "based on conduct that constitutes child abuse," within meaning of extended statute of limitations, allowing action to be brought within three years from time former Boy Scout discovered the causal connection between sexual abuse and his injuries. ORS 12.117.

[9] Statutes ⚿188
361k188 Most Cited Cases

[9] Statutes ⚿208
361k208 Most Cited Cases

In interpreting a statute, Supreme Court looks at the text of the statute, in context, giving words of common usage their plain, natural, and ordinary meaning.

[10] Limitation of Actions ⚿95(4.1)
241k95(4.1) Most Cited Cases

Action for vicarious liability that alleges that an employee committed child abuse is an action "based on conduct that constitutes child abuse" under a plain, natural, and ordinary meaning of statute extending limitations period for actions based on child abuse. ORS 12.117.

[11] Limitation of Actions ⚿30
241k30 Most Cited Cases

Limitations period applicable to actions for vicarious liability based on the doctrine of respondeat superior is the same as that for the underlying tort.

****1158 *382** On review from the Court of Appeals. [FN*]

FN* Appeal from Washington County Circuit Court, Michael J. McElligott, Judge. 147 Or.App. 425, 936 P.2d 1011 (1997).

Kelly Clark, Lake Oswego, argued the cause and filed the brief for petitioner on review.

Thomas Christ of Mitchell Lange & Smith, Portland, argued the cause and filed the brief for respondents on review.

David Slader, Portland, argued the cause for amici curiae Oregon Trial Lawyers Association, Oregon Coalition Against Domestic and Sexual Violence, National Alliance of Sexual Assault Coalitions, and National Association of Counsel For Children. With him on the brief was Michael S. Morey.

Before CARSON, Chief Justice, and GILLETTE, VAN HOOMISSEN, DURHAM, and KULONGOSKI, Justices. [FN**]

FN** Leeson and Riggs, JJ., did not participate in the consideration or decision of this case.

***383** GILLETTE, J.

This case arises out of allegations by plaintiff that he was sexually abused by his Boy Scout leader, Swensen, approximately 30 years earlier, when plaintiff was a minor. In 1995, plaintiff brought the present action against Swensen as well as the Cascade Pacific Council and Boy Scouts of America (collectively, the Boy Scouts), claiming that Swensen had sexually abused him from 1965 until 1967. As against the Boy Scouts, the

complaint alleges that the Boy Scout organizations are vicariously liable for Swensen's tortious conduct under the doctrine of *respondeat superior* and that the Boy Scouts are directly liable to plaintiff for negligently failing to have implemented a screening program to prevent child abusers from becoming Boy Scout leaders.

The Boy Scouts moved, under ORCP 21, to dismiss the action on the grounds that both claims are time-barred and that the complaint fails to state ultimate facts sufficient to constitute a tort claim for vicarious liability based on the doctrine of *respondeat superior.* [FN1] The trial court granted the motion as to both claims. Plaintiff appealed.

FN1. Swensen ultimately settled all claims with plaintiff.

**1159 On appeal, the Court of Appeals affirmed the decision of the trial court. *Lourim v. Swensen,* 147 Or.App. 425, 936 P.2d 1011 (1997). That court concluded that plaintiff's direct liability negligence claim is time- barred, because the complaint fails to allege conduct "knowingly allowing, permitting or encouraging child abuse" by the Boy Scouts as required by ORS 12.117(1). *Id.* at 444, 936 P.2d 1011. The court further held that the complaint contains no facts from which it reasonably could be concluded that Lourim's sexual assaults on plaintiff were within the scope of his employment. *Id.* at 438, 936 P.2d 1011. In light of those holdings, the court did not consider whether the *respondeat superior* claim also is barred by the applicable statute of limitations. *Id.*

Plaintiff seeks review of the Court of Appeals' decision only insofar as it affirmed the trial court's order with respect to the dismissal for failure to state a claim based on *respondeat superior.* For the reasons that follow, we conclude *384 that the allegations contained in the amended complaint pertaining to the claim for vicarious liability against the Boy Scouts based on *respondeat superior* are sufficient to withstand an ORCP 21 motion to dismiss. We therefore reverse the decision of the Court of Appeals to that extent. We also hold that plaintiff's claim is not, on the record before us, time-barred as a matter of law.

[1] ORCP 18 A requires that a complaint contain "[a] plain and concise statement of the ultimate facts constituting a claim for relief without unnecessary repetition." In determining the sufficiency of plaintiff's complaint, we accept all well-pleaded allegations of the complaint as true and give plaintiff the benefit of all favorable inferences that may be drawn from the facts alleged. *Boise Cascade Corp. v. Board of Forestry,* 325 Or. 185, 196-97, 935 P.2d 411 (1997). Conclusions of law alone, however, are insufficient. *See Zehr v. Haugen,* 318 Or. 647, 655-56, 871 P.2d 1006 (1994) (allegations in complaint do not state ultimate facts sufficient to state a claim for breach of warranty despite inclusion of such conclusory terms as "warranty agreement").

The following facts are alleged in the complaint. From 1965 to 1967, Swensen was a volunteer Boy Scout leader, duly authorized by the Boy Scouts to act as such. As part of his volunteer duties with the Boy Scouts, he was directed to fulfill the role of troop leader or assistant troop leader to plaintiff's troop. Plaintiff and his family became close to Swensen, and Swensen was a frequent guest in their home. Swensen gained the trust and confidence of plaintiff's family as a suitable friend, guide, mentor, and role model to plaintiff, then an adolescent. By virtue of that relationship, Swensen gained the support, acquiescence, and permission of plaintiff's family to spend substantial periods of time alone with plaintiff.

Swensen also won the friendship and admiration of plaintiff himself. He was his mentor and role model. Swensen gained the opportunity to socialize with plaintiff and to spend time alone with him and together with other boys in remote places. Swensen also used his position of trust to gain the *385 opportunity to touch plaintiff physically. Eventually, Swensen committed a series of sexual assaults on plaintiff. At the time of those assaults, plaintiff was a minor.

The complaint describes Swensen's performance of his duties as troop leader in developing a trust relationship with plaintiff and his family, together with the eventual sexual assaults, as "[m]anipulations." Plaintiff alleges in the complaint that the manipulations were committed in connection with Swensen's performance of his duties as troop leader:

"The [m]anipulations * * * were committed within the time and space limits of his

> responsibilities as troop leader, were committed out of a desire, at least initially and partially, to fulfill his duties as troop leader, and were generally actions of a kind and nature which Swensen was required to perform as troop leader."

[2][3] A complaint is sufficient to state a claim for vicarious liability based on the doctrine of respondeat superior if the allegations that it contains, if true, would establish that the employee's acts were committed within the scope of his or her employment. *Stanfield v. Laccoarce,* 284 Or. 651, 588 P.2d 1271 (1978). In *Chesterman v. Barmon,* 305 Or. 439, 442, 753 P.2d 404 (1988), this court set out three requirements that must be met to ****1160** establish that an employee's conduct was within the scope of employment: (1) the conduct must have occurred substantially within the time and space limits authorized by the employment; (2) the employee must have been motivated, at least partially, by a purpose to serve the employer; and (3) the act must have been of a kind that the employee was hired to perform. Applying that framework in this case, the Court of Appeals held that the complaint failed to state a claim, because

> "[t]here simply are no allegations of fact that satisfy all three of the elements of vicarious liability. In particular, there are no facts from which it reasonably could be concluded that Swensen's sexual assaults were acts 'of a kind [an] employee was hired to perform.' "

Lourim, 147 Or.App. at 438, 936 P.2d 1011 (*quoting Stanfield,* 284 Or. at 655, 588 P.2d 1271).

***386** In *Fearing v. Bucher,* 328 Or. 367, 977 P.2d 1163 (1999), we addressed whether a complaint against the Archdiocese of Portland in Oregon (Archdiocese) for vicarious liability for a priest's acts of child abuse was sufficient to state a claim. The allegations contained in that complaint were not materially different from those in plaintiff's complaint here. The Court of Appeals in *Fearing* relied on the same reasoning that it employed in the present case to affirm the trial court's order dismissing the claim. In that case, we held that, in the intentional tort context, it usually is inappropriate for the court to base its decision regarding the adequacy of allegations supporting a claim for vicarious liability based on the doctrine of *respondeat superior* on whether the intentional tort *itself* was committed in furtherance of any interest of the employer or involved the kind of activity that the employee was hired to perform. We held that the proper focus rather was whether the complaint contained sufficient allegations of employee conduct that arguably *resulted in* the acts that led to plaintiff's injury. We concluded that a jury reasonably could infer that the priest's conduct in cultivating a trust relationship with the plaintiff was motivated, at least in part, by a desire to further the interests of the Archdiocese, that that conduct was of a kind that the priest was hired to perform, and that that conduct led to the sexual assaults. Accordingly, we held that the complaint was sufficient to state a claim for vicarious tort liability based on the doctrine of *respondeat superior,* and we reversed the decision of the Court of Appeals. 328 Or. at 388, 977 P.2d at 1161.

[4] The same is true in the present case. Accepting the allegations in the complaint as true and drawing all reasonable inferences in the plaintiff's favor, a jury reasonably could infer that the sexual assaults were merely the culmination of a progressive series of actions that involved the ordinary and authorized duties of a Boy Scout leader. Additionally, a jury could infer that, in cultivating a relationship with plaintiff and his family, Swensen, at least initially, was motivated by a desire to fulfill his duties as troop leader and that, over time, his motives became mixed. A jury also reasonably could infer that Swensen's performance of his duties as troop leader with respect to plaintiff and his family was a necessary precursor to the sexual abuse and that the assaults were ***387** a direct outgrowth of and were engendered by conduct that was within the scope of Swensen's employment. Finally, a jury could infer that Swensen's contact with plaintiff was the direct result of the relationship sponsored and encouraged by the Boy Scouts, which invested Swensen with authority to decide how to supervise minor boys under his care. Based on the foregoing, we conclude, as we did in *Fearing,* that the amended complaint contains allegations sufficient to satisfy all three *Chesterman* requirements. The Court of Appeals erred in concluding otherwise.

[5] Notwithstanding that conclusion, the Boy Scouts argue that dismissal of the complaint is proper on a ground not considered by the Court of Appeals and not present in *Fearing.* They assert that the doctrine of *respondeat superior* is premised on the existence of a master-servant relationship which, they argue, is not adequately alleged in the

present complaint. For the following reasons, we disagree.

[6][7] It is well established that one can be a servant even though the service is performed **1161 gratuitously. [FN2] *Kowaleski v. Kowaleski,* 235 Or. 454, 458-59, 385 P.2d 611 (1963). The relevant inquiry in determining whether a master-servant relationship exists for *respondeat superior* purposes is whether the master has the right to control the actions of the servant. *Id.* at 458-59, 385 P.2d 611. Therefore, in evaluating the sufficiency of plaintiff's *respondeat superior* claim, we must determine whether plaintiff adequately has alleged that the Boy Scouts had the right to control Swensen's actions.

> FN2. Moreover, although the doctrine of charitable immunity historically protected charitable institutions from vicarious liability for the torts of their servants, that doctrine was abolished in *Hungerford v. Portland Sanitarium,* 235 Or. 412, 416, 384 P.2d 1009 (1963).

The complaint alleges that, "[a]t all relevant times, Swensen was a volunteer Boy Scout leader, duly authorized by the Boy Scouts and the Cascade Pacific Council to act in that capacity" and that, "[a]s part of his volunteer duties with the Boy Scouts and the Cascade Pacific Council, Swensen was directed to fulfill the role of troop leader or assistant troop leader to [plaintiff's] troop." Again, for the purpose of ruling on the Boy Scouts' ORCP 21 motion to dismiss, we accept those allegations as true and give plaintiff the benefit *388 of all reasonable inferences that may be drawn from those allegations.

A jury reasonably could infer from the allegation that "Swensen was directed to fulfill the role of troop leader or assistant troop leader to [plaintiff's] troop" (emphasis added) that the Boy Scouts directed his activities and, thus, that the Boy Scouts had the right to control Swensen's activities as troop leader or assistant troop leader. [FN3] In this regard, although the complaint does not contain a specific allegation setting forth the typical duties of a troop leader or what, specifically, Swensen was directed to do as a Boy Scout leader, such an allegation is unnecessary. It is sufficient, we believe, that the complaint allege that Swensen did certain acts while acting as a Boy Scout leader and that the plaintiff was injured while Swensen was acting in that capacity. The connection between the two fairly may be inferred. Other inferences might be drawn instead, but that is a matter for the trier of fact. *Stanfield,* 284 Or. at 655, 588 P.2d 1271. We hold, therefore, that the complaint is sufficient to state a claim against the Boy Scouts for liability based on the doctrine of *respondeat superior.*

> FN3. The Boy Scouts cite several cases from other jurisdictions in which courts have concluded that neither the Boy Scouts nor the regional councils *in fact* have the right to control the activities of individual troop leaders. Those cases are irrelevant to the present inquiry, because they all were decided after the presentation of evidence on the subject of control. As noted, our review of the matter is confined to the allegations in the complaint and the reasonable inferences that may be drawn from them. We do not speculate whether plaintiff ultimately might be able to prove the existence of a right of control on the part of the Boy Scouts.

[8] We turn to the issue not addressed by the Court of Appeals: The timeliness of the action under ORS 12.117. That statute provides:

"(1) Notwithstanding [statutory sections not relevant here], an action based on conduct that constitutes child abuse or conduct knowingly allowing, permitting or encouraging child abuse accruing while the person who is entitled to bring the action is under 18 years of age shall be commenced not more than six years after the person attains 18 years of age, or if the injured person has not discovered the injury or the causal connection *389 between the injury and the child abuse, nor in the exercise of reasonable care should have discovered the injury or the causal connection between the injury and the child abuse, not more than three years from the date the injured person discovers or in the exercise of reasonable care should have discovered the injury or the causal connection between the child abuse and the injury, whichever period is longer.

"(2) As used in subsection (1) of this section,

'child abuse' means any of the following:
" * * * * *
"(c) Sexual abuse, as defined in ORS chapter 163, when the victim is a child."

The Boy Scouts argue that, in the event that we hold that the vicarious liability claim is adequately pled, we should remand the case to the Court of Appeals for consideration **1162 of the proper interpretation of the foregoing statute. Remand for that purpose is unnecessary, however, because we addressed that precise issue in *Fearing.* In that case, under circumstances very similar to those presented here, we held that the complaint, seeking damages against the Archdiocese for injuries that the plaintiff suffered 20 years previously arising out of sexual abuse committed by a priest, was not time-barred as a matter of law. Although liability in the Archdiocese was based on the doctrine of *respondeat superior,* we concluded that the action was one "based on conduct that constitutes child abuse," because the Archdiocese would be liable, if at all, for damages for injuries suffered as a result of the child abuse. 328 Or. at 378-79, 977 P.2d at 1168-1169. Accordingly, ORS 12.117 effectively extended the statute of limitations to three years from when the plaintiff discovered the causal connection between the child abuse and his injuries.

Similarly, plaintiff's claim for vicarious liability against the Boy Scouts is not, on the record before us, time-barred as a matter of law. At this point in the proceedings, it is undisputed that Swensen's alleged sexual assaults constitute "child abuse" within the definition of that term in ORS 12.117(2)(c) and that the complaint alleges that the action was brought within three years of plaintiff's discovery of the causal connection between the child abuse and his injuries. [FN4] *390 As in *Fearing,* the fact that the Boy Scouts' liability is vicarious and based on the doctrine of *respondeat superior* does not alter our conclusion that the action is one "based on conduct that constitutes child abuse" and, therefore, is subject to the extended statute of limitations set out in ORS 12.117 .

FN4. The Boy Scouts did assert in the Court of Appeals that the allegation in the complaint that "[o]n or about April 1994 plaintiff discovered the causal connection between the Assaults and the damages he suffered as a result of the Assaults" was a legal conclusion and not a statement of ultimate fact. We disagree. Whether plaintiff actually discovered the connection in April 1994 or at some other time is a question of fact, to be proved or disproved at trial.

In the Court of Appeals, the Boy Scouts argued that application of the extended limitations period in ORS 12.117(1) to claims that a defendant is vicariously liable for abuse perpetrated by someone else would render surplusage that part of the statute that applies to "conduct knowingly allowing, permitting or encouraging child abuse," because an action based on conduct allowing or permitting child abuse also is an action "based on" child abuse. Instead, the Boy Scouts advocated an interpretation of the phrase, "an action based on conduct constituting child abuse," that would extend the statute of limitations only for actions directly against the alleged perpetrator.

[9][10][11] In interpreting a statute, this court employs the methodology set out in *PGE v. Bureau of Labor and Industries,* 317 Or. 606, 859 P.2d 1143 (1993). At the first level of our analysis, we look at the text of the statute, in context, giving words of common usage their plain, natural, and ordinary meaning. *Id.* at 610-11, 859 P.2d 1143. An action for vicarious liability that alleges that an employee committed child abuse is an "action based on conduct that constitutes child abuse" under a plain, natural, and ordinary meaning of that phrase. The Boy Scouts' interpretation, by contrast, "omits what has been inserted," in violation of the statutory directive found in ORS 174.010. Additionally, as contextual support, we note that there is no explicit reference to a statute of limitations for actions for vicarious liability based on the doctrine of *respondeat superior.* The limitations period is the same as that for the underlying tort.

The decision of the Court of Appeals is reversed in part and affirmed in part. The judgment of the circuit court is reversed in part and affirmed in part, and the case is remanded to the circuit court for further proceedings.

977 P.2d 1157, 328 Or. 380

END OF DOCUMENT

See page 4

ALL the News about Mormons, Mormonism and the LDS Church

MORMON NEWS

All the News about Mormons, Mormonism and the LDS Church

Posted 10 Sep 2001 For week ended September 07, 2001

News about Mormons, Mormonism, and the LDS Church

Sent on Mormon-News: 09Sep01
By Kent Larsen

Church Settles Portland Abuse Case for $3 Million

SALT LAKE CITY, UTAH -- Citing unfavorable rulings by a local judge that will take protracted appeals and significant expense to reverse, The Church of Jesus Christ of Latter-day Saints agreed Tuesday to settle a lawsuit over child abuse by a church member. The Church agreed to pay $3 million to 22-year-old Jeremiah Scott, who claims that his then-Bishop knew that Franklin Richard Curtis was a pedophile and failed to tell his mother of the man's history when she sought advice on taking Curtis into their home. The case also breaks new ground because the Church has for the first time disclosed the amount and

QUOTE:

Missionaries are unique in some respects. But they are clearly an identifiable group who are serving overseas for a predetermined time. They are identical to

Continuing Coverage of:
Boston Temple
School Prayer
Julie on MTV
Robert Elmer Kleasen

About Mormon News

News by E-Mail
Daily News 5-10 Msgs daily
Daily Digest 1-2 Msgs daily
Weekly Summary

Participating
Submitting News
Submitting Press Releases
Volunteer Positions

Bad Link?

substance of the settlement of a child abuse case.

Franklin Richards Curtis, who was 87 at the time of the abuse, had been excommunicated by the Church in Pennsylvania for previous abuse. Church records indicate that he was rebaptized in 1984, but as a member of the Rocky Butte Ward in Portland he then abused five additional children. Although the Bishop of that ward confronted him, and Curtis confessed, the Bishop never reported the abuse to the police, and only reported the abuse to Salt Lake City when parents in his ward complained.

Curtis then moved to the Brentwood ward, where, the Scott's allege, he told then-Bishop Gregory Lee Foster that he had repented of previous abuse.. Bishop Foster later called Curtis to teach Sunday School, and he eventually met Scott's mother, Sandra, and in 1990 arranged to stay with Scott family. When asked if it was a good idea to bring Curtis into their home, Bishop Foster told Sandra Scott no, giving financial reasons.

But Sandra Scott brought Curtis in anyway, and even had him share a double-bed with her then-11-year-old son. As a result, Jeremiah Scott was abused on a daily basis for about six months, the lawsuit alleges.

When the abuse was finally discovered, Sandra Scott called to warn Bishop Foster, who, she says, told her he had known about Curtis' previous abuse, but couldn't tell her about it because Curtis had repented. However, the Church says that Sandra Scott misunderstood Bishop Foster and that he was only trying to say that he had already been told of her son's abuse and wanted to express his sympathy.

But the Scott's attorney's still maintained that the Church knew, "It's the institution that knew," says attorney David Slader, one of Scott's attorneys. "A church owes a very, very special and high duty to the children of its parishoners, the children whose souls it has taken responsibility for." He also said that the church is "the most meticulous keeper of records in the history of religion," and should have made information about Curtis' past abuses available to Bishop Foster.

In 1994 Curtis was convicted of the sexual abuse of Jeremiah Scott, and died the next year while serving time. In 1998 the Scott's filed a lawsuit blaming the Church for the abuse and alleging that the Church knew of Curtis' prior abuse and should have informed them and kept Curtis away from children in Church.

However, as the case prepared for a trial this Fall, the Church lost several rulings which made its defense in the case more difficult. These included rulings that:

- The church could be held liable for conduct committed by a member even though it didn't happen as part of a Church activity or on Church premises.
- The Church must produce records of the confessed abuse by other members in the Portland area, even though those confessions didn't have anything to do with the Scott case.
- The Scotts could argue that Curtis, as a high priest, holds the position of clergy, even though he didn't hold a formal leadership position in the Church.
- The Church must provide financial statements prior to the trial so that the court can ascertain its ability to pay, and how big a penalty is justified in the case.

The Church announced the settlement on Tuesday, as Von Keetch, the attorney who has represented the Church in child abuse cases, met with reporters from many newspapers and broadcast media to answer questions about the case. Keetch admitted that the Church normally kept the details of settlements confidential, but

decided in this case to make the settlement public, saying that the "church has learned by experience that these cases come in to the press through the plaintiffs. The church has a story it wanted to get out as to the reason its settling, and that's why it decided to go forward as it did."

Keetch said that the church "settled this case solely on the basis of litigation economics" and says the church "continues to expressly and emphatically deny that it owed any legal liability" to the Scotts. He also indicated that the most troubling of the rulings against it was the order to produced confidential records of child abusers who had confessed. Added to the other rulings, Keetch says, "turned a weak claim into a potentially lengthy and expensive legal battle, involving multiple appeals and an eventual retrial."

Caught by surprise with the Church's announcement, Sandra Scott and the lawyers representing her son went ahead and held a planned news conference near Temple Square in Salt Lake City where they attacked the Church, calling it a "sanctuary for pedophiles." Sandra Scott charged that the Church "is so concerned about its public image that it hides the truth from me that it had recycled a known pedophile into a position of authority in a church where he had unlimited

access to young children."

Scott, who is writing a book about her experiences, says she has made it her mission to speak out about the way that the church has handled sexual abuse reports. The lawyers claim that this is just the first step in "the long struggle to expose the Mormon Church's epidemic pattern of providing a safe and secret haven for child molesters."

They claim that Jeremiah Scott was just one of 21 victims that Curtis abused in four different states. They also say that the Church has faced more than 200 cases involving alleged mishandling of child sexual abuse reports, and had planned to use these cases to claim that the church had a pattern of failing to report, warn members about and prevent the abuse of children. The cases include several high-profile cases that have made the newspapers, including a West Virginia lawsuit filed in 1996 by attorney Michael Sullivan and a Texas lawsuit filed by attorney Clay Dugas.

But Keetch notes that many of these claims date from the 1980s, before the Church put in place a system for annotating the records of Child abusers in the mid 1990s, "They are ... basically criticizing us that today we cover up child abuse based on events from the 1980s," said Keetch. "If

today I confess child abuse to priesthood leaders, my membership record will be annotated. I may be forgiven and I may be able to repent and come back and be a member of the church, but what I can't do is ever work with children again."

Keetch also notes that the Church has changed other procedures, including putting an instruction in the General Handbook of Instructions that members with records flagged for child abuse should not be put in positions involving children. It also offers training for clergy on child abuse and produced a training video on the subject. Local leaders also have a hotline available where LDS family service counselors, lawyers and other specialists answer questions and determine what steps should be taken to comply with child abuse reporting laws and to help victims.

He disputed the claim that the Church doesn't protect children, "There is no religious organization which does more to protect children - or which reaches out more to assist children who have been physically or sexually abused - than does The Church of Jesus Christ of Latter-day Saints. The church strongly believes that victims of child abuse need professional counseling, love, safety and other forms of assistance. It provides assistance and helps victims of child

abuse in dozens of different ways. It condemns child abuse in the strongest terms and is constantly working to assist its members and others with this devastating societal problem."

Sources:

Mom: Bishop Knew of Pedophile
Salt Lake Tribune 6Sep01 N1
By Elizabeth Neff: Salt Lake Tribune

Mormon Church Settles $3 Million Sex Suit
Portland OR KGW TV8 (AP) 5Sep01 N1

LDS Church Settles Suit, Paying $3M
Salt Lake Tribune 5Sep01 N1
By Elizabeth Neff: Salt Lake Tribune
Child-molestation case was allegedly covered up

Child Abuse Cover-Up Costs Mormon Church $3 Million
PRNewswire 5Sep01 N1
David Slader, Esq. Press Release

Sex Abuse Lawsuit Is Settled by Mormons for $3 Million
New York Times 5Sep01 N1
By Gustav Niebuhr

Lawyer blasts LDS Church
Deseret News 5Sep01 N1
By Carrie A. Moore: Deseret News religion editor

Church settles abuse case

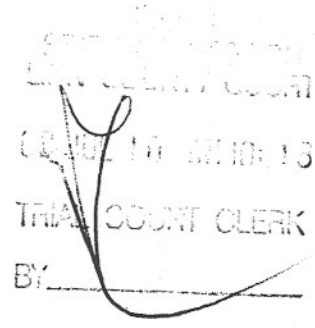
Deseret News 4Sep01 N1
By Carrie A. Moore: Deseret News religion editor
LDS officials agree to pay $3 million

See also:

Oregon Abuse Lawsuit Seeks LDS Church Financial Information

LDS Church Fighting Judge's Order to Provide Child Abuse Records

JULY 9, 2003



IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA MORELY, JESSICA SCHROEDER, AND CHRISTINA VIZENOR,

Plaintiffs,

v.

NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC., et al,

Defendants.

No. 03-0431

DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF ORCP 21 MOTIONS

A. Introduction

As the Court is aware, defendants argue that, as a matter of law, they do not have a duty to prevent "member on member" sex abuse involving members of their congregations that occurs on private property when church activities are not occurring. The Court should note that this is a separate "no duty" argument that does **not** involve the First Amendment. The "existence of a duty is a question of law for the court." Cook v. School Dist. UH3J, 83 Or App 292, 295, 731 P2d 443 (1987).

In response, plaintiffs' Texas attorneys cite several cases that do not involve religious defendants or claims of "member on member" abuse.

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Rather, they cite generic cases for the proposition that defendants had a duty to warn of a foreseeable harm, and that defendants allegedly breached an assumed duty to protect plaintiff. Plaintiffs' citations to cases not factually on point confirm the accuracy of defendants' contention that the alleged facts and claims asserted by plaintiffs present an issue of first impression for this Oregon court. No Oregon court has held that such allegations state a viable claim for relief. As plaintiff concedes through citing many non-Oregon cases, in the absence of any Oregon caselaw directly on point, decisions from other jurisdictions should be considered. Donaca v. Curry County, 77 Or App 677, 680, 714 P2d 265 (1986), rev'd on other grounds, 303 Or 30, 734 P2d 1339 (1987) (stating that because "this is a case of first impression, we look to other jurisdictions to see how they have resolved similar claims").

The one case factually on point is the case cited and submitted by defendants, Bryan R. v. Watchtower Bible and Tract Society of New York, Inc., 738 A2d 839 (Maine 1999), cert. denied, 528 US 1189 (2000). As the Court is aware, in that case, the Maine Supreme Court held that, as a matter of law, organizations (including the Jehovah's Witnesses church) do not have a general duty to protect their members from sexual abuse by other members, even when the organization allegedly knew of prior abuse charges involving a member, and thus dismissed the case at the pleading stage. The court held that, just like the present case, "the complaint does not allege that there were aspects of [plaintiff's] relationship with the church that were distinct from those of its relationships with any other members, adult or child, of the church. The creation of an amorphous common law duty on the part of a church or other voluntary organization requiring it to protect its members from each other would give rise to 'both unlimited liability and liability out

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of all proportion to culpability.'" Id. (citations omitted).

As noted, the "existence of a duty is a question of law for the court." Cook, 83 Or App at 295. Therefore, the Court should hold that, as a matter of law, defendants do not owe any such duty to plaintiffs for the sound reasons stated by the court in Bryan R. Thus, defendants' Motion to Dismiss the First Amended Complaint should be granted, just like the defendants' motion against the pleadings in Bryan R.

This ruling would also be consistent with the recent rulings of Benton County Circuit Court Judge Locke Williams in Davidow v. Watchtower, et al., Benton County Circuit Court Case No. 02-10345. As the Court is aware, a copy of Judge Williams' Letter Opinion concerning the ORCP 21 Motions in Davidow is attached as Exhibit A to defendants' Motions for the Court's review.

Moreover, plaintiffs' Response to defendants' ORCP 21 Motions against plaintiffs' First Amended Complaint fails to explain how their First Amended Complaint states legally cognizable claims for relief. Instead, it presents a wholly new legal claim that is not pled in the First Amended Complaint.

Even assuming the truth of plaintiffs' new allegations, the Court should still grant defendants' Motion to Dismiss because (1) plaintiffs may not respond to a ORCP 21A(8) motion to dismiss by asserting a new liability theory in their response memorandum; (2) even if this new theory of liability is considered, it also fails to state a claim upon which relief may be granted; and (3) the claims asserted in the First Amended Complaint fail as a matter of law.

Also, and in the alternative, plaintiff Christina Vizenor's claims

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should be dismissed because the allegations show that her claims cannot be established as a matter of law as they arise from alleged abuse by her grandfather, Don Serjeant. Any such relationship between plaintiff and Mr. Serjeant that allegedly allowed him to abuse her is a family relationship for which defendants are not liable.

B. Plaintiffs' New Theory of Liability

In their Response, plaintiffs advance a new theory of liability that is not pled in their First Amended Complaint. In short, plaintiffs now claim that Mr. Serjeant was a "ministerial servant," *i.e.*, a "leader" in the North Albany Congregation, rather than simply a "male member" of the congregation (all of whom serve in the "leadership"). As this change in theory was not pled in the First Amended Complaint, it should not be considered by the Court for purposes of ruling on defendants' Motions to Dismiss.

When deciding an ORCP 21 motion to dismiss, the Court "cannot base [its] decision on statements in plaintiffs' brief; rather, [it is] limited to the allegations in the [operative] complaint." Gregory v. Lovlien, 174 Or App 483, 493, 26 P3d 180, rev. denied, 333 Or 74 (2001).

In Navas v. City of Springfield, 122 Or App 196, 857 P2d 867 (1993), the court considered whether it was appropriate for a trial court to consider a theory advanced by the plaintiff for the first time in his response to the defendant's motion to dismiss. In his pleadings, the plaintiff sought relief under a statutory procedure that expressly excluded his claim. However, when faced with a motion to dismiss, plaintiff orally advanced a new breach of contract claim and the trial court permitted the argument, rationalizing that it would have to address the issue anyway. Id. at 200.

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On appeal, the court reversed the trial court's decision and held that the "[d]efendant is entitled to rely on the theory pleaded by the plaintiff to frame the issues to be tried. The rule is that a complaint must separately state each claim and within each claim, it must identify alternative theories of recovery as separate counts." Id. at 201. The court recognized that the "trial court has no authority to render a decision not framed by the pleadings" unless the "implied consent" requirements of ORCP 23B are met. Because defendant repeatedly objected to the change in theory, the court held that defendant did not consent to the purported amendment of the complaint. Id.

In this case, plaintiffs presented one theory as the basis for their case, but now have charted a new course in their Response to defendants' ORCP 21 Motion to Dismiss. In the First Amended Complaint, plaintiffs allege that "**all** male members, whether Elders, Ministerial Servants, Pioneers and/or Publishers, are appointed and empowered by the GOVERNING BODY to carry out [the] responsibility" for the development, protection, and discipline of the organization. (First Amended Complaint at ¶ 20 (emphasis added).) Plaintiffs also allege that defendants "authorize male members to develop relationships of trust with women, children and families and to assume the role of counselor and advocate for any problems that might arise." Id. at ¶ 21. Thus, in plaintiffs' view, all "male members" of the church, including Mr. Serjeant, are vested with "leadership authority" and may become "leaders of good standing in the organization." Id. at ¶¶ 23-24.

This characterization of the Jehovah's Witnesses is, of course, contested by defendants because it does not make sense that all male members of a church could be characterized as "leaders," and because of the underlying assumption this leads to – namely, that a religious organization

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has a duty to protect its regular members from one another. According to this theory, any church may be held liable for the actions of any regular male member simply on the basis of his gender if he were alleged to have abused another member of the church. Plaintiffs do not limit this alleged duty to abuse taking place on church property, on a church outing, or by any other factor.

Defendants have shown that no court has ever held a religious organization to have such a broad duty, and that the Maine Supreme Court in Bryan R. specifically addressed this theory and rejected it in a lawsuit against the Jehovah's Witnesses. As in the present case, the plaintiff in Bryan R. attempted to characterize the alleged abuser, Baker, as something more than just a regular member of the congregation. According to the plaintiff, Baker was placed "in a position of leadership and respect." Bryan R., 738 A2d at 842.

However, the Maine Supreme Court recognized that the plaintiff (just like plaintiffs in the present case) did not allege that Baker held a "clerical" position (such as priest, minister, pastor, elder, etc.); did not allege that Baker was placed in a position of control and supervision of children; and did not allege that the church knowingly placed Baker in a position where he could sexually abuse children in a church setting. Id. at 843. Thus, in examining Baker's status in the congregation, the court found that Baker was "not different in quality from any other member in good standing of the church." Id.

Plaintiffs in the present case now seem to abandon their argument that a religious organization is responsible for the actions of all of its regular male members, and instead assert the new argument that Mr. Serjeant was a

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"ministerial servant" or a "leader" in the North Albany Congregation. (Plaintiffs' Response at p. 6.) While the merits of this argument will be discussed below, it is important to note that plaintiffs recognize that this shift in theory necessitates an amendment of their pleadings by stating that they "are in the process of amending their Complaint to reflect this and other information they have discovered." Id. at p. 6, n. 1.

Thus, plaintiffs acknowledge that their new theory that defendants may be liable for the alleged misconduct of Mr. Serjeant as a "ministerial servant" is not properly before the Court in the context of defendants' Rule 21 Motions. Like the plaintiff in Navas, plaintiffs cannot urge a new theory of their case in their Response Memorandum to avoid a motion to dismiss.

For the same reason, the Court should reject plaintiffs' argument that their hearsay, unauthenticated exhibits allegedly establish that defendants admit owing a fiduciary duty to plaintiffs, and that defendants assumed this duty. (Plaintiffs' Response at p. 27, lines 23-25.) This is a **Rule 21** motion – hearsay exhibits that go outside the allegations of the First Amended Complaint cannot be considered when deciding whether plaintiffs state a claim for relief against defendants. Gregory, 174 Or App at 493. Also, as noted, whether a duty exists or not is a question of **law** for the Court to decide, not an issue of fact. Cook, 83 Or App at 295.

ORCP 23A allows plaintiffs to amend their Complaint once as a matter of course before a responsive pleading is served. Plaintiffs took advantage of this provision and filed their First Amended Complaint. However, plaintiffs have not sought leave to further amend their Complaint, nor have defendants consented to such an amendment. Additionally,

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defendants have not given their "explicit or implied consent" to try this new theory (even though they will address it below).

Thus, the Court should not consider issues that have not been presented in the First Amended Complaint when deciding defendants' Rule 21 Motions, and defendants' Motion to Dismiss the First Amended Complaint should be granted.

C. Plaintiffs' new liability theory also fails to state a claim upon which relief may be granted.

Even if the Court considers plaintiffs' new liability theory and related allegations, it also fails as a matter of law. Plaintiffs now argue that defendants may be held liable for Mr. Serjeant's actions because he was a "ministerial servant" in a "leadership position" in the North Albany Congregation. While "ministerial servants" may have a measure of trust and some responsibility in congregations of Jehovah's Witnesses, the U.S. Supreme Court and the U.S. Congress have already addressed the legal question of who is in a "leadership position" in a congregation of Jehovah's Witnesses.

The U.S. Supreme Court and U.S. Congress have adopted a strict definition of the term "leader" concerning the Jehovah's Witnesses. In Cox v. United States, 332 US 442 (1947), the Court considered the cases of Cox, Thompson, and Roisum, three Jehovah's Witnesses. Each of these men sought classification as "regular or duly ordained ministers" under the Selective Training and Service Act of 1940 ("STSA"). This classification would have exempted them completely from the requirements of the STSA. Id. at 443.

