Via Knox

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FILED
Clerk of the Superior Court
MAY 13 2011
By: A. SEAMONS, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

John Dorman, Individually, and Joel Gamboa, Individually, Plaintiffs, vs. Defendant Doe 1, La Jolla Church; Defendant Doe 2, Linda Vista Church; Defendant Doe 3, Supervisory Organization; Defendant Doe 4, Perpetrator; and Does 5 through 100, Defendants.	Case No: 37-2010-00092450-CU-PO-CTL **NOTICE OF LODGMENT IN SUPPORT OF PLAINTIFFS' REPLY TO MOTION TO COMPEL FURTHER DOCUMENTS FROM DEFENDANTS** **Date: 5-20-11** **Time: 9:00 a.m.** **Judge: Steven R. Denton** **Dept: C-73**

Plaintiffs hereby lodge the following documents with their Reply in Support of Plaintiffs' Motion to Compel Further Responses to Request for Production of Documents:

Exhibit 1: True and correct copy of the Notice of Disfellowshipping of the Perpetrator; a certified Spanish to English Translation of the original document; and a certificate of the authenticity of the translation.

Exhibit 2: Pages 42-50 of the deposition of Juan Guardado taken in this litigation.

Exhibit 3: Pages 35-40 of the deposition of Dennis Palmer, taken in this litigation.

Exhibit 4: An order dated September 29, 2005, in the matter of *Charissa W., et al. v. Watchtower Bible and Tract Society of New York, et al.*, Judicial Council Coordinated Proceeding Case Number 4374.

Exhibit 5: An order issued by Division 3 of the Fist District Court of Appeal denying the Petition for Writ of Mandate filed by the Watchtower Bible and Tract Society of New York following the issuance of the order attached as Plaintiffs' Exhibit 4 in Appellate Case Number A114329.

Exhibit 6: A copy of the Petition for Writ of Mandate filed by the Watchtower Bible and Tract Society of New York following the issuance of the order attached as Plaintiffs' Exhibit 4..

Respectfully Submitted,

THE ZALKIN LAW FIRM, P.C.

Dated: 5/13/11

Devin M. Storey
Attorney for Plaintiffs

FILED
Clerk of the Superior Court
MAY 13 2011
By: A. SEAMONS, Deputy

PROOF OF SERVICE

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I, Lisa E. Maynes, am employed in the city and county of San Diego, State of California. I am over the age of 18 and no a party to the action; my business address is 12555 High Bluff Drive, Suite 260, San Diego, CA 92130.

On May 13, 2011, I caused to be served:

PLAINTIFFS' NOTICE OF LODGMENT IN SUPPORT OF REPLY TO MOTION TO COMPEL FURTHER DOCUMENTS FROM DEFENDANTS

in this action by placing a true and correct copy of said documents(s) in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

___ (BY MAIL) I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Diego, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

_X__ (BY PERSON SERVICE) By causing to be delivered by hand to the offices of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 5-13-11

Lisa E. Maynes

MAILING LIST

James M. McCabe, Esq.
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Attorneys for Defendants
Defendant Doe 1, La Jolla Spanish Congregation
Defendant Doe 2, Linda Vista Spanish Congregation
Defendant Doe 3, Watchtower Bible & Tract Society of New York

EXHIBIT 1

DO NOT DESTROY

NOTIFICATION OF EXPULSION OR DISASSOCIATION

(Please write all information on typewriter or print in ink.)

JUNE 23, 1995

Playa Pacifica	San Diego	CA	98806
Name of Congregation	City	State	Number of Congregation

Gonzalo Campos	June 9, 1995	21/APR/00
Name of person expulsed or disassociated	Date of announcement expulsion or disassociation	Date of reestablishment

Mark the corresponding boxes, if applicable: (X) Elder ( ) Ministerial servant ( ) Regular or special precursor ( ) Listed with the Society as a person that receives literature or magazines (Please send new name and address.)

DO NOT DESTROY

Offense(s) for which the person was expulsed (if the person disassociated on his/her own, indicate the reason):

Please provide a brief summary, but complete, of the matter: 1) What led to the commission of the bad act 2) Had the person been advised or censured previously? 3) What factors, including the lack of proper acts of repentance, led the person to that decision? (See point number 3 in back.) (Use additional page if you need more space.)

What evidence was presented of the bad act, such as a confession, two or more witnesses, etc.?

Signatures of the elders who served in the committee. (Print or typewrite the names under the line. Sign on the line. (If this is a disassociation, the committee selected to deal with the case must sign.)

(Signature)	(Signature)
Eduardo Chavez	Florentino Garcia
(Signature)	(Signature)
Jesus Martinez	Kevin Phillips

Did the person appeal your decision? No If so, this form must be filled out and handed to the appeals committee president, who shall send it to the Society with a letter of the appeals committee. If the original committee wants to add more comments, it must do so in writing and give them to the appeals committee so that it may send them to the Society.

If the person had been expelled or had disassociated himself/herself previously, indicate:

1. Date _____ 2. Name of the person at that time _____
3. Date of reestablishment _____
4. Congregation that took the action: _____

Name of the Congregation City State

NOTE: Send the original of this form to the Society along with cards S-79a-S and S-79b-S that you have filled out. Retain a copy of this form in the confidential files of the congregation. After the Society receives these forms, the card S-79b-S will be returned to you. If the person is reestablished (or if the person dies), send a card S-79b-S to the Society and indicate in your copy of Form S-77-S the date of reestablishment (or of death).

(SEE BACK)

INSTRUCTIONS TO FOLLOW TO INFORM REGARDING EXPULSIONS OR DISASSOCIATIONS

The judicial committee shall use the cards S-79a-S and S-79b-S and form S-77-S to provide information to the Society when managing expulsion cases. When a person disassociates himself/herself, a committee shall be named to deal with the matter, and the committee must use these same forms to inform the Society. The forms and the special blue envelope shall be used in the following manner:

Notification of expulsion or disassociation (S-77-S): Fill out the original and a carbon copy. Retain carbon copy in the confidential files of the congregation and send the original to the Society in the special blue envelope.

Registration of expulsion or disassociation (S-79a-S and S-79b-S: Fill out the originals of each of these cards. both cards, S-79a-S and S-79b-S, must be sent to the Society, along with the form S-77-S. Card S-79-S shall be retained in the files of the Society. The society shall stamp on card S-79b-S the date on which the registration was made and then it shall return it to the congregation. Once you receive card S-79b-S, place it along with your copy of Form S-77-S in the confidential files of the congregation.

If the person is reestablished (or dies), the secretary must place on card S-79b-S, the date on which this happened, sign it and send it to the Society in the special blue envelope. This date must also be registered in your copy of form S-77-S.

Blue envelopes: These special blue envelopes shall only be used when sending the aforementioned forms to the Society or when sending to the Society correspondence related to judicial matters. Please do not use the blue envelopes to send any other correspondence.

POINTS THAT MUST BE REVIEWED WHEN HANDLING EACH CASE

1. The arrangements that the body of elders must make in order to assign brothers capable of serving in the judicial committee.

2. The procedure that the judicial committee must follow.

3. The most recent information regarding how to identify true repentance and acts proper of repentance.

4. The instructions regarding how to deal with an appeal, in case the expulsion is appealed.

DO NOT DESTROY

NOTIFICACIÓN DE EXPULSIÓN O DESASOCIACIÓN

(Sírvanse escribir toda la información a máquina o con letra de molde y tinta.)

JUN 28 1995

Playa Pacifica	San Diego	CA	98806
Nombre de congregación	Ciudad	Estado	Número de congregación

Gonzalo Campos	9 de Junio, 1995	21/ABR/00
Nombre de la persona expulsada o desasociada	Fecha del anuncio de expulsión o desasociación	Fecha de restablecimiento

Marquen los encasillados correspondientes, si aplican: ☒ Anciano ☐ Siervo ministerial ☐ Precursor regular o especial ☐ Alistado con la Sociedad como la persona que recibe la literatura o las revistas (Sírvanse enviar el nombre y la dirección nuevos.)

DO NOT DESTROY

Ofensa(s) por la(s) cual(es) se expulsó a la persona (si ella se desasoció, indiquen la razón):

Sírvanse proporcionar un resumen breve, pero completo, del asunto: 1) ¿Qué condujo a la comisión del mal? 2) ¿Se había aconsejado o censurado anteriormente a la persona? 3) ¿Qué factores, incluso la falta de obras propias de arrepentimiento, los llevaron a tomar su decisión? (Vean el punto núm. 3 al dorso.) (Usen una hoja adicional si necesitan más espacio.)

¿Qué evidencia se presentó del mal, tal como una confesión, dos o más testigos, etc.?

Firmas de los ancianos que sirvieron en el comité. (Escriban los nombres en letra de molde o a máquina debajo de las líneas. Firmen en las líneas.) (Si se trata de una desasociación, el comité seleccionado para tratar el caso debe firmar.)

