

1 **THE McCABE LAW FIRM, APC**

James M. McCabe SBN 51040

2 4817 Santa Monica Avenue

San Diego, CA 92107

3 Telephone: (619) 224-2848

4 Facsimile: (619) 224-0089

5 Attorney for Defendant Doe Supervisory Organization

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **COUNTY OF SAN DIEGO**

8 **JOHN DORMAN, Individually, and JOEL**
9 **GAMBOA, Individually,**

10 **Plaintiffs,**

11 **v.**

12 **DEFENDANT DOE 1, La Jolla Church,**
13 **DEFENDANT DOE 2, Linda Vista Church,**
14 **and DEFENDANT DOE 3, Supervisory**
15 **Organization, DEFENDANT DOE 4,**
Perpetrator, and DOES 5 through 100,
16 **inclusive,**

17 **Defendants.**

Case No.: 37-2010-00092450-CU-PO-CTL

WATCHTOWER DEFENDANTS'
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
PLAINTIFFS' NOTICE OF MOTION
AND MOTION TO COMPEL FURTHER
DOCUMENTS FROM DEFENDANT

Judge: Stephen R. Denton

Dept: C-73

Date: May 20, 2011

Time: 9:00 a.m.

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I. INTRODUCTION

This lawsuit arises from the alleged conduct of co-defendant Gonzalo Campos that occurred more than 20 years ago. (See Plaintiffs' First Amended Complaint at ¶¶ 5 and 5.2.) Plaintiffs' counsel served his First Set of Requests for Production on each of the Watchtower Defendants on August 5, 2010.¹ Plaintiffs' document requests include overly broad and irrelevant requests for documents dating to 2010, more than 15 years after the last allegedly abused. The 18 documents requested are also protected by the penitential privilege and the Watchtower Defendants have provided Plaintiffs' counsel a complete privilege log identifying documents by title and the specific objections and privilege that attach thereto.

In deciding whether the 18 documents must be produced, the Watchtower Defendants submit that documents in question are different and cannot all be put in the same bucket when evaluating the penitential privilege. The disputed documents identified as Withheld Documents 1 through 18, fall within seven different types as shown in Exhibit 5, attached hereto and incorporated by reference.

II. STATEMENT OF FACTS

All of the 18 documents involve spiritual communications which are private and confidential communications pursuant to the religious practices, beliefs, tenets and teachings of Jehovah's Witnesses based upon Scripture and tradition. (See Exhibit '1' Affidavit of Richard Ashe, Jr.² ¶¶ 8-10, 12-13, 18-22; See Exhibit '2' Affidavit of Bruce Antonoff, Exhibit '3' Affidavit of Kevin Phillips, and Exhibit '4' Affidavit of Juan Guardado³ ¶¶ 7-13.)

Congregations of Jehovah's Witnesses are provided spiritual oversight on a local level by a small group of individuals who serve as ordained ministers and appointed congregation elders (hereinafter referred to as "elders"). Before elders are appointed, they must meet the strict Scriptural qualifications outlined in the Bible and be recommended and approved by current elders, a circuit overseer (*i.e.* traveling elder), and Branch Office elders who serve in the Service

¹ Defendants La Jolla Spanish Congregation (now the Playa Pacifica Spanish Congregation of Jehovah's Witnesses), Linda Vista Spanish Congregation of Jehovah's Witnesses, and Watchtower Bible and Tract Society of New York, Inc. referred to herein collectively as "Watchtower Defendants."

² Hereinafter "Exhibit '1' Ashe Affidavit."

³ Hereinafter "Elder Affidavits."

1 Department at the Branch Office of Jehovah's Witnesses in New York. Once an individual is
2 approved and appointed to serve as a congregation elder, a letter from the Branch Office is read
3 to the congregation and the individual is officially vested with ministerial authority as an or-
4 dained minister and appointed elder. All elders of the Linda Vista Spanish and Playa Pacifica
5 Spanish congregations are and were at all times relevant to these cases ordained ministers and
6 spiritual leaders of the congregation. (See Exhibit '1' Ashe Affidavit ¶¶ 5-7, 11; Elder Affida-
7 vits Exhibits 2.3.4 ¶ 4.)

8 The congregation elders are responsible for the spiritual development and spiritual teach-
9 ing of the members of the congregation as well as for pastoral care. Elders frequently provide
10 spiritual counsel and advice to members of the congregation concerning highly confidential per-
11 sonal and spiritual matters. For example, congregation elders are authorized to hear confessions
12 and other private, confidential communications and to provide spiritual guidance and spiritual
13 counsel by virtue of the Holy Scriptures and the Governing Body of Jehovah's Witnesses. Ac-
14 cording to the religious beliefs and practices of Jehovah's Witnesses, congregation elders are
15 expected to maintain the confidentiality of confessions and other confidential spiritual commu-
16 nications. (See Exhibits '2,3,4' Elder Affidavits ¶¶ 5-10; Exhibit '1' Ashe Affidavit ¶¶ 8-10,
17 12.)

18 From time to time, congregation elders, including those in the Linda Vista Spanish and
19 Playa Pacifica Spanish congregations, communicated with Branch Office elders in order to re-
20 ceive spiritual counsel and advice as to how to apply the religious doctrine and procedures of
21 Jehovah's Witnesses to issues concerning the congregation and its members. All such spiritual
22 communications between congregation elders and Branch Office elders must be kept strictly
23 confidential under the religious tenets and teachings of Jehovah's Witnesses. (See Exhibit '1'
24 Ashe Affidavit ¶¶ 13, 19.)

25 Congregation elders are also responsible for conducting "judicial investigations" or "ju-
26 dicial committees" where a member of the congregation is accused of serious wrongdoing or a
27 sin. The goal of a judicial investigation or judicial committee is to ensure that the congregation
28 remains spiritually and morally clean and the elders endeavor to provide spiritual counseling and

1 assistance to those who may have erred, with the hope of helping them to regain their spirituality
2 and relationship with God. When the elders on a judicial committee confirm that a congregant
3 has in fact committed a serious sin for which spiritual discipline is required based on Jehovah's
4 Witnesses' understanding of the Bible, the judicial committee will decide what that spiritual dis-
5 cipline should be. Based on the religious beliefs, practices, and procedures of Jehovah's Wit-
6 nesses, at least two elders are required to conduct a judicial investigation and at least three elders
7 are required for a judicial committee involving a congregant who is alleged to have committed a
8 serious sin. Jehovah's Witnesses believe that men are imperfect and, therefore, three elders can
9 provide more full and complete spiritual counsel and advice based on a broader range of experi-
10 ence and knowledge than can a single elder alone. Pursuant to the beliefs, practices, and proce-
11 dures of Jehovah's Witnesses, all spiritual communications taking place during a "judicial inves-
12 tigation" or "judicial committee," are considered extremely private and strictly confidential by
13 all present, including the accused congregant and elders. (See Exhibit '1' Ashe Affidavit ¶¶ 14-
14 16, 19-21.)

15 Where a serious sin is confirmed by the elders on the judicial committee, the judicial
16 committee may give private or public reproof or disfellowship, depending on whether the indi-
17 vidual is repentant or not. When a member is subject to public reproof or disfellowshipping, an
18 announcement is made during a congregation meeting simply to the effect that "[name] has been
19 reproofed" or "[name] is no longer one of Jehovah's Witnesses." If a congregation member is
20 disfellowshipped, the judicial committee elders forward a notice of disfellowshipping to Branch
21 Office elders for their review to ensure that their decision was spiritually based and well
22 founded. The notice of disfellowshipping has the name of the disfellowshipped person, the date
23 of disfellowshipping, and the Scriptural basis for disfellowshipping. (See Exhibit '1' Ashe Affi-
24 davit ¶¶ 16, 19.)

25 The confidentiality of spiritual communication between members of the congregation
26 and elders is a foundational element of the religious beliefs and teachings of Jehovah's Wit-
27 nesses. Jehovah's Witnesses recognize the Bible's admonition to confess one's sins to God and
28 believe that there is a great benefit from speaking to congregation elders regarding such confi-

1 dential spiritual matters. As such, Jehovah's Witnesses encourage those who need spiritual as-
2 sistance to approach the congregation elders and convey to them whatever information may be
3 necessary to provide such spiritual assistance. (See Exhibit '1' Ashe Affidavit ¶¶ 17-21; Exhib-
4 its '2,3,4' Elder Affidavits ¶¶ 6-11.)

5 Because open and free communication between congregation members and elders is re-
6 quired to provide spiritual counsel and advice under the religious beliefs and practices of Jeho-
7 vah's Witnesses, emphasis is placed on privacy and strict confidentiality. The confidentiality
8 requirements with respect to such spiritual communications are explained in official literature
9 and publications of Jehovah's Witnesses. Congregants expect that all spiritual communications
10 with congregation elders will remain strictly confidential. Further, revealing confidential spiri-
11 tual communications would call into question an elder's qualifications and could result in his
12 removal as an elder in the congregation. Moreover, if an elder was compelled to disclose confi-
13 dential information, his credibility and effectiveness as an elder, as well as the credibility and
14 effectiveness of other elders in the congregation, would be adversely affected and compromised,
15 since congregants would not trust and rely that personal problems and information they disclose
16 would not be revealed and used against them in a court action. (See Exhibit '1' Ashe Affidavit
17 ¶¶ 10, 18-21; Exhibits '2,3,4' Elder Affidavits ¶¶ 7-11.)

