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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOY 1, BOY 2, BOY 3, BOY 4, BOY 5,
and BOY 6,

Plaintiffs,

v.

BOY SCOUTS OF AMERICA, a
congressionally chartered corporation
incorporated in the District of Columbia,

Defendant.

CASE NO. C10-1912-RSM

ORDER GRANTING
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court upon Defendant Boy Scouts of America’s (“BSA”) Motion for Summary Judgment (Dkt. # 83). For the reasons that follow, the motion shall be GRANTED.

II. BACKGROUND

Plaintiffs, former child Boy Scout troop members, brought suit against the Boy Scouts of America (“BSA”), for claims related to sexual abuse that occurred when Plaintiffs participated in scouting activities. The Court previously dismissed Plaintiffs’ claims for

1 negligence, outrage, civil conspiracy, equitable estoppel, fraudulent concealment, and willful
2 and wanton misconduct under Fed. R. Civ. P. 12(b)(6). Dkt. # 22. The Court declined to rule
3 on the sufficiency of Plaintiffs’ allegations under the Sexual Exploitation of Children Act
4 (“SECA”), RCW 9.68A. Plaintiffs were granted leave to amend and filed two First Amended
5 Complaints (together, “FAC”) on behalf of Boys 1, 2, & 3 and Boys 4, 5, & 6, respectively.
6 *See* Dkt. ## 23, 24. The FAC asserted the same claims against BSA, save for the claim of
7 “estoppel and fraudulent concealment,” which was eliminated from the FAC.
8

9 The FAC included new allegations regarding the hierarchal structure of the BSA
10 organization and details about those instances in which the local troop leaders knew about
11 scout leaders’ history of child sexual abuse but failed to warn the children of the troop. *See,*
12 *e.g.*, Dkt. # 23, ¶ 16; ¶¶ 92-93; ¶ 113. Dkt. # 24, ¶ 51; ¶ 92. Plaintiffs also included gruesome
13 descriptions of the abuse suffered by the Plaintiffs at the hands of scouting group members.
14

15 After considering Defendant’s motion to dismiss the FAC, the Court dismissed Boy 1
16 and Boy 5’s claims with prejudice but permitted Boys 2, 3, 4, and 6’s claims for negligence,
17 outrage, and SECA to proceed. Dkt. # 31. Boys 4 and 6 have since settled, leaving only Boys 2
18 and 3 as Plaintiffs in this action. BSA now moves for summary judgment on Boy 2 and Boy
19 3’s remaining claims for negligence and outrage as well as the dependant SECA claim. BSA
20 contends that the FAC should be dismissed in its entirety.

21 Generally, the “Scouting Movement” is comprised of three components: BSA, scout
22 councils, and independent community organizations. BSA is a national organization that offers
23 an educational youth program (the Scouting program) to chartered organizations. In addition,
24 BSA maintains a database of excluded persons in relation to its sole right to exclude
25 individuals from membership or leadership. Scout councils grant charters to community
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1 organizations and provide Scouting publications, supplies, and training. The Scouting
2 Movement's largest component consists of independent community organizations, such as
3 schools, civic organizations, and churches. These organizations integrate the Scouting
4 program into their own program, organize members into units, and appoint committees that run
5 the unit, select leaders, and supervise those leaders.

6 Boy 2 was a troop member of Troop 13 in 1972. Troop 13 appears to have been
7 sponsored by a group of parents. Leroy Van Camp was the registered scoutmaster of Troop 13.
8 Walter Weber was Mr. Van Camp's neighbor. Although Mr. Weber had previously been a
9 registered scoutmaster he was not a scoutmaster in 1972. Mr. Van Camp allowed Mr. Weber to
10 participate in Troop 13's activities. Mr. Weber was not a registered troop leader or registered
11 adult volunteer for Troop 13. Boy 2 was sexually abused by Mr. Weber while attending a troop
12 camping trip.
13

14 Boy 3 was a troop member of Troop 666, which was sponsored by St. Monica's
15 Catholic Church on Mercer Island. Boy 3 participated in Troop 666 from approximately 1980
16 to 1983. Rick Smith was the registered scoutmaster. Sometime between 1981 and 1983, Boy 3
17 was sexually abused by Stephen Schembs, a child member of Troop 666 who was the Senior
18 Patrol Leader¹ for a camping trip around Ross Lake. Boy 3's abuse occurred during the
19 weekend hiking trip.
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26 ¹ The Senior Patrol Leader is a youth head of the troop. *See* Dkt. # 89-14, p. 5,
Scoutmaster's Handbook, p. 51.

