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FILED June 25th 2018
Candace Fisher
SANDERS COUNTY CLERK OF DISTRICT COURT
BY [Signature]
DEPUTY

ALEXIS NUNEZ and
HOLLY McGOWAN,

Plaintiffs,

VS.

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/Third-Party Plaintiffs,

VS.

MAXIMO NAVA REYES,

Third-Party Defendant.

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

**PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT AS TO
DEFENDANTS' THIRD-PARTY CLAIMS
AGAINST MAX REYES AND MARCO
NUNEZ AND DEFENDANTS' THIRD
AFFIRMATIVE DEFENSE**

MOTION

Pursuant to Rule 56 of the Montana Rules of Civil Procedure, Plaintiffs respectfully move the Court for an order granting partial summary judgment on 1) Defendants' Third-Party Claims against Maximo Reyes and Marco Nunez and 2) Defendants' Third Affirmative Defense as to Reyes and Nunez. This motion is supported by the record in this case and the following supporting memorandum. A proposed order accompanies the motion.

MEMORANDUM

I. INTRODUCTION

Plaintiffs brought this suit against Defendants Watchtower Bible & Tract Society of New York ("WTNY"), Christian Congregation of Jehovah's Witnesses ("CCJW"), and Thompson Falls Congregation of Jehovah's Witnesses ("Thompson Falls") asserting claims based on negligence relating to Defendants' policies and procedures for handling reports of child abuse.

Defendants filed their answer on February 24, 2017 asserting various affirmative defenses ("Answer")¹. On March 5, 2018, Defendants filed their First Amended Third-Party Complaint ("FATC")². In their FATC, Defendants asserted claims against Max Reyes ("Reyes") and Marco Nunez ("Nunez"). Specifically, in Counts I ("Reyes") and II ("Nunez") of the FATC, Defendants assert that pursuant to § 27-1-703 Defendants have "the right of contribution from any person whose negligence may have contributed as a proximate cause to the injury complained of." FATC ¶¶ 20, 32, p.11 ¶1. Defendants also claim they are entitled to indemnity in the alternative. *Id.* at ¶¶ 24, 36, p.11 ¶1. Defendants further request "apportionment" of liability to Reyes and Nunez. *Id.*

¹ Exhibit A, Defendants' Answer (2/24/17)

² Exhibit B, Defendants' First Amended Third-Party Complaint (3/5/18)

at p.11, ¶ 2. However, because Defendants' complaints against Nunez and Reyes are both based on the acts of intentional child abuse, they are precluded from comparison with Plaintiffs' claims for negligence against Defendants for the purposes of contribution or apportionment. Further, Defendants are not entitled to indemnity because Plaintiffs do not claim—nor have Defendants tried to prove—that Defendants are vicariously liable for the acts of Reyes or Nunez. For the reasons described herein, Plaintiffs respectfully request the court grant their motion.

II. SUMMARY OF UNDISPUTED MATERIAL FACTS

Defendants WTNY, CCJW, and Thompson Falls are organizations that make up the Jehovah's Witness religion. This case involves two occasions when Defendants were notified that children had been sexually abused by Max Reyes: 1998 and 2004. Defendants deny that they were notified in 1998, but admit they received verbal and written notice in 2004 when Plaintiff McGowan and her younger brother Peter reported their abuse to the Elders at Thompson Falls. The Thompson Falls elders then disclosed the reports to multiple clergy elders at the Jehovah's Witnesses headquarters in New York, which is operated by WTNY and CCJW. Following an investigation by the Elders, Reyes was disfellowshipped (temporarily expelled from the congregation) on April 1, 2004. Fourteen months later, on June 16, 2005, Reyes was reinstated to the congregation. During the time he was disfellowshipped and into his subsequent reinstatement, Reyes continued to sexually abuse Plaintiff Alexis Nunez.

In addition, both Plaintiffs testified that Marco Nunez abused them at certain times in their childhood. Alexis Nunez testified that she remembers one time that Marco abused her when she was 3 or 4 years old (1999-2000).³ Holly McGowan testified that Marco Nunez abused her when

³ Exhibit C, Deposition of Alexis Nunez 32:23-35:5 (January 11, 2018).

she was 10 until she was around 17 (1994 -2001).⁴ Plaintiffs do not allege that the Religious Defendants had knowledge of the abuse by Marco Nunez as to either plaintiff before this lawsuit.

III. APPLICABLE LAW

“The party moving for summary judgment bears the initial burden of establishing the absence of any genuine issue of material fact and entitlement to judgment as a matter of law.” *Semenza v. Kniss*, 2008 MT 238, ¶18, 344 Mont. 427, 189 P.3d 1188. If met, “the burden shifts to the non-moving party” to avoid summary judgment by “establish[ing] with substantial evidence, as opposed to mere denial, speculation, or conclusory assertions, that a genuine issue of material fact does exist or that the moving party is not entitled to prevail under the applicable law.” *Id.* A Plaintiff may move for summary judgment on an affirmative defense. *Ballas v. Missoula City Bd. of Adjustment*, 2006 Mont. Dist. LEXIS 824, *16 (striking affirmative defenses at summary judgment stage when undisputed facts did not support elements of defense); *Capital One, NA v. Guthrie*, 2017 MT 75, ¶21, 387 Mont. 147, 152, 392 P.3d 158, 163 (affirming denial of affirmative defense at summary judgment stage when party failed to provide evidentiary support for his affirmative defense).

Defendants claim—and at the same time assert as an affirmative defense—that they are entitled to contribution or alternatively, be indemnified, for any damages awarded against them for the acts of Reyes and Nunez, which resulted in the sexual abuse of Plaintiffs and the damages claimed in this action. FATC ¶¶ 24, 36; Answer at ¶ 70 (asserting the same as Defendants’ Third Affirmative Defense).

⁴ Exhibit D, Deposition of Holly McGowan, 134:11 - 142:23 (January 9, 2018).

A. Contribution

Contribution is a limited statutory claim of right, by a joint tortfeasor against one or more others, for equitable apportionment of the damages caused by the combined tortious conduct of the multiple tortfeasors. *See* § 27-1-703(1), MCA (1997); *Consolidated Freightways Corp. of Delaware v. Osier*, 185 Mont. 439, 446, 605 P.2d 1076, 1080 (1979). Section 27-1-703 articulates a comparative negligence scheme and precludes the comparison of intentional conduct with negligent conduct. *See Martel v. Montana Power Co.*, 231 Mont. 96, 752 P.2d 140, 143 (Mont. 1988).

B. Indemnification

Indemnity may refer to contract indemnity or equitable indemnity. Contract indemnity arises under “a contract by which one engages to save another from a legal consequence of the conduct of one of the parties or of some other person.” Section 28-11-301, MCA.

Equitable indemnity “shifts the entire loss from one party compelled [by law] to bear it” to another who in equity should be responsible to “bear it instead.” *Consolidated Freightways*, 185 Mont. at 447, 605 P.2d at 1081. A claim for equitable indemnity is a claim: (1) by a person without fault; (2) who is vicariously or otherwise imputed liable to a third-party for injury and damages caused by another’s tortious conduct; and (3) for the amount the person had to pay to compensate the third-party for the injury and damages caused by the tortfeasor. *Asurion Servs., LLC v. Mont. Ins. Guar. Ass’n*, 2017 MT 140, ¶ 21, 387 Mont. 483, 490, 396 P.3d 140, 145 (citing *Consolidated Freightways*, 185 Mont. at 447-48, 605 P.2d at 1081).

