

A. Defendants Owed A Duty to Alexis Nunez Under the Montana Mandatory Reporter Statute

“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).

Despite the clear Montana Law on this point, Defendants argue that they did not owe a duty to Alexis Nunez because 1) Max was not acting as their agent when he abused Alexis¹ and 2) they did not have a special relationship of custody or control with Alexis. However, Defendants fail to carry their burden on summary judgment because neither argument is determinative as to whether Defendants owed Alexis Nunez a duty.

Indeed, Defendants’ motion entirely ignores the statutorily created duty imposed on Defendants by the State of Montana. Montana’s Mandatory Reporter statute imposes a duty on clergy to report child abuse. Mont. Code. Annot. § 41-3-201(2)(h). Defendants do not dispute that the Jehovah’s Witness elders are clergy. Exhibit A, Chappel Depo at 61:16-20; Exhibit B, Gary Breaux Affidavit, November 19, 2004 at ¶6. Thus, the remaining question is whether Alexis was a member of the class that the statute was intended to protect. *Fisher v. Swift Transp. Co.*, 2008 MT 105, ¶ 22, 342 Mont. 335, 341, 181 P.3d 601, 607 (“Where a duty is established by statute, we look to the class of people the statute intended to protect to determine whether the plaintiff is a member of that class. If so, he is a foreseeable plaintiff.”) (citations omitted). The statute at issue in the instant case was enacted to protect children from abuse. Here, Alexis Nunez was a minor

¹ Plaintiffs are no longer pursuing a theory of vicarious liability against the Defendants for the intentional acts of abuse perpetrated by Max Reyes. Plaintiffs do still contend that Defendants are vicariously liable for the acts of their Elders. Further, Plaintiffs do not concede that Max Reyes was not ever acting as an agent of Defendants.

child that participated in the Thompson Falls congregation for 5 years.² Thompson Falls is the local congregation where elders received written, confirmed, and confessed notice that Max Reyes was abusing his family members. Exhibit D, Notice of Disfellowship. Defendants knew that Alexis was a family member and knew that she participated in Thompson Falls congregation with Joni and Max Reyes *after* Defendants had knowledge that Max Reyes was a child molester. *Supra*, n. 2. Thus, Alexis Nunez, a minor child, was a member of the protected class.

Further, because Nunez is a member of the protected class, she in fact is considered to be in a special relationship with Defendants. *See Masseur v. Thompson*, 2004 MT 121, ¶ 42, 321 Mont. 210, 225, 90 P.3d 394, 403 (citing *Nelson v. Driscoll*, 1999 MT 193, ¶ 22, 295 Mont. 363, 371, 983 P.2d 972, 978 (“a special relationship gives rise to a special duty, and can be established . . . by a statute intended to protect a specific class of persons of which the plaintiff is a member from a particular type of harm . . .”)) Thus, Defendants’ motion for summary judgment that they did not owe a duty to Alexis Nunez should be denied.

B. Defendants Undertook A Duty to Protect Alexis Nunez From Further Abuse by Max Reyes

Defendants argument that they did not owe Nunez a specific legal duty to supervise Max in his home where the abuse occurred should be denied. *See Defs. Mot.* at 10. Even if it is true that the Religious Defendants did not initially owe Alexis Nunez a specific duty to supervise Max Reyes and monitor his conduct, Defendants assumed this duty when they created policies and procedures to take it upon themselves to investigate and handle cases of child abuse rather than

² “[Alexis] attended the Thompson Falls Congregation of Jehovah’s Witnesses with her grandmother Joni Reyes between 2002 and 2007. Her attendance was weekly during the first year but monthly afterward. She engaged in field service with that congregation from age 6 to 10 . . .” Exhibit C, Defendants’ Expert Report at 3.

report that abuse to authorities. *Nelson v. Driscoll*, 1999 MT 193, ¶ 36, 295 Mont. 363, 377, 983 P.2d 972, 981. (“Where a person undertakes to do an act or discharge a duty by which the conduct of another may be properly regulated and governed, he is bound to perform it in such a manner that those who are rightfully led to a course of conduct or action on the faith that the act or duty will be properly performed shall not suffer loss or injury by reason of negligent failure so to perform it.”) Montana imposes a statutory duty on members of clergy to report child abuse to law enforcement. However, rather than reporting Max Reyes to law enforcement, Defendants—all of which are clergy—took it upon themselves to investigate and discipline Max Reyes for sexually abusing children. Defendants were well aware of the dangers Max Reyes presented to other children in the congregation. Indeed, Defendants even instructed elders how they were supervise Max Reyes and to limit his interaction with children. Exhibits E, F TF0000151-152; CCJW000147-148 (August 25, 2005 Letter from CCJW to Thompson Falls).

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 publishers 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 service to protect the minor who might answer the door, the former abuser and the reputation of the congregation.

Id. (emphasis added)

By taking these affirmative steps to investigate reports child abuse and monitor the abusers interactions with children—while at the same time preventing law enforcement from doing so—Defendants assumed a duty to protect children, including Alexis Nunez, from further harm by Max Reyes. Thus, because Defendants assumed a duty to protect children in the Thompson Falls congregation from abuse by Max Reyes, Defendants did owe Alexis Nunez a duty to protect her from further abuse by Max Reyes.

C. Alexis Nunez Is the Type of Victim that Montana’s Mandatory Reporter Seeks to Protect

Defendants claim that Alexis Nunez’s claim for Negligence *per se* fails for two reasons. First Defendants claim the statute does not regulate corporate activities. Second, Defendants claim that because Alexis Nunez was not a resident of Montana in 1998, she was not the type of victim that the statute seeks to protect. Neither argument has merit and should be denied.

First, Defendants’ argument that Montana’s Mandatory Reporter statute does not regulate corporate activities was raised in Defendants’ Opposition to Plaintiffs’ Motion for Partial Summary Judgment and Cross-Motion for Partial Summary Judgment (Exhibit G at 19-20) and Plaintiffs responded in Plaintiffs’ Opposition to Defendants’ Cross-Motion for Summary Judgment on Count II (Exhibit H at 11-14). For the reasons described therein, Defendants’ arguments that Montana’s Mandatory Reporter statute does not regulate corporate activities is misplaced.

Second, as to whether Alexis Nunez was the type of victim that the statute seeks to protect, there is nothing in the statute that limits the reporting requirement to children who were born in Montana. *See generally* MCA § 41-3-201. The statute imposes a duty to report child abuse regardless of where that child was born. Indeed, the statute is intended to protect *all* future victims of a known child sexual abuser. Jehovah’s Witnesses recruit families with children all across the

country to join their organization. This statute is intended to protect those children that Defendants bring into their local congregations, especially where the elders know a child molester is a member. Plaintiffs allege that the Mandatory Reporter statute was triggered in 1998 and in 2004. Plaintiffs allege they were abused in Montana. Ex. C at 3-4; Ex. J, Alexis Nunez Depo. at 71-77; Ex. K, Holly McGowan Depo. at 13, 88, 112. Whether Defendants knew that Max Reyes had sexually abused children as of 1998 is a disputed fact in this case. It is undisputed however, that in 2004, Defendants knew that Max Reyes abused children in Montana while those children lived in the State of Montana. Ex. C, at 3-4; Ex. D; Ex. J, Alexis Nunez Depo 71-77; Ex. K, Holly McGowan Depo at 13, 88, 112. And it is undisputed that Alexis Nunez was abused both before and after 2004 by Max Reyes in the State of Montana, while she lived in the State of Montana. Ex. C at 3, 4; Ex. J, Alexis Nunez Depo 71-77. Alexis Nunez, a minor child that was in fact later abused by Max for years in the State of Montana, is certainly the type of victim that the statute seeks to protect. Thus, Defendants' motion for Summary Judgment should be denied.

D. Respondeat Superior Theory of Liability Applies to This Case

As mentioned above, Plaintiffs do not assert that Max Reyes was acting in the course and scope of his agency with Defendants when he molested the victims. As such, Plaintiffs do not assert any vicariously liability based on such a theory for the intentional criminal acts of Max Reyes. *Supra*, n. 1. However, Plaintiffs do assert that Defendants are liable for the negligent acts of Jehovah's Witness elders acting within the scope of their agency. Indeed, Defendants have recently stipulated that the elders of the Service Department and Legal Department were acting on behalf of Defendants CCJW and Watchtower respectively.³ Whether that is considered an

³ On July 12, 2018, at the second deposition of Defendants' 30(b)6 witness Douglas Chappel, Defendants' counsel stipulated on the record that the Service Department was acting on behalf of CCJW and the Legal Department was acting on behalf of Watchtower.

independent claim for recovery or a theory of recovery can sometimes be a matter of semantics. Nevertheless, Defendants have not shown that Plaintiffs cannot pursue a claim or theory of *Respondeat Superior* against Defendants for the acts of the elders of any of the Defendants. Defendants do not, and now cannot, argue that any of the elders were acting outside the scope of their agency relationship with Defendants. Thus, Defendants fail to carry their burden to show that no genuine issue of material fact exists as to whether the Plaintiffs can pursue a claim or theory of *Respondeat Superior* against Defendants.

