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**ELECTRONICALLY FILED 06/08/07**

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

11 DA-DAZE-NOM MANZANARES,

12 Plaintiff,

13 vs.

**CASE NO. 07-CV-00076-LRH-RAM**

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

**REPLY IN SUPPORT OF  
 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; and  
 RESPONSE TO PLAINTIFF'S  
 MOTION FOR LEAVE TO AMEND  
 COMPLAINT**

21 Defendants.

24 **I. REPLY IN SUPPORT OF MOTION TO DISMISS**

25 **A. Failure to Report**

26 Plaintiff asserts that her sixth claim for relief states a claim for negligence based on the  
 27 duties imposed by NRS § 432B.220. *See* Plaintiff's Opposition to LDS' Motion to Dismiss,  
 28

1 Doc. #22, at p.7, lns.5-6. The proposed Amended Complaint attached to the Opposition simply  
2 takes Plaintiff's original claim for failure to report and inserts the word "negligent" before every  
3 instance of "failure to report." See Proposed Amended Complaint, attached to Doc. # 25,<sup>1</sup> at  
4 p.13, lns.14, 22, and 27. However, Plaintiff has not remedied the defect with her original claim  
5 for relief for failure to report by simply inserting "negligent" into the phrase - she is still  
6 attempting to state a claim for failure to report under NRS § 432B.220, which does not provide a  
7 civil cause of action.  
8

9 This Court has addressed this very issue and stated that the "assertion that this Court has  
10 specifically held that a claim for negligence under the reporting statute is a viable claim is not an  
11 accurate characterization of the Court's prior ruling or of the relevant law." *Doe v. Nevada*, 356  
12 F.Supp.2d 1123, 1125 (D. Nev. 2004). Yet this is precisely what Plaintiff's sixth claim for relief  
13 in her proposed Amended Complaint is.  
14

15 Plaintiff may use evidence of a failure to report pursuant to NRS § 432B.220, if any, in  
16 connection with her other negligence claims.<sup>2</sup> She may not, however, state a separate claim for  
17 relief for negligent failure to report. Plaintiff's sixth claim for relief should be dismissed.  
18

19 **B. Intentional Infliction of Emotional Distress**

20 Plaintiff admits that her claim for intentional infliction of emotional distress is not based  
21 on any conduct by LDS, but rather is derivative of Jones' intentional conduct. See Opposition to  
22 Motion to Dismiss, Doc. # 22, at p.7, lns.9-12; p.7, p.7-8. Indeed, the crux of Plaintiff's claim  
23

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24 <sup>1</sup> Plaintiff originally filed her Motion for Leave to Amend as part of Doc. #22 and 24, with the  
25 Proposed Amended Complaint attached thereto. However, at least with respect to Doc. #24, which  
26 is Plaintiff's Response to Elko County School District's joinder in LDS' Motion to Dismiss,  
27 Plaintiff has separated her Motion for Leave to Amend and Proposed Amended Complaint and  
28 filed it as Doc. # 25. Although this was not done for Doc. #22, Plaintiff's Response to LDS'  
Motion to Dismiss, for clarity, LDS will refer to the Motion for Leave to Amend as Doc. #25 and  
refer to the Proposed Amended Complaint as attached to Doc. #25.

<sup>2</sup> Plaintiff's seventh claim for relief is for negligent training and supervision against LDS, and her  
ninth claim for relief is for negligent infliction of emotional distress against LDS and ECSD.

1 against LDS is that it “must be held vicariously liable for the misconduct of Jones.” Opposition  
2 to Motion to Dismiss, Doc. # 22, at p.9, lns.5-6.

3 However, in order to state a claim for intentional infliction of emotional distress, the  
4 plaintiff must allege that the specific defendant against whom the claim is asserted (LDS) acted  
5 with the specific intent or reckless disregard for causing emotional distress. *Jordan v. State ex*  
6 *rel Dept. of Motor Vehicles and Public Safety*, 121 Nev. 44, 110 P.3d 30, 52 (2005). Plaintiff  
7 cannot base her claim for intentional infliction of emotional distress against LDS on Jones’ intent  
8 to cause her emotional distress.  
9

10 Further, Plaintiff’s reliance on *State, Dept. of Human Res., Div. of Mental Hygiene and*  
11 *Mental Retardation v. Jiminez*, 113 Nev. 356, 935 P.2d 274 (1997) is inappropriate. The *Jiminez*  
12 opinion was withdrawn by the Nevada Supreme Court shortly after its publication. *See State,*  
13 *Dept. of Human Res., Div. of Mental Hygiene and Mental Retardation v. Jiminez*, 113 Nev. 735,  
14 941 P.2d 969 (1997).  
15