IV. ARGUMENT

A. Defendants' Cannot Compare Their Negligent Conduct with Max Reyes's and Marco Nunez's Intentional Abuse

Because Defendants' complaints against both Reyes and Nunez are based on intentional conduct, they are improper under Mont. Code Annot. § 27-1-703. This statute articulates a comparative negligence scheme and precludes the comparison of intentional conduct with negligent conduct. *See Martel v. Montana Power Co.*, 231 Mont. 96, 752 P.2d 140, 143 (Mont. 1988) ("All forms of conduct amounting to negligence ... are to be compared with any conduct that falls short of conduct intended to cause injury or damage."). Indeed, § 27-1-03 explicitly requires negligence by both the defendant/third-party plaintiff and the third-party defendant:

- (1) Except as provided in subsections (2) and (3), if the *negligence of a party to an action* is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from *any other person whose negligence may have contributed as a proximate cause to the injury complained of*.

- (4) On motion of a party against whom a claim is asserted for negligence resulting in death or injury to person or property, *any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action*. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the *negligence* of the claimant, injured person, defendants, and third-party defendants. The liability of persons released from liability by the claimant and persons with whom the claimant has settled must also be considered by the trier of fact, as provided in subsection (6). The trier of fact shall apportion the percentage of *negligence* of all persons listed in this subsection. Nothing contained in this section makes any party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

Mont. Code Ann. §27-1-703 (emphasis added)

Here, despite Defendants' transparent efforts to characterize these third-party acts as negligent in the FATC⁵, both Reyes' and Nunez's abuse of the Plaintiffs were *intentional* conduct and are therefore improper to compare with Defendants' negligence under section 27-1-03. *Groves v. Greyhound Lines, Inc.*, 79 F. App'x 255, 256-57 (9th Cir. 2003)(unpublished) amended, 2003 U.S. App. LEXIS 25886 (9th Cir. Dec. 18, 2003). *Groves* is directly on point. In *Groves*, the plaintiff was a passenger on a Greyhound bus and was injured by another intoxicated passenger. Plaintiff brought a lawsuit against Greyhound claiming Greyhound was negligent because its procedures for dealing with disorderly and intoxicated passengers were inadequate. *Groves v. Greyhound Lines, Inc.*, No. 4:00-cv-00118 (D. Mont. Sept. 21, 2000). Greyhound asserted a third-party complaint against the intoxicated passenger. *Id.*, Doc. No. 14. (Jan. 18, 2001). On appeal, the Ninth Circuit, applying Montana law, held that it was error for the district court to allow the jury to compare third-party defendant passenger's *intentional* conduct with the Defendant corporation's *negligence* when determining liability for plaintiff passenger's injuries. *Groves*, 79 F. App'x at 256-57.

The same rationale applies here. Defendants should not be allowed to compare their negligence with the intentional conduct of Reyes and Nunez for the purposes of apportioning liability for Plaintiffs' injuries. Defendants' attempts to characterize the abuse by Reyes and Nunez as negligence is misleading and should be ignored. *See* Ex. B, FATC at ¶¶15-17, 29-30. There is nothing negligent about abusing a child. The Court should grant Plaintiffs' Motion for Summary

⁵ In the FATC, Defendants attempt to characterize the intentional acts of Reyes and Nunez as negligent. Defendants essentially argue that Reyes and Nunez were negligent for not preventing themselves from intentionally sexually abusing Plaintiffs. Defendants' characterization is a transparent attempt to apportion liability under §27-1-03 and should be denied. *See* Ex. B, FATC¶¶15-17, 29-30.

Judgment as to Defendants' third-party claims against Reyes and Nunez for apportioning liability and for contribution.

B. Indemnification Does Not Apply to Defendants' Third-Party Claims

Defendants claim that if they are not entitled to contribution, they are entitled to indemnification in the alternative. Like their claim for contribution, Defendants' claims for indemnity are not supported by facts or law and must be denied. Indemnity may refer to contract indemnity or equitable indemnity. Contract indemnity does not apply because Defendants do not allege, and have provided no evidence, that Reyes or Nunez are contractually obligated to indemnify them for Plaintiffs' claims against Defendants. Further, Defendants are not entitled to equitable indemnity because Plaintiffs do not claim that Defendants are faultless and simply vicariously liable for the acts of Reyes or Nunez. Plaintiffs do not claim that Defendants directed Reyes or Nunez to abuse Plaintiffs. In fact, Defendants expressly deny as much in their FATC. Ex. B, FATC at ¶19, 35 ("Religious Defendants neither directed Max Reyes [Marco Nunez] to abuse Plaintiffs Holly McGowan and Alexis Nunez nor knew of the abuse when it was occurring.") Instead, Plaintiffs' claims asserted against Defendants are for Defendants' own failures and inadequate policies and procedures for handling reports of child abuse. Accordingly, the Court should grant Plaintiffs' Motion for Summary Judgment as to Defendants' third-party claims against Reyes and Nunez for indemnification.

C. Summary Judgment Should Also Be Granted as to Defendants' Third Affirmative Defense Based on Contribution and Indemnification

For the same reasons Defendants third-party *claim* for contribution and indemnification fail, so too must its affirmative defense. Defendants' third affirmative defense asserts that Defendants are entitled to contribution or indemnification from Reyes and Nunez. Ex. A, Answer at ¶ 70. ("The conduct of all persons or entities who contributed to cause the claims and damages

alleged by McGowan and Nunez should be compared by the trier of fact with the claims against the Religious Defendants either barred or proportionately diminished with contribution and indemnification, if any, in accordance with applicable law.”) As an affirmative defense, Defendants have the burden of proving every element of the defense. For the reasons described above, Defendants cannot establish they are entitled to contribution or indemnification from Reyes or Nunez—regardless of whether it is asserted as a claim or defense. Accordingly, the Court should grant Plaintiffs’ Motion for Summary Judgment as to Defendants’ Third Affirmative Defense as it pertains to Reyes and Nunez.

V. CONCLUSION

Defendants claim that they are entitled to apportionment and contribution or in the alternative indemnification for the acts of Reyes and Nunez. For the reasons described above, those claims fail as a matter of law. Because these are the only claims for relief Defendants assert against Reyes and Nunez⁶, upon the granting of this motion Reyes and/or Nunez will no longer be parties to this litigation. Plaintiffs respectfully request the Court grant their motion for summary judgment.

DATED: This 21st day of June, 2018

⁶ Defendants assert in their FATC that “the negligence” of Reyes and Nunez are intervening and superseding causes of the damages claim by Plaintiffs. Ex. B, FATC at ¶¶22, 34. As described above, the acts of Reyes and Nunez were intentional, not negligent. Further, intervening and superseding cause is an affirmative defense, not a claim for relief. Indeed, Defendants assert that exact affirmative defense in their Answer. Ex A, Answer at ¶71.

Attorney for Plaintiffs:

A handwritten signature in black ink, appearing to read "Ross Leonoudakis". The signature is stylized with a large "R" and "L".

By: _____
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all attorneys of record via Email on this the 21st day of June, 2018.

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First class mail postage prepaid

A handwritten signature in black ink, appearing to read "Ross LA", written over a horizontal line.

Ross Leonoudakis

EXHIBIT A

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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

ANSWER, DEMAND FOR JURY
TRIAL AND THIRD-PARTY
COMPLAINT

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,

Third-Party Defendant.

Defendants Watchtower Bible and Tract Society of New York, Inc. ("Watchtower NY"), Christian Congregation of Jehovah's Witnesses ("CCJW") and the Thompson Falls Congregation of Jehovah's Witnesses ("Thompson Falls Congregation") (collectively "Religious Defendants") answer Plaintiffs' First Amended Complaint as follows:

FIRST DEFENSE

1. Plaintiffs' First Amended Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

2. Answering Paragraph 1, Religious Defendants lack sufficient knowledge to affirm or deny the citizenry and domicile of Plaintiff Holly McGowan and so deny the same.

3. Answering Paragraph 2, Religious Defendants lack sufficient knowledge to affirm or deny the citizenry and domicile of Plaintiff Alexis Nunez and so deny the same.

