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Electronically Filed
FIRST CIRCUIT
1CCV-20-0000390
29-DEC-2020
09:44 AM
Dkt. 115 RPTS

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MAKAHA CONGREGATION OF JEHOVAH'S
WITNESSES, HAWAII and WATCHTOWER BIBLE
AND TRACT SOCIETY OF NEW YORK, INC.

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;
KENNETH L. APANA, Individually; and
Does 1 through 100, inclusive,

Defendants.

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

DEFENDANTS/CROSSCLAIMANTS
MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES, HAWAII and
WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC.'S
RESPONSIVE PRETRIAL STATEMENT;
CERTIFICATE OF SERVICE

JUDGE: Honorable Dean E. Ochiai
No Trial Date Set

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; and
WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC., a New
York corporation,

Crossclaimants,

vs.

KENNETH L. APANA, Individually,

Crossclaim Defendant.

**DEFENDANTS/CROSSCLAIMANTS MAKAHA CONGREGATION
OF JEHOVAH’S WITNESSES, HAWAII and WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW YORK, INC.’S
RESPONSIVE PRETRIAL STATEMENT**

Defendants/Crossclaimants MAKAHA CONGREGATION OF JEHOVAH’S
WITNESSES, HAWAII (“**MCJW**”) and WATCHTOWER BIBLE AND TRACT SOCIETY OF
NEW YORK, INC. (“**WTNY**”, together with MCJW, the “**Religious Defendants**”), by and
through their attorneys, Dentons US LLP, hereby submit their Responsive Pretrial Statement
pursuant to Rules 12(b) and 12(h) of the Rules of the Circuit Courts of the State of Hawai‘i.

A. STATEMENT OF FACTS

Plaintiff N.D. (“Plaintiff”) filed a Complaint on March 10, 2020 against Religious
Defendants, Defendant/Crossclaim Defendant Kenneth L. Apana (“Apana”), and Christin

Congregation of Jehovah's Witnesses ("CCJSW"),¹ with claims Apana sexually abused the Plaintiff during sleepovers as a guest of Apana's daughter, at Apana's residence that occurred in or about 1992.

Plaintiff also alleges the Religious Defendants were aware of the sexual abuse by Apana, an Elder with MCJW, of a separate victim prior to Plaintiff's incident and the sexual abuse of Apana's own daughters. Plaintiff further alleges other MCJW Elders told her parents that they would not support Plaintiff if she reported Apana's conduct to local law enforcement. She alleges that due to the hierarchy of the Religious Defendants and the role of the MCJW in Plaintiff's life and community, the intimidation imposed in the "shepherding call" and alleged threats to remove Plaintiff from MCJW, Plaintiff did not report Apana's sexual abuse to Hawai'i Child Protective Services, Honolulu Police Department, or seek immediate medical treatment or counseling.

Plaintiff's claims include: (1) sexual assault/aiding and abetting sexual assault; (2) gross negligence; (3) hindering prosecution; (4) intentional infliction of emotional distress; (5) grossly negligent infliction of emotional distress; (6) and gross negligence supervision of perpetrator. Religious Defendants deny these allegations. Religious Defendants also deny all of Plaintiff's claims as stated against them, and served a third party complaint against Apana.

B. ADMITTED FACTS

The Religious Defendants admitted in its Answer filed August 6, 2020, that:

1. MCJW admits that it is an unincorporated religious association and that it operates in Waianae, Hawai'i.

¹ CCJSW was dismissed by Stipulation filed July 30, 2020.

2. WTNY admits that it is a New York corporation, with its principal place of business in the State of New York.
3. Religious Defendants admit only that Apana formerly served as an elder in MCJW.
4. WTNY admits that it has published materials for elders.
5. WTNY admits to previously providing letters addressed to All Bodies of Elders on a broad spectrum of topics.
6. WTNY admits that prior to 2001 it communicated appointments of elders and ministerial servants.
7. WTNY admits sending a letter to All Bodies of Elders in 1989.

C. CLAIMS AND DEFENSES

Plaintiff claims include sexual assault/aiding and abetting sexual assault, gross negligence, hindering prosecution, intentional infliction of emotional distress, grossly negligent infliction of emotional distress, and gross negligence supervision of perpetrator.

