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Candace Fisher
SANDERS COUNTY CLERK OF DISTRICT COURT
BY [Signature]
DEPUTY

**MONTANA TWENTIETH JUDICIAL DISTRICT COURT
SANDERS COUNTY**

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.

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

**PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT AS TO
DEFENDANTS' THIRD-PARTY CLAIMS
AGAINST IVY McGOWAN-
CASTLEBERRY**

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 Defendants' third-party claims against Ivy McGowan-Castleberry as discussed below. 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 Ivy McGowan-Castleberry. Specifically, in Count III of the FATC, Defendants assert that "Religious Defendants are not liable to Plaintiffs Holly McGowan and Alexis Nunez for any damages caused to them by the acts of Ivy-McGowan Castleberry. Ex. B at ¶ 46. Further, Defendants claim they entitled to contribution or alternatively, be indemnified, for any damages awarded against them for the acts of Ivy, which resulted in the sexual abuse of Plaintiffs and the damages claimed in this action. FATC ¶ 51. Defendants further request "apportionment" of liability to Ivy. *Id.* at p.11, ¶ 2.

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

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

However, certain claims against Ivy McGowan-Castleberry brought by Defendants' are based on the abuse by Marco Nunez. As such, they are precluded from comparison with Plaintiffs' claims for negligence against Defendants for the purposes of contribution or apportionment because the injuries caused by Marco Nunez are not the injuries complained of in this case. 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 Ivy.

Further, Defendants' claims against Ivy that are based on abuse of Holly McGowan by Max Reyes also fail because Ivy did not owe a duty to protect Holly from Max Reyes's abuse. As such, Plaintiffs hereby request that the Court grant summary judgment as to Defendants' third-party claims based on the abuse of Holly McGowan by Max Reyes. 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 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 Ivy, which resulted in the sexual abuse of Plaintiffs and the damages claimed in this

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

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

action. FATC ¶¶ 51; Answer at ¶ 70 (asserting the same as Defendants' Third Affirmative Defense).

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 27-1-03 articulates a comparative negligence scheme for the purposes of apportionment of liability and contribution by third-parties and expressly requires that any third-party must have “**contributed as a proximate cause to the injury complained of:**” *See* Mont. Code Ann. §27-1-703 (emphasis added)

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' Claims Against Ivy McGowan-Castleberry Based on Abuse by Marco Nunez are Improper

Defendants claim that Ivy McGowan-Castleberry was negligent for allowing Marco Nunez to be near their child Alexis Nunez and Ivy's sister Holly McGowan. See FATC at ¶¶37-43. As a result, Defendants claim that they are entitled to contribution or indemnification from Ivy, "for any damages awarded against them for the intentional and negligent acts of Ivy, which resulted in the sexual abuse of Plaintiffs and the **damages claimed in this action.**" FATC ¶50 (emphasis added). In addition, Defendants ask for an apportionment to Ivy of any liability for Holly McGowan's and Alexis Nunez's claimed damages. *Id.* at 11.

However, for the reasons described in Plaintiffs' Motion to Strike Defendants' First Amended Third-Party Complaint Against Marco Nunez,^{5,6} and Plaintiffs' Motion for Partial Summary Judgment as to Defendants' Third-Party Claims Against Max Reyes and Marco Nunez,⁷ Marco Nunez is not a proper third-party in this case. As explained in Exhibits E-G, Plaintiffs have not asserted any **claims in this action** against Defendants for the abuse by Marco Nunez. That is because Marco's actions were not part of the same transactions or occurrences that are the basis for Plaintiffs' claims in this case: the abuse by Max and Defendants' actions and inactions related to that abuse. Consequently, the injuries caused by Marco Nunez are not the "**injuries complained of**" as required by § 27-1-703. See Mont. Code Ann. §27-1-703 (emphasis added)

⁵ Exhibit E, Plaintiffs' Motion to Strike Defendants' First Amended Third-Party Complaint Against Marco Nunez

⁶ Exhibit F, Plaintiffs' Reply in Support of Their Motion to Strike Defendants' First Amended Third-Party Complaint Against Marco Nunez

⁷ Exhibit G, Plaintiffs' Motion for Partial Summary Judgment as to Defendants' Third-Party Claims Against Max Reyes and Marco Nunez

Thus, because Plaintiffs have not asserted **claims in this action** against Defendants for the injuries caused by Marco Nunez, Defendants cannot seek apportionment, contribution or indemnification from Ivy for the injuries caused by Marco Nunez because those injuries are not the injuries complained of in this case. *Id.*

a. Defendants' Claims Against Ivy Are Improper Under §27-1-703

Section 27-1-03 articulates a comparative negligence scheme for the purposes of apportionment of liability and contribution by third-parties and expressly requires that any third-party must have “**contributed as a proximate cause to the injury complained of:**”

- (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, the injuries that resulted from Marco Nunez's abuse are not the injuries complained of in this action. Thus, there is no genuine issue of material fact that Defendants' cannot assert claims for apportionment and contribution against Ivy McGowan-Castleberry under §27-1-703 for injuries caused by Marco Nunez. Plaintiffs respectfully request that the Court grant their motion

for summary judgment as to Defendants' Third-Party claims for apportionment or contribution against Ivy based on abuse of Plaintiffs by Marco Nunez.

b. Indemnification Does Not Apply to Defendants' Third-Party Claims Against Ivy

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 Ivy is 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 Ivy. Plaintiffs do not claim that Defendants directed Ivy in any way. 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 Ivy for indemnification.

B. Ivy McGowan-Castleberry Did Not Owe Holly McGowan a Duty to Protect Her from Max Reyes

Defendants' Third-Party complaint is vague as it pertains to Holly McGowan. *See* FATC ¶¶ 37-51. However, to the extent Defendants claim that Ivy McGowan-Castleberry was negligent for allowing Max to abuse Holly, the Court should grant Plaintiffs' motion for summary judgment because Ivy did not owe Holly McGowan a duty to protect her from Max Reyes.

