

2009

# In the Matter of the United Effort Plan Trust v. : Brief of Appellee

Utah Supreme Court

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**IN THE UTAH SUPREME COURT**

IN THE MATTER OF THE UNITED  
EFFORT PLAN TRUST

**BRIEF OF APPELLEE ARIZONA  
ATTORNEY GENERAL'S OFFICE**

**Supreme Court Case No.  
20090691-SC**

**Third District Court Civil No.  
053900848**

**APPEAL FROM THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT  
LAKE COUNTY, STATE OF UTAH, HONORABLE DENISE P. LINDBERG  
PRESIDING**

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## **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

Did the trial court err in denying the motions to intervene filed by Willie Jessop, Dan Johnson, Merlin Jessop, Lyle Jeffs and James Oler (the “FLDS Intervenors”) where the FLDS Intervenors sought to intervene in a judicial administration of a charitable trust that had many years earlier been reformed to be a purely non-sectarian charitable trust, the FLDS Intervenors had failed to seek pre-reformation intervention despite having notice of the trial court’s administration of the Trust, and where the FLDS Intervenors proved no greater interest in administration of the Trust than thousands of other potential trust participants who also include non-FLDS members?

“Denials of intervention as of right under rule 24(a) are subject to de novo review on appeal.” *Parduhn v. Bennett*, 112 P.3d 495, 500 (Utah 2005) (citing *In re Marriage of Gonzalez*, 1 P.3d 1074 (Utah 2000)).

## **CONSTITUTIONAL PROVISIONS OR STATUTES**

The Office of the Arizona Attorney General (the “Arizona AG”) agrees with the FLDS Intervenors that Rule 24(a), Utah Rules of Civil Procedure is relevant to this appeal.

The Arizona AG disagrees that Utah Code Ann. § 75-7-405(3) is relevant. The FLDS Intervenors do not qualify as the settlors of the reformed trust, did not prove themselves the original settlors of even the predecessor United Effort Plan Trust (the “1998 Trust”), are not among the “others” contemplated by the statute, and are not

seeking to enforce a trust as presently constituted. Instead they seek only to undermine and reverse the reformation of the existing United Effort Plan Trust (the “Trust”).

The following additional statutes are relevant:

Utah Code Ann. § 75-1-302

Utah Code Ann. § 75-7-201

Utah Code Ann. § 75-7-203

The text of these statutes appears in the Appendix at Appendix “1”.

### **STATEMENT OF THE CASE**

The trial court denied two motions to intervene from the FLDS Intervenors that were filed almost 4 years after the trial court’s administration of the Trust started, and some two and a half years after the trial court had issued a final reformation of the Trust that had become non-appealable. The trial court denied the motions. (R. 16376-77; R. 16381-82). The trial court found that the motions to intervene provided insufficient grounds to justify an exception to the general rule that potential beneficiaries of a charitable trust have no right to intervene in a trust administration proceeding. (*Id.*) Though the motions claimed a right to intervene to object to a proposed sale of a particular piece of the Trust’s property known as the Berry Knoll Farm because the farm property has alleged religious significance to members of the Fundamentalist Church of Jesus Christ of Latter-Day Saints (the “FLDS Church” or “FLDS”), some of the FLDS Intervenors have sought to remove the Special Fiduciary and trial judge (*see* R. 14582-84; R. 14551-78), and a group calling themselves the Fundamentalist Church of Jesus Christ of Latter-Day Saints and using an affidavit from FLDS Intervenor Willie Jessop

have previously challenged the constitutionality of the trial court's non-appealable reformation order (Supreme Court of Utah Case No. 20090859). Thus, the motions are connected with attempts to gain standing for untimely objections to final trust administration decisions made years earlier.

### STATEMENT OF THE FACTS

In the 1990's, residents of the Colorado City, Arizona and Hildale, Utah communities, some of whom had formerly been members of the Fundamentalist Church of Jesus Christ of Latter-Day Saints (the "FLDS Church" or "FLDS"), sued a trust known as the United Effort Plan Trust (the "Original Trust") seeking to enforce equitable interests in properties of the Original Trust based on claims that they were promised the right to live on such properties throughout their life and had contributed to the Original Trust by improving the trust property they were allowed to use. *See Jeffs v. Stubbs*, 970 P.2d 1234 (Utah 1998). The Original Trust was created in 1942 and stated the following purpose:

The purpose and object of the trust shall first be charitable and philanthropic, its operations to be governed in a tru [sic] spirit of brotherhood, and to accomplish such purpose, it may engage in any and all kinds of legitimate business ventures; provided, however, that such endeavors or adventures of whatsoever name or nature shall in no wise conflict with the Constitution of the United States, or the constitutional laws of the land where such operations may be carried on."

(R. 32 at ¶ VIII). All of the property originally comprising the corpus of the trust was located in Arizona. (R. 33-34, at ¶ XII ["Membership in the trust estate is established for the signers of this instrument . . . by the conveyance to the trust estate of the following described property, situated in Mohave County, State of Arizona . . ."]; *see also* R. 22-



23, at Sec. I). At the time of the Original Trust's creation, just as today, the Constitution of the State of Arizona prohibited polygamy and plural marriage. *See* Ariz. Const., art. XX, Second ("Polygamous or plural marriages, or polygamous cohabitation, are forever prohibited within this State.") Thus, consistent with the purpose statement of the Original Trust, the trust could not have been created for the support of a religious doctrine encouraging polygamy or plural marriage.

Subsequent amendments of the Original Trust authorized the trustees to "render assistance to non-members of the Trust when deemed wise by them." (R. 45). Nor was the trust likely created for the benefit of the FLDS Church as a specific, formalized religious institution. Utah corporate records show that the Corporation of the President of the Fundamentalist Church of Jesus Christ of Latter-Day Saints did not create its Articles of Incorporation until over forty years after the Original Trust was created. (*See* R. 19241-43).

When this Court held in *Jeffs* that the Original Trust was a private trust, not a charitable trust, and recognized that the non-FLDS residents could make out claims for equitable interests in Trust property, the existing settlors of the Original Trust restated the trust. (R. 21-27). They created The Amended and Restated Declaration of Trust of the United Effort Plan Trust in November, 1998 (the "1998 Trust"). (*Id.*) Yet, non-FLDS residents continued to live on trust property. (R. 16448 (Transcript of July 29, 2009 hearing) at pp. 20, 44-46, 77-78). The idea that the 1998 Trust served only to benefit faithful FLDS members is not true.

In 2004, the 1998 Trust was sued in two tort actions in Utah state court. (*See* R. 7-8). The trustees of the 1998 Trust left the trust undefended in these actions when their attorneys withdrew explaining that “withdrawal from the representation is permitted pursuant to Utah Rule of Professional Conduct 1.16(b)(4) in that the clients insist upon a course of conduct with which their lawyers have a fundamental disagreement and upon the further ground that withdrawal from the representation is required under Rule 1.16(a)(3), in that the lawyers have been discharged from representation of the defendants in this case.” (R. 8; R. 51-67). When he withdrew as counsel, attorney Rodney Parker filed a notice that specifically acknowledged the enforceable interests of non-FLDS members in trust property that had been confirmed in *Jeffs*, and identified that other occupants of Trust properties may have similar claims. (*See* Memorandum of the Office of the Arizona Attorney General in Opposition to Petition for Extraordinary Writ, Exh. U at pp. 1-7, Supreme Court of Utah Case No. 20090859). His filing further recommended the District Court require notice be sent to an appropriate trust representative, “such as the Utah Attorney General” before any default was entered against the 1998 Trust for protection those individuals claiming an interest in the 1998 Trust’s property. (*See id.* at 2).

The Utah Attorney General initiated the petition creating the trust administration proceeding from which this appeal arises on May 26, 2005. (R. 1-118). All of the former trustees were properly served. (*See* R. 301-370; R. 389-400; R. 423-429; R. 16973-17010). This included Warren S. Jeffs who was then listed in Utah corporate records as the Corporation Sole of the FLDS Church. (*See* R. 17050-17051; R. 19242-19244). It

also included Leroy S. Jeffs, who has himself sought to intervene in this action claiming that he is the administrator of the estate of the late Rulon Jeffs, one of the original settlers of the Original Trust and a trustee at the time of the 1998 Trust amendment. (*See* R. 16831-16869). One of the FLDS Intervenors, Willie Jessop, has provided a sworn statement to this Court that the FLDS members became aware of the trust administration proceeding in the trial court in 2005. (*See* Appendix “3” hereto (copy of Affidavit of Willie Jessop In Support of Petition for Extraordinary Writ dated October 16, 2009 in Supreme Court of Utah Case No. 20090859).

Finally, the attorney who claims in earlier proceedings before this Court that he has represented the FLDS Church for some 18 years, Rodney Parker, continued to receive copies of the matters filed below throughout the trust administration proceedings, and he was named on the certificates of service as the agent of the Corporation of the President of the Fundamentalist Church of Jesus Christ of Latter-Day Saints. (*See* R. 16978-16982). At one point, when the Court was shaving its service list down, Mr. Parker formally requested from the trial court’s Special Fiduciary that he be kept on the service list, and he was. (*See* R. 4001-4004). Mr. Parker was served with copies of the filings of various parties recommending reformation of the Trust, and with notice that the trial court was considering reforming the Trust. (*See* R. 169890, n. 4 (consolidating notices provided to Mr. Parker)).

Thus, leadership and members of the FLDS church, including FLDS Intervenor Willie Jessop, were well aware of the trust administration proceedings by 2005, and had advance notice of the trial court’s intention to reform the 1998 Trust. None of the FLDS

Intervenors have argued or provided any proof that they were not aware of the trust administration proceedings in the trial court long before the trial court reformed the Trust.

Yet, FLDS Intervenors Willie Jessop, Dan Johnson and Merlin Jessop filed nothing until August, 2008, almost two years after the trial court's October 26, 2006 final order reforming the Trust. (R. 6537; R. 13193-13229)). Even then, these FLDS Intervenors did not seek leave to intervene under Utah R. Civ. P. 24, but only filed a motion seeking a stay of a potential sale of trust property known as the Berry Knoll Farm. (R. 13193-13229). Their moving papers alleged that the Berry Knoll Farm was used by the Colorado City and Hildale FLDS communities to produce food and for grazing livestock. (R. 13206-13207, at p. 11, ¶ 29 – 12, ¶ 31). They alleged that “[a] portion of the produce of the property goes directly to the Bishop’s Storehouse for distribution to rank-and-file FLDS members according to their just wants and needs,” that “[t]he surplus is sold commercially,” and that by supporting the Bishop’s Storehouse, the farm “feeds many members of the FLDS community.” (*Id.* at 12, ¶¶ 30-31; *see also* R. 15257-15263, at ¶ 9 [claiming “[p]roduce grown at the Berry Knoll farm is, from time to time, sent to the community in Bountiful [British Columbia] to assist with the support of members of the FLDS congregation.”]). The suggestion that the Berry Knoll Farm property was producing food in 2008 that was feeding many members of the FLDS community has been called into question in later proceedings. (*See* R. 16448 (transcript of July 29, 2009 hearing) at pp. 21-23, 53).

The trial court denied the August, 2008 motion for a stay filed by FLDS Intervenors Willie Jessop, Dan Johnson and Merlin Jessop. (R. 14063-14085). None of

them sought intervention until they filed a motion to intervene on May 13, 2009.<sup>1</sup> (R. 15219 – 15232). FLDS Intervenor Willie Jessop originally alleged only that “Movant Willie Jessop presently has a stewardship from priesthood leadership to graze cattle on the [Berry Knoll Farm] property.” (R. 13207, at 12, ¶ 29). When he finally moved for intervention in 2009, Mr. Jessop submitted an affidavit claiming that in 1994 he received a stewardship to graze cattle on “certain parts of the [Berry Knoll Farm] land,” and that he has continued grazing cattle on parts of the farm since then. (R. 15214, at ¶ 6). He never offered any proof of any lease or other written document granting him the right to use of any portion of the Berry Knoll Farm property or any other property of the Trust. (*See id.*) Nor has he ever specified who exactly granted him his stewardship, or provided any proof that the stewardship was granted by the trustees of the Original Trust or the 1998 Trust as opposed to non-trustee religious leaders. Nor has he identified how much of the Berry Knoll Farm was included in his alleged stewardship.

FLDS Intervenor Dan Johnson initially alleged in seeking a temporary restraining order in August, 2008, only that he “presently has a stewardship from priesthood leadership to operate the agricultural operations and feed lot on the [Berry Knoll Farm] property.” (R. 13207, at ¶ 29). When he moved to intervene in May, 2009, Mr. Johnson’s affidavit asserted further that “[i]n about the year 2000, I was given a sacred stewardship to tend and care for the sheep for the FLDS Church in Colorado City, Arizona and Hildale, Utah,” and that he tended the sheep by grazing them “on parts of the

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<sup>1</sup> These movants admitted that the trial court had denied them standing earlier, “albeit not on a proper Motion to Intervene.” (R. 15230).

Berry Knoll [Farm] lands.” (R. 15202, at ¶ 3). He further claimed that “I continue to use the Berry Knoll Farm lands . . .” (*Id.* at ¶ 8). Mr. Johnson never provided proof that he had a “stewardship” specifically for use of the Berry Knoll Farm land or any other Trust property, and he never provided any lease or other written instrument granting him any interest in or right to use any property of the Trust. (*See id.*). Nor did he ever identify who specifically granted him the stewardship to raise sheep for the FLDS Church, or provide any proof that such persons were trustees of the 1998 Trust as opposed to non-trustee FLDS religious leaders.

FLDS Intervenor Merlin Jessop initially asserted in August, 2008 that he “presently has a stewardship from priesthood leadership to operate the agricultural operations and feed lot on the [Berry Knoll Farm] property. (R. 13207, at ¶ 29). His May, 2009 affidavit in support of his motion to intervene further asserted that “[i]n about 1987, after Berry Knoll became part of the Trust, I was granted [a] sacred stewardship to farm parts of it,” and that “[s]ince that time, I have farmed Berry Knoll, including grazing and feeding cattle and planting and harvesting corn and grain under supervision of the Bishop.” (R. 15208, at ¶ 3). He further claimed that “I continue to use the Berry Knoll Farm and have never been removed . . .” (*Id.* at ¶ 8). Merlin Jessop never provided any proof of any lease or other written document granting him any rights to use any portion of the Berry Knoll Farm or any Trust property. (*See id.*). Nor did he identify who specifically granted him any stewardship over the Berry Knoll Farm, provide any proof that the stewardship was granted by the trustees of the Original Trust or the 1998 Trust as

opposed to non-trustee FLDS religious leaders, or identify what portions of the Berry Knoll Farm property his stewardship purportedly extends to.

The affidavits of FLDS Intervenors Oler and Jeffs concede that “[t]here is no formal conveyance involved in a grant of stewardship” over property by the FLDS Church leadership. (R. 15249-15256, at ¶ 4; R. 15257-15263, at ¶ 4). Thus, the stewardships claimed by FLDS Intervenors Willie Jessop, Dan Johnson and Merlin Jessop are not supported by any formal, legal conveyance of any interest or right.

By Minute Entry and Order filed November 10, 2008, the trial court denied the Motion to Stay filed by Willie Jessop, Dan Johnson and Merlin Jessop, but, “in an effort to provide an opportunity for interested individuals to comment on the proposed sale [of the Berry Knoll Farm property] . . . the Court agreed to schedule another hearing” on the sale proposal. The trial court specifically authorized counsel for Willie Jessop, Dan Johnson and Merlin Jessop to coordinate and present testimony against the proposed sale from individuals opposing the sale. (R. 14063-14064, at ¶¶’s 3, 6).

FLDS Intervenors James Oler and Lyle Jeffs filed nothing before May, 2009. Finally, on May 21, 2009, they filed their motion to intervene. (R. 15264-15287). They do not claim to have any particular interest in any Trust properties, but instead claim that their roles as Bishops in the FLDS Church gave them responsibilities to administer the UEP Trust and distribute trust assets “according to the just wants and needs of the people in my congregation.” (R. 15259 at ¶ 5; R. 15251, at ¶ 5).

In responding to the FLDS Intervenors’ motions to intervene and a related motion to stay all the trust proceedings, the Arizona AG argued that the motions were untimely,

particularly as the movants sought to challenge the reformation of the Trust which had been decided by a final order that had become non-appealable. (*See* R. 15470; R. 15618-15629).

During the many years in which the FLDS Intervenors failed to participate in this action, much transpired that caused non-FLDS members and FLDS members alike to rely upon the trial court's administration, the authority of the trial court's Special Fiduciary, and the final reformation of the Trust in October, 2006. For example, the trial court's orders delegated the Special Fiduciary authority to manage and lease trust property. (*See, e.g.*, R. 1996-2001). Over the years preceding the FLDS Intervenors' May, 2009, motions to intervene, the Special Fiduciary reported entering into leases and occupancy agreements and selling some trust property, and he incurred substantial debts on behalf of the Trust in pursuing claims for return of trust property, in defending the Trust from tort claims, in representing the Trust in other lawsuits, and in pursuing water and subdivision issues for the benefit of the trust. (*See, e.g.*, R. 4308-4423; R. 4424-4759; R. 6858-7230; R. 7805-7975; R. 10585-10891; R. 11145-11590) The parties also devoted substantial resources to creation of a process by which reformation could occur, to briefing the legal issues involved in reformation, and to crafting the proposed reformed declaration of trust. (*See, e.g.*, R. 1122-1182; R. R. 1544-1602; R. 2104-2118; R. 2151-2157; R. 2422-2439; R. 3452-3480; R. 393-3992; R. 4009-4017; R. 4031-4069; R. 4100-4102; R. 5325-5473; 6537-6545). As a result, a substantial number of people and families are residing upon and using Trust properties in reliance on the reformation and the authority delegated to the Special Fiduciary by the trial court.



