

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
SANDERS COUNTY CLERK OF DISTRICT COURT
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

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

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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")
(collectively referred to as the "Religious Defendants"), respectfully submit this reply
brief in support of their Motion for Protective Order Regarding Requests for Production.

I. INTRODUCTION

Even though Plaintiffs have withdrawn five of the requests addressed in this
Motion, there remains a need for this Court to narrow the scope of discovery. The
document demands at issue collectively seek production of copies of [all] deposition
transcripts, affidavits, declarations and stipulations submitted by any of the Defendants
named in this case, who were a party to any other case that involved "sexual misconduct
by an adult Jehovah's Witness against a minor Jehovah's Witness" arguably from the
beginning of time to present and from every State in the Union. As outlined in the
moving papers, the Religious Defendants offered to compromise by providing documents

from similar cases, i.e., those involving incest as well as prior statements, deposition transcripts, etc., made by the witness designed to testify in this case. Decl. Joel M. Taylor Support Defs.' Mot. Protective Order ¶¶ 7-8, Apr. 18, 2018. Plaintiffs contend they require this information for impeachment purposes. At a minimum, this Court should set subject matter, temporal, and geographical limits on the demands, and permit redaction of all information that could lead to the identification of third parties wholly unrelated to this case.

II. LEGAL ARGUMENT

A. This Court Should Reject Plaintiffs' Overly Broad Demands in the Search for Impeachment Evidence Regarding Matters of Religious Polity

Plaintiffs' Response states the extent of Plaintiffs' intended probe: "Plaintiffs' claims in this case are against the Jehovah's Witnesses organization" Earlier, they explain that the targeted organization has faced investigations and litigation "across the globe" resulting from "teachings of secrecy, deception, and distrust of authority." Pls.' Resp. Religious Defs.' Mot. Protective Order Regarding Reqs. Prod. 2, May 7, 2018 ("Pls.' Resp."). That purported framework may explain the Response's lack of citation to any Montana case law; the Response is pure argument without any precedential support. Indeed, the Response appears to be a regurgitation of mis-information posted on the internet by individuals hostile to the faith of Jehovah's Witnesses.

Plaintiffs essentially admit that they seek to conduct a heresy trial, which has no place in this Court. *See United States v. Ballard*, 322 U.S. 78, 86 (1944) (affirming trial court decision refusing to try matters of religious beliefs and doctrines and explaining

that “[h]eresy trials are foreign to our Constitution.”). The mere process of inquiry into ecclesiastical matters can be enough to violate the First Amendment. *See Davis v.*

Church of Jesus Christ of Latter Day Saints, 258 Mont. 286, 298-299, 852 P.2d 640, 648 (1993); *Miller v. Catholic Diocese*, 224 Mont. 113, 118, 728 P.2d 794, 797 (1986).

Moreover, discovery must be reasonably calculated to lead to the discovery of *admissible* evidence. Mont. R. Civ. P. 26(c). Because matters of religious teachings have no place in a secular courtroom, they are not the proper subject of discovery. Yet, Plaintiffs argue that the documents they seek speak to conflicting prior testimony about matters that fall squarely into the realm of *religious polity* and *religious practices*, e.g., “The role of the Governing Body within Jehovah’s Witnesses,”¹ “[t]he two-witness rule,”² “Judicial Committee investigations,”³ and “[t]he factors taken into account when disfellowshipping and reinstating an alleged perpetrator of child sexual abuse.”⁴ Pls.’ Resp. 4. This Court should protect the Religious Defendants from these requests.

¹ *See* Decl. D. Chappel Support Defs.’ Motion Protective Order ¶¶ 10-11, Apr. 18, 2018 (“Decl. Chappel”). *See also* *Matthew* 24:45-47 (New World Translation). Jehovah’s Witnesses believe the ecclesiastical Governing Body of Jehovah’s Witnesses is the “faithful and discrete slave” that Jesus said would be appointed over all his belongings.

² *See* Decl. Chappel ¶ 46. *See also* *John* 8:17 (New World Translation) (“Also, in your own Law it is written: ‘The witness of two men is true.’”); *1 Timothy* 5:19 (New World Translation) (“Do not accept an accusation against an older man except on the evidence of two or three witnesses.”). Jehovah’s Witnesses believe there must be two witnesses before ecclesiastical action can be taken.

³ *See* Decl. Chappel ¶¶ 42-49.

⁴ *See* Decl. Chappel ¶¶ 36, 43, 48, and 50-52.

Discovery in this case should be limited to legal relationships, if any, these corporate Defendants have to one another, any legal relationships they have to the Plaintiffs and/or the perpetrator (Maximo Reyes), and any secular functions the corporations serve. Mot. Protective Order Religious Defs.’ Regarding Reqs. Prod. 8-9, Apr. 20, 2018 (“Mot.”). Indeed, Plaintiffs have sued four corporations that do not encompass an international religious organization. At a minimum, this Court should impose subject matter, temporal and geographical limits on this discovery. The Court should not endorse Plaintiffs’ attempt to decipher matters of religious teachings and religious polity in derogation of Constitutional proscriptions and then use purportedly conflicting explanations of those matters to impeach witnesses. Prior testimony about religious matters is irrelevant, immaterial, and is not likely to lead to discovery of admissible evidence. Therefore, it is not the proper subject of discovery.