4. Answering Paragraph 3, Religious Defendants admit the same.
5. Answering Paragraph 4, Religious Defendants admit the same.
6. Answering Paragraph 5, Religious Defendants admit the same.
7. Answering Paragraph 6, Religious Defendants admit the same.
8. Answering Paragraph 7, Religious Defendants deny the same.
9. Answering Paragraph 8, Religious Defendants admit this Court has jurisdiction over civil matters pursuant to Montana Code Annotated § 3-5-302(1)(b), admit that the Thompson Falls Congregation is found within the State of Montana, and admit that the allegations of the First Amended Complaint allege a tort accruing within the State of Montana.
10. Answering Paragraph 9, Religious Defendants admit the Plaintiffs allege torts were committed in Sanders County and admit that the Thompson Falls Congregation is located in Sanders County, Montana.
11. Answering Paragraph 10, Religious Defendants deny the same as written.
12. Answering Paragraph 11, Religious Defendants deny the same as written.
13. Answering Paragraph 12, Religious Defendants deny the same as written.
14. Answering Paragraph 13, Religious Defendants deny the same as written.
15. Answering Paragraph 14, Religious Defendants deny the same as written.
16. Answering Paragraph 15, Religious Defendants deny the same as written.
17. Answering Paragraph 16, Religious Defendants deny the same as written.
18. Answering Paragraph 17, Religious Defendants deny the same as written.
19. Answering Paragraph 18, Religious Defendants deny the same as written.

20. Answering Paragraph 19, Religious Defendants deny the same as written.
21. Answering Paragraph 20, Religious Defendants deny the same as written.
22. Answering Paragraph 21, Religious Defendants deny the same as written.
23. Answering Paragraph 22, Religious Defendants deny the same as written.
24. Answering Paragraph 23, Religious Defendants deny the same as written.
25. Answering Paragraph 24, Religious Defendants deny the same as written.
26. Answering Paragraph 25, Religious Defendants deny the same as written.
27. Answering Paragraph 26, Religious Defendants admit the same as written.
28. Answering Paragraph 27, Religious Defendants deny the same as written.
29. Answering Paragraph 28, Religious Defendants deny the same as written.
30. Answering Paragraph 29, Religious Defendants deny the same as written.
31. Answering Paragraph 30, Religious Defendants deny the same.
32. Answering Paragraph 31, Religious Defendants admit that Holly

McGowan's mother was and is one of Jehovah's Witnesses but based upon information and belief her biological father has not been a member of a congregation for years.

Religious Defendants further admit that, at certain times, Holly McGowan attended the Thompson Falls Congregation.

33. Answering Paragraph 32, Religious Defendants admit that in 2004 the Thompson Falls Congregation, through its elders, learned of Holly McGowan's abuse accusations against her stepfather, Maximo Nava Reyes ("Reyes"), which according to Holly, began in 1994 and continued for several years after. Religious Defendants admit that in 2004 Thompson Falls Congregation also learned that Holly McGowan's brother

accused Reyes of abuse

34. Answering Paragraph 33, Religious Defendants deny the same.

35. Answering Paragraph 34, Religious Defendants deny the same.

36. Answering Paragraph 35, Religious Defendants deny the same.

37. Answering Paragraph 36, Religious Defendants lack sufficient information to affirm or deny the allegations of this paragraph and so deny the same.

38. Answering Paragraph 37, Religious Defendants admit Plaintiff Alexis Nunez is the daughter of Ivy McGowan-Castleberry and Marco Nunez. Religious Defendants further admit that Alexis was raised in a family that, at times, attended meetings at the Thompson Falls Congregation.

39. Answering Paragraph 38, Religious Defendants lack sufficient information to affirm or deny the allegations of this paragraph and so deny the same.

40. Answering Paragraph 39, Religious Defendants deny the same.

41. Answering Paragraph 40, Religious Defendants admit Reyes was disfellowshipped from the Thompson Falls Congregation on April 1, 2004 and further state that he was reinstated on June 16, 2005. Except as expressly admitted, the Religious Defendants deny the remaining allegations of this paragraph.

42. Answering Paragraph 41, Religious Defendants lack sufficient knowledge to affirm or deny this paragraph and so deny the same.

43. Answering Paragraph 42, Religious Defendants lack sufficient knowledge to affirm or deny this paragraph and so deny the same.

44. Answering Paragraph 43, Religious Defendants lack sufficient knowledge

to affirm or deny this paragraph and so deny the same.

45. Answering Paragraph 44, to the extent this paragraph contains legal conclusions, no response is necessary. To the extent this paragraph contains factual assertions, Religious Defendants deny McGowan's claim is timely pursuant to Montana Code Annotated § 27-2-216(b).

46. Answering Paragraph 45, Religious Defendants re-allege and incorporate their responses to Paragraphs 1-44 as if fully set forth herein.

47. Answering Paragraph 46, to the extent this paragraph contains legal conclusions, no response is necessary. To the extent this paragraph contains factual assertions, Religious Defendants deny the same.

48. Answering Paragraph 47, Religious Defendants deny the same.

49. Answering Paragraph 48, Religious Defendants deny the same.

50. Answering Paragraph 49, Religious Defendants deny the same.

51. Answering Paragraph 50, Religious Defendants re-allege and incorporate their responses to Paragraphs 1-49 as if fully set forth herein.

52. Answering Paragraph 51, to the extent this paragraph contains a legal conclusion, no response is necessary. To the extent this paragraph contains factual allegations, Religious Defendants admit the statute, including exceptions, speaks for itself.

53. Answering Paragraph 52, Religious Defendants deny the same.

54. Answering Paragraph 53, Religious Defendants deny the same.

55. Answering Paragraph 54, Religious Defendants deny the same.

56. Answering Paragraph 55, Religious Defendants re-allege and incorporate their responses to Paragraphs 1-54 as if fully set forth herein.

57. Answering Paragraph 56, Religious Defendants deny the same.

58. Answering Paragraph 57, Religious Defendants deny the same.

59. Answering Paragraph 58, Religious Defendants deny the same.

60. Answering Paragraph 59, Religious Defendants deny the same.

61. Answering Paragraph 60, Religious Defendants deny the same.

62. Answering Paragraph 61, Religious Defendants deny the same.

63. Answering Paragraph 62, Religious Defendants re-allege and incorporate their responses to Paragraphs 1-61 as if fully set forth herein.

64. Answering Paragraph 63, Religious Defendants deny the same.

65. Answering Paragraph 64, Religious Defendants deny the same.

66. Answering Paragraph 65, Religious Defendants deny the same.

67. Religious Defendants deny each and every allegation not specifically admitted herein.

AFFIRMATIVE DEFENSES

At this time, Religious Defendants are uncertain what affirmative defenses may apply if this case goes to trial. Discovery, trial preparation, and the facts of the case may make some of the affirmative defenses inapplicable and thus they are raised in this Answer to avoid being waived. Religious Defendants will dismiss any affirmative defenses at the final pretrial conference that do not appear to be reasonably supported by the facts and/or law. The purpose of raising these affirmative defenses is not to create

defenses where none exist. Instead, it is recognized that the pleadings, discovery, and trial preparation require an examination and evaluation of evolving facts and law. The decision maker, whether a judge or jury, should have available for consideration all defenses that may apply.

FIRST AFFIRMATIVE DEFENSE

68. Religious Defendants did not cause the injuries alleged in the First Amended Complaint.

SECOND AFFIRMATIVE DEFENSE

69. The injuries alleged in the First Amended Complaint were caused by the acts or omissions of other persons or entities.

THIRD AFFIRMATIVE DEFENSE

70. The conduct of all persons or entities who contributed to cause the claims and damages alleged by McGowan and Nunez should be compared by the trier of fact with the claims against the Religious Defendants either barred or proportionately diminished, with contribution and indemnification, if any, in accordance with applicable law.

FOURTH AFFIRMATIVE DEFENSE

71. The injuries alleged in the First Amended Complaint were caused by unforeseeable, superseding and intervening causes.

