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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 DA-DAZE-NOM MANZANARES,

Case No. 3:07-cv-00076-LRH-RAM

10 Plaintiffs,

11 vs.

**DEFENDANT ELKO COUNTY
SCHOOL DISTRICT'S ANSWER
TO COMPLAINT**

12 ELKO COUNTY SCHOOL DISTRICT,
13 and GARY LEE JONES, SR., as agent for
14 ELKO COUNTY SCHOOL DISTRICT,
15 and GARY LEE JONES, SR.,
16 individually, and CORPORATION OF
17 THE PRESIDING BISHOP OF THE
18 CHURCH OF JESUS CHRIST OF
19 LATTER-DAY SAINTS, a foreign
20 corporation registered to do business in the
21 State of Nevada; CORPORATION OF
22 THE PRESIDENT OF THE CHURCH OF
23 JESUS CHRIST OF LATTER-DAY
24 SAINTS AND SUCCESSORS, a foreign
25 corporation registered to do business in the
26 State of Nevada; and Does 1-5, and XYZ
27 Corporations 1-5.

28 Defendants.

29
30 COME NOW Defendant ELKO COUNTY SCHOOL DISTRICT, by and through its
31 attorneys ERICKSON, THORPE & SWAINSTON, LTD., and THOMAS P. BEKO, ESQ.,
32 and answering Plaintiff's Complaint and Demand for Jury Trial on file herein, admit, deny
33 and allege as follows. Any allegations contained in the Complaint not specifically admitted
34 by Defendant are hereby denied.

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Parties

(Jurisdiction and Venue)

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3 1. Defendant denies each, every and all of the allegations contained within
4 Paragraph 1 of Plaintiff's Complaint.

5 2. Defendant denies each, every and all of the allegations contained within
6 Paragraph 2 of Plaintiff's Complaint.

7 3. Defendant is without knowledge or information sufficient to form a belief
8 as to the truth of the allegations contained within Paragraph 3 of Plaintiff's Complaint
9 and therefore, the same are denied.

10 4. Defendant admits generally the allegations contained in Paragraph 4 of
11 Plaintiff's Complaint.

12 5. Defendant is without knowledge or information sufficient to form a belief
13 as to the truth of the allegations contained within Paragraph 5 of Plaintiff's Complaint
14 and therefore, the same are denied.

15 6. Defendant is without knowledge or information sufficient to form a belief
16 as to the truth of the allegations contained within Paragraph 6 of Plaintiff's Complaint
17 and therefore, the same are denied.

18 7. Defendant denies each, every and all of the allegations contained within
19 Paragraph 7 of Plaintiff's Complaint.

20 8. Defendant is without knowledge or information sufficient to form a belief
21 as to the truth of the allegations contained within Paragraph 8 of Plaintiff's Complaint
22 and therefore, the same are denied.

23 9. Defendant denies each, every and all of the allegations contained within
24 Paragraph 9 of Plaintiff's Complaint.

25 10. Defendant denies each, every and all of the allegations contained within
26 Paragraph 10 of Plaintiff's Complaint.

27 **Facts**

28 11. Defendant adopts by reference and incorporates herein each, every and all

1 of its admissions, denials and averments to Paragraphs 1 through 10 of Plaintiff's
2 Complaint as if the same were set forth in full at this point.

3 12. Defendant is without knowledge or information sufficient to form a belief
4 as to the truth of the allegations contained within Paragraph 12 of Plaintiff's Complaint
5 and therefore, the same are denied.

6 13. Defendant is without knowledge or information sufficient to form a belief
7 as to the truth of the allegations contained within Paragraph 13 of Plaintiff's Complaint
8 and therefore, the same are denied.

9 14. Defendant is without knowledge or information sufficient to form a belief
10 as to the truth of the allegations contained within Paragraph 14 of Plaintiff's Complaint
11 and therefore, the same are denied.

12 15. Defendant denies each, every and all of the allegations contained within
13 Paragraph 15 of Plaintiff's Complaint.

14 16. Defendant denies each, every and all of the allegations contained within
15 Paragraph 16 of Plaintiff's Complaint.

16 17. Defendant denies each, every and all of the allegations contained within
17 Paragraph 17 of Plaintiff's Complaint.

18 18. Defendant is without knowledge or information sufficient to form a belief
19 as to the truth of the allegations contained within Paragraph 18 of Plaintiff's Complaint
20 and therefore, the same are denied.

21 19. Defendant admits generally the allegations contained in Paragraph 19 of
22 Plaintiff's Complaint.