Eduardo Chavez	Florentino Gracia
Jesus Martinez	Kevin Phillips

¿Apeló la persona de la decisión de ustedes? No Si es así, debe llenarse este formulario y entregarse al que preside el comité de apelación, quien lo enviará a la Sociedad con una carta del comité de apelación. Si el comité original quiere añadir más comentarios, debe ponerlos por escrito y dárselos al comité de apelación para que éste los envíe a la Sociedad.

Si la persona había sido expulsada o se había desasociado anteriormente, indiquen: 1. Fecha _____

2. Nombre de la persona entonces _____ 3. Fecha de restablecimiento _____

4. Congregación que tomó la acción: _____ _____ _____

Nombre de la congregación — Ciudad — Estado

NOTA: Envíen a la Sociedad el *original* de este formulario junto con las tarjetas S-79a-S y S-79b-S que ustedes han llenado. Retengan una copia de este formulario en los archivos confidenciales de la congregación. Después que la Sociedad reciba estos formularios, se les devolverá la tarjeta S-79b-S. Si se restablece a la persona (o ella muere), envíen a la Sociedad la tarjeta S-79b-S y anoten en su copia del formulario S-77-S la fecha de restablecimiento (o de la muerte).

SEP 20 1995

Impreso en E.U.A.

INSTRUCCIONES A SEGUIR PARA INFORMAR EXPULSIONES O DESASOCIACIONES

El comité judicial utilizará las tarjetas S-79a-S y S-79b-S y los formularios S-77-S para suministrar información a la Sociedad cuando manejen casos de expulsión. Cuando una persona se desasocia, se nombrará un comité para tratar el asunto, y el comité debe emplear estos mismos formularios para informar a la Sociedad. Se utilizarán los formularios y los sobres azules especiales de la siguiente manera:

Notificación de Expulsión o Desasociación (S-77-S): Llenen el original y una copia al carbón. Retengan la copia al carbón en los archivos confidenciales de la congregación y envíen *el original a la Sociedad* en el sobre azul especial.

Registro de Expulsión o Desasociación (S-79a-S y S-79b-S): Llenen los originales de cada una de estas tarjetas. Deben enviarse a la Sociedad ambas tarjetas, la S-79a-S y la S-79b-S, junto con el formulario S-77-S. Se retendrá en los archivos de la Sociedad la tarjeta S-79a-S. La Sociedad estampará en la tarjeta S-79b-S la fecha en que se hizo el registro y entonces la devolverá a la congregación. Una vez que la reciban de vuelta, pongan la tarjeta S-79b-S, junto con su copia del formulario S-77-S, en los archivos confidenciales de la congregación.

Si se restablece a la persona (o ella muere), el secretario debe poner en la tarjeta S-79b-S la fecha en que sucedió esto, firmarla y enviarla a la Sociedad en el sobre azul especial. También debe registrarse esta fecha en su copia del formulario S-77-S.

Sobres azules: Estos sobres azules especiales solo se usarán cuando se envíen a la Sociedad los formularios antes mencionados o cuando se envíe a la Sociedad correspondencia relacionada con asuntos judiciales. **Sírvanse *no* usar los sobres azules para enviar cualquier otra correspondencia.**

PUNTOS QUE SE DEBEN REPASAR CUANDO MANEJEN CADA CASO

1. Los arreglos que tiene que hacer el cuerpo de ancianos para asignar a hermanos capacitados para que sirvan en el comité judicial.
2. El procedimiento que debe seguir el comité judicial.
3. La información más reciente en cuanto a cómo identificar el arrepentimiento verdadero y las obras propias del arrepentimiento.
4. Las instrucciones sobre cómo encargarse de una apelación, en caso de que se apele de la expulsión.

TRANSLATOR'S CERTIFICATION

I, Manuel Duran, duly appointed interpreter and translator for the Federal District Court hereby deposes and certifies that I transcribed and translated :

Two Page Document of a Notice of Disfellowshipping or Disassociation

from the Spanish language to the English language to the best of my knowledge and ability .

Manuel Duran
State Certification 300344
Federal Certification 93-462

EXHIBIT 2

ORIGINAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JOHN DORMAN, individually, and JOEL GAMBOA, individually, Plaintiffs, vs. DEFENDANT DOE 1, LaJOLLA CHURCH; DEFENDANT DOE 2, LINDA VISTA CHURCH; DEFENDANT DOE 3, SUPERVISORY ORGANIZATION; DEFENDANT DOE 4, PERPETRATOR; and DOES 5 through 100, Defendants.	Case Number 37-2010-00092450-CU-PO-CTL

DEPOSITION OF JUAN GUARDADO, called on behalf of the Plaintiffs, at 12555 High Bluff Drive, Suite 260, San Diego, California, on Tuesday, February 8, 2011, commencing at 12:54 p.m., before Judy Runes, California CSR No. 5874.

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1 speak to any witnesses?
2 A Not that I -- not that I recall. I don't
3 remember.
4 Q Did you speak to any people who had accused
5 Gonzalo?
6 A No, not that I remember.
7 Q Did you speak to Gonzalo?
8 A While he was disfellowshipped, I never spoke
9 with Gonzalo.
10 Q How did he communicate his interest in being
11 reinstated?
12 A He prepared a document, a small document,
13 asking to be reinstated.
14 Q What did he -- what was stated in that
15 document?
16 A I don't remember. But, basically, those
17 documents, it's where you state that you want to be a
18 member of the congregation again.
19 Q In that document, would he have stated that he
20 repented or had learned from his mistake?
21 A Yeah, he -- he must have.
22 Q So in that document, would he have admitted to
23 this conduct?
24 A He might have. Again, he -- I don't remember
25 exactly what the document said. But he will have said

1 that he was repentant, that what he was doing that
2 showed that he was repentant, he was -- and why he
3 thought that God had forgiven him, things like that.
4 But I don't remember the content.
5 Q Could he have been reinstated if he had not
6 confessed and claimed to be repentant?
7 A No, if he wasn't repentant, and he would have
8 been denying, you know, that he had sinned.
9 Q So your understanding is by the time he was
10 reinstated, he had admitted that he had done these
11 things?
12 A Yes.
13 Q When you were considering his reinstatement,
14 did you speak to any of the other elders about him?
15 A Not that I remember. Only the ones in this
16 document.
17 Q Okay. Do you remember speaking to
18 Jesus Martinez about Gonzalo Campos?
19 A Yes.
20 Q And what was said?
21 A I don't remember. We just -- one thing I can
22 say is we got together to review his request to be
23 reinstated. Yeah.
24 Q Is the same true with Ronald Cortez?
25 A Yes.

1 Q How many elders were there at Playa Pacifica
2 in 1999?
3 A Just Ronald Cortez, Jesus Martinez, and
4 myself.
5 Q You were the only three?
6 A Yes.
7 Q Generally, when there's a request for
8 reinstatement, will all of the elders consider it, or
9 will a committee be appointed?
10 A The committee, the original proceedings, is
11 usually the one that handles the reinstate -- the
12 petition of reinstatement.
13 Q Okay. So the original judicial committee who
14 recommended the disfellowship is the one who would
15 consider the request for reinstatement?
16 A During -- if they're in the congregation, they
17 would.
18 Q Is it your understanding the members of that
19 committee weren't with the congregation anymore?
20 A They weren't with the congregation anymore.
21 Q Okay. Do you know how many people made
22 accusations against Gonzalo Campos?
23 A Do I know? No.
24 Q Other than Manuela Dorman's son, do you know
25 any of the people who made accusations against

1 Gonzalo Campos?
2 A No.
3 Q When you knew Gonzalo Campos at the
4 Linda Vista congregation, did you ever observe him with
5 children?
6 A Did I ever observe him with any children? I
7 don't remember.
8 Q At that time, did you ever hear that he would
9 take children with him to work?
10 A I don't remember. Based on what I remember, I
11 don't -- I don't -- I don't know.
12 Q Do you know Kevin Phillips?
13 A Yes.
14 Q Was Kevin Phillips a member of the
15 Playa Pacifica congregation in 1999?
16 A 1999? I don't think so, no.
17 Q What about Eduardo Chavez?
18 A No.
19 Q Do you know Eduardo Chavez?
20 A Yes.
21 Q But he was not a member of the congregation as
22 of 1999?
23 A No.
24 Q Okay. When you were considering the
25 reinstatement petition, or the reinstatement request

1 from Gonzalo Campos, did you contact Kevin Phillips or
2 Eduardo Chavez?
3 A No. I personally did not. No.
4 Q Do you know if one of the other elders did?
5 A I don't remember. I don't know. I don't
6 remember, and I don't know.
7 Q When I look at the last page of this letter,
8 there are different positions listed next to people's
9 names.
10 What does the -- next to Jesus Martinez's
11 name, it says "Secretario." What does that mean?
12 A Usually the one that prepares -- makes notes
13 in judicial proceedings or the one that prepares the
14 report and this kind -- kind of situations.
15 Q Okay. So would you think that he wrote this
16 letter?
17 A Do I think he wrote this letter? I don't
18 know.
19 Q Was there anyone who was in charge,
20 specifically taxed with taking the lead in this matter
21 of looking into the reinstatement?
22 A Yes. The one who took the lead was
23 Ronald Cortez.
24 Q Okay. And next to him, it says "Sup.
25 Presidente." What does that mean?

