Memo to Ally W. Howell:

Based on the facts provided, I offer this analysis of the intentional and negligent torts which may have been committed and the defenses to those torts and the causation issues that could arise for each tort. Damages are discussed or identified for each tort.

The FACTS of this case involve the parents of 15-year-old Rob Jr., Rob Sr. and Bunny Sherman, who want to bring suit against the Church of the Divine Light, alleging that their son was tricked into becoming an involuntary member of the Church through deceptive practices and against his will... They want to sue on their son's behalf for the intentional torts that were inflicted on him, as well as for the torts committed against them, including recovery of funds and damages.

The parents allege the torts of Fraud and Deceit, which the state of California describes as conduct that includes an intentional misrepresentation, concealment, a false promise or a negligent misrepresentation. More specifically, Cal. Civ. Code, § 1710, defines a deceit as either, “(1) The suggestion, as a fact, of that which is not true, by one who does not believe it to be true, (2) The assertion, as a fact, of that which is not true, by one who has no
reasonable ground for believing it to be true, (3) The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or, (4) A promise, made without any intention of performing it.”

It is fact that Rob Jr. was invited to, and attended a youth meeting at the Church of the Divine Light, and because he did not bring additional items that would indicate that he had intended to stay beyond the meeting, it is reasonable to believe that he had intended to leave after the conclusion of the youth meeting. Combined with the assertion that the organizer of the youth retreat allegedly made numerous excuses for keeping Rob Jr. there, while also threatening Rob Jr., with the thought of being thrown into the eternal fires of Hell, if he left, and not being allowed back into the Church, made Rob Jr. feel that he should remain. Rob Jr. did not intend to stay as a member, and was not aware that this was expected of him prior to the youth meeting. Feeling that he cannot, or could not leave, he feels, as his parents do; that he was deceived into staying.

In following the thought that Rob Jr. did not intend on staying, or to permanently stay as a Church member, nor was he aware of the expectations of him to stay, would suggest that the full facts and intentions of the Church’s
youth meeting were withheld; those intentions being to recruit by deceptive practice, which would meet Cal. Civ. Code, § 1710, “(3) The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact.” The youth retreat organizer’s threatening words in order to make Rob Jr. stay could lend support to Rob Jr.’s contention, that he did not intend to stay, and was not made aware of this expectation to stay prior to the youth meeting. However, it may not stand a defense claim as Restatement 2nd Torts, § 46, com. d., states, “Liability “does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.”

Alleging Fraud, and fraudulent conduct being similar in nature to deceitful conduct, does have it’s own necessary elements that must be shown, which include “(1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (sciente); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage.” Molko, v. Holy Spirit Association for the Unification of World Christianity, 46 Cal. 3d 1092, 762 P. 2d 46, 252 (Cal. Rptr. 122, 1988); Seeger v. Odell, 18 Cal. 2d 409, 414, 115 P.2d 977. (1941).
If relying on Molko, v. Holy Spirit Association for the Unification of World Christianity, (1988), the contention then was “specified members of the Unification Church knowingly misrepresented the Church's identity with the intent to induce each of them to associate with and ultimately join the Church.” [46 Cal. 3d 1092, 762 P. 2d 46, 252 (Cal. Rptr. 122, 1988)]. The Court concluded in this instance, “that neither the federal nor state Constitution bars Molko and Leal from bringing traditional fraud actions against the Church for allegedly inducing them, by misrepresentation and concealment of its identity, into unknowingly entering an atmosphere in which they were then subjected to coercive persuasion.” Molko, v. Holy Spirit Association for the Unification of World Christianity, 46 Cal. 3d 1092, 762 P. 2d 46, 252 (Cal. Rptr. 122, 1988).

Because the Court determined that triable issues of fact exist, we can compare (1) whether Rob Jr. was put on notice regarding the Church's identity prior to the youth meeting and (2) whether Rob Jr. was, “by means of coercive persuasion, rendered unable to respond independently upon learning (he) had been deceived” Molko, v. Holy Spirit Association for the Unification of World Christianity, 46 Cal. 3d 1092, 762 P. 2d 46, 252 (Cal. Rptr. 122, 1988), holding that “the Court of Appeal erred in affirming the summary judgment for the Church as to plaintiffs' actions for fraud” and, when “Viewed in the light most favorable to plaintiffs, the Church's continued deceptions might well be seen as
conduct breaching plaintiffs' trust...So viewed, the Church's actions might well constitute an abuse of "a relation or position which gives [the Church] power to damage the plaintiff's interest." Molko, v. Holy Spirit Association for the Unification of World Christianity, 46 Cal. 3d 1092, 762 P. 2d 46, 252 (Cal. Rptr. 122, 1988); Cole v. Fair Oaks Fire Protection Dist., supra, 43 Cal. 3d at p. 155, 233 Cal. Rptr. 308, 729 P. 2d 743, fn. 7, (1987).