Religious Defendants' defenses:

1. The Complaint fails to state a claim against Religious Defendants on which relief can be granted.
2. The Complaint, and each cause of action therein, is barred by the First Amendment to the U.S. Constitution and/or Article I, Section 4 of Hawai'i State Constitution.
3. The Complaint, and each cause of action thereof, characterizes church hierarchy, doctrine, policy, and practices to establish a foundational basis for liability in violation of federal and state constitutional proscriptions.

4. The Complaint, and each cause of action thereof, improperly blurs the existence of distinct legal entities to conflate their existence into a single religious entity in violation of the First and Fourteenth Amendments to the United States Constitution.

5. The claim for punitive damages violates the Religious Defendants' right to due process and equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and/or Article 1, Section 5 (due process and equal protection) of the Hawai'i State Constitution in that no provision of Hawai'i law provides an adequate or meaningful standard for determining the nature of the conduct upon which an award of punitive damages may be based or for determining or reviewing the amount of punitive damages awarded; and no provision of Hawai'i law adequately requires safeguards against the imposition of punitive damages in that (a) Article 1, Section 10 of the Hawai'i Constitution (defendant's privilege against self-incrimination) only applies to criminal actions and (b) HRS § 635–20 allows for less than a unanimous jury verdict as to the punitive damages portion of an adverse judgment.

6. The imposition of punitive damages in this case would violate the Commerce Clause of the United States Constitution.

7. The imposition of punitive damages in this case would violate the First, Fifth, Sixth, Eighth and/or Fourteenth Amendments to the United States Constitution.

8. With respect to the claim for punitive damages, the Religious Defendants specifically incorporate by reference all standards of limitations regarding the determination and enforceability of punitive damages awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408 (2003); *Williams v. Phillip Morris*, 549 U.S. 336 (2007); and *Exxon Shipping Co. v. Baker*, 554 U.S. 471 (2008).

9. Plaintiff has not pleaded or proved sufficient facts to support an award of punitive damages against the Religious Defendants under applicable law, including but not limited to the failure to plead and prove conduct by an officer, director, or managing agent of the Religious Defendants that would entitle her to recover punitive damages against them.

10. If, and only if, Plaintiff's allegations are accurate, then the Religious Defendants assert their entitlement to an apportionment of fault by the trier of fact between any person (legal or natural) to whom apportionment of fault may be made under statutory and common law principles.

11. Some or all of Plaintiff's claims are barred by HRS § 657-1.8 and other applicable laws, rules, statutes, or regulations controlling or requiring the institution of suit within a certain period following its accrual. Additionally, Plaintiff failed to comply with rules relating to Plaintiff's alleged costs; accordingly, Plaintiff's claims are barred as a matter of law.

12. Plaintiff's claims are barred, in whole or in part, by reason of laches, estoppel, waiver, consent, unclean hands, res judicata, and/or other equitable defenses.

13. Plaintiff's claims against the Religious Defendants are barred as a matter of law because the "person who committed the [alleged] act[s] of sexual abuse against the victim was [not] employed by" the Religious Defendants, as required under HRS § 657-1.8(b).

14. Religious Defendants had no duty and/or breached no duty to Plaintiff.

15. Plaintiff's claims against the Religious Defendants are barred as a matter of law because the Plaintiff and alleged perpetrator were not "engaged in an activity over which the legal entity had a degree of responsibility or control, as required under HRS § 657-1.8(b).

16. Plaintiff's claims are barred by the doctrine of Charitable Immunity.

17. Plaintiff's claims are barred for lack of personal jurisdiction over WTNY.

18. The acts or omissions of third parties, individuals, or entities for which the Religious Defendants have no responsibility, either directly or indirectly, whether or not presently named parties to this action, were the sole, intervening, or contributing cause of Plaintiff's claimed damages, if there are any. Such acts or omissions bar and/or proportionately reduce recovery, if any, by Plaintiff against the Religious Defendants.

19. Plaintiff has failed to join all necessary and indispensable persons for a full and just adjudication of the purported causes of action asserted in the Complaint.

