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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

|    |                     |   |                            |
|----|---------------------|---|----------------------------|
| 18 | STATE OF ARIZONA,   | ) | NO. CR-2007-743            |
|    |                     | ) |                            |
| 19 | Plaintiff,          | ) | REPLY TO HOOLE & KING'S    |
| 20 | v.                  | ) | OPPOSITION TO MOTION FOR   |
|    |                     | ) | DEPOSITION OF WITNESES     |
| 21 | WARREN STEED JEFFS, | ) | SAM BROWER AND DAN FISCHER |
|    |                     | ) |                            |
| 22 | Defendant.          | ) | [Oral Argument Requested]  |
| 23 |                     | ) | [Hon. Steven F. Conn]      |

24 The defendant, Warren Jeffs, by and through counsel undersigned, hereby  
 25 replies to the Memorandum in Opposition to Motion for Deposition of Witnesses  
 26 Sam Brower and Dan Fischer filed by numerous clients of the Hoole & King law  
 27  
 28

1 firm and attorney Natalie Malonis.<sup>1</sup> The defendant has replied separately to Dr.  
2 Fischer's opposition to the motion to depose him and incorporates herein by  
3 reference the legal and factual arguments contained therein. This reply will  
4 address the motion to depose witness Sam Brower in connection with the  
5 criminal accusers and other prosecution witnesses who are receiving benefits  
6 from Dr. Fischer and the Diversity Foundation. The opposition to the motion to  
7 depose witness Sam Brower is without merit for the reasons set forth in the  
8 attached Memorandum of Points and Authorities.  
9

10  
11 RESPECTFULLY SUBMITTED this 2nd day of October, 2009.

12  
13 WRIGHT STANISH & WINCKLER

14 By

15 Richard A. Wright  
16 Attorney for Warren Jeffs

17 PICCARRETA DAVIS PC

18 By

19 Michael L. Piccarreta  
20 Jefferson Keenan  
21 Attorneys for Warren Jeffs

22 MEMORANDUM OF POINTS AND AUTHORITIES

23 I. STATEMENT OF FACTS

24 The defendant, Warren Jeffs, stands accused in two pending criminal  
25 prosecutions in the state of Arizona by individuals who have received hundreds  
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<sup>1</sup> Because defendant's motion for the deposition of Mr. Brower involves primarily Mr. Jeffs' criminal accusers who have been receiving Fischer-funded legal services from the Hoole & King law firm and investigator Sam Brower, the defendant will refer to the Memorandum in Opposition to Motion for Deposition of Witnesses Sam Brower and Dan Fischer as the "Hoole & King" opposition.

1 of thousands of dollars in legal services and other financial benefits from Dr.  
2 Dan Fischer and his company Ultradent Products, Inc., through the ostensibly  
3 charitable organization Dr. Fischer founded, Diversity Foundation. Ultradent  
4 Products, Inc., through the end of 2009, has contributed nearly \$3.2 million to  
5 the Diversity Foundation. Approximately \$2.2 million of this has been paid by  
6 the Diversity Foundation to two entities: the Hoole & King law firm and  
7  
8 investigator Sam Brower.  
9

10 At the outset, the defendant would like to make it clear that he is not  
11 interested in communications relating to anyone other than his criminal accusers  
12 and other prosecution witnesses who have been receiving these benefits. Accuser  
13

14 and her husband Lamont Barlow have been the primary beneficiaries  
15 of Dr. Fischer's largesse, receiving hundreds of thousands of dollars in legal  
16 services and other financial benefits. Accuser has also received  
17 financial benefits, and so have State's witnesses Carolyn Jessop and Richard  
18 Holm. The motives, bias, and prejudice of a defendant's criminal accusers and  
19 other state witnesses is always material and relevant, even critical, to the defense,  
20 thus, Hoole & King's contention that Mr. Jeffs' motion to depose Dr. Fischer and  
21 Mr. Brower is "not even about obtaining information for his defense" is absurd.  
22 [Opposition, p. 4]. The defendant is merely trying to explore and evaluate the  
23 extent to which Dr. Fischer's millions have led to the criminal prosecutions  
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1 against him in the state of Arizona.

