

ENDORSED  
FILED  
ALAMEDA COUNTY

AUG 24 2012

SUPERIOR COURT OF THE STATE OF CALIFORNIA OF THE SUPERIOR COURT  
IN AND FOR THE COUNTY OF ALAMEDA By Monica Martin Deputy

JANE DOE

Plaintiff,

vs.

THE WATCHTOWER BIBLE AND  
TRACT SOCIETY OF NEW YORK, ET.  
AL.,

Defendants.

Case No. HG11558324

ORDER CONDITIONALLY GRANTING  
MOTION FOR NEW TRIAL AS TO  
PUNITIVE DAMAGES

Orders regarding New Trial, JNOV and Remittitur in Jane Doe. V. The Watchtower Bible and Tract Society of New York, Inc et al:

Defendant's Watchtower and North Fremont Congregation timely filed Motions for New Trial and JNOV and argument was heard regarding same on August 13, 2012. Various grounds were alleged in support of the subject motions pursuant to CCP 657 including irregularities in the proceedings; insufficiencies in the evidence to support the verdict; errors in law excepted to by the defendants; the noneconomic damages awarded were excessive and the punitive damages awarded excessive. The verdicts appealed from reflected economic damages in the amount of \$130,000 and noneconomic damages in the amount of \$6,870,000 (total \$7,000,000) entered against defendant Jonathan Kendrick, the North Fremont Congregation and Watchtower. The jury allocated responsibility as follows: Kendrick 60 percent; North Fremont 13 percent and Watchtower 27 percent. The jury also found an agency relationship to have existed between North Fremont and Watchtower. In phase two of the trial, the jury returned a punitive damages verdict in the amount of \$21,000,001 against Watchtower solely. The court denies the requests for new trial and judgment notwithstanding verdict except as the same pertain to the amount of punitive damages which the court finds to have been excessive and the request for new trial as to the amount of punitive damages is granted subject to the remittitur referenced hereinafter. As to the other grounds alleged for new trial, the court made a number of

orders regarding motions in limine here; other evidentiary rulings during the course of trial; instructions (including limiting instructions) which considered and ruled upon the matters referenced within these particular motions, otherwise, and declines these requests based upon the record here.

#### The Punitive Damages Question Here:

Analysis regarding the plethora of U.S. Supreme Court and California appellate decisions dealing with the amount of punitive damages awarded during the past decade is measured against constitutional principles that admittedly are elastic and subject to review on an individual case and factual basis. Several guideposts that have emerged include that the legal viability of the "ratio" (aka "the multiplier") between compensatory and punitive damages "necessarily depends on the reprehensibility of the conduct" (Simon v. San Paolo U.S. Holding Co. Inc. 35 Cal 4<sup>th</sup> 917); reprehensibility is to be measured by the five prong test enunciated in State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408; the greater the amount of compensatory damages awarded the more likely they will be considered to contain a punitive element, Bankhead v. ArvinMeritor Inc. 205 Cal. App. 4<sup>th</sup> 68 (and others); a court's mission is not to find the "right" level of punitive damages but to serve as a check on arbitrary awards or those the product of passion or prejudice (Simon, supra) and the trend appears to be to "lesser" multiplier awards with the exception of the award and analysis in Bullock v. Phillip Morris 198 Cal. App. 4<sup>th</sup> 543 where a 16 to 1 multiplier was upheld where the reprehensibility was "extreme" and the profitability "vast."

#### Consideration of Whether a "Punitive Element" Exists Within the Award of Compensatory Damages Here:

The court in Bankhead, supra, found that a punitive damage element existed where the jury's award included \$2.5 million in noneconomic damages for pain and suffering and loss of consortium. In this matter, the jury awarded \$6,870,000 in noneconomic damages. When coupled with the circumstances that this sum was arguably more than plaintiff's counsel requested; the jury was fully aware that there was a separate agreement between plaintiff and Mr. Kendrick that plaintiff would not seek to collect any damages awarded from him and considering the nature of the conduct alleged; this court believes that like Bankhead, the sum here includes a punitive element. The inclusion of a punitive element in emotional distress damages reduces the permissible ratio of punitive to compensatory damages. Roby v. Mc Kesson, 47 Cal. 4<sup>th</sup> 686.