FIFTH AFFIRMATIVE DEFENSE

72. Some or all of Plaintiffs' damages are barred by the applicable statute of limitations and laches.

SIXTH AFFIRMATIVE DEFENSE

73. Religious Defendants are not mandatory reporters pursuant to Montana Code Annotated § 41-3-201(6)(c).

SEVENTH AFFIRMATIVE DEFENSE

74. Requiring reporting that is contrary to Religious doctrine is a violation of the Establishment Clause of the United States Constitution and Article II, section 5 of the Montana Constitution.

EIGHTH AFFIRMATIVE DEFENSE

75. Punitive damages are not allowed or appropriate in this case under the provisions of Montana Code Annotated § 27-1-221. Furthermore, any award of punitive damages would violate the Fifth, Sixth and Eighth Amendments, the Due Process and Equal Protection clause of the Fourteenth Amendment of the Constitution of the United States of America, as well as Sections 4, 17, and 25 of Article II of the Constitution of the State of Montana.

WHEREFORE Religious Defendants request Plaintiffs Holly McGowan and Alexis Nunez take nothing by way of their First Amended Complaint, and that Religious Defendants recover the costs of suit expended herein, as well as any other relief the Court deems appropriate.

DEMAND FOR JURY TRIAL

Religious Defendants hereby demand a jury trial on all issues so triable.

THIRD-PARTY COMPLAINT

Pursuant to Montana Code Annotated § 27-1-703(6) and Montana common law,

Defendants/Third-Party Plaintiffs Watchtower Bible and Tract Society of New York, Inc. ("Watchtower NY"), Christian Congregation of Jehovah's Witnesses ("CCJW") and the Thompson Falls Congregation of Jehovah's Witnesses ("Thompson Falls Congregation") (collectively "Religious Defendants") file their Third-Party Complaint against Third-Party Defendant Maximo Nava Reyes ("Max Reyes"):

1. Maximo Nava Reyes is a resident and citizen of the State of Montana, currently domiciled in Sanders County, Montana.
2. This Court has jurisdiction over Max Reyes because he is found in the State of Montana. Mont. R. Civ. P. 4(b)(1).
3. Venue in Sanders County is appropriate as Third-Party Defendant Max Reyes resides in Sanders County and it is the county in which Third-Party Plaintiff Thompson Falls Congregation is located. Mont. Code Ann. § 25-2-122 (2015).
4. Third-Party Defendant Max Reyes married Joan Reyes in 1993. Joan Reyes had three children from a prior marriage, one of whom is Holly McGowan.
5. Upon information and belief, Max Reyes abused Holly McGowan and her brother after his marriage to Joan Reyes.
6. This knowledge was concealed from the elders in the Thompson Falls Congregation and the other Religious Defendants until early 2004, when Peter McGowan approached elder Don Herberger and accused Max Reyes of abuse in the past.
7. Don Herberger and other elders investigated the allegations to determine if Max Reyes committed serious sin worthy of loss of membership in the Thompson Falls Congregation. During the course of the investigation, Holly McGowan, who had since

left Montana, wrote to the elders and noted that she had recently disclosed that she had also been abused by Max Reyes.

8. Max Reyes confessed to improper conduct with Holly McGowan's brother but denied abusing Holly McGowan. Based upon the allegations and Max Reyes' response, the elders in the Thompson Falls Congregation disfellowshipped (expelled) Max Reyes from the congregation.

9. Religious Defendants are not liable to Plaintiffs Holly McGowan and Alexis Nunez for any of the damages caused to them by Max Reyes.

10. Pursuant to Montana Code Annotated § 27-1-703(1), Religious Defendants have "the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of" by Plaintiffs Holly McGowan and Alexis Nunez.

11. Max Reyes had a duty to ensure the safety and well-being of the minor children staying at his home.

12. Max Reyes breached his duty to use reasonable care in protecting the minor children staying at his home.

13. Max Reyes further breached the duty of reasonable care when he failed to take precautionary steps after he admitted abusing Holly McGowan's brother to ensure that there would be no additional abuse of minor children in his home or under his care.

14. Pursuant to Montana Code Annotated § 27-1-703(4), Max Reyes is a person "whose negligence may have contributed as a proximate cause to the injury complained of" by Plaintiffs Holly McGowan and Alexis Nunez against Religious

Defendants.

15. But for the negligence of Max Reyes, there would be no claims against Religious Defendants.

16. The negligence of Max Reyes was an intervening cause of the damages now claimed by Plaintiffs Holly McGowan and Alexis Nunez. As a result, the claimed negligence of the Religious Defendants was neither a foreseeable nor substantial cause of the damages now claimed by Plaintiffs.

17. Religious Defendants did not cause, or allow to be caused, any damages to Plaintiffs Holly McGowan and Alexis Nunez.

18. Religious Defendants are entitled to contribution or alternatively, be indemnified, for any damages awarded against them for the intentional and negligent acts of Max Reyes, which resulted in the sexual abuse of Plaintiffs and the damages claimed in this action.

WHEREFORE, Religious Defendants and Third-Party Plaintiffs respectfully request the following relief:

1. For full contribution or indemnification from Third-Party Defendant Max Reyes for any and all damages awarded to Holly McGowan and Alexis Nunez as a result of his conduct;
2. For apportionment of all or part of any liability for Holly McGowan's and Alexis Nunez's claimed damages to the Third-Party Defendant Max Reyes; and
3. For any other relief the Court finds appropriate.

//

DEMAND FOR JURY TRIAL

Religious Defendants and Third-Party Plaintiffs hereby demand a jury trial on all issues so triable.

DATED this 24th day of February, 2017.

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By Kathleen L. DeSoto
Kathleen L. DeSoto

CERTIFICATE OF SERVICE

I hereby certify that on February 24th, 2017, a copy of the foregoing document was served on the following persons by the following means:

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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

FIRST AMENDED
THIRD-PARTY COMPLAINT

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.

Pursuant to Montana Code Annotated § 27-1-703(6) and Montana common law, Defendants/Third-Party Plaintiffs Watchtower Bible and Tract Society of New York, Inc. ("Watchtower NY"), Christian Congregation of Jehovah's Witnesses ("CCJW") and the Thompson Falls Congregation of Jehovah's Witnesses ("Thompson Falls Congregation") (collectively "Religious Defendants") file their First Amended Third-Party Complaint against Third-Party Defendants Maximo Nava Reyes ("Max Reyes"), Marco Nunez, and Ivy McGowan-Castleberry.

THIRD-PARTY DEFENDANTS

1. Max Reyes is, and at all relevant times was, a resident and citizen of the State of Montana, currently domiciled in Sanders County, Montana.
2. At all relevant times to this First Amended Third-Party Complaint, Marco Nunez was a resident of the State of Montana. The Religious Defendants allege upon information and belief that he presently resides in Mexico.

3. At all relevant times to this First Amended Third-Party Complaint, Ivy McGowan-Castleberry was a resident of the State of Montana. The Religious Defendants allege upon information and belief that she is presently domiciled in the State of Wyoming.

JURISDICTION and VENUE

4. This Court has subject matter jurisdiction over this First Amended Third-Party Complaint because it is a civil matter. Mont. Code Ann. § 3-5-302(1)(b).

5. This Court has personal jurisdiction over Third-Party Defendant Max Reyes because he is found in the State of Montana and because his actions in the State of Montana resulted in the accrual of a tort action. Mont. R. Civ. P. 4(b)(1)(B).

6. This Court has personal jurisdiction over Third-Party Defendant Marco Nunez because his actions within the State of Montana resulted in the accrual of a tort action. Mont. R. Civ. P. 4(b)(1)(B).

7. This Court has personal jurisdiction over Third-Party Defendant Ivy McGowan-Castleberry because her actions in the State of Montana resulted in the accrual of a tort action. Mont. R. Civ. P. 4(b)(1)(B).