III. DISCUSSION

A. Legal Standard

Summary judgment is proper where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). In ruling on summary judgment, a court does “not weigh the evidence or determine the truth of the matter but only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco, Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citing *FDIC v. O’Melveny & Myers*, 969 F.2d 744, 747 (9th Cir. 1992), *rev’d on other grounds*, 512 U.S. 79 (1994)). Material facts are those which might affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at 248.

The court must draw all reasonable inferences in favor of the non-moving party. *See O’Melveny & Myers*, 969 F.2d at 747. However, the nonmoving party must “make a sufficient showing on an essential element of her case with respect to which she has the burden of proof” to survive summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). “If a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact as required by Rule 56(c), the court may . . . consider the fact undisputed for purposes of the motion” or the court may “grant summary judgment if the motion and supporting materials . . . show that the movant is entitled to it.” Fed. R. Civ. P. 56(e)(2)-(3). Whether to consider the fact undisputed for the purposes of the motion is at the court’s discretion and the court “may choose not to consider the fact as undisputed, particularly if the court knows of record materials that should be grounds for genuine dispute.” Fed. R. Civ. P. 56, advisory committee note of 2010. On the other hand, “[t]he mere existence of a scintilla of

1 evidence in support of the plaintiff's position will be insufficient; there must be evidence on
2 which the jury could reasonably find for the plaintiff." *Anderson*, 477 U.S. at 252.

3 **B. Analysis**

4 BSA contends that summary judgment should be granted on Plaintiffs' negligence,
5 outrage, and SECA claims because Plaintiffs have failed to raise a material issue of fact that
6 would tend to establish BSA's liability, either directly or through an agency relationship.

7 1. Direct Liability

8 As a general rule, there is no duty to prevent a third party from intentionally harming
9 another unless "a special relationship exists between the defendant and either the third party or
10 the foreseeable victim of the third party's conduct." *Hutchins v. 1001 Fourth Ave. Associates*,
11 802 P.2d 1360, 1365-66 (Wash. 1991) (citations omitted). The duty to prevent harm arises only
12 where "(a) a special relation exists between the [defendant] and the third person which imposes
13 a duty upon the actor to control the third person's conduct, or (b) a special relation exists
14 between the [defendant] and the other which gives to the other a right to protection." *Petersen*
15 *v. State*, 671 P.2d 230, 236 (Wash. 1983) (quoting Restatement (Second) of Torts § 315
16 (1965)). Stated differently, the duty to prevent harm arises where the defendant has either (1) a
17 special relationship with the third party that imposes a duty to control that party's actions, or
18 (2) a special protective relationship with the victim. *See id.* BSA contends that Plaintiffs' tort
19 claims must fail because it did not have a duty to control Weber or Schembs, nor did it have a
20 special protective relationship with Plaintiffs.
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23 a. *BSA's Relationship with Weber and Schembs*

24 As discussed above, for the special relationship exception to apply, BSA must have had
25 a special relationship with Weber and Schembs that imposed a duty upon it to control their
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1 actions. Under Washington law, a special relationship that imposes a duty to control another's
2 criminal acts requires "a definite, established and continuing relationship between the
3 defendant and the third party." *Hertog v. City of Seattle*, 979 P.2d 400, 407 (Wash. 1999)
4 (quoting *Taggart v. State*, 822 P.2d 243 (Wash. 1992)). The Court finds that there is no
5 evidence from which it could conclude that BSA had a special relationship with either Weber
6 or Schembs.

