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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH FLEMING, *et al.*,

Plaintiffs,

v.

THE CORPORATION OF THE
PRESIDENT OF THE CHURCH OF JESUS
CHRIST OF LATTER DAY SAINTS, *et al.*,

Defendants.

CASE NO. C04-2338RSM

ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS PUNITIVE DAMAGES
CLAIM

This matter comes before the Court on defendants' Motion to Dismiss Plaintiffs' Punitive Damages Claim, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Dkt. #9). Defendants argue that plaintiffs have failed to assert any claim under federal or state statute that provides for punitive damages, and such damages are not otherwise permitted under Washington State law. Plaintiffs argue that this Court should apply the most significant relationship test, and find that Utah State law governs this case, and therefore, that state's punitive damages laws apply to this case. (Dkt. #11).

Having reviewed defendants' motion to dismiss (Dkt. #9), plaintiffs' opposition (Dkt. #11), defendants' reply (Dkt. #14), the declarations in support of those briefs, and the remainder of the record, the Court hereby finds and ORDERS:

ORDER GRANTING MOTION TO DISMISS CLAIM
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1 (1) Defendants' Motion to Dismiss Plaintiffs' Punitive Damages Claim (Dkt. #9) is
2 GRANTED. Under Rule 12(b)(6), the Court must dismiss a claim if plaintiff can prove no set of
3 facts in support of his claim which would entitle him to relief. *Van Buskirk v. Cable News*
4 *Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002); *Love v. United States*, 915 F.2d 1242, 1245
5 (9th Cir. 1989). In deciding a motion to dismiss, the Court accepts as true all material
6 allegations in the complaint and construes them in the light most favorable to the plaintiff. *See*
7 *Newman v. Sathyavaglswaran*, 287 F.3d 786, 788 (9th Cir. 2002); *Associated Gen. Contractors*
8 *v. Metro. Water Dist.*, 159 F.3d 1178, 1181 (9th Cir. 1998). However, conclusory allegations
9 of law and unwarranted inferences are insufficient to defeat a motion to dismiss. *Associated*
10 *Gen. Contractors*, 159 F.3d at 1181.

11 In the instant case, plaintiffs urge the Court to apply Utah's punitive damages laws to
12 their case, arguing that Utah has the most significant relationship with plaintiffs' claims. (Dkt.
13 #11 at 7-10). The Court finds this argument misguided.

14 In the typical diversity case, when the laws of more than one state can arguably apply to
15 the claim at issue, a district court must apply the conflict-of-law rules of the state in which the
16 court is located. *Digital Control Inc. v. Radiodetection Corp.*, 294 F. Supp.2d 1199, 1204 n. 6
17 (W.D. Wash. 2003). In Washington State, the courts apply a "most significant relationship"
18 test, as set forth in the Restatement (Second) Conflict of Laws § 145 (1971). *Johnson v. Spider*
19 *Staging Corp.*, 87 Wn.2d 577, 580 (1976); *Williams v. State*, 76 Wash. App. 237, 241 (1994).

20 Section 145 provides:

- 21 (1) The rights and liabilities of the parties with respect to an issue in tort
22 are determined by the local law of the state which, with respect to that
23 issue, has the most significant relationship to the occurrence and the
24 parties under the principles stated in § 6.
- 25 (2) Contacts to be taken into account in applying the principles of § 6 to
26 determine the law applicable to an issue include:
- (a) the place where the injury occurred,

1 (b) the place where the conduct causing the injury occurred,

2 (c) the domicile, residence, nationality, place of incorporation and
3 place of business of the parties, and

4 (d) the place where the relationship, if any, between the parties is
5 centered.

6 These contacts are to be evaluated according to their relative importance with
7 respect to the particular issue.

8 *Restatement (Second) of Conflict of Laws* § 175 (1971). Furthermore, in personal injury cases,
9 Restatement § 146 states that generally the law where the injury occurred governs. Restatement
10 § 146; see *Bush v. O'Connor*, 58 Wash. App. 138, 144 (1990). The *Johnson* court explained
11 that the approach “is not merely to count contacts, but rather to consider which contacts are
12 most significant and to determine where these contacts are found.” *Johnson*, 87 Wn.2d at 581.
13 Thus, in the instant case, this Court must consider the significant contacts with Washington and
14 with Utah.

15 After examining the contacts with each state, this Court must conclude that Washington
16 law governs the case. First, the fact that plaintiffs’ injury occurred in Washington raises the
17 presumption that Washington law applies and will determine the rights and liabilities of the
18 parties. See Restatement § 146. In the Complaint, plaintiffs allege that it was the failure of
19 Washington clergymen to report child abuse, and the failure to properly train and supervise
20 Washington clergymen who handled plaintiffs’ cases, that constitute unlawful conduct. (Dkt.
21 #1, Complaint). Furthermore, plaintiffs allege that the failure of Washington clergy to report the
22 abuse to Washington civil authorities was unlawful. Thus, it is clear that the injury occurred in
23 Washington, not in Utah. In addition, at all times material to the allegations raised in the
24 Complaint, plaintiffs were residents of, and domiciled in, Washington State. The church in
25 which the abuse occurred was located in Kent, Washington, and was registered to do business in
26 Washington. Finally, the relationship between plaintiffs and the church is centered in
Washington. (Dkt. #1, Complaint).

1 While plaintiffs argue that Utah has the most significant relationship because that is
2 where the headquarters of the church is incorporated, that is where the senior leadership is
3 located, financial contributions are made to the church headquarters, and document archives are
4 maintained there, these facts are irrelevant under the significant relationships test set forth in the
5 Restatement. Moreover, plaintiffs erroneously rely on *Kammerer v. Western Gear*, 96 Wn.2d
6 416 (1981), in support of their argument. (See Dkt. #11 at 7-8). Instead, the appropriate
7 analysis is found in *Barr v. Interbay Citizens Bank of Tampa, Florida*, 96 Wn.2d 692 (1981),
8 wherein the Court determined that, because the immediate, injury-causing conduct occurred in
9 Washington by an agent of the Florida defendant, the interests of Florida were subordinate to
10 those of Washington. *Barr*, 96 Wn.2d at 699. On that basis, the court declined to apply the
11 punitive damages laws of Florida. Unlike *Barr* and unlike the instant case, in *Kammerer*, the
12 Court applied California law in the Washington forum because plaintiffs were California
13 residents, the negotiations on which the fraud claim was based took place in California, the
14 agreement between the parties directed that California law would govern, and payments and
15 royalties were made in California. *Kammerer*, 96 Wn.2d at 422. None of those factors are
16 present in plaintiffs' case.

17 Therefore, the Court finds that Washington has the most significant relationship to the
18 alleged unlawful conduct and the parties in this lawsuit. Accordingly, Washington law clearly
19 governs, and the Court declines to apply Utah's punitive damages laws. Because punitive
20 damages are not permitted under Washington law, plaintiffs' punitive damages claim must be
21 dismissed.

22 (2) The Clerk shall forward a copy of this Order to all counsel of record.

23 DATED this 25 day of March, 2005.

24 /s/ Ricardo S. Martinez
25 RICARDO S. MARTINEZ
26 United States District Judge