In determining who constituted a "regular or duly ordained

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minister" of Jehovah's Witnesses, the Court considered the responsibilities of each of these men in their local congregations. In Cox's case, the evidence before his local board was "an affidavit of a company servant,[1] Cox's church superior ***, stating that Cox 'regularly and customarily serves as a minister by going from house to house and conducting Bible Studies and Bible Talks.'" Id. at 444. Also, Cox presented an affidavit stating that he was "able to average 150 hours per month [in his] ministerial duties without secular work," and that "[his] entire time will be devoted to preaching the Gospel as a pioneer." Id. at 444-45.[2]

Thompson stated in his questionnaire that he had operated a grocery store for 13 years. To support his ministerial exemption, he submitted an affidavit from his "Company Servant" stating that he had devoted 519.5 hours to "field service" (door-to-door evangelism) in the previous 12 months; that he was an "assistant company servant" and "school instructor;" and that he had served his congregation as an "advertising servant" and "book study conductor." Id. at 445-46.

Roisum's evidence was that he was "an assistant company

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[1] Justice Douglas described the claims of these three men to "ministerial status" as being supported by "affidavits of the immediate superiors in the local group" or their "company servants." Cox, 332 US at 456 (Douglas, J., dissenting). Since the early 1970s, each congregation of Jehovah's Witnesses has been supervised by a body of "Elders" instead of by one individual formerly known as a "Company Servant," "Presiding Minister," or "Congregation Servant." See First Amended Complaint at p. 7, line 3 (referring to "Elders of the Defendants Bothell Congregation"); p. 8, line 19 (referring to "Elders of the Defendant North Albany Congregation").

[2] A "Pioneer" is a member of the congregation, male or female, who in the 1940s was expected to devote 100 hours each month to the field ministry or door-to-door evangelism of Jehovah's Witnesses. See Dickinson v. United States, 346 US 389 (1953).

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servant, a back call servant, and a book study conductor." Id. at 447. Roisum also submitted an affidavit from his "Company Servant" showing that "the number of hours which Roisum had spent in religious activities for six months ranged from as little as 11 hours per month to as many as 69, averaging about 40." Id.

In rejecting these men's claims that they were entitled to the "ministerial" exemption, the Supreme Court in Cox held as follows:

> Our examination of the facts, as stated herein in each case, convinces us that the board had adequate basis to deny to Cox, Thompson and Roisum classification as ministers, regular or ordained. *** The documents show that Thompson and Roisum spent only a small portion of their time in religious activities, and this fact alone, without a far stronger showing than is contained in either of the files of the registrants' leadership in church activities and the **dedication of their lives to the furtherance of religious work**, is sufficient for the board to deny them a minister's classification. As for Cox, the documents suggest but do not prove that Cox spent full time as a "pioneer" between October 1942 and May 1944 when he was ordered to camp.

Id. at 451 (emphasis added).

Thus, the Court in Cox held as a matter of law that the petitioners, despite extensive involvement in religious activities, were not in "leadership positions" for the purposes of the STSA.

The U.S. Congress reacted to the holding in Cox and addressed the dissenting justices' concerns by revising the STSA's definitions of "regular and duly ordained ministers" in the re-titled Selective Service Act of 1948 ("SSA"). In the Senate Report accompanying the SSA, Congress noted that the ministerial exception "is a narrow one, intended for the leaders of the various religious faiths and not for the members generally." (S. Rep. No. 80-1268 (1948), reprinted in 1948 U.S.C.C.A.N. 1989, 2001 (emphasis added).)

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Thus, Congress supported the majority's view in Cox that narrowly limited the definition of a "leader" of Jehovah's Witnesses.

Less than six years later, the Supreme Court revisited the definition of a "leader" in Dickinson, another case concerning Jehovah's Witnesses. Like the petitioners in Cox, Dickinson sought to be classified as a "regular or duly ordained minister" under the Universal Military Training and Service Act ("UMTSA"), 50 U.S.C.A. Appendix § 456(g).[3] However, this time, the Court recognized that Dickinson was in a "leadership position" and met the prima facie definition of a "duly ordained minister" under the UMTSA.

Dickinson, unlike the petitioners in Cox, was actually the "Company Servant" or "Presiding Minister" (now "Elder")[4] of the Coalinga, California Jehovah's Witnesses congregation. Dickinson, 346 US at 393. Dickenson also established that in August, 1949, he had become "a **full time** 'pioneer' minister, devoting **150 hours each month** to religious efforts." Id. at 392 (emphasis added). At that time, "he dedicated approximately 100 hours each month to actual missionary work--delivering public sermons, door-to-door preaching, [and] conducting home Bible studies." Id. at 393. The Court described his duties as "preaching," "planning sermons," "conducting meetings," "presiding over meetings," and "instructing" others in the congregation. Id.

The Court in Dickinson thus held as follows:

> We think Dickinson made out a case which

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[3] The title was changed from the "Selective Service Act of 1948" to the "Universal Military Training and Service Act" prior to the Dickinson decision. Dickinson, 346 US at 389, n. 1.

[4] See n. 1, *supra*.

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> meets the statutory criteria. He was ordained in accordance with the ritual of his sect and, according to the evidence here, he meets the vital test of regularly, **as a vocation**, teaching and preaching the principles of his sect and conducting public worship in the tradition of his religion.

Id. at 395 (emphasis added).

Thus, Dickinson, as a "Company Servant" or "Elder" of the Coalinga Congregation, and as a "Pioneer," was recognized by the Court as a "leader" of Jehovah's Witnesses.

The Cox and Dickinson decisions set the stage for many other challenges in the 1950s, 1960s and 1970s, when other Jehovah's Witnesses also sought to be classified as "leaders" under the Selective Services Acts. In one case, United States v. German, 353 F Supp 1197 (MD Penn 1973), defendant German attempted to use his appointment as a "ministerial servant" to support his claim that he was entitled to an exemption. The court noted that in "August of 1972, the Defendant was appointed a ministerial servant in the Slatington Congregation, which included secretarial and financial duties." Id. at 1202. However, the court ruled that German's status as a "ministerial servant" was insufficient for him to be considered a "leader" under the Act.

According to U.S. Supreme Court precedent, therefore, a "ministerial servant" (such as Mr. Serjeant was alleged to have been) is not in a "leadership position" in a congregation of Jehovah's Witnesses. Plaintiffs allege that Don Serjeant was a "ministerial servant" in the North Albany Congregation and that as such, he was in a "leadership position" in the congregation. (Plaintiffs' Response at p. 5.) According to plaintiffs' response, a "ministerial servant's" responsibilities include "accounts, literature, magazines, subscriptions, [and] territories." Id. at p. 8.

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Additionally, a "ministerial servant" may be used "as an attendant, microphone handler, to operate sound equipment, to represent the congregation in prayer, or to present 'Announcements' on the Service Meeting." Id. Finally, he may be a "reader" at some meetings or "conduct a meeting for field service." Id.

As noted, the U.S. Supreme Court decisions in Cox and Dickinson address who constitutes a "leader" of Jehovah's Witnesses, and show that, even accepting plaintiff's allegations as true, as a matter of law, they fail to establish that Mr. Serjeant was a "leader" within the church. The definitions established in Cox and Dickinson for a "leader of the faith" are narrow. Plaintiffs do not allege that Mr. Serjeant was a leader within the church as a full-time religious "vocation."

If petitioner Thomson in Cox was not considered a "leader" despite his assistance to the supervisor of his congregation and the hundreds of hours spent in door-to-door evangelism, then a "ministerial servant" whose duties include handling microphones and passing out magazines would obviously not come within the U.S. Supreme Court's definition either. See Cox, 332 US at 445-46.

As noted, at least one federal court has held that a petitioner's status as a "ministerial servant" did not mean he was a "leader of the faith," and consequently was not a "regular or duly ordained minister" within the Jehovah's Witnesses' church. German, 353 F Supp at 1202.

Consequently, while "ministerial servants" may have a measure of trust and some responsibility, as a matter of law, they are not in a "leadership position" in the Jehovah's Witnesses church based on U.S. Supreme Court precedent.

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Therefore, plaintiffs' new theory of liability is again reduced to their original novel theory that a religious organization is responsible for protecting its members from one another. Without any proof of such duty, defendants' Motion to Dismiss should be granted. See Cook, 83 Or App at 295 (the "existence of a duty is a question of law for the court").

D. Plaintiffs' theory of liability in their First Amended Complaint fails as a matter of law because the caselaw on point holds that religious entities do not have a duty to protect their members from each other.

As noted, plaintiffs fail to cite any appellate caselaw that supports their proposition that a religious organization may be held liable for failing to protect its members from one another. On this issue, the sole reference plaintiffs make is to "Cause No. 98-1208640; Jeremiah Scott v. Church of Jesus Christ of Ladder [sic] Day Saints; In Multnomah County, Oregon (Civil)" in an attached printout from a hearsay Internet newsletter. (Plaintiffs' Response at p. 14.) Although a brief summary of the two-year-old news article is given, plaintiffs fail to submit a copy of this trial court case. Without the actual case, the hearsay summary offered by the plaintiffs is of little use and cannot be used as legal authority that a church was held liable for the actions of one of its members.

Plaintiffs also rely on Lourim v. Swensen, 328 Or 380, 977 P2d 1157 (1999), and Erickson v. Christenson, 99 Or App 104, 977 P2d 1157 (1989). However, neither case is on point.

In Lourim, the court held that the Boy Scouts of America could be held vicariously liable for the alleged actions of a troop leader in sexually abusing a child in his care. The case arose "out of allegations by plaintiff that he was sexually abused by his Boy Scout Leader, Swensen,

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approximately 30 years earlier, when plaintiff was a minor." Lourim, 328 Or at 382. Thus, Lourim involved a troop Leader who allegedly abused plaintiff; it was not a case of one Boy Scout abusing another Boy Scout.

Similarly, in Erickson, the plaintiff brought an action against her pastor alleging that he "manipulated her and seduced her through a counseling relationship." Erickson, 99 Or App at 106. The present case is clearly not about pastoral seduction in a counseling relationship. Plaintiffs' First Amended Complaint only alleges that Mr. Serjeant was a member of the congregation with undefined "leadership responsibilities" (although he was not an "Elder"). Thus, Erickson does not answer the question of whether a church has a duty to protect its members from each other.

In Erickson, the plaintiff alleged that beginning when she was 13, defendant Christenson, a ***church pastor*** (not a fellow church member like Mr. Serjeant) who acted as her "counselor, confessor, advisor, friend, teacher and surrogate father," established a "confidential relationship" with her and "mentally manipulated" her into having sex with him over a 17-year period. Plaintiff also alleged that the co-defendant church that employed her pastor failed to advise plaintiff that this relationship was improper and prevented her from obtaining professional help. Plaintiff claimed that she suffered sexual abuse, extreme emotional distress, and other injuries due to her pastor's conduct. Id.

Thus, in Erickson, the court allowed plaintiff's claims to be asserted because plaintiff alleged that "Christenson misused his position ***as pastor*** and counselor to abuse her sexually," and that "the harm to plaintiff stemmed from Christenson's misuse of his ***position of trust***." Id. at 107 (emphasis added). Mr. Serjeant was not plaintiffs' pastor, nor is there an

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allegation that he held a clerical position of trust that allowed him to abuse plaintiffs (the same deficiency existing in the Bryan R. case).

The Court should also note the falsity of plaintiffs' contention that this case is not about whether churches have a duty to protect their members from each other, or about "whether the First Amendment prohibits inquiry into the correctness of church beliefs and disciplinary ***policies***." (Plaintiffs' Response at p. 2 (emphasis added).)

The truth is that plaintiffs seek to make defendants' alleged religious beliefs, policies, and disciplinary practices a basis for secular liability by alleging in their First Amended Complaint that, through their religious "***policy***" of not reporting sexual abuse to secular authorities, defendants "failed to adequately investigate, ***discipline***, evaluate, treat, supervise and otherwise monitor the conduct" of Mr. Serjeant, which allegedly resulted in plaintiffs being sexually abused by him. (First Amended Complaint at ¶¶ 22, 35 (emphasis added).)

Indeed, plaintiffs further contradict themselves in their Response by separately contending that the defendant church was "an organization entrusted with their care," thereby admitting that they seek to impose a duty of "care" on defendants to protect plaintiffs from harm by another church member. (Plaintiffs' Response at p. 2, lines 14-16.) These allegations also show the falsity of plaintiffs' argument that "nothing" in the First Amended Complaint attacks defendants' religious beliefs. Id. at p. 3, lines 1-2.

Plaintiffs also argue that there is "nothing in Plaintiffs' complaint that alleges *** that it is a religious tenet of the Jehovah's Witnesses to never report child abuse." (Plaintiffs' Response at p. 32, lines 13-16.) This is false. In paragraph 22 of plaintiffs' First Amended

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Complaint, plaintiffs allege that sex abuse victims within the church "are ***not permitted*** to report suspected abuse to outside authorities or to other Publishers within the organization," and that violation "of this ***policy*** can lead to severe ***sanctions***." (Emphasis added.) Indeed, plaintiffs admit elsewhere in their Response that they allege a "***policy*** of concealment" by the Jehovah's Witnesses concerning sex abuse claims. (Plaintiffs' Response at p. 32, lines 16-18 (emphasis added).)[5]

Neither this secular Court, nor a jury, are allowed to premise civil liability on the "correctness" or "incorrectness" of defendants' alleged religious beliefs and "policies" in this regard, or on whether church-provided "discipline" was "adequate." See Bryan R., 738 A2d at 848 ("the effort to hold the church responsible, in addition to the wrongdoer himself, would require direct inquiry into the religious sanctions, ***discipline***, and terms of redemption or forgiveness that were available within the church in the context of this claim, an inquiry that would require secular investigation of matters that are almost entirely ecclesiastical in nature") (emphasis added).

The U.S. Supreme Court long ago established that under the First Amendment, civil courts have no authority or competence (no "jurisdiction")

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[5] As discussed below, the fact that plaintiffs allege that this religious "policy of concealment" exists also shows why the clergy-penitent exception to ORS 419B.010, the child abuse reporting statute, applies to this case and renders defendants immune from liability for any claim allowed to be asserted under ORS 419B.010. See ORS 419B.010(1) and OEC 506. Specifically, OEC 506(3) provides that even "though the person who made the communication has given consent to the disclosure, a member of the clergy may not be examined as to any confidential communication made to the member in the member's professional character if, under the discipline or ***tenets*** of the member's church, denomination or organization, ***the member has an absolute duty to keep the communication confidential.***" (Emphasis added.) This is precisely what plaintiffs allege in the present case. (First Amended Complaint at ¶ 22.)

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to address claims that turn on disputed questions of religious doctrine or ecclesiastical policy. Watson v. Jones, 80 US (13 Wall) 679, 727-29 (1871) (affirming the "unquestioned" right of religious organizations to decide theological issues for themselves without second-guessing by secular courts).

In Presbyterian Church v. Mary Elizabeth Blue Hull Church, 393 US 440 (1969), the Court held that civil courts have no authority to "engage in the forbidden process of interpreting and weighing church doctrine." Id. at 451. Such a process can play "no role" in any "judicial proceedings" – including proceedings involving ostensibly secular claims – because it unconstitutionally "inject[s] the civil courts into substantive ecclesiastical matters." Id. at 450-51.

Thus, under the First Amendment, civil courts are preempted from delving into doctrinal issues because "civil courts exercise no jurisdiction" over "a matter which concerns theological controversy." Serbian Eastern Orthodox Diocese v. Milivojevich, 426 US 696, 713-14, reh'g denied, 429 US 873 (1976) (quoting Watson, 80 US (13 Wall) at 733-34). Churches alone have the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." Kedroff v. St. Nicholas Cathedral, 344 US 94, 116 (1952).

In sum, the First Amendment bars civil courts from undertaking "an analysis or examination of ecclesiastical polity or doctrine ***in settling [civil] disputes***." Jones v. Wolf, 443 US 595, 605 (1979) (emphasis added). Where such an analysis or examination is necessary to adjudicate a plaintiff's claims, the action is nonjusticiable in a civil court; the claims are completely

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preempted as a matter of First Amendment law.[6]

Also, under the First Amendment, "clergy malpractice" claims are not justiciable in civil courts. The claim of clergy malpractice has been universally rejected. The court in Franco v. The Church of Jesus Christ of Latter-day Saints, 21 P3d 198 (Utah 2001), explained why in addressing this issue in the ecclesiastical counseling context: "Defining such a [fiduciary] duty would necessarily require a court to express the standard of care to be followed by other reasonable clerics in the performance of their ecclesiastical counseling duties, which, by its very nature, would embroil the courts in establishing the training, skill, and standards applicable for members of the clergy in this state in a diversity of religions professing widely varying beliefs. ***This is as impossible as it is unconstitutional***; to do so would foster an excessive government entanglement with religion in violation of the [First Amendment's] Establishment Clause." Id. at 206 (emphasis added).

Oregon also recognizes that claims for clergy malpractice are not

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[6] Dozens of cases, federal and state, hold that under the First Amendment, civil courts are barred from delving into matters of religious doctrine and practice. See, e.g., Bell v. Presbyterian Church, 126 F3d 328, 332-33 (4th Cir 1997) ("courts must defer to the decisions of religious organizations 'on ***matters of discipline***, faith, internal organization, or ecclesiastical rule, custom or law'") (quoting Serbian Eastern Orthodox Diocese, 426 US at 713) (emphasis added); Scharon v. St. Luke's Episcopal Presbyterian Hosp., 929 F2d 360, 363 (8th Cir 1991) ("It is not only the conclusions that may be reached *** which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry.") (citation omitted); Minker v. Baltimore Annual Conference, 894 F2d 1354, 1359 (DC Cir 1990) ("We hold that the interpretation of the appointment and antidiscrimination provisions of the Book of Discipline is inherently an ecclesiastical matter; it follows that this court lacks jurisdiction to hear Minker's contract claim."); Natal v. Christian and Missionary Alliance, 878 F2d 1575, 1577 (1st Cir 1989) ("Natal's complaint directly involves, and would require judicial intrusion into, rules, policies, and decisions which are unmistakably of ecclesiastical cognizance. They are, therefore, not the federal courts' concern.").

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permitted. See Erickson, 99 Or App at 108.

Therefore, the admitted core of plaintiffs' claim is nothing more than an artfully pled claim for clergy malpractice based on allegedly deficient spiritual or ecclesiastical counseling or "discipline." Where the "essence" of the claim is that church defendants "generally mishandled the pastoral counseling relationship by giving bad advice – [a] claim[] necessarily directed at [the church] Defendants' performance of their ecclesiastical counseling duties," the "real issue [is] clergy malpractice," no matter how the claim is technically labeled. Franco, 21 P3d at 205; see also Dausch v. Rykse, 52 F3d 1425, 1438 (7th Cir 1994) (Ripple, J., concurring in part and dissenting in part, joined by Coffey, J., concurring) (stating that the district court correctly determined that plaintiff's claim for breach of fiduciary duty was "simply an elliptical way of alleging clergy malpractice"); Schmidt v. Bishop, 779 F Supp 321, 327 (SD NY 1991) (as "with her negligence claim, [plaintiff's] fiduciary duty claim is merely another way of alleging that the [clergyman] grossly abused his pastoral role, that is, that he engaged in malpractice").

Indeed, as noted by the court in Erickson, and in contrast with the present case, the plaintiffs' Complaint in Erickson merely alleged "simple negligence," which was why it did not invoke the First Amendment. Erickson, 99 Or App at 111, n. 5. As discussed previously, unlike Erickson, plaintiffs' First Amended Complaint directly invokes the First Amendment by attacking, and seeking to hold defendants liable for, their alleged religious beliefs, "policies," and practices. See First Amended Complaint at ¶ 22.

Simply put, plaintiffs seek to hold defendants liable for their alleged religious belief and "policy" that claims of sexual abuse should be

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handled internally through church-specified procedures, and through allegedly "negligently" counseling and failing to properly discipline Mr. Serjeant. Whether these alleged religious beliefs, policies, and practices are "correct" or not, and whether the alleged discipline (or lack of it) was "negligent," are not proper issues for this secular court to decide, a point expressly recognized in Bryan R. under similar allegations.

Therefore, Erickson supports defendants' position that plaintiffs' allegations not only fail as a matter of law to establish a duty of a church to protect its members from abuse by other members, but also show that plaintiffs' claims are barred by the "free exercise of religion" clauses in the Oregon and U.S. Constitutions because plaintiffs allege much more than "simple negligence." See Erickson, 99 Or App at 111, n. 5.

Also, the fact that the numerous non-Oregon cases cited by plaintiffs involving church liability for sexual abuse involve priests and pastors, not members abusing other members, shows that those cases are distinguishable. See Plaintiffs' Response at pp. 18-20.

Moreover, with regard to the First Amendment, plaintiffs' citation of these cases is a rehash of the same argument the same Texas lawyers made in the related Davidow action in Benton County, and Judge Locke Williams rejected those arguments. Judge Williams also rejected the "assumed duty" argument asserted by plaintiffs' lawyers in the Davidow action and this action.

This Court should reach the same result. The Court should also reject plaintiffs' request to ignore the Davidow ruling from an **Oregon** judge, and to instead accept decisions from **other** states involving distinguishable facts.

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In the present case, plaintiff does not allege that Mr. Serjeant was a priest or pastor in the church; that he was placed in a position of control or supervision or children; or that he was placed in a position where he could sexually abuse children in a church setting. See First Amended Complaint.

As noted previously, this precise distinction was expressly recognized by the court in Bryan R. The court acknowledged that the plaintiff in that case also did not allege that Baker, the adult Jehovah's Witnesses church member who sexually abused plaintiff when he was a minor, held a "clerical" position (such as a priest, minister, or pastor); did not allege that the church affirmatively placed Baker in a position of control or supervision of children (such as a Sunday school teacher); and did not allege that the church knowingly placed Baker in a position where he could sexually abuse children in a church setting. Bryan R., 738 A2d at 843, n. 3. The court in Bryan R. thus concluded that, like the present case, these "allegations placed Baker in a relationship to [plaintiff] that was not different in quality from any other member in good standing in the church." Id. at 843.

Plaintiffs contend that the present case is different than Bryan R. because they allege that Mr. Serjeant "was placed in a position of supervision and control" over plaintiffs. (Plaintiffs' Response at pp. 14-15.) However, plaintiffs are incorrect. In Bryan R., the plaintiff similarly alleged that Baker was able to "earn his trust and confidence" because "the church placed Baker" (an adult) in "a position of ***leadership*** and respect." Plaintiff further alleged that the church cloaked "Baker with ***power*** and respect," and that "because of his position of power and ***authority*** in the church," the Jehovah's Witnesses' church negligently allowed him "to gain Bryan's trust" and abuse him. Bryan R., 738 A2d at 843 and n. 3 (emphasis added).

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This is the same thing as alleging that Mr. Serjeant "was placed in a position of supervision and control" over plaintiffs, and the court in Bryan R. held that "we decline to recognize a general common law duty on the part of an organization such as a church to protect its members from each other," particularly when (as in the present case) there is no allegation that the abuse occurred on church property or during a church activity. Id. at 845.

The present case and Bryan R. thus stand in contrast with the facts of Erickson, where the alleged abuser was plaintiff's "pastor, counselor, confessor, advisor, friend, teacher, and surrogate father." Erickson, 99 Or App at 106. Because of this "misuse of his position of trust" and the "confidential relationship" between plaintiff and the pastor, the court in Erickson held that plaintiff stated claims for breach of fiduciary duty and intentional infliction of severe emotional distress arising from the pastor's alleged sexual abuse of plaintiff. Id. at 107-108.

Thus, plaintiff's reliance on Erickson is misplaced because it is factually dissimilar to the present case. Defendants' Motion to Dismiss this action should be granted, just like the defendants' motion in Bryan R.

E. Plaintiff Christina Vizenor's claims should be dismissed because she cannot establish any viable claim for relief against defendants.

If all plaintiffs' claims are not dismissed for the reasons stated above, in the alternative, the claims of plaintiff Christina Vizenor should be dismissed for two reasons: (1) The First Amended Complaint does not allege that Ms. Vizenor was one of Jehovah's Witnesses, nor does it allege that she ever attended the North Albany Congregation of Jehovah's Witnesses; and (2) even if she did attend the North Albany Congregation, the fact that she was allegedly the granddaughter of the alleged abuser makes her claim a private

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family matter for which defendants cannot be held liable.

On page 8 of plaintiffs' First Amended Complaint, a description of each plaintiff is given, including their claimed relationship to Mr. Serjeant. In the cases of plaintiffs Leanna Morley and Jessica Schroeder, this pleading states that both were "participants in the North Albany Congregation." (First Amended Complaint at p. 8.) However, Ms. Vizenor's relationship to the congregation is not stated. Id. Even assuming that Mr. Serjeant was a "leader" in the North Albany Congregation, as a matter of law, a church does not have a duty to protect or warn an individual with whom it has no relationship. See Cook, 83 Or App at 295.

Also, even if Ms. Vizenor were to amend the operative Complaint to allege that she was part of the North Albany Congregation, she still claims to be Mr. Serjeant's granddaughter. (First Amended Complaint at p. 8.) Thus, Ms. Vizenor's alleged abuse was due to her family relationship with Mr. Serjeant, not due to any alleged position of "leadership" that Mr. Serjeant held in the church.

While any abuse is tragic, as a matter of law, the Court should hold that a church is not liable for abuse perpetrated by an adult against a relative. "Oregon follows the general rule that '[t]here is no duty to aid one in peril in the absence of some special relation between the parties which affords a justification for the creation of a duty.'" Cain v. Rijken, 74 Or App 76, 78, 700 P2d 1061 (1985), aff'd, 300 Or 706, 717 P2d 140 (1986) (citation omitted).

Furthermore, Oregon defines "special relationship" through the standard expressed in Section 344 of the Restatement (Second) of Torts. Torres v. United States National Bank of Oregon, 65 Or App 207, 211, 670

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P2d 230, rev. denied, 296 Or 237 (1983). According to the Restatement, such relations include "those of carrier and passenger, innkeeper and guest, employer and employee, possessor of land and invitee, and bailee and bailor." Id. at 212, n. 2.

Ms. Vizenor does not allege facts sufficient to create a "special relationship" between herself and the Elders of the North Albany Congregation. As noted, there is no allegation that Mr. Serjeant abused Ms. Vizenor in any type of church setting, on church property, or during a church outing, facts which could give rise to a special relationship based on the possessor of land-invitee standard. See Bryan R., 738 A.2d at 843 (dismissing the case in part because plaintiff did not allege that the church placed the alleged abuser "in a position where he could sexually abuse children in a church setting").

If a "special relationship" were found under the facts Ms. Vizenor alleges, any organization could be held liable for failing to protect family members from the abusive conduct of other family members who also happen to belong to the organization. No court has ever imposed a duty for intra-family conduct against any kind of organization, religious or otherwise.

Furthermore, Ms. Vizenor cannot establish vicarious liability against defendants based on the theory of respondeat superior. Under the theory of respondeat superior, an employer may be held liable for an employee's torts if the employee was acting within the scope of employment. Fearing v. Bucher, 328 Or 367, 373, 977 P2d 1163 (1999). Three requirements must be met to establish that an employee's conduct was within the scope of employment: (1) The conduct must have occurred substantially within the time and space limits authorized by the employment; (2) the

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employee must have been motivated, at least partially, by a purpose to serve the employer; and (3) the act must have been of a kind that the employee was hired to perform. Id.

In Fearing, the plaintiff alleged that he was molested by a Catholic priest as a child. Plaintiff sued the priest and the Catholic Archdiocese of Portland, seeking to hold it liable for the priest's conduct under the doctrine of respondeat superior. Id. at 370. The Oregon Supreme Court noted that "an employee's intentional tort rarely, if ever, will have been authorized by the employer. In that context, then, it virtually always will be necessary to look to the acts that led to the injury to determine if those acts were within the scope of employment." Id. at 373, n. 4.

Thus, the court in Fearing found it relevant that the priest had

> used his position as **youth pastor, spiritual guide, confessor, and priest** to plaintiff and his family to gain their trust and confidence, and thereby **gain the permission of plaintiff's family to spend large periods of time alone with plaintiff**. By virtue of **that relationship**, Bucher [the priest] gained the opportunity to be alone with the plaintiff, to touch him physically, and then to assault him sexually. The complaint further alleges that those activities *** were committed out of a desire, at least partially and initially, to fulfill Bucher's employment duties as a youth pastor and priest, and that they were of a kind and nature that he was required to perform as youth pastor and priest.

Id. at 374 (emphasis added).

Thus, the court in Fearing ruled that the Archdiocese could be held vicariously liable for the priest's alleged abuse of plaintiff because the acts that led to the alleged abuse had been premised, at least partially and initially, on the priest-parishioner relationship.

In the present case, plaintiffs claim that the "Watchtower

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Defendants' agent, Don [Serjeant] had access to each of the Plaintiffs due to his leadership position in the organization." (First Amended Complaint at p. 8.) However, whatever position Mr. Serjeant may have had in the North Albany Congregation, common sense dictates that his alleged role as Ms. Vizenor's grandfather was the basis of his alleged access to her, and not the fact that he belonged to the church. Cf. Erickson, 99 Or App at 106 (the pastor was not a relative of the plaintiff). This is also confirmed by the fact that plaintiffs do not allege that any abuse occurred on church property or during a church activity. See First Amended Complaint.

Unlike the allegations in Fearing, the acts that led to Ms. Vizenor's alleged abuse do not depend on Mr. Serjeant's status in the church; Mr. Serjeant did not have access to her because he was a "youth pastor, spiritual guide, confessor, or priest." Rather, Mr. Serjeant was allegedly Ms. Vizenor's grandfather, and that was the reason he was allegedly able to spend time alone with her.

Therefore, because Ms. Vizenor's claims relate to a private family matter, and no abuse is alleged to have occurred in a church setting or on church property, they should be dismissed. See Bryan R., 738 A2d at 843 and n. 3 (holding that the Jehovah's Witnesses' church was not liable for the alleged sexual abuse of plaintiff by Baker, another church member, in part because plaintiff did not allege that Baker held a "clerical" position (such as a priest, minister, or pastor); did not allege that the church affirmatively placed Baker in a position of control and supervision of children (such as a Sunday school teacher); and did not allege that the church knowingly placed Baker in a position where he could sexually abuse children in a church setting).

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F. Oregon's child abuse reporting statute does not provide for a civil cause of action and cannot form the basis of a negligence *per se* claim, and the clergy-penitent exception to the statute applies.

Plaintiffs argue that they can assert a claim for negligence *per se* based on defendants' alleged violations of ORS 419B.010, Oregon's child abuse reporting statute. Plaintiffs concede that this issue has never been decided by an Oregon appellate court, but then argue that the issue of whether Oregon's reporting statute creates a civil cause of action for damages does not need to be resolved because they can state a negligence *per se* claim. Plaintiffs also chastise defendants for citing cases from jurisdictions outside Oregon on the issue of whether a child abuse reporting statute creates a private cause of action, even though plaintiff recognizes that no Oregon appellate court has ruled on this issue. (Plaintiffs' Response at p. 29.)

However, plaintiffs' argument is without merit. Plaintiffs, similar to their other arguments, cite generic cases addressing when the violation of a statute can constitute negligence *per se*. Id. at p. 30. However, defendants do not argue that the violation of a statute can never constitute negligence *per se*. Rather, defendants' point is that Oregon's child abuse reporting statute (ORS 419B.010) does not create a private cause of action and cannot form the basis of a negligence *per se* claim.

Plaintiffs fail to cite a single appellate case from any jurisdiction holding that a child abuse reporting statute creates a private cause of action or can form the basis of a negligence *per se* claim. Plaintiffs also do not even attempt to distinguish the 6 cases directly on point cited by defendants in their original Motions, which represent the overwhelming majority rule, holding that child abuse reporting statutes do not provide a civil cause of

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action for their violation. Plaintiffs also fails to cite any legislative history indicating that ORS 419B.010 intended to create a civil cause of action.

The cases on point also reject the negligence *per se* "end around" plaintiffs attempt by further holding that child abuse reporting statutes do not allow for liability under a negligence *per se* theory. See Marquay v. Eno, 662 A2d 272 (NH 1995) (holding that New Hampshire's child abuse reporting statute "does not support a private right of action for its violation because we find no express or implied legislative intent to create such civil liability," and a violation of the reporting statute also "***does not constitute negligence per se***") (emphasis added).

Therefore, it is undisputed that no appellate court holds that a child abuse reporting statute which fails to expressly provide for a civil cause of action for its violation can be the basis for a civil cause of action or a negligence *per se* claim. As noted, when the Oregon Legislature wants to provide a civil cause of action for violations of a statutory duty, it knows how to do so, but that did not occur with regard to ORS 419B.010. Rather, that statute merely provides for a ***criminal*** penalty for its violation, and does not provide for a civil cause of action when it is violated. See ORS 419B.010(3).

Plaintiffs also "fall into the trap" by citing Fazzolari v. Portland School Dist. No. 1J, 303 Or 1, 734 P2d 1326 (1987), for the argument that defendants can be held civilly liable for allegedly violating ORS 419B.010 because the "Oregon Supreme Court has already determined that there is a common law duty to warn of foreseeable harm." (Plaintiffs' Response at p. 30.)

However, the court in Fazzolari stated that its general

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foreseeability negligence standard does not apply when, like plaintiffs, a party invokes a "special relationship." Fazzolari, 303 Or at 17. Thus, "the existence of a special relationship ***takes the claim out of the general standards of common law negligence***. In other words, the existence of a special relationship *** 'creates, defines, or limits' the duties that are owed by the parties to that relationship. *** It is only when there is no such special relationship that *Fazzolari's* general foreseeability principle comes into play." Dikeman v. Carla Properties, Ltd., 127 Or App 53, 59-60, 871 P2d 474 (1994) (citations, quotation marks, and ellipses omitted; emphasis added).

Plaintiffs have expressly alleged a "special relationship" between plaintiffs and defendants. (First Amended Complaint at ¶ 39.) Thus, by their own allegations, plaintiffs show that the general foreseeability negligence standard in Fazzolari is inapplicable to their claims. See Fazzolari, 303 Or at 17.

Also, even assuming *arguendo* that ORS 419B.010 did create a civil cause of action, its clergy privilege exception (OEC 506) bars plaintiff's claim, as previously discussed. See ORS 419B.010(1). Plaintiff responds that there is nothing in the operative Complaint that establishes that the church Elders' alleged receipt of information that Mr. Serjeant had previously abused others was "confidential" within the meaning of OEC 506. As noted above, plaintiffs also argue that there is "nothing in Plaintiffs' complaint that alleges *** that it is a religious tenet of the Jehovah's Witnesses to never report child abuse." (Plaintiffs' Response at p. 32, lines 13-16.)

This is false. In paragraph 22 of plaintiffs' First Amended Complaint, plaintiffs allege that sex abuse victims "are not permitted to

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report suspected abuse to outside authorities or to other Publishers within the organization," and that violation "of this ***policy*** can lead to severe sanctions." (Emphasis added.) Indeed, as also noted above, plaintiffs admit in their Response that they allege a "***policy*** of concealment" by the Jehovah's Witnesses concerning the reporting of sex abuse claims. (Plaintiffs' Response at p. 32, lines 16-18 (emphasis added).)

Therefore, contrary to plaintiffs' argument, they do allege that it is a religious tenet of the Jehovah's Witnesses to not report child abuse. OEC 506(3) expressly states that a clergy member must keep information confidential if the "discipline or tenets" of their church require it to be kept confidential, even though the person who made the communication has given consent to the disclosure.

Moreover, what plaintiffs cannot escape is that there is nothing in the operative Complaint that alleges that the Church Elders received the alleged notice of Mr. Serjeant's alleged prior abuse in a ***non***-confidential setting. This is an ORCP 21 Motion to Dismiss, and thus the allegations of the operative Complaint are taken as true for purposes of the Motion. Natkin & Co. v. H.D. Fowler Co., 128 Or App 311, 313, 876 P2d 319 (1994).

It is thus important to consider what plaintiffs allege. Plaintiffs allege that when Mr. Serjeant's daughter complained to church "Elders" that he had abused her, the Elders told her "not to discuss the matter with anyone else and that they would take any and all necessary action." (First Amended Complaint at ¶¶ 24, 26.) Plaintiffs' own allegations thus establish that defendants received this information in a confidential and privileged church setting, i.e., private communications between Mr. Serjeant's daughter, a congregation member, and defendants, church Elders. Such communications

are expressly privileged pursuant to OEC 506(3), and are expressly exempt from the child abuse reporting requirement pursuant to ORS 419B.010(1).

Therefore, in the event all claims against defendants are not dismissed for the reasons stated above, the Court should dismiss Count VI of plaintiffs' First Amended Complaint, which seeks to hold defendants civilly liable for alleged violations of ORS 419B.010. That statute does not provide for a civil cause of action for violations of it, and, even if it did, the clergy privilege exception contained in OEC 506 applies (according to plaintiffs' own allegations) and dictates that defendants did not violate ORS 419B.010.

G. Oregon does not recognize claims for relief for "negligent usurpation of investigatory function," "alter ego and single business enterprise," "respondeat superior," or "ratification."

The Court should alternatively dismiss certain other claims alleged by plaintiffs' Texas-based lawyers because they are not recognized claims for relief in Oregon. On this issue, plaintiffs respond with no relevant law, but contend that defendants are taking "cheap shots," and engage in other hyperbole and irrelevant attacks on the Jehovah's Witnesses church that have no place in the confines of Rule 21 motions that merely address issues of law.