7
8 Although the Court previously determined that Boys 2 and 3 had "sufficiently pled that
9 BSA had a special relationship with the volunteer and paid scout leaders who perpetrated the
10 abuse" (Dkt. # 31, p. 4), Plaintiffs have failed to provide evidence that substantiates their
11 factual allegations. Plaintiffs' FAC alleges that "BSA and BSA's local councils comprise a
12 tightly integrated, hierarchical organization structure under BSA's control at the top," that
13 "BSA oversees and controls all professional staffing of local councils," and that "[u]nless BSA
14 has selected and approved them, no adult leader, whether paid or volunteer, may serve in a
15 local troop or council." Dkt. # 23, ¶ 16. BSA's alleged ability to control the actions of Weber
16 and Schembs, as explicated within the FAC, however, is not borne out by the evidence in the
17 record.
18

19 First, Weber and Schembs were not troop leaders or registered volunteers at the time
20 the sexual abuse occurred. Despite having been a scoutmaster in the past, when the abuse of
21 Boy 2 occurred, there is no evidence that Weber was a formal member of Troop 13. Rather, as
22 Plaintiffs acknowledge, Troop 13's then scoutmaster, Leroy Van Camp, allowed Weber to
23 participate in Troop 13's activities. Dkt. # 89, p. 6 (citing Dkt. # 89-8, Boy 2 Dep., 34:20-24).
24 Nor was Schembs a troop leader or volunteer of Troop 666 when the abuse of Boy 3 took
25 place. Schembs was a scout member who acted as a Senior Patrol Leader during the weekend
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1 camping trip around Ross Lake; he was not an adult troop leader or adult volunteer. *See* Dkt. #
2 84, Schembs Decl., ¶¶ 2, 7. There is no evidence to suggest that BSA had any knowledge of
3 Weber or of his unofficial affiliation with Troop 13. There is also no evidence to show that
4 BSA had knowledge of Schembs' scout member role as Senior Patrol Leader. Even assuming
5 that BSA had the sole authority to select and approve troop leaders, Weber and Schembs were
6 not troop leaders subject to any hypothetical vetting process. Thus, there is no evidence to
7 show that BSA had a "definite, established and continuing" relationship with either Weber or
8 Schembs.
9

10 Moreover, the duty to control another's conduct "depends on proof that the defendant
11 was aware of the tortfeasor's dangerous propensities." *N.K. v. Corp. of Presiding Bishop of the*
12 *Church of Jesus Christ of Latter-Day Saints*, 307 P.3d 730, 735 (Wash. Ct. App. 2013) *review*
13 *denied*, Case No. 89210-5, 2013 WL 6832344 (Wash. Dec. 11, 2013). In *N.K.*, the court
14 rejected the plaintiff's assertion that BSA had a special relationship with an unofficial adult
15 troop volunteer absent any evidence raising an inference that BSA knew about the volunteer's
16 existence. *Id.* Similar to *N.K.*, no evidence has been offered to demonstrate that BSA knew
17 about either Weber's affiliation with Troop 13, or Schembs' position in Troop 666 other than
18 his child scout membership. Implicitly then, there is no evidence to suggest that BSA was or
19 could have been aware of either individual's dangerous propensities.
20

21 *b. BSA's Relationship with Plaintiffs*

22 "A duty to protect another from sexual assault by a third party may arise where . . . the
23 defendant has a special relationship with the other that gives the other a right to protection."
24 *N.K.*, 307 P.3d at 734-35. BSA argues that Plaintiffs cannot establish that BSA owed them a
25 duty to prevent Weber and Schembs' alleged criminal acts because BSA did not have a special
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1 protective relationship with Plaintiffs. BSA’s argument rests primarily on a decision issued by
2 Division 1 of the Washington Court of Appeals in which the court held that the BSA does not
3 have a special protective relationship with former scout troop members “[b]ecause [its]
4 relationship to the scouts [is] not custodial.” *Id.* at 739. Having reviewed *N.K.* as well as
5 Defendant’s notice of supplemental authority, which shows that the Washington State Supreme
6 Court denied discretionary review of the *N.K.* decision on December 11, 2013 (Dkt. # 93), the
7 Court concludes that BSA did not have a special protective relationship with Plaintiffs.
8