By its Ruling and Order on Pending Motions filed July 16, 2009, the trial court denied the FLDS Intervenors' motions to intervene. (R. 16376-16380). The court adopted the analysis in Section II.a of the Arizona AG's Memorandum in Opposition to Movants' Motion to Stay Proceedings, To Replace Special Fiduciary, and to Enjoin Further Actions of Special Fiduciary Pending Evidentiary Hearing (*see* R. 15604-15617), holding that the FLDS Intervenors had not established the type of "legally cognizable interest" in property of the Trust needed to create an exception to the general rule that potential beneficiaries of a charitable trust have no standing to intervene in trust administration proceedings. (R. 16376-16380).

Nevertheless, in denying the motions to intervene, the trial court ruled:

That said, since the inception of this case the Court has agreed to consider comments from various non-parties, including interested potential beneficiaries; and has broadly noticed its hearings to anyone who is interested. Upon request, the Court has also been willing to include such individuals (or their counsel) in its distribution of Court decisions. Those actions by the Court should not be understood as anything more than what they are-a courtesy to interested individuals and as a way of ensuring that the Court receives relevant input on issues affecting the Trust. The Court remains committed to receiving input from non-parties in order for the Court to be fully and fairly informed on the issues it must decide. However, the Court's courtesies should not be misunderstood to imply that the Court recognizes those individuals as having standing in the case.

(*Id.* [R. 16376]) The trial court then implemented its position on input from non-parties by allowing the FLDS Intervenors to participate in a hearing held July 29, 2009 on approval of a sale of the Berry Knoll Farm property. (R. 16415-16416; R. 16448 [transcript of hearing of July 29, 2009]). The FLDS Intervenors were allowed to participate equally with all other parties in this hearing by presenting statements from

witnesses and arguments from their counsel. (See R. 16448 (transcript of hearing of July 29, 2009)). At the hearing, the trial court stated:

. . . I would ask the FLDS members who are here to take this word to those who are outside, I know it's a sacrifice to be here, I know that it was hard to come up. I needed to hear your viewpoints . . . that's why it was important to have people to speak on behalf and represent the views of the community and I want to thank you for being here. I wanted to thank you for engaging with me because I haven't had that. It wasn't until last fall that I even had a couple of members of the community in terms of Mr. Jessop and I think one other who showed up. Before that, for four years I have been begging to have the community respond and participate.

(*Id.* [transcript of hearing of July 29, 2009] at p. 105). The FLDS Intervenorors thus had as much say in the Berry Knoll Farm sale discussion as any of the parties.

### **SUMMARY OF ARGUMENTS**

The FLDS Intervenorors claim entitlement to intervention as a matter of right. Such intervention is only allowed under Utah R. Civ. P. 24(a) if the movants first prove that either: 1) a statute confers on them an unconditional right to intervene; or 2) they have an interest relating to the property in issue that may be impaired or impeded by disposition of the action, and that the interest is not already adequately represented by a party to the action. The only statute the FLDS Intervenorors rely on is Utah Code Ann. § 75-7-405(3). That statute confers no unconditional right to intervene here, however, as it applies only to “settlers” of the trust or “others” defined by common law standards the FLDS Intervenorors do not meet. None of the FLDS Intervenorors were settlers of the Trust, nor did they show the type of “special interest” that would justify standing to intervene. Also, the statute contemplates only actions “to enforce” a charitable trust. The FLDS

Intervenors seek to disrupt and to reverse the final reformation of the Trust, not to enforce the current trust. Thus, the statute does not apply to their motions.

For similar reasons, the FLDS Intervenors did not show that they actually possess a legal interest relating to property of the Trust sufficient to create a right to intervention under the second alternative to Rule 24(a). The Trust as established at the time the motions to intervene were filed is a non-sectarian, charitable trust. Thus, the FLDS Intervenors' purported religious interests create no special interest. Nor does the Trust, or even the 1998 Trust, express a special fixed interest for individual FLDS Intervenors sufficient to confer standing on them to enforce any trust provisions. They are similarly situated to the thousands of other residents of the Colorado City and Hildale communities, FLDS and non-FLDS alike, who may qualify as trust participants by their prior contributions to building up the Trust. Such general interests do not create rights warranting intervention.

The FLDS Intervenors' motions were also untimely. They seek an entrance to challenge the reformation of the Trust and upset all aspects of the current administration. However, such relief is not legally available to them, and the FLDS Intervenors waited far too long to seek intervention for such purposes. Their delay also works a substantial prejudice on those who have relied on the trial court's authorities under the trust administration proceedings, upon the Special Fiduciary's delegated powers, and upon the reformation of the Trust to a non-sectarian entity that does not favor one religion over another.

Finally, the trial court granted the FLDS Intervenor the equivalent of intervention by allowing them to be heard through argument of counsel, to brief issues, and to present witness statements in objection to the proposed sale of Berry Knoll Farm. The denial of a motion to intervene is not error when the trial court allows such participation.

## **ARGUMENTS**

### **I. The Motions Show No Sufficient Legally Protectable Interest is at Stake.**

An intervenor must show that the law “vest[s] in him a protectable interest . . .” that is threatened by the ongoing proceedings. *In re I.K.*, 220 P.3d 464, 472 (Utah 2009). The intervenor must establish a “direct interest in the subject matter of the litigation such that [his or her] rights may be affected, for good or for ill . . .” *Id.* (parenthetical in original). The FLDS Intervenor provided no proof of such a direct, protectable interest under either of the two Rule 24(a) alternatives for establishing a sufficient interest.

#### **A. No Statute Confers a Right to Intervene.**

The first alternative for showing the required “interest in the subject matter of the litigation” needed to support Rule 24(a) intervention requires that the moving party prove that a “statute confers an unconditional right to intervene” on them. Utah R. Civ. P. 24(a). The FLDS Intervenor cannot make that showing.

They claim that Utah Code Ann. § 75-7-405(3) confers an unconditional right to intervene. That statute provides that “[t]he settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.” Utah Code Ann. § 75-7-405(3). This statute does not apply for several reasons.

**1. The FLDS Intervenorors Are Not Seeking to Enforce the Trust, But Seek Instead an Improper Collateral Attack on the Reformation of the Trust.**

First, the FLDS Intervenorors are not trying to “maintain a proceeding to enforce the trust” as contemplated by Utah Code Ann. § 75-7-405(3). Instead, they claim that the trial court erred in ever reforming the Trust, and they seek to enforce interests that allegedly emanate from religious components of the superseded 1998 Trust. (*See* Petition for Extraordinary Writ in Supreme Court of Utah Case No. 20090859, at 2-3). For instance, FLDS Intervenorors Lyle Jeffs and James Oler complain that the reformation has prevented them from performing their purported religious responsibilities to distribute properties of the Trust. (R. 15257-15263, at ¶ 5; R. 15249-15256, at ¶¶ 5, 8). Mr. Oler complains that “the Courts’ reformation of the UEP Trust supplanted my role in the operation of the Trust under the Law of Consecration” because the reformation “vested primary responsibility for the distribution of Trust assets in the Special Fiduciary.” (R. 15257-15263, at ¶ 5). Lyle Jeffs makes similar complaints. (R. 15249-15256, at ¶ 5).

Despite these complaints, the prior trust does not exist in any legal sense, and it cannot be enforced. The law of trusts confirms that once the trial court uses its *cy pres* powers to reform a trust, the reformed trust instrument supersedes the prior instrument and nobody can revive or enforce the prior instrument. *See The Township of Cinnaminson v. First Camden Nat’l. Bank and Trust Co.*, 238 A.2d 701, 708-09 (N. J. Super. 1968); 14 C.J.S. Charities, § 45. To allow the original intent of a settlor to be revived years after a court reforms a trust through its *cy pres* powers would unwisely open challenges to reformations “*ad infinitum.*” *The Township of Cinnaminson*, 238

A.2d at 708-09. This, in turn, would improperly limit the social benefit derived from *cy pres* reformations because the new beneficiaries would be merely conditional recipients, unable to rely on their ability to make full use of the trust. *Id.* Thus, the courts may not reverse the reformation creating the current non-sectarian version of the Trust.

Additionally, because the trust reformation was finalized by a final, appealable order of the trial court in October, 2006, the reformation is now a final order that is non-appealable. *See* Rule 4(a), Utah R. App. P. (requiring notice of appeal to be filed within 30 days of entry of a final order or judgment); *see also Serrato v. Utah Transit Auth.*, 13 P.3d 616, 618 (Utah 2000) (holding that if an appeal is not timely filed, the appellate courts lack jurisdiction to consider an appeal); *Varian-Eimac, Inc. v. Lamoreaux*, 767 P.2d 569, 570 (Utah Ct. App. 1989) (holding appellate courts have jurisdiction only to dismiss an untimely appeal).<sup>2</sup>

The FLDS Intervenors have no way legally to overturn the prior reformation and seek resurrection of the 1998 Trust. Still, they have shown through all their filings that this is their ultimate intent in seeking to participate in these proceedings. Because the FLDS Intervenors seek to destroy, not enforce, the trust instrument now legally in effect, the terms of Utah Code Ann. § 75-7-405(3) do not apply. The statute supplies no right to intervene.

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<sup>2</sup> An intervenor has no right to demand that the court in whose proceeding he intervenes reassess decisions made before he attempted to intervene. *Suites at New Orleans, L.L.C. v. Lloyd's London*, 13 So. 3d 241, 243 (La. App. 2009) (holding that intervenor “must take the suit as he finds it. He cannot complain of the mode of procedure or object to the jurisdiction of the court or retard the principal suit.”)

## **2. The FLDS Intervenorors Are Not Settlorors of the Trust.**

Moreover, the statute refers specifically only to proceedings brought by the “settlor” of the charitable trust “among others.” As the Trust was reformed using the trial court’s *cy pres* powers, there is no individual settlor of the trust presently in force. Even if one assumed the 1998 Trust could still be enforced, the settlors of that Trust have all died. (*See* R. 16831-16869). The FLDS Intervenorors cannot invoke the language of Utah Code Ann. § 75-7-405(3) as settlors.

## **3. The FLDS Intervenorors Are Not the “Others” Contemplated by the Charitable Trust Enforcement Statute.**

This leaves the FLDS Intervenorors arguing that the statute also contemplates proceedings brought by “others,” and that they are the “others” it refers to. This argument fails because, even if they were the “others” contemplated by Utah Code Ann. § 75-7-405(3), they would still have to show that they were intervening to “enforce” the current Trust. As explained above, they are not.

Moreover, the “others” contemplated by the trust statute include the Attorney General, but not the FLDS Intervenorors. The statute is ambiguous on what “others” it is referring to. The term “others” is nowhere defined in the trust statutes. However, the statute the FLDS Intervenorors cite is drawn from the Uniform Trust Code (2000), whose comments recognize that under the general law of trusts, certain “special interests” may confer standing on potential charitable trust beneficiaries to judicially enforce the trust. *See* Uniform Trust Code, §§ 405(c) & cmt. (“The grant of standing to the settlor does not negate the right of . . . persons with special interests to enforce either the trust or their

interests”), 1001 cmt. (“In the case of a charitable trust, those with standing include . . . other persons with a special interest.”) The code reference to “others” therefore ties to the long-established common law rules regarding which persons may seek to intervene in enforcement of a charitable trust. Those rules are expressly incorporated as a supplement to the Utah trust statutes. *See* Utah Code Ann. §§ 75-7-106 (“The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or laws of this state.”), 75-1-103 (“Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.”) The Court must therefore define which “others” may be entitled to seek to enforce a charitable trust under Utah Code Ann. § 75-7-405(3) by reference to the common law governing such rights.

Under the common law of trusts, those like the FLDS Intervenors have no standing to intervene in a trust administration proceeding.

A suit can be maintained for the enforcement of a charitable trust by the Attorney General or other public officer, or by a co-trustee, or by a person who has a special interest in the enforcement of the charitable trust, but not by persons who have no special interest or by the settlor or his heirs, personal representatives or next of kin.

Restatement (Second) of Trusts, § 391; *see also Collier v. Bd. of Nat’l. Missions of the Presbyterian Church*, 464 P.2d 1015, 1018 (App. 1970). The rules governing the right to sue to enforce a charitable trust apply equally to deciding who has the right to intervene in an enforcement action brought by the Attorney General. *See The Art Institute of Chicago v. Castle*, 133 N.E.2d 748, 751 (Ill. App. 1956) (holding that rules governing standing for institution of original suits against trust apply as well to determining rights to



intervene). Thus, while the Attorney General has standing to enforce the Trust here, the FLDS Intervenors have no similar right to intervene unless they can show a sufficient “special interest.”

“[T]he term ‘special interest’ is not defined and must be determined on the facts of each case . . .” *Schalkenbach Foundation v. Lincoln Foundation, Inc.*, 208 Ariz. 176, 182-83, 91 P.3d 1019, 1025-26 (App. 2004). Merely being potential beneficiaries or participants in benefits available through the Trust does not create a sufficient “special interest.” “The mere fact that a person is a possible beneficiary is not sufficient to entitle him to maintain a suit for the enforcement of a charitable trust.” Restatement (Second) of Trusts, § 391, cmt. c; *see also* 15 Am. Jur. 2d, Charities, § 142 (“[T]hose who enjoy the status of beneficiaries only when selected by the trustees generally are held to have no right to initiate a suit for the enforcement of a charitable trust.”).

The Arizona AG did not have the opportunity to test the FLDS Intervenors’ claims that they have consecrated property to the Trust, but if they did, they may qualify as potential participants in benefits under the reformed Trust. (*See* R. 6537, at Sec. 4.2 [Appendix “2” hereto]).<sup>3</sup> This alone does not confer on them standing to enforce the Trust, however.

Instead, to prove the type of “special interest” that can confer standing, a potential beneficiary “must be entitled to benefits under the trust that are greater than or different from those to which members of the public are entitled generally.” *Scott and Ascher on*

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<sup>3</sup> The Court’s record indicates that the final form of the reformed trust is missing. The Arizona AG has attached a copy as Appendix “B” hereto for the Court’s convenience and moves that it be added to the official record.

*Trusts*, vol. 5 § 37.3.10 (5<sup>th</sup> ed. 2008). Also, the special interests must emanate from the trust instrument itself, and must place the potential beneficiary in a small class of particularly identified persons who have particularized, identifiable and fixed rights to benefit from the trust. *See Robert Schalkenbach Foundation*, 208 Ariz. at 182, 91 P.3d at 1025; *see also*, Restatement (Second) of Trusts, § 391, cmt. c. The Arizona Court of Appeals has adopted the commentary from George Gleason Bogert, *The Law of Trusts and Trustees* § 414 (Rev. 2d ed. Supp 2003) to explain:

[I]n a fairly large group of cases the courts have permitted private individuals, whose positions with regard to the charitable trust were more or less fixed, to sue for its enforcement. These decisions have been regarded in the past as *exceptional and dependent in large part on special circumstances showing that the plaintiff was certain to receive trust benefits*, or on lack of opposition to the capacity of the complainant.

*Robert Schalkenbach Foundation*, 208 Ariz. at 182, 91 P.3d at 1025 (emphasis added).

Courts place such strict limitations on what qualifies as “special interests” to avoid the multiplicity of litigation encouraged by anything other than a narrow exception. “The policy behind limiting enforcement of charitable trusts to public officers and persons with a special interest ‘stems from the inherent impossibility of establishing a distinct justiciable interest on the part of a member of a large and constantly shifting benefited class, and the recurring burdens on the trust res and trustee of vexatious litigation that would result from recognition of a cause of action by any and all of a large number of individuals who might benefit incidentally from the trust.’” *Id.* (quoting *Hooker v. Edes Home*, 579 A.2d 608, 612 (D.C.App. 1990); citing Bogert, § 414 [“The court usually require that suits for enforcement be brought by the established representative of the

charity, the Attorney General, so that the trustees may not be vexed by frequent suits, possible based on an inadequate investigate and brought by responsible parties, and so that the courts may not find their calendars clogged with an unnecessarily large amount of litigation.”]; Mary Grace Blasko, Curt S. Crossley, David Lloyd, *Standing to Sue in the Charitable Sector*, 28 U.S.F.L.Rev. 37, 41-47 (Fall 1993) [the “Blasko Article”]). The Illinois Court of Appeals has similarly warned against “[t]he vexation, delay and expense caused by attempts of individuals to intervene in pending suits to enforce or construe charitable trusts . . .” as justification for denying intervention to those without a sufficient special interest. *The Art Institute of Chicago*, 133 N.E.2d at 751. Thus, defining what qualifies as a sufficient “special interest” depends, at least in part, on the risk that allowing the claimed interest to confer standing creates for multiplying litigation.

To enforce the policies behind limiting which interests qualify as sufficiently “special,” the Arizona courts have adopted a helpful five-part test to determine if “special interests” exist. *Robert Schalkenbach Foundation*, 208 Ariz. at 183, 91 P.3d at 1026.

The test considers:

- (1) the nature of the benefited class and its relationship to the charity;
- (2) the extraordinary nature of the acts complained of and the remedy sought;
- (3) the state attorney general’s availability or effectiveness to enforce the trust;
- (4) the presence of fraud or misconduct on the part of the defendants;
- and (5) subjective and case-specific circumstances.

A recent decision by the United States District Court for the District of Arizona arising out of these same United Effort Plan Trust proceedings confirms that these factors

compel the courts to reject claims by FLDS members that they have the “special interests” needed to support standing to intervene. *Cooke v. Wisan*, 2010 WL 1641015 (D. Ariz. April 22, 2010).

