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-and-

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Attorney for Defendant

10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
11 IN AND FOR THE COUNTY OF MOHAVE

12	STATE OF ARIZONA,	)	NO. CR-2007-743
13		)	
14	Plaintiff,	)	DEFENDANT JEFFS'
15	vs.	)	MOTION TO QUASH
16		)	SUBPOENA <i>DUCES TECUM</i>
17	WARREN STEED JEFFS,	)	
18	Defendant.	)	[Oral Argument Requested]
19		)	[Hon. Steven F. Conn]

20 The defendant, Warren Steed Jeffs, by and through his undersigned  
21 attorneys, hereby moves to quash the subpoena *duces tecum* served upon Jeffrey  
22 Shields, counsel for Bruce Wisan, Special Fiduciary of the United Effort Plan  
23 (UEP). This Court is without jurisdiction to subpoena items or individuals that are  
24 not within the territorial boundaries of the State of Arizona. In addition, the  
25 subpoena seeks materials that were unlawfully seized initially and have been the  
26 subject of protective orders prohibiting their release to third parties. The subpoena  
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1 clearly seeks materials that are privileged under the First and Fifth Amendments to  
2 the United States Constitution and Article Two, Sections Six and Ten of the  
3 Arizona Constitution, and the subpoena seeks irrelevant materials and is otherwise  
4 overbroad. The subpoena should be quashed for the reasons set forth in the  
5 attached Memorandum of Points and Authorities  
6

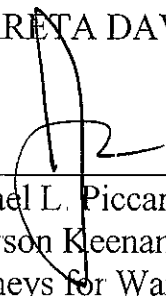
7  
8 RESPECTFULLY SUBMITTED this 4th day of June, 2008.

9 WRIGHT STANISH & WINCKLER

PICCARRETA DAVIS PC

10  
11 By  \_\_\_\_\_

12 Richard A. Wright  
13 Attorney for Warren Jeffs

10  
11 By  \_\_\_\_\_

12 Michael L. Piccarreta  
13 Jefferson Kleenan  
14 Attorneys for Warren Jeffs

15 MEMORANDUM OF POINTS AND AUTHORITIES

16 I. STATEMENT OF FACTS

17 The Objection to Subpoena Duces Tecum filed by the Fiduciary of the  
18 United Effort Plan Trust sets forth some of the factual and procedural background  
19 relating to the materials sought. The subpoena at issue in the present case requests  
20 items that were seized from the search of defendant's vehicle, a 2007 Cadillac  
21 Escalade, on August 28, 2006, in the state of Nevada, in connection with the  
22 federal charge of unlawful flight to avoid prosecution under 18 U.S.C. § 1073  
23  
24 The United States District Court for the District of Utah assumed jurisdiction over  
25 issues pertaining to the search warrant. United States District Court Judge Dee  
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1 Benson ordered that:

2 the government must return any and all records seized which are  
3 beyond the scope of the search warrant issued in Case No. 2:06-mj-  
4 00618-PAL, District of Nevada, which authorized only the search  
5 and seizure of evidence relevant to violations of Title 18, United  
6 States Code, Sections 1073 (Unlawful Flight to Avoid Prosecution)  
and 1071 (Concealing Person from Arrest).....

7 [Order of Judge Dee Benson, attached hereto as Exhibit A]. The court further  
8 ordered “the government shall not disclose any of the electronic and paper records  
9 seized from defendant on or about August 28, 2006 to third parties.” [*Id.*]. The  
10 court’s order subsumed the provisions of an earlier letter agreement between the  
11 government and the defendant that required the government to provide the  
12 defendant with copies of seized paper records and a mirrored image of electronic  
13 data. The court ordered counsel for Mr. Jeffs to hold the returned items in  
14 escrow. [*Id.*].

