

Kathleen L. DeSoto
Tessa A. Keller
GARLINGTON, LOHN & ROBINSON, PLLP
350 Ryman Street • P. O. Box 7909
Missoula, MT 59807-7909
Telephone (406) 523-2500
Telefax (406) 523-2595
kldesoto@garlington.com
takeller@garlington.com

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Candace Fisher
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BY [Signature]
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Joel M. Taylor (*Pro Hac Vice*)
Associate General Counsel
Watchtower Bible and Tract Society of New York, Inc.
100 Watchtower Drive
Patterson, NY 12563
Telephone (845) 306-1000
jmtaylor@jw.org

Attorneys for Defendants/Third-Party Plaintiffs Watchtower Bible and Tract Society of New York, Inc., Christian Congregation of Jehovah's Witnesses, and Thompson Falls Congregation of Jehovah's Witnesses

MONTANA TWENTIETH JUDICIAL DISTRICT COURT, SANDERS COUNTY

ALEXIS NUNEZ and HOLLY
McGOWAN,

Plaintiffs,

v.

WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC.;
WATCHTOWER BIBLE AND TRACT
SOCIETY OF PENNSYLVANIA, INC.;
CHRISTIAN CONGREGATION OF
JEHOVAH'S WITNESSES and
THOMPSON FALLS CONGREGATION
OF JEHOVAH'S WITNESSES,

Defendants.

Hon. James A. Manley
Cause No. DV 16-84

MOTION FOR PROTECTIVE ORDER
BY DEFENDANTS WATCHTOWER
BIBLE AND TRACT SOCIETY OF
NEW YORK, INC. AND CHRISTIAN
CONGREGATION OF JEHOVAH'S
WITNESSES REGARDING
DEPOSITION TOPICS AND
BRIEF IN SUPPORT

WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC.;
CHRISTIAN CONGREGATION OF
JEHOVAH'S WITNESSES and
THOMPSON FALLS CONGREGATION
OF JEHOVAH'S WITNESSES,

Third-Party Plaintiffs,

v.

MAXIMO NAVA REYES, MARCO
NUNEZ, IVY McGOWAN-
CASTLEBERRY,

Third-Party Defendants.

Defendants, Watchtower Bible and Tract Society of New York, Inc.

("Watchtower") and Christian Congregation of Jehovah's Witnesses ("CCJW")
("Movants"), submit this brief in support of their Motion for Protective Order pursuant to
Montana Rule of Civil Procedure 26(c). Movants ask the Court to enter an order that
either excuses or limits substantially the Religious Defendants' obligation to respond to
four of the 31-plus deposition topics listed in the Rule 30(B)(6) notices of deposition of
the Religious Defendants because they seek patently irrelevant information, breach third-
party privacy rights, and are designed to burden, harass and/or embarrass the Religious
Defendants.

Pursuant to Montana Rule of Civil Procedure 26(c)(1), Joel M. Taylor, counsel for
Religious Defendants has filed a declaration certifying that he conferred in good faith
with counsel for the Plaintiffs but was unable to resolve the dispute over the discovery
requests.

I. INTRODUCTION

This case is about incest.¹ The Plaintiffs accuse Maximo Nava Reyes (“Reyes”), their stepfather/step-grandfather, of childhood sexual abuse and seek to hold religious corporations responsible because Reyes was a congregation member (like a mere parishioner) in Thompson Falls. Indeed, Reyes never held a position of authority in any congregation of Jehovah’s Witnesses. Unfortunately, the Plaintiffs’ mothers disregarded information about dangers in the family—information the Religious Defendants did not possess—and failed to protect their daughters from Reyes.²

Judicial intervention is necessary because four of the 31-plus topics in Plaintiffs’ Amended Rule 30(B)(6) Notices of Deposition are outside the proper scope of discovery. Defendants’ attorneys attempted to resolve a dispute over discovery but did not reach an amicable resolution. *See* Decl. Joel M. Taylor Support Defs.’ Mot. Protective Order Regarding Dep. Topics, Apr. 18, 2018. The topics to which the Religious Defendants object are set forth herein. In sum, they seek (a) information about all lawsuits since

¹ Montana Code Annotated § 45-5-507(1) includes stepchildren and “other descendants” in the definition of incest.