Ivy testified that in 1998 while she was visiting Thompson Falls, a friend of hers alerted her that she had seen Max fondle Holly.⁸ Ivy confirmed this incident with Holly and together they told their mother Joni and alerted the local elder Don Herberger. Holly and Ivy then went to Don Herberger's house to further discuss the incident. *Id.* at 45:21-49:9. After they reported the incident to the elders, Ivy went back home to Nebraska. Ivy and Holly did not live together. Ivy was not Holly's guardian. Holly still lived at home with her mother Joni.

Defendants have not provided any evidence to show that Ivy owed Holly a duty of care to protect her from Max Reyes. Because Ivy had no duty to protect Holly from Max, the Court should grant Plaintiffs' motion for summary judgment as to Defendants' Third-Party claims against Ivy for negligence as it relates to abuse of Holly by Max Reyes.

DATED: This 26th day of June, 2018

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By: 

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⁸ Exhibit H, Ivy McGowan-Castleberry Deposition, 44:20-45:20 (January 10, 2018).

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 26th day of June, 2018.

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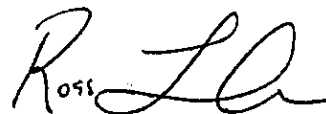
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A handwritten signature in black ink, appearing to read "Ross Leonoudakis". The signature is fluid and cursive, with the first name "Ross" and last name "Leonoudakis" clearly distinguishable.

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.

Attorneys for the Religious Defendants/Third-Party Plaintiffs:

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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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Polson, MT 59860

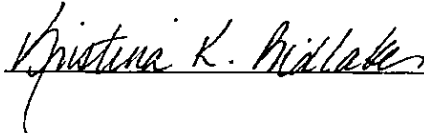


EXHIBIT B

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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

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.

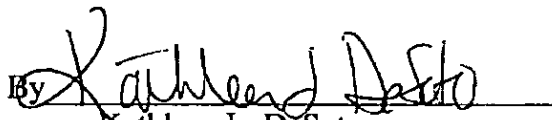
DEMAND FOR JURY TRIAL

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

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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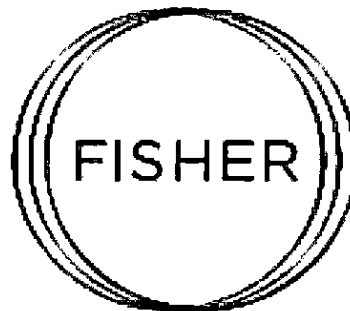


EXHIBIT C

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

*Alexis Nunez
January 11, 2018*

*Charles Fisher Court Reporting
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Bozeman, MT 59715
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maindesk@fishercourtreporting.com*



Min-U-Script® with Word Index

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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. LEONOUDAKIS:** 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?**

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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**

Page 31

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.**

Page 32

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 revent 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

Page 34

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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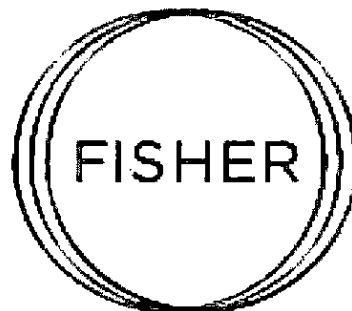
1 A. Electromagnetic something or other.
 2 Q. And how many times have you been treated
 3 with that therapy?
 4 A. I only went through the process once, but
 5 the process is extended over several months.
 6 Q. Do you anticipate completing the process?
 7 A. I have already.
 8 Q. You have already?
 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.**

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 **MR. LEONOUKAKIS: 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**

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.**

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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

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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

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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?

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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 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 **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. LEONOUidakis: Objection.**
 23 **MR. TAYLOR: And your basis?**
 24 **MR. LEONOUidakis: You asked her was that**
 25 **the first time that Ivy became aware, so personal**

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. LEONOUidakis: 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?**

EXHIBIT E

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**PLAINTIFFS' MOTION TO
STRIKE DEFENDANTS'
FIRST AMENDED THIRD-PARTY
COMPLAINT
AGAINST MARCO NUNEZ**

TO: 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 ("Religious Defendants"), by and through their attorney of record, Kathleen DeSoto, Garlington Lohn & Robinson PLLP, 350 Ryman St., Missoula, MT 59807.

Pursuant to Rule 14 of the Montana Rules of Civil Procedure, Plaintiffs move the Court to strike Defendants' Third-Party Complaint against Marco Nunez.

Defendants' claim against Nunez is not a valid third-party claim under Montana Rule of Civil Procedure 14(a)(1). Nunez is not liable to Defendants for Plaintiffs' pleaded claims.

This motion is based upon this Notice and Motion, the Memorandum in Support, and the records and files in this action.

I. INTRODUCTION

Plaintiffs move to strike Defendants' Third-Party Complaint against Marco Nunez.¹ Plaintiffs were sexually molested by Maximo Nava Reyes ("Reyes") while Plaintiffs were young girls. Plaintiffs allege in their complaint that Defendants had knowledge that Reyes had sexually abused children and failed to take reasonable steps to help protect Plaintiffs from further abuse by Reyes. Importantly, Plaintiffs haven't asserted claims based on abuse by persons other than Reyes.

¹ Defendants' Third-Party Complaint is improperly brought pursuant to Montana Code Annotated § 27-1-703(6). (Defs. Complaint at 2). This statute applies where multiple parties may have proximately caused the same injury. Further, subsection (6) applies only to persons with whom the claimant has settled or whom the claimant has released from liability. Neither applies here. Nevertheless, Defendants' Third-Party Complaint is improper even if it were properly brought pursuant to Rule 14.

During their respective depositions in this case, both Plaintiffs testified that prior to the abuse by Max Reyes, they had previously been abused by a man named Marco Nunez. Defendants now improperly attempt to join Marco Nunez into this lawsuit.

Defendants Third-Party Complaint is improper. Plaintiffs haven't asserted any claims for the abuse by Nunez. The Nunez abuse occurred at separate times and at separate locations than the acts that form the basis of Plaintiffs' complaint. Therefore, Nunez is not secondarily or derivatively liable to the Defendants. For these reasons Defendants' Third-Party Complaint is improper and should be stricken.

