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IN THE UTAH SUPREME COURT

<p>THE FUNDAMENTALIST CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, an association of individuals, LYLE JEFFS, an individual, WILLIE JESSOP, an individual,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>JUDGE DENISE P. LINDBERG, District Court Judge,</p> <p style="text-align: center;">Respondent</p>	<p><b>THE UNITED EFFORT PLAN TRUST'S RESPONSE IN OPPOSITION TO PETITION FOR EMERGENCY RELIEF</b></p> <p>Appellate Case No. 20090859-SC</p> <p>Third District Court Case No. 053900848</p>
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Bruce R. Wisan, as the Court-appointed Special Fiduciary ("Fiduciary") of the United Effort Plan Trust (the "Trust"), through counsel, and pursuant to UTAH R. APP. P. 8A(d), submits his response<sup>1</sup> to the PETITION FOR EMERGENCY RELIEF ("Petition") filed on August 19, 2010 by

<sup>1</sup>The majority of the facts alleged in the Petition are not (and could not be) supported by affidavit or the record below. Due to the shortness of time required for the Fiduciary's response under Rule 8A, the Fiduciary does not identify or discuss all of the factual or legal flaws in the Petition, but focuses on some of the more obvious problems warranting denial of the Petition. (For a citation of the relevant facts in this case, see Brief of Appellee Bruce R. Wisan, as the  
(continued...)

“an unincorporated association representing the thousands of members of the Fundamentalist Church of Jesus Christ of latter Day Saints.”<sup>2</sup>

### INTRODUCTION

There is no emergency warranting this Court’s intervention.

The tragic irony behind this emergency petition and the other contrived attacks against the District Court and its Fiduciary, is that there would be no Trust property for the Petitioner to accuse the District Court and Fiduciary of "mismanaging" and "wrongfully taking" had the District Court not acted to prevent Warren Jeffs from looting the Trust and abandoning what was left in default judgments to tort plaintiffs who threatened to expose his gross misconduct. Rather than cooperate with the District Court's proposal to distribute Trust property preserved by the Fiduciary to members of the beneficiary class (a process that would likely result in the transfer of large portions if not the vast majority of Trust assets to FLDS members), the FLDS elite adamantly oppose any distribution that would give their followers and others living on Trust property an opportunity to decide whether they want the security of owning their homes. While the District Court and the Fiduciary have repeatedly declared that such distribution would not prevent recipients of Trust property from transferring it to the FLDS Church or any other person or entity of their choosing, the FLDS elite are

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<sup>1</sup>(...continued)

Court-appointed Special Fiduciary of the United Effort Plan Trust, dated July 14, 2010, filed in Supreme Court Case No. 20090691, at pp. 5-26).

<sup>2</sup>The “unincorporated association” is not a party to the trial court proceedings and has never sought to intervene there (certain individuals purporting to be members and/or leaders of the FLDS church have sought to participate below). Because Petitioner is apparently seeking to confer independent standing on itself in a different forum without having exhausted its remedies in the trial court, the Petition should be summarily dismissed as not ripe.

simply unwilling to risk the possibility that some members might elect not to relinquish control of their homes to the man who ordered the homes abandoned so that his followers could be "scattered" and punished.

To regain their absolute control, the FLDS elite are attempting to re-write history by falsely accusing the District Court and the Fiduciary of "unconstitutional" acts that require the immediate return of all Trust property to the FLDS elite. That such elite (who personally benefit from Mr. Jeffs' total domination of Trust property at the expense of the rank and file) are willing to fabricate<sup>3</sup> alleged "discriminatory abuses" and deceive in order to preserve their privileged status is no surprise. What is most disturbing, however, is that these slanderous, misleading attacks against the District Court and the Fiduciary are being asserted in this Court despite sworn testimony in this proceeding that directly contradicts these accusations. As explained below, the Petition should be denied.

#### **I. THE PETITION IS AN ABUSE OF RULE 8A.**

The present petition is the seventh petition for extraordinary or emergency relief filed in these proceedings.<sup>4</sup> This Court's ruling in Snow, Christensen & Martineau v. Lindberg, 222 P.3d 1141,

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<sup>3</sup>The is not the first emergency writ filed in this case that was grounded in falsehood. For example, on December 28, 2009, a Petition for Emergency Writ was filed in this Court in Case No. 20090859 complaining that the Fiduciary had sold certain cattle owned by a Trust-owned business. That Petition asserted that the cattle were unique and irreplaceable because they were a source of "wholesome milk" for the FLDS people, and because of FLDS religious breeding practices, had never suffered from venereal disease, and had never been bred using artificial insemination. The affidavit submitted by the farmer actually running the farm provide irrefutable evidence that (1) the cattle had never been a significant source of milk for the FLDS community; (2) the herd had suffered a serious outbreak of the venereal disease trichomoniasis when under FLDS management; and (3) all the cattle in question had been bred by artificial insemination. This Court denied that Petition for Emergency Writ.

<sup>4</sup>After Warren Jeffs reversed his "answer them nothing" position with respect to the trial  
(continued...)

2009 UT 72, recognized that Rule 8A's "abbreviated response deadline has the effect of placing a substantial burden on respondents" and cautioned that:

[R]ule 8A should not be employed as a means for harassing or unjustifiably burdening respondent when ordinary procedural mechanisms would be adequate. This includes the circumstance where the "emergency" has arisen from petitioners' own unjustified delay in seeking relief.

Id. at ¶ 7 and n. 2.

The facts here compel the conclusion that Petitioner has violated this Court's admonition. Petitioner grossly mischaracterizes the District Court's statements at the July 22, 2010 hearing in order to fabricate a basis for emergency relief. Petitioner takes out of context a statement that beneficiaries of a charitable trust have "no preexisting property right" to accuse the District Court of wrongfully denying the FLDS members an opportunity to assert claims to Trust property.

When the entirety of the July 22, 2010 hearing is considered (and not the one-liner on which the entire Petition is grounded), it is clear that the District Court, consistent with her duties under the Trust Code, has solicited input on a process for resolution of disputed rights in Trust property. The issue was presented to the District Court by William A. Richards of the Arizona Attorney General's office:

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<sup>4</sup>(...continued)

court proceedings and instead instructed his followers to "demand [] their rights", a Petition for Emergency Relief was filed on November 10, 2008 in Case No. 20080928. A Petition for Extraordinary Writ was filed on September 23, 2009 in Case No. 20090781. A Petition for Extraordinary Writ was filed October 20, 2009 in Case No. 20090859. A Petition for Emergency Relief was filed on November 25, 2009 in Case No. 20080928. A Petition for Extraordinary Writ was filed on December 3, 2009 in Case No. 20091006. A Petition for Emergency Relief was filed on December 29, 2009 in Case No. 20090859. The Petitions have consistently and repeatedly requested that the District Court proceedings be stayed. The request was repeated again at oral argument in this very case. See, Petition at Fact Statement 5. This Court's repeated denial of such requests should be persuasive, if not preclusive, with respect to the instant Petition.

The dispute that is alleged there is that members of the FLDS have a— some sort of a preexisting religious stewardship, not as we understand evidenced by any sort of actual conveyance. . . . But these folks have taken it upon themselves to simply go out and assume the property and to interfere with the use of that property by those who have been granted an occupancy agreement or a lease by the special fiduciary. We're also concerned that there has been issues involving removal of property...all of which would be a violation the Court's pending injunction order.

See, Transcript of July 22, 2010 hearing, attached hereto as Exhibit "A", at 8: 13 - 9:8 (the Transcript was conspicuously absent from the Petition). Mr. Richards then requested that the District Court clarify that it stands behind the leases from the Fiduciary, whereupon Counsel for Petitioner cautioned that the District Court should not "take away the existing property rights of somebody else, whether it's real property or personal property by fiat like that." Ex. "A" at 26:13 - 27: 12. The District Court responded that "There is no preexisting property rights of any alleged beneficiary to any land or to anything in the UEP," a statement consistent with established rule of law that in a charitable trust the beneficial rights to Trust property "are not given to individual beneficiaries but the property is devoted to the accomplishment of purposes beneficial to the community." Id. at 27:13-15; Jeffer v. Stubbs, 970 P.2d 1234, ¶ 41 (1998). Counsel for Petitioner countered that there may be persons with "unjust enrichment claims . . . in the real property; and . . . food and personal property down there that UEP does not own." Id. at 27: 18 - 23. The District Court expressly acknowledged that "if there are legitimate competing claims by anyone who believes that he or she has a claim to any particular property, that can certainly be addressed in court on a full trial on the merits." Id. at 29: 8 - 12. The hearing participants then discussed the proper methodology for resolution of such disputes, whereupon the District Court stated:

...I'm going to have to think through how to create a process so that those concerns and those counter positions and other documentation can be presented to the Court and adjudicated. And I'm going to need the assistance of counsel in – in fashioning

a proper process so that if there are challenges to [the Fiduciary's] agreements, then those can be properly documented and presented to the Court and addressed.

