

DENTONS US LLP

WILLIAM S. HUNT 1259-0
CANDACE M. HOUGH 10658-0
1001 Bishop Street, Suite 1800
Honolulu, Hawai`i 96813
Telephone: (808) 524-1800
Facsimile: (808) 524-4591
E-mail: bill.hunt@dentons.com
candace.hough@dentons.com

Electronically Filed
FIRST CIRCUIT
1CCV-20-0000390
26-MAY-2020
04:05 PM

Attorneys for Defendants
MAKAHA CONGREGATION OF JEHOVAH'S
WITNESSES, HAWAII; WATCHTOWER BIBLE
AND TRACT SOCIETY OF NEW YORK, INC.;
and CHRISTIAN CONGREGATION OF
JEHOVAH'S WITNESSES

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

N.D.,

Plaintiff,

vs.

MAKAHA, HAWAII CONGREGATION OF
JEHOVAH'S WITNESSES, a Hawaii non-
profit unincorporated religious organization,
a.k.a. MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES and KINGDOM
HALL, MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES; WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW
YORK, INC., a New York corporation;
CHRISTIAN CONGREGATION OF
JEHOVAH'S WITNESSES, a New York non-
profit corporation; KENNETH L. APANA,
Individually; and Does 1 through 100,
inclusive,

Defendants.

Civil No. 1CCV-20-0000390
(Other Non-Vehicle Tort)

**DEFENDANTS MAKAHA
CONGREGATION OF JEHOVAH'S
WITNESSES, HAWAII; WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW
YORK, INC.; and CHRISTIAN
CONGREGATION OF JEHOVAH'S
WITNESSES' MOTION TO DISMISS
THE COMPLAINT FOR FAILURE TO
STATE A CLAIM; MEMORANDUM IN
SUPPORT OF MOTION; DECLARATION
OF WILLIAM S. HUNT; EXHIBIT "A";
NOTICE OF HEARING;
CERTIFICATE OF SERVICE**

Hearing:

DATE: June 22, 2020

TIME: 10:30 a.m.

JUDGE: Honorable Dean E. Ochiai

No Trial Date Set

**DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH’S
WITNESSES, HAWAII; WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC.; and CHRISTIAN CONGREGATION
OF JEHOVAH’S WITNESSES’ MOTION TO DISMISS THE
COMPLAINT FOR FAILURE TO STATE A CLAIM**

Defendants MAKAHA CONGREGATION OF JEHOVAH’S WITNESSES, HAWAII (“Makaha Congregation”); WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.; and CHRISTIAN CONGREGATION OF JEHOVAH’S WITNESSES (collectively “Religious Defendants”) move for an order dismissing the Complaint on the grounds that it fails to state a claim upon which relief can be granted since all claims against Religious Defendants are barred by the statute of limitations.

Plaintiff seeks to hold Religious Defendants liable for Defendant Apana’s alleged tortious and criminal sexual behavior that occurred nearly thirty years ago, even though:

(i) Apana was not an employee of Religious Defendants, (ii) the Religious Defendants owed no duty of care to Plaintiff, and (iii) the alleged misconduct occurred outside of any activity over which Religious Defendants had a degree of responsibility or control. HRS § 657-1.8(b). The Complaint alleges that the abuse occurred in Apana’s private home while Plaintiff was visiting Apana’s daughter for a sleepover. There are no allegations that the Religious Defendants had custody or control over Plaintiff and placed her in a dangerous environment, nor any allegations that the Religious Defendants knew of these private sleepover arrangements. Therefore, even assuming that all of Plaintiff’s allegations are true, Plaintiff’s claims fall woefully short of the threshold requirements to support a complaint filed under the revival statute of limitations.

This Motion is based on HRCP 12(b)(6) and on the attached memorandum in support, and the records and files herein.

DATED: Honolulu, Hawai`i, May 26, 2020.

/s/ William S. Hunt
WILLIAM S. HUNT
CANDACE M. HOUGH

Attorneys for Defendants
MAKAHA CONGREGATION OF JEHOVAH’S
WITNESSES, HAWAII; WATCHTOWER BIBLE
AND TRACT SOCIETY OF NEW YORK, INC.;
and CHRISTIAN CONGREGATION OF
JEHOVAH’S WITNESSES

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

N.D.,

Plaintiff,

vs.

MAKAHA, HAWAII CONGREGATION OF JEHOVAH'S WITNESSES, a Hawaii non-profit unincorporated religious organization, a.k.a. MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES and KINGDOM HALL, MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES; WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a New York corporation; CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, a New York non-profit corporation; KENNETH L. APANA, Individually; and Does 1 through 100, inclusive,

Defendants.

Civil No. 1CCV-20-0000390
(Other Non-Vehicle Tort)

**MEMORANDUM IN
SUPPORT OF MOTION**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. RELEVANT ALLEGATIONS IN THE COMPLAINT..... 2

III. LEGAL STANDARD 2

IV. ARGUMENT 3

 A. The Complaint impermissibly seeks to hold the Religious Defendants
 liable for Defendant Apana’s intentional tortious misconduct. 3

 B. Apana was not an employee of the Religious Defendants.....3

 C. Religious Defendants did not owe a duty of care to Plaintiff.....4

 1. There was no “Special Relationship”.....5

 2. Apana’s alleged intentional tortious misconduct did
 not occur on the Religious Defendants’ property and
 his misconduct at his private home was not foreseeable.....6

 D. Plaintiff and Apana were not engaged in an activity over which
 the Religious defendants had any responsibility or control.....7

V. CONCLUSION..... 7

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

On March 10, 2020, Plaintiff filed a Complaint asserting claims against the Religious Defendants and Defendant Apana based upon sexual abuse by Apana that allegedly occurred in 1992, almost three decades ago. The Complaint asserts the following:

First Claim for Relief: Sexual Assault/Aiding & Abetting Sexual Assault

Second Claim for Relief: Gross Negligence

Third Claim for Relief: Hindering Prosecution

Fourth Claim for Relief: Intentional Infliction of Emotional Distress

Fifth Claim for Relief: Grossly Negligent Infliction of Emotional Distress;

Sixth Claim for Relief: Gross Negligence Supervision of Perpetrator;

See Exhibit A (Complaint) at 16–23.

Pursuant to Haw. R. Civ. P. (“**HRCP**”) 12(b)(6), Religious Defendants move for an order dismissing the Complaint as against them since all of the claims Plaintiff asserts against Religious Defendants are barred by the relevant statutes of limitations as set forth in HRS § 657-1 et. seq.

In enacting legislation to allow plaintiffs to assert otherwise time-barred claims against individuals who sexually abused children in the past, the Hawai`i Legislature created a window of time for claims to also be brought against a legal entity, but **only if:** (1) that entity employed the abuser **and** owed a duty of care to the victim; **or** (2) that entity had a degree of responsibility or control over the victim’s and abuser’s activity at the time of the abuse.

Subsection (b) of HRS § 657-1.8 provides in full:

(b) For a period of eight years after April 24, 2012, a victim of child sexual abuse that occurred in this State may file a claim in a circuit court of this State against the person who committed the act of sexual abuse if the victim is barred from filing a claim against the victim’s abuser due to the expiration of the applicable civil statute of limitations that was in effect prior to April 24, 2012.