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18 In civil proceedings in state court in the state of Utah, the Fiduciary for the  
19 UEP trust attempted to subpoena from Mr. Jeffs’ counsel the materials obtained  
20 from the Escalade. The Fiduciary and counsel for Mr. Jeffs agreed to a Stipulated  
21 Protective Order under which the materials were provided to the Fiduciary. This  
22 Stipulated Protective Order has already been provided to the court as Exhibit A to  
23 the objection to subpoena *duces tecum* filed on behalf of the Fiduciary in this  
24 matter. The protective order deems all of the materials to be confidential and  
25 prohibits disclosure to third parties absent consent of the parties or an order of the  
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1 court. The protective order further requires the Fiduciary to return to Mr. Jeffs'  
2 criminal defense counsel "documents unrelated to the location of UEP assets or  
3 the administration of the UEP Trust including, but not limited to, documents  
4 containing religious doctrine, religious teachings, spiritual guidance, confessions,  
5 prayers, religious ordinances, and revelations..." [Stipulated Protective Order, ¶¶  
6 10, 17, 21, 22]. The Stipulated Protective Order also recognizes Mr. Jeffs as the  
7 real party in interest and authorizes Jeffs or his designee to protect the seized  
8 records in the Fiduciary's possession. Mr. Jeffs now moves to quash the subpoena  
9 directed to the Fiduciary of the UEP Trust.  
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## 13 II. DISCUSSION

### 14 A. This Court Is Without Jurisdiction To Subpoena Items In The 15 Possession Of Witnesses Who Do Not Live Within The Territorial 16 Boundaries Of The State Of Arizona.

17 "Material witnesses who live outside Arizona are not within the subpoena  
18 power of our courts" *Ponderosa Plaza v. Siplast*, 181 Ariz. 128, 134, 888 P.2d  
19 1315, 1321 (App. 1993). The Fiduciary does not reside in Arizona and neither the  
20 Fiduciary nor the items requested in the subpoena are within the State of Arizona.  
21 This Court simply does not have the jurisdiction or authority to issue or enforce  
22 the requested subpoena. *Sam v State*, 33 Ariz. 383, 411, 265 P. 609, 619 (1928)  
23 ["subpoena issued by the Superior Court of Mohave county could be served by the  
24 proper officer anywhere within the State of Arizona"]. Mr. Jeffs therefore objects  
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1 to the subpoena and moves to quash on these grounds.

2 Mr. Wisan was appointed by the Utah court to act as Special Fiduciary of  
3 the UEP Trust. The office of counsel for the Special Fiduciary is located in Utah  
4 and the items requested in the subpoena are located in the state of Utah. Indeed,  
5 the very items requested by the subpoena are already the subject of orders of the  
6 courts of the state of Utah, as noted above. The State of Arizona should direct its  
7 efforts to the Utah courts that have the jurisdiction to determine whether they  
8 should exercise their authority with regard to the items requested in the subpoena.  
9 See A.R.S. § 13-4091, *et seq.* This Court does not have the jurisdiction or  
10 authority to make an “end run” around the orders of the Utah courts governing  
11 items that are within the subpoena power of the Utah courts.  
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16 B. The Subpoena Must Be Quashed Because It Seeks Materials That  
17 Were Illegally Seized To Begin With And Materials That The  
18 Fiduciary Has Been Ordered To Return To Counsel For Mr. Jeffs.

19 As noted above, the United States District Court authorized the government  
20 to seize only items related to the federal charges of unlawful flight to avoid  
21 prosecution and concealing a person from arrest. In the civil case in the Utah state  
22 court, the Fiduciary was allowed access to the seized materials, but only as to  
23 documents related to the location of UEP assets or the administration of the UEP  
24 Trust. The Fiduciary was ordered to return all of the remaining unrelated  
25 documents. Accordingly, the subpoena must be quashed because the State of  
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1 Arizona is attempting to acquire materials that should never have been in the  
2 Fiduciary's possession to begin with and which he is required to return. In  
3 addition, the only materials the Fiduciary was lawfully entitled to inspect relating  
4 to the location of UEP Trust assets or the administration of the UEP Trust are  
5 obviously irrelevant to any issue in the present criminal proceedings, and the  
6 Fiduciary has been ordered not to disclose these items to third parties in any event.  
7  
8

9 C. The Subpoena Must Be Quashed Because It Requests Material  
10 Which Is Privileged And Confidential Under The First And Fifth  
11 Amendments To The United States Constitution And Article Two,  
12 Sections Six And Ten Of The Arizona Constitution.

13 1. The subpoena improperly requests material regarding the  
14 religious beliefs and practices of Mr Jeffs and the FLDS  
15 Church.