E. Breach of Fiduciary Duty

Defendants claim that Plaintiff Alexis Nunez's claim for breach of fiduciary duty fails because the Defendants did not have a special relationship with Nunez. Defs. Mot. at 16. Defendants allege in conclusory fashion that no fiduciary duty can arise from religious affiliation. *Id.* at 18-19. However, the Montana Supreme Court has refused to draw such a clear line. *Davis v. Church of Jesus Christ of Latter Day Saints*, 258 Mont. 286, 296, 852 P.2d 640, 646 (1993). As Defendants point out, the questions of whether a special relationship giving rise to a fiduciary duty is a question of law, not fact, that may be resolved on summary judgment **when no genuine issues of material fact remain.**" *Gliko v. Permann*, 2006 MT 30, ¶ 24, 331 Mont. 112, 120, 130 P.3d 155, 16 (emphasis added). However, "the circumstances of the particular relationship are factual, and disputes over material facts will preclude summary judgment." *Id.*

Here, Defendants fail to show that no genuine issues of material fact remain as to the existence of a fiduciary duty to Alexis Nunez. The existence of a fiduciary duty depends upon satisfactory proof of a special relationship. *Davis*, 258 Mont. 286, 296, 852 P.2d 640, 646 (1993). Indeed, the "special relationship" that gives rise to the fiduciary duty in this case is statutorily created by Montana's Mandatory Reporter statute. *See Masseur v. Thompson*, 2004 MT 121, ¶ 42,

321 Mont. 210, 225, 90 P.3d 394, 403 (citing *Nelson v. Driscoll*, 1999 MT 193, ¶ 22, 295 Mont. 363, 371, 983 P.2d 972, 978 (“a special relationship gives rise to a special duty, and can be established . . . by a statute intended to protect a specific class of persons of which the plaintiff is a member from a particular type of harm . . .”). Here, in 2004, when Defendants received reports of sexual abuse by Max Reyes, they knew that Alexis Nunez would stay Max and Joni Reyes’s house and attend services at Thompson Falls Congregation. Because Defendants, as clergy, were mandatory reporters and because Alexis Nunez was a member of the protected class, Defendants had a special relationship with Alexis Nunez.

Further, even if the special relationship was not created by statute, the facts surrounding Alexis Nunez relationship with Defendants is, at a minimum, a disputed fact question. A fiduciary duty may exist where there is a relationship of “trust and confidence” between two parties. *Gliko v. Permann*, 2006 MT 30, ¶ 16, 331 Mont. 112, 116, 130 P.3d 155, 159 (quoting *Deist v. Wachholz* (1984), 208 Mont. 207, 216-17, 678 P.2d 188, 193.) Here, it is undisputed that Defendants consider their Elders to be in positions of trust. Exhibit I, July 20, 1998 - Confidential Letter to Bodies of Elders (“Those who are appointed to privileges of service, such as elders and ministerial servants, **are put in a position of trust**. One who is extended privileges in the congregation is judged by others as being worthy of trust.”) (emphasis added). Further, it is undisputed that Defendants’ elders consider their relationship with their members confidential as they have premised much of their defense in this case on the alleged confidentiality of that relationship. *See generally* Exhibit G. Thus, the evidence shows that Defendants consider their relationship with Jehovah’s Witnesses to be a relationship of “trust and confidence.” Defendants have not presented any evidence to show that their relationship with their members or “publishers” changes or is treated differently based on whether they are baptized or not. Unlike many other

religions, Defendants go door to door to actively recruit families and children into their congregations. Defendants' elders then teach those families and children that Elders are the spiritual shepherds that are to be trusted and confided in. Here, Alexis Nunez attended Thompson Falls Congregation from 2002-2007. Thus, the question of whether her relationship with the Thompson Falls Elders constituted a special relationship is, at a minimum, a disputed fact question that should be resolved by the jury.

F. Defendants Have Not Shown that No Genuine Issue of Material Fact Exists as to Plaintiff Alexis Nunez's Claim for Punitive Damages

For the reasons described above, Defendants' motion for summary judgment as to Alexis Nunez's claims for compensatory damages should be denied.

Further, Defendants' bare assertion that their behavior does not warrant punitive damages does not prove that no genuine issue of material fact exists as to whether Defendants are guilty of malice. Liability for punitive damages must first be determined by the trier of fact, which in this case will be the jury. MCA 27-1-221(6). It is undisputed that: 1) Defendants knew that Max Reyes was a child molester, Ex. D (Notice of Disfellowship) 2) Defendants knew that child molesters are likely to repeat their abusive behavior. Exhibits E, F) ("experience has shown that such an adult may well molest other children.") 3) Defendants knew that Max Reyes had children and grandchildren that were active in the Thompson Falls congregation. *Supra* n. 2. 4) Defendants never reported Max Reyes to authorities; and 5) Max Reyes continued to abuse children after Defendants had knowledge that he was a child molester. Ex. D, Notice of Disfellowship; Exhibit C at 4, ("Alexis described abuse by her step-grandfather between the years of 2002 and 2007 or 2008.") Thus, the undisputed evidence is sufficient to raise a question of fact for the jury regarding whether punitive damages should be awarded.

DATED: July 19, 2018

Attorney for Plaintiffs:

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

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 19th day of July, 2018.

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First class mail postage prepaid



Ross Leonoudakis

EXHIBIT A

1 Jehovah's Witnesses. Are elders clergy?

2 **A. We do not refer to ourselves as clergy. So**
3 **what do you understand "clergy" to be?**

4 Q. Well, I understand that you and your lawyers
5 are refusing to turn over documents because you claim
6 that elders are clergy. That's what I understand. So
7 I'm asking you, sir, are elders clergy members?

8 **A. Okay. So in that context you're talking about**
9 **clergy -- What's the term that the loss uses?**

10 Q. I don't know, sir. I'm simply asking you --

11 **A. Clergy --**

12 Q. -- are they clergy or not?

13 **A. -- client privilege I think is how it -- it**
14 **goes. So for the -- for the law, we do, yes, we -- we**
15 **do view ourselves as having that privilege.**

16 Q. So for purposes of Montana law, the Jehovah
17 witnesses take the position that elders are clergy
18 members.

19 **A. Yes. For law, because we can't dictate how**
20 **they're going to use terminology, so, yes.**

21 Q. Well, let's look at what the law says about
22 clergy. Are elders -- Do elders have to be approved?

23 **A. Elders have to meet the qualifications, as I**
24 **mentioned earlier this morning, in 1 Timothy 3 and in**
25 **Titus 1.**

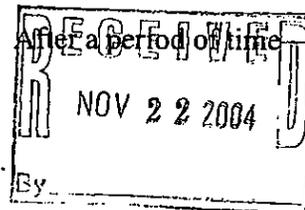
EXHIBIT B

CONFIDENTIAL

STATE OF NEW YORK)
) ss.
COUNTY OF PUTNAM)

Gary N. Breaux, being first duly sworn upon oath deposes and says:

1. I am over 18 years of age and make this affidavit of my own free will.
2. I became one of Jehovah's Witnesses in 1956, and I was appointed to serve as a congregation elder in 1972.
3. Since 1994, I have served in the Service Department of the U.S. Branch office of Jehovah's Witnesses. My duties included monitoring the functioning, organization, and staffing of congregations of Jehovah's Witnesses, including reviewing qualifications for the appointment of elders to congregations of Jehovah's Witnesses in the United States.
4. Jehovah's Witnesses are not automatically appointed to serve as congregation elders. Rather they must first meet certain qualifications that are outlined in the Bible, as follows: Before a male member of the congregation can be considered for appointment as a congregation elder, he must first be baptized as one of Jehovah's Witnesses. Next the individual must gain further knowledge of the Holy Scriptures and show a willingness to be used in a further way to assist others in the congregation. If he shows such a willingness, he must then meet Scriptural qualifications set out in 1 Timothy 3:8-13. Thereafter, he may qualify and be appointed as a ministerial servant. Although a ministerial servant would not provide spiritual supervision in the congregation, he could be assigned certain tasks to assist the congregation elders as they carry out their duties.



CONFIDENTIAL

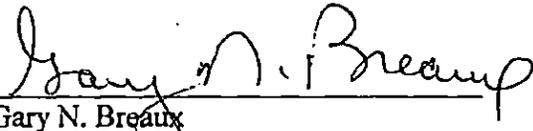
perhaps many years—a ministerial servant who has faithfully carried out his assignments and has gained more experience may meet the qualifications of a congregation elder as outlined in 1 Timothy 3:1-7 and Titus 1:6-9. When this occurs, the congregation elders will make this recommendation to the circuit overseer (a representative of the Branch office). If the circuit overseer agrees with the recommendation, it will then be forwarded to the Branch office's Service Department. Approved elders in the Service Department will then review the recommendation in accord with the guidelines outlined in the Holy Scriptures, adopted by the Governing Body of Jehovah's Witnesses. The Branch office will then inform the local congregation's body of elders, in writing, of their determination with regards the recommendation.