16 Plaintiff’s reliance on *Doe v. Green*, 298 F.Supp.2d 1025 (D. Nev. 2004) is similarly  
17 misplaced. The *Green* case involved a teacher who was sexually abusing a student at school and  
18 during school-related functions. The *Green* Court held the school district vicariously liable for  
19 the teacher’s conduct that occurred during the time he was engaged in or should have been  
20 engaged in employment activities. 298 F.Supp.2d at 1042. The *Green* Court did not hold the  
21 school district responsible for the teacher’s conduct while he was not working, emphasizing that  
22 vicarious liability only arises when the employee acts while engaged in the very task assigned to  
23 him. *See id.* *See also* NRS § 41.745.  
24  
25

26 In so holding, however, the Court relied on the withdrawn *Jiminez* opinion and *Ray v.*  
27 *Value Behavioral Health, Inc.*, 967 F.Supp. 417 (1997), which in turn relied on the withdrawn  
28 *Jiminez* opinion. Because the *Jiminez* opinion has been withdrawn, the *Green* Court’s reasoning

1 based on it and *Ray* should be disregarded by this court.

2 The *Green* Court also cited to and relied upon the opinion in *Doe v. Estes*, 926 F.Supp.  
3 979 (1996) for the proposition that the responsibility of the employer of a teacher who fondles a  
4 student that of a blackjack dealer who slugs a customer during a deal is the same because “[i]n  
5 both cases the plaintiff was on the defendant’s premises for the purpose of enjoying the  
6 defendant’s services.” *Green*, 298 F.Supp.2d at 1042 (quoting *Estes*, 926 F.Supp. at 989)  
7 (emphasis added).  
8

9 A key distinction in this case is the fact that Plaintiff has not alleged that she was abused  
10 by Jones while on LDS’ premises. Indeed, Plaintiff has not alleged that she was a member of the  
11 LDS Church or even that she ever attended any LDS Church service. Plaintiff’s only specific  
12 allegations relate to Jones’ abuse of her “on school grounds; . . . in a school locker room; . . . and  
13 [at] an ECSD function[.]” Proposed Amended Complaint, attached to Doc. # 25, at p.9, ln.28;  
14 p.10, lns.1-2 (emphasis added). Moreover, *Green* did not specifically address the imposition of  
15 vicarious liability for intentional infliction of emotional distress. Thus, its holding is inapposite  
16 to this case.  
17

18 Plaintiff’s eighth claim for relief for intentional infliction of emotional distress should be  
19 dismissed.  
20

21 **II. RESPONSE TO MOTION FOR LEAVE TO AMEND COMPLAINT**

22 The allowance of leave to amend a complaint after a responsive pleading has been filed is  
23 within the sound discretion of the Court. See *PSG Co v. Merrill Lynch, Pierce, Fenner & Smith,*  
24 *Inc.*, 417 F.2d 659, 664 (9<sup>th</sup> Cir. 1969). Although leave to amend to amend should normally be  
25 freely granted, the Court need not do so when the proposed amendment: (1) prejudices the  
26 opposing party; (2) is sought in bad faith; (3) produces an undue delay in litigation; or (4) would  
27 be futile. See *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 951 (9<sup>th</sup> Cir. 2006)  
28

1 (emphasis added).

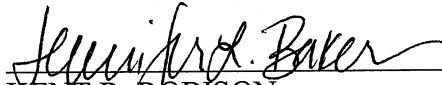
2 Plaintiff's amendments to her complaint consist inserting "negligent" in front of "failure  
3 to report" in her sixth claim for relief, and to expound on the outrageous conduct of Jones and  
4 LDS' vicarious liability for Jones' conduct in connection with her eighth claim for relief. See  
5 Proposed Amended Complaint, attached to Doc. #25. As explained in LDS' above arguments,  
6 these amendments would be futile because Plaintiff cannot maintain a claim for negligent failure  
7 to report, and because LDS cannot be held vicariously liable for Jones' intentional infliction of  
8 emotional distress. As such, Plaintiff's motion for leave to amend should be denied.  
9

10 **III. CONCLUSION**

11 For the foregoing reasons, LDS respectfully requests that this Court GRANT LDS'  
12 Motion to Dismiss. LDS also respectfully requests that this Court DENY Plaintiff's Motion for  
13 Leave to Amend.  
14

15 DATED this 8<sup>th</sup> day of June, 2007.

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**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused a true copy of **REPLY IN SUPPORT OF 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; and RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT** to be served on all parties to this action by:

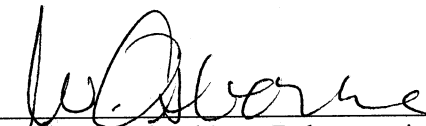
- placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.
- personal delivery/hand delivery
- facsimile (fax)
- Federal Express/UPS or other overnight delivery
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Dated this 8<sup>th</sup> day of June, 2007.

  
\_\_\_\_\_  
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