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SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation, et al.,

Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT McGUINESS, DEPARTMENT 22

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTIONS FOR NEW TRIAL AND J.N.O.V. OF DEFENDANTS WATCHTOWER NEW YORK AND FREMONT CONGREGATION

Date: August 13, 2012
Time: 8:30 a.m.
Dept: 22

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INTRODUCTION

Watchtower New York and the North Fremont Congregation (the "Church Defendants") jointly move for New Trial and, as to Watchtower only, for Judgment Notwithstanding the Verdict on the issues of punitive damages. Not a single ground for the combined Motions has legal or factual merit. The Church Defendants base their Motions on claimed insufficiency of the evidence, but exclude reference to any evidence favorable to Plaintiff. They base their Motions on claimed error in the Trial Court's ruling excluding non-parties from the Special Verdict and its refusal to instruct the jury on inapplicable mandatory reporting statutes, but again fail to accurately state the evidence or address to the controlling authorities relied on by the Court. Defendant Watchtower claims Constitutional violations in the punitive damage award, but the arguments misinterpret the cases it cites. The Church Defendants attack the jury's award of damages as resulting from passion and prejudice, but ignore their own failure to offer either evidence or argument on the issue of compensatory damages.

The jury's verdict was neither capricious nor arbitrary. Jury selection was guided by the Trial Court, with caution to exclude any prospective juror who demonstrated bias against Jehovah's Witnesses or strong emotion about child sexual abuse. Defendants did not raise a single objection to any ruling in the voir dire process. During trial the jury was extremely attentive. Their deliberations were methodically conducted over four days. The jurors were thorough, asking for portions of testimony to be re-read and reporting the omission of Table A from the Present Cash Value instruction that had been overlooked by counsel and the Court.

I. THE MOTION FOR J.N.O.V. FAILS TO MEET THE STATUTORY STANDARD AND IGNORES EVIDENCE SUFFICIENT TO SUPPORT THE VERDICT.

A. Evidence on Malice

Watchtower's Motion for J.N.O.V. argues that the evidence is insufficient to support a finding by the clear and convincing standard that Watchtower's conduct harming Plaintiff constituted legal malice. The identical argument has been rejected by the Trial Court twice, once in granting Plaintiff's Motion to Amend her Complaint and again in denying Watchtower's Motion for Nonsuit/Directed Verdict. As before, Watchtower incorrectly argues that "Plaintiff's entire argument regarding malice

. . . was based solely on the July 1, 1989 letter from Defendant Watchtower to all bodies of elders." (Def. MPA 4:22-24.) The argument fails to mention the evidence showing three interrelated Watchtower corporate policy decisions that contributed to Plaintiff's harm. The first is the policy of keeping child sexual abuse reports secret, embodied in the 1989 letter that was Plaintiff's Exhibit 1. The second is the related policy of relying exclusively on parents to protect children in Jehovah's Witnesses against childhood sexual abuse, while simultaneously denying them the information to identify confirmed child abusers who are in frequent contact with their children. The third is the total absence of any program or policy on child sexual abuse *prevention*, as opposed to parental *education*. Although Watchtower argues the evidence showed it had good "policies to protect children" (Def. MPA 7:24-25), even Defendants' expert Dr. Applewhite pointedly refused to support Defendants' child sex abuse prevention program. (Applewhite testimony, Simons Dec., Ex. 14, 136:2-15.) Plaintiff's counsel argued all three policy issues in closing. (Plaintiff's closing, Simons Dec., Ex. 15, 95:6-9; 101:9-12; 119:17-121:5.)