II. ARGUMENT

In their complaint, Plaintiffs seek damages from the various Jehovah's Witness Defendants resulting from Defendants' deficient policies and procedures related to handling reports of child sexual abuse perpetrated by *Reyes*. Plaintiffs do not allege that Defendants had knowledge of *Nunez's* abuse of the Plaintiffs or that Defendants should be held responsible for *his* abuse. Nevertheless, Defendants erroneously claim that Nunez is somehow liable to Defendants and that he should be joined in this lawsuit. Defendants Third-Party Complaint is improper under Mont. R. Civ. Pro. 14 and should be stricken.

Rule 14(a) states that a defendant may be allowed to bring into a lawsuit any "person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the **plaintiff's claim against the third-party plaintiff.**" Mont. R. Civ. Pro. 14 (emphasis added). "This Rule is essentially identical to Federal Rule 14(a). The federal courts have ruled that a third-party claim may only be asserted when the third-party's liability is dependent on the main claim or when the third-party is secondarily liable to the defendant." *Mills v. Mather*, 1996 ML 64, 7. "If the third-

party claim is separate or independent from the main claim, it will be denied.” *Id.* quoting Wright, Miller & Kane, Federal Practice and Procedure Section 1446 at pp. 355-58 (1990).

Here, Defendants’ Third-Party claims are completely separate and independent from Plaintiffs’ claims. Plaintiffs have not asserted claims for abuse by Nunez. As Defendants point out in their Third-Party Complaint, Nunez abused Plaintiffs years before Max Reyes did. Defs. Complaint at 6-7. Thus, because the actions and events giving rise to Plaintiffs’ Complaint and Defendants’ Third-Party Complaint took place at different times and at different locations, Defendants’ Third-Party Complaint should be denied. *See Amspacher v. Bldg. Sys. Transp. Co.*, No. SAG-17-324, 2018 U.S. Dist. LEXIS 28363, at *10 (D. Md. 2018) (holding that third-party complaint was improper where it attempted to bring in a driver from a separate car wreck even though the injuries were similar and overlapping). *See id.*; *see also Tesch v. United States*, 546 F. Supp. 526, 530 (E.D. Pa. 1982) (holding that contribution was not appropriate when the original complaint and third-party complaint were “separate and distinct causes of action committed by different persons, . . . at clearly severable times with neither party having the opportunity to guard against the other’s acts.”) Here, Plaintiffs’ claims against Defendants have nothing to do with the acts of Marco Nunez and thus he cannot be secondarily or derivatively liable to Defendants for the Plaintiffs’ claims.

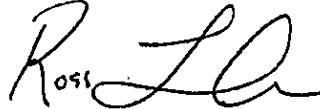
Thus, because Defendants cannot show that there exists a valid legal basis to assert that Nunez is liable to Defendants for the damages sustained by Plaintiffs for the claims raised in their Complaint, Defendants’ Third-Party Complaint is improper and should be stricken. Indeed, if permitted, Defendants’ strategy would produce an absurd result. If Defendants were allowed to implead Nunez in this case, it would mean that every person who ever caused Plaintiffs *any* mental anguish in their life would be proper parties to this case well. That is not what Rule 14 permits.

III. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that Defendants' Third-Party Complaint should be stricken.

DATED: This 3rd day of May, 2018.

Attorney for Plaintiffs:

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

By: _____
Ross Leonoudakis

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served by the means set forth below on this the 3rd day of May, 2018.

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First class mail postage prepaid

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

Ross Leonoudakis

EXHIBIT F

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TO: 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 ("Religious Defendants"), by and through their attorney of record, Kathleen DeSoto, Garlington Lohn & Robinson PLLP, 350 Ryman St., Missoula, MT 59807.

Defendants acknowledge that Marco is not liable to Defendants' for Plaintiffs' *claims* in this case. Defs. Resp. at 5. Rather, Defendants argue that because Marco may have also caused Plaintiffs mental anguish in the past, he should be a party to this lawsuit. Defendants' argument misapplies Montana law and should be denied.

Defendants continue to misconstrue Montana Code Ann. §27-1-703. Section 27-1-703 outlines comparative negligence in Montana. As Plaintiffs pointed out, Subsection (6) is inapplicable to this case because Plaintiffs have not settled with or released anyone from potential liability. Further, subsection (6) is only a basis for a *defense*, not a third-party complaint. *See* 27-1-703(6)(a) "a defendant may assert as a defense . . ." However, Plaintiffs did not mean to imply that Defendants' third-party complaint as to Marco Nunez was instead proper under subsection (4). Subsection (4) is also inapplicable for at least two reasons. First, Plaintiffs have not made any claims for the injuries they suffered from the abuse by Marco. It is undisputed that abuse by Marco happened years before the actions and events that are at the heart of this case and that Defendants never had knowledge of that abuse. As a result, Marco's actions were not part of the same transactions or occurrences that are the basis for Plaintiffs' claims in this case: the abuse by Max and Defendants' actions related to that abuse. Simply put, the Defendants and Marco are not joint-tortfeasors. Second, Marco Nunez cannot be comparatively negligent with Defendants in this case because his acts were not negligent. The act of sexually abusing a child is intentional and under Montana law, a defendant is not allowed to compare its own negligence with the intentional acts

of a third-party under § 27-1-703. For the reasons described below, Plaintiffs respectfully request that the Court grant their motion.

A. Montana Law Does Not Permit Joining Marco Nunez as a Third-Party Defendant

Defendants cite *Plumb v. Fourth Judicial Dist. Court* to support their argument that Marco is proper third-party because he may have separately caused Plaintiffs mental anguish in the past. Defendants' argument misapplies the law and would indeed produce an absurd result. If Defendants' argument were accepted, that would mean that in every case involving claims for mental anguish, every person that has ever caused the plaintiff mental anguish of any kind, at any time, would be a proper party to a single lawsuit—every bully, every negligent driver, every negligent doctor, etc. That is not what the law allows. Rule 14 doesn't allow that, Rule 20 doesn't allow that, and Montana's comparative negligence statute doesn't allow that. Indeed, these laws require a proximal connection to the claims made by the plaintiff. The *Plumb* Court acknowledged as much. In *Plumb*, though the Mall defendant did not name the doctor as a third-party defendant, the Court noted:

To the extent that a party defendant is interested in a true and accurate apportionment of liability, our rules of third party practice and § 27-1-703(4), MCA (1995), already provide the means by which contribution can be sought from those who have been unnamed by the plaintiff but who may have contributed, in fact, to the plaintiff's injuries and damages. Rule 14(a), M.R.Civ.P., provides that a defendant may join, as a third-party defendant, anyone who may be responsible for any part of the plaintiff's claim. Section 27-1- 703(4), MCA (1995), permits any party against whom a claim is asserted for negligence resulting in death or injury, to join any other party who may have contributed as a cause of the plaintiff's injury for purposes of contribution. Rule 20(a), M.R.Civ.P., has been identified as the procedural mechanism for that joinder.

