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5

6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
8

9
10 DA-DAZE-NOM MANZANARES,

11 Plaintiff,

CASE NO. 3:07-CV-00076

12 vs.

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

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS CORPORATION OF
THE PRESIDING BISHOP OF THE
CHURCH OF JESUS CHRIST OF
LATTER - DAY SAINTS AND
CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST
OF LATTER-DAY SAINTS AND
SUCCESSORS' MOTION TO DISMISS
OR IN THE ALTERNATIVE MOTION
FOR LEAVE TO AMEND COMPLAINT**

21 Defendants.
22 _____/


23
24 COMES NOW, Plaintiff, Da-daze-nom Manzanares, by and through her attorneys, Marvel
25 & Kump, Ltd., and submits the following in opposition to the Defendants Corporation of the
26 Presiding Bishop of the Church of Jesus Christ of Latter - Day Saints and Corporation of The
27 President of The Church of Jesus Christ of Latter-day Saints And Successors'(collectively referred
28 to herein as "LDS") Motion to Dismiss Plaintiff's sixth and eight claims against LDS. Plaintiff's

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1 Opposition is based upon the following points and authorities and the papers and pleadings on file
2 herein. Plaintiff additionally moves this court for leave to amend its complaint. A copy of Plaintiff's
3 proposed First Amended Complaint is attached hereto.

4 DATED this 14 day of May, 2007.

MARVEL & KUMP, LTD.
217 Idaho Street
Elko, Nevada 89801



JEFFREY J. KUMP
Attorneys for Plaintiff
Nevada State Bar No. 5694

1
2 POINTS AND AUTHORITIES

3 1. Facts.

4 1. Plaintiff DA-DAZE-NOM MANZANARES, was 14 years old at the time the alleged
5 incidents began. Complaint, Doc. #1-1, at p.5, para. 15.

6 2. Defendant Gary Lee Jones, Sr. ("Jones") was the acting Branch President of the
7 Church of Jesus Christ of LDS. Complaint, Doc. #1-1, at p.4, para. 13.

8 3. LDS selected Jones to serve as the Branch President for Church of Jesus Christ of
9 LDS to counsel minister and serve as the spiritual leader for the Church of Jesus Christ of LDS.

10 4. LDS empowered Jones to perform all duties of a Branch President including
11 counseling, spiritual and moral guidance, religious instruction, ministry. LDS knew that as part of
12 Jones' duties as Branch President, Jones would be in a position of trust and confidence with the
13 community families, including Plaintiff. Complaint, Doc. #1-1, at p.11, para. 44.

14 5. While working in the Church of Jesus Christ of LDS and for the purpose of furthering
15 his assigned duties as Branch President, Jones identified Plaintiff's family as one in need with a
16 teenage girl, befriended Plaintiff, and her family, gained the family's trust and confidence as a church
17 counselor and spiritual guide, and as a valuable and trustworthy mentor to Plaintiff; gained the
18 permission, acquiescence, and support of Plaintiff's family to counsel Plaintiff, and sought and
19 gained the instruction of Plaintiff's parents that she was to have respect for Jones' authority and to
20 comply with Jones' instruction and requests. Complaint, Doc. #1-1, at p.4, para. 14.

21 6. For the purpose of furthering his duties as a Branch President, Jones also sought and
22 gained the trust, friendship, admiration and obedience of Plaintiff. As a result, Plaintiff was
23 conditioned to trust Jones to comply with Jones' direction, and to respect Jones as a person of
24 authority in spiritual, moral and ethical matters. Complaint, Doc. #1-1, at p.11, para. 45.

25 7. The relationship Jones established with Plaintiff in his capacity as the Branch
26 President of the LDS Church, continued in Jones' contact with Plaintiff through the course and scope
27 of his employment with Defendant Elko County School District, (ECSD) at Owyhee High School
28 where Plaintiff was a student. Complaint, Doc. #1-1, at p.11, para. 46. Jones while using the
authority and position of trust as the Branch President of the Church of Jesus Christ of LDS and also

1 while acting within the course and scope of his employment and agency with ECSD induced and
2 directed Plaintiff to engage in various sex acts with Jones. Complaint, Doc. #1-1, at p.11, para. 47.

3 8. Jones sexually abused and molested Plaintiff from 2001 to 2002, including instances
4 of fondling and mutual masturbation, as well as instances of oral sex, and sexual intercourse while
5 Jones was serving LDS and ECSD. Complaint, Doc. #1-1, at p.11, para. 48.

6 9. Jones used the grooming process to accomplish his acts of sexual molestation of the
7 Plaintiff. Jones' grooming was (1) committed in direct connection and for the purposes of fulfilling
8 Jones' employment and agency with each of the Defendants; (2) committed within the time and
9 space limits of his agency with each of the Defendants; (3) done initially and at least in part from a
10 desire to serve the interests of the Defendants; (4) done directly in the performance of his duties with
11 each of the Defendants; (5) consisted generally of actions of a kind and nature which Jones was
12 required to perform for each of the Defendants; and (6) was done at the direction of , and pursuant
13 to, the power vested in him by each of the Defendants. Complaint, Doc. #1-1, at p.11, para. 49.

14 10. Jones was arrested for his sexual assault of Plaintiff and ultimately convicted of
15 Statutory Sexual Seduction of a Minor under sixteen pursuant to NRS 200.368 and 200.364.
16 Complaint, Doc. #1-1, at p.13, para. 55.