Id. at 37:20 - 3.<sup>5</sup>

Thus, contrary to the primary assertion of the Petition, the District Court has not “prejudged” any rights in Trust property, but has instead recognized that where individuals assert unjust enrichment claims with respect to Trust property, or that certain fixtures are not real property, but instead, removable personal property, their claims should be heard by the District Court.<sup>6</sup> Not a single piece of property has been lost by Petitioner as a result of the District Court’s July 22, 2010 hearing.<sup>7</sup>

As is clear from its title, Rule 8A exists to provide emergency relief “when adherence to the regular [appellate] deadlines would effect a denial of justice.” Snow, Christensen & Martineau, 2009 UT 72 at ¶ 5. Where the District Court has not even ruled on any particular property dispute (or even announced the process by which such disputes are to be adjudicated), Petitioner is well ahead of any “regular deadline” for invoking this Court’s jurisdiction. An issue is not ripe for appeal if “there

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<sup>5</sup>The District Court gave the hearing participants 45 days from the entry of her order to provide their input on the process. Ex. “A” at 62. However, because of various objections to the order, and a recently-filed Motion to Disqualify the District Court, the written order has yet to be entered.

<sup>6</sup>Petitioner appears to object to the jurisdiction of the District Court to entertain such disputes. However, the Trust Code makes clear such jurisdiction is proper. See, UTAH CODE ANN. § 75-7-201.

<sup>7</sup>It bears repeating here that despite the alleged anti-FLDS animus of the Fiduciary, not a single member of the FLDS church has been evicted from a home on Trust property by the Fiduciary in over five years of Trust administration. This is a very different record than that created by the former Trustees of the Trust. See, United Effort Plan Trust v. Holm, 101 P.3d 641 (Ariz. Ct. App. 2004) (Considering Trust’s attempt to evict FLDS parents from their home after they refused to consent to the marriage of their 15-year-old daughter to a 39-year old man).

exists no more than a difference of opinion regarding the hypothetical . . . situation in which the parties might, at some future time, find themselves.” Bodell Const. Co. v. Robbins, 215 P.3d 933, 2009 UT 52 at ¶ 29. Yet that is precisely what the Petitioner complains of, that the District Court has already prejudged unknown and hypothetical disputes she may hear in the future. Far from being a true emergency, the Petition does not even present a ripe controversy for this Court’s adjudication. The Petition should be dismissed as an abuse of Rule 8A and this Court’s emergency jurisdiction.

**II. PETITIONER'S ALLEGATIONS OF RELIGIOUS DISCRIMINATION BY THE FIDUCIARY ARE CONTRIVED AND CONTRADICTED BY THEIR OWN SWORN ADMISSIONS.**

Petitioner accuses the Fiduciary of terminating "without due process FLDS members pre-existing rights in and to farmland and grain silos that the FLDS Bishop has historically administered" by imposing "a superseding lease granting a competing incompatible use of the property by anti-FLDS persons." Petition at 10-11. Petitioner fails to tell the Court that before the Fiduciary entered into the alleged "superseding lease" he offered that opportunity to the FLDS members who previously farmed the land. That fact was known by Petitioner's counsel, who defended the depositions of the FLDS members who admitted that they refused the Fiduciary's offer for a lease to farm the Berry Knoll property after the Fiduciary received complaints about blowing dust coming from the Berry Knoll farm property – which property had been abandoned and had not been planted or irrigated for several years.

In response to such complaints, the Fiduciary asked his assistant, Isaac Wyler, to find someone who would be willing to farm the property. Mr. Wyler approached FLDS member, Mr. Merlin Jessop, who had farmed the property in prior years, and asked him if he would be willing to resume his farming operations on the Berry Knoll property. Mr. Jessop refused. He told Mr. Wyler

that he was not interested "in getting a lease or some type of a formal permission" from the Fiduciary. *See* Merlin Jessop Deposition at 36:14-38:9; Exhibit "B". Mr. Jessop testified that "the reason . . . he wouldn't be interested in farming the property is because it was under the control of Bruce Wisan." *Id.* at 42:8-43:1. As Mr. Wyler stated at the hearing before Judge Lindberg, he offered to "fill out paperwork and be the go-between with Merlin and Bruce so Merlin would not have to deal directly with the fiduciary. Merlin refused my offer and wouldn't communicate with the fiduciary, so I told [Bruce] he'd have to look elsewhere to find someone to farm the ground." Exhibit "C" at 55:1-7. *See also* Exhibit "B" at 63:13-64:25.

The Fiduciary instructed Mr. Wyler to look for others who might be interested in farming the ground but the few people who initially expressed interest "were scared off when they learned that the prior FLDS farmers had left an unpaid power bill of \$20,000 which needed to be paid before the power would be restored to the farm." *See* Isaac Wyler Statement to Judge Lindberg at 54:21-55:12; Exhibit "B". Finally, after FLDS members refused the Fiduciary's offer to lease the Berry Knoll land for farming, Mr. Wyler was successful in finding someone who would be willing to farm the property. On April 14, 2008, the Fiduciary entered into a written Lease Agreement with David and Shane Stubbs. *See* Exhibit "D". In the fall of 2008, Mr. Stubbs planted 200 acres of winter wheat. *See* Unsworn Statement of Shane Stubbs, Exhibit "E".

In December 2008, as a "goodwill gesture" toward the FLDS persons represented by Willie Jessop, the Fiduciary agreed to "terminate that portion of Mr. Stubbs' lease relating to property located north of State Highway 389" so that Willie Jessop could use that property. *See* Exhibit "F". Both Mr. Willie Jessop and Mr. Okazaki were told that the land south of the highway remained leased to Mr. Stubbs. In an email dated December 12, 2008, Ken Okazaki acknowledged the

Fiduciary's agreement that the "FLDS may commence plowing, planting and cultivation of the land *located to the north side of the highway.*" See Exhibit "G" (emphasis added). Despite the Fiduciary's prior showing of good faith and with the full knowledge that the property south of the highway was under lease to Mr. Stubbs, Clarence and Thomas Jessop entered the property without permission on March 2, 2009 and commenced to plow up and destroy Mr. Stubbs' crop of winter wheat. See Mohave County Sheriff Press Release at Exhibit "H". Mr. Stubbs estimated the damage to his crop to be in excess of \$10,000. *Id.*

Petitioner should be required to explain how they can accuse the Fiduciary of wrongfully "terminat[ing] without due process FLDS Church members' pre-existing rights in and to farmland . . . by impos[ing] a superseding lease" without disclosing to the Court that those members refused the Fiduciary's invitation to lease and farm that property. No matter what rights the Fiduciary offers to FLDS members for use of the property, they have been commanded not to communicate or cooperate with him in any way. How can Petitioner accuse the Fiduciary of religious discrimination when they know full well that FLDS members have been commanded not to accept any benefits or property rights from the Fiduciary? In fact, when Warren Jeffs learned that many of his followers "feel like [the Fiduciary] and this Judge will be kind and allow us our rights and protect us," he declared that anyone cooperating with the Fiduciary would be condemned for consorting with "the devil." R. 19595.

Similarly, Petitioner falsely alleges that "the Special Fiduciary has literally locked FLDS Church members out of such community properties as the FLDS Church park . . ." and seems content that such "Trust assets go to waste so long as they are not used by the FLDS." Petition at pp. 9-10. One of the attorneys making that allegation personally negotiated and affirmed in writing the

Fiduciary's agreement that "FLDS may resume management and maintenance of the Cottonwood Park forthwith." See December 17, 2008 email from Ken Okazaki, counsel for the Utah Attorney General and the Special Fiduciary, Exhibit "G". To this day, Petitioner controls the very park<sup>8</sup> that it now falsely accuses the Fiduciary of "wasting."<sup>9</sup>

Petitioner makes these false allegations to the Court in the context of "emergency petitions" or at the end of oral argument where the Fiduciary has little or no time to respond to rebut the false attacks. After the conclusion of oral argument on February 17, 2010, counsel opposing the Fiduciary's motion to disqualify the Trust's former attorney<sup>10</sup> made statements that he was forced to "clarify" and "withdraw" after being confronted with the facts. See March 24, 2010 letter from

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<sup>8</sup>Ironically, prior to turning the park over to Mr. Okazaki's clients, the Fiduciary expended significant funds to maintain the park and keep it open to the public.