A claim may also be brought under this subsection **against a legal entity if:**

- (1) **The person who committed the act of sexual abuse against the victim was employed by an institution, agency, firm, business, corporation, or other public or private legal entity that owed a duty of care to the victim;** or
- (2) **The person who committed the act of sexual abuse and the victim were engaged in an activity over which the legal entity had a degree of responsibility or control.**

Damages against the legal entity shall be awarded under this subsection only if there is a finding of gross negligence on the part of the legal entity. (Emphases added).¹

Thus, Plaintiff's attempt to hold Religious Defendants liable for Apana's misconduct conflicts with the express language of the statute. As described more fully below, Plaintiff does not allege that Apana was an employee of Religious Defendants (and rightfully so because he was not an employee), nor does she allege that she and Apana were engaged in an activity over which Religious Defendants had any degree of responsibility or control. Why? Because all of the abuse took place in Apana's private home at night during sleepovers. Since the facts alleged in the Complaint do not bring Plaintiff's claim within all of the requirements of the statute, the Complaint must be dismissed as to Religious Defendants.

II. RELEVANT ALLEGATIONS IN THE COMPLAINT

The relevant factual allegations in the Complaint are summarized as follows:

1. Defendant Apana was "associated with" Defendants Makaha Congregation and Watchtower (¶ 9) and acted as "an agent of the Church" (¶ 70);
2. Apana's daughter and Plaintiff were friends, and Plaintiff attended sleepovers at Apana's home many times in 1992, when she was 13 years old. (¶¶ 39 and 41);
3. All of the alleged sexual abuse occurred in those years in Apana's residence while Plaintiff was asleep. (¶¶ 42-44).

III. LEGAL STANDARD

A motion to dismiss for failure to state a claim pursuant to HRCP 12(b)(6) should be granted where the moving party establishes that it appears beyond a doubt that the plaintiff can prove no set of facts sufficient to support her claim and entitling her to relief. Bertelmann v. Taas Assocs., 169 Haw. 95, 99, 735 P.2d 930, 933 (1987). Assuming for the purpose of this motion that all of the allegations set forth in the Complaint are true, the Religious Defendants are entitled to dismissal of the Complaint with prejudice.

¹ Plaintiff agrees that HRS § 657-1.8 is the statute of limitations under which she is bringing all her claims. See ¶ 3 of the Complaint, attached hereto as Exhibit "A".

IV. ARGUMENT

A. The Complaint impermissibly seeks to hold the Religious Defendants liable for Defendant Apana's intentional tortious misconduct

The plain language of HRS § 657-1.8 allows an award of damages against a legal entity for otherwise time-barred claims of a victim of child sexual abuse **only** if the abuser was employed by an entity which owed a duty of care to the victim; or the victim and abuser were engaged in an activity over which the entity had a degree of responsibility or control. Plaintiff does not allege any facts to support a claim that Apana was an employee of the Religious Defendants, or that they had a duty of care to Plaintiff, or that she and Apana were engaged in an activity in which the Religious Defendants had any responsibility or control, because those facts simply do not exist.

As the Hawai'i Supreme Court has repeatedly held,

When construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. And we must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose.

Hawaii Mgmt. All. Ass'n v. Ins. Com'r, 106 Hawai'i 21, 26, 100 P.3d 952, 957 (2004) (quoting Troyer v. Adams, 102 Hawai'i 399, 409, 77 P.3d 83, 93 (2003)). Thus, there is no legal basis for holding the Religious Defendants liable for Plaintiff's damages.

B. Apana was not an employee of the Religious Defendants

Hawai'i statutes and Hawai'i case law provide the following definition of an employee: "Employee' means a person who performs services for hire" HRS § 378-71.² "[A]n individual is an employee under the chapter while he or she is being paid" Vail v. Empls' Ret. Sys. of State, 75 Haw. 42, 60–61, 856 P.2d 1227, 1237 (1993). Our statutes expressly exclude from the definition of employment the unpaid service for a religious or charitable organization. HRS § 386-1 ("Employment' does not include: (1) Service for a religious, charitable, educational, or nonprofit organization if performed in a voluntary or unpaid capacity . . ."). These statutory definitions are consistent with the common use and

² See also HRS § 383-2 ("[E]mployment' . . . means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied."); HRS § 393-3 ("Employment' means service, including service in interstate commerce, performed for wages under any contract of hire, written or oral, expressed or implied, with an employer.").

understanding of the term “employ,” which means “to provide a job that pays wages or a salary.”³

This limitation makes sense. The Hawai`i legislature recognized that it was doing something extraordinary in resurrecting claims that had lapsed under the statute of limitations. Thus, it carefully retained limitations on claims against entities, requiring that the abuser be an employee of that entity and that the entity be found to be grossly negligent. Making legal entities liable only for paid employees protects volunteer organizations like churches, boys and girls clubs and schools. The Legislature obviously decided against allowing an organization to be held liable for the conduct of a volunteer who acted decades ago.

Plaintiff does not plead that Apana was an employee of the Religious Defendants. Rather, the complaint merely alleges that Apana was an “agent” of those defendants “via his status” as an “Elder” in the Makaha Congregation, (¶ 70). Nothing in subsection (1) of the statute allows a claim against an entity as a result of the action of anyone other than an employee.

C. Religious Defendants did not owe a duty of care to Plaintiff

Furthermore, Subsection (1) of the statute not only requires that Apana must have been an employee of the Religious Defendants, but also that the defendants “owed a duty of care to the victim.” Although Plaintiff alleged that the Religious Defendants owe such a duty, the Complaint is devoid of any factual allegations to support that legal conclusion.

As a general matter, “a person does not have a duty to act affirmatively to protect another person from harm by a third person.” Doe Parents No. 1 v. State, Dep’t of Educ., 100 Hawai`i 34, 71, 58 P.3d 545, 582 (Haw. 2002) (quoting Lee v. Corregedore, 83 Hawai`i 154, 159, 925 P.2d 324, 329 (Haw. 1996)). Determining a duty of care is a two-step process: “(1) plaintiff must establish the existence of a special relationship; [and] (2) plaintiff must establish that the victim was foreseeably endangered by the conduct. The tort duty is comprised of two mutually dependent elements—special relationship and foreseeability.” Hanakahi v. United States, 325 F. Supp. 2d 1125, 1133 (D. Haw. 2002) (citations omitted).

Whether a special relationship exists between parties is a question of law for the court. Doe Parents No. 1, 100 Hawai`i at 57, 58 P.3d at 568.

³ Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/employed>.

1. There was no “Special Relationship”

Religious Defendants did not have a special relationship with Plaintiff or with Apana. Hawai`i follows the Restatement (Second) of Torts § 314A, which sets forth four examples of “special relations” between a defendant and the victim, none of which is applicable here.⁴

Plaintiff’s only relationship with Religious Defendants was her alleged membership in the Makaha Congregation. Although Hawai`i courts have not specifically addressed this question, other courts have held that mere church membership does not create a “special relationship.” As stated by the California Court of Appeal, a thorough search will find “no authority” for the imposition of a “duty on the part of a church to prevent its members from harming each other,” even if church agents knew the perpetrator posed a danger prior to the abuse (which is not even alleged in N.D.’s case). Conti v. Watchtower Bible & Tract Soc’y of N.Y., Inc., 235 Cal.App.4th 1214, 1227 (2015).

In Berry v. Watchtower Bible & Tract Soc’y, 879 A.2d 1124, 1129 (N.H. 2005), two girls sued their congregation claiming that their mother reported to their congregation elders that their father was sexually abusing them. They alleged that the congregation elders failed to report the abuse and improperly counseled their mother about how to handle the abuse. The plaintiffs argued “that a special relationship existed between them and Watchtower and Wilton Congregation because ‘they and their family were members of the Wilton Congregation and relied to their detriment on elders of the congregation for moral, spiritual and practical guidance.’” Id. at 1129. The court rejected the argument, noting that the children were not within the “custody or control” of the congregation when the abuse occurred. Id. “We decline to hold that the fact of church membership or adherence to church doctrine by the plaintiffs’ parents creates a special relationship between the plaintiffs and Watchtower or Wilton Congregation.” Id. This reasoning has been applied by numerous courts throughout the country in cases involving a variety of religious organizations.⁵

⁴ Ah Mook Sang v. Clark, 130 Hawai`i 282, 294, 308 P.3d 911, 923 (2013) describes the “general, oft-quoted definition of special relationships” found in the Restatement. Those relationships are (1) common carrier and passenger; (2) innkeeper and guest; (3) landowner and invitee; and (4) one who is required by law to take custody of another and does so under circumstances that deprive the other of his normal opportunities for protection. Id. (citing Restatement (Second) Torts § 314A)).