20. HRS § 657-1.8 does not permit a private right of action for aiding and abetting sexual assault. And no such action exists under common law or any other law. Plaintiff therefore does not have standing to bring a cause of action against the Religious Defendants. The Court lacks subject matter jurisdiction over such claims for the same reason.

21. HRS § 657-1.8 provides for a private right of action for sexual abuse of a minor "based upon sexual acts that constituted or would have constituted a criminal offense under part V or VI of [HRS] chapter 707." HRS §§ 710-1039 and 710-1030 do not fall under part V or VI of chapter 707. Plaintiff therefore does not have standing to bring a cause of action against the Religious Defendants under HRS § 657-1.8. The Court lacks subject matter jurisdiction over such claims for the same reason.

22. HRS §§ 710-1039 and 710-1030 are criminal statutes, and do permit a private right of action for hindrance of prosecution and/or aiding and abetting the hindrance of prosecution. Plaintiff therefore does not have standing to bring a cause of action against Religious Defendants under HRS §§ 710-1039 or 710-1030. The Court lacks subject matter jurisdiction over such claims for the same reason.

23. Based on the allegations in the Complaint, Religious Defendants cannot formulate all of its defenses at this time but expressly reserve the right to assert any additional affirmative defenses and defenses as may appear applicable during the course of this litigation. Religious Defendants intend to rely on any and all other affirmative defenses, including but not limited to, the affirmative defenses set forth in HRCF Rule 8(c), the applicability of which may be disclosed through discovery and investigation.

24. Based on the allegations in the Complaint, Religious Defendants cannot formulate all of their defenses at this time, but reserves the right to amend their answer to include additional affirmative defenses if and when discovery justifies.

These defenses will be supported by evidence in the form of 1) testimony of lay and expert witnesses; 2) documents, including medical records, medical articles/treatises and deposition transcripts; and 3) demonstrative evidence.

D. LAY AND PHYSICIAN WITNESSES

Religious Defendants reserve the right to call the following lay witnesses to testify regarding liability, causation and damages at trial. Treating physicians and other health care professionals may testify as both lay witnesses and expert witnesses, to the extent allowed and as their testimony is set forth in their depositions.

	Witness	Testimony
1.	Plaintiff N.D. c/o Davis Levin Livingston 851 Fort Street, Suite 400 Honolulu, Hawai`i 96813	Plaintiff will testify regarding liability and damages.

	Witness	Testimony
2.	L.M. c/o Davis Levin Livingston 851 Fort Street, Suite 400 Honolulu, Hawai`i 96813	L.M. is Plaintiff's cousin and will testify about incidents in which she was the victim of sexual abuse, her knowledge of the Defendants and their conduct and the damages N.D. has suffered.
3.	Harvey Mendoza, Jr. c/o Davis Levin Livingston 851 Fort Street, Suite 400 Honolulu, Hawai`i 96813	Mr. Mendoza is Plaintiff's cousin and will testify about his knowledge of the Defendants and their conduct and the damages N.D. has suffered.
4.	Norene Mendoza c/o Davis Levin Livingston 851 Fort Street, Suite 400 Honolulu, Hawai`i 96813	Ms. Mendoza is L.M.'s mother and will testify about L.M.'s sexual abuse, N.D.'s sexual abuse, her knowledge of the Defendants and their conduct and the damages N.D. has suffered.
5.	Sharon Miyake c/o Davis Levin Livingston 851 Fort Street, Suite 400 Honolulu, HI 96813	Ms. Miyake is N.D.'s mother and will testify about N.D.'s sexual abuse, her knowledge of the Defendants and their conduct, and the damages N.D. has suffered.
6.	Milton Miyake c/o Davis Levin Livingston 851 Fort Street, Suite 400 Honolulu, HI 96813	Mr. Milton Miyake is N.D.'s father and will testify about N.D.'s sexual abuse, his knowledge of the Defendants and their conduct, and the damages N.D. has suffered.
7.	Mathew Miyake c/o Davis Levin Livingston 851 Fort Street, Suite 400 Honolulu, HI 96813	Mr. Mathew Miyake is N.D.'s brother and will testify about the damages N.D. has suffered.
8.	Mandy Miyake c/o Davis Levin Livingston 851 Fort Street, Suite 400 Honolulu, HI 96813	Ms. Mandy Miyake is N.D.'s sister and will testify about the damages N.D. has suffered.