2 As a third party fee payor, there is no privilege for Dr. Fischer and his  
3 company, Ultradent Products. The Diversity Foundation, itself, is a listed defense  
4 witness and has not (and cannot) assert any privilege. Accordingly, there is no  
5 privilege for any communications between Mr. Brower and either Dr. Fischer or  
6 the Diversity Foundation. All of the writings, memoranda, billings, and other  
7 communications between Mr. Brower and these entities are therefore subject to  
8 disclosure and Mr. Brower is subject to being deposed about these matters.  
9

10  
11 Contrary to the assertions in Hoole & King's opposition, the defendant has  
12 made it quite clear that these are the areas of inquiry he is interested in.  
13 [Interview of Sam Brower, May 20, 2009, p. 30]. Mr. Roger Hoole specifically  
14 interposed objections about these communications. [*Id.*]. Mr. Brower further  
15 refused to answer questions based on the erroneous belief that his conversations  
16 with any third parties in the course of his investigations were privileged. [*Id.*, pp.  
17 132-34]. Mr. Brower also inexplicably refused to answer questions about his  
18 cooperation and communications with federal authorities and other third parties  
19 regarding Mr. Jeffs. [*Id.*, pp. 92-93].<sup>2</sup> Significantly, this matter is not even  
20 addressed in Hoole & King's opposition. Also not addressed is the defendant's  
21 claim that, upon information and belief, it appears Mr. Brower provided some  
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1 answers during his pre-trial interview that may be false and that directly relate to  
2 his credibility. Mr. Brower's deposition is therefore needed to further the truth  
3 finding process by requiring Mr. Brower to be deposed under the penalty of  
4 perjury.  
5

6 The defendant also feels compelled to correct Hoole & King's  
7 mischaracterization of Mr. Brower's alleged willingness to be interviewed. The  
8 contention that "at Jeffs' counsels' request, Mr. Brower agreed to travel to Salt  
9 Lake City from St. George, Utah, on March 28, 2009,<sup>3</sup> to submit voluntarily to  
10 and participate in an interview by Jeffs' counsel" is completely false.  
11 [Opposition, p. 8]. Mr. Brower never "agreed" to do any such thing. That was the  
12 problem. As the attached email correspondence, [Exhibit 1], clearly shows, Mr.  
13 Brower kept playing games with counsel and refused to confirm that his  
14 interview would take place on that date. Just as Mr. Brower was playing games  
15 with counsel, the Hoole & King opposition is being less than forthright with this  
16 Court in making these assertions.<sup>4</sup> Defense counsel made every effort to conduct  
17 Mr. Brower's interview on the same date as Dr. Fischer's, but was unable to do  
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23 <sup>2</sup> Thus, Hoole & King's assertion that "Jeffs fails to cite a single question that he alleges Mr.  
24 Brower refused to answer," [Opposition, p. 14], is completely false.

25 <sup>3</sup> Hoole & King is incorrect about the date. Dr. Fischer's interview took place in Salt Lake  
26 City on March 18, 2009.

27 <sup>4</sup> The only truth in these assertions is that co-counsel for Mr. Jeffs, Richard Wright, had an  
28 emergency scheduling conflict and could not participate in Mr. Brower's interview scheduled  
for April 10, 2009.

1 so solely because of Mr. Brower's actions. In fact, at the end of January, counsel  
2 for Mr. Jeffs sent the following email regarding Mr. Brower's interview, and  
3 received the following answer:  
4

5 Matt:

6 Could you please let me know by the end of the week if Sam  
7 Brower intends to cooperate in the setting of a personal interview?  
8 If so, let's set him up for when we are in Salt Lake City to do Dr.  
9 Fischer and kill two birds with one stone. On the other hand, if he is  
10 unwilling to cooperate for a personal interview, let me know that so  
11 I can file the motion for a deposition at a time and location of my  
12 choosing. I will obviously check with you before I set it. Thanks.

13 Mike Piccarreta

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14 Mike, it is my understanding that Sam Brower does not intend to do  
15 a personal interview so go ahead and file any motion you feel is  
16 appropriate. Matt

17 [Exhibit 1].

18 As the Court may recall, counsel for Mr. Jeffs was then required to file a  
19 motion for Mr. Brower's deposition, which the Court granted. Counsel for Mr.  
20 Jeffs continued to try to confirm Mr. Brower's interview and even offered to  
21 conduct Mr. Brower's interview in Las Vegas or St. George, rather than having  
22 him travel to Salt Lake City where Dr. Fischer was being interviewed. It was not  
23 until February 27, 2009, that the State first indicated that Mr. Brower would  
24 consent to a voluntary interview. As of March 9, 2009, counsel for the State  
25 informed counsel for Mr. Jeffs that "I am still working on trying to get Sam  
26  
27  
28

1 Brower set up for next week.” [Exhibit 1].

2 On Monday, March 16, 2009, two days prior to Dr. Fischer’s interview,  
3  
4 counsel for Mr. Jeffs informed the State:

5 Matt:

6 I am unable to wait any longer for Mr. Brower to make up his mind  
7 as to whether he will grant the voluntary interview in Salt Lake City  
8 next Wednesday. There will be no interview of Brower on  
9 Wednesday. Tuesday is my travel day and preparation for his  
10 interview is quite extensive and with all the other matters I am  
11 preparing for, including next week’s interviews and a trial the  
12 following week, I can no longer wait for Mr. Brower to make up his  
13 mind. I will not say anything critical of Mr. Brower, however, I am  
14 left with the feeling that there is some type of gamesmanship  
15 going on as he has had weeks to either confirm the interview in  
16 Salt Lake City, decline it, or request the interview at another  
17 location. If Mr. Brower is willing to consent to a voluntary  
18 interview, I am willing to make myself available on April 2 or 3 at  
19 a location convenient to him. If he is unable to commit to a  
20 personal interview, I will set a deposition in accordance with  
21 Judge Conn's order. If he fails to comply with Judge Conn's order  
22 to appear for a deposition, I will seek an order of contempt.

23 I realize you have in good faith been trying to arrange the  
24 interview in communicating with Mr. Brower. In setting the  
25 deposition, I will, as always, take into account your schedule when  
26 determining the date, time and location.

27 Mike Piccarreta

28 [Exhibit 1]. It was only after sending this email that counsel for Mr. Jeffs learned,  
for the first time, that Mr. Brower was now willing to be interviewed on March  
18, 2009, after all. On his travel day, Tuesday, March 17, 2009, counsel for Mr.  
Jeffs responded by requesting the State to set up Sam Brower’s interview for

1 April 2, 2009. Thus, Hoole & King's claim that there was an agreement between  
2 the parties to interview Sam Brower on March 18, 2009, and that Mr. Brower  
3 travelled to Salt Lake City for that interview only to have the interview cancelled  
4 by defense counsel, [Opposition, p. 8], is highly disingenuous, to put it  
5 charitably.  
6

7 The Court can make up its own mind as to the candor behind Hoole &  
8 King's characterization of Mr. Brower's conduct and the relative levels of  
9 professionalism and reasonableness of the parties involved.  
10

## 11 II. DISCUSSION

### 12 A. As Third Party Fee Payors, Dr. Fischer And The Diversity 13 Foundation Have No Claim Of Privilege With Regard To Any 14 Communications With Mr. Brower.

15 For the reasons set forth in defendant's Reply to Witness Dan Fischer's  
16 Opposition to Motion for Deposition, as third party fee payors, neither Dr.  
17 Fischer nor the Diversity Foundation have any valid claim of privilege.<sup>5</sup>  
18

19  
20 <sup>5</sup> As with the authority cited in Dr. Fischer's opposition, none of the cases relied upon by Hoole  
21 & King extend the "representative of the client" privilege to third party fee payors and none of  
22 the cases involve a client who is a natural person. *Sevenson Environmental Services, Inc. v.*  
23 *Sirius America Ins. Co.*, 64 A.D.3d 1234, 883 N.Y.S.2d 423 (N.Y. 2009) [corporation as  
24 client]; *Loftin v. Bande*, 258 F.R.D. 31 (D.D.C. 2009) [corporate client]; *Heriot v. Byrne*, 257  
25 F.R.D. 645 (N.D. Ill. 2009) [corporate client]; *Hanover Ins. Co. v. Rapo & Jepsen Ins. Services,*  
*Inc.*, 449 Mass. 609, 870 N.E.2d 1105 (2007) [corporate client]. Only *Via v. Commonwealth*, 42  
Va. App. 164, 590 S.E.2d 583 (App. 2004) involved a natural person as a client but the court  
rejected a claim of privilege for a doctor as an alleged agent of the attorney, not the client.

26 Hoole & King also rely on the self-serving, after-the-fact, affidavits drafted by the attorneys  
27 Dr. Fischer pays in which these young clients lacking in formal education now avow, under  
28 oath, that they were expressly relying on the idiosyncrasies of Utah's law of privilege. These

1 Accordingly, there is no privilege for any communications to or from Mr.  
2 Brower and Dr. Fischer or the Diversity Foundation. In addition, by disclosing  
3 correspondence, memoranda, billings, and any other communications to Dr.  
4 Fischer and/or the Diversity Foundation, Mr. Brower has waived any privilege  
5 with respect to any of those communications. 1 McCormick on Evidence § 93, p.  
6 425 (6th ed. 2006). Accordingly, Mr. Brower should be subjected to a deposition  
7 on these matters at which he is required to produce all of the relevant  
8 communications.  
9

10  
11 B. There Is No Valid Privilege Regarding Communications To Or  
12 From Third Parties Such As Law Enforcement Personnel.

