

WILLIAM S. HUNT 1259-0
JENNY J.N.A. NAKAMOTO 9780-0

DENTONS US LLP
1001 Bishop Street, Suite 1800
Honolulu, Hawai'i 96813-3689
Telephone: (808) 524-1800
Facsimile: (808) 524-4591
E-mail: bill.hunt@dentons.com
jenny.nakamoto@dentons.com

JOEL M. TAYLOR (Pro Hac Vice)
1000 Watchtower Drive
Patterson, New York 12563
Telephone: (845) 306-0700
Email: jmtaylor@jw.org

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

Electronically Filed
FIRST CIRCUIT
1CCV-20-0000390
01-APR-2022
03:12 PM
Dkt. 329 MSJ

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 DEO
(OTHER NON-VEHICLE TORT)
[REDACTED VERSION]
**DEFENDANTS MAKAHA
CONGREGATION OF JEHOVAH'S
WITNESSES, HAWAII AND
WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC.'S
MOTION FOR SUMMARY JUDGMENT;
MEMORANDUM IN SUPPORT OF
MOTION; DECLARATION OF
WILLIAM S. HUNT; EXHIBIT
ABSTRACT; EXHIBITS "A" – "G";
NOTICE OF REMOTE HEARING and
CERTIFICATE OF SERVICE**

Hearing:

Date: April 18, 2022
Time: 9:00 a.m.
Judge: Honorable Dean E. Ochiai
Trial: June 20, 2022

(caption continued)

█ that the Religious Defendants were not aware of, and did not supervise or control. These material undisputed facts entitle the Religious Defendants to summary judgment.

DATED: Honolulu, Hawai'i, March 29, 2022.

/s/ William S. Hunt
WILLIAM S. HUNT
JENNY J.N.A. NAKAMOTO
JOEL M. TAYLOR (*Pro Hac Vice*)

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

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

N.D.,

Plaintiff,

vs.

MAKAHA, HAWAII CONGREGATION OF JEHOVAH'S WITNESSES, a Hawaii non-profit unincorporated religious organization, a.k.a. MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES and KINGDOM HALL, MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES; WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a New York corporation; KENNETH L. APANA, Individually; and Does 1 through 100, inclusive,

Defendants.

Civil No. 1CCV-20-0000390 DEO
(OTHER NON-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.

TABLE OF CONTENTS

I. INTRODUCTION 1

II. STATEMENT OF MATERIAL FACTS 1

 A. Plaintiff’s Family And The Apana Family 1

 B. Apana ██████ Plaintiff During ██████ At Apana’s House. 1

 C. Plaintiff and Her Parents Agree That Religious Defendants Had Nothing To Do With Arranging For, Or Supervising, The ██████. 2

 D. Plaintiff and Her Parents Confirm That The Religious Defendants Do Not Sponsor Activities For Children. 4

 E. Plaintiff and Her Parents Confirmed ██████ ██████. 4

 F. Defendant Apana Was Not “Employed By” The Religious Defendants. 5

III. LEGAL STANDARD 5

IV. ARGUMENT 5

 A. Plaintiff’s Claims Are Barred By The Statute Of Limitations 5

 1. Defendant Apana Was Not “Employed By” The Religious Defendants. 6

 2. The Religious Defendants Did Not Owe A Duty Of Care To Plaintiff ██████. 9

 a. Religious Defendants Had No Special Relationship With Plaintiff 10

 b. The Religious Defendants Did Not Have A Special Relationship With Apana ██████. 13

 3. Plaintiff Admits That Religious Defendants Did Not “Supervise Or Control” The ██████. 15

 B. Plaintiff’s Claims Fail Because Religious Defendants Owed Plaintiff No Duty of Care 16

 C. Plaintiff’s non-negligence claims lack merit and are also barred by the statute of limitations 16

 1. Plaintiff’s Claim for “Hindering Prosecution” Has No Merit 16

 2. Plaintiff’s Claims for Negligent and Intentional Infliction of Emotional Distress Have No Merit and are Barred by the Statute of Limitations 17

V. CONCLUSION 18

TABLE OF AUTHORITIES

Hawai‘i State Cases

<i>Anduha v. Cnty. Of Maui</i> , 30 Haw. 44 (1927)	7
<i>Costa v. Able Distributors, Inc.</i> , 3 Haw. App. 486, 653 P.2d 101 (1982)	13
<i>Doe Parents No. 1 v. State Dept. of Educ.</i> , 100 Hawai‘i 34, 58 P.3d 545 (2002).....	9, 10, 11, 13
<i>Doe v. Grosvenor Properties (Hawai‘i) Ltd.</i> , 73 Haw. 158, 829 P.2d 512 (1992)	9
<i>Figueroa v. State of Hawaii</i> , 61 Haw. 369, 604 P.2d 1198 (1980)	11
<i>Fujimoto v. Au</i> , 95 Hawai‘i 116, 19 P.3d 699 (2001).....	5
<i>Gap v. Puna Geothermal Venture</i> , 106 Hawai‘i 325, 104 P.3d 912 (2004).....	6
<i>Hawai‘i Tech. Acad. v. L.E.</i> , 141 Hawai‘i 147, 407 P.3d 103 (2017).....	6
<i>Hunt v. First Ins. Co. of Hawaii, Ltd.</i> , 82 Hawai‘i 363, 922 P.2d 976 (App. 1996).....	16
<i>Kaopuiki v. Kealoha</i> , 104 Hawai‘i 241, 87 P.3d 910 (App. 2003).....	13
<i>Lee v. Corregedore</i> , 83 Hawai‘i 154, 925 P.2d 324 (1996).....	9
<i>Maguire v. Hilton Hotels Corp.</i> , 79 Hawai‘i 110, 899 P.2d 393 (1995).....	10
<i>Molfino v. Yuen</i> , 134 Hawai‘i 181, 339 P.3d 679 (2014).....	16
<i>State v. Marroquin</i> , 149 Hawai‘i 136, 482 P.3d 1097 (2021).....	6
<i>Touchette v. Ganal</i> , 82 Hawai‘i 293, 922 P.2d 347 (1996).....	9, 13

<i>Vail v. Emps’ Ret. Sys. of State</i> , 75 Haw. 42, 856 P.2d 1227 (1993)	7
---	---

