

OF COUNSEL:
DAVIS LEVIN LIVINGSTON

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

Electronically Filed
FIRST CIRCUIT
1CCV-20-0000390
18-JUL-2023
01:25 PM
Dkt. 673 FOF

LAW OFFICES OF JAMES S. ROGERS

JAMES S. ROGERS 5335 [Pro Hac Vice]
1500 Fourth Avenue, Suite 500
Seattle, WA 98101
Telephone: (206) 621-8525
Facsimile: (206) 223-8224
Email: jsr@jsrogerslaw.com

Co-Counsel:
THOMAS M. OTAKE, AAL, ALC 7622
Davies Pacific Center
841 Bishop Street, Suite 2201
Honolulu, Hawai'i 96813
Telephone: (808) 521-3336
Email: thomas@otakelaw.com

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

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

**FINDINGS OF FACT, CONCLUSIONS
OF LAW**

Hearing on Motion for Default Judgment as
to Defendant, Kenneth L. Apana,

Date : June 7, 2023

Judge : Honorable Dean E. Ochiai

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.

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.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Court conducted a hearing in this matter on June 7, 2023 on Plaintiff’s Motion for Default as to Defendant, Kenneth L. Apana (“Apana”). Mark Davis, Matthew Winter, and James S. Rogers appeared on behalf of Plaintiff N.D. Apana appeared on his behalf, *pro se*. This case was filed by the Plaintiff using her initials but whose identity has been disclosed to all parties. The Court has considered the evidence presented by way of Plaintiff’s Motion for Default Judgment as to Defendant Apana and the accompanying exhibits thereto. Defendant, Apana, did not file or support a response thereto. The Court has further considered the arguments of counsel and Defendant Apana and considered the applicable law. Pursuant to Hawai’i Rules of Civil Procedure

Rule 52, the Court makes the following Findings of Fact and Conclusions of Law, and FINDS and CONCLUDES, for the reasons articulated below, that Plaintiff is entitled to a total of \$15,000,000 in general damages and \$25,000,000 in punitive damages.

Any finding of fact that should more properly be deemed a conclusion of law and any conclusion of law that should more properly be deemed a finding of fact shall be so construed.

FINDINGS OF FACT

1. This lawsuit seeks compensation for the injury to N.D. as a result of repeated sexual assaults perpetrated against her while she was a minor by Defendant Apana.

2. Plaintiff's allegations against Defendants MAKAHA, HAWAII CONGREGATION OF JEHOVAH'S WITNESSES, MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, KINGDOM HALL, AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ("Church Defendants") were dismissed by stipulation following a settlement of the Plaintiff's claims against the Church Defendants on or about January 30, 2023.

3. Plaintiff brought suit under HRS §657-1.8, extending the statute of limitations for cases arising from instances of childhood sexual abuse. Plaintiff filed a Certificate of Merit pursuant to HRS §657-1.8 on or about May 12, 2020.

4. The Complaint initiating this lawsuit was filed on March 10, 2020.

5. Apana was served with a Copy of the Complaint on April 7, 2020 but never filed an Answer. However, Apana has occasionally appeared at hearings and depositions.

6. Apana is a 78-year-old man who is currently living on the Big Island. Apana sexually molested minor girls for a period of at least 23 years (from 1988-2011). Plaintiff was one

of Apana's victims and was raped and repeatedly sexually abused in 1992, when she was 12 years-old, during sleepovers at Apana's house.

7. Apana admitted in his deposition testimony that he had sexually assaulted four young girls, including a close family member, as well as Plaintiff.

8. Apana has never been arrested or prosecuted for these crimes.

9. Apana's first known instance of sexually assaulting children was in 1988 or 89 when he began to sexually abuse a 14 year-old family member. He would enter the minor's bedroom and masturbate in front of her and touch her vagina. This predatory behavior lasted for four years until the minor family member reached 18 and left the family home.

10. In or about 1992, Apana repeatedly raped and digitally penetrated Plaintiff. The abuse continued for a little over a year. During a ten-day stay at Apana's home, Apana sexually molested her every night.

11. Apana admitted to sexually abusing another minor child in or around 1992.

12. At the time of this abuse, Apana was a Church Elder of the Church Defendants.

13. Following the abuse, Plaintiff was forced to sit next to Apana during Church services.

14. The last known victim of Apana was sexually abused in 2011. Apana admitted in his deposition that he had sexually abused this victim when she was 13 years old.

15. Apana has shown no remorse for the harms he inflicted on his victims.

16. Plaintiff has been living with daily memories of her rapist and the sexual abuse.

17. After this abuse, N.D. withdrew from friends her age. She continues to have a hard time relating to and trusting others.

18. The effects of the sexual abuse have been profound and affect all areas of Plaintiff's life, including professionally and socially. She continues to have difficulties with meeting new people and pursuing a career. Plaintiff has resorted to cutting herself on occasions.

19. Flashbacks of the abuse occur indiscriminately at all times of the night and day.

20. Dr. Jon Conte, Ph.D., a leading national expert on the effects of childhood sexual abuse, reported Plaintiff's posttraumatic stress and symptoms as "unpleasant memories," "images of [her] abuse," "numbness," "distrust of other people," "depress[ion]," "ang[er]," "[being] overwhelmingly sad," and "[being] anxious."

21. The Court accepts the report of Dr. Conte wherein he notes "[Plaintiff] 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."

22. The Court also accepts Dr. Conte's observations as they relate to Plaintiff's loss of faith and spirituality. "She said the loss of faith has been difficult. She has lost her rudder." "She said it made her question everything. She said her chance to believe was taken away."

23. Dr. Conte's testing data revealed the following:

- "Clinically significant levels of anxious arousal, . . . and intrusive experiences and defensive avoidance;"
- "[A] problematic level of self-criticism, and clinically significant levels of self-blame, helplessness, hopelessness, and preoccupation with danger;"
- "[C]linically significant levels of peritraumatic distress;"
- "[C]linically significant levels of re-experiencing, avoidance, . . . and hyperarousal;"

- “[S]ignificant trauma-related compromise of her functioning; as indicated by her “posttraumatic stress-total score which placed [Plaintiff’s] symptoms in the severe range;” and
- “[C]linically significant level of posttraumatic dissociation.”

CONCLUSIONS OF LAW

1. Hawai‘i Rules of Civil Procedure 55(b)(2) allows the Court to issue default judgment against a defendant upon application by a plaintiff.

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

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

4. The requirements set forth under HRS §657-1.8, extending the statute of limitations, have been met by Plaintiff

5. Had Apana been criminally prosecuted, he would have faced multiple Class A and Class 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.

6. The Court finds that there is ample evidence in the record to find that Apana committed these crimes against Plaintiff, and that perpetuating these crimes proximately caused Plaintiff’s damages as set forth *supra*.

7. “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 the 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.*

8. 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 willful 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).

9. 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 highly probable.’” *Id.* at 263, 349 P. 3d at 370 (citations omitted).

10. The Court finds the requirements for imposition of punitive damages present in 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.”

11. 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.

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

13. Given the damages sustained by Plaintiff and the reprehensible conduct of Apana, all of which is supported by the evidence submitted by the Plaintiff, the Court finds that Plaintiff is entitled to an award of compensatory general damages in the amount of Fifteen Million Dollars (\$15,000,000) and a punitive damages award of Twenty-five Million Dollars (\$25,000,000).

DATED: Honolulu, Hawai'i. July 18, 2023.

/s/ Dean E. Ochiai



JUDGE OF THE ABOVE-ENTITLED COURT

**PLEASE NOTE ALL
CHANGES IN RED**