

1 Irwin M. Zalkin, Esq., (#89957)
Devin M. Storey, Esq. (#234271)
2 Michael J. Kinslow, Esq. (#238310)
THE ZALKIN LAW FIRM, P.C.
3 12555 High Bluff Drive, Suite 260
San Diego, CA 92130
4 Tel: 858-259-3011
Fax: 858/259-3015

5 Attorney for Plaintiffs
6

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**
10

11 John Dorman, Individually, and Joel
Gamboa, Individually,

12 Plaintiffs,

13 vs.
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15 Defendant Doe 1, La Jolla Church;
16 Defendant Doe 2, Linda Vista Church;
17 Defendant Doe 3, Supervisory Organization;
18 Defendant Doe 4, Perpetrator; and Does 5
through 100,

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

**PLAINTIFF JOHN DORMAN'S
OPPOSITION TO DEFENDANTS'
MOTIONS FOR SUMMARY
JUDGMENT**

**Date: 12-16-11
Time: 10:30 a.m.
Judge: Steven R. Denton
Dept: C-73
Trial: 1-27-12**

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1 **I. INTRODUCTION**

2 This action results from the sexual abuse of Plaintiffs' John Dorman and Joel Gamboa, by
3 Defendant Gonzalo Campos. At the time of the abuse, Campos was an adult man, and Plaintiffs
4 were young boys. Plaintiffs jointly filed a complaint against Campos, Defendant Linda Vista
5 Spanish Congregation of Jehovah's Witnesses (Linda Vista), Defendant Playa Pacifica Spanish
6 Congregation of Jehovah's Witnesses (Playa Pacifica), and Defendant Watchtower Bible and
7 Tract Society of New York, Inc. (Watchtower). Defendants Linda Vista, Playa Pacifica and
8 Watchtower have each moved for summary judgment, or in the alternative, summary
9 adjudication of Plaintiffs' claims. This brief will serve as John Dorman's consolidated
10 opposition to the motions for summary judgment / adjudication filed by Linda Vista and
11 Watchtower. John Dorman did not assert a claim against Playa Pacifica in his operative Second
12 Amended Complaint.

13 Linda Vista and Watchtower both argue that vicarious liability is unavailable to Plaintiff
14 because the sexual molestation occurred outside the course and scope of Campos' agency with
15 Defendants. This argument is largely unnecessary since this Court ruled on the Defendants'
16 Demurrer in this action that respondeat superior, as it relates to the molestation itself, was
17 unavailable to Plaintiff since sexual molestation is outside the scope of employment per se.
18 Defendants do not consider or discuss that respondeat superior is still available to hold the
19 institutional Defendants vicariously liable for the negligence of their agents in hiring,
20 supervising, and retaining Campos, and in failing to warn, train or educate Plaintiff. In this
21 regard Plaintiff contends that in the first instance, based on the evidence he has presented and the
22 law of this state, Linda Vista is liable for the acts of its agent Campos. Further, Watchtower is
23 liable for the acts of its agent Campos, and, notwithstanding, Watchtower is liable for the
24 negligent supervision and retention of Campos by its agents the Elders of Linda Vista.

25 In addition, Defendants each deny that they can be held vicariously liable for ratifying
26 Campos' sexual molestation of children. Linda Vista argues that Campos was not its agent at the
27 time of the molestation of Dorman, and consequently Linda Vista cannot ratify his misconduct.

1 As discussed in detail herein, Linda Vista had the ability to control Campos, and did exert control
2 over Campos. Linda Vista also accepted Campos' efforts in Field Service, which is the
3 Jehovah's Witnesses primary means of recruiting new members. Moreover, different positions
4 within a Jehovah's Witness Congregation wield different amounts of authority. There is a
5 genuine dispute as to the position held by Campos at the time of the molestation of John
6 Dorman. Factual issues abound as to the existence of an agency relationship, and as to the
7 position occupied by Campos when he molested Dorman.

8 Linda Vista also argues that the molestations took place while Campos was engaging in
9 his occupation, and not in relation to Jehovah's Witness activities. This argument fails. *Murillo*
10 *v. Rite Stuff Foods*, makes clear that an employer can ratify conduct occurring outside the course
11 and scope of the agency. (1998) 65 Cal.App.4th 833, 852 (recognizing that sexual harassment is
12 outside course and scope, but finding that employer could ratify conduct.) Watchtower raises the
13 same arguments as Linda Vista with regard to the issue of ratification, and they fail for the same
14 reasons.

15 Linda Vista and Watchtower argue that they owed no duty to John Dorman. Linda Vista
16 argues that since the molestation occurred in connection with Campos' occupation as a gardner,
17 rather than in connection with any Linda Vista church activity, no duty was owed to Dorman.
18 This is incorrect because Campos' ability to gain access to Dorman was created by his agency
19 with Linda Vista irrespective of where the sexual abuse took place. *See Evan F. v. Hughson*
20 *United Methodist Church* (1992) 8 Cal.App.4th 828, 834 (victim met perpetrator through church,
21 but was molested in hot tub at perpetrator's residence.)

22 Linda Vista also claims that a duty to prevent molestation can only arise if there is a
23 special relationship. While this is not the law, a special relationship nonetheless existed between
24 Linda Vista and Campos, sufficient to impose a duty on Linda Vista. A duty is also created by
25 the *Rowland* Factors and Restatement (Second) of Agency § 213.

26 Watchtower argues that it owed no duty to John Dorman because Campos was simply a
27 "rank and file member" of the Linda Vista Congregation at the time of the molestation of
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1 Dorman, and was therefore not an agent of Watchtower. As mentioned above, a genuine dispute
2 exists as to the position occupied by Dorman at the time of the molestation, and substantial
3 evidences exists to create a triable issue of fact as to whether Campos was an agent of
4 Watchtower at the time of the abuse of John Dorman, regardless of the position he held.

5 Watchtower also argues that a duty cannot be imposed in the absence of a special
6 relationship. But this argument is legally incorrect, and Plaintiff has established the existence of
7 multiple duties.

8 Each of Defendants' motions for summary judgment / adjudication should be denied.
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11 **II. THIS COURT SHOULD DENY SUMMARY JUDGMENT/SUMMARY**
12 **ADJUDICATION OF ISSUES BECAUSE PLAINTIFF HAS PRESENTED**
13 **TRIALBLE ISSUES OF MATERIAL FACT**

14 This Court should deny Defendants, motions for summary judgment/adjudication since
15 several triable issues of fact exist. Summary judgment is only proper when there are no triable
16 issues of material fact and the defendant is entitled to judgment as a matter of law. *Kahn v.*
17 *Eastside Union High School District* (2003) 31 Cal. 4th 990, 1002. The burden of persuasion
18 remains with the party moving for summary judgment. *Id.* Summary adjudication is proper
19 when there are no triable issues of material fact. Code of Civil Procedure § 437(c)(o)(1).
20 Evidence of the non-moving party must be liberally construed. *Vournas v. Fidelity National*
21 *Title Insurance Co.* (1999) 73 Cal. App. 4th 668, 672.