Defendants are merely trying to clean up the operative Complaint so that claims for relief that are not recognized in Oregon are removed from the case, and the parties can then focus on the real issues. It is the "shotgun" approach to the operative Complaint taken by Texas attorneys with little knowledge of Oregon law that has created this problem, not defendants. The First Amended Complaint does not need to be 20 pages in length with 10 claims for relief. ORCP 18A requires a "plain and **concise** statement of the

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ultimate facts constituting a claim for relief without unnecessary repetition." (Emphasis added.)

As noted, plaintiffs allege "claims" for "negligent usurpation of investigatory function," "alter ego and single business enterprise," "respondeat superior," and "ratification" in their First Amended Complaint. However, no Oregon case holds that these are recognized "claims for relief" (or "causes of action"), as opposed to being a legal theory that can support a viable claim for relief. For example, the doctrine of respondeat superior can be used to support a claim for negligence against a corporate entity; however, respondeat superior is not a "claim for relief" in and of itself. Chesterman v. Barmon, 305 Or 439, 449, 753 P2d 404 (1988) (the "doctrine of *respondeat superior* is not an independent cause of action") (Jones, J., dissenting).

None of the Oregon cases plaintiffs cite on this issue hold that any of the above-noted theories or doctrines are viable "causes of action" or "claims for relief." (Plaintiffs' Response at pp. 34-37.) While some of these doctrines may be recognized, they need to be included within a viable claim for relief (see ORCP 18A), and that has not occurred in the First Amended Complaint.

Therefore, the Court should dismiss the first, eighth, ninth, and tenth "claims for relief" in plaintiffs' First Amended Complaint because none of these alleged claims are recognized as viable causes of action in Oregon.

H. If this action is not dismissed, plaintiffs should be required to specify the amounts of their claimed economic damages in a Second Amended Complaint as required by ORCP 18B.

Finally, pursuant to ORCP 21E and 18B, defendants have moved to strike plaintiffs' request for unspecified economic damages ("amount to be

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inserted prior to trial") from paragraph 50 and the Prayer of the First Amended Complaint. In response, plaintiffs agree to amend the operative Complaint to provide these specific figures. (Plaintiffs' Response at p. 37.)

Therefore, defendants' Motion to Strike plaintiffs' unspecified economic damage claims should be granted in the event this action is not dismissed in its entirety.

DATED this 9th day of July, 2003.

BULLIVANT HOUSER BAILEY PC

By _____
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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA MORELY, JESSICA SCHROEDER, AND CHRISTINA VIZENOR,

Plaintiff,

vs.

NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC., et al,

Defendant

Case No. 03-0431

PLAINTIFFS' SUPPLEMENTAL RESPONSE TO DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF ORCP 21 MOTIONS

Come now Plaintiffs, LEANNE MORELY, JESSICA SCHROEDER, AND CHRISTINA VIZENOR, and file this Supplemental Response to Defendants Reply Memorandum In Support of ORCP 21 Motions. Plaintiffs refer this Court to Plaintiffs' Response to Defendants ORCP 21 Motions to Dismiss and incorporate it herein by this reference. Plaintiffs also add the following brief arguments:

1. ***Bryan R. v. Watchtower Bible and Tract Society of New York, Inc.*** **Is Irrelevant to this Case.**

No matter how many times Defendants argue that under *Bryan R. v. Watchtower Bible and Tract Society of New York, Inc.*, 738 A.2d 839 (Maine 1999) cert denied 528 U.S. 1189 (2000) "organizations (including the Jehovah's Witness Church) do not have a general duty to protect their members from sexual abuse by other

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members...." That has nothing to do with this case. This case is about an appointed leader in an organization, who had authority over children in the organization, and who used that authority to sexually abuse children.

2. *Davidow v. Watchtower* Is Irrelevant to This Case.

No matter how many times Defendants argue that like *Bryan R.*, the court in *Davidow v. Watchtower, et al, Benton County Circuit Court Case N. 02-10345* found no general duty on the part of an organization to protect members from sexual abuse by other members, that is not this case. This case is about an appointed leader in an organization, who had authority over children in the organization, and who used that authority to sexual abuse children.

3. Plaintiffs Response to Defendants' ORCP 21 Motions Does Not Assert a New Liability Theory.

Plaintiffs First Amended Complaint asserts as a theory of liability that the Watchtower Defendants are liable for the conduct of Don Serjeant because they appointed him to a position of leadership in the Watchtower Defendants' organization with authority over women and children. This agent used his position of authority to sexually abuse children affiliated with the Watchtower Defendants. By way of example only, Plaintiffs refer the Court to the following quotes from Plaintiffs' First Amended Complaint:

- "the Watchtower Defendants vested Don Serjeant with leadership authority within the WATCHTOWER DEFENDANTS' organization and at all times held him out to be in good standing." (p.6)

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- "... the Watchtower Defendants continued to promote Don Serjeant as a leader in good standing in the organization, placing him in positions of control and supervision of children." (p. 7)
- "The Watchtower Defendants' agent, Don Serjeant, had access to each of the Plaintiffs due to his leadership positions in the organization" (p. 8)
- "For three decades, the WATCHTOWER DEFENDANTS know or should have known that Don Serjeant was sexually molesting and physically abusing young children. Nevertheless, the WATCHTOWER DEFENDANTS allowed Don Serjeant to continue as a leader in good standing, entrusting him with authority to supervise and control children in the WATCHTOWER DEFENDANTS' local congregation, many of whom he sexually molested " (p. 9)

The fact that Plaintiffs could not, before having an opportunity to conduct discovery, articulate Don Serjeant's exact position in the organization, does not mean they have not pled a viable claim based on his leadership and authority[1]. His exact position of Ministerial Servant, his authority, and his use of that position are factual issues that Plaintiffs are entitled to prove through discovery. Plaintiffs do not have to prove their case to survive a Rule 21(8) Motion. *Natkin & Co. v. H.D. Fower Co.*, 128 Or. App. 311; 879 P.2d 319 (Or. 1994).

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[1] Plaintiffs are seeking leave from this Court to amend their complaint to add more specificity regarding Don Serjeant's leadership role and its fiduciary nature. Plaintiffs discovered this information after Defendants filed their Motions to Dismiss.

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4. **Plaintiffs Have Not Admitted That Their Legal Theory is Not Properly Before the Court.**

Plaintiffs attached to their Response to Defendants Rule 21 Motions copies of documents they intend to prove up to this Court as part of discovery and the trial of this matter. Those exhibits are not offered as evidence nor do they address issues outside Plaintiffs' allegations. Plaintiffs have pled a case for assumption of duty, leadership and fiduciary duty. The documents attached to Plaintiffs' response merely demonstrate that Plaintiffs have a good faith belief that they can support those allegations.

5. **The United States Supreme Court Decisions in *Cox* and *German* Are Irrelevant.**

Oregon law says that a charitable organization (whether religious or otherwise) may be held responsible for sexual abuse by one of its leaders. *Lourim v. Swenson* 328 Or. 380, 977 P.2d 1157 (Or. 1999). That is the issue before this Court. *Cox* and *German* deal with an entirely different issue: Whether a statutory exemption from military service under the Selective Training and Service Act applies to non-ordained clergy. While Defendants' argument is creative, it has no bearing on this case. A volunteer Boy Scout leader who is not ordained would certainly not qualify for the exemption under the Selective Training and Service Act of 1940. That does not mean, however, that under Oregon law, the organization that put that troop leader in a leadership position cannot be held liable for his acts of sexual abuse. Furthermore, regardless of what the U.S. Supreme Court says about the degree of leadership needed to qualify under the Selective Training and Service Act of 1940, Defendants' own documents state that members and children within their organization are taught

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by Defendants that "ministerial servants" are fiduciary leaders with authority over them.

6. Disputed Fact Issues are Not a Basis For Granting a Rule 21(8) Motion.

The Watchtower Defendants argue that Plaintiff Christine Vizenor's claims should be dismissed based upon a dispute about whether Don Serjeant used his authority as a leader in the organization or his familial relationship to abuse her. Plaintiffs have pled that Don Serjeant was an appointed leader in the Watchtower Defendants' organization who used his position of leadership in the organization to abuse her. For purposes of a ORCP 21(8) Motion, the Court must "assume the truth of all allegations, as well as any inferences that may be drawn from them and view them in the light most favorable to the nonmoving party." *Natkin & Co. vs. H.D. Fower Co.* 128 Or. App. 311, 313, 879 P.2d 319 (Or. 1994).

The above argument also apples to other factual disputes raised by the Watchtower Defendants. The extent to which communications are or are not confidential and therefore discoverable are factual issues and form no basis for a dismissal of Plaintiffs' pleadings. The same is true of the factual dispute about whether or not Don Serjeant's leadership position created a relationship with Plaintiffs that was fiduciary in nature.

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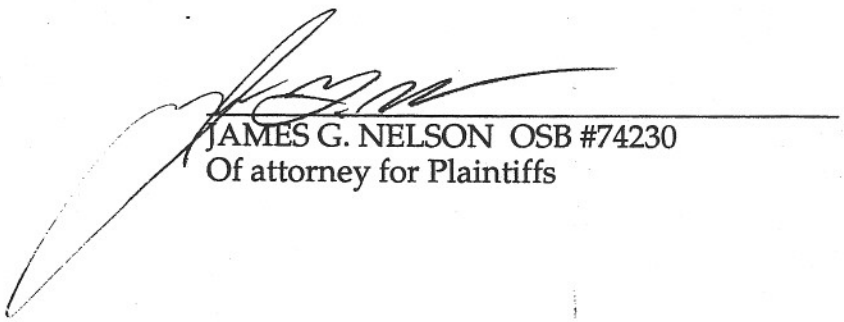
Plaintiffs' pleadings, when taken as true, articulate a cause of action on behalf of Christine Vizenor. They also articulate that the Watchtower Defendants' knowledge of their agents' conduct was gained pursuant non-confidential communications and that their agent, Don Serjeant, had a fiduciary duty to Plaintiffs. This court may not dismiss Plaintiffs' case because Defendants dispute that pleading.

DATED this the 3rd date of September, 2003.

Respectfully submitted,

NELSON & MacNEIL, P.C.



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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing PLAINTIFFS' SUPPLEMENTAL RESPONSE TO DEFENDANTS' REPLAY MEMORANDUM IN SUPPORT OF ORCP 21 MOTIONS on the date indicated below to the attorney at the address listed herein by:

[X] Mail with first-class postage prepaid, deposited in the U.S. mail at Albany, Oregon

[ ] Hand Delivery

[ ] Facsimile Transmission

[ ] Overnight Delivery

John Kaempf
Bullivant Houser Bailey
300 Pioneer Tower
888 SW 5th Avenue
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DATED this 3rd day of September, 2003.

NELSON & MacNEIL, P.C.

JAMES G. NELSON OSB #74230
Of Attorneys for Plaintiffs

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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA MORLEY, JESSICA SCHROEDER, AND CHRISTINA VIZENOR,

Plaintiff,

vs.

NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC., et al,

Defendant

Case No. 03-0431

PLAINTIFFS' MOTION FOR LEAVE TO AMEND TO FILE PLAINTIFFS' SECOND AMENDED PETITION

Pursuant to Rule 23(a) of the Oregon Rules of Civil Procedure, Plaintiffs file this Motion for Leave to Amend and would show the court the following:

On or about April 23, 2003, Plaintiffs filed their First Amended Complaint. On or about May 23, 2003, Defendants filed ORCP 21(A) Motions to Dismiss. One of the bases upon which Defendants have moved to dismiss is an allegation that Plaintiffs have not pled with enough specificity the facts regarding their agent, Don Serjeant's, leadership position in the Watchtower Defendants' organization and the fiduciary nature of that relationship. Plaintiffs disagree with Defendants' assessment of their pleadings and have filed responsive pleadings opposing the Watchtower Defendants' motions to dismiss which are set for hearing on September 23, 2003.

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Subsequent to the filing of Defendants' ORCP 21(A) Motions to Dismiss, Plaintiffs discovered in the public arena, without the aid of any formal discovery in this case, information and documents indicating that Don Serjeant was appointed by the WATCHTOWER DEFENDANTS to a position of "Ministerial Servant" and that the WATCHTOWER DEFENDANTS themselves consider this position of Ministerial Servant to be fiduciary in nature. These documents also indicate that such an appointment leads members and others affiliated with the WATCHTOWER DEFENDANTS' organization to believe that they may safely leave their children in the care of one appointed to the position of Ministerial Servant. Plaintiffs seek leave to amend their complaint to reflect this information.

Subsequent to the filing of Defendants' ORCP 21 Motions to Dismiss, Plaintiffs also obtained information indicating that the Watchtower Defendants' organization has for years maintained secret files at headquarters regarding a large number of child abusers in leadership positions in their organizations and have mandated that information regarding allegations of abuse be reported to the organization, but not otherwise disclosed. Plaintiffs seek leave to amend their Complaint to reflect this information as well.

Under Oregon law, leave to amend should be liberally granted under Rule 23 of the Oregon Rules of Civil Procedure when justice so requires and the other party would not be prejudiced. *Franke v. Oregon Dept. of Fish and Wildlife*, 166 Or. App. 660, 2 P.3d 931 (Or. 2000). Plaintiffs seek to amend their Complaint based upon information they have discovered in the public arena which provides more specificity to causes of action and facts already pled. In addition, Plaintiffs seek to add a conspiracy claim based upon newly developed facts that arise out of the same

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transactions and occurrences already before this court. Plaintiffs ability to obtain justice in this matter requires the amendment and Defendants will not be prejudiced by the amendment as discovery has not yet commenced in this cause, nor is this matter set for trial. Therefore, the requisites of Rule 23 have been satisfied.

I have conferred with Defendants' counsel and he indicated that he opposes the filing of a Second Amended Complaint until the court rules on the pending motions on the First Amended Complaint.

Wherefore, Plaintiffs seek leave to amend to file Plaintiffs' Second Amended Complaint which is attached hereto and incorporated by reference.

DATED this the 18th date of September, 2003.

NELSON & MacNEIL, P.C.

JAMES G. NELSON OSB #74230
Of Attorneys for Plaintiffs

SUBMITTED BY:
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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA MORLEY, JESSICA SCHROEDER and CHRISTINA VIZENOR, Plaintiffs, v. NORTH ALBANY OREGON CONGREGATION OF JEHOVAH'S WITNESSES, INC., f/k/a ALBANY OREGON COMPANY OF JEHOVAH'S J WITNESSES, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, WATCHTOWER ENTERPRISES, L.L.C., WATCHTOWER FOUNDATION, INC., WATCHTOWER ASSOCIATES, LTD., KINGDOM SUPPORT SERVICES, INC. CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, RELIGIOUS ORDER OF JEHOVAH'S WITNESSES, THE WATCHTOWER GROUP, INC. AND NORTH BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES, INC., Defendants.	CASE NO. 030431 PLAINTIFF'S SECOND AMENDED COMPLAINT (Sexual Battery of a Child; Vicarious Liability; Negligence; Fraud; Ratification; and Alter Ego Not subject to Mandatory Arbitration *Jury Trial Requested*

Plaintiffs allege:

GENERAL ALLEGATIONS

I.

PARTIES

1.

Plaintiff LEANNA MORLEY is a resident of Albany, Oregon.

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2.

Plaintiff JESSICA SCHROEDER is a resident of Eddyville, Oregon.

3.

Plaintiff CHRISTINA VIZENOR is a resident of South Dakota.

4.

Defendant NORTH ALBANY OREGON CONGREGATION OF JEHOVAH'S WITNESSES, INC. f/k/a ALBANY OREGON COMPANY OF JEHOVAH'S WITNESSES, INC. is a corporation organized and existing under the laws of the State of Oregon. At all material times, it maintained its offices at Kingdom Hall Building, 303 Grand Prairie Road SE, Albany, Linn County, Oregon 97321.

5.

Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation organized and existing under the laws of the State of New York, with offices at 25 Columbia Heights, Brooklyn, New York 11201-2483, has conducted business within the State of Oregon through its agents and alter egos.

6.

Defendant WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation organized and existing under the laws of the State of Pennsylvania, with offices at 1630 Spring Run Road Extension, Coraopolis, Pennsylvania 15108, has conducted business within the State of Oregon through its agents and alter egos.

7.

Defendant WATCHTOWER ENTERPRISES, INC., a limited liability company organized and existing under the laws of the State of New York, with offices at 25 Columbia Heights, Brooklyn, New York 11201, has conducted business within the State of Oregon through its agents and alter egos.

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8.

Defendant WATCHTOWER FOUNDATION, INC., a corporation organized and existing under the laws of the State of New York with offices at 25 Columbia Heights, Brooklyn, New York 11201, has conducted business within the State of Oregon through its agents and alter egos.

9.

Defendant WATCHTOWER ASSOCIATES, LTD., a corporation organized and existing under the laws of the State of New York, with offices at 147 Holiday Drive, Westbury, New York 11797, has conducted business within the State of Oregon through its agents and alter egos.

10.

Defendant KINGDOM SUPPORT SERVICES, INC., a corporation organized and existing under the laws of the State of New York with offices at 98 Montague Street, Brooklyn, New York 11201, has conducted business within the State of Oregon through its agents and alter egos.

11.

Defendant CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of New York with offices at 100 Watchtower Drive, Patterson, New York 12563-9204, has conducted business within the State of Oregon through its agents and alter egos.

12.

Defendant RELIGIOUS ORDER OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of New York with offices at 25 Columbia Heights, Brooklyn, New York 11201-2483, has conducted business within the State of Oregon through its agents and alter egos.

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13.

Defendant THE WATCHTOWER GROUP, INC., a corporation organized and existing under the laws of the State of Pennsylvania with offices at 196 E. Butler Avenue, Chalfont, PA 18914, has conducted business within the State of Oregon through its agents and alter egos.

14.

Defendant NORTH BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of Washington, has conducted business within the State of Oregon through its agents and alter egos.

15.

The Defendant entities are collectively referred to herein as the "WATCHTOWER DEFENDANTS" because each is the alter ego of each other and operate as a single business enterprise.

II.

JURISDICTION AND VENUE

16.

Plaintiffs have been damaged in an amount exceeding the minimum jurisdictional levels of this court.

17.

Venue is proper in Linn County, Oregon because Defendant NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC. has its principal place of business in Linn County and because some of the acts or omissions that give rise to Plaintiffs' claims occurred in Linn County.

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III.

SUMMARY OF FACTS

A. WATCHTOWER DEFENDANTS' ORGANIZATION AND CHAIN OF COMMAND

18.

The WATCHTOWER DEFENDANTS' organization has a hierarchical structure in which the GOVERNING BODY sits at the top of a strict chain of command that extends over each individual and Defendant entity in the organization. These individuals and entities act as agents, servants and alter egos of each other. Authority for any actions by the organization or its members must derive from the GOVERNING BODY, which has absolute authority over every person and all matters in the organization and its worldwide operations. The GOVERNING BODY is a small group of men who operate out of various entities within the hierarchical structure.

19.

All of the Defendants are the agents and servants of each other and are vicariously liable for each other's acts. The WATCHTOWER DEFENDANTS are so organized and controlled and their affairs are so conducted that they are alter egos of each other and operate as a single business enterprise.

B. VICARIOUS LIABILITY OF THE WATCHTOWER DEFENDANTS

20.

Through its hierarchical structure, the WATCHTOWER DEFENDANTS assume complete responsibility for the development, protection and discipline of its membership, especially the children of members. All male members, whether Elders, Ministerial Servants, Pioneers and/or Publishers, are appointed and empowered by the GOVERNING BODY to carry out this responsibility. Male members who are appointed to privileges of service, such as elders and ministerial servants, are put in a

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position of trust over members of the congregation who are taught to respect that trust relationship. Pursuant to this relationship of trust and respect, congregation members and others affiliated with the organization are led to believe that they may safely leave their children with elders, ministerial servants, and others in leadership positions.

21.

To further their goals, the WATCHTOWER DEFENDANTS groom male members to become elders, ministerial servants and to hold other leadership positions through leadership schools and curriculum published by the Watchtower Defendants' organization. The Watchtower Defendants encourage and authorize these trained leaders as well as male members of the organization to develop relationships of trust with women, children and families and to assume the role of counselor and advocate for any problems that might arise, including claims of child abuse. It is the responsibility of the Elders and those higher up in the chain of command, all the way up to the GOVERNING BODY, to decide if abuse has occurred and how it should be handled.

22.

Despite detailed knowledge of a severe problem with sexual abuse of minors by leaders in the Watchtower Defendants' organization, the Watchtower Defendants showed willful indifference and/or reckless and/or intentional disregard for the children entrusted to their care. Rather than implement measures to redress and prevent the sexual molestation of these children, the Watchtower Defendants engaged in a systematic pattern and practice of suppression of information to cover-up and hide incidents of child molestation from law enforcement and their membership in order to protect those within the Watchtower Defendants' organization who

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committed acts of sexual molestation against children. The Watchtower Defendants have likewise engaged in the routine practice of maintaining secret archival files regarding sexual abuse by elders, ministerial servants, pioneers, male publishers and other leaders in the organization. The existence of these files and the contents thereof were not disclosed to or made available to law enforcement authorities or others in order for law enforcement to investigate the crimes of these leaders in the Watchtower Defendants' organization. The Watchtower Defendants furthered this conspiracy of concealment by, among other things: failing to properly investigate complaints of sexual misconduct; failing to report such allegations to law enforcement authorities; and failing to remove molesting leaders or prevent their access to children. Molesting leaders were allowed to remain as leaders in good standing in the organization and were allowed continued frequent and unsupervised access to children in the organization. At all material times, the WATCHTOWER DEFENDANTS have prohibited the victim and/or accuser from warning others or speaking about the matter to anyone under penalty of discipline. Victim/accusers were not permitted to report suspected abuse to outside authorities or to other Publishers within the organization, despite secular laws and duties regarding the reporting of sexual abuse. The Watchtower Defendants represented to Plaintiffs, members of the organization and the public at large that Don Serjeant was fit to lead, when in fact he was a predator pedophile. The Watchtower Defendants knew or should have known that Don Serjeant would continue to sexually molest children, using his leadership positions to gain access and control over his victims.

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23.

From at least 1955 until the date of his death, the WATCHTOWER DEFENDANTS vested Don Serjeant with leadership authority within the WATCHTOWER DEFENDANTS' organization as a ministerial servant and at all times held him out to be a ministerial servant in good standing.

24.

As early as 1962, if not before, Don Serjeant began sexually molesting and physically abusing his daughter, Suzan, who was seven years old at the time. Suzan finally complained to the Elders of Defendant BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES, where Don Serjeant was a leader in good standing and Suzan was a participant as a member of his family. Suzan described to the Elders of Defendant BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES the repeated sexual and physical abuse by Don Serjeant and asked for their help. The Elders of Defendant BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES told Suzan not to discuss the matter with anyone else and that they would take any and all necessary action. The Elders of Defendant BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES reported Suzan's complaint to Don Serjeant whereupon Don Serjeant beat her for talking to the Elders. The Elders were informed of this and other beatings. Despite their knowledge and representations, the WATCHTOWER DEFENDANTS did nothing to assist Suzan, to protect Suzan or other young girls from further abuse, to discipline Don Serjeant or to warn others of the threat he posed. The WATCHTOWER DEFENDANTS made no report to law enforcement authorities or others. Instead, the WATCHTOWER DEFENDANTS continued to promote Don Serjeant as a ministerial servant and leader in good standing in the

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organization, placing him in positions of control and supervision over children and they thereby aided, abetted and ratified the abuse of Suzan and other young victims within the organization.

25.

At some time prior to 1984, Don Serjeant moved to Albany, Oregon and joined Defendant NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, where the WATCHTOWER DEFENDANTS continued to promote Don Serjeant as a ministerial servant and leader in good standing, and placed him in positions of authority with supervision and control of children, despite the WATCHTOWER DEFENDANTS' knowledge that he was sexually and physically abusing young children. The WATCH TOWER DEFENDANTS made no effort to warn families of Defendant NORTH ALBANY CONGREGATION that a sexual predator was in their midst and that their children were at risk. Beginning sometime after 1978 for a number of years until 1989, Don Serjeant repeatedly sexually abused his granddaughter, Plaintiff CHRISTINA VIZENOR who was born on September 3, 1977. From 1984 through 1989, Don Serjeant repeatedly sexually abused Plaintiff LEANNA MORLEY, a participant in Defendant NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES. Plaintiff LEANNA MORLEY was approximately 9 years old when the abuse began. Beginning in 1986, Don Sergeant also began repeatedly sexually assaulting Plaintiff JESSICA SCHROEDER who was also a participant in Defendant NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES. Plaintiff JESSICA SCHROEDER was approximately 6 years old when the abuse began. The WATCHTOWER DEFENDANTS' agent, Don Schroeder, had access to

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each of the Plaintiffs due to his appointed leadership position as a ministerial servant in the organization.

26.

In about 1989, Plaintiff LEANNA MORLEY'S father found a journal which graphically depicted Don Serjeant's sexual abuse of his daughter. He gave the journal to the WATCHTOWER DEFENDANTS through the Elders of Defendant NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES and asked the WATCHTOWER DEFENDANTS to address this abuse by their agent, Don Serjeant, who was a ministerial servant and leader in the organization. The WATCHTOWER DEFENDANTS did nothing about the sexual abuse described in the journal except to punish Plaintiff LEANNA MORLEY. The WATCHTOWER DEFENDANTS told Plaintiff LEANNA MORLEY'S family that they were not to report the abuse to anyone, not even law enforcement authorities or other Publishers. The abuse of Plaintiff Jessica Schroeder continued after 1989.

27.

For three decades, the WATCHTOWER DEFENDANTS knew or should have known that Don Serjeant was using his authority as an appointed leader in the organization as a means of sexually molesting and physically abusing young children. Nevertheless, the WATCHTOWER DEFENDANTS allowed Don Serjeant to continue as a ministerial servant and leader in good standing, entrusting him with the authority to supervise and control children in the WATCHTOWER DEFENDANTS' local congregations, many of whom he sexually molested. The WATCHTOWER DEFENDANTS failed to notify anyone that Don Serjeant was molesting or had sexually molested young children. They further failed to take any steps to protect

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these young victims from his abuse, but instead continued to place their agent, Don Serjeant, in positions of supervision and control over children. They also knowingly concealed this information from Plaintiffs and others. The WATCHTOWER DEFENDANTS also aided, abetted and ratified the abuse by disciplining the victims who dared to report the abuse to the WATCHTOWER DEFENDANTS, further increasing Don Serjeant's power over them.

28.

Plaintiffs and their families sought the advice and protection of the WATCHTOWER DEFENDANTS and told them about the abuses perpetrated by their agent, Don Serjeant. The WATCHTOWER DEFENDANTS assumed the role of advocate and counselor to Plaintiffs and their families and instructed Plaintiffs and their families to keep the abuse matters within the WATCHTOWER DEFENDANTS' organization and not to disclose the abuses to any other publishers or outside authorities. They even punished those who dared to complain. Thus, the WATCHTOWER DEFENDANTS aided and abetted the perpetrator and ratified his conduct, causing further damage to Plaintiffs.

29.

The WATCHTOWER DEFENDANTS did not report the abuse to law enforcement authorities nor did they warn any other members of the NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC., or any other congregation, that a dangerous sexual predator was in their midst. They did not act to help Plaintiffs or their families deal with the trauma and actively prevented them from obtaining help from trained and appropriate resources. They also took no steps to discipline or otherwise hold Don Serjeant accountable for his conduct or to assist

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him in addressing his propensities. Instead, they continued to allow him to act as their agent, with control and supervision over children.

30.

Don Serjeant used the authority of his position as a ministerial servant in the WATCHTOWER DEFENDANTS' organization to sexually abuse Plaintiffs. The WATCHTOWER DEFENDANTS directly and vicariously caused foreseeable harm to Plaintiffs by, among other things:

a. aiding, abetting and ratifying the abuse of children by leaders in the organization;

b. blaming, humiliating, sanctioning and/or disciplining victims/accusers of sexual abuse instead of the perpetrators

c. negligently failing to report such sexual abuse, including the abuse by Don Serjeant, to law enforcement and governmental child welfare agencies and requiring that Publishers not make such reports.

d. negligently failing to warn Plaintiffs, their families, and others of the risk of Don Serjeant's abuse after they knew or should have known of Don Serjeant's propensities to use his position of leadership to engage in acts of sexual abuse.

e. negligently failing to train its Elders, volunteers, appointed overseers and other associated individuals to prevent, identify, investigate, respond to or report child abuse.

f. negligently failing to adopt adequate policies and procedures for the protection of children and other publishers and/or to implement and comply with such procedures that did exist.

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g. failing to properly investigate matters brought to the WATCHTOWER DEFENDANTS' attention involving child sexual abuse and/or suspicions of child sexual abuse.

h. negligently allowing Don Serjeant to move between congregations as a leader in good standing and placing him in leadership positions with authority over children after the WATCHTOWER DEFENDANTS knew or should have known of his propensities to use his position of leadership to engage in acts of sexual abuse of children.

i. negligently failing to provide child abuse victims and their families with any assistance in coping with the trauma of abuse and preventing Plaintiffs and their families from reporting the abuse to outside authorities and obtaining outside help to deal with the trauma of abuse.

j. concealing from Plaintiffs and their families that the WATCHTOWER DEFENDANTS had information that Don Serjeant was abusing young children.

k. negligently failing to undertake a sexual offender evaluation, provide sexual offender treatment and/or obtain psychiatric evaluation and treatment of Don Serjeant after they knew or should have known of his propensities to use his position of leadership to engage in acts of sexual abuse.

l. negligently failing to properly supervise Don Serjeant as a leader in the organization or to monitor his activities after they knew or should have known of his propensities to use his position of leadership to engage in acts of sexual abuse.

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31.

Plaintiffs did not discover and could not have discovered through the exercise of reasonable diligence their injuries that resulted from the abuse or the causal connection between their injuries and the wrongful conduct of the WATCHTOWER DEFENDANTS until less than three years before the filing of this lawsuit.

CAUSES OF ACTION

COUNT I

RESPONDEAT SUPERIOR

32.

For a number of years, beginning in 1984, as an agent and alter ego of the WATCHTOWER DEFENDANTS, Don Sergeant repeatedly committed sexual battery upon the persons of the Plaintiffs in the State of Oregon. Each of the WATCHTOWER DEFENDANTS was in the chain of command and acted pursuant to the authority granted to them as agents and the alter ego of the GOVERNING BODY and each other, utilizing such leadership and authority to carry out and/or aid, abet and ratify the sexual abuse of Plaintiffs. The WATCHTOWER DEFENDANTS are therefore liable for the sexual battery of Plaintiffs under the legal theory of *respondeat superior*.

COUNT II

COMMON-LAW NEGLIGENCE

33.

At all material times, WATCHTOWER DEFENDANTS assumed a duty to protect Plaintiffs from sexual predators within the WATCHTOWER DEFENDANTS' organization. The WATCHTOWER DEFENDANTS further knew or should have known that Plaintiffs were at risk of foreseeable harm by their agent, Don Serjeant, whom the WATCHTOWER DEFENDANTS had placed in leadership positions with supervision and control over children, but failed to act to protect them from said

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harm. The WATCHTOWER DEFENDANTS breached their duty to the great harm of Plaintiffs.

34.

As a direct result of the negligent conduct of the WATCHTOWER DEFENDANTS, Plaintiffs have suffered the injuries and damages described herein.

COUNT III

NEGLIGENT HIRING, RETENTION AND SUPERVISION

35.

At all material times, the WATCHTOWER DEFENDANTS knew or should have known of Don Serjeant's propensities to use his position as a leader in the organization to engage in acts of sexual abuse. The WATCHTOWER DEFENDANTS failed to adequately investigate, discipline, evaluate, treat, supervise and otherwise monitor the conduct of Don Serjeant who was under their control. They therefore negligently hired, retained and supervised Don Serjeant in the organization at a time when they knew or should have known of his propensities to engage in acts of sexual abuse against Plaintiffs and other young children. The WATCHTOWER DEFENDANTS also failed to adequately train and supervise the Elders of the local congregations to whom they had entrusted the responsibility of investigating, evaluating and handling all reports or suspicions of child abuse. Plaintiffs have suffered grave harm due to WATCHTOWER DEFENDANTS' negligent hiring, retention and supervision of their agent, Don Serjeant, and Elders of the local congregations.

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COUNT IV

AGGRAVATED NEGLIGENCE

36.

The behavior of the WATCHTOWER DEFENDANTS set forth above demonstrated a conscious indifference to the safety and welfare of Plaintiffs, entitling Plaintiffs to amend and seek damages under O.R.S. 18.535.

37.

As a direct result of the aggravated negligent conduct of the WATCHTOWER DEFENDANTS, Plaintiffs have suffered the injuries and damages described herein.

COUNT V

BREACH OF FIDUCIARY DUTY

38.

The WATCHTOWER DEFENDANTS placed themselves in a position of trust and confidence with Plaintiffs. The relationship between Plaintiffs and the WATCHTOWER DEFENDANTS' organization was fiduciary in nature and imposed on the WATCHTOWER DEFENDANTS a duty to act in Plaintiffs' best interests.

39.

Because of this special relationship between the Plaintiffs and the WATCHTOWER DEFENDANTS, Plaintiffs and their families placed their trust and confidence in the WATCHTOWER DEFENDANTS that they would not harm Plaintiffs or fail to warn Plaintiffs of potential harm. Further, Plaintiffs and their families placed their trust and confidence in the WATCHTOWER DEFENDANTS that they would protect Plaintiffs from harm.

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40.

The above acts and/or omissions by the WATCHTOWER DEFENDANTS, either independently or in conjunction with each other, constitutes a breach of the fiduciary duty owed to Plaintiffs by WATCHTOWER DEFENDANTS.

41.

As a direct result of the conduct of the WATCHTOWER DEFENDANTS, Plaintiffs have suffered the injuries and damages described herein.

COUNT VI

***NEGLIGENCE PER* SE and COMMON-LAW NEGLIGENCE: FAILURE TO REPORT SUSPECTED CHILD ABUSE**

42.

The WATCHTOWER DEFENDANTS had a duty, under Section 419B of the Oregon Revised Statutes and the common-law, to report the abuse or suspected abuse of children.

43.

The WATCHTOWER DEFENDANTS deliberately and negligently failed to report to law enforcement the abusive conduct of Don Serjeant prior to the abuse of Plaintiff. Further, the WATCHTOWER DEFENDANTS failed to report abuse of Plaintiffs by Don Serjeant to law enforcement. The WATCHTOWER DEFENDANTS thereby violated Section 419B of the Oregon Revised Statutes intended to safeguard and enhance the welfare of abused children. Plaintiffs were members of the class of persons Section 419B was designed to protect and were injured as a result of The WATCHTOWER DEFENDANTS' violation of the statute. Such violation constitutes *negligence per se*. The WATCHTOWER DEFENDANTS' failure to report also constitutes common-law negligence. The WATCHTOWER DEFENDANTS asserted

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their authority over both Plaintiffs and their abuser, Don Serjeant, creating a special relationship of trust and confidence and power over Plaintiffs. In the context of this special relationship and the uneven balance of power, the WATCHTOWER DEFENDANTS assumed a duty to handle all reports of child abuse and prevented Plaintiffs and their families from reporting the abuse to, or seeking help from, sources and authorities outside the WATCHTOWER DEFENDANTS' organization. The WATCHTOWER DEFENDANTS, with conscious disregard for the welfare of Plaintiffs, violated that duty to Plaintiffs' detriment.

44.

As a direct result of the WATCHTOWER DEFENDANTS' failure to report Don Serjeant's abuse to law enforcement, Plaintiffs were deprived of Oregon's victim assistance program that would have provided for counseling and care that would have decreased the harm to the Plaintiffs from the effects of the abuse.

COUNT VII

FRAUD, FRAUDULENT CONCEALMENT AND CONSPIRACY

45.

Plaintiffs incorporate herein by this reference all paragraphs of this Complaint as if fully set forth herein. Plaintiffs further state that after receiving reports that their agent, Don Serjeant was using his position of authority in the organization to abuse adolescents, the WATCHTOWER DEFENDANTS, with the intent to keep the information from Plaintiffs, other victims similarly situated and the community-at-large, willfully concealed that information. The WATCHTOWER DEFENDANTS materially misrepresented to Plaintiffs and their families that Don Serjeant was a leader in good standing with authority to instruct Plaintiffs and other children in

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spiritual, ethical and moral matters and that their agent was to be obeyed. The WATCHTOWER DEFENDANTS further materially misrepresented that they would act in the best interests of Plaintiffs and other children entrusted to their care. The WATCHTOWER DEFENDANTS failed to disclose that they knew of Don Serjeant's propensity to use his leadership position to sexually abuse Plaintiffs and others and that they were doing nothing to protect the children under their care. Plaintiffs did not know of the falsity of the WATCHTOWER DEFENDANTS' representations, were entitled to rely upon them and did in fact reasonably rely upon them to their serious injury and harm.

46.

By holding out Don Serjeant as a Ministerial Servant and leader, qualified to provide religious instruction and counsel, and by undertaking the religious instruction and spiritual and emotional counseling and training of plaintiff, and by accepting, through their agents Don Serjeant and other leaders, including Elder and Ministerial Servants, the control and responsibility of the Plaintiffs as minors, the WATCHTOWER DEFENDANTS and each of them entered into a fiduciary relationship with the minor plaintiff.