⁵ See Meyer v. Lindala, 675 N.W.2d 635, 640–41 (Minn. App. 2004) (rejecting the plaintiff’s argument that a special relationship existed between the plaintiff and the defendant—plaintiff

2. **Apana’s alleged intentional tortious misconduct did not occur on the Religious Defendants’ property and his misconduct at his private home was not foreseeable**

Plaintiff admits that at the time Apana sexually abused her, he was not on or using Congregation property; he was in his own home. ¶ 12. Also, Plaintiff does not allege that Religious Defendants knew or should have known that she would be in Apana’s home and would need to be protected from him. She does not allege that Religious Defendants put her in Apana’s custody and does not allege that Religious Defendants had the ability to “control” his behavior in the privacy of his own home. R.A. v. First Church of Christ, 748 A.2d 692, 699 (Sup. Ct. Pa. 2000) is a case involving facts similar to those alleged here. The court held that the church was not liable for sexual abuse of a friend of a minister’s daughter where “none of the harm was caused on Church premises” and he was not acting “in his capacity as a minister” at the time of the abuse.

In Meyer, supra, 675 N.W.2d at 640, the court held that the church had no duty to prevent abuse of a minor parishioner that occurred “at [her] residence, on a snowmobile, and in an automobile” and not on church property or during church functions. In Roman Catholic Bishop v. Superior Court, 42 Cal.App.4th 1556 (1996), a 15-year-old parishioner alleged she was sexually abused by her parish priest. She claimed the church negligently hired and supervised the priest. She made “generalized allegations she was ‘entrusted to his care’ in the ‘spiritual

argument such relationship existed because the church’s “doctrine ... provides that members rely on congregation elders for all of their concerns” and requires “that members only associate with other Jehovah’s Witnesses” and that this “amounts to significant control, which deprived [them] of normal opportunities for self-protection”—and noting that the church “did not have custody or control over [plaintiffs] at the time of the alleged misconduct” and that “[p]roviding faith-based advice or instruction, without more, does not create a special relationship”); Bryan R. v. Watchtower Bible & Tract Soc’y, 738 A.2d 839, 847 (Me. 1999) (“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.”); Roman Catholic Bishop, 42 Cal.App.4th at 1568 (no special relationship exists “based on a priest/parishioner relationship”); Doe v. Corp. of the President of The Church of Jesus Christ of Latter-day Saints, 98 P.3d 429, 432 (Utah App. 2004) (“[W]e also reject Plaintiffs’ argument that [church] membership alone was sufficient to establish a special relationship between [the church] and Plaintiffs that created a duty on [the church’s] part to warn Plaintiffs about Tilson.”); see also Restatement (Second) of Torts § 320 (duty exists when one “takes the custody of another under circumstances such as to deprive the other of his normal power of self-protection or to subject him to association with persons likely to harm him”).

environment' provided by the church" but made "no specific allegations or facts the church somehow placed [her] in [the priest's] actual custody or control." Id. at 1567. The sexual abuse occurred when the priest "took [plaintiff] from her home to various public places and hotels." Id. Thus, the court held that the church did not have a duty to protect the plaintiff or supervise the priest under the circumstances in which the abuse occurred. Id.

For these reasons, the Complaint fails to state a claim for relief against the Religious Defendants.

D. Plaintiff and Apana were not engaged in an activity over which the Religious Defendants had any responsibility or control

Since Apana was not an employee of Religious Defendants and the Religious Defendants owed no duty of care to Plaintiff, the only other argument that could lead to liability on the part of the Religious Defendants would be under subsection (b)(2) of the statute, which requires that Plaintiff and Apana were engaged in an activity over which those Defendants had "a degree of responsibility or control" when the tortious conduct occurred. However, the Complaint is clear that all of the alleged abuse took place at Apana's home while Plaintiff was there for a sleepover with his daughter. The Complaint does not allege that Religious Defendants were responsible for, or even were aware of that situation, much less that they arranged it or had any type of control over the sleepover. Why? Because those facts simply do not exist. Plaintiff has not alleged facts that satisfy the requirements of HRS § 657-1.8 and her Complaint should be dismissed.

V. CONCLUSION

Accordingly, this Complaint should be dismissed with prejudice as to the Religious Defendants. The Statute of Limitations only permits Plaintiff to pursue her claim against Apana.

DATED: Honolulu, Hawai'i, May 26, 2020.

/s/ William S. Hunt
WILLIAM S. HUNT
CANDACE M. HOUGH

Attorneys for Defendants
MAKAHA CONGREGATION OF JEHOVAH'S
WITNESSES, HAWAII; WATCHTOWER BIBLE
AND TRACT SOCIETY OF NEW YORK, INC.;
and CHRISTIAN CONGREGATION OF
JEHOVAH'S WITNESSES

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

N.D.,

Plaintiff,

vs.

MAKAHA, HAWAII CONGREGATION OF JEHOVAH'S WITNESSES, a Hawaii non-profit unincorporated religious organization, a.k.a. MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES and KINGDOM HALL, MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES; WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a New York corporation; CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, a New York non-profit corporation; KENNETH L. APANA, Individually; and Does 1 through 100, inclusive,

Defendants.

Civil No. 1CCV-20-0000390
(Other Non-Vehicle Tort)

**DECLARATION OF
WILLIAM S. HUNT**

DECLARATION OF WILLIAM S. HUNT

I, William S. Hunt, hereby declare as follows:

1. I am an attorney with the law firm of Dentons US LLP, attorneys for Defendants MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAII; WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.; and CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES (collectively "Religious Defendants").

2. I make this declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.

3. Attached hereto as Exhibit "A" is a true and correct copy of Plaintiff's Complaint filed on March 10, 2020.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Honolulu, Hawai'i, on May 26, 2020.

/s/ William S. Hunt
William S. Hunt

Recd 4/4/20
12:50 pm

OF COUNSEL:
DAVIS LEVIN LIVINGSTON

MARK S. DAVIS 1442
LORETTA A. SHEEHAN 4160
MATTHEW WINTER 8464
851 Fort Street, Suite 400
Honolulu, HI 96813
Telephone: (808) 524-7500
Facsimile: (808) 356-0418

Electronically Filed
FIRST CIRCUIT
1CCV-20-0000390
10-MAR-2020
04:08 PM

LAW OFFICES OF JAMES S. ROGERS

JAMES S. ROGERS 5335 [Pro Hac Vice Pending]
HEATHER M. COVER 52146 [Pro Hac Vice Pending]
MICHELLE HYER 32724 [Pro Hac Vice Pending]
1500 Fourth Avenue, Suite 500
Seattle, WA 98101
Telephone: (206) 621-8525
Facsimile: (206) 223-8224

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

N.D.,

Plaintiff,

vs.

MAKAHA, HAWAII CONGREGATION OF
JEHOVAH'S WITNESSES, a Hawaii non-
profit unincorporated religious organization,
a.k.a. MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES and KINGDOM
HALL, MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES; WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW
YORK, INC., a New York corporation;
CHRISTIAN CONGREGATION OF
JEHOVAH'S WITNESSES, a New York non-
profit corporation; KENNETH L. APANA,
Individually; and Does 1 through 100,
inclusive,

Defendants.

CIVIL NO.