18 Jehovah's Witnesses do not believe that the confidentiality of spiritual communications
19 they may have with congregation elders is limited to confessions. Such confidentiality extends
20 to all confidential communications of a spiritual nature, including those that take place in the
21 course of judicial investigations or committees, or while seeking and providing spiritual counsel
22 and advice. Additionally, based upon Scripture and church tradition, such confidentiality re-
23 quirements also extend to congregation files, notes, papers, reports, minutes or other documents
24 prepared in conjunction with, or as a result of, confidential spiritual communications. Should
25 the disclosure of such documents be compelled, the credibility and effectiveness of those in
26 charge of the spiritual well being of entire congregations will be compromised. (See Exhibit '1'
27 Ashe Affidavit ¶¶ 19-22; Exhibits '2,3,4' Elder Affidavits ¶¶ 7, 11-13.)

III. PENITENTIAL PRIVILEGE

1
2 The penitential privilege should apply to all 18 of the documents in question because (1)
3 the drafters meet the definition of "penitent" under Cal. Evid. Code Section 1031; (2) the recipi-
4 ents of the documents meet the definition of "member of the clergy" under Cal. Evid. Code sec-
5 tion 1030; (3) the documents are "penitential communications" under Cal. Evid. Code section
6 1032; and (4) the Watchtower Defendants and their elders (*i.e.* clergy) have standing to assert
7 this privilege because they are "members of the clergy". Cal. Evid. Code sections 1033, 1034.

A. California's Penitential Privilege

8
9 The documents Plaintiffs seek to compel discovery of are protected by the penitential
10 privilege set forth in California Evidence Code section 1030, *et seq.* California Evidence Code
11 section 1033 provides: "Subject to section 912, a penitent, whether or not a party, has a privilege
12 to refuse to, and to prevent another from disclosing, a penitential communication if he claims the
13 privilege." California Evidence Code section 1034 further provides: "Subject to section 912, a
14 clergyman, whether or not a party, has a privilege to refuse to disclose a penitential communica-
15 tion if he claims the privilege." Under California's statutory scheme, a "member of the clergy"
16 is defined as a "priest, minister, religious practitioner, or similar functionary of a church or of a
17 religious denomination or religious organization." California Evidence Code section 1031.
18 Therefore, appointed elders of Jehovah's Witnesses are clearly within this definition of "clergy-
19 man" and therefore have standing to invoke the penitential privilege.

20 Furthermore, a "penitent" is defined simply as "a person who has made a penitential
21 communication to a clergyman." California Evidence Code section 1031. In turn, a "penitential
22 communication" is defined as follows:

23 "As used in this article, 'penitential communication' means a communication made in
24 confidence, in the presence of no third person so far as the penitent is aware, to a cler-
25 gyman who, in the course of the discipline or practice of his church, denomination, or
26 organization, is authorized or accustomed to hear such communications and, under the
27 discipline or tenants of his church, denomination or organization, has a duty to keep such
28 communication secret."

26 Evidence Code section 1032. There is no requirement that the communication "have as
27 its purpose the confession of a 'flawed act' to 'receive religious consolation and guidance in re-
28

1 turn' in order to be privileged." *Doe 2 v. Superior Court* (2005) 132 Cal.App.4th 1504, 1518.
2 Rather, the privilege applies to any communication that fits the statutory description. *See* Cal.
3 Law Revision Com. com., West's Ann. Evid. Code (2011) foll. § 1032. (statute extends protec-
4 tion of privilege beyond just "confessions"). Consequently, a "penitential communication" is not
5 limited to just confessions in the stereotypical sense of the word. It is any communication that
6 fits the statutory description.

7 California case law supports the foregoing analysis. The court in *People v. Edwards* de-
8 fined the elements of the rule of privilege. (1988) 203 Cal.App.3d 1358, 1362-63.⁴

9 **B. The Withheld Documents Constitute Penitential Communications**

10 The written communications at issue were made in a fashion that requires the rule of
11 privilege to apply. The evidence indicates that the written communications were made by a
12 "penitent" as defined by California Evidence Code section 1031 to an elder or elders of Jeho-
13 vah's Witnesses (clergy) with a reasonable expectation of privacy under the religious beliefs and
14 tenets of Jehovah's Witnesses. Under these circumstances, Evidence Code section 917 provides
15 that the confidential quality of the communications *must be presumed*. California Evidence
16 Code section 917 provides that the opponent of the claim of privilege has the burden of proof to
17 establish that the communication was not confidential.

18 **1. The Religious Practices and Beliefs of Jehovah's Witnesses Mandate**
19 **that Certain Confidential, Spiritual Communications Can Be Made**
20 **Only to Two or More Elders**

21 Plaintiffs assert that when confidential communications are made to two or more elders
22 of Jehovah's Witnesses during a judicial committee meeting, or otherwise, then the penitential
23 privilege somehow disappears. This is simply not true.

24 It is undisputed that each of the elders who form a judicial committee qualifies as a
25 "member of clergy" under section 1032 of the Evidence Code. Thus, there is no question that the
26 penitential privilege would apply had the spiritual communications at issue been made to each of

27 ⁴ "In order for a statement to be privileged, it must satisfy all of the conceptual requirements of a penitential com-
28 munication: (1) it must be intended to be in confidence; (2) it must be made to a member of the clergy who in the
course of his or her religious discipline or practice is authorized or accustomed to hear such communications; and
(3) such member of the clergy has a duty under the discipline or tenants of the church, religious denomination or
organization to keep such communications secret."

1 these elders individually and on separate occasions. To hold that the privilege is voided simply
2 because an otherwise protected penitential communication is made to multiple authorized clergy
3 members in a single setting—particularly where, as here, it was done in accordance with the re-
4 ligious beliefs and tenets of one’s religion—is to choose form over substance and thereby vitiate
5 the purpose underlying the privilege.

6 No reported case interpreting California law has addressed whether the presence of more
7 than one *clergy* member during a confidential, spiritual communication by a penitent destroys
8 the penitent-clergy privilege. Likewise, no reported case has addressed whether a spiritual com-
9 munication by a penitent to a “judicial committee” formed under the tenets and discipline of the
10 Jehovah’s Witnesses qualifies as a protected penitential communication under California law.
11 Absent such authority, it is practical to look at decisions from other jurisdictions who have in-
12 terpreted similar, or even stricter, penitential communication statutes. For instance, interpreting
13 a similar yet narrower state statute,⁵ the Washington Supreme Court held that a communication
14 made in the presence of a third person destroys the privilege unless that third person is necessary
15 for the communication or is another clergy member. *State v. Martin* (Wash. 1999) 975 P.2d
16 1020, 1028. Likewise, the Third Circuit has held that the presence of third persons who are “es-
17 sential to and in furtherance of the communication” does not void the penitent-clergy privilege
18 under Rule 501 of the Federal Rules of Evidence. *In re Grand Jury* (3d Cir. 1990) 918 F.2d 374,
19 384; *see also, Scott v. Hammock* (Utah 1994) 870 P.2d 947, 956.)

20 Another Washington case, *Jane Doe v. Corporation of the President of the Church of Je-*
21 *sus Christ of Latter-Day Saints, supra* (hereafter “*Jane Doe*”), involved the disclosure of church
22 documents relating to the Mormon Church’s disciplinary action concerning a church member’s
23 alleged sexual abuse of his two daughters. Under church doctrine, when a church member is ac-
24 cused of a serious transgression, a “stake disciplinary council” must intervene and help the
25 church member repent and re-establish a covenant with God. *Id.* at 1149-50. The accused mem-

26 _____
27 ⁵ Under Washington law, the penitent-clergy privilege protects communications which are (1) made to a clergy
28 member, (2) as a confession in the course of discipline enjoined by the church, and (3) confidential. (RCWA
5.60.060(3); *Jane Doe v. Corporation of the President of the Church of Jesus Christ of Latter-Day Saints* (Wash.
2004) 90 P.3d 1147, 1150.)

1 ber confesses his sin to the disciplinary council which is comprised entirely of ordained presi-
2 dents, bishops, and other ordained church members. The disciplinary council then determines
3 the appropriate discipline to be administered, which can vary from probation to disfellowship-
4 ping to excommunication. *Id.* at 1150. When the discipline results in disfellowshipping or ex-
5 communication, church procedures require that a summary of the disciplinary proceedings be
6 prepared and sent to the church's headquarters in Utah. *Id.* at 1150. The court held that the
7 summary of the disciplinary proceeding was protected from disclosure by the clergy-penitent
8 privilege, and the presence of all participants in the disciplinary council was necessary for the
9 communication to occur and such third party presence did not vitiate the privilege. *Id.* at 1152-
10 53. The New Hampshire Supreme Court recognized that confidential, spiritual communications
11 that were made to two or more elders of Jehovah's Witnesses must be deemed privileged. *Berry*
12 *v. Watchtower Bible and Tract Society of New York, Inc.* (N.H. 2005) 879 A.2d 1124.

13 The decision in *Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005)
14 131 Cal.App.4th 417 (hereafter "*Roman Catholic Archbishop*"), upon which Plaintiffs rely, is
15 distinguishable and unavailing. In that case, the court ruled that the penitent privilege was inap-
16 plicable to protect communications by a Catholic priest in the presence of a "vicar for clergy"
17 and a bishop *because the Catholic tenets or doctrine do not require that such persons be present*
18 *during those communications*. In contrast, the Jehovah's Witnesses religion mandates the pres-
19 ence of three or more elders when the communication regards allegations of serious wrongdoing
20 or sin, which includes child sexual abuse. Second, *Roman Catholic Archbishop* is equally inap-
21 plicable because it concerned testimony and evidence to be presented to a grand jury in a crimi-
22 nal proceeding. Disclosure was required in that instance, the court held, "because the govern-
23 ment had a compelling interest in prosecuting child molesters." In contrast, this case involves
24 civil actions and not the criminal prosecutions of child molesters. The government has no such
25 compelling interest in this case.