5. If an individual is appointed to serve as a congregation elder, the letter of appointment from the Branch office is read to the congregation. It is at this time that he is officially vested with ministerial authority. In other words he is ordained as a congregation elder.
6. Jehovah's Witnesses who serve as appointed elders are recognized as ordained ministers and congregation elders, and as such have been approved by every state, including Massachusetts, to perform ministerial functions such as officiating at weddings.
7. Like Jesus and his apostles, congregation elders do not receive a salary for their ministerial work. Nonetheless, as ordained ministers and congregation elders, they are responsible for providing spiritual supervision to the congregations, which includes hearing confessions and other confidential communications made

to them by members of the congregation who are seeking religious or spiritual advice or comfort.

- 8. Congregation elders are authorized to hear confessions and other private, confidential communications and to provide confidential spiritual guidance and counsel, by virtue of the Holy Scriptures and the Governing Body of Jehovah's Witnesses.
- 9. According to the religious beliefs and practices of Jehovah's Witnesses, congregation elders are expected to keep confessions and other confidential communications confidential. An elder who reveals such a confession or communication, without the express permission of the one making the confession or communication may be disqualified to continue serving as an elder.
- 10. According to our records at the U.S. Branch office of Jehovah's Witnesses, [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (also known as [REDACTED] [REDACTED] all serve as appointed congregation elders in the [REDACTED] Congregation of Jehovah's Witnesses, Boston, Massachusetts, and have been serving in that capacity at least since 2000.

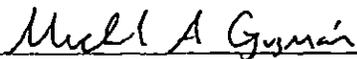
Dated: November 19, 2004



 Gary N. Breaux

STATE OF NEW YORK
COUNTY OF PUTNAM

Subscribed and sworn to before me
this 19 day of November, 2004.



 Notary Public

MICHAEL A. GUZMAN
 Notary Public-State of New York
 No. 01GU6076764
 Qualified in Putnam County
 My Commission Expires July 1, 2006

EXHIBIT C

Marco was arrested in 1998 for sexually abusing a 12 - 14-year-old girl named Anastasia who had been working in their home as a babysitter. He was convicted and spent four to six months in jail before returning home as a registered sex offender. Marco later attempted to rape Alexis' aunt Holly McGowan in 2001. Alexis' mother Ivy discovered in 2002 that Marco had molested her oldest daughter Dominique. Marco left the family home before Alexis was five years old and moved to California, where he had limited subsequent contact with Alexis, although he continued to have visitation rights with his sons Kenyan and Hunter between 2002 and 2013. In 2003, Marco engaged in parental child abduction of his sons to California, but Ivy was able to retrieve them within a week. Ivy alleged in her deposition that Marco had inappropriately touched her older sons' penis during that period. Marco and Ivy's divorce was finalized in 2007.

Alexis moved with her family to Polson, Montana in approximately 2002 when she was five or six years old. She attended the Thompson Falls Congregation of Jehovah's Witnesses with her grandmother Joni Reyes between 2002 and 2007. Her attendance was weekly during the first year but monthly afterward. She engaged in field service with that congregation from age 6 to 10 but was never baptized as a Jehovah's Witness and is not currently active in any religious faith.

Ivy married Troy Castleberry in approximately 2008 when Alexis was approximately 10 or 11 years old. Alexis lived in Polson, Montana for much of her childhood, attending elementary, middle, and one year of high school there. Her family moved to Gillette, Wyoming, where she attended the remainder of high school. She lived in Gillette until starting college in Missoula, Montana. She left college after six months next residing in Lovell, Wyoming before moving to nearby Byron, Wyoming approximately one year ago with her fiancé Jared and daughter Prudence.

Alexis described having a good relationship with her mother, step-father, and siblings, as well as her aunt Holly McGowan, who is her co-plaintiff in this litigation. She reported no recent contact with her father Marco until he attempted to contact her on Facebook several months ago, to which Alexis blocked him from further contact on that platform. She reported that Marco had created multiple Facebook accounts since 2013 in an attempt to contact her.

The table below outlines Alexis' specific allegations of sexual abuse against her:

Approx Dates / Age	Alleged Abuser / Relationship	Description
1999 - 2000 Ages 3 - 4	Marco Nunez - Father	Alexis described in her deposition that her first abuse was at the hands of her father. She testified that "I must have been three or four" years old. She did not have a detailed recollection of the type or extent of the abuse but testified that "to the best of my memory, mostly fondling" that took place both above and below the waist. She stated that this abuse did not involve penetration. She described limited recollection, and when asked whether she had put an emotional barrier around the subject of this abuse, she stated: "I believe so." She could not recall if this abuse happened once or more than once.
2002 - 2008 Ages 6-12	Maximo Nava-Reyes - Step-grandfather	Alexis described abuse by her step-grandfather between the years of 2002 and 2007 or 2008. The most extensive period of abuse appeared to be around 2002 to 2003 when Alexis's mother Ivy was utilizing Max and Joni Reyes for babysitting services. when asked about the frequency of this abuse, Alexis said: "I believe it was weekly." She described this abuse as fondling above and below the waist with no penetration. She denied that he had ever forced her to perform oral sex but said that "I think he made me kiss his member once." She also described being told to manipulate his penis "like a hand job." Alexis reported that most of the abuse would take place at her grandparents' house and that the abuse ended in approximately 2007 or 2008 when Alexis stopped attending her grandparents' church. Alexis was not aware of whether the behaviors ever caused Max to ejaculate. Alexis stated that the first person that she told about this abuse was her boyfriend Jared in 2012 and the second time she disclosed it was during her evaluation of the Amen clinic in 2015.
2002 - 2008 Ages 5 or 6 - 12	Peter McGowan - Uncle	Alexis described her abuse by her maternal uncle Peter beginning when she was approximately five or six years old after she and her family moved to Montana. Peter was Alexis's mother's younger brother and was approximately ten years older than her. She reported that Peter began to touch her inappropriately Above and below the waist. In approximately 2004, Peter moved out of his family home into the house where Alexis lived. After Peter moved into the house with Alexis, she reported that the abuse progressed to digital penetration. According to Alexis' deposition, she affirmed that the abuse by Peter involved vaginal penetration, oral sex performed on her, and being forced to perform oral sex on him. She stated that this behavior continued at least once a month until Peter married when Alexis was approximately 12. Alexis stated that the behavior continued "only a handful of times after he was married," taking place in her uncle's home when his wife was at work. She stated that the abuse by Peter ended around 2007 or 2008. Alexis stated that in 2008, she "decided to stop attending church, and with that, I was pretty much cut from that side of the family, my grandmother and my uncle."

Alexis described no other abusive relationships.

EXHIBIT D

NOTIFICATION OF DISFELLOWSHIPING OR DISASSOCIATION

(Please type or print neatly in ink.)

Individual's full name: nava-Reyes Maximo
Last First Middle (Jr, Sr, II, III, etc.)

5-15-49 April 1, 2004
Date of birth Date of announcement of disfellowshipping or disassociation

FOR OFFICE USE ONLY

128215 Thompson Falls Thompson Falls MT
Congregation number Congregation name City State

Check if applicable: Elder Ministerial servant Regular pioneer (If so, include S-202 with this form.) Special pioneer
 Listed with the branch office as the person to receive literature and/or magazine shipments for the congregation. (If so, immediately submit an S-36 and/or M-206 form, showing a new name and address.)

1. DISFELLOWSHIPING. Specify offense(s) for which disfellowshipped (See ks91 92-6.): Pornelia

At any point, did the wrongdoer confess to the committee? If not, what evidence substantiated the wrongdoing?

[Redacted]

DISASSOCIATION. Specify by what action(s) the person disassociated himself (such as resignation, non-neutral activity, failure to abstain from blood, or joining another religion): _____

Did the individual submit a signed letter of resignation? _____ If not, what evidence substantiated the disassociation?

2. Give a detailed summation of the case, explaining exactly what took place. (Use additional sheet only if more space is needed.) For a disfellowshipping, include the reasons why you judged the person to be unrepentant. For a disassociation, include what led to the person's decision, how he responded to efforts to assist him, and what convinced you that his position was adamant.

One of the victims came forward + informed 2 elders of the sexual abuse of himself from the age of 8 yrs. to 12 yrs old. The abuser was his stepfather. He also related that his sister had informed him of similar sexual abuse from 10 yrs to about age of 15. Both related a pattern of ongoing sexual abuse, which started shortly after the marriage.

The judicial committee all agreed the testimony of the two victims was more credible. We felt Maximo was unrepentant based on the seriousness of the sin, his unwillingness to confess, and that it was carried on over a long period of time. We also felt the purity of the children and the reputation of the cong. needed to be protected. W. 97 1-1 pp. 26-29 ESP. P. 29 Pa

3. Did the individual appeal your decision? _____ (If so, follow the instructions on the reverse side regarding appeals.)

