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The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KENNETH FLEMING, JOHN DOE, R.K., and
T.D.,

Plaintiffs,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole, a/k/a "MORMON CHURCH"; LDS
SOCIAL SERVICES a/k/a LDS, a Utah
corporation,

Defendants.

NO. 04-2338 RSM

DEFENDANTS' AMENDED
ANSWER TO PLAINTIFFS'
AMENDED COMPLAINT

Defendants Corporation of the President of The Church of Jesus Christ of Latter-Day
Saints and LDS Family Services ("Defendants") respond to Plaintiffs' Amended Complaint as
follows:

1. Answering paragraph 1.1 of Plaintiffs' Amended Complaint, Defendants admit
that Kenneth Fleming and John Doe, R.K. and T.D. at one time were believed to have resided in
Kent, Washington, where one or both of their parents also resided. Except as expressly admitted

1 herein, Defendants are without present knowledge or information sufficient to form a belief as to
2
3 the truth or falsity of the remaining allegations contained herein, and therefore deny the same.
4

5 2. Answering paragraph 1.2 of Plaintiffs' Amended Complaint, Defendants admit
6
7 that Kenneth Fleming and John Doe were at one time members of the Church of Jesus Christ of
8
9 Latter-Day Saints ("LDS Church") and resided within the Kent Second Ward. Except as
10
11 expressly admitted herein, Defendants are without present knowledge or information sufficient to
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13 form a belief as to the truth or falsity of the remaining allegations contained herein, and therefore
14
15 deny the same.

16
17 3. Answering paragraph 1.3 of Plaintiffs' Amended Complaint, Defendants admit
18
19 that the Corporation of the President of the Church of Jesus Christ of Latter-Day Saints is a Utah
20
21 corporation sole; admits that it is registered to do business, and does business, in the State of
22
23 Washington. Except as expressly admitted herein, any other allegations contained in said
24
25 paragraph are denied.

26
27 4. Answering paragraph 1.4 of Plaintiffs' Amended Complaint, Defendants admit
28
29 that one of the ecclesiastical offices of the LDS Church is that of President and Prophet, and that
30
31 said person possesses and exercises the authority commensurate with that office as defined by
32
33 the doctrines and beliefs of the LDS Church. Defendants admit that the current President of the
34
35 LDS Church is Gordon B. Hinckley. Defendants admit that the Corporation of the President of
36
37 The Church of Jesus Christ of Latter-Day Saints is registered to do business and does business in
38
39 the State of Washington. Except as expressly admitted herein, any other allegations contained in
40
41 said paragraph are denied.

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43 5. Answering paragraph 1.5 of Plaintiffs' Amended Complaint, Defendants admit
44
45 that the LDS Church functions geographically based upon the designations of "wards" and

1 “stakes,” which are geographically delineated. Defendants admit that there is also a geographic
2 designation of “area” which is used for certain ecclesiastical administration purposes.
3

4 Defendants admit that the LDS Church uses the designations of bishops, stake presidents, and
5 area presidents; and admit that “wards,” “stakes,” and “areas,” as those terms are used within the
6 LDS Church are not corporate entities. Except as expressly admitted herein, any other
7 allegations contained in said paragraph are denied.
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13 6. Answering paragraph 1.6 of Plaintiffs’ Amended Complaint, Defendants admit
14 that the religious doctrine of tithing is a part of the belief and doctrine of the LDS Church and
15 that all members of the church are invited to practice this doctrine. Except as expressly admitted
16 herein, any other allegations contained in said paragraph are denied.
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21 7. Answering paragraph 1.7 of Plaintiffs’ Amended Complaint, Defendants are
22 without present knowledge or information sufficient to form a belief as to the truth or falsity of
23 the allegations contained therein, and therefore deny the same.
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27 8. Answering paragraph 1.8 of Plaintiffs’ Amended Complaint, Defendants admit
28 that LDS Social Services, now known as LDS Family Service, is an LDS Church-affiliated social
29 service organization, but is a corporate entity separate from Defendant Corporation of the
30 President of The Church of Jesus Christ of Latter-Day Saints, and is also separate from the
31 unincorporated association denominated as the LDS Church. Defendants further admit that LDS
32 Family Services has state licensed social service personnel on its staff and that some members of
33 the staff of LDS Family Services believe the teachings of the Church of Jesus Christ of Latter-
34 Day Saints. Except as expressly admitted herein, any other allegations contained in said
35 paragraph are denied.
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1 9. Answering paragraph 1.9 of Plaintiffs' Amended Complaint, Defendants admit
2
3 that LDS Family Services is and was a Utah corporation whose principal place of business is Salt
4
5 Lake City, Utah. Defendants further admit that said corporation has offices in various
6
7 geographic areas. Except as expressly admitted herein, any other allegations contained in said
8
9 paragraph are denied.