1 A The overseer, the coordinator of the
2 congregation.
3 Q Okay. So, to the best of your recollection,
4 Ronald Cortez would have been in charge of --
5 A Yes.
6 Q -- this decision as to whether reinstatement
7 should be made?
8 A Well, taking the lead as to looking into --
9 looking into deciding as a body of elders if Gonzalo
10 should be reinstated at the time.
11 Q So if there was going to be an investigation,
12 if there were going to be phone calls made to talk to
13 witnesses, you would expect that it was Ronald Cortez
14 who made those calls?
15 A I don't know. But he was taking the lead.
16 Q And ultimately -- did you, as the board of
17 elders, have the final say as to whether Gonzalo was
18 reinstated?
19 A Yes.
20 Q So you could make the decision? You didn't
21 have to send a recommendation to the Watchtower?
22 A Since it was a long time ago, and the case has
23 to do with reinstating ~~reinstated in~~ a child abuser, I don't remember, I don't
24 know if we -- if we sent this case a recommendation
25 somewhere.

1 Q Do you know Luis Rivera?
2 A Yes.
3 Q Did you contact Luis Rivera when you were
4 looking into this matter?
5 A I did not.
6 Q So, best of your recollection, have you --
7 since this matter of the reinstatement was closed, have
8 you spoken to anyone about Gonzalo Campos?
9 A No.
10 Q So is it accurate to say the first person you
11 ever spoke to about this was Manuela Dorman?
12 A Yes.
13 Q And that following your discussion with
14 Manuela Dorman, you had no communications with anyone
15 regarding Gonzalo Campos until the matter of his
16 reinstatement came up?
17 A Yes.
18 Q And then after the matter of his reinstatement
19 was closed, you never spoke to anyone about
20 Gonzalo Campos again?
21 A No.
22 Q That's correct?
23 A That's correct.
24 Q Okay. And during the context or the course of
25 his reinstatement proceeding, you may have spoken to the

1 two elders and you may have reviewed his request for
2 reinstatement?
3 A With Jesus Martinez.
4 Q Yes?
5 A Yes.
6 Q And you've never spoken to anyone else about
7 Gonzalo Campos being accused of sexually abusing
8 children?
9 A No. I never spoke to anybody else. No.
10 Q Other than this document, have you ever seen
11 any documents that discussed Gonzalo Campos being
12 accused of sexually abusing children?
13 A Other than this document?
14 Q Yes. This particular document (indicating).
15 A I don't remember. The only -- the only -- I
16 don't remember.
17 Q In considering --
18 A Uh-huh.
19 Q In considering the reinstatement request,
20 would you have looked at Gonzalo's file?
21 A Yes, probably.
22 Q Okay.
23 A Yeah.
24 Q And would you have discussed the contents of
25 that file with anyone other than Ronald Cortez or

1 Jesus Martinez?
2 A No. Just them.
3 Q Have you ever written any documents about
4 Gonzalo Campos and his allegations that he'd been
5 sexually abusing children?
6 A I have never written any documents about him,
7 no.
8 Q Okay. Mark this as Exhibit 1, please.
9 All right. I asked you to bring some
10 documents today, if you had any. And it was basically
11 any documents you have regarding Gonzalo Campos.
12 Did you have any such documents?
13 A No.
14 Q Okay. Where did you look?
15 A Excuse me?
16 Q Where did you look?
17 A Well -- well, maybe I misunderstood the
18 question. I didn't know I ~~have~~ had to look for any
19 documents. And I don't have any documents. So even if
20 I was asked to look for any, I wouldn't find any because
21 I don't have any. Yeah.
22 MR. STOREY: Okay. Well, I have no further
23 questions for the witness.
24 MR. McCABE: Okay.
25

EXHIBIT 3

ORIGINAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JOHN DORMAN, individually, and JOEL GAMBOA, individually, Plaintiffs, vs. DEFENDANT DOE 1, LaJOLLA CHURCH; DEFENDANT DOE 2, LINDA VISTA CHURCH; DEFENDANT DOE 3, SUPERVISORY ORGANIZATION; DEFENDANT DOE 4, PERPETRATOR; and DOES 5 through 100, Defendants.	Case Number 37-2010-00092450-CU-PO-CTL

DEPOSITION OF DENNIS PALMER, called on behalf of the Plaintiffs, at 12555 High Bluff Drive, Suite 260, San Diego, California, on Monday, February 7, 2011, commencing at 10:12 a.m., before Judy Runes, California CSR No. 5874.

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1 '80 -- I'm so sorry. Let's see. Let's see. '88 --
2 between '88 and '89, in the couple of years that I was
3 not serving as an elder. But between -- between '83 and
4 '91, at my departure, with the exception of those two
5 years, I was serving as an elder.
6 Q Was there a third time that you heard that
7 Gonzalo Campos had been accused?
8 A It wasn't until more recently that we were
9 asked to open his files and look into his -- his case.
10 But that was, I think, around 200- -- oh, my goodness,
11 in the mid-2000s. I can't remember exactly what year.
12 I think -- I think it was around 2005 or '6 that -- that
13 we had some questions and we looked in -- we wanted to
14 look into his case.
15 Q Who asked you to look into the case?
16 A It was -- it was among the elder body. And I
17 can't remember what individual, but among our -- among
18 our -- not our present body, but our elder body at that
19 time in Playa Pacifica that I -- I think there was a
20 concern about discrepancy, I don't remember why, why
21 they -- they wanted to look into this. I don't remember
22 exactly. I don't remember exactly why his name was
23 brought up and why -- why they wanted to take a look at
24 this -- what existed in the archives.
25 Q What did exist in the archives at that time?

1 A Not very much. That was -- I think that was
2 the concern, that there -- this was an individual
3 that -- that had been -- had had some responsibility in
4 the congregation, and -- and they -- they wanted to see
5 what -- what had transpired, what was -- what was
6 written. And, you know, I think there was just a
7 concern that -- that things were -- were brought up to
8 date and everything was -- was proper.
9 And -- and I think -- I think it was also -- I
10 think it was also the case that we wanted to see about
11 Gonzalo's status in the congregation also; how he was
12 behaving, how he was performing, and just to make sure
13 that we were -- that we were accurate in our
14 observations.
15 Q So at the time of this investigation into the
16 file, had he been reinstated or re-established?
17 A Yes. Yeah, we refer to it as reinstatement.
18 Q Reinstatement?
19 A Yes.
20 Q Now, did you see -- was there anything out of
21 the ordinary with respect to the documents?
22 A I think there was a concern that it wasn't
23 documented properly, that there might have been a term
24 or two that weren't -- that weren't proper, and we
25 wanted to make sure that we understood what had

1 happened.
2 Q Was all of the documentation you would expect
3 to see present?
4 A Well, no, because we didn't have access to
5 things that had -- that may have transpired elsewhere.
6 We had reference to things that might have happened in
7 Linda Vista, but we didn't have -- we didn't have
8 documentation. So we were -- we were looking at
9 correspondence that had been sent that referred to other
10 documents that we didn't have. So we didn't -- we
11 didn't have a full -- we didn't have a grasp of
12 everything that had happened, I think.
13 Q After that file was dug out of the archives,
14 what happened to it next?
15 A There was -- I remember at the time, I believe
16 there was -- there was a letter, I believe, that was
17 sent to the Watchtower. But we -- it wasn't -- it
18 wasn't as though we were doing any more with Gonzalo.
19 His case had been considered, it had been -- it had been
20 basically finalized. If there were still any
21 restrictions we had on him, it was simply a matter of,
22 you know, making sure that we're in a position to be
23 able to remove restrictions.
24 Q Okay. So following this, you know, 2005
25 reopening of the file, did any restrictions remain on

1 Gonzalo?
2 A I will -- restrictions as far as day-to-day
3 restrictions, no, no. I think that was -- that was it.
4 He was -- he was never going to be in a position to be
5 in any authoritative position in the congregation. We
6 already knew that. That he would never have a position
7 of responsibility, I should say, in the congregation.
8 Q Okay. So in roughly the mid-2000s when you
9 opened his file, there was a report from the judicial
10 committee that had been formed in the 1990s?
11 A Yes, yes. We did have a -- we did have --
12 that is part of -- that was part of our file in
13 Playa Pacifica.
14 Q Okay. But you didn't have -- were there any
15 documents that came over from Linda Vista?
16 A No.
17 Q When was Playa Pacifica Spanish congregation
18 created?
19 A I believe it was 1995.
20 Q And --
21 MR. McCABE: I'm assuming you know there was a
22 name change from La Jolla to Playa Pacifica.
23 MR. STOREY: I was just going to get there.
24 THE WITNESS: And I was -- I was thinking, you
25 probably want to follow up on that.