	Witness	Testimony
9.	Shanna Apana Address Unknown	Ms. Shanna Apana is Defendant Kenneth Apana's daughter and will testify about her knowledge of N.D.'s sexual abuse, the conduct of the Defendants, and her own suspected sexual abuse.
10.	Sabrina Graciidis 73-4339 Papaana Place Kailua-Kona, HI 96740	Ms. Sabrina Graciidis is Defendant Kenneth Apana's daughter and will testify about her knowledge of N.D.'s sexual abuse and the conduct of the Defendants.
11.	Defendant Kenneth Apana P.O. Box 331 Kona, HI 96745	Defendant Kenneth Apana will testify about his sexual abuse of N.D., L.M. and his own children. He will testify about his status/position within Makaha Kingdom Hall as a church elder. He will testify about the actions taken by Defendant Makaha Kingdom Hall and Defendant Watchtower regarding his conduct and any disciplinary actions taken.
12.	Philip Main c/o Dentons US LLP Suite 1800, ASB Tower 1001 Bishop Street Honolulu, Hawaii 96813	Makaha Kingdom Hall elder. Will testify regarding sexual abuse allegations by church members, L.M., N.D., or any family members of L.M. or N.D. Will also testify regarding Apana, including his role as an elder at Makaha Kingdom Hall and any and all investigations and/or disciplinary actions against him taken by Religious Defendants.
13.	Harriet Cuarisma c/o Dentons US LLP Suite 1800, ASB Tower 1001 Bishop Street Honolulu, Hawaii 96813	Makaha Kingdom Hall member. Will testify regarding sexual abuse allegations by church members, L.M., N.D., or any family members of L.M. or N.D. Will also testify regarding Apana, including his role as an elder at Makaha Kingdom Hall and any and all investigations and/or disciplinary actions against him taken by Religious Defendants.

	Witness	Testimony
14.	Representative(s) and/or employee(s) of Makaha Congregation of Jehovah's Witnesses, Hawaii c/o Dentons US LLP Suite 1800, ASB Tower 1001 Bishop Street Honolulu, Hawaii 96813	Will testify regarding Makaha Kingdom Hall's standard policies and procedures in place at the time of N.D.'s incidents regarding sexual abuse of Makaha Kingdom Hall members.
15.	Representative(s) and/or employee(s) of Watchtower Bible and Tract Society of New York, Inc. c/o Dentons US LLP Suite 1800, ASB Tower 1001 Bishop Street Honolulu, Hawaii 96813	Will testify regarding Watchtower's standard policies and procedures in place at the time of N.D.'s incidents regarding sexual abuse of various Makaha Kingdom Hall members.
16.	Margaret Kitchell, MD Carole H. Crew, MA LMFT, CMHS Gayle M. Forslund, MSW, LSW, CMHS c/o Compass Health 4526 Federal Everett, WA 98203	Will testify as to liability and damages including but not limited to Plaintiff's mental health history and the costs of the treatment provided.
17.	Carolyn Freed, MD Contact information unknown	Will testify as to liability and damages including but not limited to Plaintiff's mental health history and the costs of the treatment provided.
18.	Jessica Webb, ARNP Gregory Lind, ARNP Kristi Farrell, ARNP c/o Western Washington Medical Group Lake Serene Clinic 3501 Shelby Rd., Suite B Lynnwood, WA 98087	Will testify as to liability and damages including but not limited to Plaintiff's mental health history and the costs of the treatment provided.
19.	Marcia Herivel, LICSW Roanoke Park Counseling 2601 Broadway East Seattle, WA 98102	Will testify as to liability and damages including but not limited to Plaintiff's mental health history and the costs of the treatment provided.