4. If individual was previously disfellowshipped or disassociated show: _____ Date of previous action _____
Person's full name at that time _____ Date of previous reinstatement _____
Congregation that took the action _____

Name of congregation _____ City _____ State _____

5. Each member of the appointed committee should sign this form and any additional sheets. (Type name below each signature.)

Glenn Wilson Don Herburger Ken Riech
CHAIRMAN: Glenn Wilson Don Herburger KEN RIECH

Reinstated
 Deceased Date: June 16 2005 Glenn Wilson
(Month, Day, Year) (Signature of secretary)

FOR OFFICE USE ONLY

EXHIBIT E

Christian Congregation
of Jehovah's Witnesses

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

SDJ:SSM August 25, 2005



KR
Don
Shuman

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.

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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

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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.

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Your brothers,

*Christian Congregation
of Jehovah's Witnesses*

Christian Congregation of Jehovah's Witnesses

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

SDJ:SSM August 25, 2005



KR
Don
Blum

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

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*Christian Congregation
of Jehovah's Witnesses*

EXHIBIT F

Do Not Destroy

SDK AUG 25 2005

SDJ:SSM August 25, 2005

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

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CCJW000148

THOMPSON FALLS CONGREGATION, THOMPSON FALLS, MT

August 25, 2005

Page 2

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EXHIBIT G

Kathleen L. DeSoto
Tessa A. Keller
GARLINGTON, LOHN & ROBINSON, PLLP
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Missoula, MT 59807-7909
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Joel M. Taylor (*Pro Hac Vice*)
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Watchtower Bible and Tract Society of New York, Inc.
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Patterson, NY 12563
Telephone (845) 306-1000
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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

RELIGIOUS DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND CROSS-MOTION
FOR PARTIAL SUMMARY
JUDGMENT

WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC.;
CHRISTIAN CONGREGATION OF
JEHOVAH'S WITNESSES and
THOMPSON FALLS CONGREGATION
OF JEHOVAH'S WITNESSES,

Third-Party Plaintiffs,

v.

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

Third-Party Defendants.

Defendants/Third Party Plaintiffs, Watchtower Bible and Tract Society of New York, Inc. ("Watchtower"), Christian Congregation of Jehovah's Witnesses ("CCJW"), and Thompson Falls Congregation of Jehovah's Witnesses' (collectively referred to as "Religious Defendants"), pursuant to Montana Rule of Civil Procedure 56, file this Opposition to Plaintiffs' Motion for Partial Summary Judgment on the Religious Defendant's Sixth Affirmative Defense.

In addition, Religious Defendants request an Order granting partial summary judgment on the merits of Count II of the Plaintiffs' Complaint, i.e., the Claim of Negligence *Per Se*. First Am. Compl., ¶¶ 50-54, Nov. 14, 2016. A proposed Order accompanies the motion and memorandum.

Religious Defendants request oral argument.

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I. MEMORANDUM OF POINTS AND AUTHORITIES

A. Introduction

This is a case about incest. Plaintiffs Holly McGowan (“Holly”) and Alexis Nunez (“Alexis”) were sexually molested by their stepfather/step-grandfather, Maximo Nava Reyes (“Maximo”), while they were in the care and control of their mother/grandmother (“Joni”). Plaintiffs describe the case as one about “mandatory reporting.” Pls.’ Mot. Partial Summ. J. Re: Defs.’ 6th Affirmative Def. & Mem. Support 2, May 14, 2018 (“Pls.’ Mot.”). However, Plaintiffs did not sue any mandated reporters – they sued corporations, seeking to hold the Defendants vicariously responsible for the alleged failure of mandated reporters. Although they rely on the reporting statute in Count II of the First Amended Complaint, Plaintiffs take issue with the Religious Defendants asserting a defense based upon language in that same statute that can exempt “a member of the clergy or a priest” from making a report. Mont. Code Ann. § 41-3-201(6).¹ Plaintiffs’ arguments invite the Court to make a constitutionally impermissible evaluation of the manner in which congregation elders handled Holly’s accusation that Maximo had committed a serious sin. To validate the Plaintiffs’ position, this Court must violate Montana and federal constitutional protections that prohibit civil courts from evaluating matters of religious polity, internal church governance, and the manner in which it addresses unrepentant sinners.

¹ Montana Code Annotated § 41-3-201 has been amended multiple times, most recently in 2017. The version of this statute that was in effect in 2004 was enacted in 2001. 2001 Mont. Laws Ch. 311 (S.B. 116). The limited exception for a member of the clergy or priest was found at subsection (4)(a) and (b). In the current version of the statute, the exception is in subsection (6).

In response to Plaintiffs' motion, the Religious Defendants will show that the decision made in 2004 by local Thompson Falls Congregation elders harmonizes with Montana Reporter law § 41-3-201(6)(c) because the elders were acting in their capacity as ordained ministers who followed "church doctrine, or established church practice" that required confidentiality under the beliefs and practices of their faith when they acted on information about Maximo that they received from Plaintiff Holly McGowan and her brother, Peter McGowan.

To support their cross-motion for partial summary judgment on Count II of the First Amended Complaint, the Religious Defendants will also show that the Mandated Reporting law does not apply to religious corporations.

B. Summary of Undisputed Facts

Plaintiffs limit their motion to the information Defendants acquired in 2004 and ask the court to rule that the Affirmative Defense based upon the limited exception from reporting by members of the clergy² does not apply. Pls.' Mot. 4.

In 2004, Holly's brother, Peter, disclosed confidential information to Don Herberger regarding sinful conduct involving his stepfather, Maximo that had occurred in the past. 5th Found. Aff. Kathleen L. DeSoto ¶ 3 ("5th Aff. DeSoto"), Ex. 1: Dep. Peter Edwin McGowan 7:3-5; 8:1-22, Apr. 24, 2018. During his deposition in this case, Peter relied on the clergy-penitent privilege of Montana law and refused to disclose the details of what he told Mr. Herberger. 5th Aff. DeSoto ¶ 3, Ex. 1: Dep. P. McGowan 39:1-11.

² The term "clergy" is defined to include "an ordained minister, priest, or rabbi" because § 41-3-201 expressly incorporates the definition of clergy found at § 15-6-201(2)(b)(i).

Peter considers his communications with Mr. Herberger, and other elders in the Thompson Falls congregation to be conversations with spiritual shepherds in the congregation that are to remain private and confidential. 5th Aff. DeSoto ¶ 3, Ex. 1: Dep. P. McGowan 45:21-46:10. There is no dispute in the fact that the abuse Peter experienced had stopped around the year 2000, several years before Peter talked to Mr. Herberger. 5th Aff. DeSoto ¶ 3, Ex. 1: Dep. P. McGowan 14:6-19.

As a result of those confidential communications with Peter, Don acted within his role of spiritual shepherd and congregation elder when he contacted Holly, who was then an adult living in Nebraska, and asked her to share what she knew about the allegations Peter had made. 5th Aff. DeSoto ¶ 4, Ex. 2: Dep. Donald John Herberger 193:19-194:9, Sept. 13, 2017. By letter dated March 19, 2004, 20-year-old Holly wrote to “the body of elders of the Thompson Falls congregation” and stated that beginning in 1994, she and Peter were regularly sexually molested by their stepfather, Maximo. Pls.’ Mot., Ex. A. As a result of this information, three elders from the Thompson Falls congregation determined that Maximo had to be expelled (disfellowshipped) from the congregation. 5th Aff. DeSoto ¶ 4, Ex. 2: Dep. Herberger 148:21-25; 5th Aff. DeSoto ¶ 3, Ex. 1: Dep. P. McGowan 30:14-25. Disfellowshipping is the most severe congregational discipline available in the faith of Jehovah’s Witnesses. Decl. Douglas Chappel Support Mot. Protective Order ¶ 52, Apr. 18, 2018 (“Decl. Chappel”).

It is undisputed that in 2004 Peter was not being abused and it had been several years since the last incident had occurred. 5th Aff. DeSoto ¶ 3, Ex. 1: Dep. P. McGowan 14:6-19. It is undisputed that in 2004, Holly was a 20-year-old parent of her own

children who lived in Nebraska. 5th Aff. DeSoto ¶ 5, Ex. 3: Dep. Holly McGowan 133:2-20, Jan. 9, 2018. It is undisputed that in 2004, Alexis lived with her mother in Polson. 5th Aff. DeSoto ¶ 6, Ex. 4: Dep. Ivy McGowan-Castleberry 95:4-14, Jan. 10, 2018; 5th Aff. DeSoto ¶ 7, Ex. 5: Pl. Alexis Nunez's Objections & Resp. Religious Defs.' 1st & 2d Sets Interrogs. & Reqs. Prod., Interrog. Resp. No. 1, Aug. 9, 2017. And, it is undisputed that in 2004 Alexis' mother was aware that Maximo had been accused of inappropriate conduct towards Holly and Peter. 5th Aff. DeSoto ¶ 6, Ex. 4: Dep. McGowan-Castleberry 98:13-24.