Plumb v. Fourth Judicial Dist. Court, 279 Mont. 363, 378, 927 P.2d 1011, 1020 (1996), superseded by statute.

Thus, Rule 14 requires that a third-party “is or may be liable to it for all or part of the claim against [defendant].” And Rule 20(a)(2)—the procedural mechanism to bring a claim for

contribution under 27-1-703—requires that “Persons may be joined in one action as defendants if: . . . Any right to relief is asserted against them jointly, severally, or in the alternative **with respect to or arising out of the same transaction, occurrence, or series of transaction or occurrences; and any question of law or fact common to all defendants will arise in the action.**” M.R.Civ.P. Rule 20(a) (emphasis added). Defendants cannot meet the requirements of either rule to join Marco as a third-party defendant in this case. Plaintiffs’ claims in this case are for the injuries caused by Defendants related to their knowledge and handling of the sexual abuse perpetrated by Max Reyes. Plaintiff do not allege that Defendants are responsible for the injuries caused by Marco Nunez.

Thus, *Plumb* is distinguishable in that the doctor was alleged to have contributed to or worsened the injury to the plaintiff’s leg. Under Rule 20, the plaintiff’s fall at the mall and the subsequent treatment by the doctor were “arising out of the same transaction, occurrence, or series of transaction or occurrences.” That is not the case here. The abuse by Marco occurred at a separate time and at a separate place than the abuse and wrongful acts by Max and the Defendants. Plaintiffs have not alleged that Defendants are responsible for the injuries caused by Marco or even that Defendants had knowledge or notice of that abuse. Thus, it is not part of the same transaction, occurrence, or series of transaction or occurrences that are at the basis of this suit and therefore does not satisfy Rule 20. And as Defendants acknowledge in their motion, Marco is not liable to Defendants for the *claims* against them under Rule 14.

Finally, the issue of whether Plaintiffs’ mental anguish injuries resulting from separate instances of abuse are divisible has not yet been litigated in this case. Nevertheless, it is irrelevant to this analysis. The indivisibility of Plaintiffs’ injuries cannot be a justification to load the courtroom with every person that has ever caused Plaintiffs mental anguish. Nor is it Plaintiffs’ burden to prove divisibility to prevent such an absurd result.

B. Defendants' Cannot Compare Their Negligent Conduct with Marco Nunez's Intentional Abuse

For the reasons described above, Defendants' third-party complaint is improper under Rule 14 and Rule 20. However, even if Defendants' complaint were *procedurally* proper, it is still *substantively* improper under § 27-1-703. 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) ("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."

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

Here, Marco Nunez's abuse of the Plaintiffs was *intentional* conduct and is therefore improper to compare with Defendants' negligence under §27-1-03. *Groves v. Greyhound Lines*,

Inc., 79 F. App'x 255, 256-57 (9th Cir. 2003) amended, 2003 U.S. App. LEXIS 25886 (9th Cir. Dec. 18, 2003) (finding that pursuant to Mont. Code Ann. § 27-1-703, 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.) Defendants' attempts to characterize the abuse by Nunez as negligence is misleading and should be ignored. Defs. Complaint at ¶¶29-30.

C. Plaintiffs' Motion is Not Untimely

Defendants cite no support for their contention that Plaintiffs' motion is untimely. Rather, Defendants' surprisingly use Plaintiffs' act of professional courtesy as the basis for their blame.

Under the Court's scheduling order, the original deadline to amend pleadings and join additional parties was November 30, 2017. As that deadline approached, Defendants had not yet deposed Ivy McGowan-Castleberry. As a courtesy, Plaintiffs agreed not to oppose a motion to amend to add Ivy if her deposition needed to occur after the November 30, 2017 deadline. This agreement was simply a good-faith attempt not to unreasonably prejudice Defendants by objecting to the timeliness of a motion to add Ivy. Plaintiffs, of course, did not agree to waive any substantive objections to the merits of the motion. Indeed, at the time of the agreement, Plaintiffs had no way to know what the basis of Defendants' motion would be. Contrary to Defendants argument, Plaintiffs did not sit back and remain silent about a single theory. Defendants' third-party complaint is improper under all theories.

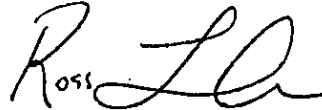
D. Admissibility of Evidence of Third-Party Conduct Is a Separate Question

Defendants confusingly quote *Faulconbridge v. State* to support their argument. *Faulconbridge* considered only the admissibility of evidence of a third-party conduct, not whether a third-party could be joined in a lawsuit. *Faulconbridge v. State*, 2006 MT 198, 333 Mont. 186,

142 P.3d 777. Importantly, admissibility of evidence of third-party conduct is a separate question that will be decided closer to trial in this case.

Dated: June 1, 2018

Attorney for Plaintiffs:

A handwritten signature in black ink, appearing to read "Ross L.", with a stylized flourish at the end.

By: _____
Ross Leonoudakis

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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 1st day of June, 2018.

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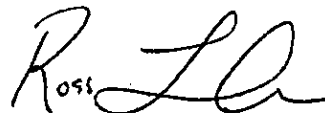
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A handwritten signature in black ink, appearing to read "Ross Leonoudakis", with a stylized "R" and "L".

Ross Leonoudakis

EXHIBIT G

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**MONTANA TWENTIETH JUDICIAL DISTRICT COURT
SANDERS COUNTY**

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.

100

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.