17 11. Despite receiving reports and being informed and having reasonable cause to suspect
18 child abuse or neglect of the minor Plaintiff, ECSD and LDS failed to report obvious signs of abuse
19 as required by Nevada law and further failed to conduct a reasonable investigation. Complaint, Doc.
20 #1-1, at p.5, para.17; Complaint, Doc. #1-1, at p.13, para. 60.

21 12. ECSD and the LDS Church knew or should have known of the activities of Jones,
22 but ECSD and LDS either chose not to investigate, and/or did not provide information to authorities,
23 which enabled Jones to molest and sexually abuse Plaintiff over an extended period of time.
24 Complaint, Doc. #1-1, at p.13, para. 60.

25 13. Because of the Defendant's acts Plaintiff suffered a breakdown and attempted to hang
26 herself in her parents' basement. Complaint, Doc. #1-1, at p.5, para. 18.

27 14. Defendants LDS now ask this Court to dismiss count six in which Plaintiff alleges
28 that Defendants LDS failed to report suspected child abuse arguing that Nevada Law does not allow
a civil right of action.

1 Plaintiff's complaint satisfies the requirements of Rule 8(a) because it gives the Defendants
2 fair notice of the basis for Plaintiff's claims and relief can be granted under proven facts consistent
3 with the allegations.
4

5 2.2 "In considering a motion to dismiss, '[a]ll allegations and reasonable inferences are
6 taken as true, and the allegations are construed in the light most favorable to the nonmoving party,
7 but conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to
8 dismiss." Simpson v. AOL Time Warner, Inc., 452 F.3d 1040, 1046 (9th Cir. 2006) (quoting Adams
9 v. Johnson, 355 F.3d 1179, 1183 (9th Cir. 2004)). There is a strong presumption against dismissing
10 an action for failure to state a claim. See Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 249 (9th Cir.
11 1997) (citation omitted)." George v. Morton, Slip Copy, WL 680788 (D.Nev. 2007).
12

13 2.3 Plaintiff's sixth claim for relief alleges that she has been harmed because of
14 Defendants' LDS and ECSD's failure to investigate and report signs of abuse or neglect as is
15 required under Nevada law. Plaintiff cites 432B.220.

16 In this case a violation of NRS 432B.220 constitutes negligence per se. A statutory violation
17 is negligence per se if the injured party belongs to the class of persons whom the statute was intended
18 to protect, and the injury suffered is of the type the statute was intended to prevent. Atkinson v.
19 MGM Grand Hotel, Inc., 120 Nev. 639, 643, 98 P.3d 678 (2004).

20 The plain and unambiguous language of NRS 432B.220 is intended to protect children
21 against abuse and neglect. In this case LDS knew that as part of Jones' duties as Branch President,
22 Jones would be in a position of trust and confidence with the community families, including
23 Plaintiff. Jones sexually abuse Plaintiff over an extended period of time. LDS Church knew or
24 should have known of the activities of Jones, but ECSD and LDS Church either chose not to
25 investigate, and/or did not provide information as required by Nevada law which enabled Jones to
26 molest and sexually abuse Plaintiff over an extended period of time. Plaintiff was clearly within the
27 the class of persons that the statute was designed to protect and her injury is of the type the statute
28 was intended to prevent.

1 Negligence per se is a question of fact for the jury. Doe v. State of Nevada, 356 F.Supp.2d
2 1123,1126 (D.Nev. 2004)(citing Anderson, 113 Nev. at 965-66.) Plaintiff contends that by failing
3 to report, LDS was negligent. The Nevada law, NRS 432B.220, prescribes the standard of conduct
4 required of a reasonable man. Doe v. State of Nevada, 356 F.Supp.2d 1123,1126 (D.Nev. 2004).
5 Plaintiff's sixth claim for relief asserts a claim for negligence based on the duties imposed by the
6 reporting statute NRS 432B.220.

7
8 2.4 Plaintiff's eighth claim for relief alleges Intentional Infliction of Emotional Distress
9 against Defendant LDS. Plaintiff's theory lies in that the extreme and outrageous nature of
10 Defendant LDS' conduct may arise not so much from what it did or failed to do, but from abuse by
11 Defendant Jones of the relation and position which gave him actual and apparent power to cause
12 Plaintiff's damages.

13 "[T]o establish a cause of action for intentional infliction of emotional distress, a complaint
14 must allege the following: (1) extreme and outrageous conduct with either the intention of , or
15 reckless disregard for, causing emotional distress; (2) severe or extreme emotional distress suffered
16 by the plaintiff; and (3) actual or proximate causation." Jordan v. State ex rel Dept. of Motor
17 Vehicles and Public Safety, 121 Nev. 44, 110 P.3d 30, 52 (2005).

18 Jones while using the authority and position of trust as the Branch President of the Church
19 of Jesus Christ of LDS and also while acting within the course and scope of his employment and
20 agency with ECSD induced and directed Plaintiff to engage in various sex acts with Jones. Jones
21 sexually abused and molested Plaintiff from 2001 to 2002, including instances of fondling and
22 mutual masturbation, as well as instances of oral sex, and sexual intercourse while Jones was serving
23 LDS and ECSD. Despite having reasonable cause to suspect child abuse or neglect of the minor
24 Plaintiff, Defendants' ECSD and LDS failed to report obvious signs of abuse as required by Nevada
25 law and further failed to conduct a reasonable investigation or act to protect Plaintiff in any manner
26 or fashion. Plaintiff suffered a breakdown and attempted to hang herself in her parents' basement.
27 Plaintiff continues to suffer emotionally and psychologically.