26 **2. Evidence is Needed to Determine Whether Penitential Communica-**
27 **tions Were Made With the Knowledge that they Would be Revealed**

1 From time to time, congregation elders communicate with elders serving in the Branch
2 Office's Service Department, as well as with elders serving as circuit overseers and district over-
3 seers, in order to receive spiritual guidance and advice as to how to apply the religious doctrine
4 and procedures of Jehovah's Witnesses to issues concerning the congregation and its members.
5 All such spiritual communications between congregation elders and the Branch Office Service
6 Department, circuit overseer or district overseer must be kept strictly confidential under the reli-
7 gious tenets and teachings of Jehovah's Witnesses. (See Ashe Affidavit ¶¶ 13, 19)

8 Congregation elders are required by the tenets of their faith to keep confessions and other
9 confidential spiritual communications strictly confidential. Similarly, Jehovah's Witnesses doc-
10 trine requires that all confidential spiritual communications between congregation elders and
11 elders serving in the Branch Office's Service Department, as well as with elders serving as cir-
12 cuit and district overseers, be kept in the strictest confidence. As well, confidential spiritual
13 communications taking place during a "judicial investigation" and during "judicial committee"
14 meetings are considered to be extremely private and elders must keep such confidential spiritual
15 communications strictly confidential. Plaintiffs assert that the penitential privilege does not ap-
16 ply because the elders were required to communicate information it obtained regarding potential
17 cases of child molestation to the Watchtower Society Headquarters. First, this argument does
18 not apply to each document. Second, the elders' communications to the elders in the Service
19 Department does not automatically result in a breach of their duty to keep penitential communi-
20 cations—whether made to an individual elder or a judicial committee—secret and confidential.
21 Rather, the relevant inquiry is (1) what information was communicated in those documents (i.e.
22 did the congregation elders reveal the penitent's *actual* communications?), and (2) did the peni-
23 tent know or expect that his confidential communication would be disclosed to the Service De-
24 partment elders.

25 With regard to the first question, it is unlikely that the congregation elders in this case
26 revealed the contents of the actual communications they had with Gonzalo Campos (penitent).
27 Thus, any such communication would not be a waiver under Section 912(a) (a waiver would oc-
28 cur only if the holder of a privilege "has disclosed a significant part of the communication or has

1 consented to disclosure made by anyone”). It is therefore necessary for the Court to hold an evi-
2 dentiary hearing or undertake an *in camera* inspection of the documents in question to determine
3 whether any confidential communications that the elders may have made to elders serving in the
4 Service Department disclosed “a significant part” of a communication resulting in a waiver.

5 With regard to the second question, in *Roman Catholic Archbishop of Los Angeles v. Su-*
6 *perior Court* (2005) 131 Cal. App 4th 417, 445, a priest discussed his psychological and sexual
7 problems with the cardinal and an appointed “vicar for clergy.” The priest knew that his conver-
8 sations, along with the documents that were created as a result of the conversations, were rou-
9 tinely shared with the archbishop, the cardinal, the vicar for clergy, as well as other employees
10 of the archdiocese. Although the priest claimed that these communications were privileged un-
11 der Section 1032, the court held that the privilege was waived because “both parties to the origi-
12 nal communication knew it likely would be transmitted to a third person.” *Id.* In this case,
13 Plaintiffs provide no evidence to show that Gonzalo Campos did not expect his communications
14 to remain strictly confidential. In determining whether a penitent’s communication to a clergy
15 member qualifies as a penitential communication, courts look to whether the penitent had an ex-
16 pectation of confidentiality at the time of their communication. *Doe 2 v. Superior Court* (2005)
17 132 Cal.App.4th 1504, 1518.

18 3. A Disclosure That is Privileged Itself Does Not Waive the Privilege

19 Plaintiffs also assert that the penitential privilege was waived when the elders sought the
20 spiritual advice of the elders in the Service Department. Again, a plain reading of Section 912
21 of the Evidence Codes indicates that such a disclosure does not constitute a waiver.

22 First, it must be acknowledged that elders (i.e., clergy) may also be penitents under Evi-
23 dence Code section 1031, when they engage in confidential spiritual communications with other
24 elders. Therefore, any confidential spiritual communications between congregation elders, cir-
25 cuit overseers (i.e., traveling elders), and Branch Office elders in New York for the purpose of
26 obtaining spiritual counsel and advice are also penitential communications under Evidence Code
27 section 1032 and thus protected from disclosure by Evidence Code sections 1033 and 1034.

28

1 According to the provisions of Section 912(c), “[a] disclosure that is itself privileged is
2 not a waiver of any privilege.” Thus, California recognizes that there will be situations when a
3 privilege holder will have the need to speak to others about matters relating to their privileged
4 communications. And, as long as the privilege holder limits these communications to individu-
5 als with whom he also has a privilege, then the privilege is not waived.

6 Thus, an elder who sought spiritual advice and direction from another elder—no matter
7 where he was physically situated—regarding a confidential communication he received from a
8 penitent, will not be deemed to have been waived the privilege as long as the three requirements
9 of Section 1032 are met. The three requirements are met in this case. (See Ashe Affidavit ¶ 19)

10 **C. The Documents were Created by Clergy Members and Transmitted to
11 Clergy Members**

12 Plaintiffs’ assertions that the documents cannot be privileged because they are addressed
13 to “the U.S. Service Department” or to a “body of elders” and not ‘members or the clergy’ are
14 without merit. Privilege does not turn on an address on an envelope, but rather the expectation
15 of confidentiality with respect to the intended recipients. An *in camera* inspection of the docu-
16 ments would indicate that the salutations are to “brothers,” (i.e., elders in this case), and the con-
17 tents absolutely meet to definition of “penitential communication.” California Evidence code
18 section 1032. Further, an *in camera* inspection of the documents will show that these communi-
19 cations were sent to elders, who are clergy. With respect to communications sent to the U.S.
20 Service Department, such correspondence is read *only* by elders of Jehovah’s Witnesses. (See
21 Exhibit ‘1’ Ashe Affidavit ¶ 19)

22 **D. The Watchtower Defendants have Standing to Assert the Penitential Privi-
23 lege on Behalf of the Congregation Elders and the Elders in the U.S. Service
24 Department**

25 Plaintiffs next assert that the documents were not drafted by a ‘penitent,’ and that the
26 Watchtower Defendant’s have no standing to assert the penitential privilege. This assertion, too,
27 has no merit. According to the California Evidence Code, elders (i.e., clergy) may also be ‘peni-
28 tents’ under Evidence Code section 1031, when they engage in confidential spiritual communi-
cations with other elders. Thus, the confidential, spiritual communications made by elders,

1 whether in a congregation of Jehovah's Witnesses or serving in the U.S. Service Department,
2 would constitute privileged penitential communications. Plaintiffs also assert that the Watch-
3 tower Defendants have no standing to assert the privilege because the privilege can only be as-
4 serted by a 'natural person.' The Watchtower Defendants are the ones raising the privilege in
5 this case because they are the ones that have been sued and no individual elders have been sued.
6 Nevertheless, the affidavits of Elders Ashe, Antonoff, Phillips, and Guardado clearly show that
7 the elders claim and have not waived the penitential communication privilege for any of the
8 documents in question. (See Exhibit '1' Ashe Affidavit ¶ 22 and Exhibits '2,3,4' Elder Affida-
9 vits ¶ 12.)

10 **E. The Penitential Privilege Was Not Waived by Any Act or Communication**

11 Plaintiffs also allege that the penitential privilege is waived with respect to any docu-
12 ments that were given to the Watchtower Defendants. Plaintiffs do not describe which docu-
13 ments that are referring to, but a waiver would apply to documents or communications only if a
14 *significant part* of the communication has been disclosed. *See e.g., Maas v. Municipal Court*
15 (1986) 175 Cal.App.3d 601, 606. As stated above, according to the California Evidence Code,
16 elders (i.e., clergy) may also be 'penitents' under Evidence Code section 1031, when they en-
17 gage in confidential spiritual communications with other elders. Thus, the confidential, spiritual
18 communications made by elders, whether in a congregation of Jehovah's Witnesses or serving in
19 the U.S. Service Department, would constitute privileged penitential communications.

20 Further, "a member of the clergy, whether or not a party, has a privilege to refuse to dis-
21 close a penitential communication if he or she claims the privilege."⁶ California Evidence Code
22 Section 1034. A member of the clergy "may claim this privilege even if the penitent has waived
23 the privilege granted to him by Section 1033." Cal. Law Revision Com. Com., West's Ann.
24 Evid. Code (1995 ed.) foll. § 1033, p.; *see* 2 Witkin, Cal. Evidence (4th ed. 2000) Wit-
25 nesses, § 239. In this case, the elders have claimed the privilege and refuse to disclose peniten-
26 tial communications.

27 **IV. WITHHELD DOCUMENTS 7-14 AND 16-18 ARE NOT REASONABLY**

28 ⁶ This privilege is also subject to the waiver provisions of Section 912.