47.

As fiduciaries to Plaintiffs, the WATCHTOWER DEFENDANTS, and each of them, had the duty to obtain and disclose information relating to sexual misconduct by their agent Don Serjeant. The WATCHTOWER DEFENDANTS failed to disclose and conspired to conceal such information from Plaintiffs.

48.

The WATCHTOWER DEFENDANTS, and each of them, in concert with each

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other and with the intent to conceal and defraud, conspired and came to a meeting of the minds whereby they would misrepresent, conceal or fail to disclose information relating to the sexual misconduct of their agent, Don Serjeant. By so concealing, the WATCHTOWER DEFENDANTS and each of them committed at least one act in furtherance of the conspiracy.

COUNT VIII

RATIFICATION

49.

Upon learning that its agent, Don Serjeant had sexually abused Plaintiffs and others, the WATCHTOWER DEFENDANTS failed to take any steps to discipline or otherwise hold Don Serjeant accountable for his actions and continued to maintain that Don Serjeant was a leader in good standing with the organization, with authority to supervise and control children, until his death. The WATCHTOWER DEFENDANTS have thereby ratified Don Serjeant's conduct in sexually abusing Plaintiffs and others. The WATCHTOWER DEFENDANTS are thus liable in damages to Plaintiffs.

COUNT IX

ALTER EGO AND SINGLE BUSINESS ENTERPRISE

50.

The WATCHTOWER DEFENDANTS are organized and controlled and their affairs are so conducted that they are, in fact, mere instrumentalities and alter egos for each other and liable for each other's acts. Alternatively, the WATCHTOWER DEFENDANTS were all engaged, at all material times, in a single business enterprise and are liable for each other's acts.

///

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COUNT X

NEGLIGENT USURPATION OF INVESTIGATORY FUNCTION

51.

Section 419B of the Oregon Revised Civil Statutes (and predecessor provisions) requires officials to perform specific responsibilities to carry out the policy of the statute described in Section 419.005 (and its predecessors). The WATCHTOWER DEFENDANTS assumed these duties and responsibilities, but negligently failed to perform them.

52.

As a direct result of the WATCHTOWER DEFENDANTS' negligent conduct, Plaintiffs have suffered the injuries and damages described herein.

COUNT XI

VIOLATION OF OREGON STATUES SECTION 161.55

53.

Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth herein. The WATCHTOWER DEFENDANTS' acts described herein violate Oregon Statutes §161.155 in that the WATCHTOWER DEFENDANTS conspired with one or more other person to commit acts injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.

COUNT XII

VIOLATION OF OREGON STATUES SECTION 162.325

54.

Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth herein. The WATCHTOWER DEFENDANTS' acts described herein violate

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Oregon Statutes §162.325 in that the WATCHTOWER DEFENDANTS harbored, concealed and/or aided their agent, Don Serjeant, after their agent, Don Serjeant, had committed a felony, with the intent that their agent, Don Serjeant, might avoid or escape arrest, trial, conviction and/or punishment, and the WATCHTOWER DEFENDANTS having knowledge that their agent, Don Serjeant had committed a felony.

DAMAGES

55.

As a result of Defendants' acts, Plaintiffs have incurred and will continue to incur costs for medical expenses, counseling and psychological treatment, have lost earning capacity and have suffered and will continue to suffer extreme, permanent emotional distress and psychological harm with accompanying physical manifestations, embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life, and economic damages of $(amount to be inserted prior to trial) and non-economic damages of $4,000,000 as to each Plaintiff.

WHEREFORE, Plaintiffs demand judgment against Defendants individually, jointly and severally in an amount for economic damages of $(amount to be inserted prior to trial) and non-economic damages of $12,000,000, plus costs, disbursements, and whatever relief the court deems just and equitable.

DATED this 15 day of September, 2003.

NELSON & MacNEIL, P.C.

By: James O. Nelson OSB #74230
Of Attorneys for Plaintiffs

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Attorneys at Law

JOHN KAEMPF
Direct Dial: (503) 499-4468
E-mail: john.kaempf@bullivant.com

September 22, 2003

Via Facsimile and U.S. Mail

The Honorable John A. McCormick
Circuit Court Judge
Linn County Circuit Court
PO Box 1749
Albany, OR 97321-0491

Re: *Leanna Morley, et al. vs. North Albany Oregon Congregation, Watchtower Bible and Tract Society of New York, Inc., et al.*
Linn County Circuit Court Case No. 030431

Dear Judge McCormick:

I learned today that you are assigned to hear the oral argument of the defendants' ORCP 21 Motions against the First Amended Complaint tomorrow, September 23, 2003, beginning at 10:00 a.m. Ron Bailey and I represent the defendants.

This confirms that the defendants filed an original supporting Memorandum, as well as a Reply Memorandum, in support of the ORCP 21 Motions, and that the Court has these pleadings in its file. If you do not have these pleadings, please notify my office immediately, and we will get copies of them to you.

This further confirms that, pursuant to a September 19, 2003 letter hand-delivered to the Court, the plaintiffs withdrew their "Supplemental" memorandum in opposition to defendants' Motions. Therefore, the Court will not need to read that pleading, and defendants will not need to respond to it.

Thank you for your attention to this matter. I look forward to the hearing tomorrow morning.

Sincerely,

John Kaempf

JTK:eku
cc: James G. Nelson, Plaintiffs' Attorney (via facsimile and regular mail)

RECEIVED DEC 1 0 2003

Nelson & MacNeil, P.C.

ATTORNEYS AT LAW • ALBANY OFFICE (541) 928-9147 • CORVALLIS OFFICE (541) 758-5347

Attorneys: James G. Nelson • Christopher E. MacNeil
Legal Assistants: Heather L. Brown • Laura C. Grant

December 9, 2003

The Honorable John McCormick
Linn County Circuit Court
PO Box 1749
Albany OR 97321

Re: Morley et al. v. North Albany Oregon Congregation, et al.
Case No. 030431

Dear Judge McCormick:

Please find enclosed a trial court decision in a similar case against some of the Watchtower entities in which they raised the issue of "ecclesiastical abstention" as they have in this case. The Tennessee court has rejected that challenge at the pleading stage.

Sincerely,

JAMES G. NELSON

JGN/lkg
Enclosure(s)
cc: Ron Bailey
Diane McGehee
Greg Love

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IN THE CIRCUIT COURT FOR THE FOURTEENTH JUDICIAL DISTRICT OF TENNESSEE, AT MANCHESTER, PART II

BARBARA J. ANDERSON, and A. JOSEPH ANDERSON,

Plaintiffs,

vs.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, WATCHTOWER ENTERPRISES, L.L.C., WATCHTOWER FOUNDATION, INC., WATCHTOWER ASSOCIATES, LTD., KINGDOM SUPPORT SERVICES, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, RELIGIOUS ORDER OF JEHOVAH'S WITNESSES, THE WATCHTOWER GROUP INC., MANCHESTER CONGREGATION OF JEHOVAH'S WITNESSES ELDERS, LAWRENCE A. SEELY, GARY HOBSON, DALE DORMANEN, ROBERT E. MATTHEWS, DAVID SEMONIAN, J. R. BROWN, JOHN DOE #1, JOHN DOE #2, JOHN DOE #3, and JOHN DOE #4,

Defendants.

No.: 32,382

ORDER

This cause came on to be heard by the undersigned on October 6, 2003 on the defendants' motion to dismiss the amended complaint of the plaintiffs. Defendants allege two grounds: one, that the court lacked subject matter jurisdiction and two, the amended complaint should be dismissed for failure to state a claim. On the first matter, defendants cite Tennessee

Rules of Civil Procedure 12.02(1) and sets out in great detail Tennessee and U. S. Supreme Court decisions that specifically prohibit civil courts from exercising jurisdiction over internal matters of a church because of the constitutional doctrine of "ecclesiastical abstention". Plaintiffs counter that specifically in counts one through seven of the amended complaint there are clear assertions of well established causes of action that they expressly plead specifically; intentional, malicious, and fraudulent tortious conduct. The parties have plead exhaustively a variety of issues much of which this court should not consider in a motion to dismiss. (They are more appropriate in a motion for summary judgment.) Just as in a motion for summary judgment, it is the obligation of the trial court to construe the complaint liberally in favor of the plaintiff taking all allegations of fact as true and denying the motion unless it appears that the plaintiff can prove no set of facts in support of plaintiffs' claim. It is the opinion of the undersigned that the court has jurisdiction of one through seven of the complaint which alleges malicious, fraudulent, and bad faith conduct. Count eight is somewhat more suspect in light of the fact that there is no current Tennessee case law that addresses "wrongful disfellowship" as a cause of action, however the plaintiff will be allowed to go forward at the present time on all eight counts. Wherefore, the defendants' motion to dismiss is respectfully denied.

Even in the absence of the doctrine of "ecclesiastical abstention" which this writer wholehcartedly embraces, the litigants can rest assured that the troubled soul of this trial judge has no desire to sit in judgment on matters of internal discipline, faith, church customs, and church government of his fellow human beings. Nor to permit a jury to do likewise.

ENTER this the 3rd day of November, 2003.

John W. Rollins

John W. Rollins, Circuit Judge, Part II

COPY

Kaempf, John

From:	Kaempf, John
Sent:	Thursday, December 11, 2003 12:08 PM
To:	'john.a.mccormick@ojd.state.or.us'
Cc:	James Nelson (E-mail)
Subject:	Morley v. Watchtower (Case #030431)

RECEIVED DEC 15 2003

Dear Judge McCormick: I see that on December 9, 2003, even though the briefing has closed and we are awaiting your ruling on the defendants' Rule 21 motions, Mr. Nelson, plaintiffs' attorney, took it upon himself to send you a letter with a ruling from a Tennessee trial court case, where the Complaint is not attached and the nature of the claims is unknown.

With all due respect to Mr. Nelson, if you are going to consider trial court rulings, we hope you will consider the Letter Opinion and Order we submitted from your colleague, the Honorable Locke Williams, in the similar case of Davidow v. Watchtower, Benton County Circuit Court Case No. 0210345, where many of the same motions before you were granted. Please note that the same lawyers filed the Davidow case.

Thank you. We look forward to receiving your rulings.

John Kaempf

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CIRCUIT COURT OF OREGON
FOR BENTON COUNTY

BENTON COUNTY COURTHOUSE
P.O. BOX 1870
CORVALLIS, OREGON 97339

LOCKE A. WILLIAMS
CIRCUIT JUDGE

(541) 766-6827

April 21, 2003

COPY

James G. Nelson
Attorney at Law
P.O. Box 946
Albany, OR 97321

John T. Kaempf
Attorney at Law
300 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204-2088

Re: Davidow v. Watchtower, et al.; Case No. 02-10345

Counsel:

The above-referenced matter came before the Court on March 3, 2003, for hearing upon Defendants' (hereinafter collectively referred to as the "Defendants"and exclusive of Defendant Troy Christian McKenzie) ORCP 21 Motions. Plaintiff appeared by and through his attorney, James G. Nelson. Defendants appeared by and through their attorney, John T. Kaempf. Prior to the commencement of the hearing, Counsel advised the Court that they had resolved the matters raised by Defendants' Motions to Strike and thus limited their argument to Defendants' Motions to Dismiss. Plaintiff has prepared and tendered to the Court for filing a Second Amended Complaint, which amended complaint addresses the issues raised by Defendants' motions to strike and adds several new causes of action that were not before the Court for this ORCP 21 hearing. Therefore, the Court limits this discussion and decision to the counts contained in Plaintiff's First Amended Complaint which have been moved against by Defendants' pending motions to dismiss.

The Court, having taken the matter under advisement, has reviewed and considered the arguments of Counsel and each party's memorandum(s) of law and the statutes and case law cited therein. In addition, each party has supplemented their arguments by submitting additional case law to the Court after the conclusion of the hearing.

EXHIBIT A
PAGE 1 OF 4

For purposes of considering Defendants' Motion to Dismiss, this Court is limited to the facts stated in Plaintiff's First Amended Complaint and accepts as true the allegations and all reasonable inferences that may be drawn from them. A pleading that contains an allegation of material fact as to each element of the claim for relief, even if vague, is sufficient to survive a motion to dismiss.

This case involves allegations of sexual abuse committed by one church member of minor age against another church member of minor age. Plaintiff's allegations are summarized as follows:

(a) That in approximately 1984, Plaintiff was repeatedly sexually molested by Defendant Troy Christian McKenzie (hereinafter referred to as "McKenzie") at a location or locations away from church property and not during any church activities;

(b) That at all material times, Plaintiff and McKenzie and their mothers were Jehovah's Witnesses and members of Defendant North Albany Oregon Congregation of Jehovah's Witnesses and, by virtue of organizational hierarchy, the other Defendants;

(c) That in 1985, Plaintiff disclosed the sexual abuse to his mother who immediately reported the abuse to Defendants;

(d) That Defendants instructed Plaintiff and his mother not to report the abuse to the authorities or seek outside help and Defendants stated they would handle the matter within the church community;

(e) That Defendants knew or should have known of McKenzie's propensity to engage in acts of sexual abuse and failed to warn Plaintiff; and

(f) That Defendants failed to properly address the abuse and they did not report the abuse to law enforcement or any governmental child welfare agency.

Plaintiff asserts, alternatively, claims against Defendants for (1) negligence based on a duty arising out of a special relationship between the parties; (2) in the absence of a duty, common law negligence based on foreseeability of harm to Plaintiff; (3) negligent performance of an assumed duty; and (4) negligence per se based upon violation of the child abuse reporting statute.

Defendants move this Court to dismiss Counts II (Negligence), III (Gross Negligence), IV (Breach of Fiduciary Duty), and V (Failure to Report Child Abuse) of Plaintiff's First Amended Complaint for failure to state ultimate facts sufficient to constitute a claim for relief. Defendants argue that (1) they do not have a duty to protect Plaintiff from the actions of another church member, and (2) the Constitutions of the United States and Oregon prohibit this Court from inquiring into the correctness of the Church's beliefs, policies, and disciplinary practices. With regard to Count V, Defendants argue that ORS 419B.010 does not provide for a civil cause of action when it is violated.

(1) The existence of a "duty" is a question of law for the Court. Cook v. School Dist. UH3J, 83 Or App 292, 295, 731 P2d 443 (1987). Plaintiff asserts negligence based on a duty arising out of a special relationship between the parties. The question of whether a church has a duty to protect its members from each other appears to be one of first impression in Oregon so the Court may consider decisions from other jurisdictions addressing this issue. The case of Bryan R. V. Watchtower Bible and Tract Society of New York, Inc., 738 A2d 839 (Maine 1999), cited by Defendants is factually very similar to this case. Similar to the plaintiff in Bryan R., Plaintiff in this case does not allege that McKenzie was an agent or employee of the church. Nor does Plaintiff allege that McKenzie occupied any position of authority, such as church elder. Plaintiff does not allege that the church affirmatively placed McKenzie in any position of control or supervision of children or that the church knowingly placed McKenzie in a position where he could sexually abuse children within a church setting. Plaintiff's First Amended Complaint alleges that Defendants held a position of trust in relation to Plaintiff and expected Plaintiff and his family to recognize the relationship as one of special trust and confidence. These allegations are not sufficient to identify a special relationship. Plaintiff has not alleged ultimate facts to support a claim that a special relationship exists between himself and the church sufficient to give rise to a duty of the church to protect Plaintiff from other members of the church under the circumstances presented in this case.

(2) In the absence of a duty that arises as a result of status, a relationship, or a particular standard of conduct, "the issue of liability for harm actually resulting from defendant's conduct depends on whether the conduct unreasonably created a foreseeable risk to a protected interest of the kind of harm that befell the plaintiff." Fazzolari v. Portland School Dist. No. 1J, 303 Or 1, 17, 734 P2d 1326 (1987). A general responsibility exists to not unreasonably expose people to a foreseeable risk of harm. The concept of foreseeability refers to generalized risks of the type of incidents and injuries that occurred rather than predictability of the actual sequence of events. Stewart v. Jefferson Plywood Co., 255 Or 603, 469 P2d 783 (1970). Plaintiff's First Amended Complaint alleges that Defendants knew or should have known that McKenzie had a propensity to engage in acts of sexual abuse and that failure to warn Plaintiff about McKenzie unreasonably exposed Plaintiff to a foreseeable risk of harm. As stated before, Plaintiff does not allege that McKenzie was an agent or employee of the church; or that McKenzie occupied any position of authority within the church; or that the church affirmatively placed McKenzie in any position of control or supervision of children; or that the church knowingly placed McKenzie in a position where he could sexually abuse children within a church setting. Even accepting as true Plaintiff's allegation that Defendants knew that McKenzie had a propensity to engage in acts of sexual abuse, Plaintiff has not alleged ultimate facts to support a claim that the harm to Plaintiff was foreseeable.

(3) Plaintiff alleges negligent performance of an assumed duty. The Court agrees with Defendants that this allegation requires an inquiry into the religious beliefs, policies, and practices of the church, which inquiry is barred by the "free exercise of religion" clauses in the Oregon and the U.S. Constitutions.

(4) Plaintiff alleges negligence *per se* based upon Defendants' violation of the Oregon child abuse reporting statute. ORS 419B.010 creates a statutory duty for "any public or private official having reasonable cause to believe that any child with whom the official comes into contact has suffered abuse or that any person with whom the official comes into contact has abused a child" to immediately report the abuse. Defendants argue that ORS 419B.010 does not provide a civil cause of action for violations of the statute, and the Court agrees. However, under the doctrine of negligence *per se*, the violation of a statute raises a rebuttable presumption of negligence if (1) the violation causes an injury to a member of the class of persons meant to be protected, and (2) the injury is of a type which the statute was enacted to prevent. Torres v. Pacific Power and Light, 84 Or App 412, *rev. dismissed* 304 Or 1, 740 P2d 792 (1987). Defendants argue that they fall within an exception to the reporting requirement as a "member of the clergy" because the communication is privileged under ORS 40.260. Whether the communication meets the privilege requirements of ORS 40.260 is a factual issue. For purposes of the pending motion, Plaintiff has pled ultimate facts sufficient to state a claim for negligence *per se*.

The Court grants Defendants' motions to dismiss Counts II, III, and IV, but denies Defendants' motion with regard to Count V. Mr. Kaempf will kindly prepare an order.

Sincerely,

Locke A. Williams
Circuit Court Judge

Nelson & MacNeil, P.C.

ATTORNEYS AT LAW • ALBANY OFFICE (541) 928-9147 • CORVALLIS OFFICE (541) 758-5347
Attorneys: James G. Nelson • Christopher E. MacNeil
Legal Assistants: Heather L. Brown • Laura C. Grant

January 16, 2004

Via Hand Delivery

The Honorable John McCormick
Linn County Circuit Court
PO Box 1749
Albany OR 97321

Re: Morley et al. v. North Albany Oregon Congregation, et al.
Case No. 030431

Dear Judge McCormick:

I am submitting to you two new rulings on similar cases against the Watchtower Bible & Tract Society of New York.

Enclosed is an Order from the case of Daniel West v. Watchtower Bible and Tract Society of New York from the Superior Court of Yolo County in California, filed on December 29, 2003. The court allowed portions of the case to proceed in spite of the Watchtower's First Amendment defenses.

Also enclosed is an Order from the case of Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York from the Superior Court of Napa County in California, filed on December 17, 2003. The Court, in the relevant portions, commented on the First Amendment defense as follows:

> Plaintiffs' complaint alleges, generally, that the plaintiffs and other minors were regularly sexually abused by church leaders, that the Church defendants were notified of the abuse, and that they failed to take steps to protect the children entrusted to their care and to take steps to prevent future acts of molestation. The complaint further alleges that "rather than implement measures to redress and prevent the sexual molestation of these children, the Watchtower defendants acted in a systematic pattern and practice of suppression of information to cover-up and hide incidents of child molestation from law enforcement and their membership in order to protect those within the [defendants'] organization who committed acts of sexual molestation against children." The complaint alleges that leaders who molested children were allowed to remain as leaders in good standing and were given continued access to children in the organization, and that the organization prohibited the victims and accusers from speaking to anyone about the alleged abuse under threat of suffering sever (sic) sanctions. The complaint also contains specific allegations about the abuse allegedly suffered by the two individual plaintiffs at the hands of a Church Elder and about the defendants' failure to take steps to protect the plaintiffs or to prevent future abuse, when it was in their power to do so.

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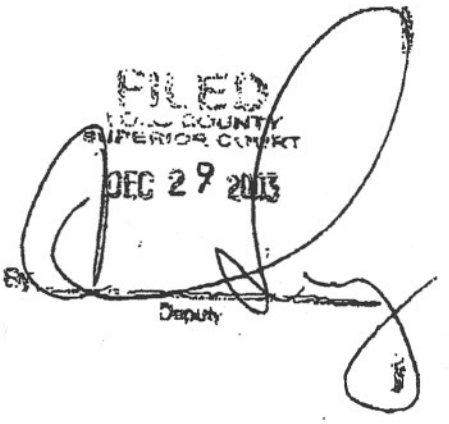
> Defendants cannot use the First Amendment to shield them from these allegations, and none of the cases cited by defendants say otherwise. As made clear from plaintiffs' thorough review of the relevant case law, this court may hear plaintiffs' claims without treading on the Constitution's free exercise clause. Accordingly, defendants' demurrer to plaintiffs' tort claims on the ground that they are barred by the First Amendment is OVERRULED.

I was criticized previously for submitting trial court rulings without accompanying pleadings. If the court desires, I will be happy to obtain and submit the pleadings and memorandums that have lead to these Orders. I do note that on the Napa County case above, on page 4 of the Order, that the Bullivant Houser Bailey firm is apparently involved in that case, also, and I assume that if Mr. Kaempf wishes you to review pleadings or memos, he can submit them from his firm's files.

Sincerely,

JAMES G. NELSON

JGN/lkg
Enclosure(s)
cc: John Kaempf
Kenneth Fibich
Diane McGehee
Greg Love



SUPERIOR COURT OF CALIFORNIA

COUNTY OF YOLO

Daniel West, et al., Plaintiffs, vs. Watchtower Bible and Tract Society of New York, Inc., et al., Defendants	Case No.: No. CV 03-1439 **ORDER AFTER HEARING** Date: December 4, 2003 Time: 8:30 Dept: 11

The motion to quash of defendants Kingdom Support Services, Religious Order of Jehovah's Witnesses and Watchtower Bible and Tract Society of Pennsylvania and the demurrer of defendants Watchtower Bible Tract Society of New York, Watchtower Bible and Tract Society of Pennsylvania, Kingdom Support Services, Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, Woodland Congregation of Jehovah's Witnesses and Quincy Congregation of Jehovah's Witnesses were heard at the above-noted place and time. Rudy Nolen and William L. Brelsford, Jr., Attorneys at Law, appeared for the plaintiffs. Robert J. Schnack, Attorney at Law, appeared for the defendants.

Having considered all matters submitted in the pleadings and on oral argument, all admissible evidence, the file in this case and the applicable law, the court now rules as follows:

///

1. The motion of defendants Kingdom Support Services and Religious Order of Jehovah's Witnesses to quash service of the summons and complaint is **GRANTED**;

2. The motion of defendant Watchtower Bible and Tract Society of Pennsylvania to quash service of the summons and complaint is **DENIED WITHOUT PREJUDICE**. The plaintiffs are authorized to conduct limited written discovery regarding the entity's contacts with California. The plaintiffs are not authorized to depose Richard E. Abrahamson;

3. The demurrer to the first cause of action for respondeat superior is **SUSTAINED** without leave to amend. The complaint does not allege that defendant Silva was acting within the scope of his employment when he abused the plaintiffs. (*Mark K. v. Roman Catholic Archbishop of Los Angeles* (1998) 67 Cal.App.4th 603, 609.) The plaintiffs argue that a respondeat superior theory is available to them because the entity defendants ratified Silva's acts. However, as discussed below, the plaintiffs have not properly pleaded ratification or shown a reasonable possibility of amending to cure the defect. The cause of action for sexual battery remains pending as to defendant Silva;

4. The demurrer to the second cause of action for negligence, third cause of action for negligent appointment, retention and supervision, fourth cause of action for gross negligence with willful misconduct, fifth cause of action for breach of fiduciary duty and seventh cause of action for fraud, fraudulent concealment and conspiracy is **OVERRULED**. Although the complaint does contain some allegations about the practices of the Jehovah's Witness church (see e.g. Paragraph 25), the plaintiffs do not allege that they were vulnerable to Silva because of their religious piety. Such an allegation would bar their complaint under the First Amendment and the opinion in *Richelle L. v. Roman Catholic Archbishop of San*

Francisco (2003) 106 Cal.App.4th 257. It is clear from the complaint that the plaintiffs were vulnerable to Silva because of their youth;

5. The demurrer to the sixth cause of action for negligence per se and common law negligence for failure to report is **SUSTAINED** with leave to amend. The plaintiffs may amend the complaint to either (1) clearly allege that the defendants acquired knowledge or a reasonable suspicion of child abuse after January 1, 1997; or (2) delete the allegations concerning Penal Code §11164;

6. The demurrer to the eighth cause of action for ratification is **SUSTAINED** without leave to amend. "Ratification is the voluntary election by a person to adopt in some manner as his own an act which was purportedly done *on his behalf* by another person, the effect of which, as to some or all persons, is to treat the act as if originally authorized by him. A purported agent's act may be adopted expressly or it may be adopted by implication based on conduct of the purported principal from which an intention to consent to or adopt the act may be fairly inferred, including conduct which is inconsistent with any reasonable intention on his part, other than that he intended approving and adopting it." (*Fretland v. City of Humboldt* (1999) 69 Cal.App.4th 1478, 1490-1491.) The plaintiffs have not shown, and have not shown a reasonable possibility of alleging, that Silva acted "on behalf of" the entity defendants when he molested the plaintiffs;

7. The demurrer to the ninth cause of action for alter ego and single business enterprise is **SUSTAINED** without leave to amend. The plaintiffs have conceded that this is not a separate cause of action;

8. The demurrer to the tenth cause of action for negligent usurpation of investigatory function is **SUSTAINED** without leave to amend. The plaintiffs have not cited any authority supporting this cause of action;

///

9. The demurrer to the eleventh and twelfth causes of action for violations of the Penal Code is **SUSTAINED** with leave to amend. The cited code sections do not create private rights of action. However, there is a reasonable possibility that the plaintiffs could amend to allege negligence per se based on violations of the Penal Code sections.

Date: 12/29/03

By:

Hon. Thomas E. Warriner
Judge of the Superior Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF YOLO
725 COURT STREET
601 COURT STREET
WOODLAND, CA 95695

CASE TITLE: WEST ET AL VS. WATCHTOWER BIBLE ET AL

CASE NO: CV-CV-03-0001439

By: Deputy

I, the undersigned, certify under penalty of perjury that I am a Deputy Clerk of the above-entitled Court and not a party to the within-entitled action; that on January 6, 2004 I served true and correct copies of the foregoing ORDER AFTER HEARING FILED 12-29-03 by depositing the same, enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Post Office at Woodland, California addressed as follows:

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11335 GOLD EXPRESS DRIVE, SUITE 105
GOLD RIVER, CA 95670

MICHAEL W. JANSEN
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1301 COLLEGE STREET
WOODLAND, CA 95695

At the time of said mailing there was regular communication by United States Mail between the said place of mailing and the places addressed.

Dated: January 6, 2004

JAMES B. PERRY
COURT EXECUTIVE OFFICER

By: _____
CSANCHEZ, Deputy Clerk

certmail.s (CCM)

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

ENDORSED

DEC 17 2003

Clerk of the Napa Superior Court
By: S. PETTY Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., Defendants.	CASE NO: 26-22191 **ORDER ON DEMURRER AND MOTION TO QUASH SERVICE OF SUMMONS** **Date: November 21, 2003** **Time: 8:30 a.m.** **Dept: B**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The Church Defendants Demur to each cause of action in Plaintiffs' amended complaint and Motion to Quash Service of Summons was regularly scheduled for hearing on November 21, 2003 in the Napa County Superior Court. None of the parties to the

action requested a hearing and the tentative ruling was recorded as stated below.

1) CHURCH DEFENDANTS' DEMURRER TO AMENDED COMPLAINT
TENTATIVE RULING: The Church defendants demur to each cause of action in plaintiffs' amended complaint. The court will overrule the demurrers to causes of action 2 through 5 and 7 will sustain with leave to amend causes of action 1, 6, 8 and 9, and will sustain without leave to amend causes of action 10 through 12.

Tort Causes of action for Sexual Battery and Respondeat Superior (1st), Common Law Negligence (2nd), Negligent Appointment, Retention and Supervision (3rd), Gross Negligence/Wilful Misconduct (4th), Breach of Fiduciary Duty (5th), Fraud, Fraudulent Concealment and Conspiracy (7th), and Ratification (8th)

First Amendment

The defendants seek to characterize plaintiffs' action as one for clergy malpractice arising out of a counseling relationship, and as such contend that, under the First Amendment, this court may not interject itself into the inner workings of the church. They assert that the plaintiffs' claims are barred because they seek to impermissibly entangle the court in ecclesiastical affairs and in the interpretation of religious doctrine, practices and beliefs. Put plainly, this is simply not so.

Plaintiffs' complaint alleges, generally, that the plaintiffs and other minors were regularly sexually abused by church leaders, that the Church defendants were notified of the abuse, and that they failed to take steps to protect the children entrusted to their care and to take steps to prevent future acts of molestation. The complaint further alleges that "rather than implement measures to redress and prevent the sexual molestation of these children, the Watchtower defendants acted in a systematic pattern and practice of suppression of information to cover-up and hide incidents of child molestation from law enforcement and their membership in order to protect those within the [defendants'] organization who committed acts of sexual molestation against children." The complaint alleges that leaders who molested children were allowed to remain as leaders in good standing and were given continued access to children in the organization, and that the organization prohibited the victims and accusers from speaking to anyone about the alleged abuse under threat of suffering sever sanctions. The complaint also contains specific allegations about the abuse allegedly suffered by the two individual plaintiffs at the hands of a Church Elder and about the defendants' failure to take steps to protect the plaintiffs or to prevent future abuse, when it was in their power to do so.

Defendants cannot use the First Amendment to shield them from these allegations, and none of the cases cited by defendants say otherwise. As made clear from plaintiffs' thorough review of the relevant case law, this court may hear plaintiffs' claims without treading on the Constitution's free exercise clause. Accordingly, defendants' demurrer to plaintiffs' tort claims on the ground that they are barred by the First Amendment is OVERRULED.

Respondeat Superior (1st) and Ratification (8th)

As currently drafted the complaint fails to state facts to support claims against the church defendants on respondeat superior and ratification theories. (Mark K. v. Roman Catholic Archbishop (1998) 67 Cal.App.4th 603, 609; Fretland v. County of Humboldt (1999) 69 Cal.App.4th 1478, 1490.) The demurrer to these claims is sustained with leave to amend.

Cause of action for Negligence Per Se and Common Law Negligence (6th) and for Negligent Usurpation of Investigatory Function (10th)

The demurrer to the 6th cause of action is sustained as to the allegations of negligence per se premised upon the California Child Abuse and Neglect Reporting Act, Penal Code § 11164, et seq. This statute did not apply to the clergy during the

time period in question. Accordingly, it cannot support a negligence per se cause of action. The demurrer to the 6th cause of action is sustained with leave to amend to delete the allegations concerning Penal Code section 11164.

The 10th cause of action is premised entirely on Penal Code § 11164. Accordingly, the demurrer to that cause of action is sustained without leave to amend.

Cause of action for Alter Ego and Single Business Enterprise (9th)

"Alter ego" is not a separately cognizable cause of action, rather it is a contract law theory concerning business structures which allows a separate entity to be disregarded and another to be held responsible for the disregarded entities liabilities. Plaintiffs may amend their complaint to state their alter ego allegations generally, but not as a separate cause of action.

Violation of Penal Code sections 182 and 32 (11th and 12th causes of action)

Plaintiffs have presented no authority that allows them to state a private cause of action for asserted Penal Code violations. The demurrers to these causes of action are sustained without leave to amend.

Plaintiffs shall have 20 days to amend their complaint as specified herein. Defendants shall have 20 days thereafter to respond.

2) WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC.'S MOTION TO QUASH SERVICE OF SUMMONS TENTATIVE RULING: Plaintiffs request for leave to conduct discovery is granted. Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period. This motion shall be continued to January 21, 2004 at 8:30 in Dept. B.

IT IS ORDERED as follows:

The Court overrules the Defendants' demurrers to causes of action 2 through 5 and 7 will sustain with leave to amend causes of action 1, 6, 8 and 9, and will sustain without leave to amend causes of action 10 through 12. Plaintiffs shall have 20 days to amend their complaint as specified herein. Defendants shall have 20 days thereafter to respond.

The Court grants Plaintiffs' request for leave to conduct discovery. Plaintiffs are permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period. The motion is continued to January 21, 2004 at 8:30 in Dept. B.

DATED: DEC - 2 2003

W. SCOTT SNOWDEN

Judge of the Superior Court of California, County of Napa

Approval as to form.

Dated: November 25, 2003

BULLIVANT HOUSER BAILEY

Robert J. Schnack

Dated: November 25, 2003

NOLEN SAUL BRELSFORD

William L. Brelsford

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January 20, 2004

The Honorable John A. McCormick
Circuit Court Judge
Linn County Circuit Court
PO Box 1749
Albany, OR 97321-0491

Re: *Leanna Morley, et al. vs. North Albany Oregon Congregation, Watchtower Bible and Tract Society of New York, Inc., et al.*
Linn County Circuit Court Case No. 030431

Dear Judge McCormick:

As you know, on September 23, 2003, you presided over the hearing of the defendants' ORCP 21 Motions. Pursuant to UTCR 5.030, the briefing is closed, oral argument has occurred, and the parties are awaiting your rulings.

However, Mr. Nelson, plaintiffs' attorney, continues to send you letters and additional rulings from out of state trial court cases. When the briefing was still open, we did not object to you considering relevant trial court rulings, which is why we cited the court's decision in the related Davidow action in Benton County. However, we do object to Mr. Nelson continuing to send you letters and additional legal authorities after the time for briefing has closed, and after oral argument has occurred, which puts our office in an awkward position in terms of rebutting Mr. Nelson's new arguments.

Therefore, while we are not concerned with the substance of the new out of state trial court rulings submitted by Mr. Nelson, we urge you to review the rulings in the Davidow action from Oregon, and we object to Mr. Nelson continuing to send you letters and legal authorities in opposition to our motions. If these additional authorities will cause you to deny our motions, we request the opportunity to submit additional briefing and to conduct another oral argument. If the additional rulings submitted by Mr. Nelson do not affect your analysis, we will look forward to receiving your rulings.

Nelson & MacNeil, P.C.

ATTORNEYS AT LAW • ALBANY OFFICE (541) 928-9147 • CORVALLIS OFFICE (541) 758-5347

Attorneys: James G. Nelson • Christopher E. MacNeil
Legal Assistants: Heather L. Brown • Laura C. Grant

January 21, 2004

The Honorable John McCormick
Linn County Circuit Court
PO Box 1749
Albany OR 97321

Re: Morley et al. v. North Albany Oregon Congregation, et al.
Case No. 030431

Dear Judge McCormick:

I believe we have only submitted court decisions decided after this case was argued on September 23, 2003. We could not have cited them any earlier. I believe the submission of additional rulings while a matter is pending a decision is entirely consistent with our ethical duty to zealously represent our clients as required by DR 7-101.

Both sides have cited numerous court decisions from around the country. It is appropriate to cite out-of-state decisions dealing with similar issues regarding the interpretation of the US Constitution.

It is my understanding that the submission of supplemental authority after briefing is closed is appropriate under the circumstances and it also happens on the appellate level.

While citations of trial court rulings usually have much less weight than appellate decisions, in this case, the Defendants are attempting to rely heavy on a trial court ruling from the Davidow case.

If there are other relevant decisions decided after this case was argued, I would invite Defendant's counsel to submit them.

Sincerely,

JAMES G. NELSON

JGN/lkg
cc: John Kaempf
Kenneth Fibich
Diane McGehee
Greg Love
Clients

213 WATER AVE. NW, SUITE 100 • P.O. BOX 946 • ALBANY, OR 97321 • FAX (541) 928-3621

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March 11, 2004

The Honorable John A. McCormick
Circuit Court Judge
Linn County Circuit Court
PO Box 1749
Albany, OR 97321-0491

Re: *Leanna Morley, et al. vs. Watchtower Bible and Tract Society, et al..*
Linn County Circuit Court Case No. 030431

Dear Judge McCormick:

Plaintiffs' attorney, over our objection, has submitted trial court rulings to you issued after the oral argument of our motions to dismiss last September. However, the Court has not sustained our objection and has appeared willing to review subsequent decisions.

Therefore, please find enclosed for your review a copy of the Minnesota Court of Appeals' March 9, 2004 decision in *Meyer v. Lindala and Annandale Congregation of Kingdom Hall of Jehovah's Witnesses*, -- NW2d --, 2004 WL 422668 (Minn App 2004). As you will see, the court in *Meyer* held that the Jehovah's Witnesses Church does **not** have a duty to prevent "member on member" sex abuse, even when it received prior notice of sex abuse charges against a church member, because the required "special relationship" does not exist. The court also held that Minnesota's child abuse reporting statute does **not** allow for a private cause of action based on negligence *per se*. The court in *Meyer* thus rejected the same arguments made by the plaintiffs in the case before you.