10
11 10. Answering paragraph 1.10 of Plaintiffs' Amended Complaint, Defendants deny
12
13 the same.

14
15 11. Answering paragraph 1.11 of Plaintiffs' Amended Complaint, Defendants admit
16
17 that certain individuals employed by LDS Family Services may fall within the written definition
18
19 of mandatory reporters as set forth in RCW 26.44.030. Except as expressly admitted herein, any
20
21 other allegations contained in said paragraph are denied.

22
23 12. In answering paragraph 1.12 of Plaintiffs' Amended Complaint, Defendants admit
24
25 that Herman M. Allenbach, as a male member of the Church, participated in the lay priesthood of
26
27 the Church, as that term is defined and understood within the LDS Church, and that
28
29 Mr. Allenbach had been a High Priest, a Counselor to the Bishopric of the Kent Second Ward,
30
31 and a scout leader. Defendants further admit that Herman M. Allenbach was an oral surgeon
32
33 who maintained a practice in Kent, Washington. Except as expressly admitted herein,
34
35 Defendants are without present knowledge or information sufficient to form a belief as to the
36
37 truth or falsity of the remaining allegations contained therein, and therefore deny the same.

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39 13. Answering paragraph 1.13 of Plaintiffs' Amended Complaint, Defendants admit
40
41 that Herman M. Allenbach died on or about March 6, 2000.

42
43 14. Answering paragraph 1.14 of Plaintiffs' Amended Complaint, Defendants admit
44
45 that Randy Borland, Philip Coleman and Richard Petitt have served as Bishops in the Kent

1 Second Ward. Except as expressly admitted herein, any other allegations contained in said
2
3 paragraph are denied.
4

5 15. Answering paragraph 1.15 of Plaintiffs' Amended Complaint, Defendants admit
6
7 that Jack Allen Loholt, aka Jack Allen Onefrey, (hereinafter "Loholt"), has been convicted of a
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9 crime in the State of Washington; has been a member of the LDS Church; and that, as a male
10
11 member of the church, he participated in the lay priesthood of the church, as that term is defined
12
13 and understood within the LDS Church. Except as expressly admitted herein, any other
14
15 allegations contained in said paragraph are denied.
16

17 16. Answering paragraph 2.1 of Plaintiffs' Amended Complaint, Defendants admit
18
19 that this Court has jurisdiction of the subject matter, subject to the constraints of the First
20
21 Amendment of the Constitution of the United States, and Article I, Section II of the Constitution
22
23 of the State of Washington, and of the parties hereto. Except as expressly admitted herein, any
24
25 other allegations contained in said paragraph are denied.
26

27 17. Answering paragraph 3.1 of Plaintiffs' Amended Complaint, Defendants admit
28
29 that persons who are baptized and confirmed into the LDS Church are members of the Church.
30
31 Defendants further admit that various LDS Church ecclesiastical authorities, in the practice of
32
33 their religious beliefs and responsibilities, attempt to guide and encourage church members in
34
35 their service in the church. Except as expressly admitted herein, any other allegations in said
36
37 paragraph are denied.
38

39 18. Answering paragraph 3.2 of Plaintiffs' Amended Complaint, Defendants admit
40
41 that male members of the LDS Church may be eligible for ordination to the lay priesthood of the
42
43 Church beginning at age 12; admit there are different offices in the priesthood with different
44
45 responsibilities, and that eligible members of the Church must meet the standards of worthiness,

1 as that term is doctrinally defined by the Church, before being ordained into an office of the
2
3 priesthood. Defendants further admit that the offices of Elder and High Priest (in the
4
5 Melchizedek Priesthood), are offices in the lay priesthood of the LDS Church. Except as
6
7 expressly admitted herein, any other allegations contained in said paragraph are denied.
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9 19. Answering paragraph 3.3 of Plaintiffs' Amended Complaint, Defendants deny the
10
11 same.