22 Whether the defendant owed plaintiff a duty of care is a question of law. *Huggins v.*
23 *Longs Drug Stores California Inc.* (1993) 6 Cal. 4th 124, 129. On the other hand, "[t]he
24 existence of an agency is a question of fact [citation omitted], which may be implied from the
25 conduct of the parties." *Thayer v. E.R. Co.* (1961) 55 Cal.2d 430, 438; *see also Stevens v. Roman*
26 *Catholic Bishop of Fresno* (1975) 49 Cal.3d 877, 884 ("Whether an agency exists is a question of
27 fact to be determined from the circumstances of each case.") A determination of whether an
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1 agency exists can only be made as a matter of law when the essential facts are not in conflict.
2 *Wickham v. Southland Corp.* (1985) 168 Cal.App.3d 49, 55. Triable issues of fact exist as to
3 Campos' status as an agent of Linda Vista, as a result, Linda Vista's motion should be denied.

4 Whether a principal has ratified the conduct of its agent is also a question of fact. *Siva v.*
5 *General Tire & Rubber Co.* (1983) 146 Cal.App.3d 152, 159 ("Ratification is a question of fact
6 and may be proved by circumstantial evidence"); *see also C.R. v. Tenet Healthcare Corp.* (2009)
7 169 Cal.App.4th 1094, 1111 ("[w]hether an employer has ratified an employee's conduct is
8 generally a factual question.") Plaintiff has presented ample evidence for his claim of ratification
9 to proceed to a jury.

10 The vast majority of the issues raised by Defendants' motions are factual questions that
11 may only be decided at summary judgment if the facts are not in dispute and there is only one
12 reasonable interpretation of the undisputed facts. Many facts in this action are in dispute, and
13 Plaintiff has identified numerous triable issues of material fact. Summary judgment should be
14 denied.

15 **III. FACTUAL HISTORY**

16 **A. The Hierarchical Structure of the Jehovah's Witness Faith**

17 The Jehovah's Witness Faith is organized in a hierarchical structure. During the relevant
18 periods of time, the Watchtower sat atop the hierarchy with respect to issues of appointment of
19 leaders (called Elders and Ministerial Servants) in local congregations, and provided local
20 congregation leaders with direction when difficult issues arose, including issues relating to sexual
21 abuse of children by Jehovah's Witnesses. Local congregations of Jehovah's Witnesses
22 administer the faith on a day to day basis and implement church policy and practice that is
23 dictated from higher levels in the organizational structure.

24 Local congregations of Jehovah's Witnesses are directed by Elders. The Body of Elders
25 is responsible for administering the day to day operations of the congregation. Elders coordinate
26 the activities of the congregation, including meetings and field service. Elders also help
27 members deal with problems that may arise in their personal lives. (Plaintiffs' Undisputed
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1 Material Fact 1 (“PUMF”).) Elders are viewed reverently by members of the congregation, and
2 members are required to approach one of the congregation’s Elders with any accusation of
3 wrongdoing, including childhood sexual abuse. (PUMF 2.)

4 Prospective Elders are selected from among the congregation’s Ministerial Servants and
5 thoroughly vetted by the Body of Elders. (PUMF 3.) If a Ministerial Servant meets the
6 qualifications to become an Elder, the Body of Elders makes a recommendation to Watchtower.
7 (PUMF 4.) Watchtower approves or rejects the appointment. (PUMF 4.) Elders are agents of
8 both the Watchtower and the local congregation to which they are appointed. (PUMF 5.)

9 Through a published Elder handbook called *Pay Attention to Yourselves and to All the*
10 *Flock*, and through letters directed to the Bodies of Elders, the Watchtower provides Elders of
11 local congregations with detailed instruction regarding an extremely broad range of topics
12 including responding to childhood sexual abuse, maintaining congregation files, handling judicial
13 matters, nurturing Baptized males who meet the requirements to become Ministerial servants and
14 Elders, what to tell people who want to leave real property to the congregation upon their
15 passing, how to structure weekly congregation meetings and how long they should last, among a
16 myriad other major and minor instructions. (PUMF 6.)

17 A Ministerial Servant is a male Baptized Publisher who has been delegated added
18 responsibilities within the congregation. Male Baptized Publishers are recommended to become
19 Ministerial Servants by the Body of Elders. Watchtower then has the final say as to whether the
20 appointment is confirmed. (PUMF 7.)

21 A Pioneer is a Baptized Publisher who has committed to spend a certain amount of time
22 per month preaching. To become a Pioneer, a Publisher must be approved by a committee of
23 Elders. In addition to maintaining the requirements of good morals to be a Baptized Publisher,
24 the Elders must also determine that the applicant’s track record shows that he will be able to
25 meet his hourly obligations if he is approved. (PUMF 8.)

26 Pioneers are viewed as examples in the congregation. When Elders are considering
27 offering privileges, such as a position as a Ministerial Servant, service as a Pioneer would make a
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1 prospective privilege holder stand out. Being a Pioneer gives a member position that stands out
2 in the congregation, which enhances his or her status in the congregations. (PUMF 9.)

3 Field Service is an important part of the Jehovah's Witness faith. Field Service involves
4 members of the congregation going from door to door and preaching to people living in the
5 community. (PUMF 10.) Not everyone is permitted the privilege of participating in Field
6 Service. Instead, that privilege is reserved for people who are "Publishers." (PUMF 11.)

7 If someone wants to participate in Field Service, he or she must request to be approved as
8 a Publisher. (PUMF 12.) A committee of Elders within the congregation will consider that
9 request. (PUMF 13.) The committee will interview the prospective Publisher and determine
10 whether he or she has sufficient knowledge of the bible to participate in Field Service, and will
11 also determine whether he or she is living his or her life in accordance with Christian Bible
12 principles. (PUMF 14.) Since Publishers are given the privilege of representing the
13 congregation in the community, they must not be engaged in immorality. (PUMF 15.)

14 Publishers can be either Baptized or Un-Baptized, with greater rights and responsibilities
15 being reserved for Publishers who have been Baptized. (PUMF 16.) Once a male Publisher has
16 been Baptized, he can lead field service; give Bible Study, "participate in the school and then
17 with time, he can receive certain privileges if he is a male, such as becoming a ministerial servant
18 or elder." (PUMF 17.) A Baptized Publisher can also work as a missionary or serve as a Pioneer.
19 (PUMF 18.) **Baptism as one of Jehovah's Witness is an ordination as a minister of the**
20 **Jehovah's Witness faith.** (PUMF 19.)

21 To be baptized as one of Jehovah's Witnesses a prospective member must study the bible.
22 Campos for instance, studied for at least six months and maybe as many as twelve months before
23 he was able to become baptized. (PUMF 20.) Campos studied with a Baptized Publisher once
24 per week during this time prior to being baptized, and also studied on his own. (PUMF 21.)
25 Prior to becoming baptized, Campos was interviewed by one or two Elders of the congregation,
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1 and was asked a series of approximately eighty questions based on his study of the Bible that he
2 had to answer thoughtfully prior to being ordained. (PUMF 22.)

3 When a Publisher gives Bible Study, he is required to complete a form and turn that form
4 into the Congregation Secretary. (PUMF 23.) The form indicates the name and address of the
5 person to whom the Publisher has given Bible Study as well as the dates of each session. (PUMF
6 23.) Publishers are also required to file a Service Report with the Congregation Secretary
7 detailing the amount of time they spend in service. (PUMF 24.)

8 Formal Field Service begins with a "meeting for Field Service." This meeting is often led
9 by a congregation Elder, or Ministerial Servant. (PUMF 25.) The meeting for Field Service
10 generally begins with a discussion of a daily scripture, and the accompanying Watchtower
11 comment. Then, a demonstration is given explaining how to present the material that day, and
12 discussing the literature that will be offered. Finally, the members are divided into car groups by
13 the person conducting the meeting for Field Service and instructed which territory to visit.
14 (PUMF 26.)