The Church Defendants argue that the jury was required to believe, accept, and give 100% credence to the defense witnesses' testimony, including their expert Dr. Applewhite. (Def. MPA 7:1-20.) They argue that the jury was required to interpret the July 1, 1989 letter to all bodies of elders only as the defense attorneys suggested. (MPA 5:4-6:27.) They argue that there was no contrary evidence presented. (Def. MPA 7:21-28.) All three arguments sidestep the rule that J.N.O.V. "may be granted only if it appears from the evidence, viewed in the light most favorable to the party securing the verdict, that there is no substantial evidence in support." (*Sweatman v. Department of Veterans Affairs* (2001) 25 Cal.4th 62, 68, emphasis added; See C.C.P. §663.) "If there is any substantial evidence, or reasonable inferences to be drawn therefrom, in support of the verdict, the motion should be denied." (*Hauter v. Zogarts* (1975) 14 Cal.3d 104, 110.) The party in whose favor the verdict was rendered is "entitled to the benefit of every favorable inference which may reasonably be drawn from the evidence and to have all conflicts in the evidence resolved in his favor." (*Fountain Valley Chateau Blanc Homeowner's Ass'n v. Dep't. of Veterans' Affairs* (1998) 67 Cal.App.4th 743, 750.)

The content and timing of the 1989 letter, with repeated references to avoiding lawsuits, leads to the inference that its true purpose was to avoid claims like Plaintiff's, based either on sexual abuse of a child by a perpetrator already known to the Church Defendants, like Jonathan Kendrick, or possible suits by other abused children, who might remain unaware that they were not their abuser's only victims. The timing of the letter, coming soon after national attention focused on multiple lawsuits involving sexual abuse in the Catholic Church, supports that inference. (Salter test., Simons Dec., Ex. 7, 54:25-56:21; 61:14-65:3.) The jury was reasonably persuaded by the repeated secular and lawsuit-related concerns expressed in the letter that its true purpose was not to instruct on religious beliefs, but rather to hide the existence of known child sexual abusers from the congregations and the public. The jury doubtlessly waited for the explanation - which the Church Defendants never offered - as to why, if the 1989 letter represented only a common sense, garden variety instruction in basic confidentiality when taking confessions or performing counseling, it ends with a P.S. instructing elders to not copy the letter or disclose its contents to anyone, ever. (Trial Ex. 1/Def. 026; Plaintiff's closing, Simons Dec., Ex. 15, 105:23-106:9.)

Watchtower knew that secrecy protects molesters and injures victims. (Awake Magazine, Trial Ex. 64/Def. 37, Oct. 8, 1993); that secrecy is why child sex abusers were allowed to roam free in the Catholic Church (*Ibid.*); that child sex abusers could be otherwise trusted persons within the church (*Ibid.*); and that child sex abuse has devastating effects on children. (Awake Magazine, Trial Ex. 60/Def. 29, Oct. 8, 1991; Trial Ex. 63/Def. 36, July 22, 1993.) Slogans about "Abhorring Child Abuse" aside, Watchtower's actual policies deliberately kept child sex abusers secret with the result of causing devastating harm to Plaintiff.

The jury had many good reasons to disbelieve and reject some or all of the Church Defendants' testimony on these issues. None of the witnesses who testified regarding the reasons for the July 1, 1989 policy were involved in creating it or had any personal knowledge on the issue above what they were told by unknown individuals at Watchtower New York. (Shuster test., Simons Dec., Ex. 11, 115:19-116:5; Clarke test., Simons Dec., Ex. 10, 188:18-20; Ex. 16, 31:1-7; Lamerdin test., Simons Dec., Ex. 13, 204:7-16.) For reasons of their own, the Church Defendants chose not to

call anyone who was involved in the actual creation of the policy set forth in the letter to explain or defend it. Although the policies were admitted to be those of the Governing Body, none of its members testified in this action. (Shuster test., Simons Dec., Ex. 11, 116:14-117:5.) The jury may have reasonably decided to follow the Court's instruction and view with suspicion the weaker second-hand evidence of the letter's intent and basis offered by the low-ranking elders who were produced to testify on the issue. (CACI 203, Court's Inst., Simons Dec, Ex. 18, 53:17-22.)

