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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
(Non-Motor Vehicle Tort)

**PLAINTIFF'S MOTION FOR DEFAULT
JUDGMENT AGAINST DEFENDANT
KENNETH APANA; MEMORANDUM IN
SUPPORT OF MOTION; DECLARATION
OF MARK S. DAVIS; EXHIBITS 1 - 6;
NOTICE OF REMOTE HEARING OF
MOTION; AND CERTIFICATE OF
SERVICE**

Hearing:

Date : June 7, 2023

Time : 8:45 a.m.

Judge : Hon. Dean E. Ochiai

Trial: February 21, 2023

Judge: Honorable Dean E. Ochiai

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.

**PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT
AGAINST DEFENDANT KENNETH APANA**

Plaintiff above-named, by and through her attorneys, DAVIS LEVIN LIVINGSTON and THE LAW OFFICES OF JAMES S. ROGERS, moves this Honorable Court to order a default judgment against Defendant Kenneth L. Apana.

This Motion is made pursuant to Rules 7 and 55 of the Hawaii Rules of Civil Procedure and Rules 7 of the Hawaii Rules of the Circuit Courts.

DATED: Honolulu, Hawai‘i. May 10, 2023.

/s/ Mark S. Davis
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Attorneys for Plaintiff

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STATE OF HAWAII

N.D.,

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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
(Non-Motor Vehicle Tort)

**MEMORANDUM IN SUPPORT OF
MOTION**

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.

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**PLAINTIFF’S MEMORANDUM IN SUPPORT OF MOTION FOR
DEFAULT JUDGMENT AGAINST DEFENDANT KENNETH L. APANA**

I. INTRODUCTION

Discovery in this case reveals that Defendant Kenneth L. Apana (“Apana”) repeatedly sexually assaulted young girls—aged 12 to 18—from 1988 to 2011. Plaintiff was one of these survivors. During his deposition in this case, while under oath, Apana confessed to sexually molesting these young girls. This memo outlines the timeline and evidence submitted to support the damages award. Should the Court order a hearing, Plaintiff will submit a video deposition with regard to the damages she suffered.

In 1992, Apana, then 48 years old, was serving as an Elder in the Jehovah’s Witnesses organization. This title bestowed upon him respect and trust by the members of his community. According to Jehovah’s Witnesses theology, the Elder is entrusted by God with this role “to shepherd the congregation of God.” (Acts 20:28).

In his capacity as a trusted religious leader, Apana repeatedly preyed upon young girls who viewed him as a moral and spiritual guide. Worse yet, Apana frequently attacked these young girls in his home. Plaintiff was one of these girls. Apana confessed to sexually assaulting Plaintiff—then only 12 years old and just starting middle school—during repeated sleepovers at his house with his stepdaughter. Plaintiff’s parents, normally reserved about their young daughter staying at other’s homes, trusted Apana’s home because he was a respected religious and clergy leader in their community.

The true number of young girls Apana sexually exploited and raped will never be known. What is clear, however, is that he sexually assaulted several young girls before he was confronted by other Church Elders in late 1992. But even after the Church learned of Apana’s widespread sexual abuse, it only “punished” him by removing his Elder title. Undeterred by this slap on the

wrist, Apana continued his predatory behavior over the next two decades. His most recent *known* victim was a 13-year-old girl, who he molested in 2011. We will never know his unknown victims.

Until now, Apana has evaded any accountability for his actions and these survivors have never received justice. Plaintiff files the instant motion to ask this Court, and the civil justice system, to hold Apana accountable for his egregious misconduct and for destroying the lives of innocent children by punishing him through an indelible court order that adjudges him liable and awards substantial damages to Plaintiff.

II. RELEVANT PROCEDURAL HISTORY

The Complaint was filed on March 10, 2020. *See* Complaint. Apana, along with Makaha, Hawaii Congregation of Jehovah’s Witnesses (“Makaha”); Watchtower Bible and Tract Society of New York, Inc. (“Watchtower”); and Christian Congregation of Jehovah’s Witnesses (“Christian Congregation”) were named as defendants. *Id.*

Apana was served with the Complaint on April 7, 2020. *See* Return and Acknowledgment of Service, Dkt. #487. Partial Stipulation to Dismiss Parties, filed January 31, 2023, Dkt. #654, (“Defendant/Cross-claim Defendant Kenneth L. Apana (“Apana”) was served the Complaint but did not answer the Complaint”).

Makaha and Watchtower filed an Answer on August 6, 2020. *See* Answer. The parties stipulated to dismiss Christian Congregation from the case on July 24, 2020. *See* Stipulation for Partial Dismissal filed July 24, 2020,

Apana has never filed an Answer, but has occasionally appeared at hearings and depositions. *See* Dkt # 654 (Partial Stipulation to Dismiss).

The Court entered an Order of Default against Apana on October 17, 2022. Dkt #497.

