

2009

In the Matter of the United Effort Plan Trust v. Willie Jessop, Dan Johnson, Merlin Jessop, Lylie Jeffs, and James Oler : Brief of Appellee

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc2

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

James C. Bradshaw; Rodney R. Parker; Richard A. Van Wagoner; Kenneth A. Okazaki; Stephen C. Clark.

Annina M. Mitchell; Timothy A. Bodily; Counsel for Attorney General.

Recommended Citation

Brief of Appellee, *In the Matter of the United Effort Plan Trust v. Willie Jessop, Dan Johnson, Merlin Jessop, Lylie Jeffs, and James Oler*, No. 20090691.00 (Utah Supreme Court, 2009).

https://digitalcommons.law.byu.edu/byu_sc2/2957

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH SUPREME COURT

IN THE MATTER OF THE UNITED)
EFFORT PLAN TRUST)

-----)

WILLIE JESSOP, DAN JOHNSON,)
MERLIN JESSOP, LYLE JEFFS, and)
JAMES OLER,)

Appellants.)

No. 20090691-SC

BRIEF OF UTAH ATTORNEY GENERAL

**Appeal from the July 17, 2009 Order Denying Appellants'
Motions to Intervene, the Honorable Denise P. Lindberg,
Third District Judge, Presiding**

James C. Bradshaw
Brown, Bradshaw & Moffat, LLP
10 West Broadway
Salt Lake City, UT 84101

Rodney R. Parker
Richard A. Van Wagoner
Snow, Christensen & Martineau
10 Exchange Place, 11th Floor
Salt Lake City, UT 84111

Kenneth A. Okazaki
Stephen C. Clark
Jones, Waldo, Holbrook & McDonough
170 South Main, Suite 1500
Salt Lake City, UT 84101

ANNINA M. MITCHELL #2274
Utah Solicitor General
TIMOTHY A. BODILY #6496
Assistant Utah Attorney General
160 East 300 South, 5th Floor
P.O. Box 140858
Salt Lake City, UT 84114-0858
Telephone:(801) 366-0533

Counsel for Utah Attorney General
Mark L. Shurtleff

**FILED
UTAH APPELLATE COURTS
JUL 13 2010**

IN THE MATTER OF THE UNITED
EFFORT PLAN TRUST

Appellants.

)
)
)
)
)
)
)
)
)

BRIEF OF UTAH ATTORNEY GENERAL

Counsel for Utah Attorney General
Mark L. Shurtleff

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iv
JURISDICTION	2
RESTATEMENT OF ISSUES PRESENTED	2
DETERMINATIVE RULES AND STATUES	4
STATEMENT OF THE CASE/STATEMENT OF FACTS	4
Introduction	4
History of the Trust	5
2006 Trust Reformation and Subsequent Administration	8
Appellants' May 2009 Motions to Intervene	11
District Court Hearing July 2009	13
The Instant Appeal	15
SUMMARY OF ARGUMENT	15
ARGUMENT	17
I. THIS APPEAL IS MOOT SINCE APPELLANTS HAVE ALREADY RECEIVED WHAT THEY SOUGHT IN THEIR MOTIONS TO INTERVENE, I.E., A MEANINGFUL OPPORTUNITY TO OPPOSE THE PROPOSED SALE OF THE BERRY KNOLL PROPERTY	17
II. APPELLANTS DO NOT SATISFY THE STATUTORY OR COMMON LAW REQUIREMENTS FOR STANDING TO ENFORCE THE REFORMED UEP TRUST OR TO CHALLENGE THE SALE OF TRUST PROPERTY TO PAY TRUST DEBTS	20

A.	<u>Appellants Lack Standing Under the Applicable Statutes.</u>	25
B.	<u>Appellants Do Not Qualify for the Common Law’s Special Interest Exception</u>	26
1.	There is no “sharply defined” or “small class” of potential beneficiaries	26
2.	The interests of Appellants, who have no preferential status under the Trust, conflict with those of many other Trust beneficiaries.	27
3.	Appellants moved to intervene to challenge the routine exercise of the Fiduciary’s discretion, a sale of Trust property, which obtained judicial approval.	28
4.	The Utah and Arizona Attorneys General have diligently and effectively enforced the Trust.	29
III.	EVEN IF APPELLANTS QUALIFY FOR THE SPECIAL INTEREST EXCEPTION, THE DISTRICT COURT PROPERLY DENIED THEM INTERVENTION UNDER RULE 24(a)	30
A.	<u>The Motions to Intervene are Untimely</u>	30
B.	<u>Appellants’ Interests are Adequately Represented.</u>	31
	CONCLUSION	32

ADDENDA

Addendum A -	Order of July 17, 2009 (R.16381-83)
Addendum B -	Motion to Require Notice and Supporting Memorandum in <i>Jeff v. Jeffs</i> , Third District No. 040915857
Addendum C -	Partial Docket, <i>In re United Effort Plan Trust</i> , Third District No. 053900848 (Entries for 5/26/05 to 8/18/05)

Addendum D -	Reformed Declaration of Trust, October 25, 2006 (R. 6537)
Addendum E -	Appellants' Motions to Intervene, Memoranda, and Affidavits (R 15201-287)

TABLE OF AUTHORITIES

CASES

	Page
<i>Alco Gravure, Inc. v. Knapp Fdn.</i> , 64 N.Y.2d 458, 479 N.E.2d 752 (1985), amendment denied, 67 N.Y.2d 717, 490 N.E.2d 861 (1986)	23, 24, 27
<i>Brigham Young Univ. v. Tremco Consultants, Inc.</i> , 2007 UT 17, 156 P.3d 782	1
<i>Dep’t Human Servs. ex rel. Parker v. Irizarry</i> , 945 P.2d 676 (Utah 1997)	3
<i>First Equity Federal, Inc. v. Phillips Dev. LC</i> , 2002 UT 56, 52 P.3d 1137.	4
<i>Hooker v. Edes Home</i> , 579 A.2d 608 (D.C. App. 1990)	23, 24, 27, 28
<i>Jeffs v. Stubbs</i> , 970 P.2d 1234 (Utah 1998), cert. denied sub nom <i>Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Bradshaw</i> , 526 U.S. 1130 (1999)	5
<i>Jeffs v. Jeffs</i> , Third District Court No. 040915857	5
<i>Jenner v. Real Estate Servs.</i> , 659 P.2d 1072 (Utah 1983)	30
<i>Kania v. Chatham</i> , 254 S.E.2d 528 (N.C. 1979)	27
<i>Lopez v. Medford Community Center, Inc.</i> , 424 N.E.2d 229 (Mass. 1981)	24, 28
<i>M.J. v. Jeffs</i> , Third District Court No. 070916524	9
<i>In re Milton Hershey School</i> , 911 A.2d 1258 (Pa. 2006)	29
<i>Papanikolas Bros. Enterpr. v. Sugarhouse Shopping Center Assocs.</i> , 535 P.2d 1256 (Utah 1975)	31
<i>Public Benevolent Trust v. Humane Soc’y of Indianapolis, Inc.</i> , 829 N.E.2nd 1039 (Ind. App. 2006)	23
<i>Ream v. Jeffs</i> , Third District Court No. 040918237	5, 6

<i>Robert Schalkenbach Fdn. v. Lincoln Fdn., Inc.</i> , 91 P.23d 1019 (Ariz. App. 2004) .	25, 29
<i>Salt Lake County v. Holliday Water Co.</i> , 2010 UT 45, ___ P.3d ____	17, 20
<i>State v. Laycock</i> , 2009 UT 53, 214 P.3d 104	17, 20
<i>State ex rel. Nixon v. Hutcherson</i> , 96 S.W.3d 81 (Mo. 2003)	22, 23, 24
<i>Snow Christensen & Martineau v. Lindberg</i> , 2009 UT 72	11
<i>Taylor-West Weber Water Improvement Dist. v. Olds</i> , 2009 UT 86, 224 P.3d 709	3, 20
<i>The Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Lindberg</i> , No. 20090859-SC	1
<i>Tracy v. Univ. of Utah Hosp.</i> , 619 P.2d 340 (Utah 1980)	1
<i>Wasatch Crest Ins. Co. v. LWP Claims Adm’rs Corp.</i> , 2007 UT 32, 158 P.3d 548	3
<i>Weaver v. Wood</i> , 680 N.E.2d 918 (Mass. 1997)	24, 25
<i>Williams v. Bd. of Trustees of Mount Jezebel Baptist Church</i> , 589 A.2d 901 (D.C. App. 1991)	27

STATUTES and RULES

Utah Code Ann. § 75-1-201 (West 2004)	21
Utah Code Ann. § 75-1-204 (West 2004)	25
Utah Code Ann. § 75-1-304 (West 2004)	21
Utah Code Ann. § 75-7-106 (West 2004)	22
Utah Code Ann. § 75-7-201 (West 2004)	21, 28
Utah Code Ann. § 75-7-203 (West 2004)	21
Utah Code Ann. § 75-7-405 (West 2004)	22
Utah Code Ann. § 78A-3-102 (West 2009)	2

Utah R. Civ. P. 5	4
Utah R. Civ. P. 24	passim
Uni. Trust Code, Title 75 Chapt 7	21

OTHER WORKS CITED

Blasko, Mary Grace <i>et al.</i> , “Standing to Sue in the Charitable Sector,” 28 U.S.F.L. Rev. 37 (Fall 1993)	25
Chester & Bogert, <i>Trusts & Trustees</i> , §§411 & 11 (3 rd e. 2005)	22, 23
Scott & Ascher <i>Trusts</i> (5 th ed. 2008) § 37.3.10	23

IN THE UTAH SUPREME COURT

IN THE MATTER OF THE UNITED
EFFORT PLAN TRUST

)
)
)
)
)
)
)
)
)
)

No. 20090691-SC

WILLIE JESSOP, DAN JOHNSON,
MERLIN JESSOP, LYLE JEFFS, and
JAMES OLER,

Appellants.

BRIEF OF UTAH ATTORNEY GENERAL

This appeal is from the July 17, 2009 order of the Third District Court denying Motions to Intervene in proceedings concerning ongoing administration of the United Effort Plan Trust.¹ The motions were filed by Appellants Willie Jessop,² Dan Johnson,

¹The order denying intervention, included here as Addendum A, is appealable as of right. *See Brigham Young Univ. v. Tremco Consultants, Inc.*, 2007 UT 17, ¶ 17 & n.3, 156 P.3d 782; *Tracy v. Univ. of Utah Hosp.*, 619 P.2d 340, 341-42 (Utah 1980).

²In a related, pending case commenced by way of a petition for extraordinary relief in this Court, Appellant Willie Jessop filed a supporting affidavit as a member of the petitioner in that case, an informal association of members of the Fundamental Church of Jesus Christ of Latter-Day Saints. *The Fundamental Church of Jesus Christ of Latter-Day Saints v. Lindberg*, No. 20090859-SC (submitted on oral argument February 17, 2010). That separate action challenges the district court's 2006 reformation and ensuing oversight of the administration of the United Effort Plan Trust.

Merlin Jessop, Lyle Jeffs, and James Oler in their capacities as bishops and/or members of the Fundamentalist Church of Jesus Christ of Latter-Day Saints (hereafter “the Fundamentalist Church”).

JURISDICTION

This appeal comes within the original jurisdiction of the Utah Supreme Court under Utah Code Ann. § 78A-3-102(3)(j) (West 2009).

RESTATEMENT OF ISSUES PRESENTED

1. As Appellants concede, the interest of a possible beneficiary of a charitable trust is “not sufficient to entitle him to maintain a suit for the enforcement of a charitable trust.” Applts.’ Br. at 24. Regardless of whether Appellants qualify for the “special interest exception” to this common law rule, is the issue of the denial of their Motions to Intervene moot since they were subsequently given what they sought in their motions—the opportunity to voice to Judge Lindberg their opposition to the proposed sale of the Berry Knoll Farm—in their numerous filings and at the July 29, 2009 hearing?

Standard of Review: This issue of mootness arises for the first time on appeal; thus, there is no standard of review.

2. Did the district court correctly conclude that Appellants do not have the “interest” required by Rule 24(a) because they do not qualify under applicable Utah statutes or the “special interest exception” to the supplementary common law rule that potential beneficiaries of a charitable trust cannot sue to enforce it?

Standards of Review: Application of a statute presents a question of law reviewed for

correctness. *Wasatch Crest Ins. Co. v. LWP Claims Adm'rs Corp.*, 2007 UT 32, ¶ 6, 158 P.3d 548. Whether Appellants qualify for the special interest exception under the common law of trusts presents a mixed question of law and fact. *See Dep't Human Servs. ex rel. Parker v. Irizarry*, 945 P.2d 676, 678 (Utah 1997) (“The issue of whether equitable estoppel has been proven is a classic mixed question of law and fact.”). Like the common law doctrine of estoppel, the special interest exception to the common law rule of trusts may be applicable in “a wide variety of factual and legal situations. *Id.* “The variety of fact-intensive circumstances involved weighs heavily against lightly substituting our judgment for that of the trial court. Therefore, we properly grant the trial court’s decision a fair degree of deference” *Id.*

3. If the Court overrules Judge Lindberg and determines Appellants do have such a special interest in the charitable trust that would allow them to sue as parties for its enforcement, did the district court nonetheless correctly deny them intervention under the standards in Rule 24(a) because: (a) their Motions to Intervene were untimely; or (b) their interests have been, and are being, adequately represented by the Attorneys General?

Standard of Review: “A motion to intervene involves questions of law and fact. We review the district court's legal determinations for correctness, affording no deference to its conclusions. We do not disturb the district court's factual findings unless they are clearly erroneous. . . . Mandatory intervention under rule 24(a) . . . turns on a legal determination, which we review de novo.” *Taylor-West Weber Water Improvement Dist. v. Olds*, 2009 UT 86, ¶ 3, 224 P.3d 709 (internal citations omitted). In addition, this

Court can affirm denial of the Motions to Intervene on any legal ground or theory apparent on the record, even if it was not the basis for the district court's decision. *First Equity Federal, Inc. v. Phillips Dev. LC*, 2002 UT 56, ¶ 11, 52 P.3d 1137.

DETERMINATIVE RULES AND STATUTES

Rule 24(a) and (c), Utah Rules of Civil Procedure, provide:

(a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

. . . .

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motions shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

The text of relevant statutes is included in the body of the brief.

STATEMENT OF THE CASE/STATEMENT OF FACTS

Introduction

The corpus of the United Effort Plan Trust includes land on the Utah-Arizona border on which thousands of people reside in houses owned by the Trust. Since 2005, the Utah Attorney General has acted to protect the interests of all beneficiaries of the Trust. Although the Court has heard the history of that undertaking in several other related actions filed in the last twenty months, the Utah Attorney General believes it necessary to remind the Court of the historical and procedural context in which Third District Judge Denise P. Lindberg denied the Appellants' Motions to Intervene.

History of the Trust

The United Effort Plan Trust was created by a Declaration of Trust dated November 9, 1942. R. 29-42. The members of the Trust were those who contributed property or services to it. *Id.* at 33-35. The Trust has been a source of legal contention for many years. In *Jeffs v. Stubbs*, 970 P.2d 1234, 1252-53 (Utah 1998), *cert. denied sub nom Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Bradshaw*, 526 U.S. 1130 (1999), this Court held that it was not a charitable trust, but rather a private trust; therefore, the consecration of property to the Trust by identified individuals earned them a beneficial interest.

The Trustees then amended the Trust to make it a charitable trust, thereby overcoming the adverse consequence of the Court's conclusion in *Stubbs*. R. 21-27 (hereafter "the Restated Declaration"). The Restated Declaration was signed by Rulon Jeffs in his capacity as President of the Corporation of the Presiding Bishopric of the Fundamentalist Church of Jesus Christ of Latter-Day Saints, a corporation sole.³ *Id.*

In 2004, Warren Jeffs, the Trust, and the Fundamentalist Church were sued in two different tort actions, *Jeffs v. Jeffs*, Third District Court No. 040915857, and *Ream v. Jeffs*, Third District Court No. 040918237. The *Jeffs v. Jeffs* matter involved allegations of child sexual abuse, assault, and fraud primarily against Warren Jeffs individually, but

³The Corporation of the Presiding Bishopric of the Fundamentalist Church of Jesus Christ of Latter-Day Saints, a corporation sole, will be referred to as the "FLDS Corporation Sole."

also against other defendants as alter egos of Warren Jeffs. *Ream* included claims of civil conspiracy, fraud, breach of fiduciary duties, and various negligent and intentional torts against Warren Jeffs, the Fundamentalist Church, and the Trust. Warren Jeffs was the controlling Trustee of the Trust and the Prophet of the Fundamentalist Church at the time the tort actions were filed. R. 9.

Rodney Parker served as attorney for the Trust and the Fundamentalist Church in these two tort actions until he was asked to withdraw by Warren Jeffs. *See* Motion to Withdraw filed December 16, 2004, Dockets for Third District Nos. 040918237 and 040915857. Warren Jeffs, as controlling Trustee, failed to appoint a substitute attorney to defend the Trust and left the Trust subject to default in the two tort actions. *Id.*, Entry of Default.

Rodney Parker, as former attorney for the Trust, was concerned that the Trust would be subject to a default. When he withdrew, Mr. Parker filed motions in the two tort cases on December 16, 2004, asking the district court to give notice to the Utah Attorney General's Office and Trust participants prior to a default being issued against the Trust. Addendum B, Motion to Require Notice and Memorandum in Support, Third District No. 040918237. Mr. Parker's motions asked for notice prior to default of the Trust to "all persons residing upon land owned by the United Effort Plan Trust and the Attorney General of the State of Utah." *Id.* The purpose of the notice was to allow individuals to protect their interests and the Utah Attorney General to protect the public interest in the Trust.

At this time in 2004 and early 2005, it also became apparent that the Fundamentalist Church had decided to abandon its presence in the communities in Hildale, Utah and Colorado City, Arizona. Property was subject to liquidation upon the order of Warren Jeffs. R. 9, 13. Residents on Trust property in these communities became concerned that residential Trust property would be lost because of defaults and the abandonment of the communities by the Trustees.

In response, on May 26, 2005, the Utah Attorney General's Office petitioned the district court for: (i) the removal of the then-current Trustees for breach of fiduciary duty (the failure to defend the Trust being the most obvious breach); (ii) an order compelling Warren Jeffs and the other Trustees to personally appear and file an inventory, final report, and accounting of their administration of the Trust; and (iii) the appointment of a special fiduciary to serve until the appointment of new trustees. R. 1-19.

The district court made great efforts to ensure notice of the Attorney General's Petition and subsequent proceedings before ultimately granting it. *See* Addendum C, Partial Docket (entries from 5/26/05 to 8/18/05). Personal service was made on Trustees who were not avoiding service. Substitute service was made on Trustees avoiding service. Personal service was made upon Rodney Parker, who was the registered agent of the FLDS Corporation Sole. Publications were made in newspapers in areas where Trust participants resided in Canada, Utah, Arizona, Colorado, and Texas. *Id.* (Entries for 5/31/2005, 6/07/2005, 6/08/2005, 6/09/2005, 6/10/2005, 6/14/2005, 6/16/2005, 6/20/2005, 6/21/2005, 7/29/2005, 8/1/2005, 8/18/2005). Once appointed, the Fiduciary

provided notices to each mail box in Colorado City, Arizona and Hildale, Utah.

Fiduciary's Reports, R. 3024-3101, Ex. K; R. 3701; R. 7815 & Ex. 7. The Fiduciary established a website where the district court orders could be reviewed. Fiduciary's Report. R. 4441.

Many Trust Participants nominated new trustees. Docket for Third District No. 053900848 (Entries for 07/07/2005 through 12/31/2005 and 07/12/2007 through 08/28/2007). At an August 4, 2005, hearing, the district court carefully considered the nominations and set up a procedure for additional disclosures by the nominees. R. 1464-65. Judge Lindberg also ordered the Fiduciary to file a memorandum identifying the critical issues that the court had to address before the appointment of new Trustees. R. 1465. The Fiduciary filed a memorandum identifying the following issues: (i) which Trust agreement applies, the Original Trust Agreement or the Restated Declaration and (ii) if the Restated Declaration applies, whether it needs to be reformed. R. 1544-1602.

2006 Trust Reformation and Subsequent Administration

Judge Lindberg, after considering various responses by the parties, concluded that the Restated Declaration applied, that it was a charitable trust, and that because no proposed Trustees had been nominated by the FLDS Corporation Sole, the Trust had to be reformed prior to the appointment of new Trustees. Memorandum Order of Dec. 13, 2005, R. 3452-80. After various hearings and filings, the court issued a final order on October 25, 2006, reforming the Trust. Reformed Declaration of Trust of the United

Effort Plan, R. 6537, § 4.2.⁴ This order, included here as Addendum D, was not appealed or collaterally attacked by anyone.

After appointment of the Fiduciary, the Trust was subjected to a new tort lawsuit arising from the actions of Warren Jeffs. *M.J. v. Jeffs.*, Third District Court No. 070916524. Warren Jeffs, the Fundamentalist Church, and the FLDS Corporation Sole were also named, and default certificates were obtained against these three defendants. *See* Docket, Third District Court No. 070916524. The Trust, however, is defending the claims made against it.⁵

The district court has retained supervisory jurisdiction over other administrative matters regarding the Trust. The Fiduciary has filed several reports detailing his administration of the Trust. *E.g.*, R. 3024-3101; 8390-8587; 9261-9665; 10585-91; 12557-87. Numerous factors have complicated administration of the Trust. For example, the residential property owned by the Trust in Arizona and Utah is not subdivided. Fiduciary's Report, R. 3041-45. Multiple homes are located on one lot. *Id.* The assessment and collection of property taxes is complicated because multiple residents live upon the same tax parcel. *Id.* Liquidation or distribution of Trust property to occupants

⁴This key document, like many others, is assigned a record number but is listed as "Not Found in the File" by the preparer of the record index.

⁵This civil complaint seeks damages related to same incidents for which Warren Jeffs was criminally convicted in *State v. Jeffs*, which is currently under advisement before this Court on direct appeal as Case No. 20080408-SC.

is also complicated by the lack of a subdivision. *Id.* As a result, the Fiduciary, with the approval of the district court, has sought to subdivide the property “as is” for legal description purposes only, an effort resisted by the cities of Hildale and Colorado City. Fiduciary Reports, R. 8402-04; R. 9226; R. 10589; R.11158-59.

The Reformed Trust allows the Board of Trustees (the “Board”) to distribute property outright to Trust participants, not all of whom are members of the Fundamentalist Church. The Reformed Trust states in section 6.1:

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 specially contemplated that the property conveyances to Trust Participants through the means of spendthrift trusts may be necessary to accomplish the ultimate goal of securing residences for Trust Participants.

A process has been established to claim such property, and many such petitions have been filed. Fiduciary’s Report, R. 11162. The district court acknowledged that there is no reason why members of the Fundamentalist Church could not file petitions for their homes, receive a distribution of their homes, and then contribute their homes to the religious leader of their choice. R. 16448 at 106.

The former Trustees (other than Winston Blackmore), presumably still the leaders of the Fundamentalist Church, have not appeared and filed an inventory and final accounting as ordered by the district court. Many members of the Fundamentalist Church have resisted paying their \$100 monthly occupancy fees to cover the costs of

administering the Trust and defending the lawsuits. Addendum A, R. 16381-83. In order for the trust to meet its financial obligations, the Fiduciary asked the district court to approve sale of Trust property, including the Berry Knoll Farm Property.

