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MAKAHA, HAWAII CONGREGATION OF
JEHOVAH'S WITNESSES; 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 MAKAHA, HAWAII
CONGREGATION OF JEHOVAH'S
WITNESSES and WATCHTOWER BIBLE
AND TRACT SOCIETY OF NEW YORK,
INC.'S **(1) ANSWER AND AFFIRMATIVE
DEFENSES TO THE COMPLAINT
FILED ON MARCH 10, 2020; and
(2) CROSS-CLAIM AGAINST
DEFENDANT KENNETH L. APANA,
INDIVIDUALLY; SUMMONS; and
CERTIFICATE OF SERVICE**

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 MAKAHA, HAWAII CONGREGATION OF JEHOVAH’S WITNESSES AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.’S ANSWER TO THE COMPLAINT FILED ON MARCH 10, 2020

Defendants Makaha, Hawaii Congregation of Jehovah’s Witnesses (“**MCJW**”) and Watchtower Bible and Tract Society of New York (“**WTNY**”) (collectively, “**Religious Defendants**”) file this answer to the Complaint filed by Plaintiff N.D. (“**Plaintiff**”) on March 10, 2020 (“**Complaint**”):

ADMISSION & DENIALS

1. Paragraph 1 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny the allegations.

2. Paragraph 2 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 2 and therefore deny those allegations.

3. Paragraph 3 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 3.

4. Religious Defendants state that the Complaint contains two paragraphs marked as number 4. For purposes of clarity, the first paragraph is referred to as paragraph 4.1 and the second paragraph is referred to as 4.2.

A. In response to paragraph 4.1, Religious Defendants state that the allegations therein contain legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 4.1 and therefore deny those allegations.

B. In response to paragraph 4.2, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations therein and therefore deny those allegations.

5. Paragraph 5 contains legal conclusions, to which no response is required. To the extent that a response is required:

A. MCJW admits that it is an unincorporated religious association and that it operates in Waianae, Hawai'i, but denies all the remaining allegations in paragraph 5.

B. WTNY lacks sufficient knowledge or information to form a belief about the truth of the allegations in the first sentence of paragraph 5 and therefore denies those allegations. WTNY further denies all the remaining allegations in paragraph 5.

6. Paragraph 6 contains legal conclusions, to which no response is required. To the extent that a response is required:

A. WTNY admits that it is a New York corporation, with its principal place of business in the State of New York, but denies all the remaining allegations in paragraph 6.

B. MCJW lacks sufficient knowledge or information to form a belief about the truth of the allegations in the first, second, and third sentences of paragraph 6 and therefore denies those allegations. MCJW further denies all the remaining allegations in paragraph 6.

7. In response to paragraph 7, Religious Defendants state that the Christian Congregation of Jehovah's Witnesses ("CCJW") has been dismissed from this action, and therefore no response to the allegations in paragraph 7 is required. (*See* Dkt. # 66, Stipulation for Partial Dismissal Without Prejudice of All Claims Against CCJW.) Religious Defendants further state that paragraph 7 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 7 and therefore deny those allegations. Further, inasmuch as WTNY is a corporate entity separate and distinct from CCJW,

WTNY states that it is improper to conflate the existence, roles, and activities of the two corporations.

8. Paragraph 8 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 8.

9. In response to paragraph 9, Religious Defendants admit only that Defendant Kenneth L. Apana (“**Defendant Apana**”) formerly served as an elder in MCJW. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the remaining allegations in paragraph 9 and therefore deny those allegations.

10. Paragraph 10 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 10 and therefore deny those allegations.

11. Paragraph 11 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny that Religious Defendants acted as the agent, servant, or employee of any other defendant. Religious Defendants further deny that Religious Defendants joined in or conspired with any other defendant or with anyone else to carry out the alleged tortious or unlawful activity set forth in the Complaint. Religious Defendants state that the allegations in the second part of the first sentence are vague and conclusory and therefore those allegations are denied, as Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of all remaining allegations in paragraph 11 and therefore deny those allegations.

12. Religious Defendants deny the allegations in paragraph 12.

13. In response to paragraph 13, WTNY admits that it has published materials for elders but denies all the remaining allegations. MCJW lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 13 and therefore denies those allegations.

14. In response to paragraph 14, WTNY admits to previously providing letters addressed to All Bodies of Elders on a broad spectrum of topics but denies all the remaining allegations. MCJW lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 14 and therefore denies those allegations.

15. In response to paragraph 15, WTNY admits that prior to 2001 it communicated appointments of elders and ministerial servants but denies all the remaining allegations. MCJW lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 15 and therefore denies those allegations.