15 During field service, the congregation members call on homes in their assigned territory.
16 They knock on the door and initiate contact with the residents. They distribute literature, attempt
17 to engage the residents in discussion about the Jehovah's Witness faith and invite interested
18 residents to attend meetings at the Kingdom Hall. The congregation members will endeavor to
19 start a home Bible Study with the residents they contact. The Literature distributed by
20 congregation members during Field Service is published by Watchtower New York. (PUMF 27.)
21 The congregants' efforts to invite residents to attend meetings at the Kingdom Hall, or to begin
22 Home Bible Studies are the primary means by which the Jehovah's Witnesses, including local
23 congregations and Watchtower New York, attract new members to their faith. (PUMF 28.)

24 The Theocratic Ministry School and the Service Meeting provide weekly instruction to
25 congregants regarding methods for approaching individuals and of literature distribution and
26 training to improve the effectiveness of the congregants' presentation. (PUMF 29.) The
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1 congregant's progress is tracked and recorded. (PUMF 31). Congregants are also required to
2 observe Watchtower's dress code and personal grooming guidelines when engaged in formal
3 Field Service. (PUMF 32.)

4 **B. Campos' Ordination and Elevation in the Jehovah's Witness Faith**

5 Campos was born on January 10, 1963 in Mexico City, Mexico. Campos attended school
6 in Mexico and did not complete junior high school. He moved to the United States with his
7 mother in approximately 1979 or 1980. Campos began to associate with Linda Vista in
8 approximately 1979 or 1980, when he came to the United States. Campos studied the Bible and
9 attended meetings at Linda Vista. He became an Un-Baptized Publisher in approximately 1980.
10 (PUMF 33.) Campos was ordained as a minister of the Jehovah's Witness Faith when he was
11 baptized in 1980. (PUMF 34.)

12 When Campos was nineteen years of age, which would have been approximately 1982,
13 an announcement was made to the Linda Vista Spanish Congregation that Campos would be
14 serving as a Pioneer. Campos continued to serve as a Pioneer in Linda Vista. (PDMF 1.)
15 Campos later served as a Pioneer in the Playa Pacifica Congregation. (PUMF 35.)

16 After moving to Playa Pacifica, Campos was appointed as a Ministerial Servant on
17 December 22, 1988. (PUMF 36.) Campos was appointed as an Elder of Playa Pacifica in June
18 of 1993. (PUMF 37.) Campos served as the Congregation Secretary of Playa Pacifica. (PUMF
19 38.)

20 **C. The 1982 Complaint**

21 In approximately 1982, Campos molested a young member of Linda Vista. (PUMF 39.)
22 Immediately following the incident, John Doe, informed his mother of the abuse. (PUMF 40.)
23 Campos confessed his inappropriate sexual conduct to Doe's mother just after it happened.
24 (PUMF 41.) Doe's mother reported the abuse to multiple Elders associated with Linda Vista.
25 (PUMF 42.)
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1 The allegation was brought before the entire Body of Elders of Linda Vista. (PUMF 43.)
2 Two Elders were assigned to investigate the accusation. (PUMF 44.) Within one or two days of
3 the molestation, Doe was interviewed by at least one Elder from Linda Vista and informed the
4 Elder(s) of the abuse by Campos. (PUMF 45.) Campos was also interviewed by multiple Elders
5 from Linda Vista and admitted that he "had touched [John Doe] inappropriately." (PUMF 46.)

6 The Elders did not punish Campos. (PUMF 47.) Justino Diaz, an Elder at the time of the
7 accusation, considered it to be a minor matter since Campos' mother and the victim's mother
8 were apparently able to work out some resolution. (PUMF 48.) Diaz knew that molestation was
9 a crime and that once a person has molested a child, he may repeat that conduct. (PUMF 49.)
10 Nonetheless, the police were not called, Campos' service privileges were not restricted, further
11 victims were not sought, and the congregation was not warned about the dangers posed by
12 Campos. (PUMF 50.) Campos continued to be allowed to preach door to door, and to give bible
13 study sessions to minor children. (PUMF 51.)

14 **D. The 1986 Complaint**

15 In 1986, Campos' sexual abuse of children was again brought to the attention of the
16 Elders of Linda Vista. A Judicial Committee was formed at that time to investigate, determine
17 Campos' guilt and level of repentance, and to impose punishment. (PDMF 2.)

18 When a grave sin committed by a congregation member is brought to the attention of a
19 local congregation's Elders, two Elders are assigned to investigate. (PUMF 52.) Those two
20 Elders determine if there is a sufficient justification for the creation of a Judicial Committee.
21 (PUMF 53.) If there are either multiple witnesses to the sin, or if the accused confesses his sin, a
22 Judicial Committee will be formed. (PUMF 54.) The Judicial Committee will be comprised of
23 the original two Elders assigned to investigate, and usually at least one more Elder. (PUMF 55.)
24 The Judicial Committee will then determine what punishment is appropriate. (PUMF 56.) The
25 sinner can be disfellowshipped, which is a period of expulsion from the local congregation, or if
26 the Judicial Committee determines the sinner is truly repentant, he or she can be reprovved, which
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1 entails some public or private censorship but no expulsion from the congregation. (PUMF 104.)

2 In order for a person to be reproved, he must first have admitted his sin.

3 The Judicial Committee formed in 1986 to look into Campos' alleged sexual misconduct
4 determined that Campos was repentant for his sins and therefore chose to reprove him, rather
5 than expel him from the congregation. (PDMF 3.) Specifically, the Judicial Committee imposed
6 a six to nine month period of private censorship on Campos, during which time his service
7 privileges were somewhat restricted. (PDMF 4.)

8 **E. The Division of the Linda Vista Congregation**

9 During 1986 or 1987, Linda Vista had grown large enough that it could divide into two
10 distinct congregations. At that time, La Jolla came into existence. (PUMF 57.) Linda Vista was
11 the "parent congregation" of La Jolla. This means that the complete membership originally
12 comprising La Jolla were former members of Linda Vista. (PUMF 58.) In addition, the
13 inaugural Elders of La Jolla, Luis Rivera and Ramon Preciado, had previously been members
14 from Linda Vista. (PUMF 59.) Luis Rivera had served on the 1986 Judicial Committee that
15 investigated Campos' sexual abuse of children. (PDMF 5.)

16 **F. The Dorman Complaint in April of 1994**

17 In April of 1994, John and Manuela Dorman learned that their son John had been
18 sexually molested by Campos. (PUMF 60.) Upon learning that her son had been molested, Mrs.
19 Dorman called Campos and confronted him. Campos admitted to sexually abusing John
20 Dorman, and informed Manuela Dorman that the Elders were already aware of the issue and he
21 had been found repentant. (PUMF 61.) Campos was an elder of La Jolla at the time of the
22 confrontation.

23 At that time, Manuela Dorman also called Roberto Rivera, who was the father of another
24 boy that John Dorman believed had been molested by Campos. Roberto Rivera informed
25 Manuela that he had already been warned of the danger posed by Campos, and that he would
26 have to speak with his son and with the Elders at Playa Pacifica and call her back. (PUMF 62.)
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1 When Roberto Rivera returned Manuela Dorman's call, he informed her that the Elders wanted
2 her to know that if she continued to pursue the matter, an affair she had engaged in years ago
3 would be disclosed within the congregation. Roberto Rivera also conveyed the message that too
4 many years had passed and there was nothing that Manuela Dorman could do. (PUMF 63.)