9 *N.K.* concerned a child scout member who was sexually abused by his volunteer scout
10 leader. The plaintiff sued BSA, his local troop’s council, and two church defendants who were
11 the troop’s sponsoring organizations. The *N.K.* court analyzed prior Washington case law to
12 conclude that a special protective relationship may arise where children are delivered into the
13 “custody and care” of an organization. *Id.* at 738. This is because “the protective custody of the
14 [organization] is substituted for that of the parent.” *Id.* (citations omitted). When considering
15 BSA’s relationship with the child troop member, however, the court determined that BSA did
16 not have a custodial relationship with the plaintiff because it was “not in a position to provide
17 protection from physical danger as a school or church group does for children, or to monitor
18 personal care as a hospital or nursing home does for disabled patients.” *Id.* at 739. Absent
19 evidence that an organization like BSA maintains a custodial relationship with its child
20 members by exerting “on-the-ground control of day-to-day operations” such that it is capable
21 of providing those members protection from harm, a special protective relationship may not be
22 found. *See id.* Here, there has been no evidence presented to show that BSA controlled the day-
23 to-day operations of Troop 13 or Troop 666.
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1 Plaintiffs appear to recognize the force of *N.K.*'s holdings and make no attempt in the
2 briefing to distinguish that opinion from this case. *See* Dkt. # 89, p. 10. Directly on point, *N.K.*
3 makes clear that no special protective relationship exists because BSA's relationship with the
4 scout members was not custodial.

5 2. Vicarious Liability

6 Plaintiffs contend that even if BSA did not have a special relationship with Plaintiffs, or
7 with Weber and Schembs, BSA still may be found liable for the negligent acts of "the local
8 sponsoring organizations and troop leaders." Dkt. # 89, p. 11. Plaintiffs contend that the local
9 sponsoring organizations and troop leaders of Troops 13 and 666 were agents, or apparent
10 agents of BSA. Plaintiffs also contend that BSA is vicariously liable for the tort of outrage for
11 the acts of BSA's purported agents.
12

13 Consent and control are the essential elements of the agency relationship. *Moss v.*
14 *Vadman*, 463 P.2d 159, 164 (Wash. 1969). Generally, when a corporation's agent acts within
15 the scope of its authority, those acts are considered the acts of the corporation. *Mauch v.*
16 *Kissling*, 783 P.2d 601, 604 (Wash. Ct. App. 1989). In addition, the corporation may also be
17 liable for the acts of a person acting with apparent authority. *Id.* Such apparent authority,
18 however, may only be inferred from the acts of the principal. *Id.* Further, there must be
19 evidence to show that the principal had knowledge of the actions taken by its agent for the
20 apparent agency theory to apply. *Id.* at 605.
21

22 Plaintiffs contend that the evidence shows (1) that "BSA consented to engage local
23 sponsoring agents organizations and troop leaders to act on its behalf and for its benefit," (2)
24 that "local sponsoring organizations and troop leaders consented to perform tasks on BSA's
25 behalf and for BSA's benefit," and (3) that "BSA retained the right to control the local
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1 sponsoring organizations' and troop leaders' manner of performance relating to
2 implementation of BSA's scouting program." Dkt. # 89, p. 12. Having considered the evidence
3 in the light most favorable to Plaintiffs, the Court finds that the evidence presented does not
4 create a material issue of fact about whether the local organizations or troop leaders were
5 BSA's agents.

6 In *Mauch v. Kissling*, the court addressed the role played by local sponsoring
7 organizations and scout leaders. It noted "[t]he troop committee and the scoutmaster are
8 volunteer workers whose services are given to the community rather than to the [BSA] which
9 is, in practical effect, merely an advisor rather than an employer." 783 P.2d at 605 (quoting
10 *Young v. Boy Scouts of Am.*, 51 P.2d 191 (Cal. App. Ct. 1935)). The *Mauch* court concluded
11 that there was no basis to impute liability to the BSA without evidence that BSA had consented
12 to or had control over the acts of a volunteer scout leader. *Id.*

14 When faced with a motion for summary judgment where plaintiffs have put forth
15 BSA's scouting pamphlets and guidelines as evidence of BSA's structural control and consent,
16 other state courts have held that such evidence is insufficient to create a material issue of fact
17 with respect to agency. For example, in *Glover By & Through Dyson v. Boy Scouts of Am.*, 923
18 P.2d 1383, 1388-89 (Utah 1996), the court rejected the plaintiff's arguments that BSA's supply
19 of uniforms and patches, and BSA's written guidelines and other scouting materials were
20 sufficient to raise a material issue over whether BSA had the right to control the activities of
21 the sponsoring organizations or troop leaders. It held that because BSA acts in a chartering and
22 advisory capacity, it "does not retain the right to control day-to-day troop operations." *Id.* at
23 1388. The court also stated

26 [w]e note that our decision today is in accord with the vast majority of
jurisdictions which have held as a matter of law that under the

1 organizational structure described above, neither the BSA nor a local
2 council has a right to control the conduct of scoutmasters in connection
3 with troop activities that are not directly sponsored or supervised by the
4 BSA or a local council.