16. In response to paragraph 16, Religious Defendants state that CCJW has been dismissed from this action, and therefore no response to the allegations in paragraph 16 is required. (*See* Dkt. # 66.) To the extent that a response is required, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 16 and therefore deny those allegations.

17. Religious Defendants deny the allegations in paragraph 17.

18. Religious Defendants deny the allegations in paragraph 18.

19. Religious Defendants deny the allegations in paragraph 19.

20. Religious Defendants deny the allegations in paragraph 20.

21. Religious Defendants deny the allegations in paragraph 21.

22. Religious Defendants deny the allegations in paragraph 22.

23. Religious Defendants deny the allegations in paragraph 23.

24. Religious Defendants deny the allegations in paragraph 24.

25. Religious Defendants deny the allegations in paragraph 25.

26. Religious Defendants deny the allegations in paragraph 26.

27. Religious Defendants deny the allegations in paragraph 27.

28. Religious Defendants deny the allegations in paragraph 28.

29. Religious Defendants deny the allegations in paragraph 29.

30. Religious Defendants deny the allegations in paragraph 30.

31. In response to paragraph 31, WTNY admits sending a letter to All Bodies of Elders in 1989 but denies all the remaining allegations. MCJW lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 31 and therefore denies those allegations.

32. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 32 and therefore deny those allegations.

33. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 33 and therefore deny those allegations.

34. In response to paragraph 34, Religious Defendants admit only that Defendant Apana formerly served as an elder in the MCJW. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the remaining allegations in paragraph 34 and therefore deny those allegations.

35. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 35 and therefore deny those allegations.

36. Religious Defendants deny the allegations of paragraph 36.

37. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 37 and therefore deny those allegations.

38. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 38 and therefore deny those allegations.

39. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 39 and therefore deny those allegations.

40. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 40 and therefore deny those allegations.

41. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 41 and therefore deny those allegations.

42. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 42 and therefore deny those allegations.

43. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 43 and therefore deny those allegations.

44. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 44 and therefore deny those allegations.

45. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 45 and therefore deny those allegations.

46. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 46 and therefore deny those allegations.

47. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 47 and therefore deny those allegations.

48. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 48 and therefore deny those allegations.

49. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 49 and therefore deny those allegations.

50. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 50 and therefore deny those allegations.

51. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 51 and therefore deny those allegations.

52. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 52 and therefore deny those allegations.

53. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 53 and therefore deny those allegations.

54. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 54 and therefore deny those allegations.

55. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 55 and therefore deny those allegations.

56. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 56 and therefore deny those allegations.

57. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 57 and therefore deny those allegations.

58. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 58 and therefore deny those allegations.

59. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 59 and therefore deny those allegations.

60. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 60 and therefore deny those allegations.

61. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 61 and therefore deny those allegations.

62. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 62 and therefore deny those allegations.

63. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 63 and therefore deny those allegations.

64. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 64 and therefore deny those allegations.

65. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 65 and therefore deny those allegations.

66. Paragraph 66 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 66 and therefore deny those allegations.

67. Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 67 and therefore deny those allegations.

68. In response to paragraph 68, Religious Defendants repeat and re-allege their answers to each paragraph of the Complaint as though fully restated herein.

69. Paragraph 69 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 69 and therefore deny those allegations.

70. Paragraph 70 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 70.

71. Paragraph 71 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 71 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 71 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 71.

72. Paragraph 72 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 72 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 72 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 72.

73. Paragraph 73 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 73 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 73 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to

form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 73.

74. In response to paragraph 74, Religious Defendants repeat and re-allege their answers to each paragraph of the Complaint as though fully restated herein.

75. Paragraph 75 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 75 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 75 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 75.

76. Paragraph 76 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 76 (including subparagraphs (a)–(k)).

77. Paragraph 77 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 77.

78. Paragraph 78 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 78 (including subparagraphs (a)–(c)).

79. In response to paragraph 79, Religious Defendants deny that they attempted to dissuade Plaintiff from reporting the alleged sexual abuse to law enforcement, and deny all remaining allegations in paragraph 79 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 79 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 79.

80. Paragraph 80 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 80 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 80 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 80.

81. Paragraph 81 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 81

that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 81 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 81.

82. Paragraph 82 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 82 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 82 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 82.

83. Paragraph 83 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 83 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 83 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 83.

84. Paragraph 84 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 84 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 84 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 84.

85. In response to paragraph 85, Religious Defendants repeat and re-allege their answers to each paragraph of the Complaint as though fully restated herein.

86. Paragraph 86 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 86 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 86 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 86.

87. Paragraph 87 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny the allegations that pertain to

Religious Defendants and lack sufficient knowledge or information to form a belief about the truth of the remaining allegations and therefore deny them.