Although Appellant Willie Jessop admittedly had notice of the district court proceeding over four years ago, he did not appear there until August 14, 2008, when he and the other Appellants filed a Motion to Stay the scheduled November 14, 2008 hearing in St. George concerning the sale of Berry Knoll Farm. R. 13186. This was nearly two years after the district court's final, unappealed order reforming the Trust and over three years from the date the original Petition was filed by the Utah Attorney General. When that motion was denied, Appellants Willie Jessop, Dan Johnson, Merlin Jessop and others filed an original action in this Court in November 2008, in part seeking to stay the scheduled hearing at which Judge Lindberg was to hear from all interested persons concerning the proposed sale. That stay request was denied.⁶

Appellants' May 2009 Motions to Intervene

As Appellants admit, Applts.' Br. at 11, the scheduled St. George hearing was eventually postponed by agreement of the Utah Attorney General and all interested persons, who attempted to negotiate a settlement. R. 14623. Only after the Fiduciary filed a motion in early May 2009 seeking the requisite district court approval of the sale of the Berry Knoll Farm in order to pay Trust debts, R. 15126-28, 15132-72, did

⁶*Snow Christensen & Martineau v. Lindberg*, 2009 UT 72 (dismissing Rule 8A petition for emergency relief).

Appellants finally file Rule 24(a) Motions to Intervene as parties in the proceeding.⁷ R. 15201-15232; R. 15249-15287.⁸ They sought to be heard at a hearing to convey to the district court their opposition to the proposed sale of the Berry Knoll Farm. *Id.*; R. 15225 (“The [Fiduciary’s] motion appears to be an attempt to deny a majority of Trust beneficiaries, whose views Movants represent, their most fundamental right to be heard. Rule 24 is meant to prevent such procedural and substantive maneuvers that would deprive interested parties of a say in the disposition of property.”)

Judge Lindberg denied the Motions to Intervene in her July 17, 2009 “Corrected Ruling and Order on Pending Motions,” while declining to address the merits of other motions the proposed intervenors had filed. Addendum A, R. 16381-83. Contrary to Appellants’ characterization of her ruling, Applts.’ Br. at 17, Judge Lindberg did apply the Rule 24(a) standards to their intervention request:

The memoranda in support of the Motions do not persuade the Court that the proposed Intervenor are uniquely situated or have a particularized interest that satisfies the requirements of Utah Rule of Civil Procedure 24(a). Categorical assertions of interest with respect to Trust property are insufficient to establish a right to intervene under Rule 24(a). What proposed Intervenor must show—which they have not—is that they have a legally cognizable interest in any Trust property. Any “claim of interest” under Rule 24 must have a legal basis; without it, no claimant has a right to a remedy and, therefore, no right to participate as a party.

⁷As the Court can see from the Record Index, from 2008 on Appellants filed numerous motions and memoranda in the district court, over the parties’ objections, without ever seeking intervention as parties.

⁸Because Appellants’ Addenda do not include them, the motions and supporting affidavits and memoranda are included here as Addendum E.

Addendum A, R. 16381. Relying on “black letter law,” Judge Lindberg reasoned that, since “potential beneficiaries of a charitable trust have no right to make claims upon such trusts,” Appellants could not have a legally cognizable interest that would satisfy the “interest” requirement of Rule 24(a). *Id.*, R. 16382. Moreover, although Appellants had insisted that they were **not** claiming entitlement to intervention under the “special interests exception” to this common law rule, R. 15705 n.2, Judge Lindberg accepted the Arizona Attorney General’s analysis about why Appellants do not qualify for that exception. Addendum A, R. 16382 (incorporating the Arizona Attorney General’s analysis in his memorandum at R. 15606-09). She denied Appellants “standing” because they lack a legally cognizable interest under trust law. She did **not** conclude, as Appellants’ mistakenly assert, Applts.’ Br. at 16, that they lack standing in its usual sense even if they qualified for the special interest exception.

District Court Hearing July 2009

In the July 17, 2009 order challenged on appeal, Judge Lindberg scheduled a hearing on the proposed sale of the Berry Knoll Farm for July 29, 2009, at the Matheson Courthouse. Addendum A, R. 16383. She explained to the packed courtroom the purpose of the hearing and why the Trust’s debts require sale of Trust property:

The trust has incurred numerous obligations, some by choice, but many, if not the majority, solely in response to and defense of the duties that neither this Court nor the Special Fiduciary sought but which were thrust upon us and which we now must deal with.

So the purpose of today’s meeting is that since the trust cannot fulfill its purposes without money, and the trust does not have many cash producing assets, and other vehicles that we have explored for providing

some ongoing income to the trust such as the very modest occupancy fee that this Court authorized, have not been maintained or honored, then I need to look to where the strength of the trust is, the land, to look for ways to generate funds. . . . My purpose today is to listen, not to make any decisions. . . . I'm going to consider the input I receive.

Transcript of Hearing, R. 16448 at 3-4. Appellants' counsel appeared at the hearing and addressed the court, as did Appellant Willie Jessop, R. 16448 at 27-30, and more than a dozen other persons who were both for and against the proposed sale. Some of these individuals, though actual or potential beneficiaries of the Trust, are not members in good standing of the Fundamentalist Church. *See, e.g.*, Statement of Richard Ream, R. 16448 at 18-20; Statement of Jethrow Barlow, *id.* at 25 ("I'm here to say that this sale is good because it resolves the financial issues focused on by the trust. . . ."); Statement of Shane Stubbs, *id.* at 51-52; Statement of Katie Cox, *id.* at 77-78; *see also* Applts.' Br. at 11 (conceding that the court heard from a "variety of perspectives," including those of former Fundamentalist Church members). Winston Blackmore—a former trustee, FLDS bishop and Presiding Elder in Canada—disputed the claims that the Berry Knoll Farm is the breadbasket of the FLDS community; instead, it was operating at huge losses each month that Warren Jeffs wanted to stop subsidizing. According to Blackmore, they were never taught that the Berry Knoll property was prophesized to be a temple site. R. 16448 at 21, 23.

After taking the matter under advisement for nearly four months, Judge Lindberg ordered the sale of the Berry Knoll Farm property to the highest bidder to pay for Trust obligations. Revised Ruling and Order on the Motion to Approve the Sale of the Berry

Knoll Property, R. 16735-43.

The Instant Appeal

In order to participate as actual parties in the trust administration proceedings, along with the Fiduciary and the Attorneys General of Utah and Arizona, Appellants challenge Judge Lindberg's denial of their Motions to Intervene. Applts.' Br. at 33. First, they claim that she failed to apply the standard in Rule 24(a). Second, they claim to have a legal basis for the "interest" required by Rule 24(a) because they qualify for the "special interest exception" to the admittedly well-settled common law rule that the interest of a possible beneficiary of a charitable trust is "not sufficient to entitle him to maintain a suit for the enforcement of a charitable trust." *Id.* at 16, 17-23, 19, 24, 24-33. Going far beyond what their Motions to Intervene sought, Appellants ask this Court "to recognize the 'special interest exception,' find that they satisfy the exception's criteria, reverse the trial court's ruling and grant them standing to pursue the removal of the Fiduciary and his replacement by a Fiduciary with the full trust and confidence of *all* Trust Beneficiaries." *Id.* at 33 (emphasis in original).

SUMMARY OF ARGUMENT

Appellants' Motions to Intervene sought to provide Judge Lindberg with their views opposing the Trust's proposed sale of the Berry Knoll property on religious grounds. Although Judge Lindberg denied the motions, she provided Appellants (and others who opposed the sale) many opportunities to voice their concerns. Appellants repeatedly did so since August 2008 in numerous motions, memoranda, objections,

letters, and statements in person at the July 29, 2009 hearing in Third District Court. Because of this, and because a court can limit the scope of an intervenor's participation, Appellants' appeal is moot.

The "interest" required by Rule 24(a) for Appellants' mandatory intervention is defined by the Utah statutes applicable to trust proceedings, as well as by any supplemental common law rules adopted by this Court. They do not meet the statutes' requirement to intervene in this probate proceeding as "interested parties" since, as unnamed beneficiaries of a charitable trust, they lack the requisite "property right in or claim against [the] trust estate."

It is well established at common law that potential beneficiaries lack standing to enforce a charitable trust. Even if this Court adopted the common law exception to this rule as supplemental to applicable state statutes, Appellants have no special interest in its enforcement. Their status as bishops or members of the Fundamentalist Church does not give them any unique powers or preferences under the trust. The class of all potential beneficiaries of the Reformed Trust is large and ill-defined. Membership in that class, which comprises several thousands, depends on demonstrated contributions of property or services to The trust. For consecrations after 2006, the Board is given complete discretion to determine if the required contributions have been made.

The record clearly documents that Appellants cannot and do not fairly represent the interests of all Trust beneficiaries since there are deep religious and social divides among the various factions. Moreover, it is apparent from Appellants' numerous filings

below that they seek to inappropriately second guess the day to day decisions the Fiduciary has to make in administering this charitable trust. Allowing Appellants to intervene through the special interest exception would lead to more expensive and vexatious litigation against the Trust and the Fiduciary, precisely the result the common law rule against such participation was meant to prevent.

Finally, even if Appellants were held to possess a special interest in enforcement of this charitable trust, Judge Lindberg properly denied their Motions to Intervene under Rule 24. They waited far too long after the Fiduciary's 2005 appointment and the Trust's October 2006 reformation to raise any objections to the administration of the Trust or to attempt to intervene as formal parties. In any case, their intervention under Rule 24(a) is unwarranted because their interests and those of the Trust and all potential Trust beneficiaries are already being effectively represented by the Utah and Arizona Attorneys General.

ARGUMENT

I. THIS APPEAL IS MOOT SINCE APPELLANTS HAVE ALREADY RECEIVED WHAT THEY SOUGHT IN THEIR MOTIONS TO INTERVENE, I.E., A MEANINGFUL OPPORTUNITY TO OPPOSE THE PROPOSED SALE OF THE BERRY KNOLL PROPERTY

“An appeal is moot if during the pendency of the appeal circumstances change so that the controversy is eliminated, thereby rendering the relief requested impossible or of no legal effect.” *Salt Lake County v. Holliday Water Co.*, 2010 UT 45, ¶ 15, __ P.3d __ (quoting *State v. Laycock*, 2009 UT 53, ¶ 12, 214 P.3d 104).

In their Motions to Intervene, memoranda, and brief on appeal, Appellants repeatedly make it clear that they want to intervene in order to voice their opposition to the proposed sale of the Berry Knoll Farm. Although Appellants had already informed Judge Lindberg in their lengthy memoranda of the bases for this opposition, both financial and spiritual, *e.g.*, R. 15223, they asked for an opportunity to present that position to the district court at a hearing. *E.g.*, R. 15220 (“[Appellants] move to intervene pursuant to Rule 24(a) . . . to oppose the Fiduciary’s Motion [seeking approval of the sale of Berry Knoll Farm] and protect their rights.”); R.15265 (arguing that selling the property without a hearing would deny the Trust’s beneficiaries of due process); R. 15284 (“sale of the property without [Appellants’] input would be both a violation of the Reformed Trust and against the vast majority of Trust participants. . . .”).

Since that request, however, Appellants have received exactly what they asked for: a court hearing at which they could convey directly to the judge their views on this topic.⁹ That July 29, 2009 hearing was scheduled “to provide an opportunity for parties and other individuals with an interest in this case to express their views on the proposed sale of the Berry Knoll Farm.” Decorum Order, R. 1645. Attorneys representing those interested individuals, including Appellants, were allotted time to speak. *Id.* at 1645-46. Passes to

⁹Even before July 2009 the district court had consistently agreed to consider comments and input from nonparties, including Appellants, and had given notice of its hearings to anyone interested. Addendum A, R. 16381 n.1; *see also* R. 3469, ¶ 37; R. 3477, ¶ 58 (permitting Fundamentalist Church representatives or local priesthood leadership to provide input to the trustees concerning how they interpret religious principles).

the hearing were made available to the public as well as to the attorneys for distribution “to those individuals best situated to comment on the proposal during the public comment period.” *Id.* at 16416. In addition to the attorneys, others who wanted to speak at the hearing could sign up to do so. R. 16448 at 4. The Court should read for itself the competing views of interested individuals presented at that lengthy hearing, including those of Appellants. Transcript, R. 16448. For example, although Ms. Oler and Mr. Barlow opposed the proposed sale because the Berry Knoll Farm is a sacred, future FLDS temple site, R. 16448 at 13-14, 16, former trustee Blackmore disputed whether that was, in fact, a tenet of the FLDS religion, and he supported what the Fiduciary has done. R. 16448 at 21, 23.

Appellants disparage the July 29 hearing because those who spoke were not sworn or cross-examined and because those with competing views were allowed to speak. Applts.’ Br. at 11-12. But Judge Lindberg appropriately considered all the statements made at the hearing, as well as memoranda and affidavits that were submitted to her. R. 16735-36. She eventually decided to approve the sale of the Berry Knoll property—despite strenuous opposition from Appellants and others—because of the Trust’s financial obligations and lack of income stream with which to meet them. *Id.* at 16737. As Judge Lindberg made clear, her decision was not made lightly. *Id.* And that decision is not under review in this appeal.

Appellants asked to be heard as Intervenors in opposition to the sale of the Berry Knoll property. *See* Utah R. Civ. P. 24(c) (requiring prospective intervenor to set forth

“the claim or defense for which intervention is sought”). They have been heard repeatedly on this point: in their various memoranda, R. 13193-95, R.15219-30; R.15264-73; in their affidavits, R. 15201-15; R. 15249-54; R. 15257-61; and at the July 2009 hearing, R. 16448. *See Taylor-West*, 2009 UT 86, ¶ 12 (noting trial court can limit the issues an intervenor can litigate). That Appellants ultimately did not succeed in persuading Judge Lindberg to bar the sale of the Berry Knoll Farm does not mean that they were not given a meaningful opportunity to be heard on this topic.

Because Appellants have already received the limited relief they were seeking in their Motions to Intervene, their appeal from the denial of those motions is now moot. *Holliday Water Co.*, 2010 UT 45, ¶ 15; *Laycock*, 2009 UT 53, ¶ 12.

II. APPELLANTS DO NOT SATISFY THE STATUTORY OR COMMON LAW REQUIREMENTS FOR STANDING TO ENFORCE THE REFORMED UEP TRUST OR TO CHALLENGE THE SALE OF TRUST PROPERTY TO PAY TRUST DEBTS

Appellants first argue that they satisfy all the criteria in Rule 24(a), then argue that they qualify for the “special interest exception.” This analysis is backwards: unless their participation as parties would satisfy the relevant statutes (the Probate Code and the Trust Code) as well as the “special interest exception” in the common law of trusts if it supplements the statutes, they do not and cannot have the “interest” required of putative intervenors by Rule 24(a). In other words, the statutes and common law governing who can enforce charitable trusts defines their “interest” (or lack of it) for purposes of Rule 24(a), not the intervention rule itself or the caselaw interpreting or applying the rule in

different fact situations. *See* Utah Code Ann. § 75-1-304 (West 2004) (stating rules of civil procedure govern in probate proceedings unless they are inconsistent with the Utah Uniform Probate Code).

Proceedings in probate, including trust administration proceedings such as this one, are unlike typical civil actions. The former are usually *in rem* proceedings, while the latter involve parties plaintiff (or petitioner) and defendant (or respondent). The district court is given exclusive jurisdiction of trust proceedings commenced by interested parties concerning the internal affairs of trusts. Utah Code Ann. § 75-7-201(1)(a) (West 2004); *see also id.* § 75-7-203. Nonetheless, “administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention. . . subject to the jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by law.” *Id.* § 75-7-201(2)(b). There is no statutory definition of the term “interested parties,” but the Utah Uniform Probate Code defines “interested persons” as including

heirs, devisees, children, spouses, creditors, beneficiaries, and any others **having a property right in or claim against a trust estate.** . . . The meaning as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

Id. § 75-1-201(24) (West 2004) (emphasis added). Significantly, the legislature has expressly provided that the common law of trusts and principles of equity supplement the Uniform Trust Code, Title 75, chapter 7, “except to the extent [the common law is] modified by this chapter or laws of this state.” *Id.* § 75-7-106 (West 2004).

Under Utah law, a charitable trust is one “created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.” *Id.* § 75-7-405(1) (West 2004). A charitable trust may be enforced by “[t]he settlor. . . among others. . . .” *Id.* § 75-7-405(3).

Although Utah’s appellate courts have not addressed the question, it is generally held that the Attorney General is a proper party to enforce a charitable trust as representative of the sovereign; this is rooted in the common law power of *parens patriae*. Ronald Chester and George Bogert, *Trusts & Trustees* §§ 411 at 11 (3rd ed. 2005) (hereafter “Chester & Bogert”) (collecting cases). There is a sound policy reason for vesting in a single public authority the discretion and power to enforce charitable trusts, instead of leaving it to the numerous, changing, and uncertain members of the group to be aided: “The persons affected by such trusts are usually some or all of the members of a large and shifting class of the public. If any member of this class who deemed himself qualified might begin suit, the trustee might be subjected to unnecessary litigation.” *Id.*, § 411 at 13; *accord id.* § 414 at 48; *State ex rel. Nixon v. Hutcherson*, 96 S.W.3d 81, 84 (Mo. 2003) (quoting Bogert). Thus, potential beneficiaries of a charitable trust lack standing to bring suit to enforce it. Chester & Bogert, § 414 at 47; *e.g.*, *Nixon*, 96 S.W.3d at 84.

An exception to this common law rule has been recognized by some courts for those with a “special interest in the enforcement of the charitable trust.” Restatement

(Second) of Trusts § 391 (1959); Chester & Bogert, § 414 (collecting cases). Appellants list factors relevant to determining who has a sufficient special interest to qualify for the exception, Applts' Br. at 26, but their cited source contains no such laundry list. Instead, courts that have considered the matter have looked at various factors, with some overlap, but no consensus. Outcomes have varied depending on, among other things, the particular facts of the cases, the wording of the applicable state statutes, or the states' common law precedents pertaining to charitable trusts.

For example, several courts have held that those invoking the exception must be among a class of potential charitable trust beneficiaries that is "sharply defined and limited in number." *Public Benevolent Trust v. Humane Soc'y of Indianapolis, Inc.*, 829 N.E.2d 1039, 1047 (Ind. App. 2006); *accord Hooker v. Edes Home*, 579 A.2d 608, 614 (D.C. App. 1990); *Alco Gravure, Inc. v. Knapp Fdn.*, 64 N.Y. 2d 458, 479 N. E.2d 752, 755 (1985), *amendment denied*, 67 N.Y.2d 717, 490 N.E.2d 861 (1986); 5 Scott & Ascher on Trusts (5th ed. 2008) § 37.3.10 at 2443 ("It would seem that, **when a charitable trust is for the benefit of a reasonably limited class of persons**, any one or more of them ought to be able to sue on behalf of themselves and the other members of the class to enforce the trust. . . .") (emphasis added); *but see Hooker*, 579 A.2d at 614 (noting that even a small and distinct class of beneficiaries can subject the trust to recurring litigation).

In Missouri, one's status as a potential beneficiary is insufficient to demonstrate a "special interest." *Nixon*, 96 S.W.3d at 85. In Massachusetts, private parties are allowed

to make claims against a public charity if they assert interests in the charities that are “distinct” from those of the general public, but “[i]n each such case the claim has arisen from a personal right that directly affects the individual member, such as where the member has a right to exercise a vote in connection with some aspect of the charity’s affairs . . . and is prohibited from doing so.” *Weaver v. Wood*, 680 N.E.2d 918, 923 (Mass. 1997) (referring to one of petitioners’ claims in *Lopez v. Medford Community Center, Inc.*, 424 N.E.2d 229 (Mass. 1981), for which standing was granted). Another court has required putative intervenors in a charitable trust proceeding to represent a class of trust beneficiaries entitled to “preference” in the distribution of trust funds. *Alco Gravure*, 479 N.E.2d at 756. Others have considered the nature of the challenge to the trustee’s acts, distinguishing exceptional special interest cases from those that merely challenge ordinary exercises of the trustee’s discretion in administering a charitable trust. *E.g., Hooker*, 579 A.2d at 614-15; *Lopez*, 424 N.E.2d at 166-67 (refusing standing to petitioners for their claims of mismanagement in the charitable trust’s administration).

One commentator has culled from the many cases and treatises a list of factors frequently considered important by courts faced with the question of whether certain petitioners have a special interest that gives them standing to challenge certain aspects of a charitable trust’s administration. These are: (1) the nature of the benefitted 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 a trust; (4) the presence of fraud or misconduct on the part of the defendants; and (5)

subjective and case-specific circumstances. Mary Grace Blasko *et al.*, “Standing to Sue in the Charitable Sector,” 28 U.S.F.L. Rev. 37, 61-82 (Fall 1993).

Appellants satisfy neither the statutory standard for standing as parties in this trust proceeding nor the common law criteria to the extent they supplement Utah’s statutes.

A. Appellants Lack Standing Under the Applicable Statutes.

Appellants do not satisfy the statutory prerequisite for parties in trust proceedings because they have no “property right in or claim against [the UEP] trust estate.” Utah Code Ann. § 75-1-204(24); *see Robert Schalkenbach Fdn. v. Lincoln Fdn., Inc.*, 91 P.23d 1019, 1028 (Ariz. App. 2004) (concluding challengers to charitable trust administration do not qualify as “interested parties” under the same statutory language), *review denied*. Although Appellants are certainly concerned about the disposition of trust assets that they consider sacred to their religion, this is not enough to give them a property right or claim to that property. *See Weaver*, 680 N.E.2d at 921, 923 (concluding “life-long members in good standing” of the First Church of Christ, Scientist, lack an enforceable legal interest in the administration of the trust established to operate the Church). This conclusion is supported by the Reformed Trust itself:

No Trust Participants 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 just wants and needs of a Trust participant shall be made in the sole and absolute discretion of the Board.

Addendum D, Reformed Trust, § 6.2.

Because Appellants do not satisfy the criterion set by the Utah Legislature for their

participation as interested parties in this trust proceeding, they do not have the “interest” required by Rule 24(a) for mandatory intervention.

B. Appellants Do Not Qualify for the Common Law’s Special Interest Exception

Even if this Court were to recognize the common law’s special interest exception in Utah as supplementary to Utah’s statutes and to then consider the various factors used by other courts for determining who can enforce a charitable trust, Appellants would not meet the “interest” requirement in Rule 24(a).

1. There is no “sharply defined” or “small class” of potential beneficiaries.

Participants in the Reformed Trust include

[i]ndividuals 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. . . .

Addendum D, Reformed Trust, § 4.2. “Contributions” to the Trust “may be in the form of real and personal property of any nature and may also include consecrations of time, money and materials and improvements to the Trust Property *Id.* at § 3.2.

