

**F I L E D**

Clerk of the Superior Court

MAY 13 2011

By: A. SEAMONS, Deputy

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6

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR THE COUNTY OF SAN DIEGO**  
9

10  
11 John Dorman, Individually, and Joel  
Gamboa, Individually,

12 Plaintiffs,

13 vs.

14 Defendant Doe 1, La Jolla Church;  
15 Defendant Doe 2, Linda Vista Church;  
16 Defendant Doe 3, Supervisory Organization;  
17 Defendant Doe 4, Perpetrator; and Does 5  
through 100,

18 Defendants.  
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Case No: 37-2010-00092450-CU-PO-CTL

**PLAINTIFFS' REPLY IN SUPPORT  
OF MOTION TO COMPEL FURTHER  
DOCUMENTS FROM DEFENDANTS**

Date: 5-20-11

Time: 9:00 a.m.

Judge: Steven R. Denton

Dept: C-73

MAY 13 2011 PM 3:21

**PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO COMPEL FURTHER DOCUMENTS**

1 **I. INTRODUCTION**

2 The documents at issue in this motion are administrative in nature. They begin chronologically  
3 with a written complaint by Plaintiff John Dorman's parents to a local congregation of Jehovah's  
4 Witnesses about Plaintiff Dorman's molestation by the Perpetrator. The ensuing documents chronicle  
5 the progress of the complaint through the Jehovah's Witness judicial process. The documents describe  
6 the judicial committee's investigation of a crime, its findings, its decision to disfellowship the  
7 Perpetrator, the evidence supporting that decision, and the process by which the Perpetrator was  
8 reinstated as one of Jehovah's Witnesses.

9 The documents contain statements of fact uncovered through the judicial investigation of the  
10 misconduct by the Perpetrator. Each such statement made to a judicial committee was made with the  
11 knowledge that it could be disclosed to elders at the Branch Office; circuit or district overseers; elders on  
12 a judicial committee created to hear an appeal of the original judicial committee's disposition; subsequent  
13 congregation secretaries and elders; the Watchtower Legal Department; possibly local law enforcement;  
14 and elders on a judicial committee convened to determine whether to reinstate the Perpetrator.

15 While Defendants have liberally used the word "confidential" to describe communications made  
16 to a judicial committee, there is a stark difference between keeping information confidential as the word  
17 is used by the Defendants (i.e. subject to potential review by multiple individuals within the Jehovah's  
18 Witness Church), and confidential for purposes of triggering the clergy-penitent privilege, which requires  
19 that the communication not be disclosed to a single soul who was not present for the original  
20 communication. *See* Cal. Evid. Code § 1032 (requiring the communication to be made in confidence, "in  
21 the presence of no third person" to a person with a religious obligation to keep the statement secret); *see*  
22 *also Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417 (*RCALA*)  
23 (communication not privileged when shared with multiple individuals within church who were tasked  
24 with caring for the communicant.) A statement made with knowledge that it may be shared with some  
25 third person is not a confidential statement under the Evidence Code, and is therefore not privileged.

26 In addition to asserting the clergy-penitent privilege, Defendants make claims relating to the  
27 religion clauses of the First Amendment, the relevance of documents generated after the last date of  
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1 molestation of the Plaintiffs, and third party privacy.<sup>1</sup> None of these ancillary objections provide any  
2 basis for denying production of the subject documents. The motion to compel should be granted.

3 **II. THE CLERGY-PENITENT PRIVILEGE**

4 The foundation of the clergy-penitent privilege in California is the making of a “penitential  
5 communication.” A “penitential communication means a communication made in confidence, in the  
6 presence of no third person so far as the penitent is aware, to a member of the clergy who, in the course of  
7 the discipline or practice of the clergy member’s church, denomination, or organization is authorized or  
8 accustomed to hear those communications and, under the discipline or tenets of his or her church,  
9 denomination, or organization, has a duty to keep those communications secret.” Cal. Evid. Code § 1032.  
10 This provision was interpreted in *RCALA*, 131 Cal.App.4th 417, which provides the controlling analysis.