8. Venue in Sanders County is appropriate as it was, at the time this action was commenced, the county in which Third-Party Defendants Max Reyes and Marco Nunez resided; it is the county in which Defendant Thompson Falls Congregation is located; and it is the county where the acts occurred that resulted in the accrual of the torts alleged in this First Amended Third-Party Complaint. Mont. Code Ann. §§ 25-2-117, 25-2-118, and 25-2-122(1).

FIRST COUNT
(Against Max Reyes)

9. Religious Defendants repeat and re-allege the preceding paragraphs as if fully set forth herein.

10. Third-Party Defendant Max Reyes married Joan Reyes in 1993. Joan Reyes had three children from a prior marriage: Plaintiff Holly McGowan, Third-Party Defendant Ivy McGowan-Castleberry, and Peter McGowan.

11. Upon information and belief, after his marriage to Joan Reyes, Max Reyes committed acts of sexual abuse on Plaintiff Holly McGowan, Plaintiff Alexis Nunez, and Peter McGowan.

12. The facts surrounding Max Reyes' acts of sexual abuse against Holly McGowan and Peter McGowan were concealed from the elders in the Thompson Falls Congregation and the other Religious Defendants until early 2004, when Peter McGowan approached elder Don Herberger and accused Max Reyes of abuse that had occurred in the past.

13. After Peter McGowan informed Don Herberger about the past abuse by Max Reyes, Mr. Herberger and other elders followed up on the allegation to determine if Max Reyes committed serious sin that would impact his membership in the Thompson Falls Congregation. During the course of their spiritual inquiry, Holly McGowan, who had since left Montana, wrote to the elders and stated that she had recently disclosed that she had also been abused by Max Reyes.

14. Based upon Peter McGowan's allegations and Max Reyes' response

thereto, the elders in the Thompson Falls Congregation disfellowshipped (expelled) Max Reyes from the congregation despite Max Reyes' denial of having abused Holly McGowan.

15. Pursuant to Montana Code Annotated § 27-1-701 and the common law, Max Reyes had a duty to use care in his dealings with others and in the management of his property and his person to prevent acts that would injure others. That duty included ensuring the safety and well-being of the minor children staying at his home.

16. Max Reyes breached the duty of care owed to the minor children staying at his home by failing to take steps to ensure their protection and by failing to refrain from close, unsupervised contact with children despite his knowledge that there was a likelihood that such contact would lead to willful acts that injured them.

17. After admitting he had abused Peter McGowan, Max Reyes further breached the duty of care owed to minor children when he failed to implement household rules and procedures that would protect children in his home under his wife's temporary custody and control.

18. The facts surrounding Max Reyes' acts of sexual abuse against Alexis Nunez were concealed from the elders in the Thompson Falls Congregation and the other Religious Defendants until in or around 2015.

19. Religious Defendants neither directed Max Reyes to abuse Plaintiffs Holly McGowan and Alexis Nunez nor knew of the abuse when it was occurring.

20. Pursuant to Montana Code Annotated § 27-1-703, Religious Defendants have "the right of contribution from any other person whose negligence may have

contributed as a proximate cause to the injury complained of" by Plaintiffs Holly McGowan and Alexis Nunez.

21. But for the acts of Max Reyes, there would be no claims against Religious Defendants.

22. The negligence of Max Reyes was an intervening and superseding cause of the damages now claimed by Plaintiffs Holly McGowan and Alexis Nunez. As a result, the claimed negligence of the Religious Defendants was neither a foreseeable nor a substantial cause of the damages now claimed by Plaintiffs.

23. Religious Defendants did not cause, or allow to be caused, any damages to Plaintiffs Holly McGowan and Alexis Nunez.

24. Religious Defendants are entitled to contribution or alternatively, be indemnified, for any damages awarded against them for the acts of Max Reyes, which resulted in the sexual abuse of Plaintiffs and the damages claimed in this action.

SECOND COUNT (Against Marco Nunez)

25. Religious Defendants repeat and re-allege the preceding paragraphs as if set forth herein.

26. Third-Party Defendant Marco Nunez is the father of Plaintiff Alexis Nunez and the brother-in-law of Plaintiff Holly McGowan.

27. Upon information and belief, Marco Nunez was a registered sex offender when he sexually abused Plaintiff Alexis Nunez on multiple occasions in the late 1990's, which was before any alleged abuse by Max Reyes.

28. Upon information and belief, Marco Nunez, sexually abused Plaintiff Holly McGowan on multiple occasions starting in 1993, which was before any alleged abuse by Max Reyes.

29. Pursuant to Montana Code Annotated § 27-1-701 and the common law, Marco Nunez had a duty to use care in his dealings with others and in the management of his property and his person to prevent acts that would injure others. That duty included ensuring the safety and well-being of minor children visiting or staying at his home.

30. Marco Nunez breached the duty of care owed to the minor children visiting or staying at his home by failing to take steps to ensure their protection and by failing to refrain from close, unsupervised contact with children despite his knowledge that there was a likelihood that such contact would lead to willful acts that injured them.

31. Religious Defendants are not liable to Plaintiffs Holly McGowan and Alexis Nunez for any of the damages caused to them by Marco Nunez.

32. Pursuant to Montana Code Annotated § 27-1-703, Religious Defendants have "the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of" by Plaintiffs Holly McGowan and Alexis Nunez.

33. But for the acts of Marco Nunez, there would be no claims against Religious Defendants.

34. The negligence of Marco Nunez was an intervening and superseding cause of the damages now claimed by Plaintiffs Holly McGowan and Alexis Nunez. As a result, the claimed negligence of the Religious Defendants was neither a foreseeable nor a

substantial cause of the damages now claimed by Plaintiffs.

35. Religious Defendants did not cause, or allow to be caused, any damages to Plaintiffs Holly McGowan and Alexis Nunez. Indeed, Religious Defendants neither directed Marco Nunez to abuse Plaintiffs Holly McGowan and Alexis Nunez nor knew of the abuse when it was occurring. On the contrary, before Holly McGowan and Alexis Nunez were harmed by Marco Nunez, Religious Defendants were not even aware that he posed a danger to children.

36. Religious Defendants are entitled to contribution or alternatively, be indemnified, for any damages awarded against them for the acts of Marco Nunez, which resulted in the sexual abuse of Plaintiffs and the damages claimed in this action.

THIRD COUNT
(Against Ivy McGowan-Castleberry)

37. Religious Defendants repeat and re-allege the preceding paragraphs as if set forth herein.

38. Third-Party Defendant Ivy McGowan-Castleberry is the mother of Plaintiff Alexis Nunez, the sister of Plaintiff Holly McGowan, and the former wife of Third-Party Defendant Marco Nunez.

39. Upon information and belief, Ivy McGowan-Castleberry knew that Marco Nunez was a registered sex offender when she welcomed him back into the marital home in or around 1998 after his release from incarceration. After returning to the home, Marco Nunez began to abuse Plaintiff Alexis Nunez and resumed his abuse of Plaintiff Holly McGowan.

40. Pursuant to Montana Code Annotated § 27-1-701 and the common law, Ivy McGowan-Castleberry had a duty to use care in her dealings with others and in the management of her property to prevent acts that would injure others. That duty included ensuring the safety and well-being of minor children including her own daughter and others who visited or stayed at her home.

41. Ivy McGowan-Castleberry knew, or should have known, that there was a likelihood of harm to children who are in close, unsupervised contact with Marco Nunez. That knowledge created a heightened duty to protect the children in her custody or entrusted to her care.

42. Ivy McGowan-Castleberry breached her duty to use reasonable care in protecting minor children by failing to seek education or training in how to protect children when a paroled sex offender returns home, by failing to establish household rules that would protect children under those conditions, by welcoming known sex offenders into her home and allowing them unsupervised access to children. She further breached her duty of care to children by failing to supervise them at all times when they were in her custody and by allowing known sex offenders to have close, unsupervised contact with children despite her knowledge that there was a likelihood that such contact would lead to injury.