The class of potential beneficiaries is ill-defined because participation is contingent on demonstrating contributions and on Board approval. *See* Addendum D, Reformed Trust, § 6.2. Moreover, the class is not small. As Appellants repeatedly state, there are thousands of FLDS members. All of them, as well as many non-FLDS members who have made or will make qualified contributions, are current or potential Trust

beneficiaries, leading to a large enough group to subject the Trust to “recurring vexatious litigation.” *Hooker*, 579 A.2d at 612; *see also Kania v. Chatham*, 254 S.E. 2d 528, 530 (N.C. 1979) (refusing standing to an unsuccessful nominee of a scholarship funded by a charitable trust because granting standing “would only open the door to similar actions by [hundreds] of other unsuccessful nominees now and in the future.”); *Williams v. Bd. of Trustees of Mount Jezebel Baptist Church*, 589 A.2d 901, 909 (D.C. App. 1991) (refusing to grant standing to a group that would be “uncertain and limitless”).

The Reformed Trust itself recognizes that the potential beneficiaries are large in number and indefinite in composition. Addendum D, Reformed Trust, E.1. In contrast, the cases relied on by Appellants pertained to small groups of well-defined beneficiaries of the charity: indigent, aged widows, *Hooker*, 579 at 615; and employees of a founder’s corporation and their families, *Alco Gravure*, 479 N.E.2d at 756.

2. The interests of Appellants, who have no preferential status under the Trust, conflict with those of many other Trust beneficiaries. It is apparent from the numerous filings and transcripts from the district court proceedings, noted above, as well as from the actions already filed before this Court concerning the Trust, that Appellants do not and cannot represent the interests of all current and potential beneficiaries. There are sharp religious and nonreligious factors that divide the entire class of actual and potential beneficiaries into several splinter groups. *See, e.g.,* Statement of Patrick Pipkin, R. 16448 at 47-50 (Trust participant supporting Fiduciary); Statement of Katie Cox, R. 16448 at 78-79 (Advisory Board member describing different factions among Trust

participants); Statement of Carolyn Jessop, R. 16448 at 42 (disputing claim that faithful FLDS members comprise 95% of the Trust beneficiaries). Furthermore, Appellants are given no rights and no preferential status as Trust beneficiaries over any other potential beneficiaries just because they are bishops or members in good standing of the Fundamentalist Church. In this circumstance, allowing Appellants to intervene as parties would surely be unfair to those other beneficiaries. It would also undoubtedly open the floodgates to additional expensive and contentious litigation against the Fiduciary and the Trust.

3. Appellants moved to intervene to challenge the routine exercise of the Fiduciary's discretion, a sale of Trust property, which obtained judicial approval. There is nothing extraordinary about the Fiduciary's decision to sell Trust assets, a power authorized by section 5.35 of the Reformed Trust whose exercise has already been approved in this instance by Judge Lindberg. Appellants seek through intervention to usurp the oversight authority of the district court and to then micro-manage the daily administration of the Trust, contrary to section 75-7-201(2)(b). Judge Lindberg correctly denied their attempt to do so via Rule 24(a). *See Hooker*, 579 A.2d at 614-15; *Lopez*, 424 N.E.2d at 166-67.

Moreover, Appellants seek broader relief on appeal than they sought in their Motions to Intervene. If granted party status, they would be positioned to paralyze or bankrupt the Trust by litigating every administrative decision they disagree with, by any court-appointed Fiduciary who did not routinely do their bidding. Meanwhile, Judge

Lindberg has never found any fraud or misconduct in the proposed sale of Berry Knoll Farm or any other actions taken by the Fiduciary thus far,¹⁰ despite repeated allegations by Appellants and some others who oppose many of the actions taken by the Fiduciary.

4. The Utah and Arizona Attorneys General have diligently and effectively enforced the Trust. For five years the attorneys general have attempted to enforce the UEP Trust to protect the interests of all potential beneficiaries, not just those who are favored by Appellants and other members in good standing of the Fundamentalist Church. Some proposals they have made to Judge Lindberg have been accepted and others rejected, such as the Settlement Agreement proposed by the Utah Attorney General, but they are not accountable for her exercises of the discretionary powers granted to her to oversee the administration of this charitable trust. *See In re Milton Hershey School*, 911 A.2d 1258, 1263 (Pa. 2006) (concluding alumni association's disagreement with attorney general's decision to modify trust that supports their school "does not vest the Association with standing to challenge that decision in court").

In sum, because Appellants do not meet the statutory or common law criteria for standing to enforce the UEP charitable trust, Judge Lindberg's order denying them intervention should be affirmed.

¹⁰The Arizona Court of Appeals has wisely given little weight to allegations of fraud and misconduct by putative intervenors, which are easy to make. In that court's view, doing otherwise would lead to erosion of the protection of the trustees from vexatious litigation, one acknowledged purpose of limits on private individual standing to enforce charitable trusts. *Robert Schalkenbach Fdn.*, 91 P.3d at 1026 & n.7.

III. EVEN IF APPELLANTS QUALIFY FOR THE SPECIAL INTEREST EXCEPTION, THE DISTRICT COURT PROPERLY DENIED THEM INTERVENTION UNDER RULE 24(a)

Under Rule 24(a), a movant must file a “timely application” for intervention and must show that his or her interests are not “adequately represented by existing parties.” Even if Appellants had the requisite interest conferring standing to enforce the UEP Trust under Utah statutes and the common law’s special’s interest exception, Judge Lindberg nonetheless correctly denied them intervention since they satisfy neither of these prerequisites under the rule.

A. The Motions to Intervene are Untimely.

First, Appellants’ Motions to Intervene are untimely. Appellants had notice of the Trust proceedings since the Utah Attorney General’s May 2005 petition was filed. *See supra* at 7-8. Yet Appellants did not file their Motions to Intervene until May 2009. In the interim, Judge Lindberg’s October 2006 order reforming the Trust was a final judgment that was not appealed. Intervention after final judgment is not permitted under Rule 24(a). *Jenner v. Real Estate Servs.*, 659 P.2d 1072, 74 (Utah 1983). Appellants simply waited too long to try to become parties in this litigation.

Second, Appellants’ efforts to become parties through intervention under Rule 24(a) are, at bottom, collateral attacks on the actions of the Fiduciary dating back to his appointment in 2005. These belated challenges are barred by laches due to Appellants’ lack of diligence and injury to the Trust, the Fiduciary, and other potential beneficiaries resulting from their delay in attempting to object or to formally intervene. *Papanikolas*

Bros. Enterpr. v. Sugarhouse Shopping Center Assocs., 535 P.2d 1256, 1260 (Utah 1975).

Appellants waited nearly two years before voicing any objections to the reformation of the Trust or to the Fiduciary's powers to deal with Trust assets. In the meantime, the Fiduciary reasonably relied upon the absence of objections to the reformation or to his ongoing administration of the Trust. Appellants waited almost another year before filing their Motions to Intervene. During those three years the Fiduciary sold property, entered into leases and other commitments on behalf of the Trust, made outlays, defended the Trust in legal actions, and incurred obligations. These cannot be undone at this late date. Moreover, other beneficiaries and those who have dealt with the Trust through the Fiduciary have changed their positions in reliance on his authority to administer the Trust. As Judge Lindberg previously concluded—in an unappealed order rebuffing Appellants' efforts to stay the planned hearing in St. George about the sale of the Berry Knoll Farm—any attempts by Appellants to challenge the district court's authority and jurisdiction over the Reformed Trust are barred by laches. Order of Nov. 10, 2008, R. 14083 at ¶ 37.

B. Appellants' Interests are Adequately Represented.

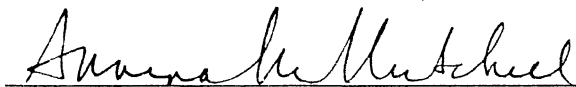
Intervention is not mandated under Rule 24(a) if the putative intervenor's interests are already being adequately represented in the proceeding. As discussed above in Point II4, the interests of Appellants and all potential Trust beneficiaries are already being vigorously and effectively represented by the Attorneys General of Utah and Arizona. That Appellants have not always gotten what they want from the Attorneys General does

not render these parties ineffective. It merely reflects the facts that not everything the Appellants want is in what the Attorneys General regard as the best interests of the Trust or all potential beneficiaries of this charitable trust and that not everything Appellants demand is possible or economically wise.

CONCLUSION

For the foregoing reasons, the Utah Attorney General asks this Court to affirm the district court's order of July 17, 2009 denying Appellants' Motions to Intervene.

Respectfully submitted this TH13 day of July, 2010.

A handwritten signature in cursive script, reading "Annina M. Mitchell", written over a horizontal line.

ANNINA M. MITCHELL
Utah Solicitor General
TIMOTHY A. BODILY
Assistant Utah Attorney General
Counsel for Utah Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July, 2010, I caused two copies of the foregoing BRIEF OF UTAH ATTORNEY GENERAL to be to be mailed, with first class postage prepaid, to the following:

James C. Bradshaw (3768)
jim@brownbradshaw&moffat.com
BROWN, BRADSHAW & MOFFAT
10 West Broadway, Suite 210
Salt Lake City, UT 84101

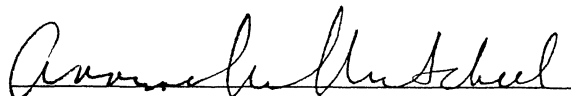
Rodney R. Parker
Richard A. Van Wagoner
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, 11th Floor
Salt Lake City, UT 84111
rparker@scmlaw.com

Kenneth A. Okazaki
Stephen C. Clark
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main Street, Suite 1500
Salt Lake City, UT 84101
kokazaki@joneswaldo.com

Jeffrey L. Shields
Mark Callister
Zachary Shields
CALLISTER NEBEKER & MCCULLOUGH
10 East South Temple, Suite 900
Salt Lake City, UT 84133
jlshields@cnmlaw.com

Roger H. Hoole
Gregory N. Hoole
HOOLE & KING
4276 S. Highland Drive, Suite 100
Salt Lake City, UT 84124
rrh@hooleking.com

William A. Richards
Bill.Richards@AZAG.gov
Assistant Arizona Attorney General
1275 West Washington Street
Phoenix, AZ 85007-2926



ADDENDA

ADDENDUM A

FILED DISTRICT COURT
Third Judicial District

JUL 17 2009

SALT LAKE COUNTY

Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH
SALT LAKE DEPARTMENT

IN THE MATTER OF THE UNITED EFFORT
PLAN TRUST

:
:
:
:
:
:
:

**CORRECTED
RULING AND ORDER ON PENDING
MOTIONS**

Case No. 053900848

Judge Denise Posse Lindberg

Date: July 17, 2009

This matter is before the Court on a number of Motions that have been submitted for decision or are otherwise ripe for determination. They are (1) Willie Jessop's, Dan Johnson's and Merlin Jessop's Motion to Intervene; (2) Lyle Jeffs' and James Oler's Motion to Intervene; (3) Potential Intervenors' Motion to Stay Proceedings, to Replace Special Fiduciary and to Enjoin Further Actions of Special Fiduciary Pending Evidentiary Hearing; (4) Motion for Expedited Discovery; (5) Special Fiduciary's Motion for Relief to Preserve Assets of the Trust; and (6) Arizona Attorney General's Motion for Partial Lift of Stay. Having considered the Motions, the Court rules as follows:

Motions to Intervene and Proposed Intervenors' Other Motions

All the Motions to Intervene are DENIED. The Court has previously determined that individuals who may be potential Trust beneficiaries have no standing to intervene in this action. The memoranda in support of the Motions do not persuade the Court that the proposed Intervenors are uniquely situated or have particularized interest that satisfies the requirements of Utah Rule of Civil Procedure 24(a). Categorical assertions of interest with respect to Trust property are insufficient to establish a right to intervene under Rule 24(a). What proposed Intervenors must show—which they have not—is that they have a legally cognizable interest in any Trust property. Any “claim of interest” under Rule 24 must have a legal basis; without it, no claimant has a right to a remedy and, therefore, no right to participate in the case as a party.¹

¹ 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.

It is black letter law that potential beneficiaries of charitable trusts have no right to make claims upon such trusts. Because the UEP Trust is a charitable trust, the only individuals with legally cognizable interests are the Utah and Arizona Attorneys General (A.G.s) as representatives of the community, and the Court-designated Special Fiduciary. The Court reaffirms its prior rulings on standing. The Court also relies upon and incorporates by reference the analysis set forth in Section II.a of the Arizona Attorney General's Office's Memorandum in Opposition to Movants' Motion to Stay Proceedings, to Replace Special Fiduciary, and to Enjoin Further Action of Special Fiduciary.² Because the Motions to Intervene must be denied for lack of standing, the proposed Intervenor's remaining motions are also DENIED.

Lifting of Stay/Sale of Berry Knoll property

The Special Fiduciary's Motion for Relief to Preserve Assets of the Trust, and the Arizona A.G.'s Motion for Partial Lift of Stay are GRANTED. During the telephonic status conference held on May 27, 2009, the Court reiterated its position(also expressed during the January 20, 2009 telephonic status conference) that the stay of the proposed sale of the Berry Knoll Farm was predicated upon the timely and unconditional payment of the monthly fees charged for use or occupancy of UEP Trust property. As detailed in the Court's written ruling of June 1, 2009, during its off-the-record meeting with all counsel on November 14, 2008, the Court was asked to stay the proposed sale of the property and grant the various participants a period of time to explore settlement. To induce the Court to take that action, and as a show of "good faith" by the FLDS community, the Court was promised that monthly payments of approximately \$64,000 would be made timely to the Utah A.G. Those payments would then be forwarded to the Special Fiduciary and would be used to meet the Trust's financial obligations. However, at the May 27th telephonic conference the Court was informed that the promised payments had not been forthcoming. In light of that information the Court unequivocally ordered that the unpaid occupancy fees be paid "forthwith." Although the payments were five months delinquent, the Court allowed the FLDS to catch-up their payments, in full, through two equal installments payable on June 1 and June 15, 2009. A few days later, on June 1, 2009, the Court issued a written ruling that restated its Order and clarified that the payments were to be made unconditionally. Furthermore, the Court made it clear that if the terms of its Order were not complied with fully, the stay would be lifted and the Court would promptly proceed to consider the proposal to sell the Berry Knoll Farm.

Notwithstanding the Court's Order, and its further requirement that the Utah A.G. immediately forward the payments to the Special Fiduciary for his use in meeting Trust obligations, the payments were made "under protest." That designation effectively rendered the funds unusable by the Special Fiduciary. Further, the Utah A.G. agreed with FLDS representatives that he would not disburse the second payment without FLDS approval. That side agreement is inconsistent with the Court's prior Orders. The Court concludes that the promises and representations upon which the stay of the sale and litigation were predicated have not been honored. As a result, badly-needed funds have not been available

²The Special Fiduciary also filed an opposition, asserting that the Trust lacked sufficient funds to defend against the Motion. The Special Fiduciary requested a hearing to resolve any factual disputes underlying the motions. Because the Motions are resolved on the issue of

to meet the Trust's pressing obligations. Therefore, within two business days of the issuance of this Ruling and Order, the Utah A.G. is ordered to deposit with the Court all of the funds received to date from/on behalf of the FLDS. The Court will distribute the funds to the Trust to meet its obligations.

Additionally, the Court has no choice but to proceed promptly to set a hearing on the proposed sale of the Berry Knoll Farm. The hearing will be held on Wednesday, July 29, 2009, from 9:00 a.m. to noon, in courtroom W-46 at the Matheson Courthouse. Because of the limited seating available in the courtroom, and in order to avoid potential disruption of other court hearings at the Matheson Courthouse that day, a decorum order for that hearing will be forthcoming shortly.

Settlement proposals

The Court has received, and is in the process of reviewing, various settlement proposals that have been filed. The Court is also reviewing the comments received by the June 30th deadline. Although the Court's review is not yet complete, it is apparent that there remain widely divergent views on what the appropriate course of action should be. Because of their roles as community representatives in this action, the fact that the Utah and Arizona A.G.s have taken such divergent positions regarding the viability of any settlement is of significant concern. The Court is studying all submissions and considering its options; the Court will announce its decision(s) as promptly as possible.

ORDER

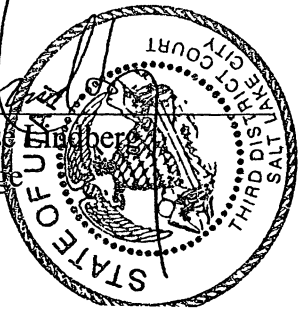
For the reasons stated in this Ruling and Order, the various pending Motions to Intervene and all other motions brought by proposed Intervenors, are hereby DENIED.

A hearing on the sale of the Berry Knoll property will take place on Wednesday July 29, 2009, between 9:00 a.m. and noon, in W-46 of the Matheson Courthouse in Salt Lake City.

two business days
Within ~~48 hours~~ of the issuance of this Ruling and Order, the Utah A.G. shall deposit with the Court all funds received from/on behalf of the FLDS in connection with this action. The Court will assume responsibility for disbursal of the funds to the Special Fiduciary in order to ensure that the Trust's financial obligations are addressed.

SO ORDERED BY THE COURT this ²⁷~~17~~ day of July, 2009.

Denise Fosse
Judge Denise Fosse
District Court Judge



ADDENDUM B

RODNEY R. PARKER (A4110)
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

*Attorneys for Defendants Fundamentalist Church and
United Effort Plan Trust*

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

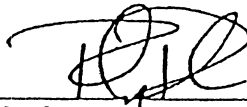
BRENT JEFFS,)	MOTION TO REQUIRE NOTICE
)	
Plaintiff,)	No. 040915857
)	
v.)	Judge Stephen L. Henriod
)	
WARREN STEED JEFFS, <i>et al.</i> ,)	
)	
Defendants.)	
)	

Rodney R. Parker, of Snow, Christensen & Martineau, moves that the Court, prior to entry of any default judgment against the United Effort Plan Trust in this case, require the plaintiff to give notice of the pendency of such action to all non-parties who would potentially be adversely affected by, or have standing to object to, such action, including all persons residing upon land owned by the United Effort Plan Trust and the Attorney General of the State of Utah, such notice to be sufficient to give such persons reasonable opportunity to protect their own in-

terests, to the extent they have such interests, prior to the entry of any default judgment against the United Effort Plan Trust. This motion is supported by an accompanying memorandum.

DATED this 16 day of December, 2004.

SNOW, CHRISTENSEN & MARTINEAU

By 
Rodney R. Parker
Attorneys for Defendants Fundamentalist Church
and United Effort Plan Trust

N:\14781 J3\MOTION TO REQUIRE NOTICE_1.DOC 12/16/04

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached MOTION TO REQUIRE
NOTICE was served by U.S. Mail on December 16, 2004, as follows:

ROGER H HOOLE
HOOLE & KING LC
4276 HIGHLAND DR
SALT LAKE CITY UT 84124-2634

JOANNE L SUDER
THE SUDER LAW FIRM PA
120 E LEXINGTON ST STE 100
BALTIMORE MD 21202-1703



RODNEY R. PARKER (A4110)
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

*Attorneys for Defendants Fundamentalist Church and
United Effort Plan Trust*

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

BRENT JEFFS,)	MEMORANDUM IN SUPPORT OF
)	MOTION TO REQUIRE NOTICE
Plaintiff,)	
)	No. 040915857
v.)	
)	Judge Stephen L. Henriod
WARREN STEED JEFFS, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

Rodney R. Parker, of Snow, Christensen & Martineau, submits this memorandum in support of its motion that the Court, prior to entry of any default judgment in this case, require the plaintiff to give notice of the pendency of such action to all non-parties who would potentially be adversely affected by, or have standing to object to, such action, including all persons residing upon land owned by the United Effort Plan Trust and the Attorney General of the State of Utah, such notice to be sufficient to give such persons reasonable opportunity to protect their

own interests, to the extent they have such interests, prior to the entry of any default judgment against the United Effort Plan Trust.

The United Effort Plan Trust was initially formed in 1942 as a common law trust to facilitate the ownership of real property in the Hildale, Utah and Colorado City Arizona area for the benefit of members of the Fundamentalist Church of Jesus Christ of Latter-Day Saints. In *Jeffs v. Stubbs*, 970 P.2d 1234 (Utah 1998), the Utah Supreme Court held that the Trust was a private trust and that its beneficiary was Rulon T. Jeffs.

In 1998, the Declaration of Trust was amended and restated with the consent of Rulon T. Jeffs to provide that it was a charitable trust, formed for the charitable purpose of supporting the “effort and striving on the part of Church members toward the Holy United Order.” No court has yet ruled on the character of the Trust as charitable or private following the amendment, or who the beneficiaries might be if the Trust is not deemed to be a charitable trust.

Pursuant to the Declaration of Trust both before and after its amendment, hundreds of members of the FLDS Church have constructed homes on real property owned by the United Effort Plan Trust. In three cases, courts have held that such occupants have enforceable interests in the use of premises they occupy, on the basis of application of the doctrine of unjust enrichment. *Jeffs v. Stubbs*, *supra*; *United Effort Plan Trust v. Holm*. No. CV-2000528, Superior

Court of Mohave County, State of Arizona¹; *United Effort Plan Trust v. Chatwin*, No. CV-04-83, Superior Court of Mohave County, State of Arizona (appeal pending). No court has yet determined whether or not an occupant of the land would stand in the position of a “beneficiary” of the Trust.

Under those rulings, it is possible that occupants of Trust property may have rights which would be adversely affected in the event judgment is entered against the Trust.

If a judgment is entered against the Trust following a full defense on the merits, then it seems that occupants’ due process rights will have been protected. If, however, the trustees do not defend the interests of the Trust, the occupants should be given notice, be advised to obtain counsel, and be given an opportunity to protect their own interests, to the extent they have such interests, prior to the entry of any default judgment against the Trust. In addition, to the extent the Trust is deemed to be a charitable trust, an appropriate representative of the beneficial interest, such as the Utah Attorney General, should be notified as well.

¹ On November 30, 2004, the Arizona Court of Appeals reversed the decision in *United Effort Plan v. Holm* on procedural grounds, holding that the tenancy and compensation claims raised in that case must be decided in a civil action rather than in a summary eviction proceeding.

DATED this 16 day of December, 2004.

SNOW, CHRISTENSEN & MARTINEAU

By

A handwritten signature in black ink, appearing to be "R. Parker", written over a horizontal line.