11 **A. Roman Catholic Archbishop of Los Angeles v. Superior Court (RCALA)**

12 *RCALA* involved grand jury subpoenas to compel production of certain priests’ personnel files in  
13 the possession of the Archbishop. 132 Cal.App.4th at 424. The Archdiocese argued that:

14 “[U]nder the Church’s ‘formation of clergy’ doctrine, a bishop is charged with the responsibility  
15 of sanctifying his priests, and is obligated to care for and treat any emotional, physical, or spiritual  
16 problem a priest may be experiencing. In carrying out this obligation . . . the bishop is obliged to  
17 intervene and judge inappropriate conduct of any priest and to impose restrictions and penalties as  
18 appropriate in his moral judgment . . . these tasks require open communications between the  
19 bishop and his priests.” 131 Cal.App.4th at 427.

20 Such discussions between the Archbishop and his priests were considered confidential and often  
21 took place in the context of “troubled-priest interventions.”

22 The bishop is permitted to appoint Episcopal vicars who wield the authority of the bishop in the  
23 limited spheres to which the vicar is appointed. *Id.* The Archbishop appointed a Vicar for Clergy to help  
24 him manage his “formation of clergy” obligations. *Id.* “Participants in the Archdiocese’s troubled-priest  
25 interventions knew any communications likely were to be shared with more than one person.” *Id.* at 444-  
26 445. However, records relating to such investigation are kept confidential and apart from the priest’s  
27 personnel file. *Id.* at 428. The court noted:

28 “The Archdiocese argues the challenged subpoenaed documents fall within California’s clergy-

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<sup>1</sup> The issue of third party privacy was conclusively and exhaustively discussed in Plaintiffs’ moving papers, and no further discussion is warranted by Defendants’ Opposition.

1 penitent privilege because they were confidential communications made in the course of troubled-  
2 priest interventions, and under the tenets of the church, Cardinal Mahony and the Vicar for Clergy  
3 were authorized to hear the communications and obligated to keep them secret. The Archdiocese  
4 also presented evidence the interventions with troubled priests depend on the troubled priests'  
5 understanding the communications will be held in confidence *within the church*." 131  
6 Cal.App.4th at 444 (italic emphasis in original.)

7 The Archdiocese attempted to interpret the "penitential communication" requirement of the  
8 clergy-penitent privilege so liberally as to require only that the communication be held in confidence  
9 *within the church*. The Archdiocese also argued that since the Vicar for Clergy exercises the  
10 Archbishop's formation of clergy powers, they are really alter egos and the sharing of information  
11 between them is not a disclosure to a third person. *Id.* at 445. The court disagreed, finding that keeping  
12 communications within the Church, or even within a select few within the Church who would make  
13 decisions about the troubled priests' care, was not sufficient to qualify as a "penitential communication."

14 "This sharing of information violates Evidence Code section 1032's requirement that the  
15 penitent's communication be 'made in confidence, in the presence of no third person so far as the  
16 penitent is aware.'" *Id.* at 445. Moreover, "the fact that both parties to the original  
17 communication knew it likely would be transmitted to a third person vitiated ab initio any  
18 privilege under Evidence Code section 1032, or, alternatively, constituted a waiver of the  
19 privilege." *Id.*

#### 20 1. Defendants' Arguments Regarding *RCALA*'s Application to this Case

21 Defendants attempt to distinguish *RCALA* by arguing that the communications in question were  
22 "communications by a Catholic priest in the presence of a 'vicar for clergy' and a bishop" and that  
23 "Catholic tenets or doctrine do not require that such a person be present during those communications."  
24 (Defendants' Opposition at 8)(italic emphasis omitted.) Defendants claim that the Jehovah's Witness  
25 religion, on the other hand, "mandates the presence of three or more elders when the communication  
26 regards allegations of serious wrongdoing or sin, which included childhood sexual abuse." (Defendants'  
27 Opposition at 8.)<sup>2</sup>