5 Following these calls, the Dormans sent a letter to Mrs. Dorman's local congregation,
6 accusing Campos of sexually abusing their son. The letter of complaint was forwarded to
7 Watchtower. (PUMF 64.) Watchtower held onto the letter for almost two months, then
8 forwarded it to La Jolla. (PUMF 65.)

9 **1. Campos Continued to Serve as an Elder, Congregation Secretary and**
10 **Pioneer Even After the Dorman Complaint was Received**

11 The forwarding instructions from Watchtower to Playa Pacifica asked for an investigation
12 into the allegations to be conducted, and for a prompt reply to be sent back to Watchtower
13 regarding the matter. (PUMF 66.) Upon receiving the letter, Campos was asked by an Elder of
14 La Jolla whether the accusations were true, and Campos confirmed the allegations. (PUMF 67.)

15 Notwithstanding Campos' confession, almost one full year elapsed between Manuela
16 Dorman's phone calls to Campos and Roberto Rivera, and her concurrent letter to her local
17 congregation before any response from Playa Pacifica to Watchtower. More than eight months
18 passed between Watchtower's letter to Playa Pacifica and the Elders' reply. In addition, even
19 after receiving a written complaint about the molestation of John Dorman, Campos continued to
20 function in a leadership capacity in Playa Pacifica as an Elder, Secretary of the Congregation and
21 as a Pioneer. (PUMF 68.)

22 **2. Campos Continued to Hold Elevated Positions in the Congregation**
23 **Even After the Dorman Complaint and Would not Have Been**
24 **Removed Absent an Additional Complaint**

25 When Playa Pacifica responded to Watchtower with a letter regarding the Dorman
26 allegation, the responsive letter indicated that Campos had been reprovved years ago, and his
27 restrictions had been lifted several months before he was appointed as a ministerial servant.
28 Playa Pacifica stated that the amount of time that had passed between the censure and Campos'

1 elevation to Ministerial Servant (about 15 months) was sufficient, and closed the matter. (PUMF
2 69.)

3 Manuela Dorman would not let the issue go. She continued to call Jehovah's Witnesses
4 who she knew from Linda Vista and tell them about what Gonzalo Campos had done. She
5 learned that Joel Gamboa may have been a victim of abuse and informed the Elders of Playa
6 Pacifica. (PUMF 70.)

7 Ultimately, Campos was disfellowshipped in June of 1995 for sexually abusing Joel
8 Gamboa; not for sexually abusing John Dorman. (PUMF 71.) This subsequent abuse was
9 discovered when Gamboa's mother spoke to Elders of the congregation in May of 1995. (PUMF
10 72.) Until the Gamboa complaint was received, Campos was not the subject of a Judicial
11 Committee relating to the Dorman accusation, and would not have been disfellowshipped.

12 **G. Campos' Reinstatement**

13 After he was disfellowwhipped in 1995, Campos repeatedly sought reinstatement as one of
14 Jehovah's Witnesses. (PUMF 73.) In 1996, he confessed to the Elders that he had molested
15 three additional children while serving as a Ministerial Servant at Playa Pacifica. (PUMF 74.)
16 The Elders discussed the nature of the sexual acts committed by Campos in the correspondence
17 with Watchtower, including acts of mutual masturbation, oral copulation and sodomy. (PUMF
18 75.) Notwithstanding the horrible acts known to have been committed by Campos, Defendants
19 quibbled about whether Campos' acts constituted abuse, or whether he could be considered "a
20 person who is known as someone who has sexually abused a child." (PUMF 76.) Campos was
21 reinstated as one of Jehovah's Witnesses on April 21, 2000. (PUMF 77.)

22 **IV. THE ABUSE OF JOHN DORMAN**

23 John Dorman was born on September 7, 1977. (PUMF 92.) Plaintiff Dorman attended
24 Linda Vista from when he was very young, until his family moved to Illinois in 1987. (PUMF
25 93.) While attending Linda Vista, John and his mother met Campos through their mutual
26
27
28

1 attendance at Linda Vista. (PUMF 94.) John Dorman, his sister Adeleida, and his mother
2 Manuela sometimes received rides to meetings from Campos. (PUMF 95.)

3 John Dorman, his sister Adeleida, and Manuela Dorman sometimes engaged in Field
4 Service with Campos. (PUMF 96.) On many occasions, the Dormans were assigned by the
5 person leading the meeting for Field Service to ride in Campos' car to the location where they
6 would be preaching. (PUMF 97.) Campos often took charge when the group reached the
7 location for Field Service. (PUMF 98.) Sometimes John and Campos would approach doors
8 together. (PUMF 98.)

9 Ultimately, Gonzalo Campos began to give John Bible Study lessons. It is common for
10 Jehovah's Witness fathers to provide Bible Study lessons to their children. However, John
11 Dorman's father was not Jehovah's Witness and could not fulfill this role. Because Gonzalo
12 Campos was a Baptized member and a Pioneer, Manuela Dorman allowed Campos to provide
13 John with these lessons instead.

14 After these Bible Study lessons had begun, Campos asked Manuela Dorman if he could
15 take John to work with him. Manuela Dorman thought this would be a good opportunity for
16 John and that Campos would be a good example for the boy, so she allowed Campos to take John
17 to work with him on more than one occasion. (PUMF 99.)

18 On multiple occasions while accompanying Campos to work between 1983 and 1985,
19 John Dorman was sexually molested by Campos. (PUMF 100.) The abuse included fondling,
20 oral copulation and sodomy. (PUMF 101.) Campos has admitted to the abuse. (PUMF 102.)
21 Sometime after the abuse had concluded and the Dormans had moved from the city of La Jolla to
22 Linda Vista, Gonzalo Campos came to visit John and take him to lunch. Campos asked John if
23 he had told anyone about what they did together, and instructed John to keep the sexual episodes
24 a secret. (PUMF 103.)

25 **V. EACH DEFENDANT IS VICARIOUSLY LIABLE FOR THE HARM SUFFERED**
26 **BY PLAINTIFF DORMAN**

1 Defendants argue that the sexual molestation of Plaintiff did not occur during the course
2 and scope of Campos' agency. In this Court's ruling on Defendants' demurrer, this Court
3 determined that "[a]buse is committed outside the scope of the cleric's employment, the doctrine
4 of respondeat superior is not available." As such, Defendants appear to have argued a position
5 when this Court has already ruled in their favor. Defendants also fail to consider that the
6 doctrine of respondeat superior can be applied to hold Defendants vicariously liable for the
7 negligence of Defendants' agents, the Elders of Linda Vista, for failing to exercise due care in
8 selecting, training, hiring and supervising Campos, or in failing to warn, train or educate
9 Plaintiff.

10 Linda Vista and Watchtower argue that they did not ratify Campos' sexual abuse of
11 children. Linda Vista and Watchtower claim that the sexual molestation of Plaintiff Dorman
12 took place outside the scope of Campos' relationship with Linda Vista and Watchtower, and also
13 that Linda Vista and Watchtower cannot ratify the wrongful conduct of an individual that was not
14 its agent.¹ (LV MSJ at 13.)

