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MONTANA TWENTIETH JUDICIAL DISTRICT COURT, SANDERS COUNTY

ALEXIS NUNEZ and HOLLY  
McGOWAN,

Plaintiffs,

v.

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

Defendants.

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

REPLY BRIEF IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGMENT AS TO THE CLAIMS  
BROUGHT BY ALEXIS NUNEZ, OR IN  
THE ALTERNATIVE, MOTION FOR  
SUMMARY ADJUDICATION OF  
INDIVIDUAL CLAIMS

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.

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Defendants/Third-Party Plaintiffs Watchtower Bible and Tract Society of New York, Inc. ("Watchtower NY"), Christian Congregation of Jehovah's Witnesses ("CCJW") and the Thompson Falls Congregation of Jehovah's Witnesses ("Thompson Falls Congregation") (collectively "Religious Defendants") respectfully provide their Reply Brief in Support of their Motion for Summary Judgment as to the Claims of Alexis Nunez, or in the Alternative, Motion for Summary Adjudication of Individual Claims.

**A. Religious Defendants Are Not Mandated Reporters.**

Montana's Reporting Statute does not include religious corporations. As noted in Religious Defendants' initial brief, Montana Code Annotated § 41-3-201(2)(h) requires "a member of the clergy, as defined in 15-6-201(2)(b)"<sup>1</sup> to make a report. Mot. Summ. J.

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<sup>1</sup> Montana Code Annotated § 15-6-201 is part of Montana law that identifies persons and institutions that qualify for exemption from property taxes.

Claims Brought Alexis Nunez, Alternative, Mot. Summ. Adjudication Individual Claims & Supporting Br. 14, June 25, 2018. Unlike subsection (2)(b) – which describes specific individuals who fit the definition of “member of the clergy” and are incorporated into the reporting statute, subsection (2)(c) describes charitable institutions. Mont. Code Ann. § 15-6-201(2)(c).

It is a well-settled principle of law that statutes must be read and understood according to the natural and most obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending their operation. *Osterholm v. Boston & Mont. Consol. Copper & Silver Mining Co.*, 40 Mont. 508, 107 P. 499 (1910). The Court “has no license to psychoanalyze the legislators” or “determine the prudence of a legislative decision.” *Rohlf’s v. Klemenhagan, LLC*, 2009 MT 440, ¶ 20, 354 Mont. 133, 227 P.3d 42. Rather, the Court’s job in interpreting a statute is “simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit hat has been inserted.” *State v. Cooksey*, 2012 MT 226, ¶ 69, 336 Mont. 346, 286 P.3d 1174 (quoting Mont. Code Ann. § 1-2-101). The Court cannot “rewrite a statute, by ignoring clear and unambiguous language, in order to accomplish what we may feel is a more sensible or palatable purpose.” *Cooksey*, ¶ 69.

Plaintiffs are incorrect when they repeatedly argue that the Religious Defendants – religious corporations—“are clergy” and mandated reporters. Pls.’ Resp. Defs.’ Mot. Summ. J. Claims Brought Alexis Nunez, Alternative, Mot. Summ. Adjudication

Individual Claims 2, 4, July 19, 2018 (“Pls.’ Resp.”). By incorporating only subsection (2)(b) into the reporting statute, the Montana Legislature exempted religious institutions like the Religious Defendants from the statutory scheme and subjected only *persons* like elders to the definition. Only elders are subject to the penalties for failure to report. Plaintiffs did not sue any elder individually, and thus Plaintiffs do not have a claim against the Religious Defendants for failure to report under § 41-3-201(2)(h).

**B. Religious Defendants Did Not Undertake a Duty to Supervise Max Reyes.**

Alexis Nunez (“Nunez”) confuses ecclesiastical discipline with secular law enforcement to mischaracterize efforts associated with spiritual efforts to assist a congregation member accused of committing a serious sin. Nunez calls those efforts an undertaking to “handle cases of child abuse rather than report that abuse to authorities.” Pls.’ Resp. 3-4 (emphasis added). Internal religious processes designed to assist a sinner to repair his/her relationship with God do not interfere with any distinct and separate processes of reporting suspected child abuse to law enforcement. Indeed, the reporting statute makes allowances for information obtained during those religious processes. Mont. Code. Ann. § 41-3-201(6)(c).

Plaintiffs also mischaracterize the content of a letter CCJW sent to Thompson Falls elders in 2005 and quote two paragraphs as the basis for an argument that the Religious Defendants assumed a duty to supervise Max Reyes when they instructed elders “how they were [to] supervise” him. Pls.’ Resp. 4. The excerpt does not support Nunez’s argument because the excerpt reveals that the direction was provided to assist congregation elders help a sinner (Max) to become sensitive to things that might tempt

him to sin again. “It would be appropriate for elders to give kindly caution to any who are doing things that may be a temptation or a cause for concern to others in the congregation.” *See* Pls.’ Resp. 4, Ex. E: Letter from CCIW to Thompson Falls Congregation elders, Aug. 25, 2005 (TF000152). No elder accepted a duty to supervise Max Reyes in any capacity, let alone in Reyes’ personal activities in his own home.

**C. No Special Relationship Existed Between the Religious Defendants and Alexis Nunez.**

Nunez argues that a special relationship was created by Montana’s Reporting Statute, which she contends required the Religious Defendants – including New York corporations – to protect her, a resident of Nebraska. Nunez overreaches far beyond Thompson Falls Congregation to claim that religious institutions across the country are subject to Montana’s Reporting Law because “Jehovah’s Witness elders” in the Service Department and lawyers in the Legal Department, which operate in New York, are agents of the Religious Corporations. Pls.’ Resp. 6-7. That argument fails, however, because it is axiomatic that “[t]he authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980) (quoting *Pennoyer v. Neff*, 95 U.S. 714, 720 (1877)).