Other State Cases

<i>Bohrer v. DeHart</i> , 943 P.2d 1220 (Colo. App. 1996)	12
<i>Bouchard v. New York Archdiocese</i> , 2006 WL 1375232 (S.D.N.Y. May 18, 2006)	10
<i>Bryan R. v. Watchtower Bible & Tract Soc’y</i> , 738 A.2d 839 (Me. 1999)	10
<i>Castro v. Bushman</i> , 2015 WL 5564833 (Wash. App. Sept. 22, 2015)	12
<i>Conti v. Watchtower Bible & Tract Soc’y</i> , 235 Cal.App.4th 1214 (2015)	11
<i>Dinsmoor v. City of Phoenix</i> , 492 P.3d 313 (Ariz. 2021)	11
<i>Doe v. Corp. of the President of The Church of Jesus Christ of Latter-day Saints</i> , 98 P.3d 429 (Utah App. 2004)	10, 14
<i>Doe v. Roman Catholic Archbishop of Los Angeles</i> , 70 Cal.App.5th 657 (2021)	11
<i>Doe v. Superior Court</i> , 237 Cal.App.4th 239 (2015)	11
<i>Doe v. United States Youth Soccer Ass’n, Inc.</i> , 8 Cal.App.5th 1118 (2017)	11
<i>F.G. v. MacDonnell</i> , 696 A.2d 697 (N.J. 1997)	12
<i>Hadnot v. Shaw</i> , 826 P.2d 978 (Okla. 1992)	18
<i>L.L.N. v. Clauder</i> , 563 N.W.2d 434 (Wis. 1997)	12, 18
<i>Meyer v. Lindala</i> , 675 N.W.2d 635 (Minn. App. 2004)	10, 14
<i>R.A. v. First Church of Christ</i> , 748 A.2d 692 (Sup. Ct. Pa. 2000)	14

<i>Regents of the Univ. of Cal. v. Sup. Ct.</i> , 413 P.2d 656 (Cal. 2018)	16
<i>Roman Catholic Bishop v. Sup. Ct.</i> , 42 Cal.App.4th 1556 (1996)	10, 12, 14
<i>Williams v. United Pentecostal Church Intern.</i> , 115 S.W.3d 612 (Tex. App. 2003).....	10

Federal Cases

<i>Lewis v. Bellows Falls Congregation of Jehovah’s Witnesses</i> , 95 F. Supp. 3d 762 (D. Vt. 2015).....	11, 12, 15
<i>Serbian E. Orthodox Diocese v. Milivojevich</i> , 426 U.S. 696 (1976).....	17

Hawai‘i State Statutes

Haw. Rev. Stat.	
§ 90-1	7
§ 321-15.2(d).....	7
§ 350-1.1	5, 17
§ 352D-4.3(a).....	7
§ 378-71	6
§ 383-2	6
§ 383-7.6(b)(2)(A)	7
§ 386-1	7
§ 393-3	6
§ 657-1.8	5
§ 657-1.8(b).....	<i>passim</i>
§ 657-1.8(b)(1).....	9, 12
§ 662D-1	7
§ 662D-2(b).....	7
§ 707-711	7
§ 710-1029	16
§ 710-1030	16

Hawai‘i Legislative Materials

Hawai‘i Senate Stand Comm. Rpt. No. 765, Reg. Sess. (2011)	8
Hawai‘i Senate Bill No. 217, Reg. Sess. (2011).....	8

Other Authorities

U.S. Const. Amend I12, 17

Del. Code § 10-81458

Cal. Code of Civ. Pro. § 340.1(c)7

Restatement (Second) Torts

 § 314.....9

 § 314A.....10, 11

 § 315.....9

 § 317.....13, 14, 15

Merriam-Webster Dictionary6

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

This case involves [REDACTED] over thirty years ago. This Court denied Religious Defendants' earlier motion to dismiss the complaint since there had been no discovery to develop material facts. Deposition testimony and other discovery from all material and knowledgeable witnesses provide uncontested facts that prove this case is totally different from the cases involving the Catholic Church or St. Francis Medical Center, which this Court has considered in other cases. Here, four material facts entitling the Religious Defendants to summary judgment are not in dispute: (1) Defendant Apana was not employed by the Religious Defendants; (2) Defendant Apana being an elder had no bearing on [REDACTED]; (3) the [REDACTED] was not a church activity and did not occur on church property; and (4) no other elder or congregation member was aware of the [REDACTED]. In sum, Plaintiff cannot meet any of the statutory requirements to revive her claim against Religious Defendants.

II. STATEMENT OF MATERIAL FACTS

A. Plaintiff's Family And The Apana Family

[REDACTED] is Plaintiff's mother ("Mom") and [REDACTED] her stepfather ("Step-Dad"). [REDACTED] is Kenneth Apana's [REDACTED].

Plaintiff was born in [REDACTED] 1979. [REDACTED]

[REDACTED]¹ Her family lived a block from the Apana family. *Id.* at 24:11-20. Plaintiff was friends with [REDACTED] *Id.* at 24:21-25:14; *see also* Step-Dad Depo., attached hereto as Exhibit "B", at 17:12-18:11.

B. Apana [REDACTED] Plaintiff During [REDACTED] At Apana's House.

When she was 12 or 13, Plaintiff [REDACTED]. Exhibit "A" at 25:21-26:3.

¹ For ease of reference, citations to deposition transcripts include reference to page number and lines, separated by a colon. Thus, "7:4-6" refers to page 7, lines 4-6 of Plaintiff's deposition transcript.

C. Plaintiff and Her Parents Agree That Religious Defendants Had Nothing To Do With Arranging For, Or Supervising, The [REDACTED].

Defendant Apana was an “elder” in the Makaha Congregation, but that fact had nothing to do with the [REDACTED]. Plaintiff testified that [REDACTED]

[REDACTED]

[REDACTED]

Exhibit “A” at 24:24-25:14.

Plaintiff’s Mom testified [REDACTED]

[REDACTED]

Mom’s Depo., attached hereto as Exhibit “C “ at 43:19-24.

Plaintiff’s Step-Dad agreed:

[REDACTED]

[REDACTED]

[REDACTED]

Exhibit “B” at 17:12-18:11.

Plaintiff’s Step-Dad also testified that the Religious Defendants [REDACTED]

Exhibit “B” at 24:1-15.

Defendant Apana likewise admitted that [REDACTED]

[REDACTED] See Defendant Apana’s Responses to Watchtower’s First Request for Admissions to Defendant Kenneth L. Apana, attached hereto as Exhibit “E” at Admission No. 9.

Defendant Apana’s [REDACTED] See *id.* at Admission No. 10. [REDACTED]

[REDACTED] *Id.* at Admission No. 9-15, 18-20, handwritten note on page 3. [REDACTED]

Exhibit “E” at handwritten note on page 3.