15 **A. Defendants Ratified Campos' Molestation of Children**

16 Ratification is a form of vicarious liability. The principal may become liable for an
17 originally unauthorized tort of the agent by the subsequent ratification of the tort. 3 Witkin,
18 Summary 10th (2005) Agency, § 164, p. 207. The failure to discharge an agent or employee
19 despite knowledge of his unfitness is evidence tending to show ratification. *See McChristian v.*
20 *Popkin* (1946) 75 Cal.App.2d 249, 256. "The theory of ratification is generally applied where an
21 employer fails to investigate or respond to charges that an employee committed an intentional
22 tort, such as assault or battery." *Baptist v. Robinson* (2006) 143 Cal.App.4th 151, 170; *see also*
23

24
25 ¹ As to the issue of abuse occurring outside the scope of the agency, *Murillo v. Rite Stuff*
26 *Foods*, makes clear that an employer can ratify conduct occurring outside the course and scope of
27 agency. (1998) 65 Cal.App.4th 833, 852 (recognizing that sexual harassment is outside course
28 and scope, but finding that employer could ratify conduct.) As a result this argument is
unavailing.

1 *Murillo v. Rite Stuff Foods* (1998) 65 Cal.App.4th 833, 852 (finding that defendant ratified
2 assault and battery in a sexual harassment context.)

3 “Generally, the effect of a ratification is that the authority which is given to the purported
4 agent relates back to the time when he performed the act.” *Ballard v. Nye* (1903) 138 Cal. 588,
5 597; *see also White v. Moriarty* (2000) 15 Cal.App.4th 1290, 1295 (“Ratification is approval of a
6 transaction that has already taken place.”) “By ratifying an act, a principal triggers the legal
7 consequences that follow had the act been that of an agent acting with actual authority.” *C.R.*,
8 169 Cal.App.4th at 1112.

9 **1. Triable Issues of Material Fact Exist as to Campos’ Agency with**
10 **Linda Vista and Watchtower**

11 “An agency relationship may be informally created. No particular words are necessary,
12 nor need there be consideration. All that is required is conduct by each party manifesting
13 acceptance of a relationship whereby one of them is to perform work for the other under the
14 latter’s direction.”² *Malloy v. Fong* (1951) 37 Cal.2 356, 372. “To constitute the relation of
15 master and servant, the one for whom the service is rendered must consent or manifest his
16 consent to receive the services as a master.”³ Rest. 2d (Agency) § 221.

17 As outlined in the factual history section, and in Plaintiff’s Exhibits in support of his
18 opposition, Linda Vista and Watchtower exercised an astounding amount of *control* over the
19 lives of Jehovah’s Witnesses, right down to the clothes that they wear and the way that they
20 groom themselves. This level of control is indicative of an agency.

21 _____
22 ² The approved CACI jury instruction as to the existence of an agency relationship
23 similarly provides as follows:

24 “If [name of plaintiff] proves that [name of defendant] gave [name of agent]
25 authority to act on [his/her/its] behalf, then [name of agent] was [name of
26 defendant]’s agent. This authority may be shown by words or may be implied by
the parties’ conduct. This authority cannot be shown by the words of [name of
agent] alone.” CACI § 3705 (Existence of “Agency” Relationship Disputed.)

27 ³ “One who volunteers services without an agreement for or expectation of reward may be
28 a servant of the one accepting such services.” Rest. 2d (Agency) § 225.

1 Linda Vista provided instruction regarding how to more effectively approach people and
2 distribute Watchtower produced literature (PUMF 30), and monitored and recorded congregants'
3 progress and evaluated congregants' performance (PUMF 31.) Linda Vista enforced compliance
4 with established Jehovah's Witness standards for grooming and personal appearance among its
5 members (PUMF 32) and also policed congregants' personal conduct and ensured that it
6 complied with Jehovah's Witness standards, including conduct occurring off site and during the
7 congregants' free time. (PUMF 52-56.)

8 Watchtower had the ability to control Campos to the same extent as Linda Vista, because
9 the Elders of Linda Vista are also Watchtower's agents. (PUMF 5.) In addition, through the
10 Bodies of Elders letters and the Elder handbook *Pay Attention to Yourselves and to All the Flock*,
11 Watchtower directly impacts on all members of Linda Vista by directing policy on large and
12 small matters including the very important requirement that its members distribute Watchtower
13 literature.

14 Linda Vista and Watchtower each accepted the benefit of Campos' efforts on its behalf.
15 When Campos performed Field Service or gave Bible Study sessions, he was recruiting for Linda
16 Vista and Watchtower, since Field Service is the primary means by which new members are
17 attracted to the congregation and the faith. (PUMFS 27 and 28.)

18 It is indisputable that Linda Vista had the ability to decide whether to accept or reject
19 Campos into the Congregation, and also exercised the ability to control his conduct, not just at
20 congregation events but also in his private life, through the judicial process and the possibility of
21 reproof or disfellowship. Campos undoubtedly performed work for the benefit of Linda Vista,
22 who not only accepted the benefits of his efforts, but also provided him instruction regarding
23 how to be more effective in his service, monitored his progress, and recorded the time he spent in
24 service.

25 A jury could easily find that Campos was Linda Vista's agent while serving as a Baptized
26 Publisher(ordained minister), and would be hard pressed to find that Campos was not Linda
27

1 Vista's agent when he was serving as a Pioneer. Since Watchtower exercised the same, or a
2 greater level of control, and accepted the benefits of Campos labor, a triable issue of material fact
3 exists as to Campos' Agency.⁴

4 **2. Linda Vista Ratified Campos' Molestation of Children**

5 Linda Vista was made aware of Campos' molestation of John Doe in 1982. Linda Vista
6 interviewed Doe, and Campos confessed to touching Doe inappropriately. (PUMFS 39-46.)
7 Linda Vista had full knowledge, or an opportunity to gain full knowledge regarding the abuse,
8 but chose not to discipline Campos. By allowing Campos to retain his position as a Baptized
9 Publisher (ordained minister) and promoting him to the position of Pioneer, Linda Vista ratified
10 Campos' sexual abuse of children. Later, in 1986, Linda Vista's Elders conducted a Judicial
11 Committee regarding Campos' molestation of a child. Campos confessed and after a nine month
12 period of private censure was fully reinstated. Linda Vista again ratified or approved the
13 molestation of children by Campos.

14 **3. Watchtower Ratified Campos' Molestation of Children**

15 Apart from acting to ratify Campos' molestation of children through its agents, the Elders
16 of Playa Pacifica and Linda Vista, Watchtower ratified Campos' conduct by appointing Campos
17 as a Ministerial Servant and Elder of Playa Pacifica after gaining knowledge of his earlier abuse
18 of children. Watchtower also ratified Campos' molestation of children by sitting on the Dorman
19 letter of complaint for nearly two months before forwarding the letter to Playa Pacifica, and then
20 allowing Playa Pacifica to take nine months to respond to the accusations. Watchtower had the
21

22 ⁴ Watchtower cites *Gillet v. Watchtower Bible and Tract Society of Pennsylvania, Inc.*,
23 for the proposition that a local church member is not an agent of Watchtower. (FL. Ct. App.
24 2005) 913 So.2d 618. *Gillet* is distinguishable initially because Campos was a Pioneer while in
25 Linda Vista, not a publisher as was at issue in *Gillet*. Also the evidence in *Gillet* differed. There,
26 the evidence was that when the driver participated in Field Service she was doing so for Jehovah.
27 *Id.* at 620. No such evidence has been offered here. In this case Plaintiff has offered evidence
28 that members participating in Field Service are acting as recruiters for Linda Vista and
Watchtower, and that Linda Vista and Watchtower accept the benefits of their service. (PUMF
28.) These facts change the agency analysis dramatically. *Gillet* is not controlling, or even
particularly persuasive.