The jury may have reasonably found that the elders were willfully false in significant portions of their testimony, and decided to disbelieve the rest. (CACI 5003, Court's Inst., Simons Dec., Ex. 18, 81:18-20.) Elders Abrahamson's and Clarke's versions of the Kendrick family meeting in 1993, where they learned Kendrick had molested his step-daughter, were repeatedly contradicted by Evelyn Kendrick and Andrea Sylvia. (Abrahamson test., Simons Dec., Ex. 1, 108:6-110:3, 136:7-18 and Clarke test., Simons Dec., Ex. 10, 173:11-23, 179:13-23 v. E. Kendrick test., Simons Dec., Ex. 2, 41:19-42:19 and Sylvia test., Simons Dec., Ex. 3, 94:1-95:17 [touching was intentional, in bedroom, skin-to-skin, and included pelvic area]; Clarke test., Simons Dec., Ex. 10, 184:22-185:14 v. E. Kendrick test., Simons Dec., Ex. 2, 43:6-20 and Sylvia test., Simons Dec., Ex. 3, 97:12-98:1 [report not "private"]; Clarke test., Simons Dec., Ex. 10, 166:22-167:4 v. E. Kendrick test., Simons Dec., Ex. 2, 40:14-41:4 [meeting held because Evelyn called Clarke for protection, not because Jonathan Kendrick called Clarke for "counseling"]; Abrahamson test., Simons Dec., Ex. 1, 114:24-115:4 v. E. Kendrick test., Simons Dec., Ex. 2, 42:20-43:5 [blaming Evelyn].)

Mr. Shuster and the Fremont elders testified that Kendrick would never have been allowed to be in field service with Plaintiff, then age eight, nine, and ten. (Abrahamson test., Simons Dec., Ex. 1, 122:21-123:6, Clarke test., Ex. 10, 208:20-209:11; Shuster test., Ex. 12, 177:13-25.) This testimony was contradicted by witness Carolyn Martinez, who saw them in field service together. (Martinez test., Simons Dec., Ex. 6, 41:10-18.) Mr. Shuster falsely testified that he believed Watchtower has a written policy proscribing known child molesters from performing field service with children, but was unable to produce it. (Shuster test., Simons Dec., Ex. 12, 177:13-179:23.) And Mr. Shuster and Elders Abrahamson and Lamerdin each gave the inherently ridiculous testimony that they do not

believe parents would be better equipped to decide who to trust with their children if they knew the identity of confirmed child molesters in their congregation. (Shuster test., Simons Dec., Ex. 12, 181:6-12; Abrahamson test., Simons Dec., Ex. 1, 118:15-120:9; Lamerdin test., Simons Dec., Ex. 13, 202:14-18.)

The jury could have reasonably decided not to believe any of the testimony of the elders as to why they were instructed to and did keep Kendrick's record of child sexual abuse secret from the congregation, giving him the opportunity to groom other girls for molestation. In rejecting the elders' testimony that the purpose was to protect the Kendrick family's privacy, and not to hush-up victims and avoid unwanted attention, legal or otherwise, the jury may reasonably have concluded that the opposite was true – that Watchtower was far more concerned with protecting Jehovah's Witnesses from image-damaging attention and hushing-up any victims than it was with protecting its flock from Brother Kendrick. "To disbelieve the denial of the existence of a fact is to believe in the existence of that fact." (*Donchin v. Guerrero* (1995) 34 Cal.App.4th 1832, 1840.) This is particularly true in the case where the evidence establishing state of mind, such as malice, is exclusively within the control of the defendant. (*Ibid.*)

Defense counsel's interpretation of the 1989 letter was also within the jury's power to reject. Elder Abrahamson specifically admitted that elders did have the authority to "inform" parents of a known molester like Kendrick, which contradicts the Church Defendants' counsel's, and other elders', testimony that biblical mandates required secrecy. (Abrahamson test., Simons Dec., Ex. 1, 116:11-18.) Defendants argue that the 1989 policy was to avoid lawsuits by child sexual abusers for invasion of privacy and improper disclosure of confidential information. (Def. MPA 5:21-23.) However, no evidence of any such lawsuits was introduced, and the fact that Kendrick was publicly convicted in the criminal courts demonstrates that there was no right of privacy involved in this case. Evelyn and Andrea Kendrick did not consider the matter private. (E. Kendrick test., Simons Dec., Ex. 2, 43:6-20; Sylvia test., Simons Dec., Ex. 3, 97:12-98:1.) Furthermore, under repeated cross-examination, elders Abrahamson and Clark admitted that Kendrick's "confession" was really a lie. (Abrahamson test., Simons Dec., Ex. 1, 105:16-107:14; Clarke test., Simons Dec., Ex. 10, 173:24-

174:6.) There was more than sufficient evidence to clearly convince the jury that the Fremont elders were instructed and carried out policies of keeping known child sex abusers secret, and failed to protect children, including Plaintiff, for the benefit of Watchtower and to the risk and detriment of children.