1 **CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE**

2 If this court finds that the penitential privilege does not apply to some of the documents
3 in question, the Watchtower Defendants submit that with regard to Withheld Documents 7-14
4 and 16-18, an additional reason why they should not have to be produced to Plaintiffs is that
5 these particular documents do not have any information that is reasonably calculated to lead to
6 the discovery of admissible evidence. These documents were created between June 9, 1995, and
7 October 28, 2006, one to twelve years after the date of the last abuse of either of the two Plain-
8 tiffs, and none of the documents have any information related to the abuse of either Plaintiff by
9 Defendant Campos with the possible exception of Withheld Document 15 which does not men-
10 tion any plaintiff by name but might possibly have a reference to Plaintiff Gamboa. Further, in
11 the case of all the Withheld Documents, with the exception of Withheld Documents 9 and 15-
12 18, there is no information regarding the names of any of Defendant Campos' alleged victims or
13 names of the parents of any of his alleged so as to lead to the discovery of admissible evidence.
14 Further, Withheld Documents 12-14 are confidential spiritual letters from Defendant Campos to
15 Playa Pacifica Congregation elders written between October 13, 1995 and January 17, 1999 (one
16 to five years after the abuse of either Plaintiff terminated), which are related to Defendant Cam-
17 pos request to be reinstated as a congregation member and there is not even a mention of child
18 sexual abuse, let alone the names of any of Defendant Campos' alleged victims so as to be rea-
19 sonably calculated to lead to the discovery of admissible evidence. These documents are clearly
20 not reasonably calculated to lead to the discovery of admissible evidence.

21 **V. WITHHELD DOCUMENTS 7, 9 AND 16-18 CONTAIN CONFIDENTIAL**
22 **AND PRIVATE INFORMATION REGARDING INDIVIDUAL(S)**
23 **WHO ARE NOT A PARTY TO THIS LAWSUIT**

24 In addition, if this court finds that the Watchtower Defendants' objections to production
25 based on the penitential privilege and documents not being reasonably calculated to lead to the
26 discovery of admissible evidence to not apply to some of the documents in question, the Watch-
27 tower Defendants submit that with regard to Withheld Documents 7, 9 and 16-18, these docu-
28 ments should not have to be produced because they contain confidential and private information
regarding individual(s) who are not a party to this lawsuit. In the alternative, if this court finds

1 that despite the privacy interests of individuals who are not a party to this lawsuit these docu-
2 ments must be produced, the Watchtower Defendants request that they be allowed to redact the
3 name(s) and any other identifying information so as to protect the privacy of these individuals
4 who are not a party to this lawsuit.

5 VI. FIRST AMENDMENT

6 The establishment clause in the First Amendment to the federal constitution provides
7 that, "Congress shall make no law respecting an establishment of religion" Among other
8 things, the U.S. Supreme Court has held that this clause prohibits the government's excessive
9 entanglement with religion. *See Lemon v. Kurtzman* (1971) 403 U.S. 602, 621-24. Under the
10 established clause, every religion is guaranteed the same rights and protections. The U.S. Su-
11 preme Court has decisively settled that these protections have been made wholly applicable to
12 the states by the Fourteenth Amendment. *Abington School District v. Schemp* (1963) 374 U.S.
13 203, 216; *NAACP v. Alabama ex ret Patterson* (1958) 357 U.S. 449, 463; *West Virginia Board*
14 *of Education v. Barnette* (1943) 319 U.S. 624, 637. "Judicial action is to be regarded as action of
15 the state for the purposes of the Fourteenth Amendment [and] is not immunized from the opera-
16 tion of the Fourteenth Amendment simply because it is taken pursuant to the state's common
17 law policy." *Shelley v. Kramer* (1948) 334 U.S. 1, 15, 20.

18 As explained above, the tenets and religious beliefs of Jehovah's Witnesses doctrine es-
19 tablish the requirement that three or more elders receive and investigate penitent communica-
20 tions regarding allegations of serious transgression or sin. If this court denies the penitential
21 privilege on the basis of a distinction between Jehovah's Witnesses' pastoral procedures and
22 those of other religions, it would essentially establish "acceptable" religious practices in viola-
23 tion of the federal and state constitutional prohibitions of excessive governmental entanglement
24 with religion.

25 Additionally, if this Court refused to apply the penitential privilege to the religious prac-
26 tices and doctrines of Jehovah's Witnesses for confidential communications, it would inhibit the
27 free exercise of religion of Jehovah's Witnesses and the Watchtower Defendants in violation of
28 the free exercise clauses of the state and federal constitutions. Only a neutral law of general ap-

1 plicability may burden the right to free exercise of religion. *Employment Division Department of*
2 *Human Resources of Oregon v. Smith* (1990) 494 U.S. 872, 879-80. California courts also apply
3 the strict scrutiny standard when deciding matters under the free exercise clause of the Califor-
4 nia Constitution. *Catholic Charities of Sacramento, Inc.*, 32 Cal. 4th at 562.

5 Here, the government has no compelling interest for granting the penitent-clergy privi-
6 lege to religions that require a penitent confess to one minister but denying the rule of privilege
7 to religions that require that a penitent confess to more than one minister. Because there is no
8 compelling state interest for the court's non-neutral judicial interpretation of the rule of privi-
9 lege, Plaintiffs' arguments must be rejected.

10 **VII. TRIAL COURT SHOULD CONDUCT AN *IN CAMERA* INSPECTION**

11 Should this Court decide not to reject Plaintiff's Motion, the Watchtower Defendants al-
12 ternatively request that this Court inspect each of the requested documents *in camera* before de-
13 termining whether or not the privilege should apply as to each document in question. An in
14 camera review by the trial court is appropriate to resolve a dispute as to whether requested
15 documents, which contain privileged information, are discoverable. *Lipton v. Superior Court*
16 (1996) 48 Cal.App.4th 1599, 1619-20.

17 **VIII. CONCLUSION**

18 The Watchtower Defendants have attempted in good faith to reasonably respond to all of
19 Plaintiff's requests for documents and information. In the face of overly broad and irrelevant
20 document requests, however, the Watchtower Defendants asserted all appropriate objections and
21 privileges. While Plaintiff is entitled to information reasonably calculated to lead to the discov-
22 ery of admissible evidence (*i.e.*, "relevant" information), Plaintiff is not entitled to obtain docu-
23 ments that are protected from disclosure by the penitential privilege, that are irrelevant, or that
24 invade the privacy of individuals not party to this action and Plaintiffs' request should be denied.

25 DATED: May __, 2011

THE McCABE LAW FIRM, APC

26 By _____
27 James M. McCabe
28 Attorneys for Watchtower Defendants

1 **PROOF OF SERVICE**

2 37-2010-00092450-CU-PO-CTL

3 *Dorman et al. v. Defendant Doe, La Jolla Church, et al.*

4 I am a citizen of the United States and am employed in San Diego County, where this
5 mailing occurs. My business address is 4817 Santa Monica Avenue, San Diego, CA 92107. I
6 am over the age of eighteen (18) and not a party to this within cause. On the date below, follow-
7 ing ordinary business practice, I served the foregoing document(s) described as:

8 **WATCHTOWER DEFENDANTS' MEMORANDUM OF POINTS AND AU-
9 THORITIES IN OPPOSITION TO PLAINTIFF'S NOTICE OF MOTION AND
10 MOTION TO COMPEL FURTHER DOCUMENTS FROM DEFENDANT, DE-
11 FENDANTS EXHIBITS AND FOREIGN CASES**

12 in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as
13 follows:

14 Attorneys for Plaintiffs
15 Mr. Devin M. Storey
16 The Zalkin Law Firm, P.C.
17 12555 High Bluff Drive Suite 260
18 San Diego, CA 92130

19 (BY MAIL) I caused such envelope(s) with First Class postage thereon fully
20 prepaid to be placed in the U.S. Mail in San Diego, California. I am readily familiar with my
21 employer's normal business practice for collection and processing of correspondence and other
22 material for mailing with the U.S. Postal Service, and that practice is that said material is depos-
23 ited with the U.S. Postal Service the same day as the day of collection in the ordinary course of
24 business.

25 (BY MESSENGER) I caused such envelope(s) to be hand delivered to

26 (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an
27 authorized Federal Express agent, this date to.

28 (BY FACSIMILE) I caused to be transmitted the aforementioned document, via fac-
simile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m.
and 5:00 p.m. on _____ and received verification of each complete transmission.

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

(Federal) I declare that I am employed in the office of a member of the Bar of this
Court at whose direction the service was made.

Executed on May __, 2011, at San Diego, California.

By _____

THE McCABE LAW FIRM, APC

James M. McCabe SBN 51040
4817 Santa Monica Avenue
San Diego, CA 92107
Telephone: (619) 224-2848
Facsimile: (619) 224-0089

Attorney for Defendant Doe Supervisory Organization

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

JOHN DORMAN, Individually, and JOEL
GAMBOA, Individually,

Plaintiffs,

v.

DEFENDANT DOE 1, La Jolla Church,
DEFENDANT DOE 2, Linda Vista Church,
and DEFENDANT DOE 3, Supervisory
Organization, DEFENDANT DOE 4,
Perpetrator, and DOES 5 through 100,
inclusive,

Defendants.

Case No.: 37-2010-00092450-CU-PO-CTL

WATCHTOWER DEFENDANTS'

**EXHIBITS IN OPPOSITION TO PLAIN-
TIFFS' MOTION TO COMPEL PRODUC-
TION OF DOCUMENTS**

JUDGE: Stephen R. Denton

Dept.: C-73

Date: May 20, 2011-05-03 Time: 9 a.m.