<sup>9</sup>Similar falsehoods undercut Petitioner's assertions regarding the Trust's school buildings. The Fiduciary has not "forced [a] well-maintained school building. . . to be abandoned and surrounded it with an unsightly chain-link fence...." Petition at 10. The fence in question was erected by the Colorado City Unified School District (which leased the building from the Trust) years ago, well before the appointment of the Fiduciary, and before Warren Jeffs commanded his followers to withdraw their children from the public school system. Today the members of the Petitioner's association have the use of twelve (12) school buildings on Trust land. The one school building that has been leased out by the Trust (known as the Darger building) is the oldest of the school buildings.

<sup>10</sup>The Order disqualifying Mr. Parker from representing the Trust is still pending before this Court. The Fiduciary notes that the argument asserted in the emergency petition – that the members of the beneficiary class have "pre-existing property rights" that prevail over the rights of the Charitable Trust – is precisely the argument that Mr. Parker was paid thousands of dollars by the Trust to defeat when he was retained by the Trust to restructure his Trust client into a charitable trust in order to defeat the pre-existing property rights that this Court recognized in *Jeffs v. Stubbs*. Mr. Parker is now advising other clients on how to circumvent and evade the very protections he devised for the Trust client he is now attacking. This is the equivalent of an attorney designing a business entity's corporate veil only to have him later seek to pierce that same veil, fully cognizant of every weakness in that veil because it was he who designed it.

Michael Zimmerman to Pat H. Bartholomew, Exhibit "I". The Fiduciary appreciates and respects Mr. Zimmerman's candor in withdrawing those misleading representations and looks forward to similar corrective action addressing the misleading statements and arguments in this petition.

### **III. PETITIONER'S TRUE MOTIVATIONS**

Petitioner's actions, in filing yet another "emergency" petition with this Court based upon false accusations, reveal Petitioner's true motivation. Petitioner seeks to have this Court micro-manage the Trust while avoiding any adjudication on the merits by a trier-of-fact tasked with ascertaining the truthfulness of Petitioner's allegations or of discerning the credibility of Petitioner's witnesses. Furthermore, Petitioner has filed the present petition in an attempt to stop a number of pending legal matters – including a pending investigation into numerous allegations of misconduct by the members of Petitioner's association.

Petitioner seeks to short-circuit the ordinary appellate process – whereby an appeal is brought after an adjudication on the merits by a trial judge who has received evidence subject to cross-examination and who has been in a position to judge the credibility of the witnesses and the evidence. Petitioner's misuse of the petition process is improper. It places an unfair disadvantage and burden upon the respondents, who are obliged to respond in an extremely-short time period. It further allows Petitioner to present the Supreme Court with false and misleading accusations unsupported by the record. The Fiduciary is confident that the falsity of Petitioner's allegations would be quickly exposed if adjudicated by a trier-of-fact after hearing all of the evidence. Unfortunately, because of Petitioner's use of the emergency petition process, such adjudication has not taken place and Petitioner continues to spout the same false and outrageous accusations with apparent impunity.

Next, it appears that Petitioner's true motivation for the present petition is to stop a number of pending legal matters – which matters Petitioner has failed to disclose to this Court. Petitioner's stated purpose in seeking injunctive relief appears suspect. Petitioner asserts that it needs an injunction in order to stop the Fiduciary and the District Court from dispossessing FLDS occupants, from irreversibly altering the status quo, from dismantling and dissipating the Trust, and from totally destroying a religious community. In fact, such things are not happening, and there is no need for an injunction as to such matters. Notwithstanding Petitioner's outrageous accusations, neither the Fiduciary nor the District Court is seeking to destroy the Trust or the FLDS religion. There is nothing pending which would irreversibly alter the status quo or dispossess FLDS occupants from Trust land. The Fiduciary is merely doing his best to administer the trust in accordance with the law, as ordered by the District Court.

Contrary to Petitioner's accusation, the Fiduciary is not presently seeking to evict any person from Trust land. To date, the Fiduciary has honored the status quo as to residential property by allowing occupants to remain in possession.<sup>11</sup> When it becomes necessary and appropriate to seek the removal of any person from Trust property – whether because of a refusal to pay property taxes and occupancy fees or otherwise – the Fiduciary intends to do so in accordance with the rule of law

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<sup>11</sup> As to non-residential property, which was previously abandoned and vacant, the Fiduciary has entered into certain lease agreements – with both FLDS and non-FLDS persons. The Fiduciary stands behind such lease agreements and has properly resisted attempts by late-comers to dispossess the rightful lessee through improper usurpation of control over the non-residential property.

after due process, notice, and opportunity for a hearing.<sup>12</sup> Thus, there is no present need for an injunction as to the matters alleged in the Petition – especially on an emergency basis.

Petitioner has failed to disclose pending legal matters which would be impacted by the broad relief requested in the petition. For example, the Arizona Attorney General is presently investigating a number of allegations of misconduct by members of Petitioner’s association – including police officers, government officials, and public utilities controlled by Petitioner. The allegations under investigation include police misconduct, religious discrimination by public officials, theft of water rights, and failures to abide by court orders. They include allegations of religious discrimination in refusing to allow a disabled veteran to receive desperately-needed power and water from the public utilities, in improperly arresting a mother in front of her children, and in refusing to enforce orders of the court. They further include diverting funds collected by a public utility to the FLDS bishop. (Additional details regarding the allegations being investigated by the Arizona Attorney General are set forth in the Emergency Report of the Arizona Attorney General’s Office, dated July 8, 2010).

The Arizona Attorney General is attempting to conduct depositions regarding such matters. After meeting resistance from the local governmental officials, the Arizona Attorney General was obliged to seek assistance from the District Court with the ultimate aim of compelling the witnesses

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<sup>12</sup> Contrary to Petitioner’s accusations, the District Court has not purported to endow every action of the Fiduciary with the presumptive force of a court order. Rather, the District Court has merely acknowledged the authority of the Fiduciary over the administration of the Trust. Similarly, the District Court has not summarily wiped out all pre-existing property rights. Rather, the District Court merely held (correctly so) that membership in a beneficiary class of a charitable trust does not include any property rights as to the property of the charitable trust. As to alleged property rights independent of the charitable trust relationship – based upon unjust enrichment claims or otherwise – the District Court held that such claims can be resolved “on a full trial on the merits.” (See Exhibit “A” at 29:8-12).

to attend the depositions. Now, Petitioner seeks to stop such investigation through the extremely broad injunctive relief requested in the petition. Petitioner does so without informing this Court of such investigation, and without disclosing to the Court that the requested injunction would interfere with the investigation.

Next, it appears that Petitioner is similarly seeking to stop the District Court from enforcing its orders against Warren Jeffs and LeRoy Jeffs, former trustees, who have violated multiple court orders. Most recently, the former trustees have flagrantly violated a District Court Order, entered in March, 2010, to participate in the process of selecting a special master, and to produce documents to such master. Again, the broad relief requested by Petitioner in the present emergency petition would hinder the Fiduciary and the District Court from enforcing such orders.

Next, it appears that Petitioner is seeking to stop further adjudication of a dispute regarding the validity of a 2008 lease which the Trust granted to Shane Stubbs as to certain non-residential property of the Trust. In July, 2010, certain members of Petitioner's association obtained a temporary restraining order ("TRO") from the Fifth District Court of Washington County, Utah, enjoining Mr. Stubbs from using property which he had leased from the Trust. They did so on an ex parte basis – without giving Mr. Stubbs notice or an opportunity to be heard, and without disclosing relevant facts to the court. Based upon such TRO, Petitioner members, through self help, then removed Mr. Stubbs' grain from silos on the leased property and placed it on the side of the road. Later, after the Fiduciary intervened and the court heard facts which had not been disclosed by Petitioner, the court expressed regret at having entered the TRO. The court ordered that the TRO would be dissolved pending further adjudication of the dispute. The court further stated that it was appalled that the plaintiffs had placed Mr. Stubbs' grain on the side of the road and ordered that it

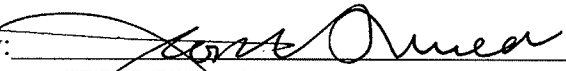
be safely moved back into the grain silos. (See Transcript of Hearing, dated July 27, 2010, at pp. 51-54 (attached hereto as Exhibit "J"). Now, it appears that, with the filing of the present petition, Petitioner is seeking to stop the Fiduciary from adjudicating the validity of the Stubbs lease.