In closing argument, Plaintiff's counsel went through the July 1, 1989 letter in great detail, and offered an interpretation of the document that was in stark contrast to that offered by Defendants' attorneys. (Plaintiff's closing, Simons Dec., Ex. 15, 101:9-106:9.) As the Trial Court found in granting Plaintiff's Motion to Amend her Pleadings to add the punitive damages claim, and in denying the Motion for Non-Suit/Directed Verdict on the issue of malice, there was sufficient evidence for Plaintiff to have proven a prima facie case on the issue of malice.

B. "National Policy"

The Church Defendants argue "the punitive damages award must also be vacated in its entirety because Plaintiff's stated purpose for pursuing punitive damages was to effect a change in Watchtower's national policy." (Def. MPA 8:5-7.) They assert that "seeking punitive damages for that purpose is improper." (*Id.* at 8:7-8.)

The Church Defendants have confused two separate and distinct concepts: the prohibition against awarding punitive damages to punish conduct committed outside of the state's jurisdiction, and the permissible goal of deterring future wrongful conduct by changing a national policy through an award of punitive damages for the conduct against the plaintiff who is before the Court. This confusion arises from the Church Defendants' failure to properly read *BMW of North America, Inc. v. Gore* (1996) 517 U.S. 559, and failure to review or cite *Johnson v. Ford Motor Company* (2005) 35 Cal.4th 1191.

BMW was an Alabama case against the automobile manufacturer that sold a repainted BMW as a new vehicle. Evidence was introduced at trial of nationwide sales of nearly 1000 such cars, all but 14 of them sold in other states. In addition to awarding compensatory damages of $4000, the jury awarded two million dollars in punitive damages: a ratio of 500 to 1.

The U.S. Supreme Court held that "a state may not impose economic sanctions on violations of its laws with the intent of changing the tortfeasor's **lawful** conduct in other states." (517 U.S. at p. 572 [emphasis added].) A state may not impose punitive damages to punish a defendant for conduct that did not occur in, or had no impact on, the state where the trial was held. (*Id.* at p. 572-73.) Due Process prohibits punishing a defendant for harm to persons not before the Court. (*Phillip Morris USA v. Williams* (2007) 549 U.S. 346, 349.) Thus, although evidence of harm to others is admissible on the issue of reprehensibility, the Court must protect against the risk that the jury will punish the defendant for harm caused to others. (*Id.* at p. 355.)

None of these rules were violated in this case. The jury's award of punitive damages could not have been for the purpose of punishing Watchtower for harm to others outside of California, because the Trial Court granted the Church Defendants' Motion in Limine to exclude evidence of any other victims and no such evidence was admitted. Because there was no evidence of harm to others outside of California or of harm to others besides Plaintiff, there is no basis to argue that the jury awarded punitive damages based upon harm to anyone other than Plaintiff. Moreover, the jury was instructed that punitive damages were only for the purpose of punishing Defendant Watchtower "for the conduct [that] harmed the Plaintiff and to discourage similar conduct in the future." (CACI 3949, Court's Inst., Simons Dec., Ex. 19, 13:5-8), and not to award punitive damages "for the impact of its alleged misconduct [on] persons other than Candace Conti." (*Id.* at 14:12-14.)

There was also no evidence of Watchtower's lawful conduct in other states. Unlike *BMW*, Plaintiff's expert Dr. Anna Salter testified that the policy of Defendant Watchtower violated national standards of care, applicable in all 50 states where she trains and teaches. (Salter test., Simons Dec., Ex. 7, 61:14-65:3.) There is no evidence from which the jury could have concluded that the policies at issue were lawful in any state. Therefore, the prohibition on imposing punitive damages "with the intent of changing the tortfeasor's lawful conduct in other states" has no applicability to this case. (*BMW, supra*, 517 U.S. at p. 572.)