1 **THE McCABE LAW FIRM, APC**

2 James M. McCabe SBN 51040

3 4817 Santa Monica Avenue

4 San Diego, CA 92107

5 Telephone: (619) 224-2848

6 Facsimile: (619) 224-0089

7 Attorney for Watchtower Defendants

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

JOHN DORMAN, Individually, and JOEL
GAMBOA, Individually,

Plaintiffs,

v.

DEFENDANT DOE 1, La Jolla Church,
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Organization, DEFENDANT DOE 4,
Perpetrator, and DOES 5 through 100,
inclusive,

Defendants.

Case No.: 37-2010-00092450-CU-PO-CTL

EXHIBIT 1

AFFIDAVIT OF RICHARD ASHE, JR.

I, Richard Ashe, Jr., after being duly sworn, depose and state and if called to testify
would do so as follows:

1. I am over 18 years of age, of sound mind, and competent to make this Affidavit.

I have personal knowledge of the matters contained herein, and they are all true and correct.

2. I reside in Patterson, New York and have served as an elder in the faith of
Jehovah's Witnesses since about 1984.

3. Since November 1999, I have served in the Service Department at the U.S.
Branch Offices of Jehovah's Witnesses in Patterson, New York. I provide spiritual assistance to
congregation elders who call or write the Service Department for help. Prior to March 2001, the

1 spiritual assistance provided by the Service Department, along with the appointment of elders,
2 was communicated to congregations of Jehovah's Witnesses through the Watchtower Bible and
3 Tract Society of New York, Inc. Since March 2001, this has been communicated through the
4 Christian Congregation of Jehovah's Witnesses. Prior to November 1999, I served as a circuit
5 overseer from August 1990 until November 1999.

6 4. My duties in the Service Department also include monitoring the functioning,
7 organization, and staffing of congregations of Jehovah's Witnesses, including reviewing the
8 qualifications for the appointment of elders to congregations of Jehovah's Witnesses in the
9 United States.

11 QUALIFICATIONS OF ELDERS

12 5. Jehovah's Witnesses are not automatically appointed to serve as congregation
13 elders. Rather, they must first meet certain qualifications that are outlined in the Bible, as
14 follows: Before a male member of the congregation can be considered for appointment as a
15 congregation elder, he must first be baptized as one of Jehovah's Witnesses. Next the individual
16 must gain further knowledge of the Holy Scriptures and show a willingness to be used in a
17 further way to assist others in the congregation. If he shows such a willingness, he must then
18 meet Scriptural qualifications set out in 1 Timothy 3:8-13. Thereafter, he may qualify and be
19 appointed as a ministerial servant. Although a ministerial servant would not provide spiritual
20 supervision in the congregation, he could be assigned certain tasks to assist the congregation
21 elders as they carry out their duties. After a period of time—perhaps many years—a ministerial
22 servant who has faithfully carried out his assignments and has gained more experience may
23 meet the qualifications of a congregation elder as outlined in 1 Timothy 3:1-7 and Titus 1:6-9.
24 When this occurs, the congregation elders will make this recommendation to the circuit overseer
25 (a representative of the Branch office who is also an experienced elder). If the circuit overseer
26
27
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1 agrees with the recommendation, it will then be forwarded to the Branch office's Service
2 Department. Approved elders in the Service Department will then review the recommendation
3 in accord with the guidelines outlined in the Holy Scriptures, adopted by the Governing Body of
4 Jehovah's Witnesses. The Branch office will then inform the local congregation's body of
5 elders, in writing, of their determination with regards the recommendation.

6 6. If an individual is appointed to serve as a congregation elder, the letter of
7 appointment from the Branch office is read to the congregation. It is at this time that he is
8 officially vested with ministerial authority. In other words, he is appointed as a congregation
9 elder.
10

11 7. Jehovah's Witnesses who serve as appointed elders are recognized as ordained
12 ministers and congregation elders.

13 8. Like Jesus and his apostles, congregation elders do not receive a salary for their
14 ministerial work. Nonetheless, as ordained ministers and congregation elders, they are
15 responsible for providing spiritual supervision to the congregations, which includes hearing
16 confessions and other confidential spiritual communications made to them by members of the
17 congregation who are seeking spiritual counsel, advice or comfort.
18

19 9. Congregation elders are authorized to hear confessions and other confidential
20 spiritual communications and to provide confidential spiritual counsel, advice, and comfort by
21 virtue of the Holy Scriptures and the Governing Body of Jehovah's Witnesses.
22

23 10. According to the religious beliefs and practices of Jehovah's Witnesses,
24 congregation elders are expected to keep confession and other confidential spiritual
25 communications confidential. An elder who reveals such a confession or other confidential
26 spiritual communication, without the express permission of the one making the confession or
27 confidential spiritual communication may be disqualified from serving as an elder.
28

1 15. The goal of a judicial investigation is to make certain that the Christian
2 congregation remains spiritually and morally clean. (James 1:26) In doing so, if the elders
3 confirm that serious Scriptural wrongdoing has occurred, a judicial committee of at least three
4 elders is selected by the congregation body of elders to endeavor to provide spiritual assistance
5 to the congregant who may have sinned, with the hope of assisting them to regain their
6 spirituality and relationship with God. (Galatians 6:1, 2) At times, a judicial committee will
7 determine that an accused congregant should be spiritually disciplined internally, based on
8 Jehovah's Witnesses' understanding of the Bible.
9

10 16. Spiritual discipline administered by elders of Jehovah's Witnesses serving on a
11 judicial committee is based solely on Jehovah's Witnesses' understanding of the Bible as
12 applied to the facts of the matter. Where a serious sin is involved and the accused person is
13 repentant, the judicial committee may recommend private or public reproof. But if the person
14 who committed a serious sin cannot be brought back to repentance, the individual will have to
15 be disfellowshipped. When a member is subject to public reproof or disfellowshipping, an
16 announcement is made during a congregation meeting simply to the effect that "[name] has been
17 reproved" or "[name] is no longer one of Jehovah's Witnesses."
18

19 17. Jehovah's Witnesses recognize the Bible's admonition to confess ones sins to
20 God. 1 John 1:8, 9 ("If we confess our sins, he is faithful and righteous so as to forgive us our
21 sins and to cleanse us from all unrighteousness.").

22 18. In addition Jehovah's Witnesses also believe that there can be much benefit from
23 speaking to the congregation elders ("older men") regarding such confidential matters. James
24 5:13-16 ("Is there anyone suffering evil among YOU? Let him carry on prayer. Is there anyone
25 in good spirits? Let him sing psalms. Is there anyone sick among YOU? Let him call the older
26 men of the congregation to [him], and let them pray over him, greasing [him] with oil in the
27
28

1 name of Jehovah. And the prayer of faith will make the indisposed one well, and Jehovah will
2 raise him up. Also, if he has committed sins, it will be forgiven him. Therefore openly confess
3 YOUR sins to one another and pray for one another, that YOU may get healed.”). Jehovah’s
4 Witnesses view confessions and other confidential and private communications of a spiritual
5 nature between congregants and elders as communications that elders must keep confidential.
6 Proverbs 25:9.

7
8 19. Jehovah’s Witnesses do not believe that the confidentiality of spiritual
9 communications they may have with the congregation elders is limited to confessions. Rather,
10 as outlined in James 5:13-16, Jehovah’s Witnesses are encouraged to seek the spiritual counsel
11 and advice of the elders in a variety of life situations. Congregation elders are also encouraged
12 to seek spiritual counsel and advice from elders serving in the Branch Office’s Service
13 Department, or from elders serving as circuit or district overseers, in order to receive spiritual
14 counsel and advice as to how to apply the religious doctrine and procedures of Jehovah’s
15 Witnesses to issues concerning the congregation and its members, and on occasion congregation
16 elders seek such spiritual counsel and advice. Such confidential spiritual communications from
17 congregation elders are only handled by elders in the Branch Office Service Department. In
18 addition, if a congregation member is disfellowshipped, the judicial committee elders forward a
19 notice of disfellowshipping to Branch Office elders for their review to ensure that their decision
20 was spiritually based and well founded. The notice of disfellowshipping has the name of the
21 disfellowshipped person, the date of disfellowshipping, and the Scriptural basis for
22 disfellowshipping. Jehovah’s Witnesses view all such spiritual communications as confidential
23 communications that must be kept strictly confidential.
24
25

26 20. Elders do not allow unnecessary third parties to be a party to a confidential
27 communication. However, at times more than one elder may be a party to the conversation. For
28

1 instance, it is Jehovah's Witnesses religious belief and practice to have at least two elders
2 present during a judicial investigation and at least three elders present during a judicial
3 committee. (Deuteronomy 17:6; Deuteronomy 19:15; Matthew 18:15-17; 2 Corinthians 13:1; 1
4 Timothy 5:19) Before one becomes one of Jehovah's Witnesses, he would be made aware of
5 this provision. *Your Word Is a Lamp To My Foot*, pages 176-79; *Organization for Kingdom-*
6 *Preaching and Disciple-Making*, pages 159-65; *Organized to Accomplish Our Ministry*, pages
7 145-47; *Organized To Do Jehovah's Will*, pages 151-2. In addition, there may be instances
8 where a husband and wife, or a parent and child, may together seek or would be provided with
9 spiritual counsel, advice or comfort from the elders. Jehovah's Witnesses believe that men are
10 imperfect and, therefore, three elders serving on a judicial committee can provide more full and
11 complete spiritual counsel and advice based on a broader range of experience and knowledge
12 than can a single elder alone. The elders and participants to these confidential and private
13 spiritual communications would view these communications as confidential and congregants
14 would expect the elders to keep such communications strictly confidential.