28 As an initial matter, Defendants misrepresent the facts of *RCALA*. The statements at issue in that

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<sup>2</sup> Defendants also argue that *RCALA* is inapplicable because it involved "testimony and evidence to be presented to a grand jury in a criminal proceeding." (Defendants' Opposition at 8.) The express provisions of California Evidence Code §§ 1030-1034 do not change when the privilege is applied in a civil action rather than a criminal proceeding. Either the requirements of the statute are met, or they are not. In *RCALA*, the writings did not contain "penitential communications," so the documents were not privileged. The criminal nature of the proceeding had no bearing on the analysis.

1 case were not made in the presence of a “vicar for clergy and a bishop,” but were instead:

- 2 1. Letters from Cardinal Roger Mahony to a priest (Doe 1 No. 16-17, Doe 2 No. 79);
- 3 2. Letters from a priest to the Vicar for Clergy (Doe 1 No. 50-52);
- 4 3. Memoranda from the Vicar for Clergy to Cardinal Mahony (Doe 1 No. 80, Doe 2 No. 31-32, Doe 2 No. 140, Doe 2 No. 172);
- 5 4. A document containing summaries and excerpts of Doe 1 No. 16-17 and Doe 1 No. 80;
- 6 5. A letter from Cardinal Mahony’s predecessor to the Vicar for Clergy (Doe 2 No. 13);
- 7 6. A memorandum to file written by the Vicar for Clergy (Doe 2 No. 23);
- 8 7. A letter from the Vicar for Clergy to a priest (Doe 2 No. 183), and;
- 9 8. A document containing excerpts from Doe 2 No. 140, Doe 2 No. 172 and Doe 2 No. 183.

10 The statements in these documents did not fail to be privileged because they were made in the  
11 presence of more than one priest. The documents failed to be privileged because they were made with the  
12 knowledge that the single priest receiving the statement was likely to share the communication with  
13 others who were not present for the original communication. *RCALA*, 131 Cal.App.4th at 447-448.

14 Defendants attempt to confuse the issues by highlighting the difference between the body of elders  
15 method of local church governance used by the Jehovah’s Witnesses and the single priest method of  
16 church governance used by the Catholic Archdiocese in *RCALA*. Regardless of the method of local  
17 governance chosen by the particular church, the fundamental inquiry raised by *RCALA* is whether the  
18 particular statement at issue was made with the knowledge that some third party may gain access to the  
19 statement. If that is the case, then the statement was not made in confidence in the absence of any third  
20 party as required by the statute. This precise aspect of *RCALA* is controlling of the issues in this case.

## 21 2. Application of *RCALA* to This Case

22 The *RCALA* court determined that none of the subject documents were privileged since they  
23 involved routine matters related to investigation of molestation and also contained statements made by  
24 priests who the communications may be shared with a third person. *Id.* At 447-448. For instance:

25 “Doe 1 No. 80: This is a memorandum from the Vicar for Clergy to Cardinal Mahony, reporting  
26 on a conversation with a priest. The referee reasonably could conclude this document did not  
27 constitute a penitential communication because it merely reported on the priest’s cooperation with  
28 this therapists, strategized about possible legal problems and discussed church assignments.  
Moreover, the letter was not within the clergy-penitent privilege because it was not sufficiently  
confidential in that the parties to the communication knew it likely would be transmitted to a third  
person.” *RCALA*, 131 Cal.App.4th 446.

This excerpt from *RCALA* is illustrative of the problems with Defendants’ position. The excerpt  
was not sufficiently confidential to be a “penitential communication” because it was known as a result of

1 the Archdiocese's policy of appointing a Vicar for Clergy to help the Archbishop satisfy his formation of  
2 clergy obligations that a statement made in the context of a troubled priest intervention would likely be  
3 shared among several people responsible for decision-making regarding the offending priest.