In *Cooke*, the plaintiff asserted that the Special Fiduciary, Mr. Wisan, “confiscated the homes and property of 20,000 to 70,000 people in Utah, Arizona and Canada in violation of the [federal] Takings Clause,” and further challenged whether the Third Judicial District Court had jurisdiction over any of the United Effort Plan Trust’s property in Arizona and Canada. *Id.* at \*1. The court ruled that the plaintiff had not established Article III standing and did “not have standing to allege injuries on behalf of 20,000 to 70,000 unnamed people.” *Id.* at \*3. The court further concluded that the plaintiff failed to show the types of “special interests” needed to challenge the administration of this charitable trust. *Id.* at \*4 n. 5. Relying on *Robert Schalkenbach Foundation*, 208 Ariz. at 183, 91 P.3d at 1026, the court explained:

Very little weight is given to the nature of the acts complained of and allegations of fraud because “if mere allegations of grave misconduct were sufficient to confer standing, the purposes of limiting standing to protect trustees from vexatious litigation would be undermined. Where there are such allegations, . . . the availability of Attorney General enforcement will suffice to remedy any alleged misconduct.”

*Id.* (quoting *Robert Schalkenbach Foundation*, 208 Ariz. at 183 n. 7, 91 P.3d at 1026 n. 7). The allegations here are closely tied to those faced in *Cooke*, and the same reasoning applied there applies here to reject any claims of “special interests.”

Moreover, even if this Court applies the five relevant factors independently, the FLDS Intervenor has not established any “special interests” justifying intervention.

**B. Factor 1 - The Nature of the Class Interests Asserted by the FLDS Intervenor.**

1. The Class is Not Small and Recognizing Special Interests Threatens to Multiply Litigation Against a Resource-Starved Trust.

To create “special interests”, the class benefited by the trust must be a “small, sharply defined class,” which is tested by the “manageability of the size of the class, whether it can be easily entered, and whether the [intervenor] established that it has a direct interest in the operation of the trust.” *Robert Schalkenbach Foundation*, 208 Ariz. at 183-84, 91 P.3d at 1026-27. The class must be “small and distinct enough to prevent the trustees from being subjected to ‘recurring vexatious litigation.’” *Id.* (citing *Hooker*, 579 A.2d at 612; *Kania v. Chatham*, 254 S.E.2d 528, 530 (N.C. 1979); *Williams v. Board of Trustees of Mount Jezreel Baptist Church*, 589 A.2d 901, 909 (D.C. App. 1991); *Pollock v. Peterson*, 271 A.2d 45, 49 (Del. Ch. 1970); *Warren v. Board of Regents*, 544 S.E.2d 190, 194 (Ga. 2001)). The Court should not allow “potential beneficiaries to clog court dockets and dissipate trust assets with attacks on ordinary exercises of trustees’ judgment.” *Hooker*, 579 A.2d at 615. Recognizing special interests in the FLDS Intervenor here will only encourage substantial additional litigation.

The FLDS Intervenor claim that they represent the interests of several thousand FLDS members.<sup>4</sup> (See Appellants’ Brief at 28). Add to this the many non-FLDS

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<sup>4</sup> As the trial court noted in its November 10, 2008 Minute Entry and Order, this is not a class action proceeding, and the FLDS Intervenor do not by seeking intervention represent anyone but themselves. (R. 14063, n. 1). Nor have the FLDS Intervenor submitted admissible proof that they actually represent the specific interests of anyone else. Finally, given the indications in the record here (see R. 16448 (transcript of July 29,

potential trust participants whose existence is proven by the *Jeffs* and *Holm* decisions, and the FLDS Intervenors inhabit a class of potential beneficiaries that includes thousands of people whose identities are left unknown to this Court and the trial court. These FLDS Intervenors have proven particularly litigious. Between them, they have filed Since August, 2008 an Emergency Motion to Stay the Sale of Property (R. 13193-13195), two Motions to Intervene (R. 15229-15232 and R. 15283-15287), a Motion to Stay Proceedings (R. 13965-13968), a Motion to Replace the Special Fiduciary (R. 14582-14584), a Motion to Enjoin Further Actions of the Fiduciary Pending Evidentiary Hearing (R. 15324-15328), and a Motion for Expedited Discovery (R. 14582-14584), along with a separate action on behalf of members of the FLDS Church in the U.S. District Court for the District of Utah and an action before the Superior Court of the State of Arizona in Mohave County. (See R. 14707-14715 [listing other pending actions]).

Thus, if the FLDS Intervenors can establish “special interests” through their allegations of prior consecrations to the Trust, then so can thousands of others who might repeat the multi-jurisdictional, serial filing tactics experienced here. This is particularly dangerous given the Trust’s precarious financial position. Just the costs of administration

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2009 hearing) at pp. 18-20, 23, 44-46, 77-80), and in the facts presented in *Jeffs* and *United Effort Plan Trust v. Holm*, 209 Ariz. 347, 101 P.3d 41 (App. 2004), and the terms of the 1998 Trust instrument (R. 23-24, at Section II [“[Trust] Participants who, in the opinion of the Presidency of the Church, do not honor their commitments to live their lives according to the principles of the United Effort Plan and the Church shall remove themselves from the Trust property and, if they do not, the Board of Trustees may in its discretion cause their removal”]), those who consider themselves FLDS Church members today may not be members tomorrow through the decision of others. Thus, the FLDS Intervenors cannot say with confidence that they know they are representing the current and future interests of all persons now professing membership in the FLDS Church.

so far have placed the Trust over \$2 million in debt and required the sale of Trust assets to cover costs. (*See* Appellants' Brief at 14-15). Recognizing a sufficient special interest here threatens to open the door to thousands of others who may wish at some point to protest the administration of the Trust, realizing that the Trust is financially powerless to fight back. This risk counsels against finding any "special interests" in the FLDS Intervenor.

**C. The Extraordinary Nature of the Acts Alleged by the Intervenor.**

A second important factor in assessing if "special interests" exist is whether the issues targeted by the intervenors threaten the ongoing administration of the trust, or whether they are simply claiming the trust has taken an extraordinary action impacting their particularized interests. *Robert Schalkenbach Foundation*, 208 Ariz. at 184-85, 91 P.3d at 1027-28. Moreover, the challenge to the trustee's actions must attack a fundamental trust issue and not challenge the trustee's normal exercise of discretion. *Hooker*, 579 A.2d at 612-16.

**1. The Intervenor Seeks to Target All Aspects of Ongoing Trust Administration.**

Where the intervenors allege, as here, that the Trust assets are being mismanaged, improperly transferred or used, and that the trust managers should be stopped or replaced, they seek remedies that "wish[] to influence the daily operations of the [trust]." *Robert Schalkenbach Foundation*, 208 Ariz. at 184-85, 91 P.3d at 1027-28. Intervenor seeking remedies that "are highly intrusive in the administration of the trust" improperly open the

trust “to further litigation by other potential or disappointed beneficiaries.” *Id.* at 185, 91 P.3d at 1028. The Court should not recognize special interests in them. *See id.*

Here, the FLDS Intervenors have sought by Petition for Extraordinary Writ to this Court to invalidate the reformation of the Trust, and they have tried to stop and remove the Special Fiduciary from his delegated trust administration duties. (Supreme Court of Utah Case No. 2009-0859; R. 14582-14584). They now claim that the Special Fiduciary has engaged in fraud on the court and criminal activities. (Appellants’ Brief at 13-14). All these allegations are intended to motivate removal of the Special Fiduciary who they dislike and distrust, and to replace him with trust administrators who will impose a religious test on who receives trust benefits that is satisfactory to the intervenors. This hits at the heart of trust administration, and opens the door to other frustrated potential beneficiaries, including those who are non-FLDS and might prefer that FLDS members not be eligible for benefits. Again, the allegations made by the FLDS Intervenors and the relief they seek counsels against acknowledging any that they have any “special interests.”

Moreover, the motions to intervene targeted the proposed sale of the Berry Knoll Farm. The sale of one piece of trust property to raise cash needed to satisfy trust debts is a normal trust operation taken in the discretion of the trustee (or, as here, a special fiduciary). It is not a “fundamental” trust issue that supports finding “special interests.”

#### **D. The Attorney General’s Actions.**

Where “the Attorney General’s Office would be able to enforce the trust if it concluded that Arizona [or Utah] citizens were being harmed by the [trust’s] alleged



breach,” the courts should be reluctant to find “special interests” in members of the public. *Robert Schalkenbach Foundation*, 208 Ariz. at 185, 91 P.3d at 1028; *see also Cooke*, 2010 WL 1641015 at \*3. Here, the case has attracted the involvement of not one, but two Attorney General’s offices. Also, the record shows that the Attorneys General have not always advocated the same positions. (*See* R. 16201-16217). This shows that the interest of Arizona and Utah citizens are being affirmatively and independently represented by the advocacy of the Attorneys General of their states. Again, it is not necessary to recognize any “special interest” to protect those with a potential interest in trust benefits.

**E. Claims of Fraud by the Special Fiduciary.**

The FLDS Intervenors claimed below that the Special Fiduciary was harming the FLDS members by placing non-FLDS members into housing on Trust property, which ostensibly prevented the FLDS Bishops from granting housing requests from their followers. (CITE TO RECORD). However, they provided no proof that the Special Fiduciary has refused housing requests for fraudulent reasons. The trial court has pointed out that there exists a formal process for seeking benefits from the Trust, and that the FLDS are just as able to invoke that process as anyone else. (*See* R. 16448 [transcript of July 29, 2009 hearing] at pp. 108-109).

The only claim of fraud the FLDS Intervenors make alleges that the Special Fiduciary committed fraud on a court in obtaining an \$8.8 million default judgment against the former trustees of the Trust. (Appellants’ Brief at 13-14). Ironically, this asserts a fraud in favor of the Trust, allegedly securing more assets for the Trust than it is

entitled to. (*See id.* at 14 “[t]he judgment allowed the Fiduciary subsequently to execute on additional valuable property that has never been in the Trust . . . .”) The FLDS Intervenor’s real complaint about the default judgment is that it is being used to “divert resources . . . away from the FLDS community . . . .” (*Id.*) Though the FLDS adherents may have reason to question the failure of the former trustees to defend the Special Fiduciary’s claims against them, they have not shown any sort of fraud draining the trust.

Finally, the FLDS Intervenor’s challenge alleged criminal activity by the Special Fiduciary, citing one misdemeanor trespassing conviction of a representative of the Special Fiduciary and a second set of similar charges leveled at the Special Fiduciary himself for his conspiracy in allowing such alleged trespassing on property of the Trust occupied by FLDS members. The FLDS Intervenor’s have not shared with the Court the prior frustrations faced by the Special Fiduciary in seeking cooperation of local municipal law enforcement to uphold the order and authority of the Utah court, and the fact that this lack of cooperation resulted in an administrative finding during a decertification proceeding for the Marshal overseeing Colorado City and Hildale that the Marshal’s refusal to answer certain questions at a deposition by the Special Fiduciary’s counsel “constitutes nonfeasance in office,” “tended to disrupt, diminish, and jeopardize public trust in the law enforcement profession, because his answers made clear he was more concerned with protecting members of the FLDS than he was with enforcing a valid court order,” and therefore provided grounds for the Arizona Peace Officers Standards and Training Board to revoke, suspend, cancel, or otherwise sanction his Arizona peace officer’s certification. (*See* Emergency Report of the Arizona Attorney General’s Office

and Recommendation for Expedited Status Conference filed below on July 8, 2010, at Exhibit “10” at 66, ¶¶ 24-26). The reference to misdemeanor charges asserted by local municipal authorities under these circumstances does not prove any misconduct undermining the Trust. Moreover, it demonstrates that the local FLDS adherents already have an active law enforcement advocate against any alleged illegal encroachments on their privacy by the Trust or its agents.

**F. Other Case-Specific Circumstances.**

**1. The FLDS Intervenorors Have Shown No Fixed Rights to Receive Trust Benefits.**

As noted above, sufficient “special interests” require a showing “that the plaintiff was certain to receive trust benefits.” *Robert Schalkenbach Foundation*, 208 Ariz. at 182, 91 P.3d at 1025 (quoting Bogert, § 414). The FLDS Intervenorors established no fixed right to receive benefits under the 1998 Trust, and have established no fixed rights to receive benefits under the Trust as reformed.

Instead, even the 1998 Trust left distribution of benefits to discretion of the trustees:

- 1) that “[t]he Board of Trustees, in their sole discretion, shall administer the Trust consistent with its religious purpose to provide for Church members according to their wants and needs, insofar as their wants are just . . .;”
- 2) that “[t]he privilege to participate in the United Effort Plan and live upon the lands and in the buildings of the United effort Plan Trust is granted, and may be revoked, by the Board of Trustees;” and
- 3) that “[p]articipation in the United Effort Plan and use of property owned by the United Effort Plan Trust is not and

does not become a right or claim of anyone who may benefit in any way from the Trust.”

(*See* R. 23). Thus, the FLDS Intervenorors had no specified, fixed rights to receive any benefits even under the now defunct 1998 Trust. The same applies to the reformed Trust. It provides that trust benefits shall be distributed on a discretionary basis after giving consideration to multiple factors. (R. 6537 [Appendix “2” hereto]). It does not prefer any particular potential participant over any other, and certainly does not single out any of the FLDS Intervenorors from the thousands of potential trust participants for favored treatment. The FLDS Intervenorors cannot show the type of fixed and particularized right that might entitle them to claim “special interests.”

Moreover, the FLDS Intervenorors do not even claim any truly fixed right under any trust instrument. Intervenorors Willie Jessop, Dan Johnson and Merlin Jessop claim only that unnamed religious leaders granted them ill-defined stewardships to use unspecified portions of the Berry Knoll Farm property. Intervenorors James Oler’s and Lyle Jeffs’ affidavits confirm that the purported stewardships involve “no formal conveyance,” but simply the giving of permission by religious leaders, who may or may not be trustees of the Trust, to use some portion of Trust property. The discretionary decisions of religious leaders who may not even be legally empowered to make any distributions of trust properties does not equate to a fixed right under a trust instrument to use or enjoy any trust property.

The claims of FLDS Intervenorors James Oler and Lyle Jeffs are even further removed from the trust instruments. They claim an interest in administering the trust and

distributing trust property as a function of their positions as FLDS Bishops. (*See* R. 15249-15256, at ¶¶ 5, 8, 9; R. 15257-15263, at ¶¶ 5, 8, 10). However, the instruments governing the Original Trust, the 1998 Trust and the current reformed Trust all grant exclusive authority to distribute trust property benefits to the actual trustees. (R. 31, at ¶ V [“The trustees . . . and their successors in trust shall hold the legal title to all property that may be acquired by or for the benefit of the trust estate, and shall have and exercise exclusive management, disposition and control of the same . . .”; R. 23, at ¶ III [“. . . the Trust shall be administered by a Board of Trustees . . .” who “shall have all rights, powers, and privileges of an absolute owner in carrying out the purposes of the Trust, including without limitation all powers of trustees under Utah law.”]; Appendix “2” hereto).<sup>5</sup> The record confirms that neither Jeffs nor Oler were trustees of the 1998 Trust when this administration proceeding started. (*See* R. 1-5 [naming the trustees of the 1998 Trust]).<sup>6</sup> They do not claim that they were ever trustees, nor delegates of the trustees, and they certainly have not been appointed trustees since this administration proceeding commenced. Thus, they have no legally viable authority to administer the Trust or

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<sup>5</sup> The 1998 Trust provided at Section III that the Board of Trustees, subject to approval of the President of the Church, “may designate representatives” to perform functions on behalf of the board. (R. 24). However, none of the FLDS Intervenors provided any proof that the prior trustees had delegated trust powers to them. And, even if they had, such delegation would have emanated from the powers of the prior trustees which did not survive the reformation of the Trust.

<sup>6</sup> The trustees of the 1998 Trust at the time this action commenced were Truman Barlow, Warren Jeffs, Leroy Jeffs, Winston Blackmore, James Zitting and William E. Jessop a/k/a William E. Timpson. (*Id.*)

distribute its property, and they have no special interest or fixed right created or recognized in any of the trust instruments.

Finally, the religious positions of Messrs. Jeffs and Oler as “bishops” of the FLDS Church do not change the analysis. Even if the 1998 Trust was still operative, it did not provide anyone special rights to receive trust benefits simply because they were officials of the FLDS Church. (R. 21-27). Moreover, any trust objective to advance a particular religion or tie trust benefits to religious practice ended when the trial court reformed the trust without objection or appeal in October, 2006. Even if the FLDS Bishops, Oler and Jeffs, had been able to establish any legal rights under the 1998 Trust, they are, post-reformation, no better off than the unsuccessful intervenor in *Robert Schalkenbach Foundation*, 208 Ariz. at 184, 91 P.3d at 1027 who was once a beneficiary but had ceased being one ten years earlier. They might qualify, at most, as “just another potential beneficiary of the trust.”<sup>7</sup> *Id.*

Given their inability to show any fixed and particularized interest emanating from the terms of the existing Trust instrument, or even any such interest emanating from the terms of the 1998 Trust and Original Trust instruments, the FLDS Intervenors cannot show sufficient “special interests” to qualify as the “others” who might seek enforcement of the Trust under Utah Code Ann. § 75-7-405(3).

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<sup>7</sup> Even this status would require the Bishops to have contributed sufficiently to the building up of the Trust to be qualified as potential trust participants. (See Appendix “2” hereto at Sec. 4.2).

**2. The FLDS Intervenor's Seek Only to Vindicate Personal Interests.**

“[S]uits by a representative of a class of potential beneficiaries should aim to vindicate the interests of the entire class and should be addressed to trustee action that impairs those interests, not the interests of a given individual.” *Hooker*, 579 A.2d at 615. The FLDS Intervenor's motions places their personal interests over those of all other potential Trust participants. For instance, intervenors Willie Jessop, Dan Johnson and Merlin Jessop focus solely on the impact a proposed sale of the Berry Knoll Farm will have on their alleged religious stewardships. (Mot. to Stay 4, 12-13.) The two Bishops, intervenors Oler and Jeffs, seek to vindicate unique religious authority that allegedly entitles them to determine who gets distributions of property belonging to the Trust. They do not seek to vindicate the interests of all potential Trust participants which include non-FLDS members, and cannot even prove that they represent all FLDS Church members.