Defendant Apana did not ask permission or notify other elders in the Makaha Congregation, or anyone associated with the Religious Defendants, about [REDACTED]

[REDACTED]. See Exhibit “E” at Admission No. 11-17, 19-20. [REDACTED]

[REDACTED] *Id.* Plaintiff testified that [REDACTED]

[REDACTED] Exhibit “A” at 37:1-18. Her mother testified that [REDACTED]

[REDACTED]. Exhibit “C” at 42:18-43:11.

D. Plaintiff and Her Parents Confirm That The Religious Defendants Do Not Sponsor Activities For Children.

Unlike some religious groups, Religious Defendants do not sponsor or promote activities for minors that separate children from their parents. Plaintiff's Mom testified *children are at all times in the custody of their parents*. Exhibit "C" at 16:23-17:11. This was confirmed by elder Philip Main:

Q. Do elders have contact with children, teaching children or any capacity in the church at Jehovah's Witnesses?

A. Not separate from their parents.

Q. What does that mean? I don't understand when you say "not separate from their parents."

A. Based on the Bible's instruction, when they attend congregation meetings, children sit with their parents.

Main Depo, attached hereto as Exhibit "F" at 54:10-18.

The Makaha Congregation did not encourage or allow Defendant Apana to conduct services from his home. *See* Defendant Apana's Responses to Plaintiff's Requests for Admissions, attached hereto as Exhibit "D" at Admission No. 44-46. Defendant Apana did not conduct elder services, such as shepherding, from his home. *Id.*

E. Plaintiff and Her Parents Confirmed

See Exhibit "F" at 84:22-85:10.

Id. at 82:2-83:10; 94:14-21.

Watchtower 30(b)(6) Depo., attached hereto as Exhibit "G" at 32:9-16.

Exhibit "A" at 39:15-40:8. They promptly notified Congregation elders. *Id.* at 40:12-17; *see also* Exhibit "F" at 91:19-92:16.

Exhibit G at 32:3-8.

Id.

██████████² Exhibit “A” at 50:21-51:2; Exhibit “B” at 19:6-11, 34:9-19, 39:2-9.

F. Defendant Apana Was Not “Employed By” The Religious Defendants.

Plaintiff alleges that Apana was an elder in the Makaha Congregation during part of the time period ██████████. See Complaint, ¶ 9; Exhibit “A” at 36:14-23. However, not one witness deposed to date testified that elders are anything more than volunteers. In fact, in their depositions both of Plaintiff’s parents agreed that elders are not employees of the congregation or the church. Defendant Apana did not fill out a job application to serve as an elder. Exhibit E, Admission No. 2. He was not “hired” to be an elder. *Id.*, Admission No. 3. He did not receive hourly wages or a salary. *Id.*, Admission No. 4. He did not have a contract of employment. *Id.*, Admission No. 6. Rather, he was a religious volunteer whose role was to assist fellow worshippers in spiritual matters. *Id.*, Admission No. 7-8. Elders receive no monetary compensation. Exhibit “G” at 65:4-6; Exhibit “B” at 18:14-16 (elders are not paid); Exhibit “C” at 18:6-8 and 18:16-18 (never encountered a salaried elder and does not know about employees of Makaha Congregation).

III. LEGAL STANDARD

Summary judgment “is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Fujimoto v. Au*, 95 Hawai’i 116, 136-37, 19 P.3d 699, 719-20 (2001). “A fact is material [only] if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties.” *Id.*

IV. ARGUMENT

Religious Defendants seek summary judgment for two reasons. First, Plaintiff’s claims are barred by the Statute of Limitations. Second, the Religious Defendants did not owe Plaintiff a duty of care.

A. Plaintiff’s Claims Are Barred By The Statute Of Limitations.

Plaintiff brings her claim pursuant to HRS § 657-1.8, the statutory window for previously barred sexual abuse claims. (Compl. ¶ 3.) That law opened a wide window for claims against

² Clergy were not mandatory reporters in Hawai’i until September 15, 2020. See HRS § 350-1.1, amended by L 2020, c 35, § 3 eff. 9/15/2020.

perpetrators. It also opened two narrow windows for claims against legal entities. Under the revival statute, a previously time-barred claim can be brought against a “legal entity” only if:

- (1) The person who committed the act of sexual abuse against the victim was employed by an institution, agency, firm, business, corporation, or other public or private legal entity that owed a duty of care to the victim; or
- (2) The person who committed the act of sexual abuse and the victim were engaged in an activity over which the legal entity had a degree of responsibility or control.

HRS § 657-1.8(b).

The first window is closed to Plaintiff because (1) Defendant Apana was not “employed by” the Religious Defendants and (2) the Religious Defendants did not “owe[] a duty of care” to Plaintiff. The second window is closed because the Religious Defendants did not have “responsibility or control” over Plaintiff’s ██████████.

1. Defendant Apana Was Not “Employed By” The Religious Defendants.

Whether an unpaid volunteer like Defendant Apana was “employed by” the Religious Defendants is a matter of statutory construction. “Interpretation of a statute is a question of law ...” *Gap v. Puna Geothermal Venture*, 106 Hawai‘i 325, 331, 104 P.3d 912, 918 (2004). “[T]he fundamental starting point for statutory interpretation is the language of the statute itself.” *Hawai‘i Tech. Acad. v. L.E.*, 141 Hawai‘i 147, 155, 407 P.3d 103, 111 (2017) (quotation marks omitted). “Where the statutory language is plain and unambiguous” the court must “give effect to its plain and obvious meaning.” *State v. Marroquin*, 149 Hawai‘i 136, 139, 482 P.3d 1097, 1100 (2021).

The plain meaning of “employed by” is “to provide a job that pays wages or a salary.”³ Numerous Hawai‘i statutes define “employee” according to this plain meaning: “‘Employee’ means a person who performs services for hire ...” HRS § 378-71. “[E]mployment ... means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.” HRS § 383-2. *See also* HRS § 393-3 (same definition as HRS § 383-2). Conversely, Hawai‘i statutes define “volunteer” as “a person performing

³ Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/employed>, last visited on March 28, 2022.

services without compensation, other than reimbursement for actual expenses incurred.” HRS § 662D-1.

Hawai’i law expressly **excludes from the definition of employment unpaid service for a religious or charitable organization**: “‘Employment’ does not include: (1) [s]ervice for a religious, charitable, educational, or nonprofit organization if performed in a voluntary or unpaid capacity” HRS § 386-1; *see also Vail v. Emps’ Ret. Sys. of State*, 75 Haw. 42, 60-61, 856 P.2d 1227, 1237 (1993) (“[A]n individual is an employee under the chapter while he or she is being paid”).