We hope you will reach the same ruling as the court in *Meyer*; the Maine Supreme Court in *Bryan R.*; and the other appellate cases we cited in our briefs.

Thank you for your attention to this matter. We look forward to receiving your rulings on the defendants' Motions to Dismiss.

Sincerely,

John Kaempf

cc: James G. Nelson (w/enc.)

Only the Westlaw citation is currently available.

Court of Appeals of Minnesota.

Heidi MEYER, et al., Appellants,
v.
Derek LINDALA, Respondent,
Annandale Congregation of Kingdom Hall of Jehovah's Witnesses, et al.,
Respondents.

No. A03-1142.

March 9, 2004.

Background: Victims of sexual assault sued their religious congregation and its governing body for negligence in failing to report child abuse and other congregation member for sexual battery. The District Court, Wright County, granted congregation and governing body's motion for summary judgment. Victims appealed.

Holdings: The Court of Appeals, Robert H. Schumacher, J., held that:
(1) special relationship did not exist between victims and congregation and governing body, and thus congregation and governing body did not have affirmative duty to protect victims from other member, and
(2) statute requiring certain professionals to report suspected sexual abuse of children does not create private cause of action for violation of its reporting requirements or create duty that could be enforced through common-law negligence action.

Affirmed.

[1] Appeal and Error 0

30k0 k.

Constitutional questions should not be decided by appellate court unless doing so is necessary to dispose of the case at bar.

[2] Negligence 0
272k0 k.

The basic elements of a negligence claim are (1) the existence of a duty, (2) breach of that duty, (3) injury proximately caused by the breach, and (4) damages.

[3] Negligence 0
272k0 k.

An affirmative duty to act only arises when a special relationship exists between the parties.

[4] Negligence 0
272k0 k.

The fact that an actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose upon him a duty to take such action unless a special relationship exists between the actor and the other which gives the other the right to protection.

[5] Negligence 0
272k0 k.

A special relationship giving rise to an affirmative duty to act exists where one party has custody of another under circumstances that deprive the other of normal opportunities for self-protection; typically, the plaintiff is in some respect particularly vulnerable and dependent on the defendant, who in turn holds considerable power over the plaintiff's welfare.

[6] Religious Societies 0
332k0 k.

Special relationship did not exist between victims of sexual assault and their religious congregation and its governing body, and thus congregation and governing body did not have affirmative duty to protect victims from other congregation member who sexually assaulted them as children, even though religious doctrine provided that members were to bring complaints exclusively to congregation elders and that members were to associate only with other members in good standing; sexual assaults did not occur during congregation functions or on congregation property, religious doctrine was faith-based advice, and congregation and governing body did not assume duty to victims.

[7] Negligence 0
272k0 k.

Providing faith-based advice or instruction, without more, does not create a special relationship giving rise to an affirmative duty to act.

[8] Religious Societies 0

332k0 k.

When it comes to restraining religious conduct, it is the obligation of the state to impose the necessary limitations.

[9] Negligence 0
272k0 k.

A special duty giving rise to an affirmative duty to act may arise where one accepts responsibility to protect another, although there was no initial duty.

[10] Constitutional Law 0
92k0 k.

The constitutional right to religious freedom includes the authority to independently decide matters of faith and doctrine and to believe and speak what it will. U.S.C.A. Const.Amend. 1.

[11] Infants 0
211k0 k.

Statute requiring certain professionals to report suspected neglect, physical abuse, or sexual abuse of children does not create a private cause of action for a violation of its reporting requirements or create a duty which could be enforced through a common-law negligence action. M.S.A. § 626.556.

Syllabus by the Court

*1 1. The duty of an organization to protect its members from injury by a third party arises only where there is a special relationship between an organization and its members.

2. Minnesota's child abuse reporting act, Minn.Stat. § 626.556 (2000), does not provide for a civil cause of action.

Wright County District Court, File No. C1022072.

Cynthia J. Waldt, Jeffrey R. Anderson, Jeff Anderson Associates, P.A., St. Paul, MN, for appellants.

Linda M. Ojala, Kurzman, Grant Ojala, Minneapolis, MN, for respondent Lindala.

Lindsay G. Arthur, Jr., Sally J. Ferguson, Keesha M. Gaskins, Kirsten J. Hansen, Arthur, Chapman, Kettering, Smetak Pikala, P.A., Minneapolis, MN, for respondents Annandale Congregation of Kingdom Hall of Jehovah's Witnesses and Watchtower Bible and Tract Society of New York.

Considered and decided by SCHUMACHER, Presiding Judge; WILLIS, Judge; and WRIGHT, Judge.

OPINION

ROBERT H. SCHUMACHER, Judge.

Appellants Heidi Meyer and Jane L A Doe challenge the district court's grant of summary judgment in favor of respondents Annandale Congregation of Kingdom Hall of Jehovah's Witnesses (Annandale Congregation) and Watchtower Bible and Tract Society of New York, Inc. (Watchtower). Meyer and Doe argue Annandale Congregation and Watchtower owed a common law duty of care, had a special relationship with Meyer and Doe giving rise to a special duty of care, and are liable for negligence because they failed to report child abuse as mandated under Minn.Stat. § 626.556 (2000) [FN1] . Annandale Congregation and Watchtower argue the Establishment Clause of the First Amendment to the United States Constitution precludes subject matter jurisdiction. We affirm.

FACTS

During the times of the alleged wrongdoing, Meyer and Doe, their parents, and respondent Derek Lindala were members of Annandale Congregation, a congregation of the Jehovah's Witnesses. Annandale Congregation is managed by Watchtower's governing body. The governing body has authority over every person and all matters in Annandale Congregation, including discipline of individual members and furthering the overall welfare of the congregation. The governing body appoints elders to each congregation, including Annandale Congregation, to act as spiritual leaders.

Meyer and Doe state that Jehovah's Witnesses doctrine requires members "to associate only with other members of the Jehovah's Witnesses organization and avoid association with other people who are not Jehovah's Witnesses." In their depositions, Meyer and Doe stated that members are expected to bring all allegations of wrongdoing to congregation elders. If a member makes an allegation of wrongdoing to anyone other than an elder, including law enforcement, that person can be accused of gossip or slander, which are punishable offenses within the organization. According to Jehovah's Witnesses doctrine, wrongdoing cannot be proven without two eyewitnesses to the wrongful act,

nondisputable evidence, or confession by the wrongdoer. According to Richard Olson, the presiding overseer of Annandale Congregation, upon hearing allegations of child abuse, the elders of Annandale Congregation contact legal counsel at Watchtower and make a report to authorities if directed to do so by counsel.

*2 According to affiant Rebecca Mumford, in approximately 1989 the elders of Annandale Congregation received information that Lindala had sexually abused his younger sister. At the time, Mumford was a Jehovah's Witness and friend to Lindala's sister. Lindala was approximately 17 years old and his sister was six years old. The elders investigated the allegation, did not immediately report the information to law enforcement, and allowed Lindala to continue as a member of Annandale Congregation.

From 1989 to 1992, Meyer was repeatedly sexually assaulted by Lindala while she was between the ages of 10 and 12. The abuse occurred at various locations, including Lindala's parents' home. Meyer reported the abuse to her parents in approximately 1994. Meyer and her father then reported the abuse to elders of Annandale Congregation. Watchtower was also informed. The elders instructed Meyer not to report the abuse to anyone and threatened she would be "disfellowed" if she did so. Disfellowship is the act of excommunication from the organization.

In 1991, while she was 10 or 11 years old, Doe was sexually assaulted by Lindala. The incident took place in the basement of Lindala's parents' home. Doe and her father immediately reported the incident to elders of Annandale Congregation. The elders told Doe and her father they would be investigating the allegation and threatened Doe and her father with disfellowship if they reported the matter to anyone, including other congregation members or the police. Watchtower was informed of the incident by letter in December 1993.

On July 1, 2002, Meyer and Doe commenced a lawsuit in Wright County District Court against Lindala, Annandale Congregation, and Watchtower. The suit alleged sexual battery of both Meyer and Doe by Lindala. The suit also alleged negligence by Annandale Congregation and Watchtower, arguing the parties were liable for not taking action to report Lindala's conduct to authorities and by holding him out to Annandale Congregation as an appropriate person with whom to associate. On motion by Annandale Congregation and Watchtower, the district court granted summary judgment on the claim of negligence. The court found Meyer and Doe had not shown a special relationship existed between the parties, Annandale Congregation and Watchtower did not owe Meyer and Doe a duty of care, and their injuries were not proximately caused by Annandale Congregation or Watchtower. The court also held any failure to comply with Chapter 626 of Minnesota Statutes on the part of Annandale Congregation and Watchtower did not create a private cause of action.

ISSUES

1. Does the Establishment Clause of the First Amendment to the United States Constitution prohibit judicial consideration of Meyer and Doe's claims for negligence?

2. Did the district court err by granting Annandale Congregation and Watchtower's motion for summary judgment, finding there was no duty of care owed to Meyer and Doe by Annandale Congregation and Watchtower?

*3 3. Did the district court err by granting Annandale Congregation and Watchtower's motion for summary judgment, finding Minn.Stat. § 626.556 does not provide for a civil cause of action for failure to report known child abuse?

ANALYSIS

[1] 1. Annandale Congregation and Watchtower argue the Establishment Clause of the First Amendment to the United States Constitution precludes subject matter jurisdiction. Constitutional questions should not be decided unless doing so is necessary "to dispose of the case at bar." *State v. Hoyt,* 304 N.W.2d 884, 888 (Minn.1981). Because we decide this case on other grounds, we do not address the merit of this claim.

2.Summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and that either party is entitled to judgment as a matter of law. *Fabio v. Bellomo,* 504 N.W.2d 758, 761 (Minn.1993). "On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the lower courts erred in their application of the law." *State by Cooper v. French,* 460 N.W.2d 2, 4 (Minn.1990).

[2][3][4] The basic elements of a negligence claim are

(1) the existence of a duty, (2) breach of that duty, (3) injury proximately caused by the breach, and (4) damages. *Schweich v. Ziegler, Inc.,* 463 N.W.2d 722, 729 (Minn.1990). Meyer and Doe argue Annandale Congregation and Watchtower owed a duty to protect them from Lindala after they learned in 1989 that he had sexually assaulted a child because they had control over investigating the allegations of wrongdoing, reporting child abuse to authorities, and informing congregants that Lindala was not a safe person with whom to associate. But an affirmative duty to act only arises when a special relationship exists between the parties. "The fact that an actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose upon him a duty to take such action ... unless a special relationship exists ... between the actor and the other which gives the other the right to protection." *Harper v. Herman,* 499 N.W.2d 472, 474 (Minn.1993) (alteration in original) (quotation omitted). Meyer and Doe must first prove that a special relationship existed between the parties that placed an affirmative duty to act on the part of Annandale Congregation and Watchtower.

[5] A special relationship exists where one party has custody of another under circumstances that deprive the other of normal opportunities for self- protection. *Harper,* 499 N.W.2d at 474. "Typically, the plaintiff is in some respect particularly vulnerable and dependent on the defendant, who in turn holds considerable power over the plaintiff's welfare." *Donaldson v. Young Women's Christian Assoc. of Duluth,* 539 N.W.2d 789, 792 (Minn.1995).

[6] Here, Meyer and Doe argue the district court erred in finding there was no special relationship between Meyer and Doe and Annandale Congregation and Watchtower. Meyer and Doe point to the Jehovah's Witnesses doctrine which provides that members rely on congregation elders for all of their concerns, to the specific exclusion of governmental bodies or agencies, as the source of Annandale Congregation and Watchtower's control and therefore a special relationship exists. Meyer and Doe further point to doctrine that members only associate with other Jehovah's Witnesses who are in good standing with the organization, the organization's standard for proof of wrongdoing, and the punishment of disfellowship for gossip or slander. Meyer and Doe argue that this amounts to significant control, which deprived Meyer and Doe of normal opportunities for self-protection.

*4 But, unlike previous cases where a special relationship was found, Annandale Congregation and Watchtower did not have custody or control over Meyer and Doe at the time of the alleged misconduct. The incidents of sexual misconduct took place at Lindala's residence, on a snowmobile, and in an automobile. Meyer and Doe do not argue that the misconduct took place during Annandale Congregation functions or on Annandale Congregation property. *Cf. Delgado v. Lohmar,* 289 N.W.2d 479, 483-84 (Minn.1979) (noting "special relationships exist between parents and children, masters and servants, possessors of land and licensees, common carriers and their customers, or people who have custody of a person with dangerous propensities"). Moreover, Meyer and Doe's contention of control is premised on faith-based advice given to Meyer, Doe, and other congregants by the elders of Annandale Congregation.

[7][8] Providing faith-based advice or instruction, without more, does not create a special relationship. *Lundman v. McKown,* 530 N.W.2d 807, 821- 26 (Minn.App.1995) (finding no special relationship between Christian Science church and critically ill child who died, where church's teachings inspired parent to care for child through prayer, and parent, when hiring Christian Science nurse, relied on church's listing of individuals that met requirements for faith-based care; but finding special relationship where Christian Science nurse accepted responsibility to care for child in his home in return for cash wages), *review denied* (Minn. May 31, 1995). Here, as in *Lundman,* mere knowledge coupled with power is insufficient to impose a duty. *Id.* at 826. "When it comes to restraining religious *conduct,* it is the obligation of the state ... to impose [the] necessary limitations[.]" *Id.*

[9] A special duty may also arise where one accepts responsibility to protect another, although there was no initial duty. *Walsh v. Pagra Air Taxi, Inc.,* 282 N.W.2d 567, 570 (Minn.1979) (finding special duty where city, while having no affirmative duty to assist in preservation of private property, voluntarily undertook to render fire protection services to airport users); *Abresch v. Northwestern Bell Tel. Co.,* 246 Minn. 408, 414, 75 N.W.2d 206, 210 (Minn.1956) (finding special duty where telephone company has held itself out to public as willing to convey messages in case of certain emergencies such as fire).

[10] Here, Meyer and Doe again point to the organization's doctrine that requires members to bring complaints exclusively to the attention of elders and argue that this is a voluntary undertaking of an affirmative duty to investigate allegations of wrongdoing and protect congregants from future

wrongful acts. We disagree. Annandale Congregation and Watchtower espoused religious faith and doctrine and, according to Meyer and Doe, threatened excommunication for failure to adhere to that doctrine. By doing so, Annandale Congregation and Watchtower did not assume a duty owed to Meyer and Doe but rather acted within their constitutional right to religious freedom, which includes the authority to "independently decide matters of faith and doctrine" and "to believe and speak what it will." *Lundman,* 530 N.W.2d at 826.

*5 The district court did not err in finding a special relationship did not exist between the parties. Because there is no special relationship, there is no duty, and we need not reach the issues of breach or causation. The district court did not err in applying the law or in granting Annandale Congregation and Watchtower's motion for summary judgment.

[11] 3. Meyer and Doe's brief to this court argues Annandale Congregation and Watchtower's failure to report abuse, in violation of Minnesota's child abuse reporting act, is negligence per se. *See* Minn.Stat. § 626.556 (requiring certain professionals to report to welfare agencies or police suspected neglect, physical abuse, or sexual abuse of children and providing that failure to report as mandated is misdemeanor). In their reply brief, Meyer and Doe argue they do not claim that a violation of the reporting statute is "negligence," but rather argue "violation of the statute is *evidence* of negligence per se." (Alteration in original.) We disagree. This court previously determined that section 626.556 does not create a private cause of action for violation of its reporting requirements or create a duty which could be enforced through a common-law negligence action. *See Valtakis v.. Putnam,* 504 N.W.2d 264, 266 (Minn.App.1993) (refusing to impose civil remedy for violation of Minn.Stat. § 626.556 (1990) where legislature provided criminal remedy and did not provide civil remedy).

DECISION

The district court did not err in finding there was no special relationship between the parties and therefore no duty owed. Annandale Congregation and Watchtower are entitled to summary judgment as a matter of law. Failure of Annandale Congregation and Watchtower to comply with Minn.Stat. § 626.556 did not create a private cause of action.

Affirmed.

FN1. We note Meyer and Doe allege Annandale Congregation and Watchtower breached duties imposed under versions of the Minnesota child abuse reporting statutes in effect from 1989 to 1994 but brought suit against them in July 2002. Thus, the case is governed primarily by Minn.Stat. § 626.556 (2000). Because the 2000 version of the reporting statute is substantively the same as that in previous years, we cite the 2000 version of the reporting statute in this opinion.

2004 WL 422668, 2004 WL 422668 (Minn.App.)

END OF DOCUMENT

Nelson & MacNeil, P.C.

ATTORNEYS AT LAW • ALBANY OFFICE (541) 928-9147 • CORVALLIS OFFICE (541) 758-5347

Attorneys: James G. Nelson • Christopher E. MacNeil
Legal Assistants: Heather L. Brown • Laura C. Grant

April 5, 2004

The Honorable John McCormick
Linn County Circuit Court
PO Box 1749
Albany OR 97321

Re: Morley et al. v. North Albany Oregon Congregation, et al.
Case No. 030431

Dear Judge McCormick:

On January 16, 2004, I sent you trial court rulings from two similar cases against the Watchtower Bible and Tract Society of New York, arising from sexual abuse of church members. One of those cases was Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc. It appears that there has now been an additional ruling in that case based upon demurrers to a Second Amended Complaint and I am enclosing a copy of the Order entered on March 30, 2004 on the second demurrer.

As I pointed out before, it appears that the Bullivant Houser Bailey firm is representing the Watchtower Bible and Tract Society in this California case. I assume if Mr. Kaempf wishes you to review any additional pleadings or memorandums from that case, he will submit them and I certainly will not object.

Sincerely,

JAMES G. NELSON

JGN/lkg
cc: John Kaempf
Kenneth Fibich
Diane McGehee
Greg Love
Clients

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

ENDORSED

MAR 3 0 2004

Clerk of the Napa Superior Court
By: L. WALKER
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., Defendants.	CASE NO: 26-22191 **ORDER ON DEFENDANT'S DEMURRER TO PLAINTIFF'S SECOND AMENDED COMPLAINT** **Date: February 19, 2004** **Time: 8:30 a.m.** **Dept: B**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The Church Defendants demur to each cause of action in Plaintiffs' second amended complaint was regularly scheduled for hearing on February 19, 2004 at 8:30 a.m. in Department B of the Napa County Superior Court. None of the parties to the action

requested a hearing regarding Defendants' demurrer and the tentative ruling was recorded as stated below.

TENTATIVE RULING: The demurrer is OVERRULED.

Plaintiffs' amended complaint contains causes of action for negligence, negligent appointment, retention and supervision, gross negligence, breach of fiduciary duty, and fraud. Defendants demur to the amended complaint on the ground that plaintiffs have failed to state facts to show that the defendants owed plaintiffs a legal duty of care to support each cause of action. A review of the complaint reveals that plaintiffs have stated facts that, if true, would impose a duty running from defendants to plaintiffs under ordinary negligence principles and under plaintiff's breach of fiduciary duty allegations.

As did the earlier complaint, the Plaintiffs' amended complaint alleges generally that the plaintiffs and other minors were regularly sexually abused by church leaders, that the Church defendants were notified of the abuse, and that they failed to take steps to protect the children entrusted to their care and to take steps to prevent future acts of molestation. The complaint further alleges that "rather than implement measures to redress and prevent the sexual molestation of these children, the Watchtower defendants acted in a systematic pattern and practice of suppression of information to cover-up and hide incidents of child molestation from law enforcement and their membership in order to protect those within the [defendants'] organization who committed acts of sexual molestation against children." The complaint alleges that leaders who molested children were allowed to remain as leaders in good standing and were given continued access to children in the organization, and that the organization prohibited the victims and accusers from speaking to anyone about the alleged abuse under threat of suffering severe sanctions. The complaint also contains specific allegations about the abuse allegedly suffered by the two individual plaintiffs at the hands of Edward Villegas, a Church Elder, and about the defendants' failure to provide the plaintiffs and their families with notice or warning regarding the past abuse inflicted by Villegas or take steps to protect the plaintiffs or to prevent future abuse, when it was in their power to do so. The amended complaint alleges that the Church defendants used the

daycare center run out of the Villegas' home to attract new converts, that plaintiffs' families became new converts and placed their trust and confidence in Villegas and the church, and that Villegas used his position as a Church Elder to gain access to the plaintiffs and to sexually abuse them.

Defendants seek to go outside the complaint's allegations to assert that the day care center where the plaintiffs were allegedly molested was an in-home day care center that was not church-affiliated. The complaint's allegations assert otherwise, and must be accepted as true for purposes of ruling on a demurrer.

Under the reasoning expressed in Juarez v. Boy Scouts of America (2000) 81 Cal.App.4th 377 and other cases cited by plaintiffs, this court concludes that the amended complaint states facts to support all of the asserted causes of action, including the required element of duty. Analyzing the allegations using the factors set down in Rowland v. Christian (1968) 69 Cal.2d 108 and considering the existence of duty imposed by a special relationship, as discussed in Richelle L. v. Roman Catholic Archbishop (2003) 106 Cal.App.4th 257, the complaint withstands demurrer.

Defendants shall answer within 20 days.

IT IS ORDERED as follows:

The Court will overrule defendants' demurrer. Defendants shall answer within 20 days.

The Church Defendants' Motion to Quash Service of Summons and Complaint also was heard on February 19, 2004 at 8:30 a.m. in Department B of the Napa County Superior Court. The Court having issued its Tentative Ruling on Watchtower Bible and Tract Society of Pennsylvania's Motion to Quash Service of Summons as to Watchtower Bible and Tract Society of Pennsylvania ruled on February 18, 2004 as follows:

TENTATIVE RULING: The motion to quash service of summons for lack of personal jurisdiction is GRANTED. On November 21, 2003, this court continued this motion to allow

plaintiffs to conduct discovery into Watch Tower Pennsylvania's contacts with California. Plaintiffs, who have the burden of proof, have submitted no supplemental evidence to support their opposition to defendant's motion. The defendant has submitted supplemental evidence and points and authorities in support of the motion. The court concludes from all of the evidence presented that moving defendant does not have the requisite substantial, continuous and systematic contacts with California to subject it to this State's general jurisdiction. There is also no basis for asserting personal jurisdiction over moving defendant, as none of the defendant's few contacts with this forum are related to the controversy in question. Finally, plaintiffs have provided no evidence to show that this defendant is the alter ego or that principal of other named defendants.

Counsel for Plaintiffs CHARISSA W. and NICOLE D. requested oral argument regarding the Court's ruling on defendant's Motion to Quash. Appearing for Plaintiffs CHARISSA W. and NICOLE D. was William Brelsford, Esq., of NOLEN SAUL BRELSFORD. Appearing for Defendants was Robert Schnack, Esq., of BULLIVANT HOUSER BAILEY, PC.

After oral argument by the parties, the Court having reviewed all pleadings on file with the Court regarding this motion, the Court ruled as follows:

IT IS ORDERED that the Motion to Quash Service of Summons for Lack of Personal Jurisdiction asserted by Watch Tower Bible and Tract Society of Pennsylvania is continued until April 14, 2004 at 8:30 a.m. in Department B to allow Plaintiffs additional time conduct discovery on the minimum contacts, if any, Watch Tower Bible and Tract Society of Pennsylvania has with California.

IT IS SO ORDERED.

Dated: 3/26, 2004

W. SCOTT SNOWDEN
Judge of the Superior Court of California,
County of Napa

Approval as to form.

Dated: February ___, 2004

Rober: J. Schnack, Esq., Attorney for Watchtower Defendants

Dated: ~~February~~ March 2, 2004

William L. Brelsford, Esq., Attorney for Plaintiffs CHARISSA W. and NICOLE D.

May 13, 2004

The Honorable John McCormick
Linn County Circuit Court
PO Box 1749
Albany OR 97321

Re: Morley et al. v. North Albany Oregon Congregation, et al.
Case No. 030431

Dear Judge McCormick:

This is a joint request from counsel for Plaintiffs and Defendants for a status report on the motions under advisement, which were argued on September 23, 2003.

Sincerely,

John Kaempf

James G. Nelson

Bullivant | Houser | Bailey PC
Attorneys at Law

JOHN KAEMPF
Direct Dial: (503) 499-4468
E-mail: john.kaempf@bullivant.com

August 26, 2004

The Honorable John A. McCormick
Circuit Court Judge
Linn County Circuit Court
PO Box 1749
Albany, OR 97321-0491

Re: *Leanna Morley, et al. vs. Watchtower Bible and Tract Society, et al..*
Linn County Circuit Court Case No. 030431

Dear Judge McCormick:

Please find enclosed for your review a copy of the August 23, 2004 Letter Opinion by The Honorable Locke Williams in the related case of Tyler Davidow v. Watchtower, et al., Benton County Circuit Court Case No. 0210345.

As you can see, under similar facts, Judge Williams dismissed the same claims against the same Jehovah's Witnesses Church entities in a lawsuit brought by the same attorneys who are representing the plaintiff in the case before you. I appreciate you considering Judge Williams' Letter Opinion when deciding the pending motions to dismiss before you in the Morley case.

Thank you for your attention to this matter.

Sincerely,

John Kaempf

JTK:czj
Enclosure
cc: James G. Nelson (enclosure already provided)

RECEIVED 8-25-04

CIRCUIT COURT OF OREGON
FOR BENTON COUNTY

BENTON COUNTY COURTHOUSE
P.O. BOX 1870
CORVALLIS, OREGON 97339

LOCKE A. WILLIAMS
CIRCUIT JUDGE

(541) 766-6827

COPY

August 23, 2004

James G. Nelson
J. Edward Bell III
Attorneys for Plaintiff
PO Box 946
Albany, OR 97321

John Kaempf
Attorney at Law
300 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204-2089

Re: Davidow v. Watchtower, et al.; Case No. 02-10345

Counsel:

The above-referenced matter came before the Court on June 16, 2004, for hearing upon Defendants' (hereinafter collectively referred to as the "Defendants"and exclusive of Defendant, Troy Christian McKenzie) ORCP 21 Motion to Dismiss Plaintiff's Third Amended Complaint. Plaintiff appeared by and through his attorneys, James G. Nelson and J. Edward Bell III. Defendants appeared by and through their attorney, John T. Kaempf.

The Court, having taken the matter under advisement, has reviewed and considered the arguments of Counsel and each party's memorandum(s) of law and the statutes and case law cited therein.

For purposes of considering Defendants' Motion to Dismiss, this Court is limited to the facts stated in Plaintiff's Third Amended Complaint, and accepts as true the allegations and all reasonable inferences that may be drawn from them. A pleading that contains an allegation of material fact as to each element of the claim for relief, even if vague, is sufficient to survive a motion to dismiss.

Plaintiff's basic factual allegations are summarized in the Court's prior decision letter dated April 21, 2003, and are incorporated herein. Plaintiff alleges in his Third Amended Complaint that Defendant, McKenzie, was an agent and alter ego of Defendants because he was a "Publisher" in the church and that, as such, he was appointed and empowered by Defendants to assume responsibility for the development, protection, and discipline of church members. Plaintiff further alleges that all male members of the church are instructed to develop relationships of trust with women, children, and families within the church, and to assume the role of counselor and advocate for problems that may arise, including claims of child abuse.

Plaintiff's Third Amended Complaint asserts, alternatively, claims against Defendants for (1) respondeat superior and sexual battery; (2) negligence per se and common law negligence for failure to report suspected child abuse; (3) fraud and fraudulent concealment; (4) ratification; (5) alter ego and single business enterprise; and (6) negligent usurpation of investigatory function. Defendants move this Court to dismiss all claims of Plaintiff's Third Amended Complaint with prejudice for failure to state ultimate facts sufficient to constitute a claim for relief.

(1) An agency relationship is a prerequisite for a claim based on the theory of respondeat superior. Whether an agency relationship exists is a matter of law. When viewed in the light most favorable to Plaintiff, the allegation is that all male members of the church, including Publishers, are charged with certain duties and responsibilities. Plaintiff does not allege that being designated as a "Publisher" somehow makes Defendant, McKenzie, any different in quality or responsibility from any other male member in good standing of the church. In other words, a "Publisher" is merely a male member of the church who, because of archaic patriarchal church doctrine, is made responsible for the well-being of fellow church members, especially women and children. Plaintiff does not allege any facts to show that Defendant, McKenzie, held a clerical position; nor that he was placed in a position of control or supervision of children; nor that he was knowingly placed by the church in a position where he could sexually abuse children in a church setting. The Court finds that Plaintiff's allegations are not sufficient to establish an agency relationship between Defendant, McKenzie, and Defendants. Therefore, Plaintiff has not alleged ultimate facts sufficient to support a claim for respondeat superior.

(2) The Court has previously ruled on Plaintiff's common law negligence claim and, for the reasons stated herein above and in the prior decision letter dated April 21, 2003, declines to change its ruling. With regard to Plaintiff's negligence per se claim, Plaintiff's Third Amended Complaint alleges that Defendants "deliberately and negligently failed to report to law enforcement the abusive conduct of Defendant, Troy Christian McKenzie, *prior to* the abuse of Plaintiff"(emphasis added). However, Plaintiff does not allege facts sufficient to show that Defendants had knowledge of alleged abuse of others by Defendant, McKenzie, prior to the alleged abuse of Plaintiff. Since failure to report something of which Defendants had no knowledge could not have prevented the alleged abuse of Plaintiff, causation cannot be established.

Plaintiff does, however, allege facts sufficient to show that Defendants failed to report the abuse of Plaintiff *after* it had allegedly occurred. Plaintiff alleges that he was damaged because he was "deprived of Oregon's victim assistance program that would have provided for counseling and care that would have decreased the harm to plaintiff from the effects of the abuse." As stated in the Court's prior ruling, under the doctrine of negligence *per se*, the violation of a statute raises a rebuttable presumption of negligence if (1) the violation causes an injury to a member of the class of persons meant to be protected, and (2) the injury is of a type which the statute was enacted to prevent. While the Court finds that Plaintiff is within the class of persons the abuse reporting statute was meant to protect, the Court does not find that the alleged injury suffered by Plaintiff was of a type that the statute was intended to prevent, i.e., denial of State funded counseling services. For these reasons, and for the reason that neither ORS 418.750 nor 419B.010 provides a civil cause of action for violations, the Court finds that Plaintiff has not alleged ultimate facts sufficient to support a claim for common law negligence or negligence per se.

(3) Plaintiff alleges that Defendants (a) willfully concealed reports from Plaintiff that Defendant, McKenzie, was abusing young children; (b) materially misrepresented to Plaintiff that Defendant, McKenzie, was a Publisher in good standing; (c) materially misrepresented that they would act in Plaintiff's best interest; and (d) failed to disclose that they knew of Defendant, McKenzie's, propensities to use his position as a male Publisher to sexually abuse Plaintiff, and that they were doing nothing to protect him.

Notwithstanding the fact that Plaintiff fails to allege sufficient facts to show that Defendants had knowledge that Defendant, McKenzie, had abused children prior to Plaintiff's report of his alleged abuse, the Court relies upon its prior decision letter dated April 21, 2003, and finds that Defendants did not have a duty to disclose reports that Defendant, McKenzie, was abusing young children, that they knew of Defendant, McKenzie's, propensities to use his position as a male Publisher to sexually abuse Plaintiff, or that they were doing nothing to protect him.

The Court agrees with Defendants that whether Defendants materially misrepresented that Defendant, McKenzie, was a Publisher in good standing would require inquiry into subject matter that is beyond the jurisdiction of this secular Court. The Court further agrees with Defendants that whether Defendants materially misrepresented that they would act in Plaintiff's best interest would also require inquiry into the religious beliefs, policies and practices of the church which is barred by the "free exercise of religion" clauses in the Oregon and the U.S. Constitutions. For these reasons, as more fully explained in the prior decision letter dated April 21, 2003, the Court finds that Plaintiff has not alleged ultimate facts sufficient to support a claim for fraud and fraudulent concealment.

(4) The Court relies upon the findings and ruling set forth above, and in its prior ruling, to find that no agency relationship exists, and that ratification is not a claim for relief in and of itself. Therefore, Plaintiff's claim for ratification fails as a matter of law.

(5) The Court agrees with Defendants and finds that Plaintiff's claims for alter ego and single business enterprise are not recognized causes of action in Oregon. Therefore, this claim fails as a matter of law.

(6) The Court agrees with Defendants and finds that Plaintiff's claim for negligent usurpation of investigation function is not a recognized cause of action in Oregon. Therefore, this claim fails as a matter of law.

The Court grants Defendants' motions to dismiss Counts I, II, III, IV, V, and VI with prejudice. Mr. Kaempf will kindly prepare an order.

Sincerely,

Locke A. Williams
Circuit Court Judge

GLEN D. BAISINGER
Judge
CAROL R. BISPHAM
Judge
JOHN A. MCCORMICK
Judge
RICK J. MCCORMICK
Judge
DANIEL R. MURPHY
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NOV 10 2004

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CIRCUIT COURT OF OREGON
TWENTY-THIRD JUDICIAL DISTRICT

November 4, 2004

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Ronald E. Bailey
Attorney at Law
888 SW 5th Ave Ste 300
Portland OR 97204

Re: Leanna Morley, et al v. North Albany Oregon Congregation, et al
Case No.: 03-0431

Dear Counsel:

Oral arguments were held September 23, 2003 on Defendants' seven ORCP motions and the matter was taken under advisement. Attorneys present for Defendants were John Kaempf and Ronald Bailey. Attorneys present for Plaintiffs were James Nelson, Diane McGehee and Hartley Hampton. A preliminary discussion was held regarding Plaintiffs' withdrawal of the "Plaintiffs' Supplemental Response to Defendants' Reply Memorandum in Support of ORCP 21 Motions." The Court ruled that to the extent Defendants had raised new material in their "Defendants' Reply Memorandum in Support of Rule 21 Motions" that Plaintiffs could orally argue those points even though Plaintiffs' Supplemental Response was being ordered withdrawn. Several additional submissions were received by the Court after oral argument from both Plaintiffs and

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Defendants continuing up to August 27, 2004. To the extent that those submissions reflect decisions made by other Courts after the time of oral argument, the Court will consider the additional materials in the interests of justice. Plaintiffs also filed a Motion to Allow Leave to file Plaintiffs' Second Amended Complaint. That Motion has become moot because the rulings of the Court herein will impact the proposed Second Amended Complaint, but Plaintiffs are granted the right to refile an Amended Complaint pursuant to ORCP 25 and 23 anyway. To the extent that Plaintiffs attempt to raise new theories in their proposed Second Amended Complaint, Defendants will certainly maintain the right to file additional Rule 21 motions if that is appropriate. For purposes of ruling on Defendants' ORCP 21 (8) motions, the Court assumes the truth of all factual allegations in Plaintiffs' First Amended Complaint as well as any inferences which may be drawn from them and the Court views the factual allegations in the light most favorable to the nonmoving party.

The Court grants Defendants' Motions #4, #5 and #6 for the reasons stated by Defendants. While the legal principles of "Respondent Superior," "Ratification," "Single Business Enterprise" and "Alter Ego" may be proven to apply to this case and may result in jury instructions, none are independent causes of action or claims for relief.

The Court grants Defendant's Motion #7 although the Court agrees with Plaintiffs that their pleading of a specified amount of economic damages may be accompanied by a reservation of the right to amend to update the amount of damages to the time of trial.

As to Defendants' Motions #2 and #3, the Court is not aware of Oregon authority for Plaintiffs' Sixth and Tenth Claims for Relief. Clearly in ORS 419B.010, the Oregon Legislature could have allowed for civil action as has been done in many other statutes where both a criminal and civil action are provided. Plaintiffs' additional allegations that the failure to report could constitute negligence per se or common law negligence seem similarly logical but have no basis in authority under current Oregon law. An additional problem with negligence per se in this case is that the addition of "clergy" as a mandatory reporter almost certainly occurred after the alleged abuse. Secondly, none of Plaintiffs' various allegations (leader, agent, Publisher) as to Don Serjeant's status come close to alleging that he was a member of the "clergy." The Court agrees that the closest Oregon law comes to allowing a private cause of action for failure to report or investigate would be an extension of Blachly v. Portland Police Dept., 135 Or App 109 (1995) but that case is clearly based on a specific duty of CSD (DHS) to investigate under ORS 418.760 (1). Therefore, as morally desirable as it is to expand civil actions for failure to report, it is not appropriate for this Court to do so. Defendants' Motions #2 and #3 are granted.

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As to Defendants' Motion #1, a distinction was drawn at oral argument by Defendants as between the three Plaintiffs. The Court agrees with Defendants that as to Plaintiff Christina Vizenor, Plaintiffs' First Amended Complaint does not allege that Christina Vizenor was a member of any congregation of Jehovah's Witnesses at any time during the alleged sexual abuse by her grandfather. Therefore, Defendants' Motion #1 dismissing the entire case for failure to state ultimate facts sufficient to constitute any claim for relief is granted as to Christina Vizenor. Of course, if Plaintiff Christina Vizenor mistakenly failed to allege in Paragraph 25 that she was a member of a congregation, Plaintiff is granted leave to amend.