1 full facts, or the opportunity to gain all of the facts about the abuse of Dorman, and allowed
2 Campos to continue to serve as an Elder, Pioneer and the Secretary of Playa Pacifica.
3 Watchtower ratified Campos' conduct.

4 **B. Each Defendant is Vicariously Liable Under the Doctrine of Respondeat
5 Superior for the Negligence of its Agents in Hiring, Supervising and
6 Retaining Campos, and in Failing to Warn, Train or Educate Dorman**

7 While this Court has held that the sexual abuse of minors occurs outside the scope of
8 agency, the issue of the vicarious liability of a principal for the negligent acts of its agents
9 occurring during the course and scope of the agency has been well-established in California. It is
10 "settled that an employer's vicarious liability may extend to willful and malicious torts of an
11 employee as well as negligence." *Delfino v. Agilent Technologies, Inc.* (2006) 145 Cal.App.4th
12 790, 812 (underline emphasis added.) Similarly, in *Hoff v. Vacaville Unified School District*, the
13 court noted that through various statutes of the Government Code: "the Legislature incorporated
14 general standards of tort liability as the primary basis for respondeat superior liability against
15 public entities. Under them, a school district is vicariously liable for injuries proximately caused
16 by the negligence of school personnel responsible for student supervision."(1998) 19 Cal.4th
17 925, 932-933 (underline emphasis added.)

18 Elders and Ministerial Servants of local congregations of Jehovah's Witnesses are agents
19 of both that local congregation to which the individual has been appointed, as well as
20 Watchtower. (PUMF 5.) Moreover, Plaintiffs have established below that the congregation and
21 Watchtower, which must act through its agents, owed a duty to protect Dorman from Campos
22 and a special duty to investigate Campos. To the extent that the Elders of Linda Vista were
23 negligent in carrying out these duties as it relates to the treatment of Campos' sexual abuse of
24 children, both Linda Vista and Watchtower can be held vicariously liable. Defendants' motions
25 for summary judgment on the issue of vicarious liability should be denied.

26 **VI. DEFENDANTS OWED A DUTY TO PROTECT PLAINTIFF FROM HARM BY
27 CAMPOS**

1 Defendants argue that they owed no duty to Plaintiff that can support any negligence
2 based claim.⁵ In the process, Defendants mis-characterize California law as requiring a special
3 relationship between the Defendants and Plaintiff as a pre-requisite to the imposition of a duty to
4 protect the Plaintiffs.⁶ In truth, a defendant's duty to a plaintiff can be established in multiple
5 ways. In this case, the Defendants owed duties to protect Plaintiff based on application of the
6 *Rowland* factors, the special relationship between Defendants and Campos, and a special duty to
7 protect under Restatement (Second) of Agency Section 213.

8 **A. The *Rowland* Factors Support the Existence of a Duty to Protect Plaintiff**

9 Since the initial publication of *Rowland v. Christian* (1968) 69 Cal.2d 108, its
10 "innumerable judicial descendants have adopted the *Rowland* court's multi-element duty
11 assessment in determining whether a particular defendant owed a tort duty to a given plaintiff."
12 *Adams v. City of Fremont* (1998) 68 Cal.App.4th 243, 267-268, (fn. omitted.) "The goal of
13 applying the *Rowland* factors has been described as the ascertainment of whether the category of
14 negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that
15 liability may appropriately be imposed on the negligent party." *Juarez v. Boy Scouts of America*
16 (2000) 81 Cal.App.4th 377, 401 (internal quotation omitted.)

17 The *Rowland* factors include: (1) the foreseeability of harm to the injured party; (2) the
18 degree of certainty that the injured party has suffered harm; (3) the closeness of the connection
19 between the defendant's conduct and the injury suffered; (4) the moral blame attached to the
20 defendant's conduct; (5) the policy of preventing future harm; (6) the extent of the burden to the
21

22 ⁵ Defendants seek a finding that churches are always immune from liability for torts
23 committed by their agents, no matter how foreseeable. This is clearly not the law in California.

24 ⁶ Watchtower relies on *Meyer v. Lindala* (Minn. Ct. App. 2004) 675 N.W.2d 635, for the
25 proposition that it owes no duty to a "rank-and-file" member of a local congregation to prevent
26 sexual abuse. Initially, this case is factually distinguishable from *Meyer* because Campos was a
27 Pioneer at Linda Vista when Dorman was molested, while Meyer was a publisher. More
28 significant is the fact that in *Meyer*, the plaintiffs' only path to establishing a duty was through
the existence of a special relationship. In California, a duty can be established in several
different ways. Neither the factual setting, nor the legal landscape in this case bear close
resemblance to *Meyer*.

1 defendant; and (7) the consequences to the community of imposing a duty to exercise care, with
2 resulting potential liability. *Rowland*, 69 Cal.2d at 112-113.

3 With regard to the issue of the foreseeability factor, *Wallace v. Der-Ohanian* (1962) 199
4 Cal.App.2d 141, is instructive. There, a camp owner put two 11-year-old girls in a cabin alone,
5 without supervision. *Id.* at 141-42. One of the girls was raped and sued the camp owner for
6 negligence. *Id.* The court of appeal stated:

7 It is certain that there exists in our civilization the constant possibility that persons
8 suffering from a lack of proper mental balance or normal decency might subject young
9 people to molestation. This fact is illustrated by frequent newspaper accounts of crimes
10 against children, the many litigated criminal cases, accounts of which may find their way
11 into reports, and the concern of Legislature evidenced by the enactment of many laws for
12 the protection of children. It is also noted in magazine articles and talks before
13 organizations such as the Parent-Teacher Associations throughout the country. The
14 general feeling of the public that this problem does exist in a threatening way leading to
15 the conclusion that people charged with the care of children should guard against it is
16 confirmed in treatment of the question in "Sexual Behavior in the Human Female" by
17 Kinsey, pages 116 to 122.

18 *Id.* at 146 (citing numerous articles relating to sex abuse of children.)

19 In the years since the *Wallace* opinion, "the scourge of childhood sexual abuse has not
20 abated; and the danger that a child who participates in organized youth activities will encounter a
21 sexual predator certainly is at least as foreseeable now as it was then." *Juarez*, 81 Cal.App.4th at
22 404. In *O'Hara v. Western Seven Trees Corp.*, the appellant was raped on the premises of her
23 apartment building after the landlord had knowledge that a rapist was active in the area and did
24 not take actions to protect her from harm. (1977) 75 Cal.App.3d 798, 801. The court noted:

25 "An analysis of the factors set forth in *Rowland v. Christian*, supra, 69 Cal.2d 108, 113,
26 shows that there is potential liability here. The existence of the most important factor,
27 foreseeability, was alleged. Respondents allegedly knew of the past assaults and of
28 conditions making future attacks likely. By not acting affirmatively to protect appellant,
they increased the likelihood that she would also be a victim. This failure to act, either by
warning appellant or by providing adequate security, allegedly created a risk of injury to
appellant."