28 Respondeat superior liability attaches when the employee is under the control of the employer
and when the act is within the scope of employment. Molino v. Asher, 96 Nev. 814, 817 (1980).

1 LDS is liable for intentional torts committed by its Branch President during his employment, even
2 if it is clear that those acts were not authorized by LDS. (See Doe v. Green, 298 F.Supp2d 1025,
3 1042 (D.Nev. 2004).

4 Although employees are never authorized to molest victims, in some circumstances they
5 engage in the activity to serve the employer. This conduct may be viewed as both activity within and
6 outside of the scope of employment and create vicarious liability for the employer. Nevada Dept. of
7 Human Resources, Div. Of Mental Hygiene and Mental Retardation v. Jimenez, 113 Nev. 356, 364,
8 935 P.2d 274 (1997). For example, an employer is vicariously liable for the conduct of a group home
9 supervisor who sexually abuses a child while providing care; and a psychologist's sexual harassment
10 of his client exposed the counseling firm to liability for its employee's acts. Doe v. Green, 298
11 F.Supp2d 1025, 1042 (D.Nev. 2004) (citing Doe v. Estes, 113 Nev at 361; Ray v. Value Behavioral
12 Health, Inc., 967 F.Supp 417 (D. Nev. 1997)).

13 The doctrine of vicarious liability imposes liability upon an employer or principal for the
14 conduct of an employee or agent, on the grounds that the employer or principal should be held
15 accountable for losses to third parties that arise from the actions of the employer or principal.
16 Faragher v. City of Boca Raton, 524 U.S. 775, 795-798, 118 S.Ct. 2275, 141 L.Ed.2d 662 (1998).
17 Unlike the principle of direct liability, vicarious liability does not require that the employer or
18 principal actually cause the loss sustained by the third party. "The proper inquiry is not whether the
19 wrongful act itself was authorized but whether it was committed in the course of a series of acts of
20 the agent which were authorized by the principal." Green, at 1042. Liability is imposed on the
21 employer or principal with the rationale that the loss is the result of a reasonably foreseeable risk and
22 attributable to the employer's or principal's activities. *Id.*

23 In this case, LDS empowered Jones authorizing him to counsel in his capacity as Branch
24 President and then failed to monitor and/or supervise, thereby creating the opportunity to abuse his
25 power. Jone's acts were strongly related to the psychological intimacy inherent in his role as LDS
26 Branch President. The power created by LDS was intensified in this particular LDS church because
27 of its isolation in the Owyhee region of Northeastern Nevada. The "aided-by-agency-relation
28 principle embodied in section 219(2)(d) of the Restatement is instructive: an employer 'is not
subject to liability for the torts of his servants acting outside the scope of their employment unless

1 . . . the servant purported to act or speak on behalf of the principal and there was reliance on apparent
2 authority, or he was aided in accomplishing the tort by the existence of the agency relation."
3 Faragher, at 801-802. As such, there was a significant obligation upon LDS to supervise and control
4 the conduct of Jones who it had empowered. Jones' conduct was made possible, actually facilitated
5 by the existence of the actual agency relationship, and LDS must be held vicariously liable for the
6 misconduct of Jones.

7
8 3. Conclusion.

9 All allegations and reasonable inferences taken as true, and construed in the light most
10 favorable to Plaintiff, relief could be granted under proven facts consistent with the allegations.

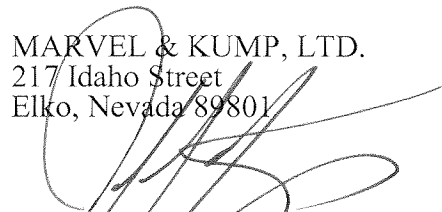
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12 4. Motion for Leave to Amend Complaint.

13 FRCP 15(a) provides that "[a] party may amend the party's pleading once as a matter of
14 course at any time before a responsive pleading is served" "Otherwise a party may amend the
15 party's pleading only by leave of court or by written consent of the adverse party; and leave shall be
16 freely given when justice so requires."

17
18 WHEREFORE, Plaintiff requests that the Court deny Defendant LDS' Motion to Dismiss
19 and grant Plaintiff grant Plaintiff leave to file the proposed First Amended Complaint attached
20 hereto.

21 DATED this 14 day of May, 2007.

22 MARVEL & KUMP, LTD.
23 217 Idaho Street
24 Elko, Nevada 89801

25 
26 JEFFREY J. KUMP
27 Attorneys for Plaintiff
28 Nevada State Bar No. 5694

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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA
8

9 DA-DAZE-NOM MANZANARES,
10 Plaintiff,

11 vs.

**FIRST AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

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

20 Defendants.
21 _____/

22 COMES NOW, Plaintiff, DA-DAZE-NOM MANZANARES, ("PLAINTIFF"),
23 by and through her attorneys, Marvel & Kump, Ltd., and Lisa K. Mendez,
24 Ltd., and for causes of action against Defendants, alleges, avers and
25 complains as follows:

26 ///

27 ///

28 ///

1 Parties

2 (Jurisdiction and Venue)

3 1. This action arises under the United States Constitution,
4 particularly under the provisions of the Fourth and Fourteenth
5 Amendments to the Constitutions of the United States and under federal
6 law, particularly the Civil Rights Act, Title 42 of the United States
7 Code, §§ 1983 and 1988.