² Ivy McGowan-Castleberry (mother of Alexis Nunez) testified in deposition that she believed a co-worker who in 1998 told Ivy that she had seen Max Reyes place his hands inside Holly McGowan’s shirt and fondle her breasts. Found. Aff. Kathleen L. DeSoto ¶ 3, Apr. 20, 2018 (Found. Aff. DeSoto”), Ex. 1: Dep. Ivy McGowan-Castleberry 44:17-45:20, Jan. 10, 2018. Despite that information, Ivy delivered Alexis to Max Reyes’ home and left Alexis there for extended periods of time. According to Holly McGowan, her mother, Joni McGowan-Reyes frequently sent Holly to “lay down with Max to cuddle” in a room with a closed door. Found. Aff. DeSoto ¶ 4, Ex. 2: Dep. Holly McGowan 88:7-89:25, Jan. 9, 2018. Alexis Nunez testified in deposition that her grandmother, Joni McGowan-Reyes instructed Alexis to “scratch his back or rub” Max Reyes’ shoulders while unsupervised and in a bedroom with the door closed. Found. Aff. DeSoto ¶ 5, Ex. 3: Dep. Alexis Nunez 78:1-13, Jan. 11, 2018.

1990 against Movants that allege sexual misconduct by an adult Jehovah's Witness against a minor Jehovah's Witness, (b) a fund known as the Kingdom Hall Assistance Arrangement (KHAA), (c) a fund known as the Global Assistance Arrangement (AA) and (d) claims paid by "Jehovah's Witnesses" for sexual misconduct by an adult Jehovah's Witness against a minor Jehovah's Witness. Each topic is patently irrelevant, and some are literally global and are not confined to a reasonable territory. For these reasons, the Religious Defendants seek protection from the Court.

II. STATEMENT OF FACTS

According to the First Amended Complaint ("FAC"), Holly McGowan "belonged to" *i.e.*, was a general member of, the Thompson Falls Congregation. FAC ¶ 31, Nov. 14, 2016. Alexis Nunez was not a member of the Thompson Falls Congregation but she occasionally "attended services" there. *Id.* at ¶ 37. Plaintiffs allege that Reyes was at times "a baptized Publisher" in the Thompson Falls Congregation. FAC ¶ 40. In the faith of Jehovah's Witnesses, a baptized publisher is a non-supervisory rank-and-file congregation member who holds no "appointed position" in the congregation. *See* Decl. D. Chappel Support Mot. Protective Order at ¶ 23 ("Decl. Chappel"). Plaintiffs allege that agency principles establish the Religious Defendants' liability for the harm that Reyes caused. FAC ¶ 19. Toward that end, although Plaintiffs did not sue "the Jehovah's Witness Church," allegations throughout their pleading refer to it. *See e.g.*, FAC ¶¶ 12-13, 36, and 40. Plaintiffs defined that term as "the entire Jehovah's Witness religion or denomination as a whole, including but not limited to its entities,

organizations, subsidiaries, congregations, and followers.” *See* Decl. Chappel ¶ 4 (quoting McGowan Ans. Interrog. No. 16). Similarly, the Rule 30(b)(6) deposition notices for the Religious Defendants defines “Jehovah’s Witnesses” to mean “the entire religious organization known as Jehovah’s Witnesses.” Found. Aff. DeSoto ¶ 6, Ex. 4: Pls.’ Am. Notices. Plaintiffs thus conflate the terms “the Church” and “Jehovah’s Witnesses” with the corporations they sued, apparently misunderstanding the role that Watchtower and CCJW have in connection with the religion as a whole.

Simply stated, Watchtower is not synonymous with “the Jehovah’s Witness church.” Nor does it form a part of the religion. Neither is CCJW. Rather, Watchtower and CCJW are religious corporations that facilitate the work of Jehovah’s Witnesses. *See* Decl. Chappel ¶¶ 3-10. Importantly, Reyes and McGowan were members of the Thompson Falls Congregation only. FAC ¶¶ 31-32. They were not members of Watchtower or CCJW. Indeed, the religious corporation Defendants have very few members. Decl. Chappel ¶ 7.

This Court should enter a protective order that denies such broad discovery on patently irrelevant matters beyond the scope of these corporations’ activities.

