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7  
8 Attorneys for Defendant Watchtower Bible and Tract Society of  
New York, Inc., sued herein as Doe 2, Supervisory Organization

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

11 JOSE LOPEZ, an Individual,  
12 Plaintiff,  
13 v.  
14 DOE 1, LINDA VISTA CHURCH; DOE  
2, SUPERVISORY ORGANIZATION;  
15 DOE 3, PERPETRATOR; and DOES 4  
through 100, inclusive,  
16 Defendants.

CASE NO. 37-2012-00099849-CU-PO-CTL  
**DEFENDANT WATCHTOWER BIBLE AND  
TRACT SOCIETY OF NEW YORK, INC.'S  
OBJECTION TO NEW EVIDENCE AND  
ISSUES RAISED IN PLAINTIFF'S REPLY  
AND SUR-REPLY BRIEF**

**IMAGED FILE**

Date: May 2, 2014  
Time: 8:30 a.m.  
Dept: C-65  
Judge: Joan M. Lewis

Complaint Filed: June 29, 2012  
Trial Date: June 27, 2014

20 Defendant Watchtower Bible and Tract Society of New York, Inc. (Watchtower) hereby  
21 submits this sur-reply brief and its objection to new issue and evidence raised by in plaintiff's  
22 reply brief on support of its motion for terminating sanctions.

23 **I**

24 **PLAINTIFF'S NEW ISSUE AND DECLARATION OF RAFIQ WAYANI**

25 "The salutary rule is that points raised in a reply brief for the first time will not be  
26 considered unless good cause is shown for the failure to present them before." (See *In Re*  
27 *Marriage of Millet* (1974) 41 Cal.App.3d 729, 732, 116 Cal.Rptr. 390; 6 Witkin, Cal.Procedure  
28 (2d ed. 1971) Appeal, § 442, p. 4405.) (*Balboa Ins. Co. v. Aguirre* (1983) 149 Cal.App.3d 1002,

1 1010.)

2 Plaintiff's reply brief has raised a new issue and submitted new evidence that was not  
3 included in plaintiff's original moving papers. Plaintiff has argued in the reply brief that  
4 Watchtower has the ability to search its Sharepoint program and locate the documents that plaintiff  
5 claims he needs for certain selected issues. That argument was not raised in plaintiff's original  
6 moving papers despite the fact that plaintiff had taken the deposition of Richard Ashe who  
7 provided all of the testimony about the Sharepoint program and the inability to simply conduct a  
8 search of its database to locate the documents requested. Plaintiff raised this argument in his reply  
9 brief and submitted a declaration from a purported expert on the Sharepoint program. Code of  
10 Civil Procedure section 1005, subdivision (b), required the plaintiff to submit "all moving and  
11 supporting papers" at the time the motion for terminating sanctions was filed. That did not occur.  
12 The court can refused to consider arguments first raised in reply papers. (*Balboa Ins. Co. v.*  
13 *Aguirre* (1983) 149 Cal.App.3d 1002, 1010.) To permit plaintiff to raise new arguments and  
14 submit new evidence in its reply brief would be a violation of Watchtower's due process rights.

15 Therefore, defendant Watchtower requests this Court to disregard that issue and to strike  
16 that issue from plaintiff's reply brief as well as to strike the declaration of Rafiq Wayani.

17 **II**

18 **WATCHTOWER REQUESTS THE COURT TO CONSIDER THIS SUR-REPLY BRIEF**  
19 **SHOULD THIS COURT DENY WATCHTOWER'S REQUEST TO STRIKE THE NEW**  
20 **ISSUE AND EVIDENCE SUBMITTED BY PLAINTIFF**

21 In an abundance of caution, Watchtower requests that this Court read and consider this sur-  
22 reply brief and the declaration of Richard Ashe which addresses the new issue raised by the  
23 plaintiff.

24 Plaintiff's Sharepoint expert expresses opinions that the documents sought can be located  
25 in a few days up to a few months. (Wayani declaration, page 5, lines 1-3.) However, Mr. Wayani  
26 qualifies his opinions by stating that they are merely "estimates" and it would "depend on how  
27 organized the data is."

28 What Mr. Wayani does not address in his opinions that are based upon pure speculation is  
that these documents are not organized so that a search of the term "child abuse" or "child sexual

1 abuse” could be entered and the documents identified for purposes of review for third-party  
2 privacy rights, ministerial privileged communications and attorney client and attorney work  
3 product privileges.

4 Mr. Wayani does not understand the religious beliefs and practices of the Jehovah’s  
5 Witnesses religion. They do not report the sin of “child abuse.” On the contrary, the secular  
6 concept of child abuse would fall under one of *numerous sins as defined by the Bible*. The sins  
7 under which child abuse might be reported could be porneia, loose conduct, fornication, or  
8 uncleanness. Unfortunately, a search with just those Bible terms will also be unsuccessful.  
9 There are many other sins that fall under those same terms. Any matter considered notorious or  
10 scandalous from a spiritual viewpoint could be considered one of those terms. For example, bad  
11 business deals involving fraud, adulterous remarriage, treacherous divorce, two teenagers having  
12 pre-marital sex, etc., could all fall under those sins as defined by the Bible. In other words, the  
13 only way to conduct a search is to open the file on the database for each individual congregation  
14 and then reviewing the file to try and locate any documents that would be related to child sexual  
15 abuse.