**CONCLUSION**

For the above-stated reasons, the Fiduciary respectfully requests that the Petition be denied.

DATED this 24th day of August, 2010.

CALLISTER NEBEKER & McCULLOUGH

By:   
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct that a true and correct copy of the foregoing **THE UNITED EFFORT PLAN TRUST'S RESPONSE IN OPPOSITION TO PETITION FOR EMERGENCY RELIEF** served by United States mail, first class postage prepaid, on this 24th day of August, 2010, on the following:

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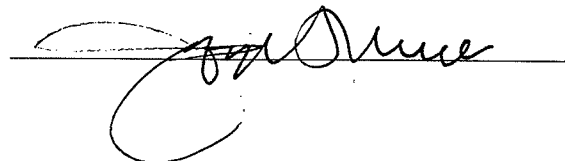
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# EXHIBIT A

July 22, 2010

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

IN THE MATTER OF THE UNITED )  
EFFORT PLAN TRUST, (Dated ) Status Conference  
November 9, 1942, Amended )  
April 10, 1946 and Amended )  
and Restated on November 3, ) Civil No. 053900848  
1998); and its, TRUSTEES, )  
including known trustees ) Judge Lindberg  
TRUMAN BARLOW, WARREN )  
JEFFS, LEROY JEFFS, WINSTON )  
BLACKMORE, JAMES ZITTING )  
and WILLIAM E. JESSOP a/k/a )  
WILLIAM E. TIMPSON and DOE )  
TRUSTEES I THROUGH IX. )  
)  
)

JULY 22, 2010 \* 2:42 p.m.

Transcript prepared from electronic recording

Reporter: Tamra J. Berry, CSR, RPR  
Notary Public in and for the State of Utah

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1 need to be addressed in an evidentiary hearing. I  
2 believe that that needs to be scheduled as an order  
3 to show cause hearing with -- supported by affidavits  
4 from the various individuals who are -- essentially  
5 what you're alleging in your emergency report is that  
6 the Court -- orders of the Court are consistently and  
7 routinely being disregarded by a number of people,  
8 including most notably the police department or the  
9 marshal's office of Hilldale and Colorado City. But  
10 that those individuals have had notice of the Court's  
11 orders, and they're essentially ignoring them.

12 I am concerned that in the paperwork that  
13 I received, there are references made to a city  
14 prosecutor or other attorney who apparently is -- or  
15 is allegedly advising the marshal's office. But I  
16 see no name given for that individual. I don't know  
17 if that individual has been identified, but we need  
18 to identify that person.

19 MR. RICHARDS: Yes, your Honor, I can  
20 identify him for you. In fact, I think if you  
21 reviewed some of the videotapes -- I apologize,  
22 Judge, this is Mr. Richards.

23 THE COURT: Okay.

24 MR. RICHARDS: If you view some of the  
25 videotapes that we provided you, they identify him as

PROCEEDINGS

1  
2  
3 THE COURT: Good afternoon.  
4 MR. RICHARDS: Good afternoon, your Honor.  
5 THE COURT: Okay. We are on the record on  
6 case number 053900848.  
7 This is the matter of the United Effort  
8 Plan Trust, and this is a telephonic status  
9 conference requested by the Attorney General for  
10 Arizona.  
11 Do I have Mr. Richards?  
12 MR. RICHARDS: You do, your Honor.  
13 THE COURT: Okay. And I am told that I  
14 have on the line everyone except Mr. Evans,  
15 Mr. Bradshaw and Mr. Zimmerman.  
16 And that everybody else, Mr. Shields, Mr.  
17 Bodily, Mr. Okazaki, Mr. Hamilton, Mr. Parker,  
18 Mr. Hoole, Mr. Sampson, Mr. Richards and Mr. Leavitt  
19 are on. Is that all correct?  
20 MR. OKAZAKI: Yes, your Honor. This is  
21 Ken Okazaki, Your Honor.  
22 THE COURT: Okay. All right.  
23 Mr. Richards, I have reviewed your  
24 emergency report, and I'm a little at a loss. I  
25 think you raised a lot of significant issues that

1 Mr. Brendel. His name is Ken Brendel. I believe  
2 that's B-r-e-n-d-e-l. He is a contract attorney out  
3 of the Flagstaff firm of -- I believe it's Mangum,  
4 Wall, Stoops.

5 THE COURT: Okay. And he is separate from  
6 the -- because I understood that it was Mr. Stirba's  
7 firm that represented the cities.

8 MR. HAMILTON: Civilly, yes, your Honor.  
9 This is Blake Hamilton.

10 THE COURT: Okay. So what relationship,  
11 if any, do you have with Mr. Brendel?

12 MR. HAMILTON: He is the prosecutor for  
13 Colorado City. That's the relationship we have. We  
14 don't have a relationship further than that.

15 THE COURT: Okay.

16 MR. HAMILTON: And the prosecutor for  
17 Hilldale is Deputy Washington County Attorney  
18 Zach Wyler. Probably he's involved in any of the  
19 matters that are alleged in the report of Bill  
20 Richards.

21 THE COURT: Okay.

22 MR. HAMILTON: I think it's all the  
23 Colorado City bunch.

24 THE COURT: Right. Well, obviously,  
25 Mr. Brendel is an important person that I'm going to

1 need to have brought to court as well by subpoena, if  
2 necessary.

3 And I do apologize, I reviewed everything  
4 that was submitted except until just about ten  
5 minutes before this phone call I had been unable to  
6 view the recordings that had been attached. Although  
7 my clerk's computer had allowed her to do that, I  
8 have not been able to review those.

9 And then I realized or I was informed by  
10 our IT department that I was lacking the necessary  
11 software. So they installed it, and so I now am  
12 going to be able to review it. I just haven't been  
13 able to do that up until now.

14 But it seems to me that what we need to do  
15 is -- I'm going to treat this submission as basically  
16 a request for an order to show cause hearing. But it  
17 will need to be pursuant to the statute, will need to  
18 be supported by affidavits. And so if there have  
19 been -- you know, whether they're affidavits from  
20 Mr. Stubbs or affidavits from Mr. Wyler or from  
21 whoever else has had personal experience in dealing  
22 with the allegations that are made here, I'm going to  
23 need to have that.

24 And then the -- if necessary, we'll --  
25 we'll need to have each officer involved, as well as

1 problems though that we have is the issues go  
2 certainly far beyond just the local law enforcement,  
3 local city officials. As we have pointed out, I  
4 believe in the filing there have been issues  
5 involving, for example, removal of well pump  
6 equipment.

7 THE COURT: No. I didn't know.

8 MR. RICHARDS: Of the destruction of lots,  
9 the removal of no trespassing signs, the running of  
10 livestock off of property. It's a -- for example, at  
11 the Berrymore Farm issue, the plowing under of those  
12 farm properties and things.

13 The dispute that is alleged there is that  
14 members of the FLDS have a -- some sort of a  
15 preexisting religious stewardship, not as we  
16 understand evidenced by any sort of actual  
17 conveyance. In fact, their affidavits of their  
18 bishops styled with you previously appeared to  
19 indicate exactly to the contrary, that they don't  
20 have and they do not make these stewardships by any  
21 sort of a legal conveyance. But these folks have  
22 taken it upon themselves to simply go out and assume  
23 the property and to interfere with the use of that  
24 property by those who have been granted an occupancy  
25 agreement or a lease by the special fiduciary.

1 the center manager and the city prosecutor and  
2 whatever brought to court. And we'll hold an  
3 evidentiary hearing to address the concerns because I  
4 do believe that you have raised serious concerns that  
5 merit an evidentiary hearing.

6 The problem is that you've styled it as a  
7 status conference and at least under our protocol,  
8 status conferences, I'm not able to provide the  
9 relief that you're seeking in a status conference.  
10 It really does seem to be that you are asking for a  
11 finding of contempt. And that would require an  
12 evidentiary hearing with proper notice.