(Other Non-Vehicle Tort)

**COMPLAINT, DEMAND FOR JURY
TRIAL; AND SUMMONS**



COMPLAINT

Plaintiff N.D., by and through her attorneys, DAVIS LEVIN LIVINGSTON and the LAW OFFICES OF JAMES S. ROGERS (*pro hac vice* petition pending) hereby submits this Complaint against the above-named Defendants, alleges and avers as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to Hawaii Revised Statutes (“HRS”) §§603-21.5 and 634-35 because the relevant events occurred in the City and County of Honolulu, State of Hawaii.

2. Venue is proper before this Court under HRS § 603-36.

3. The requirements set forth under HRS §657-1.8, extending the statute of limitations, have been met by Plaintiff, for whom a Certificate of Merit will be filed separately under seal.

PLAINTIFF

4. N.D. is proceeding by initials only because (1) this case involves sensitive matters that are of a personal nature, (2) Plaintiff is particularly vulnerable to the harms of disclosure, (3) identification or disclosure poses a risk of retaliation of mental, physical, reputational, and/or economic harm to the Plaintiff, (4) identification or disclosure will subject Plaintiff to intense humiliation, embarrassment, ridicule, stigmatization, scrutiny, and/or isolation due to the sexual abuse and molestation she was subjected to as a child, (5) identification or disclosure poses a risk of irreparable harm to her career, employment, reputation, and/or standing in the community, (6) identification or disclosure will aggravate, amplify, and/or exacerbate her condition, injury, and/or loss that are at issue in this litigation, (7) Defendants are not prejudiced by allowing Plaintiff to proceed using only her initials and any prejudice can be mitigated by the court, (8) her identity has

been kept confidential thus far, (9) the public interest in disclosure of Plaintiffs' identity is minimal, (10) the public has an interest in allowing Plaintiff to proceed using her initials only so that injustices, such as the one the Plaintiff has suffered, are rectified and the parties responsible for perpetrating the harm are held liable, and (11) Defendants are not prejudiced by allowing the Plaintiff to proceed using her initials as the Plaintiff's true identity will be disclosed to Defendants' counsel confidentially by way of a protective order.

PARTIES

4. Plaintiff is a resident of Snohomish County, State of Washington. During the acts and omissions alleged within this Complaint, Plaintiff was a resident of the City and County of Honolulu, State of Hawaii.

5. Upon information and belief, Defendant Makaha, Hawaii Congregation of Jehovah's Witnesses is a Hawaii non-profit unincorporated religious organization, a.k.a. Makaha Congregation of Jehovah's Witnesses and Kingdom Hall, Makaha Congregation of Jehovah's Witnesses ("Makaha Kingdom Hall") located in Waianae, Hawaii and conducts its church business operations in the State of Hawaii, including, but not limited to, Waianae, O'ahu, and other cities in the County of Honolulu. In addition, Defendant Makaha Kingdom Hall is vicariously liable under the doctrine of *respondeat superior* for the grossly negligent acts and omissions of individuals who were acting within the course and scope of their role within Makaha Kingdom Hall, and/or their actual or apparent agency with Makaha Kingdom Hall.

6. Defendant Watchtower Bible and Tract Society of New York, Inc. ("Watchtower") is a New York corporation, with its principal place of business in the State of New York. Upon information, Watchtower is authorized to conduct, and does, business in the State of Hawaii, County of Honolulu. Upon information and belief, at all times prior to April of 2001, Watchtower

organized, administered, and directed the affairs of Jehovah's Witnesses in the United States and in Hawaii. In addition, Watchtower is vicariously liable under the doctrine of *respondeat superior* for the grossly negligent acts and omissions of individuals who were acting within the course and scope of their role within Watchtower and/or Makaha Kingdom Hall, and/or their actual or apparent agency with Watchtower or Makaha Kingdom Hall.

7. Christian Congregation of Jehovah's Witnesses is a non-profit religious corporation with its principal place of business in the State of New York. Upon information and belief, in or about April of 2001, Christian Congregation of Jehovah's Witnesses assumed from Watchtower the obligation to operate the Service Department of the United States Branch of Jehovah's Witnesses, and became Watchtower's successor-in-interest. For purposes of this Complaint, Christian Congregation of Jehovah's Witnesses and Watchtower will be referred to collectively as "Watchtower."

8. At all times Defendants Makaha Kingdom Hall, Watchtower and Does 1 through 100 exercised a degree of responsibility or control over the Perpetrator's interactions with minor female congregants, including Plaintiff, in that at all times Defendants Makaha Kingdom Hall, Watchtower and Does 1 through 100 chose to confer upon Perpetrator the special status and authority of an Elder, and by choosing to cover-up Perpetrator's pedophilic attacks on minor female members of its congregation, rather than to protect its minor female congregants, including Plaintiff. Defendants Makaha Kingdom Hall, Watchtower and Does 1 through 100 decided to protect Perpetrator by failing to report Perpetrator to Child Protective Services and/or the Honolulu Police Department, by conducting an internal investigations under its own standards, by imposing minimal consequences for the commission of pedophilic attacks on minor females in the congregation, by shrouding Perpetrator's sexual abuse in confidentiality, by intimidating witnesses

into secrecy, and by forcing Plaintiff to practice her faith in the presence of the man who had sexually assaulted her on numerous occasions.

9. Upon information and belief, Defendant Kenneth L. Apana (“Perpetrator”) is an individual who, at all times relevant, was an Elder associated with, and supervised, directed and controlled by Defendants Makaha Kingdom Hall and Watchtower. While in his position of authority within Makaha Kingdom Hall and Watchtower, Perpetrator committed acts of child sexual abuse against N.D. alleged herein.

10. Defendants Does 1 through 100, inclusive, are individuals and/or businesses or corporate entities incorporated in and/or doing business in Hawaii whose true names and capacities are unknown to Plaintiff who therefore sues each defendant by such fictitious names, and who will amend the Complaint to show the true names and capacities of each such Defendant Doe when ascertained. Each such Defendant Doe is legally responsible in some manner for the events, happenings, and/or tortious and unlawful conduct that caused the injuries and damages alleged in this Complaint.

11. Each Defendant is the agent, servant, and/or employee of the other Defendants, and each Defendant was acting within the course and scope of his, her, or its authority as an agent, servant, and/or employee of the other Defendants. Defendants are individuals, corporations, partnerships, and other entities or associations which engaged in, joined in, and conspired with other wrongdoers in carrying out the tortious and unlawful activity described in this Complaint.

FACTUAL ALLEGATIONS APPLICABLE TO ALL COUNTS

12. The organizational structure of the Jehovah’s Witnesses is hierarchical in nature. The organizational head of the religion is Watchtower. Authority flows downward from Watchtower to the local level of the church, which is made up of Congregations.

13. Watchtower is the head of the Jehovah's Witness Hierarchical structure. Watchtower is directed by the Governing Body of Jehovah's Witnesses, a business or religious entity of unknown legal status (hereinafter the "Governing Body"), which is comprised of a fluctuating number of members. Watchtower exercises control of the organization and running of local congregations. Watchtower has published a series of handbooks that are distributed to Elders and are kept secret from other Jehovah's Witnesses and the public. These handbooks provide instructions to the Elders regarding the day-to-day administration of the religion such as the scheduling of congregation meetings, as well as more specific instructions regarding how to respond to allegations of wrongdoing, when to convene a judicial committee, and how to handle certain procedures.

14. Watchtower also provides periodic instructions to local Congregations through letters addressed to All Bodies of Elders. These letters have covered a broad spectrum of topics ranging from standardizing the recordkeeping practices of all Congregations, establishing procedures for ordering literature from Watchtower or remitting payments, to responding to complaints of childhood sexual abuse.