16 Prior to 1990, the United States Supreme Court held that the First  
17 Amendment required government action that burdened the free exercise of  
18 religion to be justified by a compelling governmental interest and that the action  
19 be the least restrictive means of promoting that interest. *See, e.g., Wisconsin v.*  
20 *Yoder*, 406 U.S. 205, 215, 234 (1972); *Sherbert v. Verner*, 374 U.S. 398, 403,  
21 (1963). In 1990, the Court modified these decisions in *Employment Division,*  
22 *Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 883–85  
23 (1990), when it held that the compelling interest/least restrictive means test did  
24 not apply when the burden on religion was imposed by a facially neutral law of  
25 general applicability. The *Smith* Court found that the government must show a  
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1 rational basis for impinging on the free exercise of religion by enforcing a  
2 facially neutral law. 494 U.S. at 883-85. In contrast, where government  
3 activity is not neutral in that it directly targets religion, it is subject to the  
4 compelling interest/least restrictive means test. *Church of the Lukumi Babalu*  
5 *Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993)(holding that city  
6 ordinances regulating the slaughter of animals violated the First Amendment  
7 where the ordinances were targeted to interfere with ritual slaughter under  
8 particular religious practice).

9  
10  
11 The Arizona Supreme Court has recognized that Article Two, Section Six  
12 of the Arizona Constitution may provide greater protection of expressive rights  
13 than the First Amendment. *Mountain States Telephone and Telegraph Co v*  
14 *Arizona Corporation Commission*, 160 Ariz. 350, 354-55, 773 P.2d 455, 459-60  
15 (1989). In the context of government action infringing upon religious beliefs  
16 and practices, Arizona courts have held that the challenged action must be the  
17 least restrictive means of achieving an unusually important or compelling state  
18 interest. *Barlow v. Blackburn*, 165 Ariz. 351, 355-56, 798 P.2d 1360, 1364-65  
19 (App. 1990). It would appear that this remains the applicable standard under  
20 Arizona law, especially given the recognition that Article Two, Section Six of  
21 the Arizona Constitution has provided greater protections than the First  
22 Amendment.  
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1           Turning to the instant case, the subpoena should be quashed because the  
2 state cannot show either a compelling or rational interest justifying the intrusion  
3 into the religious beliefs and practices of the FLDS Church and Jeffs. More  
4 precisely, the subpoena constitutes a government intrusion into Jeffs' rights to  
5 conscience and free exercise of religion which cannot be supported by a  
6 legitimate state interest because the items requested are unrelated to the pending  
7 charges concerning allegations of sexual conduct with a minor and/or incest.  
8 The subpoena is in no way an exercise of neutral government authority in that it  
9 specifically targets the religious records of the FLDS Church. *See, Hialeah,*  
10 508 U.S. at 531. As such, the heightened scrutiny test applies to the First  
11 Amendment analysis. Government intrusion into sacred and confidential  
12 religious records infringes on religious freedom unless the compelling  
13 interest/least restrictive analysis is satisfied. *See, Mockaitis v. Harcleroad,* 104  
14 F.3d 1522 (9th Cir. 1997) (priest established *prima facie* First Amendment and  
15 Religious Freedom Restoration Act claims by showing that government taped  
16 and retained tape of conversation that the priest's religion required him to keep  
17 confidential) *overruled on other grounds by City of Boerne v. Flores,* 521 U.S.  
18 507 (1997); *Society of Jesus of New England v. Commonwealth,* 808 N.E.2d  
19 272, 279–80 (Mass. 2004) (deciding that under state's compelling/interest least  
20 restrictive means test, religious adherents established *prima facie* case by  
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1 showing that government burdened religion by inquiring into communications  
2 deemed secret by religious doctrine).

