

HON. JAMES A. MANLEY  
20<sup>th</sup> Judicial District Court  
Lake County Courthouse  
106 Fourth Avenue East  
Polson, MT 59860  
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FILED June 25 20 18

Candace Fisher  
SANDERS COUNTY CLERK OF DISTRICT COURT

BY C Fisher

**MONTANA TWENTIETH JUDICIAL DISTRICT COURT, SANDERS COUNTY**

Cause No. DV-16-84

ALEX 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.

**ORDER ON DEFENDANT'S MOTION TO  
COMPEL PRODUCTION OF DOCUMENTS**

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,

vs.

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

Third-Party Defendant.

**ORDER**

Defendant's *Motion to Compel Production of Documents* is **GRANTED and DENIED, in part.**

**The order is granted as follows:**

1. Plaintiff Holly McGowan shall respond fully and with good faith to the following Requests for Production:
  - a. Request for Production No. 10 seeking her public social network postings.
2. Plaintiff Alexis Nunez shall respond fully and with good faith to the following Requests for Production:
  - a. Request for Production No. 9 seeking communications with Marco Nunez, including unsolicited messages Plaintiff Nunez received through Facebook; and
  - b. Request for Production No. 11 seeking her public social network postings.

Rationale for allowing the discovery of and ordering the production of the preceding materials is based on this court's belief that such materials are public posts on the internet and Plaintiffs are in a more reasonably located position to produce the public posts to Defendant.

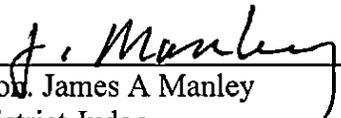
This court does take note that to the extent that Plaintiff Alexis Nunez may not be in possession of all photographs taken between 1999-2007, she and her counsel are to make a best effort to contact her parents, siblings, and grandparents that might have photographs responsive to the Request for Production No. 15.

**The order is denied as follows:**

3. Requests for Production No. 15 seeking photographs of Plaintiff Alexis Nunez taken between 1999-2007 is denied for lack of relevancy and are seen by this court as overly broad and burdensome to produce.

4. Plaintiff's are not ordered to produce social media private/friend posts and messaging except as otherwise stated in this order in ¶ 2.a. Such a ruling, allowing such broad discovery, may infringe on the rights of third parties' communications not concerned with these proceedings. Plaintiff's objections concerning a threshold that posts to public profiles need to indicate that private/friend posts will reveal more admissible evidence is not met with specific facts from Defendant's motion. See *Keller v. Nat'l Farmers Union Prop. & Cas.* No. CV 12-72-M-DLC-JCL(D. Mont. Jan. 2, 2013), 2013 U.S. Dist. LEXIS 452, at \*11-12. Citing *Tompkins v. Detroit Metropolitan Airport*, 278 F.R.D. 387, 388-89 (E.D. Mich. 2012) (denying discovery as overly broad where publicly available information was not inconsistent with the plaintiff's claims). "Courts requiring such a showing do so, at least in part, to guard against the "proverbial fishing expedition." *Id.* at 388. As the *Tompkins* court explained it, a "[d]efendant does not have a generalized right to rummage at will through information that [p]laintiff has limited from public view." *Id.* Absent some "threshold showing that the requested information is reasonably calculated to lead to the discovery of admissible evidence," a "[d]efendant would be allowed to engage in the proverbial fishing expedition, in the hope that there *might* be something of relevance in [p]laintiff's Facebook account." *Id.*
5. Plaintiff's objections to providing the criminal history of Holly McGowan are sustained. Defendants on their own can discover publicly accessible criminal records if any exist and Montana Rule of Evidence 609 forbids admissibility of criminal history evidence for the purpose that Defendants intend to use Holly McGowan's criminal history.

DATED this 24<sup>th</sup> day of June, 2018.

  
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Hon. James A Manley  
District Judge

cc: **James P. Molloy**, Co-Counsel for Plaintiffs Alexis Nunez and Holly McGowen  
**D. Neil Smith**, Co-Counsel for Plaintiffs Alexis Nunez and Holly McGowen  
**Kathleen L. DeSotto / Tessa A. Keller**, Co-Counsel for Defendant and 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  
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**Matthew McKeon**, Attorney for Third-Party Defendant Ivy McGowan-Castleberry

06/18/18 SCB