13 It is well settled that the attorney-client privilege simply does not “apply to  
14 information or facts acquired by the attorney or the attorney’s agents from non-  
15 client sources.” *Granger v. Wisner*, 134 Ariz. 377, 380, 656 P.2d 1238, 1241  
16 (1982); J. Livermore, Arizona Law of Evidence § 501:5, p. 204 (Revised Fourth  
17 Edition 2008) [“the privilege does not protect information learned by the lawyer  
18 from third parties”]. Thus, there is no valid basis for Mr. Brower’s refusal to  
19 answer questions concerning his communications with federal law enforcement  
20 officials, or any other third parties, for that matter. Accordingly, Mr. Brower  
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affidavits cannot be relied upon and must be stricken unless the affiants can be cross examined  
about the contents of the affidavits.

1 must be deposed because he had no valid basis for refusing to answer these  
2 questions. [See, e.g., Interview of Sam Brower, May 20, 2009, pp. 92-93, 132-  
3 34].  
4

5 Neither are these communications with third persons protected by the  
6 work-product immunity doctrine. Because there is no valid claim to attorney-  
7 client privilege regarding these third parties, there can be no protected work  
8 product. In this regard, Hoole & King ignore the applicable law. “[A]lthough the  
9 attorney-client privilege covers communications between attorney and client  
10 whether or not litigation is pending, the work product doctrine protects only  
11 written material prepared in anticipation of litigation.” J. Livermore, *et al.*,  
12 *Arizona Law of Evidence* § 501:6, p. 214 (Revised Fourth Edition 2008)  
13 [emphasis added]. There appears to be no appreciable difference between the  
14 work product doctrine in Utah and Arizona as Rule 26(b)(4) of the Utah Rules of  
15 Civil Procedure is identical in all material respects to Rule 26(b)(3) of the  
16 Arizona Rules of Civil Procedure and both refer to “documents and tangible  
17 things...prepared in anticipation of litigation....”<sup>6</sup> The questions put to Mr.  
18 Brower at his pre-trial interview regarding these third parties were obviously not  
19 requesting him to turn over any written materials he had prepared in anticipation  
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26 \_\_\_\_\_  
27 <sup>6</sup> In any event, for the reasons set forth in the reply to Dr. Fischer’s opposition, Arizona law  
28 should prevail. Moreover, there do not appear to be any reported decisions in Utah citing or

1 of litigation.

2 C. Mr. Brower's Own Conduct At His Pre-Trial Interview Has Made  
3 His Deposition Necessary.

4 As noted above, on information and belief, it appears that Mr. Brower may  
5 have provided false answers to some questions that relate directly to his  
6 credibility and now require that he be deposed under penalty of perjury so that  
7 these inaccuracies can be corrected before this matter proceeds to trial.<sup>7</sup> Notably,  
8 the Hoole & King opposition does not even address this basis for Mr. Brower's  
9 deposition.  
10

11 D. The Attorney-Client Privilege Is Arguably Only Applicable To Mr.  
12 Brower's Communications As An Investigator With The Attorney  
13 Or The Client.  
14

15 The Arizona Supreme Court has not explicitly extended the attorney-  
16 client privilege to communications relayed from a client to an attorney through  
17 an investigator:  
18

19 we recognize that some courts have extended the privilege to  
20 communications relayed from client to attorney through the  
21 latter's agents and intermediaries, including investigators. See  
22 *United States v. Kovel*, 296 F.2d 918, 920-23 (2d Cir. 1961);  
23 *American National Watermattress Corp. v. Manville*, 642 P.2d  
1330, 1333-34 (Ala. 1982); *City and County of San Francisco v.*

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24 adopting the provision in the Restatement concerning work product cited in Hoole & King's  
25 opposition. Restatement (Third) of the Law Governing Lawyers § 87(1) (2009).

26 <sup>7</sup> As indicated in the defendant's motion, the defendant is prepared to provide the particular  
27 details supporting his good faith basis for this assertion to the Court *ex parte*, under seal, for  
28 *in camera* inspection.

1           *Superior Court*, 37 Cal.2d 227, 234-38, 231 P.2d 26, 29-32  
2           (1951); 1 M. Udall & J. Livermore, *Arizona Practice, Law of*  
3           *Evidence* § 74, at 140-41 (2d ed. 1982). Even assuming, without  
4           deciding, that we were to adopt this reasoning, we do not agree  
5           that the Farmers investigator was an agent of Barker to the extent  
6           that the attorney-client privilege is applicable.

7           *Longs Drug Stores v. Howe*, 134 Ariz. 424, 427, 657 P.2d 412, 415 (1983).