As to Plaintiffs Leanna Morley and Jessica Schroeder, there are two major aspects to Defendants' Motion #1. The first issue is whether and to what extent a church has a duty to protect their members from each other. Both parties agree that the existence of a duty is a question of law for the Court. Therefore, the Court must rule at this time based on the facts alleged in Plaintiffs' First Amended Complaint and any reasonable inferences which can be made therefrom. Both parties referred extensively in oral argument to Bryan R. v. Watchtower Bible and Tract Society of New York, Inc., 738 A2d 839 (Maine 1999) and Davidow v. Watchtower Bible and Tract Society of New York, Inc., Benton County Circuit Court Case No. 02-10345. The most important distinction between Davidow and Bryan and the present case is that Plaintiffs allege in the present case that Don Serjeant was promoted as a leader in good standing, placed in a position of authority with supervision and control of children, had access to the Plaintiffs due to his leadership position in the organization, was an "agent" of Defendants, and all at a time when Defendants had prior knowledge that he had been accused of sexually abusing a minor female in the past. The Court agrees with Defendants that it is very significant that Plaintiffs do not allege in the First Amended Complaint that abuse occurred during church activities or on church property but when the Court allows reasonable inferences from facts alleged, the Plaintiffs' allegations are sufficient at this stage of the case to deny the first aspect of Defendants' Motion #1. The Court is aware from reading the numerous cases submitted by both parties that the position of "Publisher" is probably not enough to establish a duty on Defendants' part. However, at the motion stage, it is not appropriate for the Court to establish a definition for "Publisher" from outside of the pleadings especially where Plaintiffs clearly alleged "agent." The Court is also aware that Plaintiffs apparently intend to allege "Ministerial Servant" in the Second Amended Complaint which will render the "Publisher" issue moot.

The second aspect of Defendants' argument on Motion #1 is that under the First Amendment to the U.S. Constitution and the "free exercise of religion" clauses of the Oregon Constitution that the Court is prohibited from inquiring into a church's beliefs, policies and disciplinary practices.

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One difficulty the Court has in regard to this aspect of Motion #1 is that the Court can only respond based on the facts alleged in the First Amended Complaint even though both parties have argued facts which do not appear in the pleadings. Therefore, while the Court agrees with Defendants that certain claims or parts of claims alleged by Plaintiffs may involve an impermissible inquiry into church policies or beliefs, other claims may be proven without such inquiry. The Court also agrees with Plaintiffs that facilitating or condoning abuse to occur is clearly not a church policy or belief and in those cases where a church does have a church policy or belief which is contrary to law, Courts have become involved to the extent necessary to enforce the state's interests and without treading on the Constitution's "free exercise" clause.

Having these principles in mind, the Court can identify some claims which fit into a given category.

As to Count 2 for Common-Law Negligence, Plaintiffs do not directly incorporate the "specifications of negligence" found in Paragraph 30 but the Court assumes that Plaintiffs meant to do so in using the phrase in Paragraph 34 "the negligent conduct of the Watchtower Defendants." However, even if the Court makes that assumption, the specifications of negligence are not concisely and properly stated. As stated previously herein, the Court did not grant the first part of Defendant's Motion as to striking the whole Complaint. However, as to the basic claim for common-law negligence, only specifications d, h, j and l and possibly i come close to stating specifications of negligence. The remainder of the allegations either allege intentional torts or simply attempt to incorporate other claims for relief which have already been dismissed. These mentioned specifications when joined with the allegations previously discussed which arguably establish a duty on Defendants part would constitute a claim for relief which does not appear to "entangle" with church policies or doctrine.

As to the second aspect of Motion #1 and Count 3, the Court recognizes that the law is not clear as discussed in Doe v. Hartz, 970 F Supp 1375 (N.D. Iowa 1997) where at page 58 the Court explains that as to negligent retention and supervision, those claims do not necessarily involve an improper inquiry by the Court but that a negligent hiring allegation would involve an inquiry into church policies and is not a proper inquiry (although the negligent hiring point was conceded by the parties and therefore, not directly ruled upon by the Court.) However, the allegation of negligent retention and supervision are a logical part of the common law negligence claim under the facts of this case and therefore, should not be stated as a separate claim for relief. Therefore, Count 3 is stricken as being includable in Count 2.

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As to the second aspect of Motion #1 as it relates to Count 4, the question of punitive damages (now ORS 31.725) is not properly before the Court because neither party has had an opportunity to submit affidavits and documentation as allowed in ORS 31.725 (2) and the Court is aware that yet another Complaint will be necessary.

As to the second aspect of Motion #1 as it relates to Count 5 for Breach of Fiduciary Duty, for the reasons explained in Bryan R., the allegation of special relationship because of trust and confidence are too vague to constitute a claim for relief based on a duty of a church to protect its members from each other. Therefore, to establish the special relationship, the prospective Plaintiff would have to plead with more specificity an actual placing of trust and confidence, a great disparity of position and influence between the parties which makes it reasonable to place trust and confidence and some factor which distinguishes this member of the church from other members. Therefore, the extra factors necessary would be the same ones which caused the Court not to dismiss Plaintiff's Count 2. Therefore, Count 5 is dismissed as a separate claim for relief.

Finally, the Court considers the second aspect of Motion #1 as it applies to Count 7. Here again, the Court's ruling is made more difficult because Count 7 is presumably inclusive of at least part of the prior allegations made in Paragraphs 1 through 31. The claim boils down to five allegations. First, is the allegation that Defendants willfully concealed the information that Don Serjeant was abusing young girls with intent to keep that information from Plaintiffs. Two related allegations are that Defendants knew of Don Serjeant's propensities to use his leadership position to sexually abuse Plaintiffs and others and that Defendants failed to disclose that they were doing nothing to protect them. Another of the allegations is that Defendants materially misrepresented to Plaintiffs and their families that Don Serjeant was a Publisher in good standing with authority to instruct Plaintiffs in spiritual, ethical and moral matters and that he was to be obeyed. The last allegation is that Defendants materially misrepresented that they would act in "their" best interests.

The analysis in Bryan R. in reference to the allegations of Intentional Infliction of Emotional Distress and the points raised in Defendants' Memorandum of Law at pages 21-23 wherein numerous allegations in the First Amended Complaint are cited which refer to policies of Defendants make it clear that trying the allegations of Count 7 would necessitate an inquiry into matters which are partly ecclesiastical in nature. The Court must then consider whether such inquiry is to be allowed anyway with a cautious and balanced approach.

The Orders from the two California cases cited in Mr. Nelson's letter of January 16, 2004 raise some valuable points regarding the fact that Plaintiffs do not allege vulnerability because of religious piety (or the need to follow church policies or doctrines) but rather the Plaintiffs were

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vulnerable because of their youth. Or stated another way, as found in Bryan R. at page 8 and 9, a religious organization's decisions or actions when providing advice, counsel or religious discipline to its members should not be inquired upon. But here unlike in Davidow and Bryan R., Plaintiffs have alleged agency. Therefore, if a duty to protect exists, the specific "policy" being inquired into is the knowing placement of a child under the authority of a church leader who is known to be a child abuser while intentionally concealing that knowledge and danger. While the Court certainly recognizes that Plaintiffs are only making allegations at this stage of the case, the Defendants' Motion as to Count 7 is denied. However, the Court agrees with Judge Williams' August 23, 2004 opinion in Davidow that the allegations regarding Don Serjeant's "good standing with authority to instruct Plaintiffs in spiritual, ethical, and moral matters" and that Don Serjeant was "to be obeyed" and that the Defendants misrepresented that they would act in Plaintiffs' "best interests" would require an inquiry almost entirely involving ecclesiastical matters and that those allegations in and of themselves do not implicate church policies which appear to be contrary to law. Therefore, as to those allegations, Defendants' Motion is granted when Plaintiffs file the Second Amended Complaint.

The Court apologizes for the inexcusable delay in getting this opinion out.

The Court requests that Plaintiffs prepare and submit an appropriate order which grants Plaintiffs 20 days from the date of signature of order by the Court within which to replead.

Very truly yours,

John A. McCormick
Circuit Court Judge

cle

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JAN 28, 2005

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA MORLEY, JESSICA SCHROEDER and CHRISTINA VIZENOR, Plaintiffs, vs. NORTH ALBANY OREGON CONGREGATION OF JEHOVAH'S WITNESSES, INC., f/k/a ALBANY OREGON COMPANY OF JEHOVAH'S WITNESSES, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, WATCHTOWER ENTERPRISES, L.L.C., WATCHTOWER FOUNDATION, INC., WATCHTOWER ASSOCIATES, LTD., KINGDOM SUPPORT SERVICES, INC. CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES RELIGIOUS ORDER OF JEHOVAH'S WITNESSES, THE WATCHTOWER GROUP, INC., and NORTH BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES, INC. Defendants.	CASE NO. 030431 ORDER ON DEFENDANTS' RULE 21 MOTIONS

Plaintiffs have alleged ten (10) claims for relief in their First Amended Complaint as follows:

Count I: *Respondeat Superior*

NELSON & MacNEIL, P.C.
Attorneys at Law
P.O. Box 946
Albany, OR 97321
Phone: (541) 928-9147

Count II: Common-Law Negligence

Count III: Negligent Hiring, Retention and Supervision

Count IV: Aggravated Negligence

Count V: Breach of Fiduciary Duty

Count VI: Negligence Per Se and Common Law Negligence: Failure to Report

Count VII: Fraud and Fraudulent Concealment

Count VIII: Ratification

Count IX: Alter Ego and Single Business Enterprise

Count X: Negligent Usurpation of Investigatory Function

Defendants moved to dismiss all counts based on seven (7) motions. Having considered oral argument of counsel on September 23, 2003, and having reviewed the written submissions, **THE COURT HEREBY ORDERS AS FOLLOWS:**

MOTION NO. 1 - DUTY

With respect to Plaintiff Christine Vizenor, Defendants' Motion No. 1 is granted; Plaintiff Vizenor is granted leave to amend.

With respect to Plaintiffs Leanna Morley and Jessica Schroeder, the "Duty" challenge in Defendants' Motion No. 1 is denied.

With respect to Plaintiff Morley and Plaintiff Schroeder's Common-Law Negligence counts (Count II), Defendants' Motion No. 1 is denied as to specifications d, h, j, l and i. Specifications a, b, c, e, f, g, and k are dealt with below.

Defendants' Motion No. 1 as to Negligent Hiring, Retention and Supervision (Count III) is denied to the extent the allegations contained therein make up Plaintiffs Leanna Morley and Jessica Schroeder's common law negligence claims; to the extent

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Negligent Hiring, Retention and Supervision is urged as a separate claim for relief, it is stricken as being includable in the Common-Law Negligence count (Count II).

Defendants' Motion No. 1 is granted as to the Aggravated Negligence count (Count IV) because the question of punitive damages is not properly before the Court at this time. Plaintiffs are granted leave to file a motion to amend to claim punitive damages within the time allowed by Oregon Rules of Civil Procedure.

Defendants' Motion No. 1 as to the Breach of Fiduciary Duty count (Count V), is granted with leave for Plaintiffs to amend.

Defendants' Motion No. 1 as to the Fraud and Fraudulent Concealment count (Count VII) is denied in part and granted in part. The Motion to Dismiss all of Count VII is denied. However, for reasons stated in the Letter Opinion (of the Honorable John A McCormick, dated November 4, 2004, attached hereto as Exhibit A and by this reference incorporated herein), the allegations regarding Don Serjeant's "good standing with authority to instruct Plaintiffs in spiriual, ethical, and moral matters," that Don Serjeant was "to be obeyed," and that the Defendants misrepresented that they would act in Plaintiffs' "best interests" are dismissed.

MOTION NO. 2

Defendants' Motion No. 2 to dismiss the claim of "Failure to Report Suspected Child Abuse" (Count VI) is granted.

MOTION NO. 3

Defendants' Motion No. 2 to dismiss the claim of "Negligent Usurpation of Investigatory Function" (Count X) is granted.

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MOTION NO. 4

Defendants' Motion No. 4 to dismiss is granted as to all Plaintiffs as *Respondeat Superior* (Count I) is not an independent cause of action.

MOTION NO. 5

Defendants' Motion No. 5 to dismiss is granted as to all Plaintiffs as Ratification (Count VIII) is not an independent cause of action.

MOTION NO. 6

Defendants' Motion No. 6 to dismiss is granted as to all Plaintiffs as Alter Ego and Single Business Enterprise (Count IX) are not independent causes of action.

MOTION NO. 7

Defendants' Motion No. 7 to strike is granted and Plaintiffs may replead to conform to ORCP 18B.

Plaintiffs are granted twenty (20) days from the signing of this Order on Defendants' Rule 21 Motions within which to replead.

DATED this 27 day of JANUARY, 2005.

The Honorable John A. McCormick
Circuit Court Judge

SUBMITTED BY:

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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA STONE, Plaintiff, vs. NORTH ALBANY OREGON CONGREGATION OF JEHOVAH'S WITNESSES, INC., f/k/a ALBANY OREGON COMPANY OF JEHOVAH'S WITNESSES, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND SOCIETY OF PENNSYLVANIA, WATCHTOWER ASSOCIATES, LTD., KINGDOM SUPPORT SERVICES, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, RELIGIOUS ORDER OF JEHOVAH'S WITNESSES, and NORTH BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES, INC. Defendants.	CASE NO. 0210345 PLAINTIFF'S SECOND AMENDED COMPLAINT (Sexual Battery of a Child, Negligence, Premises Liability) *Not subject to Mandatory Arbitration* Jury Trial Requested

Plaintiff alleges:

COMMON FACTS

1.

Plaintiff LEANNA STONE, formerly known as LeAnna Morley, is a resident of Albany, Oregon.

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2.

Defendant North Albany Oregon Congregation of Jehovah's Witnesses, Inc. f/k/a Albany Oregon Company of Jehovah's Witnesses, Inc., is a corporation organized and existing under the laws of the State of Oregon. At all material times, it owned and maintained a meeting hall and offices at Kingdom Hall Building, 303 Grand Prairie Road SE, Albany, Oregon 97321.

3.

Defendant Watchtower Bible and Tract Society of New York, Inc., a corporation organized and existing under the laws of the State of New York, with offices at 25 Columbia Heights, Brooklyn, New York 11201-2483, has conducted business within the State of Oregon through its officers, agents, and servants.

4.

Defendant Watchtower Bible and Tract Society of Pennsylvania, a corporation organized and existing under the laws of the State of Pennsylvania, with offices at 1630 Spring Run Road Extension, Coraopolis, Pennsylvania 15108, has conducted business within the State of Oregon through its officers, agents, and servants

5.

Defendant Christian Congregation of Jehovah's Witnesses, a corporation organized and existing under the laws of the State of New York, with offices at 100 Watchtower Drive, Patterson, New York 12563-9204, has conducted business within the State of Oregon through its officers, agents, and servants.

///

///

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6.

Defendant North Bothell Congregation of Jehovah's Witnesses, a corporation organized and existing under the laws of the State of Washington, has conducted business within the State of Oregon through its agents and alter egos.

7.

Venue is proper in Linn County, Oregon, because Defendant North Albany Congregation of Jehovah's Witnesses, Inc., has its principal place of business in Linn County and because some of the acts or omissions that give rise to Plaintiff's claims occurred in Linn County.

8.

The Defendant entities are collectively referred to herein as the "Watchtower Defendants" because each is an agent of the other and all operate as a single business enterprise.

9.

The Watchtower Defendants comprise a hierarchical organization made up of different corporations and other entities. The Watchtower Bible and Tract Society of New York is the parent organization of all entities of Jehovah's Witnesses in the United States. A "governing body" establishes policies and dictates practices for Jehovah's Witnesses throughout the world, and operates through various corporate entities including the Watch Tower Bible and Tract Society of Pennsylvania. (Each entity is led by officers known as Elders and Ministerial Servants, appointed by the Governing Body.) Elders and Ministerial Servants are all agents of the Watchtower Defendants.

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10.

Don Serjeant was appointed to the office of Ministerial Servant in the North Bothell Congregation of Jehovah's Witnesses and in the North Albany Congregation of Jehovah's Witnesses. This is a position higher than general member. In this position, he was an agent of the Watchtower Defendants.

11.

A person who has the office of Ministerial Servant is held out to be a person of trust and responsibility and a person to whom one can trust to supervise minor children.

12.

One of the principal activities of the Jehovah's Witnesses organization is the distribution of literature and the solicitation of donations. Members of the organization are required to participate in this activity, often called "going out in service." These activities are supervised by Elders and Ministerial Servants.

13.

As early as 1962, if not before, Don Serjeant began sexually molesting and physically abusing his daughter, Suzan, who was seven years old when the abuse began. Suzan reported the abuse to the Elders of Defendant Bothell Congregation of Jehovah's Witnesses, where Serjeant was serving as a Ministerial Servant in the state of Washington. The Elders of the Defendant Bothell Congregation of Jehovah's Witnesses told Suzan not to discuss the matter with anyone else and that they would take any and all necessary action.

///

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14.

Don Serjeant later moved from Washington to Albany, Oregon, sometime prior to 1984. Don Serjeant was appointed by Watchtower Defendants to serve the office of Ministerial Servant of the North Albany Congregation of Jehovah's Witnesses. While serving in that position, Don Serjeant met Plaintiff Leanna Stone, a minor child. Watchtower Defendants new Don Serjeant transferred to the North Albany Congregation of Jehovah's Witnesses and knew he was going to be appointed to the office of Ministerial Servant.

15.

Don Serjeant used the "position of trust" that his status as Ministerial Servant represented to develop a relationship with Leanna Stone. Plaintiff's parents believed that Serjeant was worthy of trust because he was Ministerial Servant and they were comfortable entrusting their young daughter to his oversight.

16.

From 1984 through 1989, Don Serjeant sexually abused Plaintiff on multiple occasions while Plaintiff was performing her required "service" activities. Don Serjeant used his authority and position as Ministerial Servant and his "position of trust" to arrange to supervise Plaintiff in her "going out in service" activities for Watchtower Defendants so that he could gain access to her and sexually abuse her. Don Serjeant also abused Plaintiff in the parking lot of the North Albany Congregation Kingdom Hall.

17.

The abuse, which started when Plaintiff was nine years old, continued while Don Serjeant continued to serve as Ministerial Servant and, therefore, as the

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appointed agent of the Watchtower Defendants. Participating in "going out in service" was within the course and scope of Don Serjeant's agency relationship with the Watchtower Defendants, and the Watchtower Defendants knew, or should have known, that he was taking Plaintiff out alone on service.

18.

The Watchtower Defendants had been on notice since at least 1962 that Don Serjeant had engaged in the physical and sexual abuse of minor children. The Watchtower Defendants knew or should have known that individuals who sexually abuse children are often repeat offenders who abuse multiple victims and the same victim multiple times. It was foreseeable to the Watchtower Defendants that if Don Serjeant obtained unsupervised access to young children, such as Plaintiff Leanna Stone, he would molest and abuse them.

19.

Nevertheless, the Watchtower Defendants continued to allow Don Serjeant to occupy appointed leadership "positions of trust" and authority which gave him access to children such as Leanna Stone. Don Serjeant sexually abused Plaintiff Leanna Stone during Jehovah's Witnesses' activities and on the Watchtower Defendants' Albany, Oregon, property when the Watchtower Defendants had both the opportunity and the duty to supervise their agent, Don Serjeant, and to protect Leanna Stone.

COUNT I: NEGLIGENCE

20.

The Watchtower Defendants were negligent in one or more of the following particulars that have been a substantial contributing factor to the damages of Plaintiff

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Leanna Stone as alleged in paragraph 23 below:

a. Despite the fact that the Watchtower Defendants knew, or should have known, of Don Serjeant's history of pedophilia, and despite their actual or constructive knowledge that he was taking Plaintiff out alone on service, they failed to warn Plaintiff, or her family, of Don Serjeant's history of sexually abusing children;

b. Despite the fact that the Watchtower Defendants knew, or should have known, of Don Serjeant's history of pedophilia, they negligently permitted him to be alone with Plaintiff, both in "service," and on the church parking lot;

c. Despite the fact that the Watchtower Defendants knew, or should have known, of Don Serjeant's history of pedophilia, they negligently appointed him to the office of Ministerial Servant when they knew or should have known that he would be allowed to supervise minor children in the course and scope of his duties;

d. The Watchtower Defendants negligently allowed Don Serjeant to move from one congregation to another without warning the second congregation of Don Serjeant's dangerous tendencies to molest minor children; and

e. The Watchtower Defendants negligently failed to supervise Don Serjeant despite their actual or constructive knowledge that he posed a potential and foreseeable danger to children.

///

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COUNT II.
FRAUD AND FRAUDULENT CONCEALMENT

21.

Plaintiff realleges paragraphs 1 through 19 above.

22.

Despite knowing that Don Serjeant had sexually abused minor children, the Watchtower Defendants intentionally and willfully concealed that information from the Plaintiff and her family. The Watchtower Defendants materially misrepresented to Plaintiff and her family that Don Serjeant was an official in good standing, who occupied a "position of trust" and authority, and was a person to whom minor children could be entrusted. Neither Plaintiff nor her parents could know about Serjeant's past or about the falsity of Defendants' representations. They were entitled to rely upon those representations and did, in fact, rely upon them to Plaintiffs' serious injury and harm, as alleged in paragraph 23 below.

23.

As a result of the Watchtower Defendants' acts and omissions, Plaintiff has incurred and will continue to incur costs for medical expenses, counseling and psychological treatment, has lost earning capacity, and has suffered and will continue to suffer extreme, permanent emotional distress and psychological harm with accompanying physical manifestations, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life, all to her economic damage of $25,000, and to her non-economic damage of $4,000,000.

24.

Plaintiff did not discover and could not have discovered through the exercise of reasonable diligence her injuries that resulted from the abuse or the causal

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connection between her injuries and the wrongful conduct of the Watchtower Defendants until less than three years before the filing of this lawsuit.

WHEREFORE, Plaintiff demands judgment against the Watchtower Defendants individually, jointly and severally, for economic damages of $25,000, noneconomic damages of $4,000,000, plus costs, disbursements, and whatever other relief the Court deems just and equitable.

DATED this 16th day of February, 2005.

NELSON & MacNEIL, P.C.

By: James O. Nelson OSB #74230
Of Attorneys for Plaintiff

SUBMITTED BY:
James G. Nelson OSB #74230
Nelson & MacNeil, P.C.
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OF ATTORNEYS FOR PLAINTIFF:
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Hartley Hampton, Esquire
Fibich, Hampton & Leebron
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ORIGINAL

FILED
STATE OF OREGON
LINN COUNTY COURT

05 APR 22 AM 9:30

TRIAL COURT CLERK
BY

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA STONE,

Plaintiff,

v.

NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC., et al,

Defendants.

No. 03-0431

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT

(CLAIM IN EXCESS OF $10,000)

(JURY TRIAL REQUESTED)

For their Answer to plaintiff's Second Amended Complaint, defendants[1] hereby admit, deny, and allege as follows:

1.

Defendants are currently without sufficient knowledge to admit, and thus deny, paragraph 1.

[1] The term "defendants" as used herein means defendants North Albany Oregon Congregation of Jehovah's Witnesses, Inc.; Watchtower Bible and Tract Society of New York, Inc.; Watchtower Bible and Tract Society of Pennsylvania; Christian Congregation of Jehovah's Witnesses; Religious Order of Jehovah's Witnesses; and North Bothell Congregation of Jehovah's Witnesses, Inc. This Answer is not made on behalf of defendant Watchtower Associates, Ltd.

Bullivant|Houser|Bailey PC
888 S.W. Fifth Avenue, Suite 300
Portland, Oregon 97204-2089
Telephone: 503.228.6351
Facsimile: 503.295.0915

2.

In response to paragraph 2, deny the allegation relating to the street address of the Kingdom Hall Building. Defendants admit all other allegations in paragraph 2.

3.

In response to paragraph 3, defendants admit that defendant Watchtower Bible and Tract Society of New York, Inc. is a corporation organized and existing under the laws of the State of New York with the address alleged by plaintiff, and that it has conducted activities within the state of Oregon through its agents. Defendants deny all other allegations in paragraph 3.

4.

In response to paragraph 4, defendants admit that defendant Watchtower Bible and Tract Society of Pennsylvania is a corporation organized and existing under the laws of the State of Pennsylvania at the address listed by plaintiff. Defendants deny all other allegations in paragraph 4.

5.

In response to paragraph 5, defendants admit that defendant Christian Congregation of Jehovah's Witnesses is a corporation organized and existing under the laws of the State of New York at the address listed by plaintiff. Defendants deny all other allegations in paragraph 5.

6.

In response to paragraph 6, defendants admit that defendant North Bothell Congregation is a Washington corporation. Defendants deny all other allegations in paragraph 6.

///

///

///

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Telephone: 503.228.6351
Facsimile: 503.295.0915

15.

Except as specifically admitted herein, defendants deny each and every allegation in plaintiff's Second Amended Complaint directed at defendants, and deny all of plaintiff's damage allegations.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Statute of Limitations)

16.

All of plaintiff's claims against defendants are barred by the statute of limitations.

SECOND AFFIRMATIVE DEFENSE

(Lack of Personal Jurisdiction)

17.

This Court lacks personal jurisdiction over defendants Watchtower Bible and Tract Society of Pennsylvania and Religious Order of Jehovah's Witnesses.

THIRD AFFIRMATIVE DEFENSE

(Free Exercise of Religion Clauses of the U.S. and Oregon Constitutions)

18.

Plaintiff's action is barred by the First Amendment to the U.S. Constitution, as well as Article 1, Sections 2 and 3 of the Oregon Constitution.

FOURTH AFFIRMATIVE DEFENSE

(Failure to State a Claim)

19.

Plaintiff's allegations fail to state any claim upon which relief can be granted against defendants.

WHEREFORE, having fully answered plaintiff's Second Amended Complaint, defendants pray for a Judgment in their favor, including an award of their costs and

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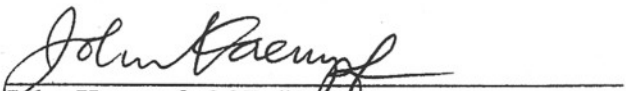
disbursements incurred herein, as well as such other and further relief as the Court deems just and proper.

DATED: April 20, 2005.

BULLIVANT HOUSER BAILEY PC

By 

John Kaempf, OSB #92539
E-mail: john.kaempf@bullivant.com

Attorneys for Defendants

Trial Attorney: John Kaempf, OSB #92539

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GLEN D. BAISINGER
Judge
CAROL R. BISPHAM
Judge
JOHN A. MCCORMICK
Judge
RICK J. MCCORMICK
Judge
DANIEL R. MURPHY
Judge

CIRCUIT COURT OF OREGON
TWENTY-THIRD JUDICIAL DISTRICT

P.O. BOX 1749
ALBANY, OREGON 97321-0491
COURTS (541) 967-3848
CRIMINAL RECORDS (541) 967-3841
CIVIL RECORDS (541) 967-3845

April 27, 2005

James G. Nelson
Attorney at Law
PO BOX 946
Albany OR 97321

John Kaempf
Attorney at Law
300 Pioneer Tower
888 SW Fifth Ave
Portland OR 97204-2089

Re: Morley v. North Albany Oregon Congregation, et al
Case No. 03-0431

Counsel:

The Court recently received Defendant's Answer to Plaintiff's Second Amended Complaint. Since the case appears to be at issue, the Court would ordinarily set the case for Settlement Conference. However, because of the association of Out of State Counsel and the complexity of the issues, the Court is going to allow the Attorneys in this case greater latitude on how to proceed.

Please confer and at least one of you send a written update as to case status including whether discovery is completed, do the Attorneys want to try private Mediation or perhaps a Settlement Conference with a retired Senior Judge who could devote additional time, what other impediments are there to setting a trial, and how many days do you expect the trial to take. Having received your written update, the Court will take further action to move this case along.

Very truly yours,

John A. McCormick
Circuit Judge

mh

cc: Gregory Love, Attorney at Law
Tommy Fibich, Attorney at Law

Nelson & MacNeil, P.C.

ATTORNEYS AT LAW • ALBANY OFFICE (541) 928-9147 • CORVALLIS OFFICE (541) 758-5347

Attorneys: James G. Nelson • Christopher E. MacNeil
Legal Assistants: David E. Gould • Laura C. Grant

May 4, 2005

The Honorable John McCormick
Linn County Circuit Court
PO Box 1749
Albany OR 97321

Re: Morley et al. v. North Albany Oregon Congregation, et al.
Case No. 030431

Dear Judge McCormick:

I am responding to your letter of April 27, 2005. I have scheduled a telephone conference with the out-of-state counsel for May 12, 2005. I will endeavor to confer with defense counsel as soon as possible after that phone conference and will then respond to the Court with agreed-upon scheduling for completing discovery, a settlement conference if appropriate, and a potential trial date.

Thank you for allowing us this opportunity to give input on this complex case.

Sincerely,

James G Nelson lkg

JAMES G. NELSON

JGN/lkg
cc: John Kaempf
Hartley Hampton
Diane McGehee
Greg Love
Client

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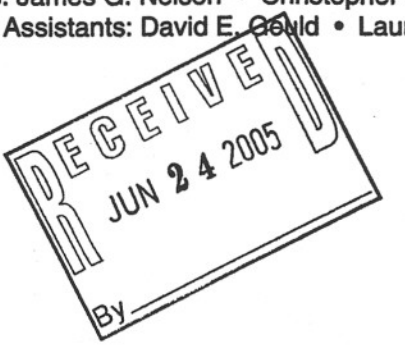
Attorneys: James G. Nelson • Christopher E. MacNeil
Legal Assistants: David E. Gould • Laura C. Grant

June 22, 2005



The Honorable John McCormick
Linn County Circuit Court
PO Box 1749
Albany OR 97321

Re: Stone v. North Albany Oregon Congregation, et al.
Case No. 030431

Dear Judge McCormick:

I have consulted with defense attorney, John Kaempf, and out-of-state counsel, Hartley Hampton and Gregory Love. It appears that the best time to schedule a workable trial date would be late February or March 2006.

There is substantial discovery yet to be accomplished and some discovery issues are anticipated that may need the court's attention. This case is complex in that it deal with events that occurred many years ago and some witnesses and documents may be difficult to locate.

The anticipated length of trial is 1-1/2 weeks. Because a number of out-of-state witnesses and out-of-state counsel are involved, a setting in the time frame noted above gives us the time needed to have the case properly prepared for trial.

Sincerely,

JAMES G. NELSON

JGN/lkg
cc: John Kaempf
Hartley Hampton
Greg Love
Client

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR LINN COUNTY
LINN COUNTY COURTHOUSE
P.O. Box 1749 (300 4th Ave) Albany, Oregon 97321
(541) 924-6907

August 10, 2005

FILE COPY

Morley Leanna/North Albany Oregon Congreg
Case#: **030431** Civil Other

NOTICE OF SCHEDULED COURT PROCEEDING

Scheduled Proceeding: **Trial Twelve Person Jury**
Date: **3/07/06**
Time: **9:00AM**
Room: **COURTROOM #3**
Additional Information:
JUDGE JAM ONLY - 8 DAYS
PTF TO SUBMIT JURY FEE BY 8/31

IMPORTANT NOTICE: PLEASE READ

NOTE: COURTROOM IS SUBJECT TO CHANGE

Failure to appear at the court event indicated above at the time and place specified may result in an order being rendered against you in this case.

IF YOU HAVE A COURT APPEARANCE OR TRIAL SET THAT CONFLICTS WITH THIS COURT SETTING, NOTIFY THIS COURT THROUGH THE CALENDARING DEPARTMENT WITHIN 10 DAYS, STATING THE NAME OF THE CONFLICTING CASE, THE COUNTY, THE DATE OF FILING, AND THE DATE OF SET.

CC:
JAMES G NELSON
213 WATER AVENUE NW SUITE 100
P O BOX 946
ALBANY OR 97321
JOHN T KAEMPF
888 SW FIFTH AVENUE SUITE 300
PORTLAND OR 97204-2088
RONALD E BAILEY
888 SW 5TH AVENUE SUITE 300
PORTLAND OR 97204-2089

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA STONE,

Plaintiff,

v.

NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC., et al.,

Defendants.

Case No. 03-0431

DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM OF LAW

(ORAL ARGUMENT REQUESTED)

REQUEST FOR ORAL ARGUMENT

Defendants request oral argument of these Motions and estimate that 10 minutes will be required. Official court reporting services are reque

MOTION

Pursuant to ORCP 47, defendants Chr. 's Witnesses ("CCJW"), Kingdom Support Services, Inc. of Jehovah's Witnesses ("ROJW")[1] (collectively referred t move for

100

[1] Although they are listed in the caption of plaintiff's Second Amended Complaint, plaintiff does not allege any cause of action against KSS or ROJW (both not-for-profit corporations) in the body of her Second Amended Complaint. In anticipation of plaintiff's request to further amend her Complaint to include KSS and ROJW in her negligence and fraud claims, KSS and ROJW join in this Motion.

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summary judgment as to all claims against them in plaintiff's Second Amended Complaint. Defendants, which are all not-for-profit corporations, did *not* exist at the time the alleged acts and omissions occurred. In fact, defendants did not exist until they were incorporated in 2000, which was at least 11 years *after* the alleged acts and omissions at issue.

These Motions are based on ORCP 47, the Court's file, the attached Declarations, and the following Memorandum of Law.

MEMORANDUM OF LAW

A. Introduction and summary of plaintiff's claims

This is a childhood sex abuse action arising from the alleged sexual abuse of plaintiff, a member of a Jehovah's Witnesses' congregation, by an alleged member of the congregation, Don Serjeant, who is deceased.

Plaintiff alleges that Mr. Serjeant's daughter reported to church "Elders" in **1962** that Mr. Serjeant had sexually abused her, but that defendants told his daughter not to discuss this with anyone, and that they would take any necessary action. Plaintiff further alleges that Mr. Serjeant later sexually molested plaintiff when he acted as a "Ministerial Servant" for the church. Plaintiff asserts that Mr. Serjeant, acting as defendants' agent, used his "position of trust" to sexually abuse plaintiff between **1984 and 1989**. Plaintiff alleges that she was 9 years old when the alleged abuse began. Based on these allegations, plaintiff asserts claims for negligence and fraud against defendants. See Second Amended Complaint.

B. Defendants were created in 2000, which was 11 years after the alleged abuse of plaintiff ended, and defendants thus cannot be held liable.

CCJW was incorporated as a not-for-profit corporation on August 21, 2000, in the State of New York, County of Putnam. (Declaration of William Nonkes.) KSS was incorporated as a not-for-profit corporation on September 26, 2000, in the State of New York, County of Putnam. (Declaration of Alexander Reinmueller.) ROJW was incorporated

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Telephone (503) 228-6351

as a not-for-profit corporation on August 21, 2000, in the State of New York, County of Putnam. (Declaration of Patrick LaFranca.)

A corporation's existence begins at the time of its incorporation. (ORS 65.051(1) and ORS 65.067; N.Y. Religious Corporations Law § 2-b-1;[2] N.Y. Not-For-Profit Corporations Law § 403.[3])

Therefore, it is an undisputed fact that defendants did *not* exist during the relevant time period set forth in plaintiff's Second Amended Complaint (1962 through 1989).

Thus, pursuant to ORCP 47, defendants should be granted summary judgment as to all claims against them.

DATED: September 23, 2005.

BULLIVANT HOUSER BAILEY PC

By _____
John Kaempf, OSB #92539

Attorneys for Defendants

[2] New York Religious Corporations Law § 2-b-1 provides, in relevant part, that the "not-for-profit corporation law applies to every [religious] corporation."

[3] New York Not-For-Profit Corporation Law § 403 provides, in relevant part, that upon "the filing of the certificate of incorporation," the "corporate existence shall begin."

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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA STONE,

Plaintiff,

v.

NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC., et al.,

Defendants.

Case No. 03-0431

DECLARATION OF ALEXANDER REINMUELLER

I, Alexander W. Reinmueller, being duly sworn, depose and say as follows:

1. I am over the age of 18, of sound mind, and legally competent in all respects. I have personal knowledge of the matters testified to herein and am competent to testify to these matters. I submit this Declaration on behalf of Defendant Kingdom Support Services, Inc. ("KSS") and in support of its Motion for Summary Judgment. I am the Secretary and Treasurer of KSS.

2. KSS first came into existence at the time of its incorporation as a not-for-profit corporation in the State of New York, County of Putnam, on September 26, 2000.

///

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///

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Portland, Oregon 97204-2089
Telephone: 503.228.6351
Facsimile: 503.295.0915

3. Plaintiff's negligence and fraud claims, as set forth in her Second Amended Complaint, are based upon alleged abuse occurring during the period 1984 through 1989. KSS did not exist during that period.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED: August 18, 2005.

Alexander W. Reinmueller

Bullivant|Houser|Bailey PC
888 S.W. Fifth Avenue, Suite 300
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Telephone: 503.228.6351
Facsimile: 503.295.0915

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA STONE,

Plaintiff,

v.

NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC., et al.,

Defendants.

Case No. 03-0431

DECLARATION OF PATRICK J. LAFRANCA

I, Patrick J. LaFranca, being duly sworn, depose and say as follows:

1. I am over the age of 18, of sound mind, and legally competent in all respects. I have personal knowledge of the matters testified to herein and am competent to testify to these matters. I submit this Declaration on behalf of Defendant Religious Order of Jehovah's Witnesses ("ROJW") and in support of its Motion for Summary Judgment. I am the President of ROJW.