III. LEGAL ARGUMENT

Over twenty-five years ago, the United States Supreme Court warned that with the advent of modern technology, pretrial discovery comes with “a significant potential for abuse . . . not limited to matters of delay and expense; discovery may seriously implicate privacy interests of litigants and third parties.” *Seattle Times v. Rhinehart*, 467 U.S. 20,

34-35 (1984), “There is an opportunity, therefore, for litigants to obtain—incidentally or purposefully—information that is not only irrelevant but if publicly released could be damaging to reputation and privacy. *The government clearly has a substantial interest in preventing this sort of abuse of its processes.*” *Id.* at 35 (emphasis added) (citations omitted). Consistent with the Supreme Court’s holding, Montana Rule of Civil Procedure 26 limits the scope of permissible discovery to “any non-privileged matter that is relevant to any party’s claim or defense . . . *if* the discovery appears to be reasonably calculated to lead to the discovery of admissible evidence.” (Emphasis added.)

District courts have wide discretion in controlling discovery. *State of Or. ex rel. Worden v. Drinkwater*, 216 Mont. 9, 12, 700 P.2d 150, 152 (1985). “While discovery is meant to be a broad tool in facilitating the resolution of lawsuits, it is not without restraint.” *State v. Burns*, 253 Mont. 37, 39, 830 P.2d 1318, 1320 (1992). *See also Hegwood v. Mont. Fourth. Judicial Dist. Ct.*, 2003 MT 200, ¶ 16, 317 Mont. 30, 75 P.3d 308 (citation omitted); *Travelers Cas. & Sur. Co. v. Ribi Immunochem Research*, 2005 MT 50, ¶ 54, 326 Mont. 174, 108 P.3d 469.

Courts may issue protective orders related to discovery “for good cause,” including “to protect a party or person from . . . undue burden or expense.” Mont. R. Civ. P. 26(c)(1). Courts are empowered, for example, to forbid discovery or to limit the scope of discovery to certain matters. *See* Mont. R. Civ. P. 26(c). Discovery requests are improper if they are “unduly broad” and seek information about documents that are irrelevant to the issues in the case. *Park Cnty. Concerned Citizens v. DePuy*, 2008 MT

246, ¶ 31, 344 Mont. 504, 190 P.3d 293. Religious Defendants ask the Court to enter a protective to enter an order that either excuses or limits substantially the Religious Defendants' obligation to respond to four of the 31-plus deposition topics listed in the Rule 30(B)(6) notices of deposition of the Religious Defendants. That Order is appropriate because the Requests (1) are not reasonably calculated to lead to the discovery of admissible information, (2) violate constitutionally protected rights, and (3) are so patently overbroad that any potential relevance is not proportional to the burden and expense involved in marshaling the information, and redacting privileged information. On the contrary, the requests are designed to harass and embarrass the Defendants.

A. The Court Should Block Plaintiff's Objectionable Deposition Topics Because They Are Not Relevant to the Issues And Are Not Reasonably Calculated to Lead to the Discovery of Admissible Evidence.

1. Relevance is determined by the issues validly before the Court.

Relevance is defined at Montana Rule of Evidence 401 as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." And a "fact that is of consequence" must be a "*fact in issue*" (*Brion v. Brown*, 135 Mont. 356, 363, 340 P.2d 539, 543 (1959) (emphasis in original) (citation omitted)) or, stated differently, a "fact in controversy" (*Rhodes v. Weingand*, 145 Mont. 542, 546, 402 P.2d 588, 590 (1965)). Facts in controversy are limited to the issues framed by the pleadings. *See State ex rel. Westlake v. Dist. Ct. of First Jud. Dist. in and for Lewis and Clark County*, 119

Mont. 222, 238 (1946) ("It is likewise a well-recognized rule of law that the issues in a

cause are made and raised alone by the pleadings.”) (citation omitted). Indeed, “proof without pleading is just as unavailing as pleading without proof.” *Ibid.*

Based upon the issues framed by the FAC in this case,³ the focus of discovery should be on what allegedly occurred between *these* Plaintiffs (Alexis Nunez and Holly McGowan), *this* alleged perpetrator (Maximo Nava Reyes), and *these* Defendants (Watchtower, CCJW and Thompson Falls Congregation) at or about the time of the alleged abuse. The Defendants’ knowledge of *these* parties is relevant; knowledge about other entities and other third parties – especially those who are not similarly situated – is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence as required by Rule 26.