1 BY MR. STOREY:
2 Q Okay. So prior to being Playa Pacifica
3 Spanish congregation in 1995 --
4 A It was La Jolla Spanish congregation. Uh-huh.
5 And that was formed, I believe, in 1987.
6 Q Now, as of this time, 1995, did the
7 Linda Vista Spanish congregation continue to exist?
8 A It did.
9 Q Okay. And to your knowledge, does it exist
10 today?
11 A It does.
12 Q So in 2005 when the -- roughly 2005,
13 mid-2000s, when Gonzalo's file was reopened, was there
14 any correspondence with Linda Vista about their files?
15 A No. I don't believe so. I think we -- I
16 think it was simply a letter that was sent to the
17 Watchtower.
18 Q And no contact, phone calls, anything like
19 that, to say to the Linda Vista elders, Hey, what's in
20 your file about Gonzalo Campos?
21 A No. No, I don't believe so. I think we --
22 the question wasn't so much whether or not anything --
23 that Linda Vista had something. We were more concerned
24 about observing Mr. Campos in the congregation at the
25 present. We just wanted to make sure that everything

1 was -- I believe was just up to date, and everything
2 was -- that the file was -- was complete on our side.
3 Q Okay. Is there a requirement as to how long
4 that file be kept?
5 A It -- it depends on the nature, I believe, of
6 files. Some files can be -- can be discarded. But if
7 it's a judicial committee, we usually keep these files.
8 We keep them indefinitely.
9 Q Okay. So if there had been a judicial
10 committee at the Linda Vista Spanish congregation, you
11 would expect that record to still be in existence?
12 A Yes.
13 Q Okay. And still in their possession?
14 A Yes.
15 Q After this time in the mid-2000s, when you
16 looked into the file, was there ever a time again when
17 you heard that Gonzalo Campos had been accused of
18 sexually abusing a minor?
19 A No.
20 Q Okay. Let's go back to the first time when
21 you had that conversation with Kevin Phillips.
22 What did he tell you?
23 A He was questioning me as to whether I had any
24 previous knowledge of any -- any incidence that may have
25 occurred in Linda Vista.

EXHIBIT 4

FILED

SEP 2 9 2005

Clerk of the Napa Superior Court
By: Jean E. Pike
Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,

COUNTY OF NAPA

CHARISSA W., et al., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, et al. Defendants.	Case No.: 26-22191 JCCP No. 4374 RULING ON SUBMITTED MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Plaintiffs' Motion To Compel Production Of Documents came on for hearing on August 31, 2005. The court, having read and considered the papers and heard oral argument, took the matter under submission and now rules as follows:

Plaintiff's motion to compel production of documents is GRANTED in part and continued in part to allow for the production of an attorney-client privilege log.

Although defendants raised a number of objections when responding to plaintiffs' request for production of documents, they address only two of those objections in opposing plaintiffs' motion to compel: the penitential communication privilege and the attorney-client privilege, which the court will discuss in more detail below. As to the other objections not discussed by defendants, the court finds the objections are not well taken. The requested discovery requests

are not overbroad, are relevant, and are not barred by *Serbian East Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696.

1. Penitential Privilege

Evidence Code section 1032 provides:

> As used in this article, "penitential communication" means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who, in the course of the discipline or practice of the clergy member's church, denomination, or organization, is authorized or accustomed to hear those communications and, under the discipline or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret.

Defendants object to the production of a number of documents requested by plaintiffs on the ground that they are protected by the penitential communication privilege contained in Evidence Code section 1032. This court finds that the privilege does not apply to communications between the alleged abusers and the Judicial Committee. The evidence presented by both sides establishes that communications with the Judicial Committee do not fall within the scope of the privilege. First, it is clear that the Judicial Committee's purpose is to investigate sins for which disfellowship is a potential penalty. This is established not only by the deposition excerpts provided by plaintiffs, but by the Watchtower publication provided by defendants in connection with the objections to plaintiffs' evidence ("Judicial action is necessary only if a gross sin has been committed that could lead to disfellowshipping" p. 18.) Second, the privilege does not apply because the Judicial Committee was under no duty to keep the communications private. In fact, the evidence establishes that the Judicial Committee was required to communicate information it obtained regarding potential cases of child molestation to the Watchtower Society Headquarters.

Because the penitential communication privilege does not apply, within 20 days defendants shall produce all documents for which it previously asserted this privilege.

2. Attorney-client privilege

Defendants have not produced a privilege log for those few documents they apparently claim are protected by the attorney client privilege. Neither the plaintiffs nor the court can adequately address the objection without a privilege log. Defendants shall serve a privilege log

on plaintiffs within 10 days. Plaintiffs may thereafter file and a supplemental brief addressing the log within 10 days. The court will then issue a written ruling on the matter.

Dated: 9/29/05

Raymond A. Guadagni, Judge

EXHIBIT 5

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

FILED
Court of Appeal First Appellate District
JUL 06 2006
Diane Herbert, Clerk
By _____ Deputy Clerk

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK ET AL.,

Petitioners,

v.

THE SUPERIOR COURT OF NAPA COUNTY,

Respondents;

TIM W., ET AL.,

Real Parties in Interest.

A114329

(Judicial Council Coordination Proceeding No. 4374; Coordinated with Napa County Super. Ct. No. 26-22191)

BY THE COURT:*

The petition for a writ of mandate is denied.

Dated: JUL - 6 2006

McGUINESS, P.J.

* McGuiness, P.J., Parrilli, J., and Siggins, J.

EXHIBIT 6

No. _____

Court of Appeal
of the
State of California
First Appellate District, Division _____

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK and NORTH CONGREGATION OF JEHOVAH'S WITNESSES, RED BLUFF, CALIFORNIA,
Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF NAPA
Respondent.

TIM W., JULIANNE WIMBERLEY GUTIERREZ AND JOSHUA WIMBERLEY
Real Parties In Interest

Judicial Council Coordination Proceeding No. 4374
Coordinated With Napa County Superior Court Case No. 26-22191 (Lead Case)

PETITION FOR WRIT OF MANDATE; VERIFICATION OF ROBERT J. SCHNACK AND MEMORANDUM OF POINTS AND AUTHORITIES

From the Order of the Napa Superior Court Granting Real Parties in Interest's Motion to Compel Production of Documents (September 29, 2005)
The Honorable Raymond A. Guadagni, Judge

Robert J. Schnack, SBN 191987
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PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF

AUTHENTICITY OF EXHIBITS

1. All exhibits accompanying this petition are true copies of original documents on file with respondent court, except for the following: Exhibit E, which are true copies of the privilege logs furnished by the Church Defendants to plaintiffs. Exhibit J, which is a true copy of the original reporter's transcript of the hearing on August 31, 2005 on plaintiffs' Motion to Compel. Exhibit L which are true copies of the non-binding case law cited in the Memorandum of Points and Authorities, filed concurrently herewith. The exhibits are incorporated herein by reference as though fully set forth in this petition. The exhibits are paginated consecutively from page 1 through page 458 and page references in this petition are to the consecutive pagination.

BENEFICIAL INTEREST OF PETITIONERS; CAPACITIES OF RESPONDENT AND REAL PARTIES IN INTEREST

2. Petitioners Watchtower Bible & Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Red Bluff, California, Inc. (collectively "Church Defendants") are defendants in two actions now pending in Tehama County Superior Court and entitled *Tim W. v. Watchtower New York, et al.*, Case No. 52594, and *Wimberley-Gutierrez v. Watchtower New York, et al.*, Case No. 52598, which are collectively referred to herein as "Track I Cases." The Track I Cases were earlier coordinated with other cases in Judicial Council Coordination Proceeding No. 4374, including the so-called lead case pending in respondent Napa County Superior Court entitled *Charissa W. v. Watchtower New York, et al.*, Case No.

26-22191. (Exh. K, pp. 407-08.) Plaintiffs in the Track I Cases are named herein as the real parties in interest.

CHRONOLOGY OF PERTINENT EVENTS

3. These Track I Cases arise from the alleged sexual abuse by co-defendant James Henderson in *Tim W.* that occurred more than 10 years ago and co-defendant Alvin Heard in *Wimberley* that occurred more than 24 years ago.

4. On July 24, 2003, Plaintiffs filed separate civil complaints against the Church Defendants asserting claims arising from allegations that the Church Defendants failed to report and/or disclose their knowledge of child abuse allegedly committed by James Henderson and Alvin Heard. (Exh. A, p. 5.)