23 **FIRST CAUSE OF ACTION**

24 **Violation of Civil Rights**

25 20. Defendant adopts by reference and incorporates herein each, every and all
26 of its admissions, denials and averments to Paragraphs 1 through 19 of Plaintiff's
27 Complaint as if the same were set forth in full at this point.

28 21. Defendant denies each, every and all of the allegations contained within

1 Paragraph 21 of Plaintiff's Complaint.

2 22. Defendant denies each, every and all of the allegations contained within
3 Paragraph 22 of Plaintiff's Complaint.

4 23. Defendant denies each, every and all of the allegations contained within
5 Paragraph 23 of Plaintiff's Complaint.

6 24. Defendant denies each, every and all of the allegations contained within
7 Paragraph 24 of Plaintiff's Complaint.

8 25. Defendant denies each, every and all of the allegations contained within
9 Paragraph 25 of Plaintiff's Complaint.

10 26. Defendant denies each, every and all of the allegations contained within
11 Paragraph 26 of Plaintiff's Complaint.

12 27. Defendant denies each, every and all of the allegations contained within
13 Paragraph 27 of Plaintiff's Complaint.

14 28. Defendant denies each, every and all of the allegations contained within
15 Paragraph 28 of Plaintiff's Complaint.

16 29. Defendant denies each, every and all of the allegations contained within
17 Paragraph 29 of Plaintiff's Complaint.

18 30. Defendant denies each, every and all of the allegations contained within
19 Paragraph 30 of Plaintiff's Complaint.

20 31. Defendant denies each, every and all of the allegations contained within
21 Paragraph 31 of Plaintiff's Complaint.

22 32. Defendant denies each, every and all of the allegations contained within
23 Paragraph 32 of Plaintiff's Complaint.

24 **SECOND CAUSE OF ACTION**

25 **Attorney Fees**

26 33. Defendant adopts by reference and incorporates herein each, every and all
27 of its admissions, denials and averments to Paragraphs 1 through 32 of Plaintiff's
28 Complaint as if the same were set forth in full at this point.

1 34. Defendant denies each, every and all of the allegations contained within
2 Paragraph 34 of Plaintiff's Complaint.

3 **THIRD CAUSE OF ACTION**

4 **Negligent Supervision and Retention Against Defendant**
5 **Elko County School District**

6 35. Defendant adopts by reference and incorporates herein each, every and all
7 of its admissions, denials and averments to Paragraphs 1 through 34 of Plaintiff's
8 Complaint as if the same were set forth in full at this point.

9 36. Defendant denies each, every and all of the allegations contained within
10 Paragraph 36 of Plaintiff's Complaint.

11 37. Defendant denies each, every and all of the allegations contained within
12 Paragraph 37 of Plaintiff's Complaint.

13 38. Defendant denies each, every and all of the allegations contained within
14 Paragraph 38 of Plaintiff's Complaint.

15 39. Defendant denies each, every and all of the allegations contained within
16 Paragraph 39 of Plaintiff's Complaint.

17 40. Defendant denies each, every and all of the allegations contained within
18 Paragraph 40 of Plaintiff's Complaint.

19 41. Defendant denies each, every and all of the allegations contained within
20 Paragraph 41 of Plaintiff's Complaint.

21 42. Defendant denies each, every and all of the allegations contained within
22 Paragraph 42 of Plaintiff's Complaint.

23 **FOURTH CAUSE OF ACTION**

24 **Sexual Abuse of a Child/ Respondeat Superior**

25 43. Defendant adopts by reference and incorporates herein each, every and all
26 of its admissions, denials and averments to Paragraphs 1 through 42 of Plaintiff's
27 Complaint as if the same were set forth in full at this point.

28 44. Defendant is without knowledge or information sufficient to form a belief

1 as to the truth of the allegations contained within Paragraph 44 of Plaintiff's Complaint
2 and therefore, the same are denied.

3 45. Defendant is without knowledge or information sufficient to form a belief
4 as to the truth of the allegations contained within Paragraph 45 of Plaintiff's Complaint
5 and therefore, the same are denied.

6 46. Defendant denies each, every and all of the allegations contained within
7 Paragraph 46 of Plaintiff's Complaint.

8 47. Defendant denies each, every and all of the allegations contained within
9 Paragraph 47 of Plaintiff's Complaint.

10 48. Defendant is without knowledge or information sufficient to form a belief
11 as to the truth of the allegations contained within Paragraph 48 of Plaintiff's Complaint
12 and therefore, the same are denied.