Plaintiff dismissed her claims against Makaha and Watchtower by stipulation on January 31, 2023, after the parties reached a settlement. The Partial Stipulation for Dismissal and Order states:

3. Defendant/Cross-claim **Defendant Kenneth L. Apana (“Apana”)** was served the Complaint but did not answer the Complaint, file a motion for summary judgment, or otherwise defended against the Complaint. Apana was served the Religious Defendants’ Crossclaims filed on August 6, 2020 (“Crossclaim”) but Apana but did not answer, file a motion for summary judgment, or otherwise defended against the Crossclaim. On October 17, 2022 default was entered against Apana as to the Crossclaim.
.....
6. Plaintiff’s claims asserted in her Complaint against Apana are the only remaining claims.

See Dkt #654 (Partial Stipulation to Dismiss Parties, filed January 31, 2023) (emphasis added).

Defendant Apana remains a defaulted party to this case.

III. TIMELINE OF DEFENDANT APANA’S SEXUAL ABUSE OF CHILDREN WITH CITATIONS TO THE FACTUAL RECORD

Apana is a 78-year-old man who is currently living on the Big Island. Ex. 1, Apana Dep. at 8:16-20. Discovery, including Apana’s confessions under oath, reveal that he sexually molested minor girls for a period of at least 23 years (between 1988 and 2011). His first known victim is his own stepdaughter, who he began to sexually abuse in 1988 when she was just 14 years old. Other girl victims followed, including the then 12-year-old Plaintiff, who he raped and repeatedly abused in 1992 during sleepovers at his home. His last *known* 13-year-old victim was in 2011. At the time these young girls were sexually assaulted, Apana’s victims ranged in age from 12 to 18.

Apana primarily committed the sexual abuse in his Makaha home,¹ where he used sleepovers to lure and gain access to victims. During his deposition, Defendant Apana nonchalantly confessed to sexually assaulting four young girls: S.K., L.M., plaintiff, and N. Ex. 1, Apana Dep. at 92:2-22; 69:13-21. Many of these victims were members of the Makaha Hawaii Congregation of Jehovah's Witnesses, where Apana was a Church Elder. Defendant Apana has never been arrested or prosecuted for these crimes.

A. SEXUAL ASSAULTS OF APANA'S DAUGHTER S.K. – 1988-1992

Apana's first known act of sexually assaulting children was in 1988 or 89, when he began to repeatedly sexually abuse his 14-year-old stepdaughter S.K. Ex. 2, S.K. Dep. pp. 15:17-25; 16:1-16, 35:10-25, 36:1. He was 44 years old at the time. At her deposition, S.K. testified that Apana's sexual assaults occurred at night, when he would enter her bedroom while sometimes saying, "I want to fuck you, I want to fuck you." *Id.* at 39:3-7. His abuse included masturbating in front of her and touching her vagina. *Id.* at 37:12-25; 38:1, 4-17. Apana's predatory sexual abuse lasted for four years until S.K. turned 18 and left the family's home in 1992. *Id.* at 16:14-16; 41:21-25, 42:1.

-
- ¹ Q. Okay. Was any -- where was this -- when you touched her, you fondled or touched S[K.] and N[D.] and L[M.], where were you with that? Where were you? Where did that happen?
- A. In my home.
- Q. Where in your home?
- A. In the bedroom.
- Q. Was it at night?
- A. Yeah.
- Q. And L[M.], did you -- did you touch her vagina?
- A. With my feet.

Ex. 1, Apana Dep. at 29:14-25

S.K. reported Apana's abuse to the Elders of her Church around this time. Ex. 2, S.K. Dep. pp. 42:14-16, 24-25; 43:1-3.

In her deposition, S.K. described some of the sexual abuse she sustained:

Q. Would he masturbate to completion?

A. I don't know. I don't know. I just pretended to be sleeping, tried to block it out.

Q. You tried to what?

A. Just pretend it wasn't happening.

Q. To pretend it wasn't happening. Did he ever touch you?

A. Yes.

Q. Where did he touch you?

A. I can't say the word.

Q. I'm sorry, I didn't hear you?

A. He touched me in my private areas.

Q. Did he touch your vagina?

A. Yes.

Ex. 2, S.K. Dep. pp. 35-39.

During his deposition, Apana was asked about sexually assaulting S.K. He described his assaults as "horseplay," and stated that "he wrestled with her... slapped her on the butt." Ex. 1, Apana Dep. at 27:2-16, 27:24-25. When asked if he "touched his daughter's vagina," Apana admitted: "I believe I did that once. Yes." *Id.* at 28:1-4. Apana expressed no remorse and faced no legal consequences for his actions.

B. SEXUAL ASSAULTS OF L.M. – 1992

In 1992, S.K. learned that Apana had also been sexually abusing another young girl, L.M., during sleepovers at the Apana home. Ex. 2 S.K. Dep. at 11:12-22; 16:21-25; 17:1-8; 22:10-19. At her deposition, S.K. described what her father did to L.M.:

Q (Plaintiff's Counsel). Okay. What did L[M.] tell you happened?