5 *Id* (collecting cases and citing *Mauch*).

6 BSA contends that Plaintiff's evidence compels the same result. The Court agrees. The
7 evidence fails to show that BSA maintained the right to control the day-to-day activities of the
8 troop leaders or sponsoring organizations. Plaintiffs continue to cite statements from a brief
9 submitted by BSA in *Boy Scouts of Am. V. Dale*, 530 U.S. 640 (2000) as evidence that BSA
10 maintained control over the selection, supervision, and retention of troop leaders. However, the
11 Court previously stated that "BSA can retain control over the registration process while not
12 retaining control over the day to day activities of scout leaders." Dkt. # 22, p. 8 n.2. As the
13 *Glover* court noted, "we fail to see how the right to discharge [a scout leader] on these specific
14 grounds would in any way manifest the BSA's right to control the day-to-day operations of
15 regular troop meetings." 923 P.2d at 1388. Plaintiffs failed to substantively address the Court's
16 prior statement or the reasoning set forth in *Glover* to explain how BSA's control of the
17 registration process manifested a right to control the day-to- day activities of the troop leaders
18 of Troop 13 or Troop 666. There has been no evidence offered to show that BSA exerted, or
19 had the right to exert control over these scoutmaster's activities.

20 Plaintiffs also rely on the BSA Charter and Bylaws, a publication titled "Securing a
21 Scoutmaster," and the "Troop Committee Guidebook" to argue that BSA's policies for
22 implementing a scouting program manifested BSA's right to control. But as stated by several
23 other courts, no provision cited within these materials "specifically grant BSA or its district
24 councils direct supervisory powers over the method or manner in which adult volunteers scout
25 leaders accomplish their tasks." *Anderson v. Boy Scouts of Am.*, 589 N.E.2d 892, 894-95 (Ill.
26

1 App. Ct. 1992); *see also Wilson v. United States*, 989 F.2d 953, 958-59 (8th Cir. 1993) (“the
2 organizational structure of the BSA leaves the control of the specific activities at the level
3 closest to the individual troop”).

4 BSA’s Charter and Bylaws do not establish BSA’s right to control the activities of the
5 sponsoring organizations or scoutmasters. The Bylaws grant to BSA the “power to grant
6 charters to [organizations]” that meet the requirements of the Bylaws as well as the power to
7 revoke charters when warranted. Dkt. # 83-3, Ex. A, Bylaws art. XII. The Bylaws state that
8 “charters may be granted to institutions upon application . . . [and] [s]uch applications shall
9 obligate the institutions to provide adequate facilities, supervision, and leadership” *Id.* The
10 charters may be renewed provided that the renewal application “shows a satisfactory effort to
11 carry out the Scout program” *Id.* Importantly, the Bylaws make no mention of BSA’s
12 right to control the day-to-day activities of any particular sponsoring organization and in fact
13 require that a sponsoring organization commit to providing its own “facilities, supervision, and
14 leadership” for scouting activities. Moreover, that BSA promulgated a policy for securing a
15 scoutmaster, or that its printed materials outlined a procedure for training scout leaders does
16 not manifest its right to control the day-to-day activities of a local troop. *See* Dkt. # 89-7, pp. 5-
17 7, Troop Committee Guidebook; *see* Dkt. # 90-1, ¶ 3, Jolly Decl. (assistant Troop 13
18 scoutmaster testifying that BSA was not involved with planning, organizing, or supervising the
19 troop); *see also* Dkt. # 87-10, F. Schembs Dep. 23:5-10 (former Troop 666 scoutmaster
20 recalling that his connection to BSA was “very limited” in that it “was the source of merit
21 badges, rank badges . . . imposed the guidelines” and provided the scouts with books).
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25 Contrary to Plaintiffs’ assertion that BSA “controlled or maintained a right to control
26 all critical functions of the local sponsoring organization” (Dkt. # 89, p. 14), the evidence