3  
4 The attached declaration by Alvin Barlow, a lifelong member of the  
5 FLDS, elaborates on the FLDS as an established religion adhering to certain  
6 sacred and confidential doctrines. [Declaration of Alvin S. Barlow, Sr., ¶¶ 1-3,  
7 attached hereto as Exhibit B]; see *United States v. Meyers*, 95 F.3d 1475, 1483–  
8 84 (10th Cir. 1996) (listing factors indicating that a religion qualifies as a  
9 sincere religion). The declaration also verifies that maintaining the secrecy of  
10 the confidential religious records is central to the FLDS’s religious practices.  
11 Certain ordinances and the revelations and teachings of the Prophets, including  
12 Jeffs, are also deemed confidential. (Ex B, Aff. at 3); see, *Mockaitis*, 104 F.3d  
13 1522; *Society of Jesus of New England*, 808 N.E.2d at 279–80. The disclosure  
14 of sacred religious ordinances, teaching, and revelations to those outside of the  
15 FLDS Church constitutes an infringement on the religious beliefs and practices  
16 of the FLDS Church and Jeffs.  
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21 By coming forth with factual evidence that the FLDS is a sincere religion  
22 and that Jeffs’ exercise of that religion is substantially burdened by the  
23 prosecution’s compelled production of sacred materials, Jeffs has made a *prima*  
24 *facie* case that he is entitled to protection under the federal and state  
25 constitutions. The state cannot show that it has any legitimate interest in the  
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1 production of the religious material in the instant case because the materials do  
2 not relate to the pending allegations of sexual conduct with a minor and/or  
3 incest. Moreover, the prosecution cannot establish that the compelled  
4 production of the irrelevant religious materials is the least restrictive means by  
5 which to carry its burden of proof in the instant case. Accordingly, the  
6 subpoena must be quashed because the compelled production of the sacred and  
7 confidential religious records for use in the instant case impinges on Jeffs'  
8 rights of conscience and exercise of religion under the state and federal  
9 constitutions.

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13 2. The subpoena requests privileged communications.

14 A.R.S. § 13-4062 states that:

15 A person shall not be examined as a witness in the following cases:

16  
17 3. A clergyman or priest, without consent of the person  
18 making the confession, as to any confession to the clergyman or  
19 priest in his professional character in the course of discipline  
enjoined by the church to which the clergyman or priest belongs.

20 “The privilege afforded by the statute belongs to the communicant: a clergyman  
21 may not disclose the communicant’s confidences without the communicant’s  
22 consent.” *Waters v. O’Connor*, 209 Ariz. 380, 383, ¶ 11, 103 P.3d 292, 295  
23 (App. 2004). Moreover, “whether a person is a clergyman of a particular  
24 religious organization should be determined by that organization’s ecclesiastical  
25 rules, customs and laws.” *Id.* at 385, ¶ 21, 103 P.3d at 297.  
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1           Since 2002, Warren Jeffs has been the spiritual leader of the FLDS  
2 Church and is regarded as the living prophet. [See Declaration of Alvin S.  
3 Barlow, Sr., ¶ 4, attached hereto as Exhibit B] Among the materials requested  
4 by the State's subpoena are records of literally hundreds of confidential  
5 communications and confessions made by FLDS Church members to Warren  
6 Jeffs in his capacity as a prophet, or functionary of that religious organization.  
7  
8 Because of the enormous volume of electronic records and documents, it is  
9 unknown how many such privileged documents are present in the Escalade  
10 materials. However, it is evident that these materials fall squarely within the  
11 definition of privileged communications with clergy, and Mr. Jeffs is obligated  
12 to assert that privilege on behalf of the communicants.  
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16           Compelling the wholesale production of the Escalade materials would  
17 clearly violate the clergy/communicant privilege, adversely affecting  
18 fundamental rights of numerous FLDS Church members. The Court should  
19 therefore quash the subpoena because it improperly requires disclosure of  
20 privileged matter and contravenes A.R.S. § 13-4062.  
21

22           3. The subpoena violates Mr. Jeffs' privilege against self  
23 incrimination.

24           The Fifth Amendment to the United States Constitution states that no  
25 person can be compelled "to be a witness against himself." Article Two,  
26 Section Ten of the Arizona Constitution states that "[n]o person shall be  
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1 compelled in any criminal case to give evidence against himself....”

2  
3 The constitutional privilege against self-incrimination applies to  
4 the involuntary production of private books and papers in response  
5 to any process or order of court addressed to the owner in the  
6 character of a witness, as well as to the giving of oral testimony.  
7 The compulsory production of a person’s private books or papers  
8 to be used in evidence against him is not substantially different  
9 from compelling the person to be a witness against himself, and,  
10 accordingly, an accused cannot be compelled to produce private  
11 papers or documents that may contain incriminating evidence.

12 The privilege against self-incrimination applies to personal  
13 documents, containing intimate information about the individual’s  
14 private life, and to papers that are the private property of the  
15 person asserting the privilege or in his or her possession in a purely  
16 personal capacity.

17 81 Am. Jur. 2d Witnesses § 111 (2008) [citing *Bellis v. United States*, 417 U.S.  
18 85 (1974)].