As the California Supreme Court recognized in *Johnson v. Ford Motor Company, supra*, the fact that wrongful conduct involves a national policy does not preclude the use of punitive damages

to deter continuation of that policy. (35 Cal.4th 1191 at p. 1207.) The scale of the wrongful conduct, including whether or not it is resulting from a national policy that would be applied to all similar cases, remains "relevant to reprehensibility and hence to the size of award warranted, under the guidepost, to meet the state's interest in deterrence." (*Ibid.*) Even more strongly, the *Johnson* Court stated, "Nothing the high court has said about due process review requires that California juries and courts ignore evidence of corporate policies and practices and evaluate the defendant's harm to the plaintiff in isolation."

Defendant Watchtower's argument that a jury may not consider the scope of a national policy in determining reprehensibility and an award of punitive damages is simply wrong and not supported by either the authorities it cites or the authorities it omits.

II. THERE WAS NO ERROR IN EXCLUDING NON-PARTIES FROM VERDICT FORM.

As their first-claimed basis for new trial, the Church Defendants argue that the Court erred in not including various public entities and Plaintiff's parents on the verdict form. The Court's ruling rejecting the request was based on case law showing none of the claimed at fault non-parties had a legal duty to Plaintiff under the facts of this case. Defendants' Motion for New Trial neither addresses these cases nor cites any evidence that would establish a prima facie case against any non-party. A non-party may only be included on a Special Verdict form if the evidence is sufficient to establish a legal duty, the breach of that duty, and causation of the plaintiff's injury. (*Ford v. Polaris Industries, Inc.* (1997) 139 Cal.App.4th 755, 778-80; *Wilson v. Ritto* (2003) 105 Cal.App.4th 361, 369-70; *Chakalis v. Elevator Solutions, Inc.* (2012) 205 Cal. App. 4th 1557, 1569-70.) The Church Defendants did not introduce sufficient evidence to meet this standard.

A. Law Enforcement Agencies

Absent a "special relationship," law enforcement agencies and public agencies have no duty in California to warn citizens of an individual who presents a danger to others. (*Denton v. City of Fullerton* (1991) 233 Cal.App.3d 1636, 1640-41 [police officers aware of a sexual assault in an apartment complex laundry room had no duty to warn residents of the complex of the risk of sexual assaults on the property]; *Thompson v. County of Alameda* (1980) 27 Cal. 3d 741 [County employees

had no duty to warn neighbors that a juvenile released from Juvenile Detention may constitute a danger to others].)

In this case, the public agencies Defendants blame had no duty to warn anyone of Kendrick's risk of further molestations, because - unlike the Church Defendants – those agencies had no special relationship to Plaintiff, and no readily identifiable individual or group of individuals who were Kendrick's future victims. There is no discrimination against the Church Defendants in violation of the First Amendment, as they suggest. (Def. MPA 13:3-13.) The Church Defendants' duty arose from their combined specific knowledge of Kendrick and their relationship with Plaintiff, a combination the agencies did not share.

B. Parents

The Church Defendants do not produce any argument or evidence that Mr. or Mrs. Conti, Plaintiff's parents, had actual knowledge that Kendrick was a child molester or that he was molesting Candace. The Defendants instead argue the Contis were bad parents. (Def. MPA 14:12-25.) Although their parenting flaws may have made their daughter more vulnerable, that evidence does not meet the threshold to create a legal duty to prevent her molestation in this case. The Church Defendants do not discuss or distinguish *Romero v. Superior Court* (2001) 89 Cal.App.4th 1068 or *Chaney v. Superior Court* (1995) 39 Cal.App.4th 152, both of which were relied on by the Trial Court. Both cases state the requirement that a private person must have actual knowledge of the perpetrator's propensity for sexual abuse before imposition of a duty to protect a minor can be imposed. The *Romero* Court held that no duty could be imposed on the parents "because there is no evidence from which the trier of fact could find that the Romeros had prior actual knowledge of Joseph's propensity to sexually assault female minors." (89 Cal.App.4th at p. 1080.)

