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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KENNETH FLEMING and JOHN DOE,

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 FAMILY SERVICES,
a Utah corporation,

Defendants.

No. CV4-2338-M

**DEFENDANTS' 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 herein, defendants are without present knowledge or

DEFENDANTS' ANSWER TO PLAINTIFFS'
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STAFFORD FREY COOPER

PROFESSIONAL CORPORATION
601 Union Street, Suite 3100
Seattle WA 98101.1374
TEL 206.623.9900 FAX 206.624.6885

1 information sufficient to form a belief as to the truth or falsity of the remaining allegations
2 contained herein, and therefore deny the same.

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

9 3. Answering paragraph 1.3 of plaintiffs' Amended Complaint, defendants
10 admit that the Corporation of the President of the Church of Jesus Christ of Latter-day
11 Saints is a Utah corporation sole; admits that it is registered to do business, and does
12 business, in the State of Washington. Except as expressly admitted herein, any other
13 allegations contained in said paragraph are denied.

14 4. Answering paragraph 1.4 of plaintiffs' Amended Complaint, defendants
15 admit that one of the ecclesiastical offices of the LDS Church is that of President and
16 Prophet, and that said person possesses and exercises the authority commensurate
17 with that office as defined by the doctrines and beliefs of the LDS Church. Defendants
18 admit that the current President of the LDS Church is Gordon B. Hinckley. Defendants
19 admit that the Corporation of the President of The Church of Jesus Christ of Latter-day
20 Saints is registered to do business and does business in the State of Washington.
21 Except as expressly admitted herein, any other allegations contained in said paragraph
22 are denied.

1 5. Answering paragraph 1.5 of plaintiffs' Amended Complaint, defendants
2 admit that the LDS Church functions geographically based upon the designations of
3 "wards" and "stakes," which are geographically delineated. Defendants admit that there
4 is also a geographic designation of "area" which is used for certain ecclesiastical
5 administration purposes. Defendants admit that the LDS Church uses the designations
6 of bishops, stake presidents, and area presidents; and admit that "wards," "stakes," and
7 "areas," as those terms are used within the LDS Church are not corporate entities.
8 Except as expressly admitted herein, any other allegations contained in said paragraph
9 are denied.

10 6. Answering paragraph 1.6 of plaintiffs' Amended Complaint, defendants
11 admit that the religious doctrine of tithing is a part of the belief and doctrine of the LDS
12 Church and that all members of the church are invited to practice this doctrine. Except
13 as expressly admitted herein, any other allegations contained in said paragraph are
14 denied.

15 7. Answering paragraph 1.7 of plaintiffs' Amended Complaint, defendants
16 are without present knowledge or information sufficient to form a belief as to the truth or
17 falsity of the allegations contained therein, and therefore deny the same.

18 8. Answering paragraph 1.8 of plaintiffs' Amended Complaint, defendants
19 admit that LDS Social Services, now known as LDS Family Service, is an LDS Church-
20 affiliated social service organization, but is a corporate entity separate from defendant
21 Corporation of the President of The Church of Jesus Christ of Latter-day Saints, and is
22 also separate from the unincorporated association herein denominated as the LDS
23 Church. Defendants further admit that LDS Family Services has state licensed social

1 service personnel on its staff and that some members of the staff of LDS Family
2 Services believe the teachings of the Church of Jesus Christ of Latter-day Saints.
3 Except as expressly admitted herein, any other allegations contained in said paragraph
4 are denied.

5 9. Answering paragraph 1.9 of plaintiffs' Amended Complaint, defendants
6 admit that LDS Family Services is and was a Utah corporation whose principal place of
7 business is Salt Lake City, Utah. Defendants further admit that said corporation has
8 offices in various geographic areas. Except as expressly admitted herein, any other
9 allegations contained in said paragraph are denied.

10 10. Answering paragraph 1.10 of plaintiffs' Amended Complaint, defendants
11 deny the same.

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

17 12. In answering paragraph 1.12 of plaintiffs' Amended Complaint, defendants
18 admit that Herman M. Allenbach, as a male member of the church, participated in the
19 lay priesthood of the church, as that term is defined and understood within the LDS
20 Church, and that Mr. Allenbach had been a high priest, a counselor to the bishopric of
21 the Kent Second Ward, and a scout leader. Defendants further admit that Herman M.
22 Allenbach was an oral surgeon who maintained a practice in Kent, Washington. Except
23 as expressly admitted herein, defendants are without present knowledge or information

1 sufficient to form a belief as to the truth or falsity of the remaining allegations contained
2 therein, and therefore deny the same.

3 13. Answering paragraph 1.13 of plaintiffs' Amended Complaint, defendants
4 admit that Herman M. Allenbach died on or about March 6, 2000.

5 14. Answering paragraph 1.14 of plaintiffs' Amended Complaint, defendants
6 admit that Randy Borland, Phillip Coleman and Richard Petitt have served as bishops in
7 the Kent Second Ward. Except as expressly admitted herein, any other allegations
8 contained in said paragraph are denied.