A (S.K.). She said that, I guess, he touched her breasts and he made like he was just putting a blanket over her or something like that. I don't really remember, but something to that degree.

Id. at 17:1-8.

L.M.'s mother, who was also deposed, testified that L.M. told her that Apana had been "fondling her" and also peeked in the window while she and S.K. were getting dressed. Ex. 3, N. Mendoza Dep. p.13:17-18; 14:4-8. L.M.'s mother testified that she and L.M. reported Apana's sexual assaults to their Church Elders soon after S.K. came forward about her assaults. Ex. 3, N. Mendoza Dep. p. 17:16-25; 19:12-15.

At his deposition, Apana confessed to sexually abusing L.M. and having touched her vagina "with [his] feet." Ex. 1, Apana Dep. 26:8-23; 29:23-25.

Q (Plaintiff's Counsel). Yeah, I mean, I'm asking you, L[M.], a friend of your daughter's, did you sexually abuse her, and was that subject of a hearing later with -- judicial hearing?

A (Apana). Yeah.

Id. at 26:8-23. Again, Apana expressed no remorse and faced no legal consequences.

C. SEXUAL ASSAULT OF PLAINTIFF – 1992

Plaintiff testified during her recent deposition that she was raped by being penetrated digitally and repeatedly sexually assaulted by Apana during a series of sleepovers at his home,

beginning when she was twelve years old. Ex. 4, N.D. Dep. 4/13/23 at 6:11-18. She described the first time she was molested:

A (Plaintiff). He would come into the room, and he would hover over me, and he would -- I would wake up to him touching my bare skin and penetrating digital -- well, actually raping me with his hands -- his hands. And I would wake up, and he would just be over me. He wasn't on me, but he would be over me trying as much as he -- doing whatever he could at the time.

Q (Plaintiff's Counsel). So he penetrated your vagina with his hand; is that true?

A (Plaintiff). Yes.

Q (Plaintiff's Counsel). And touching your bare vagina area, correct?

A (Plaintiff). Yes, yes.

Q (Plaintiff's Counsel). And did this happen each time he sexually abused you?

A (Plaintiff). Yes.

Id. at 7:16-25 – 8:1-5.

Apana's molestation and rape of Plaintiff began in 1992 during sleepovers at Apana's home and "went on until – for about over – a little over a year." Ex. 4, N.D. Dep. at 8:20-21, *see also id.* at 8:22-23. Plaintiffs' parents trusted Apana due to his status as a church elder. Plaintiff's first sleepover lasted ten days due to her chicken pox exposure while Plaintiff's mother was pregnant. *Id.* at 9:9-16. Apana molested her every day during this ten-day stay. *Id.* at 9:17-22.

At his deposition, Apana again confessed but downplayed his assaults of Plaintiff:

Q (Plaintiff's Counsel). What did you do with [N.D.], under oath, what did you do?

A (Apana). Yeah. I rubbed her chest one time and I groped her over the blanket one time.

Q (Apana). When you say “groped,” what do you mean? What does that mean to you?

A (Apana). With my hand, I just -- I groped her over the blanket.

Ex. 1, Apana Dep. At 29:3-10.

D. SEXUAL ASSAULT OF N.D. – 2011

In 2011, Apana sexually assaulted a thirteen-year-old girl. At the time, Apana was 67 years old. He confessed to this assault during his deposition:

Q (Plaintiff’s Counsel). ...Were there four? There was N.[D.]. There was your daughter, S.[K.]. There - there was [L.M.]. And who was the fourth, ages 8 to 13?

A (Apana). Would be that girl in Kona, I guess.

Q (Plaintiff’s Counsel). And that -- okay. And that – that happened in what year?

A (Apana). 2011.

Q (Plaintiff’s Counsel). And what was her name?

A (Apana). N[]. I think it was N[] or N[] or -- yeah.

Q (Plaintiff’s Counsel). Okay. What was her last name?

A (Apana). Oh, I don't know the last name.

Q (Plaintiff’s Counsel). How old was she when you sexually molested her?

A (Apana). 13, I believe.

Q (Plaintiff’s Counsel). And how many times did you molest her?

A (Apana). Once.

Q (Plaintiff’s Counsel). What did you do? Did you touch her vagina?

A (Apana). I groped her one time.

Ex. 1, Apana Dep. At 92:2-22.

E. APANA’S LACK OF CONSEQUENCES TO DATE

To this day, Apana has not faced criminal charges or other consequences for these crimes.

At his deposition, Apana was asked if the authorities were ever informed of his crimes:

Q (Plaintiff’s Counsel)... The police, the legal authorities were never told that you sexually abused any of these four girls, right?

A (Apana). It seems -- it seems to be they wasn't told.

Q (Plaintiff’s Counsel). Seems to be they wasn't told?

A (Apana). Yeah, according to this letter.