B. This Court Should Disregard Plaintiffs’ Red Herring Attack on the Credibility of Gerrit Lösch in an Unrelated Case Because the Argument Violates Defense Counsel’s Duty of Candor to this Court

On page 5 of the Response, Plaintiffs support their argument with misplaced reliance on an issue that arose in the case of *Lopez v. Watchtower Bible and Tract Society of New York, Inc.*, 201 Cal. Rptr. 3d 156 (Ct. App. 2016). Plaintiffs argue that a vast array of prior testimony is necessary to impeach witnesses because the same issue exists in this case. To illustrate, Plaintiffs rely on a Declaration from Gerrit Lösch, a member of the Governing Body of Jehovah’s Witnesses. Pls.’ Resp., Ex. B: Lösch Decl.

In dereliction of Montana Rule of Professional Conduct 3.3(a), Plaintiffs

incorrectly claim that Watchtower filed the Declaration⁵ and Plaintiffs only cite to the background allegations of *Lopez* (Response at 5) to argue that the same conflict in evidence exists in this case - without advising this Court of the actual holding wherein the Court of Appeals overruled the trial court and reversed the default judgment entered as a discovery sanction. *Lopez*, 201 Cal. Rptr. 3d at 189 (“We order the [trial] court to vacate (1) the portion of the January 2 order requiring Watchtower to produce Löscher for his deposition; (2) the order granting terminating and monetary sanctions; and (3) the entry of default and the default judgment.”).

The Court of Appeals explained that all parties “acknowledge that Löscher was not a party, nor was he an officer, director, or employee of Watchtower.” The issue was whether or not Mr. Löscher was a “managing agent” under state law.⁶ *Lopez*, 201 Cal. Rptr. 3d at 184. The Court of Appeals found insufficient evidence to support such a finding and explained:

⁵ Watchtower did not file the Löscher Declaration. It was filed by Mr. Löscher’s private counsel to request relief from the court’s discovery order on jurisdictional grounds.

⁶ In *Lopez*, a Discovery Referee recommended (and the trial judge ordered) that Watchtower produce Gerrit Löscher for deposition because the Referee “believes that Mr. Löscher’s position as a member of the Governing Body” of Jehovah’s Witnesses “make [him] a managing agent” under the discovery statute. *Lopez*, 201 Cal. Rptr. 3d at 168. The trial judge disagreed with Watchtower’s position that “the Governing Body is purely a religious committee that provides guidance on religious practice.” *Id.* Mr. Löscher’s personal counsel appeared at a hearing in March 2014 and moved to quash the deposition notice. *Id.* at 170. The trial judge ordered the deposition to proceed. *Id.* at 173. And when Mr. Löscher failed to appear for deposition, the trial court sanctioned Watchtower and ultimately entered default judgment against Watchtower. *See Lopez*, 201 Cal. Rptr. 3d at 174. All of which, was later overturned on appeal.

On the factual record before us, we determine Lopez did not satisfy his minimal burden to present evidence showing Lösch fell within the statutory "managing agent" category.

Although there was evidence indicating the Governing Body (and its members) asserted authority over Watchtower and could influence its conduct, there was no evidence showing the reverse was true. . . . Without evidence from which a reasonable inference can be drawn that Watchtower had some legal or practical ability to influence Lösch's decision to attend the deposition, there is no basis to conclude Lösch could be expected to comply with Watchtower's directive to appear.

Lopez, 201 Cal. Rptr. 3d at 184, 186.

This manufactured discrepancy is exactly why this Court should deny Plaintiffs' overbroad discovery demands. Plaintiffs seek, not a trial on the merits, but instead a meandering religious heresy trial, wherein irrelevant information is presented, with a view to clouding the fundamental fact that no liability exists for the Religious Defendants.

III. CONCLUSION

Accordingly, this Court should exercise its broad discretion to protect the Religious Defendants from the undue burden and expense involved in responding to Plaintiffs' overly broad discovery demands; thereby avoiding entangling itself in an analysis of the religious beliefs of a faith. Indeed, the demands are unduly broad because they require Religious Defendants to locate every affidavit, declaration, stipulation and transcript given in every case involving child sexual abuse, review each for privileged and sensitive third-party information and then redact same. As the Religious Defendants requested in their moving papers, the Court should enter a protective order that

establishes the relevant time period for discovery with the subject matter limited to allegations of incest. And, to the extent the Court requires production of relevant information, production should be limited to cases filed within a 500-mile radius of this Court.

DATED this 17th day of May, 2018.

Attorneys for Religious Defendants/Third-Party
Plaintiffs:

GARLINGTON, LOHN & ROBINSON, PLLP

By Kathleen L. DeSoto
Kathleen L. DeSoto

CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2018, a copy of the foregoing document was served on the following persons by the following means:

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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