13 MR. RICHARDS: Your Honor, this is  
14 Mr. Richards.

15 Is it appropriate at this point for me to  
16 elaborate a little bit?

17 THE COURT: Absolutely.

18 MR. RICHARDS: Your Honor, I think what  
19 you are suggesting is a valid and a valuable process.  
20 One of the reasons that we styled this as a report  
21 was to give the Court discretion to identify for the  
22 parties those issues that the Court felt it was  
23 appropriate to address going forward. I think you  
24 hit the nail on the head with respect to some of  
25 these contempt issues. Your Honor, one of the

1 We're also concerned, Judge, that there  
2 has been these issues involving removal of property.  
3 The same with removal of well cap, removal of well  
4 equipment, the listing of property that Mr. Stubbs  
5 had put on, the trust property with the fiduciary  
6 authorization and removal of (inaudible) from that  
7 property, all of which would also be a violation of  
8 the Court's pending injunction order.

9 And we don't have all the evidence we need  
10 on who precisely is responsible for that. There's  
11 certainly allegations about who is responsible. And  
12 I (inaudible) believe that given those allegations,  
13 it may be appropriate for Mr. Okazaki or Mr. Parker  
14 to address whether any of their clients have had any  
15 involvement in any of those issues. But at this  
16 point we are without sufficient information to bring  
17 all that in the way we would like to to the Court.

18 THE COURT: Right.

19 MR. RICHARDS: That is one of the reasons  
20 that we have filed with you last December our motion  
21 that was fully briefed by I believe January asking to  
22 partially lift the stay to allow us to conduct  
23 discovery involving these sort of property disputes,  
24 disputes over water rights, and all those sorts of  
25 things which have been pending now and we believe

1 creating far greater tension in the community.  
 2 My suggestion, your Honor, and it's only a  
 3 suggestion, but it would be that the Court grant the  
 4 order that we previously had submitted to you on that  
 5 that had been filed for submission now for some time,  
 6 allow us to initiate that discovery process with the  
 7 order that at the end of -- I think we had a  
 8 four-month period -- at the end of which we were  
 9 asking you to order us to file a report with the  
 10 Court on various issues.

11 But in the meantime also give us a shorter  
 12 time period, and I'm going to give the suggestion of  
 13 30 days from now, in which we would submit to the  
 14 Court any appropriate requests for an order to show  
 15 cause based upon the initial discovery we've been  
 16 able to complete, plus the information that we  
 17 already have to get that process going. But the  
 18 issues involving the police, involving the immediate  
 19 violation to the Court's order are part and parcel of  
 20 the problem.

21 Your Honor, I would make one other  
 22 suggestion, if I could. And that is that the police  
 23 attitude -- and Mr. Stirba can (inaudible) me and  
 24 Mr. Hamilton can certainly elaborate on this. In  
 25 fact, I was informed by Mr. Hamilton himself, not Mr.

1 THE COURT: Right.

2 MR. RICHARDS: I guess the argument is --  
 3 and again Mr. Hamilton can elaborate -- I guess the  
 4 argument is that you don't have jurisdiction in  
 5 Arizona, for example, to order anything. We would  
 6 dispute that, Judge, on multiple grounds, some of  
 7 which we've briefed for you.

8 THE COURT: Right.

9 MR. RICHARDS: We believe your  
 10 jurisdiction extends over the entire realm of the  
 11 trust, and we believe that your pro tem powers extend  
 12 certainly to anybody in violation of your order  
 13 whether they're in Arizona, Utah or elsewhere.

14 THE COURT: I agree.

15 MR. RICHARDS: And we also believe that --  
 16 and know that the fiduciary has domesticated many of  
 17 your orders, including the injunction order in  
 18 Arizona --

19 THE COURT: Right.

20 MR. RICHARDS: -- in any event. But  
 21 because of the attitude that has been displayed by  
 22 the local police and local government officials, we  
 23 think it would be helpful to maintaining the peace,  
 24 to deescalating the disputes in the local community  
 25 for the short term while the discovery process goes

1 Brendel, last fall that they were training or  
 2 retrained the police department to take -- simply  
 3 take reports rather than citing individuals on site  
 4 for trespassing.

5 And my understanding is that based upon  
 6 watching the videotapes and seeing this, the police  
 7 attitude is, well, they either -- the Court's orders  
 8 are not clear enough, because you will see in some of  
 9 those tapes that members of Mr. -- representatives of  
 10 Mr. Wisan are actually showing the orders to the  
 11 police officers. They are reading the transcripts  
 12 that -- of your statements on enforcement of the  
 13 leases from last July to the police officers. But  
 14 the police officers are responding that, Well, we  
 15 need another court order. We need another court  
 16 order.

17 THE COURT: Right.

18 MR. RICHARDS: And basically indicating  
 19 this isn't enough. Well, it's either not clear  
 20 enough to them or they don't believe that you've  
 21 actually issued an order on the enforceability of the  
 22 leases issued by the occupancy agreement issued by  
 23 the special fiduciary. Even in some cases there are  
 24 comments made indicating that you do not have  
 25 jurisdiction.

1 forward and while the orders to show cause are  
 2 developed for the Court to issue some interim order  
 3 so that there is no continuing argument that you have  
 4 not spoken clearly enough or that you have not  
 5 addressed the issues or the special fiduciary's  
 6 authority to lease property. And, your Honor, if I  
 7 could, I can elaborate on what I think that other  
 8 order would look like.

9 MR. OKAZAKI: Excuse me, this is  
 10 Ken Okazaki speaking.

11 Your Honor, we didn't even know what this  
 12 phone conference was about, and we are not prepared  
 13 to argue anything. And I hear motions being made --

14 THE COURT: The motion was made in  
 15 writing, and you have a copy of that.

16 MR. HAMILTON: We have had a copy, but  
 17 your Honor -- this is Blake Hamilton, we've had a  
 18 copy but we took that to mean a motion -- that  
 19 Arizona Attorney General's office was making a motion  
 20 with this report and we still have time to file a  
 21 response, and we plan on filing a response.

22 THE COURT: Just a minute. Just a minute.  
 23 Just a minute.

24 There then was then a -- the motion that  
 25 Mr. Richards is addressing, as I understand it, is a

1 motion that -- for lifting the -- the partial lifting  
 2 of the stay and allowing discovery to proceed, that  
 3 has been fully briefed. That has been noticed. That  
 4 has been pending. You have had plenty of opportunity  
 5 to respond to that. So this is not a new motion.  
 6 This is -- he's just reminding the Court that there  
 7 has been a motion that apparently I have not  
 8 addressed, although I am aware that it existed and I  
 9 thought I had addressed it. But if we have not, I --  
 10 I am prepared to do that. But that is not something  
 11 you haven't had the opportunity to respond to.  
 12 MR. OKAZAKI: But if this is the time --  
 13 this is Ken Okazaki speaking, your Honor -- if this  
 14 is the time set for oral argument, we (inaudible)  
 15 because we're going to argue it right now. And  
 16 second, we don't even know -- we didn't even know  
 17 what this phone conference was about. There are  
 18 emails circulating does anybody know what this phone  
 19 conference is about. And --  
 20 THE COURT: Well, and --  
 21 MR. OKAZAKI: -- (inaudible) answers.  
 22 THE COURT: Well, since you were served  
 23 with copies of Mr. Richards's motion and requests for  
 24 an expedited status conference and you've received  
 25 notice -- you would have -- you know, I think it

1 would have been reasonable to say -- to understand  
 2 that this is what we were addressing today.  
 3 MR. OKAZAKI: I --  
 4 THE COURT: In any event, I -- and I do  
 5 dispute the question that I have to hold oral  
 6 argument on everything. When briefing is as  
 7 exhaustive as it is in this case by all sides, I  
 8 don't have to have oral argument on every motion.  
 9 And not every motion under our rules requires oral  
 10 argument. And in fact, it is my practice in most  
 11 cases not to schedule oral argument on most motions,  
 12 unless they're required by Rule -- Rule 7.  
 13 MR. PARKER: But, your Honor -- this is  
 14 Rod Parker speaking -- the problem is that you're  
 15 having -- as I see it, two problems. One is that  
 16 you're having half of an oral argument. But more  
 17 than that, there are a lot of representations that  
 18 were made by Mr. Richards that are simply not true.  
 19 They're very disputed. And so to the extent he's  
 20 attempting to make a factual argument that he's then  
 21 attempting to attach to a motion that was, say, six  
 22 months ago and then make new factual allegations to  
 23 bolster the motion, I think Mr. Okazaki is exactly  
 24 right. And I think what the Court needs to recognize  
 25 with regard to what Arizona is saying is this is --