5. On January 13, 2005, Plaintiffs propounded document requests to the Church Defendants seeking, *inter alia*, documents and information related to confidential spiritual communications that penitents Henderson and Heard had separately with clergy within a Jehovah's Witness congregation. (Exh. A, p. 5.)

6. On April 5, 2005, the Church Defendants objected to certain of Plaintiffs' document requests on the grounds that the responsive documents are protected from disclosure by the penitent-clergy privilege and the attorney-client privilege. (Exh. A, p. 5.)

7. On July 29, 2005, Plaintiffs filed a motion to compel responses to their requests for production of documents, arguing that the documents sought are not protected by either the penitent-clergy or attorney-client privileges. (Exh. A, pp. 1-246.)

8. On August 19, 2005, the Church Defendants filed their opposition to the motion to compel, asserting the requested documents

were protected from disclosure based on privilege and constitutional grounds. (Exh. B, pp. 247-300.)

9. The documents at issue in the underlying motion to compel relate to spiritual communications between pentinent James Henderson and ordained elders of the Jehovah's Witnesses, and spiritual communications between penitent Alvin heard and ordained elders of the Jehovah's Witnesses. (*See*, Exh. E, pp. 331-40.)

10 On September 29, 2005, the trial court granted, in part, Plaintiffs' motion to compel and ordered the Church Defendants to produce all documents for which they previously asserted the penitent-clergy privilege. The trial court also ordered the Church Defendants to produce a privilege log with respect to all documents for which they asserted the attorney-client privilege, reserving Plaintiffs' right to challenge the log. (Exh. F.)

11 On October 24, 2005, the trial court granted the Church Defendant's motion to stay execution of order to produce documents until such time that a writ can be filed and ruled upon by the Court of Appeal. (Exh. G.)

12. On November 22, 2005, the trial court entered its stipulated order extending the time for the filing of the instant writ to April 28, 2006. (Exh. H.) On May 1, 2006, the trial court entered a further stipulated order extending the time for the filing of the instant writ up to and including June 30, 2006. (Exh. I.)

BASIS FOR RELIEF

13. The issue presented in this writ petition is whether the trial court erred in granting the motion to compel. In granting the motion, the trial court abused its discretion because disclosure of the

requested documents is prohibited by (1) the penitent-clergy privilege, (2) the First Amendment of the United States Constitution, and (3) the free exercise clause in both the federal and the California constitution.

ABSENCE OF OTHER REMEDIES

14. Interlocutory review is the only adequate remedy for the trial court's order compelling the Church Defendants to produce potentially privileged documents since "once privileged matter has been disclosed there is no way to undo the harm which consists in the very disclosure." (*Korea Data Systems Co. v. Superior Court* (1997) 51 Cal.App.4th 1513, 1516.)

PRAYER

Petitioners/Church Defendants pray that this Court:

1. Issue an alternative writ directing respondent superior court set aside and vacate its order of September 29, 2005, granting Plaintiffs' motion to compel, or show cause why it should not be ordered to do so, and upon return of the alternative writ, issue a peremptory writ of mandate and/or probation or such other extraordinary relief as is warranted, directing respondent superior court to set aside and vacate its order of September 29, 2005, granting

Plaintiffs' motion to compel, and to enter a new and different order denying the motion;

2. Award Petitioners/Church Defendants their costs pursuant to Rule 56.4 of the California Rules of Court; and

3. Grant such other relief as may be just and proper.

Dated: 06-28-06

Respectfully submitted,

BULLIVANT HOUSER BAILEY PC

By:

Robert J. Schnack
Attorneys for the Church Defendants

VERIFICATION

I, Robert J. Schnack, declare as follows:

1. I am one of the attorneys for the petitioners herein. I have read the foregoing Petition For Writ Of Mandate/Prohibition Or Other Extraordinary Relief and know its contents. The facts alleged in the petition are within my own knowledge and I know these facts to be true. Because of my familiarity with the relevant facts pertaining to the trial court proceedings, I, rather than petitioners, verify this petition.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on June 28, 2006, at Sacramento, California.

Robert J. Schnack

MEMORANDUM OF POINTS & AUTHORITIES

I. WRIT OF MANDATE IS NECESSARY

A. The issue is whether confidential spiritual communications by a penitent to a "judicial committee" of ordained Jehovah's Witness elders are protected by the penitent-clergy privilege.

1. Overview of penitent-clergy privilege

A penitent has a privilege to refuse to disclose, and to prevent another from disclosing, a penitential communication. (Evid. Code § 1033.) Similarly, a member of the clergy has an independent privilege to refuse to disclose a penitential communication if he or she claims the privilege. (Evid. Code § 1034.) A penitent is defined simply as "a person who has made a penitential communication to a clergyman." (Evid. Code § 1031.) A "penitential communication" is defined as a communication made (1) in confidence, (2) in the presence of no third persons so far as the penitent is aware, (3) to a member of the clergy who, incident to the tenets of his or her religious denomination, is authorized or accustomed to hear such communications and (4) has a duty to keep such communications secret. (Evid. Code § 1032.)

There is no requirement that the communication "have as its purpose the confession of a 'flawed act' to 'receive religious consolation and guidance in return' in order to be privileged." (*Doe 2 v. Superior Court* (2005) 132 Cal.App.4th 1504, 1518.) Rather, the privilege applies to any communication that fits the statutory description. (*See* Cal. Law Revision Com. com., West's Ann. Cal.Evid. Code (2006) foll. §§1032.) (statute extends protection of privilege beyond just "confessions".)

2. Overview of clergy for the Jehovah's Witnesses

Congregations of Jehovah's Witnesses are not led by a priest or pastor but instead by appointed lay clergy called elders. Congregations of Jehovah's Witnesses are provided spiritual oversight on a local level by a small group of elders recognized as ordained ministers and ordained elders. (*See* Exh B, pp. 285-86, 292, 297.) Elders are not automatically appointed to serve in a congregation. Rather, they must first meet strict Scriptural qualifications as outlined in the Bible and must also be recommended and approved by current congregation elders, an elder serving as circuit overseer, and the Service Department at the U.S. Branch Office Jehovah's. (*See* Exh. B, pp. 285-86.) Once an individual is approved and appointed to serve as a congregation elder, a letter from the Branch Office is read to the congregation and the individual is officially vested with ministerial authority and is ordained as an elder. (*See* Breaux Affidavit ¶ 6.) All elders of the Red Bluff congregation are and were at all times relevant to these cases ordained ministers and spiritual leaders of those congregations. (*See* Exh. B, p. 287.)

The congregation elders are responsible for the spiritual development and spiritual teaching of the members of the congregation, as well as for pastoral care. (*See* Exh. B, pp. 273-74, 286, 292, 297.) Elders frequently provide spiritual counsel and advice to members of the congregation concerning highly confidential personal and spiritual matters. (*See* Exh. B, p. 287.) According to the religious beliefs and practices of Jehovah's Witnesses, congregation

elders are expected to keep confessions and other spiritual communications confidential. (*See* Exh. B, pp. 274, 280-81, 287-88, 293-94, 298-99.)

From time to time, congregation elders, including those in Red Bluff, communicated with elders serving in the Branch Office's Service Department, as well as with elders serving as circuit overseers and district overseers, in order to receive spiritual guidance and advice as to how to apply the religious doctrine and procedures of Jehovah's Witnesses to issues concerning the congregation and its members. (*See* Exh. B, p. 287.) All such spiritual communications between congregation elders and the Branch Office Service Department, circuit overseer or district overseer must be kept strictly confidential under the religious tenets and teachings of Jehovah's Witnesses. (*See* Exh. B, p. 287.)

Congregation elders are also responsible for conducting "judicial investigations" where a member of the congregation is accused of a serious wrongdoing or sin. (*See* Exh. B, pp. 274-87.) The goal of a judicial investigation, which is conducted by two elders, is to ensure that the congregation remains spiritually and morally clean, and the elders endeavor to provide spiritual counseling and assistance to those who may have erred, with the hope of helping them to regain their spirituality and relationship with God. (*See* Exh. B, pp. 274, 287.) At times after a judicial investigation, a "judicial committee" consisting of three or more elders will be formed and will determine whether a person accused of sin should be ecclesiastically disciplined, based on Jehovah's Witnesses' understanding of the Bible. (*See* Exh. B, pp. 275, 287.) The "judicial committee" consists

of three or more elders because Jehovah's Witnesses believe that men are imperfect and, therefore, three elders can provide more full and complete spiritual counseling and guidance based on a broader range of experience and knowledge than can a single elder alone. (*See* Exh. B, p. 275.) Pursuant to the beliefs, tenets and teachings of Jehovah's Witnesses, all spiritual communications taking place during a "judicial investigation" and during a "judicial committee" are extremely private and strictly confidential. (*See* Exh B., pp. 275, 288.)