Instead of limiting discovery to any relationship that existed between these parties, Plaintiffs base their tort claims upon duties that allegedly result from religious affiliation and religious practices.⁴ The Court should narrow the scope of discovery to the

³ The claims against Watchtower and CCJW sound in tort: negligence (FAC ¶¶ 46-49); negligence per se (*id.* at ¶¶ 51-54); and breach of fiduciary duty (*id.* at ¶¶ 58-61). Theories supporting those claims include allegations of a special relationship (*id.* at ¶¶ 58-59); vicarious liability for employees/agents (*id.* at ¶¶ 56-57) and malice (*id.* at ¶¶ 62-65). The Defendants do not address the merits of any of those claims herein.

⁴ See e.g., FAC ¶ 10 (referring to Watchtower as “the parent organization” and the “Governing Body” establishing policies for Jehovah’s Witnesses throughout the world); ¶ 12 (describing elders as “the highest rank within the church”); ¶ 13 (using terms “publisher,” “ministerial servants” “church members”); ¶¶ 14-18 (describing a process for studying the bible and eventually leading to becoming “an agent” for “the Jehovah’s Witness Church.”). But Plaintiffs do not allege (nor can they) that Max Reyes was employed by or was a member of either Watchtower or CCJW (he was not). They do not allege (nor can they) that Max Reyes was commissioned by the defendants to take custody and control of the Plaintiffs (he was not). Nor do they allege (nor can they) that

relationships, if any, these corporate Defendants have with Plaintiffs and the secular purposes they serve. *See Davis v. Church of Jesus Christ of Latter Day Saints*, 258 Mont. 286, 298-299, 852 P.2d 640, 648 (1993) (declining examination of “Temple Recommend” and church “callings” to determine corporate liability); *Miller v. Catholic Diocese of Great Falls, Billings*, 224 Mont. 113, 118, 728 P.2d 794, 797 (1986) (refusing to examine a religious school’s discipline policy and evaluate a teacher’s interpretation and application of policy in violation of the First Amendment).

The objectionable topics that Plaintiffs list are not directed to the above issues and are thus overbroad, seek patently irrelevant information and are not proportional to the needs of this case, the amount in controversy, the parties’ resources, the importance of the issues in the action, and the importance of the discovery to resolving the issues. Therefore, this Court should protect the Religious Defendants from the burden and harassing nature of Topic Nos. 6, 13, 14, and 15:

TOPIC NO. 6: Lawsuits that have been filed against You, Your officers or directors in any state or federal court since 1990, which allege sexual misconduct by an adult Jehovah’s Witness perpetrated against a minor Jehovah’s Witness.

TOPIC NO. 13: The Kingdom Hall Assistance Arrangement (KHAA) and its operation from 1990-present including but not limited to amounts collected and amounts paid by the KHAA, coverage provided by the KHAA and related insurance policies.

Max Reyes’ self-serving acts of child molestation were committed at the direction of or for the benefit of the Defendants (they were not).

TOPIC NO. 14: The Global Assistance Arrangement (GAA) and its operation from 1990-present including but not limited to amounts collected and amounts paid by the GAA, coverage provided by the GAA and related insurance policies.

TOPIC NO. 15: Claims paid by Jehovah's Witnesses related to sexual misconduct by an adult Jehovah's Witness perpetrated against a minor Jehovah's Witness.

In Topic 15, Plaintiffs seek discovery of claims paid by Jehovah's Witnesses related to sexual misconduct by an adult Jehovah's Witness perpetrated against a minor Jehovah's Witness. The topic is not limited to defendants in this lawsuit. It is not limited to claims in this state, or even this nation. It is so broad that it includes even private claims by individuals against other individuals that never involved a congregation or a corporation used by Jehovah's Witnesses.

Topics 13 and 14 concern specific assets that Plaintiffs believe Religious Defendants own. Montana Code Annotated § 27-1-221 provides the scope of issues relevant to discovery the potential basis for the ultimate award of punitive damages. Subsection (7) lists those issues as:

- (i) the nature and reprehensibility of the defendant's wrongdoing;
- (ii) the extent of the defendant's wrongdoing;
- (iii) the intent of the defendant in committing the wrong;
- (iv) the profitability of the defendant's wrongdoing, if applicable;
- (v) the amount of actual damages awarded by the jury;
- (vi) the defendant's net worth;

- (vii) previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act;
- (viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and
- (ix) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive damages.

