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

RICHARD HOLM,

Plaintiff,

vs.

WARREN JEFFS, LYLE JEFFS, THE
FUNDAMENTALIST CHURCH OF JESUS
CHRIST OF LATTER DAY SAINTS, THE
CORPORATION OF THE PRESIDENT OF
THE FUNDAMENTALIST CHURCH OF
JESUS CHRIST OF LATTER DAY SAINTS,
THE CORPORATION OF THE PRESIDING
BISHOP OF THE FUNDAMENTALIST
CHURCH OF JESUS CHRIST OF LATTER
DAY SAINTS, THE FUNDAMENTALIST
CHURCH OF JESUS CHRIST OF LATTER
DAY SAINTS, An Association of Individuals,
DOES 1 THROUGH 20, and BRUCE R.
WISAN, in his capacity as a court-appointed
Special Fiduciary,

Defendants.

COMPLAINT

Note: This matter is related to IN
THE MATTER OF THE UNITED
EFFORT PLAN TRUST, CASE
NO. 053900848, ASSIGNED TO
THE HONORABLE JUDGE
DENISE P. LINDBERG

Civil No.

Judge

Plaintiff, Richard Holm, by and through counsel, complains and alleges against the Defendants as follows:

PARTIES

1. Plaintiff, Richard Holm, is a resident of Montana, but also maintains a home in Colorado City Arizona.

2. Defendant, Warren Jeffs, is a resident of, and incarcerated in, Texas.

3. Defendant, Lyle Jeffs, is a resident of Washington County, Utah, residing at 875 North Maple Street, Hildale, Utah.

4. Defendants, Does 1 through 20, are, on information and belief, leaders of the institutional defendants identified below, who are presently unknown, but who shall be identified in future pleadings in this matter.

5. Defendant, the Fundamentalist Church of Jesus Christ of Latter Day Saints, is an unincorporated religious organization operated by Defendants Warren Jeffs, Lyle Jeffs and Does 1 through 20 with its principle place of business in Washington County, Sate of Utah.

6. Defendant, the Corporation of the President of the Fundamentalist Church of Jesus Christ of Latter Day Saints, is a Utah corporation operated by Defendants Warren Jeffs, Lyle Jeffs and Does 1 through 20 with its principle place of business in Washington County, Sate of Utah.

7. Defendant, the Corporation of the Presiding Bishop of the Fundamentalist Church of Jesus Christ of Latter Day Saints, is a Utah corporation operated by Defendants Warren Jeffs, Lyle Jeffs and Does 1 through 20 with its principle place of business in Washington County, Sate of Utah.

8. The term "FLDS Church," as referred to herein, collectively means the corporation known as the Fundamentalist Church of Jesus Christ of Latter Day Saints, the Corporation of the President of the Fundamentalist Church of Jesus Christ of Latter Day Saints and the Corporation of the Presiding Bishop of the Fundamentalist Church of Jesus Christ of Latter Day Saints.

9. On information and belief, Defendant, the Fundamentalist Church of Jesus Christ of Latter Day Saints, An Association of Individuals, consists of members of the FLDS Church who reside primarily in Hildale, Utah and Colorado City, Arizona on land owned by the United Effort Plan Trust ("UEP Trust" or "Trust").

10. Bruce R. Wisan is the court appointed Special Fiduciary in the matter known as In The Matter of the United Effort Plan Trust, Case No. 053900848.

11. The term "FLDS," as referred to herein, means the individual members of the FLDS Church lead and operated by Warren Jeffs and Lyle Jeffs. The term "Defendants" includes the FLDS Church and the FLDS, but does not include the Special Fiduciary.

12. Plaintiff, Richard Holm, reserves the right to amend this Complaint to identify Doe Defendants, name additional defendants and to add additional facts and claims as necessary.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this case pursuant to Utah Code Ann. §§ 78A-5-102, 78B-3-205, 75-7-201(a) and 78B-6-401, and as further set forth below.

14. On May 26, 2005, the Attorney General of Utah, invoking the jurisdiction of the Utah Probate Code, commenced a probate proceeding in the Third Judicial District Court known as "In the Matter of the United Effort Plan Trust, Case No. 053900848.