There is no evidence that the Legislature intended “employed by” to mean something different than its plain meaning. The Legislature clearly knows the difference between employees and volunteers, often listing employees and volunteers separately when it intends to cover both. For example, in HRS § 707-711, the Legislature defined assault in the second degree to include “knowingly caus[ing] bodily injury to an educational worker” and defined “educational worker” to mean “any administrator, specialist, counselor, teacher, or employee of the department of education or an employee of a charter school” or “a person who is a volunteer as defined in section 90-1”⁴

The Legislature also knows how to make entities liable for the actions of volunteers.⁵ Volunteers would have been included in the revival statute by simply omitting the restrictive words “employed by” or by adding phrases like “agent of” or “employee or volunteer of.” In contrast, California opened a broad revival window that encompassed abuse by an “employee, volunteer, representative, or agent.” Cal. Code of Civ. Pro. § 340.1(c) (emphasis added). But

⁴ *See also* HRS § 321-15.2(d) (requiring background checks on “employees, and adult volunteers of a healthcare facility”); HRS § 352D-4.3(a) (“Employees, prospective employees, and volunteers of contracted providers or subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office shall be required to agree to criminal history record checks”); HRS § 383-7.6(b)(2)(A) (requiring a domestic violence victim to get a written statement from “[a]n employee, agent, or volunteer of a victim services organization” to support a claim for unemployment).

⁵ *See* HRS § 662D-2(b) (“In any suit against a nonprofit organization ... for civil damages based upon the negligent act or omission of a volunteer, proof of the act or omission shall be sufficient to establish the responsibility of the entity therefor”). *See also Anduha v. Cnty. Of Maui*, 30 Haw. 44, 48 (1927) (“If the defendant wished to rebut this *prima facie* showing it might have done so by offering evidence that Leong was not **employed by** the officers designated by the statute but was a mere **volunteer**.” (emphasis added)).

the Hawai'i Legislature chose to limit revival to cases where the perpetrator was actually “employed by” the “legal entity” being sued. HRS § 657-1.8(b).

Looking beyond plain meaning to legislative history confirms the intent to bar claims like this one. Hawai'i followed Delaware's “employed by” restriction after a broader statute was first proposing in 2011. *See* S.B. 217, 26th Leg., Reg. Sess. (2011) (“S.B. 217”).⁶ The original proposed text provided that “[a]ny cause of action that is barred as of the effective date of this section because the applicable period of limitations has expired is revived and a civil action may be commenced within one year after the effective date of this section subject to subsection (c).” S.B. 217(b). But the attorney general, among others, expressed concern that this breadth of language would allow claims not just against perpetrators “but against even those whom the claimant may believe had some connection, no matter how peripheral, to the assault or abuse, without any limitation.” S. Stand. Comm. Rpt. No. 765 at 1-2 (emphasis added).⁷ In response, the Senate Judiciary Committee deleted the original language and copied Delaware Code Title 10, Section 8145, which included the “employed by” language:

For a period of two years following the effective date of this Act, victims of child sexual abuse that occurred in this State who have been barred from filing suit against their abusers by virtue of the expiration of the former civil statute of limitations shall be permitted to file those claims in the circuit courts of this state.

If the person committing the act of sexual abuse against the minor was employed by an institution, agency, firm, business, corporation, or other public or private legal entity that owed a duty of care to the victim, or the accused and the minor were engaged in an activity over which the legal entity had some degree of responsibility or control, damages against the legal entity shall be awarded under this subsection only if there is a finding of gross negligence on the part of the legal entity.

S.B. 217, S.D.2 § b, 26th Leg., Reg. Sess. (2011). *Cf.* Del. St. § 10-8145.

Our Legislature sensibly limited the reach of the revival statute by using the phrase “employed by” in its literal and plain sense to mean employees and not volunteers. The

⁶ https://www.capitol.hawaii.gov/session2011/bills/SB217_.HTM, last visited on March 28, 2022.

⁷ https://www.capitol.hawaii.gov/session2011/commreports/SB217_SD2_SSCR765_.HTM, last visited on March 28, 2022.

Legislature was taking an extraordinary step by resurrecting claims for abuse that occurred decades ago. In addition to restricting claims against legal entities, it also required evidence of gross negligence. Those steps protect organizations that rely on volunteers—largely nonprofit organizations—like churches, boys and girls clubs, and similar entities. The Legislature decided against allowing an organization to be held liable for abuse by a volunteer that occurred decades ago.

In brief, there is no reasonable factual or legal basis in this case to interpret “employed by” to include volunteers such as Defendant Apana. Accordingly, Plaintiff’s claim cannot meet the requirements set forth in the first window of the revival statute.

2. The Religious Defendants Did Not Owe A Duty Of Care To Plaintiff

Even if Defendant Apana had been “employed by” one of the Religious Defendants (he was not), the revival statute also requires proof that the Religious Defendants “owed a duty of care” to Plaintiff. HRS § 657-1.8(b)(1). The issue of duty “is entirely a question of law.” *Doe Parents No. 1 v. State Dept. of Educ.*, 100 Hawai‘i 34, 57, 58 P.3d 545, 568 (2002) (quotation marks omitted). The general rule is that “a person does not have a duty to act affirmatively to protect another person from harm.” *Lee v. Corregedore*, 83 Hawai‘i 154, 159, 925 P.2d 324, 329 (1996). “ ‘The fact that the actor realized or should realize that action on his or her part is necessary for another’s aid or protection does not of itself impose upon him or her a duty to take such action.’ ” *Id.* (quoting Restatement (Second) of Torts § 314).

An exception to the “no duty” rule “may arise when justified by the existence of some special relationship between the parties.” *Doe v. Grosvenor Properties (Hawai‘i) Ltd.*, 73 Haw. 158, 163, 829 P.2d 512, 516 (1992). On this point, “Hawaii law follows the Restatement (Second) of Torts § 315 (1965).” *Touchette v. Ganal*, 82 Hawai‘i 293, 298, 922 P.2d 347, 352 (1996). Section 315 of the Restatement provides:

There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless (a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person’s conduct, or (b) a special relation exists between the actor and the other which gives to the other a right of protection.

We address these special relationships in reverse order.

a. Religious Defendants Had No Special Relationship With Plaintiff.

“[S]ection 314A of the Restatement (Second) of Torts sets forth a non-exclusive list of ‘special relationships’ upon which a court may find a duty to protect.” *Maguire v. Hilton Hotels Corp.*, 79 Hawai‘i 110, 113, 899 P.2d 393, 396 (1995) (citations omitted). Those are: (1) common carrier-passenger; (2) innkeeper-guest; (3) landowner-invitees; and (4) “[o]ne who ... voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection” Restatement (Second) Torts § 314A. “[B]ecause of the ‘special relationship’ shared between [these groups] the law imposes upon the former the duty to take reasonable steps to protect the latter from foreseeable harms.” *Doe Parents No. 1*, 100 Hawai‘i at 71, 58 P.3d at 582.