8 2. This Court has jurisdiction of this cause under and by
9 virtue of Title 28 of the United States Code, §§ 1331 and 1393,
10 Plaintiff also invokes the pendent jurisdiction of this court.

11 3. Venue is proper in this District pursuant to Title 28 of
12 the United States Code, §1391. Plaintiff, Da-Daze-Nom Manzanares, was
13 born on February 14, 1987 and was a minor at the time the causes of
14 action arose, having since that time reached the age of majority.
15 Plaintiff is currently nineteen (19) years old. During all relevant
16 times, Plaintiff resided in Elko County, Nevada with her mother Martha
17 Seahmer.

18 4. Defendant Elko County School District ("ECSD") was at all
19 times material to this complaint a school district organized and
20 existing under the laws of the State of Nevada. ECSD is located in Elko
21 County, Nevada.

22 5. At all times relevant to this Complaint, the Corporation
23 of the President of the Church of Jesus Christ of Latter-Day Saints and
24 Successors, was a foreign religious corporation of the Church of Jesus
25 Christ of Latter Day Saints operating in Nevada. At all times relevant
26 to this Complaint, the Corporation of the Presiding Bishop of the Church
27 of Jesus Christ of Latter-Day Saints, was a foreign religious
28 corporation of the LDS Church operating in Nevada. The Corporation of

1 the President and Corporation of the Presiding Bishop will be referred
2 to collectively hereinafter as "LDS Church."

3 6. As part of the LDS Church's hierarchy, the Church selects
4 and authorizes individual members to serve as Bishops or Branch
5 Presidents to counsel, minister and serve as spiritual leaders to LDS
6 families, including children, in the congregation. The LDS Church
7 selected Defendant, Gary Lee Jones, Sr., to serve as the Branch
8 President for the Church of Jesus Christ of LDS, to counsel minister and
9 serve as the head of the Church of Jesus Christ of LDS of which
10 Plaintiff and her family were members.

11 7. Defendant Gary Lee Jones, Sr., ("Jones"), both as an
12 agent for ECSD, an agent for the LDS Church, and individually, was at
13 all times material to this complaint, employed by ECSD as a building
14 superintendent, and the Branch President of the Church of Jesus Christ
15 of LDS. Jones was a resident of Elko County, Nevada when the cause of
16 action arose.

17 8. Owyhee High School ("OHS") was at all times material to
18 this complaint a high school facility operated by and under the
19 management and control of Defendant ECSD under the laws of the State of
20 Nevada.

21 9. Does 1 through 6 are unknown employees, agents,
22 contractors, personal representatives, persons, entities, successors,
23 assigns, tortfeasors, or agencies who are in some way responsible for
24 Plaintiff's damages alleged herein, in either a representative capacity
25 or by virtue of independent acts or omissions. When the true names and
26 identities of the Doe Defendants are ascertained, Plaintiff will seek
27 leave to amend this complaint to insert their true names and identities.

28 ///

1 10. XYZ Corporations 1 through 6, inclusive, are legal
2 entities or corporations who the Plaintiff alleges are additionally,
3 jointly and severally liable to the Plaintiff for the acts and events
4 alleged herein, or are agents and/or alter egos of Defendants named
5 herein. When the true names and identities of XYZ Corporations are
6 ascertained, Plaintiff will seek leave to amend this complaint to insert
7 their true names.

8 Facts

9 11. Plaintiff restates and realleges Paragraphs 1
10 through 10 above, and incorporates the same as if fully set out herein.

11 12. Jones, was employed as a building Superintendent at OHS
12 during the times Plaintiff attended high school there, and was the
13 supervisor to Plaintiff's mother, MARTHA SEAHMER, also employed by ECSD.

14 13. Jones was selected and appointed by the LDS Church to act
15 as their Branch President for the Church of Jesus Christ of LDS to
16 minister, counsel, and serve as the spiritual leader for that
17 congregation, of which Plaintiff and her family relied upon.

18 14. While working in the Church of Jesus Christ of LDS and
19 for the purpose of furthering his assigned duties as a Branch President,
20 Jones identified Plaintiff's family as one in need with a teenage girl,
21 befriended Plaintiff, and her family, gained the family's trust and
22 confidence as a church counselor and spiritual guide, and as a valuable
23 and trustworthy mentor to Plaintiff; gained the permission,
24 acquiescence, and support of Plaintiff's family to counsel Plaintiff,
25 and sought and gained the instruction of Plaintiff's parents that she
26 was to have respect for Jones' authority and to comply with Jones'
27 instruction and requests.

28 ///

1 15. The relationship Jones established with Plaintiff in his
2 capacity as the Branch President of the LDS Church, continued during the
3 time that Jones was working at OHS where Plaintiff was a student.
4 During the 2001-2002 school year, when Plaintiff was fourteen, staff at
5 OHS observed Jones making inappropriate contacts with Plaintiff. OHS
6 staff members were also aware of daily telephone calls between Jones and
7 Plaintiff at his school office. OHS staff members complained to the OHS
8 administration, but OHS and ECSD took no action.