4 Similarly, any person making a statement to a judicial committee must likewise have known that  
5 "such communications were likely to be shared" with a third person. While Defendants claim that  
6 statements made to local elders are required to be kept confidential, they use that term much more loosely  
7 than did the Legislature in defining "penitential communication." Defendants concede that following a  
8 decision by a judicial committee to disfellowship a member, a notice of disfellowshipping is sent to  
9 "Branch Office elders." (Defendants' Opposition at 3.) The notice of disfellowshipping sent in this case  
10 required the local congregation to divulge the name and position of the disfellowshipped member, the  
11 date of disfellowshipping, the offense that led to the disfellowshipping, the names of the elders on the  
12 judicial committee, whether there was an appeal, and required the judicial committee to:

13 "Please provide a brief summary, but complete, of the matter: (1) What led to the commission of  
14 the bad act? (2) Had the person been advised or censured previously? (3) What factors, including  
15 the lack of proper acts of repentance, led the person to that decision? (See point number 3 in  
16 back.) (Use additional page if you need more space.) . . . What evidence was presented of the bad  
17 act, such as a confession, two or more witnesses, etc.?" (Plaintiffs' Exhibit 1, notice of  
18 expulsion.)

19 Defendants concede that congregation elders seek advice generally from Branch Office elders  
20 regarding issues concerning the congregation and its members, and that elders from the local  
21 congregation Defendants actually sought advise from Branch Office elders as well as circuit and district  
22 overseers.

23 Defendants also fail to dispute Plaintiffs' evidence that a statement made to a judicial committee  
24 at the congregation level could be made available to the Watchtower; to a different group of elders in the  
25 course of an appeal; and to a potentially different group of elders at the local congregation in the context  
26 of a request for reinstatement after a period of disfellowship. (Plaintiffs' Motion to Compel at 3-4.)

27 In this case, the notice of disfellowshipping of the Perpetrator makes clear that Kevin Phillips,  
28 Eduardo Chavez, Florentino Gracia and Jesus Martinez comprised the judicial committee that  
disfellowshipped the Perpetrator. But, Juan Guardado, Ronald Cortez and Jesus Martinez were the group  
of elders that later determined whether to reinstate the Perpetrator. (Plaintiffs' Exhibit 2, Deposition of

1 Juan Guardado at 42:10 - 44:20.) In considering the reinstatement request, Guardado opened the  
2 Perpetrator's confidential file and discussed its contents with Cortez and Martinez. (Plaintiffs' Exhibit 2,  
3 at 49:19 - 50:2.)

4 Later, in 2005 or 2006, the body of elders at Playa Pacifica re-opened and examined the contents  
5 of the Perpetrator's confidential file.<sup>3</sup> (Plaintiffs' Exhibit 3, Deposition of Dennis Palmer at 35:6-40:2.)  
6 These elders were not on the original judicial committee that disfellowshipped the Perpetrator, nor did they  
7 consider the Perpetrator's reinstatement request.

8 The policies and practices of the Jehovah's Witnesses to allow multiple layers of review of  
9 information obtained by local elders following a complaint related to childhood sexual abuse, both at the  
10 congregation and national level, conclusively establish that such communications do not qualify as  
11 penitential communications because they are not sufficiently "confidential." Moreover, the evidence in  
12 this case establishes that at least 11 elders of the Playa Pacifica Spanish Congregation reviewed the  
13 contents of the Perpetrator's confidential file over the course of more than a decade for varying purposes.  
14 An unknown number of Branch Office elders were also provided with substantial information gathered by  
15 the original judicial committee in the notice of disfellowshipping, and the voluminous correspondence  
16 that followed.