15. This Court exercised its jurisdiction in the probate case pursuant to Utah Code Ann. §§ 75-7-201, 75-7-706 and 75-7-1001; the Amended and Restated Declaration of Trust of the United Effort Plan Trust, dated November 3, 1998, which stated that the "Trust shall be construed, administered, and governed by the law of the State of Utah. . . ."; and the UEP Trust's ownership of land in Utah.

16. On May 27, 2005, this Court entered an order appointing Bruce R. Wisan to serve as the Special Fiduciary of the UEP Trust. The Special Fiduciary's appointment was confirmed in subsequent orders of the Court dated May 31, 2005; June 6, 2005; June 16, 2005; and June 22, 2005. On September 7, 2005, the Court expanded the authority of the Special Fiduciary. On October 25, 2006, in connection with the reformation of the UEP Trust, the Court entered an additional order affirming and clarifying the authority of the Special Fiduciary.

17. This Court has analyzed its jurisdiction over the probate proceeds and ruled that: "Pursuant to Utah Code Annotated § 75-7-201(a) '[t]he court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts.' This includes ' . . . (ii) the declaration of rights; and (iii) the determination of other matters involving trustees and beneficiaries of trusts.' Utah Code Ann. § 75-7-201(1)(b)." *See* Ruling and Order on the UEP Trust's Renewed Motion for Order to Show Cause Re: Unauthorized Filings and the Special Fiduciary's Recommended Action for Procedures to Address and Resolve Competing Claims, copy attached as **Exhibit A**, at 7.

18. In so ruling, the Court noted a conflict in the venue statutes between "the Probate Code's broad grant of authority whenever the controversy (a) involves challenges to the administration of Trust property, or (b) challenges [to] the Special Fiduciary's authority to manage

the Trust property" and held that the venue statutes must yield to the Probate Code. *Id.* "In other words, where the challenge is to the decisions or action of the Special Fiduciary in managing the Trust *res*, under the *custodial legis* doctrine or principles of receivership referenced earlier, the Court holds those matters lie within the exclusive jurisdiction [and necessarily, the venue] of this Court." *Id.* (footnote omitted).

19. The present case involves a dispute over Trust property arising from a lease agreement involving UEP Trust property entered into by the Special Fiduciary and Richard Holm. Accordingly, both jurisdiction and venue are proper in this Court, and this matter should be consolidated with the probate proceedings known as In The Matter of the United Effort Plan Trust, Case No. 053900848, which proceedings are presently assigned to the Honorable Judge Denise P. Lindberg.

FACTUAL ALLEGATIONS

20. On November 20, 2006, the Special Fiduciary entered into an Occupancy Agreement or lease with Richard Holm whereby Richard Holm agreed to lease the Holm School Building (including the modular out buildings and class rooms) located at 1055 Carling Street, Hildale, Utah (the "Holm School"). A copy of the Occupancy Agreement (the "Lease") is attached as **Exhibit B**.

21. Under the heading, "Obligations to Maintain/General Obligations/Surrender of Premises," the Lease requires the following of Richard Holm:

- (a) **Occupant shall at all times and at his/her own expense repair and maintain the Premises in a clean, sanitary and safe condition** including but not limited to, all electrical, cooling, heating, and plumbing systems and all appliances, fixtures, furniture and furnishings.
- (b) **Occupant shall not allow any waste, nuisance, or damage to any portion of the Premises.**

- (c) Occupant shall timely respond to all reasonable requests of the Fiduciary to up keep, clean and maintain the Premises for the general welfare and safety of all persons using the Premises.
- (d) **Occupant shall coordinate reservations of the Premises by community groups. In the event that multiple groups want to schedule use of the Premises on the same day or time, Occupant shall make the final decision.**
- (e) **Occupant shall obtain the Fiduciary's written approval before making any material improvements or modifications to the Premises.**
- (f) All improvements to the Premises shall be in compliance with the applicable building codes and other regulations.
- (g) Occupant shall provide written notice to the Fiduciary of any intention to move from or vacate the Premises at least ten (10) days in advance.
- (h) **At termination of this Agreement, Occupant shall quit and deliver the quiet and peaceful possession of the Premises to Fiduciary or his agent in as good or better condition, ordinary wear and tear excepted, as when the Premises were accepted under this Agreement.**

Exhibit B at 1-2 (emphasis added).