Rodney R. Parker

Attorneys for Defendants Fundamentalist Church
and United Effort Plan Trust

N 14781-33-MOTION TO REQUIRE NOTICE_MEM_1 DOC 12-16 04

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached MEMORANDUM IN SUPPORT OF MOTION TO REQUIRE NOTICE was served by U.S. Mail on December 16, 2004, as follows:

ROGER H HOOLE
HOOLE & KING LC
4276 HIGHLAND DR
SALT LAKE CITY UT 84124-2634

JOANNE L SUDER
THE SUDER LAW FIRM PA
120 E LEXINGTON ST STE 100
BALTIMORE MD 21202-1703



ADDENDUM C

Amount Due:	20.00
Paid In:	20.00
Paid Out:	20.00

TRUST DETAIL

Trust Description:	Other Trust
Recipient:	UTAH STATE OF
Amount Due:	192,600.00
Paid In:	192,600.00
Paid Out:	192,600.00

CASE NOTE

PROCEEDINGS

5-26-05 Case filed
5-26-05 Judge ROBERT ADKINS assigned.
5-26-05 Filed: Utah Attorney General's Petition for Removal of Current Trustees and appointment of New Trustees
5-26-05 Filed: Private Beneficiaries Pretition for Removal of Current Trustees and Appointment of New Trustees
5-26-05 Filed: Notice of Interested Parties and Response to Petitioners
5-26-05 Filed: Utah Attorney General's Ex-Parte Motion for Immediate Appointment of Special Fiduciary and Suspension of the Trustees
5-26-05 Filed: Memorandum in Support of Utah Attorney General's Ex-Parte Motion for Immediate Appiontment of Special Fiduciary and Suspension of Trustees
5-27-05 Issued: Temporary Restraining Order
Judge ROBERT ADKINS
5-27-05 Filed: Utah Attorney General's ex-parte motion for immediate appointment of special fiduciary and suspension of the trustees
5-27-05 Fee Account created Total Due: 2.50
5-27-05 Fee Account created Total Due: 4.00
5-27-05 CERTIFIED COPIES Payment Received: 2.50
Note: 20.00 cash tendered.
5-27-05 CERTIFICATION Payment Received: 4.00

inted: 11/19/09 13:25:43

Page 19

SE NUMBER 053900848 Trust

-27-05 Filed order: Ex Parte Order Granting Request for Special Notice of Hearing
Judge ROBERT ADKINS
Signed May 27, 2005
-27-05 Filed order: Ex-Parte Temporary Restraining Order Appointing a Special Fiduciary and Suspending Trustee
Judge ROBERT ADKINS
Signed May 27, 2005
-27-05 Fee Account created Total Due: 2.50
-27-05 Fee Account created Total Due: 4.00
-27-05 CERTIFIED COPIES Payment Received: 2.50
-27-05 CERTIFICATION Payment Received: 4.00
-27-05 Filed: Notice of interested parties and response to petitions

05-27-05 EVIDENTIARY HEARING scheduled on June 06, 2005 at 10:00 AM in
Fourth Floor - S44 with Judge ADKINS.

05-27-05 Filed: Media request for still photography in courtroom

05-27-05 Minute Entry - Probate Minutes

Judge: ROBERT ADKINS

Clerk: patj

PRESENT

Petitioner's Attorney: TIMOTHY A BODILY

Video

Tape Count: 10.20

This case is before the court for a TRO. T. Bodily, J Kerry and J. Shields, Roger Hoole and Greg Hoole appeared. The court takes its ruling under advisement.

05-31-05 Issued: Amended Temporary Restraining Order

Judge ROBERT ADKINS

05-31-05 Filed: Memorandum in support of Utah Attorney General's
ex-parte motion to amend temporary restraining order

05-31-05 Minute Entry - Probate Minutes

Judge: ROBERT ADKINS

Clerk: patj

PRESENT

Petitioner's Attorney: TIMOTHY A BODILY

Video

Tape Count: 2.00

This case is before the court on Utah Attorney General's ex-parte motion to amend the temporary restraining order. The court finds the amended order narrows the effect of the order and approves the amended order.

05-31-05 Filed: Utah Attorney General's ex-parte motion to amend
temporary restraining order

Printed: 11/19/09 13:25:44

Page 20

CASE NUMBER 053900848 Trust

05-31-05 Filed: Utah Attorney General's Ex-Parte Motion to Amend
Temporary Restraining Order

05-31-05 Filed: Memorandum in Support of Utah Attorney General's
Ex-Parte Motion to Amend Temporary Restraining Order

05-31-05 Filed order: Amended Ex-Parte Temporary Restraining Order
Appointing a Special Fiduciary and Suspending the Trustees

Judge ROBERT ADKINS

Signed May 31, 2005

05-31-05 Filed: Certificate of Service

06-02-05 Filed: Detail incident - Washington County Sheriff's Office
5/28/05

06-03-05 Filed: Motion and consent of sponsoring local counsel for pro
hac vice admission of William A Richards

06-03-05 Filed: Motion for leave to intervene as interested party

06-03-05 Filed: Affidavit of Sam Brower
06-06-05 EVIDENTIARY HEARING scheduled on June 16, 2005 at 10:00 AM in
Fourth Floor - S44 with Judge HIMONAS.
06-06-05 Minute Entry - Probate Minutes
Judge: ROBERT ADKINS
Clerk: patj
PRESENT
Petitioner's Attorney: TIMOTHY A BODILY
Video
Tape Count: 11.19

Timothy Bodily appearing for the Utah Attorney General's Office,
Randy Hunter appearing for the Arizona Attorney General's Office,
Jeff Shield, Roger Hoole, Greg Hoole and Marlene Mone appearing.
The petitioner makes a motion to continue the TRO. The court
grants the motion. The TRO is continued for ten days to June 16 at
10 AM before Judge Himonas.

6-06-05 Issued: Temporary Restraining Order
Judge ROBERT ADKINS
6-06-05 Filed order: Extension of Temporary Restraining Order
Appointing a Special Fiduciary and Suspending the Trustees
Judge ROBERT ADKINS
Signed June 06, 2005

6-06-05 Note: End of Volume 1

6-07-05 Notice - NOTICE for Case 053900848 ID 6307364
Notice is hereby given that on May 26, 2005 SHURTLEFF, MARK L Filed
a Petition requesting an order for removal of current trustees and
appointment of new trustees, suspension of the current trustees
pending a hearing on their removal, an inventory, accounting, and
final reports of the current trustees, the appointment of a
special fiduciary, a hearing for the appointment of new trustees
proposed by interested parties and special notice of hearings.

Printed: 11/19/09 13:25:44

Page 21

SE NUMBER 053900848 Trust

A copy of the petition is on file with the clerk of the court and
may be reviewed upon request.

The petition has been set for hearing in this court at the THIRD
DISTRICT COURT, 450 SOUTH STATE, SLC, UTAH, on June 22, 2005, at
09:00 o'clock a.m. in Fourth Floor - W44 Before Judge: GLENN K.
IWASAKI.

Dated: June 07, 2005

Deputy Clerk

TIMOTHY A BODILY
Assistant AG

POB 140874
SLC, UT 84114
(Attorney)

CERTIFICATE OF POSTING

I certify that on June 10, 2005 I posted copies of the attached notice in three public places in SALT LAKE COUNTY, as follows:

Third District Court
450 South State
Salt Lake City UT 84111

Third District Court - Sandy
210 West 10000 South
Sandy UT 84070

Third District - WV Dept
3636 Constitution Blvd
West Valley City UT 84119

And that the copies of the notice remained posted for ten consecutive days immediately preceding the time for the hearing referred to in the notice.

Dated: June 10, 2005

Deputy Clerk

Printed: 11/19/09 13:25:44

Page 22

CASE NUMBER 053900848 Trust

06-07-05 REMOVAL OF TRUSTEES scheduled on June 22, 2005 at 09:00 AM in Fourth Floor - W44 with Judge IWASAKI.
06-08-05 Filed: Motion for Preliminary Injunction
06-08-05 Filed: Memorandum in Support of Motion for Preliminary Injunction
06-08-05 Filed: Ex-Parte Motion for Service by Publication and Notice of Order RE: Extension of Temporary Restraining Order
06-08-05 Filed: Memorandum in Support of Ex Parte Motion for Service by Publication and Notice of Order RE: Extension of Temporary Restraining Order
06-08-05 Filed: Certificate of Service - Extension of Temporary Restraining Order Appointing a Special Fiduciary and Suspending the Trustees
06-09-05 Filed order: Ex-parte order authorizing service upon Warren Jeffs, Leroy Jeffs, and William Timpson by publication and notice of the order re: extension of the temporary restraining

order

Judge ROBERT ADKINS

Signed June 09, 2005

06-09-05 Filed: Schleicher County Sheriff Department Civil Process Form
- Return of Service
06-09-05 Filed: Proof of Service - Truman Barlow
06-09-05 Filed: Return of Non-Service - Warren Jeffs
06-09-05 Filed: Proof of Service - James Zitting
06-09-05 Filed: Proof of Service - LeRoy Jeffs
06-10-05 Filed: Notice of Petition and Hearing - Private Beneficiaries
June 22, 2005
06-10-05 Filed: Certificate of Service - Notice of Interested Parties
and Response to Petitions
6-10-05 Filed: Private Beneficiary Petitioners' Joinder of Attorney
General's Motion for Preliminary Injunction
6-10-05 Filed: Certificate of Service
6-10-05 Filed: Notice of Filing of Original Signature Pate
6-10-05 Filed: Affidavit of Winston Kaye Blackmore
6-10-05 Filed: Copy of Constable's Proof of Service - Petition
6-13-05 Judge DENO HIMONAS assigned.
6-13-05 Filed: Certificate of Service - Affidavit of Sam Brower and
Winston Kaye Blackmore
6-13-05 Filed: Subpoena to Appear and Subpoena Duces Tecum - Robert
Scott Anderson
6-13-05 Filed: Subpoena to Appear - Winston K. Blackmore
6-13-05 Filed: Subpoena to Appear - Sam Brower
5-13-05 Filed: Subpoena to Appear - Richard Holdm
5-13-05 Filed: Acceptance of Service of Subpoena - Richard Holm (faxed
copy)
5-13-05 Filed: Certificate of Service - Subpoena to Appeal and Subpoena
Duces Tecum to Robert Scott Anderson, Subpoena to Same Brower,
Subpoena to Apepal to Winston K. Blackmore, Subpoena to Appear
to Richard Holm, Subpoena to Appear and Subpoena Duces Te

inted: 11/19/09 13:25:44

Page 23

SE NUMBER 053900848 Trust

-13-05 Filed: Subpoena to Appear and Subpoena Duces Tecum (Kirk Ehlers
- 1st American Title)
-13-05 Filed: Acceptance of Service of Subpoena and Subpoena Duces
Tecum (Faxed from Kirk Ehlers)
-13-05 Filed: Subpoena to Appear and Subpoena Duces Tecum (Hilary
Martin - 1st American Title)
-14-05 Filed: Notice (re Hrg 6/16/05)
-16-05 Minute Entry - Probate Minutes
Judge: DENO HIMONAS
Clerk: patj
PRESENT
Petitioner's Attorney: TIMOTHY A BODILY
Video
Tape Count: 10.02

This case is before the court for an evidentiary hearing.
 Defts did not appear nor were they represented by counsel.
 The court grants the preliminary injunction.

06-16-05 Filed order: Order re: Preliminary injunction appointing a
 special fiduciary and suspending the trustees

Judge DENO HIMONAS

Signed June 16, 2005

06-16-05 Filed: Certificate of Service

06-16-05 Filed return: Proof of Service

Party Served: FLDS CHURCH,

Service Type: Personal

Service Date: June 08, 2005

06-17-05 Filed: Certificate of Service

06-17-05 Fee Account created	Total Due:	58.00
------------------------------	------------	-------

06-17-05 COPY FEE	Payment Received:	58.00
-------------------	-------------------	-------

06-17-05 Fee Account created	Total Due:	16.00
------------------------------	------------	-------

06-17-05 COPY FEE	Payment Received:	16.00
-------------------	-------------------	-------

06-20-05 Filed: Certificate of Service

06-20-05 Filed: (2) Notice of Petition and Hearing returned mail -
 Warren Jeffs & Leroy Jeffs (first notice) Notice was also sent
 to alternate addresses

06-21-05 Filed: Notice of Petition and Hearing returned mail - Truman
 Barlow (2nd notice) notice was sent to alternate address

06-21-05 Filed: (2) Mail Return 2nd notice - Warren Jeffs and Leroy
 Jeffs

06-21-05 Filed: Notice of Publication - Canada, Province of British
 Columbia

06-21-05 Filed: Proof of Publication-Spectrum-County of Washington

06-21-05 Filed: Proof of Publication - Spectrum - County of Washington

06-21-05 Filed: Publisher's Affidavit - State of Texas, County of
 Schleicher

06-21-05 Filed: Proof of Publication - State of Colorado - Cortez

Printed: 11/19/09 13:25:44

Page 24

CASE NUMBER 053900848 Trust

Journal

06-22-05 Fee Account created	Total Due:	5.00
------------------------------	------------	------

06-22-05 COPY FEE	Payment Received:	5.00
-------------------	-------------------	------

06-22-05 Fee Account created	Total Due:	2.50
------------------------------	------------	------

06-22-05 COPY FEE	Payment Received:	2.50
-------------------	-------------------	------

06-22-05 Fee Account created	Total Due:	3.50
------------------------------	------------	------

06-22-05 COPY FEE	Payment Received:	3.50
-------------------	-------------------	------

Note: 20.00 cash tendered.

06-22-05 Fee Account created	Total Due:	3.50
------------------------------	------------	------

06-22-05 COPY FEE	Payment Received:	3.50
-------------------	-------------------	------

Note: 5.00 cash tendered.

06-22-05 Fee Account created	Total Due:	3.50
------------------------------	------------	------

06-22-05 COPY FEE	Payment Received:	3.50
-------------------	-------------------	------

06-22-05 Filed order: Order Granting Utah Attorney General's Petition
 for removal of current trustees, suspension of the current
 trustees, an inventory, accounting an final report of the
 current trustees, the appointment of a special fiduciary, etc.

Judge GLENN K IWASAKI

Signed June 22, 2005

06-22-05 Case Disposition is Granted
Disposition Judge is GLENN K IWASAKI

06-23-05 Fee Account created Total Due: 4.50

06-23-05 Fee Account created Total Due: 4.00

06-23-05 CERTIFIED COPIES Payment Received: 4.50
Note: 20.00 cash tendered.

06-23-05 CERTIFICATION Payment Received: 4.00

06-23-05 Filed: Certificate of Service

06-24-05 Filed: Notice of Acceptance of Donation

06-27-05 Fee Account created Total Due: 24.25

06-27-05 COPY FEE Payment Received: 24.25
Note: 25.00 cash tendered.

06-27-05 Filed return: Mail Returned
Party Served: JEFFS, WARREN
Service Type: Mail

06-27-05 Filed return: Mail Returned
Party Served: JESSOP, WILLIAM E
Service Type: Mail

6-27-05 Filed return: Mail Returned
Party Served: JESSOP, WILLIAM E
Service Type: Mail

6-27-05 Fee Account created Total Due: 34.50

6-27-05 COPY FEE Payment Received: 34.50

6-28-05 Fee Account created Total Due: 4.00

6-28-05 COPY FEE Payment Received: 4.00

6-28-05 Note: End of Volume 2

7-01-05 Filed: Private Beneficiary Petitioners' Notice of Proposed
Substitute Trustees and Request for Partial Reformation of
Trust

7-01-05 Filed: REFUSED - Notice of Petition and Hrg in Re Hr 6/22/05

Printed: 11/19/09 13:25:45

Page 25

Case NUMBER 053900848 Trust

from Leroy Jeffs

-01-05 Filed: Undelivered Notice of Petition & Hrg (6/22) to Warren
Jeffs

-05-05 Filed: Notice of Appearance of Counsel and Request for Notice

-05-05 Filed return: 3 Returned Mailer - Insufficient Address
Party Served: ZITTING, JAMES
Service Type: Mail
Service Date: June 07, 2005

-07-05 Filed: Notice of Appearance of Counsel

-07-05 Filed: Affidavit of Jerome Romero

-07-05 Filed: Affidavit of Gregory A. Kemp

-07-05 Filed: Affidavit of Craig L. Booth

-07-05 Filed: Affidavit of Robert C. Huddleston

-07-05 Filed: Petition for Appointment of Robert C. Huddleston, Craig
L. Booth, and Gregory A. Kemp as Replacement Trustees for the
United Effort Plan Trust

08-05 Filed: Original Affidavit of Donald B. Cox

09-05 Filed: Affidavit of Jane Ellen Johanson

11-05 Minute Entry - Probate Minutes

Judge: DENO HIMONAS
Clerk: patj

The court hereby recuses itself from the above entitled case because of the prior relationship with Jones, Waldo, Holbrook & McDonough.

- 07-11-05 Filed: Notice of appearance of counsel - Edward Munson, Timothy B Anderson, Jerome Romero & Russell S Mitchell
- 07-11-05 Filed: Amended Private Beneficiary Petitioner's Notice of Proposed Substitute Trustee and request for Partial Reformation of Trust
- 07-11-05 Filed: Affidavit of Lee Van Dam
- 07-11-05 Filed: Returned Notice of Petition and Hearing - Leroy Jeffs
- 07-11-05 Filed: Further notice of proposed substitute trustees and request for partial reformation
- 07-12-05 Filed: Child Protection Project's Notice of proposed substitute trustees in the matter of the United Effort Plant Trust
- 07-12-05 Filed: Notice of interested parties and response to petitions
- 07-12-05 Filed: Affidavit of Antonina Miller, Heidi Miller, William Miller, & Buster Johnson
- 07-12-05 Filed: Affidavit of Linda Walker
- 07-12-05 Filed: Affidavits of Flora Mae Jessop & Laurene Cooke Jessop
- 07-12-05 Filed: Affidavit of Nancy Stuart
- 07-12-05 Filed: Affidavit of Carl J Holm
- 07-12-05 Filed: Affidavits of: L. Bradshaw, C. Hazlett, R. Winsko, C. Widell, J. Price, D. Wilson, A. Warne, B. Martin, M. Sterling, J. Navaretta, M. Perri, E. Bryce, M. Nicely, A. Elder, C. Collins, S. Vance, M. Murray, & H. Kaino

Printed: 11/19/09 13:25:45

Page 26

CASE NUMBER 053900848 Trust

-
- 07-12-05 Filed: Affidavit of Nancy Mereska
 - 07-12-05 Filed return: Subpoena duces tecum
 - Party Served: Roger Hoole
 - Service Type: Personal
 - Service Date: July 01, 2005
 - 07-12-05 Filed order: Minute Entry - Case is reassigned to Judge Lindberg
 - Judge SANDRA PEULER
 - Signed July 12, 2005
 - 07-12-05 Judge DENISE P. LINDBERG assigned.
 - 07-13-05 Fee Account created Total Due: 3.50
 - 07-13-05 COPY FEE Payment Received: 3.50
 - 07-13-05 Note: Clerk called Tim Bodily regarding the hearing they think is scheduled for July 21. Clerk informed him that Judge Lindberg is on master Preliminary Hearings that day and as she just received the files today she will need time to review them.
 - 07-13-05 Note: This case was set for a 1 hour hearing on July 21 before Judge Himonas, due to the judges recusal and this case being reassigned to Judge Lindberg that date is stricken and the

hearing will have to be reset with Judge Lindberg's clerk

07-13-05 Note: End of Volume 3

07-14-05 Filed: Affidavits of: Buster Johnson, Diana Heagle, Dolores George, Susan Donahue, Jesse Ullery, Genevieve Newman, Judith Thomas, Jacqueline Matson, Noreen Thomas, & Richard Thomas

07-14-05 Filed: Affidavit of Deanna Bohart Frazier

07-14-05 Filed: Letter from Jaybe Beswick (Representative "For Kids Sake") opposing proposed trustees.

07-14-05 Filed: Affidavit of Margaret L Nyberg

07-15-05 Fee Account created Total Due: 3.25

07-15-05 COPY FEE Payment Received: 3.25

07-15-05 Filed: Affidavits of Ron Benty, Linda Tompkins, GE Terriff, Linda Calahan, Joyce Johnson, Debra Quesnel, Mary Schmelzel, Shirley McIsaac, Nicholas Ronaldson, Norma Mennie, & Leiana Mennie

07-15-05 Filed: Response to Petitions for Appointment of Trustees and Request for Hearing

07-18-05 Filed: Affidavit of Rowenna Erickson

07-18-05 Filed: Response to petitions for appointment of trustees and request for hearing

7-18-05 Filed: Letter from Paul Toscano re: interest in appointment as trustee

7-19-05 Filed: Joinder in Response to Petitions for Appointment of Trustees and Request for Hearing

7-19-05 Filed order: Minute entry and notice of hearing
Judge DENISE P. LINDBERG
Signed July 19, 2005

7-19-05 HEARING ON APPT OF TRUSTEES scheduled on August 04, 2005 at 01:30 PM in Fourth Floor - W46 with Judge LINDBERG.

Printed: 11/19/09 13:25:45

Page 27

ASE NUMBER 053900848 Trust

-19-05 Filed: Objection to the appointment of Richard L. Holm as replacement trustee for the United Effort Plan Trust

-19-05 Fee Account created Total Due: 59.25

-19-05 COPY FEE Payment Received: 59.25

-21-05 Filed: Affidavits of: Deanna Frazier, Nora Mennie, Nicholas Ronaldson, Leiana Mennie, Nancy Merreska

-21-05 Fee Account created Total Due: 8.50

-21-05 COPY FEE Payment Received: 8.50

Note: 10.00 cash tendered.

-21-05 Filed order: Order (pro hac vice)
Judge DENISE P. LINDBERG
Signed July 21, 2005

-22-05 Fee Account created Total Due: 44.75

-22-05 COPY FEE Payment Received: 44.75

-26-05 Filed: Letter from Jancis Andrews

-26-05 Filed: Mail returned

26-05 Filed: Affidavit of Carl J. Holm

26-05 Filed: Notice of Appearance of Counsel for Janet Johanson

26-05 Filed: Petition of Janet Johanson for the Nomination of Trustees to the United Effort Plan Trust

26-05 Filed: Petition of Carl J. Holm for the Nomination of Trustees

to the United Effort Plan Trust

07-26-05 Fee Account created	Total Due:	2.25
07-26-05 COPY FEE	Payment Received:	2.25
Note: 3.00 cash tendered.		
07-27-05 Filed: Letter from Kathryn Cox		
07-27-05 Filed: Petition of Janet Johanson nomination of trustees to United Effort Plan Trust		
07-27-05 Filed: Returned Mail - Leroy Jeffs		
07-28-05 Filed: Returned Mail - James Zitting		
07-28-05 Filed: Returned Mail - William E. Jessop (Timpson)		
07-28-05 Filed: Affidavits of: B. Johnson, D. Heagle, D. George, S. Donahue, J. Ullery, G. Newman, J. Thomas, J. Matson, N. Thomas, R. Thomas, C. Hazlett, R. Winsko, C. Widell, J. Price, A. Warne, B. Martin, M. Sterling, J. Navaretta, M. Perri, E. Bryce,		
07-28-05 Filed: (Affidavits continued) M. Nicely, A. Elder, C. Collins, S. Vance, & M. A Murray.		
07-28-05 Filed: Objection to attorney General's request to delay the appointment of suitable trustees		
07-29-05 Filed: Publisher's Affidavit - State of Texas for The Eldorado Success Thursday July 7, 2005		
07-29-05 Filed: Proof of Publication - Cortez Journal July 9, 2005		
07-29-05 Filed: Objection to other proposed trustees and objection to fiduciary's expanded role and to additional requirements proposed by the attorney general		
07-29-05 Note: End of Volume 4		
08-01-05 Fee Account created	Total Due:	20.75
08-01-05 COPY FEE	Payment Received:	20.75

Printed: 11/19/09 13:25:45

Page 28

CASE NUMBER 053900848 Trust

Note: 21.00 cash tendered.