#### Discussion of the "Reprehensibility" Aspects Here:

As to the reprehensibility consideration of Mr. Kendrick's conduct as found by the jury, it is a "given" to this court that it is reprehensible in the "extreme" and fully satisfies the five prong analysis found in State Farm Mutual, supra. The reprehensibility analysis as to defendants here is more nuanced. A decision not to disclose Mr. Kendrick's proclivities to the congregation was intentional in the deliberative sense but not in the result. Exhibit

1 in the record here notes: "Victims of such (child) abuse need to be protected from further danger." The net effect of defendant's decision not to disclose was to imperil the safety of each child in a small congregation and thoroughly undermine defendant's teachings and understanding of child molesters and methods of dealing with them as reflected in their writings distributed to their congregants on a national basis. Though the jury found that Mr. Kendrick's acts occurred on a repeated basis, on the record here, defendant's actions were limited to a consideration of Mr. Kendrick's behavior solely and response to same. Whether viewed within the looking glass of the jury's allocation as to fault (40%) or a consideration of the scale of reprehensibility, this court believes the defendants' conduct to support a finding of punitive damage responsibility in the "mid range."

#### Consideration of the "Base Level" for Application of the Multiplier:

The punitive damages verdict was entered solely against defendant "Watchtower" and on this basis defendants argue that the base for purposes of the calculation of a punitive damages award here is 27%. This approach negates entirely the decision making and authority process engaged in by "Watchtower" and "North Fremont Congregation" and the jury's express findings as to an agency relationship between the two. This court believes that the base number for the purposes of punitive damages analysis is 40%.

In this particular matter, plaintiff's counsel argued that a reasonable amount of damages was effectively three times the damages awarded in phase one of this trial. In the recently decided case of *Bankhead*, supra, the court noted in pertinent part as follows: "...the proper role of the jury's finding a low percentage of liability is to reduce the amount of compensatory damages with which the amount of punitive damages is compared, when considering the ratio between the two." Of further note regarding the amount of punitive damages question here is that the jury actually awarded one dollar more than plaintiff's counsel requested. The award of the "additional dollar" is noteworthy because it is as though the jury was putting its final passion filled stamp on its efforts.

#### The "Appropriate Multiplier" and Conclusion:

With the noted exception of *Bullock*, supra, the trend in use of multipliers in the consideration of the constitutionally permitted outer limits of punitive damages awards has become increasingly conservative. In *Roby*, supra, the ratio was 1:1. In *State Farm Mutual*, supra, the U.S. Supreme court noted that "more than four times the amount of compensatory damages might be close to the line of constitutional impropriety." In *Bankhead*, supra, a ratio of 2.4:1 was upheld. In the case of *Amerigraphics, Inc. v. Mercury Casualty Co.*(2010), the ratio was 3:8. In consideration of the jury's effort and methodology used here; sensitive to Justice Ruvolo's comment as to an appropriate "base" for use of the multiplier; understanding the nature of the conduct, it's long term effects upon plaintiff and her vulnerability at the time of same and the passion generally engendered in the consideration of the same; yet, also mindful of considerations

otherwise, including (but not necessarily limited to) those of a constitutional nature, this court reduces the punitive damages award here to \$8,610,000. Accordingly, this court orders a new trial on the issue of punitive damages solely, unless, within 30 days of the date of this order, plaintiff agrees to the entry of a judgment for \$8,610,000 in punitive damages. It is so ordered.



ROBERT MCGUINNESS  
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA

Case Number : HG11558324

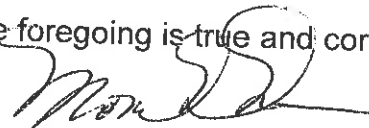
Case name: Jane Doe vs The Watchtower Bible and Tract Society of New York, et.al.,

**ORDER CONDITIONALLY GRANTING MOTION FOR NEW TRIAL AS TO PUNITIVE  
DAMAGES FILED ON AUGUST 24, 2012**

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document, **ORDER CONDITIONALLY GRANTING MOTION FOR NEW TRIAL AS TO PUNITIVE DAMAGES FILED ON AUGUST 24, 2012** was mailed first class, postage prepaid, in a sealed envelope, addressed as shown at the bottom of this document, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, California.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 24, 2012.



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