22. The Lease also states that the Holm School "shall be used as a facility for education, occupational training, and community economic development events and activities and is open to use by all Trust Participants and persons residing in the communities of Hildale, Utah, Colorado City, Arizona, and surrounding communities." *Id.* at 2.

23. The Lease further states that "[n]o person shall be denied use of the Premises based on religious affiliation or other protected categories under federal and state law." *Id.*

24. Consistent with the purposes of the lease, Richard Holm, who was expelled from the FLDS Church in 2003, and his brother, Thomas Holm, who until at least December 15, 2011 was a member in good standing of the FLDS Church, have together collaborated to use the Holm School

as a school for their respective non-FLDS and FLDS children, as well as for the education of the children of dozens of other FLDS parents.

25. Over the last few days, however, Thomas Holm's standing among the FLDS has been placed in question to the point that it no longer appears that he is considered a member of the FLDS Church, and, as a result, a contest has arisen over the use and control the Holm School by Richard Holm and Thomas Holm on the one hand and the FLDS on the other. As a result, the Holm brothers and the FLDS Church are asserting competing rights to the use and occupancy the Holm School.

26. Richard Holm claims to be the lawful possessor of the Holm School under the Lease (entitled, "Occupancy Agreement") he entered into with the Special Fiduciary; recognizes his responsibilities to manage and maintain the property for the benefit of Trust Participants without regard to religious affiliation as required by the Lease; and agrees with the position stated by the Washington County attorney in a letter dated December 20, 2011, copy attached as **Exhibit C**, that his lease of the Holm School from the Special Fiduciary is enforceable just as if it were a deed or a lease.

27. In opposition to Richard Holm's claims, the FLDS have stated their belief that this Court and the Special Fiduciary have no authority over the UEP Trust; rather, they rely on an order from the United States District Court for the District of Utah that had sought to return UEP Trust property to the FLDS Church until that order was stayed, and despite the fact that the order is stayed are now engaging in unlawful acts of self-help as to the Holm School.

28. The only change in the circumstances surrounding Richard Holm's lease of the Holm School and his use of the Holm School, in conjunction with his brother Thomas Holm, as a school for the children of Trust Participants is the change in Thomas Holm's status in the FLDS Church;

having lost his membership, Thomas Holm, who had been allowed to possess and operate the Holm School by Richard Holm, is no longer a recognized member of the FLDS Church.

29. This development has placed Richard Holm's lease of the Holm School in jeopardy because the Lease states that "[n]o person shall be denied use of the Premises based on religious affiliation or other protected categories under federal and state law." *See* Exhibit B at 2.

30. Specifically, on the evening of Thursday, December 16, 2011, Richard Holm, Thomas Holm and Harold Holm, who was also recently expelled by the FLDS and whose children were attending the Holm School until they disappeared, went to inspect and verify that Richard Holm and Thomas Holm were still in control of the Holm School, and found that the locks had been changed and the keys would not work.

31. Within a few minutes of being on the premises, the whole area was swarmed with the FLDS, led by Berklee Holm and local police officer, Jerry Darger. Officer Drager demanded to know what they were doing there, as he had been told falsely by Berklee Holm that Berklee Holm was now and had been in possession of the buildings for the last several years. Richard Holm explained to Officer Drager that he was there to inspect the Holm School and to maintain his possession and control, under the Lease.

32. There were a number of FLDS men in the main school building, who would not open the doors, nor identify themselves, thus preventing Richard Holm from entering the building.

33. When Richard Holm explained the Lease to Officer Darger and asked the Officer to have Berklee Holm turn over the keys, Officer Drager said it was a "civil matter," that he was only there to "keep the peace" and that he "would not ask anyone to leave."

34. Richard Holm then taped a note on each of the exterior doors of the occupied building giving notice that any use of the buildings would have to be authorized.