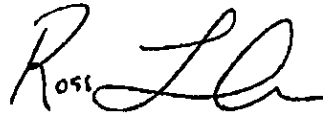
V. CONCLUSION

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:

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By: _____
Ross Leonoudakis

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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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Ross Leonoudakis

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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

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.

Attorneys for the Religious Defendants/Third-Party Plaintiffs:

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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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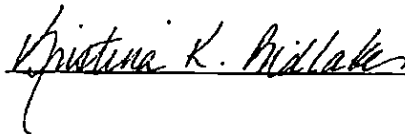


EXHIBIT B

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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 Rcyes 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.

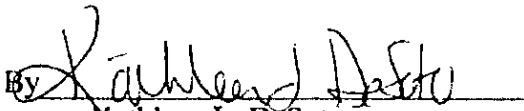
DEMAND FOR JURY TRIAL

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

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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Polson, MT 59860

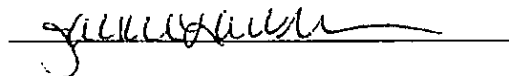
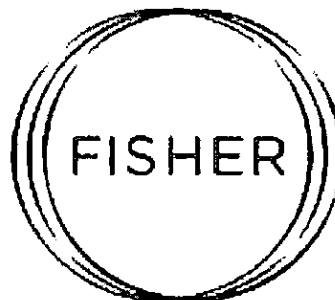


EXHIBIT C

*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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Min-U-Script® with Word Index

| | |
|---|--|
| <p style="text-align: right;">Page 29</p> <p>1 A. Not that I recall.</p> <p>2 Q. Do you have any recollection of Marco</p> <p>3 ever cursing at your mother/throwing an object at</p> <p>4 your mother?</p> <p>5 MR. LEONOUKAKIS: Objection.</p> <p>6 A. You know, I remember yelling, but I do</p> <p>7 not remember what was said.</p> <p>8 Q. Okay. Do you have any understanding as</p> <p>9 to why your mom and dad got divorced?</p> <p>10 A. Yes.</p> <p>11 Q. And what is your understanding?</p> <p>12 A. My understanding was that it was an</p> <p>13 abusive relationship.</p> <p>14 Q. Had you heard that from your mother?</p> <p>15 A. Yes.</p> <p>16 Q. Did you hear it from anyone else?</p> <p>17 A. Not that I can think of.</p> <p>18 Q. Was there ever any point in time prior to</p> <p>19 the divorce that you felt close to your dad?</p> <p>20 A. Not that I can remember.</p> <p>21 Q. Was he around when you were going to</p> <p>22 kindergarten and things like that?</p> <p>23 A. No.</p> <p>24 Q. No. Do you have any recollection of him</p> <p>25 being in the family home?</p> | <p style="text-align: right;">Page 31</p> <p>1 come to the home to watch the kids?</p> <p>2 A. Yes.</p> <p>3 Q. And who was that?</p> <p>4 A. A member of the Jehovah's Witness</p> <p>5 Congregation.</p> <p>6 Q. Do you remember the name of the person?</p> <p>7 A. Brandy. I don't remember her last name.</p> <p>8 Q. Was she your regular babysitter?</p> <p>9 A. Yes.</p> <p>10 Q. And that would have been in Nebraska?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. After the divorce, did your mom</p> <p>13 have someone who would routinely stay with you?</p> <p>14 A. Are you referring to when we lived in</p> <p>15 Nebraska or Montana?</p> <p>16 Q. We can take that first.</p> <p>17 A. Brandy was the one who would watch us in</p> <p>18 Nebraska --</p> <p>19 Q. Okay.</p> <p>20 A. -- when my mom worked.</p> <p>21 Q. So Brandy before and after was the</p> <p>22 primary babysitter?</p> <p>23 A. I don't remember before. I don't</p> <p>24 remember much before I was 4, so --</p> <p>25 Q. Okay.</p> |
| <p style="text-align: right;">Page 30</p> <p>1 A. Our very first one in Fremont, yes.</p> <p>2 Q. Fremont, Nebraska?</p> <p>3 A. Correct.</p> <p>4 Q. And would he do dad things? Would he</p> <p>5 take you to the park? Did he teach you how to</p> <p>6 ride a bike?</p> <p>7 A. I don't remember.</p> <p>8 Q. You don't remember. How was the</p> <p>9 relationship -- strike that.</p> <p>10 Did the divorce have any effect on you at</p> <p>11 all?</p> <p>12 A. Yes.</p> <p>13 Q. And what effect did it have on you?</p> <p>14 A. Well, it -- it put a lot of strain on our</p> <p>15 family with a single mom with four young kids and</p> <p>16 moving to Montana.</p> <p>17 Q. Did you move around a lot as a young --</p> <p>18 A. Not that I can remember.</p> <p>19 Q. Okay. Was your mom working a lot during</p> <p>20 your ages 5 to 10, ages 5 to 13? Was she home a</p> <p>21 lot or working a lot?</p> <p>22 A. She was home every evening during the</p> <p>23 week and worked a lot during the weekends.</p> <p>24 Q. Prior to the divorce, did your mom employ</p> <p>25 a babysitter, or was there someone who would often</p> | <p style="text-align: right;">Page 32</p> <p>1 A. -- I don't know.</p> <p>2 Q. Understood. When you came back from</p> <p>3 Nebraska, did you have a babysitter then?</p> <p>4 A. My grandmother, Joni, would watch us on</p> <p>5 the weekends.</p> <p>6 Q. To your knowledge, was that something</p> <p>7 that occurred regularly; by that, I mean, more</p> <p>8 than one weekend a month?</p> <p>9 A. Yes. When we first moved to Montana,</p> <p>10 correct.</p> <p>11 Q. Was it almost every weekend?</p> <p>12 A. Yes.</p> <p>13 Q. Did anyone live in the house with Joni?</p> <p>14 A. Yes.</p> <p>15 Q. And who was that?</p> <p>16 A. Max and Peter McGowan, and I do not</p> <p>17 recall if Holly was living there when we first</p> <p>18 moved back.</p> <p>19 Q. That's okay. Did your mom ever have</p> <p>20 anyone that would come to your home to babysit</p> <p>21 when you moved back from Montana -- or to Montana?</p> <p>22 A. Not that I can remember. Not then.</p> <p>23 Q. Did there ever come a point in time when</p> <p>24 Marco touched you in an improper way?</p> <p>25 A. Yes.</p> |

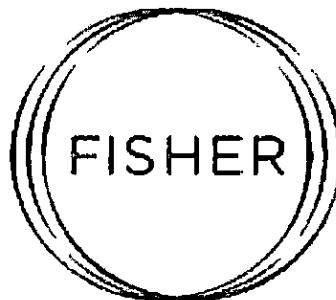
| | |
|--|--|
| <p style="text-align: right;">Page 33</p> <p>1 Q. When was the first time that Marco, your 2 father, touched you in an improper way, that you 3 recall? 4 A. The one specific event that -- event 5 that I recall the most, I believe happened in 6 California. 7 Q. And how old were you at 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</p> | <p style="text-align: right;">Page 35</p> <p>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?</p> |
| <p style="text-align: right;">Page 34</p> <p>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</p> | <p style="text-align: right;">Page 36</p> <p>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?</p> |

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. LEONOUKAKIS: 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.**

| | |
|---|--|
| <p style="text-align: right;">Page 137</p> <p>1 Q. Okay. Would you say once a week?</p> <p>2 A. Once a week, every couple weeks.</p> <p>3 Q. And was it always in the 1994 time frame</p> <p>4 fondling above the waist?</p> <p>5 A. At the beginning, yes.</p> <p>6 Q. Okay. How long after it started did it</p> <p>7 transition to something more than fondling above</p> <p>8 the waist?</p> <p>9 A. Probably about six months.</p> <p>10 Q. And did it progress to fondling below the</p> <p>11 waist?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Did it include digital</p> <p>14 penetration?</p> <p>15 A. Eventually, yes.</p> <p>16 Q. And did that occur in the 1994/'95/'96</p> <p>17 time frame?</p> <p>18 A. Yes.</p> <p>19 Q. Did Marco ever attempt to or actually</p> <p>20 engage in rape?</p> <p>21 A. He did attempt to, yes.</p> <p>22 Q. He attempted to?</p> <p>23 A. He did, yes.</p> <p>24 Q. Okay. When was the first time he</p> <p>25 attempted to -- and really, digital is rape. When</p> | <p style="text-align: right;">Page 139</p> <p>1 than how Max also? Was it threats or coercion?</p> <p>2 A. Max was much more forceful, just going</p> <p>3 to.</p> <p>4 Q. And with Marco, it was more coercion?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So Marco makes it -- his way down</p> <p>7 to Nebraska in 1996. At this point, according to</p> <p>8 your testimony, you haven't told anyone about</p> <p>9 Max's abuse. By '96, had you told anyone about</p> <p>10 Marco's abuse?</p> <p>11 A. No.</p> <p>12 Q. Was Marco, to your knowledge, also</p> <p>13 abusing Peter?</p> <p>14 A. Not to my knowledge at that time. I</p> <p>15 found out later.</p> <p>16 Q. You since learned that Marco --</p> <p>17 A. Yes.</p> <p>18 Q. -- also abused Peter? When did you learn</p> <p>19 that?</p> <p>20 A. When Peter and I were conversing in the</p> <p>21 2004 time range.</p> <p>22 Q. He also disclosed he was a victim?</p> <p>23 A. By Marco, yes.</p> <p>24 Q. Okay. And was -- was Marco Nunez, Marco</p> <p>25 was from Mexico as well?</p> |
| <p style="text-align: right;">Page 138</p> <p>1 was the first time he tried to have intercourse</p> <p>2 with you?</p> <p>3 A. Probably around '95 also. He moved away</p> <p>4 prior to my sister moving away, --</p> <p>5 Q. Okay.</p> <p>6 A. -- so that would have been '96ish and --</p> <p>7 Q. Their marriage broke up?</p> <p>8 A. No. He moved to Nebraska with family to</p> <p>9 begin a job. She moved later.</p> <p>10 Q. So he left first?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So prior to him leaving to</p> <p>13 Nebraska in that '95/'96 time frame, he attempted</p> <p>14 to vaginally penetrate you --</p> <p>15 A. Yes.</p> <p>16 Q. -- with his penis? Did he ever engage in</p> <p>17 oral sex with you during that time frame?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Did you -- did he ever force you</p> <p>20 to engage in oral sex with him?</p> <p>21 A. Yes.</p> <p>22 Q. And would he threaten you, or how would</p> <p>23 he force you to engage?</p> <p>24 A. Coerce mostly.</p> <p>25 Q. Coerce. Is that similar or different</p> | <p style="text-align: right;">Page 140</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Is Marco related to Max in any</p> <p>3 way?</p> <p>4 A. No.</p> <p>5 Q. Other than these marriage relationships?</p> <p>6 A. No.</p> <p>7 Q. Okay. Did Marco and Max know each other</p> <p>8 before Marco married Ivy?</p> <p>9 A. Yes.</p> <p>10 Q. Did they work at the same place?</p> <p>11 A. Yes, for awhile, yes.</p> <p>12 Q. Did Ivy study with Marco?</p> <p>13 A. No. He was already baptized when he</p> <p>14 moved.</p> <p>15 Q. Okay. Did you ever travel to Nebraska in</p> <p>16 the '96 to '97 time frame?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Did any abuse occur in Nebraska?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. What's your earliest recollection</p> <p>21 of abuse in Nebraska?</p> <p>22 A. Very much the same. It was infrequent</p> <p>23 because he was not there very often, also</p> <p>24 traveling for work, but on the occasions that he</p> <p>25 did visit home, he would begin again with fondling</p> |

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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?**

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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**

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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. LEONOUidakis:** Objection.
 23 **MR. TAYLOR:** And your basis?
 24 **MR. LEONOUidakis:** You asked her was that
 25 the first time that Ivy became aware, so personal

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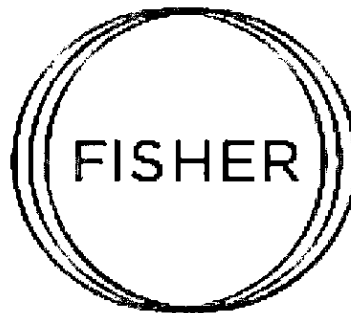
1 knowledge.
 2 **Q. (BY MR. TAYLOR) Is that the first time**
 3 **you told Ivy of the sexual assaults?**
 4 A. Yes.
 5 **Q. Okay. At that time, did you tell Ivy**
 6 **about the instances of abuse that occurred in the**
 7 **'90s as well, or was it only the attempted rape**
 8 **that time?**
 9 A. Only the attempted rape.
 10 **Q. Okay. So when did Ivy first learn about**
 11 **all the other sexual activity -- sexual assaults?**
 12 **MR. LEONOUidakis:** 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?**

EXHIBIT H

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

*Ivy McGowan-Castleberry
January 10, 2018*

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1 progress spiritually that you're like, "Okay, he's
2 good for her," or were you, even today, do you
3 feel that he was never good for her?