2. ROJW first came into existence at the time of its incorporation as a not-for-profit corporation in the State of New York, County of Putnam, on August 21, 2000.

/ / /

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Facsimile: 503.295.0915

3. Plaintiff's negligence and fraud claims, as set forth in her Second Amended Complaint, are based upon alleged abuse occurring during the period 1984 through 1989. ROJW did not exist during that period.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED: August 18, 2005.

Patrick J. LaFranca

Patrick J. LaFranca

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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA STONE,

Plaintiff,

v.

NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC., et al.,

Defendants.

Case No. 03-0431

DECLARATION OF WILLIAM NONKES

I, William H. Nonkes, being duly sworn, depose and say as follows:

1. I am over the age of 18, of sound mind, and legally competent in all respects. I have personal knowledge of the matters testified to herein and am competent to testify to these matters. I submit this Declaration on behalf of Defendant Christian Congregation of Jehovah's Witnesses ("CCJW") and in support of its Motion for Summary Judgment. I am the Secretary and Treasurer of CCJW.

2. CCJW first came into existence at the time of its incorporation as a not-for-profit corporation in the State of New York, County of Putnam, on August 21, 2000.

/ / /

/ / /

/ / /

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Telephone: 503.228.6351
Facsimile: 503.295.0915

3. Plaintiff's negligence and fraud claims, as set forth in her Second Amended Complaint, are based upon alleged abuse occurring during the period 1984 through 1989. CCJW did not exist during that period.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED: August 18, 2005.

W. H. Nonkes

William Nonkes

Nelson & MacNeil, P.C.

ATTORNEYS AT LAW • ALBANY OFFICE (541) 928-9147 • CORVALLIS OFFICE (541) 758-5347

Attorneys: James G. Nelson • Christopher E. MacNeil
Legal Assistants: David E. Gould • Laura C. Grant

December 12, 2005

The Honorable John McCormick
Linn County Circuit Court
PO Box 1749
Albany OR 97321

Re: Stone v. North Albany Oregon Congregation, et al.
Case No. 030431

Dear Judge McCormick:

The Defendants have asked us to remove several Defendants who were improperly named in this case. We have agreed to do so; therefore, Defendants' motion is moot. Plaintiff's Third Amended Complaint has been filed with the court on this date.

Sincerely,

JAMES G. NELSON

JGN/lkg
cc: John Kaempf
Hartley Hampton
Greg Love
Client

213 WATER AVE. NW, SUITE 100 • P.O. BOX 946 • ALBANY, OR 97321 • FAX (541) 928-3621

12/13/05

2005 DEC 13 AM 9:38

COURT ADMINISTRATOR

BY

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA STONE, Plaintiff, vs. NORTH ALBANY OREGON CONGREGATION OF JEHOVAH'S WITNESSES, INC., f/k/a ALBANY OREGON COMPANY OF JEHOVAH'S WITNESSES, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND SOCIETY OF PENNSYLVANIA, WATCHTOWER ASSOCIATES, LTD., and NORTH BOTHELL CONGREGATION OF JEHOVAH'S WITNESSES, INC. Defendants.	CASE NO. 0210345 PLAINTIFF'S THIRD AMENDED COMPLAINT (Sexual Battery of a Child, Negligence, Fraud, Fraudulent Concealment, Premises Liability) *Not subject to Mandatory Arbitration* **Jury Trial Requested**

COMES NOW the Plaintiff and alleges as follows:

COMMON FACTS

1.

Plaintiff LeAnna Stone, formerly known as LeAnna Morley, is a resident of **Sweet Home, Linn County**, Oregon.

2.

Defendant North Albany Oregon Congregation of Jehovah's Witnesses, Inc. f/k/a Albany Oregon Company of Jehovah's Witnesses, Inc., is a corporation

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Attorneys at Law
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organized and existing under the laws of the State of Oregon. At all material times, it owned and maintained a meeting hall and offices at Kingdom Hall Building, 303 Grand Prairie Road SE, Albany, Oregon 97321.

3.

Defendant Watchtower Bible and Tract Society of New York, Inc., a corporation organized and existing under the laws of the State of New York, with offices at 25 Columbia Heights, Brooklyn, New York 11201-2483, has conducted business within the State of Oregon through its officers, agents, and servants.

4.

Defendant Watchtower Bible and Tract Society of Pennsylvania, a corporation organized and existing under the laws of the State of Pennsylvania, with offices at 1630 Spring Run Road Extension, Coraopolis, Pennsylvania 15108, has conducted business within the State of Oregon through its officers, agents, and servants.

5.

Defendant Watchtower Associates, Ltd., a corporation organized and existing under the laws of the State of New York, with offices at 147 Holiday Drive, Westbury, New York 11797, has conducted business within the State of Oregon through its officers, agents, and servants.

6.

Defendant North Bothell Congregation of Jehovah's Witnesses, a corporation organized and existing under the laws of the State of Washington, has conducted business within the State of Oregon through its agents and alter egos.

///

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7.

Venue is proper in Linn County, Oregon, because Defendant North Albany Congregation of Jehovah's Witnesses, Inc., has its principal place of business in Linn County and because some of the acts or omissions that give rise to Plaintiff's claims occurred in Linn County.

8.

The Defendant entities are collectively referred to herein as the "Watchtower Defendants" because each is an agent of the other and all operate as a single business enterprise.

9.

The Watchtower Defendants comprise a hierarchical organization made up of different corporations and other entities. The Watchtower Bible and Tract Society of New York is the parent organization of all entities of Jehovah's Witnesses in the United States. A "Governing Body" establishes policies and dictates practices for Jehovah's Witnesses throughout the world, and operates through various corporate entities including the Watchtower Bible and Tract Society of Pennsylvania. (Each entity is led by officers known as Elders and Ministerial Servants, appointed by the Governing Body.) Elders and Ministerial Servants are all agents of the Watchtower Defendants.

10.

Don Serjeant was appointed to the office of Ministerial Servant in the North Bothell Congregation of Jehovah's Witnesses and in the North Albany Congregation of Jehovah's Witnesses. This is a position higher than general member. In this position, he was an agent of the Watchtower Defendants.

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11.

A person who has the office of Ministerial Servant is held out to be a person of trust and responsibility and a person to whom one can trust to supervise minor children.

12.

One of the principal activities of the Jehovah's Witnesses organization is the distribution of literature and the solicitation of donations. Members of the organization are required to participate in this activity, often called "going out in service." These activities are supervised by Elders and Ministerial Servants.

13.

As early as 1962, if not before, Don Serjeant began sexually molesting and physically abusing his daughter, Suzan, who was seven years old when the abuse began. Suzan reported the abuse to the Elders of Defendant Bothell Congregation of Jehovah's Witnesses, where Don Serjeant was serving as a Ministerial Servant in the state of Washington. The Elders of the Defendant Bothell Congregation of Jehovah's Witnesses told Suzan not to discuss the matter with anyone else and that they would take any and all necessary action.

14.

Don Serjeant moved from Washington to Albany, Oregon, sometime prior to 1984. Don Serjeant was appointed by the Watchtower Defendants to serve the office of Ministerial Servant of the North Albany Congregation of Jehovah's Witnesses. While serving in that position, Don Serjeant met Plaintiff Leanna Stone, a minor child. Watchtower Defendants knew Don Serjeant transferred to the North Albany

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Congregation of Jehovah's Witnesses and knew he was going to be appointed to the office of Ministerial Servant.

FIRST CLAIM FOR RELIEF:

SEXUAL BATTERY OF A CHILD

15.

Plaintiff realleges paragraphs 1 through 14 above.

16.

Don Serjeant used the "position of trust" that his status as Ministerial Servant represented to develop a relationship with Leanna Stone. Plaintiff's parents believed that Don Serjeant was worthy of trust because he was a Ministerial Servant and they were comfortable entrusting their young daughter to his oversight.

17.

From 1984 through 1989, Don Serjeant sexually abused Plaintiff on multiple occasions while Plaintiff was performing her required "service" activities. Don Serjeant used his authority and position as Ministerial Servant and his "position of trust" to arrange to supervise Plaintiff in her "going out in service" activities for Watchtower Defendants so that he could gain access to her and sexually abuse her. Don Serjeant also abused Plaintiff in the parking lot of the North Albany Congregation Kingdom Hall.

18.

The abuse, which started when Plaintiff was nine years old, continued while Don Serjeant served as Ministerial Servant and, therefore, as the appointed agent of the Watchtower Defendants. Participating in "going out in service" was within the course and scope of Don Serjeant's agency relationship with the Watchtower

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Attorneys at Law
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Albany, OR 97321
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Defendants, and the Watchtower Defendants knew, or should have known, that Don Serjeant was taking Plaintiff out alone on service.

19.

The Watchtower Defendants had been on notice since at least 1962 that Don Serjeant had engaged in the physical and sexual abuse of minor children. The Watchtower Defendants knew, or should have known, that individuals who sexually abuse children are often repeat offenders who abuse multiple victims and the same victim multiple times. It was foreseeable to the Watchtower Defendants that if Don Serjeant obtained unsupervised access to young children, such as Plaintiff Leanna Stone, he would molest and abuse them. As a result, Plaintiff suffered serious injury and harm, as alleged in paragraph 26 below.

SECOND CLAIM FOR RELIEF:

PREMISES LIABILITY

20.

Plaintiff realleges paragraphs 1 through 19 above.

21.

Nevertheless, the Watchtower Defendants continued to allow Don Serjeant to occupy appointed leadership "positions of trust" and authority which gave him access to children such as Leanna Stone. Don Serjeant sexually abused Plaintiff Leanna Stone during Jehovah's Witnesses' activities and on the Watchtower Defendants' Albany, Oregon, property when the Watchtower Defendants had both the opportunity and the duty to supervise their agent, Don Serjeant, and to protect Leanna Stone. As a result, Plaintiff suffered serious injury and harm, as alleged in paragraph 26 below.

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Phone: (541) 928-9147

THIRD CLAIM FOR RELIEF:

NEGLIGENCE

22.

Plaintiff realleges paragraphs 1 through 21 above.

23.

The Watchtower Defendants were negligent in one or more of the following particulars that have been a substantial contributing factor to the damages of Plaintiff Leanna Stone as alleged in paragraph 26 below:

a. Despite the fact that the Watchtower Defendants knew, or should have known, of Don Serjeant's history of pedophilia, and despite their actual or constructive knowledge that he was taking Plaintiff out alone on service, they failed to warn Plaintiff, or her family, of Don Serjeant's history of sexually abusing children;

b. Despite the fact that the Watchtower Defendants knew, or should have known, of Don Serjeant's history of pedophilia, they negligently permitted him to be alone with Plaintiff, both "in service," and in the church parking lot;

c. Despite the fact that the Watchtower Defendants knew, or should have known, of Don Serjeant's history of pedophilia, they negligently appointed him to the office of Ministerial Servant when they knew or should have known that he would be allowed to supervise minor children in the course and scope of his duties;

d. The Watchtower Defendants negligently allowed Don Serjeant to move from one congregation to another without warning the second

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congregation of Don Serjeant's dangerous tendencies to molest minor children; and

e. The Watchtower Defendants negligently failed to supervise Don Serjeant despite their actual or constructive knowledge that he posed a potential and foreseeable danger to children.

FOURTH CLAIM FOR RELIEF:

FRAUD AND FRAUDULENT CONCEALMENT

24.

Plaintiff realleges paragraphs 1 through 23 above.

25.

Despite knowing that Don Serjeant had sexually abused minor children, the Watchtower Defendants intentionally and willfully concealed that information from the Plaintiff and her family. The Watchtower Defendants materially misrepresented to Plaintiff and her family that Don Serjeant was an official in good standing, who occupied a "position of trust" and authority, and was a person to whom minor children could be entrusted. Neither Plaintiff nor her parents could know about Don Serjeant's past or about the falsity of Defendants' representations. They were entitled to rely upon those representations and did, in fact, rely upon them to Plaintiff's serious injury and harm, as alleged in paragraph 26 below.

26.

As a result of the Watchtower Defendants' acts and omissions, Plaintiff has incurred and will continue to incur costs for medical expenses, counseling and psychological treatment, has lost earning capacity, and has suffered and will continue to suffer extreme, permanent emotional distress and psychological harm with

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accompanying physical manifestations, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life, all to her economic damage of $25,000, and to her non-economic damage of $4,000,000.

27.

Plaintiff did not discover, and could not have discovered through the exercise of reasonable diligence, her injuries that resulted from the abuse or the causal connection between her injuries and the wrongful conduct of the Watchtower Defendants until less than three years before the filing of this lawsuit.

WHEREFORE, Plaintiff demands judgment against the Watchtower Defendants individually, jointly and severally, for economic damages of $25,000, noneconomic damages of $4,000,000, plus Plaintiff's attorney fees, costs and disbursements herein, and such other relief as the Court deems just and equitable.

DATED this 9th day of December, 2005.

NELSON & MacNEIL, P.C.

By: James O. Nelson OSB #74230
Of Attorneys for Plaintiff

SUBMITTED BY:
James G. Nelson OSB #74230
Nelson & MacNeil, P.C.
P.O. Box 946
Albany, OR 97321
(541) 928-9147

OF ATTORNEYS FOR PLAINTIFF:
Gregory S. Love, Esquire
Love & Norris
314 Main Street, Suite 300
Fort Worth, Texas 76102
(817) 335-2800

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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA STONE,

Plaintiffs,

v.

NORTH ALBANY OREGON CONGREGATION OF JEHOVAH'S WITNESSES, INC., et al,

Defendants.

No. 03-0431

STIPULATED MOTION AND ORDER TO RESET TRIAL DATE

Pursuant to UTCR 6.030, defendants move the Court to postpone the current trial date of March 7, 2006 for the following reasons: Additional discovery needs to be completed. Also, settlement negotiations need to occur. Plaintiff joins in this Motion.

Case Filing Date: February 20, 2003
Number of prior postponements: None

REQUESTED SETOVER [X] Regular Course [ ]

Opposing Party: [x] Consents [ ] Objects
Probable Trial Status: [ ] Court [x] Jury
Estimated Total Length of Trial: One week

///

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Portland, Oregon 97204-2089
Telephone: 503.228.6351
Facsimile: 503.295.0915

I certify that I have advised my clients of this request and served a copy of this Motion on plaintiff's attorney.

Dated: December 19, 2005.

John Kaempf

John Kaempf, OSB #92539
E-mail: john.kaempf@bullivant.com
Attorney for Defendants

ORDER

The motion to postpone is **GRANTED**: [ ] in the regular course [X] to BE SET

Dated: 1/3/06

Presiding Judge

JOHN A. McCORMICK

FILED
STATE OF OREGON
LINN CO. CIRCUIT COURT
2006 FEB -7 PM 3:23
BY COURT ADMINISTRATOR

Bullivant|Houser|Bailey PC
888 S.W. Fifth Avenue, Suite 300
Portland, Oregon 97204-2089
Telephone: 503.228.6351
Facsimile: 503.295.0915

Tracy G KRUG/LIN/OJD
01/12/2006 04:54 PM

To Laura Grant <lgrant@nelsonandmacneil-law.com>
cc Gregory Love <gslove@airmail.net>, Hartley Hampton <hhampton@FHL-Law.com>, John Kaempf <John.Kaempf@bullivant.com>
bcc
Subject Re: Stone v. Watchtower

fantastic, I will send you all notices.... 7/25-28 and 7/31-8/3

Tracy
Laura Grant <lgrant@nelsonandmacneil-law.com>

Laura Grant <lgrant@nelsonandmacneil-law.com>
01/12/2006 01:08 PM

To Tracy Krug <Tracy.G.KRUG@ojd.state.or.us>
cc Gregory Love <gslove@airmail.net>, John Kaempf <John.Kaempf@bullivant.com>, Hartley Hampton <hhampton@FHL-Law.com>
Subject Stone v. Watchtower

January 12, 2006

Tracy:

This will confirm that Mr. Nelson and Mr. Love are both available for trial the week of July 25, 2006. I assume you will send out new notices. Thank you.

Laura Grant-Trevisiol
Legal Assistant to Jim Nelson
Nelson & MacNeil, P.C.
213 Water Avenue NW, Suite 100
Albany, OR 97321 (541) 928-9147

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030431

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR LINN COUNTY
LINN COUNTY COURTHOUSE
P.O. Box 1749 (300 4th Ave) Albany, Oregon 97321
(541) 924-6907

January 20, 2006

FILE COPY

Morley Leanna/North Albany Oregon Congreg
Case#: **030431** Civil Other

NOTICE OF SCHEDULED COURT PROCEEDING

Scheduled Proceeding: **Trial Twelve Person Jury**
Date: **7/25/06**
Time: **9:00AM**
Room: **COURTROOM #3**
Additional Information:
JUDGE JAM ONLY - 8 DAYS
CNTD FROM 3/7 PER ATTY MOTION

IMPORTANT NOTICE: PLEASE READ

NOTE: COURTROOM IS SUBJECT TO CHANGE

Failure to appear at the court event indicated above at the time and place specified may result in an order being rendered against you in this case.

IF YOU HAVE A COURT APPEARANCE OR TRIAL SET THAT CONFLICTS WITH THIS COURT SETTING, NOTIFY THIS COURT THROUGH THE CALENDARING DEPARTMENT WITHIN 10 DAYS, STATING THE NAME OF THE CONFLICTING CASE, THE COUNTY, THE DATE OF FILING, AND THE DATE OF SET.

CC:
JAMES G NELSON
213 WATER AVENUE NW SUITE 100
P O BOX 946
ALBANY OR 97321
JOHN T KAEMPF
888 SW FIFTH AVENUE SUITE 300
PORTLAND OR 97204-2088
RONALD E BAILEY
888 SW 5TH AVENUE SUITE 300
PORTLAND OR 97204-2089

Tracy G KRUG/LIN/OJD
01/23/2006 02:28 PM

To: Gregory Love <gslove@airmail.net>, Hartley Hampton <hhampton@FHL-Law.com>, John Kaempf <John.Kaempf@bullivant.com>, Laura Grant
cc:
bcc:
Subject: Re: Stone v. Watchtower

I regretfully inform you all that I did not have Judge John McCormick's vacation schedule when I set this trial. He will be gone the day we set this trial to commence. I spoke w/ Laura from Nelson's office earlier today on an unrelated matter and explained the problem and she shows Mr. Nelson marked off for vacation during part of the 8 days we set this trial for as well.

Additionally Judge John McCormick (JAM) will be gone 7/20-25.

Here are my new proposals for trial, please discuss amongst yourselves and let me know what works for everyone's schedules or email me and copy everyone and I will do the matching up and notifying. Sorry for the inconvenience and confusion.

Tuesday, 8/1-4 and 8/7-10 or 8/8-11
Monday, 8/7-11 and 8/15-17 (we may even be able to start week two on 8/14 if that's better for everyone since none of our judges at this point have that Monday scheduled off).

Judge JAM is available all of August, there is a holiday 9/4 (and it would be nice to avoid trial on 9/5 if possible) and we have 2 judges gone 9/11 so we need to avoid that Monday, however the remainder of September is also wide open for Judge JAM.

Please let me know as soon as possible so we can get a date confirmed.

Tracy
Tracy G KRUG/LIN/OJD

Tracy G KRUG/LIN/OJD
01/12/2006 04:55 PM

To: Laura Grant <lgrant@nelsonandmacneil-law.com>
cc: Gregory Love <gslove@airmail.net>, Hartley Hampton <hhampton@FHL-Law.com>, John Kaempf <John.Kaempf@bullivant.com>
Subject: Re: Stone v. Watchtower

fantastic, I will send you all notices.... 7/25-28 and 7/31-8/3

Tracy
Laura Grant <lgrant@nelsonandmacneil-law.com>

Laura Grant <lgrant@nelsonandmacneil-law.com>
01/12/2006 01:08 PM

To: Tracy Krug <Tracy.G.KRUG@ojd.state.or.us>
cc: Gregory Love <gslove@airmail.net>, John Kaempf <John.Kaempf@bullivant.com>, Hartley Hampton <hhampton@FHL-Law.com>
Subject: Stone v. Watchtower

> <lgrant@nelsonand
> macneil-law.com> To
> Tracy Krug
> <Tracy.G.KRUG@ojd.state.or.us>
> 01/24/2006 08:44 AM cc
> John Kaempf
> <John.Kaempf@bullivant.com>,
> Gregory Love <gslove@airmail.net>,
> Hartley Hampton
> <hhampton@FHL-Law.com>
> Subject
> Stone v. Watchtower
>
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>
>
> Tracy:
>
> Plaintiff's counsel is good for Aug. 7-11 and Aug. 15-17. Please
> confirm and send new notices. Thanks!
>
> Laura Grant-Trevisiol
> Legal Assistant to Jim Nelson
> Nelson & MacNeil, P.C.
> 213 Water Avenue NW, Suite 100
> Albany, OR 97321 (541) 928-9147
>
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Tracy G KRUG/LIN/OJD
01/24/2006 11:58 AM
Message History

To Laura Grant <lgrant@nelsonandmacneil-law.com>
cc Gregory Love <gslove@airmail.net>, Hartley Hampton <hhampton@FHL-Law.com>, John Kaempf <John.Kaempf@bullivant.com>
bcc
Subject Re: Stone v. Watchtower

Sounds like 8/8-11 and 8/14-16 is the majority vote, I will send out new notices today.

Tracy
(541)924-6907
Laura Grant <lgrant@nelsonandmacneil-law.com>

Laura Grant <lgrant@nelsonandmacneil-law.com>
01/24/2006 11:55 AM

To Tracy.G.KRUG@ojd.state.or.us
cc Gregory Love <gslove@airmail.net>, Hartley Hampton <hhampton@FHL-Law.com>, John Kaempf <John.Kaempf@bullivant.com>
Subject Re: Stone v. Watchtower

Tracy - We are available all week, both weeks. Whatever works best for the Court is fine. Thanks.

Laura Grant-Trevisiol
Legal Assistant to Jim Nelson
Nelson & MacNeil, P.C.
213 Water Avenue NW, Suite 100
Albany, OR 97321 (541) 928-9147

Quoting Tracy.G.KRUG@ojd.state.or.us:

> Thanks everyone for responding in such a timely manner.
>
> Both counsel have reported they are available for trial 8/7-11 and 15-17.
> Before I send out notices the other option during that time frame would be
> Tuesday, 8/8-11 and 8/14-16. It's difficult for us to have a jury trial 2
> Mondays in a row but 8/8-11 and 8/14-17 may be more convenient for folks
> and having less of a break over a weekend. Please let me know which option
> is preferable and I'll send notices.
>
> Tracy
> (541)924-6907
>
>
>
> Laura Grant

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR LINN COUNTY
LINN COUNTY COURTHOUSE
P.O. Box 1749 (300 4th Ave) Albany, Oregon 97321
(541) 924-6907

January 24, 2006

FILE COPY

Morley Leanna/North Albany Oregon Congreg
Case#: **030431** Civil Other

NOTICE OF SCHEDULED COURT PROCEEDING

Scheduled Proceeding: **Trial Twelve Person Jury**
Date: **8/08/06**
Time: **9:00AM**
Room: **COURTROOM #3**
Additional Information:
JUDGE JAM ONLY - 8 DAYS
CNTD FROM 3/7 PER ATTY MOTION
CNTD FROM 7/25 SCHDL CONFLICT

IMPORTANT NOTICE: PLEASE READ

NOTE: COURTROOM IS SUBJECT TO CHANGE

Failure to appear at the court event indicated above at the time and place specified may result in an order being rendered against you in this case.

IF YOU HAVE A COURT APPEARANCE OR TRIAL SET THAT CONFLICTS WITH THIS COURT SETTING, NOTIFY THIS COURT THROUGH THE CALENDARING DEPARTMENT WITHIN 10 DAYS, STATING THE NAME OF THE CONFLICTING CASE, THE COUNTY, THE DATE OF FILING, AND THE DATE OF SET.

CC:
JAMES G NELSON
213 WATER AVENUE NW SUITE 100
P O BOX 946
ALBANY OR 97321
JOHN T KAEMPF
888 SW FIFTH AVENUE SUITE 300
PORTLAND OR 97204-2088
RONALD E BAILEY
888 SW 5TH AVENUE SUITE 300
PORTLAND OR 97204-2089

GLEN D. BAISINGER
Judge
CAROL R. BISPHAM
Judge
JOHN A. MCCORMICK
Judge
RICK J. MCCORMICK
Judge
DANIEL R. MURPHY
Judge

P.O. BOX 1749
ALBANY, OREGON 97321-0491
COURTS (541) 967-3848
CRIMINAL RECORDS (541) 967-3841
CIVIL RECORDS (541) 967-3845

CIRCUIT COURT OF OREGON
TWENTY-THIRD JUDICIAL DISTRICT

February 7, 2006

James G Nelson
Attorney at Law
PO Box 946
Albany OR 97321

John T Kaempf
Attorney at Law
888 SW Fifth Avenue Suite 300
Portland OR 97204-2088

Re: Leanna Morley, et al. v North Albany Oregon Congregation, et al.
Linn County Case No.: 03-0431

Dear Counsel:

The Court notes that Calendaring recently reset the trial in this matter to August 8, 2006. Of course, the Court would like to see this case get resolved and will cooperate to make that happen.

Following the filing of the Third Amended Complaint in mid-December, the Court was waiting to hear from Defendants as to whether they were going to object to the filing and whether Defendants would agree that their previous Motion for Summary Judgment was now moot. The Court received a note from Calendaring on January 31 indicating that Mr. Kaempf had stated that his Motion was now moot. Therefore, the Court will not be setting a hearing and will await the filing of an Answer to the Third Amended Complaint.

The Court trusts that the attorneys will let the Court know as soon as possible if there are further Motions to consider before the trial.

Very truly yours,

John A. McCormick
Circuit Court Judge

smi

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA STONE, Plaintiff, v. NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC., et al, Defendants.	No. 03-0431 **DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S THIRD AMENDED COMPLAINT** **(CLAIM IN EXCESS OF $10,000)** **(JURY TRIAL REQUESTED)**

For their Answer to plaintiff's Third Amended Complaint, defendants[1] hereby admit, deny, and allege as follows:

1.

Defendants are currently without sufficient knowledge to admit, and thus deny, paragraph 1, except that defendants admit that plaintiff was once known as Leanna Morley.

/ / /

[1] The term "defendants" as used herein means defendants North Albany Oregon Congregation of Jehovah's Witnesses, Inc.; Watchtower Bible and Tract Society of New York, Inc.; Watchtower Bible and Tract Society of Pennsylvania; and North Bothell Congregation of Jehovah's Witnesses, Inc. This Answer is not made on behalf of defendant Watchtower Associates, Ltd.

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2.

In response to paragraph 2, defendants deny the allegation relating to the street address of the Kingdom Hall Building. Defendants admit all other allegations in paragraph 2.

3.

In response to paragraph 3, defendants admit that defendant Watchtower Bible and Tract Society of New York, Inc. is a corporation organized and existing under the laws of the State of New York with the address alleged by plaintiff, and that it has conducted activities within the State of Oregon through its agents. Defendants deny all other allegations in paragraph 3.

4.

In response to paragraph 4, defendants admit that defendant Watchtower Bible and Tract Society of Pennsylvania is a corporation organized and existing under the laws of the State of Pennsylvania at the address listed by plaintiff. Defendants deny all other allegations in paragraph 4.

5.

In response to paragraph 5, it is not directed at defendants, and, therefore, a response by defendants is not required.

6.

In response to paragraph 6, defendants admit that defendant North Bothell Congregation is a Washington corporation. Defendants deny all other allegations in paragraph 6.

7.

In response to paragraph 7, defendants admit that defendant North Albany Congregation of Jehovah's Witnesses, Inc. has its principal place of business in Linn County, Oregon. Defendants deny all other allegations in paragraph 7.

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8.

Defendants deny paragraphs 8 and 9.

9.

In response to paragraph 10, defendants admit that Don Serjeant was appointed as a ministerial servant in the North Albany, Oregon Congregation. Defendants deny all other allegations in paragraph 10.

10.

Defendants deny paragraphs 11, 12, and 13.

11.

In response to paragraph 14, defendants admit that Don Serjeant was appointed and served as a ministerial servant for a time in the North Albany, Oregon Congregation. Defendants deny all other allegations in paragraph 14.

12.

In response to paragraph 15, defendants reallege their responses to paragraphs 1-14. Defendants deny paragraphs 16, 17, 18, and 19.

13.

In response to paragraph 20, defendants reallege their responses to paragraphs 1-19. Defendants deny paragraph 21. In response to paragraph 22, defendants reallege their responses to paragraphs 1-21. Defendants deny paragraph 23. In response to paragraph 24, defendants reallege their responses to paragraphs 1-23. Defendants deny paragraphs 25, 26, and 27.

14.

Except as specifically admitted herein, defendants deny each and every allegation in plaintiff's Third Amended Complaint directed at defendants, and deny all of plaintiff's damage allegations. Defendants also deny that plaintiff is entitled to recover attorney fees.

/ / /

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Statute of Limitations)

15.

All of plaintiff's claims against defendants are barred by the statute of limitations.

SECOND AFFIRMATIVE DEFENSE

(Lack of Personal Jurisdiction)

16.

This Court lacks personal jurisdiction over defendant Watchtower Bible and Tract Society of Pennsylvania.

THIRD AFFIRMATIVE DEFENSE

(Free Exercise of Religion Clauses of the U.S. and Oregon Constitutions)

17.

Plaintiff's action is barred by the First Amendment to the U.S. Constitution, as well as Article 1, Sections 2 and 3 of the Oregon Constitution.

FOURTH AFFIRMATIVE DEFENSE

(Failure to State a Claim)

18.

Plaintiff's allegations fail to state any claim upon which relief can be granted against defendants. Also, there is no statutory or contractual basis for an award of attorney fees to plaintiff.

WHEREFORE, having fully answered plaintiff's Third Amended Complaint, defendants pray for a Judgment in their favor, including an award of their costs and

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disbursements incurred herein, as well as such other and further relief as the Court deems just and proper.

DATED: March 17, 2006.

BULLIVANT HOUSER BAILEY PC

By _____
John Kaempf, OSB #92539
E-mail: john.kaempf@bullivant.com

Attorneys for Defendants

Trial Attorney: John Kaempf, OSB #92539

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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA (MORLEY) STONE,

Plaintiff,

v.

NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC., et al,

Defendants.

No. 03-0431

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM OF LAW

(ORAL ARGUMENT REQUESTED)

REQUEST FOR ORAL ARGUMENT

Defendants request oral argument of this Motion and estimate that 30 minutes will be required. Official court reporting services are requested.

MOTION

This is a childhood sex abuse civil action. Pursuant to ORCP 47, defendants move for summary judgment as to all claims against them because they are barred by the statute of limitations contained in ORS 12.117.

Plaintiff is 30 years old and filed this action on February 20, 2003, when she was 27 years old. Plaintiff's own deposition testimony and medical records show that at the time the sexual abuse occurred (when plaintiff was between the ages of 5 to 14 years), she knew she was being "molested," that it was "wrong," and that it "caused" her to suffer various problems, including depression and drug problems. This is not a repressed memory case.

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Therefore, pursuant to ORS 12.117, plaintiff was required to file this lawsuit by her 24th birthday. However, plaintiff did not file it until she was 27 years old, which is 3 years too late. This is why defendants are entitled to summary judgment.

This Motion is based on the Court's file; the following Memorandum of Law; the attached Declaration of John Kaempf; and the exhibit thereto.

MEMORANDUM OF LAW

A. Introduction and summary of plaintiff's claims

This lawsuit arises from incidents of childhood sexual abuse that allegedly took place during a 9-year period ending in 1989, which was 14 years before this action was filed in February 2003. Plaintiff was between the ages of 5 and 14 years when the abuse occurred. See Third Amended Complaint.[1]

Plaintiff seeks damages from defendants North Albany Congregation of Jehovah's Witnesses, Inc., f.k.a. Albany Company of Jehovah's Witnesses, Inc.; Watchtower Bible and Tract Society of New York, Inc.; Watch Tower Bible and Society of Pennsylvania [sic]; and North Bothell Congregation of Jehovah's Witnesses, Inc. (collectively referred to herein as "defendants") for injuries caused by the sexual abuse of plaintiff by Don Serjeant, a church member and family friend who is deceased. Id.[2]

B. Terms of ORS 12.117, the applicable statute of limitations

ORS 12.117(1) is the statute of limitations for childhood sex abuse claims. It provides as follows:

> Notwithstanding ORS 12.110, 12.115 or 12.160, an action based on conduct that constitutes child abuse or conduct

---

[1] Through this Motion, defendants make no admission as to the ultimate validity of plaintiff's claims if they are decided on the merits. Also, for purposes of this Motion, defendants will accept plaintiff's testimony as true *arguendo*.

[2] Plaintiff also named Watchtower Associates, Ltd. as a party. However, since Watchtower Associates, Ltd. is not known to defendants, this Motion is not brought on its behalf. In any event, this entire action should be dismissed if the Court determines that all of plaintiff's claims are time-barred.

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> knowingly allowing, permitting or encouraging child abuse accruing while the person who is entitled to bring the action is under 18 years of age shall be commenced not more than six years after that person attains 18 years of age, or if the injured person has not discovered the injury or the causal connection between the injury and the child abuse, nor in the exercise of reasonable care should have discovered the injury or the causal connection between the injury and the child abuse, not more than three years from the date the injured person discovers or in the exercise of reasonable care should have discovered the injury or the causal connection between the child abuse and the injury, whichever period is longer.[3]

C. Plaintiff was required to file this lawsuit by her 24th birthday, but failed to do so.

ORS 12.117(1) "establishes a general rule that child abuse claims must be filed not more than six years after the plaintiff reaches 18 years of age. It also establishes a different time limit for plaintiffs who qualify for a 'delayed discovery' exception. Plaintiffs qualify for the extended filing period if they did not discover the injury while under 18; alternatively, they qualify, if, while under 18, they discovered the injury but did not discover that it was caused by the child abuse. In either case, the time limit applies only if the nondiscovery was reasonable. If a plaintiff qualifies for the extended limitation period, she may file her action within three years of the time she discovered, or should have discovered, the injury or the connection between the injury and the abuse, whichever period is longer." Jasmin v. Ross, 177 Or App 210, 214 (2001).

In other words, therefore, a plaintiff generally must file a lawsuit based on childhood sexual abuse by their 24th birthday. Plaintiff failed to meet this requirement.

If a plaintiff can show (a) that they did not discover their injury prior to turning 18, or (b) they discovered their injury prior to their 18th birthday, but did not discover that it was caused by the child abuse until after they turned 18, they have 3 years from the time they

[3] The term "child abuse" as used in ORS 12.117(1) includes rape and sexual abuse of a child. (ORS 12.117(2)(b)-(c).)

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discovered, or should have discovered, the injury or the connection between the injury and the abuse, whichever time period is longer. Id.

However, as shown below, plaintiff cannot rely on the "delayed discovery" exception or the "discovery rule" because it is undisputed that (1) her memories of the alleged abuse were not repressed; and (2) she was consciously aware of the causal connection between the abuse and at least some of her injuries ***at the time the abuse occurred*** nearly 2 decades ago.

The statute of limitations begins to run when "the plaintiff knows or should know that *some* harm has been incurred and that *a* claim exists. The statute is not delayed until the plaintiff is or should be aware of the full extent of his or her damage or all of the details relevant to the claim." Widing v. Schwabe, Williamson & Wyatt, 154 Or App 276, 283-284 (1998) (italics in original). Thus, a plaintiff does *not* have to know "all of the particulars of his or her injury" for the statute of limitations to begin running. Id. at 283.

Also, the "defense of the statute of limitations is not a 'technical' one in the invidious sense of that word, but is considered meritorious, since statutes of limitation are looked on with favor as statutes of repose." King v. Mitchell, 188 Or 434, 442 (1950); see also Stevens v. Bispham, 316 Or 221, 247 (1993) ("Statutes of limitations are designed to promote stability in the affairs of persons and to avoid the unfairness and burdens inherent in defending stale claims.") (Unis, Justice, specially concurring).

D. **Plaintiff was born on April 8, 1975 and, therefore, her 24th birthday, the deadline to file this lawsuit, was on April 8, 1999, nearly 4 years before this action was filed in February 2003.**

Plaintiff was born on April 8, 1975. (Plaintiff's deposition ("Depo") at 14.)[4] Therefore, plaintiff's 24th birthday was on April 8, 1999.

///

///

[4] For the purposes of this Motion only, plaintiff's cited deposition testimony is assumed to be true *arguendo*. Defendants do not waive the right to later impeach or otherwise controvert plaintiff's testimony or medical records.

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Plaintiff alleges that Mr. Serjeant sexually molested her between 1980 and 1989, when plaintiff was between the ages of 5 and 14 years. Id. at 31.

The Court's file shows that this lawsuit was not filed until February 20, 2003, when plaintiff was 27 years old. Thus, pursuant to ORS 12.117, plaintiff filed this lawsuit nearly 3 years too late. This is why defendants are entitled to summary judgment.