88. Paragraph 88 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 88 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 88 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 88.

89. Paragraph 89 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 89 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 89 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 89.

90. In response to paragraph 90, Religious Defendants repeat and re-allege their answers to each paragraph of the Complaint as though fully restated herein.

91. Paragraph 91 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 91 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 91 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 91.

92. Paragraph 92 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 92 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 92 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 92.

93. Paragraph 93 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 93 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 93 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a

belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 93.

94. In response to paragraph 94, Religious Defendants repeat and re-allege their answers to each paragraph of the Complaint as though fully restated herein.

95. Paragraph 95 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 95 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 95 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 95.

96. Paragraph 96 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 96 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 96 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 96.

97. Paragraph 97 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 97 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 97 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 97.

98. Paragraph 98 contains legal conclusions, to which no response is required. To the extent that a response is required, Religious Defendants deny all the allegations in paragraph 98 that pertain to Religious Defendants. Insofar as the remaining allegations in paragraph 98 pertain to other defendants, Religious Defendants lack sufficient knowledge or information to form a belief about the truth of those allegations and therefore deny them. Religious Defendants deny all the remaining allegations in paragraph 98.

99. Religious Defendants deny all allegations not specifically admitted in this Answer, including but not limited to Plaintiff's prayer for relief. Religious Defendants further deny that Plaintiff is entitled to any damages.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

100. The Complaint fails to state a claim against Religious Defendants on which relief can be granted.

SECOND DEFENSE

101. 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.

THIRD DEFENSE

102. 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.

FOURTH DEFENSE

103. 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.

FIFTH DEFENSE

104. 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.

SIXTH DEFENSE

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

SEVENTH DEFENSE

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

EIGHTH DEFENSE

107. 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).

NINTH DEFENSE

108. 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.

TENTH DEFENSE

109. 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.

ELEVENTH DEFENSE

110. 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.

TWELFTH DEFENSE

111. 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.

THIRTEENTH DEFENSE

112. 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).

FOURTEENTH DEFENSE

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

FIFTEENTH DEFENSE

114. 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).

SIXTEENTH DEFENSE

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

SEVENTEENTH DEFENSE

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

EIGHTEENTH DEFENSE

117. 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.

NINETEENTH DEFENSE

118. 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.

TWENTIETH DEFENSE

119. 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.

TWENTY-FIRST DEFENSE

120. 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.

TWENTY-SECOND DEFENSE

121. 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.

TWENTY-THIRD DEFENSE

122. 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.

WHEREFORE, Religious Defendants respectfully requests that:

- A. The Complaint be dismissed with prejudice as to Religious Defendants;
- B. Judgment be entered in favor of Religious Defendants and against Plaintiff on all claims in the Complaint, and that Plaintiff take nothing thereby;
- C. Religious Defendants be awarded its reasonable attorneys' fees and costs; and
- D. Religious Defendants be awarded such other relief as the Court deems just and proper.

DATED: Honolulu, Hawai'i, August 6, 2020.

/s/ William S. Hunt

WILLIAM S. HUNT
CANDACE M. HOUGH

JOEL M. TAYLOR

Attorneys for Defendants/Crossclaimants
MAKAHA, HAWAII CONGREGATION OF
JEHOVAH'S WITNESSES 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)

**CROSS-CLAIM AGAINST DEFENDANT
KENNETH L. APANA, INDIVIDUALLY**

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.

**CROSS-CLAIM AGAINST DEFENDANT
KENNETH L. APANA, INDIVIDUALLY**

Pursuant to Rule 13 of the Hawai`i Rules of Civil Procedure, Defendants/Crossclaimants Makaha, Hawaii Congregation of Jehovah’s Witnesses (“**MCJW**”) and Watchtower Bible and Tract Society of New York (“**WTNY**”) (collectively, “**Religious Defendants**”) file this Cross-Claim against Defendant/Crossclaim Defendant Kenneth L. Apana, Individually (“**Apana**”), and allege as follows:

1. Plaintiff N.D. (“**Plaintiff**”) filed a Complaint on March 10, 2020, seeking damages and claims against Religious Defendants and Apana. The Complaint alleges six causes of actions: (1) Sexual Assault/Aiding & Abetting Sexual Assault against Apana and Religious Defendants, respectively (Count I); (2) Gross Negligence against Religious Defendants (Count II); (3) Hindering Prosecution against Religious Defendants (Count III); (4) Intentional Infliction of Emotional Distress (Count IV); and (5) Grossly Negligent Infliction of Emotional Distress (Count V).

2. Religious Defendants deny any and all liability to Plaintiff as set forth in their Answer to the Complaint. Any injury or damages alleged by Plaintiff are due to the actions of Defendant Apana and not Religious Defendants.