15. Watchtower researches, writes, approves, publishes and distributes its own materials for distribution to actual and prospective Jehovah's Witnesses and for recruitment purposes. Prior to 2001, Watchtower also reviewed and approved or rejected recommendations of prospective Elders of Ministerial Servants. Watchtower directly appoints Circuit and District Overseers.

16. After 2001, some of the responsibilities of Watchtower were assumed by Defendant Christian Congregation of Jehovah's Witnesses, including the appointment of Elders, the

nominating, appointing, supervising, and discipline of publishers, ministerial servants, pioneers, elders and circuit overseers. All claims relevant here occurred prior to 2001.

17. Watchtower also establishes processes for the discipline of members accused of wrongdoing, and receives and keeps records of determinations of disfellowship, or of reproof of individuals appointed by Watchtower as Ministerial Servants or Elders.

18. Above the local congregation level is the circuit. Circuits are generally comprised of 20 to 22 congregations, though this number is variable. Each circuit is staffed by a Circuit Overseer and/or a Substitute Circuit Overseer. Circuit Overseers are directly appointed by Watchtower. Circuit Overseers are sometimes referred to as Traveling Overseers because they travel from one congregation within their circuit to another. The Circuit Overseer generally visits each congregation within his circuit twice yearly. During the Circuit Overseer's visit to a congregation, the Circuit Overseer meets with the Elders of that congregation, conferences about the overall function of the congregation and problems occurring in that congregation generally, and specific issues of importance, such as allegations of child molestation by a congregant. The Circuit Overseers also participate in Field Service and observe the functioning of the congregations.

19. The Circuit Overseer meets with the Elders for the purpose of discussing the men in each congregation, and whether they meet the requirements for appointment as Ministerial Servants or Elders. Prior to 2001, the Circuit Overseer helped the Elders arrive at recommendations to Watchtower for appointments as Ministerial Servants and Elders in Congregations. Prior to 2001, the Circuit Overseer prepared a report of his time at each Congregation and submitted that to Watchtower. Watchtower has the ultimate authority as to whether a candidate is elevated to a Ministerial Servant.

20. At the local level members of the church are divided into congregations. Congregations are run on a daily basis by a Body of Elders. The number of Elders in a given congregation fluctuates depending on the size and needs of that particular congregation, as well as the number of qualified men in that congregation.

21. Elders are responsible for the daily operations and governance of the local church, in this case Makaha Kingdom Hall. The Elders are the highest authority at the congregational level and direct door-to-door preaching activities (e.g., city streets or airports) select potential candidates for becoming Ministerial Servants and Elders, organize weekly church meetings, determine whether an individual is suitable for representing the congregation and Watchtower in the community by becoming a Publisher, handle finances for the local congregation, and determine the guilt, repentance and punishment of congregation members who commit serious sins.

22. To be appointed as an Elder, a person must be a Ministerial Servant in good standing, or have served as an Elder in another congregation within the Jehovah's Witness organization. The Body of Elders of the local congregation, in concert with the Circuit Overseer, identifies potential candidates and determines whether they are suitable for an Elder, and, if they live their life in accordance with appropriate morals. Prior to 2001, once a candidate had been identified by the local authority, a recommendation was made to Watchtower, who had ultimate authority as to whether a candidate was approved and became an Elder.

23. Male baptized Publishers who meet certain requirements may be appointed as "Ministerial Servants." Ministerial Servants serve each of their congregations and aid the Elders in their responsibilities. To be appointed as a Ministerial Servant, a person must be a Publisher in good standing. The Body of Elders of the local church identifies potential candidates, and in concert with the Circuit Overseer, determines whether they are suitable, and if they live their life

in accordance with appropriate morals. Prior to 2001, once a candidate was identified by the local church, a recommendation was made to Watchtower, who had ultimate authority as to whether a candidate was approved and became a Ministerial Servant.

24. Membership in the Jehovah's Witness organization is strictly regulated and monitored. A person can attend open meetings at a congregation for years and not be a member of that congregation. When a person expresses interest in becoming a member of the Jehovah's Witness church, he or she begins a period of Bible Study with a Baptized member of the congregation. The aspirant also engages in self-study during this period of time. After months of study, a person may become an unbaptized publisher. To become an unbaptized publisher, the aspirant must make an application to the congregation's Body of Elders. Such a person must be approved by the Body of Elders, who will consider whether the aspirant exhibits sufficient knowledge of the beliefs and organization of the Jehovah's Witness church for approval as a publisher.

25. Once a person is approved as an unbaptized publisher, he or she is authorized to represent the Jehovah's Witness organization, Watchtower, and the specific congregation, in the community. An unbaptized publisher is authorized to engage in field service, which is the centerpiece of Jehovah's Witness marketing, fundraising, and recruiting activities. Field Service involves, but is not limited to, door-to-door ministry.

26. By participating in Field Service, an unbaptized publisher is authorized by his or her congregation and by Watchtower to distribute Jehovah's Witness literature within the community, to accept donations on behalf of the congregation and Watchtower, and to invite prospective members to attend open congregation meetings as a means of recruitment. The literature distributed during Field Service is written, printed, and published by Watchtower.

27. After several months of study, an unbaptized publisher may seek to become a baptized publisher. Baptism as a Jehovah's Witness is considered an ordination as a minister of the Jehovah's Witness organization. To be approved for baptism, an applicant must be tested and approved by Elders of the local congregation. During the testing, the applicant is asked a series of oral questions relating to the teachings of the Jehovah's Witness organization, as well as questions about the organizational structure of the Jehovah's Witness church, which the applicant must adequately answer prior to being approved for baptism.

28. As stated above, in order to become an Elder, one must have been a baptized publisher, then a Ministerial Servant. In addition to regulating all aspects of an Elder's participation in congregation events, Elders submit to the congregation and Watchtower's control in all other aspects of their lives. An Elder is subject to church discipline for any misdeeds that occurred in church or in the Elder's personal life.

29. Congregants are encouraged to bring problems to the Elders to be resolved rather than seek outside intervention. In practice, when a congregant makes an allegation of sexual abuse, policies of Jehovah's Witnesses and Watchtower require Elders to investigate such a claim. If there are two witnesses to the wrongdoing, or if the accused confesses his wrongdoing, a Judicial Committee within the congregation will be convened. Even in cases of child molestation, if there are not at least two eyewitnesses to the abuse and the accused denies the wrongdoing, then no action will be taken by the congregation, despite the fact that there are rarely eyewitnesses to sexual abuse.

30. If a Judicial Committee is convened, the two original Elders that investigated the wrongdoing will be joined by a third, who will hear the case and impose punishment on the wrongdoer. Possible punishment ranges from a private reproof to disfellowship. Private reproof

is a private censorship of the wrongdoer that generally results in a limitation of the wrongdoer's privileges to engage in Field Service for a short period of time. No announcement is made to the congregation when a wrongdoer is privately reprovved. Disfellowship is expulsion from the congregation. When a wrongdoer is disfellowshipped, an announcement is made to the congregation that the wrongdoer is no longer a Jehovah's Witness, but no details are given regarding the nature of the wrongdoing. A person who is disfellowshipped can seek reinstatement into the congregation by written request to the Elders.

31. In 1989, Watchtower sent a letter to all Bodies of Elders in the United States, instructing them that while many states have mandatory reporting laws, should an allegation of child abuse be made in a congregation, they were to contact Watchtower's legal department immediately.

SEXUAL ABUSE OF PLAINTIFF

32. Plaintiff was born on March 8, 1979. She was raised in a Jehovah's Witness family. From birth until adulthood, she was a member of the Makaha Kingdom Hall Congregation.

33. At the time of the sexual abuse alleged herein, Plaintiff and Perpetrator both belonged to Defendant Makaha Kingdom Hall and regularly attended Jehovah's Witness events and meetings as part of the Congregation.