9 16. Jones, while using the authority and position of trust as
10 the Branch President of the Church of Jesus Christ of LDS and also while
11 acting within the course and scope of his employment and agency with
12 ECSD, induced and directed Plaintiff to engage in various sex acts with
13 Jones. These acts constituted a harmful or offensive touching of
14 Plaintiff.

15 17. The LDS Church and ECSD were informed of Jones'
16 inappropriate conduct and sexual abuse of Plaintiff. Despite receiving
17 various reports concerning Jones, neither the LDS Church nor ECSD took
18 any action to protect Plaintiff or to report the sexual abuse to law
19 enforcement authorities.

20 18. On or about August 26, 2002, days after the commencement
21 of the new school year, Plaintiff attempted suicide by trying to hang
22 herself in her family's basement due to Jones' conduct and sexual abuse
23 of her. She remained hospitalized until approximately January 7, 2003,
24 when she was discharged from a residential treatment facility.

25 19. Subsequently, Jones was arrested on charges of sexual
26 abuse of a minor as a result of his sexual abuse of Plaintiff. Jones
27 ultimately pleaded guilty to Statutory Sexual Seduction of Plaintiff in
28 Elko County District Court in the State of Nevada.

1 FIRST CAUSE OF ACTION

2 Violation of Civil Rights

3 20. Plaintiff restates and realleges Paragraphs 1 through 19
4 above, and incorporates the same as if fully set out herein.

5 21. The acts of the Defendants alleged herein were done by
6 ECSD and Jones, under the color and pretense of the statutes,
7 ordinances, regulations, and customs, of the State of Nevada, City of
8 Elko, and the County of Elko, and under the authority of their office as
9 a school district organized and existing under the laws of the State of
10 Nevada.

11 22. That pursuant to statutes, ordinances, regulations, and
12 customs of the State of Nevada, ECSD was responsible for the care,
13 custody and control of their employees and students, including
14 Plaintiff, who was a minor child enrolled as a student at OHS at all
15 relevant times to this action.

16 23. That during the above-alleged period of time extending
17 through 2002, Jones, acting as a building superintendent and within the
18 course and scope of his employment with ECSD, did on repeated, separate
19 and distinct times, sexually assault Plaintiff during her minority.

20 24. That during this relevant period of time, ECSD had
21 adopted and were pursuing a policy, custom, or de facto policy or custom
22 which failed to properly implement, supervise and oversee the
23 administration of its schools which allowed Jones to sexually assault
24 the minor child Plaintiff. Further, ECSD failed to investigate or
25 report allegations of sexual misconduct made against Jones, and failed
26 to follow-up in any form as to these allegations, which investigation
27 and follow-up would have prevented and/or terminated the actions of
28 Jones.

1 25. As a result of the acts of ECSD and Jones, Plaintiff
2 suffered such extreme physical and mental pain, anguish, and
3 embarrassment that she attempted to commit suicide in her family's home
4 and was placed in a mental hospital for several months.

5 26. Plaintiff alleges that at all times herein mentioned, the
6 above-described acts and omissions were performed pursuant to certain
7 customs, policies, or defacto policies and/or customs of the Defendants,
8 and each of them, including, but not limited to: (1) the inadequate
9 screening, hiring, and retention of school personnel; (2) the inadequate
10 training of employees; (3) inadequate and unreasonable supervision of
11 employees; (4) inadequate implementation of investigation procedures or
12 reporting procedures regarding the sexual abuse of a minor student by an
13 adult employee; (5) inadequate implementation of procedures to protect
14 students in their custodial care; and (6) inadequate attention and
15 deliberate indifference to students enrolled in ECSD schools.

16 27. The acts of the ECSD and Jones that resulted in harm to
17 Plaintiff, were partially or wholly undertaken in pursuance of official
18 and/or unofficial policy, and established unauthorized and illegal
19 patterns of conduct, consisting of (1) the inadequate screening, hiring,
20 and retention of school personnel; (2) the inadequate training of
21 employees; (3) inadequate and unreasonable supervision of employees; (4)
22 inadequate implementation of investigation procedures or reporting
23 procedures regarding the sexual abuse of a minor student by an adult
24 employee; (5) inadequate implementation of procedures to protect
25 students in their custodial care; and (6) inadequate attention and
26 deliberate indifference to students enrolled in ECSD schools; by which
27 said Defendants, acting under color of law, have denied persons the
28 rights, privileges and immunities guaranteed to them by the Fourth and

1 Fourteenth Amendments to the Constitution of the United States. This
2 pattern of conduct, while carried out under color of law, has no
3 justification or excuse in law, but instead, is improper and illegal and
4 is unrelated to any activities in which school authorities and personnel
5 may properly and legally act in the course of their duties to care for
6 minor students.

7 28. Further, the acts of the ECSD and Jones that resulted in
8 injuries to the Plaintiff, were undertaken as a result of inadequate
9 hiring, training and supervision of school personnel, and this failure
10 amounted to deliberate indifference to the rights of students with whom
11 Defendant had custodial care.

12 29. The aforesaid acts of Defendants, individually, and in
13 concert with the others, were carried out under the pretense of color of
14 law in their official capacities, but said acts went beyond the scope of
15 their jurisdiction and without authorization of law, each Defendant,
16 individually, and in concert with others, acted willfully, knowingly,
17 and with specific intent to deprive Plaintiff, a minor student, of her
18 rights, by reason of the same Plaintiff is entitled to compensatory
19 damages and punitive damages in the amounts set forth below.