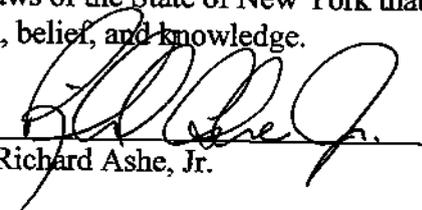
17 21. In addition, the religious doctrine of Jehovah's Witnesses requires that all elders
18 keep these confidential and private spiritual communication strictly confidential. *The*
19 *Watchtower*, April 1, 1971, pages 222-224; *Kingdom Ministry*, July 1975; *The Watchtower*,
20 December 15, 1975, pages 764-66; *The Watchtower*, September 1, 1983, pages 21-26; *The*
21 *Watchtower*, September 15, 1989, pages 10-15; *The Watchtower*, September 1, 1991, pages 22-
22 27; *The Watchtower*, November 15, 1991, pages 19-23. Indeed, an elder who reveals the
23 contents of such a confidential communication may be subject to removal.

25 22. In this case, Withheld Documents 1, 11, and 15-17, referenced in Plaintiffs' Ex
26 Parte Application Re Production of Withheld Documents and Plaintiffs' Notice of Motion and
27 Motion to Compel Further Documents From Defendants, were all received by or sent by elders
28

1 serving in the Branch Office's Service Department and are the type of confidential
2 communications and documents described in paragraphs 13-21 above, which must be kept
3 strictly confidential. The undersigned therefore claims and does not waive the penitent privilege
4 as to any of the Withheld Documents.

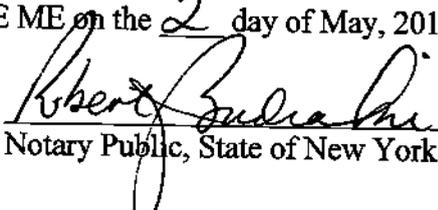
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6 SIGNED this the 2 day of May, 2011.

7 I declare under penalty of perjury under the laws of the State of New York that the foregoing is
8 true and correct to the best of my information, belief, and knowledge.

9
10 
Richard Ashe, Jr.

11 STATE OF NEW YORK)
12) ss.:
13 COUNTY OF PUTNAM)

14 SUBSCRIBED AND SWORN TO BEFORE ME on the 2 day of May, 2011, to certify
15 which witness my hand and official seal.

16 
Notary Public, State of New York

17 ROBERT J. BUDRECKI
Notary Public, State Of New York
No. 01BU6003185
Qualified In Putnam County
Commission Expires 02/23/2014

1 **THE McCABE LAW FIRM, APC**
James M. McCabe SBN 51040
2 4817 Santa Monica Avenue
San Diego, CA 92107
3 Telephone: (619) 224-2848
Facsimile: (619) 224-0089

4 Attorney for Watchtower Defendants
5

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF SAN DIEGO

8 JOHN DORMAN, Individually, and JOEL
9 GAMBOA, Individually,

10 Plaintiffs,

11 v.

12 DEFENDANT DOE 1, La Jolla Church,
13 DEFENDANT DOE 2, Linda Vista Church,
and DEFENDANT DOE 3, Supervisory
14 Organization, DEFENDANT DOE 4,
Perpetrator, and DOES 5 through 100,
15 inclusive,

16 Defendants.
17

Case No.: 37-2010-00092450-CU-PO-CTL

EXHIBIT 2

AFFIDAVIT OF BRUCE ANTONOFF

18 I, Bruce Antonoff, after being duly sworn, depose and state and if called to testify would
19 do so as follows:

- 20 1. That I am over 21 years of age and reside in San Diego, California.
21
22 2. That I have been a duly ordained minister and elder of the Playa Pacifica Spanish
23 Congregation of Jehovah's Witnesses, in San Diego, California since 2006.
24
25 3. That from 1991 to 2006 I served as ministerial servant of the Playa Pacifica
Spanish Congregation of Jehovah's Witnesses in San Diego, California.
26
27 4. That I am thoroughly familiar with the religious beliefs, teachings, practices, and
organization of Jehovah's Witnesses.
28

1 5. That duly ordained ministers of Jehovah's Witnesses responsible for teaching
2 and pastoral care of congregation members are called "elders."

3 6. That it is a religious belief and practice of Jehovah's Witnesses based on God's
4 Word, the Bible, that an elder has a responsibility to provide spiritual counsel and advice to
5 those who seek or need it, and that a person who seeks or needs spiritual counsel and advice
6 conveys to the elders whatever information may be needed to provide this spiritual assistance.—
7 Isaiah 32:2; James 5:14-16; Hebrews 13:17.
8

9 7. That it is the religious belief and practice of Jehovah's Witnesses, based upon
10 Scripture and tradition, that elders must maintain in strict confidence any church
11 communications connected with such spiritual counsel and advice and congregants expect that
12 their communications to elders will remain confidential.—Proverbs 15:22; 25:9, 10.

13 8. That revealing such confidential communications would call into question an
14 elder's qualifications and could result in his removal as an elder in the congregation.

15 9. That if Affiant or any other elder is compelled to disclose such confidential
16 information, his credibility and effectiveness as an elder, as well as the credibility and
17 effectiveness of the other elders in the congregation, would be adversely affected and
18 compromised, since congregants will no longer be able to trust and rely that problems and
19 confidential information they disclose to elders will not be revealed through discovery and used
20 against them in a court action or otherwise violate their expectation of privacy and
21 confidentiality.
22

23 10. That the requirement of keeping the above-described confidential and spiritual
24 communications to elders confidential is explained in the official publications of Jehovah's
25 Witnesses as follows:
26

27 In each congregation of Jehovah's witnesses there are mature ministers
28 appointed to care for various assignments. (1 Tim. 3:2, 12) As they discharge

1 their duties they often are told about confidential things, and it is essential that
2 they respect this confidence. For instance, James 5:13-16 shows that a member
3 of the congregation who has some spiritual problem, perhaps even having
4 committed a sin, should go to the spiritually older men for help. Isaiah 32:2
5 prophetically pictured these men as places of comfort and protection. What a
6 fine thing it is to be able to explain one's problem and get balanced spiritual
7 help, and at the same time have full confidence that the matter will not become
8 general knowledge in the congregation or community.

9 Those mature ministers will not discuss even with their wives and close
10 friends what they thus learn in confidence. They know that if they did so it
11 would undermine respect for their positions; it would make individuals hesitant
12 to come to them; yes, in time it might even make it impossible for them to fulfill
13 their role as spiritual shepherds.

14 *The Watchtower*, April 1, 1971, p. 223.

15 11. That it is also the religious belief and practice of Jehovah's Witnesses, based
16 upon Scripture and church tradition, to keep congregation files, papers, reports, minutes or other
17 documents prepared in conjunction with, or as a result of, the above-described confidential
18 communications, confidential.

19 12. That Withheld Document 18 referenced in Plaintiffs' Ex Parte Application Re
20 Production of Withheld Documents, was signed by Affiant and are the type of confidential
21 communications and documents described in paragraph 10 above. The undersigned Affiant
22 therefore claims and does not waive the penitential privilege as to any of the Withheld
23 Documents.

24 13. That if Affiant or any other elder is compelled to produce any papers, reports,
25 minutes or other documents prepared in conjunction with or as a result of the above-described
26 confidential communications, the credibility and effectiveness of Petitioner and other elders in
27 the congregation, will be adversely affected and compromised, and the confidentiality of the
28 oral communications will be rendered worthless.

1 SIGNED this the 2nd day of May, 2011.

2 I declare under penalty of perjury under the laws of the State of California that the foregoing is
3 true and correct to the best of my information, belief, and knowledge.

4 Bruce Antonoff
Bruce Antonoff

5 STATE OF CALIFORNIA)
6) ss.:
7 COUNTY OF SAN DIEGO)

8 SUBSCRIBED AND SWORN TO BEFORE ME on the 2nd day of May, 2011, to certify
9 which witness my hand and official seal.

Jesse R. McCabe
Notary Public, State of California



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1 **THE McCABE LAW FIRM, APC**

James M. McCabe SBN 51040

2 4817 Santa Monica Avenue

San Diego, CA 92107

3 Telephone: (619) 224-2848

4 Facsimile: (619) 224-0089

5 Attorney for Watchtower Defendants

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **COUNTY OF SAN DIEGO**

8 **JOHN DORMAN, Individually, and JOEL**
9 **GAMBOA, Individually,**

10 **Plaintiffs,**

11 **v.**

12 **DEFENDANT DOE 1, La Jolla Church,**
13 **DEFENDANT DOE 2, Linda Vista Church,**
14 **and DEFENDANT DOE 3, Supervisory**
15 **Organization, DEFENDANT DOE 4,**
Perpetrator, and DOES 5 through 100,
inclusive,

16 **Defendants.**

Case No.: 37-2010-00092450-CU-PO-CTL

EXHIBIT 3

AFFIDAVIT OF KEVIN PHILLIPS

17
18 I, Kevin Phillips, after being duly sworn, depose and state and if called to testify would
19 do so as follows:

- 20 1. That I am over 21 years of age and reside in San Diego, California.
- 21 2. That I have been a member of the Poway Spanish Congregation of Jehovah's
- 22 Witnesses, in San Diego, California since 1997.
- 23 3. That from December 1994 to 1997 I served as a duly ordained minister and elder
- 24 of the Playa Pacifica Spanish Congregation of Jehovah's Witnesses in San Diego, California.
- 25 4. That I am thoroughly familiar with the religious beliefs, teachings, practices, and
- 26 organization of Jehovah's Witnesses.
- 27
- 28

1 5. That duly ordained ministers of Jehovah's Witnesses responsible for teaching
2 and pastoral care of congregation members are called "elders."