19 It has long been established that “when a writing is in the possession or  
20 custody of one accused of a crime, it is regarded as inaccessible to the state, as  
21 the accused cannot be compelled to produce it.” *Johnson v State*, 33 Ariz. 354,  
22 360, 264 P. 1083, 1085 (1928). In *State ex rel Hyder v. Superior Court*, 128  
23 Ariz. 253, 625 P.2d 316 (1981), the Arizona Supreme Court specifically held  
24 that a subpoena directed to a criminal defendant requesting the production of  
25 personal letters violated his privilege against self incrimination under the Fifth  
26 and Fourteenth Amendments to the United States Constitution.

27 The personal papers, recorded statements and books of Mr. Jeffs which  
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1 comprised much of the Escalade materials are plainly protected by the privilege  
2 against self incrimination, as recognized by the Arizona and United States  
3 Supreme Courts. Accordingly, the subpoena must be quashed because it  
4 requests materials that are protected by Mr. Jeffs' privilege against self  
5 incrimination under the Arizona and United States Constitutions.  
6

7  
8 D. The Subpoena Is Overbroad, Not Reasonably Calculated To Lead  
9 To The Discovery Of Relevant Or Admissible Evidence, And  
Unduly Burdensome.

10 "Subpoenas that are overbroad are not enforceable." *State ex rel.*  
11 *Goddard v. Western Union*, 216 Ariz. 361, 369, 166 P.3d 916, 924 (App. 2007).  
12

13 Moreover, the court retains discretion to quash a subpoena *duces tecum* that is  
14 overbroad and unreasonable. *State v. Loyd*, 118 Ariz. 106, 109, 574 P.2d 1325,  
15 1328 (App. 1978)  
16

17 The subpoena in the present case clearly seeks a wide variety of  
18 documents and electronic information seized from the Escalade without any  
19 parameters or reference to subject matter. This is really no different than  
20 issuing a subpoena for every document and piece of electronic data in a  
21 person's home or office. The subpoena wholly fails to describe items with  
22 reasonable particularity that might be relevant to any genuinely disputed issues.  
23

24 As in *Loyd*, the subpoena is overbroad and unreasonable "since mere 'fishing  
25 expeditions' are not to be countenanced." *Id.* [citation omitted].  
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1           In addition, as noted above, the only materials the Fiduciary was lawfully  
2 entitled to inspect related to the location of UEP Trust assets or the  
3 administration of the UEP Trust and are obviously irrelevant to any issue in the  
4 present criminal proceedings. Moreover, the Escalade materials comprise an  
5 enormous amount of information. In addition to paper documents, there is a  
6 vast amount of electronic data which is difficult, time-consuming, and  
7 expensive to review. Under these circumstances, easily 100 hours or more  
8 could be required to review the electronic data, alone. Such a review would  
9 obviously be necessary in order to identify and cull out privileged  
10 communications. The subpoena should therefore be quashed because of the  
11 imposition of this unreasonable burden and expense. See e.g., *Williams v. City*  
12 *of Dallas*, 178 F.R.D. 103, 109 (N.D. Tex. 1998) ["Undue burden can be found  
13 when a subpoena is facially overbroad"].

### 14 III. CONCLUSION

15           For the foregoing reasons, the defendant, Warren Steed Jeffs, by and  
16 through his undersigned attorneys, respectfully requests this Court to quash the  
17 subpoena *duces tecum* served upon Jeffrey Shields, counsel for Bruce Wisan,  
18 Special Fiduciary of the United Effort Plan. This Court is without jurisdiction  
19 to subpoena items or individuals that are not within the territorial boundaries of  
20 the State of Arizona. The subpoena seeks materials that were unlawfully seized  
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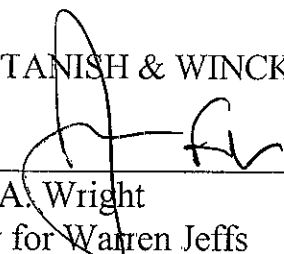
1 initially and have been the subject of protective orders prohibiting their release  
2 to third parties. The subpoena further seeks materials that are privileged under  
3 the First and Fifth Amendments to the United States Constitution and Article  
4 Two, Sections Six and Ten of the Arizona Constitution and A.R.S. § 13-4062,  
5 and the subpoena seeks irrelevant materials is otherwise overbroad and unduly  
6 burdensome.  
7

8  
9 RESPECTFULLY SUBMITTED this 4th day of June, 2008.