**G. The FLDS Intervenor's Cannot Prove the Type of Interest That Justifies Intervention As of Right Under Rule 24(a) By Those Without a Statutory Right.**

Absent a statutory grant of an unconditional right to intervene, an individual “may intervene as of right only under the second alternative, which requires [him] to establish that: (1) [his] application to intervene was timely, (2) [he] has ‘an interest relating to the property or transaction which is the subject of the action,’ (3) [he] ‘is so situated that the disposition of the action may as a practical matter impair or impede [his] ability to protect that interest,’ and (4) [his] interest is not ‘adequately represented by existing parties.’”

*Beacham v. Fritzi Realty Corp.*, 131 P.3d 271, 273 (Utah App. 2006) (quoting Utah R. Civ. P. 24(a)). The test for intervention under this aspect of Rule 24(a) parallels the test for intervention by a potential trust beneficiary under the common law of trusts. The movant must prove a “significantly protectable interest” in the subject of the litigation and not just a contingent interest or one that is similar to any other member of the public. See *State Farm Mutual Automobile Insurance Company v. Colley*, 871 P.2d 191, 194 (Wyo. 1994).

For the same reasons that the FLDS Intervenors cannot prove a right to intervene under the Utah trust statutes, they cannot prove an interest sufficient at law to justify their intervention otherwise. The law of trusts, explored above, prevents them from proving the type of “special interest” that would grant standing to intervene.

## **II. The Motions to Intervene Were Untimely.<sup>8</sup>**

The intervention rule requires first that each application to intervene be “timely”. Utah R. Civ. P. 24(a) (“Upon *timely* application anyone shall per permitted to intervene in an action . . . .”) (emphasis added); see *Republic Ins. Group v. Doman*, 774 P.2d 1130, 1131 (Utah 1989) (“The first requirement under both rule 24(a) and rule 24(b) is that the intervenor make ‘timely application.’”) (quoting *Jenner*, 659 P.2d at 1073-74); *Parduhn*

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<sup>8</sup> The Court may deny this appeal based on such defects in the motions even if the trial court did not rely on them. See *Buehner Block Co. v. UWC Associates*, 752 P.2d 892, 895 (Utah, 1988) (holding that “we may affirm trial court decisions on any proper ground(s), despite the trial court’s having assigned another reason for its ruling.”) (citing *City Elec. v. Industrial Indem. Co.*, 683 P.2d 1053, 1060 (Utah 1984); *In re Estate of Hock*, 655 P.2d 1111, 1114 (Utah 1982); *Rice, Melby Enter., Inc. v. Salt Lake County*, 646 P.2d 696, 698 n. 3 (Utah 1982)).



*v. Bennett*, 112 P.3d 495, 500 (Utah 2005) (holding that Rule 24(a) requires that the moving party establish “that [] its motion to intervene is timely . . .”) (quoting *Moreno v. Bd. of Educ.*, 926 P.2d 886, 888 (Utah 1996)). A “motion to intervene can be denied solely on the basis of timeliness.” *Masinter v. Markstein*, 45 P.3d 237, 242 (Wyo. 2002) (citing *Platte County School District No. 1 v. Basin Electric Power Cooperative*, 638 P.2d 1276, 1278 (Wyo. 1982)). Thus, unless the motions to intervene were timely, a valid basis exists to reject the intervention attempt and uphold the trial court’s ruling.<sup>9</sup>

Determining the timeliness of an application to intervene is a matter within the trial court’s discretion. *See Jenner*, 659 P.2d at 1073-74 (““Use of the word ‘timely’ in the [r]ule requires that the timeliness of the application be determined under the facts and circumstances of each particular case, and in the sound discretion of the court.”); *Masinter*, 45 P.3d at 242 (citing *Curless v. Curless*, 708 P.2d 426, 432 (Wyo. 1985)). Timeliness should thus be evaluated “in light of the circumstances of the particular case,” *Colley*, 871 P.2d at 194, and any determination of timeliness should not be overturned on appeal unless an abuse of discretion exists. *U. S. v. Louisiana*, 669 F.2d 314, 315 (5th Cir. 1982).

Given that the Trust was reformed by final order in October, 2006, and that the reformation order is now non-appealable order, membership in the FLDS Church cannot,

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<sup>9</sup> The Court may deny this appeal solely based on such defects in the motions even if the trial court did not rely on them exclusively. *See Buehner Block Co. v. UWC Associates*, 752 P.2d 892, 895 (Utah 1988) (holding that “we may affirm trial court decisions on any proper ground(s), despite the trial court's having assigned another reason for its ruling.”) (citing *City Elec. v. Industrial Indem. Co.*, 683 P.2d 1053, 1060 (Utah 1984); *In re Estate of Hock*, 655 P.2d 1111, 1114 (Utah 1982); *Rice, Melby Enter., Inc. v. Salt Lake County*, 646 P.2d 696, 698 n. 3 (Utah 1982)).

legally, grant any person any unique interest in receiving benefits under the Trust. (*See* Appendix “2” hereto). Nor can any stewardships granted by FLDS religious leaders, which they admit did not constitute any formal conveyance of rights, survive the reformation of the Trust and delegation to the Special Fiduciary of the right to manage and lease trust property. The only way the FLDS Intervenors can claim some sort of “special interest,” then, is to reverse the reformation.

The prior filings of the FLDS Intervenors have attempted to reverse the reformation.<sup>10</sup> On October 19, 2009, a group calling itself the Fundamentalist Church of Jesus Christ of Latter-Day Saints, using an affidavit from FLDS Intervenor Willie Jessop, filed with this Court a Petition for Extraordinary Writ in Supreme Court of Utah Case No. 20090859. The Petition stated that “[t]he basis for this Petition . . . is that Respondent [Judge Lindberg] unlawfully ‘reformed’ a religious charitable trust” and asked this Court to stop “the course of action charted by the ‘reformation’” and instead administer the “bulk of the remaining Trust assets” in accordance with the language of 1998 Trust instrument. (Petition for Extraordinary Writ in Supreme Court of Utah Case No. 20090859, at 1-3). Thus, the ultimate objective of those claiming association and leadership in the FLDS Church is to challenge and overturn the reformation of the Trust.

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<sup>10</sup> Though the FLDS Intervenors’ motions to intervene were filed in connection with the Special Fiduciary’s proposal to sell the Berry Knoll Farm, the same movants have sought by another filing to remove the Special Fiduciary and the trial court judge, Judge Lindberg. (*See* R. 14551-14578; R. 14582-14584). Their accusations against Judge Lindberg include allegations surrounding her formation of the Trust. (*See id.*). The portion of the motion seeking removal of the Special Fiduciary remains pending.

To the extent the FLDS Intervenors' motions for intervention seek to provide a platform by which the FLDS Intervenors can challenge the Trust's reformation and administrative actions that are consistent with that reformation, they were untimely. Where a judgment was entered long before the application to intervene was made, the motion is particularly subject to being barred as untimely. As this Court has explained:

Generally, the cases hold that intervention is not to be permitted after entry of judgment. The courts are reluctant to make exceptions to the general rule [footnote omitted] and do so only upon a strong showing of entitlement and justification, [footnote omitted] or such unusual or compelling circumstances [footnote omitted] as will justify the failure to seek intervention earlier. Postjudgment intervention is looked upon with disfavor by reason of the tendency thereof to prejudice the rights of existing parties and the undue interference it has upon the orderly processes of the court. [footnote omitted]

In *Rains v. Lewis*, [footnote omitted] the Washington court reaffirmed its holding in a prior case [footnote omitted] and stated the rule as follows:

[I]f [intervention is] permitted after judgment, it should be only on a strong showing after taking into consideration all circumstances, including prior notice of the lawsuit and circumstances contributing to the delay in making the motion. To this we would add a showing of substantial prejudice if permission to intervene is denied.

*Jenner*, 659 P.2d at 1074. Thus, where a partner had chosen to remain undisclosed, and had failed to seek intervention until 11 days after entry of summary judgment against the partnership venture, intervention was not allowed.

Similarly, in *Republic Ins. Group v. Doman*, 774 P.2d 1130, 1131 (Utah, 1989) this Court noted that the relevant "facts and circumstances" reflected that the movant knew the case was pending before he tried to intervene, but that he failed to try to intervene

“until every fact necessary for a ruling on the motion for summary judgment had been deemed admitted and a ruling had been requested on the motion.” The Court concluded that given the movant’s “apparent notice and opportunity to intervene at an earlier stage of the proceeding and the ripeness of the case for summary judgment at the time the motion to intervene was made, the trial court did not abuse its discretion in denying the motion. *Id.* The Court further confirmed that individuals who were not parties at the time a dispositive ruling was entered below have no standing “to challenge on appeal the [trial] court’s ruling . . .” *Id.* at 1131.

Here the FLDS Intervenors delayed seeking intervention, without excuse, to the prejudice of the parties and others who have relied upon the administrative orders of the trial court, the authority of the Special Fiduciary, and the reformation of the Trust. FLDS Intervenor Willie Jessop has admitted that “[i]n 2005, ~~we~~ became aware that the Third District Court had determined that the Board of Trustees was in breach of the Trust and had removed the Board and appointed a Special Fiduciary to administer the Trust.” (*See* Appendix “3” hereto at 7, ¶ 26 [emphasis added]). The planned reformation of the Trust was appropriately noticed in advance, including through service on Rodney Parker as counsel for the Corporation of the President of the Fundamentalist Church of Jesus Christ of Latter-Day Saints. Yet, the FLDS Intervenors failed to seek intervention then, and waited over two more years to seek intervention. In the meantime, the Trust leased properties to individuals, sold other properties with the trial court’s approval, entered into contracts including a settlement of the two tort actions pending against the Trust, initiated other litigation to recover the Trust’s assets and damages at considerable expense,

acquired property for the Trust like the Harker Farm and arranged for its management, and incurred debts to assess address water issues affecting the Trust's property and to complete engineering studies needed to seek subdivision of the Trust's properties through the local municipal governments. (*See* discussion and record citations, *supra*, at 11). Yet, all the while the FLDS Intervenor stood idly by and refused to participate.

Then, with the Trust having incurred large debts that required the sale of Trust properties, the FLDS Intervenor sought to intervene and stop the Trust from selling property needed to pay the Trust's debts. The FLDS Church members have also sought to overturn the reformation of the Trust, and the FLDS Intervenor have sought to have the Special Fiduciary removed, and to have the appointed trial court judge removed. When asked why the FLDS waited so long to participate in the trust administration proceedings, their counsel previously indicated to this Court that they were honoring a religious test. Yet, by choosing to say that the religious test was sufficiently complete years after the Trust, parties and trial court had incurred so much on behalf of a Trust the FLDS leadership had abandoned, the FLDS Intervenor sought to intervene at a point of maximum possible disruption. The unexcused delay only enhances the prejudice of the attempted intervention to the parties, the Court, and to the many persons who have relied on the trust administration proceedings to lease, improve and work Trust property, to supply services to the Trust on the expectation of compensation, and to purchase trust property with the Court's approval. These factors justify finding the attempted intervention untimely and thereby barred by Utah R. Civ. P. 24(a).

### **III. The FLDS Intervenors Cannot Establish Prejudice Sufficient to Justify Broad Intervention.**

Despite its rulings on the FLDS Intervenors' motion to intervene, the trial court has allowed them to appear through counsel, file matters to be considered regarding settlement and regarding the proposed sale of the Berry Knoll Farm, to present statements of witnesses, and to argue through counsel their positions on trust administration matters, including the proposed sale of the Berry Knoll Farm, before the trial court. (*See* R. 16448 [transcript of July 29, 2009 hearing]). Where this level of participation is allowed despite the denial of intervention, the interests of the party seeking intervention are adequately protected for due process purposes, and the refusal to formally grant intervention provides no basis for appeal. *See S.E.C. v. Charles Plohn & Co.*, 448 F.2d 546, 549 (2<sup>nd</sup> Cir. 1971) (holding that nonparty served with notice of motion to sell, permitted to file papers, submit proof, and be heard on oral argument suffered no prejudice from denial of motion to intervene.); *see also U.S. v. Hooker Chemicals & Plastics Corp.*, 749 F.2d 968, 992-93 (2<sup>nd</sup> Cir. 1984) (fact that nonparty's interests could have been nearly accommodated by accepting district court's offer of elevated amicus status with opportunity to present witnesses weighed in favor of not disturbing court's denial of motion to intervene.); *S.E.C. v. Byers*, 109 F.R.D. 299, 302 (W.D. Pa. 1985) (motion to intervene should be denied because nonparties can present objections at scheduled hearing); *S.E.C. v. Credit Bancorp, LTD.*, 194 F.R.D. 457, 467 (S.D.N.Y. 2000) (summary or claims proceedings are adequate to protect due process rights of nonparties seeking to safeguard assets without granting a motion to intervene.)

#### **IV. Even if the FLDS Intervenor Could Justify Intervention, The Court Would Have to Narrowly Limit the Intervention.**

The original parties to this action, not the FLDS Intervenor, would be prejudiced by allowing broad, late intervention. This Court has held that “upon a showing that the original parties would be prejudiced by a broad intervention, the court may limit the issues that an intervenor may litigate. *See Wright & Miller* § 1922.” *Taylor-West Weber Water Improvement Dist. v. Olds*, 224 P.3d 709, 713 (Utah 2009); *see also Reikes v. Martin*, 471 So.2d 385, 391 (Miss. 1985) (“An intervenor . . . should not be permitted to do more to the prejudice of any party.”) Such limitations are justified even where a party shows a right to intervene. *Nielson v. Thompson*, 982 P.2d 709, 713 (Wyo. 1999) (“even if an intervenor comes in a a matter of right, a district court may limit the role of the intervenor in the litigation.”) Thus, even if the Court considered allowing intervention, it should be allowed, at most, to address future administration issues, and not to reverse all the work that has gone before while the FLDS Intervenor purposefully stood silent.

#### **V. The FLDS Intervenor Did Not File a Pleading as Required.**

Rule 24(c), Utah R. Civ. P. requires that any application to intervene be accompanied by a pleading. The FLDS Intervenor did not file any pleading with their motions. Thus, they failed to comply with Rule 24 and their motions should be denied.

### **CONCLUSION**

Because the FLDS Intervenor cannot establish the type of special interest that would justify intervention to enforce a charitable trust, and because the FLDS Intervenor’s delay in seeking intervention renders their motions for intervention both

untimely and highly prejudicial to the parties, the trial court, and many non-parties who have relied on the trust administration proceeding, the Court should uphold the trial court's denial of the motions to intervene brought by Willie Jessop, Dan Johnson, Merlin Jessop, Lyle Jeffs and James Oler.

Respectfully submitted this 13th day of July, 2010.

Terry Goddard  
Attorney General

A handwritten signature in black ink, appearing to read 'W. A. Richards', written over a horizontal line.

William A. Richards  
Assistant Attorney General

Attorneys for Appellees



## CERTIFICATE OF SERVICE

Original and nine copies of the foregoing shipped via overnight delivery this 13th day of July, 2010, to:

Utah Supreme Court  
450 South State  
Salt Lake City, UT 84114-0210

And two copies of the foregoing mailed on July 14, 2010 to:

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By: \_\_\_\_\_  
878941



## **APPENDIX**

- 1 - Utah Code Ann. § 75-1-302; § 75-7-201; and § 75-7-203
- 2 – Reformed Declaration of the Trust of the United Effort Plan Trust
- 3 – Affidavit of Willie Jessop in Support of Petition for Extraordinary Writ

# Appendix 1

Title/Chapter/Section:  [Go To](#)

Utah Code

Title 75 Utah Uniform Probate Code

Chapter 1 General Provisions, Definitions, and Probate Jurisdiction of Court

**Section 302** Subject matter jurisdiction.

**75-1-302. Subject matter jurisdiction.**

(1) To the full extent permitted by the Constitution of Utah, the court has jurisdiction over all subject matter relating to:

(a) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons;

(b) protection of minors and incapacitated persons; and

(c) trusts.

(2) The court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

Enacted by Chapter 150, 1975 General Session

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[<< Previous Section \(75-1-301\)](#)    [Next Section \(75-1-303\) >>](#)

Title/Chapter/Section:  [Go To](#)

[Utah Code](#)

[Title 75 Utah Uniform Probate Code](#)

[Chapter 7 Utah Uniform Trust Code](#)

**Section 201** Court -- Exclusive jurisdiction of trusts.

**75-7-201. Court -- Exclusive jurisdiction of trusts.**

(1) (a) The court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts.

(b) Proceedings which may be maintained under this section are those concerning:

(i) the administration and distribution of trusts;

(ii) the declaration of rights; and

(iii) the determination of other matters involving trustees and beneficiaries of trusts.

(c) These include, but are not limited to proceedings to:

(i) appoint or remove a trustee;

(ii) review a trustee's fees;

(iii) review and settle interim or final accounts;

(iv) ascertain beneficiaries;

(v) determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments;

(vi) instruct trustees;

(vii) determine the existence or nonexistence of any immunity, power, privilege, duty, or right; and

(viii) order transfer of administration of the trust to another state upon appropriate conditions as may be determined by the court or accept transfer of administration of a trust from another state to this state upon such conditions as may be imposed by the supervising court of the other state, unless the court in this state determines that these conditions are incompatible with its own rules and procedures.

(2) (a) A proceeding under this section does not result in continuing supervision by the court over the administration of the trust.

(b) The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval or other action of any court, subject to the jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by law.

Amended by Chapter 3, 2003 Special Session 2

Download Code Section [Zipped](#) WordPerfect [75\\_07\\_020100.ZIP](#) 2,642 Bytes

[<< Previous Section \(75-7-112\)](#)   [Next Section \(75-7-202\) >>](#)

Title/Chapter/Section:

Utah Code

Title 75 Utah Uniform Probate Code

Chapter 7 Utah Uniform Trust Code

**Section 203** Subject matter jurisdiction.

**75-7-203. Subject matter jurisdiction.**

(1) The district court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

(2) The district court has concurrent jurisdiction with other courts of this state of other proceedings involving a trust.