3 6. That it is a religious belief and practice of Jehovah's Witnesses based on God's
4 Word, the Bible, that an elder has a responsibility to provide spiritual counsel and advice to
5 those who seek or need it, and that a person who seeks or needs spiritual counsel and advice
6 conveys to the elders whatever information may be needed to provide this spiritual assistance.—
7 Isaiah 32:2; James 5:14-16; Hebrews 13:17.
8

9 7. That it is the religious belief and practice of Jehovah's Witnesses, based upon
10 Scripture and tradition, that elders must maintain in strict confidence any church
11 communications connected with such spiritual counsel and advice and congregants expect that
12 their communications to elders will remain confidential.—Proverbs 15:22; 25:9, 10.
13

14 8. That revealing such confidential communications would call into question an
15 elder's qualifications and could result in his removal as an elder in the congregation.
16

17 9. That if Affiant or any other elder is compelled to disclose such confidential
18 information, his credibility and effectiveness as an elder, as well as the credibility and
19 effectiveness of the other elders in the congregation, would be adversely affected and
20 compromised, since congregants will no longer be able to trust and rely that problems and
21 confidential information they disclose to elders will not be revealed through discovery and used
22 against them in a court action or otherwise violate their expectation of privacy and
23 confidentiality.
24

25 10. That the requirement of keeping the above-described confidential and spiritual
26 communications to elders confidential is explained in the official publications of Jehovah's
27 Witnesses as follows:
28

In each congregation of Jehovah's witnesses there are mature ministers
appointed to care for various assignments. (1 Tim. 3:2, 12) As they discharge

1 their duties they often are told about confidential things, and it is essential that
2 they respect this confidence. For instance, James 5:13-16 shows that a member
3 of the congregation who has some spiritual problem, perhaps even having
4 committed a sin, should go to the spiritually older men for help. Isaiah 32:2
5 prophetically pictured these men as places of comfort and protection. What a
fine thing it is to be able to explain one's problem and get balanced spiritual
help, and at the same time have full confidence that the matter will not become
general knowledge in the congregation or community.

6 Those mature ministers will not discuss even with their wives and close
7 friends what they thus learn in confidence. They know that if they did so it
8 would undermine respect for their positions; it would make individuals hesitant
to come to them; yes, in time it might even make it impossible for them to fulfill
their role as spiritual shepherds.

9 *The Watchtower*, April 1, 1971, p. 223.

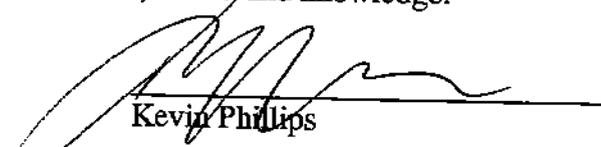
10
11 11. That it is also the religious belief and practice of Jehovah's Witnesses, based
12 upon Scripture and church tradition, to keep congregation files, papers, reports, minutes or other
13 documents prepared in conjunction with, or as a result of, the above-described confidential
14 communications, confidential.

15 12. That Withheld Documents 1, 2, 4, 7, 13, and 15, referenced in Plaintiffs' Ex
16 Parte Application Re Production of Withheld Documents, were all prepared, signed, and sent by
17 Affiant or received by Affiant as an elder in the Playa Pacifica Spanish Congregation, and are
18 the type of confidential communications and documents described in paragraph 11 above, which
19 must be kept strictly confidential. The undersigned Affiant therefore claims and does not waive
20 the penitential privilege as to any of the Withheld Documents.

21
22 13. That if Affiant or any other elder is compelled to produce any papers, reports,
23 minutes or other documents prepared in conjunction with or as a result of the above-described
24 confidential communications, the credibility and effectiveness of Affiant and other elders in the
25 congregation, will be adversely affected and compromised, and the confidentiality of the oral
26 communications will be rendered worthless.
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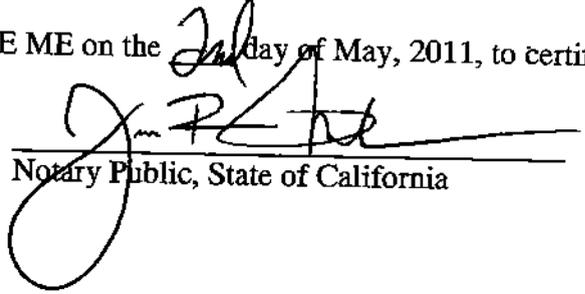
1 SIGNED this the 2 day of May, 2011.

2 I declare under penalty of perjury under the laws of the State of California that the foregoing is
3 true and correct to the best of my information, belief, and knowledge.

4 
Kevin Phillips

5 STATE OF CALIFORNIA)
6) ss.:
7 COUNTY OF SAN DIEGO)

8 SUBSCRIBED AND SWORN TO BEFORE ME on the 2nd day of May, 2011, to certify
9 which witness my hand and official seal.

10 
Notary Public, State of California



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1 **THE McCABE LAW FIRM, APC**

James M. McCabe SBN 51040

2 4817 Santa Monica Avenue

San Diego, CA 92107

3 Telephone: (619) 224-2848

4 Facsimile: (619) 224-0089

5 Attorney for Watchtower Defendants

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF SAN DIEGO

8 JOHN DORMAN, Individually, and JOEL
9 GAMBOA, Individually,

10 Plaintiffs,

11 v.

12 DEFENDANT DOE 1, La Jolla Church,
13 DEFENDANT DOE 2, Linda Vista Church,
14 and DEFENDANT DOE 3, Supervisory
15 Organization, DEFENDANT DOE 4,
Perpetrator, and DOES 5 through 100,
inclusive,

16 Defendants.

Case No.: 37-2010-00092450-CU-PO-CTL

EXHIBIT 4

AFFIDAVIT OF JUAN GUARDADO

17
18 I, Juan Guardado, after being duly sworn, depose and state and if called to testify would
19 do so as follows:

- 20 1. That I am over 21 years of age and reside in San Diego, California.
- 21 2. That I have been a duly ordained minister and elder of the Centro English
- 22 Congregation of Jehovah's Witnesses, in Tijuana, Mexico since 2010.
- 23 3. That from 1997 to 2001 I served as a duly ordained minister and elder of the
- 24 Playa Pacifica Spanish Congregation of Jehovah's Witnesses in San Diego, California.
- 25 4. That I am thoroughly familiar with the religious beliefs, teachings, practices, and
- 26 organization of Jehovah's Witnesses.
- 27
28

1 5. That duly ordained ministers of Jehovah's Witnesses responsible for teaching
2 and pastoral care of congregation members are called "elders."

3 6. That it is a religious belief and practice of Jehovah's Witnesses based on God's
4 Word, the Bible, that an elder has a responsibility to provide spiritual counsel and advice to
5 those who seek or need it, and that a person who seeks or needs spiritual counsel and advice
6 conveys to the elders whatever information may be needed to provide this spiritual assistance.—
7 Isaiah 32:2; James 5:14-16; Hebrews 13:17.
8

9 7. That it is the religious belief and practice of Jehovah's Witnesses, based upon
10 Scripture and tradition, that elders must maintain in strict confidence any church
11 communications connected with such spiritual counsel and advice and congregants expect that
12 their communications to elders will remain confidential.—Proverbs 15:22; 25:9, 10.

13 8. That revealing such confidential communications would call into question an
14 elder's qualifications and could result in his removal as an elder in the congregation.
15

16 9. That if Affiant or any other elder is compelled to disclose such confidential
17 information, his credibility and effectiveness as an elder, as well as the credibility and
18 effectiveness of the other elders in the congregation, would be adversely affected and
19 compromised, since congregants will no longer be able to trust and rely that problems and
20 confidential information they disclose to elders will not be revealed through discovery and used
21 against them in a court action or otherwise violate their expectation of privacy and
22 confidentiality.
23

24 10. That the requirement of keeping the above-described confidential and spiritual
25 communications to elders confidential is explained in the official publications of Jehovah's
26 Witnesses as follows:

27 In each congregation of Jehovah's witnesses there are mature ministers
28 appointed to care for various assignments. (1 Tim. 3:2, 12) As they discharge

1 their duties they often are told about confidential things, and it is essential that
2 they respect this confidence. For instance, James 5:13-16 shows that a member
3 of the congregation who has some spiritual problem, perhaps even having
4 committed a sin, should go to the spiritually older men for help. Isaiah 32:2
5 prophetically pictured these men as places of comfort and protection. What a
6 fine thing it is to be able to explain one's problem and get balanced spiritual
7 help, and at the same time have full confidence that the matter will not become
8 general knowledge in the congregation or community.

9 Those mature ministers will not discuss even with their wives and close
10 friends what they thus learn in confidence. They know that if they did so it
11 would undermine respect for their positions; it would make individuals hesitant
12 to come to them; yes, in time it might even make it impossible for them to fulfill
13 their role as spiritual shepherds.