13 49. Defendant is without knowledge or information sufficient to form a belief
14 as to the truth of the allegations contained within Paragraph 49 of Plaintiff's Complaint
15 and therefore, the same are denied.

16 50. Defendant denies each, every and all of the allegations contained within
17 Paragraph 50 of Plaintiff's Complaint.

18 51. Defendant denies each, every and all of the allegations contained within
19 Paragraph 51 of Plaintiff's Complaint.

20 52. Defendant denies each, every and all of the allegations contained within
21 Paragraph 52 of Plaintiff's Complaint.

22 **FIFTH CAUSE OF ACTION**

23 **Sexual Abuse of a Child/ Respondeat Superior**

24 53. Defendant adopts by reference and incorporates herein each, every and all
25 of its admissions, denials and averments to Paragraphs 1 through 52 of Plaintiff's
26 Complaint as if the same were set forth in full at this point.

27 54. Defendant denies each, every and all of the allegations contained within
28 Paragraph 54 of Plaintiff's Complaint.

1 55. Defendant admits generally the allegations contained in Paragraph 55 of
2 Plaintiff's Complaint.

3 56. Defendant denies each, every and all of the allegations contained within
4 Paragraph 56 of Plaintiff's Complaint.

5 57. Defendant denies each, every and all of the allegations contained within
6 Paragraph 57 of Plaintiff's Complaint.

7 58. Defendant denies each, every and all of the allegations contained within
8 Paragraph 58 of Plaintiff's Complaint.

9 **SIXTH CAUSE OF ACTION**

10 **Failure to Report Suspected Child Sex Abuse By ECDS and the LDS Church**

11 59. Defendant adopts by reference and incorporates herein each, every and all
12 of its admissions, denials and averments to Paragraphs 1 through 58 of Plaintiff's
13 Complaint as if the same were set forth in full at this point.

14 60. Defendant denies each, every and all of the allegations contained within
15 Paragraph 60 of Plaintiff's Complaint.

16 61. Defendant denies each, every and all of the allegations contained within
17 Paragraph 61 of Plaintiff's Complaint.

18 62. Defendant denies each, every and all of the allegations contained within
19 Paragraph 62 of Plaintiff's Complaint.

20 63. Defendant denies each, every and all of the allegations contained within
21 Paragraph 63 of Plaintiff's Complaint.

22 **SEVENTH CAUSE OF ACTION**

23 **Negligent Training and Supervision**

24 64. Defendant adopts by reference and incorporates herein each, every and all
25 of its admissions, denials and averments to Paragraphs 1 through 63 of Plaintiff's
26 Complaint as if the same were set forth in full at this point.

27 65. Defendant is without knowledge or information sufficient to form a belief
28 as to the truth of the allegations contained within Paragraph 65 of Plaintiff's Complaint

1 and therefore, the same are denied.

2 66. Defendant is without knowledge or information sufficient to form a belief
3 as to the truth of the allegations contained within Paragraph 66 of Plaintiff's Complaint
4 and therefore, the same are denied.

5 67. Defendant is without knowledge or information sufficient to form a belief
6 as to the truth of the allegations contained within Paragraph 67 of Plaintiff's Complaint
7 and therefore, the same are denied.

8 68. Defendant is without knowledge or information sufficient to form a belief
9 as to the truth of the allegations contained within Paragraph 68 of Plaintiff's Complaint
10 and therefore, the same are denied.

11 **EIGHTH CAUSE OF ACTION**

12 **Intentional Infliction of Emotional Distress**

13 69. Defendant adopts by reference and incorporates herein each, every and all
14 of its admissions, denials and averments to Paragraphs 1 through 68 of Plaintiff's
15 Complaint as if the same were set forth in full at this point.

16 70. Defendant denies each, every and all of the allegations contained within
17 Paragraph 70 of Plaintiff's Complaint.

18 71. Defendant denies each, every and all of the allegations contained within
19 Paragraph 71 of Plaintiff's Complaint.

20 72. Defendant denies each, every and all of the allegations contained within
21 Paragraph 72 of Plaintiff's Complaint.

22 73. Defendant denies each, every and all of the allegations contained within
23 Paragraph 73 of Plaintiff's Complaint.

24 **NINTH CAUSE OF ACTION**

25 **Negligent Infliction of Emotional Distress**

26 74. Defendant adopts by reference and incorporates herein each, every and all
27 of its admissions, denials and averments to Paragraphs 1 through 73 of Plaintiff's
28 Complaint as if the same were set forth in full at this point.