8           Accordingly, if Arizona were to recognize such an extension of the  
9           privilege, it would be presumably limited to "communications relayed from  
10          client to attorney through the latter's agents and intermediaries, including  
11          investigators." *Id.* However, this exception has no applicability to any non-  
12          clients such as Dr. Fischer, the Diversity Foundation, federal law enforcement  
13          officers, or the other third parties discussed above. In fact, Mr. Brower has  
14          waived any assertion of privilege to the extent that he has disclosed  
15          communications to these third parties.  
16

17           In addition, there is no valid attorney-client privilege with respect to Mr.  
18          Brower's statements and activities that have nothing to do with pending civil  
19          litigation, such as Mr. Brower's time spent accompanying Mohave County  
20          Investigator Gary Engels, Utah law enforcement, federal law enforcement,  
21          Mohave County law enforcement, media, elected officials and others engaged in  
22          the general hounding of the FLDS and its members. All of this work has been  
23          conducted apart from any investigative work conducted to any litigation and is  
24          not subject to any sort of privilege:  
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28

1 Nothing in the policy of the privilege suggests that attorneys,  
2 simply by placing accountants, scientists or investigators on their  
3 payroll and maintaining them in their offices, should be able to  
4 invest all communications by clients to such persons with a  
5 privilege the law has not seen fit to extend when the latter are  
6 operating under their own steam.

7 *United States v. Kovel*, 296 F.2d 918, 921 (2d Cir. 1961) [cited in *Long's Drug*  
8 *Stores, supra*].

9 Accordingly, to the extent that there is any valid attorney-client privilege  
10 Mr. Brower can assert that would be recognized by the Arizona courts, it must be  
11 strictly limited to conversations between Mr. Brower and \_\_\_\_\_, Mr.  
12 Brower : \_\_\_\_\_ and Mr. Brower and the attorney for each of these  
13 clients.  
14

15 Finally, even with respect to matters that really are covered by the  
16 attorney-client privilege, the privilege will not be recognized in furtherance of  
17 crime or fraud. Mr. Brower has essentially made his living off of Dr. Fischer and  
18 the Diversity Foundation for the past few years.<sup>8</sup> He has received over half a  
19 million dollars for his role in the Fischer-funded efforts to bankroll civil  
20 litigation and provide financial benefits to Mr. Jeffs' criminal accusers and other  
21 prosecution witnesses. For the reasons set forth in the reply to Dr. Fischer's  
22 opposition, this factual arrangement raises serious questions about the legitimacy  
23  
24  
25

26 \_\_\_\_\_  
27 <sup>8</sup> Dr. Fischer acknowledged, and Mr. Brower confirmed, that Brower is no longer being paid  
28 by Diversity or Dr. Fischer for his work.

1 of the Diversity Foundation as a charitable organization, the motives of Mr.  
2 Jeffs' accusers, and whether the attorneys, the investigator, and the accusers may  
3 really be serving the interests in their benefactor.  
4

5 The defendant submits that this arrangement should be reviewed by the  
6 Internal Revenue Service, with full disclosure as to all the facts which has not yet  
7 occurred. Mr. Brower, like Dr. Fischer, has been an outspoken critic of Mr. Jeffs  
8 and the FLDS and it is not permissible under the tax code to use a charitable  
9 organization to further personal litigation goals, especially by targeting one  
10 unpopular religion or its leader. *Cf., Nationalist Movement v. Commissioner of*  
11 *Internal Revenue*, 37 F.3d 216 (5th Cir. 1994) [tax exemption denied because  
12 organization's legal activities were not primarily for charitable purposes].  
13  
14

15 Because privileges impede the truth finding function and always provide  
16 "worse answers to questions of fact," *State v. Heaney*, 689 N.W.2d 168, 175  
17 (Minn. 2004), they must not only be strictly and narrowly construed, they must  
18 also give way to a defendant's constitutional right to effectively cross examine  
19 his accusers. *Davis v. Alaska*, 415 U.S. 308, 316 (1974); 3 J. Weinstein & M.  
20 Berger, *Weinstein's Federal Evidence* § 501.03[2][b] (Second Edition 2008).  
21 Under these circumstances, Hoole & King has failed to carry its burden, J.  
22 Livermore, *et al.*, *supra* at § 501:2, p. 191, and there should be no recognition of  
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1 any privilege that permits these activities to evade scrutiny.