16 Furthermore, Mr. Wayani does not know or address the facts that many of the documents  
17 are in languages other than English. There are 4,214 Spanish congregations and 960 other foreign  
18 language congregations in the United States branch territory of the Jehovah Witnesses.  
19 Consequently, these searches would have to be conducted by someone who is fluent in the  
20 language of the congregation.

21 Mr. Wayani’s declaration also fails to address the fact that many of the documents that  
22 were scanned and sent to the Service Department as pictures or images and the optical character  
23 recognition program does not work and the format is not searchable.

24 Mr. Wayani also fails to address the time that would be necessary to review any documents  
25 located, redact out third-party privacy information of other victims or witnesses, redact out any  
26 attorney-client communications or attorney work product information, and prepare a privilege log.

27 In addition, Mr. Wayani’s declaration does not address whether the definition of child  
28 sexual abuse that is applicable will be the definition under California law or the definition of child

1 sexual abuse of the other 49 states and 2 territories that fall within the United States Branch of  
2 Jehovah's Witnesses.

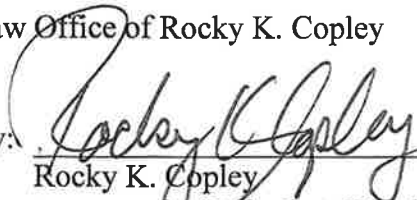
3 In summary, Mr. Wayani provides opinions on the length of time necessary to locate these  
4 documents that are meaningless because they are not based upon all of the factual information.  
5 Likewise, these documents are confidential within the Jehovah Witness religion and would need to  
6 be reviewed by Service Department Elders. The cost of such a review would be close to \$500,000  
7 and it would take in excess of 20 years to complete the review of the documents assuming a  
8 review of 8 hours per day and a 40 hour work week.

9 Elders who are not Service Department Elders cannot be used to search for, review, redact  
10 or produce documents responsive to plaintiff's request because of the religious beliefs and  
11 practices of Jehovah Witnesses. Those religious beliefs and practices require only Service  
12 Department Elders to read and review any confidential spiritual documents received from  
13 congregation elders from the over 14,000 congregations in the United States branch. To compel  
14 Watchtower to allow someone other than a Service Department Elder to review these documents  
15 would be a violation of its First Amendment rights since it would violate its religious practices and  
16 beliefs by requiring someone else other than a Service Department Elder to review the documents  
17 contained in the congregation files.

18 **III**  
19 **CONCLUSION**

20 In conclusion, Watchtower respectfully requests that this Court strike the new issue raised  
21 by the plaintiff as well as Mr. Wayani's declaration. In the alternative, Watchtower requests that  
22 this Court read and consider this sur-reply brief and the declaration of Richard Ashe submitted  
23 herewith.

24  
25  
26 Dated: April 29, 2014

Law Office of Rocky K. Copley  
By:   
Rocky K. Copley  
Attorney for Defendant Watchtower Bible and  
Tract Society of New York, Inc.

28

1 PROOF OF SERVICE  
2 (Code Civ. Proc., §§ 1013a, 2015)

3 *Jose Lopez v. Doe 1, Linda Vista Church, et al.*  
4 Case No. 37-2012-00099849-CU-PO-CTL

5 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

6 I am employed in the County of San Diego, State of California. I am over the age of 18  
7 and not a party to the within action; my business address is 225 Broadway, Suite 2100, San Diego,  
8 California, 92101.

9 On April 29, 2014, I served the foregoing document described as Defendant Watchtower  
10 Bible and Tract Society of New York, Inc.'s Objection to New Evidence and Issues Raised in  
11 Plaintiff's Reply and Sur-reply Brief; and Declaration of Richard Ashe in Support of Defendant  
12 Watchtower's Sur-Reply in Opposition to Plaintiff's Motion for Sanctions on the other parties in  
13 this action in the manner indicated below as follows:

14 **By Overnight Courier**

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29  **By Overnight Carrier:** I am readily familiar with the practice of Law Office of Rocky  
30 K. Copley for collection and processing correspondence for overnight delivery and know that the  
31 document(s) described herein will be deposited in a box or other facility regularly maintained by  
32 for overnight delivery.

33  **By Email or Electronic Transmission:** I caused a copy of the document(s) to be sent  
34 from email address tstant@rkc-rocklaw.com to the persons at the email addresses listed above. I  
35 did not receive, within a reasonable time after the transmission, any electronic message or other  
36 indication that the transmission was unsuccessful.

37 I declare under penalty of perjury under the laws of the State of California that the above is  
38 true and correct. Executed on April 29, 2014, at San Diego, California.

\_\_\_\_\_  
Tomi Lee Stant