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Attorneys for Defendant

**IN THE FIFTH DISTRICT COURT**

**WASHINGTON COUNTY, STATE OF UTAH**

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STATE OF UTAH,

Plaintiff,

vs.

WARREN STEED JEFFS,

Defendant.

**DEFENDANT'S MOTION TO QUASH  
 SUBPOENA DUCES TECUM  
 (Filed Under Seal)**

**Case No. 061500526**

**Judge James L. Shumate**

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Defendant by and through his counsel of record, Walter F. Bugden and Tara L. Isaacson, Bugden & Isaacson, L.L.C., and Richard Wright, Wright, Judd & Winckler, hereby moves to quash the Subpoena Duces Tecum served upon Jeffrey Shields, counsel for Bruce Wisan, Special Fiduciary of the United Effort Plan. Said subpoena seeks religious records protected by the First Amendment of the U.S. Constitution and

Article I, Section 4 of the Utah Constitution. The subpoena should be quashed because it seeks confidential, sacred religious records which are unrelated to allegations that Jeffs was an accomplice to the rape of Elisa Wall.<sup>1</sup> Because the audio recording is unrelated to the instant charges, the disclosure of the confidential record infringes upon Jeffs' rights of conscience and freedom of religion. A copy of the audio recording will be provided to this Court for *in camera* review.

### **STATEMENT OF FACTS**

On September 5, 2007, the prosecutor in the instant case issued a subpoena duces tecum requiring Mr. Shields to produce an audio recording in which Jeffs refers to his marriage to a minor girl. The recording is a dictation made by Jeffs on August 7, 2006, in which he chronologies his activities as the spiritual leader and president of the FLDS church. The dictation would be reduced to writing and become part of the confidential historical records of the FLDS Church. The recording contains information deemed sacred and confidential by the FLDS Church, including references to sacred ordinances, teachings, and revelations. In the dictation, Jeffs memorialized the fact that he administered a sacred ordinance upon the minor known as the "Ordinance of the Love of God." This is a sacred ordinance of the FLDS Church which is not to be communicated with people outside the Church and only for faithful members named by revelation through the Prophet. See Affidavit of Alvin S. Barlow (attached hereto as

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<sup>1</sup> The defendant reserves his right to further object to the admission of the religious recording as irrelevant and prejudicial under the Utah Rules of Evidence.

**Exhibit A.** The dictation contains no evidence relevant to the pending allegations that Jeffs was an accomplice in the rape of Elisa Wall years before the making of the audio tape.

Pursuant to a search warrant issued by a federal magistrate in Nevada, this audio recording was retrieved by the FBI from an electronic device seized from the vehicle at the time of Jeffs' arrest in Nevada on August 28, 2006. The audio recording and other seized electronic and paper records are currently protected from disclosure pursuant to federal and state court orders. The federal search warrant required federal authorities to keep the seized records under seal. Search Warrant, 2:06-mj-00618-PAL, United States District Court, District of Nevada. The United States District Court for the District of Utah assumed jurisdiction over issues pertaining to the search warrant in *United States v. Warren Steed Jeffs*, Case No. 2:07-cr-00148. In resolving Jeffs' "Emergency Motion to Seal and Establish Procedures for In Camera Review of Seized Protected Religious Records," United States District Court Judge Dee Benson, District of Utah, ordered federal authorities not to disclose the seized records to any third parties. Judge Benson further ruled, however, that the special fiduciary could access the religious records pursuant to order and process previously issued in the Third Judicial District Court, Salt Lake County. Order, June 7, 2007, *United States v. Warren Steed Jeffs* Case No. 2:07-cr-00148 (attached hereto as **Exhibit B**).

The special fiduciary subsequently received a copy of the seized records pursuant to a Stipulated Protective Order signed on June 27, 2007, by Third Judicial District Court Judge Denise Lindberg in *In Re The United Effort Plan Trust, et. al.*, Civil

No. 05380-0001 (attached hereto as **Exhibit C**). The Protective Order deemed all the records to be confidential and prohibited disclosure to third parties absent consent of the parties or order of the court. After receiving service of the subject subpoena duces tecum, the special fiduciary adhered to the provisions of the Stipulated Protective Order and filed an objection thereto in the Third Judicial District Court, as well as notified the prosecution in the instant case of the objection and Stipulated Protective Order. The Stipulated Protective Order recognizes Jeffs as the real party in interest and authorized Jeffs, or his designee, to protect the seized records in the fiduciary's possession. By this motion, Jeffs seeks to quash the subpoena to prevent disclosure of constitutionally-protected religious material deemed sacred and confidential to Jeffs and the members of the FLDS Church.