17 Any statements made to the original judicial committee, witness declarations, confessions,  
18 correspondence with the Branch Office, district or circuit overseers, committee member notes, the notice  
19 of disfellowshipping, and any other documents relating to sexual abuse by the Perpetrator, were  
20 indisputably viewed by individuals who were not on the original judicial committee. The documents at  
21 issue, and the statements contained therein simply are not sufficiently confidential to qualify as  
22 "penitential communications." The documents are not privileged.

23 **B. Defendants' out of State Authorities**

24 Rather than relying on the clearly-controlling in-state authority cited by Plaintiffs, *RCALA*,  
25 Defendants instead cite out-of-state cases which, upon inspection, are clearly inapplicable. Defendants

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27 <sup>3</sup> Withheld Document 18 is a page of notes by elders in Playa Pacifica regarding the Perpetrator dated  
28 October 26, 2006. That document was signed by four elders from Playa Pacifica. None of whom was a  
member of the original judicial committee.

1 cite *State v. Martin* (Wash. 1999) 975 P.2d 1020, 1028, *In re Grand Jury* (3d Cir. 1990) 918 F.2d 374,  
2 384 and *Scott v. Hammock* (Utah 1994) 870 P.2d 947, 956 for the proposition that “the presence of third  
3 persons who are ‘essential to and in furtherance of the communication’ does not void the penitent-clergy  
4 privilege.” (Defendant Opposition at 7.) California’s statutory structure mandates a different result.

5 Under Evidence Code § 912(d):

6 “A disclosure in confidence of a communication that is protected by a privilege provided by  
7 section 954 (lawyer-client privilege), 994 (physician-patient privilege), 1014 (psychotherapist-  
8 patient privilege), 1035.8 (sexual assault counselor-victim privilege), or 1037.5 (domestic  
9 violence counselor-victim privilege), when disclosure is reasonably necessary for the  
accomplishment of the purpose for which the lawyer, physician, psychotherapist, sexual assault  
counselor, or domestic violence counselor was consulted, is not a waiver of the privilege.”

10 Evidence Code § 912 (d) contains a list of privileges that are not waived when a confidential  
11 communication is shared among people who are reasonably necessary for the advancement of the purpose  
12 of the consultation. “Notably, the clergy-penitent relationship is missing from the enumerated  
13 relationships that benefit from this ‘reasonably necessary disclosure’ rule.” *RCALA*, 131 Cal.App.4th at  
14 445, n. 14. Under the maxim of *exclusio unius est exclusio alterius*, this Court must determine that the  
15 clergy-penitent privilege was not erroneously excluded from this list, but instead that the Legislature  
16 intentionally determined that the sharing of a privileged communication waives the clergy-penitent  
17 privilege in such circumstances. The out of state cases cited by Defendants are clearly inconsistent with  
18 California law and should not be followed.

19 Defendant also relied on *Jane Doe v. Latter-Day Saints* (Wash. 2004) 90 P.2d 1147, and  
20 discussed the case at length. The defendant in *Doe* claimed that a report from a local disciplinary  
21 proceeding to the national church in Utah was privileged under the clergy-penitent privilege. The court of  
22 appeal was asked to decide whether all of the members of the disciplinary counsel were “clergy.”  
23 Applying the rule discussed in the previous paragraph, the court determined that they were, in fact, clergy.  
24 The court expressly refrained from making any determination of whether the accused’s “communications  
25 were a confession and the disciplinary proceedings were confidential,” because the plaintiff did not  
26 appeal the trial court’s decision on the issue. *Id.* at 563, n.13. A case is not authority for propositions not  
27 considered. *Sonic-Calabasas A, Inc. v. Moreno* (2011) 51 Cal.4th 659, 694.

28 Similarly, in *Berry v. Watchtower Bible and Tract Society of New York, Inc.* (N.H. 2005) 879



1 A.2d 1124, the court noted that the mandatory reporting statute did not create a civil duty, and therefore  
2 “we need not decide whether Jehovah’s Witness elders qualify as ‘clergy’ for purposes of the evidentiary  
3 religious privilege.” 879 A.2d at 1128. Again, this Court should not consider *Berry* because the issue for  
4 which Defendants cite the case was expressly not considered. *Sonic-Calabasas A*, 51 Cal.4th at 694.