08-01-05 Filed: Publisher's affidavit		
08-01-05 Filed: Proof of publication Cortez Journal		
08-02-05 Filed: Letter with attached Proof of Publication - June 22, 2005 - The Spectrum, Eldorado Success and Creston Valley Advance		
08-02-05 Filed: Letter - Proof of Publication for August 4, 2005 - The Spectrum, Eldorado Success and The Creston Valley Advance		
08-02-05 Filed: Report and Recommendation of Bruce Wisan, The Court-Appointed Special Fiduciary Dated August 2, 2005		
08-02-05 Fee Account created	Total Due:	22.00
08-02-05 COPY FEE	Payment Received:	22.00
08-02-05 Fee Account created	Total Due:	6.50
08-02-05 COPY FEE	Payment Received:	6.50
08-02-05 Filed: Letter and affidavit of Pennie Petersen		
08-02-05 Filed: Certificate of service		
08-02-05 Filed: Affidavit of Donald B. Cox dated August 2, 2005		
08-03-05 Filed: Notice of Appearance of Counsel (Karra Porter for James Pipkin)		
08-03-05 Filed: Affidavit of Karra J. Porter Regarding Publication of Notice		
08-03-05 Filed: Notice of Support of Jeremy M. Black for Petition for		

Appointment of Robert C. Huddleston, Craig L. Booth, and
Gregory A. Kemp as Replacement Trustees for the Untied Effort
Plan Trust

08-03-05 Filed: Interested Parties' Reply to Attorney General's Response
to Petitions for Appointment of Trustees
08-03-05 Fee Account created Total Due: 15.25
08-03-05 COPY FEE Payment Received: 15.25
08-03-05 Fee Account created Total Due: 15.25
08-03-05 COPY FEE Payment Received: 15.25
08-03-05 Filed: UEP Trust Management Recommendations and Reservation of
Right to be Heard on Petitions and Responses to Petitions and
Other Matters
08-03-05 Note: End of Volume 5
8-04-05 Minute Entry - Probate Minutes
Judge: DENISE P LINDBERG
Clerk: michelddb
PRESENT
Petitioner's Attorney: TIMOTHY A BODILY
Petitioner(s): RANDY HUNTER
Other Parties: JEROME ROMERO
WINSTON BLACKMORE
ATTORNEY GENERAL OF ARIZONA
MARLENE MOHN
CRAIG L BOOTH
GREGORY A KEMP
KARRA PORTER
ROGER H HOOLE

inted: 11/19/09 13:25:46

Page 29

SE NUMBER 053900848 Trust

JEFFREY SHIELDS
AUL TOSCANO
WILLIAM RICHARDS
CARL HOLM
DON COX
CATHERINE

Video

Tape Number: 8/4/05 Tape Count: 2:00

Attorney for the Special Fiduciary (Jeffrey Shields) addresses the court regarding special fiduciary's report. Tim Bodily from the Utah Attorney General's office addresses the court. William Richards from the Arizona Attorney General's office addresses the court. Counsel: Roger Hoole, Marlene Mohn, Jerome Romero, Karra Porter and Paul Toscano address the court with recommendations. The court agrees with the special fiduciary that expanded powers are needed and authorizes the special fiduciary to take necessary steps to respond to suits, negotiate settlement, continue marshalling assets and other points addressed in his report. The court doesn't have all the information regarding all possible trustees. The court agrees that further disclosure is needed.

The court requests additional information on all possible trustees within 20 days (August 24, 2005). The additional information requested is: past/present affiliation with the FLDS Church or familial ties, where they reside and any limitations to perform duties with regards to residence, education or experience including any license or special expertise, prior criminal or civil litigation including criminal charges or probation and bankruptcies (status of probation and bankruptcy), personal credit report and score, willingness to secure a bond if required, reasons for wanting to serve, and what level of compensation they are expecting if any. Special Fiduciary to file by 8/18/05 his recommendations on what the critical legal issues are that need to be addressed prior to appointment of trustees. All briefs on legal issues due by 9/16/05 with response and objections due no later than 9/30/05. There is a 3-9 person range and the court has not determined the optimal number.

- 08-04-05 LAW AND MOTION scheduled on October 25, 2005 at 03:00 PM in Fourth Floor - W46 with Judge LINDBERG.
- 08-05-05 Filed: Motion to Strike Objection to the Appointment of Richard L. Holm as Replacement Trustee for the United Effort Plan Trust
- 08-05-05 Filed: Memorandum in Support of Motion to Strike Objection to the Appointment of Richard L. Holm as Replacement Trustee for the United Effort Plan Trust
- 08-05-05 Filed: Reply to Attorney General's Response to Petition for Appointment of Trustees and Response to Objection to Attorney General's Request to Delay the Appointment of Suitable Trustees

Printed: 11/19/09 13:25:46

Page 30

CASE NUMBER 053900848 Trust

-
- 08-09-05 Filed: Letter from Pamela Black
 - 08-09-05 Filed: Letter from Nancy Mereska
 - 08-15-05 Filed: Letter from Mathew Bjorkman
 - 08-15-05 Filed: Letter from Donald Cox
 - 08-16-05 Fee Account created Total Due: 15.00
 - 08-16-05 VIDEO TAPE COPY Payment Received: 15.00
 - 08-18-05 Filed: Memorandum of the Special Fiduciary Recommending Legal Issues to be Resolved Prior to Appointment of Substitute Trustees
 - 08-18-05 Filed: Memorandum in Support of Motion to Approve Settlement Agreement and Sale of Property in Quiet Title Action
 - 08-18-05 Filed: Motion to Approve Settlement Agreement and Sale of Property in Quiet Title Action and Request for Hearing
 - 08-18-05 Filed: Proof of Publication- Daily newspaper in St George, Washington County, Utah
 - 08-18-05 Filed: Proof of Publication- Daily newspaper St George, Washington County, Utah
 - 08-18-05 LAW AND MOTION scheduled on September 20, 2005 at 09:30 AM in Fourth Floor - W46 with Judge LINDBERG.
 - 08-22-05 Filed: Letter from Cecelia Foxley with Recommendation
 - 08-22-05 Filed: Letter from Merrill Harker
 - 08-23-05 Filed: Certificate of Service
 - 08-23-05 Filed: Corrected Notice of Hearing on Motion to Approve Settlement Agreement in Quiet Title Action

ADDENDUM D

REFORMED
DECLARATION OF TRUST
OF THE
UNITED EFFORT PLAN TRUST

This Reformed Declaration of Trust of The United Effort Plan Trust is effective the 25th 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

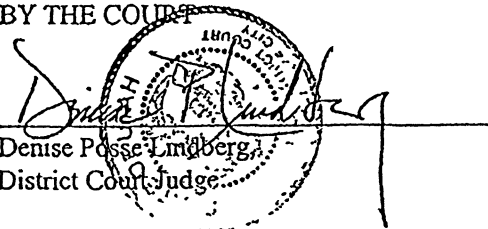
8.8.2 posting and maintaining for a reasonable period of time the Reports on a website and notifying the Designated Recipients of the website.

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 25th day of October, 2006.

BY THE COURT


Denise Posse-Lindberg
District Court Judge

ADDENDUM E

FILED
DISTRICT COURT

09 MAY 13 PM 5:55

THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY
BY WPS
DEPUTY CLERK

James C. Bradshaw (#3768)
BROWN, BRADSHAW & MOFFAT, L.L.P.
10 West Broadway, Suite 210
Salt Lake City, Utah 84101
Telephone: (801) 532-5297
Facsimile: (801) 532-5298

Kenneth A. Okazaki (USB #3844)
Stephen C. Clark (USB #4551)
Ginger Utley (USB #11788)
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main St., Ste. 1500
Salt Lake City, UT 84101
Telephone: (801) 521-3200
Facsimile: (801) 328-0537

Attorneys for Willie Jessop, Dan Johnson and Merlin Jessop

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE UNITED
EFFORT PLAN TRUST

:
:
: **MOTION OF WILLIE JESSOP, DAN**
: **JOHNSON, AND MERLIN JESSOP TO**
: **INTERVENE**
:
: Case No. 053900848
:
: Judge Denise P. Lindberg
:
:

Willie Jessop, Dan Johnson, and Merlin Jessop (“Applicants”), through their attorneys of record, hereby move the Court pursuant to Rule 24(a) of the Utah Rules of Civil Procedure to intervene as a matter of right in the above entitled matter. The basis

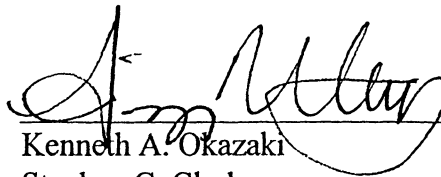
for this motion is that, as required by Rule 24(a), Applicants claim “an interest relating to the property or transaction which is the subject of the action,” in that they have been granted and have exercised stewardships over the specific Trust property that is the subject of the Special Fiduciary’s Motion for Relief to Preserve Assets of the Trust filed with the Court on May 6, 2009; they are “so situated that the disposition of the action may as a practical matter impair or impede [their] ability to protect that interest,” in that the sale of the property to a third party will preclude their exercising that stewardship or pursuing their claims thereto under the Reformed Trust; and their interest is not “adequately represented by existing parties, in that, as the Special Fiduciary has stated, no party “with standing” has objected to the sale – but only because Applicants have previously been deemed not to have standing, albeit not on a proper Motion to Intervene.

This motion is supported by the accompanying Memorandum and the Affidavits of Willie Jessop, Dan Johnson, and Merlin Jessop.

DATED this 17th day of May, 2009.

JONES, WALDO, HOLBROOK & McDONOUGH

By:



Kenneth A. Okazaki

Stephen C. Clark

Ginger Utley

*Attorneys for Willie Jessop, Dan Johnson and
Merlin Jessop*

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May 2009, I caused a copy of the foregoing
**MOTION OF WILLIE JESSOP, DAN JOHNSON, AND MERLIN JESSOP TO
INTERVENE** to be served upon the following in the following described manner:

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

Timothy Bodily, Esq.
Assistant Attorneys General
Office of the Utah Attorney General
160 East 300 South, 5th Floor
P.O. Box 140874
Salt Lake City, UT 84114-0874
EMAIL: tbodily@utah.gov

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

Mark L. Callister
Jeffrey L. Shields
Zachary Shields
Callister Nebeker & McCullough
10 E. South Temple, Suite 900
Salt Lake City, UT 84133
EMAIL: jlshields@cnmlaw.com

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

Roger H. Hoole
Gregory N. Hoole
4276 South Highland Drive
Salt Lake City, UT 84124
EMAIL: rrh@hooleking.com

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

Mark L. Shurtleff
Utah Attorney General
160 East, 300 South, Fifth Floor
P.O. Box #142320
Salt Lake City, UT 84114
EMAIL: mshurtleff@utah.gov

VIA U.S. MAIL POSTAGE PREPAID AND EMAIL TRANSMISSION:

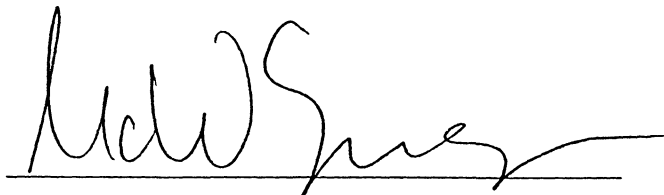
Peter Stirba
Stirba & Associates
215 South State Street, Suite 750
P.O. Box 810
Salt Lake City, UT 84110-0810
EMAIL: peter@stirba.com

VIA FACSIMILE TRANSMISSION and EMAIL TRANSMISSION:

William A. Richards
Arizona Attorney General's Office
1275 West Washington
Phoenix, Arizona 85007-2997
Fax No.: (602) 364-2214
EMAIL: bill.richards@azag.gov

VIA U.S. MAIL POSTAGE PREPAID AND EMAIL TRANSMISSION:

Michael D. Zimmerman
Snell & Wilmer
15 W. South Temple, Suite 1200
Salt Lake City, UT 84101
EMAIL: mzimmerman@swlaw.com

A handwritten signature in black ink, appearing to read "Michael D. Zimmerman", written over a horizontal line.

FILED
DISTRICT COURT
09 MAY 13 PM 5:55
THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY
BY WB
DEPUTY CLERK

JAMES C. BRADSHAW (#3768)
BROWN, BRADSHAW & MOFFAT, L.L.P.
10 West Broadway, Suite 210
Salt Lake City, Utah 84101
Telephone: (801) 532-5297
Facsimile: (801) 532-5298

Kenneth A. Okazaki (USB #3844)
Stephen C. Clark (USB #4551)
Ginger Utley (USB #11788)
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main St., Ste. 1500
Salt Lake City, UT 84101
Telephone: (801) 521-3200
Facsimile: (801) 328-0537

Attorneys for Willie Jessop, Dan Johnson and Merlin Jessop

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE UNITED
EFFORT PLAN TRUST

:
:
: **MEMORANDUM IN SUPPORT OF**
: **WILLIE JESSOP'S, DAN JOHNSON'S,**
: **AND MERLIN JESSOP'S MOTION TO**
: **INTERVENE**
:
: Case No. 053900848
:
: Judge Denise P. Lindberg
:

The Court-appointed Special Fiduciary, Bruce R. Wisan ("Fiduciary"), has moved the Court for relief "to preserve the assets of the Trust." "Preserve" in this case, however, means "dispose of," since the crux of the Fiduciary's motion is to seek an immediate sale

of the Berry Knoll Farm (“Berry Knoll”). Contrary to this Court’s prior ruling, the Fiduciary urges the Court to act without a hearing, claiming that “[t]o hold a formal hearing on the matter would *only* cause delay and would unnecessarily increase the costs and burdens to be borne by the Fiduciary and his legal counsel” (emphasis added).

That is not, however, the “only” consequence of such extraordinary and hasty action. The additional and material consequence of selling Berry Knoll without hearing—or based on the expedited hearing schedule the Fiduciary proposes in the alternative—is to deprive, without due process, the Trust’s intended beneficiaries of the value of land as a perpetual, productive source of food and income, and as a sacred religious site of a future temple, in exchange for a one-time cash benefit to the Fiduciary. It is for this reason that Willie Jessop, Dan Johnson, and Merlin Jessop, members of the FLDS Church who have been granted sacred priesthood stewardship over Berry Knoll (“Movants”), move to intervene pursuant to Rule 24(a) of the Utah Rules of Civil Procedure to oppose the Fiduciary’s Motion and protect their rights.

Utah Rule of Civil Procedure 24(a) provides that a party may intervene as of right “[u]pon timely application . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.”

Movants satisfy these criteria. First, their interests “will be adversely affected by the court’s disposition of property.” *Jenner v. Real Estate Servs.*, 659 P.2d 1072, 1073 (Utah 1983). The Fiduciary’s Motion asks this Court to dispose of one of the most sacred

pieces of property held by the FLDS Church—Berry Knoll. Disposing of that property without hearing, or according to the expedited hearing schedule the Fiduciary proposes, will undoubtedly adversely affect Movants, and, more importantly, make discharging their sacred priesthood stewardships of Berry Knoll difficult, if not impossible. As explained herein, Movants have sacred responsibilities for parcels of Berry Knoll and have, for years, dedicated their time, talents, resources, and labor to improving Berry Knoll. They rely on Berry Knoll to discharge their sacred priesthood stewardships to provide for the just wants and needs of their families and the FLDS members. Thus, they are entitled to intervene as of right.

Second, their application is timely. The Fiduciary filed his Motion on May 5, 2009. Prior to that time, the Court had imposed a “stand-down” of litigation so that the parties could seek a negotiated resolution on a number of issues, including the Fiduciary’s previously proposed sale of Berry Knoll and payment of the Fiduciary’s fees and expenses and other Trust obligations. Movants and their counsel participated in good faith in those negotiations, culminating in a three-day settlement conference with Judge Paul Cassell on April 22-24, 2009. Given the stand-down and the good faith efforts of counsel to settle the pending legal matters, including issues regarding Berry Knoll, Movants had no reason to intervene prior the Fiduciary’s Motion filed only days ago. Thus, Movants have acted timely given the Fiduciary’s Motion and relevant facts and circumstances of the litigation. *See, e.g., Jenner v. Real Estate Servs.*, 659 P.2d 1072 (Utah 1983) (explaining that the “timeliness” of an application for intervention must be determined based on the facts and circumstances of the individual case.)

Third, Movants “claim[] an interest relating to the property . . . which is the subject of the action and [are] so situated that the disposition of the action may as a practical matter impair or impede [their] ability to protect that interest.” The Utah Court of Appeals has defined this interest requirement as follows: “The applicant’s interest in the subject matter of the dispute must be a direct claim upon the subject matter of the action such that the applicant will either gain or lose by direct operation of the judgment to be rendered, not a mere, consequential, remote or conjectural possibility of being in some manner affected by the result of the original action.” *Interstate Land Corp. v. Patterson*, 797 P.2d 1101, 1108 (UT App 1991) (citation and internal quotation marks omitted); *see also Commercial Block Realty Co. v. United States Fidelity & Guar. Co.*, 828 P.2d 1081, 1083 (Utah 1994) (For a party to intervene, “[h]e must have an interest in the matter in litigation, in the success of either of the parties, or an interest against both.”) Movants have a unique interest in Berry Knoll and will indeed gain or lose by direct operation of this Court’s judgment regarding its sale. Specifically, each of the men has worked to improve Berry Knoll since it was purchased in the 1980s by Thomas and John Steed and later consecrated to the Trust. Movants have removed sagebrush, seeded, harvested, fenced, grazed cattle, irrigated, and helped produce food and income from Berry Knoll for their families and the FLDS Church membership. In fact, they helped turn over 500 acres of sagebrush into a working, productive farm, and they did so, in part, pursuant to a priesthood stewardship that each was granted to maintain, farm, and improve Berry Knoll. It is a stewardship Movants consider sacred. The exercise of their religious beliefs requires that they magnify that stewardship as part of their striving

toward not only harmonious communal living but also eternal salvation. Additionally, Movants regard Berry Knoll as a sacred site of a future temple. The most sacred FLDS ordinances are conducted in temples, and the land on which temples is situated is similarly sacred to Movants. Berry Knoll has provided, and, so long as it is **not sold**, will continue to provide, for the just physical and spiritual wants and needs of the Movants. Thus, their interest in the property is clear.

Fourth, “the disposition of the action may as a practical matter impair or impede” the Movants’ ability to protect their interest in Berry Knoll. Indeed, if Berry Knoll is sold without so much as a hearing, or even according to the expedited hearing schedule the Fiduciary proposes, and the Movants are not allowed to intervene, the Movants very likely will never again have the opportunity to assert or protect their legal interest in the land. As explained, their interest is not merely financial; it is spiritual, sacred, and intertwined with their belief in their eternal salvation and their sacred priesthood stewardship of the land.

On the other hand, the Fiduciary has only a single interest in Berry Knoll: obtaining a one-time cash payment from its hasty sale. The Fiduciary’s Motion asks the Court to ignore all possible interests of the beneficiaries of the Trust, including the Movants’, and sell Berry Knoll without the most fundamental due process requirement: an opportunity to be heard. While the Fiduciary claims unclean hands on the part of the FLDS people, it is the Fiduciary who appears to be acting in bad faith, since his motion comes immediately in the wake of settlement negotiations wherein Movants, on behalf of the FLDS Church, negotiated toward an alternative resolution that would have provided

the Fiduciary the relief he claims so desperately to need while *truly* preserving for the Trust this unique property, which up until his management, has been highly productive.

As justification for his expedited hearing request, the Fiduciary asserts that an unidentified buyer is willing to purchase Berry Knoll only until May 31, 2009. The Fiduciary does not, however, offer any explanation or support for the buyer's claimed deadline. He merely states, without evidentiary support, that after May 31 the buyer "will no longer be willing to purchase the property from the Trust." The timing of the Fiduciary's Motion and claimed deadline are suspect, and appear calculated to preclude continued progress toward a negotiated resolution.

Fifth, and finally, there is no existing party who adequately represents Movants' interest in Berry Knoll. The Fiduciary answers only to the "Advisory Board" (an entity that seems to have taken on inordinate power far beyond being merely "advisory") and to the tiny fraction of disgruntled former FLDS Church members they represent. The Attorneys General represent the public broadly but have no special interest in Berry Knoll, let alone the kind of sacred stewardship, granted under the Trust and long productively maintained until the Fiduciary interfered and granted a lease to a party with *no* connection to the land. The Fiduciary insists that "no party with standing has objected to the Motion for Approval." The Fiduciary's statement, however, misrepresents the most basic and salient facts. First, Movants have objected, just as they have continually sought to express their views, and those of the vast majority of Trust beneficiaries they represent, but they have been denied standing. Second, counsel for the FLDS Church prepared a Motion to block the sale of Berry Knoll when the Fiduciary originally

proposed such a sale in the fall of 2008. That hearing was canceled due to the stand-down. It is therefore disingenuous and misleading for the Fiduciary to assert that no party has objected. Third, the Fiduciary's Motion is less than a week old, giving no party adequate time to object. Finally, the very purpose of the Fiduciary's Motion appears to be depriving any party of their opportunity to be heard to object. In every respect, the Fiduciary's arguments appear suspect. And in every respect, Rule 24 entitles Movants to intervene.

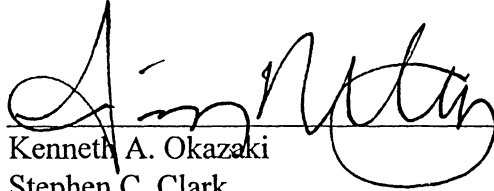
CONCLUSION

The Fiduciary has moved this Court to take the drastic action of selling a sacred, productive landholding that has been in the FLDS Church's ownership and management for over three decades, and do so without a hearing. Alternatively, the Fiduciary seeks an expedited hearing schedule for the claimed purpose of raising funds from a buyer who **will apparently disappear** in two weeks' time, never to be replaced by another. Given the facts, the Motion appears to be an attempt to deny a majority of Trust beneficiaries, whose views Movants represent, their most fundamental due process right to be heard. Rule 24 is meant to prevent such procedural and substantive maneuvers that would deprive interested parties of a say in the disposition of property. Pursuant to Rule 24, Movants are entitled to intervene: they have an interest directly relating to Berry Knoll, and without intervention, they will be unable to protect their interest. They therefore respectfully request this Court to grant their motion to intervene.

DATED this 17th day of May, 2009.

JONES, WALDO, HOLBROOK & McDONOUGH

By:

A handwritten signature in black ink, appearing to read "Ginger Utley", written over a horizontal line.