1 there is another side to the story that --  
 2 THE COURT: And that's what --  
 3 MR. PARKER: -- you need to know about.  
 4 They're about evictions without due process. You  
 5 know, the fiduciary is taking the position, Arizona  
 6 is taking the position that they are basically  
 7 dictators down there and that people with property  
 8 rights can simply be ignored --  
 9 THE COURT: Well, just --  
 10 MR. PARKER: -- and the --  
 11 THE COURT: Excuse me --  
 12 MR. PARKER: -- (inaudible).  
 13 THE COURT: -- excuse me, excuse me, Mr.  
 14 Parker. I'm not going to be hearing oral argument on  
 15 this today. I -- while I disagree with some of your  
 16 representations because -- well, I disagree with some  
 17 of your characterizations. I will -- I am not  
 18 prepared to hear argument today on this matter. What  
 19 I am prepared to do is schedule an oral -- I mean to  
 20 schedule an evidentiary hearing on those -- on that  
 21 part of the -- I am persuaded that based on the  
 22 representations that have been brought here, which is  
 23 as it is in any other order to show cause, people  
 24 have the opportunity to respond and they will -- they  
 25 will be given the opportunity to respond and present

1 whatever testimony they wish to.  
 2 The Court needs to make an initial  
 3 determination of whether there is enough basis there  
 4 to warrant further hearing. All I'm saying is there  
 5 is enough shown here to warrant further hearing.  
 6 MR. PARKER: There's no (inaudible), your  
 7 Honor.  
 8 THE COURT: Sir --  
 9 MR. PARKER: At least that's my  
 10 (inaudible).  
 11 THE COURT: That's why I am saying that I  
 12 am not prepared to act today. That's why I've told  
 13 Mr. Richards that I'm going to need affidavits. To  
 14 the extent that they can be documented, that's going  
 15 to be the extent of what the order to show cause can  
 16 address. And it will have to be supported, and it  
 17 will have to be properly presented. That's not at  
 18 all inconsistent with what I said at the beginning of  
 19 this -- of this telephonic conference.  
 20 Now, I -- I believed that I had addressed  
 21 that the earlier motion that has been -- that is -- I  
 22 am being told now had not been addressed. And -- but  
 23 I am aware that that motion for allowing discovery to  
 24 proceed had been fully briefed by everyone.  
 25 MR. PARKER: Your Honor, this is Rod

1 Parker again.  
 2 THE COURT: No.  
 3 MR. PARKER: I would just say one more  
 4 thing about -- just procedurally here. You also have  
 5 still, I think, pending before you the motion to  
 6 intervene that we filed. And it was not decided.  
 7 And I --  
 8 THE COURT: Can I -- can I --  
 9 MR. PARKER: -- (inaudible).  
 10 THE COURT: I'm sorry. I'm sorry.  
 11 MR. PARKER: Go ahead.  
 12 THE COURT: Can I ask you because I have  
 13 time and again issued minute entries saying, Guys, I  
 14 don't get the paperwork that you filed. It is --  
 15 it's either missing from the file or the file is --  
 16 frankly, the files have been taken physically from  
 17 me.  
 18 MR. PARKER: I thought we did put that on  
 19 that motion. But if not, I apologize.  
 20 THE COURT: I don't -- I'm looking at my  
 21 clerk, and my clerk has some things.  
 22 THE CLERK: I don't think I have one from  
 23 Rod Parker.  
 24 THE COURT: My clerk tells me that she  
 25 does not recall seeing something from you.

1 MR. RICHARDS: We did submit to you the  
 2 binder that you have requested with all of those  
 3 papers in it I want to say about a month ago, maybe a  
 4 little more.  
 5 THE COURT: Okay.  
 6 MR. RICHARDS: If you do not have that --  
 7 THE COURT: No.  
 8 MR. RICHARDS: -- we can duplicate that  
 9 very easily.  
 10 THE COURT: My clerk tells me that she  
 11 does have that one.  
 12 MR. RICHARDS: Okay.  
 13 THE COURT: Okay.  
 14 MR. PARKER: And, your Honor, Rod Parker  
 15 again.  
 16 THE COURT: Yes, Mr. Parker.  
 17 MR. PARKER: The other thing I wanted to  
 18 say was that is discovery issue, at least in some of  
 19 its form, goes right to the heart of the issues that  
 20 are pending before the Supreme Court on appeal. And  
 21 I don't think that it's -- I understand the need to  
 22 maintain status quo and those sorts of things that  
 23 are --  
 24 THE COURT: Well, it's more than  
 25 maintaining status quo, Counsel. I have an ongoing

1 I said my memory was that we had addressed  
 2 the motion for proceeding in discovery, but maybe  
 3 not. Maybe I just read all the paperwork but  
 4 didn't -- for some reason did not act on it.  
 5 Those -- that was contemporaneously with the  
 6 arguments before the Supreme Court, if I recall the  
 7 timing correctly.  
 8 MR. RICHARDS: Yeah. This is  
 9 Mr. Richards. I may have a clarification for you.  
 10 About the same time that we submitted our request,  
 11 the special fiduciary had submitted a request. And  
 12 to be honest, I can't remember the details of it.  
 13 But it did involve some discovery-related issues as  
 14 well. The Court did rule on that motion.  
 15 THE COURT: So maybe I just didn't --  
 16 MR. RICHARDS: Yes, the Court has not  
 17 issued a ruling on our motion that we filed last  
 18 December.  
 19 THE COURT: Okay. In that case my  
 20 apologies. We will have to dig this up and address  
 21 it. And --  
 22 MR. RICHARDS: And we did --  
 23 THE COURT: -- Mr. Parker's --  
 24 MR. RICHARDS: I'm sorry, Judge.  
 25 THE COURT: Go ahead.

1 responsibility to administer the trust, and I have  
 2 delegated that responsibility or appointed the  
 3 fiduciary to address that. And if they're -- and  
 4 that administration is ongoing. And in that sense it  
 5 is not unlike a domestic matter that notwithstanding  
 6 it being on appeal, there are continuing motions that  
 7 are presented to the Court and that still need to be  
 8 addressed for ongoing management purposes.  
 9 MR. PARKER: Right. But this is sort of  
 10 like race to -- it's almost like a race to the finish  
 11 line. It's like trying to get to do things that are  
 12 not necessary to the administration of the trust or  
 13 of immediate importance but long term, like the  
 14 subdivisions and stuff like that, that I think are  
 15 fundamental changes that are not as (inaudible) in  
 16 terms of the daily administration of the trust. And  
 17 that's what I mean by things going to the heart of  
 18 what's on appeal.  
 19 MR. RICHARDS: Your Honor.  
 20 MR. PARKER: That's a different category.  
 21 MR. RICHARDS: Your Honor, this is Mr.  
 22 Richards, and I can address that. I think I can  
 23 address that fairly succinctly.  
 24 Mr. Parker says that the issues raised in  
 25 that motion have nothing to do with the ongoing

1 administration of the trust. Your Honor, a couple  
2 weeks ago the police appeared at a residence that has  
3 been rented to a couple, Ron and Ginger Cook, by the  
4 special fiduciary with this Court's authorization.  
5 The Cooks have pending now a lawsuit from our office  
6 in a private lawsuit against government officials  
7 there for a -- discrimination and violation of  
8 housing laws.

9 THE COURT: Oh, this is the one where the  
10 front yard was dug up?

11 MR. RICHARDS: Yes. Your Honor, now, in  
12 contrast to a few days earlier when clients  
13 apparently -- (inaudible) represented. I don't know  
14 if they are Mr. Okazaki's and Mr. Parker's clients.  
15 But (inaudible) represented while plowing up the  
16 field that Mr. Stubbs had leased. And the police  
17 were there, and the police refused to do anything.  
18 The police showed up at the insistence of a gentleman  
19 who claims he is from an irrigation company and that  
20 the Cooks are stealing his irrigation company water.

21 Now the Court should be aware, from our  
22 filing last December, that irrigation water and the  
23 rights of that irrigation water are in serious  
24 dispute. In fact, there is evidence that that water  
25 right was quitclaimed in 1998 from the corporate

1 the Cooks for digging up their front yard.