2 III. CONCLUSION

3 Dr. Fischer and the Diversity Foundation are simply third party fee payors  
4 for which there is no privilege for any communications involving Mr. Brower.  
5 There is no recognizable privilege for any information acquired from or  
6 disclosed to third parties and Mr. Brower has waived any such claim of privilege.  
7 Mr. Brower's own conduct has also made it necessary for him to be deposed  
8 under oath. The defendant has specifically identified the areas upon which Mr.  
9 Brower must be examined and upon which he has improperly refused to answer  
10 the questions put to him. The only arguable area of privilege are communications  
11 between Hoole & King and Brower that relate to pending litigation and any  
12 communication from the clients to be relayed to Hoole & King. All other areas  
13 are not privileged and subject to disclosure. For the foregoing reasons, the  
14 defendant respectfully requests this Court to order Mr. Brower to be deposed  
15 under oath on these matters and to disclose all relevant communications.  
16  
17  
18  
19  
20

21 RESPECTFULLY SUBMITTED this 2nd day of October, 2009.

22 WRIGHT STANISH & WINCKLER

23 By \_\_\_\_\_  
24

25 Richard A. Wright  
26 Attorney for Warren Jeffs

27 PICCARRETA DAVIS PC

28 By \_\_\_\_\_

Michael L. Piccarreta  
Jefferson Keenan  
Attorneys for Warren Jeffs

1 Original of the foregoing mailed  
2 this 2nd day of October, 2009, to:

3 Clerk of Mohave County Superior Court  
4 401 East Spring Street  
5 Kingman, AZ 86401

6 Copy of the foregoing emailed  
7 this 2nd day of October, 2009, to:

8 Hon. Steven F. Conn  
9 Mohave County Superior Court  
10 401 East Spring Street  
11 Kingman, AZ 86401

12 Matthew J. Smith, Esq.  
13 Mohave County Attorney's Office  
14 315 North Fourth Street  
15 P.O. Box 7000  
16 Kingman, AZ 86402-7000

17 Billy K. Sipe, Jr., Esq.  
18 2606 Stockton Hill Road  
19 Kingman, AZ 86401

20 Copy of the foregoing mailed  
21 this 2nd day of October, 2009, to:

22 Lee M. Novak, Esq.  
23 212 N. 4th St., Suite 10  
24 Kingman, AZ 86402

25 Roger Hoole, Esq.  
26 4276 South Highland Drive  
27 Salt Lake City, UT 84124

28 Randy L. Dryer, Esq.  
Parsons Behle & Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111

# EXHIBIT 1

Barbara Polowetz

---

**From:** Barbara Polowetz  
**Sent:** Tuesday, October 21, 2008 3:13 PM  
**To:** 'MATT SMITH'; 'BEVERLY BROOKS'  
**Subject:** Interviews in SLC

Matt:

Have we had any luck in setting up Brower, Fischer, etc. for a Salt Lake City trip?  
I really would like to do this sooner rather than later. Thanks a lot.

Mike Piccarreta

**Barbara Polowetz**

---

From: Barbara Polowetz  
Sent: Monday, November 10, 2008 3:28 PM  
To: 'BEVERLY BROOKS'; MATT SMITH .  
Cc: 'dkcaroselli@earthlink.net'  
Subject: Carolyn Jessop/Sam Brower

Matt:

Carolyn owes us some documents that she promised to get us within 90 days of her interview. We haven't received them yet. I would like to receive the documents in the next couple weeks so I can review them prior to the completion of her interview. We discussed the documents during her interview and she should know what they are. They primarily relate to her compensation for books, etc.

Let's really try and set Sam Brower up during the same period so we don't have to go back to SLC again. I suspect he will try and delay or dodge the interview, but let him know if he's not cooperative, he will have to do it at a time and place of our choosing rather than his. Let's bring this to a head soon so if he's not going to cooperate, we can file a motion for deposition and simply set it for that time period.

Mike Piccarreta  
Dictated But Not Read

-----Original Message-----

From: BEVERLY BROOKS [mailto:BEVERLY.BROOKS@co.mohave.az.us]  
Sent: Monday, November 10, 2008 1:37 PM  
To: Barbara Polowetz  
Cc: Timothy.Linnins@azag.gov; Gary Engels  
Subject: Re: Interviews: 2nd & 3rd Week December OK

On the Salt Lake City Interviews, we have the following set up at Roger Hoole's Office.

Wednesday, December 10, 2008  
9:00 a.m. tentative - haven't received confirmation from her yet)  
11:00 a.m.

Thursday, December 11, 2008  
9:00 a.m.  
1:00 p.m. Dr. Dan Fischer

>>> Barbara Polowetz <[BPolowetz@pd-law.com](mailto:BPolowetz@pd-law.com)> 11/10/2008 10:51 AM >>>

Matt:

My trial was continued so the second and third week of December are good times to do the Salt Lake City and Texas interviews. Happy holidays.