None of the above evidentiary standards supports discovery relating to how a party operates or manages specific assets.

Plaintiffs insist upon their all-encompassing definition of "Jehovah's Witnesses" and insist that Religious Defendants' witnesses be prepared to testify about claims anywhere in the world. The burden and expense involved in marshalling the information about all such claims, combing through the documents concerning them for privilege, privacy rights, and protective orders, followed by redacting sensitive third-party information *before* educating a witness to testify on behalf of the corporations is not proportional to the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake, and the importance of the discovery to resolving the issues. *Ibid.* See also Mont. R. Civ. P. 26(b)(2)(C).

2. Discovery of third parties requires adherence to procedural requisites.

Plaintiffs want discovery about third parties. "Jehovah's Witnesses" is the name of a worldwide religion. Watchtower and CCJW are two corporations that perform certain functions for the religion in the United States. The persons who perform services for those corporations are not familiar with claims that occur elsewhere in the world. Nor do they know of claims that are contained locally and that do not involve the corporation.

Plaintiffs have not issued a Rule 45 subpoena to any third party who may know about claims outside the United States. Therefore, Movants ask the Court to rule that Plaintiffs' notice for claims within the religion of Jehovah's Witnesses is too broad.

B. This Court Should Excuse Watchtower and CCJW from Responding to Topic Nos. 6 and 15 for the Additional Reason That Responsive Testimony Will Contain Information About Multiple Third-Parties Who Have Privacy Rights.

The Montana Constitution, ratified in 1972, explicitly grants a right to privacy, intending "to protect citizens from illegal private action and from legislation and from governmental practices that interfere with the autonomy of each individual to make decisions in matters generally considered private. *Armstrong v. State*, 1999 MT 261, ¶ 35, 296 Mont. 361, 989 P.2d 364 (1999). As a result, article II, section 10 of the Montana Constitution provides that "[t]he right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest." Because it is a right explicit in the Declaration Rights of Montana's Constitution, it is a *fundamental right* subjected to strict scrutiny. *Gryczan v. State*, 283 Mont. 433, 449, 942 P.2d 112, 121 (1997).

A court order is a form of governmental intrusion. *See Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960) (extending the Church Autonomy Doctrine to cover judicial actions as well as legislative actions). Defendants contend that there is no compelling state interest that would justify such an extensive intrusion into privacy rights required to testify about claims by all others in the religion of Jehovah's Witnesses, third persons wholly unrelated to this case. Disclosure of those claims would impact privacy

rights of multiple third parties, each of whom has a privacy interest that this Court must protect.

Discovery must be reasonably calculated to lead to the discovery of *admissible* evidence. The information sought by Topic Nos. 6 and 15 is not reasonably calculated to lead to the discovery of admissible evidence. This Court should enter a protective order that excuses the Religious Defendants from responding to that request.

IV. CONCLUSION

For the foregoing reasons, Movants respectfully request that this Court enter a Protective Order that excuses them from testifying about Plaintiffs' Topic Nos. 6, 13, 14 and 15.

DATED this 20th day of April, 2018.

Attorneys for Religious Defendants/Third-Party
Plaintiffs:

GARLINGTON, LOHN & ROBINSON, PLLP

By 
Kathleen L. DeSoto

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2018, a copy of the foregoing document was served on the following persons by the following means:

	Hand Delivery
3-4	Mail
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1-2	E-Mail (include email in address)

1. James P. Molloy
Gallik, Bremer & Molloy, P.C.
P.O. Box 70
Bozeman, MT 59771-0070
jim@galliklawfirm.com
Corrie@galliklawfirm.com
Attorneys for Plaintiffs
2. D. Neil Smith
Nix, Patterson & Roach, LLP
1845 Woodall Rodgers Fwy., Ste. 1050
Dallas, TX 75201
dneilsmith@me.com

Ross Leonoudakis
Nix, Patterson & Roach, LLP
3600 N. Capital of Texas Hwy, Ste. B350
Austin, TX 78746
rossl@nixlaw.com
Attorneys for Plaintiffs
3. **PERSONAL & CONFIDENTIAL**
Maximo Reyes
P.O. Box 566
Plains, MT 59859
4. **COURTESY COPY TO:**
Hon. James A. Manley
20th Judicial District Court
106 Fourth Ave. E.
Polson, MT 59860

Jackie Ruess