2 THE COURT: Right. You provided that as  
3 an exhibit.

4 MR. RICHARDS: Yes. And your Honor, that  
5 is on the letterhead that (inaudible) a company again  
6 from which we can't find any corporate existence.  
7 This is the type of thing that's going on. This is  
8 the type of thing that we believe requires the  
9 Court's immediate involvement. And, your Honor, if I  
10 could add a couple other points, Mr. Okazaki sits on  
11 a (inaudible), and he enclosed in the accusations  
12 about Mr. Cook and the (inaudible) police officer  
13 there. And --

14 THE COURT: I do --

15 MR. RICHARDS: -- we file an objection  
16 then, your Honor. We do. And that is a result of  
17 Mr. Crook resigning from the evaluating board that  
18 (inaudible) to.

19 THE COURT: Right. And I am aware of  
20 that.

21 MR. RICHARDS: They point out allegations  
22 about Mr. Stubbs that he has allegedly assaulted  
23 children, he and his mother had assaulted children.  
24 Mr. Parker has filed with the Washington County  
25 Court, just -- I believe in the last week and a half,

1 entity that we can't find any corporate existence of  
2 to an entity created by a group that includes a  
3 gentleman named William Jessop. I don't know if  
4 that's the William Jessop in this case or not, your  
5 Honor. But that issue was raised and is one of the  
6 issues in this dispute that needs to be addressed by  
7 this Court.

8 Now, the police show up, and they are  
9 informed -- and you will see it on the videotape we  
10 provided you -- they are informed that that issue is  
11 in dispute and that the trust in fact claims that  
12 water as the trust's water rights. Nevertheless, the  
13 police officer orders a backhoe onto the property and  
14 leaves it dug up. (Inaudible) an enormous hole in  
15 their front yard. Now, your Honor, I can't think of  
16 anything that involves more of the ongoing,  
17 day-to-day administration of the trust than that sort  
18 of issue. When you have individuals who are being  
19 molested in their right to use this property under a  
20 written lease from this Court's authority, that are  
21 told that they can't stop the police, that the police  
22 can come on there and that it's their word against  
23 the irrigation company.

24 Putting that (inaudible) Judge, shortly  
25 thereafter, the irrigation company sent an invoice to

1 an ex-parte application for a temporary retraining  
2 order to prevent Mr. Stubbs from executing on or  
3 using the lease he was given for grain dens on UEP  
4 property.

5 THE COURT: Right.

6 MR. RICHARDS: In that or with that  
7 filing, I understand he submitted an affidavit  
8 explaining the reason -- this is by -- from Mr.  
9 Parker himself -- explaining that the reason for an  
10 ex-parte order against Mr. Stubbs restraining him was  
11 that Mr. Stubbs has been guilty of self-help  
12 activities lately that made it dangerous somehow to  
13 give him notice in advance.

14 Your Honor, I will tell you that we don't  
15 agree with self-help activities by anybody. We don't  
16 agree with people going onto the leased property that  
17 Mr. Stubbs has leased and opening the gates, running  
18 his cattle off or running his livestock off. We  
19 don't agree with people shutting off the utilities to  
20 the property because they don't think that the person  
21 who's leased that property has a right to be there.  
22 We don't feel that's self-help anywhere.

23 And we agree with Mr. Okazaki and with Mr.  
24 Parker that this sort of thing has gotten out of hand  
25 and has become unacceptable. One of the reasons we

1 believe this has gotten out of hand, your Honor, is  
2 that the local police hide behind the argument that  
3 this is just a civil dispute, running some cows off  
4 the property, taking down fences, taking troughs out  
5 of the property and moving them, capping wells, all  
6 of these sort of things are mere sinless deeds that  
7 they can't interfere with.

8 And they don't believe that you have  
9 issued an order that is clear enough that they can  
10 follow or for them to have to acknowledge the lease  
11 rights that this Court has authorized Mr. Wisan and  
12 his lease at this time to issue.

13 Your Honor, that is why we believe it is  
14 appropriate for the Court to clarify its prior order.  
15 I'm not asking, Judge, for -- in the interim for any  
16 sort of new relief. I believe you've been extremely  
17 clear.

18 THE COURT: Yeah, I don't know  
19 (inaudible).

20 MR. RICHARDS: (Inaudible) behind the  
21 fiduciary leases and that you expected them to be  
22 honored by local law enforcement. But apparently,  
23 your Honor -- and Mr. Hamilton can explain why you  
24 haven't been clear enough -- but apparently you have  
25 not. We would ask the Court to do whatever it needs

1 properties.

2 THE COURT: Well, the granary is not a  
3 personal property.

4 MR. PARKER: What?

5 THE COURT: Granaries are not personal  
6 property.

7 MR. PARKER: They are, your Honor. I --

8 THE COURT: Okay. They're affixed to the  
9 land. They're not. They are -- they're part of the  
10 realty.

11 But in any event, I don't know how to make  
12 myself any clearer, but I will attempt again. Every  
13 order that this Court has issued is to be enforced to  
14 the letter by anyone in authority, and it is to be  
15 obeyed by anyone with knowledge of the Court's  
16 orders.

17 Number two, there is absolutely, without  
18 equivocation, I stand behind the actions of the  
19 fiduciary insofar as he has entered into leases with  
20 individuals and individuals have relied on those  
21 leases to -- those actions by the fiduciary under the  
22 discretion given to him to administer the trust under  
23 the Court's supervision, I stand behind those  
24 actions.

25 If there is a problem with those actions,

1 to do in the interim, while we are exploring the  
2 discovery, while we are preparing an order to show  
3 cause that may be appropriate, to clarify that the  
4 Court does in fact stand behind those leases, that  
5 the person has those leases from the fiduciary as to  
6 (inaudible) rights that anyone else who doesn't have  
7 a preexisting written agreement or court order that  
8 predates that lease.

9 MR. PARKER: Well, now, wait a minute.  
10 That's -- now, you can't take away the existing  
11 property rights of somebody else, whether it's real  
12 property or personal property by fiat like that.

13 THE COURT: Just a moment. There is no  
14 preexisting property rights of any alleged  
15 beneficiary to any land or to anything in the UEP.  
16 Okay. There is no preexisting right, period. There  
17 is none.

18 MR. PARKER: But, your Honor, there is.  
19 They're in two senses. One is the sense of the  
20 unjust enrichment claims that these people may have  
21 in the real property; and number two, there are food  
22 and personal property down there that UEP does not  
23 own.

24 THE COURT: Well --

25 MR. PARKER: The granary is one of those

1 then those can be brought to me, and we'll hold a  
2 trial and we will result -- resolve once and for all  
3 substantively what the issues are and where things  
4 stand. But in the interim, the presumption is that  
5 the -- and I wanted to make it very clear, I stand  
6 behind the actions of the fiduciary in terms of his  
7 administration of the trust, his -- the leases that  
8 he has executed. And if there are legitimate,  
9 competing claims by anyone who believes that he or  
10 she has a claim to any particular property, that can  
11 be certainly addressed in court on a full trial on  
12 the merits.

13 That also indicates -- reinforces the  
14 notion that discovery is in fact appropriate to be  
15 done so that we can be -- clarify and everybody can  
16 understand fully what the claims are and what the  
17 documentation is being made, if it is behind the  
18 various claims. And then as there are -- continue to  
19 be disputed issues of fact, we'll try the matter.

20 MR. PARKER: Well, your Honor, are you  
21 giving all of the residents of the property standing  
22 to participate in those trials insofar as their  
23 personal injuries are implicated? Because that seems  
24 to be the import of what you're saying, that if  
25 someone claims they own a piece of personal property,

1 they have standing in your court to dispute that.  
2 THE COURT: I will need to think through  
3 how that process can work given my prior rulings of  
4 who does and doesn't have standing.

5 But to the extent that there have been  
6 individuals who have been occupying UEP land, whether  
7 they be tenants at sufferance or by, you know,  
8 possession or whatever, I will have to figure out and  
9 think through what -- how that evidence is best  
10 presented so that those concerns can be presented to  
11 the Court and evaluated. I'm not sure how to do that  
12 right now, and I'll have to think about that.