1 suggests only that the right to control the day to day functions of the local troop remained with
2 the local troop and sponsoring organization. In *Glover*, the court stated that

3 the basis for the right must be evident from the facts as they exist.
4 *Glover* cannot establish the basis for the right by merely speculating that
5 under a different organizational structure the BSA and the Council could
6 have retained the right to control scoutmasters at regular troop meetings.
Such speculation is insufficient to create a genuine issue of material fact
for purposes of a summary judgment motion.

7 923 P.2d at 1388. The same is true here. Plaintiffs have failed to raise a material issue of fact
8 with respect to agency.

9 Lastly, Plaintiffs contend that BSA should be held vicariously liable through the
10 doctrine of apparent agency. Apparent agency may be found where the actions of the principal
11 lead a reasonable person to believe that a third party wrongdoer is the putative agent of the
12 principal. *D.L.S. v. Maybin*, 121 P.3d 1210, 1213 (Wash. Ct. App. 2005). “The doctrine has
13 three basic requirements: the actions of the putative principal must lead a reasonable person to
14 conclude the actors are employees or agents; the plaintiff must believe they are agents; and the
15 plaintiff must, as a result, rely upon their care or skill, to her detriment.” *Id.* Plaintiffs contend
16 that by providing Boy Scouts insignia and uniforms to troop leaders, BSA created the
17 appearance of an agency relationship upon which the Plaintiffs reasonably relied.
18

19 This argument has been rejected by other courts. *Wilson*, 989 F.2d at 959 (rejecting
20 plaintiff’s contention that when BSA provided uniforms, books, awards, and membership
21 cards, among other things, it created an agency relationship); *Glover*, 923 P.2d at 1388-89
22 (finding argument without merit); *cf. Mauch*, 783 P.2d at 605 (affirming summary judgment on
23 apparent agency). In *Wilson*, the Eighth Circuit Court of Appeals held that the appellant former
24 scout members failed to establish a jury question as to whether an apparent agency relationship
25 existed when they failed “to produce any evidence that BSA manifested that it had direct
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1 control over the specific activities of individual troops or that it had a duty to control,
2 supervise, or train volunteer leaders” 989 F.2d at 959. The court concluded that BSA’s
3 acts of supplying uniforms, insignias, and scouting policies and guidelines did not evidence
4 BSA’s manifestation of its authority to control a local troop upon which a reasonable person
5 could rely. *See id.* Similarly, Plaintiffs have failed to submit evidence of BSA’s manifestation
6 of authority to control Troop 13 or Troop 666. Thus, BSA cannot be held vicariously liable for
7 Plaintiffs’ claims for negligence or outrage because the troop leaders and local sponsoring
8 organizations were not BSA’s actual, or apparent, agents.²
9

10 3. SECA Claim

11 The Court stated previously that although it declined to address whether the attorney’s
12 fees provision of SECA applies in this action, Plaintiffs must prevail in order to claim
13 attorney’s fees pursuant to SECA. Dkt. # 22, p. 15. Because Plaintiffs’ remaining substantive
14 claims have failed to survive BSA’s summary judgment motion, there can be no recovery for
15 attorney’s fees under SECA. Accordingly, BSA’s motion is granted in its entirety.
16

17 IV. CONCLUSION

18 Having reviewed the motions, the responses and replies thereto, the attached
19 declarations and exhibits, and the balance of the file, the Court hereby finds and ORDERS that
20 Defendant’s Motion for Summary Judgment (Dkt. # 83) shall be GRANTED.
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25 ² Plaintiffs cite only one case from another jurisdiction that found, on summary judgment, that an adult
26 volunteer could be an agent of the BSA. *Mayfield v. Boy Scouts of Am.*, 643 N.E.2d 565, 569 (Ohio Ct. App.
1994). *Mayfield* is against the weight of authority and contrary to the only Washington case to address the issue.
See Mauch, 783 P.2d at 605.

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Dated this 8th day of January 2014.



RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE