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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.

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

**PLAINTIFFS’ BRIEF IN
OPPOSITION TO DEFENDANTS’
CROSS-MOTION FOR
SUMMARY JUDGMENT ON
COUNT II**

A. Introduction

Defendants have asserted a Cross Motion for Summary Judgment raising two challenges.¹ First, Defendants contend they had no duty to comply with Montana's mandatory reporter statute based on the timing of when they received notice of the child sex abuse. Second, the Defendants assert that they cannot be negligent per se for violations of the mandatory reporter statute.

B. Summary Judgment Evidence

1. Elders are Clergy

The Jehovah's Witness ("JW") religion includes men who serve as elders.² Elders are considered ordained ministers in every state.³ Elders in the Service Department are "ordained ministers."⁴ "Elders in the Service Department are also ministers who provide spiritual assistance and guidance to and answer questions from elders throughout the United States."⁵

2. Clergy are Mandatory Reporters

When clergy "know or have reasonable cause to suspect" that a child is abused, "they shall report the matter promptly to the department of public health and human services." Mont. Code Annot. §41-3-201. "Any person, official, or institution required by law to report known or suspected child abuse or neglect who fails to do so or who prevents another person from reasonably doing so is civilly liable for the damages proximately caused by such failure or prevention." Mont. Code Annot. §41-3-207.

¹ Defendants' cross-motion explicitly states they were only seeking summary judgment based on Count II-Negligence Per Se. However, as stated in Plaintiffs' Reply in Support of its Motion for Summary Judgment on Defendants' 6th Affirmative Defense, in their Opposition, Defendants implicitly raised a second affirmative ground for summary judgment based on the timing of the reported abuse. Plaintiffs response to both of those arguments is included here.

² Chappel Deposition at 47 (Ex. Z).

³ Gary Breau Affidavit, November 19, 2004 at ¶6 (Ex. A).

⁴ Thomas Jefferson Affidavit, August 27, 2014 at ¶7 (Ex. B); Thomas Jefferson Affidavit, May 28, 2014 at ¶6 (Ex. P).

⁵ Eric Sandoval Affidavit, November 16, 2015 at ¶7 (Ex. C).

3. The JW Clergy Elders are Appointed and Approved by Defendants

Elders are appointed and must be approved.⁶ Elders must be approved by the circuit overseer (a representative of the Branch office).⁷ Elders must be approved by the Service Department of the Branch Office.⁸ Elders are “required to follow established Watchtower policies and practices.”⁹

4. Policies and Procedures

“The policies and procedures local congregations of Jehovah’s Witnesses and the local elders follow are prepared and distributed by Watchtower.”¹⁰ “The local congregations and local elders are not free to vary from these policies and practices without first obtaining approval from Watchtower [Defendant].”¹¹ “Prior to March 2001, direction to congregations of Jehovah’s Witnesses has been communicated through Watchtower [Defendant] and since March 2001 it has been communicated by Christian Congregation of Jehovah’s Witnesses [CCJW Defendant].”¹²

5. Defendant CCJW

One of the Defendants in this case is the Christian Congregation of the Jehovah’s Witnesses (“CCJW”). The Service Department operates through the Defendant CCJW.¹³ After mid-March 2001, “the Service Department elders functioned through CCJW.”¹⁴ Elders assigned to the Service Department “worked there.”¹⁵ “CCJW has been and is the corporate entity used by Jehovah’s Witnesses to facilitate the ministry (including Service Department interaction with

⁶ Gary Breaux Affidavit, August 18, 2005 at ¶5 (Ex. D); Gary Breaux Affidavit, November 19, 2004 at ¶4 (Ex. A).

⁷ Gary Breaux Affidavit, November 19, 2004 at ¶4 (Ex. A).

⁸ *Id.*

⁹ Thomas Jefferson Affidavit, September 12, 2013 at ¶13-14 (Ex. E).

¹⁰ *Id.* at ¶5 (Ex. E).

¹¹ *Id.*

¹² *Id.*

¹³ Allen Shuster Affidavit, April 22, 2009 at ¶2 (Ex. F); Eric Sandoval Affidavit, March 6, 2014 at ¶5 and ¶7 (Ex. G).

¹⁴ Thomas Jefferson Affidavit, November 18, 2014 at ¶4 (Ex. H).

¹⁵ Thomas Jefferson Affidavit, November 18, 2014 at ¶4 (Ex. H).

local congregations) of Jehovah's Witnesses in the United States."¹⁶ CCJW prepares all the policies that local congregations and elders must follow.¹⁷ The Service Department "approves the appointment of Elders."¹⁸ The Service Department oversees "the spiritual advice and counsel that is provided to congregations elders."¹⁹ "The Service Department carries out most of its spiritual assistance and oversight of appointed elders and congregations of Jehovah's Witnesses through CCJW."²⁰ The Service Department monitors the functioning and organization of congregations and reviews the appointment of elders to congregations.²¹ The Service Department must approve of all elders.²² The Service Department determines if known child abusers can continue to serve in appointed positions.²³ The Service Department reviews all cases of disfellowshipping.²⁴ Elders in the Service Department are "ordained ministers."²⁵ Starting in March 2001, CCJW was the entity through which "all religious appointments of elders and ministerial servants" were handled.²⁶ Starting in March 2001, CCJW was the entity that "communicated to local congregations, circuit overseers, and district overseers."²⁷ The individuals in the Service Department work for the CCJW corporation.²⁸

¹⁶ Eric Sandoval Affidavit, January 12, 2015 at ¶7 (Ex. I).

¹⁷ Thomas Jefferson Affidavit, September 12, 2013 at ¶5 (Ex. E).

¹⁸ Thomas Jefferson Affidavit, September 12, 2013 at ¶19 (Ex. E); Richard Ashe Affidavit, April 29, 2014 at ¶12 (Ex. J); Richard Ashe Affidavit, May 8, 2014 at ¶12 (Ex. K).

¹⁹ Thomas Jefferson Affidavit, February 4, 2014 at ¶4 (Ex. L).

²⁰ Eric Sandoval Affidavit, March 6, 2014 at ¶5 (Ex. G).

²¹ Richard Ashe Affidavit, April 4, 2014 at ¶3 (Ex. M); Richard Ashe Affidavit, April 29, 2014 at ¶3 (Ex. J); Thomas Jefferson Affidavit, August 27, 2014 at ¶3-4 (Ex. B).

²² Thomas Jefferson Affidavit, July 30, 2014 at ¶7 (Ex. N).

²³ Richard Ashe Affidavit, May 28, 2014 at ¶6 (Ex. O).

²⁴ Thomas Jefferson Affidavit, May 28, 2014 at ¶14 (Ex. P).

²⁵ Thomas Jefferson Affidavit, August 27, 2014 at ¶7 (Ex. B).

²⁶ Thomas Jefferson Affidavit (#1), October 6, 2014 at ¶8 (Ex. Q).

²⁷ *Id.*

²⁸ Chappel Deposition at 40-41 (Ex. Z).

6. Defendant Watchtower

Another Defendant in this case is Watchtower Bible And Tract Society Of New York, Inc. (“Watchtower”). Watchtower owns the United States and World Headquarters of the JW’s.²⁹ Watchtower is a corporation and “its primary purpose is religious.”³⁰ “Its corporate purpose includes supporting the faith of Jehovah’s Witnesses.”³¹ “One way Watchtower supports the faith is by providing housing and office facilities for individuals in the United States who belong to the Worldwide Order of Special Full-Time Servants of Jehovah’s Witnesses.”³² Watchtower prints literature, sponsors courses and training for JW’s.³³ Watchtower prints the literature used by Jehovah’s Witnesses throughout the world.³⁴ The legal department for the JW’s is part of the Defendant Watchtower.³⁵ The legal department tells elder when they do and do not need to report child abuse to law enforcement.³⁶

Up until March 2001, Watchtower prepared all the policies that local congregations and elders must follow.³⁷ After March 2001, CCJW has prepared all the policies that local congregations and elders must follow.³⁸ “Local congregations and local elders are not free to vary from these policies and practices.”³⁹ Elders are “required to follow established Watchtower policies and practices.”⁴⁰ Elders do not have “any authority to make or modify Watchtower

²⁹ Richard Moake Affidavit, March 5 2014 at ¶8 (Ex. R); Thomas Jefferson Affidavit (#2), October 6, 2014 at ¶8 (Ex. S).

³⁰ Thomas Jefferson Affidavit, April 15, 2016 at ¶5 (Ex. T).

³¹ *Id.*

³² *Id.*

³³ Richard Moake Affidavit, March 5 2014 at ¶6-7 (Ex. R).

³⁴ Thomas Jefferson Affidavit (#2), October 6, 2014 at ¶8 (Ex. S).

³⁵ Chappel Deposition at 39-40 (Ex. Z).

³⁶ *Id.* at 40.

³⁷ Thomas Jefferson Affidavit, September 12, 2013 at ¶5 (Ex. E).

³⁸ *Id.*

³⁹ Thomas Jefferson Affidavit, September 12, 2013 at ¶5 (Ex. E).

⁴⁰ *Id.* at ¶19 (Ex. E).

policies and practices.”⁴¹ Elders in the Service Department “monitor the functioning and organization of congregations of Jehovah’s Witnesses.”⁴²

7. Defendant Thompson Falls

Local congregations like Defendant Thompson Falls are led by appointed congregation elders.⁴³ The local elders are “ordained ministers and spiritual shepherds of the congregation.”⁴⁴ Local elders are responsible for conducting investigations of wrongdoing within the congregation.⁴⁵ Local elders at Thompson Falls must follow the procedures prepared by Watchtower.⁴⁶ Elders at Thompson Falls supervise the congregation.⁴⁷ Elders oversee congregation meetings and provide pastoral care.⁴⁸

In 2004, elders at Thompson Falls received written notice of child sex abuse.⁴⁹ The following elders received that written notice: Glenn Wilson, Ken Riech, and Don Herberger.⁵⁰ In 1998, Holly McGowan notified the following elders that she was being sexually abused: Glenn Wilson, Ken Riech, and Don Herberger.⁵¹

8. Notice of Abuse

This case involves two occasions when Defendants were notified that children had been sexually abused: 1998 and 2004.⁵² Defendants deny that they were notified in 1998, but admit

⁴¹ *Id.* at ¶13- 14 (Ex. E).

⁴² Richard Ashe Affidavit, October 20, 2014 at ¶4 (Ex. U).

⁴³ Thomas Jefferson Affidavit, August 27, 2014 at ¶7 (Ex. B).

⁴⁴ Eric Sandoval Affidavit, November 16, 2015 at ¶7-8 (Ex. C).

⁴⁵ *Id.* at ¶10 (Ex. C).

⁴⁶ Thomas Jefferson Affidavit, September 12, 2013 at ¶5 (Ex. E).

⁴⁷ *Id.* at ¶10 (Ex. E).

⁴⁸ Thomas Jefferson Affidavit, April 15, 2016 at ¶22 (Ex. T).

⁴⁹ Written Notice of Abuse from Holly McGowan (Ex. V); Notification of Disfellowship for Child Sex Abuse (Ex. W); Documentation that Notice Received (Ex. X); Letter to CCJW 4-21-2004 (Ex. Y).

⁵⁰ *Id.*

⁵¹ Holly McGowan Deposition at 92-100 (Ex. BB).

⁵² Holly McGowan Deposition at 92-100 (Ex. BB); Written Notice of Abuse from Holly McGowan (Ex. V); Notification of Disfellowship for Child Sex Abuse (Ex. W); Documentation that Notice Received (Ex. X); Letter to CCJW 4-21-2004 (Ex. Y).

they received verbal and written notice in 2004 that multiple children were being sexually abused.⁵³ Defendants never reported the abuse to any authorities.⁵⁴

In 2004, Plaintiff Holly McGowan, a Jehovah's Witness, provided verbal and written notice that she was abused by her step-father, a fellow Jehovah's Witness.⁵⁵ Peter McGowan, her brother, reported the abuse as well.⁵⁶ The reports were initially made to clergy member elders at Thompson Falls.⁵⁷ 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.⁵⁸

Defendants admit they did not report the abuse to any authorities in Montana after learning of it in 2004, but instead assert the "Limited Exception" affirmative defense.⁵⁹ In asserting the affirmative defense, Defendants are claiming, "yes, we failed to report as required by the statute, but we are excused from reporting because of section 41-3-201(6)(c)."⁶⁰

9. Continued Abuse After Defendants Received Notice

Both Plaintiffs were sexually abuse after Defendants failed to report the 1998 notice of child sex abuse. Plaintiff Alexis Nunez continued to be abused after Defendants received notice of child sex abuse in 2004.⁶¹

⁵³ Written Notice of Abuse from Holly McGowan (Ex. V); Notification of Disfellowship for Child Sex Abuse (Ex. W); Documentation that Notice Received (Ex. X); Letter to CCJW 4-21-2004 (Ex. Y); *See* Chappel at 51 (Ex. Z).

⁵⁴ Chappel at 51-52 (Ex. Z).

⁵⁵ *See* Written Notice of Abuse from Holly McGowan (Ex. V).

⁵⁶ *See* Notification of Disfellowship for Child Sex Abuse (Ex. W); Documentation that Notice Received (Ex. X); Letter to CCJW 4-21-2004 (Ex. Y).

⁵⁷ Written Notice of Abuse from Holly McGowan (Ex. V); Documentation that Notice Received (Ex. X).

⁵⁸ Notification of Disfellowship for Child Sex Abuse (Ex. W); Documentation that Notice Received (Ex. X); CCJW Letter 4-12-2004 (Ex. GG); CCJW Letter 8-25-2005 (Ex. DD); Letter to CCJW 4-21-2004 (Ex. Y).

⁵⁹ Chappel at 51-52 (Ex. Z); Letter to CCJW 4-21-2004 (Ex. Y).

⁶⁰ In asserting the "Limited Exception" affirmative defense, Defendants have contended and judicially admitted that the individuals that received the notice of abuse are "clergy." This is a required element of the affirmative defense that Plaintiffs do not oppose and is not at issue.

⁶¹ Alexis Nunez Deposition at 72-76 (Ex. AA).

C. The Timing of Abuse and Circumstances Created Reasonable Cause to Suspect Abuse

Defendants learned that Max Reyes was a child molester in 1998 and again in 2004.⁶² In 1998, Plaintiff Holly McGowan reported to elders at Thompson Falls that she was being sexually abused by Max Reyes.⁶³ Defendants did nothing to report the abuse.⁶⁴ The abuse was again reported in 2004 by Holly McGowan and her brother Peter McGowan.⁶⁵ In 2004, the abuse was reported in writing.⁶⁶ The written notification of abuse was circulated among the Defendants.⁶⁷ The report was investigated, confirmed, and documented by Defendants.⁶⁸ Defendants disfellowshipped Max Reyes from their organization because of the confirmed sexual abuse of children.⁶⁹

Defendants now claim that they were not required to report the abuse in 2004 because it was a report of “past abuse.” Defs. Mot. at 7. Significantly, Defendants only move for summary judgment (with this argument) on their obligations regarding the 2004 report, but not the 1998 report of childhood sexual abuse.

Fortunately, the Montana Supreme Court has addressed this issue. In *Gross v. Myers*, the facts of the abuse were as follows:

1. The abuse occurred 16 years earlier;
2. The victims were the perpetrator’s own children;
3. The victims were all over the age of 19 years when the disclosure of abuse was made; and
4. The victims no longer lived with the perpetrator.

⁶² Holly McGowan Deposition at 92-100 (Ex. BB); Written Notice of Abuse from Holly McGowan (Ex. V); Notification of Disfellowship for Child Sex Abuse (Ex. W); Documentation that Notice Received (Ex. X); Letter to CCJW 4-21-2004 (Ex. Y).

⁶³ Holly McGowan Deposition at 92-100 (Ex. BB).

⁶⁴ Chappel at 51-52 (Ex. Z); Letter to CCJW 4-21-2004 (Ex. Y).

⁶⁵ Written Notice of Abuse from Holly McGowan (Ex. V); Notification of Disfellowship for Child Sex Abuse (Ex. W); Documentation that Notice Received (Ex. X); Letter to CCJW 4-21-2004 (Ex. Y).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Notification of Disfellowship for Child Sex Abuse (Ex. W).

The Court held that:

“[The reporter’s] cause for suspicion must be based upon a perceived present real harm or a perceived present imminent risk of harm. **This perception need not always be based entirely upon current, culpable acts of those responsible for the child. The primary purpose of the statute is the protection of the child.** If Ms. Myers, in her professional opinion had reasonable cause to suspect that a child presently is threatened with harm, she must report, whether her suspicion is based upon past acts, present acts, or both.”

Gross v. Myers (1987), 229 Mont. 509, 513, 748 P.2d 459, 461. In *Gross*, the mandatory reporter—a licensed social worker and mental health professional—testified that based on her training and experience she knew child sexual abusers are likely to repeat their behavior. *Id.* at 513. Consequently, despite the fact that the reported abuse occurred in the past, she felt obligated to report the perpetrator to authorities out of a current concern for the safety of the perpetrator’s grandchildren. *Id.* Based on their holding, the Court further concluded that, “the facts establish that the defendant had reasonable cause to suspect that a child may have been the subject of abuse or neglect.” *Id.* at 514.

When Defendants in this case received the written notice of childhood sex abuse in 2004:

1. There were multiple victims;⁷⁰
2. The victims were the perpetrator’s step-children;⁷¹
3. The abuse had continued over a period of 4-5 years until at least the year 2000—4 years earlier;⁷²
4. One of the victims was still a minor;⁷³
5. One of the victims still lived with the perpetrator;⁷⁴
6. The abuse was reported in writing;⁷⁵
7. The Defendants conducted a judicial investigation of the abuse;⁷⁶

⁷⁰ Written Notice of Abuse from Holly McGowan (Ex. V); Notification of Disfellowship for Child Sex Abuse (Ex. W); Documentation that Notice Received (Ex. X); Letter to CCJW 4-21-2004 (Ex. Y).

⁷¹ *Id.*

⁷² *Id.*

⁷³ Peter McGowan was born on April 19, 1986. Deposition of Peter McGowan at 20 (Ex. CC). It is undisputed that Peter and Holly’s reports of abuse to the elders occurred on or before March 19, 2004 when Peter was still 17 years old.

⁷⁴ Peter McGowan Depo at 17, 26 (Ex. CC).

⁷⁵ Written Notice of Abuse from Holly McGowan (Ex. V).

⁷⁶ Notification of Disfellowship for Child Sex Abuse (Ex. W); Documentation that Notice Received (Ex. X); Letter to CCJW 4-21-2004 (Ex. Y).

8. The abuse was confirmed;⁷⁷
9. The perpetrator confessed to the abuse;⁷⁸
10. The Defendants' own documents and experience showed that sexual abusers are likely to repeat their behavior;⁷⁹
11. The perpetrator had grandchildren that would stay at his house and participate in Thompson Falls' religious activities;⁸⁰ and
12. The perpetrator had access to other minors within Defendants' organization.⁸¹

If the reported abuse in *Gross* was sufficient to find that reasonable cause to suspect abuse, the facts of this case clearly establish reasonable cause. At a minimum, the facts certainly create a genuine issue of material fact.

Further, Steve Pieper, a former elder at Thompson Falls and father figure to Peter McGowan testified that Peter came to him initially in 2004 to report the abuse because Peter "was concerned for the congregation and for himself."⁸² Indeed, Mr. Pieper testified that he was concerned for Peter's physical safety and that Peter moved into his home shortly thereafter.⁸³ Instead of reporting the abuse to the police, Mr. Pieper told Peter that he needed to report it to the elders at Thompson Falls, which he then did.⁸⁴ Indeed, Peter McGowan testified that one of the reasons he reported the abuse to the Thompson Falls elders was to prevent other people in the congregation from getting abused.⁸⁵ Likewise, Holly also testified that by reporting the abuse, she hoped to prevent further abuse to others.⁸⁶

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *The Watchtower*, Let Us Abhor What is Wicked, Vol 118, No. 1, January 1, 1997, (Exhibit EE). ("Experience has shown that such an adult may well molest other children"); August 25, 2005 Letter from CCJW to Thompson Falls ("Experience has shown that such an adult may well molest other children") (Ex. DD);

⁸⁰ Alexis Nunez Deposition at 66 (Ex. AA).

⁸¹ August 25, 2005 Letter from CCJW to Thompson Falls (Ex. DD).

⁸² Pieper Depo at 38 (Ex. FF).

⁸³ *Id.* at 42.

⁸⁴ *Id.* at 40.

⁸⁵ Peter McGowan Depo. at 19 (Ex. CC).

⁸⁶ Holly McGowan Depo. at 126 (Ex. BB).

Defendants claim that despite these facts, they “did not have a reasonable suspicion that there was a present imminent risk of harm [to a child].” Defs. Mot. at 9. However, based on all of the evidence above, there is at least a genuine issue of material fact as to whether Defendants’ lack of suspicion was reasonable or not. Therefore, Defendants’ motion for summary judgment that they were not required to report the abuse due to the timing of the 2004 report should be denied.

D. Defendants can be Negligent Per Se Under the Mandatory Reporting Law

Defendants contend that they cannot be liable as mandatory reporters because Montana’s statute only lists “individuals” as mandatory reporters, but not “corporations.” Defs. Mot. at 9. This exact argument was presented in another jurisdiction and was rejected. In *Lee v. Detroit Med Ctr.*, Plaintiff brought claims against a hospital because its employee-doctor failed to report child abuse under the Michigan mandatory reporter statute. *Lee v. Detroit Med. Ctr.* (2009), 285 Mich. App. 51, 66, 775 N.W.2d 326, 335. The employer-hospital argued that “the plain language of [the mandatory reporter statute] limits liability to individual liability only.” *Id.* The Michigan statute states that:

“A person who is required by this act to report an instance of suspected child abuse or neglect and who fails to do so is civilly liable for the damages proximately caused by the failure.”

Mich. Comp. Laws Serv. §722.633 (2018). Defendants argued that the plain language of the statute limits liability to individual liability only. The court rejected Defendant’s argument holding that, “a well-settled common-law principle, such as the doctrine of vicarious liability, cannot be abolished by implication.” *Lee*, 285 Mich. App. 51, 66, 775 N.W.2d 326, 335. The Court found “there is no language in the statute that expressly abolishes the doctrine.” *Id.*

Defendants' arguments are wrong in this case for the same reasons. First, the statute clearly states that "institutions" may be held liable even though the list of mandatory reporters does not specifically identify any institutions. Second, Defendants may be vicariously liable for the negligence of their employees, including when the employee's conduct violates a statute. Nothing in the Montana mandatory reporter law limits the liability of corporations or abolishes vicarious liability.

1. **The Statute Imposes Liability Beyond Just Individual Mandatory Reporters**

The very language of the Montana mandatory reporter law anticipates that Defendants may be liable. The law states "any person, official, or **institution** required by law to report known or suspected child abuse or neglect who fails to do so or **who prevents another person** from reasonably doing so is civilly liable for the damages proximately caused by such failure or prevention." Mont. Code Annot. § 41-3-207. While the list of mandatory reporters only identifies individuals, the statute specifically states that institutions may be held liable. Obviously, the statute recognizes that agents for larger entities may be acting on behalf of those entities or institutions. Indeed the statute acknowledges that while "individuals" may fail to report, their failure may create liability for "institutions."

2. **Defendants' Agents are Mandatory Reporters**

Montana Courts analyze cases "under the respondeat superior doctrine based on Restatement (Second) of Agency § 228." *Margaret Maguire v. The State of Mont.* (1992), 254 Mont. 178, 835 P.2d 755. Liability of the master is based on the principle that when the servant acts, it is as if the master were acting. *Kornec v. Mike Horse Mining & Milling Co.*, 120 Mont. 1, 8, 180 P.2d 252, 256 (1947). The servant or agent must have been acting for the benefit of his master. *Id.* Significantly, "one who volunteers services without an agreement for or expectation

of reward may be a servant of the one accepting such services.” Restat. 2d of Agency, § 225 (2010).

Negligence per se is simply “[n]egligence established as a matter of law,” and negligence per se usually “arises from a statutory violation.” *Giambra v. Kelsey*, 2007 MT 158, ¶46, 338 Mont. 19, 46, 162 P.3d 134, 46 (citing Black's Law Dictionary 1057 (Bryan A. Garner ed., 7th ed., West 1999)).

“Clergy” are mandatory reporters. Mont. Code Annot. § 41-3-201(2)(h). It is undisputed that elders within the Defendant organizations are clergy.⁸⁷ Defendants’ have admitted that, “for purposes of Montana law, the Jehovah Witnesses take the position that elders are clergy members.”⁸⁸

“Clergy” also includes “a member of a religious order who has taken a vow of poverty.” Mont. Code Annot. § 15-6-201(2)(b). The two Defendant organizations are not separate.⁸⁹ They are all part of the Bethel family which is part of the US branch.⁹⁰ All of those working for the organization are “under a vow of poverty.”⁹¹ Therefore, all the employees of the organizations are clergy as well. The branch office (including its service department) and the legal department are all part of the Bethel family.⁹²

The Jehovah’s Witnesses are “a hierarchal religious organization.”⁹³ Their Governing Body has “created definite roles for the membership and governance of congregations of Jehovah’s Witnesses throughout the world.”⁹⁴ Defendants’ agents include the elders and employees within the organizations. The elders and employees carry out the tasks of Defendants.

⁸⁷ Chappel Deposition at 61 (Ex. Z).

⁸⁸ *Id.*

⁸⁹ *Id.* at 41-42, 60.

⁹⁰ *Id.* at 41.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Defendants’ Motion in Limine re Evidence of Standard of Care at 7.

⁹⁴ *Id.*

They elders are appointed and approved by Defendants. Elders are controlled by Defendants. And, elders must follow the policies and procedures established by Defendants.

Defendants' agents, including all elders and employees of the Bethel Family are "clergy" under the mandatory reporter statute. Defendants' agents received notice that a serial child molester was within their organization. Elders at the local congregation level knew of the abuse. Elders at the Service Department of the Branch Office and at the Legal Department were notified of the abuse. None of these clergy members reported the abuse. Their failure to report child abuse violates the mandatory reporting statute.

A principal may be held liable for the acts of its agent based upon vicarious liability. JW elders and Bethel Family employees are agents of the Defendants. The local elders are agents of Defendants as well. Plaintiffs allege that the agents were negligent by not reporting a known child sex abuser. A jury may determine if the failure to report was negligent. If so, the Defendants may be held liable based upon vicarious liability. The failure to report may also violate the mandatory reporter statute. If it does violate the statute, the agents would be negligent and, thus, the Defendants would be negligent as well based upon vicarious liability.

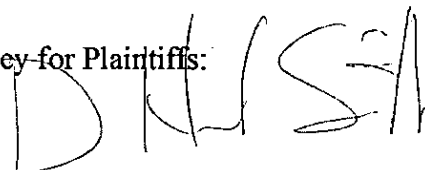
D. Conclusion

The facts presented in this response create a genuine fact issue as to whether 1) Defendants had a reasonable cause to suspect that there was present imminent risk of harm to a child; and 2) Defendants are negligent per se based upon violations of the Montana mandatory reporter statute. For the reasons described above, the timing circumstances of the 2004 report do not allow Defendants to avoid liability. Furthermore, Defendants may be negligent per se based upon the 1998 report and the 2004 report. Defendants' agents and employees are "clergy" and thus mandatory reporters. Defendants may be found liable based upon the actions of their agents

and employees. Montana's mandatory reporter statute anticipates such vicarious liability and does not abrogate it. DATED: This 5th day of July, 2018

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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 5th day of July, 2018.

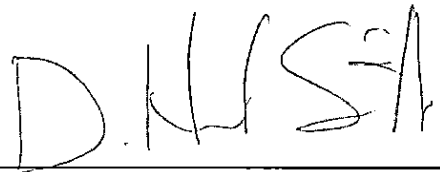
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A handwritten signature in black ink, appearing to read "D. K. Smith", written over a horizontal line.

Neil Smith

Z

1 Q. Do you have someone within the service
2 department that you would say is your superior or
3 leader within your department?

4 A. There is a group of men who are assigned to
5 oversee the -- the service department. Three -- Some
6 of those members are part of the branch committee.

7 Q. All right. Now, is there a legal department
8 within any of these entities we've just described?

9 A. The legal department is not a part of service,
10 they're not in Wallkill, no.

11 Q. What is the legal department a part of?

12 A. I believe they come under the Watchtower of
13 New -- New York Corporation.

14 Q. With your job in the service department, do
15 you ever -- is it fair to say sometimes you utilize the
16 resources of the legal department?

17 A. We correspond with. I mean, in other words,
18 we communicate with them.

19 Q. And do you consider yourself to be represented
20 today by counsel?

21 A. Yes.

22 Q. The counsel that is representing you today,
23 are they part of the Watchtower organization?

24 A. Yes.

25 Q. Now, are you familiar with the process of the

1 legal department telling elders when they do and do not
2 need to report child abuse to law enforcement?

3 **A. I understand, yes.**

4 Q. The legal department that does that, are they
5 part of the Watchtower of New York?

6 **A. Yes, because they would be the ones that would**
7 **be handling the New York call -- or the United States**
8 **calls. Is that what you mean?**

9 Q. Well, I think you may be reading too much into
10 my question. I'm just trying to figure out who they
11 work for.

12 **A. I'm just trying to give you truth.**

13 Q. Okay. Do -- Do lawyers in that department get
14 paid?

15 **A. They -- To my understanding, all of the -- the**
16 **lawyers that are there working in the legal department**
17 **are also a part of the members of the religious --**
18 **religious member of Jehovah's Witnesses just like I am.**

19 Q. Okay. So do the lawyers in the legal
20 department, does somebody pay them?

21 **A. Just like me, they get a stipend.**

22 Q. Okay. Do they get housing?

23 **A. Just like me.**

24 Q. Now, you're saying yours comes from Christian
25 Congregation of Jehovah Witnesses.

1 A. I understand that I work under that
2 corporation, yes.

3 Q. And you're saying the lawyers, their payments
4 come from Watchtower of New York.

5 A. I don't know that they're separate. I think
6 they're a part of the Bethel family, which also makes
7 them a part of the U.S. branch.

8 Q. Okay.

9 A. I think. I mean, I'm sorry, that --

10 Q. Sorry.

11 A. -- I don't know those -- all those details.

12 Q. You threw a new term in on me while I was
13 trying to take notes. Bethel family. What is Bethel
14 family?

15 A. Oh, yeah. They are the -- The U.S. branch.
16 We make up the U.S. branch. Like, we're called
17 Bethelites. So in -- in Wallkill we're -- all of us
18 that are working at Wallkill, we're all Bethel members.

19 Q. All right. What -- What -- Bethel family,
20 what's the name of that corporation?

21 A. It's an unincorporated association of
22 brothers. All of the -- All of the ones who are there
23 as Bethelites, we're -- we're all under the vow of
24 poverty, we're -- we're all a part of the -- that --
25 that group.

1 **A. No.**

2 Q. All right. What about the branch committee?
3 Do they believe those must be men and not women?

4 **A. Again, the reason they're men is because only**
5 **elders would be used in these positions. And so the**
6 **elders -- the only ones who are appointed elders are**
7 **men.**

8 Q. And Jehovah's Witnesses believe those must be
9 men.

10 **A. Those must be elders.**

11 Q. Okay.

12 **A. So they are men, yeah.**

13 Q. And that's based upon the biblical beliefs of
14 the Jehovah's Witnesses.

15 **A. Because of what the Bible says, yes.**

16 Q. And then the -- those same religious beliefs
17 are applied to who is a member of the Watchtower Bible
18 and Tract Society of New York; is that correct?

19 **A. Yes.**

20 Q. Those say -- same faith beliefs apply to the
21 corporation, right?

22 **A. Apply to the men who are appointed to be**
23 **members of the corporation, yes.**

24 Q. Now, are there stockholders in the
25 corporation?

1 Q. We're going to talk about Watchtower New York
2 and CCJW as it relates to the facts of the case, so I
3 want to understand what you and I are on -- are
4 familiar with, make sure we're on the same page.

5 Are you aware that it is undisputed that Max
6 Reyes sexually abused children?

7 **A. Undisputed. So in other words, am I aware**
8 **that he confessed to abusing children.**

9 Q. Yes, sir.

10 **A. Yes, I'm aware of that.**

11 Q. Are you aware that it's undisputed that elders
12 within the Jehovah Witness organization knew Max Reyes
13 admitted to abusing children?

14 MR. TAYLOR: Object to the form of the
15 question.

16 **A. Would you like to reword it?**

17 BY MR. SMITH:

18 Q. No.

19 **A. So what did you ask again?**

20 Q. Do you know that it's undisputed that the guy
21 confessed to abusing kids?

22 **A. Yes, I've already said that.**

23 Q. Okay. Are you aware that it's undisputed that
24 no one -- none of the Jehovah's Witnesses reported Max
25 Reyes to law enforcement?

1 A. I'm aware that the elders did not report it,
2 that is correct.

3 Q. And are you aware that the elders did nothing
4 to prevent him from abusing other kids?

5 MR. TAYLOR: Objection.

6 A. Yeah, I don't know anything about that.

7 BY MR. SMITH:

8 Q. What are you aware of them doing to prevent
9 other children from being abused by him?

10 A. The elders, when they became aware of it, knew
11 that they needed to call the legal department because
12 they needed to learn what they needed to do once they
13 learned as far as reporting it. So my understanding is
14 that they were told what the law was here, and they
15 followed it.

16 Q. So what did the elders do to prevent him from
17 abusing other children?

18 A. They met with him judiciously, and the
19 decision was to disfellowship.

20 Q. And was the decision to disfellowship him, was
21 that done to protect -- to prevent him from abusing
22 other children?

23 A. He was no longer a member of the congregation
24 at that point, and it was a warning for all of
25 Jehovah's Witnesses, yes, that he -- he was not someone

AA

Alexis Nunez

1 A. I do believe it was emailed to me.

2 Q. For example, look at Paragraph No. 37.
3 It says, "Plaintiff Alexis Nunez is the daughter
4 of Plaintiff McGowan's sister. Plaintiff Nunez
5 was raised in a Jehovah's Witness family and
6 attended services at Defendant Thompson Falls
7 Congregation."

8 Were you -- were you attending in
9 Thompson Falls or Polson?

10 A. Both.

11 Q. Both. And for how long did you attend in
12 Thompson Falls?

13 A. Whenever I stayed at my grandmother's.

14 Q. So in the faith of Jehovah's Witnesses,
15 were you visiting Thompson Falls?

16 A. Yes.

17 Q. Okay. So your mother wasn't a member of
18 Thompson Falls Congregation, correct?

19 A. Correct.

20 Q. And you never considered yourself to be a
21 member of Thompson Falls Congregation?

22 A. No.

23 Q. For example, in the faith, if someone
24 said, "Alexis, what congregation do you go to,"
25 what would have been your answer?

Alexis Nunez

1 Did there come a point in time when Max
2 fondled you inappropriately?

3 A. Yes.

4 Q. Okay. And did it begin gradually and
5 escalate?

6 A. Yes.

7 Q. Okay.

8 A. Yes.

9 Q. Did it begin with fondling above the
10 waist? Below the waist?

11 A. Both. I can't remember one over the
12 other.

13 Q. And did it progress and become more and
14 more invasive, or did it just start with fondling?

15 MR. LEONOUDAKIS: Objection.

16 A. I guess I don't understand that question.

17 Q. All right. So your recollection is that
18 there was both fondling above and below the waist.
19 Was there digital penetration?

20 A. Not -- no, not penetration.

21 Q. So fondling?

22 A. Yes.

23 Q. Okay. Did he ever penetrate you with his
24 penis?

25 A. No.

Alexis Nunez

1 Q. No. And when Max fondled you, was it
2 above the clothing or under the clothing?

3 A. Both.

4 Q. Did Max ever engage in oral sex?

5 A. I don't think so.

6 Q. Did Max ever force you to perform oral
7 sex on him?

8 A. I don't remember oral sex. I think he
9 made me kiss his member once, but I don't remember
10 oral.

11 Q. Okay. And you think that happened at
12 least on one occasion?

13 A. (Nods head affirmatively.)

14 Q. Okay.

15 MR. MOLLOY: You have to say "Yes."

16 A. Yes.

17 MR. TAYLOR: Thank you.

18 Q. (BY MR. TAYLOR) Is that the extent of
19 the abuse that Max perpetrated on you?

20 A. I -- can you rephrase the question,
21 please?

22 Q. Okay. I hate to rehash it, --

23 A. No, you're fine.

24 Q. -- but bear with me, and I'll try to
25 rehash it as you've told me. You've indicated

Alexis Nunez

1 that there was fondling both above and below the
2 waist, above and underneath the clothing; --

3 A. Correct.

4 Q. -- is that correct? Okay. You mentioned
5 that there was no digital or vaginal penetration;
6 is that correct?

7 A. Correct.

8 Q. And you mentioned that at least on one
9 occasion he made you kiss his penis; is that
10 correct?

11 A. Correct.

12 Q. Okay. Is -- is that the -- was that the
13 normal abuse that you suffered at the hands of
14 Max?

15 A. Yes.

16 Q. Okay. Did this occur -- you said you got
17 back from Montana, that would have been 2002,
18 somewhere around that time frame?

19 A. (Nods head affirmatively.)

20 MR. MOLLOY: Yes?

21 A. Yes.

22 Q. Did these events occur monthly, weekly,
23 in 2002, if you remember?

24 A. I believe it was weekly.

25 Q. Okay. Did there ever come a point when

Alexis Nunez

1 it was no longer weekly?

2 A. Yes.

3 Q. And when did that occur?

4 A. When we moved in with my now stepfather,
5 we were not traveling every weekend.

6 Q. Do you have a year in mind of when that
7 might have occurred? Okay, let's see, and maybe I
8 can help you based on what we heard yesterday.

9 MR. LEONOUDAKIS: I think you can answer
10 the question first before. Reask the question
11 first before he gets --

12 A. Oh.

13 MR. LEONOUDAKIS: Hold on, Alexis. Would
14 you read the last question, please.

15 [REQUESTED PORTION READ BACK BY THE
16 COURT REPORTER]

17 A. I believe that would have been 2003/2004.

18 Q. Around the time your mother was
19 disfellowshipped from the congregation?

20 A. Yes, I believe so.

21 Q. Because she moved in with Castleberry,
22 Mr. Castleberry?

23 A. I -- I mean, I don't have information on
24 that.

25 Q. When your mom moved in with Mr.

Alexis Nunez

1 Castleberry, you moved in too?

2 A. Correct.

3 Q. Okay. And so around that time frame when
4 you made the move, it ceased being weekly?

5 A. Correct.

6 Q. How often would it occur after that?

7 A. Well, we would go over to my
8 grandmother's about once every month, and I can't
9 say it happened every time we were there, but I do
10 believe it was at least every other time we were
11 there.

12 Q. So 12 months in a year?

13 A. Six months, so --

14 Q. Okay. Did it ever reach a point, after
15 you moved into the home with Mr. Castleberry, that
16 it became less frequent than six times a year?

17 A. Yes. Yes.

18 Q. And do you have an awareness of how old
19 you might have been or what year that might have
20 been where it became even less frequent?

21 A. I would say 2007, 2006.

22 Q. And what happened in that time frame that
23 caused it to become less frequent?

24 A. I think it was just kind of -- I was
25 losing interest in the church, and so I didn't -- 76

BB

Holly McGowan

1 and report it, it was to the elders.

2 Q. And which elders do you think you spoke
3 to about the sexual abuse?

4 A. Don Herberger, Ken Riech, Ken Wilson.

5 Q. And you think that that was somewhere
6 around 1997?

7 A. Yes.

8 Q. And what did you tell those elders?

9 A. There was a couple different occasions.

10 Q. What was the first occasion you recall?

11 A. We had gone to Don Herberger's house and
12 had disclosed, as I mentioned previously, the
13 physical and verbal abuse as well, and that there
14 was more, that there was abuse of a sexual nature.

15 Q. So was the physical, verbal, and sexual
16 all disclosed at the same time, or was the
17 physical and verbal disclosed first/sexual later?

18 A. In that scenario?

19 Q. Did it all occur in the same day, or when
20 you first talked to any elder in the Thompson
21 Falls Congregation, did you disclose all three
22 types of abuse, or just physical and verbal?

23 A. No, all three.

24 Q. All three. And then in your subsequent
25 meeting, and correct me if I'm wrong, you've had

Holly McGowan

1 two meetings, right, --

2 A. Yes.

3 Q. -- where you met with Don by himself, and
4 then you met with more than one elder --

5 A. Yes.

6 Q. -- the second time? So on both
7 occasions, you disclosed all of the abuse?

8 A. Yes.

9 Q. Okay. When you met with Don, was anyone
10 else present?

11 A. Yes.

12 Q. Who else was present?

13 A. My sister and my brother.

14 Q. And were they party to the conversation,
15 or were they just in the room?

16 A. They were in the room and it was part of
17 the conversation.

18 Q. So they heard the conversation?

19 A. Yes.

20 Q. Okay. Did they participate in the
21 conversation?

22 A. Yes.

23 Q. And do you recall, did Peter say he was
24 abused too?

25 A. No.

Holly McGowan

1 Q. Okay. Did you --

2 A. Not sexually.

3 Q. Okay. What did he -- what did he
4 disclose?

5 A. He did disclose physical and verbal as
6 well.

7 Q. Okay. And what did Ivy say?

8 A. That she was really concerned because I
9 had said that there was more.

10 Q. Okay.

11 A. And she knew what it was about, that it
12 was sexual and had asked me, and she wanted me to
13 be able to tell Don and try to get it stopped.

14 Q. So prior to your meeting with Don, had
15 you already talked to Ivy about it?

16 A. Just, like, briefly. That's why we had
17 this meeting --

18 Q. Okay.

19 A. -- and why she went with us.

20 Q. Who organized the meeting?

21 A. She made the arrangements for us to be
22 able to talk to Don.

23 Q. Okay. And you mentioned that she knew
24 that there was more?

25 A. Yes.

Holly McGowan

1 Q. And was that something that -- well, that
2 more was the sexual; is that correct?

3 A. Yes.

4 Q. Is that what -- did you tell Don about
5 that?

6 A. Yes.

7 Q. Okay. And where was your mom when this
8 conversation occurred?

9 A. I don't know. She wasn't present.

10 Q. Okay. And --

11 A. My aunt, I don't remember if she was
12 there in the house, but I believe she was -- well,
13 I know she was in the car at least, because she
14 had driven us all.

15 Q. So Irene --

16 A. Iris.

17 Q. I'm sorry. Iris drove you to Don's
18 house?

19 A. Yes.

20 Q. And is Iris still alive?

21 A. I don't know.

22 Q. Okay. And did Iris live in Plains too,
23 or --

24 A. Yes.

25 Q. So Ivy set up the ride with Iris to take

Holly McGowan

1 you to Don's house?

2 A. Yes. Yeah, they took us.

3 Q. Did Iris know why you wanted to talk to
4 Don?

5 A. She knew of verbal and physical. She did
6 not know the extent or about sexual.

7 Q. All right. And what does Don tell you in
8 response to your disclosure of verbal, physical,
9 and sexual abuse?

10 A. He wanted to have another elder present.

11 Q. Okay. So did that end the meeting, or
12 did you continue the meeting? Did another elder
13 show up?

14 A. Yeah, that ended that meeting.

15 Q. And your understanding was that Don was
16 an elder at the time?

17 A. Yes.

18 Q. Okay. And was Steve Pieper an elder at
19 the time?

20 A. I don't believe so.

21 Q. Okay. How soon after your meeting with
22 Don did you meet with Ken and Glenn?

23 A. It was whatever the next meeting in
24 Thompson Falls was.

25 Q. So the next meeting didn't happen at

Holly McGowan

1 Don's home; it happened at the Kingdom Hall?

2 A. Correct.

3 Q. And at the next meeting, was it before or
4 after the meeting that you met with the elders?

5 A. What do you mean?

6 Q. Before the meeting began, or --

7 A. Oh, after.

8 Q. After the meeting?

9 A. Yes.

10 Q. Okay. So after your worship, --

11 A. Yes.

12 Q. -- then you met with the elders?

13 A. Yes.

14 Q. Was anyone else present with you in that
15 meeting?

16 A. Present with me or -- and the elders?

17 Q. With you, other than the elders?

18 A. No.

19 Q. Okay. And in 1997, you would have been?

20 A. I was approximately 13.

21 Q. Okay. And had you ever met with any
22 elders before?

23 A. Yes.

24 Q. In connection with?

25 A. Various things. Publishing, --

Holly McGowan

1 Q. Okay.

2 A. -- you know, the theocratic ministry
3 school, if I had been in trouble for whatever, you
4 know, again, fighting with my mom or being
5 disrespectful, those type of offenses.

6 Q. They would try to reason with you?

7 A. Yeah, I'd have a lecture.

8 Q. Okay. And would your mom be present for
9 any of those?

10 A. Occasionally.

11 Q. Okay. And they would meet with you
12 sometime without your mom present?

13 A. Sometimes, yes.

14 Q. Okay. And on this occasion they met with
15 you without your mom present?

16 A. Correct.

17 Q. Okay. And what did you tell Ken and
18 Glenn?

19 A. I had started to tell them what was
20 happening, and they said that they understand that
21 there are some issues going on, and I didn't even
22 get a chance to go into details because I was
23 immediately reprimanded with scriptures for either
24 being immodest in my dress, inappropriate,
25 flirtatious, causing problems in the home, and

Holly McGowan

1 trying to divide my mom and Max. And so instead,
2 I just shut down because I was in trouble instead.

3 Q. So you said you didn't get to disclose
4 all the details?

5 A. No.

6 Q. So what did you tell Ken and Glenn?

7 A. That Max had been abusing us.

8 Q. And did you use the word "sexual abuse"?

9 A. I said along the lines of sexual
10 inappropriateness.

11 Q. Sexual inappropriateness?

12 A. Along those lines.

13 Q. Okay. And you said you weren't able to
14 give any more details other than that?

15 A. I wasn't given the opportunity, no.

16 Q. Okay. Had your mom ever accused you of
17 trying to break up Max and her?

18 A. Yes.

19 Q. Okay. And why -- why did she say that?

20 A. I don't know.

21 Q. Okay. It bothered you?

22 A. Yes.

23 Q. Did you feel like your mom had chosen Max
24 over the kids?

25 A. No.

Holly McGowan

1 Q. Okay.

2 A. At that time, no.

3 Q. At that time. Later?

4 A. (Nods head affirmatively.)

5 Q. Okay. How long did your discussion last
6 with first Don? How long did that conversation
7 last?

8 A. I would approximate a half-hour to an
9 hour.

10 Q. Okay. And your meeting with Ken and
11 Glenn?

12 A. Probably closer to an hour.

13 Q. An hour, okay. In 1997 or in 1998, were
14 you in a relationship with Steven -- or rather,
15 Brandon Pieper?

16 A. We were very good friends from childhood,
17 yes.

18 Q. Okay. Did you ever have any sexual
19 contact?

20 A. No.

21 Q. Were you and Brandon ever -- did you and
22 Brandon ever fondle each other?

23 A. No.

24 Q. Okay. Did you and Brandon ever sneak out
25 of the home?

Holly McGowan

1 upset if she didn't believe me because it would
2 have made -- it would be made known soon enough.
3 I do think, however, that deep down she knows
4 thing truth even if she doesn't admit it, not even
5 to herself."

6 And when you -- what do you mean by the
7 phrase "be made known"? Was it -- it wasn't known
8 prior to your writing it or disclosing it to your
9 mother?

10 A. That I was opening it up and trying to,
11 you know, make this known so it can be stopped,
12 not just for myself but for others.

13 Q. The last paragraph says, "I want" -- when
14 you said "others," who'd you have in mind? Alexis
15 maybe?

16 A. No, I had no idea at that time about
17 Alexis because I moved away.

18 Q. Okay.

19 A. By "others," I mean other children within
20 Jehovah's Witnesses, as this is clearly a pandemic
21 issue.

22 Q. Okay. And what's your basis for saying
23 that?

24 A. There are many cases.

25 Q. Name one.

CC

1 A. I think she was kind of confused, you know,
2 whether -- whether to believe Max or to believe me, you
3 know.

4 Q. Yeah. And your mother's still married to Max,
5 right?

6 A. She is.

7 Q. Okay. And they still live together?

8 A. Yes.

9 Q. And they no longer live in the United States;
10 is that right?

11 A. From what it sounds like from -- I talked to
12 her, like, three weeks ago, and sounds like they're
13 just living -- they're going to be coming back.
14 They're going to be going back and forth. I don't
15 know.

16 Q. Between Mexico --

17 A. Yeah.

18 Q. -- and the United States?

19 A. Yeah.

20 Q. Okay. Where were you living at the time of
21 these reports in 2004?

22 A. I was living in the house with -- with Max and
23 Joni.

24 Q. Okay. And you said at the time that you
25 reported this the abuse had since stopped, right?

1 out?"

2 **A. So that other people are aware of -- of his**
3 **actions.**

4 Q. Other members of your community?

5 **A. Yeah.**

6 Q. Other members of the congregation?

7 **A. Um-huh.**

8 Q. And you didn't want other people to get abused
9 by Max, right?

10 **A. Exactly, yeah.**

11 Q. I want to get into a little just background
12 information, very basic stuff.

13 Where were you born, Peter?

14 **A. I was born in Plains --**

15 Q. Okay.

16 **A. -- Montana.**

17 Q. And what's your birth date?

18 **A. April 19th, 1986.**

19 Q. Happy late birthday.

20 **A. I don't --**

21 Q. Mine was yesterday.

22 **A. I don't celebrate --**

23 Q. Mine was yesterday.

24 **A. -- my birthday.**

25 Q. You don't celebrate birthdays, that's right.

1 A. 'Cuz that -- the things I talked about with
2 Don were not the exact same things that I talked about
3 with Steve.

4 Q. Right.

5 A. Other than disclosing that the abuse had
6 happened, you know. I'm -- You know, I didn't go into
7 any more detail with them.

8 Q. Okay. Is there a reason that your lawyer's
9 not here with you today?

10 A. He didn't feel he needed to be.

11 Q. Okay. Is there a reason that you chose to
12 tell the elders of the church rather than go to law
13 enforcement?

14 A. Yeah, I trusted them more.

15 Q. You trusted the elders more than you do law
16 enforcement?

17 A. Um-huh. I felt they were -- they were -- You
18 know, they were closer friends.

19 Q. Sure.

20 A. So, I mean, they weren't strangers.

21 Q. When did you leave the family home?

22 A. Immediately after. I was -- It was
23 probably -- I think I was there for two months after.
24 It was pretty -- It was pretty quick. It was, like,
25 two -- two to three months after this had -- after I

DD

Christian Congregation
of Jehovah's Witnesses

2821 Route 22, Patterson, NY 12563-2237 Phone: (845) 306-1100

SDJ:SSM August 25, 2005

KR
Don
Shum

BODY OF ELDERS
THOMPSON FALLS CONGREGATION OF
JEHOVAH'S WITNESSES, THOMPSON FALLS, MT
C/O KENNETH RIECH
PO BOX 562
PLAINS MT 59859-0562

Dear Brothers:

Thank you for notifying us of the reinstatement of Maximo Nava-Reyes on June 16, 2005. Since he was disfellowshipped for sexually molesting his stepchildren, we are providing specific comments on how the congregation should view him. If Brother Nava-Reyes is not associated with your congregation, please promptly return this letter and inform us of his current whereabouts so that we can contact the appropriate body of elders.

For good reason, the January 1, 1997, issue of *The Watchtower*, page 29, states: "A dedicated adult Christian who falls into the sin of child sexual abuse reveals an unnatural fleshly weakness. Experience has shown that such an adult may well molest other children. True, not every child molester repeats the sin, but many do. And the congregation cannot read hearts to tell who is and who is not liable to molest children again. (Jeremiah 17:9) Hence, Paul's counsel to Timothy applies with special force in the case of baptized adults who have molested children: 'Never lay your hands hastily upon any man; neither be a sharer in the sins of others.' (1 Timothy 5:22) For the protection of our children, a man known to have been a child molester does not qualify for a responsible position in the congregation." Therefore, in the best interest of the congregation and its members, neither the local congregation nor any legal corporations used by Jehovah's Witnesses should be viewed as delegating authority or position to one who is a known child molester.

Now that we have given careful and prayerful consideration to all the factors in the case of Brother Nava-Reyes, we believe that what is stated in the foregoing applies to him. Hence, you should not extend to him any specific responsibility that could be construed as an assigned duty, even though some assignments might be considered minor. He should not be used to handle accounts, literature, magazines, or territories. Nor would he be used as an attendant, microphone handler, to operate sound equipment, to represent the congregation in prayer, or to present "Announcements" on the Service Meeting. He would not be used as the reader at the Congregation Book Study or *Watchtower* Study, nor to conduct a meeting for field service. It would be advisable not to have a book study in his home. And, he would not qualify to auxiliary or regular pioneer. Whereas he could volunteer to assist with general care of the Kingdom Hall where he attends meetings, he could not be approved to work on other Kingdom Halls or Assembly Halls. It will be many years, if ever, before privileges of service can be restored. Even if in the distant future you were considering him for the privileges mentioned in this paragraph, you should contact the branch office.

TF000151

Please be reminded of the following direction that appears in the March 14, 1997, confidential letter to all bodies of elders regarding known child molesters: "Individuals who have manifested a weakness in this regard should be sensitive to their need not to be alone with children. They should refrain from holding children or displaying other forms of affection for them. It would be appropriate for elders to give kindly cautions to any who are doing things that may be a temptation or a cause for concern to others in the congregation." (1 Corinthians 10:12, 32) This would include not allowing children (other than his own) to spend the night in his home, not working in field service with a child, not cultivating friendships with children, and the like.

Additionally, former child abusers should not work alone in the field ministry. They should always be accompanied by another adult publisher who is in good standing in the congregation. This also applies to working with their own minor children in the field ministry. If they choose to do so, there still should always be another adult present. This serves to protect the minor who might answer the door, the former abuser and the reputation of the congregation.

Lastly, in harmony with the direction in the August 1, 1995, and March 14, 1997, letters to all bodies of elders, if Brother Nava-Reyes moves to another congregation, you will need to write to the body of elders and "clearly and discreetly inform the elders in the new congregation about the problem," outlining the individual's background, the restrictions imposed, and any needed cautions. You should also send us a copy of your letter so that we will know his whereabouts.

Certainly, in view of the problems Brother Nava-Reyes has had, the family will benefit from regular encouragement and shepherding from you brothers. In conclusion, we thank you in advance for loyally adhering to what we have stated in this letter, and we send an expression of our warm Christian love.

Your brothers,

*Christian Congregation
of Jehovah's Witnesses*

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Let Us Abhor What Is Wicked

JEHOVAH is a holy God. In ancient times he was "the Holy One of Israel," and as such he demanded that Israel be clean, unsullied. (Psalm 89:18) He told his chosen people: "You must prove yourselves holy, because I am holy." (Leviticus 11:45) Anyone who wanted to "ascend into the mountain of Jehovah" had to be "innocent in his hands and clean in heart." (Psalm 24:3, 4) That meant more than merely avoiding sinful acts. It meant "the hating of bad."—Proverbs 8:13.

Lovingly, Jehovah laid down detailed laws so that the nation of Israel could identify and avoid wrongdoing. (Romans 7:7, 12) These laws included strict guidelines on morality. Adultery, homosexual acts, incestuous relationships, and bestiality were all identified as unholy spiritual pollutants. (Leviticus 18:23; 20:10-17) Those guilty of such degraded acts were cut off from the nation of Israel.

When the congregation of anointed Christians became "the Israel of God," similar moral standards were laid down for them. (Galatians 6:16) Christians too were to "abhor what is wicked." (Romans 12:9) Jehovah's words to Israel also applied to them: "You must be holy, because I am holy." (1 Peter 1:15, 16) Such unholy practices as fornication, adultery, homosexual acts, bestiality, and incest were not to corrupt the Christian congregation. Those refusing to stop engaging in such things would be excluded from God's Kingdom. (Romans 1:26, 27; 2:22; 1 Corinthians 6:9, 10; Hebrews 13:4) In these "last days," the same standards apply to the "other sheep."

(2 Timothy 3:1; John 10:16) As a result, anointed Christians and other sheep make up a clean and wholesome people, able to carry the name of their God as Jehovah's Witnesses.—Isaiah 43:10.

Keeping the Congregation Clean

In contrast, the world condones all kinds of immorality. Although true Christians are different, they should not forget that many who now serve Jehovah were once in the world. There are many who, before they knew our holy God, saw no reason not to indulge the desires and fantasies of their fallen flesh, wallowing in a "low sink of debauchery." (1 Peter 4:4) The apostle Paul, after describing the disgusting practices of degraded people of the nations, said: "That is what some of you were." Still, he went on to say: "But you have been washed clean, but you have been sanctified, but you have been declared righteous in the name of our Lord Jesus Christ and with the spirit of our God."—1 Corinthians 6:11.

What a comforting statement that is! Whatever a person did earlier in life, he changes when the glorious good news about the Christ has an effect on his heart. He exercises faith and dedicates himself to Jehovah God. From then on he lives a morally pure life, washed clean in God's eyes. (Hebrews 9:14) The sins that he committed previously are pardoned, and he can "stretch forward to the things ahead."—Philippians 3:13, 14; Romans 4:7, 8.

* See "Questions From Readers" in the May 1, 1996, issue of *The Watchtower*.

Jehovah forgave repentant David for murder and adultery, and He forgave repentant Manasseh for immoral idolatry and much bloodshed. (2 Samuel 12:9, 13; 2 Chronicles 33:2-6, 10-13) We can be truly grateful that he is prepared to forgive us too if we repent and approach him in sincerity and humility. Still, despite Jehovah's forgiving David and Manasseh, these two men—and Israel with them—had to live with the consequences of their sinful acts. (2 Samuel 12:11, 12; Jeremiah 15:3-5) In a similar way, while Jehovah forgives repentant sinners, there may be consequences of their actions that cannot be avoided.

Inevitable Consequences

For example, a man who lives a life of immoral debauchery and contracts AIDS may accept the truth and turn his life around to the point of dedication and baptism. Now he is a spiritually clean Christian having a relationship with God and a wonderful hope for the future; but he still has AIDS. He may eventually die of the disease, a sad but inescapable consequence of his former conduct. For some Christians the effects of former gross immorality may persist in other ways. For years after their baptism, perhaps for the rest of their lives in this system of things, they may have to fight urges in their flesh to return to their previous immoral life-style. With the help of Jehovah's spirit, many succeed in resisting. But they have to wage a constant battle.—Galatians 5:16, 17.

Such ones do not sin as long as they control their urges. But if they are men, they may wisely decide not to 'reach out' for responsibility in the congregation while still having to struggle with powerful fleshly impulses. (1 Timothy 3:1) Why? Because they know the trust that the congregation puts in the elders. (Isaiah 32:1, 2; Hebrews

13:17) They realize that the elders are consulted on many intimate matters and have to handle sensitive situations. It would be neither loving, wise, nor reasonable for one waging a constant fight with unclean fleshly desires to reach out for such a responsible position.—Proverbs 14:16; John 15:12, 13; Romans 12:1.

For a man who was a child molester before he was baptized, there may be another consequence. When he learns the truth, he repents and turns around, not bringing that cruel sin into the congregation. He may thereafter make fine progress, completely overcome his wrong impulses, and even be inclined to 'reach out' for a responsible position in the congregation. What, though, if he still has to live down notoriety in the community as a former child molester? Would he "be irreprehensible, . . . have a fine testimony from people on the outside, . . . [be] free from accusation"? (1 Timothy 3:1-7, 10; Titus 1:7) No, he would not. Hence, he would not qualify for congregation privileges.

When a Dedicated Christian Sins

Jehovah understands that we are weak and that even after baptism we may fall into sin. The apostle John wrote to Christians of his day: "I am writing you these things that you may not commit a sin. And yet, if anyone does commit a sin, we have a helper with the Father, Jesus Christ, a righteous one. And he is a propitiatory sacrifice for our sins, yet not for ours only but also for the whole world's." (1 John 2:1, 2) Yes, on the basis of Jesus' sacrifice, Jehovah will forgive baptized Christians who fall into sin—if they truly repent and abandon their wrong course.

An example of this was seen in the first-century congregation at Corinth. The

apostle Paul heard of a case of incestuous fornication in that young congregation, and he gave instructions that the man involved be disfellowshipped. Later, the sinner repented, and Paul exhorted the congregation to reinstate him. (1 Corinthians 5:1, 13; 2 Corinthians 2:5-9) Thus, by the healing power of Jehovah's loving kindness and the great value of Jesus' ransom sacrifice, the man was cleansed of his sin. Similar things may happen today. Again, though, even if a baptized person who commits a serious sin repents and is forgiven in Jehovah's eyes, there may still be ongoing consequences of his sin.—Proverbs 10:16, 17; Galatians 6:7.

For example, if a dedicated girl commits fornication, she may bitterly regret her act and eventually be restored to spiritual health with the help of the congregation. But what if she is pregnant because of her immorality? Then her whole life has been inescapably changed by what she did. A man who commits adultery may repent and not be disfellowshipped. But his innocent mate has Scriptural grounds to divorce him, and she may choose to do so. (Matthew 19:9) If she does, the man, although forgiven by Jehovah, will live the rest of his life with this grave consequence of his sin.—1 John 1:9.

What of a man who unlovingly divorces his wife in order to marry another woman? Perhaps he will eventually repent and be reinstated in the congregation. Over the years he may make progress and "press on to maturity." (Hebrews 6:1) But as long as his first wife lives without a mate, he will not qualify to serve in a responsible position in the congregation. He is not "a husband of one wife" because he had no Scriptural right to divorce his first wife.—1 Timothy 3:2, 12.

Are these not powerful reasons why a Christian should cultivate an abhorrence of what is wicked?

What of a Child Molester?

What if a baptized adult Christian sexually molests a child? Is the sinner so wicked that Jehovah will never forgive him? Not necessarily so. Jesus said that 'blasphemy against the holy spirit' was unforgivable. And Paul said that there is no sacrifice for

While Jehovah forgives repentant sinners, there may be consequences of their actions that cannot be avoided

sins left for one who *practices* sin willfully despite knowing the truth. (Luke 12:10; Hebrews 10:26, 27) But nowhere does the Bible say that an adult Christian who sexually abuses a child—whether incestuously or otherwise—cannot be forgiven. Indeed, his sins can be washed clean if he repents sincerely from the heart and turns his conduct around. However, he may still have to struggle with the wrong fleshly impulses he cultivated. (Ephesians 1:7) And there may be consequences that he cannot avoid.

Depending on the law of the land where he lives, the molester may well have to serve a prison term or face other sanctions from the State. The congregation will not protect him from this. Moreover, the man has revealed a serious weakness that henceforth will have to be taken into account. If he seems to be repentant, he will be encouraged to make spiritual progress, share in the field service, even have parts in the Theocratic Ministry School and non-teaching parts in the Service Meeting. This does not mean, though, that he will qualify to serve in a position of responsibility in the congregation. What are the Scriptural reasons for this?

For one thing, an elder must be "self-controlled." (Titus 1:8) True, none of us have perfect self-control. (Romans 7:21-25) But a dedicated adult Christian who falls into the sin of child sexual abuse reveals an unnatural fleshly weakness. Experience has shown that such an adult may well molest other children. True, not every child molester repeats the sin, but many do. And the congregation cannot read hearts to tell who is and who is not liable to molest children again. (Jeremiah 17:9) Hence, Paul's counsel to Timothy applies with special force in the case of baptized adults who have molested children: "Never lay your hands hastily upon any man; neither be a sharer in the sins of others." (1 Timothy 5:22) For the protection of our children, a man known to have been a child molester does not qualify for a responsible position in the congregation. Moreover, he cannot be a pioneer or serve in any other special, full-time service.—Compare the principle at Exodus 21:28, 29.

Some may ask, "Have not some committed other types of sin and apparently repented, only to repeat their sin later?" Yes, that has happened, but there are other fac-

tors to consider. If, for example, an individual makes immoral advances to another adult, the adult should be able to resist his or her advances. Children are much easier to deceive, confuse, or terrorize. The Bible speaks of a child's lack of wisdom. (Proverbs 22:15; 1 Corinthians 13:11) Jesus used children as an example of humble innocence. (Matthew 18:4; Luke 18:16, 17) The innocence of a child includes a complete lack of experience. Most children are open, eager to please, and thus vulnerable to abuse by a scheming adult whom they know and trust. Therefore, the congregation has a responsibility before Jehovah to protect its children.

Well-trained children learn to obey and honor their parents, the elders, and other adults. (Ephesians 6:1, 2; 1 Timothy 5:1, 2; Hebrews 13:7) It would be a shocking perversion if one of these authority figures were to misuse that child's innocent trust so as to seduce or force him or her to submit to sexual acts. Those who have been sexually molested in this way often struggle for years to overcome the resulting emotional trauma. Hence, a child molester is subject to severe congregational discipline and restrictions. It is not his status as an authority figure that should be of concern but, rather, the unblemished purity of the congregation.—1 Corinthians 5:6; 2 Peter 3:14.

If a child molester sincerely repents, he will recognize the wisdom of applying Bible principles. If he truly learns to abhor what is wicked, he will despise what he did and struggle to avoid repeating his sin. (Proverbs 8:13; Romans 12:9) Further, he will surely thank Jehovah for the greatness of His love, as a result of which a repentant sinner, such as he is, can still worship our holy God and hope to be among "the upright" who will reside on earth forever.—Proverbs 2:21.

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1 rule to require?

2 **A. That in order to move ahead with a proceeding,**
3 **there needs to be two witnesses to the fact of**
4 **something that has happened, or a confession.**

5 Q. And has the two-witness rule been in place
6 since you've been a Jehovah's Witness?

7 **A. As far as I know.**

8 Q. Okay. And do you still abide by that rule?

9 **A. Yes.**

10 Q. Okay. And is this a rule that's taught to the
11 entire congregation?

12 **A. Pretty much.**

13 Q. Okay.

14 **A. Yes.**

15 Q. Even to children?

16 **A. Yeah.**

17 Q. Okay.

18 **A. Yeah, sure.**

19 Q. And you're aware, Mr. Pieper, that Max Reyes
20 was disfellowshipped in 2004?

21 **A. Yes.**

22 Q. And do you understand why he was
23 disfellowshipped?

24 **A. Yes.**

25 Q. What do you understand to be --

1 A. Again --

2 Q. -- to be the reason?

3 A. Again, the inappropriate behavior sexually
4 between him and Peter McGowan.

5 Q. Okay. And how do you know that?

6 A. Peter McGowan came to our home, and he was
7 concerned about what had happened to him.

8 Q. When did that happen?

9 A. That happened in 2004.

10 Q. Came to your home personally, the Pieper
11 household?

12 A. Yes.

13 Q. And you were -- you were no longer an elder at
14 that time --

15 A. No.

16 Q. -- were you?

17 A. No.

18 Q. What did Peter McGowan tell you?

19 A. He told me that Max had inappropriately
20 touched him. He talked to my daughter first, and then
21 they brought it to my attention. She told him to bring
22 it to my attention, so I -- he told me that Max had
23 been basically fondling him, and he didn't go into any
24 deep, deep, you know, descriptive things on it other
25 than that Max was inappropriately touching him in

1 places that he shouldn't have been, and he was
2 concerned for the congregation and for himself, and
3 wanted to know how to handle that congregationally.

4 Q. Okay. And what did you tell him about how to
5 handle that?

6 A. I told him he needed to get a hold of the
7 brothers in the Thompson Falls congregation, which we
8 were no longer a part of, we were in St. Ignatius, and
9 talk to those brothers there, which he did.

10 Q. Did you ask -- Did you -- Did you call the
11 cops at all?

12 A. No.

13 Q. Did you ask Peter if you -- if he wanted you
14 to call the cops?

15 A. No, we didn't really get into that because he
16 was there for theocratic direction, not for that re --
17 not for that direction.

18 Q. How do you know that?

19 A. Because that's what he was asking for.

20 Q. He specifically asked you for theocratic
21 direction?

22 A. Well, for what to do within the congregation,
23 yeah. I don't know if he used the word theocratic, but
24 it was congregationally that he was concerned with.

25 Q. Why did Peter choose to come to you, do you

1 know?

2 A. Peter and I -- I kind of took him under my
3 wings when we were in the Thompson Falls congregation
4 because his biological father had some real severe
5 problems. There was the divorce because of the severe
6 problems he had with alcohol and not being faithful,
7 and, so, he was disfellowshipped, and it was just to
8 kind of take him under my wings because he was, as the
9 Scriptures bring out, a fatherless boy, basically, and,
10 so, he felt close to our family because of that.

11 Q. Did you ever talk to Peter again after this
12 initial meeting?

13 A. Not really about that.

14 Q. Okay.

15 A. You know, we'd seen each other, of course,
16 and -- but the way you handle something like that is
17 you hand that over to the congregation that they're
18 associated with, and then there's a confidentiality
19 course that you go by, and the other thing is is you
20 don't get involved with the judicial actions of another
21 congregation. And me being an elder, I didn't want to
22 know any more particulars anyway. It needed to stay
23 with those that were qualified to handle it and where
24 he can get the best help.

25 Q. And you thought that the best help he could

1 get was through the congregation?

2 A. The theocratic help, yes.

3 Q. What about for his actual physical safety?
4 Were you worried about that at all?

5 A. Yes. In fact, he came and he lived with us
6 for a few days as he was going from -- from Thom --
7 from -- well, Plains. From there to our place; he
8 stayed with us for a few days as he was relocating in
9 Polson.

10 Q. Okay. And you said you were concerned with
11 confidentiality; is that right?

12 A. Yeah.

13 Q. And this is even though you weren't an elder
14 at the time that Peter came to you, right? You were
15 not an elder --

16 A. Right --

17 Q. -- when Peter came --

18 A. Right. Exactly, yeah.

19 Q. Okay.

20 A. That the information was given -- When I'm
21 talking about confidentiality, that would have been the
22 information between Peter and the elders, and that's
23 something that I didn't feel that I should be digging
24 into what was going on at the time because they were
25 handling it. It wasn't my place.

GG

1 **A. Yes.**

2 Q. And you trusted the elders --

3 **A. Yes.**

4 Q. -- is that right?

5 You had a personal relationship with Don
6 Herberger?

7 **A. Yeah.**

8 Q. Okay.

9 **A. Um-huh.**

10 Q. Did Don ask you to write a letter of any kind?

11 **A. No.**

12 Q. Did you ever write down the allegations about
13 Max abusing you?

14 **A. No.**

15 Q. Okay.

16 **A. I have never wrote anything down.**

17 Q. What did you hope that would happen by
18 reporting this? What did you hope the elders would do?

19 **A. What do you mean?**

20 Q. Well, you all decided that you wanted to
21 report this to the elders, right?

22 **A. Yeah.**

23 Q. What was the reason for reporting it?

24 **A. To get the truth out.**

25 Q. Okay. What do you mean by "get the truth