Absent from the list is a church-parishioner or clergy-parishioner relationship. Although “[t]he ‘section 314A list’ is not ... exhaustive, and other circumstances may engender a ‘special relationship,’” *id.*, **every court to address the issue has rejected the existence of a special relationship between a church and its parishioners based on religious membership.**⁸ There is “no authority” for imposing a “duty on ... a church to prevent its members from harming each

⁸ See *Meyer v. Lindala*, 675 N.W.2d 635, 640-41 (Minn. App. 2004) (rejecting plaintiff’s argument that a special relationship existed because the church’s “doctrine ... provides that members rely on congregation elders for all of their concerns” and requires “that members only associate with other Jehovah’s Witnesses” which “amounts to significant control, which deprived [them] of normal opportunities for self-protection,” because the church “did not have custody or control over [plaintiffs] at the time of the alleged misconduct” and “[p]roviding faith-based advice or instruction, without more, does not create a special relationship”); *Bryan R. v. Watchtower Bible & Tract Soc’y*, 738 A.2d 839, 847 (Me. 1999) (“The creation of an amorphous common law duty on the part of a church or other voluntary organization requiring it to protect its members from each other would give rise to both unlimited liability and liability out of all proportion to culpability.”); *Roman Catholic Bishop v. Sup. Ct.*, 42 Cal.App.4th 1556 (1996) (no special relationship exists “based on a priest/parishioner relationship”); *Doe v. Corp. of the President of The Church of Jesus Christ of Latter-day Saints*, 98 P.3d 429, 432 (Utah App. 2004) (“[W]e also reject Plaintiffs’ argument that [church] membership alone was sufficient to establish a special relationship between [the church] and Plaintiffs that created a duty on [the church’s] part to warn Plaintiffs about Tilson.”); *Williams v. United Pentecostal Church Intern.*, 115 S.W.3d 612, 615 (Tex. App. 2003) (holding that churches and child members do not stand in a special relationship); *Bouchard v. New York Archdiocese*, 2006 WL 1375232, * 6 (S.D.N.Y. May 18, 2006) (“Plaintiff’s allegations do not make out the existence of any sort of special relationship between the Church Defendants and Plaintiff beyond that general relationship between a church or religious body and a congregant. That general relationship is insufficient in law to support the finding of a fiduciary duty.”).

other.” *Conti v. Watchtower Bible & Tract Soc’y*, 235 Cal.App.4th 1214, 1227 (2015). Thus, the Religious Defendants had no duty to protect Plaintiff merely because her family was affiliated with the faith of Jehovah’s Witnesses.

To be certain, in some circumstances not relevant here, a special relationship can exist between a church and a parishioner under the fourth option in the Section 314A, which includes a custodian and ward. “In cases involving minors, courts generally have recognized a special relationship where adults and organizations ‘acted as quasi-parents by assuming responsibility for the safety of [minors] whose parents were not present.’ *Doe v. Roman Catholic Archbishop of Los Angeles*, 70 Cal.App.5th 657, 671 (2021), *reh’g denied* (Nov. 4, 2021), *review denied* (Feb. 9, 2022) (quoting *Doe v. United States Youth Soccer Ass’n, Inc.*, 8 Cal.App.5th 1118, 1130 (2017); see also *Doe v. Superior Court*, 237 Cal.App.4th 239, 246 (2015) (“Camp acted as a daycare provider, creating a special relationship which imposed a duty of care to prevent harm to minor while attending the summer camp.”). This is because “the school or school district stands in the shoes of a student’s parents when the student is in the school’s custody.” *Doe Parents No. 1*, 100 Hawai’i at 76, 58 P.3d at 587. In those instances, the special relationship ends when the child leaves the school’s or church’s custody. See *Figueroa v. State of Hawaii*, 61 Haw. 369, 376, 604 P.2d 1198, 1202 (1980) (State had duty to protect minor “so long as he was in its custody”).

Moreover, “the scope of such [special] relationships is bounded by geography and time.” *Dinsmoor v. City of Phoenix*, 492 P.3d 313, 317, ¶ 17 (2021) (quotation marks omitted). A “school is relieved of any duty to affirmatively protect students” when school ends and the child leaves the school’s custody. *Id.* ¶ 20. The same is true of churches. In *Lewis v. Bellows Falls Congregation of Jehovah’s Witnesses*, 95 F. Supp. 3d 762 (D. Vt. 2015), the court held that no special relationship existed between a minor parishioner and the Congregation while one of the Congregation’s elders was babysitting the parishioner in his own home. “The Complaint ... does not allege True molested Lewis while she was under the care of the Congregation; rather, it asserts True molested her on his property while babysitting her.” *Id.* at 769. Further, the complaint did not allege “that the Congregation or Watchtower had any involvement in the

babysitting arrangement apart from the fact that both True and Plaintiff's family were involved with the Jehovah's Witness Church."⁹ *Id.* at 769.

Here, the undisputed facts establish that Plaintiff was not in the Religious Defendants' custody and control at the time of [REDACTED]. [REDACTED]

[REDACTED] Indeed, as a matter of longstanding religious practice, the Religious Defendants do not sponsor *any* activities where children are separated from their parents. They do not host youth Bible study classes, youth camps, or any other youth activities, much less [REDACTED]. Even when attending worship services, children are, at all times, in their parents' (or guardians') custody and care. *See Castro v. Bushman*, 2015 WL 5564833, *6 (Wash. App. Sept. 22, 2015) ("Rather than being deprived of the protection of a parent or guardian as occurs when a child is delivered into the custody and care of another, Ms. Castro admitted in deposition that she always attended church events at the Kingdom Hall with her mother.") (quotation marks, citation, brackets omitted).

Accordingly, the Religious Defendants did not have a special relationship with Plaintiff.¹⁰ This cannot be the basis of the duty required under HRS § 657-1.8(b)(1).

⁹ In *Lewis*, the court also rejected the argument that a church has a duty to warn parishioners even if it does not have a duty to protect. *Lewis*, 95 F. Supp. 3d at 770.