Id. at 804. *Wallace*, *Juarez* and *O'Hara* each involved criminal sexual assaults, yet each still
used the *Rowland* factors to establish the existence of a duty to protect. This Court should do the
same.

1 Linda Vista knew that Campos had been accused of molesting a minor in 1982. (PUMFS
2 39-44.) At least one of Linda Vista's Elders knew that sexual molestation was a crime and that
3 the molester could strike again. (PUMF 49.) The sexual abuse of Plaintiff was foreseeable.
4 Because the Elders at Linda Vista were also the agents of Watchtower (PUMF 5), that
5 Defendant was armed with the same knowledge. This factor favors the imposition of a duty to
6 protect Plaintiff.

7 Plaintiff experienced substantial damage as a result of the conduct of Campos and
8 Defendants, and Campos admitted to the abuse of Plaintiff during his deposition. (PUMFS 100-
9 102.) There is certainly no reason to doubt that Plaintiff suffered harm. Moreover, as the *Juarez*
10 court noted "there is empirical support for the proposition that sexual abuse of children can be
11 mitigated through implementation of programs designed to educate young people and their adult
12 caretakers about sexual abuse." 81 Cal.App.4th at 406. There can further be no doubt that the
13 aggressive vetting of employees, agents and volunteers who exhibit a propensity to abuse
14 children is also a successful deterrent of childhood sexual abuse. As such, both the certainty of
15 harm, and the closeness of the harm to Defendants' conduct support the imposition of a duty to
16 protect Plaintiff.

17 The policy of preventing future harm and the consequences to the community support the
18 imposition of similar duties on Defendants. "The interests of the state in protecting the health,
19 emotional welfare and well-rounded growth of its young citizens, together with its undeniable
20 interest in safeguarding the future of society as a whole, weigh strongly in favor of imposing a
21 duty in this case." *Id.* at 407. These interests cause the policy of preventing harm and the
22 consequences to the community of that harm factors to strongly support the imposition of a duty
23 here.

24 Finally, the burden imposed by this duty is nothing more than the duty imposed on any
25 institution where its employees or agents are institutionally in contact with children. In light of
26 the high duty of care owed to children, the burden imposed by such a duty places no added
27

1 burden on this or any other defendant, and therefore this factor weighs in Plaintiff's favor. The
2 *Rowland* factors favor the imposition of a tort duty to protect Plaintiff from harm by Campos.

3 **B. Defendants Owed Plaintiff a Duty of Care Based on the Special Relationships**
4 **between Defendants and Campos**

5 Notwithstanding that a duty may properly be imposed after balancing the *Rowland*
6 factors, "[i]n some instances, our Supreme Court has engaged in a duty analysis under both [the
7 *Rowland* and special relationship] standards." *Adams*, 68 Cal.App.4th at 267. A duty may arise
8 "if (a) a special relation exists between the actor and the third person which imposes a duty upon
9 the actor to control the third person's conduct, or (b) a special relation exists between the actor
10 and the other which gives the other a right to protection." RESTATEMENT (SECOND) OF
11 TORTS § 315; see also *Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 203. As
12 discussed herein, Defendants owed a duty to Dorman under the policy-driven *Rowland* analysis,
13 as well as due to the existence of special relationships between Linda Vista and Campos, and
14 Watchtower and Campos.

15 **1. The special relationship between Linda Vista and Campos gives rise**
16 **to a duty to protect Plaintiff**

17 A duty to protect Plaintiff from foreseeable injury caused by Campos is created by Linda
18 Vista and Watchtower's special relationships with Campos. Restatement (Second) of Torts §
19 317 provides that:

20 "A master is under a duty to exercise reasonable care so as to control his servant while
21 acting outside the scope of his employment as to prevent him from intentionally harming
22 others or from so conducting himself as to create an unreasonable risk of bodily harm to
23 them, if (b) the master (i) knows or has reason to know that he has the ability to control
24 his servant, and (ii) knows or should know of the necessity and opportunity for exercising
25 such control."

26 **i. Linda Vista and Watchtower knew they had the ability to**
27 **control Campos' actions**

28 Campos was a Baptized Publisher (ordained minister) in Linda Vista since 1980, and was
a Pioneer with Linda Vista after the first known accusation of sexual abuse in 1982. As
discussed more fully above, and in Plaintiff's Exhibits, Linda Vista knew that it had the ability to

1 monitor, regulate and impose punishment for Campos' conduct. (PUMF 39-44.) In 1982, Linda
2 Vista counseled Campos after the first accusation. Linda Vista had the ability to control Campos.
3 Watchtower had an identical opportunity to control Campos. Since the Elders at Linda Vista
4 were agents of Watchtower, Defendant had every opportunity to utilize its agents to impose
5 restrictions on Campos, expel him from the congregation, report him to the police, or issue a
6 warning to the congregation. Watchtower is liable for the negligence of its agents, the Elders of
7 Linda Vista.

8 **ii. Linda Vista and Watchtower knew it was necessary to exercise**
9 **control over Campos to prevent others from being injured**

10 Linda Vista was twice informed of Campos' dangerous propensity to molest children
11 (PUMF 39-44) while both Campos and Dorman were associated with Linda Vista. The first
12 accusation of wrongdoing in 1982 preceded the molestation of Dorman. Linda Vista Elder
13 Justino Diaz knew in 1982 that Campos' conduct was criminal and that he might repeat it.
14 (PUMF 49.) Dorman was not abused until after this complaint and inaction. (PUMF 100.) Linda
15 Vista undoubtedly knew that it was necessary to exercise control over Campos.

16 "As a general rule, an agent has a duty to disclose material matters to his or her principal,
17 and the actual knowledge of the agent is imputed to the principal." Civ. Code § 2332. Here, the
18 Elders of Linda Vista were agents of Watchtower (PUMF 5) who had actual knowledge of
19 Campos' molestation of a boy prior to the molestation of Dorman. (PUMFS 39-44.) This
20 knowledge is imputed to Watchtower, so it is evident that Watchtower also had knowledge of the
21 need to exercise control over Campos to prevent others from being molested.

22 Because Linda Vista and Watchtower each knew it had the ability to control Campos'
23 actions, and that it was necessary for Linda Vista and Watchtower to exercise that control to
24 prevent children from being sexually abused, Linda Vista and Watchtower were each in a special
25 relationship with Campos that creates a duty of care to the Plaintiff under Restatement (Second)
26 of Torts Sections 315 and 317.

1 2. **Linda Vista and Watchtower owed special duties to investigate due to**
2 **their knowledge of Campos' propensity to harm others**

3 A principal can be held negligent for failure to protect against the criminal actions of their
4 agents, if such actions were foreseeable. The essential focus in such cases is whether the
5 defendant knew or had reason to know of their agent's dangerous propensity and thereafter failed
6 to take reasonable steps to prevent that harm. *See Evan F. v. Hughson United Methodist Church*
7 (1992) 8 Cal.App.4th 828, 836.

8 In *Evan F.*, the perpetrator was accused in 1971 of sexually abusing a 13 year-old boy
9 while working as a Methodist minister. *Id.* at 831. In 1977, the perpetrator began working at the
10 defendant church. *Id.* at 832. Around 1982, the church hired the perpetrator as its new pastor.
11 *Id.* at 832. When the perpetrator was hired, the hiring committee knew there was some difficulty
12 with the perpetrator's reappointment and understood he had been on sabbatical of some kind. *Id.*
13 at 843. The hiring committee did not perform any investigation into his prior employment. *Id.*
14 In 1985, the perpetrator sexually molested the plaintiff. *Id.* The Appellate Court held there were
15 triable issues of fact regarding whether the Church had reason to believe the perpetrator was unfit
16 or whether the Church failed to use reasonable care in investigating him. *Id.* at 843.