### ARGUMENT

Prior to 1990, the United States Supreme Court held that the First Amendment required government action that burdened the free exercise of religion to be justified by a compelling governmental interest and that the action be the least restrictive means of promoting that interest. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 215, 234 (1972); *Sherbert v. Verner*, 374 U.S. 398, 403, (1963). In 1990, the Court modified these decisions in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 883–85 (1990), when it held that the compelling interest/least restrictive means test did not apply when the burden on religion was imposed by a facially neutral law of general applicability. The *Smith* court found that the government

exercise of religion which cannot be supported by a legitimate state interest because the audio recording is unrelated to the pending charges concerning the alleged rape of Elisa Wall in 2001 to 2003. The subpoena is in no way an exercise of neutral government authority in that it specifically targets the religious records of the FLDS Church. See, *Hialeah*, 508 U.S. at 531. As such, the heightened scrutiny test applies to the First Amendment analysis. As discussed above, the same strict scrutiny analysis applies under the Utah Constitution regardless of whether the issuance of the subpoena is a neutral exercise of government authority. See, *Holm*, 137 P.3d at 766-71 (Durham, J., concurring in part and dissenting in part).

Government intrusion into sacred and confidential religious records infringes on religious freedom unless the compelling interest/least restrictive analysis is satisfied. See, *Mockaitis v. Harclerod*, 104 F.3d 1522 (9th Cir. 1997) (priest established *prima facie* First Amendment and Religious Freedom Restoration Act claims by showing that government taped and retained tape of conversation that the priest's religion required him to keep confidential) *overruled on other grounds by City of Boerne v. Flores*, 521 U.S. 507 (2000); *Society of Jesus of New England v. Commonwealth*, 808 N.E.2d 272, 279-80 (Mass. 2004) (deciding that under state's compelling/interest least restrictive means test, religious adherents established *prima facie* case by showing that government burdened religion by inquiring into communications deemed secret by religious doctrine).

The attached declaration by Alvin Barlow, a lifelong member of the FLDS Church, elaborates on the FLDS Church as an established religion adhering to certain

sacred and confidential doctrines (Ex. A, Aff. at 1–3); see *United States v. Meyers*, 95 F.3d 1476, 1483–84 (10th Cir. 1996) (listing factors indicating that a religion qualifies as a sincere religion). The declaration also verifies that maintaining the secrecy of the confidential religious records is central to the FLDS Church's religious practices.

Certain ordinances and the revelations and teachings of the Prophets, including Jeffs, are also deemed confidential. (Ex. A, Aff. at 3); see, *Mockaitis*, 104 F.3d 1522; *Society of Jesus of New England*, 808 N.E.2d at 279–80. The disclosure of sacred religious ordinances, teaching, and revelations to those outside of the FLDS Church constitutes an infringement on the religious beliefs and practices of the FLDS Church and Jeffs.

By coming forth with factual evidence that the FLDS Church is a sincere religion and that Jeffs' exercise of that religion is substantially burdened by the prosecution's compelled production of sacred materials, Jeffs has made a *prima facie* case that he is entitled to protection under the federal and state constitutions. The State cannot show that it has any legitimate interest in the production of the religious material in the instant case because the recording does not relate to the pending allegations of rape.

Moreover, the prosecution cannot establish that the compelled production of the irrelevant religious materials is the least restrictive means by which to carry its burden of proof in the instant case. Accordingly, the compelled production of the sacred and confidential religious record for use in the instant case impinges on Jeffs' rights of conscience and exercise of religion under the state and federal constitutions.

Taken in context, the audio tape memorializes various sacred and confidential religious doctrines and beliefs, including sacred revelations and ordinances, which have

no probative value in the instant case. The fact that the majority of people may ridicule or doubt these beliefs does not justify their exposure to the public eye. The Utah and United States Constitutions protect even the unpopular religious beliefs of small insulated religious communities such as the FLDS Church.

**CONCLUSION**

Based on the foregoing, Jeffs respectfully requests this Court to quash the subpoena for compelled production of constitutionally protected religious materials.

DATED this 12th day September 2007.

BUGDEN & ISAACSON, L.L.C.