Even if Nunez had sued a non-resident elder (she did not), Montana’s Reporting Statute cannot establish a special relationship between Nunez and elders who reside in New York. Even the long-arm statute permitting a court to exercise jurisdiction in a civil case over a non-resident is subject to “traditional notions of fair play and substantial justice.” *Buckles v. Cont’l Res., Inc.*, 2017 MT 235, ¶ 11, 388 Mont. 517, 402 P.3d 1213.

The laws of New York govern the conduct of elders who reside in New York. It is undisputed that elders in Montana were acting on behalf of Thompson Falls Congregation when they addressed accusations that Max Reyes had committed serious sins involving child sexual abuse. And it is undisputed that elders in the Service Department were acting on behalf of CCJW when they provided spiritual assistance to the elders in Montana.

Nunez relies upon two inapposite cases for the proposition that the Reporting Statute establishes a special relationship between her and all the elders. Pls.' Resp. 3 (citing *Massee v. Thompson*, 2004 MT 121, ¶ 42, 321 Mont. 210, 90 P.3d 394 and *Nelson v. Driscoll*, 1999 MT 193, ¶ 22, 295 Mont. 363, 983 P.2d 972). *Massee* and *Driscoll* involve claims brought against a sheriff and a police officer, who were named as individual defendants. Nunez did not sue any individual elder. Additionally, those decisions center on the public duty doctrine, which limits duties owed by a public official who has undertaken a "duty to protect and preserve the peace." *Nelson*, ¶ 21.

Congregation elders are not public officials and the Reporting Statute only applies to individuals who are not before this Court.

The *Massee* court, citing *Driscoll*, explained that, generally, a public official owes a duty to the public at large and not to individual members of the public but an exception arises when a statute requires a public official to act in a specific way. *Massee*, ¶ 41. For purposes of the public duty doctrine, a special relationship between a public official and an individual member of the public can be created in various ways, including a statute

intended to protect individual members of the public. The *Massee* court applied a domestic abuse statute that requires a peace officer responding to a domestic violence call, who finds a family member present, to advise the victim – outside the presence of the offender – of the availability of shelters or other services, and provide notice of any legal rights and remedies available including specific language about pressing criminal charges or seeking a protective order. *Massee*, ¶ 34.

Even assuming, *arguendo*, that at some point in time a special relationship between Thompson Falls elders and Alexis came into existence, that relationship did not exist in 1998 when the Thompson Falls elders allegedly learned about Max’s abuse of Holly. Indeed, Nunez only alleges that she occasionally “attended Thompson Falls Congregation from 2002-2007.” Pls.’ Resp. 9. Thompson Falls Congregation elders did not owe Alexis – a resident of Nebraska—any duty in 1998 when the alleged failure to report occurred.

Nunez also argues that a duty to report was triggered when (in 2004<sup>2</sup>) Peter McGowan and Holly McGowan testified about child sexual abuse by Max Reyes during internal ecclesiastical processes that addressed accusations of a serious sin. Pls.’ Resp. 3. Congregation elders treated communications during those internal processes in the manner required by the religious beliefs and practices of Jehovah’s Witnesses, which

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<sup>2</sup> 5th Found. Aff. Kathleen L. DeSoto ¶ 3, June 7, 2018, Exs. 1-3: Dep. Peter Edwin McGowan 7:16-19, Apr. 24, 2018 (“Dep. P. McGowan”).

require confidentiality.<sup>3</sup> Montana Code Annotated § 41-3-201 expressly exempts congregation elders from mandatory reporting requirements under those conditions.

Thus, the elders were not required to report under the facts that existed in 2004.

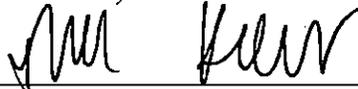
Assuming *arguendo* that some relationship developed with the Thompson Falls Congregation as a result of Alexis' occasional meeting attendance between 2002-2007, that relationship was not fiduciary in nature and this Court would violate the Church Autonomy Doctrine if it imposed legal duties based upon mere trust and confidence rooted in spiritual authority. That inquiry entangles the court into matters of religion. *NLRP v. Bishop of Chi.*, 440 U.S. 490, 502 (1979). Indeed, Nunez concedes that she does not rely upon mere spiritual authority but instead claims that the "special relationship" arose from statute. That statute applies to individuals, not corporations.

For these reasons, this Court should grant the Religious Defendants' Motion for Summary Judgment.

DATED this 14<sup>th</sup> day of August, 2018.

Attorneys for Religious Defendants/Third-Party  
Plaintiffs:

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By   
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<sup>3</sup> Peter McGowan testified that he viewed those communications to be confidential under the religious beliefs and practices of Jehovah's Witnesses and, for that reason, refused to answer certain questions protected by evidentiary privilege. Dep. P. McGowan 8:16-22; 9:3-5. Holly, who was an adult living in Nebraska, provided her testimony by letter dated March 19, 2004. Pls.' Mot. Partial Summ. J. Re: Defs.' 6th Affirm. Def. & Mem. Support, May 14, 2018, Ex. A: Written Notice Abuse Holly McGowan, Mar. 19, 2004. Indeed, Holly's letter begins with the statement, "This is my written testimony. . . ."

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2018, a copy of the foregoing document was served on the following persons by the following means:

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