Where a serious sin is involved, the "judicial committee", in line with teachings of the Bible, may recommend religious discipline, called reproof (which can be private or public) or disfellowshipping. (*See* Exh. B, pp. 274-75.) When a member is subject to public reproof or disfellowshipping, an announcement is made during a congregation meeting simply to the effect that "[name] has been reproved" or "[name] is no longer one of Jehovah's Witnesses." (*See Id.*) If a member suffers disfellowshipping, the "judicial committee" forwards a document to the Service Department in New York with only the name of the disfellowshipped person, the date of disfellowshipping, and a brief description of the Scriptural reason for disfellowshipping. However, the information on the card does not reveal the contents of the penitent's communications to the "judicial committee." (*See Id.*)

The confidentiality of spiritual communications between members of the congregation and elders is a foundational element of the religious beliefs and teachings of Jehovah's Witnesses. (*See* Exh. B, pp. 274, 281, 287-88, 292-94, 297-99.) Jehovah's Witnesses recognize the Bible's admonition to confess one's sins to God and

believe that there is a great benefit from speaking to congregation elders regarding such confidential spiritual matters. (*See* Exh. B, pp. 287-88.) As such, Jehovah's Witnesses encourage those who need spiritual assistance to approach the congregation elders and convey to them whatever information may be necessary to provide such spiritual assistance. (*See* Exh. B, pp. 288, 292, 297.)

Because open and free communication between congregation members and elders is required to provide spiritual guidance under the religious beliefs and practices of Jehovah's Witnesses, emphasis is placed on privacy and strict confidentiality. (*See* Exh B, pp.75, 281, 288, 293-94, 298-99 .) The confidentiality requirements with respect to such church communications are explained in official church literature and publications. (*See* Exh B., pp. 288, 293-94, 298-99) Congregants expect that all spiritual communications with congregation elders will remain strictly confidential. (*See* Exh B., pp. 288, 293-94, 298-99.) Further, revealing confidential spiritual communications would call into question an elder's qualifications and could result in his removal as an elder in the congregation. (*See* Exh. B, pp. 286, 293, 298.) Moreover, if an elder was compelled to disclose confidential information, his credibility and effectiveness as an elder, as well as the credibility and effectiveness of other elders in the congregation, would be adversely affected and compromised, since congregants would not trust and rely that personal problems and information they disclose would not be revealed and used against them in a court action. (*See* Exh. B, p. 288.) In fact, defendant James Henderson has specifically stated that he would not have sought

church guidance had he believed that his communications with elders were not confidential. (*See* Exh. B, p. 276.)

Jehovah's Witnesses do not believe that the confidentiality of spiritual communications they may have with congregation elders is limited to confessions. (*See* Exh. B, p. 288.) Such confidentiality extends to all communication of a spiritual nature in a variety of life situations including those that take place in the course of "judicial investigations" and "judicial committee" meetings. (*See* Exh. B, pp. 275, 281, 288.) Additionally, based upon Scripture and church tradition, such confidentiality requirements also extend to congregation files, notes, papers, reports, minutes or other documents prepared in conjunction with, or as a result of, confidential church communications. (*See* Exh. B, pp. 274, 294, 299.)

3. Issues presented for review

This petition presents three issues, which are fundamental, not only to the underlying case, but also potentially to numerous other cases pending throughout the state and based on similar claims. First, did the trial court err when it granted Plaintiffs' motion to compel based on its ruling that the investigatory purpose of the judicial committee negated the penitent-clergy privilege? Second, did the trial court err in ruling that the judicial committee was under no duty to keep communications confidential, and therefore, the privilege is inapplicable? Finally, does the trial court's order compelling disclosure of confidential church documents violate the establishment clause of the First Amendment to the federal constitution, the free exercise clauses of the federal or California constitutions, or both?

B. Writ of mandate is essential and necessary.

1. A writ of mandate is the only adequate remedy available.

A writ of mandate must be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. (Code Civ. Proc. § 1086.) Generally, writ review of discovery rulings is allowed when (1) the issues presented are of first impression and of general importance, (2) an order denying discovery denies a fair opportunity to a party to litigate its case, or (3) an order compelling discovery would violate a privilege. (*OXY Resources California LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 886-87, quoting *Johnson v. Superior Court* (2000) 80 Cal.App.4th 1050, 1061.) "Interlocutory review by writ is the only adequate remedy where a court orders production of documents which may be subject to a privilege, 'since once privileged matter has been disclosed there is no way to undo the harm which consists in the very disclosure[1]." (*Korea Data Systems Co. v. Superior Court* (1997) 51 Cal.App.4th 1513, 1516.)

The trial court's order compels the production of documents that the Church Defendants have asserted are protected from disclosure by the penitent-clergy privilege. Thus, a writ of mandate is appropriate and necessary, and interlocutory review is the only adequate remedy.

---

[1] [citations omitted.]

2. The issue will not go away.

Counsel for plaintiffs have filed a number of lawsuits in multiple venues against the various congregations of Jehovah's Witnesses and other religious entities that support their work. If the court compels the disclosure of confidential, privileged, and sensitive materials in these Track I Cases, the impact potentially will be felt not only in this proceeding but in other venues as well. As with other Jehovah's Witnesses congregations, the Church Defendants desire to keep confidential and privileged the materials regarding internal ecclesiastical affairs.

II. THE PENITENT-CLERGY PRIVILEGE BARS COMPELLED DISCLOSURE OF DOCUMENTS RELATED TO SPIRITUAL COMMUNICATIONS BETWEEN PENITENTS AND JUDICIAL COMMITTEE

Under California law, three requirements must be met for the penitent-clergy privilege to apply to a communication: (1) it must be intended to be in confidence; (2) it must be made to a member of the clergy who in the course of his/her religious discipline or practice is authorized or accustomed to hear such communications; and, (3) such clergy must have a duty under the tenets or discipline of his/her church to keep such communications secret. (Evid. Code § 1032; *see People v. Edwards* (1988) 203 Cal.App.3d 1358, 1362-63.) Communications between penitent and clergy are presumed to have been made in confidence. (Evid. Code § 917.) Thus, Plaintiffs bear the burden of establishing that the subject communications were not intended to remain confidential.

In the instant case, it is undisputed that the judicial committee elders to whom Heard and Henderson confided qualify as "member[s] of clergy" as defined in section 1030 of the Evidence Code. Thus, the questions remaining are (1) whether penitents Heard and Henderson intended their communications to be made in confidence, and (2) whether the elders were required by the religious doctrine of Jehovah's Witness to keep said communications secret. For the reasons set forth below, the Church Defendants urge the Court to answer both questions affirmatively.

A. Penitents Heard and Henderson intended their spiritual communications to the judicial committee to be confidential

By definition, a penitential communication must be "made in confidence, in the presence of no third person so far as the penitent was aware." (Evid. Code § 1032.) The privilege has been held not to apply in instances where the communication was not made with a reasonable expectation of privacy, the communication was made for a secular purpose, the receiver of the communication was acting in a secular capacity, or religious tenets did not require the clergy member to keep the subject communications secret. (*People v. Edwards* (1988) 203 Cal.App.3d 1358, 1362-63 (defendant sought advice on how to avoid secular consequences of her criminal conduct rather than spiritual counseling); *People v. Johnson* (1969) 270 Cal.App.2d 204, 207-08 (communication was not made in confidence nor in the course of the required relationship and no evidence was presented that minister was authorized or accustomed to hear such communications or that he had a duty to keep such communications secret); *United States v. Webb* (9th Cir. 1980) 615 F.2d 828 (communication made in

presence of officer in addition to prison chaplain was not confidential); *United States v. Luther* (9th Cir. 1973) 481 F.2d 429, 432 (privilege did not apply to data in church financial records sought by Internal Revenue Service and which did not contain any communications from congregants seeking spiritual guidance of counseling); *People v. Thompson* (1982) 133 Cal.App.3d 419, 425-27 (minister was acting in secular capacity when hired by company as ethics officer to improve sales and there was no expectation of confidentiality in the communication).)

None of those circumstances is present here. Rather, as demonstrated by declarations from clergy as well as their own, penitents Henderson and Heard each intended that their spiritual communications to the judicial committee elders remain confidential, which communications the elders were duty-bound to respect in accordance with the religious tenets and beliefs of Jehovah's Witnesses. Henderson's and Heard's purpose in making their separate communications and in participating in the "judicial committee" proceedings in the first place was to seek spiritual guidance and counseling – again, in accordance with the religious beliefs and tenets of Jehovah's Witnesses. (*See*, Exh. B, pp. 276, 281.)

1. <u>That the judicial committee is comprised of three or more elders should not vitiate the privilege.</u>

A disclosure does not waive a privilege if the disclosure itself is privileged. (Evid. Code § 912(c).) It is undisputed that each of the elders who form a judicial committee qualifies as a "member of clergy" under section 1032 of the Evidence Code. Thus, there is no question that the privilege would apply had penitents Heard and

Henderson made their spiritual communications to each of these elders individually and on separate occasions. To hold that the privilege is voided simply because an otherwise protected penitential communication is made to multiple authorized clergy members in a single setting – particularly where, as here, it was done in accordance with the religious beliefs and tenets of one's religion – is to choose form over substance and thereby vitiate the purpose underlying the privilege.