(3) This section does not preclude judicial or nonjudicial alternative dispute resolution.

Repealed and Re-enacted by Chapter 89, 2004 General Session

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[<< Previous Section \(75-7-202\)](#)    [Next Section \(75-7-204\) >>](#)

# Appendix 2

REFORMED  
DECLARATION OF TRUST  
OF THE  
UNITED EFFORT PLAN TRUST

This Reformed Declaration of Trust of The United Effort Plan Trust is effective the 25<sup>th</sup> day of October, 2006.

RECITALS

A. The United Effort Plan Trust Agreement was originally executed effective November 9, 1942. On the 3rd day of November, 1998, the Amended and Restated Declaration of Trust of The United Effort Plan Trust was executed. The 1998 Restatement amended in total and restated the 1942 Trust Agreement.

B. The 1942 Trust Agreement and The 1998 Restatement were executed and the Agreement is executed for the purpose of establishing an irrevocable trust qualified as a charitable trust as the term is defined in the Utah Code and under applicable common law.

C. Pursuant to a Memorandum Decision dated December 13, 2005 entered by the Honorable Denise Posse Lindberg, Judge of The Third Judicial District Court in and for Salt Lake County, State of Utah, the 1998 Restatement was to be reformed. This Agreement is the Reformed Declaration of Trust of The United Effort Plan Trust as directed by the Court.

D. Assets were originally contributed to the Trust as described in the 1942 Trust Declaration and the 1998 Restatement. Additional assets have been contributed to the Trust in the Trust's name and the name of former trustees. All Trust Property, including subsequently acquired assets, shall be held, managed, and distributed in accordance with the terms of this Agreement.

E. This reformation of the Trust is guided by the following three principles:

- E.1 The Trust is a charitable trust; the beneficiaries of the Trust are large in number and constitute a definite class, however the beneficiaries within that class are indefinite and the Trust Property shall be devoted to providing for the just wants and needs of the beneficiaries which purpose is beneficial to the community.
- E.2 The structure of the Trust shall not benefit, advocate or facilitate illegal practices including, but not limited to, polygamy, bigamy, or sexual activity between adults and minors.



- E.3 The reformation and administration of the Trust shall be based on neutral principles of law; the reformation shall not be based on religious doctrine or practice and shall not attempt to resolve underlying controversies over religious doctrine. The reformation shall allow for ecclesiastical input of a non-binding nature and a mechanism - independent of priesthood input - for establishing benefits under the Trust.

### AGREEMENT

Therefore, pursuant to the Order of the Court, The Amended and Restated Declaration of Trust of The United Effort Plan Trust is reformed in its entirety to read as follows:

### ARTICLE 1 DEFINITIONS

Section 1.1 1942 Trust Agreement means The United Effort Plan Trust Agreement originally executed effective November 9, 1942.

Section 1.2 The 1998 Restatement means The Amended and Restated Declaration of Trust of The United Effort Plan Trust executed the 3rd day of November, 1998.

Section 1.3 Agreement means this Reformed Declaration of Trust of The United Effort Plan Trust dated effective the \_\_\_\_ day of October, 2006.

Section 1.4 Annual Report shall have the meaning set forth in Section 5.6.1(b).

Section 1.5 Board means the Board of Trustees of the United Effort Plan Trust as determined in Article 5. Except as otherwise set forth herein, whenever the Board is authorized or required to take any action, such action shall require the affirmative vote of a majority of the Trustees as set forth in Section 5.1.8.

Section 1.6 Conflicting Interest shall have the meaning set forth in Section 5.1.11(b).

Section 1.7 Contribution or Contributions shall have the meaning set forth in Section 3.2.

Section 1.8 Corporate Fiduciary means an institutional Fiduciary appointed pursuant to this Agreement. Whenever a Corporate Fiduciary is appointed hereunder, the appointment shall refer to the Corporate Fiduciary as constituted at the time of the appointment and each successor entity to the corporation however succession may occur. Succession as used herein

shall include, but not be limited to, all forms of corporate reorganizations recognized by Section 368 of the IRC Code.

Section 1.9 Court means the Court having authority over Case No. 053900848 of The Third Judicial District Court in and for Salt Lake County, Utah or its successors.

Section 1.10 Designated Recipients shall have the meaning set forth in Section 8.8.1.

Section 1.11 Disclosing Trustee shall have the meaning set forth in Section 5.1.11(a).

Section 1.12 Electronic Communication shall have the meaning set forth in Section 5.1.9(d).

Section 1.13 Fiduciary means any person who has a fiduciary duty, as defined by statute or common law or pursuant to this Agreement to the Trust, any trust created hereunder or to a Trust Participant, including, but not limited to, Trustees.

Section 1.14 FLDS Church means the Fundamentalist Church of Jesus Christ of Latter-day Saints.

Section 1.15 Individual Fiduciary means an individual appointed as a Fiduciary pursuant to this Agreement. The appointment shall refer to the specified individual. Except as specifically set forth herein otherwise, the office of an Individual Fiduciary may not voluntarily or involuntarily be transferred by or to any other individual.

Section 1.16 IRC Code means the Internal Revenue Code of 1986 as amended, or corresponding provisions of subsequent federal tax laws. When the Fiduciaries of the Trust are directed to act in accordance with the IRC Code, they should give appropriate weight to the Internal Revenue Service's regulations, revenue rulings and private letter rulings as well as court decisions interpreting the IRC Code. However, this direction shall not be interpreted to preclude the Fiduciaries from contesting the position of the Internal Revenue Service or any court as to the proper interpretation of a IRC Code Section provided such contest is undertaken by the Fiduciaries in good faith.

Section 1.17 Minutes shall have the meaning set forth in Section 5.1.10.

Section 1.18 Person, where appropriate, shall refer to either individuals or entities (including, but not limited to, corporations, partnerships, estates and trusts) or both.

Section 1.19 Reformed Declaration of Trust means this Reformed Declaration of Trust of The United Effort Plan Trust dated effective the \_\_\_\_ day of October, 2006.

Section 1.20 Reports shall have the meaning set forth in Section 8.8.

Section 1.21 Required Disclosure shall have the meaning set forth in Section 5.1.11(c).

Section 1.22 Spendthrift Trustee or Spendthrift Trustees means those persons appointed as trustees of the spendthrift trusts created pursuant to Section 6.8.

Section 1.23 Sub S Stock shall have the meaning set forth in Section 5.21.7.

Section 1.24 Trust means the trust created by the 1942 Trust Declaration as amended and restated in the 1998 Restatement and as reformed by this Agreement.

Section 1.25 Trust Participants shall have the meaning set forth in Section 4.2.

Section 1.26 Trust Property shall refer to all types of assets which may be owned from time to time by the Trustees on behalf of the Trust, including but not limited to tangible and intangible assets and real and personal property.

Section 1.27 Trustee or Trustees means those persons appointed as Trustees of this Trust.

Section 1.28 Utah Code. Utah Code as used herein shall mean the Utah Code of 1953, as amended.

## ARTICLE 2 CONTINUATION OF TRUST

Section 2.1 Trust Name. The Trust shall continue to be known as The **United Effort Plan Trust**, and shall operate under such other name(s) as the Board may from time to time designate.

Section 2.2 Trust Term. This Trust shall continue in perpetuity or for the longest time period allowable pursuant to statutory or common law unless the Board determines that the purposes for the Trust have been fulfilled or the Trust cannot feasibly operate under its stated purposes, at which time the Board shall terminate the Trust and distribute all of the Trust Property consistent with the purposes of the Trust as set forth in Article 4. To the extent the rule of perpetuities applies, neither this Trust, any trust created by this Trust nor any trust created pursuant to the exercise of a special power of appointment granted pursuant to this Trust, shall continue beyond the period set forth by the Rule against Perpetuities as applied under the laws of the state having jurisdiction of the trust in question. Upon the expiration of the Rule against Perpetuities period, the Board, the trustees of any trust created by this Trust and the trustees of

any trust created pursuant to the exercise of a special power of appointment granted pursuant to this Trust shall terminate the trust and shall distribute the Trust Property consistent with the purposes of the Trust as set forth in Article 4. If the permissible distributees' relative interests are uncertain, the Board shall distribute the Trust Property to the permissible distributees as the Board deems to be consistent with the intent of this Trust Agreement as stated herein. In the event the Board is uncertain as to the intent, the Board may seek instructions from a court having jurisdiction over the administration of the trust.

Section 2.3 Irrevocable. Except as otherwise provided herein, this Reformed Trust Agreement is irrevocable and neither the Board, any Trust Participant nor any other person shall have the power to amend the Reformed Trust Agreement, except upon further order of a court having jurisdiction over the administration of the trust as set forth in Section 8.3.

Section 2.4 Distinct Organization. The Trust is separate and distinct from the United Effort Plan, a religious effort, the FLDS Church, as well as any other religious efforts, objectives, doctrines or organizations.

### ARTICLE 3 TRANSFERS IN TRUST

Section 3.1 General Provisions. The assets currently held by the Trust and any assets which subsequently may be transferred to or received by the Trustees shall be held by the Trustees in trust and shall be administered upon the terms and conditions and for the purposes herein set forth.

Section 3.2 Contributions. For purposes of this Trust, contributions to the Trust may be in the form of real and personal property of any nature and may also include consecrations of time, talents, money and materials and improvements to Trust Property (individually a "Contribution" and collectively the "Contributions").

Section 3.3 Acceptance of Transfers and Contributions. All transfers and Contributions to the Trust shall be accepted only if they are without reservation or claim of right and/or ownership by the contributor. Additionally, any and all improvements made on or to Trust Property shall become the sole property of the Trust without reservation of right or ownership. The Board shall have the right to accept or reject any Contributions to the Trust.

### ARTICLE 4 PURPOSES AND PARTICIPANTS

Section 4.1 Purposes. The Trust shall be administered and treated as a charitable trust as the term is defined in the Utah Code and applicable common law. Trust Property shall be

held, used and distributed to provide for Trust Participants, as defined below, according to their wants and their needs, insofar as their wants are just. Just wants and needs concern primarily housing, with the goal of securing residences for Trust Participants. Secondly, just wants and needs concern education, including scholarships, occupational training and economic development. Just wants and needs may also include food, clothing, medical needs and other items within the discretion of the Board. Trust Property may also be held, used and distributed for community development, including, but not limited to, community buildings and places, schools, parks and cemeteries, etc. .

Section 4.2 Trust Participants. Individuals who may be privileged to receive benefits from the Trust ("Trust Participants") shall be limited to those individuals (1) who can demonstrate that they had previously made Contributions to either the Trust or the FLDS Church; or (2) who subsequent to date of this Agreement make documented Contributions to the Trust which Contributions are approved by the Board. Trust Participant status shall not be based upon the value of the property or services contributed and shall be interpreted liberally consistent with the charitable purpose of the Trust.

Section 4.3 Use of Trust Property. The Board in its discretion shall distribute all, part or none of the net annual income of the Trust to fulfill the purposes of this Trust. The Board may also invade the principal of the Trust to fulfill the purposes of the Trust.

Section 4.4 Discretion in Fulfillment of Purposes. The Board shall have full discretion to fulfill the purposes of this Trust as the Board deems appropriate.

## ARTICLE 5 BOARD OF TRUSTEES

### Section 5.1 Board.

5.1.1 Composition. The Board shall consist of an odd number of Trustees no fewer than five and no more than nine Trustees. Trustees should have a demonstrated ability to act independently and in the best interest of the Trust and be committed to the general principles set forth in the Recitals and the Purposes as set forth in Article 4.

5.1.2 Appointment. The Initial Board shall be appointed by the Court at such time as the Court determines is appropriate. Until the Board receives complete authority for the administration of the Trust, the Court shall retain oversight over the Trust and shall determine how and by whom the Trust Property shall be administered and the compensation of those persons administering the Trust. The Court may transfer duties and authority to the Board in stages. The Court may assign to the Board some, all, or none of the duties of Trust administration at such times as the Court determines the Board can effectively administer such

assigned duties. Unless otherwise ordered by the Court, duties and authority previously granted to the Special Fiduciary by the Court shall be retained by the Special Fiduciary until the Court transfers such duties and authority to the Board.

5.1.3 Additional or Replacement Trustees. Once the initial Board is appointed, additional or replacement Trustees, shall be appointed by the Board. If a Trustee fails or ceases to serve or is removed as a Trustee, a replacement Trustee shall be appointed by the Board within 90 days of such vacancy. All persons who consent to serve as additional or replacement Trustees, shall accept in writing the office of Trustee and the fiduciary duties imposed on Trustees of the Trust.

5.1.4 Failure to Replace Trustee. In the event that a replacement Trustee is not appointed by the Board within 90 days of a vacancy, a Trustee or Trust Participant may petition a court of proper jurisdiction to name a replacement Trustee.

5.1.5 Term. With the exception of the Initial Board, Trustees shall serve for six-year terms. The initial Trustees shall be divided into three groups as determined the Court. The term for the Initial Trustees comprising the first group shall expire after two years, of the second group after four years and of the third group after six years, so that approximately one third of the Trustees shall be appointed every second year. Additional Trustees shall be included in the group containing the fewest members. A replacement Trustee shall serve for the remaining term of the replaced Trustee. Trustees may serve multiple, but not consecutive terms, except as otherwise ordered by the Court.

5.1.6 Removal. A Trustee may be removed upon a showing of good cause, upon the affirmative vote of at least 2/3rds of the Trustees. Good cause shall be the failure of the Trustee to fulfill his or her obligations under the Agreement or violation of other fiduciary obligations imposed by the Agreement or by law. Removal of a Trustee shall be by written notice delivered to the removed Trustee, effective at the date and time set forth in the Notice.

5.1.7 Compensation. The Trustees will initially be compensated on a per meeting basis, regardless of the length of the meetings at the rate of One Hundred Seventy-Five Dollars (\$175.00) per meeting. Compensation of the Trustees may only be changed by the unanimous vote of the Trustees. Compensation shall in no event exceed that which would ordinarily be paid for like services by charitable enterprises under like circumstances. Travel expenses for Trustees will be reimbursed at the same rate paid to Utah State employees for in-state business travel. Whenever possible, the Board will minimize the costs of travel by using available technology, by selecting meeting sites that will most effectively control travel costs, or by any other appropriate means.

5.1.8 Meetings, Quorums and Voting.

- (a) The Board shall meet at least quarterly, but shall meet as often as necessary to effectively administer the Trust. The scheduling and agenda of the meetings shall be set by the President.
- (b) A majority of the Trustees shall constitute a quorum for the transaction of business at any meeting of the Board. If less than a quorum is present at a meeting, the Trustees present may adjourn the meeting from time to time without further notice.
- (c) Except as specifically set forth otherwise, the act of a majority of the Trustees shall be the act of the Board.
- (d) The Board may permit any Trustee to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all Trustees participating may hear each other during the meeting. Any Trustee participating in a meeting by such means is considered to be present in person at the meeting.
- (e) No Trustee may vote by proxy.
- (f) Written notice stating the place, day, and hour of both regular and special meetings, and in the case of a special meeting, the purpose or purposes for which the meeting is called, which shall be delivered not less than five (5) nor more than thirty (30) days before the date of the meeting in accordance with the provisions of Section 5.1.12, to each Trustee.

5.1.9 Action Without a Meeting.

- (a) Any action required or permitted to be taken at a Board meeting may be taken without a meeting if each and every Trustee in writing either:
  - (i) votes for the action; or
  - (ii) votes against the action or abstains from voting and waives the right to demand that action not be taken without a meeting.

- (b) Action is taken under this Section only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take the action at a meeting at which all of the Trustees then in office were present and voted.
- (c) An action taken pursuant to this Section may not be effective unless the President receives writings describing the action taken or otherwise satisfying the requirements of Subsection (a) signed by all Trustees which writings are not revoked pursuant to Subsection (g).
- (d) The writing described above may be received by electronically transmitted facsimile or other form of wire or wireless communication ("Electronic Communication") providing the President with a complete copy of the document, including a copy of the signature on the document. Within a reasonable time after execution, the Trustee providing the Electronic Communication shall deliver to the President an originally executed writing. For purposes of Subsections (f) and (g), the writing shall be deemed received by the President when the Electronic Communication is received.
- (e) A Trustee's right to demand that action not be taken without a meeting shall be considered to have been waived if the President receives a writing satisfying the above requirements that has been signed by the Trustee and not revoked pursuant to Subsection (g).
- (f) Action taken pursuant to this Section shall be effective when the last writing necessary to effect the action is received by the President, unless the writings describing the action taken set forth a different effective date.
- (g) Any Trustee who has signed a writing pursuant to this Section may revoke the writing by a writing signed and dated by the Trustee, describing the action and stating that the Trustee's prior vote with respect to the writing is revoked if the revocation is received by the President before the last writing necessary to effect the action is received by the President.



- (h) Action taken pursuant to this Section has the same effect as action taken at a meeting of the Board and may be described as an action taken at a meeting of the Board in any document.

5.1.10 Minutes of Board Meetings and Resolutions on Actions Without Meetings. Except as otherwise set forth in this Section 5.1.10, Minutes of the Meetings of the Board and copies of Resolutions of the Board taken Without a Meeting (collectively the "Minutes") shall be made available as set forth in Section 8.8 within ten (10) days after approval of the Minutes. Information contained in the Minutes which is determined by the unanimous vote of the Trustees to be sensitive need not be made available, however, a notation shall be made in the minutes that sensitive information has been omitted.