	Witness	Testimony
20.	Karen Gunther, MD John Bruels, MSW Sophia Bixler, RN Stephanie Newton, RN c/o Swedish Hospital, First Hill 747 Broadway Seattle, WA 98122	Will testify as to liability and damages including but not limited to Plaintiff's mental health history and the costs of the treatment provided.
21.	Edmonds Family Medicine Rachel Hollister, MD 7315 212th St. SW #203 Edmonds, WA 98026	Will testify as to liability and damages including but not limited to Plaintiff's mental health history and the costs of the treatment provided.
22.	Custodian of Records for Makaha Congregation of Jehovah's Witnesses, Hawai'i c/o Dentons US LLP Suite 1800, ASB Tower 1001 Bishop Street Honolulu, Hawaii 96813	Will identify and testify as to the authenticity records.
23.	Custodian of Records for Watchtower Bible and Tract Society of New York, Inc. c/o Dentons US LLP Suite 1800, ASB Tower 1001 Bishop Street Honolulu, Hawaii 96813	Will identify and testify as to the authenticity records.
24.	Custodian of Records for Compass Health 3322 Broadway Everett, WA 98201	Will identify and testify as to the authenticity records.
25.	Custodian of Records for Carolyn Freed, MD Contact information unknown	Will identify and testify as to the authenticity records.
26.	Custodian of Records for Western Washington Medical Group Lake Serene Clinic 3501 Shelby Rd., Suite B Lynnwood, WA 98087	Will identify and testify as to the authenticity records.

	Witness	Testimony
27.	Custodian of Records for Roanoke Park Counseling 2601 Broadway East Seattle, WA 98102	Will identify and testify as to the authenticity records.
28.	Custodian of Records for Swedish Hospital, First Hill 747 Broadway Seattle, WA 98122	Will identify and testify as to the authenticity records.
29.	Custodian of Records for Edmonds Family Medicine 7315 212th St. SW #203 Edmonds, WA 98026	Will identify and testify as to the authenticity records.

Religious Defendants reserve the right to call any foundation witnesses that are deemed necessary to the presentation of their case.

Religious Defendants reserve the right to call all other witnesses listed by any party in their Pretrial Statement, Settlement Conference Statements, Final Naming of Witnesses, discovery responses, depositions, pleadings and any amendments or supplements thereto.

Religious Defendants reserve the right to call any custodian of records and rebuttal non-expert witnesses that are deemed necessary to the presentation of their case.

Religious Defendants reserve the right to name and/or call non-expert witnesses whose identities may be revealed through further discovery or investigation.

E. EXPERT WITNESSES

Decisions as to experts have not yet been made. Investigation and discovery is ongoing. Religious Defendants therefore reserve the right to identify and call one or more experts to testify concerning the matters at issue.

Religious Defendants reserve the right to name additional experts whose identities may be identified through further investigation and discovery, and any and all expert rebuttal witnesses as deemed necessary.

Religious Defendants reserve the right to name and call expert witnesses designated by any party in their Pretrial Statement, Final Naming of Witnesses, discovery responses, depositions, other pleadings and any amendments or supplements thereto.

Treating healthcare providers may be called as expert witnesses, and offer opinions relating to Plaintiff's diagnosis, prognosis and causation of condition, relation of such to the occurrence, medical expenses incurred and other related matters.

F. MEETING OF THE PARTIES

Counsel for the parties are working on scheduling a meet and confer via telephone or zoom (due to the COVID-19 pandemic) and anticipate making a good faith attempt to address disputed issues, including outstanding discovery, and to consider the feasibility of settlement.

G. ALTERNATIVE DISPUTE RESOLUTION

Religious Defendants have no objection to alternative dispute resolution, through mediation or a settlement conference, if all parties participate in good faith.

DATED: Honolulu, Hawai'i, December 29, 2020.

/s/ Jenny J.N.A. Nakamoto
WILLIAM S. HUNT
JENNY J.N.A. NAKAMOTO

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date the foregoing document was served on the following parties listed below by electronic service through the JEFS E-Filing System:

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The undersigned further certifies that on this date the foregoing document was served on the following parties listed below by U.S. mail, postage prepaid:

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Pro Se Defendant/Crossclaim Defendant

DATED: Honolulu, Hawai'i, December 29, 2020.

/s/ Jenny J.N.A. Nakamoto
WILLIAM S. HUNT
JENNY J.N.A. NAKAMOTO

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