43. At all times relevant herein, Ivy McGowan-Castleberry was the legal guardian of the minor child, Plaintiff Alexis Nunez.

44. Upon information and belief, in 1998 Ivy McGowan-Castleberry became aware of allegations of sexual abuse committed by Third-Party Defendant Max Reyes

against her sister, Plaintiff Holly McGowan.

45. Despite actual notice of allegations of abuse against Max Reyes, Ivy McGowan-Castleberry negligently entrusted the care of her minor daughter, Plaintiff, Alexis Nunez, to Max and Joni Reyes on a weekly basis from 2002 to 2007 thereby facilitating the abuse of Alexis Nunez.

46. Religious Defendants are not liable to Plaintiffs Holly McGowan and Alexis Nunez for any of the damages caused to them by the acts of Ivy McGowan-Castleberry.

47. Pursuant to Montana Code Annotated § 27-1-703, Religious Defendants have "the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of" by Plaintiffs Holly McGowan and Alexis Nunez.

48. But for the acts of Ivy McGowan-Castleberry, there would be no claims against Religious Defendants.

49. The negligence of Ivy McGowan-Castleberry was an intervening and superseding cause of the damages now claimed by Plaintiffs Holly McGowan and Alexis Nunez. As a result, the claimed negligence of the Religious Defendants was neither a foreseeable nor substantial cause of the damages now claimed by Plaintiffs.

50. Religious Defendants did not cause, or allow to be caused, any damages to Plaintiffs Holly McGowan and Alexis Nunez. Religious Defendants did not even know about the abuse when it was occurring.

51. Religious Defendants are entitled to contribution or alternatively, be

indemnified, for any damages awarded against them for the intentional and negligent acts of Ivy McGowan-Castleberry, which resulted in the sexual abuse of Plaintiffs and the damages claimed in this action.

WHEREFORE, Third-Party Plaintiffs Religious Defendants respectfully request the following relief:

1. For full contribution or indemnification from Third-Party Defendants Max Reyes, Marco Nunez, and Ivy McGowan-Castleberry for any and all damages awarded to Holly McGowan and Alexis Nunez;
2. For apportionment to the Third-Party Defendants Max Reyes, Marco Nunez, and Ivy McGowan-Castleberry of all or part of any liability for Holly McGowan's and Alexis Nunez's claimed damages;
3. For costs of suit as allowed by law; and
4. For any other relief the Court finds appropriate.

DEMAND FOR JURY TRIAL

Religious Defendants hereby demand a jury trial on all issues so triable.

DATED this 5th day of March, 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 March 5, 2018, a copy of the foregoing document was served on the following persons by the following means:

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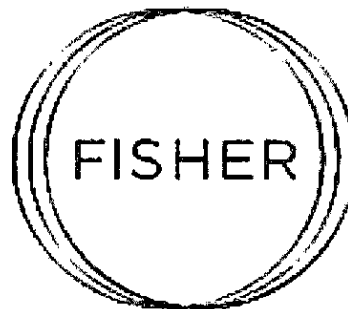


EXHIBIT C

*Alexis Nunez and Holly McGowan v.
Watchtower Bible and Tract Society of New York, Inc., e*

*Alexis Nunez
January 11, 2018*

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1 A. Not that I recall.
 2 **Q. Do you have any recollection of Marco**
 3 **ever cursing at your mother/throwing an object at**
 4 **your mother?**
 5 **MR. LEONOUidakis:** Objection.
 6 A. You know, I remember yelling, but I do
 7 not remember what was said.
 8 **Q. Okay. Do you have any understanding as**
 9 **to why your mom and dad got divorced?**
 10 A. Yes.
 11 **Q. And what is your understanding?**
 12 A. My understanding was that it was an
 13 abusive relationship.
 14 **Q. Had you heard that from your mother?**
 15 A. Yes.
 16 **Q. Did you hear it from anyone else?**
 17 A. Not that I can think of.
 18 **Q. Was there ever any point in time prior to**
 19 **the divorce that you felt close to your dad?**
 20 A. Not that I can remember.
 21 **Q. Was he around when you were going to**
 22 **kindergarten and things like that?**
 23 A. No.
 24 **Q. No. Do you have any recollection of him**
 25 **being in the family home?**

1 **come to the home to watch the kids?**
 2 A. Yes.
 3 **Q. And who was that?**
 4 A. A member of the Jehovah's Witness
 5 Congregation.
 6 **Q. Do you remember the name of the person?**
 7 A. Brandy. I don't remember her last name.
 8 **Q. Was she your regular babysitter?**
 9 A. Yes.
 10 **Q. And that would have been in Nebraska?**
 11 A. Correct.
 12 **Q. Okay. After the divorce, did your mom**
 13 **have someone who would routinely stay with you?**
 14 A. Are you referring to when we lived in
 15 Nebraska or Montana?
 16 **Q. We can take that first.**
 17 A. Brandy was the one who would watch us in
 18 Nebraska --
 19 **Q. Okay.**
 20 A. -- when my mom worked.
 21 **Q. So Brandy before and after was the**
 22 **primary babysitter?**
 23 A. I don't remember before. I don't
 24 remember much before I was 4, so --
 25 **Q. Okay.**

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Page 32

1 A. Our very first one in Fremont, yes.
 2 **Q. Fremont, Nebraska?**
 3 A. Correct.
 4 **Q. And would he do dad things? Would he**
 5 **take you to the park? Did he teach you how to**
 6 **ride a bike?**
 7 A. I don't remember.
 8 **Q. You don't remember. How was the**
 9 **relationship -- strike that.**
 10 **Did the divorce have any effect on you at**
 11 **all?**
 12 A. Yes.
 13 **Q. And what effect did it have on you?**
 14 A. Well, it -- it put a lot of strain on our
 15 family with a single mom with four young kids and
 16 moving to Montana.
 17 **Q. Did you move around a lot as a young --**
 18 A. Not that I can remember.
 19 **Q. Okay. Was your mom working a lot during**
 20 **your ages 5 to 10, ages 5 to 13? Was she home a**
 21 **lot or working a lot?**
 22 A. She was home every evening during the
 23 week and worked a lot during the weekends.
 24 **Q. Prior to the divorce, did your mom employ**
 25 **a babysitter, or was there someone who would often**

1 A. -- I don't know.
 2 **Q. Understood. When you came back from**
 3 **Nebraska, did you have a babysitter then?**
 4 A. My grandmother, Joni, would watch us on
 5 the weekends.
 6 **Q. To your knowledge, was that something**
 7 **that occurred regularly; by that, I mean, more**
 8 **than one weekend a month?**
 9 A. Yes. When we first moved to Montana,
 10 correct.
 11 **Q. Was it almost every weekend?**
 12 A. Yes.
 13 **Q. Did anyone live in the house with Joni?**
 14 A. Yes.
 15 **Q. And who was that?**
 16 A. Max and Peter McGowan, and I do not
 17 recall if Holly was living there when we first
 18 moved back.
 19 **Q. That's okay. Did your mom ever have**
 20 **anyone that would come to your home to babysit**
 21 **when you moved back from Montana -- or to Montana?**
 22 A. Not that I can remember. Not then.
 23 **Q. Did there ever come a point in time when**
 24 **Marco touched you in an improper way?**
 25 A. Yes.