¹⁰ Plaintiff's complaint suggests that Defendants had a duty to protect her because of its teachings and because of the respect and trust she and her parents placed in Apana. However, it is clear that "religious belief ... does not create a civil duty." *Roman Catholic Bishop v. Superior Court*, 42 Cal.App.4th at 1568. The "aura of spiritual power and authority" given to clergy by a church's doctrines does not create a duty of care. *Id.* A church "ha[s] no greater civil duty based upon its religious tenets." *L.L.N. v. Clauder*, 563 N.W.2d 434, 444 (Wis. 1997). Nor can a person's understanding (or misunderstanding) of a church's doctrines and teachings be the basis for a civil secular duty of care. *See F.G. v. MacDonnell*, 696 A.2d 697, 707 (N.J. 1997) (a court cannot "put the weight of the State behind [religious tenets] in order to impose civil liability" because doing so "would establish the tenets of Episcopal religion as the basis for civil liability"). Basing a duty on such things would require the court to determine what expectations are reasonably created by a church's teachings and when reliance on those teachings is reasonable. Resolution of a dispute created by "expectations" that are "created by the beliefs and doctrine of the religion" would "require that the courts become embroiled in a religious dispute requiring the interpreting and weighing of that doctrine," which the First Amendment prohibits. *Bohrer v. DeHart*, 943 P.2d 1220, 1229 (Colo. App. 1996).

b. The Religious Defendants Did Not Have A Special Relationship With Apana [REDACTED].

When a special relationship exists between a defendant and the perpetrator, “then the defendant owes the plaintiff a ‘duty to control the conduct of the [perpetrator] so as to prevent him ... from causing physical harm to the plaintiff.” *Doe Parents No. 1*, 100 Hawai‘i at 71, 58 P.3d at 382 (quotation marks omitted). A special relationship generally exists between master and servant, but as with the special relationship between custodian and ward, Hawaii law is clear that this special relationship is limited by geography and time—it exists only when the servant is in the master’s custody and control. *Touchette*, 82 Hawai‘i at 300, 922 P.2d at 354. “[T]he ability to control the third party is essential. The absence of such ability is fatal to a claim of legal responsibility.... [T]he actual custodial ability must affirmatively appear.” *Id.* In other words, a master’s duty to control his servant exists while the servant is on the job doing what he’s supposed to do. “[A]n employer’s duty to control the conduct of his employee may arise when the acts complained of are so connected in time and place with the employment as to give the employer a special opportunity to control the employee.” *Costa v. Able Distributors, Inc.*, 3 Haw. App. 486, 490, 653 P.2d 101, 105 (1982). In limited circumstances, this duty can exist even when the servant engages in conduct outside the scope of employment. “In examining the theory of ‘negligent failure to control an employee,’ the Hawai‘i Supreme Court adopted the principles in Restatement (Second) of Torts § 317.” *Kaopuiki v. Kealoha*, 104 Hawai‘i 241, 251, 87 P.3d 910, 920 (App. 2003). Under that Restatement section:

A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment so as to prevent him from intentionally harming others ... if (a) the servant (i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or (ii) is using a chattel of the master, and (b) the master (i) knows or has reason to know that he has the ability to control his servant, and (ii) knows or should know of the necessity and opportunity for exercising such control.

Restatement (Second) Torts § 317.

In this case, Apana was neither “upon the premises” of the Religious Defendants nor using their chattel at the time of [REDACTED]. He was in his own home, on his own time. Plaintiff [REDACTED] not because of any activity sponsored or supervised by the

Religious Defendants. Religious organizations, like other entities, are not liable for the after-hours, off-premises torts or crimes of their agents. In *Roman Catholic Bishop v. Sup. Ct.*, 42 Cal.App.4th 1556 (1996), a 15-year-old parishioner alleged she was sexually abused by her priest. The abuse occurred when the priest “took [plaintiff] from her home to various public places and hotels.” *Id.* at 1567. The court held that the church did not have a duty to protect the plaintiff or supervise the priest under those circumstances. *Id.* at 1567-68.

In a strikingly similar case, *R.A. v. First Church of Christ*, 748 A.2d 692 (Sup. Ct. Pa. 2000), a minister’s daughter “struck up a friendship with seven-year-old plaintiff R.A., who lived with her parents ... on the same street as the Chick [minister’s] family.” *Id.* at 695. Chick abused R.A. “at Chick’s house except on one occasion when some of the abuse may have occurred at R.A.’s own home,” but “[n]one of the abuse occurred on First Church’s premises.” *Id.* The court rejected R.A.’s claims. “[T]he Church can have no liability under [Restatement (Second) of Torts] § 317 for failing to exercise reasonable care to control Chick ... because none of the harm was caused on Church premises or on premises to which he gained admittance only as a Church employee.” *Id.* at 699. Chick’s home was “owned by him and his wife and they were the only parties who had control thereof.” *Id.* And “despite the conduct of occasional private prayer meetings and Bible studies at his home, it is clear that Chick did not perform his duties as a minister in his home.”¹¹ *Id.*

Likewise, any duty Religious Defendants had to control Apana while he was on Congregation property or performing Congregation duties did not confer any duty, power, ability, or right to control Apana in his own home when interacting with [REDACTED]. This standard applies to all institutions. No duty is imposed on a law firm to control a lawyer at home, or on a court to control a law clerk at home, or on a hospital to control a doctor at home. There simply is no basis for a court to impose on a church a duty to control a volunteer minister in his off-duty, after-hours private life. The court cannot impose a higher duty on a religious organization than it would on another entity.

¹¹ See also *Meyer*, 675 N.W.2d at 640 (church had no duty to prevent abuse of minor parishioner that occurred “at [her] residence, on a snowmobile, and in an automobile” and not on church property or during church functions); *Doe v. Corp. of the President of The Church of Jesus Christ of Latter-day Saints*, 98 P.3d at 432 (affirming dismissal where the abuse did not occur “on [church] property, during a [church] sponsored activity, or in connection with [the perpetrator’s] position as a High Priest or scout leader”).

Foreseeability is immaterial. In *Lewis*, 95 F. Supp. 3d 762, the plaintiff alleged that an elder, “molested her on his personal property, not on property belonging to the Congregation or Watchtower.” *Id.* at 768. Lewis contended that the Congregation had a duty to protect her because it was aware of prior abuse but the court explained, “[u]nder the plain language of § 317 ... mere foreseeability is insufficient to establish a duty to control if the servant is not on the master’s premises or using a chattel of the master.” *Id.* Thus, the court concluded that there “is no ‘special relationship’ between the Congregation and True giving rise to a duty when he is not on the Congregation’s premises or carrying out the Congregation’s business, and therefore the Congregation had no duty to control True when he was babysitting a child outside Congregation activities.” *Id.* The same rule of law governs this lawsuit.