Q (Plaintiff’s Counsel). It says, The community and authorities are not informed as far as we know.

A (Apana). Yeah.

Ex., Apana Dep. At 98:17-25 – 99:1.

IV. APANA’S STATE OF MIND REGARDING THE HARM TO HIS VICTIMS WITH CITATIONS TO THE RECORD

Apana has shown no remorse for the harms he inflicted on his victims. In the absence of consequences for his actions, Apana was emboldened to perpetuate his sexual abuse of young girls through at least 2011 that we know of. Until now, he has lived his life undeterred and without punishment.

During his deposition, Apana was asked about his sexual assaults, and whether he caused harm to his victims:

Q (Plaintiff’s Counsel). Were you concerned that you were hurting, damaging the lives of these young girls by what you did to them sexually?

A (Apana). At that time, no, but after the fact, yeah, kind of, yeah.

Ex. 1, Apana Dep. At 35:15-19. “Kind of” is the only expression of consciousness Apana has ever expressed regarding his decades-long, predatory sexual molestations of young girls.

V. LEGAL ANALYSIS

Hawaii Rule of Civil Procedure 55(b)(2) allows the Court to issue default judgment against a defendant upon application by a plaintiff. Once an application is made, Rule 55 allows the Court some leeway to decide how to determine damages, from the submission of evidence to ordering a hearing or trial:

If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute.

Id. Under Hawaii Revised Statutes § 636-15, a court shall accord a right of trial only “[i]f the taking of evidence is required or ordered and the matter is one which would have been tried before a jury had there been no default.” Haw. Rev. Stat. § 636-15.

Courts have discretion “to order proof of liability hearings before entering default judgment.” *Dela Cruz v. Quemado*, 141 Hawai‘i 338, 346, 409 P.3d 742, 750 (2018) (citing *Hupp v. Accessory Distribs., Inc.*, 1 Haw. App. 174, 179-80, 616 P.2d 233, 236-37 (1980), *abrogated on other grounds by Chen v. Mah*, 146 Hawai‘i 157, 457 P.3d 796 (2020)). “[I]n such a hearing, the nondefaulting party must adduce evidence which would be sufficient at trial to overcome a motion

for directed verdict.”² *Id.* (citing *Hupp*, 1 Haw. App. at 180, 616 P.2d at 237). A defendant against whom default is entered loses “standing to contest the facts of [his] liability” but retains “standing to contest the amounts of [his] liability.”³ *Occidental Underwriters of Hawaii, Ltd. v. Am. Sec. Bank*, 5 Haw. App. 431, 433, 696 P.2d 852, 854 (1985) (citations omitted).

While Plaintiff acknowledges the Court’s discretion to require a hearing for proof of liability, a determination on Apana’s liability can be easily made on the submissions, particularly where, as here, default precludes him from contesting the fact of his liability. There is compelling, reliable evidence, attached hereto, establishing Apana’s liability, including victim and witness deposition testimony; the depositions and written reports of Plaintiff’s expert witnesses; and Apana’s deposition testimony, in which he confesses to sexually abusing Plaintiff and three other young girls between 1988 and 2011. Indeed, the testimony of Apana’s victims, corroborated by his own admissions under oath, establish his despicable culpability.

Accordingly, the Court should find Apana liable on all claims asserted against him as a matter of law.

² A directed verdict “may be granted only when after disregarding conflicting evidence, giving to the plaintiff’s evidence all the value to which it is legally entitled, and indulging every legitimate inference which may be drawn from the evidence in plaintiff’s favor, it can be said that there is no evidence to support a jury verdict in his favor.” *Stewart v. Brennan*, 7 Haw. App. 136, 144, 748 P.2d 816, 822 (1988) (citations omitted). In other words, “whether a reasonable juror hearing this evidence could bring in a verdict in favor of [the plaintiff].” *Hupp*, 1 Haw. App. at 180, 616 P.2d at 237.

³ Because Apana has appeared on occasion during this case—without ever filing an Answer—Plaintiff will serve him with written notice of this motion. Haw. R. Civ. P. 55(b)(2) (“If the party against whom judgment by default is sought has appeared in the action, the party . . . shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application.”).

A. APANA IS LIABLE TO PLAINTIFF FOR ALL CLAIMS ASSERTED AGAINST HIM

1. APANA’S ACTS VIOLATE MULTIPLE CRIMINAL STATUTES

Had Apana been criminally prosecuted, he would have faced multiple Class A and B felony charges with lengthy prison sentences. In Hawaii, the sexual assault of a minor involving “penetration” is a class A felony if the minor is less than fourteen years old, or if the minor is less than sixteen provided the perpetrator is at least five years older than the victim. Haw. Rev. Stat. § 707-730. Hawaii law mandates a twenty-year term of imprisonment for a class A felony. Haw. Rev. Stat. § 706-659.