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13 20. Answering paragraph 3.4 of Plaintiffs' Amended Complaint, Defendants admit
14
15 that the LDS Church is and has been for an extended period of time one of many sponsoring
16
17 organizations for the Boy Scouts of America. Except as expressly admitted herein, any other
18
19 allegations contained in said paragraph are denied.
20

21 21. Answering paragraphs 3.5, 3.6 and 3.7 of Plaintiffs' Amended Complaint,
22
23 Defendants admit that at various times Loholt was involved in the scouting program in the Kent
24
25 Second Ward. Except as expressly admitted, Defendants are without present knowledge or
26
27 information sufficient to form a belief as to the truth or falsity of the remaining allegations
28
29 contained therein, and therefore the same are denied. The allegation that Loholt and Allenbach
30
31 were "Mormon priests" is expressly denied.
32

33 22. Answering paragraphs 3.8, 3.9 and 3.10 of Plaintiffs' Amended Complaint,
34
35 Defendants deny the same.
36

37 23. In answering paragraphs 3.11, 3.12, 3.13, 3.14, 3.15, 3.16, 3.17, 3.18 and 3.19 of
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39 Plaintiffs' Amended Complaint, Defendants are without present knowledge or information
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41 sufficient to form a belief as to the truth or falsity of the allegations contained therein, and
42
43 therefore deny the same.
44
45

1 24. Answering paragraph 4.1 of Plaintiffs' Amended Complaint, Defendants
2
3 incorporate herein by reference their responses to Plaintiffs' previous allegations, as though fully
4
5 set forth herein.
6

7 25. Answering paragraphs 4.2, 4.3, 4.4, 4.5 and 4.6 of Plaintiffs' Amended
8
9 Complaint, Defendants deny the same.
10

11 26. Answering paragraph 4.7, of Plaintiffs' Amended Complaint, Defendants admit
12
13 that the LDS Church has promulgated general guidelines to assist members in helping victims of
14
15 sexual abuse and sex offenders. Except as expressly admitted herein, any other allegations
16
17 contained in said paragraph are denied.
18

19 27. In answering paragraphs 4.8, 4.9, 4.10 and 4.11, of Plaintiffs' Amended
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21 Complaint, Defendants deny the same.
22

23 28. Answering paragraph 4.12 of Plaintiffs' Amended Complaint, Defendants deny
24
25 the same. Further, Defendants affirmatively allege that exemplary damages are not permissible
26
27 in the State of Washington, and that exemplary damages are not recoverable in the above-
28
29 captioned case pursuant to and order of the Court dated March 25, 2005.
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31 29. Answering paragraph 5.1 of Plaintiffs' Amended Complaint, Defendants
32
33 incorporate herein by reference their responses to Plaintiffs' previous allegations, as though fully
34
35 set forth herein.
36

37 30. Answering paragraphs 5.2 and 5.3 of Plaintiffs' Amended Complaint, Defendants
38
39 deny the same.
40

41 31. Answering paragraph 6.1 of Plaintiffs' Amended Complaint, Defendants
42
43 incorporate herein by reference their responses to Plaintiffs' previous allegations, as though fully
44
45 set forth herein.

1 32. Answering paragraph 6.2 of Plaintiffs' Amended Complaint, Defendants deny the
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3 same.

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5 33. Answering paragraph 7.1 of Plaintiffs' Amended Complaint, Defendants
6
7 incorporate herein by reference those responses to Plaintiffs' previous allegations, as though
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9 fully set forth herein.

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11 34. Answering paragraph 7.2 of Plaintiffs' Amended Complaint, Defendants deny the
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13 same.

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15 35. Answering paragraphs 8.1, 8.2, 8.3, 8.4, 8.5 and 8.6 of Plaintiffs' Amended
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17 Complaint, Defendants deny the same.

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19 36. Answering paragraph 9.1 of Plaintiffs' Amended Complaint, Defendants respond
20
21 that said paragraph makes no allegations against these Defendants. To the extent that an answer
22
23 is required, Defendants deny the same and affirmatively assert that punitive damages are not
24
25 allowed under the laws of the State of Washington, and that punitive damages are not
26
27 recoverable in the above-captioned case pursuant to an order of the Court dated March 25, 2005.