E. Plaintiff's deposition testimony shows that she knew she was being abused no later than when she was 14 years old, and knew at that time that the abuse was wrong and caused her various problems; therefore, she was required to sue by her 24th birthday, but failed to meet that deadline.

It is an undisputed fact that plaintiff was aware of the abuse by Mr. Serjeant, and that it caused her various problems, before she turned 18. Plaintiff's deposition testimony contains numerous unequivocal admissions that she was aware she was being abused and that it caused her various problems from the age of 14 through her early 20s. Thus, her lawsuit, which was not filed until she was 27 years old, is time-barred under ORS 12.117.

Plaintiff testified that when she was *14 years old*, she informed her foster mother, Mary Hudson, that Mr. Serjeant had sexually abused her, which led to Mr. Serjeant being arrested and convicted of sexually abusing plaintiff:

> Q. How long had you been staying with Mary Hudson as your foster parent until she found out about the sexual abuse by Mr. Serjeant?
>
> A. I don't believe it was very long.
>
> Q. Did you tell Mary Hudson at that time that Mr. Serjeant was sexually abusing you?
>
> A. She asked me if I had been molested and/or sexually abused.
>
> Q. What did you tell her at that time ***when you were 14 years old***?
>
> A. ***I told her I had, and I told her who did it.***
>
> Q. And you're referring to Mr. Serjeant?

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A. Yes.

Q. And is that what led Mary Hudson to then report it to the police?

A. Yes.

(Depo at 55 (emphasis added).)

Plaintiff further testified, in relevant part, as follows:

Q. ***At the time that it was happening***, particularly toward the end of it, ***when you became a teenager, 13 or 14 years old, what did you feel about it***? Was it upsetting?

A. Yeah.

Q. Was it very upsetting?

A. Yes, it was.

Q. Did you think it was wrong at that time?

A. Yes, ***I knew it was wrong***.

Q. Why did you know it was wrong?

A. It was against our religious beliefs. And I just recalled something else, too.

Q. What did you recall?

A. That when I was younger in school, you know, they showed us videos and stuff of child molesters, people to watch out for.

Q. And that was a video you saw at school during the time that this molestation was going on with Mr. Serjeant?

A. Yes.

Q. So at the time that it was going on, particularly toward the end, like when you were 13 and 14, did you understand that he was molesting you?

A. Not until about the third grade.

Q. And then ***when you were [in] about the third grade, you realized that it was molestation***?

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A. ***Yes.***

(Depo at 48-49 (emphasis added).)

Q. When was the first time you can remember, in terms of how old you were, when you performed oral sex on Mr. Serjeant?

A. I believe about 12.

Q. And this was after you'd seen this child molester video in third grade at school?

A. Yes.

Q. So I take it you knew that the oral sex was wrong as well?

A. Yes.

(Depo at 51-52.)

Q. How old were you when that [sexual abuse criminal] charge was brought against Mr. Serjeant?

A. I believe I was 14.

* * *

Q. Did you speak with the detectives at any point even if it wasn't physically in court?

A. Yes, I did.

Q. ***And what did you tell them at that time when you were 14 years old***?

A. ***I told them about all the abuse that I could remember happening.***

Q. Were you upset at the time?

A. Yes.

* * *

Q. ***When you were 14 years old***, and you told your foster mother, and then you ended up telling the detectives about the abuse that happened to you, ***what problems had it caused*** you at ***that*** time?

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A. ***I was severely depressed. I was withdrawing. I was rebelling***. That's what I can remember at that point living with her.

(Depo at 54, 56-57 (emphasis added).)

Plaintiff also admitted that when she was 14 years old, she kept a journal and wrote in it that Mr. Serjeant was sexually abusing her, and that she felt guilty and became suicidal when she was 14 years old because Mr. Serjeant abused her. (Depo at 62-63.)

Plaintiff further testified as follows:

Q. Besides depression, what were the problems that were ***caused*** by Mr. Serjeant abusing you at that time when you were ***14 years old***?

A. ***I became very sexually active, and I started drinking and using drugs***.

* * *

Q. What other problems can you recall ***at that time*** that had been ***caused*** by Mr. Serjeant sexually abusing you?

A. Problems trusting anybody. I didn't trust nobody. I couldn't have a functional friendship. I let boys take advantage of me. I mean, I allowed it. I had -- you know, I was sexually active, because I believed that's the way it was supposed to be, and I thought that was love.

(Depo at 73-74 (emphasis added).)

Q. ***And did you understand at that time, when you were 14 years old, that your depression at that time was caused by Mr. Serjeant sexually abusing you***?

A. ***Yes***.

(Depo at 77 (emphasis added).)

Plaintiff's medical records show that she sought and received treatment for the injuries that she allegedly suffered *before* turning 18, and she was aware of her alleged injuries and the causal connection between them and the sexual abuse by Mr. Serjeant more than 3 years before she filed this lawsuit:

///

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- **Linn County Mental Health Services**

  - **5/1/90** Treatment Plan Summary: Problem list: Depression, ***sexual*** and physical ***abuse recovery***, sexual promiscuity, anger
  - **5/24/90** Intake Assessment: Plaintiff "came to Linn County Mental Health with her foster mother upon the recommendation of CSD after attempting suicide by overdose of aspirin. She had also recently been ***moved from her parents' home into foster placement due to sexual and physical abuse.***" She "reported being constantly physically abused by her father as well as ***sexually molested by a family friend and fellow church member***. He admitted to the abuse (lasting almost six years) and is currently being prosecuted. According to [plaintiff], he attempted intercourse as well as ***molested her***."

- **M. F. Altiser, M.D.**

  - **5/9/90** "Note: She's undergoing some counseling and is out of the home in foster care because of h[istory] of rape repeatedly from age 8 [years] on by some friend of the fam[ily]."

Therefore, it is an undisputed fact that plaintiff consciously knew she was sexually abused and that it was the cause of her problems before she turned 18 years of age on April 8, 1993. Thus, pursuant to ORS 12.117(1), the statute of limitations expired 6 years later, on April 8, 1999, plaintiff's 24th birthday. However, plaintiff did not file this lawsuit until nearly 4 years later, on February 20, 2003.

Therefore, plaintiff's lawsuit is time-barred and should be dismissed. See Halseth v. Deines, 2004 WL 2997565 at *4 (D Or 2004) (in a case where the plaintiff alleged that an employee of the defendant high school sexually assaulted her when she attended the high school, the court held that, under ORS 12.117, plaintiff "had six years from the date she turned 18" to sue defendants, and further held that because, unlike the present case, the "Complaint was filed within this six-year period," plaintiff's "action was timely filed").

F. Plaintiff's deposition testimony and medical records also show that she discovered the causal connection between at least some of her injuries and the sexual abuse by Mr. Serjeant *after* she turned 18, but more than 3 years before she filed this lawsuit.

Even assuming that plaintiff did not discover "the injury" or the causal connection between the injury and the alleged child abuse, "nor in the exercise of reasonable care should

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have discovered the injury or the causal connection between the injury and the child abuse" until *after* she turned 18, plaintiff was also consciously aware of the causal connection between the sexual abuse and at least some of her injuries more than 3 years before this suit was filed, when plaintiff was 27 years old. If "a reasonable person would have discovered the injury, the cause of action must be filed within three years of the date that the injury should have been discovered." Simone v. Manning, 930 F Supp 1434, 1437 (D Or 1996).

Plaintiff testified as follows in her deposition:

> Q. And the [medical] record is dated April 16th of 1998. ***I think you would have been 22 years old.*** And, in part, it indicates, quote, "LeAnna [plaintiff] is complaining of depressive symptomology and psychotic symptoms," end quote. Is that accurate about what was going on with you in 1998?
>
> A. Yes.
>
> Q. And, again, ***was this something that you understood, in your mind, at that time was caused by Mr. Serjeant sexually abusing you***?
>
> A. ***Yes.***
>
> Q. And this is when you were 22 years old?
>
> A. Yes.

(Depo at 80-81 (emphasis added).)

> Q. And why was it you told Norma [plaintiff's Alcoholic Anonymous sponsor] when you were ***20 years old*** about Don Serjeant sexually abusing you?
>
> A. Because part of the program is to tell them why I drank, and ***that's why I drank.***
>
> Q. Is ***because Don Serjeant abused you***?
>
> A. ***Yes.***

(Depo at 85 (emphasis added).)

In addition to the testimony in her deposition cited above, plaintiff's medical records confirm that she actually knew she was sexually abused by Mr. Serjeant and that it caused

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her various problems after her 18th birthday, but more than 3 years before this lawsuit was filed in February 2003. This is another reason why her claims are time-barred:

- **10/25/95**: Plaintiff "***describes herself as the survivor of sexual molestation, between the ages of 5-14 by a church member*** who 'molested 50 kids, including my brother.'" Impression/Plans: Plaintiff "presents w/symptom of PTSD 309.81, major depression ***."
- **10/26/95:** Olivia West, MSW, CSW, Mental Health Specialist: Plaintiff "reports that ***she does not trust others because she was molested by a family friend and church member from the ages of five to fourteen years old.*** She says that she has never been happy for most of her life and most recently she feels depressed with a sleep disturbance of 3 hours nightly, nightmares, flashbacks, appetite disturbance with a loss of 38 pounds in two months with a reported history of bulimia which she says stopped three months ago. Leanna also reports that she has a fear of crowds, and suffers from panic attacks when she is required to be in a crowd." Tentative diagnosis: Chronic PTSD, Major depressive disorder, R/O Panic Disorder with agoraphobia, alcohol dependence, borderline personality disorder.
- **12/7/95** Psychiatric Assessment: Plaintiff "laments that she's getting a lot of nightmares back 'again,' and she doesn't like them at all. ***These nightmares concern old abuse situations that she has been through.*** *** ***She was sexually abused form age 5 to 14 by someone who was in the church.*** *** Apparently this particular male has abused something like fifty different people in the community. ***This kind of thing finally stopped happening when she ran away from home at age 14.***"

- **Psychiatrist Robert Vandiver**

  - **12/7/95** "The various nightmares that she has concern the abuse issues that she's been through as I've noted above [referring to the childhood sexual abuse]. They have come and gone—at least once or twice in her life and she's very upset that they are back again."
  - **12/28/95** "***Child abuse by church elder.*** She is experiencing recurring flashbacks and dreams associated w/the experiences. Leanna reports an inability to trust others. Her relationship w/her family of origin in conflict *** because they want her to attend the church where this man goes. Severe PTSD symptoms as a direct result of ch[ildhood] [sexual] molestation by church member."
  - **10/23/95** "She reports flashbacks from ch[ildhood] trauma *** ch[ildhood] sex abuse w/ symptoms of PTSD."

Therefore, plaintiff's deposition testimony and medical records show that her claims are untimely pursuant to ORS 12.117 even applying the "delayed discovery" rule.

///

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G. Oregon case law supports granting defendants' motion.

Finally, the court's decision in Flaningam v. Flaningam, 145 Or App 432 (1996), further supports granting defendants' motion. In that case, the plaintiff filed her Complaint in November 1994, alleging that the defendant, plaintiff's older brother, sexually abused her as a child and that the abuse had caused "extreme emotional disturbance" described as "Chronic Post-Traumatic Stress syndrome," from which she suffered damages. Plaintiff further alleged that she was "not diagnosed, did not know [that] she was ill or that the illness was caused by Defendant's wrongful conduct until 1994," and that her lack of knowledge before 1994 was "reasonable." Id. at 434.

Defendant moved for summary judgment based on ORS 12.117(1). Defendant argued that the evidence showed that plaintiff knew of the damage caused by the alleged abuse no later than 1987 and, therefore, the statute of limitations began to run at that time. Plaintiff responded with an affidavit stating that she "was not aware of a link" between her injury and the abuse by defendant until 1994. Id.

The trial court in Flaningam granted defendant's motion for summary judgment and the Court of Appeals affirmed. While the court assumed "that it is true that plaintiff did not discover the link between her injury and defendant's alleged abuse until 1994," the court noted that, ***just like the present case***, "the record reflects that no later than 1987 plaintiff knew of the alleged abuse, ***was able to tell her relatives and psychiatrist about it*** and believed that she had suffered ***some*** damage from the abuse." Id. at 435 (emphasis added).

Therefore, because plaintiff failed to present any evidence "about a diagnosis of Post Traumatic Stress Disorder or how that condition prevented her before 1994 from being aware of the link between her injury and the alleged abuse," the court in Flaningam held that the summary judgment for defendant was proper. Id. at 435-436.

This Court should reach the same result as in Flaningam. Plaintiff's counseling records show that plaintiff, just like the plaintiff in Flaningam, was able to tell mental health

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counselors and a family member about the abuse by Mr. Serjeant, and some of the problems it allegedly caused, during her teenage years and through her early 20s. This is *not* a case of repressed memories where a plaintiff was unable to remember and discuss the sexual abuse with a psychiatrist until shortly before the lawsuit was filed. See Simone, 930 F Supp at 1436-1437 (the plaintiff alleged that the defendant sexually abused her when she was a teenager, but plaintiff did not sue defendant until she was 32 years old and submitted evidence that until the year before she sued, she "was incapable" of discovering the causal connection between the sexual abuse by defendant and her claimed injuries; the court denied defendant's motion for summary judgment based on ORS 12.117 because, ***unlike*** the present case, while plaintiff sought counseling from psychologists in her teens and twenties, "***none of those sessions brought out the issue of childhood sexual abuse***") (emphasis added).

Therefore, just as in Flaningam, defendant should be granted summary judgment because plaintiff failed to timely commence this lawsuit as required by ORS 12.117.

CONCLUSION

The Court would be hard-pressed to find a case that contains more overwhelming proof that the plaintiff was consciously aware of the sexual abuse she alleges she suffered before she was 18, and was consciously aware of her alleged injuries and the casual connection between her injuries and the alleged abuse before she turned 18. Plaintiff's sworn deposition testimony and medical records show that these are the undisputed facts.

Therefore, this lawsuit is time-barred, and Defendants' Motion for Summary Judgment should be granted.

DATED April 4, 2006.

BULLIVANT HOUSER BAILEY PC

By _____
John Kaempf, OSB #92539
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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA (MORLEY) STONE,

Plaintiffs,

v.

NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC., et al,

Defendants.

No. 03-0431

DECLARATION OF JOHN KAEMPF

I, John Kaempf, being first duly sworn, testify as follows:

1. I am an attorney for the defendants in this action. I make this Declaration based on my personal knowledge and I am competent to testify to the matters herein.

2. The exhibit attached hereto contains true copies of the plaintiff's medical records cited in support of Defendants' Motion for Summary Judgment, as well as a true copy of the plaintiff's deposition transcript.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED: April 4, 2006.

By _____
John Kaempf

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CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2006, true copies of the foregoing **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM OF LAW and DECLARATION OF JOHN KAEMPF** were served on plaintiff's attorneys by U.S. Mail.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

COPY

LEANNA STONE,

Plaintiff,

vs.

NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC., et al.,

Defendants.

Case No. 03-0431

ORIGINAL

DEPOSITION OF LEANNA STONE

Taken in behalf of the Defendants

November 30, 2005

MOORE HENDERSON ALLEN & THOMAS
Professional Court Reporting & Videography

101 SW Main Street, Suite 280 • Portland, OR 97204 503.226.3313 • 1.800.962.7308 • Fax 503.273.0109

Page 13

work every day, because I can't sleep, and it was -- and I had to struggle to get out of bed every day with my depression.
Q. And I'm sorry if you already told me this.
The job you had in Albany working on the conveyor line, did you also have to quit that because of depression issues?
A. Yes, that and I wasn't going to work, so I got fired.
Q. And why were you not going to work?
A. Because of my depression. But I did get fired for going to work drunk. I did go to work drunk.
Q. At the job in Albany that you told me about?
A. Yes.
Q. How long have you had this depression that you've mentioned today?
A. All my life that I can remember.
Q. Including when you were under the age of ten years, even?
A. Yes.
Q. We'll get back to that later.
Other than the jobs that you've told me about, have you had any other jobs?
A. One more.
Q. What was that?

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A. I worked at Wendy's in Portland.
Q. When was that?
A. Just before I worked at Spunky's.
Q. And when did you work at Spunky's? Can you give me a year as an estimate?
A. No, I can't do years. Just ages.
Q. What's your birth date?
A. '75.
Q. What month and date?
A. 10-8-75.
Q. And what's your Social Security number?
A. [redacted].
Q. So you were born on October 8th of 1975, correct?
A. Yes.
Q. So you just turned 30 a little over a month ago?
A. Yes.
Q. How old were you when you worked at the other job you were telling me about before Spunky's?
A. I was either 15 or 16.
Q. So this is probably, not holding you to it exactly, 1990, 1991?
A. Yes.
Q. And what did you do at that job?

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A. I quit.
Q. But what was the nature of the job?
A. Oh, the nature of the job?
Q. Yeah, your duties.
A. I made french fries, and I put buns through the boiler to be toasted.
Q. And why did you quit?
A. Because I couldn't sleep and because of my depression.
Q. Have you ever held a job longer than about a month?
A. No.
Q. And your testimony -- and tell me if I'm summarizing it accurately -- in significant part, according to you, it's been because of your depression?
A. Yes.
Q. And inability to sleep?
A. Yes. That's not all, though.
Q. What else? Tell me.
A. Because of my anxiety around people, and I can't deal with authority well.
Q. Any other reasons?
A. I don't trust people in authority.
Q. Anything else?
A. I believe that's about it.

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My PTSD.
Q. And I think you mean "posttraumatic stress disorder"?
A. Yes.
Q. And we'll get back to that.
So the last time you've had a full-time job you told me was in 1997?
A. '96.
Q. 1996.
So coming up on ten years you have not had a full-time job?
A. Yes.
Q. And do you have any other source of income separate from your current husband?
A. No.
Q. When did you meet your current husband, Mr. Stone?
A. On April 24th of 2003.
Q. And when did you marry him?
A. I married him the following February 14th of 2004.
Q. Before you met Mr. Stone in April of 2003, how were you getting by economically without an income?
A. I was on Social Security.
Q. Disability?

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A. No. Just security, because disability you have to pay into.
Q. And when did you first obtain Social Security benefits?
A. That I'm not sure. I know I tried for four years before I got it, and I filed in '96.
Q. Have you ever filed a lawsuit other than this lawsuit that I'm asking you about here today?
A. No.
Q. Have you ever been sued yourself or someone else file a lawsuit against you?
A. No.
Q. Have you ever been convicted of a crime?
A. Yes.
Q. More than one or just one?
A. I have a question about that.
Q. Sure. Go ahead.
A. Underage or over 18?
Q. Both, your whole life.
A. Yes, more than one.
Q. Can you tell me about all of the criminal convictions. And just so I'm clear, when I say that, I mean both things that you would plead guilty to and things that you might have denied, but the Court may have found you guilty. I want to include all that.

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Can you tell me.
A. Yes. I had a whole bunch of run-aways. I don't know how many, but I got in trouble for that.
And I have two car thefts on my juvenile record and one assault, and then I have minor in possession of tobacco, I do believe.
And, I think, breaking and entering or trespassing. And then after 18, in '96 I got another assault.
Q. What happened in the first assault?
A. The first assault it was self-defense.
Q. I don't want to ask any questions that are inflammatory.
Do you acknowledge that you assaulted someone?
A. Yes.
Q. Who did you assault?
A. My father.
Q. And what is his name?
A. Leroy Moon.
Q. And how old were you when you assaulted Mr. Moon?
A. I believe I was about 15.
Q. So this would be approximately 1990 to 1991 time period?

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MR. LOVE: She said a few times, several times.
MR. KAEMPF: Whatever she said, the record will show that.
BY-MR. KAEMPF: (Continuing)
Q. Other than whatever you said before about the parking lot at the Kingdom Hall in Albany, was there ever a time where Mr. Serjeant sexually molested you on church property?
A. I don't know. If you could rephrase that. Do you mean church activities or church property?
Q. Right now I want to talk about physically on church property. You've told me that it occurred a certain number of times in the church parking lot at the Kingdom Hall in Albany.
A. Yes.
Q. Was there ever any other occasion where Mr. Serjeant abused you on any church property?
A. Yes.
Q. Tell me about that.
A. At the assemblies.
Q. What assemblies?
A. They have assemblies every year.
Q. Where?

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A. In Tacoma, Washington.
Q. Did you travel with Mr. Serjeant up to Tacoma?
A. No.
Q. How did you get to Tacoma?
A. With my parents.
Q. And how old were you when you went to these various assemblies in Tacoma?
A. I've gone my whole life. Well, till I was 14.
Q. Were they once a year?
A. Yes.
Q. And how many times did Mr. Serjeant abuse you up at the assemblies in Tacoma?
A. I can't tell you that. I don't know how many times.
Q. Once or more than once?
A. More than once.
Q. And was this during that same nine-year window you told us about from about age 5 to age 14?
A. Yes.
Q. And up in Tacoma, physically where did it happen?
A. It happened at the Tacoma Dome.
Q. Where in the Tacoma Dome?

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A. In the parking lot.
Q. In a car?
A. In a van.
Q. Was anybody else in the van besides the two of you?
A. No.
Q. When the abuse happened in the parking lot of the Kingdom Hall in Albany, was it also in a car?
A. What?
Q. Was it in a car or in a van when it happened at the Kingdom Hall parking lot in Albany?
A. He only had a van.
Q. Was it the same van in Albany in the parking lot as well as the Tacoma Dome?
A. Yes.
Q. And was anybody else in the van at that time?
A. No.
Q. Where were your parents at the time? Let's start with Tacoma.
Do you know what they were doing when he was alone with you in this van in the Tacoma Dome parking lot?
A. No. They were at the assembly somewhere.
Q. So with the Tacoma situation, do I

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understand that inside the Tacoma Dome, the assembly meeting, we'll call it, was going on, but Mr. Serjeant got you out in a van in the parking lot, and that's where he sexually molested you?
A. No.
Q. Tell me what happened.
A. It's over a period of days, the assembly is, and there was some breaks in between for lunch and things like that where you eat. So it wasn't actually during the assembly itself. It was during the breaks of the assembly.
Q. All of the abuse up in Tacoma was during the breaks in the assembly?
A. Yes.
Q. In the Tacoma Dome parking lot?
A. Yes.
Q. Now, in the Kingdom Hall parking lot in Albany, it was in the van, correct?
A. Yes.
Q. And this was before you would go in to attend a church meeting?
A. Yes.
Q. Was there ever any other time, other than what you've told me about in Tacoma and then in Albany, where the abuse by Mr. Serjeant occurred on what you

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contend to be church property?
A. Not on the church property.
Q. Was all the other abuse by him at his home?
A. No.
Q. Other than his home, Tacoma Dome parking lot, and the Kingdom Hall parking lot in Albany, where else did Mr. Serjeant abuse you?
A. In the van when we were supposed to be going witnessing to people.
Q. Is this when people in the church will sometimes go door to door and things like that in neighborhoods?
A. Yes.
Q. And what city were you in when that abuse occurred in the van?
A. Albany.
Q. Tell me about Mr. Serjeant's role with you when you were out doing what you refer to as "the service," when you say that he was also abusing you in the van.
Why was it that he was the person out doing that with you?
And what I'm asking you, LeAnna, if it's okay if I call you LeAnna, explain the church to me a little bit in terms of what he was out doing with you

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at that time.
A. The ministerial servants, the people that you go out and service with.
Q. When you say, "you go out and service with," what do you mean "service"?
A. Witnessing people, going door to door.
Q. How often did you do that with Mr. Serjeant?
A. I can't recall.
Q. Was this during the period of time between the ages of 5 to 14 when he was abusing you?
A. Yes.
Q. And all the times in the van when you were out doing the service and witnessing to people, that would have all been in the area of Albany, Oregon?
A. Yes.
Q. Other than Tacoma, the Kingdom Hall parking lot in Albany, Mr. Serjeant's home, and then in his van when you were out doing the service and witnessing, as you said, were there any other places that Mr. Serjeant abused you?
A. Yes. It was in his van again, but it was in California.
Q. And how old were you at that time, approximately?
A. Fourteen; 13 or 14.

A. Yes.
Q. And the oral sex, then, went on for about two years until the molestation stopped?
A. Yes.
Q. And how often would you perform oral sex on Mr. Serjeant?
A. A lot. I can't be sure how much, but a lot between those two years.
Q. Could we say that for that two-year period it was multiple times per month?
A. Yes.
Q. Was it upsetting to you at the time to have to perform oral sex on Mr. Serjeant?
A. Yes, it was upsetting.
Q. Why was it upsetting to you at the time that that began when you were 12 years old?

Mr. Serjeant at that time?
A. Because that's when my foster mother reported it.
Q. And what was the name of your foster mother at the time?
A. Mary Hudson.
Q. Do you know where Mary lives now?
A. No.
Q. When did she become your foster mother?
A. When I was 14.
Q. And why is it that you left your home with your parents, Leroy and Phyllis, and went to a foster situation?
A. It was because I didn't want to go to church. And my dad warned me that if I didn't get ready to go to church that he was going to spank me.

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Don Serjeant abusing you?
A. Twenty.
Q. About the time we were talking about with some of these records, in about 1995, 1996?
A. Yes.
Q. And why was it you told Norma when you were 20 years old about Don Serjeant sexually abusing you?
A. Because part of the program is to tell them why I drank, and that's why I drank.
Q. Is because Don Serjeant abused you?
A. Yes.
Q. And you knew when you were 20 years old, you were telling someone in Alcoholics Anonymous that a reason why you were doing that is because Don Serjeant abused you?
A. Yes. But I didn't know as clearly now as I did then -- I mean, that's backwards. I'm backwards with that. I know more now about it than I did then.
Q. Is there anyone else that you told about it?
A. Yes.
Q. Who?
A. Brenda Erickson, a friend of mine.
Q. And when did you tell Brenda?
A. I'm not sure.
Q. How old were you?

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A. I've known her for five years. I'm not sure. In between there.
Q. Sometime within the last five years?
A. I think sometime within the last couple of years.
Q. Is there anyone else you've ever told about Don Serjeant abusing you?
A. My adopted brother and his wife.
Q. Who is your adopted brother?
A. He's not really adopted. I just call him my brother. His name's Lee Gibson.
Q. And when did you tell Lee Gibson about Don Serjeant abusing you?
A. It was about --
Q. How old were you?
A. I'm not sure. It was about a year after I filed the case.
Q. Where does Lee Gibson live?
A. In Lebanon.
Q. Oregon?
A. Yes.
Q. Do you know his phone number?
A. Yes.
Q. What is it?
A. 451-3337.

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Q. Is that a 541 area code?
A. Oh, yes.
Q. Anyone else that you've told about Don Serjeant abusing you besides these people you've told me about already?
A. Yes.
Q. Who?
A. His name's Rich Gardner. He's my backup sponsor.
Q. When did you first tell Rich? How old were you?
A. I'm not even sure if it was as long ago as a year.
Q. Anyone else that you've told?
A. Since I started this case, I told a lot of people in AA during the meetings when I'm sharing.
Q. How about before you filed the lawsuit? Anyone else?
A. No.
Q. Are you aware of anybody on behalf of any defendant in this case that's admitted any kind of fault or responsibility for what happened to you concerning Don Serjeant?
A. Will you say that again. I don't understand.

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Q. I didn't ask it that well.
Is there anybody that you're aware of from the church, including any of these defendants you've sued, that have admitted fault or responsibility in any way for what happened to you regarding Don Serjeant?
A. No. They're not going to admit fault.
Q. You're not aware of that happening?
A. No, not of them admitting anything.
Q. Now, you told me about dealing with Steve Cuda, an elder, concerning when your father Leroy found your journal when you were 14 years old, correct?
A. Yes.
Q. Other than dealing with Steve Cuda at that time, did you deal with any other elders at anytime relating to Don Serjeant abusing you?
A. I know he came with another elder to my house. It wasn't just him. I'm not sure what his name was.
Q. And that was when you were 14 years old?
A. Yes.
Q. And this was the time after your journal was discovered by your dad?
A. Yes.
Q. And other than Steve Cuda and this other elder whose name you can't remember, did you ever deal

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with any other elders or anyone else from the church relating to being abused by Mr. Serjeant?
A. No.
Q. Is it fair to say your contact with the church ended after January of 1990, when you said you didn't want to be in the church anymore?
A. Yes.
Q. I was looking at another one of these medical records, a mental health initial assessment, that was produced by your lawyer, and it's dated October 26 of 1995. And under a section called "Presenting Problems," it references that you're 20 years old at the time.
And it says, quote, "She reports that she does not trust others because she was molested by a family friend and church member from the ages of 5 to 14 years old," end quote.
Does that refer to Mr. Serjeant?
A. Yes.
Q. And do you recall making the statement to that effect when you got this treatment in October of 1995?
A. No, but I must have.
Q. You don't deny that these are what the records state?

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A. No.
Q. It says also, quote, "LeAnna is a 20-year-old female who is a survivor of sexual molestation from the ages 5 to 14 by a member of her church. She requests counseling services for her inability to trust others related to this childhood history," end quote.
Is that accurate?
A. No.
Q. What's not accurate about that?
A. That's not why I was going to therapy in the first place. I was going for my food stamps, because I needed them.
Q. Is it true at this time -- it says that you're "a 20-year-old female who's a survivor of sexual molestation from the ages of 5 to 14 by a member of her church."
Is that accurate?
A. Yes.
Q. There's a record dated April 10 of 1998 from a Douglas Thayer -- T-H-A-Y-E-R -- M.D.
Do you recall Dr. Thayer?
A. Yes.
What date was that? I'm sorry.
Q. April 10 of 1998. You would have been 22.

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EXAMINATION BY-MR. LOVE:
Q. LeAnna, you know me. I'm Greg Love. And I represent you, right?
A. Yes.
Q. Before the lawsuit was filed, did you know what "depression" meant?
A. No.
Q. What about "PTSD"?
A. No.
Q. Have you ever actually sought treatment for depression or PTSD?
A. No.
Q. Now, we've looked at some medical records that use those terms.
Why did you go to places and to medical professionals?
A. So I could survive.
Q. What does that mean?
A. Financially on either food stamps, AFS, or through the Social Security to keep going, to get Social Security and to keep it.
Q. Do you know what "distymia" means?
A. I do now, but I didn't.
Q. When did you learn what "distymia" meant?
A. Today.

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Q. When did you learn for the first time what the elements of major depression are?
A. Today.
Q. What about posttraumatic stress disorder?
A. Today.
MR. LOVE: I have nothing further.
MR. KAEMPF: Subject to what I said before about technically leaving it open, I have nothing further.
And I thank you for your time.
(Deposition adjourned at 4:37 p.m.)

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STATE OF OREGON } ss.
COUNTY OF MULTNOMAH }

I, Jennifer J. DeOgny, RPR, CSR, hereby certify that, pursuant to the Rules of Civil Procedure, LEANNA STONE personally appeared before me at the time and place set forth in the caption hereof; that at said time and place I reported in stenotype all testimony adduced and other oral proceedings had in the foregoing matter; that thereafter my notes were reduced to typewriting under my direction; and the foregoing transcript, pages 1 to 110, both inclusive, constitutes a full, true, and correct record of such testimony adduced and oral proceedings had and of the whole thereof.

Witness my hand and notarial seal at Portland, Oregon, this 15th day of December, 2005.

Jennifer J. DeOgny, CSR, RPR
Notary Public No. 324896

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR LINN COUNTY
LINN COUNTY COURTHOUSE
P.O. Box 1749 (300 4th Ave) Albany, Oregon 97321
(541) 924-6907

April 20, 2006

FILE COPY

Morley Leanna/North Albany Oregon Congreg
Case#: **030431** Civil Other

NOTICE OF SCHEDULED COURT PROCEEDING

Scheduled Proceeding: **Trial Twelve Person Jury**
Date: **10/24/06**
Time: **9:00AM**
Room: **COURTROOM #3**
Additional Information:
JUDGE JAM ONLY - 8 DAYS
CNTD FROM 3/7 PER ATTY MOTION
CNTD FROM 7/25 SCHDL CONFLICT
CNTD BY THE CRT AGAIN FROM 8/9
DUE TO JCIP CONFERENCE

IMPORTANT NOTICE: PLEASE READ

NOTE: COURTROOM IS SUBJECT TO CHANGE

Failure to appear at the court event indicated above at the time and place specified may result in an order being rendered against you in this case.

IF YOU HAVE A COURT APPEARANCE OR TRIAL SET THAT CONFLICTS WITH THIS COURT SETTING, NOTIFY THIS COURT THROUGH THE CALENDARING DEPARTMENT WITHIN 10 DAYS, STATING THE NAME OF THE CONFLICTING CASE, THE COUNTY, THE DATE OF FILING, AND THE DATE OF SET.

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888 SW 5TH AVENUE SUITE 300
PORTLAND OR 97204-2089

Tracy G KRUG/LIN/OJD
04/20/2006 11:10 AM

To "Kaempf, John" <John.Kaempf@bullivant.com>
cc "Gregory Love" <gslove@airmail.net>, "Hartley Hampton" <hhampton@FHL-Law.com>, "'Laura Grant'" <lgrant@nelsonandmacneil-law.com>, "Jim Nelson"
bcc
Subject RE: Stone v. Watchtower - New Trial Date

Thanks everyone for your timely responses. Tuesday, 10/24-27 and Monday, 10/30-11/2. I will send everyone new notices today.

-Tracy
"Kaempf, John" <John.Kaempf@bullivant.com>

"Kaempf, John" <John.Kaempf@bullivant.com>
04/20/2006 09:35 AM

To "'Laura Grant'" <lgrant@nelsonandmacneil-law.com>, "Tracy Krug" <Tracy.G.KRUG@ojd.state.or.us>
cc "Hartley Hampton" <hhampton@FHL-Law.com>, "Gregory Love" <gslove@airmail.net>, "Jim Nelson" <pilaw@proaxis.com>
Subject RE: Stone v. Watchtower - New Trial Date

Tracy: The October dates also work for the defense.

Thanks.

John Kaempf

-----Original Message-----
From: Laura Grant [mailto:lgrant@nelsonandmacneil-law.com]
Sent: Thursday, April 20, 2006 9:24 AM
To: Tracy Krug
Cc: Hartley Hampton; John Kaempf; Gregory Love; Jim Nelson
Subject: Stone v. Watchtower - New Trial Date

Tracy -

Sorry for the delay in responding. Plaintiff's counsel is available for any of the October dates you provided: 10/2; 10/16; 10/23; 10/30. If defense counsel is also available in October, plese go ahead and set it and let us know which dates you finalize.

Thanks so much for all your work on this matter.

Laura Grant-Trevisiol
Legal Assistant to Jim Nelson
Nelson & MacNeil, P.C.
213 Water Avenue NW, Suite 100

"Bullivant.com" made the following annotations on 04/20/2006 09:40:10 AM

Nelson & MacNeil, P.C.

ATTORNEYS AT LAW • ALBANY OFFICE (541) 928-9147 • CORVALLIS OFFICE (541) 758-5347

Attorneys: James G. Nelson • Christopher E. MacNeil
Legal Assistants: David E. Gould • Laura C. Grant

May 15, 2006

FT
Editor

Linn County Circuit Court
Attn: Tracy K., Scheduling
PO Box 1749
Albany OR 97321

Re: Stone. v. North Albany Oregon Congregation, et al.
Case No. 030431

Dear Tracy:

Please be advised that this case has been settled. A trial date of October 24, 2006 should be removed from the docket. Thank you.

Sincerely,

JAMES G. NELSON

/lkg
Enclosure(s)
cc: John Kaempf
Hartley Hampton
Greg Love
Client

213 WATER AVE. NW, SUITE 100 • P.O. BOX 946 • ALBANY, OR 97321 • FAX (541) 928-3621

FILED
STATE OF OREGON
LINN COUNTY COURT
06 JUL 19 AM 8:30
TRIAL COURT CLERK
BY:

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

LEANNA (MORLEY) STONE,

Plaintiff,

v.

NORTH ALBANY CONGREGATION OF JEHOVAH'S WITNESSES, INC., et al,

Defendants.

No. 03-0431

STIPULATED GENERAL JUDGMENT OF DISMISSAL WITH PREJUDICE AND WITHOUT COSTS

Plaintiff and defendants stipulate that this action is dismissed with prejudice, and without an award of costs or attorney fees to any party.

IT IS SO STIPULATED:

NELSON & MACNEIL

By _____
James G. Nelson, OSB #74230
E-mail: jim@nelsonandmacneil-law.com

Attorneys for Plaintiff

BULLIVANT HOUSER BAILEY PC

By _____
John Kaempf, OSB #92539
E-mail: john.kaempf@bullivant.com

Attorneys for Defendants

///

///

///

Bullivant|Houser|Bailey PC
888 S.W. Fifth Avenue, Suite 300
Portland, Oregon 97204-2089
Telephone: 503.228.6351
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FILED
STATE OF OREGON
LINN COUNTY COURT
06 JUL 19 PM 1:20
TRIAL COURT ADMIN

GENERAL JUDGMENT

Based on the above Stipulation,

IT IS HEREBY ADJUDGED that this action is dismissed with prejudice, and without an award of costs or attorney fees to any party.

DATED this 19 day of July, 2006.

CIRCUIT COURT JUDGE
JOHN A. McCORMICK

Bullivant|Houser|Bailey PC
888 S.W. Fifth Avenue, Suite 300
Portland, Oregon 97204-2089
Telephone: 503.228.6351
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