4 MR. LEONOUDAKIS: Objection.

5 Q. You can still answer.

6 MR. LEONOUDAKIS: You can answer.

7 A. I'm sorry; can you repeat the question?

8 Q. Sure. You just testified that you had
9 some concerns about Max prior to his wedding or
10 marriage to your mom. Did those concerns ever go
11 away?

12 A. So if what you're asking me is, because I
13 said that he had not at that point been able to
14 demonstrate his commitment to being a Jehovah's
15 Witness, after his baptism and after their
16 marriage did that increase? No, I did not see a
17 change in that.

18 Q. So your concerns remained the same
19 throughout the marriage? Okay.

20 THE REPORTER: Yes?

21 A. Yes.

22 Q. I apologize; I have to remind you to say
23 verbally.

24 Did you ever observe Max and Joni engage
25 in any physical altercations?

1 A. He thumped her on the head.

2 Q. With a fist or open hand?

3 A. (Demonstrating.) Do I need to say that
4 verbally? I don't know how to describe that. A
5 flick, I guess, a hard flick.

6 Q. Do you -- to your knowledge, did Joni
7 ever report any of this to the police?

8 A. No.

9 Q. Okay. And did you ever call the police
10 on Max?

11 A. No.

12 Q. No, okay. In connection with a physical
13 assault on your mom?

14 A. No.

15 Q. You also said that you at least could
16 hear in the background that they had verbal
17 confrontations as well. Was that just one
18 occasion, or was that emblematic or symptomatic of
19 their relationship, in your opinion?

20 A. I -- I really don't want to speculate on
21 whether that was emblematic of their relationship
22 or not. It was what I had observed in a phone
23 conversation, so --

24 Q. Has Holly ever told you that there was a
25 lot of verbal abuse in the household?

1 A. Yes.

2 Q. Okay. And on those occasions, was one
3 person the aggressor as opposed to the other?

4 A. Yes.

5 Q. Who was the aggressor?

6 A. Max.

7 Q. And on how many occasions do you think
8 you saw Max physically assault Joni?

9 A. My exposure to the two of them together
10 was rather limited, so I want to say on one
11 occasion where I saw it with my own eyes and on a
12 second occasion I was trying to have a
13 conversation with my mom on the phone while he was
14 screaming at her in the background and she was
15 sobbing and I couldn't really do anything, so...

16 Q. So on the one occasion where you were --
17 you were able to observe it visibly, did that
18 happen in their marital home?

19 A. Yes.

20 Q. Okay. And was this soon after marriage?
21 Long after marriage? Was this in the '90s?

22 A. So based on where they were living, I
23 believe it would have been relatively soon, within
24 a couple of years after they were married, so...

25 Q. And you saw Max hit your mom?

1 A. Not to me directly, no.

2 Q. Okay. Have you come -- become aware of
3 that indirectly?

4 A. Yes.

5 Q. And how'd you become aware of it
6 indirectly?

7 A. In the late summer of 1998, we had met
8 with Don Herberger regarding some other instances,
9 and at that time Holly shared with him some of the
10 physical violence and abusive speech that was
11 happening in the home.

12 Q. Physical and abusive speech?

13 A. Uh-huh.

14 Q. Anything else you recall from that
15 meeting with Don Herberger in 1998?

16 A. Related to Max and Joni's relationship?

17 Q. Well, related to Max generally. What was
18 the substance of the conversation that occurred in
19 late 1998?

20 A. Well, what spurred that meeting with Mr.
21 Herberger was someone that I had been working with
22 approached me and said they were very concerned
23 for Holly's safety because --

24 Q. Who was that?

25 A. Her name was Carmen De Reyes. And I -- I

1 say "De Reyes" with a caveat there. Her and her
2 husband were common law, and so I don't -- I
3 cannot guarantee you that she went by the last
4 name De Reyes. That was her husband's last name.

5 **Q. Where -- how'd you know Carmen?**

6 A. They were a Bible study of my mom's, and
7 then she and I were working together at that time
8 as well.

9 **Q. And where did you work?**

10 A. We were harvesting St. John's Wort
11 together.

12 **Q. Okay, so what did -- what did Carmen tell
13 you about Joni?**

14 A. She expressed some --

15 **Q. I'm sorry; about Holly?**

16 A. She had expressed some concern for Holly.
17 She -- according to her, there was a time when Max
18 and Holly had come over to their house and Max had
19 put his hands inside of Holly's shirt in front of
20 Carmen and fondled Holly's breasts.

21 **Q. So Carmen tells you that prior to this
22 meeting with Don Herberger. Did you confront
23 Holly with that information?**

24 A. I did.

25 **Q. Okay. And what did Holly say about the**

1 enough to say that yes they were there.

2 **Q. Okay. And was anybody else in home with
3 Don? Of course, he had a wife and a son.**

4 A. Correct. I don't believe so. I believe
5 that they had left.

6 **Q. Okay. So it was just Don in the home,
7 and you and your siblings?**

8 A. Uh-huh.

9 **Q. Well, possibly Peter?**

10 A. Correct.

11 **Q. And maybe Iris at some point or other,
12 okay. And so how's the conversation start with
13 Don and your family?**

14 A. Well, I started with Don pretty much the
15 way that I explained it to you, is that Carmen had
16 brought this to my attention, she was concerned,
17 when I addressed it with Holly, Holly confirmed
18 that that incident had happened, and that's --
19 that was really the reason why I thought we were
20 there, was to discuss that. So that, of course,
21 the hope with that was that Don Herberger, through
22 his status as an elder, would be able to
23 provide -- help Holly obtain the necessary
24 protection that she needed.