13 MR. RICHARDS: Your Honor, this is Mr.  
14 Richards.

15 One point of clarification, if you would.  
16 And you've used the term "leases of the special  
17 fiduciary" in your comment. I had seen, I believe,  
18 some folks quibble over your language before using  
19 the word "lease" and then claiming that a --  
20 something entitled an occupancy agreement isn't  
21 within your order and that's not a lease, that's not  
22 a conveyance. I would assume when you're talking  
23 about leases, you're talking about any sort of  
24 written agreement by the fiduciary involving the  
25 property of the trust.

1 detainer statute apply that they would -- that the  
2 special fiduciary had to go through that process to  
3 actually evict somebody?

4 MR. RICHARDS: Okay. Your Honor, this is  
5 Mr. Richards. As a point of clarification for Mr.  
6 Hamilton, I don't think that what the Court has been  
7 alluding to or that you were asking about is that  
8 you're granting the fiduciary the authority to go in  
9 tomorrow and to find anyone who failed to get an  
10 occupancy agreement from him, who is exclusive --  
11 been in exclusive possession of that property since  
12 before the Court's administration, since the Court's  
13 administration instead of just kicking them out  
14 without going through some sort of a process  
15 whether -- you know, through this Court. What we're  
16 talking about --

17 THE COURT: This Court or other  
18 appropriate --

19 MR. PARKER: This Court doesn't even have  
20 jurisdiction (inaudible).

21 THE COURT: Well, whichever court has  
22 appropriate jurisdiction. I agree with Mr. Richards'  
23 clarification.

24 MR. RICHARDS: Your Honor, what we were  
25 talking about is the instance where someone had a

1 THE COURT: That is absolutely correct.  
2 Any agreement, any written agreement entered into by  
3 the special fiduciary, regardless of how denominated  
4 at this point in the -- is the order of the Court and  
5 it is to be enforced and it is to be protected. And  
6 the people receiving the -- who have entered into  
7 those agreements with a fiduciary, again, however  
8 denominated, take superior right at this point over  
9 any competing claim, pending a further determination  
10 by the Court of competing claims when they're brought  
11 in in due time and in proper fashion.

12 Now, again we'll have to address how --  
13 what that is and how that will need to be done. But  
14 it seems to me that this order has to be unequivocal  
15 and --

16 MR. HAMILTON: Your Honor, if I may --  
17 this is Blake Hamilton -- I'm just a little confused  
18 about those people that are actually occupying  
19 property. Are you saying that a person that's given  
20 an occupancy agreement can come in and just self-help  
21 evict somebody? Because that is not the law of this  
22 case. That's not the law generally.

23 Bob, this case in the minute entry that  
24 you denied our TRO back on July 21st, 2008, you said  
25 there was not imminent harm. Does the unlawful

1 lease agreement and they show up and they tell the  
2 police, Look, someone is on this property I have a  
3 lease agreement for. They don't have a lease  
4 agreement. They don't have anything that they claim  
5 that they have a right to be here. I want you to  
6 enforce my lease rights and uphold these. In fact,  
7 those are official, certified, verified orders that  
8 come with the appointor and the order of the Court.

9 MR. HAMILTON: (Inaudible) talking about  
10 commercial property that's being currently used, the  
11 granary for example. Regardless of whether the  
12 granary is going to be considered personal or real  
13 property, it's being used by somebody else. So if  
14 the special fiduciary gives a lease to somebody, does  
15 that person then -- are they allowed to come and  
16 remove grain and remove property and self-evict  
17 somebody?

18 MR. RICHARDS: (Inaudible).

19 MR. HAMILTON: (Inaudible).

20 MR. PARKER: (Inaudible) the fiduciary  
21 decides to give a lease to somebody to buy a personal  
22 vehicle, I don't think -- you know, that's what's  
23 being discussed here.

24 THE COURT: I disagree.

25 MR. PARKER: That is presumptively valid.

1 THE COURT: I disagree because the UEP  
 2 does not claim to own your personal vehicle.  
 3 MR. PARKER: (Inaudible) and then if he  
 4 comes presumptively valid under the scenario that Mr.  
 5 Richards is putting forward. He simply says it and  
 6 it becomes presumptively valid. Because I'm saying  
 7 that the personal property that we're talking about  
 8 is not owned by the trust or by the fiduciary. And  
 9 broad ownership claim is being ignored.  
 10 THE COURT: No, it's not.  
 11 MR. PARKER: That's the objection that I  
 12 have to what's happening.  
 13 THE COURT: I disagree.  
 14 MR. SHIELDS: (Inaudible) Shields. I  
 15 haven't said anything today. But on behalf of the  
 16 special fiduciary, we are not doing what Mr. Parker  
 17 alleges we are doing. What we are doing is leasing  
 18 UEP property or allowing people to use that property.  
 19 We are not asserting control over property that is  
 20 not UEP. And if we were, then that's when you bring  
 21 that to your Honor to resolve that. So this -- I  
 22 think Mr. Parker's concerns are unfounded both in  
 23 fact and in process. There's a process that you can  
 24 pursue. What's going on right now is the fiduciary  
 25 has no chance to enforce its right because the police

1 address both disputed issues. I think we can do  
 2 that.  
 3 I expect that Mr. Okazaki and Mr. Parker  
 4 will weigh in on that. I would encourage them to  
 5 call me, call Mr. Bodily, and call anyone else and  
 6 talk about the proper process for doing that so that  
 7 there was (inaudible). And I would expect that  
 8 irrespective of any intervention issues we'd probably  
 9 submit some briefing to the Court, and the Court  
 10 probably will review that. And that would be my  
 11 recommendation on that. The only other question I  
 12 have, Judge, and I'll shut up, is whether or not  
 13 we're going to have a transcript of this proceeding  
 14 or if the Court is going to have a folder, an order  
 15 that issues this clarification in some other form.  
 16 THE COURT: Mr. --  
 17 MR. HAMILTON: Your Honor, if I may. This  
 18 is Blake Hamilton.  
 19 THE COURT: Yes, Mr. Hamilton.  
 20 MR. HAMILTON: I'm speaking on behalf of  
 21 the cities here. The police have been put in a very  
 22 difficult situation. They are not siding with one  
 23 faction or the other. They are -- they have been put  
 24 in a difficult situation because the special  
 25 fiduciary, for whatever reason, hasn't gone through

1 are siding with anybody who's contra-fiduciary.  
 2 MR. PARKER: And that isn't true either.  
 3 He says he had a conflict at the granary and they  
 4 refused to side with anybody. It's a civil matter  
 5 that goes (inaudible). That's what we encountered at  
 6 the granary last Tuesday.  
 7 MR. RICHARDS: Your Honor, this is Mr.  
 8 Richards. I think with your clarification that  
 9 you've now provided us, I think that the police, the  
 10 local government officials and the individuals who  
 11 were represented here and otherwise received notice  
 12 of your order are fully advised of the Court's intent  
 13 and the Court's order. And they'll act at their own  
 14 risk and make their own decisions.  
 15 THE COURT: Mr. Richards --  
 16 MR. RICHARDS: I don't think the Court  
 17 needs to go further on that. However, on these other  
 18 issues, your Honor, with respect to disputes where  
 19 people are claiming I have a prior interest or I have  
 20 a personal interest, I think the Court is correct  
 21 that there may need to be a process for addressing  
 22 those separately. I would recommend that the Court  
 23 do what it's done in the past and give us, say, 30  
 24 days in which -- for the parties to submit briefs to  
 25 you, outlining recommendations for a process to

1 the process, the legal process. And Mr. Richards  
 2 keeps talking about that there needs to be a process  
 3 put in. Well, there is a legal process already,  
 4 unlawful detainer action, abandonment statutes so  
 5 that they -- that the special fiduciary has to go  
 6 through that legal process before extinguishing  
 7 rights.  
 8 THE COURT: Just a moment. Let me make  
 9 sure that we are all talking about the same thing.  
 10 What I'm talking about right now is that  
 11 where the special fiduciary has entered into an  
 12 agreement as to a particular field, property, that  
 13 those written agreements are to be enforced. And the  
 14 holder of those agreements and the beneficiary of  
 15 those agreements has, at this point, documented  
 16 superior right to anything.  
 17 Now, if there are contests as to those  
 18 rights and the right of the fiduciary to issue those  
 19 agreements or to enter into those agreements, that's  
 20 the -- you know, I'm going to have to think through  
 21 how to create a process so that those concerns and  
 22 those counter positions and other documentation can  
 23 be presented to the Court and adjudicated. And I'm  
 24 going to need the assistance of counsel in -- in  
 25 fashioning a proper process so that if there are