Kenneth A. Okazaki

Stephen C. Clark

Ginger Utley

*Attorneys for Willie Jessop, Dan Johnson, and
Merlin Jessop*

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May 2009, I caused a copy of the foregoing **MEMORANDUM IN SUPPORT OF WILLIE JESSOP'S, DAN JOHNSON'S, AND MERLIN JESSOP'S MOTION TO INTERVENE** to be served upon the following in the following described manner:

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

Timothy Bodily, Esq.
Assistant Attorneys General
Office of the Utah Attorney General
160 East 300 South, 5th Floor
P.O. Box 140874
Salt Lake City, UT 84114-0874
EMAIL: tbodily@utah.gov

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

Mark L. Callister
Jeffrey L. Shields
Zachary Shields
Callister Nebeker & McCullough
10 E. South Temple, Suite 900
Salt Lake City, UT 84133
EMAIL: jlshields@cnmlaw.com

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

Roger H. Hoole
Gregory N. Hoole
4276 South Highland Drive
Salt Lake City, UT 84124
EMAIL: rhh@hooleking.com

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

Mark L. Shurtleff
Utah Attorney General
160 East, 300 South, Fifth Floor
P.O. Box #142320
Salt Lake City, UT 84114
EMAIL: mshurtleff@utah.gov

VIA U.S. MAIL POSTAGE PREPAID AND EMAIL TRANSMISSION:

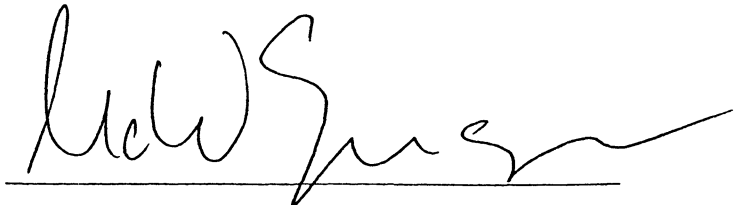
Peter Stirba
Stirba & Associates
215 South State Street, Suite 750
P.O. Box 810
Salt Lake City, UT 84110-0810
EMAIL: peter@stirba.com

VIA FACSIMILE TRANSMISSION and EMAIL TRANSMISSION:

William A. Richards
Arizona Attorney General's Office
1275 West Washington
Phoenix, Arizona 85007-2997
Fax No.: (602) 364-2214
EMAIL: bill.richards@azag.gov

VIA U.S. MAIL POSTAGE PREPAID AND EMAIL TRANSMISSION:

Michael D. Zimmerman
Snell & Wilmer
15 W. South Temple, Suite 1200
Salt Lake City, UT 84101
EMAIL: mzimmerman@swlaw.com

A handwritten signature in black ink, appearing to read "Michael D. Zimmerman", is written over a horizontal line.

JAMES C. BRADSHAW (#3768)
BROWN, BRADSHAW & MOFFAT, L.L.P.
10 West Broadway, Suite 210
Salt Lake City, Utah 84101
Telephone: (801) 532-5297
Facsimile: (801) 532-5298

Kenneth A. Okazaki (USB #3844)
Stephen C. Clark (USB #4551)
Ginger Utley (USB #11788)
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main St., Ste. 1500
Salt Lake City, UT 84101
Telephone: (801) 521-3200
Facsimile: (801) 328-0537

Attorneys for Willie Jessop, Dan Johnson and Merlin Jessop

FILED
DISTRICT COURT

09 MAY 13 PM 5:56

THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY

BY 108
DEPUTY CLERK

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE UNITED
EFFORT PLAN TRUST

:
:
: AFFIDAVIT OF DAN JOHNSON
:
: Case No. 053900848
:
: Judge Denise P. Lindberg
:
:
:
:

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

The undersigned Affiant, Dan Johnson, being duly sworn, deposes and states as follows:

1. I am an adult resident of the State of Arizona. I am a member of the FLDS

Church. I respectfully submit this Affidavit to provide information concerning my knowledge of

the property known as Berry Knoll Farm, located in Colorado City, Arizona. I have personal knowledge of the matters set forth herein, know them to be true and if called could and would competently testify thereto.

2. I have tended and cared for sheep nearly my entire life. Currently, I tend the FLDS storehouse's sheep herd.

3. In 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. I tended those sheep by grazing them on parts of the Berry Knoll lands; I did so to help provide for the "Just Wants and Needs" of myself and other faithful Church members under the direction of the Bishop.

4. I consider my stewardship of the FLDS shepherd and my corresponding use of Berry Knoll land to be both a sacred right and a duty. I believe that it is part of my eternal salvation to discharge the duties of my stewardship under Divine Guidance.

5. I consider the Berry Knoll to be sacred ground and believe it be the site of a future FLDS temple where sacred ordinances will be performed.

6. I have used the food and income generated from Berry Knoll lands to provide for the "Just Wants and Needs" of my family and other members of the FLDS Church as outlined in the Doctrine and Covenants and other Holy Scripture

7. I am entitled to receive the benefits of my Stewardship so long as it is not rescinded by Divine decree given only through Church Leaders.


8. I continue to use the Berry Knoll Farm lands and have never been removed by Due Process in Mohave County Superior Court even though my ability to fulfill my duties of my Stewardship and the duties to my Church have been seriously inhibited by the current actions of the Special Fiduciary of the UEP Trust.

9. Based on the above, I have an interest in the disposition of the Berry Knoll lands. Any action taken in regard to Berry Knoll lands—including its sale or liquidation—affects my interest in the property.

10. I respectfully request this Court allow me to intervene such that I can protect my interest in Berry Knoll lands and to maintain the Stewardship that I have been given by my Church.

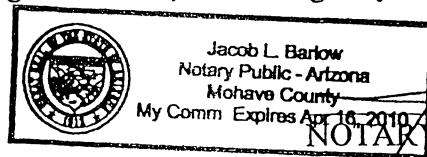
THIS IS THE END OF MY AFFIDAVIT.

DATED this 10th day of May, 2009.


DAN JOHNSON

STATE OF ARIZONA)
 : ss.
COUNTY OF MOHAVE)

On the 10th day of May 2009, personally appeared before me DAN JOHNSON, the signer of the foregoing instrument, who being duly sworn acknowledged to me that he executed the same.



CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May 2009, I caused a copy of the foregoing **AFFIDAVIT OF DAN JOHNSON** to be served upon the following in the following described manner:

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

Timothy Bodily, Esq.
Assistant Attorneys General
Office of the Utah Attorney General
160 East 300 South, 5th Floor
P.O. Box 140874
Salt Lake City, UT 84114-0874
EMAIL: tbodily@utah.gov

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

Mark L. Callister
Jeffrey L. Shields
Zachary Shields
Callister Nebeker & McCullough
10 E. South Temple, Suite 900
Salt Lake City, UT 84133
EMAIL: jlshields@cnmlaw.com

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

Roger H. Hoole
Gregory N. Hoole
4276 South Highland Drive
Salt Lake City, UT 84124
EMAIL: rrh@hooleking.com

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

Mark L. Shurtleff
Utah Attorney General
160 East, 300 South, Fifth Floor
P.O. Box #142320
Salt Lake City, UT 84114
EMAIL: mshurtleff@utah.gov

VIA U.S. MAIL POSTAGE PREPAID AND EMAIL TRANSMISSION:

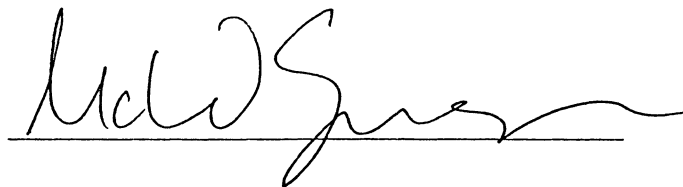
Peter Stirba
Stirba & Associates
215 South State Street, Suite 750
P.O. Box 810
Salt Lake City, UT 84110-0810
EMAIL: peter@stirba.com

VIA FACSIMILE TRANSMISSION and EMAIL TRANSMISSION:

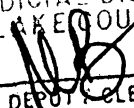
William A. Richards
Arizona Attorney General's Office
1275 West Washington
Phoenix, Arizona 85007-2997
Fax No.: (602) 364-2214
EMAIL: bill.richards@azag.gov

VIA U.S. MAIL POSTAGE PREPAID AND EMAIL TRANSMISSION:

Michael D. Zimmerman
Snell & Wilmer
15 W. South Temple, Suite 1200
Salt Lake City, UT 84101
EMAIL: mzimmerman@swlaw.com

A handwritten signature in black ink, appearing to read "Michael D. Zimmerman", written over a horizontal line.

JAMES C. BRADSHAW (#3768)
BROWN, BRADSHAW & MOFFAT, L.L.P.
10 West Broadway, Suite 210
Salt Lake City, Utah 84101
Telephone: (801) 532-5297
Facsimile: (801) 532-5298

FILED
DISTRICT COURT
09 MAY 13 PM 5:56
THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY
BY  DEPUTY CLERK

Kenneth A. Okazaki (USB #3844)
Stephen C. Clark (USB #4551)
Ginger Utley (USB #11788)
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main St., Ste. 1500
Salt Lake City, UT 84101
Telephone: (801) 521-3200
Facsimile: (801) 328-0537

Attorneys for Willie Jessop, Dan Johnson and Merlin Jessop

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE UNITED : **AFFIDAVIT OF MERLIN JESSOP**
EFFORT PLAN TRUST :

: Case No. 053900848

: Judge Denise P. Lindberg
:
:
:
:

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

The undersigned Affiant, Merlin Jessop, being duly sworn, deposes and states as follows:

1. I am an adult resident of the State of Arizona. I am a member of the FLDS

Church. I respectfully submit this Affidavit to provide information concerning my knowledge of

the property known as Berry Knoll Farm, located in Colorado City, Arizona. I have personal knowledge of the matters set forth herein, know them to be true and if called could and would competently testify thereto.

2. I am a farmer and have farmed for over 35 years. Over 30 years ago, Leroy Johnson, then-prophet of the FLDS Church, my uncle, and trustee of the FLDS Trust, granted me sacred stewardship to farm parts FLDS Trust lands. I have farmed the lands for over 35 years.

3. In about 1987, after Berry Knoll became part of the Trust, I was granted sacred stewardship to farm parts of it. Since that time, I have farmed Berry Knoll, including grazing and feeding cattle and planting and harvesting corn and grain under supervision of the Bishop.

4. I consider my stewardship of Berry Knoll Farm to be sacred and that it is part of my eternal salvation to discharge the duties of my stewardship under Divine Guidance.

5. I consider Berry Knoll to be sacred ground and believe it be the site of a future FLDS temple where sacred ordinances will be performed.

6. I have used the food and income generated from Berry Knoll Farm to provide for the "Just Wants and Needs" of my family and other faithful members of the FLDS Church as outlined in the Doctrine and Covenants and other Holy Scripture.

7. I am entitled to receive the benefits of my Stewardship so long as it is not rescinded by Divine decree given only through Church Leaders.

8. I continue to use the Berry Knoll Farm and have never been removed by Due Process in Mohave County Superior Court even though my ability to fulfill my duties of my Stewardship and the duties to my Church have been seriously inhibited by the current actions of the Special Fiduciary of the UEP Trust.


9. If the Berry Knoll Farm land is sold or liquidated I will lose the value of all improvement made to the land and will not be able to realize the benefits assured me when assigned this stewardship.

10. Based on the above, I have an interest in the disposition of Berry Knoll Farm lands. Any action taken in regard to Berry Knoll—including its sale or liquidation—affects my interests in the property.

11. I respectfully request this Court allow me to intervene such that I can protect my interest in Berry Knoll.

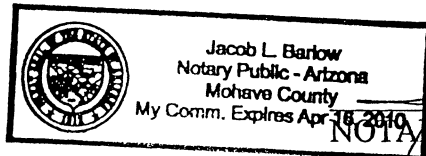
THIS IS THE END OF MY AFFIDAVIT.

DATED this 10 day of May, 2009.


MERLIN JESSOP

STATE OF ARIZONA)
 : ss.
COUNTY OF MOHAVE)

On the 10th day of May 2009, personally appeared before me MERLIN JESSOP, the signer of the foregoing instrument, who being duly sworn acknowledged to me that she executed the same.



CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May 2009, I caused a copy of the foregoing **AFFIDAVIT OF MERLIN JESSOP** to be served upon the following in the following described manner:

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

Timothy Bodily, Esq.
Assistant Attorneys General
Office of the Utah Attorney General
160 East 300 South, 5th Floor
P.O. Box 140874
Salt Lake City, UT 84114-0874
EMAIL: tbodily@utah.gov

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

Mark L. Callister
Jeffrey L. Shields
Zachary Shields
Callister Nebeker & McCullough
10 E. South Temple, Suite 900
Salt Lake City, UT 84133
EMAIL: jlshields@cnmlaw.com

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

Roger H. Hoole
Gregory N. Hoole
4276 South Highland Drive
Salt Lake City, UT 84124
EMAIL: rrh@hooleking.com

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

Mark L. Shurtleff
Utah Attorney General
160 East, 300 South, Fifth Floor
P.O. Box #142320
Salt Lake City, UT 84114
EMAIL: mshurtleff@utah.gov

VIA U.S. MAIL POSTAGE PREPAID AND EMAIL TRANSMISSION:

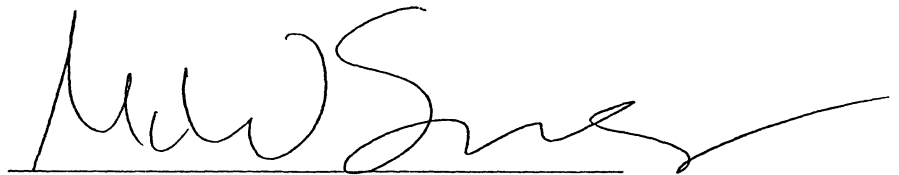
Peter Stirba
Stirba & Associates
215 South State Street, Suite 750
P.O. Box 810
Salt Lake City, UT 84110-0810
EMAIL: peter@stirba.com

VIA FACSIMILE TRANSMISSION and EMAIL TRANSMISSION:

William A. Richards
Arizona Attorney General's Office
1275 West Washington
Phoenix, Arizona 85007-2997
Fax No.: (602) 364-2214
EMAIL: bill.richards@azag.gov

VIA U.S. MAIL POSTAGE PREPAID AND EMAIL TRANSMISSION:

Michael D. Zimmerman
Snell & Wilmer
15 W. South Temple, Suite 1200
Salt Lake City, UT 84101
EMAIL: mzimmerman@swlaw.com

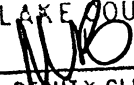
A handwritten signature in black ink, appearing to read "Michael D. Zimmerman", written over a horizontal line.

JAMES C. BRADSHAW (#3768)
MARK R. MOFFAT (#5112)
BROWN, BRADSHAW & MOFFAT, L.L.P.
10 West Broadway, Suite 210
Salt Lake City, Utah 84101
Telephone: (801) 532-5297
Facsimile: (801) 532-5298

FILED
DISTRICT COURT

09 MAY 13 PM 5:56

THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY

BY 
DEPUTY CLERK

Kenneth A. Okazaki (USB #3844)
Stephen C. Clark (USB #4551)
Ginger Utley (USB #11788)
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main St., Ste. 1500
Salt Lake City, UT 84101
Telephone: (801) 521-3200
Facsimile: (801) 328-0537

Attorneys for Willie Jessop, Dan Johnson and Merlin Jessop

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE UNITED
EFFORT PLAN TRUST

:
:
: **AFFIDAVIT OF WILLIE JESSOP**
:
: Case No. 053900848
:
: Judge Denise P. Lindberg
:
:
:
:

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

The undersigned Affiant, Willie Jessop, being duly sworn, deposes and states as follows:

1. I am an adult resident of the State of Utah. I am a member of the FLDS Church. I respectfully submit this Affidavit to provide information concerning my knowledge of the property known as Berry Knoll Farm, located in Colorado City, Arizona. I have personal knowledge of the matters set forth herein, know them to be true and if called could and would competently testify thereto.

2. Berry Knoll Farm was purchased sometime in the 1980s by my uncles, Thomas and John Steed.

3. At the time of its purchase, the land was mainly sagebrush.

4. I assisted my uncles in improving the land. I personally ran farm tractors, drills, and swathers. I helped remove sagebrush, add irrigation, seed, plant, and otherwise assist in turning Berry Knoll into a producing, agricultural farm.

5. I believe that Thomas and John Steed dedicated the land to the UEP Trust sometime in or around 1987. My role in improving and maintaining the land increased in the 1990s.

6. In 1994, I was granted sacred priesthood stewardship of Berry Knoll land and began grazing cattle on certain parts of the land. I have continued grazing cattle on parts of Berry Knoll since that time.

7. I consider my stewardship of Berry Knoll lands to be sacred. I consider that it is part of my eternal salvation to discharge the duties of my stewardship under Divine Guidance. Divine Guidance can only come from inspired Church leaders, not someone appointed by the Court or the State.

8. I consider Berry Knoll to be sacred ground and believe it be the site of a future FLDS temple where sacred ordinances will be performed.

9. The Berry Knoll Farm lands have long been of central economic, social and historical value to the FLDS Church as 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 Church through consecration of its bounty to the Bishop’s Storehouse.

10. I have used the food and income generated from Berry Knoll Farm to provide for the “Just Wants and Needs” of my family and other faithful members of the FLDS Church as described by Holy Scripture.

11. I am entitled to receive the benefits of my Stewardship so long as it is not rescinded by Divine decree given only through Church Leaders.

12. The attempt to remove me from my Stewardship and to sell the land appointed to me by Divine decree is an attack on the Holy United Order as outlined in the Doctrine and Covenants and would be a punishment for following my religious beliefs.

13. Based on the above, I have an interest in the disposition of Berry Knoll Farm lands. Any action taken in regard to Berry Knoll—including its sale or its liquidation—affects my interests in the property.

14. I respectfully request this Court allow me to intervene such that I can protect my interests in Berry Knoll.

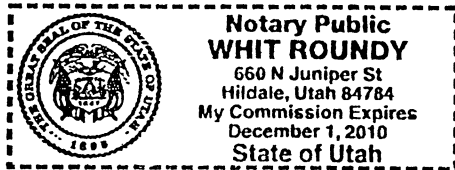
THIS IS THE END OF MY AFFIDAVIT.

DATED this 10th day of May, 2009.

William Jessop
WILLIAM JESSOP

STATE OF UTAH)
COUNTY OF WASHINGTON) : ss.

On the 10th day of May 2009, personally appeared before me WILLIAM JESSOP, the signer of the foregoing instrument, who being duly sworn acknowledged to me that he executed the same.



[Signature]
NOTARY PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May 2009, I caused a copy of the foregoing **AFFIDAVIT OF WILLIE JESSOP** to be served upon the following in the following described manner:

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

Timothy Bodily, Esq.
Assistant Attorneys General
Office of the Utah Attorney General
160 East 300 South, 5th Floor
P.O. Box 140874
Salt Lake City, UT 84114-0874
EMAIL: tbodily@utah.gov

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

Mark L. Callister
Jeffrey L. Shields
Zachary Shields
Callister Nebeker & McCullough
10 E. South Temple, Suite 900
Salt Lake City, UT 84133
EMAIL: jlshields@cnmlaw.com

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

Roger H. Hoole
Gregory N. Hoole
4276 South Highland Drive
Salt Lake City, UT 84124
EMAIL: rrh@hooleking.com

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

Mark L. Shurtleff
Utah Attorney General
160 East, 300 South, Fifth Floor
P.O. Box #142320
Salt Lake City, UT 84114
EMAIL: mshurtleff@utah.gov

VIA U.S. MAIL POSTAGE PREPAID AND EMAIL TRANSMISSION:

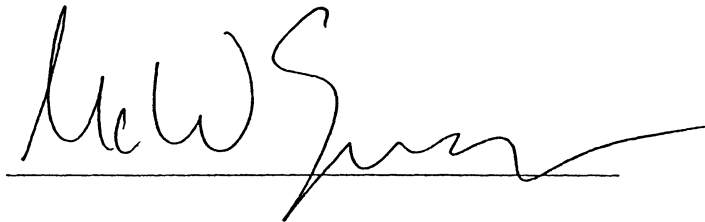
Peter Stirba
Stirba & Associates
215 South State Street, Suite 750
P.O. Box 810
Salt Lake City, UT 84110-0810
EMAIL: peter@stirba.com

VIA FACSIMILE TRANSMISSION and EMAIL TRANSMISSION:

William A. Richards
Arizona Attorney General's Office
1275 West Washington
Phoenix, Arizona 85007-2997
Fax No.: (602) 364-2214
EMAIL: bill.richards@azag.gov

VIA U.S. MAIL POSTAGE PREPAID AND EMAIL TRANSMISSION:

Michael D. Zimmerman
Snell & Wilmer
15 W. South Temple, Suite 1200
Salt Lake City, UT 84101
EMAIL: mzimmerman@swlaw.com

A handwritten signature in black ink, appearing to read "McW Zimmerman", is written over a horizontal line.

FILED
DISTRICT COURT

09 MAY 21 PM 5:16

James C. Bradshaw (#3768)
BROWN, BRADSHAW & MOFFAT, L.L.P.
10 West Broadway, Suite 210
Salt Lake City, Utah 84101
Telephone: (801) 532-5297
Facsimile: (801) 532-5298

THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY
BY 
DEPUTY CLERK

Kenneth A. Okazaki (USB #3844)
Stephen C. Clark (USB #4551)
Ginger Utley (USB #11788)
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main St., Ste. 1500
Salt Lake City, UT 84101
Telephone: (801) 521-3200
Facsimile: (801) 328-0537

*Attorneys for Movants/Intervenors Willie Jessop, Dan
Johnson, Merlin Jessop, Lyle Jeffs and James Oler*

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE UNITED
EFFORT PLAN TRUST

:
:
: **MOTION OF LYLE JEFFS AND**
: **JAMES OLER TO INTERVENE**
:
: Case No. 053900848
:
: Judge Denise P. Lindberg
:
:
:

Lyle Jeffs and James Oler, local Bishops in areas comprising Trust lands
("Bishops"), through their attorneys of record, hereby move the Court pursuant to Rule
24(a) of the Utah Rules of Civil Procedure to intervene as a matter of right in the above

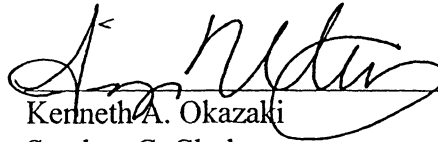
entitled matter. The basis for this motion is that, as required by Rule 24(a), the Bishops claim “an interest relating to the property or transaction which is the subject of the action,” in that their ecclesiastical responsibilities extend to ascertaining and meeting the just wants and needs of Trust beneficiaries and view the preservation of the Berry Knoll Farm, which is the subject of the Special Fiduciary’s Motion for Relief to Preserve Assets of the Trust filed with the Court on May 6, 2009, as critical to meeting those just wants and needs; they are “so situated that the disposition of the action may as a practical matter impair or impede [their] ability to protect that interest,” in that the sale of the property to a third party without their input would be both a violation of the Reformed Trust and against the best interest of the vast majority of Trust participants; and their interest is not “adequately represented by existing parties,” in that the Special Fiduciary has consistently failed and refused to solicit or accept their input on proposed dispositions of Trust property, including the Berry Knoll Farm, and other parties who might represent those interests have previously been deemed not to have standing.

This motion is supported by the accompanying Memorandum and the Affidavits of Lyle Jeffs and James Oler. It is also supported by the Memorandum and Affidavits filed in support of the Motion to Intervene of Willie Jessop, Dan Johnson, and Merlin Jessop, which are incorporated herein by reference pursuant to Utah Rule of Civil Procedure 10(c).

DATED this 21st day of May, 2009.

JONES, WALDO, HOLBROOK & McDONOUGH

By:

A handwritten signature in black ink, appearing to read "K. Okazaki", written over a horizontal line.