20 30. The aforementioned acts of all Defendants, individually,
21 and in concert with others, were willful and malicious in that
22 Defendants' conduct was carried out with a conscious disregard for the
23 Plaintiff minor child's rights such as to constitute oppression, fraud
24 or malice under the NRS 42.010, thereby warranting the assessment of
25 exemplary and punitive damages against Defendants in the amount set
26 forth below appropriate to punish Defendants and set an example for
27 others.

28 ///

1 31. As a direct result of this sexual abuse and breach of
2 trust Plaintiff has sustained and continues to sustain injuries and
3 damages in an amount to be proven at trial.

4 32. As a further result of the molestation, Plaintiff has
5 incurred or will continue to incur costs of counseling and psychological
6 treatment in an amount to be proven at trial.

7 **SECOND CAUSE OF ACTION**

8 **Attorney Fees**

9 33. Plaintiff restates and realleges Paragraphs 1 through 32
10 above, and incorporates the same as if fully set out herein.

11 34. It has been necessary for Plaintiff to retain the
12 services of Marvel and Kump, Ltd. in order to prosecute this action
13 under 42 U.S.C. §1983, and therefore, Plaintiff pursuant to 42 U.S.C.
14 §1988, is entitled to a reasonable award of attorney fees for bringing
15 this claim against the Defendants, and each of them.

16 **THIRD CAUSE OF ACTION**

17 **Negligent Supervision and Retention Against Defendant Elko County School District**

18 35. Plaintiff restates and realleges Paragraphs 1 through 34
19 above, and incorporates the same as if fully set out herein.

20 36. At all times material to this complaint, ECSD had an
21 affirmative duty and obligation to properly train and adequately
22 supervise and monitor Jones' activities, including his relations with
23 students.

24 37. While he was employed at OHS, ECSD, through its agents,
25 received abundant information concerning Jones' inappropriate conduct
26 with Plaintiff. Through its agents, ECSD was aware that Jones was
27 perpetuating an improper sexual relationship with Plaintiff, a fourteen
28 year old student, on school grounds; that Jones was caught with

1 Plaintiff in a school locker room; that Jones took Plaintiff to an ECSD
2 function in Elko, staying with her in a motel. Despite receiving
3 information, ECSD failed to take any action to investigate, supervise,
4 or report Jones' inappropriate contacts with Plaintiff. Indeed, ECSD
5 took no action until Jones' wife exposed the sexual abuse, ultimately
6 causing Jones to be reported and arrested.

7 38. As a direct and proximate result of ECSD's negligent
8 supervision of Jones, Jones was able to sexually abuse Plaintiff for an
9 extended period of time.

10 39. In addition to negligently supervising Jones, ECSD failed
11 to protect Plaintiff, an ECSD student. ECSD's negligent supervision of
12 Plaintiff allowed Jones to develop a sexual relationship with her, and
13 to sexually abuse her.

14 40. As a direct and proximate result of ECSD's negligent
15 supervision of Jones, and ECSD's negligent supervision and failure to
16 protect Plaintiff, Plaintiff has suffered damages in an amount to be
17 proven at trial, including emotional and psychological damage, pain and
18 suffering, and such other damages as are proven at trial.

19 41. As a direct result of this sexual abuse and breach of
20 trust Plaintiff has sustained and continues to sustain injuries and
21 damages in an amount to be proven at trial.

22 42. As a further result of the molestation, Plaintiff has
23 incurred or will continue to incur costs of counseling and psychological
24 treatment in an amount to be proven at trial.

25 **FOURTH CAUSE OF ACTION**

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

27 43. Plaintiff restates and realleges Paragraphs 1 through 42
28 above, and incorporates the same as if fully set out herein.

1 44. LDS Church empowered Jones to perform all duties of a
2 Branch President including counseling, spiritual and moral guidance,
3 religious instruction, ministry and other duties for LDS families.
4 Defendants knew that as part of his duties as a Branch President, Jones
5 would be in a position of trust and confidence with the church and
6 community families, including Plaintiff in this case.

7 45. For the purpose of furthering his duties as a Branch
8 President, Jones also sought and gained the trust, friendship,
9 admiration and obedience of Plaintiff. As a result, Plaintiff was
10 conditioned to trust Jones to comply with Jones' direction, and to
11 respect Jones as a person of authority in spiritual, moral and ethical
12 matters.

13 46. The relationship Jones established with Plaintiff in his
14 capacity as the Branch President of the LDS Church, continued in Jones'
15 contact with Plaintiff through the course and scope of his employment at
16 OHS where Plaintiff was a student.

17 47. Jones, while acting within the course and scope of his
18 employment and agency, and using the authority and position of trust as
19 a Branch President for the Defendants, induced and directed Plaintiff to
20 engage in various sexual acts with Jones. These acts constituted a
21 harmful or offensive touching of Plaintiff.

22 48. Specifically, Jones sexually abused and molested
23 Plaintiff from 2001 to 2002, including instances of fondling and mutual
24 masturbation, as well as instances of oral sex, and sexual intercourse
25 while Jones was serving each of the Defendants.

26 49. Jones used the grooming process to accomplish his acts of
27 sexual molestation of the Plaintiff. Jones' grooming was (1) committed
28 in direct connection and for the purposes of fulfilling Jones'

1 employment and agency with each of the Defendants; (2) committed within
2 the time and space limits of his agency with each of the Defendants; (3)
3 done initially and at least in part from a desire to serve the interests
4 of the Defendants; (4) done directly in the performance of his duties
5 with each of the Defendants; (5) consisted generally of actions of a
6 kind and nature which Jones was required to perform for each of the
7 Defendants; and (6) was done at the direction of, and pursuant to, the
8 power vested in him by each of the Defendants.