As explained above, where a member of the congregation is accused of serious wrongdoing or sin, the tenets of Jehovah's Witnesses authorize two elders to conduct an investigation. The goal of the investigation and any subsequent judicial committee comprised of three or more elders is to ensure that the congregation remains spiritually and morally clean and to allow the elders to provide spiritual guidance and counseling to the accused member. Any spiritual communications made during the investigation or during the judicial committee proceedings are extremely private and kept in the strictest confidence by the participating elders. It is with these assurances and expectations of confidentiality and spiritual guidance that penitents such as Heard and Henderson willingly participate in an investigation and with a judicial committee.

No reported case interpreting California law has addressed whether the presence of more than one *clergy* member during a confidential, spiritual communication by a penitent destroys the penitent-clergy privilege. Likewise, no court has addressed whether a spiritual communication by a penitent to a "judicial committee" formed under the tenets and discipline of the Jehovah's Witnesses

qualifies as a protected penitential communication under California law. Absent such authority, it is practical to look at decisions from other jurisdictions who have interpreted similar, or even stricter, penitential communication statutes. For instance, interpreting a similar yet narrower state statute,[2] the Washington Supreme Court held that a communication made in the presence of a third person destroys the privilege *unless* that third person is necessary for the communication or is another clergy member. (*State v. Martin* (1999) 975 P.2d 1020, 1028.) Likewise, the Third Circuit has held that the presence of third persons who are "essential to and in furtherance of the communication" does not void the penitent-clergy privilege under Rule 501 of the Federal Rules of Evidence. (*In re Grand Jury* (3d Cir. 1990) 918 F.2d 374, 384.)

Another Washington case, *Jane Doe v. Corporation of the President of the Church of Jesus Christ of Latter-Day Saints, supra* (hereafter "*Jane Doe*"), is analogous to the facts and issues presented in these Track I Cases. At issue in *Jane Doe* was the disclosure of church documents relating to the Mormon Church's disciplinary action concerning a church member's alleged sexual abuse of his two daughters. Under church doctrine, when a church member is accused of a serious transgression, a "stake disciplinary council" must intervene and help the church member repent and re-establish a

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[2] Under Washington law, the penitent-clergy privilege protects communications which are (1) made to a clergy member, (2) as a confession in the course of discipline enjoined by the church, and (3) confidential. (RCWA 5.60.060(3); *Jane Doe v. Corporation of the President of the Church of Jesus Christ of Latter-Day Saints* (Wash. 2004) 90 P.3d 1147, 1150.)

covenant with God. (*Id.* at 1149-50.) The accused member confesses his sin to the disciplinary council which is comprised entirely of ordained presidents, bishops, and other ordained church members. The disciplinary council then determines the appropriate discipline to be administered, which can vary from probation to disfellowshipping to excommunication. (*Id.* at 1150.) When the discipline results in disfellowshipping or excommunication, church procedures require that a summary of the disciplinary proceedings be prepared and sent to the church's headquarters in Utah. (*Id.* at 1150.) The court held that the summary of the disciplinary proceeding was protected from disclosure by the clergy-penitent privilege based on its findings that (1) the disciplinary councils are ecclesiastical in nature, and (2) each participant on the council is ordained as clergy. Furthermore, because the presence of all participants in the disciplinary council was necessary for the communication to occur, the presence of a third party during the communication did not vitiate the privilege. (*Id.* at 1152-53.)

Similar to the Mormon Church in *Jane Doe*, the religious doctrine of Jehovah's Witnesses mandates that two elders investigate allegations of serious wrongdoing or sin and that, if formed, a judicial committee of three or more elders determine, whether an accused member is repentant and subject to ecclesiastical discipline. That judicial committees consist of three or more elders is based upon the beliefs of Jehovah's Witnesses that men are imperfect and that three elders can provide more full and complete spiritual counseling and guidance based on their collective experience and knowledge than can a single elder alone. Therefore, under the Jehovah's Witness doctrine,

the presence of multiple clergy members is essential to and in furtherance of the penitent's communication.

The decision in *Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417 (hereafter "*Roman Catholic Archbishop*"), upon which Plaintiffs rely, is distinguishable and unavailing. In that case, the court ruled that the penitent-clergy privilege was inapplicable to protect communications by a Catholic priest in the presence of a "vicar for clergy" and a bishop because the Catholic tenets or doctrine do not require that such persons be present during those communications. In contrast, the Jehovah's Witnesses religion mandates the presence of three or more elders when the communication regards allegations of serious wrongdoing or sin, which includes child sexual abuse. When analyzing the penitent-clergy privilege, such doctrinal differences among religions should be respected rather than ignored.[3]

Second, *Roman Catholic Archbishop* is equally inapplicable because it concerned testimony and evidence to be presented to a grand jury in a criminal proceeding. Disclosure was required in that instance, the court held, "because the government had a compelling interest in prosecuting child molesters." In contrast, these Track I Cases are *civil* actions and not criminal prosecutions of child molesters. Indeed, in its investigation of child abuse allegations

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[3] Other jurisdictions have recognized the need to respect doctrinal differences among religions when analyzing the privilege. (*See, e.g.*, *Jane Doe, supra*, 90 P.3d at 1152, citing *State v. MacKinnon* (Mont. 1998) 957 P.2d 23, 28, and *Scott v. Hammock* (Utah 1994) 870 P.2d 947, 956.)

against Henderson, the State (through the local police and the district attorney's office) respected the elders' religious duty to not reveal information that they had learned via confidential communications made during the course of the judicial committee's internal proceedings with regard to those allegations. If, in its criminal investigation of Henderson, the State did not believe it necessary to compel the same confidential communications at issue here, it is difficult to argue that the State now has some higher compelling interest in the instant civil actions for money damages.

2. The trial court erred in finding that the judicial committee's purpose voided the privilege.

The trial court erred when it ruled that the privilege did not apply to the requested documents based on its finding that the "[j]udicial [c]ommittee's purpose is to investigate sins for which disfellowship is a potential penalty." (Exh. F, p. 342.) First, there is no requirement under California law that the communication be initiated by the penitent or that it "have as its purpose the confession of a 'flawed act' to 'receive religious consolation and guidance in return' in order to be privileged." (*Doe 2 v. Superior Court* (2005) 132 Cal.App.4th 1504, 1518.) Rather, the privilege applies to any communication that fits the statutory description. (Cal. Law Revision Com. Com., West's Ann. Cal. Evid. Code (2006) §1032. (Statute extends protection of privilege beyond just "confessions".) Second, even if, *arguendo*, investigation and discipline were one of the reasons for forming a judicial committee, the most important purpose of a judicial committee is to provide spiritual counseling and assistance to those who may have erred and to help them regain their spirituality

and relationship with Jehovah God. (*See*, Exh. B, pp. 274, 287.). The investigatory function of the judicial committee does not detract from or lessen its role of providing spiritual counseling and guidance.

B. The tenets and discipline of the Jehovah's Witnesses require the judicial committee elders to keep the communications of penitents Heard and Henderson secret.

Congregational elders are required by the tenets of their faith to keep confessions and other spiritual communications confidential. (Exh. B, pp. 286-288, 293-94, 298-99.) Similarly, Jehovah's Witnesses doctrine requires that all intra-faith communications between congregational elders and elders serving in the Branch Office's Service Department, as well as with elders serving as circuit and district overseers, be kept in the strictest confidence. As well, communications taking place during a "judicial investigation" and during "judicial committee" meetings are considered to be extremely private and strictly confidential. The confidentiality requirements of such church communications are explained in church literature and publications. Revealing confidential spiritual communications would call into question an elder's qualifications and could result in his removal as an elder in the congregation.

In support of its order compelling discovery, the trial court also held that the penitent-clergy privilege did not apply because the evidence established that the judicial committee "was under no duty to keep the communications private" and that it "was required to communicate information it obtained regarding potential cases of child molestation to the Watchtower Society Headquarters." (Exhibit F, p. 342.). The evidence relied upon by the trial court consists of two

letters not relevant in time and which were sent by defendant Watchtower New York to all bodies of elders throughout the United States. Those "body of elders letters" were dated March 14, 1997 and July 20, 1998, respectively, and provided direction to the elders regarding the communication of certain information to the U.S. Branch Office of Jehovah's Witnesses relating to those accused of committing child abuse. (See Exh. A, pp. 209-15.) However, the alleged abuse committed by defendant Heard ended in 1981, more than 15 years before the first body of elders letter referenced above was issued. Similarly, defendant Henderson was disfellowshipped from the Red Bluff congregation in 1994, more than two years before the first body of elders letter referenced above was issued. Thus, the trial court's reliance on these two non-relevant documents is misplaced.