1 75. Defendant denies each, every and all of the allegations contained within
2 Paragraph 75 of Plaintiff's Complaint.

3 76. Defendant denies each, every and all of the allegations contained within
4 Paragraph 76 of Plaintiff's Complaint.

5 77. Defendant denies each, every and all of the allegations contained within
6 Paragraph 77 of Plaintiff's Complaint.

7 78. Defendant denies each, every and all of the allegations contained within
8 Paragraph 78 of Plaintiff's Complaint.

9 79. Defendant denies each, every and all of the allegations contained within
10 Paragraph 79 of Plaintiff's Complaint.

11 80. Defendant denies each, every and all of the allegations contained within
12 Paragraph 80 of Plaintiff's Complaint.

13 **TENTH CAUSE OF ACTION**

14 **Conspiracy**

15 81. Defendant adopts by reference and incorporates herein each, every and all
16 of its admissions, denials and averments to Paragraphs 1 through 80 of Plaintiff's
17 Complaint as if the same were set forth in full at this point.

18 82. Defendant denies each, every and all of the allegations contained within
19 Paragraph 82 of Plaintiff's Complaint.

20 83. Defendant denies each, every and all of the allegations contained within
21 Paragraph 83 of Plaintiff's Complaint.

22 **AFFIRMATIVE DEFENSES**

23 **FIRST AFFIRMATIVE DEFENSE**

24 Plaintiff's complaint fails to state a claim upon which relief can be granted in favor
25 of Plaintiff or against this Defendant.

26 **SECOND AFFIRMATIVE DEFENSE**

27 Defendant is informed and believes and thereupon avers that at all times and
28 places relevant hereto Plaintiff was negligent, at fault and otherwise responsible for the

1 matters which are the subject of this litigation, with such negligence, fault or
2 responsibility proximately causing and contributing to Plaintiff's alleged injuries and
3 damages, if any there were.

4 THIRD AFFIRMATIVE DEFENSE

5 1. Defendant adopts by reference and incorporates herein the preceding
6 affirmative defense.

7 2. At all times denying any negligence, fault or responsibility on Defendant's
8 behalf, Defendant avers that the contributory negligence, fault or responsibility of Plaintiff
9 must be compared to that of this Defendant, if any, in accordance with the laws of the State
10 of Nevada.

11 FOURTH AFFIRMATIVE DEFENSE

12 1. Defendant adopts by reference and incorporates herein the preceding two
13 affirmative defenses.

14 2. At all times denying any negligence, fault or responsibility on Defendant's
15 behalf, Defendant avers that if Defendant is found to be negligent, at fault or otherwise
16 responsible for Plaintiff's injuries or damages, if any there were but without admitting the
17 same, the principles of law and equity relative to comparative negligence and fault require
18 that the proportionate or relative degrees of negligence, fault or responsibility of all parties
19 involved in the incident be ascertained so that this Defendant be liable to Plaintiff, if at all,
20 for no more than an amount equal to this Defendant's proportionate or relative degree of
21 negligence, fault or responsibility, if any there is.

22 FIFTH AFFIRMATIVE DEFENSE

23 Defendant is informed and believes and thereupon avers that the injuries and damages
24 sustained by the Plaintiff, if any were, caused by the acts or conduct of third parties who were
25 and are not the agents or employees of this Defendant nor acting on behalf of this defendant.

26 SIXTH AFFIRMATIVE DEFENSE

27 Defendant is informed and believes and thereupon avers that Plaintiff failed to
28 mitigate Plaintiff's losses and damages, if any there were.

1
2 SEVENTH AFFIRMATIVE DEFENSE

3 1. Without admitting the Plaintiff is entitled to punitive damages, punitive
4 damages constitute excessive fines prohibited by the United States and Nevada Constitutions.
5 Further, NRS 42.010 does not provide adequate standards and/or safeguards for its
6 application and is therefore void for vagueness under the due process clause of the
7 Fourteenth Amendment to the United States Constitution and in accordance with Article 1,
8 §8 of the Nevada Constitution.

9 EIGHTH AFFIRMATIVE DEFENSE

10 Defendant is informed and believes and thereupon avers that Plaintiff has failed to act
11 in a fair, reasonable and equitable fashion and by reason of the premises is precluded from
12 receiving the extraordinary equitable relief sought in Plaintiff's complaint.

13 NINTH AFFIRMATIVE DEFENSE

14 The obligations and duties which the Plaintiff alleges were violated by the Defendant
15 run to the public at large and as such, the Plaintiff has no private cause of action, thus her
16 claims herein are barred.