In sum, Defendant Apana was not “employed by” Religious Defendants. There was no special relationship between Religious Defendants and either Plaintiff or Defendant Apana. Religious Defendants did not owe Plaintiff a duty of care during [REDACTED] [REDACTED] [REDACTED]. Thus, Plaintiff cannot pass through the first of the two windows open for claims against legal entities.

3. Plaintiff Admits That Religious Defendants Did Not “Supervise Or Control” The [REDACTED]

A second window opens to bring claims against legal entities when the perpetrator and victim “were engaged in an activity over which the legal entity had a degree of responsibility or control.” HRS § 657-1.8(b). That window is not opened here where undisputed facts establish that the [REDACTED]

[REDACTED] Nothing in the record suggests that Religious Defendants had any type of “supervision or control” over these sleepovers. As a matter of religious practice, Religious Defendants do not hold activities where children are separated from their parents, as occurred here with Plaintiff. *See* Exhibit “C” at 16:23-17:11; Exhibit “F” at 54:10-18. Indeed, Religious Defendants [REDACTED]. *See* Exhibit “D” at Admission No. 44-46; *see also* Exhibit “E” at Admission No. 11-17, 19-20. Accordingly, the second window to revive claims against legal entities never opened. Plaintiff’s claims are therefore barred by the statute of limitations.

B. Plaintiff’s Claims Fail Because Religious Defendants Owed Plaintiff No Duty of Care.

Even if the claim were not barred by the statute of limitations (it is), “[a] prerequisite to any negligence action is the existence of a duty owed by the defendant to the plaintiff.” *Molfino v. Yuen*, 134 Hawai‘i 181, 184, 339 P.3d 679, 682 (2014). Duty was addressed above as an element of the statute of limitations window. Religious Defendants had a duty to protect Plaintiff only *while she was in their custody* (which never occurred) and to control Defendant Apana only *while he was performing his duties as an elder*. But no duty existed during activities over which the Religious Defendants had no control and did not even know existed. *Cf. Regents of the Univ. of Cal. v. Sup. Ct.*, 413 P.2d 656, 668 (Cal. 2018) (“Colleges are in a special relationship with their enrolled students only in the context of school-sponsored activities over which the college has some measure of control” and a duty of care exists “only with respect to risks that arise within the scope of the school-student relationship.”).

C. Plaintiff’s non-negligence claims lack merit and are also barred by the statute of limitations.

Plaintiff’s complaint alleges that Religious Defendants’ negligence was a proximate cause of the alleged abuse. It also asserts claims for post-abuse conduct. Those claims lack evidentiary support and remain barred by the statute of limitations.

1. Plaintiff’s Claim for “Hindering Prosecution” Has No Merit.

Plaintiff asserts a civil claim for “hindering prosecution.” She alleges that Religious Defendants intimidated “anyone from performing an act that might aid in the discovery, apprehension, prosecution or conviction of” the perpetrator and by “rendering assistance to Perpetrator in the cover-up of his crimes.” Compl. ¶ 82. At least three problems exist with this claim. First, it has no evidentiary support—zero. Second, Hawai‘i has never recognized a civil claim based on the crime of hindering prosecution, and nothing in HRS §§ 710-1029 and 710-1030 (the criminal statutes Plaintiff alleges the Religious Defendants violated) suggests a legislative intent to do so. *See Hunt v. First Ins. Co. of Hawaii, Ltd.*, 82 Hawai‘i 363, 922 P.2d 976, 984 (App. 1996) (private right of action based on criminal statute arises only when legislature intended to create such a claim). Third, HRS § 657-1.8(b) does not revive claims based on allegedly hindering prosecution. If a civil claim existed for hindering prosecution, it is barred by the statute of limitations for reasons discussed above.

context of ecclesiastical discipline, churches enjoy an absolute privilege from scrutiny by secular authority.” *Hadnot v. Shaw*, 826 P.2d 978, 987 (Okla. 1992).

Religious Defendants cannot be held liable for allowing a sinner to worship with them, regardless of how heinous his sins are. *See L.L.N. v. Clauder*, 563 N.W.2d 434, (Wis. 1997) (ecclesiastical discipline is “influenced by a religious belief in reconciliation and mercy” which cannot be second guessed by secular courts).

V. CONCLUSION

Tragically, Plaintiff was [REDACTED] at his residence during [REDACTED]. Defendant Apana, alone, is accountable for his conduct. The Religious Defendants are not legally responsible because they had neither the duty nor ability to control, protect, or monitor Plaintiff during her [REDACTED]. Religious Defendants are entitled to summary judgment on all counts in the complaint.

DATED: Honolulu, Hawai’i, March 29, 2022.

/s/ William S. Hunt
WILLIAM S. HUNT
JENNY J.N.A. NAKAMOTO
JOEL M. TAYLOR (*Pro Hac Vice*)

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

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

N.D.,

Plaintiff,

vs.

MAKAHA, HAWAII CONGREGATION OF JEHOVAH'S WITNESSES, a Hawaii non-profit unincorporated religious organization, a.k.a. MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES and KINGDOM HALL, MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES; WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a New York corporation; KENNETH L. APANA, Individually; and Does 1 through 100, inclusive,

Defendants.

Civil No. 1CCV-20-0000390 DEO
(OTHER NON-VEHICLE TORT)

**DECLARATION OF
WILLIAM S. HUNT**

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 WILLIAM S. HUNT

I, William S. Hunt, declare under penalty of law that the following is true and correct:

1. I am an attorney with the law firm of Dentons US LLP and an attorney of record for Defendants MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAII ("Makaha") and WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. ("Watchtower", together with Makaha, the "Religious Defendants").

2. I make this declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.

3. I am personally aware of the proceedings in this case and have personally participated in all phases of litigation, including discovery and oral depositions.

4. This Declaration is made in support of the Religious Defendants' Motion for Summary Judgment.

5. Attached as Exhibit "A" is a true and correct copy, with highlights, of excerpts from the transcript of Plaintiff's oral deposition taken on August 8, 2021 that I participated in on behalf of the Religious Defendants.

6. Attached as Exhibit "B" is a true and correct copy, with highlights, of excerpts from the transcript of the oral deposition of Plaintiff's step-father, [REDACTED], taken April 16, 2021 that I participated in on behalf of the Religious Defendants.

7. Attached as Exhibit "C" is a true and correct copy, with highlights, of excerpts from the transcript of the oral deposition of Plaintiff's mother, [REDACTED], taken April 15, 2021 that I participated in on behalf of the Religious Defendants.