9 50. As a result of Jones' sexual abuse, molestation, and
10 breach of authority, trust and position, Plaintiff has suffered and
11 continues to suffer severe debilitating physical, mental, and emotional
12 injury, including pain and suffering, physical and emotional trauma, and
13 permanent psychological damage, in amounts to be proven at trial.

14 51. As a direct result of this sexual abuse and breach of
15 trust Plaintiff has sustained and continues to sustain injuries and
16 damages in an amount to be proven at trial.

17 52. As a further result of the molestation, Plaintiff has
18 incurred or will continue to incur costs of counseling and psychological
19 treatment in an amount to be proven at trial.

20 **FIFTH CAUSE OF ACTION**

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

22 53. Plaintiff restates and realleges Paragraphs 1 through 52
23 above, and incorporates the same as if fully set out herein.

24 54. In the course and scope of his employment with ECSD,
25 Jones induced and directed Plaintiff to engage in various sexual acts
26 with Jones. These acts constituted a harmful or offensive touching of
27 Plaintiff. Jones' sexual molestation of Plaintiff occurred on several
28 occasions between 2001 and 2002.

1 55. Jones was arrested for his sexual assault of Plaintiff
2 and ultimately convicted of Statutory Sexual Seduction of a Minor under
3 sixteen pursuant to NRS 200.368 and 200.364.

4 56. As a direct and proximate result of Jones' intentional
5 acts Plaintiff has suffered damages in an amount to be proven at trial,
6 including emotional and psychological damage, pain and suffering, and
7 such other damages as are proven at trial.

8 57. As a consequence of Jones' malicious acts Plaintiff is
9 entitled to punitive damages.

10 58. As a further result of the molestation, Plaintiff has
11 incurred or will continue to incur costs of counseling and psychological
12 treatment in an amount to be proven at trial.

13 **SIXTH CAUSE OF ACTION**

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

15 59. Plaintiff restates and realleges Paragraphs 1 through 58
16 above, and incorporates the same as if fully set out herein.

17 60. Despite having reasonable cause to suspect child abuse or
18 neglect of the minor Plaintiff, ECSD and the LDS Church failed to report
19 obvious signs of abuse as required by Nevada law and further failed to
20 conduct a reasonable investigation.

21 61. As a direct and proximate result of ECSD and the LDS
22 Church's negligent failure to report child sex abuse by Jones against
23 Plaintiff as this duty is defined under NRS 432B.220 and other
24 applicable law, Jones was able to sexually abuse Plaintiff over an
25 extended period of time.

26 62. As a direct and proximate result of ECSD and the LDS
27 Church's negligent failure to report child sex abuse by Jones against
28 Plaintiff as this duty is defined under NRS 423B.220 and other

1 applicable law, Plaintiff has suffered damages in an amount to be proven
2 at trial, including emotional and psychological damage, pain and
3 suffering, and such other damages as are proven at trial.

4 63. As a further result of the molestation, Plaintiff has
5 incurred or will continue to incur costs of counseling and psychological
6 treatment in an amount to be proven at trial.

7 **SEVENTH CAUSE OF ACTION**

8 **Negligent Training and Supervision**

9 64. Plaintiff restates and realleges Paragraphs 1 through 63
10 above, and incorporates the same as if fully set out herein.

11 65. The LDS Church had a duty to train and supervise its
12 hierarchal clergy including but not limited to, assisting victims of
13 child abuse, reporting incidents of child abuse to property authorities,
14 making church leaders familiar with State child abuse reporting
15 statutes.

16 66. The LDS Church had an additional duty to supervise its
17 hierarchal clergy and members in positions of authority. The LDS Church
18 failed to supervise Jones in his position as Branch President, and as a
19 result, Plaintiff was sexually abused by Jones.

20 67. As a direct result of this sexual abuse and breach of
21 trust Plaintiff has sustained and continues to sustain injuries and
22 damages in an amount to be proven at trial.

23 68. As a further result of the molestation, Plaintiff has
24 incurred or will continue to incur costs of counseling and psychological
25 treatment in an amount to be proven at trial.

26 **EIGHTH CAUSE OF ACTION**

27 **Intentional Infliction of Emotional Distress**

28 69. Plaintiff restates and realleges Paragraphs 1 through 68

1 above, and incorporates the same as if fully set out herein.

2 70. Each of the Defendants herein engaged in extreme and
3 outrageous conduct with reckless disregard for causing emotional
4 distress to Plaintiff.

5 71. Defendant Jones intentionally and with reckless disregard
6 for causing emotional distress to Plaintiff, identified Plaintiff's
7 family as one in need with a teenage girl, befriended Plaintiff, and her
8 family, gained the family's trust and confidence as a church counselor
9 and spiritual guide, and as a valuable and trustworthy mentor to
10 Plaintiff, and while working at the Owyhee High School where Plaintiff
11 was a student, and under the management and control of Defendant ECSD
12 under the laws of the State of Nevada, and while acting within the
13 course and scope of his employment and agency with LDS and ECSD, induced
14 and directed Plaintiff to engage in various sex acts.