Kenneth A. Okazaki

Stephen C. Clark

Ginger Utley

*Attorneys for Movants/Intervenors Willie Jessop,
Dan Johnson, Merlin Jessop, Lyle Jeffs and James
Oler*

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of May 2009, I caused a copy of the foregoing **MOTION OF LYLE JEFFS AND JAMES OLER TO INTERVENE** to be served upon the following in the following described manner:

VIA HAND-DELIVERY:

Timothy Bodily, Esq.
Assistant Attorneys General
Office of the Utah Attorney General
160 East 300 South, 5th Floor
P.O. Box 140874
Salt Lake City, UT 84114-0874
EMAIL: tbodily@utah.gov

VIA HAND-DELIVERY:

Mark L. Callister
Jeffrey L. Shields
Zachary Shields
Callister Nebeker & McCullough
10 E. South Temple, Suite 900
Salt Lake City, UT 84133
EMAIL: jlshields@cnmlaw.com

VIA HAND-DELIVERY:

Roger H. Hoole
Gregory N. Hoole
4276 South Highland Drive
Salt Lake City, UT 84124
EMAIL: rhh@hooleking.com

VIA HAND-DELIVERY:

Mark L. Shurtleff
Utah Attorney General
160 East 300 South, Fifth Floor
P.O. Box #142320
Salt Lake City, UT 84114
EMAIL: mshurtleff@utah.gov

VIA HAND-DELIVERY:

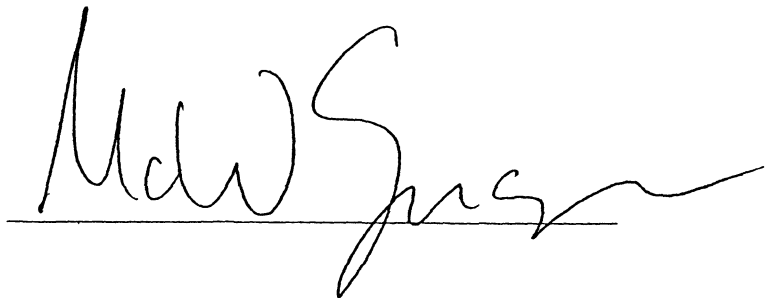
Peter Stirba
Stirba & Associates
215 South State Street, Suite 750
P.O. Box 810
Salt Lake City, UT 84110-0810
EMAIL: peter@stirba.com

VIA FACSIMILE TRANSMISSION and EMAIL TRANSMISSION:

William A. Richards
Arizona Attorney General's Office
1275 West Washington
Phoenix, Arizona 85007-2997
Fax No.: (602) 364-2214
EMAIL: bill.richards@azag.gov

VIA HAND-DELIVERY:

Michael D. Zimmerman
Snell & Wilmer
15 W. South Temple, Suite 1200
Salt Lake City, UT 84101
EMAIL: mzimmerman@swlaw.com

A handwritten signature in black ink, appearing to read "Michael D. Zimmerman", is written over a horizontal line.

James C. Bradshaw (#3768)
BROWN, BRADSHAW & MOFFAT, L.L.P.
10 West Broadway, Suite 210
Salt Lake City, Utah 84101
Telephone: (801) 532-5297
Facsimile: (801) 532-5298

Kenneth A. Okazaki (USB #3844)
Stephen C. Clark (USB #4551)
Ginger Utley (USB #11788)
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main St., Ste. 1500
Salt Lake City, UT 84101
Telephone: (801) 521-3200
Facsimile: (801) 328-0537

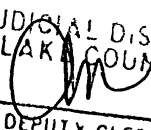
*Attorneys for Movants/Intervenors Willie Jessop, Dan
Johnson, Merlin Jessop, Lyle Jeffs and James Oler*

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE UNITED
EFFORT PLAN TRUST

:
:
: **MEMORANDUM IN SUPPORT OF**
: **LYLE JEFFS' AND JAMES OLER'S**
: **MOTION TO INTERVENE**
:
: Case No. 053900848
:
: Judge Denise P. Lindberg
:
:

The Court-appointed Special Fiduciary, Bruce R. Wisan ("Fiduciary"), has moved the Court for relief "to preserve the assets of the Trust." Intervenors Lyle Jeffs and James Oler, who are the ecclesiastical leaders with responsibility to provide for the temporal and

FILED
DISTRICT COURT
09 MAY 21 PM 5:16
THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY
BY 
DEPUTY CLERK

spiritual “just wants and needs” of the members of the FLDS Church in the communities where Trust lands are located, oppose that motion, since its effect will not be to “preserve” but instead take the physical and spiritual heart out of the Hildale/Colorado City community.

The Fiduciary’s request is not only contrary to this Court’s prior ruling, which required a hearing before the property is sold, but is also contrary to the terms of the Reformed Trust, since the Fiduciary has failed to solicit or receive any input from the Bishops as is required by the Trust. The Fiduciary now goes so far as to urge the Court to act without a hearing, claiming that “[t]o hold a formal hearing on the matter would *only* cause delay and would unnecessarily increase the costs and burdens to be borne by the Fiduciary and his legal counsel” (emphasis added). That is not, however, the “only” consequence of such extraordinary and hasty action. The additional and material consequence of selling Berry Knoll without hearing—or based on the expedited hearing schedule the Fiduciary proposes in the alternative—is to deprive without due process the Trust’s intended beneficiaries of the value of land as a perpetual, productive source of food and income, and as a sacred religious site of a future temple, in exchange for a one-time cash benefit to the Fiduciary.¹ It is for this reason that the Bishops move to intervene pursuant to Rule 24(a) of the Utah Rules of Civil Procedure to oppose the

¹ The Fiduciary’s request is especially egregious given that the only beneficiary of the Fiduciary’s request is the Fiduciary himself, and he stands to benefit at the expense of the Trust for which he has duties to protect. Further, the stated reason the Fiduciary was appointed was that the Trust was not defending itself in legal matters and that the assets of the Trust were being wasted and disposed of. Now the Fiduciary wishes to dispose of the very assets he is charged with protecting in order to pay himself. He has not, however, proposed any alternative solution that would preserve the assets despite the fact that several such proposals were offered and accepted during the parties’ mediation.

Fiduciary's Motion and protect the rights of the vast majority of Trust beneficiaries whose best interests they represent.

Utah Rule of Civil Procedure 24(a) provides that a party may intervene as of right “[u]pon timely application . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.”

The Bishops satisfy these criteria. First, their interests, and those of the FLDS Church members they represent, “will be adversely affected by the court’s disposition of property.” *Jenner v. Real Estate Servs.*, 659 P.2d 1072, 1073 (Utah 1983). The Fiduciary’s Motion asks this Court to dispose of one of the most sacred pieces of property held by the FLDS Church—Berry Knoll. Disposing of that property without hearing, or according to the expedited hearing schedule the Fiduciary proposes, will undoubtedly adversely affect the Bishops, and, more importantly, make the discharge of their callings and duties difficult, if not impossible. As explained herein, the Bishops have both direct temporal and sacred responsibilities for their congregations. They rely on Berry Knoll to discharge those sacred duties, including providing for the just physical and spiritual wants and needs of their congregations. Thus, they are entitled to intervene as of right.

Second, their application is timely. The Fiduciary filed his Motion on May 5, 2009. Prior to that time, the Court had imposed a “stand-down” of litigation so that the parties could seek a negotiated resolution on a number of issues, including the Fiduciary’s previously proposed sale of Berry Knoll and payment of the Fiduciary’s fees and

expenses and other Trust obligations. The Bishops were present and participated in good faith in those negotiations, culminating in a three-day settlement conference with Judge Paul Cassell on April 22-24, 2009. Additionally, pursuant to this Court's Memorandum Decision reforming the Trust, the purpose of the Reformed Trust is to provide for the "just wants and needs" of the FLDS people. This Court recognized that the Church's "priesthood line *should provide guidance* [to the Fiduciary] regarding what are 'just wants' in light of the Church's religious principles." *See* Memorandum Decision at 19, ¶ 42 (emphasis added). Thus, the Bishops have expected and requested—within the parameters set by this Court—to be consulted regarding decisions that affect Trust assets. Though they have been consistently denied and ignored by the Fiduciary, until now, Bishops have maintained the hope of being consulted as this Court required.

In sum, given the stand-down of the litigation, the good faith efforts of counsel to settle the pending legal matters including issues regarding Berry Knoll, and this Court's mandate that the Bishops "provide guidance" to the Fiduciary, the Bishops had no reason to intervene prior the Fiduciary's Motion filed only days ago. The Bishops have therefore acted timely given the Fiduciary's Motion and relevant facts and circumstances of the litigation. *See, e.g., Jenner*, 659 P.2d at 1074 (explaining that the "timeliness" of an application for intervention must be determined based on the "facts and circumstances of each particular case.>").

Third, the Bishops "claim[] an interest relating to the property . . . which is the subject of the action and [are] so situated that the disposition of the action may as a practical matter impair or impede [their] ability to protect that interest." The Utah Court

of Appeals has defined this interest requirement as follows: “The applicant’s interest in the subject matter of the dispute must be a direct claim upon the subject matter of the action such that the applicant will either gain or lose by direct operation of the judgment to be rendered, not a mere, consequential, remote or conjectural possibility of being in some manner affected by the result of the original action.” *Interstate Land Corp. v. Patterson*, 797 P.2d 1101, 1108 (UT App 1991) (citation and internal quotation marks omitted); *see also Commercial Block Realty Co. v. United States Fidelity & Guar. Co.*, 828 P.2d 1081, 1083 (Utah 1994) (For a party to intervene, “[h]e must have an interest in the matter in litigation, in the success of either of the parties, or an interest against both.”) Indeed, the Bishops have a unique interest in Berry Knoll and will gain or lose by direct operation of this Court’s judgment regarding its sale. Specifically, as Bishops, they have the sacred priesthood charge, pursuant to scripture and belief,² to ensure that the just wants and needs of their respective congregations are met. This charge includes providing for both the physical and spiritual needs and wants of the people. According to the tenets of the FLDS faith, the Bishops’ eternal salvation is intimately connected with how well they discharge this duty, and they have relied in part on Berry Knoll to help them do so.

The Bishops have relied on the Berry Knoll for over three decades to help provide for the just physical wants and needs of the people. Once consecrated to the Trust in the 1980s, the Bishops of the FLDS Church began granting priesthood stewardship of parcels

² See Doctrine and Covenants Section 51 verse 13: “And again, let the bishop appoint a storehouse unto his church; and let all things both in money and in meat, which are more than is needful for the wants of this people, be kept in the hands of the bishop.”
886895.1

of Berry Knoll to various FLDS priesthood holders for the benefit of the congregations. Berry Knoll could not be consecrated until all debts and encumbrances associated with the land were removed.³ The sacred charge given those men was to improve the consecrated land by turning it into a working, productive farm, and they did so by planting, harvesting, grazing, and irrigating, using the consecrated land to benefit the FLDS faithful. Based on the efforts of the Bishops and the people to whom they granted sacred stewardships, Berry Knoll has become a vital part of the Church Storehouse from which the Bishops distribute food and resources to help satisfy the just physical wants and needs of the FLDS members.

As the Bishops discharge their duty to provide for the just physical wants and needs of the people, they simultaneously discharge their sacred spiritual duty of leadership. Moreover, the Bishops, as all FLDS faithful, regard Berry Knoll as a sacred site of a future temple. Thus, Berry Knoll has provided, and, so long as it is not sold, will continue to provide for the just spiritual wants and needs of the people. The Bishops' interest in the property is clear.

Fourth, "the disposition of the action may as a practical matter impair or impede" the Bishops' ability to protect the communities' interest in Berry Knoll. Here, the Bishops' interest in Berry Knoll is the interest of the Trust participants. That is, the Bishops represent the people for whom the Trust assets are meant to provide. As the Fiduciary has pointedly noted in his Motion, there is no party with standing who

³ Pursuant to FLDS beliefs, land cannot be consecrated to the Lord if any temporal encumbrances exist.

represents the Trust participants, even under the terms of the Reformed Trust. That is not, however, what this Court intended when it reformed the Trust.

In its Memorandum Decision, this Court recognized that the FLDS peoples' interest in Trust assets should be guided, at least in part, by FLDS priesthood leadership including its Bishops. This Court therefore mandated that FLDS "priesthood line *should provide guidance*" to the Fiduciary in determining how to most effectively use Trust assets to meet the just wants and needs of the FLDS people (emphasis added). The Memorandum Decision directs the Fiduciary to provide a conduit for such "guidance." Despite repeated petitions to the Fiduciary for any kind of voice in matters relating to Trust assets, the Bishops have been ignored; often, the Fiduciary has acted in direct opposition to their guidance. If Berry Knoll is now sold without hearing, or if a hearing commences without intervention by the Bishops, neither they nor the FLDS people for whom the Trust was established will be able to protect their interest in one of their most sacred assets.

On the other hand, the Fiduciary has only a single interest in Berry Knoll: obtaining a one-time cash payment from its hasty sale. The Fiduciary's Motion asks the Court to ignore all possible interests of the Trust participants, including the Bishops' and FLDS members generally, and sell Berry Knoll without the most fundamental due process requirement: an opportunity to be heard. While the Fiduciary claims unclean hands on the part of the FLDS people, it is the Fiduciary who appears to be acting in bad faith, since he has, at all times, ignored this Court's charge that he consider the guidance of the Bishops. Moreover, the timing of his motion is suspect as it comes following settlement

negotiations wherein representatives of the FLDS Church negotiated toward an alternative resolution that would have provided the Fiduciary the relief he claims so desperately to need while *truly* preserving for the Trust this unique property, which up until his management, has been highly productive.

Fifth, and finally, there is no existing party who adequately represents the Bishops' interest in Berry Knoll, or more importantly, the voices of the thousands of faithful FLDS Church members who look to them for stewardships. The Fiduciary represents a small advisory board comprised mainly of disgruntled, ex-FLDS members whose only interest in Berry Knoll is directly adverse to the FLDS people. The States' Attorneys General represent the public generally but have no special interest in Berry Knoll, especially the kind of sacred stewardship of which the Bishops maintain responsibility. Only the Bishops truly represent the interest of the vast majority of Trust participants. And until now, they have been voiceless, without any conduit for providing "guidance."

The Fiduciary touts the fact that "no party with standing has objected to the Motion for Approval." As explained, the Bishops have tried to object many times to many of the Fiduciary's actions regarding Trust assets, and they have done so through the proper forum. That is, they have sought to "provide guidance" as this Court recognized they were entitled to do. For his part, however, the Fiduciary has never recognized, sought after, or even considered their guidance, and in fact, has acted in direct opposition to it.⁴

⁴ In March 2009, for example, the Fiduciary approved an application for a ...

The Fiduciary has long ignored and opposed the Bishops and now seeks to exclude them from even being heard to oppose his disposal of one of their most sacred assets. It is disingenuous, given the Fiduciary's past acts and present Motion, to assert that no party has objected to his proposal to sell Berry Knoll. The Bishops, representing the vast majority of Trust participants, indeed object and satisfy the criteria for intervening.

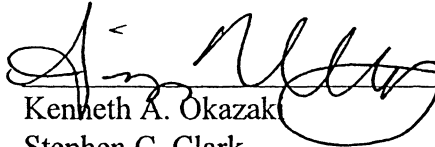
CONCLUSION

The Fiduciary has moved this Court to take the drastic action of selling a sacred, productive landholding that has been in the FLDS Church's ownership and management for over three decades, and do so without a hearing. Alternatively, the Fiduciary seeks an expedited hearing schedule for the claimed purpose of raising funds from a buyer who he claims will disappear in two weeks' time, never to be replaced by another. Given the facts, the Motion appears to be an attempt to deny the Bishops, and by extension, the vast majority of Trust beneficiaries, their most fundamental due process right to be heard. Rule 24 is meant to prevent such procedural and substantive maneuvers that would deprive interested parties of a say in the disposition of property. Pursuant to Rule 24, the Bishops are entitled to intervene: they have an interest directly relating to Berry Knoll, and without intervention, they will be unable to protect their interest. They therefore respectfully request this Court to grant their motion to intervene.

DATED this 21st day of May, 2009.

JONES, WALDO, HOLBROOK & McDONOUGH

By:

A handwritten signature in black ink, appearing to be "Ken Utley", written over a horizontal line.

Kenneth A. Okazaki

Stephen C. Clark

Ginger Utley

*Attorneys for Movants/Intervenors Willie Jessop,
Dan Johnson, Merlin Jessop, Lyle Jeffs and James
Oler*

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of May 2009, I caused a copy of the foregoing
**MEMORANDUM IN SUPPORT OF LYLE JEFFS' AND JAMES OLER'S MOTION
TO INTERVENE** to be served upon the following in the following described manner:

VIA HAND-DELIVERY:

Timothy Bodily, Esq.
Assistant Attorneys General
Office of the Utah Attorney General
160 East 300 South, 5th Floor
P.O. Box 140874
Salt Lake City, UT 84114-0874
EMAIL: tbodily@utah.gov

VIA HAND-DELIVERY:

Mark L. Callister
Jeffrey L. Shields
Zachary Shields
Callister Nebeker & McCullough
10 E. South Temple, Suite 900
Salt Lake City, UT 84133
EMAIL: jlshields@cnmlaw.com

VIA HAND-DELIVERY:

Roger H. Hoole
Gregory N. Hoole
4276 South Highland Drive
Salt Lake City, UT 84124
EMAIL: rh@hooleking.com

VIA HAND-DELIVERY:

Mark L. Shurtleff
Utah Attorney General
160 East 300 South, Fifth Floor
P.O. Box #142320
Salt Lake City, UT 84114
EMAIL: mshurtleff@utah.gov

VIA HAND-DELIVERY:

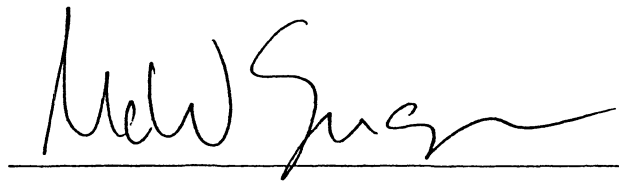
Peter Stirba
Stirba & Associates
215 South State Street, Suite 750
P.O. Box 810
Salt Lake City, UT 84110-0810
EMAIL: peter@stirba.com

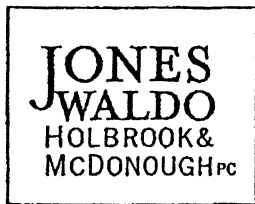
VIA FACSIMILE TRANSMISSION and EMAIL TRANSMISSION:

William A. Richards
Arizona Attorney General's Office
1275 West Washington
Phoenix, Arizona 85007-2997
Fax No.: (602) 364-2214
EMAIL: bill.richards@azag.gov

VIA HAND-DELIVERY:

Michael D. Zimmerman
Snell & Wilmer
15 W. South Temple, Suite 1200
Salt Lake City, UT 84101
EMAIL: mzimmerman@swlaw.com

A handwritten signature in black ink, appearing to read "Michael D. Zimmerman", written over a horizontal line.



March 27, 2009

BY FACSIMILE AND ELECTRONIC MAIL

Jeff Shields
Zach Shields
Callister Nebeker & McCullough
10 East South Temple, Suite 900
Salt Lake City, UT 84133

Tim Bodily
Jerrold Jensen
Assistant Attorneys General
State of Utah
160 East 300 South, Fifth Floor
Salt Lake City, UT 84111

Re: FLDS Cemetery

Gentlemen:

We apprised you this afternoon that we have learned from FLDS Church members in the area that a grave has been dug today in the FLDS Cemetery in Colorado City, Arizona. Upon our further inquiry, the Special Fiduciary confirmed that he received yesterday and approved an application for the burial of Caden Stubbs in the Cemetery, and authorized the digging of the grave today with law enforcement officers standing by.

As you should know, the Cemetery occupies a unique status among the properties dedicated and consecrated by the FLDS faithful. The faithful consider the Cemetery a holy site. Throughout its history before the appointment of the Special Fiduciary, requests to be buried in the Cemetery were always been subject to prayerful consideration by the FLDS Priesthood, and not only access to the Cemetery but assignment to specific sites within the Cemetery determined in accordance with divine revelation as to the "just wants and needs" of the person or family making the request and the broader community.

As you also know, under the terms of the Reformed Trust, administration of Trust properties generally is to be informed by, among other things, input from Priesthood authorities. See Reformed Declaration of Trust of the United Effort Plan Trust, § 6.4.9. To an even greater degree than with decisions affecting most other properties held by the UEP Trust, such input is crucial with respect to the use of the Cemetery in order to demonstrate appropriate sensitivity not only for religious sensibilities but overall harmony.

ATTORNEYS & COUNSELORS
EST. 1875

TEL: 801-521-3200
FAX: 801-328-0537

170 SOUTH MAIN ST, SUITE 1500
SALT LAKE CITY, UTAH 84101

WWW.JONESWALDO.COM

March 27, 2009

Page 2

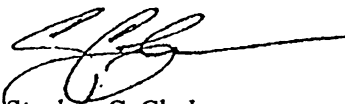
We believe the Special Fiduciary is well aware that Mr. Lyle Jeffs is the Presiding Bishop, the Priesthood authority who is responsible for determining the "just wants and needs" of putative Trust beneficiaries in the Short Creek area, including the use of the Cemetery. As such, we would have expected that the Special Fiduciary would have solicited Mr. Jeffs' recommendation in this most sensitive matter in accordance with the terms of the Reformed Trust. We understand, however, that neither Mr. Jeffs nor any other FLDS priesthood leader was consulted in connection with the Special Fiduciary's consideration and approval of the application for the burial of Caden Stubbs in the Cemetery. Nor are we aware of any effort by the Special Fiduciary to ground his decision in the specific criteria set forth in the Reformed Trust or to communicate his decision before subjecting members of the community to the deeply disturbing sight of gravediggers, accompanied by law enforcement, on this sacred ground.

We hereby respectfully request that this proposed use of UEP Trust property be suspended until, at a minimum, such time as the Special Fiduciary complies with his obligations under the Reformed Trust and contacts Mr. Jeffs as the designated representative of the FLDS Church to discuss the matter. We further reserve the right to seek any remedies that might be available to address this violation of the Trust, and more importantly from our perspective, another particularly egregious violation of the constitutional rights of the FLDS Church and its members to exercise their religion without the undue burden.

We would appreciate your immediately confirming in writing your response to this request.

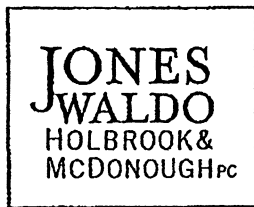
Sincerely,

JONES WALDO HOLBROOK & McDONOUGH, PC

A handwritten signature in black ink, appearing to be "S.C. Clark", written over a horizontal line.

Stephen C. Clark

cc: Willie Jessop



ATTORNEYS & COUNSELORS
EST. 1875

TEL: 801-521-3200
FAX: 801-328-0537

170 SOUTH MAIN ST, SUITE 1500
SALT LAKE CITY, UTAH 84101

WWW.JONESWALDO.COM

March 31, 2009

BY FACSIMILE AND ELECTRONIC MAIL

Mark L. Shurtleff
Utah Attorney General
Utah State Capital
350 North State Street, Suite 230
Salt Lake City, UT 84111

Re: Property Payments and Grievances

Dear Mark:

Thank you for your letter of March 26, 2009.

As part of what we understood to be a general stand down among the interested parties with respect to the UEP Trust, whereby the Special Fiduciary appointed at your request would cease incurring costs and making decisions our clients consider to be antithetical to the long-term interests of the Hilldale and Colorado City communities as well as the Trust itself, our clients agreed to use best efforts to encourage payment of the \$100 monthly occupancy fees. Our clients have done so. The fees collected in November and December were remitted to your office to be applied to what we understood, based on your own representations going back to when you secured the appointment of the Special Fiduciary, was your intent to ensure the Trust property would be protected.