By: 

WALTER F. BUGDEN, JR.  
TARA L. ISAACSON

WRIGHT, JUDD & WINCKLER  
RICHARD A. WRIGHT

Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that, on the 5 day of September, 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Brock R. Blinap  
Washington County Attorney  
178 North 100 East  
St. George UT 84770

- HAND DELIVERY
- U.S. MAIL
- OVERNIGHT MAIL
- FACSIMILE:





# EXHIBIT A

DECLARATION OF  
ALVIN S. BARLOW, SR.

I, ALVIN S. BARLOW, SR., upon penalty of perjury, declare and attest that the following is true and accurate to the best of my knowledge:

I am a member of the Fundamental Church of Jesus Christ of Latter Day Saints ("FLDS") and have been so for 69 years. Through lifelong study and participation in the FLDS, I am familiar with its history, doctrines, and religious practices.

The origins of the FLDS reaches back to the establishment of the Church of Jesus Christ of Latter Day Saints, founded and lead by the Prophet Joseph Smith in the 1830s.

The faith and doctrines of the FLDS are embodied in the sacred texts revealed by God to the Prophet Joseph Smith, including the *Book of Mormon*, *Doctrine and Covenants* and *Pearl of Great Price*. Other sacred writings central to the FLDS are the Prophet Joseph Smith's *Joseph's Translation of the Bible* and *Lectures on Faith*; and the *Journal of Discourses*, which comprises of sermons of Prophets and Apostles along with the teaching of other early leaders of the Church. These are the same writings common to the non-fundamentalist Church of Jesus Christ of Latter Day Saints, which is headquartered in Salt Lake City ("LDS"). Additionally, the FLDS uphold the teaching and writing of the Prophets Leroy S. Johnson, Rulon T. Jeffs, and Vance S. Jeffs.

The FLDS strictly adhere to the above writing and teachings of the Prophet Joseph Smith and his ordained successors. In 1843, the Prophet Smith revealed the doctrine of plural marriage, which is set forth in Section 132 of the *Doctrine and Covenants*. His successors Brigham Young and John Taylor also taught and adhered to the doctrine of plural

more so. In 1890, Wilford Woodruff, the then leader of the Church, disavowed Section 132 in response to political pressure. To this date, however, Section 132 remains a part of the *Doctrine and Covenants*. Following the renunciation of the doctrine of plural marriage, a division occurred within the Church with the FLDS continuing to adhere to the doctrine of plural marriage and the LDS which accepted the renunciation. The more recent spiritual leaders of the FLDS have been the Prophets Leroy S. Johnson and Rulon T. Jeffs. The current President and Prophet is Warren S. Jeffs, who has been the spiritual leader of the FLDS since 2002.

5. According to FLDS doctrine, the power and authority of God to act in His name on earth is bestowed upon one man (Prophet) at a time according to details in *Doctrine and Covenants*, 1:23, and other verses enumerated therein. The authority of the priesthood which governs the FLDS Church includes two levels of priesthood, the Melchizedek and Aaronic Priesthood, who are authorized by God through the Prophet. The priesthood is organized into various Quorums with differing levels of authority to perform sacred rites and ordinances to help fellow members prepare for the Second Coming of the Lord Jesus Christ and qualify for Celestial Kingdom of God. The FLDS has an established priesthood order which is similar to the LDS hierarchy. The Prophet/President is the spiritual leader of the FLDS. The General Authorities are the First Presidency, the Quorum of the Twelve Apostles, Presiding Bishops, and First and Second Quorums of the Seventy. The area and local authorities and quorums include patriarchs, bishops, elders, priests, teachers, deacons, and counselors.

6. Members of the FLDS practice sacred ceremonies and ordinances, engage in individual and group prayer and worship, adhere to a lifestyle code of conduct, and celebrate religious holidays. Ordinances are blessings bestowed on a member through divine authority

and provide for members advancement towards qualifying for the Celestial Kingdom of God. Ordinances include baptism, conferring and receiving of priesthood authority, marriage, healing, and many other ordinances. Many ordinances are deemed strictly confidential. Pursuant to church tradition a record of certain ordinances must be recorded in the presence of witnesses and remain confidential. One of the sources for recording ordinances is found in the Journal of Discourses, Vol. 16, p. 259, Orson Pratt, October 7, 1875.