34. Plaintiff is informed and believes and on that basis alleges that prior to the sexual abuse of Plaintiff, the Perpetrator had been appointed and confirmed as an Elder in the Makaha Kingdom Hall Congregation.

35. Plaintiff is informed and believes and on that basis alleges that Perpetrator was in charge of delegating all field research for Defendant Makaha Kingdom Hall.

36. Perpetrator enjoyed a position of status and authority within the Makaha Kingdom Hall Congregation. His position as church Elder conferred authority and trustworthiness which provided him with unquestioned access to Plaintiff.

37. In or about 1992, Perpetrator had a residence approximately two miles from Defendant Makaha Kingdom Hall.

38. During all relevant times herein, Plaintiff resided approximately one block away from Perpetrator's residence.

39. Perpetrator had a daughter that was of similar age to the Plaintiff. Plaintiff was friends with Perpetrator's daughter.

40. Plaintiff's parents permitted the Plaintiff to attend sleepovers at Perpetrator's home due to Perpetrator's elevated status as a church Elder in Makaha Kingdom Hall.

41. Plaintiff attended numerous sleepovers at the Perpetrator's home in 1992, when she was 12-13 years of age.

42. During these sleepovers, Perpetrator would enter the room in which Plaintiff was sleeping. He would slide his hands down her belly and place his hand on her vulva. This occurred multiple times. Perpetrator would insert his finger into the Plaintiff's vagina. This occurred numerous times.

43. In or about 1992, Plaintiff spent ten (10) days residing in the Perpetrator's home because the Plaintiff's mother was about to have a baby and Plaintiff had been exposed to chicken pox while staying at Perpetrator's home.

44. During this particular 10-day sleepover, Perpetrator committed criminal acts of sexual abuse against the Plaintiff every night, to include fondling the Plaintiff's vulva and digitally penetrating the Plaintiff's vagina.

45. Plaintiff is informed and believes and on that basis alleges that sexual abuse occurred approximately 30 times in or around 1992. To prevent further abuse, Plaintiff began to wrap herself tightly in blankets. In this way, Plaintiff believes that she may have successfully prevented additional acts of sexual abuse on several occasions.

46. Plaintiff is informed and believes and on that basis alleges that in approximately 1991 or 1992, before Plaintiff disclosed her abuse, N.M, a parent and female member of Makaha Kingdom Hall, reported to church officials at Makaha Kingdom Hall that her minor daughter L.M. had been sexually abused by Perpetrator during sleepovers at Perpetrator's home. This resulted in an internal inquiry which was done by Makaha Kingdom Hall.

47. L.M. reported Perpetrator's sexual abuse in the internal investigation performed by Makaha Kingdom Hall. Parent N.M. further reported that the Perpetrator was sexually abusing his own biological daughters.

48. Defendants refused to accept L.M.'s account of the abuse, and told N.M. and L.M. that the Jehovah's Witness Church rules required two witnesses in order to substantiate a claim of sexual abuse.

49. As part of the internal process, the Perpetrator confessed to Makaha Kingdom Hall Elders that he had sexually abused L.M.

50. Due to the sexual abuse of L.M., Perpetrator was "reproved" by the Defendants, meaning that he had been disciplined by the local church.

51. Plaintiff is informed and believes and on that basis alleges that the Perpetrator's "reproval" was a "silent reproval" meaning that no announcement was made to the congregation and Plaintiff's parents, therefore, were unaware that a punishment had been imposed.

52. After Plaintiff had suffered multiple attacks of sexual abuse, Plaintiff's mother contacted Parent N.M., because she knew that L.M. and Perpetrator's daughter were friends. N.M. told Plaintiff's mother that she could not discuss the situation because Makaha Kingdom Hall Elders had told her to keep the matter "confidential."

53. Plaintiff's mother then met one of Perpetrator's daughters and confronted her. Perpetrator's daughter also disclosed sexual abuse to her by her father, i.e., Perpetrator, and stated that it had been occurring for three years.

54. Armed with this information from Perpetrator's daughter, Plaintiff's mother called Parent N.M. again. This time Parent N.M. admitted that L.M. had been the victim of sexual abuse by Perpetrator and revealed that L.M.'s abuse had been reported to Makaha Kingdom Hall in 1991 or 1992 by Parent N.M. and L.M.

55. After learning that the Perpetrator's daughters and L.M. were both victims of sexual abuse by Perpetrator, Plaintiff's mother then confronted Plaintiff, who disclosed that Perpetrator had sexually abused her repeatedly.

56. After learning of Plaintiff's sexual abuse, Plaintiff was not permitted to attend sleepovers at Perpetrator's home.

57. Plaintiff's sexual abuse was reported to Defendant Makaha Kingdom Hall, who convened a Judicial Committee regarding the Perpetrator's sexual molestation of Plaintiff.

58. Plaintiff is informed and believes and on that basis alleges that Defendant Makaha Kingdom Hall was again told that the Perpetrator was sexually abusing his own daughter.

59. During the Judicial Committee meeting, Perpetrator admitted that he had sexually abused Plaintiff.

60. Following the Judicial Committee meeting, Perpetrator was disfellowshipped from Makaha Kingdom Hall for approximately a one-year period.

61. Defendant Makaha Kingdom Hall Elders told Plaintiff that the Church would not support her if she reported Perpetrator's conduct to local law enforcement.

62. Following the period of disfellowship, Perpetrator was required to apologize to Plaintiff, and thereafter Perpetrator was permitted to return to the Makaha Kingdom Hall church.

63. Thereafter, Plaintiff and Perpetrator attended the same church services.

64. After Perpetrator was reinstated at Makaha Kingdom Hall, two Elders from the Church conducted a "sheparding call" at Plaintiff's grandmother's house. This occurred three to six months after Plaintiff had disclosed Perpetrator's sexual abuse.

65. During this "sheparding call" Elders met with Plaintiff and members of her family and attempted to dissuade Plaintiff from reporting the sexual abuse to local law enforcement and encouraged her to "move on."

66. In or about 1991 and 1992, the Perpetrator repeatedly committed the crimes of Sexual Assault in the First Degree in violation of Section 707-730, and Sexual Assault in the Third Degree in violation of Section 707-732, H.R.S. against Plaintiff.

67. Due to the hierarchy of the Jehovah's Witness Church, and the Jehovah's Witness Church's role in her life and community, and the intimidation imposed in "sheparding call" and threats to remove her from the church, Plaintiff did not tell others about Perpetrator's sexual abuse or report Perpetrator's sexual abuse to CPS or HPD, nor did she immediately seek medical treatment or counseling.

FIRST CLAIM FOR RELIEF
SEXUAL ASSAULT/AIDING & ABETTING SEXUAL ASSAULT

68. Plaintiff re-alleges and incorporates all paragraphs of this Complaint as though fully alleged herein.

69. In or about 1992, Perpetrator victimized Plaintiff, a minor, by committing numerous criminal acts of sexual abuse against a minor.

70. Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100 aided and abetted in Perpetrator's numerous acts of sexual abuse of a minor against Plaintiff via his status as an agent of the Church. The trust, respect, and authority engendered by Perpetrator's position as Church Elder aided and abetted Perpetrator's sexual abuse of Plaintiff.

71. Perpetrator was aided in the commission of numerous acts of sexual abuse of a minor against Plaintiff via the protection accorded him by Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100. The decisions by Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100 to decline to report Perpetrator to CPS and HPD, to conduct confidential internal investigations into Perpetrator's pedophilic assaults of minor female congregants, to provide minimal consequences as a result of its investigations, and to intimidate witnesses into secrecy, aided and abetted Perpetrator's sexual abuse of Plaintiff.

72. Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100's acts and omissions were intentional, willful, wanton, oppressive, and malicious, and reflected a callous disregard of and a callous indifference to the rights and safety of Plaintiff.

73. As a direct and proximate result of Defendants' wrongful conduct, actions, inactions, and/or failures, Plaintiff has suffered and will continue to suffer pain and suffering, mental anguish, emotional distress, loss of quality of life, loss of enjoyment of life, temporary and/or partial impairment and/or disability, emotional disfigurement and/or scarring, loss of

income, economic loss, medical expenses, and other expenses, and is therefore entitled to recover special, general, and/or punitive damages in such amounts as to be shown a trial or hearing hereof.

**SECOND CLAIM FOR RELIEF
GROSS NEGLIGENCE**

74. Plaintiff re-alleges and incorporates all paragraphs of this Complaint as though fully alleged herein.

75. At all relevant times, Perpetrator held a position of authority as an agent of Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100 in his role as an Elder within the Jehovah's Witness church.

76. At all relevant times, the Church had adopted a duty to protect Plaintiff from the foreseeable risk of harm of sexual abuse when it:

- (a) conferred upon Perpetrator the special status of "Elder";
- (b) learned of Perpetrator's pedophilic attacks on minor female members of its congregation;
- (c) failed to transmit reports of Perpetrator's pedophilic attacks on minor female members of its congregation to Child Protective Services and/or to the Honolulu Police Department;
- (d) conducted an internal investigation under its own investigation standards;
- (e) required only a "silent reproval" for the commission of Class A and Class C felonies;
- (f) kept the results of its internal investigation confidential;
- (g) protected Perpetrator from consequences by the criminal and civil justice systems;
- (h) instructed the members of its congregation not to reveal any information regarding Perpetrator or his pedophilic attacks on minor female congregants;
- (i) reinstated Perpetrator in the congregation;
- (j) forced Plaintiff to practice her faith in the presence of the man who had sexually assaulted her on numerous occasions, and;
- (k) dissuaded members of the congregation, including Plaintiff, from reporting Perpetrator for pedophilic attacks on minor female congregants.

77. At all relevant times, the Church owed a duty of care to Plaintiff to protect her from foreseeable risks of harm because the Church had entered a special relationship with Perpetrator as it provided him with the title, responsibilities and authority of a church Elder, a position which

caused the parents of minor female children in the congregation to view Perpetrator as a person of authority and trustworthiness, and shielded him from investigations by CPS and HPD. The special status and protection which the Church accorded Perpetrator facilitated Perpetrator's pedophilic attacks on Plaintiff.

78. At all relevant times, the Church owed a duty of care to Plaintiff because the Church undertook an investigation and adjudication of Perpetrator's pedophilic attacks on minor female congregants. The Church knew or should have known that an investigation by CPS and/or HPD and prosecution by the Office of the Prosecuting Attorney ("OPA") would reduce the risk of physical harm to its minor female congregants, including Plaintiff. The Church breached its duty to Plaintiff, because the Church's investigation and adjudication in fact created a safe harbor for Perpetrator to continue his pedophilic attacks on minor female congregants, including Plaintiff.

The Church's investigation and adjudication:

- (a) shielded Perpetrator from investigation, arrest, prosecution, and consequences in the criminal justice system;
- (b) hid from the congregation the facts of Perpetrator's pedophilia, and;
- (c) silenced the members of the congregation who knew of Perpetrator's pedophilic attacks on minor female congregation members,

and thus increased the risk of harm to its minor female congregants beyond that which existed without the investigation and adjudication.

79. By attempting to dissuade Plaintiff from reporting Perpetrator's sexual abuse to law enforcement, Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100 created a circumstance in which Plaintiff was far less likely to receive medical/mental health care and treatment, thus exacerbating the harm to Plaintiff.

80. Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100 breached the above-listed duties of care in a manner that was intentional, willful, wanton, oppressive,

malicious, or grossly negligent and which reflect a callous disregard of and a callous indifference to the rights and safety of Plaintiff. Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100's acts and omissions have caused and continue to cause Plaintiff pain, suffering, mental anguish, emotional distress, loss of quality of life, loss of enjoyment of life, temporary and/or partial impairment and/or disability, emotional disfigurement and/or scarring, loss of income, economic loss, medical expenses, and other expenses and are therefore liable in special, general and punitive damages.

**THIRD CLAIM FOR RELIEF
HINDERING PROSECUTION**

81. At all relevant times, Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100 had a duty to follow the law of the State of Hawaii, to wit, to avoid committing the offense of Hindering Prosecution in the First Degree, a violation of Section 710-1029, H.R.S. and Hindering Prosecution in the Second Degree, a violation of Section 710-1030, H.R.S.

82. Starting in about 1991 and thereafter Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100 collectively committed, and aided and abetted in committing the offenses of Hindering Prosecution in the First Degree, a violation of Section 710-1029, H.R.S. and Hindering Prosecution in the Second Degree, a violation of Section 710-1030, H.R.S. by preventing or obstructing by means of intimidation, anyone from performing an act that might aid in the discovery, apprehension, prosecution or conviction of such person and by rendering assistance to Perpetrator in the cover-up of his crimes.

83. Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100's breach of the law was gross and egregious, reflecting a callous disregard of and a callous indifference to the rights and safety of Plaintiff.

84. As a direct and proximate result of Defendants' intentional and knowing commission of Hindering Prosecution in the First Degree and/or Hindering Prosecution in the Second Degree, an intentional and knowing breach of aforesaid duties, Plaintiff has suffered and will continue to suffer pain and suffering, mental anguish, emotional distress, loss of quality of life, loss of enjoyment of life, temporary and/or partial impairment and/or disability, emotional disfigurement and/or scarring, loss of income, economic loss, medical expenses, and other expenses, and is therefore entitled to recover special, general, and punitive damages.

**FOURTH CLAIM FOR RELIEF
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

85. Plaintiff re-alleges and incorporates all paragraphs of this Complaint as though fully alleged herein.

86. Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100 were aware of the Perpetrator's commission of acts of sexual abuse against minor females, and yet intentionally chose to protect Perpetrator, not its minor female members of its congregation. Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100 did so by declining to contact CPS and HPD with reports of sexual abuse against minor females in the congregation, by choosing instead to conduct an internal investigation under its own standards, by imposing minimal consequences for the commission of Class A and Class C felonies, by choosing not to warn of Perpetrator's pedophilic attacks on minor female members of the congregation, by failing to restrict Perpetrator's activities within the Church, by discouraging victims and witnesses from reporting Perpetrator's sexual abuse, by imposing requirements of confidentiality amongst victims and witnesses, by intimidating Plaintiff and her family from reporting Perpetrator's sexual abuse, and by forcing Plaintiff to practice her faith in the presence of the man who had sexually abused her on multiple occasions. These acts and omissions by Defendants Makaha Kingdom Hall,

Watchtower, and Does 1 through 100 in fact promoted the commission of sexual offenses against minor females, including Plaintiff, and proximately caused further acts of sexual abuse by Perpetrator. These acts and omissions by Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100 were outrageous and caused extreme emotional distress to Plaintiff.

87. After being allowed back to the Makaha Kingdom Hall Church by the Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100, the Perpetrator would sit directly in front of Plaintiff during church services causing her additional distress. These actions and inactions by Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100 were outrageous, and caused extreme emotional distress to Plaintiff.

88. Accordingly, the Defendants' acts and omissions, as aforesaid, were intentional, willful, wanton, oppressive, and malicious, and reflected a callous disregard of and a callous indifference to the rights and safety of Plaintiff.

89. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has suffered and will continue to suffer pain and suffering, mental anguish, emotional distress, loss of quality of life, loss of enjoyment of life, temporary and/or partial impairment and/or disability, emotional disfigurement and/or scarring, loss of income, economic loss, medical expenses, and other expenses, and are therefore entitled to recover special, general, and punitive damages in such amounts as shall be shown at a trial or hearing hereof.

FIFTH CLAIM FOR RELIEF
GROSSLY NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

90. Plaintiff re-alleges and incorporates all paragraphs of this Complaint as though fully alleged herein.

91. Defendants' wrongful conduct constitutes gross negligence infliction of emotional distress.

92. Defendants' wrongful conduct described herein was grossly negligent and done for the purpose of causing or with substantial certainty that Plaintiff would suffer humiliation, mental anguish, and emotional and physical distress. Accordingly, the Defendants' acts and omissions, as aforesaid, were intentional, willful, wanton, oppressive, and malicious, and reflected a callous disregard of and a callous indifference to the rights and safety of Plaintiff.

93. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has suffered and will continue to suffer pain and suffering, mental anguish, emotional distress, loss of quality of life, loss of enjoyment of life, temporary and/or partial impairment and/or disability, emotional disfigurement and/or scarring, loss of income, economic loss, medical expenses, and other expenses, and are therefore entitled to recover special, general, and punitive damages in such amounts as shall be shown at a trial.

**SIXTH CLAIM FOR RELIEF
GROSS NEGLIGENCE SUPERVISION OF PERPETRATOR**

94. Plaintiff re-alleges and incorporates all paragraphs of this Complaint as though fully alleged herein.

95. At all relevant times, Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100 owed a duty of care to Plaintiff to exercise reasonable care in connection with the training, monitoring, and supervision of Jehovah's Witness Elders, including the Perpetrator, and the protection of Plaintiff.


96. The Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100 breached the aforesaid duties by their failure to exercise reasonable care to train, monitor, and supervise the Perpetrator.

97. At all relevant times, the Defendants Makaha Kingdom Hall, Watchtower, and Does 1 through 100 knew that the Perpetrator was having sexual contact with minors. Accordingly, the Defendants' acts and omissions, as aforesaid, were intentional, willful, wanton, oppressive, and malicious, and reflected a callous disregard of and a callous indifference to the rights and safety of Plaintiff.

98. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has suffered and will continue to suffer pain and suffering, mental anguish, emotional distress, loss of quality of life, loss of enjoyment of life, temporary and/or partial impairment and/or disability, emotional disfigurement and/or scarring, loss of income, economic loss, medical expenses, and other expenses, and are therefore entitled to recover special, general, and/or punitive damages in such amounts as shall be shown at a trial or hearing hereof.

WHEREFORE, Plaintiff prays for judgement in her favor and against Defendants, jointly and severally, for special, general, economic, pecuniary, compensatory, consequential, and/or punitive damages, together with costs of suit, reasonable attorneys' fees, pre-and post-judgment interest, and any other relief deemed just and equitable by the Court.

Dated: Honolulu, Hawaii, March 10, 2020.



MARK S. DAVIS
LORETTA A. SHEEHAN
MATTHEW WINTER

JAMES S. ROGERS
HEATHER M. COVER
MICHELLE HYER
(PRO HAC VICE PENDING)
Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

N.D.,

Plaintiff,

vs.

MAKAHA, HAWAII CONGREGATION OF
JEHOVAH'S WITNESSES, a Hawaii non-
profit unincorporated religious organization,
a.k.a. MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES and KINGDOM
HALL, MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES; WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW
YORK, INC., a New York corporation;
CHRISTIAN CONGREGATION OF
JEHOVAH'S WITNESSES, a New York non-
profit corporation; KENNETH L. APANA,
individually; and Does 1 through 100,
inclusive,

Defendants.

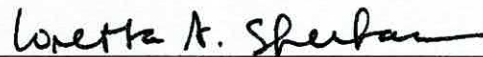
CIVIL NO.
(Other Non-Vehicle Tort)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL



Plaintiff hereby demands a trial by jury on all issues triable of right by jury in this case pursuant to Rule 38 of the Hawaii Rules of Civil Procedure.

Dated: Honolulu, Hawaii, March 10, 2020.



MARK S. DAVIS
LORETTA A. SHEEHAN
MATTHEW WINTER

LAW OFFICES OF JAMES S. ROGERS
JAMES S. ROGERS
HEATHER M. COVER
MICHELLE HYER
(PRO HAC VICE PENDING)

STATE OF HAWAI'I CIRCUIT COURT OF THE FIRST CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CASE NUMBER CIV. NO.
PLAINTIFF N.D.	VS.	DEFENDANT(S) MAKAHA, HAWAII CONGREGATION OF JEHOVAH'S WITNESSES, a Hawaii non-profit unincorporated religious organization, a.k.a. MAKAHA CONGREGATION OF JEHOVA'S WITNESSES and KINGDOM HALL, MAKAHA CONGREGATION OF JEHOVA'S WITNESSES; WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.
PLAINTIFF'S NAME & ADDRESS, TEL. NO. N.D. c/o MARK S. DAVIS (1442) DAVIS LEVIN LIVINGSTON 851 FORT STREET, SUITE 400 HONOLULU, HI 96813 808 524-7500		
<p>TO THE ABOVE-NAMED DEFENDANT(S)</p> <p>You are hereby summoned and required to file with the court and serve upon</p> <p>MARK S. DAVIS, DAVIS LEVIN LIVINGSTON 851 FORT STREET, SUITE 400, HONOLULU, HI 96813 808 524-7500</p> <hr/> <p>plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.</p> <p>THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.</p> <p>A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.</p>		
The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at: http://www.courts.state.hi.us	Effective Date of 28-Oct-2019 Signed by: /s/ Patsy Nakamoto Clerk, 1st Circuit, State of Hawai'i 	
 In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office on OAHU- Phone No. 808-539-4400, TTY 808-539-4853, FAX 539-4402, at least ten (10) working days prior to your hearing or appointment date.		

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

N.D.,

Plaintiff,

vs.

MAKAHA, HAWAII CONGREGATION OF JEHOVAH'S WITNESSES, a Hawaii non-profit unincorporated religious organization, a.k.a. MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES and KINGDOM HALL, MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES; WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a New York corporation; CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, a New York non-profit corporation; KENNETH L. APANA, Individually; and Does 1 through 100, inclusive,

Defendants.

Civil No. 1CCV-20-0000390
(Other Non-Vehicle Tort)

NOTICE OF HEARING

NOTICE OF HEARING

TO: MARK S. DAVIS, ESQ.
LORETTA SHEEHAN, ESQ.
MATTHEW WINTER, ESQ.
DAVIS LEVIN LIVINGSTON
851 Fort Street, Suite 400
Honolulu, HI 96813

LAW OFFICES OF JAMES S. ROGERS
JAMES S. ROGERS, ESQ. *[Pro Hac Vice Pending]*
HEATHER M. COVER, ESQ. *[Pro Hac Vice Pending]*
MICHELLE HYER, ESQ. *[Pro Hac Vice Pending]*
1500 Fourth Avenue, Suite 500
Seattle, WA 98101

NOTICE IS HEREBY GIVEN that the above-identified Motion shall come on for hearing before the Honorable Dean E. Ochiai, Judge of the above-entitled Court, in his courtroom at Kaahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai`i 96813, at 10:30 o'clock a.m. on June 22, 2020, or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawai`i, May 26, 2020.

/s/ William S. Hunt
WILLIAM S. HUNT
CANDACE M. HOUGH

Attorneys for Defendants
MAKAHA CONGREGATION OF JEHOVAH'S
WITNESSES, HAWAII; WATCHTOWER BIBLE
AND TRACT SOCIETY OF NEW YORK, INC.;
and CHRISTIAN CONGREGATION OF
JEHOVAH'S WITNESSES