5.1.11 Conflicts of Interest.

- (a) Any Trustee who has a potential Conflicting Interest in any decision being considered by the Board (the "Disclosing Trustee") shall disclose such conflict by making a Required Disclosure prior to any action by the Board.
- (b) A "Conflicting interest" with respect to the Trust means the interest the Disclosing Trustee has respecting a transaction effected or proposed to be effected by the Trust if the Disclosing Trustee knows that the Disclosing Trustee or a member of the Disclosing Trustee's family is either a party to the transaction or has a beneficial financial interest in, or is so closely linked to, the transaction and the transaction is so financially significant to the Disclosing Trustee or a member of the Disclosing Trustee's family that the interest would reasonably be expected to exert an influence on the Disclosing Trustee's judgment.
- (c) "Required disclosure" means disclosure by the Disclosing Trustee of the existence and nature of the Conflicting Interest; and all facts known to the Disclosing Trustee respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.
- (d) The Board, in its discretion, shall have the right to require the Disclosing Trustee to recuse himself or herself from voting on that transaction.

5.1.12 Notice.

- (a) All notices provided for by this Agreement shall be made in writing (1) either by actual delivery of the notice into the hands of the parties thereunto entitled, (2) by facsimile transmission, (3) by electronic delivery with confirmed receipt, or (4) by the mailing of the notice in the U.S. mails to the address appearing on the books of the Trust or given by the person entitled to notice to the Trust for the purpose of notice, certified mail, return receipt requested (postage prepaid). If no address for a person entitled to notice appears on the Trust's books or is given by such person, notice shall be deemed to have been given if sent by mail to the last address for such person, known to the Trust.
- (b) Notice shall be deemed to be received in case (1) on the date of its actual receipt by the party entitled thereto, in case (2) and (3) the notice shall be considered delivered upon completion of the transmission by the sender and the receipt by the sender of an affirmative indication that the message has been successfully transmitted, and in case (4) three (3) days after the date when deposited in the United States mail.
- (c) If any notice addressed to a person at the address of such person appearing on the books and records of the Trust is returned to the Trust by the United States Postal Service marked to indicate that the United States Postal Service cannot deliver the notice to the person at such address, all future notices or reports shall be deemed to have been duly given without further mailing if the same shall be available to the person upon written demand of the person at the principal executive office of the Trust for a period of one (1) year from the date of the giving of such notice.
- (d) A certificate or an affidavit of the mailing, transmission or other means of giving any notice of any meeting shall be executed by the President and shall be filed and maintained in the minute book of the Trust.

5.1.13 Waiver of Notice. If notice is required to be given to a Trustee, a waiver in writing signed by the person or persons entitled to the notice, whether made before or after the time for notice to be given, is equivalent to the giving of notice.

Section 5.2 General Powers and Duties.

5.2.1 Except as otherwise set forth herein, the Board shall have all power necessary to fulfill its responsibilities under this Trust Agreement and specifically those powers set forth in Utah Code Sections 75-7-813 and 814, as it now exists and as it may be amended in the future. The Board shall have: (1) the power to hire employees and/or independent contractors to handle the administrative duties of the Trustees, (2) the power to adopt bylaws to govern the administration of the affairs of the Trustees, (3) the power to delegate its responsibilities to individual Trustees or committees, and (4) the power to act by written approval of the Board without the necessity of a formal meeting, (5) to invest Trust Property in all types of investments permissible by law for investment of Trust Property including, but not limited to, limited partnerships, limited liability companies, etc., (6) the power to manage the Trust Property, and (7) the power to employ attorneys, accountants, brokers and other agents at the expense of the Trust and such expenses shall not be deducted from any Trustee's reasonable fee for services herein.

5.2.2 In addition to all of the powers granted to the Trustees pursuant to this Trust Agreement and by law, the Board shall have the power to establish separate organizations, including profit and non-profit entities, if necessary, to carry forth the necessary administration and purposes of the Trust.

5.2.3 It shall be the duty and responsibility of the Board to determine how best to fulfill the purposes of the Trust and specifically how to invest, administer and distribute the Trust Property.

5.2.4 To the extent that the Trust's Purpose conflicts with provisions of the Utah Uniform Prudent Investor Act, Utah Code Title 75, Chapter 7, Part 9, the Board shall be relieved of any obligation under that Act.

Section 5.3 Specific Powers and Duties. Without limiting the authority conferred by Utah Code Sections 75-7-813, the Board may:

5.3.1 determine Trust Participants;

5.3.2 determine the benefits available, if any, to Trust Participants;

5.3.3 determine the terms and conditions governing occupancy and use of Trust Property and, where appropriate, enter into occupancy agreements with individual Trust Participants;

5.3.4 manage all other aspects of Trust Property, including collecting taxes, resolving occupancy claims and disputes;

5.3.5 distribute or sell Trust Property to settle legal or equitable claims brought against the Trust or for any other legitimate Trust purpose;

Section 5.4 Investments. The Board may purchase, acquire or retain any kind of investment asset which a trustee may hold under the law of the jurisdiction in which the Trust is being administered. The Board's actions in managing the Trust Property shall be measured by the overall performance of the Trust Property, and not by the performance or lack of performance of individual assets.

Section 5.5 Types of Transactions. The Board may sell, exchange, lease, pledge, mortgage, transfer, convert, or otherwise dispose of or grant options with respect to any Trust Property. The Board may enter into leases and contracts even though the term of the lease or contract may extend beyond the period fixed by statute for leases or contracts made by fiduciaries or beyond the duration of any trust hereunder.

Section 5.6 Duty to inform and report.

5.6.1 Notwithstanding the provisions of Utah Code Section 75-7-811, the Board shall only be required to make the following reports:

- (a) Such reports as are requested by the Court or as reasonably required by any court having jurisdiction over the administration of the trust;
- (b) At least annually and at the termination of the Trust a report of the Trust Property, liabilities, receipts, and disbursements, including the amount of the Trustees' compensation or a fee schedule or other writing showing how the Trustees' compensation was determined, a listing of the Trust Property and, if feasible, their respective market values (the "Annual Report").

5.6.2 The Annual Report shall be made available as set forth in Section 8.8 within 90 days of the end of each fiscal year of the Trust.

Section 5.7 Borrowing. The Board may borrow money from any source for the benefit of the Trust, and as security for any such loan, may mortgage or pledge any Trust Property. A Trustee may loan money to the Trust with the approval of the Board provided the terms of the

loan are no more beneficial to the Trustee than those terms that would be charged by a commercial lender in the community in which the Trust is being administered.

Section 5.8 Management. The Board may vote any shares of stock or other securities, membership or partnership interests, etc. held by the Trustees on behalf of the Trust, in person or by general or limited proxy. The Board may execute, rescind, terminate or amend any voting trust agreement. If the Trust becomes a party to a voting trust agreement, the Board may deposit securities or other property with a trustee or accept securities as a trustee (whether or not the voting trust agreement extends beyond the duration of the trust). The Board may consent, directly or through a committee or agent, to any recapitalization, reorganization, consolidation, merger, dissolution or liquidation of any corporation, partnership, limited liability company or association in which the Trust has an interest. The Board may make any payments, assignments, or subscriptions and take any other steps which the Board may deem necessary or proper to enable the Trust to obtain the benefits of any of these transactions.

Section 5.9 Insurance. The Board may purchase and retain life, fire, rent, title, liability or casualty insurance or any other insurance as the Board deems advisable under the circumstances.

Section 5.10 Principal and Income. The Board shall have discretion to determine what is principal or income and to apportion and to allocate its receipts, taxes and other expenses and charges between the two. Except as otherwise determined by the Board, the Board shall allocate receipts and disbursements between principal and income in accordance with the Utah Revised Uniform Principal and Income Act (Utah Code Section 22-3-101 et al.). The Board does not need to maintain a separate income account. The Board may accumulate income notwithstanding the provisions of Sections 665 through 667 of the IRC Code. The Board may treat accumulated income as principal.

Section 5.11 Tax Elections. The Board shall have the power to make tax elections as the Board deems advisable for the benefit of the Trust and the Trust Participants.

Section 5.12 Settlement of Claims. The Board shall have the power to commence or defend, at the expense of the Trust, such litigation with respect to the Trust or any Trust Property as the Board considers advisable. The Board shall have power to renew, assign, alter, extend, compromise, release, with or without consideration, or submit to arbitration, obligations or claims held by or asserted against the Trust.

Section 5.13 Reserves for Amortization, Obsolescence, Depreciation and Depletion. The Board may charge to operating expense all current costs of amortization, obsolescence, depreciation and depletion of any Trust Property and may provide adequate reserves for amortization, obsolescence, depreciation and depletion.

Section 5.14 Agents. The Trust may hold investments in the name of a nominee or a substitute trustee and may employ brokers, agents, attorneys and custodians for any Trust Property.

Section 5.15 Reimbursement of Advances. The Board may reimburse a Trustee out of the Trust for all advances made for the benefit or protection of the Trust or the Trust Property and for all expenses, losses and liabilities incurred in connection with the administration of the Trust not resulting from a breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries.

Section 5.16 Distributions in Kind. The Board may make any distributions or payments in kind, or cause any shares to be composed of cash, property or undivided fractional interests in property different in kind from any other share. The Board shall determine the value of any distributions in kind. The Board may acquire assets for distribution in kind to the Trust Participants.

Section 5.17 Trust Expenses. The Board may pay from either income or principal of the Trust the expenses of administering the Trust; however, the Board shall allocate Trust expenses between income and principal in accordance with Section 5.10 above.

Section 5.18 Payments to Minors or Legally Disabled Trust Participants.

5.18.1 In the event the Board desires to make distribution to a Trust Participant who is under the age of twenty one (21) years, the Board may distribute the distribution to a custodian for that Trust Participant under a Uniform Gifts or Transfers to Minors Act.

5.18.2 In the event the Board desires to make distribution to a Trust Participant who is under a legal disability other than minority, the Board may make distribution by one or more of the following methods: (a) by making distribution to the Trust Participant's legal Guardian or Conservator; (b) by making distribution on behalf of the Trust Participant to any one with whom the Trust Participant resides; (c) by making distribution to third parties in discharge of the Trust Participant's bills or debts, including bills for premiums on insurance policies; or (d) by making distribution to the Trust Participant directly.

Section 5.19 Consolidation. The Board may consolidate the Trust Property or of any trust hereunder with any other trust provided proper records are kept of the Trust Property allocable to each trust and there will be no unfavorable tax consequences as a result of consolidation. In this regard, the Board is instructed to carefully review the possibility of unfavorable generation skipping tax consequences as a result of a consolidation of separate trusts. If the Board consolidates separate trusts, the Board shall not be required to physically divide any of the investments or any other property unless necessary or deemed advisable for the

purpose of distribution. Instead, the Board may keep any part of the consolidated trusts in one or more funds in which the separate and distinct trusts shall have undivided interests.

Section 5.20 Acting in Other Jurisdictions. If for any reason the Board is required or deems it advisable to take any action in any jurisdiction in which it is illegal or inadvisable for the Board to act in that jurisdiction, the Board may appoint another person or corporation to act in the other jurisdiction as the Board deems advisable. The person appointed shall be required to accept the office of Trustee and the fiduciary duties imposed on Trustees of the Trust.

Section 5.21 Miscellaneous Trustee Provisions. The Board shall have the following powers:

5.21.1 Lending Money. To lend money to any person subject to such security and interest requirements as determined by the Board.

5.21.2 Withholding Distributions. To withhold Trust Property from distribution without payment of interest, if at the time for distribution of the Trust Property the Board determines that the Trust Property may be subject to conflicting claims, to tax deficiencies, or to liabilities, contingent or otherwise, which properly must be resolved before distribution can be made.

5.21.3 Purchase Bonds at Premium. To purchase bonds and to pay premiums in connection with the purchase as the Board, in its discretion, considers advisable; provided, however, that the Board shall treat part of the interest payments on the bond, or sales proceeds if necessary, as the repayment of principal as is reasonable under the circumstances.

5.21.4 Purchase Bonds at Discount. To purchase bonds at a discount from face value as the Board, in its discretion, considers advisable; provided, however, that the Board shall treat part of the return of principal as income as is reasonable under the circumstances.

5.21.5 Proration. Upon the termination of any trust, the Board shall distribute undistributed, accrued income to the Trust or the Trust Participants as determined by the Board.

5.21.6 Partnership or Limited Liability Company. In addition to any other rights granted to the Board, the Board shall have the right to authorize the Trust to enter into general or limited partnership agreements, to execute Certificates of General or Limited Partnership and/or to serve as a General and/or Limited Partner. The Board shall also have the right to authorize the Trust to enter into limited liability company agreements, to execute the Articles of Organization thereof and to serve as a member and/or manager of such companies.

5.21.7 S Corporation Stock. If this Trust holds stock in an S Corporation, as that term is defined by IRC Code Section 1361 (hereinafter "Sub S Stock"), the Board, in the Board's sole discretion, may reform the Trust, or any sub-trust into which the Sub S Stock is or may be transferred, establish separate trusts or divide existing trusts so that such trust, as reformed, is qualified as a Subchapter S corporation shareholder Trust under IRC Code Section 1361.

Section 5.22 Delegation.

5.22.1 The Board may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The Board may not delegate the Board's discretionary authority to determine the amount, timing and recipient of distributions from the Trust. The Board shall exercise reasonable care, skill, and caution in:

- (a) selecting the agent;
- (b) establishing the scope and terms of the delegation consistent with the purposes of the trust; and
- (c) periodically reviewing the agent's actions to monitor the agent's performance and compliance with the terms of the delegation.

5.22.2 In performing a delegated function, an agent has a duty to the Trust to exercise reasonable care to comply with the terms of the delegation.

5.22.3 A Trustee who complies with the requirements of this Subsection 5.22 is not liable to the Trust, any trust created hereunder, the Trust Participants or other beneficiaries of the Trust or any trust created hereunder for the decisions or actions of the agent to whom the function was delegated.

Section 5.23 President and Other Officers. The Board shall annually elect one of the Trustees as President of the Board. The Board may also elect such other officers or establish such committees as the Board deems necessary, shall designate the duties of such officers and committees and shall establish a chain of command as appropriate. Other than the President, officers shall not be required to be Trustees. The President shall execute any necessary documents on behalf of the Trust, including contracts, deeds, transfers, assignments and other documents to manage and carry out the purposes of the Trust, unless the Board designates others to execute such documents. The President shall also be responsible for scheduling and setting the agenda for Board meetings as requested by individual Trustees and as necessary to address effectively the needs of the Trust. All officers and committee members shall serve at the pleasure of the Board and may be removed at anytime by the Board.



ARTICLE 6  
DISTRIBUTIONS, SPENDTHRIFT TRUSTS AND USE OF TRUST PROPERTY

Section 6.1 Distributions. The Board may from time to time distribute Trust Property as they deem advisable to individual Trust Participants, or all of them, in accordance with the Trust's overall purpose as set forth herein. Such distributions may be made to or for the benefit of the Trust Participants by any means deemed appropriate by the Board, including transfers by deed or in trust or by other appropriate instrument or means. It is specifically contemplated that property conveyances to Trust Participants through the means of spendthrift trusts may be a necessary and appropriate method to accomplish the ultimate goal of securing residences for Trust Participants.

Section 6.2 Right to Trust Property. No Trust Participant shall have a right to Trust Property. No single factor defining just wants and needs shall obligate the Board to use or distribute Trust Property to or for the benefit of any Trust Participant. The determination of the just wants and needs of a Trust Participant shall be made in the sole and absolute discretion of the Board.

Section 6.3 Mechanism for Trust Participants to Petition for Benefits. Any Trust Participant may make a request for benefits from the Trust by filing with the Board (or its authorized representative), a written petition setting forth the benefits desired and the facts and circumstances supporting such petition. Neither the filing of a petition nor the failure of the Board to respond to a petition shall entitle a Trust Participant to any benefit from the Trust. The Board may respond to the petition at such time, if ever, and in such manner as the Board in its sole discretion determines.

Section 6.4 Factors to Consider. Consistent with their fiduciary duties under the Utah Trust Code and the common law, the Board should use their life experiences, good judgment and common sense in administering the Trust Property and may consider some or all of the following factors in administering the Trust:

6.4.1 the financial condition and needs of the Trust Participant including existing or potential sources of income, compensation or other recovery;

6.4.2 the previous or present use of Trust Property by the Trust Participant, including the length of time the Trust Participant has used and relied on Trust Property;

6.4.3 the Trust Participant's cooperation with the Board, acceptance of occupancy agreements, operation of businesses on Trust Property consistent with the Trust's purposes and compliance with the rules and standards set by the Board;

6.4.4 the contribution of services or assets to the Trust, including improvements to Trust Property by the Trust Participant;

6.4.5 the efforts of the Trust Participant to protect Trust Property through donations for the payment of property taxes, land surveys, insurance premiums and other expenses related to the Trust;

6.4.6 the Trust Participant's efforts to keep Trust Property safe, in good repair and otherwise properly maintained;

6.4.7 the Trust Participant's ability or inability to cooperate openly with the Board;

6.4.8 any legitimate grievance a Trust Participant may have against the Trust;  
and

6.4.9 recommendations received from an authorized representative of the FLDS Church concerning what a particular Trust Participant's just wants and needs may be in light of the religious principles of the FLDS Church. These recommendations shall be non-binding and shall be only one criterion to be considered and shall not be the controlling criterion. No recommendation may be considered, however, if it benefits, advocates or facilitates illegal practices. If the FLDS Church wishes to provide recommendations with respect to the just wants and needs of Trust Participants, it shall designate an authorized representative and shall communicate such designation to the Board in writing. The authorized representative may provide input to the Board in writing and/or may be given the opportunity to provide input at the meetings of the Board.

Section 6.5 Prohibited Consideration Factors. In administering the Trust, the Board shall not consider whether any Trust Participant participates in polygamy. In so doing, the Board will not be deemed to be benefitting, advocating or facilitating illegal practices.

Section 6.6 Occupancy and Use of Trust Property for Benefit of Trust Participants.