VI. DAMAGES

A. PLAINTIFF’S DAMAGES WITH CITATIONS TO TESTIMONY

Prior to N.D.’s repeated sexual assaults by Apana, N.D. looked to the adults in her life to protect her. This was especially true for the Church Elders who are considered clergy in the Church. Ex. 4, N.D. Dep. 4/13/23 at 6:6-8.

But at age 12, this was forever taken away from her. Since then, she has been living with the daily memories of her rapist and the profound effects his actions have had on her life.

Q (Plaintiff’s Counsel). Since then, Nicole, how often have you thought about what he did to you?

A (Plaintiff). There's not a day that goes by that I never not think about it. I live with it every day.

Q (Plaintiff’s Counsel). And when you think about it, what comes in your mind? What thoughts do you have?

A (Plaintiff). It's so much that I don't even know how to express it. The only thing that I can think of that I can say is it's inevitable. You know, like I don't -- I just -- there's loss, anger, just the injustice of it all and things that I can't get back.

Ex. 4, N.D. Dep. 4/13/23 at 10:5-15.

N.D. has a difficult time expressing her feelings, a challenge that continues to plague her today. N.D. felt completely alone and like no one could understand her. Instead of spending time with friends like other kids her age, N.D. had a hard time relating to and trusting others:

I don't trust anyone. It takes a lot for me to put myself out there, and I'm very guarded and hypervigilant with regard to my safety. And I don't -- it's sad, but I don't even trust my own family in a sense because I just don't know what would happen or if they would -- I just need to know that I need to protect myself. And I don't let a lot of people in. And if I do, it matters. It means something to me that - - and I won't -- I'm just very guarded. I don't let anybody in.

Id. at 12:17-25 – 13:1.

N.D. testified about her childhood:

I didn't really have one. It was like all -- after it happened it was just a blur. Like I was walking around hovering over myself and not -- I was in such -- when I look back, it was emotional turmoil that I just never knew what was going on. And I wasn't rebellious or anything, but I was confused and afraid. And I just didn't know who would protect me, so I just don't remember a lot. I -- it's just really a blur. I don't know what -- I don't know. I can't really recall a lot of it. It was just like going through the motions, just being -- whatever I was told I would do. That's just what it was like for me.

Id. at 13:20-25 – 14:1-6.

The effects of the sexual abuse have been profound and affect all areas of her life including professionally and socially. It is an ongoing factor in her meeting new people and pursuing a career. She has even resorted to cutting herself. *Id.* at p. 13:2-14.

N.D. has had to relive the feelings of humiliation and shame from when she was forced to stand before her rapist, Apana, as he “apologized” and also sitting next to him in Church services.

Ex. 4, N.D. Dep. 4/13/23 at 11:2-16. As N.D. described, it was like being victimized all over again

– that Apana knew he had gotten away with it. N.D.’s flashbacks have manifested indiscriminately at all times of the day and night.

Q (Plaintiff’s Counsel). Does it haunt you at different times of the day and night?

A (Plaintiff). Yeah, mostly at night.

Q (Plaintiff’s Counsel). And it affects your relationship with other people?

A (Plaintiff). Definitely.

Id. at 15:2-7. Asked pointedly whether Apana being held accountable would help in her healing, N.D. testified “yes,” “just having it acknowledged that he did this means a lot . . . it makes me feel weak.” Ex. 4, N.D. Dep. 4/13/23 at 14:13-23.

B. EXPERT OPINIONS REGARDING DAMAGES WITH CITATIONS TO THE FACTUAL RECORD

Plaintiff retained Dr. Jon Conte, Ph.D., who is a leading national expert on the effects of childhood sexual abuse. Dr. Conte is a Professor Emeritus in the School of Social Work at the University of Washington in Seattle, Washington and the Director of the Joshua Center on Child Sexual Abuse Prevention at the University. *See* Ex. 5, CV of Dr. Conte. As reflected in his CV, Dr. Conte has devoted nearly four decades to the study of childhood sexual abuse and has trained multidisciplinary audiences on various aspects of childhood sexual abuse. *Id.* Dr. Conte has also served on a Panel on Child Abuse and Neglect at the National Academy of Health, was the founding President of the American Professional Society on the Abuse of Children, was on the Board of Councilors of the International Society for the Prevention of Child Abuse and Neglect, and has served on state and local child abuse prevention committees in several states. *Id.*

For this case, Dr. Conte met with Plaintiff and conducted a series of forensic testing, including a detailed assessment of her posttraumatic stress and her symptoms which includes:

“unpleasant memories,” “images of [her] abuse,” “numbness,” “distrust of other people,” “depress[ion],” “ang[er],” “[being] overwhelmingly sad,” and “[being] anxious.” Ex. 6, Report of Dr. Conte at p. 3. Dr. Conte’s opinions, based on his forensic testing of Plaintiff, are articulated in his Report, which is attached as Ex. 6.

