



No. \_\_\_\_\_

**Court of Appeal**  
of the  
**State of California**  
**First Appellate District, Division \_\_\_\_\_**

**WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK and NORTH  
CONGREGATION OF JEHOVAH'S WITNESSES, RED BLUFF, CALIFORNIA,**

*Petitioner,*

vs.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF NAPA**  
*Respondent.*

**TIM W., JULIANNE WIMBERLEY GUTIERREZ AND JOSHUA WIMBERLEY**  
*Real Parties In Interest*

**Judicial Council Coordination Proceeding No. 4374**  
**Coordinated With Napa County Superior Court Case No. 26-22191 (Lead Case)**

**PETITION FOR WRIT OF MANDATE; VERIFICATION OF ROBERT J.  
SCHNACK AND MEMORANDUM OF  
POINTS AND AUTHORITIES**

From the Order of the Napa Superior Court Granting Real Parties in Interest's Motion to  
Compel Production of Documents (September 29, 2005)  
The Honorable Raymond A. Guadagni, Judge

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BLUFF, CALIFORNIA

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**PETITION FOR WRIT OF MANDATE AND/OR  
PROHIBITION OR OTHER APPROPRIATE RELIEF**

**AUTHENTICITY OF EXHIBITS**

1. All exhibits accompanying this petition are true copies of original documents on file with respondent court, except for the following: Exhibit E, which are true copies of the privilege logs furnished by the Church Defendants to plaintiffs. Exhibit J, which is a true copy of the original reporter's transcript of the hearing on August 31, 2005 on plaintiffs' Motion to Compel. Exhibit L which are true copies of the non-binding case law cited in the Memorandum of Points and Authorities, filed concurrently herewith. The exhibits are incorporated herein by reference as though fully set forth in this petition. The exhibits are paginated consecutively from page 1 through page 458 and page references in this petition are to the consecutive pagination.

**BENEFICIAL INTEREST OF PETITIONERS; CAPACITIES  
OF RESPONDENT AND REAL PARTIES IN INTEREST**

2. Petitioners Watchtower Bible & Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Red Bluff, California, Inc. (collectively "Church Defendants") are defendants in two actions now pending in Tehama County Superior Court and entitled *Tim W. v. Watchtower New York, et al.*, Case No. 52594, and *Wimberley-Gutierrez v. Watchtower New York, et al.*, Case No. 52598, which are collectively referred to herein as "Track I Cases." The Track I Cases were earlier coordinated with other cases in Judicial Council Coordination Proceeding No. 4374, including the so-called lead case pending in respondent Napa County Superior Court entitled *Charissa W. v. Watchtower New York, et al.*, Case No.

26-22191. (Exh. K, pp. 407-08.) Plaintiffs in the Track I Cases are named herein as the real parties in interest.

### **CHRONOLOGY OF PERTINENT EVENTS**

3. These Track I Cases arise from the alleged sexual abuse by co-defendant James Henderson in *Tim W.* that occurred more than 10 years ago and co-defendant Alvin Heard in *Wimberley* that occurred more than 24 years ago.

4. On July 24, 2003, Plaintiffs filed separate civil complaints against the Church Defendants asserting claims arising from allegations that the Church Defendants failed to report and/or disclose their knowledge of child abuse allegedly committed by James Henderson and Alvin Heard. (Exh. A, p. 5.)

5. On January 13, 2005, Plaintiffs propounded document requests to the Church Defendants seeking, *inter alia*, documents and information related to confidential spiritual communications that penitents Henderson and Heard had separately with clergy within a Jehovah's Witness congregation. (Exh. A, p. 5.)

6. On April 5, 2005, the Church Defendants objected to certain of Plaintiffs' document requests on the grounds that the responsive documents are protected from disclosure by the penitent-clergy privilege and the attorney-client privilege. (Exh. A, p. 5.)

7. On July 29, 2005, Plaintiffs filed a motion to compel responses to their requests for production of documents, arguing that the documents sought are not protected by either the penitent-clergy or attorney-client privileges. (Exh. A, pp. 1-246.)

8. On August 19, 2005, the Church Defendants filed their opposition to the motion to compel, asserting the requested documents

were protected from disclosure based on privilege and constitutional grounds. (Exh. B, pp. 247-300.)

9. The documents at issue in the underlying motion to compel relate to spiritual communications between penitent James Henderson and ordained elders of the Jehovah's Witnesses, and spiritual communications between penitent Alvin heard and ordained elders of the Jehovah's Witnesses. (See, Exh. E, pp. 331-40.)

10. On September 29, 2005, the trial court granted, in part, Plaintiffs' motion to compel and ordered the Church Defendants to produce all documents for which they previously asserted the penitent-clergy privilege. The trial court also ordered the Church Defendants to produce a privilege log with respect to all documents for which they asserted the attorney-client privilege, reserving Plaintiffs' right to challenge the log. (Exh. F.)

11. On October 24, 2005, the trial court granted the Church Defendant's motion to stay execution of order to produce documents until such time that a writ can be filed and ruled upon by the Court of Appeal. (Exh. G.)

12. On November 22, 2005, the trial court entered its stipulated order extending the time for the filing of the instant writ to April 28, 2006. (Exh. H.) On May 1, 2006, the trial court entered a further stipulated order extending the time for the filing of the instant writ up to and including June 30, 2006. (Exh. I.)

#### **BASIS FOR RELIEF**

13. The issue presented in this writ petition is whether the trial court erred in granting the motion to compel. In granting the motion, the trial court abused its discretion because disclosure of the

requested documents is prohibited by (1) the penitent-clergy privilege, (2) the First Amendment of the United States Constitution, and (3) the free exercise clause in both the federal and the California constitution.

#### **ABSENCE OF OTHER REMEDIES**

14. Interlocutory review is the only adequate remedy for the trial court's order compelling the Church Defendants to produce potentially privileged documents since "once privileged matter has been disclosed there is no way to undo the harm which consists in the very disclosure." (*Korea Data Systems Co. v. Superior Court* (1997) 51 Cal.App.4th 1513, 1516.)

#### **PRAAYER**

Petitioners/Church Defendants pray that this Court:

1. Issue an alternative writ directing respondent superior court set aside and vacate its order of September 29, 2005, granting Plaintiffs' motion to compel, or show cause why it should not be ordered to do so, and upon return of the alternative writ, issue a peremptory writ of mandate and/or probation or such other extraordinary relief as is warranted, directing respondent superior court to set aside and vacate its order of September 29, 2005, granting

Plaintiffs' motion to compel, and to enter a new and different order denying the motion;

2. Award Petitioners/Church Defendants their costs pursuant to Rule 56.4 of the California Rules of Court; and
3. Grant such other relief as may be just and proper.

Dated: 06-28-06

Respectfully submitted,

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