Even if, *arguendo*, the two body of elders letters are found to be relevant in time, the elders' compliance with the instructions contained therein does not automatically result in a breach of their duty to keep penitential communications – whether made to an individual elder or a judicial committee – secret and confidential. The body of elders letters instruct elders to report the following information: (1) whether the member accused of child abuse has been disfellowshipped, reproved, counseled, or otherwise addressed; (2) if the accused member has moved to another congregation, the identity of the congregation to which he or she has moved; and (3) whether said congregation has been advised of the accused member's past child abuse conduct and, if so, the date of said advisement. Nothing in the two body of elder letters instructs or advises elders to reveal

either the contents of confidential penitential communications or the explicit details of the accusations. Therefore, nothing in the two letters prevents the judicial committee elders from complying with the reporting instructions *and* maintaining the confidentiality of the communications made during the judicial investigation and/or judicial committee proceedings.

III. THE TRIAL COURT'S ORDER VIOLATES THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

The establishment clause in the First Amendment to the federal constitution provides that, "Congress shall make no law respecting an establishment of religion ...." Among other things, the U.S. Supreme Court has held that this clause prohibits the government's excessive entanglement with religion. (*See Lemon v. Kurtzman* (1971) 403 U.S. 602, 621-24.) Under the established clause, every religion is guaranteed the same rights and protections. These protections apply equally to state judiciary proceedings. The U.S. Supreme Court has decisively settled that the First Amendment's mandate that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof has been made wholly applicable to the states by the Fourteenth Amendment ... in a series of cases, the court has repeatedly reaffirmed the doctrine...." (*Abington School District v. Schemp* (1963) 374 U.S. 203, 216.) This extension of the First Amendment to the states applies to judicial as well as legislative action. (*NAACP v. Alabama ex rel. Patterson* (1958) 357 U.S. 449, 463.) "The Fourteenth Amendment, as now applied to the states, protects the citizens against the state itself and all of its creatures." (*West Virginia Board of Education v. Barnette* (1943) 319 U.S. 624,

637.) "Judicial action is to be regarded as action of the state for the purposes of the Fourteenth Amendment [and] is not immunized from the operation of the Fourteenth Amendment simply because it is taken pursuant to the state's common law policy." (*Shelley v. Kramer* (1948) 334 U.S. 1, 15, 20.)

By denying the right conferred in the rule of privilege on the basis of a distinction between an elder or a judicial committee of Jehovah's Witnesses and ministers of other religions, or on the bases of the differences between Jehovah's Witnesses' pastoral procedures and those of other religions, the trial court has essentially established "acceptable" religious practices in violation of the federal and state constitutional prohibitions of excessive governmental entanglement with religion. As explained above, the tenets and religious beliefs of Jehovah's Witnesses doctrine establish the requirement that three or more elders receive and investigate penitent communications regarding allegations of serious transgression or sin. (Exh. B, pp. 274, 287.) This religious practice is rooted in religious doctrine of Jehovah's Witnesses and based upon the belief that men are imperfect and that the collective knowledge and experience of multiple elders will provide more full and complete spiritual counseling and guidance than that of a single elder alone. The multiple elders requirement is no less fundamental or sacred to the Jehovah's Witnesses faith and religious practice than the relationship between a penitent and a single clergy member found in other religions. As such, the trial court's refusal to apply the penitent-clergy privilege to the religious practices and procedures of the Jehovah's Witnesses is an unconstitutional, and thus impermissible, entanglement with religion.

IV. THE TRIAL COURT'S ORDER VIOLATES THE FREE EXERCISE CLAUSE UNDER THE FEDERAL AND CALIFORNIA CONSTITUTIONS

Additionally, the trial court's refusal to apply the rule of privilege to the religious practices and doctrines of Jehovah's Witnesses for confessions clearly inhibits the free exercise of religion of the Church Defendants in violation of the free exercise clauses of the state and federal constitutions. In essence, the trial court refuses to fully extend confessional protection to Jehovah's Witnesses because they require that multiple elders be present rather than just one. Only a neutral law of general applicability may burden the right to free exercise of religion. (*Employment Division Department of Human Resources of Oregon v. Smith* (1990) 494 U.S. 872, 879-80.)

A law is not neutral towards religion if its "object ... is to infringe upon or restrict practices because of their religious motivation." (*Church of the Lukumi Babaluiaaye, Inc. v. City of Hialeah* (1993) 508 U.S. 520, 531.) A law is not generally applicable if it "in a selective manner impose[s] burdens only on conduct motivated by religious belief." (*Id.* at 543.) A "law substantially burdens a religious belief if it 'conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs.'" (*Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527, 562 (quoting *Thomas v. Rev. Bd., Ind. Empl. Sec. Div.* (1981) 450 U.S. 707, 717-18).) "A law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly

tailored to advance that interest." (*Church of the Lukumi Babaluiaaye, Inc. v. City of Hialeah, supra.*) California courts apply the strict scrutiny standard when deciding matters under the free exercise clause of the California Constitution. (*Catholic Charities of Sacramento, Inc. v. Superior Court, supra.*)

The trial court has burdened the purely religious conduct of the Church Defendants by ruling that Jehovah's Witnesses cannot enjoy the same benefit from open and free spiritual communications with their ministers as do members of other churches, simply because of their religious beliefs. Here, the government has no compelling interest for granting the penitent-clergy privilege to religions that require a penitent confess to one minister but denying the rule of privilege to religions that require that a penitent confess to more than one minister. Because there is no compelling state interest for the court's non-neutral judicial interpretation of the rule of privilege, the court's order cannot withstand strict scrutiny. Therefore, the court's order violates the constitutional right of free exercise of the Church Defendants and of Jehovah's Witnesses and must be rejected.

V. TRIAL COURT SHOULD HAVE CONDUCTED AN *IN CAMERA* INSPECTION

An *in camera* review by the trial court may be appropriate to resolve a dispute as to whether requested documents, which contain privileged information, are discoverable. (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1619-20.) Before issuing its order to compel, the trial court did not review *in camera* the documents which the Church Defendants have asserted are privileged. Rather, it held that the penitent-clergy privilege was inapplicable based on its

presumptive conclusions that the judicial committee's sole purpose was investigatory and that the judicial committee elders were not required to keep confidential the communications made during the judicial committee's investigation and/or proceeding. (Exh. F, 341-43; Exh. J. p. 365-71.) Given the importance of the penitent-clergy privilege and the irreparable harm which would result from compelled disclosure of potentially privileged documents, an *in camera* inspection of the documents in question is proper and the minimum safeguard which should be applied. Accordingly, should this Court decide not to reverse the trial court's order, then Church Defendants alternatively request that the matter be remanded and the trial court ordered to inspect the requested documents *in camera* before determining whether or not the privilege should apply.

VI. CONCLUSION

For the foregoing reasons, petitioners/Church Defendants respectfully request that the Court grant a writ of mandate as prayed and issue a decision determining the applicability of the penitent-clergy privilege to Henderson's and Heard's separate confidential communications made to a judicial committee formed in accordance with the tenets and doctrine of the Jehovah's Witnesses faith.

Dated: June 28, 2006

Respectfully submitted,

BULLIVANT HOUSER BAILEY PC

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CERTIFICATION OF WORD COUNT

The text of this petition consists of 7830 words as counted by the Microsoft Word 2000 word-processing program used to generate the petition. (Cal. Rule of Court, rules 14(c)(1), 56(b)(6).)

DATED: June 28, 2006 Respectfully Submitted,

BULLIVANT HOUSER BAILEY PC

By _____
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PROOF OF SERVICE

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK and NORTH CONGREGATION OF JEHOVAH'S WITNESSES, RED BLUFF, CALIFORNIA v. **Superior Court of County of Napa**

Judicial Council Coordination Proceeding No. 4374
Coordinated With Napa County Superior Court Case No. 26-22191
Court of Appeal No. _____

I am a citizen of the United States and employed in Sacramento County. I am over the age of eighteen years and not a party to the within entitled action. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814.

On this date, I served:

PETITION FOR WRIT OF MANDATE; VERIFICATION OF ROBERT J. SCHNACK; MEMORANDUM OF POINTS AND AUTHORITIES

[XX] _____ **(BY FEDERAL EXPRESS)** I caused such envelope(s) to be delivered in a sealed Federal Express package, delivery fees for which are billed to this firm's account, to a Federal Express office for next-morning delivery. I am readily familiar with the business practices of my employer for the collection and processing of correspondence for mailing with Federal Express delivery service.

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First Appellate District
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Original and 4 copies

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Judge of the Superior Court, County of Napa
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I declare under penalty of perjury, according to the laws of the State of California, that the foregoing is true and correct.

Executed on June 29, 2006, at Sacramento , California.

_____
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