Dr. Conte’s report includes Plaintiff’s statements regarding Apana’s sexual assaults:

[Plaintiff] told me, consistent with her deposition testimony, that **she was sexually abused by an adult elder in her church while sleeping over at his home.** She dates the abuse by the birth of a sister and is clear about this because she had been exposed to chicken pox at the time and had to stay away from the new baby. The abuse took place at night with the elder coming into the room she shared with his daughter. She was twelve or thirteen years of age at the time. **The abuse involved fondling of her genitals and finger penetration of her vagina.** She recalls waking up with the elder hovering over her and smelling his breath. **One early morning he tried to get her to leave with him before the household had arisen. She was afraid of what he would do to her and resisted.** After he stopped trying to pull her away, she saw him staring into the bedroom through a window.

Ex. 6, Report of Dr. Conte at p. 3 (emphasis added).

Dr. Conte describes the profound impact Apana’s abuse has had on her life:

She said she feels **anxious** and understands she has a hard time controlling her emotions. She distrusts other people. **She feels dirty because of the sexual abuse by the elder. At times she has intrusive images of abuse by the elder. She dreams about things he did to her.**

Ex. 6, Report of Dr. Conte at p. 8 (emphasis added). In addition, Dr. Conte described Plaintiff’s consequential loss of faith and spirituality, something that had been extremely important to her:

I asked her about her sense of faith and spirituality. She said she was a believing Witness until the abuse. **She said the loss of faith has been difficult. She said she lost her rudder.** She asked who would not want to be involved in something greater than oneself. She said after the abuse her rose colored glasses were taken off. **She said it made her question everything. She said her chance to believe was taken away.**

Ex. 6, Report of Dr. Conte at p. 11 (emphasis added).

Dr. Conte's findings from Plaintiff's testing data include the following:

- “[C]linically significant levels of anxious arousal, ... and intrusive experiences and defensive avoidance” (*id.* at 14);
- “[A] problematic level of self-criticism, and clinically significant levels of self-blame, helplessness, hopelessness, and preoccupation with danger” (*id.*);
- “[C]linically significant levels of peritraumatic distress” (*id.*);
- “[C]linically significant levels of re-experiencing, avoidance, ... and hyperarousal” (*id.*);
- “[S]ignificant trauma-related compromise of her functioning” (*id.* at 15) as indicated by her “posttraumatic stress-total score which placed [N.D.’s] symptoms in the severe range,” (*id.* at 14-15) and;
- “[C]linically significant level of posttraumatic dissociation.” *Id.*

It is Dr. Conte's opinion “based on a reasonable degree of professional certainty” that “[t]he multiple layers of betrayal and trauma [Plaintiff] experienced at the hands of Elder Apana [] are a significant cause ... of her symptoms and adult development up [to] this time.” *Id.* at 16. To date, Plaintiff

continues to experience periodic depression.... She is anxious. She is generally distrustful of other people. She has affect regulation problems and can become distressed, anxious, and emotionally overloaded. She reports negative cognitions about the self and the world, a problematic level of self-criticism and clinically significant levels of self-blame, helplessness, hopelessness, and preoccupation with danger.

Id. at 16

C. GENERAL DAMAGES IN THE AMOUNT OF 15,000,000 DOLLARS ARE APPROPRIATE

As stated by N.D. and as documented by Dr. Conte, N.D.'s general damages are substantial. N.D. experienced extreme stress and pressure to move on from the trauma she sustained – to the point of being forced to sit next to her rapist during Church services. It became nearly impossible for N.D. to relax and be present at any moment. N.D.'s childhood years are long gone. They were

defiled by Apana. N.D. will never get back these stolen years. The trauma, stress, depression, and anxiety that characterized N.D.'s adolescence continued into adulthood and to the present day.

Professionally, working has been challenging for N.D. as she continues to have difficulty trusting people, specifically in positions of authority. Socially, N.D. has not been able to make friends as her experience in building connections was sullied at such a young age.

N.D. continues to survive one day at a time, often going through the motions of the day feeling numb, dirty, and shame. From the moment Apana degraded N.D., she began to experience intrusive thoughts and flashbacks reliving the trauma she suffered. Without warning, the memories of being raped by Apana consume her thoughts. Nighttime provides no escape.

Apana used and abused his position as a trusted spiritual leader by raping young girls, including Plaintiff. The trajectory of Plaintiff's life was forever altered when she was sexually abused by Apana. To date, Apana has enjoyed freedom and the ability to molest other young girls while Plaintiff is left to pick up the pieces of her shattered life. Plaintiff respectfully petitions the Court to finally hold him responsible for these abuses and to help her to finally heal. For these reasons, a general damages award of \$15,000,000 is appropriate.