8. Attached as Exhibit "D" is a true, correct copy, with highlights, of excerpts of Defendant Kenneth Apana's signed Responses to Plaintiff's First Requests for Admission my office received from Plaintiff's counsel's office, on or about February 24, 2022.

9. On or about July 15, 2020, my office served the Religious Defendants' First Request for Admissions to Defendant Kenneth Apana on Mr. Apana via U.S. mail.

10. Attached as Exhibit "E" is a true, correct, and complete copy, with highlights, of Defendant Kenneth Apana's signed Responses to the Religious Defendants' First Request for Admissions to Defendant Kenneth Apana my office received from Mr. Apana on or about October 6, 2020.

11. Attached as Exhibit “F” is a true and correct copy, with highlights, of excerpts from the transcript of the oral deposition of Philip Main, taken May 26, 2021 that I participated in on behalf of the Religious Defendants.

12. Attached as Exhibit “G” is a true and correct, with highlights, of excerpts from the revised transcript of the oral deposition of the Watchtower Rule 30(b)(6) witness, Thomas Jefferson, taken October 1, 2021 that I participated in on behalf of the Religious Defendants.

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

Executed in Honolulu, Hawai‘i, on March 29, 2022.

/s/ William S. Hunt
WILLIAM S. HUNT

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 DEO
(OTHER NON-VEHICLE TORT)

EXHIBIT ABSTRACT

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.

EXHIBIT ABSTRACT

Pursuant to the *Trial Setting Status Conference Order of February 23, 2021, Exhibit “B” (Regarding Motions)*, entered February 22, 2021 (Dkt. 137) Defendants Makaha Congregation of Jehovah’s Witnesses, Hawai’i and Watchtower Bible and Tract Society of New York, Inc. submit their Abstract regarding exhibits that are ten (10) pages or more.

Ex.	Description	Relevance	Citation
“A”	Plaintiff’s Oral Deposition Transcript - Excerpts	Facts Supported: <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div>	Memo ² at pages 1, 2, 3, 4, 5, and 17.
“B”	██████████ Oral Deposition Transcript - Excerpts	Facts Supported: <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div>	Memo at pages 1, 3, and 5.
“F”	Philip Main’s Oral Deposition Transcript - Excerpts	Facts Supported: <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div>	Memo at pages 4 and 15.

¹ “Plf.” refers to Plaintiff.

² “Memo” refers to the Religious Defendants’ Memorandum In Support of Motion.

DATED: Honolulu, Hawai`i, March 29, 2022.

/s/ William S. Hunt

WILLIAM S. HUNT

JENNY J.N.A. NAKAMOTO

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

EXHIBIT A

TO DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT

[FILED UNDER SEAL PURSUANT TO ORDER GRANTING DEFENDANTS' *EX PARTE* MOTION TO FILE UNDER SEAL: (1) *DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT* AND (2) EXHIBITS "A" – "G" TO *DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT*, entered April 1, 2022 (Dkt. 325)]

EXHIBIT B

TO DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT

[FILED UNDER SEAL PURSUANT TO ORDER GRANTING DEFENDANTS' *EX PARTE* MOTION TO FILE UNDER SEAL: (1) *DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT* AND (2) EXHIBITS "A" – "G" TO *DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT*, entered April 1, 2022 (Dkt. 325)]

EXHIBIT C

**TO DEFENDANTS
MAKAHA CONGREGATION OF JEHOVAH'S
WITNESSES, HAWAI'I AND WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW
YORK, INC.'S MOTION FOR SUMMARY
JUDGMENT**

[FILED UNDER SEAL PURSUANT TO ORDER GRANTING
DEFENDANTS' *EX PARTE* MOTION TO FILE UNDER SEAL:
(1) *DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S
WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY
JUDGMENT* AND (2) EXHIBITS "A" – "G" TO *DEFENDANTS
MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES,
HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF
NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT*,
entered April 1, 2022 (Dkt. 325)]

EXHIBIT D

TO DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT

[FILED UNDER SEAL PURSUANT TO ORDER GRANTING DEFENDANTS' *EX PARTE* MOTION TO FILE UNDER SEAL: (1) *DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT* AND (2) EXHIBITS "A" – "G" TO *DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT*, entered April 1, 2022 (Dkt. 325)]

EXHIBIT E

TO DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT

[FILED UNDER SEAL PURSUANT TO ORDER GRANTING DEFENDANTS' *EX PARTE* MOTION TO FILE UNDER SEAL: (1) *DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT* AND (2) EXHIBITS "A" – "G" TO *DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT*, entered April 1, 2022 (Dkt. 325)]

EXHIBIT F

TO DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT

[FILED UNDER SEAL PURSUANT TO ORDER GRANTING DEFENDANTS' *EX PARTE* MOTION TO FILE UNDER SEAL: (1) *DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT* AND (2) EXHIBITS "A" – "G" TO *DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT*, entered April 1, 2022 (Dkt. 325)]

EXHIBIT G

TO DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT

[FILED UNDER SEAL PURSUANT TO ORDER GRANTING DEFENDANTS' *EX PARTE* MOTION TO FILE UNDER SEAL: (1) *DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT* AND (2) EXHIBITS "A" – "G" TO *DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT*, entered April 1, 2022 (Dkt. 325)]

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 DEO
(OTHER NON-VEHICLE TORT)

**NOTICE OF REMOTE HEARING
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.

NOTICE OF REMOTE HEARING

TO: MARK S. DAVIS, ESQ.
LORETTA A. SHEEHAN, ESQ.
MATTHEW WINTER, ESQ.
JAMES S. ROGERS, ESQ. (*Pro Hac Vice*)
HEATHER M. COVER, ESQ. (*Pro Hac Vice*)
Attorneys for Plaintiff

KENNETH L. APANA
Defendant *Pro Se*

NOTICE IS HEREBY GIVEN that DEFENDANTS MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES, HAWAI'I AND WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.'S MOTION FOR SUMMARY JUDGMENT shall come on for hearing before the Honorable Dean E. Ochiai, Judge of the above entitled court, via ZOOM video conferencing on **April 18, 2022 at 9:00 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, April 1, 2022.

/s/ William S. Hunt
WILLIAM S. HUNT
JENNY J.N.A. NAKAMOTO
JOEL M. TAYLOR (*Pro Hac Vice*)

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

CERTIFICATE OF SERVICE

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

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>
HEATHER M. COVER, 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
P.O. BOX 331
KONA, HI 96745

Pro Se Defendant/Crossclaim Defendant

DATED: Honolulu, Hawai`i, April 1, 2022.

/s/ William S. Hunt

WILLIAM S. HUNT
JENNY J.N.A. NAKAMOTO

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