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1 Q. When was the first time that Marco, your
 2 father, touched you in an improper way, that you
 3 recall?
 4 A. The one specific event that -- event
 5 that I recall the most, I believe happened in
 6 California.
 7 Q. And how old were you at the time?
 8 A. I must have been 3 or 4.
 9 Q. And do you recall what Marco did?
 10 A. To the best of my memory, mostly
 11 fondling.
 12 Q. Was it above the waist or below the
 13 waist?
 14 A. Both.
 15 Q. Both. Did your father penetrate you --
 16 A. No.
 17 Q. -- at that -- was that the only time your
 18 father touched you?
 19 A. I don't know.
 20 Q. Have you put an emotional barrier around
 21 this subject, or --
 22 A. I believe so. I have -- excuse me. I
 23 have done extensive trauma counseling --
 24 Q. Okay.
 25 A. -- that is supposed to kind of help the

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1 process of dealing with it.
 2 Q. I didn't hear the --
 3 A. To help the process.
 4 Q. Oh, to help, okay. And so in this
 5 emotional counseling, have you discussed any more
 6 detail about what Marco did or --
 7 A. (Shakes head negatively.)
 8 Q. Okay. As you sit here today, do you
 9 think it happened more than once, or do you think
 10 it only happened once?
 11 A. I'm not going to speculate. I have no
 12 idea.
 13 Q. So we know at least one instance in
 14 California?
 15 A. (Nods head affirmatively.)
 16 Q. Did Marco ever touch you in Nebraska?
 17 A. I can't remember.
 18 Q. Did Marco ever touch you in Montana?
 19 A. No.
 20 Q. Never in Montana?
 21 A. Never in Montana.
 22 Q. We know that?
 23 A. Correct.
 24 Q. Okay. So if there were acts of abuse,
 25 they either occurred in Montana -- I'm sorry -- in

Page 35

1 Nebraska or in California?
 2 A. Correct.
 3 Q. Would they have occurred in any other
 4 state?
 5 A. I don't believe so.
 6 Q. Okay. Has anyone ever told you -- has
 7 Marco ever told you or apologized for multiple
 8 acts of abuse?
 9 A. No.
 10 Q. Okay. This event that happened in
 11 California was in -- when you were 3 or 4 years
 12 old, is that the first memory of molestation that
 13 you have?
 14 A. Yes.
 15 Q. Which therapists have you been working
 16 with with the barriers related to this event with
 17 your father?
 18 A. Ginny Oedekoven.
 19 Q. And where is Jeanine [sic] located?
 20 A. Gillette, Wyoming.
 21 Q. Has therapy been successful?
 22 A. I believe the EMDR therapy was
 23 successful.
 24 Q. And EMDR, is that something with the
 25 eyes?

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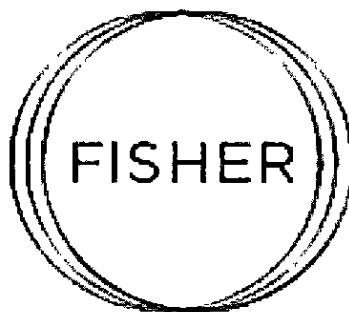
1 A. Electromagnetic something or other.
 2 Q. And how many times have you been treated
 3 with that therapy?
 4 A. I only went through the process once, but
 5 the process is extended over several months.
 6 Q. Do you anticipate completing the process?
 7 A. I have already.
 8 Q. You have already?
 9 A. Correct.
 10 Q. Okay. So --
 11 A. This was in 2013.
 12 Q. In 2013. So we know then that you -- did
 13 you disclose the abuse by your father to Jeanine?
 14 A. No.
 15 Q. And so what was Jeanine treating you for?
 16 A. It -- it was for sexual abuse, but EMDR
 17 is a non-invasive treatment, so she doesn't get
 18 into specifics and details with me.
 19 Q. So you didn't disclose to Jeanine, then,
 20 that your father had sexually abused you?
 21 A. I guess I did.
 22 Q. Okay.
 23 A. I believe I did.
 24 Q. Was she the first person you disclosed it
 25 to?

EXHIBIT D

*Alexis Nunez and Holly McGowan v.
Watchtower Bible and Tract Society of New York, Inc., e*

*Holly McGowan
January 9, 2018*

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1 authorities.

2 **Q.** And as a 20-year-old, in 2004 were you a

3 parent also?

4 **A.** Yes.

5 **Q.** Okay. Could you have called the police?

6 **A.** Yes, I could have.

7 **Q.** And why didn't you?

8 **A.** Again, very traumatized, very scared, and

9 not having any support.

10 **Q.** Did Peter want -- not want to call the

11 police?

12 **A.** Correct.

13 **Q.** And he expressed that to you?

14 **A.** Yes.

15 **Q.** Okay. And in 2004, were you already a

16 nurse or a certified nurse assistant?

17 **A.** I was working as a -- yes.

18 **Q.** Okay. And are nurses or certified

19 nurses -- you were in Nebraska?

20 **A.** Yes.

21 **Q.** Were they mandated reporters at the time?

22 **A.** I don't know.

23 **Q.** Okay.

24 **MR. TAYLOR:** Should we stop here? It's

25 12:12.

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1 **MR. LEONOUidakis:** Okay.

2 **THE VIDEOGRAPHER:** We're going off the

3 record. It's 12:12.

4 [RECESS - 12:12 P.M. TO 1:22 P.M.]

5 **THE VIDEOGRAPHER:** We are back on the

6 record. It's 1:22.

7 **Q. (BY MR. TAYLOR)** Holly, we're going to

8 resume our deposition now, and the instructions

9 that we gave at the outset of the deposition, they

10 continue in fact.

11 Earlier in our conversation, you talked a

12 little bit about Marco Nunez. How, if any way,

13 was Marco Nunez ever related to you?

14 **A.** My brother-in-law.

15 **Q.** And he was married to?

16 **A.** My sister Ivy.

17 **Q.** And Marco married Ivy shortly before --

18 **A.** Yes.

19 **Q.** -- your mother married Max?

20 **A.** Yes.

21 **Q.** You mentioned earlier that Marco also

22 engaged in some sexual contact with you early on

23 in the marriage between Marco and Ivy. What's

24 your earliest recollection of that activity?

25 **A.** Again, in the very same time frame, began

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1 when I would visit at her house.

2 **Q.** Meaning Ivy?

3 **A.** Yes.

4 **Q.** And where was Ivy living at the time, if

5 you recall?

6 **A.** In Plains.

7 **Q.** Plains. When you would visit Marco in

8 Ivy's home, did they already have any other

9 children?

10 **A.** My sister had my oldest niece, Dominique,

11 prior to their marriage.

12 **Q.** Okay. So Dominique's father is not

13 Marco?

14 **A.** No.

15 **Q.** Okay. And in connection with your age

16 and Dominique's age, how far apart are you?

17 **A.** About eight years.

18 **Q.** Eight years. So she was a baby in the

19 arms?

20 **A.** Yes.

21 **Q.** Okay. And you mentioned that -- let me

22 ask you this first. Were there any other people

23 living in the home other than Marco, Dominique,

24 and Ivy?

25 **A.** No. There -- I know his sister visited

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1 and stayed with them for a short period of time; I

2 don't recall exactly when that was though.

3 **Q.** And who would drop you off or take you to

4 Marco's and Ivy's home?

5 **A.** Either family, my sister. It's a very

6 small town, so it wasn't uncommon to walk either.

7 **Q.** Okay. So you didn't live that far apart?

8 **A.** No.

9 **Q.** Okay. And the first instance of improper

10 sexual conduct or contact between Marco and you,

11 what was it?

12 **A.** Same, him fondling.

13 **Q.** And in response to Marco's fondling on

14 that first event, did you have a conversation with

15 Ivy or your mom or your dad?

16 **A.** No.

17 **Q.** No. Did you have a conversation with

18 anyone immediately following that first incident

19 of fondling?

20 **A.** No.

21 **Q.** Okay. And how often would the fondling

22 occur in the 1994 time frame?

23 **A.** Frequently.

24 **Q.** Every time you were with him?

25 **A.** No.