17 The *Evan F.* court relied on Restatement (Second) of Agency § 213, which provides: "A
18 person conducting an activity through servants or other agents is subject to liability for harm
19 resulting from his conduct if he is negligent or reckless . . . in the employment of improper
20 persons or instrumentalities in work involving risk of harm to others." *Id.* at 836. The court
21 specifically focused on Comment d to section 213 which states:

22 "The principal may be negligent because he has reason to know that the servant or
23 other agent, because of his qualities, is likely to harm others in view of the work
24 or instrumentalities entrusted to him. An agent, although otherwise competent,
25 may be incompetent because of his reckless or vicious disposition, and if a
26 principal, without exercising due care in selection, employs a vicious person to do
27 an act which necessarily brings him in contact with others while in the
28 performance of a duty, he is subject to liability for harm caused by the vicious
propensity. If liability results it is because, under the circumstances, the employer
has not taken the care which a prudent man would take in selecting the person for
the business at hand. If ...the work is likely to subject third persons to serious risk
of great harm, there is a special duty of investigation. Liability results under the

1 rule stated in this Section, not because of the relation of the parties, but because
2 the employer antecedently had reason to believe that an undue risk of harm would
3 exist because of the employment.” *Id.* at 842.

4 Linda Vista and Watchtower were aware through the Elders at Linda Vista, of Campos’
5 sexual abuse of minors in 1982. (PUMFS 5, 39-44.) Linda Vista and Watchtower knew that
6 Campos would continue to come into contact with children in his work as their agent. Linda
7 Vista and Watchtower therefore owed a special duty of investigation under Restatement (Second)
8 of Agency § 213.

9 **3. Linda Vista is Not Released of its Negligence Liability Simply Because
10 the Molestations did not Take Place on Church Grounds**

11 Linda Vista argues that it owed no duty to Dorman because the molestation occurred in
12 connection with Campos’ independent landscaping business, not during any Linda Vista church
13 activity and not on the Linda Vista premises. A similar factual circumstance resulted in the
14 reversal of a grant of summary judgment in *Evan F. v. Hughson United Methodist Church* (1992)
15 8 Cal.App.4th 828, 834:

16 “Murphy was Evan’s Sunday school teacher in 1985 and 1986. Evan and his younger
17 brother, Eren, were often the only students in this class. On several occasions in class,
18 Murphy discussed sex with the boys. Around the fall of 1985, when Evan had just turned
19 13 years old, Murphy invited Evan and Eren to his home one several occasions. On two
20 separate occasions, after giving Evan wine and having him sit nude in a hot tub, Murphy
21 orally copulated Evan while Eren watched television inside the house.” *Id.* at 833.

22 In *Evan F.*, there was no evidence that the abuse occurred in connection with a church-
23 related function, but the court nonetheless found that the church owed the plaintiff a duty. The
24 logic is undeniable, the relationship between the abuser and the victim was built at the church.
25 The fact that the abuser happened to exploit his authority off the premises should not insulate the
26 defendant from responsibility for its negligence.

27 Similarly, John met Campos through Linda Vista (PUMF 94); John was placed into
28 Campos’ car for Field Service by agents of Linda Vista (PUMF 97); Campos directed John
during Field Service and sometimes knocked on doors with John (PUMF 98); Campos also
taught John Bible Study. (PUMF 99.) In short, Campos’ relationship with John was built

1 through Linda Vista. As in *Evan F.*, the fact the abuser ultimately exploited that trust and
2 authority away from the church premises should not insulate Linda Vista from liability. To hold
3 otherwise is to endorse a rule where, as long as the abuser takes his victims away from the
4 Church grounds, no liability can ever attach, no matter how culpable the principal's behavior.

5 **VII. CONCLUSION**

6 Triable issues of fact exist as to whether Campos was a Pioneer or a Publisher at the time
7 of the molestation of Dorman. In addition, regardless of the position held by Campos at the time
8 of the molestation, a triable issue of fact exists as to Campos' agency with Defendants. Finally, a
9 triable issue of fact exists as to whether Defendants' ratified Campos' sexual abuse of children.
10 In light of these factual questions, summary judgment is improper and Defendants' motions
11 should be denied.

12 Respectfully submitted,

13 THE ZALKIN LAW FIRM, P.C.

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15 Dated: 12-2-11

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17 Devin M. Storey
18 Attorney for Plaintiffs
19 John Dorman and Joel Gamboa

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PROOF OF SERVICE

Irwin M. Zalkin, Esq. SBN 89957
Devin M. Storey, Esq. SBN 234271
Michael J. Kinslow, Esq. SBN 238310
THE ZALKIN LAW FIRM, P.C.
12555 High Bluff Drive, Suite 260
San Diego, California 92130
Telephone (858) 259-3011
Facsimile: (858) 259-3015
Attorney for Plaintiffs

I, Lisa E. Maynes, am employed in the city and county of San Diego, State of California. I am over the age of 18 and no a party to the action; my business address is 12555 High Bluff Drive, Suite 260, San Diego, CA 92130.

On December 2, 2011, I caused to be served:

1. **PLAINTIFF JOHN DORMAN'S OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**
2. **PLAINTIFF JOEL GAMBOA'S OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**
3. **DECLARATION OF DEVIN M. STOREY IN SUPPORT OF PLAINTIFFS' OPPOSITIONS TO THE THREE MOTIONS FOR SUMMARY JUDGMENT OF DEFENDANTS**
4. **PLAINTIFFS' RESPONSE TO DEFENDANT PLAYA PACIFICA SPANISH CONGREGATION'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS; AND PLAINTIFFS' SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF THEIR OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
5. **PLAINTIFFS' RESPONSE TO DEFENDANT DOE 2 LINDA VISTA SPANISH CONGREGATION'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS; AND PLAINTIFFS' SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF THEIR OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
6. **PLAINTIFFS' RESPONSE TO DEFENDANT WATCHTOWER'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS; AND PLAINTIFFS' SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF THEIR OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
7. **PLAINTIFF JOHN DORMAN'S NOTICE OF LODGMENT IN SUPPORT OF HIS OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**
8. **PLAINTIFF JOEL GAMBOA'S NOTICE OF LODGMENT IN SUPPORT OF HIS OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

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in this action by placing a true and correct copy of said documents(s) in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

(BY MAIL) I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Diego, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

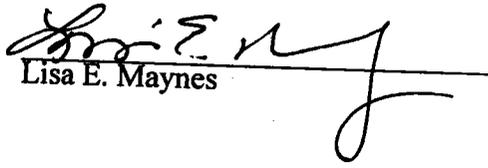
(BY PERSON SERVICE) By causing to be delivered by hand to the offices of the addressee(s).

(BY OVERNIGHT DELIVERY) By sending by Federal Express to the addressee(s) as indicated on the attached list.

(BY FAX) I caused to be transmitted to the above-described document by facsimile machine to the fax number(s) as shown. The transmission was reported as complete and without error. (Service by Facsimile Transmission to those parties on the attached List with fax numbers indicated.)

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

Dated: 12-2-11


Lisa E. Maynes