As the Trial Court previously found, neither Welfare and Institutions Code section 300 nor *Williams v. Garcetti*, (1993) 5 Cal.4th 561, establish a duty on Plaintiff's parents in this case. Welfare and Institutions Code section 300 is the Juvenile Dependency statute, and there is no authority that it creates a tort duty. *Williams* was a taxpayer group's action for injunctive relief, seeking to prohibit the

District Attorney from enforcing Penal Code section 272, and did not involve parents' failure to protect their child from sexual assault.

III. THERE WAS NO PREDJUDICIAL ERROR IN REFUSING DEFENDANTS' PROPOSED MANDATED REPORTING INSTRUCTION.

The Church Defendants argue that the Court erred in refusing to give their requested jury instruction regarding clergy not being specifically named as mandated reporters in 1993. (Def. MPA 15:19-16:22.) Where a moving party asserts instructional error as grounds for a new trial, it must prove that the error was prejudicial. (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 570.) A court may not grant a new trial on this basis if "it is not reasonably probable defendant would have obtained a more favorable result in its absence." (*Ibid.*)

The argument that the refusal to give the requested instruction was prejudicial error rests on two prongs, both of which are factually erroneous. First, Defendants argue that the instruction was required because "Plaintiff's expert, Anna Salter, Ph.D., intentionally misled the jury on this issue by suggesting that clergy were legally obligated to report." (Def. MPA 16:25-27.) Secondly, Defendants argue that Plaintiff's counsel "suggested to the jury that one measure the Church Defendants could have taken was reporting Kendrick's confession . . . to the authorities." (Def. MPA 17:9-11.)

Dr. Salter did not mislead the jury, intentionally or otherwise. Plaintiff's counsel did not ask any questions at all regarding mandatory reporting during direct examination. Defense counsel raised the issue as its first cross-examination question. (Salter test., Simons Dec., Ex. 7, 71:3-12.) Dr. Salter stated only: "I believe that there was a law in place that required people who were involved with children to report." She agreed "there was not a law that specifically addressed ministers." (*Id.* at 71:14-17.) Dr. Salter did accurately point out that the mandatory reporting law was broader than defense counsel suggested, and included "institutions that involve children." (*Id.* at 71:21-23.) This testimony accurately stated the content of Penal Code section 11166 as it existed in 1993. (Plaintiff's [Denied] Request for Judicial Notice, Simons Dec., Ex. 17.)

Similarly, the Church Defendants' argument that Plaintiff's counsel told the jury the Church Defendants could be held liable for not reporting Kendrick's confession to authorities is simply false.

Two citations to the trial transcript are offered: Mr. Schnack's Declaration, Ex. F, at 107:6-10 and 215:20-216:19. Neither quotation makes the suggestion now argued.

The Church Defendants also claim that there was error in the instruction because "the testimony of the Church Defendant elders and the July 1, 1989 letter to all bodies of elders clearly showed that this would have been a serious breach of confidentiality in violation of the tenants and practices of their faith." (Def. MPA 17:22-25.) As reviewed above, this point was neither "clearly shown" by any witness with personal knowledge of the policy, nor clearly shown to involve "confidential" information.

The Court properly ruled that the question of common law duty in this case under *Rowland v. Christian* and the legal requirements of mandated reporting were separate issues, and that the mandated reporting statutes were irrelevant and potentially confusing. The Court's duty instruction did not refer to or incorporate mandated reporting statutes, or reporting at all. The Court was correct in instructing the jury to disregard them. In any event, the Church Defendants have failed to show any prejudice from this instruction.

IV. DEFENDANTS' ARGUMENT ON EXCESSIVE DAMAGES FAILS AS A MATTER OF LAW.

"A new trial shall not be granted upon the ground of insufficiency of the evidence to justify the verdict or other decision, nor upon the ground of excessive or inadequate damages, unless after weighing the evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision." (C.C.P. § 657(7).)