## Barbara Polowetz

---

From: Barbara Polowetz  
Sent: Monday, December 01, 2008 12:34 PM  
To: MATT.SMITH@co.mohave.az.us; 'BEVERLY BROOKS'  
Cc: 'Debbie Caroselli'  
Subject: Sam Brower

Matt:

We have repeatedly requested Mr. Brower's interview and I know you have been diligently relaying these requests to him or his counsel, Mr. Hoole. Accordingly, if we don't have an interview set up by December 3, I will file the appropriate motion for deposition and choose a convenient time and place for you and I rather than accommodate him. Please relay this request to him and if he wishes to communicate directly with me through his counsel or by himself if he is unrepresented, that is acceptable.

Mike Piccarreta

Barbara Polowetz  
Legal Assistant to Michael L. Piccarreta  
Piccarreta Davis PC  
145 S. 6th Avenue  
Tucson, AZ 85701  
O: (520) 622-6900, ext 137  
F: (520) 622-0521  
Mike Piccarreta's email: [mlp@pd-law.com](mailto:mlp@pd-law.com)

**Barbara Polowetz**

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**From:** Barbara Polowetz  
**Sent:** Monday, November 24, 2008 9:45 AM  
**To:** MATT.SMITH@co.mohave.az.us; BEVERLY BROOKS  
**Cc:** dkcaroselli@earthlink.net  
**Subject:** Salt Lake City interviews

Matt:

Are we still lined up for Salt Lake City? If so, have we finalized the witness interview list? Have you had any luck arranging for Sam Brower during that trip? I am trying to set my schedule up so I need to get that straight as soon as possible. Thanks.

Mike Piccarreta  
Dictated But Not Read

Barbara Polowetz  
Legal Assistant to Michael L. Piccarreta  
Piccarreta Davis PC  
145 S. 6th Avenue  
Tucson, AZ 85701  
O: (520) 622-6900, ext 137  
F: (520) 622-0521  
Mike Piccarreta's email: [mlp@pd-law.com](mailto:mlp@pd-law.com)

Barbara Polowetz

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From: Barbara Polowetz  
Sent: Monday, December 08, 2008 2:28 PM  
To: 'BEVERLY BROOKS'  
Cc: 'Debbie Caroselli'  
Subject: Sam Brower

Matt:

Thanks for working so hard on Sam Brower. I have not put together his witness file so if he does show up, I will do the best I can, but I will not be able to finish his interview. But, starting and getting a chunk of it done is better than nothing as long as he understands the predicament due to late scheduling. Obviously, when we finish him up, I will not go through the same questions.

Mike Piccarreta

-----Original Message-----

From: BEVERLY BROOKS [mailto:BEVERLY.BROOKS@co.mohave.az.us]  
Sent: Monday, December 08, 2008 11:43 AM  
To: Barbara Polowetz  
Subject: Re: Carolyn Jessop

Barb, here is an updated list of the Salt Lake City interviews:

Wednesday, December 10th:

9:00  
10:00 - 12:00 p.m

(still trying to get Sam Brower for maybe after lunch)

Thursday, December 11th:

9:00  
1:00 Dan Fischer

FYI Bev

>>> Barbara Polowetz <[BPolowetz@pd-law.com](mailto:BPolowetz@pd-law.com)> 12/07/2008 9:16 AM >>>

Matt:

testified that she has received financial benefits from the State of Arizona that she believes was through Mohave County. I would be most appreciative if you could provide me a listing of all benefits she has received from the State of Arizona and/or Mohave County or any of its entities. To help refresh your memory, she discussed these things on pp. 29 through 31 of her interview.

Barbara Polowetz

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From: MATT SMITH [MATT.SMITH@co.mohave.az.us]  
Sent: Wednesday, January 28, 2009 3:35 PM  
To: Barbara Polowetz  
Subject: Re: Sam Brower

Mike, it is my understanding that Sam Brower does not intend to do a personal interview so go ahead and file any motion you feel is appropriate. Matt

>>> Barbara Polowetz <[BPolowetz@pd-law.com](mailto:BPolowetz@pd-law.com)> 01/27/2009 3:11 PM >>>

Matt:

Could you please let me know by the end of the week if Sam Brower intends to cooperate in the setting of a personal interview? If so, let's set him up for when we are in Salt Lake City to do Dr. Fischer and kill two birds with one stone. On the other hand, if he is unwilling to cooperate for a personal interview, let me know that so I can file the motion for a deposition at a time and location of my choosing. I will obviously check with you before I set it. Thanks.