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

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

1 17. Answering paragraph 3.1 of plaintiffs' Amended Complaint, defendants
2 admit that persons who are baptized and confirmed into the LDS Church are members
3 of the church. Defendants further admit that various LDS Church ecclesiastical
4 authorities, in the practice of their religious beliefs and responsibilities, attempt to guide
5 and encourage church member in their service in the church. Except as expressly
6 admitted herein, any other allegations in said paragraph are denied.

7 18. Answering paragraph 3.2 of plaintiffs' Amended Complaint, defendants
8 admit that male members of the LDS Church may be eligible for ordination to the lay
9 priesthood of the church beginning at age 12; admit there are different offices in the
10 priesthood with different responsibilities, and that eligible members of the church must
11 meet the standards of worthiness, as that term is doctrinally defined by the church,
12 before being ordained into an office of the priesthood. Defendants further admit that the
13 offices of Elder and High Priest (in the Melchizedek Priesthood), are offices in the lay
14 priesthood of the LDS Church. Except as expressly admitted herein, any other
15 allegations contained in said paragraph are denied.

16 19. Answering paragraph 3.3 of plaintiffs' Amended Complaint, defendants
17 deny the same.

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

22 21. Answering paragraphs 3.5, 3.6 and 3.7 of plaintiffs' Amended Complaint,
23 defendants admit that at various times LoHolt was involved in the scouting program in

1 the Kent 2nd Ward. Except as expressly admitted, defendants are without present
2 knowledge or information sufficient to form a belief as to the truth or falsity of the
3 remaining allegations contained therein, and therefore the same are denied. The
4 allegation that Loholt and Allenbach were “Mormon priests” is expressly denied.

5 22. Answering paragraphs 3.8, 3.9 and 3.10 of plaintiffs’ Amended Complaint,
6 defendants deny the same.

7 23. In answering paragraphs 3.11, 3.12, 3.13, 3.14, 3.15, 3.16, 3.17, 3.18 and
8 3.19 of plaintiffs’ Amended Complaint, defendants are without present knowledge or
9 information sufficient to form a belief as to the truth or falsity of the allegations contained
10 therein, and therefore deny the same.

11 24. Answering paragraph 4.1 of plaintiffs’ Amended Complaint, defendants
12 incorporate herein by reference their responses to plaintiffs’ previous allegations, as
13 though fully set forth herein.

14 25. Answering paragraphs 4.2, 4.3, 4.4, 4.5 and 4.6 of plaintiffs’ Amended
15 Complaint, defendants deny the same.

16 26. Answering paragraph 4.7 of plaintiffs’ Amended Complaint, defendants
17 admit that the LDS Church has promulgated general guidelines to assist members in
18 helping victims of sexual abuse and sex offenders. Except as expressly admitted
19 herein, any other allegations contained in said paragraph are denied.

20 27. In answering paragraphs 4.8, 4.9, 4.10 and 4.11 of plaintiffs’ Amended
21 Complaint, defendants deny the same.

22 28. Answering paragraph 4.12 of plaintiffs’ Amended Complaint, defendants
23 deny the same. Further, defendants affirmatively assert that exemplary damages are

1 not permissible in the State of Washington, and that exemplary damages are not
2 recoverable in the above-captioned case pursuant to an order of the Court dated
3 March 25, 2005.

4 29. Answering paragraph 5.1 of plaintiffs' Amended Complaint, defendants
5 incorporate herein by reference their responses to plaintiffs' previous allegations, as
6 though fully set forth herein.

7 30. Answering paragraphs 5.2 and 5.3 of plaintiffs' Amended Complaint,
8 defendants deny the same.

9 31. Answering paragraph 6.1 of plaintiffs' Amended Complaint, defendants
10 incorporate herein by reference their responses to plaintiffs' previous allegations, as
11 though fully set forth herein.

12 32. Answering paragraph 6.2 of plaintiffs' Amended Complaint, defendants
13 deny the same.

14 33. Answering paragraph 7.1 of plaintiffs' Amended Complaint, defendants
15 incorporate herein by reference those responses to plaintiffs' previous allegations, as
16 though fully set forth herein.

17 34. Answering paragraph 7.2 of plaintiffs' Amended Complaint, defendants
18 deny the same.

19 35. Answering paragraphs 8.1, 8.2, 8.3, 8.4, 8.5 and 8.6 of plaintiffs' Amended
20 Complaint, defendants deny the same.

21 36. Answering paragraph 9.1 of plaintiffs' Amended Complaint, defendants
22 respond that said paragraph makes no allegations against these defendants. To the
23 extent that an answer is required, defendants deny the same and affirmatively assert

1 that punitive damages are not allowed under the laws of the State of Washington, and
2 that punitive damages are not recoverable in the above-captioned case pursuant to an
3 order of the Court dated March 25, 2005.