1 Q. Okay. Would you say once a week?
 2 A. Once a week, every couple weeks.
 3 Q. And was it always in the 1994 time frame
 4 fondling above the waist?
 5 A. At the beginning, yes.
 6 Q. Okay. How long after it started did it
 7 transition to something more than fondling above
 8 the waist?
 9 A. Probably about six months.
 10 Q. And did it progress to fondling below the
 11 waist?
 12 A. Yes.
 13 Q. Okay. Did it include digital
 14 penetration?
 15 A. Eventually, yes.
 16 Q. And did that occur in the 1994/'95/'96
 17 time frame?
 18 A. Yes.
 19 Q. Did Marco ever attempt to or actually
 20 engage in rape?
 21 A. He did attempt to, yes.
 22 Q. He attempted to?
 23 A. He did, yes.
 24 Q. Okay. When was the first time he
 25 attempted to -- and really, digital is rape. When

1 than how Max also? Was it threats or coercion?
 2 A. Max was much more forceful, just going
 3 to.
 4 Q. And with Marco, it was more coercion?
 5 A. Yes.
 6 Q. Okay. So Marco makes it -- his way down
 7 to Nebraska in 1996. At this point, according to
 8 your testimony, you haven't told anyone about
 9 Max's abuse. By '96, had you told anyone about
 10 Marco's abuse?
 11 A. No.
 12 Q. Was Marco, to your knowledge, also
 13 abusing Peter?
 14 A. Not to my knowledge at that time. I
 15 found out later.
 16 Q. You since learned that Marco --
 17 A. Yes.
 18 Q. -- also abused Peter? When did you learn
 19 that?
 20 A. When Peter and I were conversing in the
 21 2004 time range.
 22 Q. He also disclosed he was a victim?
 23 A. By Marco, yes.
 24 Q. Okay. And was -- was Marco Nunez, Marco
 25 was from Mexico as well?

1 was the first time he tried to have intercourse
 2 with you?
 3 A. Probably around '95 also. He moved away
 4 prior to my sister moving away, --
 5 Q. Okay.
 6 A. -- so that would have been '96ish and --
 7 Q. Their marriage broke up?
 8 A. No. He moved to Nebraska with family to
 9 begin a job. She moved later.
 10 Q. So he left first?
 11 A. Yes.
 12 Q. Okay. So prior to him leaving to
 13 Nebraska in that '95/'96 time frame, he attempted
 14 to vaginally penetrate you --
 15 A. Yes.
 16 Q. -- with his penis? Did he ever engage in
 17 oral sex with you during that time frame?
 18 A. Yes.
 19 Q. Okay. Did you -- did he ever force you
 20 to engage in oral sex with him?
 21 A. Yes.
 22 Q. And would he threaten you, or how would
 23 he force you to engage?
 24 A. Coerce mostly.
 25 Q. Coerce. Is that similar or different

1 A. Yes.
 2 Q. Okay. Is Marco related to Max in any
 3 way?
 4 A. No.
 5 Q. Other than these marriage relationships?
 6 A. No.
 7 Q. Okay. Did Marco and Max know each other
 8 before Marco married Ivy?
 9 A. Yes.
 10 Q. Did they work at the same place?
 11 A. Yes, for awhile, yes.
 12 Q. Did Ivy study with Marco?
 13 A. No. He was already baptized when he
 14 moved.
 15 Q. Okay. Did you ever travel to Nebraska in
 16 the '96 to '97 time frame?
 17 A. Yes.
 18 Q. Okay. Did any abuse occur in Nebraska?
 19 A. Yes.
 20 Q. Okay. What's your earliest recollection
 21 of abuse in Nebraska?
 22 A. Very much the same. It was infrequent
 23 because he was not there very often, also
 24 traveling for work, but on the occasions that he
 25 did visit home, he would begin again with fondling

1 and same things.
 2 **Q. Okay. And would Ivy be home when these**
 3 **events would occur?**
 4 A. No.
 5 **Q. Okay. So she would leave to --**
 6 A. Work usually.
 7 **Q. Okay. And what type of work did she do**
 8 **at that time, if you recall?**
 9 A. She was waitressing. And that just
 10 reminded me as far as work history, there is an
 11 earlier work history also, because for a short
 12 time I was working at the same restaurant; just
 13 remembered that.
 14 **Q. Okay, so you -- when you were in**
 15 **Nebraska --**
 16 A. Yes.
 17 **Q. -- you picked up a little work --**
 18 A. Yes.
 19 **Q. -- too while you were down there?**
 20 A. Yes.
 21 **Q. And you were young though --**
 22 A. Yes.
 23 **Q. -- in Nebraska?**
 24 A. Yes.
 25 **Q. So you started working at a young age?**

1 with Don you had a meeting with Glenn, Ken, and
 2 Don. In that meeting did anything come up about
 3 Marco --
 4 A. No.
 5 **Q. -- and his abuse of you?**
 6 A. No.
 7 **Q. Okay. Any reason why that topic didn't**
 8 **come up?**
 9 A. Trying to deal with one thing at a time.
 10 **Q. Okay. It was a -- was it a challenging**
 11 **thing then to deal with the events involving**
 12 **Marco?**
 13 A. Yes.
 14 **Q. Okay. How close in age was Marco to you?**
 15 A. Quite a bit older.
 16 **Q. Okay. Was he older than Ivy?**
 17 A. Yes.
 18 **Q. Okay. Is 2001 the first time, then, that**
 19 **Ivy becomes aware of the sexual assaults that**
 20 **Marco was perpetrating on you?**
 21 A. Yes.
 22 **MR. LEONOUKAKIS: Objection.**
 23 **MR. TAYLOR: And your basis?**
 24 **MR. LEONOUKAKIS: You asked her was that**
 25 **the first time that Ivy became aware, so personal**

1 A. Well, I would visit over the summers with
 2 my sister, and yeah, I was 14 --
 3 **Q. Okay.**
 4 A. -- when I started working there.
 5 **Q. And when was the last time that Marco**
 6 **attempted to sexually assault you or actually**
 7 **sexually assaulted you?**
 8 A. It would have been around 2000/2001. At
 9 that time, I had become much more determined that
 10 nobody else was ever going to touch me again, and
 11 he hadn't for some time because I had been
 12 fighting him, and so yes, he attempted to when Ivy
 13 was working nights. She was working someplace
 14 else at that time, I don't recall, but he came
 15 downstairs, my niece Dominique was in bed with me,
 16 and woke up to him on top of me trying to rape.
 17 And so I fought him off at that time and went
 18 upstairs, called 911, and he pulled the phone away
 19 from me and tried keeping me in the house, and so
 20 I ran down to the fire station with my niece in
 21 tow and was taken to the hospital at that time for
 22 a rape kit, and then that -- he was gone after
 23 that.
 24 **Q. In 1997/1998, you mentioned that you had**
 25 **a meeting with Don, and then after that meeting**

1 knowledge.
 2 **Q. (BY MR. TAYLOR) Is that the first time**
 3 **you told Ivy of the sexual assaults?**
 4 A. Yes.
 5 **Q. Okay. At that time, did you tell Ivy**
 6 **about the instances of abuse that occurred in the**
 7 **'90s as well, or was it only the attempted rape**
 8 **that time?**
 9 A. Only the attempted rape.
 10 **Q. Okay. So when did Ivy first learn about**
 11 **all the other sexual activity -- sexual assaults?**
 12 **MR. LEONOUKAKIS: Objection.**
 13 **Q. (BY MR. TAYLOR) When is the first time**
 14 **that you disclosed the other sexual assaults to**
 15 **Ivy?**
 16 A. It would have been after that, in the
 17 months following, same time frame.
 18 **Q. Okay. You mentioned you called 911. Did**
 19 **the police come?**
 20 A. No. I had the phone yanked out of my
 21 hand before I was able to talk to anyone.
 22 **Q. Was Marco also physically abusive with**
 23 **you?**
 24 A. No, not typically.
 25 **Q. Okay. Was he verbally abusive with you?**