A. Non-Economic Damages

The Church Defendants argue the award of non-economic damages of $6,870,000 is the result of an "inflamed" jury's passion and prejudice, rather than a "sober" decision based on the evidence. (Def. MPA 20:9-15.) During the trial, however, neither defendant chose to present any evidence on the issue of damages. Neither presented any evidence challenging the causation of Plaintiff's harm. Although there was evidence that Plaintiff was evaluated by a mental health expert

retained by Defendants, a Dr. Williams, he was not called to testify. Defense counsel asked few questions of Plaintiff's current treating mental health care providers from Kaiser, Dr. Laura Walton and LCSW Helene Harmatz, and those questions were directed at her good progress now that she is in treatment. None of Plaintiff's treating providers from her adolescence were offered to testify except Laura Fraser, who strongly supported the likelihood that Plaintiff would not have disclosed her abuse at the time it was occurring or in the chaotic years that followed. Although defense counsel did not respect Dr. Ponton or her opinions, they did not offer any evidence to dispute either her qualifications or her conclusions.

There was substantial evidence of serious non-economic damages sustained by Plaintiff in the past and the likelihood of such damages for the remainder of her lifetime. (Walton test., Simons Dec., Ex. 5, 154:12-13, 155:10-15, 156:23-157:2, 158:11-159:1, 164:20-165:2; Ponton test., Simons Dec., Ex. 9, 21:16-19, 29:7-24, 34:18-35:6, 45:17-24, 46:9-47:7.) Defendants' own evidence admits that child sexual abuse wreaks havoc and leaves "deep emotional scars." (Awake, Trial Ex. 60/Def. 029, Oct. 8, 1991, p. 3.) Plaintiff's counsel's argument on damages was not manipulative, inflammatory, nor outside the evidence. (Plaintiff's closing, Simons Dec., Ex. 15, 125:23-129:5.)

The Church Defendants' argument as to excessive compensatory damages fails to cite any of the testimony or evidence that supported the jury's finding. Instead, the Court is presented with a rehash of rejected factual assertions and disputed testimony on liability issues, all of which the jury properly exercised its power to consider and reject. Church Defendants argue that Plaintiff was the only witness to her abuse. (Def. MPA 18:22-23.) Child molesters, however, generally operate in secret, without witnesses. They quibble over Kendrick's abuse occurring "after" or "during" field abuse. (Def. MPA at 19:2-3.) Both words apply where the evidence established Kendrick interrupted field service to take Plaintiff to his house, and then returned her to Kingdom Hall. (Plaintiff test., Simons Dec., Ex. 8, 110:22-111:13, 113:22-24.) The Church Defendants cite the testimony of their witnesses to dispute that Kendrick paid attention to Plaintiff at Kingdom Hall, a disputed fact not relevant to damages. The Elders attested that Plaintiff would never have been in field service with

Kendrick, (Abrahamson test., Simons Dec., Ex. 1, 122:21-123:6; Clarke test., Simons Dec., Ex 10, 208:20-209:11), testimony flatly contradicted by Carolyn Martinez. (Martinez test., Simons Dec., Ex. 6, 41:10-18.) Defendants argue that the abuse could not have occurred many times because Kendrick did not live alone. (Def. MPA 19:24-20:2.) That argument ignores evidence explaining why Plaintiff at age nine and ten would not have seen Evelyn or Andrea Kendrick at the house and had the impression they did not live there. (E. Kendrick test., Simons Dec., Ex. 2, 58:1-20, Sylvia test., Simons Dec., Ex. 3, 98:22-100:4.) Defendants argue that the jury was required to believe the elders "kept an eye on" Kendrick. (Def. MPA 19:15-16.) There was good reason for the jury to reject this self-serving testimony. (Plaintiff's closing, Simons Dec., Ex. 15, 97:3-98:1.) Defendants argue damages are excessive because Plaintiff was unable to recall with accuracy the exact number of times she was abused over the course of two years when she was nine and ten. (Def. MPA 18:23-24.) The uncontradicted expert testimony of Carl Lewis, however, established that children of that young age often are not able to accurately tabulate the number of times a serial abuser molested them. (Lewis test., Simons Dec., Ex. 4, 33:1-35:1.) The jury's award of compensatory damages would have been reasonable and appropriate whether she was horribly violated by Kendrick 100 times or "only five or ten" as argued by the defense.

None of the evidence cited by Defendants demonstrates that the jury "clearly" should have reached a different verdict on the issue of compensatory damages. None of the evidence suggests that the jury, who did not receive the benefit of contrary evidence or argument on damages from the defense, awarded Plaintiff the amount of damages she requested because of "passion or prejudice" rather than the evidence and argument they were provided by the only side to address the issue.