17 TENTH AFFIRMATIVE DEFENSE

18 1. The State of Nevada has adopted a limited waiver of sovereign immunity as
19 codified in Chapter 41 of the Nevada Revised Statutes.

20 2. ELKO COUNTY SCHOOL DISTRICT is a political subdivision of the
21 State of Nevada.

22 All acts and conduct of this Defendant and its agents and employees were
23 within the jurisdiction of their official authority and were done by virtue of and under the
24 laws of the State of Nevada. As such, they are immune from civil liability as hereinafter
25 provided.

26 ELEVENTH AFFIRMATIVE DEFENSE

27 The claims for relief averred in the Complaint pertain to the exercise or performance,
28 or the failure to exercise or perform, discretionary functions or duties on the part of ELKO

1 COUNTY SCHOOL DISTRICT and/or its agents or employees. By reason of the premises
2 and terms and provisions of NRS 41.032(2) no action may be brought against ELKO
3 COUNTY SCHOOL DISTRICT and legal recovery is thereby barred.

4 TWELFTH AFFIRMATIVE DEFENSE

5 The claims for relief averred in the Complaint pertain to conduct based upon acts or
6 omissions of employees or agents of ELKO COUNTY SCHOOL DISTRICT exercising due
7 care in the execution of a statute, ordinance or other legal regulation. By reason of the
8 premises and the terms and provisions of NRS 41.032(1) no action may be brought against
9 this Defendant and any legal recovery is thereby barred.

10 THIRTEENTH AFFIRMATIVE DEFENSE

11 The Defendants are informed and believe and thereupon allege that any duty owed
12 to the Plaintiff is a duty owed to the public at large and as a result no private cause of
13 action is permitted and therefore said claims are barred by N.R.S. 41.0336.

14 FOURTEENTH AFFIRMATIVE DEFENSE

15 NRS 41.035 limits the amount of recovery, if any, which may be awarded against a
16 political subdivision and its agents or employees.

17 FIFTEENTH AFFIRMATIVE DEFENSE

18 NRS 41.035 limits the amount of recovery, if any, which may be awarded against a
19 political subdivision and its agents or employees; further, there may be no award for punitive
20 or exemplary damages.

21 SIXTEENTH AFFIRMATIVE DEFENSE

22 Plaintiff has failed to identify any constitutionally protected right or interest and as
23 such, fails to state a claim upon which relief can be granted.

24 SEVENTH AFFIRMATIVE DEFENSE

25 At all times relevant hereto this answering Defendant was not acting under color of
26 state law and as such there is no state action committed by this Defendant.

27 EIGHTH AFFIRMATIVE DEFENSE

28 Insofar as the Plaintiff's Complaint alleges conduct which can only be characterized

1 as negligence, said Complaint fails to state a federal claim upon which relief can be granted.

2 NINTH AFFIRMATIVE DEFENSE

3 Without admitting the conduct attributed to Defendant Jones occurred, if it did, the
4 acts and conduct complained of were not sanctioned, condoned or authorized by this
5 defendant, do not constitute an official act of the Elko County School District, and are not
6 reflective of an official policy or custom of the Elko County School District.

7 TENTH AFFIRMATIVE DEFENSE

8 To the extent that Plaintiff seeks an award of punitive damages against a municipality,
9 said complaint fails to state a claim.

10 ELEVENTH AFFIRMATIVE DEFENSE

11 Without admitting Plaintiff's civil rights were violated, Plaintiff's claims are not
12 actionable inasmuch as there is no evidence or allegation that the alleged governmental
13 misconduct was the result of deliberate indifference by this Defendant.

14 TWELFTH AFFIRMATIVE DEFENSE

15 Defendant alleges that because the Complaint herein is couched in conclusionary
16 terms, answering Defendants cannot fully anticipate all affirmative defenses that may be
17 applicable to the within action. Accordingly, the right to assert additional affirmative
18 defenses, if and to the extent that such affirmative defenses are applicable, is hereby
19 reserved.

20 WHEREAS, Defendants prays that Plaintiff take nothing by reason of the Complaint
21 on file herein, that the same be dismissed and that judgment be entered in favor of the
22 Defendant and against Plaintiff for a reasonable attorney's fee, for costs of suit and for such
23 other and further relief as may be just and proper in the premises.

24 DATED this 18 day of April, 2007.

25 ERICKSON, THORPE & SWAINSTON, LTD.

26
27 By


THOMAS P. BEKO, ESQ.

Attorneys for Elko County School District