D. PUNITIVE DAMAGES ARE APPROPRIATE IN THE AMOUNT OF \$25 MILLION

“A punitive damages award is an extraordinary remedy and is only imposed when ‘the defendant’s wrongdoing has been intentional and deliberate, and has the character of outrage frequently associated with crime.’” *Kekona v. Bornemann*, 135 Hawai‘i 254, 263, 349 P.3d 361, 370 (2015) (quoting *Masaki v. Gen. Motors Corp.*, 71 Haw. 1, 6, 780 P.2d 566, 570 (1989)). Punitive damages serve the dual purpose of “punishing the defendant for aggravated misconduct and deterring the defendant and others from engaging in like conduct in the future.” *Masaki*, 71 Haw. at 12, 780 P.2d at 573. The imposition of punitive damages requires “‘something more’ than

mere commission of a tort.” *Id.* Punitive damages may only be awarded “where the wrongdoer has acted wantonly or oppressively or with such malice as implies a spirit of mischief or criminal indifference to civil obligations; or where there has been some wilful misconduct or that entire want of care which would raise the presumption of a conscious indifference to consequences.” *Id.* at 13, 780 P.2d at 573 (internal quotation marks and citation omitted).

“Because punitive sanctions are quasi-criminal in nature, Hawai‘i imposes special safeguards to ensure that a defendant is neither unfairly stigmatized nor arbitrarily deprived of his or her property.” *Kekona*, 135 Hawai‘i at 263, 349 P.3d at 370 (citation omitted). Specifically, a clear and convincing standard of proof applies to all punitive damages claims, which “requires ‘that degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established, and requires the existence of a fact be highly probable.’” *Id.* at 263, 349 P.3d at 370 (citation omitted).

Although Plaintiff harbors no false illusions that she will ever see a penny of what this Court awards, the act of this Court holding him accountable and in an amount that makes an unequivocal statement will be some justice long awaited and will serve as a message of deterrence to others. There is perhaps no case more appropriate for an award of punitive damages than this case. In repeatedly perpetrating sexual abuse of Plaintiff and others over the course of decades, Apana “acted wantonly or oppressively or with such malice as implies a spirit of mischief or criminal indifference to civil obligations” and/or engaged in willful “misconduct or [an] entire want of care which would raise the presumption of a conscious indifference to consequences.” Apana’s conduct was deliberate and in fact constitutes criminal conduct, notwithstanding the lack of criminal prosecution. Both the victims and Apana having testified to the sexual abuse, Apana’s

egregious and illegal conduct is indisputable and more than satisfies the clear and convincing standard.

An award of punitive damages is necessary and appropriate to punish Apana and to deter other wrongdoers from engaging in similar, reprehensible conduct.

The “proper measure of punitive damages is (1) the degree of intentional, willful, wanton, oppressive, malicious or grossly negligent conduct that formed the basis for [the] prior award of damages against [the tortfeasor] and (2) the amount of money required to punish [the tortfeasor] considering [his or her] financial condition.” *Kaopuiki v. Kealoha*, 104 Hawai‘i 241, 258, 87 P.3d 910, 927 (Haw. Ct. App. 2003) (alterations in original) (quoting Instruction No. 8.12, Hawai‘i Civil Jury Instructions, 1999 edition).

E. TOTAL DAMAGES AWARD

Based upon the evidentiary record presented above, Plaintiff is entitled to \$15,000,000 in compensatory damages. This amount will compensate her for the severe, indescribable harm she repeatedly suffered as a child, as well as the protracted pain, suffering, and psychological harm that persist today. *See* Hawai‘i Jury Instruction 8.9, 8.10.

Plaintiff is further entitled to \$25,000,000 in punitive damages. This amount reflects the egregiousness and criminality of Apana’s conduct and serves the dual purpose of (1) punishing Apana for decades long sexual abuse of Plaintiff and other young girls without consequence⁴ and (2) deterring others from engaging in such conduct. And perhaps more importantly, it will convey the powerful message that the civil justice system can remedy injustices by compensating sexual abuse victims for life-altering and catastrophic harms.

⁴ Although a defendant’s financial condition is supposed to factor into the amount required to punish him, Apana’s lack of participation in these proceedings precluded Plaintiff from obtaining his financial information and should not bar her from recovery or diminish the amount awarded.

VII. CONCLUSION

Default Judgment against Apana is appropriate. The testimony and record before this Court include Apana's testimony under oath about his molestations of at least four young girls over the past twenty years. Rarely does a factual record include such damning confessions by a Defendant. But because of his confessions, and the testimony by Plaintiff and others, there exists a sufficient record to order a default judgment against Apana and award damages in the amount requested to N.D. for the suffering she underwent and will continue to have for the rest of her life.

DATED: Honolulu, Hawai'i. May 10, 2023.

/s/ Mark S. Davis
MARK S. DAVIS
LORETTA A. SHEEHAN
MATTHEW C. WINTER
THOMAS M. OTAKE
JAMES S. ROGERS [*Pro Hac Vice*]
DEBORA SILBERMAN [*Pro Hac Vice*]
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; KENNETH L. APANA, Individually; and Does 1 through 100, inclusive,

Defendants.

CIVIL NO. 1CCV-20-0000390
(Non-Motor Vehicle Tort)

DECLARATION OF MARK S. DAVIS

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.