What we have seen has not been consistent with either the understanding reached or your representations. On the contrary, the stand down has not been observed by the Special Fiduciary, but he has continued his self-described "psychological and sociological war" against the FLDS people. And the payments our clients have remitted have not gone to protect the Trust property, but to finance the Special Fiduciary's continued misconduct.

Your letter asks for a list of grievances. It is difficult to know where to begin, but allow us to point to our most recent letter to your office and the Special Fiduciary, dated March 27, 2009. In that letter, we specifically pointed out one concrete and recent instance where the Special Fiduciary had acted not only contrary to the general interests of the Hilldale and Colorado City communities, but also contrary to the terms of the Reformed Trust, by unilaterally and without consultation approving a burial in the FLDS Cemetery and stationing law enforcement to stand guard on this sacred land. It is difficult to describe the resulting affront to the people in the community. We described the situation and respectfully asked for a response

Letter to Mark L. Shurtleff
March 31, 2009
Page 2

that would address this obvious affront. We received no response from your office or the Special Fiduciary.

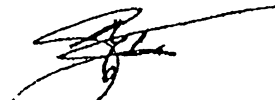
Just today, we have learned that the Special Fiduciary continues his all-out effort in disregard of reasonable concept of a stand-down. After Richard Jessop and his brother Thomas Jessop were arrested on Berry Knoll for simply trying to put the land to productive use after the Stubbs planted a portion of that property, the Special Fiduciary tried to paper over the situation by creating a lease that purports to allow the Stubbs to control that land for \$1,000 a year – again, a clear affront to the majority of the communities, without even complying with the requirement in the Reformed Trust that he consult with local ecclesiastical authority as to the “just wants and needs” of the people.

These are only the most recent examples of the Special Fiduciary’s continuing to carry out his “psychological and sociological war” and even acting contrary to the Reformed Trust. At your request, Willie Jessop has spent considerable time and effort compiling a more complete listing. He would like to personally deliver that to you at your earliest convenience. It reflects his and his communities’ perspective, an unvarnished view of their experience since the Special Fiduciary’s appointment, and their opinion of the effect of your office’s actions and inactions through either express or tacit approval. We trust you will view it in the spirit in which it is provided and in the context of confidential settlement discussions under Rule 408 of the Utah and Federal Rules of Evidence.

In light of this information, we hope you will have a greater understanding for why our clients hesitate to remit additional payments. Our clients have continued, in compliance with our agreement on the stand down and the terms of the subsequent state court order, to collect those payments, and even though the court order does not speak directly to the issue, they are prepared to remit them to your office. They will do so without condition, even though they continue to believe that the best conceivable use of the funds at this juncture would be to pay existing property tax liabilities so that the property does not go to sale, and we renew our request that they be applied to that purpose. We rely on your good faith and on the integrity of your promises, going back to the beginning of this litigation, that any funds will be used for the protection of the property.

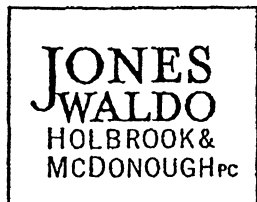
Sincerely,

JONES WALDO HOLBROOK & McDONOUGH, PC

A handwritten signature in black ink, appearing to read "Stephen C. Clark", with a stylized flourish extending from the end.

Stephen C. Clark

cc: Willie Jessop



ATTORNEYS & COUNSELORS
EST. 1875

TEL: 801-521-3200
FAX: 801-328-0537

170 SOUTH MAIN ST, SUITE 1500
SALT LAKE CITY, UTAH 84101

WWW.JONESWALDO.COM

April 8, 2009

BY ELECTRONIC MAIL AND U.S. MAIL

Mark Callister
Callister Nebeker & McCullough
10 East South Temple, Suite 900
Salt Lake City, UT 84133

Re: Stand Down and Settlement Conference

Dear Mark:

Thank you for your letter of April 2, 2009. We remain concerned at your client's lack of compliance with court orders and his failure even to follow the terms of the Reformed Trust. To give just one recent example, we recently wrote to note that our clients have now been fully engaged in this matter for months, but there has yet to be any effort by the Special Fiduciary to solicit and consider the input of FLDS Church priesthood leaders in making decisions about the disposition of Trust property. If you have examples of his having done so, perhaps you can provide details and that would inform our perspective on this issue.

The only information we have is that your client continues to rely on proxies who are less than mindful of the basic rights of church members (including one who was recently convicted of criminal conduct in connection with his carrying out the Special Fiduciary's orders as to the possession and use of Trust property) and he continues to encumber Trust property (including the signing of a lease with the Stubbs on Berry Knoll in an apparent effort to justify an earlier false arrest of FLDS members tending to the productive use of the property).

In light of these very recent examples and the cemetery issue we previously raised with you, perhaps you can understand our client's perspective that the Special Fiduciary's self-described "psychological and sociological war" on the FLDS continues unabated. You might also understand why our clients believe the Special Fiduciary has not complied with the letter or the spirit of the stand-down and why they hesitate to provide additional funds for his "war" on them. They recently offered to apply the funds directly to the overdue taxes on Trust property and thus help protect the property against loss, which the Special Fiduciary himself acknowledged as his first and foremost obligation, but he rejected that sensible offer of compromise, and as a result Trust property remains at risk of loss.

April 8, 2009

Page 2

Nevertheless, we appreciate and accept your representation that your client will participate in the settlement conference in good faith. We would ask that you instruct him to refrain from further antagonistic conduct in preparation for the settlement conference, as such can only diminish the prospects for success. We will continue to work toward a resolution with you and the Utah Attorney General's office, and we look forward to putting forward, receiving and considering together creative alternatives.

Sincerely,


JONES WALDO HOLBROOK & McDONOUGH, PC

A handwritten signature in black ink, appearing to read "Kenneth A. Okazaki/scc".

Kenneth A. Okazaki

cc: Willie Jessop
Mark L. Shurtleff, Esq.
James Bradshaw, Esq.

James C. Bradshaw (#3768)
BROWN, BRADSHAW & MOFFATT
10 West Broadway, Suite 210
Salt Lake City, Utah 84101
Telephone: (801) 532-5297
Facsimile: (801) 532-5298

FILED
DISTRICT COURT
MAY 21 PM 5:16
THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY
BY  DEPUTY CLERK

Kenneth A. Okazaki (USB #3844)
Stephen C. Clark (USB #4551)
Ginger Utley (USB #11788)
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main St., Ste. 1500
Salt Lake City, UT 84101
Telephone: (801) 521-3200
Facsimile: (801) 328-0537

*Attorneys for Movants/Intervenors Willie Jessop, Dan
Johnson, Merlin Jessop, Lyle Jeffs and James Oler*

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE UNITED
EFFORT PLAN TRUST

:
:
: **AFFIDAVIT OF JAMES OLER**
:
: Case No. 053900848
:
: Judge Denise P. Lindberg
:
:
:
:

PROVINCE OF BRITISH COLUMBIA)
: ss.
COUNTY OF KOOTENAY, CANADA)

The undersigned Affiant, James Oler, being duly sworn, deposes and states as follows:

1. I am an adult resident of the province of British Columbian, Canada. I am a
member of the FLDS Church. In roughly September 2007, I became the Bishop of a local FLDS

congregation known as the Bountiful Stake of Zion. I respectfully submit this Affidavit to provide information concerning my role as a Bishop in the Church in representing and ministering to the just wants and needs of FLDS Church members. I have personal knowledge of the matters set forth herein, know them to be true and if called could and would competently testify thereto.

2. As a Bishop in the FLDS Church, my responsibilities include providing for the just physical and spiritual wants and needs of my congregation.

3. I am also responsible for the spiritual welfare and salvation of those who belong to my congregation. I believe that my eternal salvation is based, in part, on how well I discharge my duties to my congregation. My duties as Bishop are set forth in the Doctrine and Covenants ("D&C") (*see* Sections 42, 51 and 82) and other Holy Scripture. Among other duties, I am charged with living, and helping the members of my congregation live, the Law of Consecration and Stewardship (the "Law," also known as the United Order of Heaven). The Law, which in its present form dates to 1831, is set forth in Section 42 of the Doctrine and Covenants. One author has explained it as follows: "Upon the basic principle that the earth and everything on it belongs to the Lord, every person who was a member of the church at the time the system was introduced or became a member thereafter was asked to 'consecrate' or deed all his property, both real and personal, to the bishop of the church. The bishop would then grant an 'inheritance' or 'stewardship' to every family out of the properties so received, the amount depending on the wants and needs of the family, as determined jointly by the bishop and the prospective steward. . . It was expected that in some cases the consecrations would considerably exceed the stewardships. Out of the surplus thus made possible the bishop would grant stewardships to the poorer and younger members of the church who had no property to consecrate." L. Arrington, F.

Fox & D. May, *Building the City of God* 15 (1976) (footnote omitted). The principle is also set forth in the Bible and in the Book of Mormon.

4. Consecration, although typically described in terms of a gift of property, is really more an expression of faith than an exchange of tangible property. What is consecrated is one's personal allegiance, one's faith, and one's commitment to the Church, its leaders, and its principles. An individual who has made the religious consecration is entitled to seek a "stewardship," or permission to use such portion of UEP property as is necessary to satisfy the just wants and needs of his family. There is no formal conveyance involved in a grant of stewardship. One who has ceased to maintain the necessary religious commitment loses his right to continued use of UEP property. *See* D&C 42:37.

5. I understand that the Court's reformation of the UEP Trust supplanted my role in the operation of the Trust under the Law of Consecration and vested primary responsibility for the distribution of Trust assets in the Special Fiduciary. I also understand that the Reformed Trust envisions that those who have ceased to maintain the necessary religious commitment can nevertheless assert claims to Trust property. The fact remains, however, that the members of my congregation remain beneficiaries under the Reformed Trust – indeed, I believe they are among the vast majority of Trust beneficiaries who remain faithful members of the FLDS Church. Therefore, in my role as Bishop, I have a direct and substantial interest in the administration of the UEP Trust and the distribution of trust assets according to the just wants and needs of the people in my congregation.

6. As such, I have attempted to represent the best interests of the FLDS Church members in my congregation and to minister to their just wants and needs to the extent I can do so under the Reformed Trust.

7. I am aware that the Special Fiduciary assigned the Bishop's Storehouse building, located in the community of Bountiful, British Columbia, which included a large cold storage used to store meat and other food to provide for the just wants and needs of the faithful members of the FLDS Church to former members of the FLDS Church. This assignment was made without my consent.

8. I have also had FLDS members come to me as the Bishop, needing help with housing needs, and I have not been able to help take care of their just wants and needs because the trustees of the UEP have been replaced by the Special Fiduciary.

9. I am familiar with the Berry Knoll farm located in Arizona. Produce grown at the Berry Knoll farm is, from time to time, sent to the community in Bountiful to assist with the support of members of the FLDS congregation.

10. Based on the above, I have an interest in the disposition of Trust assets, including Berry Knoll farm lands, which are part of the Trust and which have contributed greatly to the overall well-being of the participants in the Trust. Any action taken in regard to Berry Knoll—including its sale or liquidation—affects the interests of my congregation, not only because of its economic importance but also because of its religious significance as a prophesied temple site.

11. Given my special interests as Bishop, and those of the members of my congregation, in the distribution of Trust assets, I traveled from Canada and actively participated as a representative of the FLDS Church in the recent settlement negotiations with other interested parties. 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 in my congregation or in the Church generally in the areas where Trust lands are located.

12. I respectfully request this Court allow me to intervene such that I can protect the interests of FLDS Church members in my congregation and assist in representing the interests of the vast majority of Trust beneficiaries who remain faithful members of the FLDS Church, including our interests in preserving Berry Knoll as an economically and religiously important Trust asset.

THIS IS THE END OF MY AFFIDAVIT.

DATED this 21 day of May, 2009.

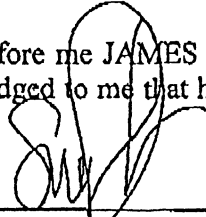

JAMES OLER

PROVINCE OF BRITISH COLUMBIA, CANADA

: ss.

On the 21 day of May 2009, personally appeared before me JAMES OLER, the signer of the foregoing instrument, who being duly sworn acknowledged to me that he executed the same.

NOTARY PUBLIC


Suzanne Maureen Pantazis
A Notary Public in and for the
Province of British Columbia
PERMANENT COMMISSION

Suzanne M. Pantazis
Notary Public
19 - 10th Avenue S.
Cranbrook, BC • V1C 2M9
Ph. (250) 426-4352

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of May 2009, I caused a copy of the foregoing **AFFIDAVIT OF JAMES OLER** to be served upon the following in the following described manner:

VIA HAND-DELIVERY:

Timothy Bodily, Esq.
Assistant Attorneys General
Office of the Utah Attorney General
160 East 300 South, 5th Floor
P.O. Box 140874
Salt Lake City, UT 84114-0874
EMAIL: tbodily@utah.gov

VIA HAND-DELIVERY:

Mark L. Callister
Jeffrey L. Shields
Zachary Shields
Callister Nebeker & McCullough
10 E. South Temple, Suite 900
Salt Lake City, UT 84133
EMAIL: jshields@cnmlaw.com

VIA HAND-DELIVERY:

Roger H. Hoole
Gregory N. Hoole
4276 South Highland Drive
Salt Lake City, UT 84124
EMAIL: rrh@hooleking.com

VIA HAND-DELIVERY:

Mark L. Shurtleff
Utah Attorney General
160 East 300 South, Fifth Floor
P.O. Box #142320
Salt Lake City, UT 84114
EMAIL: mshurtleff@utah.gov

VIA HAND-DELIVERY:


Peter Stirba
Stirba & Associates
215 South State Street, Suite 750
P.O. Box 810
Salt Lake City, UT 84110-0810
EMAIL: peter@stirba.com

VIA FACSIMILE TRANSMISSION and EMAIL TRANSMISSION:


William A. Richards
Arizona Attorney General's Office
1275 West Washington
Phoenix, Arizona 85007-2997
Fax No.: (602) 364-2214
EMAIL: bill.richards@azag.gov

VIA HAND-DELIVERY:

Michael D. Zimmerman
Snell & Wilmer
15 W. South Temple, Suite 1200
Salt Lake City, UT 84101
EMAIL: mzimmerman@swlaw.com

A handwritten signature in black ink, appearing to read "Peter Stirba", is written over a horizontal line.

JAMES C. BRADSHAW (#3768)
BROWN, BRADSHAW & MOFFAT, L.L.P.
10 West Broadway, Suite 210
Salt Lake City, Utah 84101
Telephone: (801) 532-5297
Facsimile: (801) 532-5298

FILED
DISTRICT COURT
09 MAY 21 PM 5:15
THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY
BY 
DEPUTY CLERK

Kenneth A. Okazaki (USB #3844)
Stephen C. Clark (USB #4551)
Ginger Utley (USB #11788)
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main St., Ste. 1500
Salt Lake City, UT 84101
Telephone: (801) 521-3200
Facsimile: (801) 328-0537

*Attorneys for Movants/Intervenors Willie Jessop, Dan
Johnson, Merlin Jessop, Lyle Jeffs and James Oler*

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE UNITED
EFFORT PLAN TRUST

:
:
: **AFFIDAVIT OF LYLE JEFFS**
:
: Case No. 053900848
:
: Judge Denise P. Lindberg
:
:
:
:

STATE OF UTAH)
: ss.
COUNTY OF WASHINGTON)

The undersigned Affiant, Lyle Jeffs, being duly sworn, deposes and states as follows:

1. I am an adult resident of the State of Utah. I am a member of the FLDS Church and the Bishop of a local FLDS congregation located in the Short Creek Stake. I respectfully submit this Affidavit to provide information concerning my role as a Bishop in the Church in representing and ministering to the just wants and needs of FLDS Church members. I have personal knowledge of the matters set forth herein, know them to be true and if called could and would competently testify thereto.

2. As a Bishop in the FLDS Church, my responsibilities include providing for the just wants and needs of my congregation, both physical and spiritual. I am also responsible for the spiritual welfare and salvation of those who belong to my congregation. I believe that my eternal salvation is based, in part, on how well I discharge my duties to my congregation.

3. My duties as Bishop are set forth in the Doctrine and Covenants ("D&C") (*See* D&C Section 42, Sections 51 and 82) and other Holy Scripture. Among other duties, I am charged with living, and helping the members of my congregation live, the Law of Consecration and Stewardship (also known as the United Order of Heaven). The Law, which in its present form dates to 1831, is set forth in Section 42 of the Doctrine and Covenants. One author has explained it as follows: "Upon the basic principle that the earth and everything on it belongs to the Lord, every person who was a member of the church at the time the system was introduced or became a member thereafter was asked to 'consecrate' or deed all his property, both real and personal, to the bishop of the church. The bishop would then grant an 'inheritance' or 'stewardship' to every family out of the properties so received, the amount depending on the wants and needs of the family, as determined jointly by the bishop and the prospective steward. . . It was expected that in some cases the consecrations would considerably exceed the stewardships. Out of the surplus thus made possible the bishop would grant stewardships to the

poorer and younger members of the church who had no property to consecrate.” L. Arrington, F. Fox & D. May, *Building the City of God* 15 (1976) (footnote omitted). The principle is also set forth in the Bible and in the Book of Mormon.

4. Consecration, although typically described in terms of a gift of property, is really more an expression of faith than an exchange of tangible property. What is consecrated is one's personal allegiance, one's faith, and one's commitment to the Church, its leaders, and its principles. An individual who has made the religious consecration is entitled to seek a "stewardship," or permission to use such portion of UEP property as is necessary to satisfy the just wants and needs of his family. There is no formal conveyance involved in a grant of stewardship. One who has ceased to maintain the necessary religious commitment loses his right to continued use of UEP property. *See* D&C 42:37.

5. I understand that the Court's reformation of the UEP Trust supplanted my role in the operation of the Trust under the Law of Consecration and vested primary responsibility for the distribution of Trust assets in the Special Fiduciary. I also understand that the Reformed Trust envisions that those who have ceased to maintain the necessary religious commitment can nevertheless assert claims to Trust property. The fact remains, however, that the members of my congregation remain beneficiaries under the Reformed Trust – indeed, I believe they are among the vast majority of Trust beneficiaries who remain faithful members of the FLDS Church. Therefore, in my role as Bishop, I have a direct and substantial interest in the administration of the UEP Trust and the distribution of trust assets according to the just wants and needs of the people in my congregation.

6. As such, I have attempted to represent the best interests of the FLDS Church members in my congregation and to minister to their needs to the extent I can do so under the Reformed Trust.

7. Unfortunately, Special Fiduciary Bruce R. Wisan has neither solicited nor accepted my input or guidance regarding the handling of Berry Knoll and other FLDS Trust assets. Specifically the Special Fiduciary has refused or ignored input in relation to his: (1) taking the Granary from the Church Storehouse and leasing to former members of the FLDS Church; (2) taking storage facilities from the Storehouse and selling to them former members of the FLDS Church; and (3) forcing the Bishop to remove fencing around the Storehouse yard and home.

8. I am deeply concerned about satisfying the just wants and needs of my congregation because I have had numerous members come to me as the Bishop, asking for help with dire housing needs, and I have not been able to help take care of their just wants and needs because the Special Fiduciary's actions have opposed any FLDS involvement.

9. Based on the above, I have an interest in the disposition of Trust assets, specifically Berry Knoll farm lands, which are part of the Trust and in the past have contributed greatly to the overall well-being of the participants in the Trust. Any action taken in regard to Berry Knoll—including its sale or liquidation—affects the interests of my congregation, not only because of its economic importance but also because of its religious significance as a prophesied temple site.

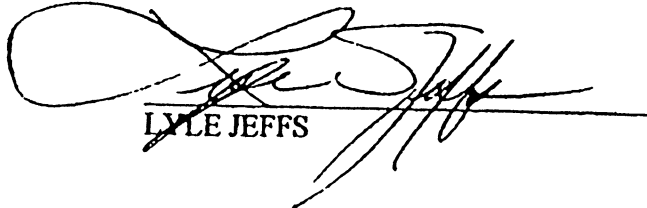
10. Given my special interests as Bishop, and those of the members of my congregation, in the distribution of Trust assets, I actively participated as a representative of the FLDS Church in the recent settlement negotiations with other interested parties. There were no

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 in my congregation or in the Church generally in the areas where Trust lands are located.

11. I respectfully request this Court allow me to intervene such that I can protect the interests of FLDS Church members in my congregation and assist in representing the interests of the vast majority of Trust beneficiaries who remain faithful members of the FLDS Church, including our interests in preserving Berry Knoll as an economically and religiously important Trust asset.

THIS IS THE END OF MY AFFIDAVIT.

DATED this 10th day of May, 2009.

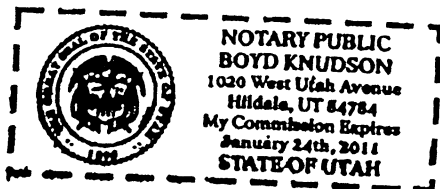

LYLE JEFFS

STATE OF UTAH

COUNTY OF Washington

)
: ss.
)

On the 10th day of May, 2009^{BK}, personally appeared before me LYLE JEFFS, the signer of the foregoing instrument, who being duly sworn acknowledged to me that he executed the same.




NOTARY PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of May 2009, I caused a copy of the foregoing **AFFIDAVIT OF LYLE JEFFS** to be served upon the following in the following described manner:

VIA HAND-DELIVERY:

Timothy Bodily, Esq.
Assistant Attorneys General
Office of the Utah Attorney General
160 East 300 South, 5th Floor
P.O. Box 140874
Salt Lake City, UT 84114-0874
EMAIL: tbodily@utah.gov

VIA HAND-DELIVERY:

Mark L. Callister
Jeffrey L. Shields
Zachary Shields
Callister Nebeker & McCullough
10 E. South Temple, Suite 900
Salt Lake City, UT 84133
EMAIL: jlshields@cnmlaw.com

VIA HAND-DELIVERY:

Roger H. Hoole
Gregory N. Hoole
4276 South Highland Drive
Salt Lake City, UT 84124
EMAIL: rrh@hooleking.com

VIA HAND-DELIVERY:

Mark L. Shurtleff
Utah Attorney General
160 East 300 South, Fifth Floor
P.O. Box #142320
Salt Lake City, UT 84114
EMAIL: mshurtleff@utah.gov

VIA HAND-DELIVERY:

Peter Stirba
Stirba & Associates
215 South State Street, Suite 750
P.O. Box 810
Salt Lake City, UT 84110-0810
EMAIL: peter@stirba.com

VIA FACSIMILE TRANSMISSION and EMAIL TRANSMISSION:

William A. Richards
Arizona Attorney General's Office
1275 West Washington
Phoenix, Arizona 85007-2997
Fax No.: (602) 364-2214
EMAIL: bill.richards@azag.gov

VIA HAND-DELIVERY:

Michael D. Zimmerman
Snell & Wilmer
15 W. South Temple, Suite 1200
Salt Lake City, UT 84101
EMAIL: mzimmerman@swlaw.com