Mike Piccarreta

Barbara Polowetz  
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145 S. 6th Avenue  
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Mike Piccarreta's email: [mlp@pd-law.com](mailto:mlp@pd-law.com)

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## Barbara Polowetz

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From: Barbara Polowetz  
Sent: Tuesday, February 17, 2009 10:30 AM  
To: MATT.SMITH@co.mohave.az.us; BEVERLY.BROOKS@co.mohave.az.us  
Cc: Debbie Caroselli  
Subject: and Sam Brower

Matt:

I really want to finish up as soon as possible. I can do it telephonically any day next week except Monday. I can move my schedule around to accommodate yours and hers if I can book the interview as soon as possible.

Since Mr. Brower lives in southern Utah, would he prefer a Las Vegas or St. George interview location rather than travelling to Salt Lake City in March? I will actually be in the Colorado City/St. George area March 2 through 4 so I could interview him on the 5th, preferably in Las Vegas (or St. George, if necessary). Please get back to me on these things as soon as you can as my schedule fills up quickly.

Mike Piccarreta  
Dictated But Not Read

Barbara Polowetz  
Legal Assistant to Michael L. Piccarreta  
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**Barbara Polowetz**

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**From:** BEVERLY BROOKS [BEVERLY.BROOKS@co.mohave.az.us]  
**Sent:** Monday, March 16, 2009 8:47 AM  
**To:** Barbara Polowetz  
**Subject:** Re: Sam Brower

Mike, I heard from Sam on Saturday who has agreed to do the interview Wednesday afternoon. Sorry but I didn't have your number at home to call you. Matt

>>> Barbara Polowetz <[BPolowetz@pd-law.com](mailto:BPolowetz@pd-law.com)> 3/16/2009 6:44 AM >>>  
Matt:

I am unable to wait any longer for Mr. Brower to make up his mind as to whether he will grant the voluntary interview in Salt Lake City next Wednesday. There will be no interview of Brower on Wednesday. Tuesday is my travel day and preparation for his interview is quite extensive and with all the other matters I am preparing for, including next week's interviews and a trial the following week, I can no longer wait for Mr. Brower to make up his mind. I will not say anything critical of Mr. Brower, however, I am left with the feeling that there is some type of gamesmanship going on as he has had weeks to either confirm the interview in Salt Lake City, decline it, or request the interview at another location. If Mr. Brower is willing to consent to a voluntary interview, I am willing to make myself available on April 2 or 3 at a location convenient to him. If he is unable to commit to a personal interview, I will set a deposition in accordance with Judge Conn's order. If he fails to comply with Judge Conn's order to appear for a deposition, I will seek an order of contempt.

I realize you have in good faith been trying to arrange the interview in communicating with Mr. Brower. In setting the deposition, I will, as always, take into account your schedule when determining the date, time and location.

Mike Piccarreta

Barbara Polowetz  
Legal Assistant to Michael L. Piccarreta Piccarreta Davis PC  
145 S. 6th Avenue  
Tucson, AZ 85701  
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F: (520) 622-0521  
Mike Piccarreta's email: [mlp@pd-law.com](mailto:mlp@pd-law.com)

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## Barbara Polowetz

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**From:** Barbara Polowetz  
**Sent:** Tuesday, March 17, 2009 3:28 PM  
**To:** 'MATT SMITH'; 'BEVERLY BROOKS'  
**Cc:** 'Debbie@wswlawlv.com'  
**Subject:** Sam Brower

Matt:

When setting up Sam Brower's interview, April 2 is looking better than April 3 as Rick Wright is tied up that day. If Sam is going to voluntarily be interviewed as opposed to a deposition, let me know as soon as possible if that date works for him and what his location of preference is.

Mike Piccarreta  
DICTATED BUT NOT READ

Barbara Polowetz  
Legal Assistant to Michael L. Piccarreta  
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## Barbara Polowetz

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**From:** Barbara Polowetz  
**Sent:** Wednesday, March 18, 2009 2:24 PM  
**To:** 'MATT SMITH'; 'BEVERLY BROOKS'  
**Subject:** Sam Brower

Matt:

I was just told that my trial next week will be continued as the judge is unavailable. It will be official Friday morning. Thus, if Mr. Brower wants to consent to a voluntary interview, I can be available Tuesday through Friday of next week. I am open to reasonable suggestions as to location. I can also be available the following week with the exception of Friday. I am unwilling, unless I am shown authority to the contrary, to pay Mr. Brower money to interview him. Please let me know if he is willing to consent to a voluntary interview during those time periods under those conditions. Please let him know that if he wants to have a voluntary interview, he must tell someone. I am not clairvoyant. If we don't have an interview set up and completed within the court deadline, we will set up a deposition.

Mike Piccarreta

Barbara Polowetz  
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