DECLARATION OF MARK S. DAVIS

I, Mark S, Davis, am over the age of 18 and hereby declare under penalty of perjury based upon personal knowledge to the truth of the following:

1. I am an attorney licensed to practice in the State of Hawai'i and am one of the attorneys for Plaintiff in the above action.

2. This Declaration is made in support of PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT KENNETH APANA.

3. Attached hereto as Exhibit 1, to be filed under seal, is a true and correct copy of excerpts from the deposition of Kenneth Apana taken on October 18, 2021.

4. Attached hereto as Exhibit 2 to be filed under seal, is a true and correct copy of excerpts from the deposition of S.K. taken on October 22, 2021.

5. Attached hereto as Exhibit 3 to be filed under seal, is a true and correct copy of excerpts from the deposition of N. Mendoza taken on March 9, 2022.

6. Attached hereto as Exhibit 4 to be filed under seal, is a true and correct copy of excerpts from the deposition of N.D. taken on April 13, 2023.

7. Attached hereto as Exhibit 5 is a true and correct copy of the curriculum vitae of Jon Robert Conte, Ph.D.

8. Attached hereto as Exhibit 6 is a true and correct copy of the expert opinion of Jon Robert Conte, Ph.D. dated February 18, 2022.

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

DATED: Honolulu, Hawai'i, May 10, 2023.

/s/ Mark S. Davis
MARK S. DAVIS

**EXCERPTS FROM THE
TRANSCRIPT OF THE DEPOSITION OF
KENNETH APANA**

FILED UNDER SEAL

EXHIBIT 1

**EXCERPTS FROM THE
TRANSCRIPT OF THE DEPOSITION OF
S.K.**

FILED UNDER SEAL

EXHIBIT 2

**EXCERPTS FROM THE
TRANSCRIPT OF THE DEPOSITION OF
N. MENDOZA**

FILED UNDER SEAL

EXHIBIT 3

**EXCERPTS FROM THE
TRANSCRIPT OF THE DEPOSITION OF
N. D.**

FILED UNDER SEAL

EXHIBIT 4

**CURRICULUM VITAE OF
JON ROBERT CONTE, PH.D.**

FILED UNDER SEAL

EXHIBIT 5

**EXPERT OPINION OF
JON ROBERT CONTE, PH.D.
DATED FEBRUARY 18, 2022**

FILED UNDER SEAL

EXHIBIT 6

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
(Non-Motor Vehicle Tort)

NOTICE OF REMOTE HEARING OF MOTION

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.

NOTICE OF REMOTE HEARING OF MOTION

TO: KENNETH APANA
P. O. Box 331
Kailua-Kona, HI 96745

Pro Se Defendant/Crossclaim Defendant

NOTICE IS HEREBY GIVEN that **PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT KENNETH APANA**, shall come on for hearing before the Honorable Dean E. Ochiai, Judge of the above-entitled court, via ZOOM video conferencing on June 7, 2023 at 8:45 a.m., or as soon thereafter as the matter can be heard.

If you fail to appear at the hearing, the relief requested may be granted without further notice to you.

All parties are directed to appear at least **10 minutes** prior to the scheduled start time. The Zoom meeting ID is: **895 888 6479**. No password is required.

Self-represented parties unable to appear by video may call **888-788-0099 (U.S. toll free)** or **646 558-8656** to participate by telephone. You must enter the above noted Zoom meeting ID when prompted. You must also notify the assigned judge’s chambers that you intend to participate by telephone at least 48 hours before the hearing and you must provide the court with the telephone number that you will be using to dial-in for the hearing.

Attorneys and self-represented parties must enter a user name that sets forth their full name, otherwise you will not be admitted into the hearing. Attorneys must also include the suffix “Esq.”

All attorneys and parties shall dress appropriately for the hearing. Recording court proceedings is strictly prohibited unless permission is granted by the court. The court may impose sanctions for failure to comply with this notice.

DATED: Honolulu, Hawai'i, May 9, 2023.

/s/ Mark S. Davis
MARK S. DAVIS
LORETTA A. SHEEHAN
MATTHEW C. WINTER
JAMES S. ROGERS [*Pro Hac Vice*]
DEBORA SILBERMAN [*Pro Hac Vice*]
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that, on the date below, a true and correct copy of the foregoing document was duly served on the following person by depositing same in the U.S. Mail, postage prepaid, addressed as follows:

KENNETH APANA
P. O. Box 331
Kailua-Kona, HI 96745

Pro Se Defendant/Crossclaim Defendant

DATED: Honolulu, Hawai'i, May 9, 2023.

/s/ Mark S. Davis
MARK S. DAVIS
LORETTA A. SHEEHAN
MATTHEW C. WINTER
JAMES S. ROGERS [*Pro Hac Vice*]
DEBORA SILBERMAN [*Pro Hac Vice*]
Attorneys for Plaintiff