C. Applicable Law

Montana Rule of Civil Procedure 56(b) authorizes the Court to grant summary judgment on all or part of a claim when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. The purpose of summary judgment is to eliminate the burden and expense of unnecessary trials. *Berens v. Wilson*, 246 Mont. 269, 271, 806 P.2d 14, 16 (1990).

Summary judgment is appropriate when “the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Mont. R. Civ. P. 56(c)(3). The moving party bears the initial burden of establishing “the absence of genuine issues of material fact and entitlement to judgment as a matter of law.” *Saari v. Winter Sports*, 2003 MT 31, ¶ 7, 314 Mont. 212, 64 P.3d 1038.

Once that burden has been met, the opposing party bears the burden of presenting “material and substantial evidence to raise a genuine issue of material fact.” *Sullivan v.*

Cherewick, 2017 MT 38, ¶ 9, 386 Mont. 350, 391 P.3d 62 (citing *Bird v. Cascade Cnty.*, 2016 MT 345, ¶ 9, 386 Mont. 69, 386 P.3d 602). All reasonable inferences will be drawn from the evidence offered by the non-moving party, but the party must offer more than “mere denial and speculation.” *Knucklehead Land Co. v. Accutitle, Inc.*, 2007 MT 301, ¶ 24, 340 Mont. 62, 172 P.3d 116 (citation omitted). A party may not rely on “conclusory statements, speculative assertions, and mere denials” to defeat a motion for summary judgment. *Sullivan*, ¶ 9. Additionally, a “party cannot create a disputed issue of material fact by putting his own interpretations and conclusions on an otherwise clear set of facts.” *Knucklehead Land*, ¶ 24 (quoting *Koepplin v. Zortman Mining*, 267 Mont. 53, 61, 881 P.2d 1306, 1311 (1994)).

THE COURT SHOULD DENY PLAINTIFFS’
MOTION FOR SUMMARY JUDGMENT

Plaintiffs ask the Court to rule, as a matter of law, that the “Limited Exceptions” for ordained ministers in § 41-3-201(6)(b) and (c) do not apply to events that occurred in 2004 because the elders did not keep the information confidential. Pls.’ Mot. 4-6.

However, the exceptions apply if the reporting statute was triggered.

- 1. Because the abuse related to Don Herberger in 2004 was in the past, the mandatory reporting statute was not triggered.**

Plaintiffs argue that Holly’s report of past abuse in 2004 triggered the Mandated Reporting statute (Mont. Code Ann. § 41-3-201(6)). However, the Montana Supreme Court has explained that the reporting statute is written in the current tense and is triggered by a reasonable suspicion that “a perceived *present* real harm or a perceived

present imminent risk of harm” exists. *Gross v. Myers*, 229 Mont. 509, 513, 748 P.2d 459, 461 (1987) (emphasis added).

In *Gross*, the plaintiff, Ms. Gross, was assured that information revealed in group therapy would be kept confidential. Relying on promised confidentiality, Gross revealed information about her husband’s past abuse of their daughters. *Gross*, 748 P.2d at 460. Believing she was obligated to report the past abuse, the therapist contacted the Department of Health and reported what Gross had revealed during the group session. *Gross*, 748 P.2d at 460. The State declined to take any investigative action, due to the remoteness of the incident. *Gross*, 748 P.2d at 460.

Gross sued, arguing the mandate to report only applied to current child abuse. *Gross*, 748 P.2d at 461. The Montana Supreme Court agreed that the “harm” the statute sought to prevent was “imminent risk of harm,” which it described as “a perceived present real harm or a perceived present imminent risk of harm.” *Gross*, 748 P.2d at 461. The Court noted that if the therapist “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*, 748 P.2d at 461. Because the therapist had subjective, reasonable cause to believe there was a current risk to children, the Court found it was not error to conclude the therapist was subject to mandatory reporting under those circumstances. *Gross*, 748 P.2d at 462.

The exact converse is true in this case. Peter testified that Max had not touched him inappropriately for several years before he talked to Mr. Herberger. 5th Aff. DeSoto ¶ 3, Ex. 1: Dep. P. McGowan 14:6-19. Further, Holly’s abuse ceased in 1999. 5th Aff.

DeSoto ¶ 8, Ex. 6: Pl. Holly McGowan's Objections & Resp. Religious Defs.' 1st & 2d Sets Interrogs. & Reqs. Prod., Interrog. Resp. No. 11, Aug. 25, 2017. The information related to Mr. Herberger in 2004 did not suggest that there was a present imminent risk of harm to a child. To the contrary, there was no imminent risk of harm to any children, as Holly was not only an adult, but also long removed from the home, and Peter confirmed that the abuse had stopped years ago. Accordingly, Mr. Herberger did not have a reasonable suspicion that there was a present imminent risk of harm, and thus not subject to mandatory reporting.

2. Thompson Falls Elders were exempt from reporting requirements under the circumstances.

Even if the Thompson Falls Elders were mandatory reporters, they are subject to the exemptions applicable to clergy. There are two distinct exemptions from Montana's reporting requirements for clergy. Mont. Code Ann. §§ 41-3-201(6)(b)-(c).

Holly argues that her communication with the Thompson Falls elders disqualified Religious Defendants and the individual elders from claiming the exception language of Montana Code Annotated § 41-3-201(6)(b), because she is the victim, not the penitent, and she made no "confession." Pls. Mot. 9. Noting that the language under § 41-3-201(6)(b) is in the singular, this section applies to a setting in which one penitent is addressing one clergymen or priest, in the manner of the Roman Catholic tradition of confession.

But that language cannot be construed to limit what is "confidential" as described in § 41-3-201(6)(c) to mirror the customs and practices of the Roman Catholic Church,

which require the priest to maintain anything heard in the confessional as a confidence and not revealed to a third party. The clergy-penitent privilege originated in the Canon law of the Roman Catholic Church, and its Canon law makes “the seal of the confessional [] inviolable.”³ But to pass Constitutional muster, the law must be applied to all religions.

For this reason, the Montana legislature provided a second ground for ordained ministers (clergymen) to claim an exemption from the duty to report child sexual abuse. Section 41-3-201(6)(c) exempts an ordained minister from reporting if the communication is required to be confidential by canon law, church doctrine, or established church practice. Plaintiffs incorrectly argue that “[n]o canon law, church doctrine, or established church practice within the Jehovah’s Witnesses *required* that the communication made by Holly McGowan [to the body of elders] be kept confidential.” Pls.’ Mot. 8 (emphasis in original). That argument is based on Plaintiffs’ own definition of the term “confidentiality,” without consideration of the religious beliefs and practices of Jehovah’s Witnesses.

a. Confidentiality and Jehovah’s Witnesses.

i. “Confidentiality” has several meanings.

Plaintiffs suggest that Religious Defendants will argue confidential means “they do not report the abuse to law enforcement.” Pls.’ Mot. 7. Defendants have made no such argument. Indeed, there are multiple definitions of confidentiality. For instance, as

³ R. Michael Cassidy, *Sharing Shared Secrets: Is it (Past) Time for a Dangerous Person Exception to the Clergy Penitent Privilege*, 44 Wm. & Mary L. Rev. 1627, 1638 (2003).

outlined in the reporting statute, the Catholic model for confessions is one example of what one religion deems is confidential. But there are many others, all of which relate to an expectation of privacy.⁴

An obvious example is the privilege relating to communications between doctor and patient.⁵ The patient may disclose confidential information about sensitive/private health to the physician with the expectation of privacy, but by doing so the patient understands the physician's medical staff, insurance carriers, social workers, and secretarial staff may in the course of rendering services to the patient, learn about the confidential communication. It is unlikely the patient expects the physician to treat the disclosure as a secret. Rather, it is in the patient's best interests that the physician shares the information with certain individuals and institutions who have a common interest and

⁴ The Montana Constitution recognizes the right to privacy (article II, section 10), even when the public also has a right to know what is done by behind closed doors by public bodies and state agencies (article II, section 9). The need to strike a balance between the two interests is subject to continuing interpretation and litigation. Montana statutes have various provisions for "confidentiality." (*See, e.g.*, Crim. Justice Info. Act, Public Crim. Justice Info. Mont. Code Ann. § 44-5-103(13), Confidential Crim. Justice Info. as defined at § 44-5-103(3), Confidentiality of Victims defined at § 44-5-311.) Even the mandated reporting statute provides for exceptions due to an expectation of confidentiality. *See* Mont. Code Ann. § 41-3-205, Confidentiality — disclosure exceptions (recognizing that individuals with authority and common interests have a lawful need to know otherwise confidential information).

⁵ Montana Code Annotated § 26-1-805, Doctor-patient privilege states: "Except as provided in Rule 35, Montana Rules of Civil Procedure, a licensed physician, surgeon, or dentist may not, without the consent of the patient, be examined in a civil action as to any information acquired in attending the patient that was necessary to enable the physician, surgeon, or dentist to prescribe or act for the patient. A communication described in 45-9-104(7) is not a privileged communication."

a need to know. However, that does not change the fact that the physician treats the patient's medical information as confidential.

ii. Jehovah's Witnesses' doctrine and practice on confidentiality.