15 72. Defendants LDS and ECSD intentionally and with reckless
16 disregard for causing emotional distress to Plaintiff empowered Jones to
17 sexually and emotionally abuse Plaintiff, and despite receiving various
18 reports concerning Jones and Plaintiff's behavior, Defendants LDS and
19 ECSD intentionally and with reckless disregard for causing emotional
20 distress to Plaintiff took no action to protect Plaintiff.

21 73. Defendants' LDS and ECSD are vicariously liable for the
22 intentional acts of Jones based upon the particular authority and
23 opportunity conferred upon Defendant Jones by Defendants' LDS and ECSD.

24 74. Each of the Defendants' outrageous conduct was the actual
25 and/or approximate cause of the Plaintiff having suffered an apparent
26 breakdown and attempting to hang herself in her parents' basement, which
27 caused Plaintiff to be hospitalized in a residential treatment facility
28 from approximately August 26, 2002 to approximately January 7, 2003.

1 75. As a direct and proximate result of the Defendants'
2 intentional acts, Plaintiff has suffered damages in an amount to be
3 proven at trial, including emotional and psychological damage, pain and
4 suffering, and such other damages as are proven at trial. As a
5 consequence of Defendants' malicious acts, Plaintiff is entitled to
6 punitive damages.

7 76. As a further result of the molestation, Plaintiff has
8 incurred or will continue to incur costs of counseling and psychological
9 treatment in an amount to be proven at trial.

10 **NINTH CAUSE OF ACTION**

11 **Negligent Infliction of Emotional Distress**

12 77. Plaintiff restates and realleges Paragraphs 1 through 76
13 above, and incorporates the same as if fully set out herein.

14 78. ECSD and the LDS Church each had an affirmative duty to
15 properly train and adequately supervise Jones' activities. ECSD
16 additionally had an obligation to protect Plaintiff, a student at OHS,
17 from its employee's criminal and intentional misconduct.

18 79. ECSD and the LDS Church failed to properly train,
19 supervise and monitor Jones, and despite reports concerning Jones'
20 inappropriate conduct with Plaintiff, failed to act or protect Plaintiff
21 from sexual abuse by Jones.

22 80. As a direct and approximate result of ECSD's negligent
23 supervision of Jones and negligent conduct in failing to protect one of
24 its students, Plaintiff was sexually abused by Jones for an extended
25 period of time.

26 81. Plaintiff suffered extreme emotional distress caused by
27 ECSD and the LDS Church's failure to protect her from further sexual
28 abuse by Jones and their failure to supervise Jones, and attempted to

1 hang herself in her family's basement. Plaintiff suffered from extreme
2 mental distress and was hospitalized in a mental hospital and
3 residential treatment center from approximately August 27, 2002 to
4 approximately January 7, 2003.

5 82. As a direct and proximate result of ECSD and the LDS
6 Church's negligent acts, Plaintiff has suffered damages in an amount to
7 be proven at trial, including emotional and psychological damage, pain
8 and suffering, and such other damages as are proven at trial. As a
9 consequence of ECSD and the LDS Church's malicious acts, Plaintiff is
10 entitled to punitive damages.

11 83. As a further result of the molestation, Plaintiff has
12 incurred or will continue to incur costs of counseling and psychological
13 treatment in an amount to be proven at trial.

14 **TENTH CAUSE OF ACTION**

15 **Conspiracy**

16 84. Plaintiff restates and realleges Paragraphs 1 through 83
17 above, and incorporates the same as if fully set out herein.

18 85. That ECSD and the LDS Church knew or should have known of
19 the activities of their agent Jones and the said Defendants by and
20 through their agents, and/or employees, conspired and in concert amongst
21 themselves chose not to investigate, and/or did not provide information
22 to one another, all in an attempt to cover up or keep secret the
23 activities of Jones in regards to the injuries sustained by Plaintiff.

24 86. That as a direct and proximate result of the conspiracy,
25 Plaintiff has suffered special and general damages.

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PRAYER FOR RELIEF

1
2 WHEREFORE, Plaintiff prays for judgment in its favor and
3 against Defendants as follows:

4 1. For compensatory and general damages for past, present
5 and future psychological, physical and emotional pain, suffering,
6 distress and injury;

7 2. For punitive damages as set forth against Defendant
8 Jones;

9 3. For the punitive damages as set forth against Defendant
10 ECSD;

11 4. For the punitive damages as set forth against Defendant
12 LDS Church;

13 5. For loss of enjoyment of life in the past and in the
14 future;

15 6. For loss of consortium in the future;

16 7. For loss of earning capacity in the future;

17 8. For loss of emotional disfigurement in the past and in
18 the future;

19 9. For loss of pre-judgment and post-judgment interest at
20 the maximum legal rate;

21 10. For all special damages including past, present and
22 future medical, counseling, and psychological treatment and all other
23 costs in an amount to be proven at trial;

24 11. For Plaintiff's costs of suit;

25 12. For Plaintiff's reasonable attorney's fees; and

26 ///

27 ///

28 ///

1 13. For such other and further relief as the Court may deem
2 just and proper.

3 DATED this 14th day of May, 2007.

4 MARVEL & KUMP, LTD.
5 Attorneys for Plaintiff
6 217 Idaho Street
7 P. O. Box 2645
8 Elko, NV 89803-2645

9 BY: _____
10 Jeffrey J. Kump, Nevada Bar #5694