3. Additionally, FLDS followers are governed by the law of accountability to legitimate Authority, which requires them to engage in confidential communications with legitimate priesthood leaders to attest to their faith and confess any wrongdoing. These confidential communications may be in writing or verbal. The priesthood hierarchy provides sacred and confidential spiritual guidance to the members under their respective authorities. The Prophet, as the leader of the entire FLDS, provides spiritual guidance, which is deemed confidential to individual and groups of individuals within the Church. The disclosure of confidential information made pursuant to the law of accountability to non-members significantly interferes with FLDS members' spiritual path towards God's Kingdom. In other words, this unauthorized disclosure is a violation of confidence and destructive to the faith of those seeking to qualify for exaltation in the Celestial Kingdom of God. The law of accountability to legitimate Authority is derived from revelation from God and expressed in many sacred religious writings, including D&C 101:78, 104:13; Journal Of Discourses, Vol. 2, p. 259, Orson Pratt, Aug. 10, 1858; Vol. 2, p. 290, Brigham Young, June 7, 1855; Vol. 17, p. 76, Erastus Snow, Jan. 8, 1871.

4. The teachings and revelations given to the Prophet are strictly confidential and are

related only to those who God, through the Prophet, designates to receive such sacred and confidential revelations. The unauthorized disclosure of a teaching or revelation to a person outside of the FLDS is deemed a sinful breach of God's confidence and may be grounds for excommunication. The divine revelations and teachings are the core of the FLDS religious beliefs. Knowledge and possession of teachings and revelations by non-members violates the sanctity and sacredness of instruction from Our Father in Heaven. It strikes at the very heart of the FLDS doctrine. Only those selected by God, through the Prophet, may receive the divine messages. Through revelations, FLDS members are guided in their preparation for the Celestial Kingdom. As plainly stated in Mormon, Section 6:12: *Make not thy gift known unto any save those who are of thy faith. Trifle not with sacred things.* The sacredness and confidentiality principles of Heavenly revelations and instructions to the Prophets are based on several church writings, including but not limited to, Mormon 6:6; Matthew 7:6; Alma 37:15, 44:3, 50:37; Helaman 4:12; 3 Nephi 14:6, 4 Nephi 1:27; DC 9:9, 41:6, 63:64, 104:54-66; TPJS, Section Four 1839-1840, p. 191; LSI 1:177, May 10, 1970 Colorado City, Arizona ("CCA"); JYB 151 January 10, 1941 Salt Lake City; LSI 4:1262-1263, August 15, 1976 CCA; LSI 6:350, June 8, 1969 Central Utah 3: 52, May 10, 1970 CCA; RTJ 3:257 June 2, 1974 CCA; RTJ 4:215 November 13, 1977 Sandy, Utah.

In addition to the confidentiality of the Prophet's revelations and writings, other records of the FLDS are deemed most sacred and confidential, including but not limited to membership, ordination, family, and title records. In large part, the need to protect the such records stems from the long history of persecution, ridicule, harassment, and physical assault of the faithful by non-members and apostates. This history of persecution has

perdition which the Prophet Joseph Smith founded the Church and continues today in great force against the followers of the FLDS.

The FLDS does not engage in missionary work to proselyte our doctrines upon non-members. Instead, the FLDS seeks to provide encouragement and support, both temporal and spiritual, to its current members and to all faithful individuals, as well as to provide strength to all sincere earnestly seeking the Truth of the Gospel of Salvation.

DATED this 10<sup>th</sup> day of April, 2007.

  
ALYSE S. BARLOW, SR.

# EXHIBIT B

Case 2:07-cr-00148-DB Document 18 Filed 06/07/07 Page 1 of 3

FILED  
U.S. DISTRICT COURT  
2007 JUN -7 P 1:22  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH/ CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WALTER BENTLEY JEFFYS,

Defendant.

~~IN RE~~ ORDER

Case No. 2:07cr00148

Judge Dee Benson

The matter having come before the Court for hearing on May 24, 2007, regarding the defendant's "Emergency Motion to Seal and Establish Procedures for In Camera Review of Defendant's Religious Records" (CR 8), upon consideration of the parties' respective arguments and briefs, and for good cause shown,

THE COURT GRANTED that the defendant's motion is GRANTED to the extent that the government shall not disclose any of the electronic and paper records seized from the defendant's home about August 28, 2006 to third parties.