4 **AFFIRMATIVE DEFENSES**

5 For further answer, and by way of affirmative defenses, defendants allege as
6 follows:

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

9 2. ***No Fiduciary Duty.*** Defendants owe no fiduciary duty to plaintiffs.

10 3. ***Failure to Mitigate Damages.*** Plaintiffs have failed to mitigate or
11 minimize their damages, if any.

12 4. ***No Proximate Cause.*** Plaintiffs' damages, if any, were proximately
13 caused by the acts or omissions of others over whom these defendants had no control
14 or right of control.

15 5. ***Contribution.*** If liability is established, these defendants are entitled to
16 contribution from any party or non-party whose negligence may have contributed as a
17 proximate cause to the injury complained of in plaintiffs' Amended Complaint.

18 6. ***Contributory Fault / Apportionment.*** Pursuant to RCW 4.22.070(1),
19 damages are to be apportioned according to the relative fault of all at-fault entities. In
20 accordance with CR 12(i), in to preserve all potential defenses, defendants identify Jack
21 LoHolt aka Jack Onefrey, Herman Allenbach, and Dorothy Kelly as unnamed at-fault
22 parties who these defendants claim, pursuant to RCW 4.22.070(1), as being at fault.

1 Defendants reserve the right to identify other unnamed or as yet unidentified at-fault
2 entities, if any, once such identity has become known to defendants.

3 7. **No Punitive Damages.** Plaintiffs' claims for punitive damages has been
4 stricken pursuant to a Court order dated March 25, 2005, because such damages are
5 not available under Washington law. Further, any award of punitive damages in this
6 case would violate the constitutional safeguards provided to defendants under the
7 applicable federal and state constitutional provisions, including due process.

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

10 9. **No Liability for Damages Resulting From Intentional Misconduct.**
11 Defendants are not liable under the laws of the State of Washington for any of plaintiffs'
12 damages caused by the intentional acts of Jack LoHolt aka Jack Onefrey (or by the
13 intentional acts of such other tortfeasors, if any), and all of plaintiffs' damages resulting
14 from such intentional acts and omissions must be segregated from damages that are
15 negligent/fault-based, on the basis of the varying degrees of culpability and causation
16 among the actors.

17 10. **Intervening or Superseding Cause.** Defendants are not liable under the
18 laws of the State of Washington based on an intervening or superseding cause.

19 **MATTERS OF AVOIDANCE**

20 1. **Freedom of Religion.** To the extent that plaintiffs' claims are based upon
21 these defendants' exercise of their religious beliefs, they are barred by the defendants'
22 rights under the First Amendment to the United States Constitution, and by Article I,
23 Section II, of the Constitution of the State of Washington.

RESERVATION

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

WHEREFORE, defendants pray for judgment as follows:

1. That plaintiffs take nothing by way of their Amended Complaint against these defendants and that the Complaint be dismissed with prejudice;

2. That defendants, each of them, be granted their attorneys' fees and costs against plaintiffs;

3. That, pursuant to RCW 4.22.070, if liability were to be established against these defendants (either or both of them), that each of defendants (either or both of them) be severally liable only for its share of fault, if any (pursuant to RCW 4.22.015);

4. That, pursuant to established law, plaintiffs' damages caused by intentional conduct be segregated from those damages, if any, caused by negligent/ "at fault" conduct; and

5. That defendants be given such other and further relief as the Court deems just and equitable.

DATED: April 28, 2005

s/ Thomas D. Frey via ECF

Thomas D. Frey, WSBA #1908

E-mail: tfrey@staffordfrey.com

s/ Marcus B. Nash via ECF

Marcus B. Nash, WSBA #14471

Email: mnash@staffordfrey.com

STAFFORD FREY COOPER

601 Union Street, Suite 3100

Seattle, WA 98101

Telephone: (206) 623-9900

Fax: (206) 624-6885

Attorneys for Defendants

DEFENDANTS' ANSWER TO PLAINTIFFS'

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STAFFORD FREY COOPER

PROFESSIONAL CORPORATION

601 Union Street, Suite 3100

Seattle WA 98101.1374

TEL 206.623.9900 FAX 206.624.6885

1 **CERTIFICATE OF SERVICE**

2 I certify that on the date noted below I electronically filed **Defendants' Answer to**
3 **Plaintiffs' Amended Complaint** using the CM/ECF system which will send notification
4 of such filing to the following persons:

5
6 Michael T. Pfau
7 Gordon Thomas Honeywell Malanca Peterson & Daheim
8 600 University Street, Suite 2100
9 Seattle, WA 98101-4185
10 Email: mpfau@gth-law.com
11 *Attorneys for Plaintiffs*

12
13 Timothy D. Kosnoff
14 Law Offices of Timothy D. Kosnoff
15 600 University Street, Suite 2100
16 Seattle, WA 98101
17 Email: timkosnoff@comcast.net
18 *Attorneys for Plaintiffs*

19
20 DATED this 28th day of April, 2005, at Seattle, Washington.

21
22 /s/ Thomas D. Frey
23