3. In the event Religious Defendants are found liable to Plaintiff, then Religious Defendants are entitled to indemnification from Apana because the alleged damages were caused by the actions of Apana and Religious Defendants are in no way at fault.

4. Accordingly, Religious Defendants are entitled to indemnification for any all sums awarded against Religious Defendants and to Plaintiff in this matter.

5. Alternatively, to the extent that Religious Defendants are held to be liable to Plaintiff for any damages whatsoever, Apana should also be held jointly liable to the extent of his relative fault.

6. A party is entitled to contribution pursuant to Hawai`i Revised Statute (“**HRS**”) § 663-12 when it is a “joint tortfeasor,” i.e., when it is “jointly or severally liable in tort for the same injury to person or property.” *See* HRS § 663-11.

7. In the event Religious Defendants are found liable to Plaintiff, then Religious Defendants will be a joint tortfeasor with Apana because Plaintiff’s alleged damages will have been caused, at least in part, by the actions of Apana.

8. Accordingly, Religious Defendants are entitled to a determination of their relative fault, if any, and a determination of its pro rata share of responsibility for any damages to be awarded to Plaintiff should Plaintiff recover on her claims against Religious Defendants in this action, and to have judgment entered against Apana for any amounts over and above Religious Defendants' pro rata share.

WHEREFORE, Religious Defendants pray as follows:

A. For entry of judgment against Apana for indemnification and contribution, for a determination of the relative fault of Apana, and for an apportionment of any judgment in favor of Plaintiff based upon the pro rata share of the parties;

B. If Plaintiff is found to be entitled to judgment, that such judgment be entered against Apana and not against Religious Defendants;

C. If Plaintiff should recover a judgment against Religious Defendants, that Religious Defendants have judgment over and against Apana the entire amount of such judgment, together with the costs of this lawsuit and attorneys' fees;

D. If said relief is not granted, and it is determined that Religious Defendants are jointly liable with Apana, that the relative degree of fault of Religious Defendants and Apana be determined and that Religious Defendants have judgment against Apana for any excess which may be paid by Religious Defendants over and above their pro rata share of any judgment in favor of Plaintiff;

E. That Religious Defendants be awarded the attorneys' fees and costs it has incurred in this lawsuit; and

F. For such other and further relief as the Court deems just and proper.

DATED: Honolulu, Hawai'i, August 6, 2020.

/s/ William S. Hunt

WILLIAM S. HUNT
CANDACE M. HOUGH

JOEL M. TAYLOR

Attorneys for Defendants
MAKAHA, HAWAII CONGREGATION OF
JEHOVAH'S WITNESSES and
WATCHTOWER BIBLE AND TRACT
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MAKAHA, HAWAII CONGREGATION OF
JEHOVAH'S WITNESSES; 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)

SUMMONS

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.

SUMMONS

TO: KENNETH L. APANA

YOU ARE HEREBY NOTIFIED that on August 6, 2020, Defendants/Crossclaimants Makaha, Hawaii Congregation of Jehovah’s Witnesses (“**MCJW**”) and Watchtower Bible and Tract Society of New York (“**WTNY**”) (collectively, “**Religious Defendants**”) filed a Cross-Claim against you in the Circuit Court of the First Circuit, State of Hawai’i, Civil No. 1CCV-20-0000390.

YOU ARE HEREBY SUMMONED and required to file with the Court and serve upon Dentons US LLP, counsel for Religious Defendants, whose address is 1001 Bishop Street, Suite 1800, Honolulu, HI 96813, an answer to the Cross-Claim which is herewith served upon you. This action must be taken within 20 days after the service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Cross-Claim.

This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

A failure to obey this Summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawai`i _____.

CLERK OF THE ABOVE-ENTITLED COURT

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:

MARK S. DAVIS, ESQ.	mdavis@davislevin.com
LORETTA A. SHEEHAN, ESQ.	lsheehan@davislevin.com
MATTHEW WINTER, ESQ.	mwinter@davislevin.com

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:

JAMES S. ROGERS, ESQ.	<i>(Pro Hac Vice)</i>
LAW OFFICES OF JAMES S. ROGERS	
1500 Fourth Avenue, Suite 500	
Seattle, WA 98101	

Attorney for Plaintiff

KENNETH L. APANA
73-4339 Papaana Place
Kailua-Kona, HI 96740

Pro Se
Defendant/Crossclaim Defendant

DATED: Honolulu, Hawai`i, August 6, 2020.

/s/ William S. Hunt

WILLIAM S. HUNT
CANDACE M. HOUGH

JOEL M. TAYLOR

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