28
29 **AFFIRMATIVE DEFENSES**

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31 For further answer, and by way of affirmative defenses, Defendants allege as follows:

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33 1. **Failure to State a Claim.** Plaintiffs' Amended Complaint fails, in whole or in
34
35 part, to state a claim upon which relief can be granted.

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37 2. **No Fiduciary Duty.** Defendants owe no fiduciary duty to Plaintiffs.

38
39 3. **Failure to Mitigate Damages.** Plaintiffs have failed to mitigate or minimize
40
41 their damages, if any.

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43 4. **No Proximate Cause.** Plaintiffs' damages, if any, were proximately caused by
44
45 the acts or omissions of others over whom these Defendants had no control or right of control.

1 5. **Contribution.** If liability is established, these Defendants are entitled to
2
3 contribution from any party or non-party whose negligence may have contributed as a proximate
4
5 cause to the injury complained of in Plaintiffs' Amended Complaint.
6

7 6. **Contributory Fault / Apportionment.** Pursuant to RCW 4.22.070(1), damages
8
9 are to be apportioned according to the relative fault of all at-fault entities. In accordance with
10
11 CR 12(i), in to preserve all potential defenses, Defendants identify Jack Loholt aka Jack Onefrey,
12
13 Herman Allenbach, Jerry Kelly and Dorothy Kelly as unnamed at-fault parties who these
14
15 Defendants claim, pursuant to RCW 4.22.070(1), as being at fault. Defendants reserve the right
16
17 to identify other unnamed or as yet unidentified at-fault entities, if any, once such identity has
18
19 become known to Defendants.
20

21 7. **No Punitive Damages.** Plaintiffs' claims for punitive damages has been stricken
22
23 pursuant to a Court order dated March 25, 2005, because such damages are not available under
24
25 Washington law. Further any award of punitive damages in this case would violate the
26
27 constitutional safeguards provided to Defendants under the applicable federal and state
28
29 constitutional provisions, include due process.
30

31 8. **Statute of Limitations.** Plaintiffs' claims are barred by the statute of limitations.
32

33 9. **No Liability for Damages Resulting from Intentional Misconduct.** Defendants
34
35 are not liable under the laws of the State of Washington for of Plaintiffs' damages caused by the
36
37 intentional acts of Jack Loholt aka Jack Onefrey (or by the intentional acts of such other
38
39 tortfeasors, if any), and all of Plaintiffs' damages resulting from such intentional acts and
40
41 omissions must be segregated from damages that are negligent/fault-based, on the basis of the
42
43 varying degrees of culpability and causation among the actors.
44
45

1 10. **Intervening or Superseding Cause.** Defendants are not liable under the laws
2
3 of the State of Washington based on an intervening or superseding cause.
4

5 **MATTERS OF AVOIDANCE**

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7 1. **Freedom of Religion.** To the extent that Plaintiffs' claims are based upon these
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9 Defendants' exercise of their religious beliefs, they are barred by the Defendants' rights under
10
11 the First Amendment to the United States Constitution, and by Article I, Section II, of the
12
13 Constitution of the State of Washington.
14

15 **RESERVATION**

16
17 Defendants hereby reserve the right to assert such further and other affirmative defenses,
18
19 avoidances, and to otherwise allege, admit, or deny as may be warranted by discovery.
20

21 **WHEREFORE**, Defendants pray for judgment as follows:
22

- 23 1. That Plaintiffs take nothing by way of their Amended Complaint against these
24
25 Defendants and that the Amended Complaint be dismissed with prejudice;
26
27 2. That Defendants, each of them, be granted their attorneys' fees and costs against
28
29 Plaintiffs;
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31 3. That, pursuant to RCW 4.22.070, if liability were to be established against these
32
33 Defendants (either or both of them), that each of Defendants (either or both of them) be severally
34
35 liable only for its share of fault, if any (pursuant to RCW 4.22.015);
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37 4. That, pursuant to established law, Plaintiffs' damages caused by intentional
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39 conduct be segregated from those damages, if any, caused by negligent/"at-fault" conduct; and
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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following. The parties will additionally be served in the manner indicated.

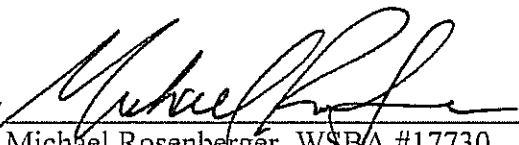
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