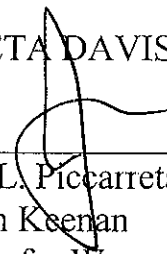
10 WRIGHT STANISH & WINCKLER

PICCARRETA DAVIS PC

11  
12 By

  
Richard A. Wright  
Attorney for Warren Jeffs

By

  
Michael L. Piccarreta  
Jefferson Keenan  
Attorneys for Warren Jeffs

13  
14  
15 Copy of the foregoing mailed  
this 4th day of June, 2008, to:

16 Clerk of Mohave County Superior Court  
17 401 East Spring Street  
Kingman, AZ 86401

18 Copy of the foregoing faxed and mailed  
19 this 4th day of June, 2008, to:

20 Hon Steven F. Conn  
21 Mohave County Superior Court  
22 401 East Spring Street  
Kingman, AZ 86401  
Fax: 928-753-8938

23 Copy of the foregoing emailed and  
24 mailed this 4th day of June, 2008, to:

25 Matthew J Smith, Esq.  
26 Mohave County Attorney's Office  
27 315 North Fourth Street  
P.O. Box 7000  
Kingman, AZ 86402-7000

28

# EXHIBIT A

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

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>WARREN STEED JEFFS</p> <p>Defendant.</p>	<p><del>PROTECTED</del> ORDER</p> <p>Case No. 2:07cr00148</p> <p>Judge Dee Benson</p>
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This 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 Protected Religious Records" (CR 8), upon consideration of the parties' respective arguments and briefs, and for good cause shown.

IT IS ORDERED 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 defendant on or about August 28, 2006 to third parties.

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

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 (Concealing Person from Arrest), believed to have occurred on and after June 10, 2005. In connection with 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 Wright, 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 had the opportunity to inspect said property pursuant to order or subpoena previously issued in the Third Judicial District Court of Salt Lake County.

IT IS ORDERED that the defendant's motion is DENIED to the extent that it seeks to have this 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 sealed affidavit supporting the above-described search warrant.

IT IS FURTHER ORDERED that the taint team procedures, privilege log procedures, and restrictions 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 Assistant United States Attorneys and agents of the Federal Bureau of Investigation assigned to the case are, therefore, authorized to review the seized items to determine relevancy to the aforementioned violations. After the government has identified relevant

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records, the defendant will have the right to assert the cleric-communicant privilege or other objections.

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

*Dee Benson*

DEE BENSON  
United State District Court Judge

# EXHIBIT B

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:

1. 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.
2. 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.
3. 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 *Inspired Version 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 holds sacred the teaching and writing of the Prophets Leroy S. Johnson, Rulon T. Jeffs, and Warren S. Jeffs.
4. 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

marriage. 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 Ruion 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*, 132:7, 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 offices with differing levels of authority to perform sacred rites and ordinances to help followers 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 a members advancement towards qualifying for the Celestial Kingdom of God. Ordinances include baptism, conferring and receiving of priesthood authority, marriage, healing, and numerous other ordinances. Many ordinances are deemed strictly confidential. Pursuant to church doctrine, 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, 1873.

7. 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 President, 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 communications made pursuant to the law of accountability to non-members significantly interferes with a 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 an 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, Sept. 10, 1858; Vol. 2, p. 399, Brigham Young, June 3, 1855; Vol. 17, p. 76, Erastus Snow, May 8, 1874.

8. 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 belief. 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 simply stated in Mormon, Section 6:12: *Make not thy gift known unto any save those who are of thy faith. Trefle not with sacred things.* The sacredness and confidentiality principle 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, 44:5, 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 1839-42, p. 194; 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 Canada; LSI 7:152, May 10, 1970 CCA; RTJ 3:257 June 2, 1974 CCA; RTJ 4:215 November 13, 1977 Sandy, Utah.

9. 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 tithing records. In large part, the need to protect the such records from disclosure 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

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

10. The FLDS does not engage in missionary work to proselyte our doctrines upon non-believers. 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 who are earnestly seeking the Truth of the Gospel of Salvation.

DATED this 16<sup>th</sup> day of April, 2007.

  
ALVIN S. BARLOW, SR.