35. While doing so, Berklee Holm notified Richard Holm that he had the utilities changed to his name, and that it was "priesthood property," and he had been given the responsibility to manage it, and that Richard Holm had no right to be there.

36. In an argumentative and loud manner, Berklee Holm also said that Bruce Wisan was not in charge, that they would not recognize his authority, that Judge Lindberg was wrong, that Judge Benson had taken control, and that Judge Benson had given the control over to the FLDS.

37. After asking several times for help from Officer Drager and being told that it was only a civil issue and he could do nothing without a court order, Richard Holm, in the company of his brothers, left for the night.

38. The following day, Richard Holm, Thomas Holm, Harold Holm and Willie Jessop, who has also been expelled from the FLDS, went to the Holm School and were able to get inside the main building. Within a few minutes, however, the whole area was again swarmed with FLDS men and two law enforcement officers, Jon Roundy and Sam Johnson, from the Hildale/Colorado City Police Department.

39. Richard Holm and his companions requested assistance from the Washington County Sheriff's Office and deputy sheriffs were dispatched to the scene, but diverted in route to handle a domestic altercation in LaVerkin.

40. After Richard Holm provided Police Chief Roundy and Officer Johnson copies of his Lease and an order staying Judge Benson's order, Police Chief Roundy asked the FLDS to leave the

Holm School, and several hours later, after they were allowed to gather what they considered their personal property, they departed.

41. However, the next morning, Sunday December 11, 2011, another standoff began when Richard Holm arrived at the Holm School to find that Berklee Holm had changed his mind.

42. The previous night, Berklee Holm had returned with some young FLDS men, stayed overnight in the building, and would not let Richard Holm or any other non-FLDS person inside.

43. In response, Hyrum Roundy, a local law enforcement officer, arrived and declared that he was only there to keep the peace, and nothing else. He stated that he was sent by Police Chief Jon Roundy, who was busy, and that he would do nothing to enforce the Lease. Officer Hyrum Roundy also announced that it would require a court order for the local officers to enforce the Lease.

44. While Officer Roundy was talking to Richard Holm, FLDS work crews arrived and began digging holes, pouring concrete and installing metal fencing to block the north entrance into the Holm School parking lot. The work crew also willed the gate at the east entrance to the Holm School closed in order to block access from the east. The north and east entrances provided the only access to the Holm School parking lot.

45. Richard Holm demanded Officer Roundy to stop the workmen from altering and damaging the Holm School property, but the officer refused. After numerous requests for help and being repeatedly refused law enforcement assistance, Richard Holm approached Officer Sam Johnson, who had just arrived, and requested the same help from him. After more insistence from Richard Holm, Officer Johnson eventually told the FLDS work crew to stop, which they did.

46. Sunday, December 18, 2011, ended with the FLDS still occupying the main building of the Holm School and FLDS law enforcement refusing further requests to enforce the Lease.

47. On Monday, December 19, 2011, the standoff continued. FLDS work crews again began installing fencing to close off entrances to the Holm School with local law enforcement standing by, doing nothing to keep the peace, and refusing to acknowledge the validity of the Lease.

48. In the late afternoon and evening of Tuesday, December 20, 2011, with the help of the Washington County Attorney, who personally delivered his letter (**Exhibit C**) to local law enforcement, and with the assistance of the Washington County Sheriff's office, possession and occupancy of the Holm School was temporarily returned to Richard Holm.

49. However, at night on December 20, 2011, FLDS men returned to the Holm School and stayed overnight---and apparently even now remain in some of the Holm School structures---further evidencing the Defendants' intent to engage in ongoing self-help with the toleration and even the approval of local law enforcement, making it clear that a restraining order will be required to make local law enforcement comply with the Lease and keep the peace.

50. Notwithstanding this Court's jurisdiction and its long judicial oversight and administration of the UEP Trust through the Special Fiduciary, the FLDS refuse to acknowledge its authority and instead voice their reliance on an order from the United States District Court for the District of Utah.