IT IS ORDERED that the defendant's motion is GRANTED to the extent that the government shall retain any and all records seized which are beyond the scope of the records as disclosed in Case No. 2:06-mj-00618-PAL, District of Nevada, which



Case 2:07-cr-00173-JDB Document 18 Filed 06/07/07 Page 2 of 3

authorized only the search and seizure of evidence relevant to violations of Title 18, United States Code, Sections 1073 (Unlawful Flight to Avoid Prosecution) and 1071 (Hiding Person from Arrest), believed to have occurred on and after June 10, 2005. Pursuant to this order, the government shall have until July 2, 2007, to retrieve from the seized materials those records which are relevant to the aforementioned violations. Upon completion of the review period, the government shall return to the defendant the records deemed irrelevant to the aforementioned violations. The government may move to extend the period of review upon good cause shown. The law firm of Judd & Winckler shall hold the returned items in escrow on the defendant's behalf until such time that the fiduciary for the United Effort Plan Trust has the opportunity to inspect said property pursuant to order or subpoena previously issued in the United Judicial District Court of Salt Lake County.

IT IS ORDERED that the defendant's motion is DENIED to the extent that it seeks to require the Court establish *in camera* review procedures at this juncture of the prosecution.

IT IS FURTHER ORDERED that the government provide to the defendant a copy of the affidavit of law enforcement supporting the above-described search warrant.

IT IS FURTHER ORDERED that the waiver procedures, privilege log procedures, and stipulations on the defense counsel's use of copies of seized materials, as previously agreed upon by the parties and integrated into the search warrant, are hereby removed. The United States Attorneys and agents of the Federal Bureau of Investigation involved in this case are, therefore, authorized to review the seized items to determine their relevance to the aforementioned violations. After the government has identified relevant

Case 2:07-cr-00100-DB Document 18 Filed 06/07/07 Page 3 of 3

... defendant will have the right to assert the cleric-communicant privilege or  
... opinions.

... this 7<sup>th</sup> day of June 2007.

Dee Benson  
DEE BENSON  
United State District Court Judge

# EXHIBIT C



1. On May 14, 2007, three of the four Subpoenaed Parties (Wally Bugden, Jr., Tara Isaacson, and Bugden & Isaacson, LLC), objected to the Subpoenas pursuant to a letter, a copy of which is attached hereto as Exhibit "A".

2. Subpoenaed Party, Warren S. Jeffs, has never objected to the subpoena served upon him.

3. On May 22, 2007, the Fiduciary filed and served upon the Subpoenaed Parties a Motion to Compel Compliance with Subpoenas ("Motion to Compel").

4. Warren S. Jeffs is represented in criminal proceedings by the law firm of Bugden & Isaacson, LLC (Wally Bugden, Jr. and Tara Isaacson), together with the law firm of Wright, Judd & Yonke (Margaret Stanish and Richard Wright).

5. This Stipulated Protective Order resolves the Motion to Compel only as to the documents described in heading I of Exhibit "A" of the Subpoenas more specifically described as follows:

I. Documents which were located in the Cadillac Escalade automobile seized during the arrest of Warren Steed Jeffs in Clark County, Nevada, on August 12, 2006, ("Escalade Documents").

6. This Stipulated Protective Order does not resolve the Motion to Compel as to any documents described in headings II, and III of Exhibit "A" to the Subpoenas ("Other Documents").

7. As to the Other Documents, the parties to this Stipulated Protective Order hereby stipulate and agree that the Court may issue an Order to Compel.

8. The Subpoenaed Parties assert that the Escalade Documents are confidential.

9. The Fiduciary does not agree that the Escalade Documents are confidential but

unless otherwise determined, the documents will be treated as confidential under the terms and conditions of this Stipulated Protective Order.

11. This Stipulated Protective Order shall not be a waiver or estoppel of the Plaintiff's right to assert that the Escalade Documents are not confidential.

12. The original Escalade Documents are currently in the possession of the FBI and the Utah State attorneys office located in Salt Lake City, Utah.

13. In connection with a federal criminal investigation and prosecution of Warren S. Jaffe, the Plaintiff's defense attorneys at Wright, Judd & Wickler obtained a copy of the Escalade Documents pursuant to a written agreement with the United States Attorney's Office, Salt Lake County, and Search Warrant in Mag. No. 2:06-cv-00618-PAL (D. Ct. Nev.). Federal criminal case currently pending against Warren S. Jaffe.

14. Within five days from the entry of this Order, the Subpoenaed Parties shall produce all of the Escalade Documents to the Fiduciary by making all electronic documents available for review and copying by the Fiduciary and/or his agents and by sending copies of all printed documents to the Fiduciary and/or his legal counsel in Salt Lake City, Utah.

15. The Fiduciary shall pay the costs of copying the Escalade Documents (including attorney's fees).


16. The Fiduciary shall make a good faith effort to review and copy all of the Escalade Documents as soon as reasonably practical.

17. Without the consent of all parties to this Stipulated Protective Order or further Court order, the Escalade Documents shall be treated as confidential and shall not be disclosed to anyone other than such documents may be disclosed to:

to maintain the alleged confidentiality as required by the Stipulated Protective  
 Order. In light of the foregoing regarding this Objection, Shields requests that the Court initially hear the  
 matter in private.

DATE: September 5<sup>th</sup> 2007

CALLISTER NESEKER & McCULLOUGH

By:   
 \_\_\_\_\_  
 JEFFREY M. SHIELDS  
 Attorneys for Bruce R. Wisan, Court-appointed  
 Special Fiduciary of the United Effort Plan Trust

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of **OBJECTION TO SUBPOENA DUCES  
TECUM** and **REQUEST FOR IMMEDIATE HEARING** was served via U.S. mail, first class  
postage and insurance paid, and facsimile transmission, as indicated below, on this 5<sup>th</sup> day of  
September 2007, on the following:

Case No. 07-10001  
Title: **STATE OF UTAH  
v. JAMES EARL RAY**  
Case No. 07-10001-Sub 150  
Case No. 07-10001-Sub 1

Walter Reed Jeffs  
Purgatory Correctional Facility  
750 South 5800 West  
Harrison, Utah 84737  
via U.S. mail

Facsimile No. 801-438-7000  
Facsimile To: 801-438-7000  
Facsimile From: [redacted]

File No. 07-10001  
Case No. 07-10001-Sub 150  
Case No. 07-10001-Sub 150  
Case No. 07-10001-Sub 1

Facsimile No. 801-438-7000  
Facsimile To: 801-438-7000  
Facsimile From: [redacted]





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Jeffrey L. Childs

TO CONTACT WRITER DIRECTLY
(801) 590-7570
jlschild@cnmlaw.com

September 5, 2007

Richard A. Wright
Margaret A. Wright
WRIGTS LAW FIRM
300 South Main Street, Suite 701
Las Vegas, NV 89101

VIA EMAIL, FACSIMILE AND U.S. MAIL

Walter B. Burchette, Jr.
Tara L. Burchette
BUCHETTE LAW FIRM
445 South Main Street, Suite 150
Salt Lake City, UT 84101

VIA EMAIL, FACSIMILE AND U.S. MAIL

Re: Central Union Plan Trust
District 1 Judicial District Court, Civil No. 053900848 (Judge Lindberg)

Re: Richard A. Wright vs. Warren Stuart Jeffs
District 1 Judicial District Court, Criminal No. 060500526

Dear Counsel:

On September 4, 2007, just (12:30 pm, MDT) returned my telephone call, I was unsuccessful in communicating with you by telephone regarding the above-referenced cases. On Wednesday, September 5, 2007, I received a SUBPOENA DUCES TECUM issued by the prosecutors in the above-referenced Criminal Case. The Subpoena requires production of documents within the scope of the Protective Order entered by Judge Lindberg in the above-referenced UEP civil case.

In accordance with the Stipulated Protective Order, I promptly filed an objection to the Subpoena in the Civil Case. A copy of the objection was emailed and faxed to you last night. I also intend to file an objection to the Subpoena in the Criminal Case. My only basis for objecting to the Subpoena in both the Civil and Criminal Case is the limitations imposed by the Stipulated Protective Order.

Notwithstanding, we will comply with the Subpoena without any further court involvement. In the absence of a court order, we will assume the responsibility to obtain an order to quash/modify the Subpoena or obtain

Sept 11 2007  
Page 1

some of the... and I know the Subpoena will fall upon you. I intend to fully comply with the Subpoena  
on Mon... 9/17/2007, at 9:00 a.m. unless other arrangements are made.

Sept 11 2007  
Margaret... I was informed by Judge Lindberg's clerk that the Judge is out of town until Monday,  
Thurs... that no hearing will take place before or before that date. Pursuant to  
Thurs... a copy of the Subpoena is attached only to the letter sent to her via email.

Sincerely,

CALLISTER NEBEKER & McCULLOUGH



Jeffrey L. Shields

JLSA  
cc: (via email)  
(via facsimile)

073912.2