Like many religions, Jehovah's Witnesses have internal processes to accommodate confession of sin and assist wrong-doers to attain repentance. Those arrangements are based in the Holy Scriptures and are practiced in congregations of Jehovah's Witnesses in the United States. Congregations of Jehovah's Witnesses are modeled on the Scriptures and the example of first-century congregations, which were cared for by a body of elders. For this reason, the process of confession of sin and attaining repentance involves more than one elder. James 5:14-16.

Doug Chappel, Religious Defendants' representative ("Chappel"), provided information about Jehovah's Witnesses' definition of confidentiality in the context of handling accusations of serious sin, including the accusation Holly made against Maximo. In paragraphs 55-60 of his Declaration, Chappel explained:

55. The requirement that elders keep information and spiritual communications confidential is based on Scripture and has been explained in the official publications of Jehovah's Witnesses.—Proverbs 25:9; *The Watchtower*, April 1, 1971, pages 222-224; *Our Kingdom Ministry*, July 1975 page 3; *The Watchtower*, December 15, 1975, pages 764-66; *The Watchtower*, September 1, 1983, pages 21-26; *The Watchtower*, September 15, 1989, pages 10-15; *The Watchtower*, September 1, 1991, pages 22-24; *The Watchtower*, November 15, 1991, pages 19-23.

56. Congregation members trust elders to keep all spiritual communications strictly confidential. This applies to all members, not just those accused of or confessing serious sin.

57. Revealing confidential communications to those not entitled to hear them could call into question an elder's qualifications.

58. While not every breach of confidentiality by an elder will result in his removal, each elder is accountable before God, the ultimate Judge, for his adherence to the Bible's command to maintain confidentiality.

59. If an elder disclosed confidential information, his credibility and effectiveness as an elder would be compromised and it could have a chilling effect on the congregation members seeking spiritual encouragement, counsel and guidance from elders. Because free and open communication between congregation members and their elders is essential to the spiritual welfare of the members and of the congregation as a whole, the importance of privacy and confidentiality is difficult to overstate.

60. Because congregations are relatively small, each person in a congregation knows each other person in the congregation by name and family. An elder's disclosure of confidential information could readily embarrass a member, cause severe emotional distress, and even damage the reputations of the member and others in the family. In turn, an elder's own relationship with God would be harmed by his causing embarrassment, distress or damage to a member.—Hebrews 13:17 (“those taking the lead among you . . . will render an account to God.”)

Decl. Chappel ¶¶ 55-60.

All elders and congregation members in the faith of Jehovah's Witnesses expect communications regarding an accusation of serious sin, as well as intra-faith processes designed to assist the sinner to repentance, will be discussed privately among individuals who have a need to know, *i.e.*, the accuser (Holly), the accused (Maximo), any witnesses (Peter) and congregation elders. The information is not disclosed to all congregation members because it is confidential, shared only with those with a Scriptural need to know.

Holly's sister, Ivy McGowan-Castleberry (“Ivy”) had first-hand experience with confidentiality in the congregation. She was disfellowshipped in 2004. 5th Aff. DeSoto

¶ 6, Ex. 4: Dep. McGowan-Castleberry 63:7-11. In addition to her own experience, Ivy also knew how the congregation viewed confidentiality because her father was disfellowshipped from the congregation. 5th Aff. DeSoto ¶ 6, Ex. 4: Dep. McGowan-Castleberry 31:7-32:13. Ivy testified that a judicial committee hearing was typically conducted by two or three elders (5th Aff. DeSoto ¶ 6, Ex. 4: Dep. McGowan-Castleberry 31:21-24) and a hearing was “done privately” (5th Aff. DeSoto ¶ 6, Ex. 4: Dep. McGowan-Castleberry 32:8-13). Ivy explained that if the judicial committee made a decision to disfellowship a person, an announcement was read to the congregation, but “[w]hat they were disfellowshipped for is not shared with the congregation.” 5th Aff. DeSoto ¶ 6, Ex. 4: Dep. McGowan-Castleberry 97:23-25. Ivy’s testimony is consistent with what Mr. Chappel said in his Declaration.

Holly’s brother, Peter, refused to answer questions in deposition that would disclose the content of conversations he had with Don Herberger, a Thompson Falls elder. Peter explained that he considered his particular communication to be protected by the clergy-penitent privilege because it was confidential information shared with an elder about matters that affected his spirituality. 5th Aff. DeSoto ¶ 3, Ex. 1: Dep. P. McGowan 39:1-11.

Holly’s mother, Joni, testified that the details of a judicial committee hearing would be “confidential” and the contents of the meeting would not be discussed with other members of the congregation; doing so would be a breach of confidentiality. 5th Aff. DeSoto ¶ 9, Ex. 7: Dep. Joni Navo Nunez 24:25-25:1-17, Feb. 23, 2018.

Concerning her husband’s judicial committee proceeding, she testified that the meetings

were not open to the public and that according to the faith of Jehovah's Witnesses the meetings were confidential. 5th Aff. DeSoto ¶ 9, Ex. 7: Dep. J. Nunez 50:12-25.

The Thompson Falls elders who participated in Max's judicial committee had similar expectations in harmony with "established church practices," which were based in Scripture. Glen Wilson ("Glen") testified that Holly's 2004 letter to the Thompson Falls Body of Elders was viewed as confidential. 5th Aff. DeSoto ¶ 10, Ex. 8: Dep. Glenn Wilson 99:2-101:1, Sept. 14, 2017. As a confidential communication, he was required by established practice to discuss the letter with members of the body of elders to determine if a judicial committee should be formed. 5th Aff. DeSoto ¶ 10, Ex. 8: Dep. Wilson 85:18-24. But, according to established church practice, Glen could not reveal the contents of the letter to anyone outside the body of elders. 5th Aff. DeSoto ¶ 10, Ex. 8: Dep. Wilson 99:16-21. Because that correspondence related to a judicial committee matter, it was considered "confidential." 5th Aff. DeSoto ¶ 10, Ex. 8: Dep. Wilson 77:15-18. The other deponents expressed a similar understanding of confidentiality. A former elder who was identified by the Plaintiffs in their First Amended Complaint, Stephen Pieper ("Pieper"), testified that it was important to follow this practice on confidentiality. 5th Aff. DeSoto ¶ 11, Ex. 9: Dep. Stephen Paul Pieper 53:23-25, Sept. 15, 2017.

Indeed, every party or witness familiar with the structure or functioning of the congregations of Jehovah's Witnesses who testified in this case agreed that Jehovah's Witnesses' teachings on confidentiality give congregation members an expectation of confidentiality with respect to their communication with elders concerning a matter

involving serious sin. When an accusation of serious sin, such as the one Holly made against Maximo, is received, the elders follow internal processes to help the sinner repent. And that necessarily involves sharing information with the accused sinner. Although the definition and practice of confidentiality within the faith of Jehovah's Witnesses does not mirror the religious practices of the Roman Catholic Church concerning the seal of confession, the practices of Jehovah's Witnesses concerning confidentiality is "church doctrine, or established church practice" as required by § 41-3-201(6)(c).

iii. Holly had no reason to think "confidentiality" would mean "secrecy."

Holly's March 19, 2004, letter was addressed "To the body of elders of the Thompson Falls congregation"—and not to one elder. The last sentence of the first paragraph says, "This is my written testimony. . . ." These words indicate that Holly understood the judicial arrangement and the concept of confidentiality within congregations of Jehovah's Witnesses. Holly voluntarily took advantage of the congregation arrangement and shared information with multiple persons and did not view it as "secret." In closing her letter to the body of elders, Holly wrote: "I want to thank Jehovah's shepherd for looking after his flock and for taking care of this situation." Pls.' Mot., Ex. A. Holly was baptized into the faith in 2000 and understood the congregation's judicial arrangement and the definition of confidentiality as understood by the faith of Jehovah's Witnesses. 5th Aff. DeSoto ¶ 5, Ex. 3: Dep. H. McGowan 60:8-12.

The fact that Holly now strategically regrets that none of the elders made a report

to the authorities, does not mean that the congregation, through its elders, is not entitled to the protection provided in the exemption of § 41-3-201(6). In fact, she testified that the congregation elders violated “a moral duty” by failing to report the abuse. 5th Aff. DeSoto ¶ 5, Ex. 3: Dep. H. McGowan 127:13-15. She recognizes that she could have reported the abuse but declined to do so. 5th Aff. DeSoto ¶ 5, Ex. 3: Dep. H. McGowan 133:5-6; Mont. Code Ann. § 41-3-201(4) (“Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.”).

b. Judicial evaluation of Bible-based doctrine of confidentiality is unconstitutional.

i. The Elders followed their faith’s procedures.