6.6.1 In addition to, or in lieu of, outright distributions of Trust Property, the Board may allow Trust Participants to occupy and use Trust Property, including real property and/or tangible personal property for Trust purposes. Such use of Trust Property by a Trust Participant shall not affect the record or beneficial ownership of such Trust Property, shall not be construed as a distribution, payment or delivery of such Trust Property by the Trust to the Trust Participant and the Trust shall retain all rights of ownership in such Trust Property.

6.6.2 Except as may otherwise be provided by the orders of courts of competent jurisdiction, the privilege to reside upon Trust real property and to occupy and use Trust Property is granted, and may be revoked, by the Board pursuant to Trust purposes. The use and/or occupancy of Trust Property is not and does not become a right or claim of anyone against the Trust.

6.6.3 Trust Participant use and occupancy of Trust Property must comply with rules and standards set by the Board. For example, the Board may require Trust Participants to do the following with respect to the Trust Property they use or occupy:

- (a) enter into occupancy agreements setting forth in detail the privileges and responsibilities associated with residing and/or operating businesses on Trust Property;
- (b) pay all property taxes and assessments;
- (c) secure and maintain adequate property insurance;
- (d) comply with all applicable governmental ordinances, codes and regulations;
- (e) operate businesses established on Trust Property consistent with the purposes of the Trust;
- (f) pay any other costs directly related to the Trust Property, such as a pro-rata share of survey costs, administrative costs, etc.;
- (g) keep the Trust Property safe, in good repair and to otherwise care for and maintain the Trust Property; and
- (h) pay rent and other costs and expenses as determined by the Board for the use of Trust Property and for community development, including, but not limited to, community buildings and places, schools, parks and cemeteries, etc.

6.6.4 To accomplish Trust purposes, the Board may require that Trust Participants and their families relocate to different locations on Trust Property, require them to share a location with others or revoke completely a Trust Participant's privilege to use and/or occupy Trust Property.

6.6.5 People who are granted the privilege to occupy or use Trust Property acknowledge by such occupancy or use their acceptance of the terms of this Agreement.

Section 6.7 Tax Effect of Distribution. The Board may, prior to a distribution, determine the tax effect of the distribution and may determine the persons responsible for payment of such taxes and may condition distributions upon the acceptance by the distributee of such responsibility.

Section 6.8 Spendthrift Trusts. The Board is specifically empowered to convey Trust Property to or for the benefit of Trust Participants through the means of individual spendthrift trusts if the Board in its discretion deems it appropriate. Trust Participants may be the beneficiaries of such spendthrift trusts.

Any spendthrift trust thus created shall meet the following requirements:

6.8.1 All conveyances of Trust Property into spendthrift trusts shall be irrevocable and in writing;

6.8.2 The Spendthrift Trustees and successor Spendthrift Trustees shall be appointed by the Board;

6.8.3 The spendthrift trust shall be in a form substantially similar to the spendthrift trust set forth in Exhibit "A", attached hereto; however, the Board may in its discretion determine the terms of any spendthrift trust as they deem appropriate.

Section 6.9 Claims Against Trust. The Board, in its sole discretion, may postpone, delay or refrain from making any or all distributions of Trust Property pending resolution of claims against the Trust.

## ARTICLE 7

### ADMINISTRATION OF TRUST - FIDUCIARY MATTERS GENERALLY

Section 7.1 Bonds for Fiduciaries. Except as otherwise required by the Court, no Fiduciary appointed hereunder, wherever acting, shall be required to give bond or surety.

Section 7.2 Fiduciary Liability. An Individual Fiduciary hereunder shall be liable only for a breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries and not for any honest error in judgment. No Individual Fiduciary hereunder shall be liable for any action taken or not taken in reliance upon the opinion or advice of counsel, nor for the default or misconduct of any counsel, agent (including a professional investment manager) or other representative selected by such Fiduciary with reasonable care and in good faith. In any contract or agreement made by a Fiduciary on behalf of the Trust, the Fiduciary may and is hereby authorized to stipulate and provide against personal

liability on such contracts. The rights created under and by virtue of such contract or contracts shall belong to the Trust, and the obligations under and by virtue of such contract or contracts shall be the obligation of the Trust. A Fiduciary shall not be personally liable on contracts properly entered into in his fiduciary capacity in the course of administration of the Trust. A Corporate Fiduciary acting hereunder shall be liable and responsible to the degree required by the laws of the state wherein it is authorized to act as a fiduciary. No Fiduciary shall be personally liable for obligations arising from ownership or control of Trust Property or for any torts committed in the course of administration of the Trust unless he is personally at fault.

### Section 7.3 Indemnification of Fiduciaries.

7.3.1 Extent of Indemnification. With the exception of damages, if a Trustee defends or prosecutes any proceeding in good faith, whether successful or not, the Trustee is entitled to receive from the Trust the necessary expenses and disbursements, including reasonable attorney's fees, incurred. As to damages, the Trust shall indemnify each Fiduciary from any and all damages required to be paid to a third party except for damages resulting from a Fiduciary's breach of trust committed in bad faith or with reckless indifference to the purposes of the Trust or the interests of the beneficiaries.

7.3.2 Advances. The Trust may pay for or reimburse the reasonable expenses incurred by a Trustee who is a party to a proceeding in advance of final disposition of the proceeding if:

- (a) The Trustee delivers to the Board a written affirmation of his good faith belief that he has met the applicable standard of conduct described in Utah Code Section 75-7-1004;
- (b) The Trustee delivers to the Board a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and
- (c) A determination is made by the Board (with the Trustee to be indemnified abstaining) that the facts then known to the Board would not preclude indemnification under this Section .

The undertaking required by Section 7.3.2(b) must be an unlimited general obligation of the Trustee but need not be secured and may be accepted without reference to financial ability to make repayment.

### Section 7.4 Transition on Change of Fiduciaries.

7.4.1 An outgoing Fiduciary, upon the effective date of removal, resignation, incapacity or death, shall cease to have any powers or discretions hereunder. At the earliest possible date thereafter, the outgoing Fiduciary, or his or her legal representative, shall deliver to

such Fiduciary's successor or to another then acting Fiduciary hereunder all of the Trust Property and original records which were in the possession of such Fiduciary and shall make available to each Fiduciary a complete record and inventory of the Trust Property and/or records for which the Fiduciary had responsibility.

7.4.2 Each successor Fiduciary, upon assumption of his fiduciary responsibilities, shall have the same powers and duties as his or her predecessor. The assumption by a successor Fiduciary shall not be complete until such successor executes a written acceptance of his office.

7.4.3 No successor Fiduciary shall be held liable for any mistake, negligence or willful misconduct of any preceding Fiduciary. Without limiting the generality of the foregoing, no Fiduciary shall be held liable for failing to make an examination of the actions or accounts of any preceding Fiduciary. If a successor Fiduciary learns of a breach of duty by a preceding Fiduciary, the successor Fiduciary shall as soon as reasonably practicable notify the Board of the breach. However, a successor Fiduciary's failure to notify the Board of a predecessor's breach shall not be grounds for a surcharge action against the successor Fiduciary. Fiduciaries shall be liable for their acts and omissions in accordance with the laws of the jurisdiction where the Trust is being administered.

Section 7.5 Fiduciary Determinations of Fact. All fiduciary determinations of fact made in the course of carrying out the terms of this Trust, if reasonably made on the basis of the then available information, shall be binding upon all concerned and shall fully protect the Fiduciaries even though it may subsequently be found that such a determination was erroneous.

Section 7.6 Fiduciary Construction of Instrument. The Fiduciaries may construe this instrument, if reasonably made, and any action taken relying upon such construction shall be binding upon all concerned and shall fully protect the Fiduciaries even though it may be subsequently determined that such construction is erroneous. Moreover, the Fiduciaries shall construe every provision of this Trust which is designed to meet specific requirements of the IRC Code in accordance with that design. Thus, if the IRC Code is changed, the Fiduciaries shall construe each affected provision of the Trust accordingly.

Section 7.7 Fiduciary Protection. If a Fiduciary disagrees with the actions taken or to be taken by the remaining Fiduciaries and if the Fiduciary could be held accountable for those actions, the Fiduciary may absolve himself or herself from any liability for the action taken or to be taken provided such Fiduciary supplies the remaining Fiduciaries with written notice of his or her disagreement within a reasonable time after the Fiduciary desiring to absolve himself or herself becomes aware of the action taken or to be taken.

ARTICLE 8  
MISCELLANEOUS

Section 8.1 Governing Law. The construction and interpretation of this Trust and all questions concerning its administration shall be governed by the laws of the State of Utah.

Section 8.2 Fiscal Year. The fiscal year of the Trust shall be January 1 to December 31. The fiscal year of the Trust may be changed by the Board from time to time as it deems advisable.

Section 8.3 Amendments. This Trust shall be irrevocable except as follows:

8.3.1 Upon further order of the Court.

8.3.2 Upon the affirmative vote of the Board and with notice to the Attorney General of the States of Utah and Arizona, the Board may petition a court of appropriate jurisdiction for an order amending this Trust Agreement. Such an order should issue only upon a showing that the amendment requested is appropriate for the effective management of the Trust or for the continued fulfillment of its purposes.

Section 8.4 Trust Additions. The Board may accept any transfer (whether inter vivos or testamentary) of additional assets to the Trust after considering the tax, business, and potential liability and other consequences of such acceptance to the purposes of the Trust. Such acceptance may include the acceptance or imposition of conditions on the transfer. If the addition is made by will or trust, the Board may accept the statement of the personal representative or trustees that the assets delivered to the Trust constitute all of the assets to which the Trust is entitled without inquiring into the personal representative's or trustees's administration or accounting.

Section 8.5 Separability of Provisions. In the event that any provision of this Trust Agreement violates any rule or law, only such invalid provision and not the entire instrument shall be considered void and all of the other provisions hereof shall remain in full force and effect.

Section 8.6 Interpretation. Whenever necessary in this Trust Agreement and where the context requires, the singular term and the related pronoun shall include the plural, and the masculine feminine and neuter terms and pronouns shall be fully interchangeable.

Section 8.7 Descriptive Titles. The descriptive titles of the Articles, Sections and Paragraphs as used in this Trust Agreement are for convenience only and any construction of this Trust Agreement shall be made without reference to such titles.

Section 8.8 Delivery of Minutes and Annual Report. The Board shall be deemed to have made the Minutes and/or Annual Report (collectively the "Reports") available by delivering a copy of the Reports to each Trustee and either:

8.8.1 mailing a copy of the Reports to those Trust Participants who have requested a copy in writing and who have provided an address for delivery (the "Designated Recipients"); or

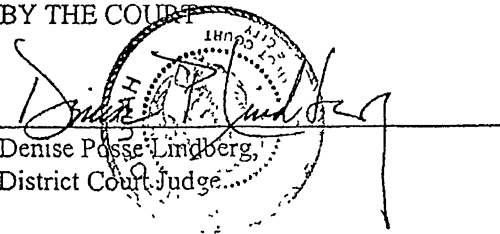
8.8.2 posting and maintaining for a reasonable period of time the Reports on a website and notifying the Designated Recipients of the website

ARTICLE 9  
INTERPRETATION OF ORIGINAL INTENT

In the event that the purposes for which this Trust has been created cannot, at any time, be carried out, the Fiduciaries are to administer the Trust for other purposes which are as similar to the original purposes as is reasonably possible and which are consistent with federal, state and common law.

Dated the 25<sup>th</sup> day of October, 2006.

BY THE COURT

  
Denise Posse-Lindberg  
District Court Judge



# Appendix 3

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Stephen C. Clark (USB #4551)  
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**IN THE UTAH SUPREME COURT**

THE FUNDAMENTALIST CHURCH  
OF JESUS CHRIST OF LATTER-DAY  
SAINTS, an association of individuals,

v.

JUDGE DENISE P. LINDBERG, Third  
District Court Judge,

Respondent.

**AFFIDAVIT OF WILLIE JESSOP IN  
SUPPORT OF PETITION FOR  
EXTRAORDINARY WRIT**

Supreme Court No. \_\_\_\_\_

Trial Court No. 053900848

Subject to Assignment to  
the Utah Court of Appeals

**Petitioner Requests that the Utah  
Supreme Court Retain Jurisdiction**

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

I, Willie Jessop, being duly sworn, hereby depose and state as follows:

1. I am a member and duly authorized representative of the Petitioner Association, which comprises an informal association of members of the Fundamentalist Church of Jesus Christ of Latter-Day Saints (the “FLDS Church” or the “Church”). I am also a member in good standing of the FLDS Church, and a beneficiary of the United Effort Plan Trust, which is the subject of this action.

2. I am over 18 years of age and am otherwise competent to testify to the facts set forth herein.

3. I have personal knowledge of the matters set forth herein unless otherwise stated, and as to other matters I attest thereto to the best of my knowledge, information and/or belief, including my sincere religious belief.

4. Petitioner Association members are a voluntary group of persons, without a formal charter, formed by mutual consent for the purpose of promoting our common objective of securing our constitutional rights against state action that has prevented us from exercising core tenets of our religion and that is tearing at the spiritual and economic heart of our community.

5. The FLDS Church is based on the “fundamental” teachings of our Savior as recorded in ancient scripture and revealed through modern-day Prophets. We believe that we have been sent to the earth to learn who God is and how to become like Him. We claim the privilege of worshiping God as guaranteed by the Constitution; we believe this same privilege belongs to all as a matter of law and divine right.

6. In the 1930's, a small group of FLDS Church faithful began to settle on a piece of land straddling the borders of Utah and Arizona. This area became known as Short Creek.

7. I have lived in the Short Creek area all my life, and I have seen the communities there grow and thrive as a result of the hard work and the faithfulness of the people.

8. We worked hard to turn the desert landscape into fertile fields and productive farms and ranches. We worked hard to create small businesses. We worked hard to build communities on principles of self-reliance, charity and brotherhood.

9. As I explain below, in the last few years our communities and our faith have come under sustained and systematic attack by the State of Utah. The principal means by which that attack has been carried out is the State's takeover of a sacred Trust and appointment of a self-proclaimed "State-Ordained Bishop" to administer the Trust.

10. As a result of the State's actions, the farms, ranches, businesses and communities we worked so hard to create and consecrated and dedicated to the common good through the Trust, have been decimated. The people are destitute, without homes, without livelihoods, without property, without food, having their power cut off. Daily I hear the pleas of my brothers and sisters, because they've lost their homes and their jobs, and everything they know and hold dear and sacred is disappearing under constant attack.

11. Millions of dollars in property and assets have been confiscated or sold. To cite just one example, the Harker Farm was formerly one of the largest and most productive dairy farms in the State of Utah, with 700 head of dairy cows and state-of-the-

art facilities. The Farm, along with dozens of other properties and small businesses, has been ripped from the heart of the community and used, not for the common benefit of the people, but to pay the fees and costs of the “State-Ordained Bishop” and the large state bureaucracy he has used to supplant the Holy United Order we created. While millions of dollars have been sucked out of the Trust, not one penny has gone to provide food, clothing or shelter to the people who were supposed to share in and be sustained by the Trust.

12. As I explain below, the “State-Ordained Bishop” now plans to auction off land that has not only served as the breadbasket of our community, but also is the site of a prophetic vision to build a Holy Temple. We ask this Court to stop this sale and hear our claims.

13. As faithful members of the FLDS Church, I and other member of Petitioner Association believe its doctrines and tenets and have sought to put those doctrines and tenets into practice through consecrating our time, talents, materials and property to the Church, as discussed below.

14. The FLDS Church teaches as one of its fundamental tenets that there must be a literal gathering together of the faithful Church members on consecrated and sacred lands to establish the Kingdom of God on Earth under the guidance of divinely-inspired Church leadership.

15. This tenet, along with specific instruction on how it is to be implemented, is set forth in a book called the “Doctrine and Covenants,” which we revere as Holy

Scripture, as well as in the Holy Bible, the Book of Mormon, the Pearl of Great Price and sermons of Church leaders.

16. This tenet gets further implementation in the day-to-day decisions of the Bishops ordained to ascertain and minister to the needs of their congregations with the guiding Light of divine inspiration.

17. As a matter of religious faith and devotion, we believe we have been commanded by God, through the Prophet God called to establish his Kingdom on Earth in these “latter days,” to consecrate our property, services, time and talents to the FLDS Church, for the purpose of building that Kingdom.

18. The principles and practices that underlie our consecrations to the FLDS Church are referred to as the Holy United Order. The scriptural foundation of the Holy United Order is found in Doctrine and Covenants 42:30-39.

19. In order to facilitate our efforts toward the Holy United Order, an “Amended and Restated Declaration of Trust of the United Effort Plan” was executed on November 3, 1998 (the “Trust”).

20. As FLDS Church members, in accordance with our internal church practices, we were given the opportunity to sustain, and we unanimously voted to sustain, the Trust.

21. We did so with the express understanding and belief, based on the terms of the Trust itself and as a matter of religious faith and devotion, that the Priesthood leaders of the Church act with the authority and under the divine inspiration of Jesus Christ in carrying out the Church’s religious mission and purpose, including the administration of

the Trust and determining the just wants and needs of Church members, and thereby are engaged in establishing the Kingdom of God on earth.

22. It is because we maintain this belief that we are willing to consecrate our real property as well as our time, talents, money and materials to the Trust and to authorize the Board of Trustees in their sole discretion to provide for us according to their wants and needs, insofar as our wants are just. This belief is set forth in Doctrine and Covenants 82: 17-21.

23. The scriptures and tenets of our faith make it clear that any determination of our “just wants and needs” is fundamentally a religious determination.

24. Our understanding and intent in voting to sustain and consecrate to the Trust was that by doing so, we were not creating an ordinary charitable trust that would exist independent of any religious belief or practice, but engaging in a form of religious expression that would enable us to put into action one of our basic religious beliefs – commonality of ownership and action in an effort toward the Holy United Order under the leadership of the FLDS Church.