Rob Jr.'s parents may be able to sue on behalf of their son, and under these circumstances, however, this claim may withstand a defense of consent, which being the most common defense to a tort, the argument can be given that the plaintiff agreed to the harmful conduct and should not be able to sue. The damages that that are available for this tort, are based on California's punitive damages statute, which provides that "the plaintiff may only recover punitive damages in an action for the breach of an obligation not arising from contract." Cal. Civ. Code, § 3294, (a). Additionally, under the punitive damage statute, fraud is defined as "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." Cal. Civ. Code, § 3294(c)(3).
The parents allege the tort of intentional infliction of emotional distress, and to show this tort occurred, California requires that certain elements be met, which are “(1) outrageous conduct by the defendant; (2) intention to cause or reckless disregard of the probability of causing emotional distress; (3) severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant’s outrageous conduct.” Quinteros v. Aurora Loan Services, 740 F. Supp. 2d 1163 (E. D. Cal. 2010).

This allegation derives from the fact that Rob Jr. was coerced into writing a letter to his parents telling them that he was planning to stay with the Church, and that they were his new family, while also demanding money at the behest of the Church organizer of the youth retreat. The parent’s charge, that making Rob Jr. stay against his will was outrageous conduct, further asserting that the Church organizer’s actions were reckless in light of his youth, and intended to cause emotional distress. The sudden and extreme change in Rob Jr. and his demands for money were the “proximate causation of the emotional distress by the defendant’s outrageous conduct.” Quinteros v. Aurora Loan Services, 740 F. Supp. 2d 1163 (E. D. Cal. 2010).

Additionally, when examining Rob Jr.’s age and susceptibility because of his age, an argument could be given with regard to knowing a person is
susceptible to emotional distress, or considering his age; should have known. If so, then “In determining whether the conduct is sufficiently outrageous or unreasonable to become actionable, it is not enough that the creditor’s behavior is rude or insolent. However, such conduct may rise to the level of outrageous conduct where the creditor knows the debtor is susceptible to emotional distress because of her physical or mental condition.” Symonds v. Mercury Savings & Loan Assn., 225 Cal. App. 3d 1458, 1469 275 (Cal. Rptr. 871,1990).

To arrive at this state, means that fraud and deceit was shown, which ultimately lead to the intentional infliction of emotional distress, suggesting that Cal. Civ. Code, § 3294, (a), is applicable, in that “the plaintiff may only recover punitive damages in an action for the breach of an obligation not arising from contract" and, under Cal. Civ. Code, § 3294(c)(3), "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury"; positions the parents of Rob Jr. for the recovery of punitive damages.

The parents, Rob Sr. and Bunny Sherman are seeking compensatory damages as well, which is money awarded to compensate for the injury suffered, or for the purposes of restoring a plaintiff as nearly as possible to their former
position, or to provide some pecuniary equivalent because of the monies that were paid by them on behalf of their son, Rob Jr. over a six-month period, and at the behest of the Church’s organizer of the youth retreat. Cal. Civ. Code, § 3281, provides, “Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefore in money, which is called damages.”

And because the parents are alleging the tort of intentional infliction of emotional distress on behalf of themselves as well, the parents assert that by holding their son against his will, or exerting control over Rob Jr. to the extent that he left home and became an involuntarily member of the Church through deceitful conduct, is considered (1) outrageous conduct by the defendant; and that the Church organizer’s conduct met (2) intention to cause or reckless disregard of the probability of causing emotional distress; and because the parents were unexpectedly made to pay money on Rob Jr.’s behalf and against his will, caused them (3) severe or extreme emotional distress; and that the combination of their son being held against his will, and having to pay money involuntarily, and while having to pull him in the car to bring him home, subsequently having to watch him for some weeks until what appeared to be brainwashing wore off, caused (4) actual and proximate causation of the emotional distress by the defendant’s outrageous conduct.” Quinteros v. Aurora
Loan Services, 740 F. Supp. 2d 1163 (E. D. Cal. 2010). The Church in this instance, may again rely on Restatement 2nd Torts, § 46, com. d., which states, “Liability “does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.”

An alternative Church defense may attempt to shift blame to the organizer of the youth retreats and his own personal conduct; however, a vicarious liability may, or likely exists, when O'Moore v. Driscoll, (1933), held; “[religious corporation liable for negligent driving by employee].) Most relevant here, in appropriate cases courts will recognize tort liability even for acts that are religiously motivated.” O'Moore v. Driscoll, 135 Cal. App. 770, 778, 28 P. 2d 438 (1933).

Conclusively, the parents, Rob Sr. and Bunny Sherman’s causes of action may survive Church’s defense with regard to fraud, deceit and intentional infliction of emotional distress, as well as restitution. The analysis given in Molko, v. Holy Spirit Association for the Unification of World Christianity, (1988), summarizes the reasoning with the Court of Appeal’s statement: “The beguiling and very intensive recruiting methods of the Unification Church, which appear primarily directed at those young people who are most emotionally impressionable and vulnerable, seem objectionable to us, as doubtless they do to

While further concluding, “I am satisfied that both the Court of Appeal and the trial court before it have correctly found the law and applied it to these appellants. Therefore, I would affirm the trial court's grant of summary judgment on the fraud, emotional distress and restitution counts.” Molko, v. Holy Spirit Association for the Unification of World Christianity, 46 Cal. 3d 1092, 762 P. 2d 46, 252 (Cal. Rptr. 122, 1988).
Reference

Cal. Civil Code § 1710

Cal. Civ. Code, § 3281

Cal. Civ. Code, § 3294


Quinteros v. Aurora Loan Services, 740 F. Supp. 2d 1163 (E.D. Cal. 2010).