Holly complains that the elders mishandled the information she gave them because “they notify headquarters and they notify the child abuser” but still view the information as confidential. Pls.’ Mot. 10. Such intra-faith disclosure pursuant to established church practices harmonizes with Montana’s reporting statute. Indeed, Chappel testified about the faith’s Bible-based judicial committee arrangement and the internal processes that require the elders to keep that information confidential. Decl. Chappel ¶¶ 55-60. No civil court is authorized to look into those ecclesiastic arrangements and second guess the internal disciplinary processes and decisions of a religious organization. Neither can the civil court determine whether the congregation elders should have used a different arrangement, or if they properly followed the direction of their faith. *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976).

ii. The faith's definition of confidentiality governs.

Holly argues that "Defendants did not keep the notification of child abuse confidential in this case. To the contrary, they followed a procedure that requires them to reveal the information to others." Pls.' Mot. 6. However, this is a misstatement. When the elders spoke to Maximo about Holly's accusations against him, they were following the direction of the faith and speaking to an accused who was in need of spiritual assistance. *See, e.g.*, Galatians 6:1; James 5:16. As Chappel explained, the Thompson Falls elders were following their Scripturally-based protocol for handling an allegation of serious sin. Decl. Chappel ¶¶ 42-49.

Neither Holly nor a civil court can determine that Jehovah's Witnesses teachings on confidentiality are invalid simply because they do not have the same views as the Roman Catholic Church. To require all faiths to embrace the Catholic definition of confidentiality based on one-on-one confession under the seal of the confessional is a blatant violation of article II, section 5 of the Montana State Constitution, which provides: "The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

In addition, accepting Holly's argument invites the court to evaluate and determine that the doctrine of confidentiality as taught and applied in congregations of Jehovah's Witnesses does not merit the same protections afforded other faiths under Montana Code Annotated § 41-3-201(6). This conclusion would violate settled constitutional protections. *See Lemon v. Kurtzman*, 403 U.S. 602 (1971). Contrary to the direction of *Lemon* and its progeny, Holly's argument invites the court into "an excessive

entanglement with religion” because the court must evaluate and conclude that the doctrine of confidentiality as defined and practiced in congregations of Jehovah’s Witnesses cannot be given the same legal weight as other faiths. The United States Supreme Court explained in its June 5, 2018 decision that such “official expressions of hostility to religion” are “inconsistent with what the Free Exercise Clause” of the First Amendment requires. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, No. 16-111, 2018 U.S. LEXIS 3386, at *32 (June 5, 2018).

For these reasons, this Court should deny Plaintiffs’ motion for partial summary judgment.

CROSS-MOTION FOR SUMMARY JUDGMENT ON COUNT II
(Negligence *per se*)

The Religious Defendants are entitled to judgment as a matter of law on Count II of the First Amended Complaint, which is a claim of negligence *per se*. Whether negligence *per se* exists is an issue of law. *Schwabe v. Custer’s Inn Assocs.*, 2000 MT 325, ¶ 23, 303 Mont. 15, 15 P.3d 903. This claim requires Plaintiffs to prove five elements: (1) the defendant violated a particular statute; (2) the statute was enacted to protect a specific class of persons; (3) the plaintiff is a member of that class; (4) the plaintiff’s injury is of the sort the statute was enacted to prevent; and (5) the statute was intended to regulate members of defendants’ class. *VanLuchene v. State*, 244 Mont. 397, 401, 797 P.2d 932, 935 (1990); *Nehring v. LaCounte*, 219 Mont. 462, 468, 712 P.2d 1329, 1333 (1986). A negligence *per se* theory fails as a matter of law if the plaintiff fails to establish all material element including causations. *Stipe v. First Interstate Bank-*

Polson, 2008 MT 239, ¶ 14, 344 Mont. 435, 188 P.3d 1063 (citing *Kiamas v. Mon-Kota, Inc.*, 196 Mont. 357, 362-363, 639 P.2d 1155, 1158 (1982)) (summary judgment appropriate when plaintiff fails to establish the elements of negligence).

In this case, Plaintiffs cannot establish that Montana’s reporting statute was intended to regulate members of Defendants’ class. The statute regulates individuals who are “professionals”—these defendants are religious corporations.

c. The Religious Defendants are not mandated reporters.

i. Religious corporations and unincorporated associations are not mandated reporters.

Montana Code Annotated § 41-3-201(2) designates specific “professionals and officials” as mandated reporters. The list includes “members of clergy, as defined at § 15-6-201(2)(b).” Mont. Code Ann. § 41-3-201(2)(h). Section 15-6-201(2)(b) defines “clergy” as individuals, including “an ordained minister, priest, or rabbi,” “a commissioned or licensed minister,” “a member of a religious order who has taken a vow of poverty,” or “a Christian Science practitioner.” Mont. Code Ann. § 15-6-201(2)(b)(i)-(iv). Religious corporations and unincorporated associations are not included in that definition.

Thus, Montana’s reporting statute applies to individual ministers but not to religious corporations or unincorporated associations. These Religious Defendants are not members of the class that the statute was intended to regulate.

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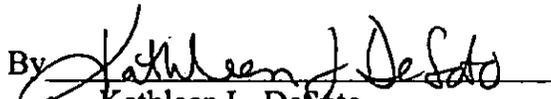
II. CONCLUSION

As a matter of law, Plaintiffs are not entitled to an Order for partial summary judgment on the Religious Defendant's Sixth Affirmative Defense because Montana's reporting statute provides an exception for ordained ministers who keep information confidential. To the extent the Defendants are vicariously liable for the conduct of the elders who decided to keep information confidential according to the religious beliefs and practices of Jehovah's Witnesses, § 41-3-201(6)(c) provides a valid affirmative defense. And, as a matter of law, Religious Defendants are entitled to an Order dismissing Count II (Negligence *Per Se*) because the Defendants—religious corporations—are not members of the class of persons § 41-3-201 was intended to regulate.

DATED this 7th day of June, 2018.

Attorneys for Religious Defendants/Third-Party
Plaintiffs:

GARLINGTON, LOHN & ROBINSON, PLLP

By 
Kathleen L. DeSoto

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2018, a copy of the foregoing document was served on the following persons by the following means:

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A handwritten signature in cursive script, appearing to read "Jackie Young", is written over a horizontal line.

EXHIBIT H

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 Breaux 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.

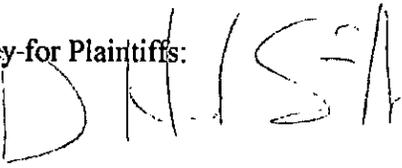
D. Conclusion

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.

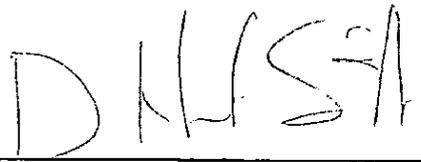
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**MONTANA TWENTIETH JUDICIAL DISTRICT COURT
 SANDERS COUNTY**

ALEXIS NUNEZ and HOLLY McGOWAN,)	
Plaintiffs,)	Cause No. DV 16-84 Hon. James A. Manley
vs.)	
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.; CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES and THOMPSON FALLS CONGREGATION OF JEHOVAH'S WITNESSES,)	CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER FILED UNDER SEAL
Defendants/Third-PartyPlaintiffs)	EXHIBITS A – Y TO PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT ON COUNT II
vs.)	
MAXIMO NAVA REYES,)	
Third-Party Defendants.)	
)	
)	

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

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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.

75

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

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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 95

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?

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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
Blum

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

THOMPSON FALLS CONGREGATION, THOMPSON FALLS, MT

August 25, 2005

Page 2

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*

TF000152

EE

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.

FF

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?

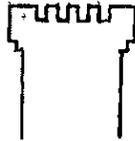
22 **A. Yeah.**

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

EXHIBIT I



WATCHTOWER

BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201-2483, U.S.A. PHONE (718) 825-3800

July 20, 1998

CONFIDENTIAL

TO ALL BODIES OF ELDERS

Dear Brothers:

We are here providing, for your future reference, information that was presented at the 15-hour supplementary course for congregation elders on certain serious matters.

Child Molestation: The Society's letter to all bodies of elders dated March 14, 1997, page 2, paragraph 5, states: "[G]ive the Society a report on anyone who is currently serving or who formerly served in a Society-appointed position in your congregation who is known to have been guilty of child molestation in the past." Reports indicate that some elders think this direction does not apply if before his baptism the person sexually abused a child. However, even in such a situation, the elders should write the branch office. This is true even if what occurred was many years ago. If any body of elders has not yet reported such a matter, they should immediately do so. Furthermore, any correspondence put in the confidential congregation file about an individual accused of child molestation, proven or otherwise, should be marked "Do Not Destroy" and be kept indefinitely.

In the Kingdom Ministry School Supplementary Course for Congregation Elders there was a panel discussion in Unit 5b, "USE DISCERNMENT IN HANDLING SERIOUS MATTERS." This portion of the course addressed questions related to the problems associated with child abuse. Question 6 to the panel asked: "What factors should be considered in determining what congregation privileges, if any, a former child molester can enjoy?" The answer included the statement: "There are also legal considerations." Some have inquired about how and why legal considerations should affect our recommendations of those who have been guilty of child abuse in the past.