25. Our understanding in voting to sustain and consecrate to the Trust was that, following principles of internal Church governance, if it were to be determined that the Board of Trustees was in breach of the Trust, they would have to be removed and replaced through Priesthood authority or, if the breaches were such as to render the Trust incapable of pursuing its religious mission, the Trust would have to be terminated.

26. In 2005, we became aware that the Third District Court had determined that the Board of Trustees was in breach of the Trust and had removed the Board and appointed a Special Fiduciary to administer the Trust.

27. Shortly after he was appointed, I met the Special Fiduciary, Bruce Wisan. Mr. Wisan came down to Short Creek and asked to meet with some of us. Among the first things he said to me was that, based on the ruling of the Third District Court, he was now the “State-Ordained Bishop” or “SOB.” He said this with a humorous expression, as if he found it clever and amusing, but it was a clear mockery of our faith and institutions.

28. As “State-Ordained Bishop,” the Special Fiduciary has proceeded to create his own secular hierarchy and to staff it with functionaries who are unmistakably identified with those who are opposed to the FLDS Church and its historic role in the spiritual and economic life of our communities.

29. All of the members of the Advisory Board of the Reformed Trust are avowed enemies of the FLDS Church.

30. Whereas before the members took their requests to the ordained Bishop, who administered the Trust lands and the Bishop’s storehouse under his Holy calling and divine inspiration, members now are supposed to go through the Special Fiduciary and have their requests considered by allegedly “neutral principles” by people who are anything but “neutral” in their views of the FLDS Church.

31. The Special Fiduciary has stated to me personally, and admitted in open court, that one of the driving factors in his decision as to how to manage and dispose of Trust properties is whether he has reason to believe a particular Trust participant will



continue to practice the Holy United Order and consecrate the property to the Church in the future.

32. This effectively requires me and my fellow Association members to forswear any intention ever to consecrate the property to the FLDS Church in fulfillment of what we believe to be a commandment of God.

33. I have read and am familiar with court pleadings filed in the Third District Court action where the Special Fiduciary discusses what he calls a “strategic plan to subdivide Trust property so that it can be conveyed to members of the beneficiary class in a religiously neutral manner in furtherance of the Reformed Trust’s purpose to serve the ‘just wants and needs’ (primarily housing) of all persons who consecrated to the Trust.”

34. The Special Fiduciary’s court filings refer to the determination of FLDS members’ “just wants and needs” in accordance with Holy Scripture and divine revelation as “the whim of leadership”; to the FLDS Church’s religious beliefs and practices in making such determinations as “discriminat[ing] on the basis of religion” and operating “in a religiously discriminatory manner”; and to me and my fellow Association members as “saboteurs.”

35. The Special Fiduciary’s characterizations of the Trust’s administration before the State takeover speak volumes about how the state views the manner in which the Trust was previously administered in accordance with its fundamental, inherent nature as a religious institution. Of course the Trust was operated under religious principles, and of course the Trust “discriminated” on the basis of determinations made in accordance with Holy Scripture and divine revelation. Although it appears the Special Fiduciary believes

churches can be required not to follow their own doctrines but only “neutral principles” dictated by the state, that is contrary to our beliefs, including our belief that all people may worship as they choose and make their own determinations as to matters of church doctrine like “just wants and needs.”

36. In other court filings, the Special Fiduciary has revealed his intention to pursue the sale of Trust properties that hold special economic, social, historical and spiritual significance for the FLDS community, including the Harker Farm, the Berry Knoll Farm and the FLDS Temple in Eldorado, Texas.

37. The Special Fiduciary says he needs to sell this property not to meet the needs of the people for food, clothing and shelter – which needs are dire – but to “resolve the current cash crunch problem” – a multi-million-dollar debt incurred by the Special Fiduciary’s for legal, accounting and other fees, including payment of fees incurred in the defense of the Special Fiduciary and his functionaries charged (one convicted) with illegal and unconstitutional actions in the course of their duties.

38. The Third District Court scheduled a hearing on the Special Fiduciary’s proposed sale of the Berry Knoll Farm for November 14, 2008, in St. George, Utah. Thousands of Petitioner Association members turned out for that hearing in an unprecedented display. We wanted the Third District Court, which had consistently said it wanted to hear from us, to hear from us, even though we had been denied any formal standing in the court.

39. Berry Knoll Farm has long been of central economic, social and historical value to the FLDS Church as a part of the prophetic vision and divine command that the

Short Creek area will “become a garden spot of the west” and sustain the faithful members of the community through consecration of its bounty to the Bishop’s Storehouse.

40. Berry Knoll Farm also has deep religious and historical significance for me and my fellow Association members. We believe that the location of a temple site is divinely revealed to Church leaders, and that as a result of a specific prophecy Berry Knoll is a sacred site upon which a temple will be constructed, even if the Church leadership is “scattered,” so long as they remain faithful. *See* documents attached hereto as Exhibit A.

41. The Special Fiduciary apparently disagrees with our faith, telling the Third District Court he has unspecified but allegedly “credible information” that the “temple site prophecy was rejected by later FLDS leadership, who stated that the FLDS church would not build a temple on Berry Knoll.” He challenges our claims as to the sacred nature of Berry Knoll as based on “a few old documents” rather than “evidence from any authorized current leader of the FLDS Church indicating that the Berry Knoll site is considered ‘sacred ground.’” Without pointing to any source document or witness, but insisting he has been “advised” of the truth in this matter of competing claims, the Special Fiduciary thus places himself in the middle of an ecclesiastical dispute.

42. In fact, the Special Fiduciary appears poised to come down on one side of that dispute, since he was forced to admit in papers filed in Third District Court that he intended to sell the property to an entity controlled by one Kenneth C. Knudson of Centennial Park, Arizona.

43. Kenneth Knudson is a member of another religious sect with a competing claim to Berry Knoll. His brother Joseph Knudson owns and conducts the day-to-day operations of an entity listed as one of the “vested Managers” of the entity that plans to buy Berry Knoll.

44. On behalf of Petitioner Association members, and to represent their interests in the distribution of UEP Trust assets, I actively participated as a representative of the FLDS Church in the recent settlement negotiations and at the Third District Court’s July 29, 2009 “public hearing.” Besides us few FLDS Church representatives allowed to participate, there were no other participants, and there are none that I am aware of in the litigation, that specifically represent the interests of the faithful FLDS Church members or in the Church generally in the areas where Trust lands are located. Once again, however, thousands of Petitioner Association members from the United States and Canada came to Salt Lake for that hearing, even though we have consistently been denied formal party status in that and all other proceedings before Judge Lindberg.

45. As a result of being taken over by the State and its religious mission, purpose and guiding tenets wholly secularized, the Reformed Trust operates with the clear purpose and effect of substituting what is fundamentally a religious institution guided by divine inspiration with a wholly secular mirror image, thus fundamentally suppressing the FLDS Church’s longstanding and historical role as the communitarian and spiritual center of life in the communities of Hildale, Utah and Colorado City, Arizona where Plaintiff association members reside.

46. More importantly, the State of Utah's sustained and systemic attack on the Holy United Order amounts to punishment for following our beliefs by consecrating our property to the good of the whole.

47. In addition, the State is making us pay those engaged in the attack – people who are opposed to the Church's religious mission and purposes, which the Trust was intended to advance – but has denied us any standing to object or require accountability.

48. The extent of the devastation, spiritual and economic, that the State of Utah's actions in this matter have visited and are continuing to visit upon our community of faith cannot be overstated. Thousands of us are literally fighting for our survival. We ask this Court for nothing more than to apply the United States Constitution to the actions of the Third District Court in this case.

THIS IS THE END OF MY AFFIDAVIT.

DATED this \_\_\_\_ day of October, 2009.

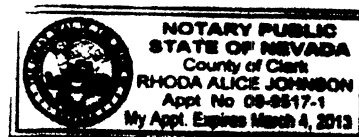
Willie Jessop  
WILLIE JESSOP

SUBSCRIBED AND SWORN to before me this 11<sup>th</sup> day of October, 2009.

Rhoda Alice Johnson  
Notary Public  
Residing in: Clark County

My Commission Expires:

March 4, 2013



**CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of October, 2009, I caused a true and correct copy of the foregoing **AFFIDAVIT OF WILLIE JESSOP IN SUPPORT OF PETITION FOR EXTRAORDINARY WRIT** to be served upon the following in the following described manner:

VIA U.S. MAIL, POSTAGE PREPAID and EMAIL TRANSMISSION:

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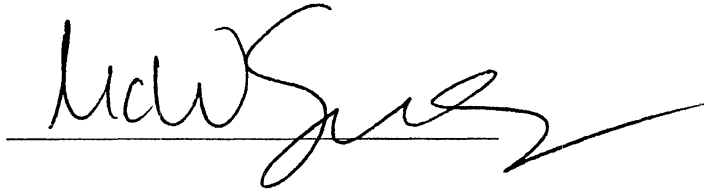
Peter Stirba  
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Michael D. Zimmerman  
Snell & Wilmer  
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EMAIL: [mzimmerman@swlaw.com](mailto:mzimmerman@swlaw.com)

A handwritten signature in black ink, appearing to read "Michael D. Zimmerman", is written over a horizontal line. The signature is stylized with a large "M" and a long, sweeping underline.

# Exhibit A



“Joseph Musser made prophecies of things that would come to pass. Among these prophecies were that a temple would be built on a small hill south of the community called Berry Knoll, ... He also prophesied that Short Creek would become a garden spot of the west, one acre of land producing more food stuff than 10 acres of the best farm land in Davis County, Utah.”

*The Polygamists: A History of Colorado City, Arizona*, Benjamin G. Bistline (2004), p. 27

## *Diary of Joseph Lyman Jessop* 1952

**Jun. 30.** Attended Insurance agents' meeting from 9 to 11:30. Went with my son Karl to fair grounds where he finally obtained his driver's license. I bot tires for the car at Sears after trying to make a trade with Mr. W. Westonslow. A lot of monkey work or waiting to get going by nighttime. I called upon Bro. R. C. Allred at his home in evening.

**Jul. 1.** Wayne Handy spent the night at our house. Wayne and my daughters Eula and Shirley and I left home in our car about 3:20 a.m., and with Bro. Joseph W. Musser (whom we picked up at 4 a.m.), we drove via Hiway 91 to Hurricane,



*Joseph W. Musser at Hurricane Hill*

thence to Short Creek, Arizona, reaching there by 11:45 a.m. and found the people mostly well tho surprised to see us. This is Wayne's first visit there, so I introduced him wherever we went. Most of the people in Short Creek are my relatives. Joseph stopped with his wife (my very sweet sister Fawn, who is the sealed wife of Joseph Leslie Broadbent). My son Edson and family and my daughters Louise and Florence are OK. My dear father (Jos. S. Jessop) not so well but always helping all he can. My brother Fred, too, always sweet and helpful. They are moving into the new store building. Fawn is Post Mistress and store keeper, along with her son David Broadbent. We saw many of the people.

The purpose of this trip is to find out how the people feel toward Joseph (Musser) and the priesthood callings made thru him. (On last Sunday, June 30<sup>th</sup>, Joseph asked me to take him on this trip). Joseph conversed some with Carl Holm on the situation, and Carl seemed to feel like he would rather not have Joseph hold a meeting with the people. Joseph and I called upon my Brother Richard Jessop, and Richard expressed a firm belief and testimony that Bro. Joseph Musser is the head of the Priesthood and he (Richard) would gladly call the peo-

ple to-gether in a meeting if Joseph desired it so—but Brother Roy Johnson was away and is expected back this evening, so Joseph decided to wait until Roy could be consulted. (Roy Johnson, Richard Jessop, and Carl Holm are the head men of the community.)

Joseph and I, also Eula and Shirley, ate supper with Fawn and David's family. Wayne and I visited with Edson and Alyne, also Margaret, Irene, and Leota and their children, and we slept there.

**Jul. 2.** By 7 a.m. Joseph had walked near 1/2 mile to find me at Margaret's place. After breakfast we drove to Berry Knoll (at Joseph's desire) about a mile south of the town. This is a spot designated for a temple sometime, so Joseph wanted to stand upon it. Leaving the car by the road side, Wayne and I helped Joseph to the top-most eminence of the hill, which climb was about 1/4 of a mile. It's a beautiful view in all directions and seems a delightful place for a Temple of God when the land is redeemed from its drought, and Joseph said as we stood in the view, "There will be plenty of water sometime."

While Wayne went back to the car for his camera, Joseph and I prayed together fervently to The Lord in behalf of the people, the saints, the Lamanites, for our own mission and callings. Wayne returned but could not get the car only a short way up because of the deep sand. We assisted Joseph to the car and we dug ourselves out of a stuck and returned to Short Creek.

We found Bro. Roy Johnson in his car near Richard's house (south side of town). We invited them into our car, and Roy, Richard, Carl Holm, Sr., and Carl Holm, Jr., came and sat in our car for more than an hour. Bro. Joseph asked Roy to state how he felt toward him (Joseph), so Roy said that he knows that Joseph holds the keys to Priesthood and he (Roy) will sustain him in that position in love and loyalty. Roy also stated in about these words, "I stood by Uncle John until the end. I was at his elbow, and I know you (Joseph) now hold the head place, and I will support you as I did him (John)." Joseph responded, "That is fine."

Bro. Carl Holm, Sr., asked Joseph if he could make a statement. Joseph said, "Yes, go ahead." Then Bro. Holm made a lengthy statement, telling of his conversion and conviction of points of doctrine, emphasizing the scripture as given by Paul, viz: "Tho we or an angel from heaven preach any other gospel than that we have preached, let him be accursed." Also, "Bro. Musser should be in harmony with the Council, else 'if you are not one, you are not mine,' sayeth The Lord." His statements seemed lengthy considering the time and place, tho he was given all the time he wanted to make his statements.

Joseph called upon me to speak my thots and I did so, saying that, "I consider the priesthood question a serious one. I agree with Bro. Holm in part, but as I see the picture and understand priesthood, he has stated the

Held meeting with the Priesthood .... (line gone) Sacrament was administered. Stressed need for unity, charity, a forgiving spirit, that when we forgive we forget and never judge each other without hearing both sides. Sustained the leadership of John and the move to Short Creek. Said temple would some time be built there; also spoke of judgments coming on this land. Said the Priesthood would be scattered, but enough would be here, if faithful, to protect the righteous with the power of their Priesthood. Those who did right would be protected.

*Personal Journal of Joseph W. Musser, Entry from Saturday March 14, 1936*

# Arise, O Glorious Zion

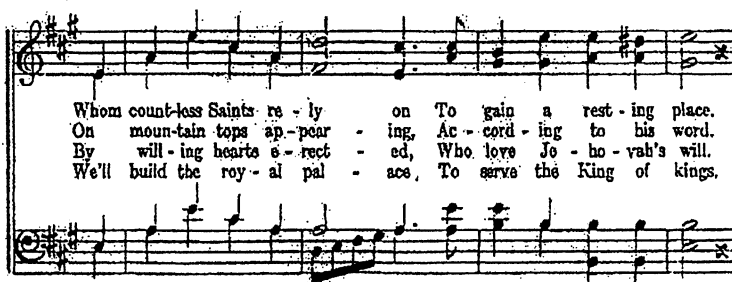
(Choir)

William G. Mills

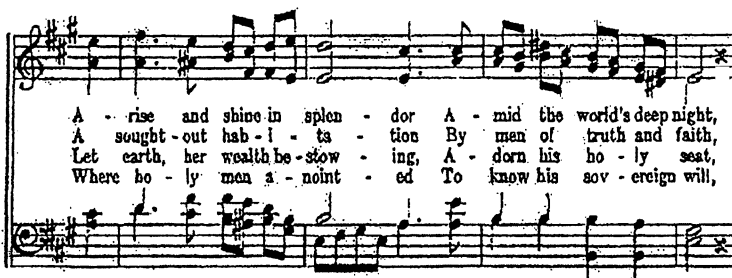
George Careless

*Brightly* ♩ = 104

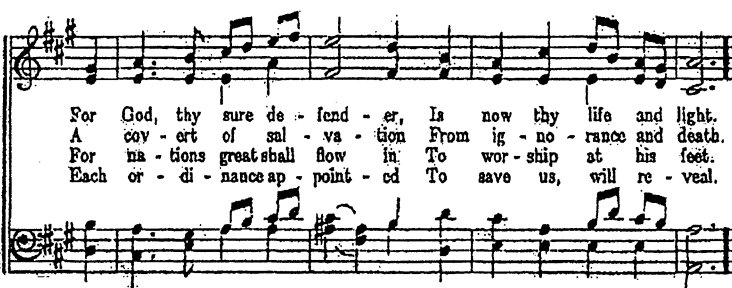

1. A - rise, O glo - rious Zi - on, Thou joy of lat - ter days,  
 2. Let faith - ful Saints be rear - ing The cit - y of our Lord,  
 3. ~~The Lord the Lord is with us~~ ~~we shall stand on~~ ~~our feet~~ ~~and~~  
 4. What though the world in mal - ice De - spise these might - y things,



Whom count-ess Saints re - ly on To gain a rest - ing place.  
 On moun-tain tops ap - pear - ing, Ac - cord - ing to his word.  
 By will - ing hearts e - rect - ed, Who love Jo - ho - vah's will.  
 We'll build the roy - al pal - ace, To serve the King of kings.



A - rise and shine in splen - dor A - mid the world's deep night,  
 A sought-out hab - i - ta - tion By men of truth and faith,  
 Let earth, her wealth be - stow - ing, A - dorn his ho - ly seat,  
 Where ho - ly men a - noint - ed To know his sov - ereign will,



For God, thy sure de - fend - er, Is now thy life and light.  
 A cov - ert of sal - va - tion From ig - no - rance and death.  
 For na - tions great shall flow in To wor - ship at his feet.  
 Each or - di - nance ap - point - ed To save us, will re - veal.