51. On April 8, 2011, the federal district court entered an order directing that UEP Trust assets, including the Holm School Building, be placed under the control of the FLDS Church, but further ordered the FLDS Church's "Association of Individuals" to "abide by the terms of any leases entered by the Special Fiduciary." *See* Preliminary Injunction Order in Case No. 2:08-CV-772-DB, copy attached as **Exhibit D**, at 4.

52. The federal district court further ordered:

No person or entity is to directly or indirectly interfere with, intimidate, harass or coerce any other person or entity in connection with the use or occupancy of Trust property. Prohibited acts include, but are not limited to, acts having the purpose or effect of harassment, intimidation or provocation; damage to or removal of personal property or fixtures. . . .¹

53. Notwithstanding the federal court's order, on April 11, 2011, this Court entered a "Ruling and Order Directing the Special Fiduciary to Retain UEP Trust Assets Pending Further Order of This Court," a copy of which is **Exhibit E**. In that ruling, this Court self-imposed a limited stay, but directed that "actions necessary to preserve and protect the assets of the Trust" could be undertaken:

To minimize my conflict with the federal court, however, this Court agrees that **other than those actions necessary to preserve and protect the assets of the Trust, the Special Fiduciary should initiate no other affirmative action until there is a final appellate decision affirming, modifying, or overturning the federal court's order**. The determination of the need to act for the preservation of Trust assets shall be committed, in the first instance, to the Special Fiduciary's business judgment, subject to review by this Court.

See **Exhibit E** at 4 (emphasis added).

54. On April 15, 2011, the United States Court of Appeal for the Tenth Circuit entered a temporary Stay Order, enjoining the April 8, 2011 Preliminary Injunction Order of the federal district court. See Stay Order, copy attached as **Exhibit F**, at 2.

55. On April 27, 2011, the Tenth Circuit entered a further Order Staying the District Court's April 8, 2011 Preliminary Injunction Order and April 14, 2011 Show Cause Order, copy attached as **Exhibit G**. In this order, the Tenth Circuit recognized and repeated this Court's order

¹Ironically, the FLDS claim that the federal district court's stayed order is enforceable, but do not even comply with it. They are not "abid[ing] by the terms of any leases entered by the Special Fiduciary" and they are "directly or indirectly interfer[ing] with, intimidat[ing], harass[ing] or coerc[ing] any other person or entity in connection with the use or occupancy of Trust property. . . ." See **Exhibit D**, at 4.

that "other than those actions necessary to preserve and protect the assets of the Trust, the Special Fiduciary should initiate no other affirmative action until there has been a final appellate decision affirming, modifying, or overturning the federal district court's order." *Id.* at 2.

56. Richard Holm recognizes that this language---written by this Court and relied on by the Tenth Circuit---is directed toward the Special Fiduciary, but believes that this Court's language is broad enough to authorize him, as a lessee of UEP Trust property and one who is charged under a Lease entered into with the Special Fiduciary, to "preserve and protect the assets of the Trust" for which he is responsible under the Lease.² See **Exhibit E**, at 4 and **Exhibit G** at 2.

57. Not enforcing his rights under the Lease, however, places him at significant legal and financial risk, thus requiring him to bring this action in order to seek appropriate relief, including a restraining order, so that the Defendants and local law enforcement will have no excuse but to respect and protect his interest in the Holm School while preserving the peace.

58. Allowing the Defendants to ignore Occupancy Agreements and leases, engage in self help, breach the peace and significantly alter and damage Trust assets is directly contrary to this Court's order, as echoed by the 10th Circuit, to "preserve and protect the assets of the Trust."

59. Moreover, as stated in the Ruling and Order on the Special Fiduciary's Motion for Guidance on Resolution of Property Tax Crises, copy attached as **Exhibit H**, the Defendants' refusal to honor Occupancy Agreements and leases entered into by the Special Fiduciary undermines the

²Richard Holm was also one of the three Private Beneficiaries, who, like the Utah Attorney General, filed a petition with this Court on May 26, 2005 to commence the probate proceedings known as In the Matter of the United Effort Plan Trust. As such, he may be bound by the litigation stand down order entered in that matter. Assuming this action is consolidated into these probate proceedings, Richard Holm will file a motion to partially lift the stand down order as soon as consolidation occurs and it is possible for him to do so.

very purpose of this Court's trust administration and the Special Fiduciary's ability to collect lease and occupancy fees, as well as the funds required to pay property taxes in order to "preserve and protect the assets of the Trust."