Those who are appointed to privileges of service, such as elders and ministerial servants, are put in a position of trust. One who is extended privileges in the congregation is judged by others as being worthy of trust. This includes being more liberal in leaving children in their care and oversight. The congregation would be left unprotected if we prematurely appointed someone who was a child abuser as a ministerial servant or an elder. In addition, court officials and lawyers will hold responsible any organization that knowingly appoints former child abusers to positions of trust, if one of these, thereafter, commits a further act of child abuse. This could result in costly lawsuits, involving dedicated funds that should be used to further the Kingdom work. So, legal considerations must also be weighed along with the degree of notoriety, the extent of the misconduct, how many years ago the sin occurred, and how the brother is now viewed by the congregation and people in the community including those he victimized.

WTNY000102

TO ALL BODIES OF ELDERS
July 20, 1998
Page 2

Scriptural Freedom to Remarry: The 1991 Kingdom Ministry School textbook, page 135, paragraph 1, describes a situation where an adulterous mate unilaterally obtains a divorce over the objection of the innocent mate. In such a case, the guilty one is not free to remarry.

What if the innocent mate consents to the divorce by signing the divorce papers? Does this free the guilty mate to remarry? Yes, Jesus' counsel at Matthew 5:37 applies here: "Let your Yes mean Yes, your No, No." If the innocent mate, perhaps in an effort to protect herself financially or to obtain custody of children, agrees to a divorce obtained by her adulterous husband, the adulterous one is then free to remarry. Although the innocent one may claim forgiveness, by signing the divorce papers she indicates her rejection of the adulterous mate. Since she has rejected that one, she holds no further claim on him, and he is Scripturally free to remarry.

Another situation involving the Scriptural freedom to remarry is where an unscriptural divorce is obtained and then, some time later, one of the mates commits fornication. In such a case, does either one have a Scriptural basis to remarry?

If a man takes the initiative and divorces his mate without a Scriptural basis and his divorced wife later commits adultery, both are free to remarry. This is because, by his previous unscriptural action of divorcing his wife, the husband has given evidence of his wanting to reject her. What is stated in the 1991 Kingdom Ministry School textbook, page 135, paragraph 6, applies: "*A person who commits adultery after having been divorced by his or her mate on unscriptural grounds would be Scripturally free to remarry, since he or she had already been rejected by the mate that obtained the divorce.*" However, the converse is not necessarily true. If the one who initiated the unscriptural divorce later commits adultery, that one is still obligated to confess to the mate, although they are legally divorced. The innocent mate must be given the opportunity to determine whether to forgive or not. However, in both cases, the one committing adultery would need to meet with a judicial committee.

While the principles outlined above should prove helpful in handling inquiries from publishers about the Scriptural freedom to remarry, the elders should always exercise extreme caution when providing an answer. They should never inform a publisher that there appears to be a basis for Scriptural freedom to divorce and remarry, *unless conclusive evidence has been established* (1) that adultery was committed, (2) that the innocent mate has rejected the guilty one, and (3) that a legal, final divorce has been obtained. Because of the numerous factors involved in such matters, in many cases it will be best to write the Society. When doing so, always provide as many details as possible, including the names of the individuals involved. The Society will then provide the needed assistance.

When a divorced brother or sister wishes to remarry, the elders should kindly request to see the divorce papers to make sure that that one is legally free to do so. They should also determine that it has been established that both parties involved are Scripturally free to remarry. (Matt. 19:9) This will help servants of Jehovah to preserve the cleanness of the congregation and avoid entering adulterous marriages. Always review the Society's letter to all bodies of elders

WTNY000103

TO ALL BODIES OF ELDERS

July 20, 1998

Page 3

dated May 15, 1988, regarding guidelines on wedding procedures before agreeing to solemnize any marriage.

Please be assured of our prayers on your behalf as you endeavor to fulfill your weighty responsibilities as shepherds of the flock. We send herewith a warm expression of our Christian love and best wishes.

Your brothers,


OF NEW YORK, INC.

P.S. to Body of Elders: At the next meeting of the entire body of elders, the presiding overseer should have this letter read and should have each elder make the following notations in the margins of his personal copy of the 1991 Kingdom Ministry School textbook:

On page 93, next to paragraphs 10-11: See the Society's letters dated July 20, 1998; March 14, 1997; August 1, 1995; February 3, 1993; March 23, 1992; and July 1, 1989.

On page 135, next to paragraphs 1-6: See the Society's letter dated July 20, 1998.

WTNY000104

EXHIBIT J

Alexis Nunez

1 Q. -- about any allegations related to child
2 sexual abuse?

3 A. Correct.

4 Q. I want to talk to you now about some of
5 the allegations that serve as the basis for the
6 lawsuit and those are the allegations that involve
7 Max. How is Max related to you?

8 A. He married my maternal grandmother.

9 Q. What's your earliest memory of meeting
10 Max?

11 A. I believe it was after we moved to
12 Montana and we began going over there on the
13 weekends, as far as I can remember back.

14 Q. And who would take you to go over to Max
15 and Joni's house?

16 A. It depended. Either my mom and
17 grandmother would meet halfway; sometimes my
18 grandmother came to Polson to pick us up. It just
19 kind of depended on the week.

20 Q. Okay. When was the first time, if you
21 remember, that Max had inappropriate sexual
22 contact with you?

23 A. I don't remember.

24 Q. Okay. Do you recall the nature of --
25 strike that. Let me rephrase the question.

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

Alexis Nunez

1 Q. Associate with your mom -- or your
2 grandmom?

3 MR. LEONOUDAKIS: Objection.

4 A. Yeah, yeah, I guess I don't know if we
5 just -- we -- our relationship began to fade at
6 that point.

7 Q. And when Max would engage in this
8 activity on the weekly basis, would this occur in
9 the family home that he owned with Joni?

10 A. Correct.

11 Q. Okay. And would it occur in the bedroom?

12 A. Yes.

13 Q. Okay. You mentioned that your siblings
14 were with you when this would occur. Where would
15 they be?

16 A. Usually in the living room.

17 Q. So you and Max would be separated from
18 your siblings?

19 A. Correct.

20 Q. And would your older sister Dominique be
21 there too?

22 A. In the home?

23 Q. In the home?

24 A. Yes, she would have been in the living
25 room.

EXHIBIT K

Holly McGowan

1 A. Yes.

2 Q. All right. And do you have any siblings?

3 A. Yes.

4 Q. Who are your siblings?

5 A. Ivy Janel McGowan-Castleberry/Peter Edwin
6 McGowan.

7 Q. Any half siblings?

8 A. No.

9 Q. Do you recall offhand Ivy's age or
10 approximately how much older than you she is?

11 A. Yes.

12 Q. How old?

13 A. She is eight-and-a-half years older.

14 Q. And what's Peter's age?

15 A. 18 months younger.

16 Q. So where did you grow up?

17 A. Primarily, Plains, Montana.

18 Q. Okay.

19 [EXHIBIT NO. 20 MARKED FOR
20 IDENTIFICATION]

21 Q. (BY MR. TAYLOR) I'm going to show you
22 what we've marked as Exhibit No. 20, and we've
23 stipulated prior to the deposition that we're
24 going to void out any numbers between the last
25 exhibit marked at our first series of depositions

13

Holly McGowan

1 involved with you and Max in sexual contact?

2 A. Approximately '95 to '96, in there.

3 Q. And do you remember the first time that
4 occurred?

5 A. I can't say it was the first time. I
6 have recollections of occasions.

7 Q. And what are your recollections? What do
8 you recall occurring?

9 A. We were frequently sent to go lay down
10 with Max to cuddle with him.

11 Q. Who would send you?

12 A. My mom.

13 Q. Okay. And you would go cuddle with Max
14 in the bedroom?

15 A. Yes.

16 Q. And how would you and Peter be involved
17 in sexual contact with Max?

18 A. He again, fondled both of us, forced us
19 to do certain acts on him and each other.

20 Q. So from '94 -- or '95/'96, try to be as
21 delicate as we possibly can, did Max perform oral
22 sex on you?

23 A. Yes.

24 Q. Did Max force you to perform oral sex on
25 him?

Holly McGowan

1 A. No.

2 Q. Okay. It says going forward, "This
3 instance however began a new threshold, as he,"
4 I'm guessing that's Max?

5 A. Yes.

6 Q. "Became much more bold in his actions.
7 From that time on, he would not hesitate to try to
8 force intercourse or oral sex on me. This would
9 occur just about any time we were at the house
10 alone and sometimes even when others -- with
11 others around."

12 So would it be fair to say that a lot of
13 the abuse occurred when no other adult was in the
14 home?

15 A. Not necessarily.

16 Q. Okay. Did abuse occur when other adults
17 were in the home?

18 A. Yes.

19 Q. And which other adults would have been in
20 the home?

21 A. My mother.

22 Q. Okay. Anyone else?

23 A. If there were friends over and we were
24 sent to go cuddle with him, possibly. Don't
25 recall anyone specifically.

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