B. Punitive Damages

1. Malice & National Policy

For the same reasons set forth in the earlier discussion on J.N.O.V., Defendant Watchtower's arguments that the evidence did not establish malice and that due process prohibits an award of punitive damages to deter a national policy are factually and legally incorrect.

2. Excessive Punitive Damages

a. Reprehensibility

"Society's greatest responsibility . . . is our common goal of safeguarding our children." (*Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377, 407.) The jury was instructed, without objection by Watchtower, on four factors to consider on the issue of reprehensibility. (Jury Inst., Simons Dec., Ex. 19, 13:17-14:2.) Defendant Watchtower does not address these factors or apply them to the facts of the case. (Def. MPA 21:23-22:2.) Instead it merely argues that its conduct was not reprehensible - period.

The first factor in reprehensibility is whether the conduct caused physical harm. In this case it did: the despicable physical harm of serial sexual abuse of a child. The second factor is whether the defendant disregarded the health or safety of others. The evidence showed that it did: Wachtower ignored the health and safety of children in order to keep childhood sexual abuse within its congregation a secret. The third factor is whether the defendant's conduct involved a pattern or practice. Although no evidence was admitted of other victims or abuse, the national policies involved constitute a practice that the elders were required to follow, nationwide, in all cases. (Abrahamson test., Simons Dec., Ex. 1, 89:21-90:16, 103:17-104:10, 121:12-16; Clarke test., Simons Dec., Ex. 10, 182:20-23, 188:10-20; Ex. 16, 29:23-25; Shuster test., Simons Dec., Ex. 12, 183:13-21.) The last factor is whether the defendant acted with trickery or deceit. There is deceit in representing a congregation member in good standing as a qualified "Brother" and "Minister," and fit to go in field service preaching the Gospel, in the company of children, when Defendants and Defendants alone know that the individual – Jonathan Kendrick – is a confirmed child molester. All of the relevant factors in the jury's analysis of reprehensibility favor the punitive damage award and none suggest it was improper in any way.

b. Ratio

Watchtower argues that the ratio between compensatory damages and punitive damages is excessive, because it greatly exceeds the percentage of non-economic damages attributable to it, and because it exceeds a 1:1 ratio to compensatory damages. (Def. MPA 22:3-18.) Neither argument is

supported by law.

The ratio of punitive damages to total compensatory damages suffered by the Plaintiff is the correct and Constitutional measure of disparity, not the ratio to the individual defendant's proportionate share of non-economic damages. This rule is repeatedly identified in *BMW, supra*, in which the Court states: "The principle that exemplary damages must bear a 'reasonable relation' to compensatory damages has a long pedigree." (517 U.S. at p. 580, and fn. 32.) The Court again reiterated, "the proposition that a comparison between the compensatory award and the punitive award is significant." (*Id.* at p. 581.) This rule is fair because Defendant Watchtower's conduct, while less than 100% of the total fault, was a substantial factor in causing 100% of the compensatory damages suffered by Plaintiff. There is no authority to the contrary, and none is cited by Defendant Watchtower.

The jury was instructed: "Any amount of punitive damages you award must bear a reasonable relationship to Candace Conti's harm." (Court's Inst., Simons Dec., Ex. 19, 13:11-13.) In awarding treble damages, the jury was well within the reasonable ratio that the *BMW* Court observed are "historically rooted" in over 65 enactments between 1275 and 1753 for double, treble, or quadruple damages. (*BMW, supra*, 517 U.S. at p. 580-81, and fn. 33.) *State Farm Mutual v. Campbell*, (2003) 538 U.S. 408, does not mandate a maximum 1:1 ratio. On the contrary, it specifically recognizes single digit multipliers of punitive damages consistent with the 700-year history of "double, treble, or quadruple damages to deter and punish." (*Id.* at p. 424-25.)

CONCLUSION

The only injustice in this case would arise if the Court decided to ignore the law it carefully reviewed and followed during the trial, or disregard the jury's authority to decide the facts. Based on the foregoing, the Court must deny the Church Defendants' Motions in their entirety.

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