TRESPASS

60. Richard Holm had lawful possession and the right to the quiet and peaceable enjoyment of the Holm School at the time of the unlawful interference described herein.

61. The Defendants interfered with Richard Holm's exclusive right to possession and quiet and peaceable enjoyment of the Holm School by entering, occupying, altering and damaging the Holm School.

62. The Defendants intended to perform the acts described herein and others that resulted in their unlawful invasion by entering, occupying, altering and damaging the Holm School.

63. The Defendants had no right to do the acts described herein and others that constitute their unlawful invasion of the Holm School leased to Richard Holm.

64. As a direct and proximate result of the unlawful invasion described herein, Richard Holm has been damages in amounts to be proven at trial.

DECLARATORY RELIEF

65. Richard Holm has legally protected interests in the Lease and his quiet and peaceable enjoyment of the Holm School Building according to the terms of the Lease.

66. This Court has jurisdiction over the parties to this action and authority, pursuant to Utah Code Ann. § 78B-6-401, to declare their rights and legal relations, and, under the circumstances, this Court's determination is necessary to terminate the controversy as to Richard Holm's Lease.

67. For purposes of this claim for declaratory relief, the Special Fiduciary has been named a party to this action, pursuant to Utah Code Ann. § 78B-6-403.

68. The actions of the Defendants³ have created justiciable controversies in that they have prevented and interfered with Richard Holm's enforceable legal rights and interests.

69. The actions of the Defendants have further created justiciable controversies between them, the Special Fiduciary, Richard Holm and other non-FLDS persons in that the Defendant's actions have resulted in injuries capable of repetition, yet evading review because, like Richard Holm others who have entered in Occupancy Agreements and leases with the Special Fiduciary are often not capable of petitioning for and obtaining relief.

70. The interests of Richard Holm are adverse to the interests of the Defendants in preventing his enforcement of the Lease and his quiet and peaceable enjoyment of the Holm School and outweigh the Defendants' interests, which are contrary to law.

71. These issues are ripe for determination because the Defendants have and continue to interfere with Richard Holm's Lease and his right to the quiet and peaceable enjoyment of the Holm School.

72. Richard Holm is entitled to a declaratory judgment, pursuant to Utah Code section 78B-6-401 *et seq.* and Rule 57 of the Utah Rules of Civil Procedure, that:

- a. The Defendants have no right to prevent or interfere with the legally protected interest of Richard Holm in the Lease.

³As noted at paragraph 10, the Special Fiduciary is not included in the defined term "Defendants" in this action.

b. The Defendants have no right to prevent or interfere with the legally protected interest of Richard Holm in his quiet and peaceable enjoyment of the Holm School.

c. The Defendants must provide Richard Holm immediate physical possession of the Holm School Building.

73. Richard Holm has the right, as provided in Utah Code section 78B-6-406, to petition this Court for supplemental relief and court orders as may be necessary.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Richard Holm, requests a judgment in his favor against Defendants for the following:

a. Damages in an amount commensurate with his injuries and the damage to the Holm School, including all special and general damages.

b. A declaratory judgment, pursuant to Utah Code section 78B-6-401, *et seq.* and Rule 57 of the Utah Rules of Civil Procedure, that:

i. The Defendants have no right to prevent or interfere with the legally protected interest of Richard Holm in the Lease;

ii. The Defendants have no right to prevent or interfere with the legally protected interest of Richard Holm in his quiet and peaceable enjoyment of the Holm School;

and

iii. The Defendants must provide Richard Holm immediate physical possession of the Holm School Building.

d. Costs, expenses and post-judgment interest.

e. Any other relief that the Court deems just and equitable, including costs and attorney fees as provided by Utah Code Ann. § 78B-6-411.

Dated this 21st day of December, 2011.

HOOLE & KING, L.C.

Roger H. Hoole
Attorneys for Richard Holm