14 *The Watchtower*, April 1, 1971, p. 223.

15 11. That it is also the religious belief and practice of Jehovah's Witnesses, based
16 upon Scripture and church tradition, to keep congregation files, papers, reports, minutes or other
17 documents prepared in conjunction with, or as a result of, the above-described confidential
18 communications, confidential.

19 12. That Withheld Documents 9-14, 16 and 17, referenced in Plaintiffs' Ex Parte
20 Application Re Production of Withheld Documents, were all prepared, signed, and sent by
21 Affiant or received by Affiant as an elder in the Playa Pacifica Spanish Congregation and are
22 the type of confidential communications and documents described in paragraph 11 above, which
23 must be kept strictly confidential. The undersigned Affiant therefore claims and does not waive
24 the penitential privilege as to any of the Withheld Documents.

25 13. That if Affiant or any other elder is compelled to produce any papers, reports,
26 minutes or other documents prepared in conjunction with or as a result of the above-described
27 confidential communications, the credibility and effectiveness of Affiant and other elders in the
28 congregation, will be adversely affected and compromised, and the confidentiality of the oral
communications will be rendered worthless.

1 **THE McCABE LAW FIRM, APC**

2 James M. McCabe SBN 51040

3 4817 Santa Monica Avenue

4 San Diego, CA 92107

5 Telephone: (619) 224-2848

6 Facsimile: (619) 224-0089

7 Attorney for Defendant Doe Supervisory Organization

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10 **JOHN DORMAN, Individually, and JOEL**
11 **GAMBOA, Individually,**

12 **Plaintiffs,**

13 **v.**

14 **DEFENDANT DOE 1, La Jolla Church,**
15 **DEFENDANT DOE 2, Linda Vista Church,**
16 **and DEFENDANT DOE 3, Supervisory**
17 **Organization, DEFENDANT DOE 4,**
18 **Perpetrator, and DOES 5 through 100,**
19 **inclusive,**

20 **Defendants.**

Case No.: 37-2010-00092450-CU-PO-CTL

WATCHTOWER DEFENDANTS'

EXHIBIT 5

PRIVELEGE DOCUMENTS

21 **EXHIBIT 5**

22 (1) Defendant Playa Pacifica Spanish Congregation's elders confidential written communication regarding the disfellowshipping of Defendant Campos to ordained ministers and appointed elders serving at the Branch Office of Jehovah's Witnesses in New York (hereinafter "Branch Office elders") for the purpose of having their decision to disfellowship reviewed by Branch Office elders to ensure that it was spiritually based and well founded:

23 **Withheld Document 1:** August 18, 1995, letter from the elders on the Playa Pacifica Span-
24 ish Congregation Judicial Committee for GC to elders in U.S. Service Department, regard-
25 ing GC.—This document is protected by the penitential privilege.

26 **Withheld Document 15:** June 9, 1995, Notification of Expulsion or Disassociation sent by
27 Playa Pacifica Congregation Judicial Committee to elders in U.S. Service Department re-
28 garding GC, also confirms date of GC's reinstatement as April 21, 2000. (Redacted to re-
remove information related to GC.)—This information is protected by the penitential privi-
lege.

1 (2) Confidential document created by Defendant Playa Pacifica Spanish Congregation elders
2 while discussing whether Defendant Gonzalo Campos was spiritually qualified to be given minor
3 privileges in the congregation:

4 **Withheld Document 18:** October 28, 2006, notes of an elders meeting of elders in the
5 Playa Pacifica Spanish Congregation, regarding Gonzalo Campos.—This document is not
6 reasonably calculated to lead to admissible evidence and it is protected by the penitential
7 privilege. In addition, this document contains confidential and private information regard-
8 ing individual(s) who are not a party to this lawsuit.

9 (3) Confidential written communications between elders in the Defendant Playa Pacifica Spanish
10 Congregation and Branch Office elders, written for the purpose of seeking or providing spiritual
11 advice and counsel related to spiritual questions involving Defendant Campos:

12 **Withheld Document 2:** April 27, 1995, letter from elders in the U.S. Service Department to
13 the body of elders for Playa Pacifica Spanish regarding GC.—This document is protected by
14 the penitential privilege.

15 **Withheld Document 3:** March 29, 1995, letter from elders on Service Committee for Playa
16 Pacifica Spanish Congregation to elders in U.S. Service Department, regarding GC.—This
17 document is protected by the penitential privilege.

18 **Withheld Document 7:** November 13, 1996, letter from elders in the Playa Pacifica Span-
19 ish Congregation to elders in the U.S. Service Department, regarding Gonzalo Campos.—
20 This document is not reasonably calculated to lead to admissible evidence and it is protected
21 by the penitential privilege. In addition, this document contains confidential and private in-
22 formation regarding individual(s) who are not a party to this lawsuit.

23 **Withheld Document 8:** January 7, 1997, letter from elders in the U.S. Service Department
24 to the body of elders for Playa Pacifica Spanish Congregation, regarding Gonzalo Cam-
25 pos.—This document is not reasonably calculated to lead to admissible evidence and it is
26 protected by the penitential privilege.

27 **Withheld Document 11:** June 5, 2000, letter from elders in the U.S. Service Department to
28 the body of elders for Playa Pacifica Spanish, regarding Gonzalo Campos.—This document
is not reasonably calculated to lead to admissible evidence and it is protected by the peniten-
tial privilege.

(4) Confidential written communications between Defendant Campos and elders in Defendant
Playa Pacifica Congregation related to Defendant Campos' effort to establish his spiritual repen-
tance so that he could be reinstated as a member of the congregation:

Withheld Document 12: January 27, 1999, letter from Gonzalo Campos to the body of eld-
ers for the Playa Pacifica Spanish Congregation, requesting reinstatement into the congrega-
tion.—This information is not reasonably calculated to lead to admissible evidence and it is
protected by the penitential privilege.

Withheld Document 13: October 13, 1995, letter from Gonzalo Campos to the body of
elders for the Playa Pacifica Spanish Congregation, requesting reinstatement into the con-
gregation.—This information is not reasonably calculated to lead to admissible evidence
and it is protected by the penitential privilege.

1 **Withheld Document 14:** September 14, 1998, letter from Gonzalo Campos to the body of
2 elders for the Playa Pacifica Spanish Congregation, requesting reinstatement into the con-
gregation.—This information is not reasonably calculated to lead to admissible evidence
and it is protected by the penitential privilege.

3 (5) Confidential written communications between elders in the Defendant Playa Pacific Congrega-
4 tion and Branch Office elders written for the purpose of seeking or providing spiritual advice and
counsel related to Defendant Campos' request to be reinstated as a member of the congregation:

5 **Withheld Document 9:** July 24, 1999, letter from elders in the Playa Pacifica Spanish Con-
6 gregation to elders in the U.S. Service Department, regarding Gonzalo Campos.—This
document is not reasonably calculated to lead to admissible evidence and it is protected by
7 the penitential privilege. In addition, this document contains confidential and private in-
8 formation regarding individual(s) who are not a party to this lawsuit.

9 **Withheld Document 10:** August 12, 1999, letter from elders in the U.S. Service Depart-
ment to the body of elders for Playa Pacifica Spanish Congregation, regarding Gonzalo
10 Campos.—This document is not reasonably calculated to lead to admissible evidence and it
is protected by the penitential privilege.

11 **Withheld Document 16:** July 20, 1999, draft of a letter from elders in the Playa Pacifica
12 Spanish Congregation to elders in the U.S. Service Department, regarding Gonzalo Cam-
pos.—This document is not reasonably calculated to lead to admissible evidence and it is
13 protected by the penitential privilege. In addition, this document contains confidential and
private information regarding individual(s) who are not a party to this lawsuit.

14 **Withheld Document 17:** July 4, 1999, draft of a letter from elders in the Playa Pacifica
15 Spanish Congregation to elders in the U.S. Service Department, regarding Gonzalo Cam-
pos.—This document is not reasonably calculated to lead to admissible evidence and it is
16 protected by the penitential privilege. In addition, this document contains confidential and
private information regarding individual(s) who are not a party to this lawsuit.

17 (6) Confidential written communication from congregant to congregation and Branch elders for the
18 purpose of making an allegation that Defendant Campos committed a serious sin for which a judi-
19 cial committee may need to be formed and for which he may need to be removed as an elder:

20 **Withheld Document 6:** April, 11, 1994, letter from John and Manuela Dorman to the eld-
21 ers of the English Congregation, Monmouth, Oregon.—This document is protected by the
penitential privilege.

22 (7) Confidential written communications between congregation elders and Branch Office elders re-
23 lated to the investigation of possible serious sins alleged against Defendant Campos that might re-
quire the formation of a congregation judicial committee and his removal as a congregation elder:

24 **Withheld Document 4:** June 9, 1994, letter from elders in U.S. Service Department to body
of elders for the English Congregation, Monmouth, Oregon, with a P.S. to the body of eld-
25 ers for the Playa Pacifica Spanish Congregation, regarding GC.—This document is pro-
tected by the penitential privilege.

26 **Withheld Document 5:** April 13, 1994, letter from the presiding elder (overseer) in the
27 English Congregation, Monmouth, Oregon to the elders in the U.S. Service Department, re-
28 garding JD and GC.—This document is protected by the penitential privilege.

Thus, the Watchtower Defendants urge the court to separately evaluate the facts and the law as to each of these six types of document before ruling on the applicability of the penitential privilege as to each of the 18 documents in question.

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