25 **Q. That was the hope?**

1 event?

2 A. She said that it was true.

3 **Q. Okay. At that point did you -- in 1998
4 you were how old? '76. 22?**

5 A. Yeah.

6 **Q. Okay. At that point did you call the
7 authorities?**

8 A. No.

9 **Q. Okay. Did you tell anyone about this
10 event other than Don Herberger?**

11 A. My mom.

12 **Q. And how did your mom respond?**

13 A. She indicated that she believed Holly was
14 lying or that -- that it was a lie.

15 **Q. And then at some point after your
16 conversation with Carmen and after your
17 conversation with your mom, you are at Don
18 Herberger's home?**

19 A. Correct.

20 **Q. Okay. Who else is with you?**

21 A. I do -- I know for a fact my sister was
22 with me. I can't -- I don't recall with a degree
23 of certainty if my brother and possibly my Aunt
24 Iris were also there with us. It seems like they
25 were, but I really can't recall it definitively

1 A. That was the hope.

2 **Q. Okay. And Don has testified he wasn't an
3 elder until the fall of 2008 -- or rather, 1998.
4 So if Don wasn't an elder, what would have been
5 your expectation?**

6 A. If he wasn't an elder at that time, I --
7 I have a hard time believing that we would have
8 gone to him, because -- well, I guess he was a
9 ministerial servant. I'm not sure.

10 **Q. Okay. He's sure, yeah. He wasn't an
11 elder.**

12 **MR. LEONOUKAKIS: Objection.**

13 **Q. Yeah. And so your expectation was that a
14 religious person would help you with protection,
15 but what about the police?**

16 A. Uh-huh. What I think is really important
17 to understand about Jehovah's Witnesses, and
18 especially when you have been raised from infancy
19 and been heavily indoctrinated with the ideas and
20 the beliefs that the church, is that if you --
21 when you take a matter like that to the police,
22 that it opens up the entire congregation for
23 having the congregation's name and Jehovah's name
24 drug through the mud.

25 **Q. So --**

1 **MR. LEONOUDAKIS:** Let her finish.

2 A. And so --

3 **MR. LEONOUDAKIS:** Go ahead.

4 A. And so you're taught from a very young
5 age that the very best way to handle any type of a
6 situation is to take it to the elders, not to
7 outside authorities, not to outside providers that
8 would be able to assist with it, but it should be
9 handled by the elders.

10 **Q.** Thank you. I appreciate that, but here's
11 the problem I have with your response, and maybe
12 you can help me understand it. You just said that
13 you had the expectation that Don would get you
14 help from the authorities to protect, but if the
15 whole goal is to keep it in the faith, how would
16 Don ever go outside the faith to get secular -- or
17 how could you have an expectation that he would
18 get secular help to protect Holly if you just said
19 that they keep it in the faith? Why would you
20 have that expectation?

21 A. I think that when you're 22 and you're
22 dealing with 12-year-olds and 14-year-olds, what
23 you're hoping for is that someone of more mature
24 status knows how to help you obtain that
25 assistance.

1 understanding is that they shepherd the flock.

2 Well, what does shepherding a flock mean? It
3 doesn't necessarily mean just standing there with
4 a shepherd's crook, right, but that you're going
5 to actively seek ways of protection. And since
6 things are really are designed in the congregation
7 to be handled through the elders, --

8 **Q.** Okay.

9 A. -- it was my understanding that they
10 would then help us with whatever was the best way
11 to provide those protections for Holly without
12 dragging Jehovah's name through the mud.

13 **Q.** And I'll ask you again. Is that
14 something that you specifically read in
15 literature?

16 A. It certainly is a doctrine that I
17 remember from a very young age.

18 **Q.** Okay. And so I'll ask the question, is
19 this something that you read?

20 A. Not that I can recall off the top of my
21 head.

22 **Q.** And let me ask you this question. If you
23 were the victim of theft, suppose someone stole
24 your car, could you call the police?

25 A. It would depend on whether that person

1 **Q.** Okay. So at 22, you were a mother of how
2 many children?

3 A. Two.

4 **Q.** Two children. And you didn't have any
5 idea that you could call the police if someone in
6 your family was being sexually assaulted? No
7 comprehension?

8 A. At that time, I still held pretty
9 strongly to the idea that that should go to the
10 elders and then they can provide that direction.

11 **Q.** Have you ever read anything that says
12 that that's published by Jehovah's Witnesses?

13 A. That says what?

14 **Q.** What you just said. That you know, as an
15 adult if you have these questions you don't go to
16 the authorities; you come to the elders?

17 A. Not that I can specifically recall.

18 **Q.** Okay. But in your mind, when you had
19 this meeting in September -- or rather, in the
20 summer of 1998, you felt that Holly needed to be
21 protected from Max?

22 A. That the situation needed to be
23 addressed, and so if the -- the idea is that if --
24 if we take a concern to the elders or the
25 ministerial servants, the idea is that -- the

1 was a member of the congregation or not.

2 **Q.** So if the person was a member of the
3 congregation, it's your understanding that if they
4 stole your car, you couldn't call the police?

5 A. That you should take it to the elders
6 first.

7 **Q.** And you can't -- can you call the police?

8 A. There's nothing that says that you can't
9 call the police.

10 **Q.** So you have the option to call the
11 police?

12 A. It is an option.

13 **Q.** Okay. If a member of the faith stabs you
14 with a knife, you'd call the elders, or you go to
15 the police?

16 A. You call the elders.

17 **Q.** And is that something that you've ever
18 read?

19 A. Not that I can recall.

20 **Q.** Okay. It's just your understanding?

21 A. Uh-huh. (Nods head affirmatively.)

22 **Q.** Okay. Would you describe your
23 relationship with Max in the 1990s, if any? Was
24 there even a relationship?

25 A. It was not -- I really don't think that