5 A persuasive authority that is on point is the decision by Judge Raymond A. Guadagni from the  
6 County of Napa, who determined in 2005 that:

7 “Defendants object to the production of a number of documents requested by plaintiffs on the  
8 ground that they are protected by the penitential communication privilege contained in Evidence  
9 Code section 1032. This court finds that the privilege does not apply to communications between  
10 the alleged abusers and the Judicial Committee. The evidence presented by both sides establishes  
11 that communications within the Judicial Committee do not fall within the scope of the privilege.  
12 First, it is clear that the Judicial Committee’s purpose is to investigate sins for which  
13 disfellowship is a potential penalty . . . Second, the privilege does not apply because the Judicial  
14 Committee was under no duty to keep the communications private. In fact, the evidence  
15 establishes that the Judicial Committee was required to communicate information obtained  
16 regarding potential cases of child molestation to the Watchtower Society Headquarters.”  
17 (Plaintiffs’ Exhibit 4, Order by Judge Raymond A. Guadagni in *Charissa W., et al. v. Watchtower  
18 Bible and Tract Society of New York, et al.*, (California Judicial Council Coordinated Proceeding  
19 Case Number 4374) at 2.)

20 Following this decision by Judge Guadagni, a Petition for Writ of Mandate by the Watchtower was  
21 denied by the First District Court of Appeal.<sup>4</sup> (Plaintiffs’ Exhibit 5, Order Denying Petition for Writ of  
22 Mandate.)

23 *RCALA* is controlling and mandates a finding that the subject documents are not privileged.  
24 However, if this Court is inclined to consider persuasive authorities, the out-of-state cases cited by  
25 Defendants are of no value since they consider substantially different statutory schemes, and the pertinent  
26 issues raised by this motion are not considered. Plaintiffs’ Exhibits, on the other hand, provide an  
27 example of how these issues have been resolved through application of California law.

28 **C. Local Elders Cannot Transmute Unprivileged Statements by Church Members into  
Confidential Communications**

Defendants argue that a church member can make a statement to multiple members of the body of

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<sup>4</sup> The Petition for Writ of Mandate filed by the Watchtower Bible and Tract Society of New York in *Charissa W.* is exceedingly similar to the opposition filed by Defendants in this case. Many portions of the argument from the writ petition are actually reproduced verbatim in Defendants’ Opposition in this case. (Plaintiffs’ Exhibit 6, Petition for Writ of Mandate, Case Number A114329.)

1 elders, who can in turn relay that allegedly confidential statement to a potentially infinite number of  
2 additional elders, with the result that the original communication, as well as all subsequent divulences of  
3 the original confidence, are protected by the clergy-penitent privilege. Defendant rationalizes this  
4 position by arguing that the “member of the clergy” who received the original communication, becomes a  
5 penitent when he or they relay the information to others.<sup>5</sup>

6 Defendants seek an unprecedented expansion of the California clergy-penitent privilege. This  
7 privilege does not exist to cloak all intra-church communications with privilege. Following Defendants’  
8 interpretation of the privilege to is logical extension, any statement made to or by a member of the  
9 Jehovah’s Witness faith regarding a sin is privileged and can never be discovered, no matter how many  
10 people within the church are privy to the communication at the time the statement is made, or later. This  
11 argument is ludicrous and completely at odds with the secrecy required by Evidence Code §§ 1030-1034.

12 Defendants seek to establish that the multiple members of the body of elders who receive the  
13 original communication, while better than a single clergyman, may nonetheless be insufficient to the task  
14 of providing counsel, so resort to additional elders for advice is necessary. Through this line of argument,  
15 Defendant seeks to circumvent Evidence Code § 912(d)’s omission of the clergy-penitent privilege from  
16 the list of privileges that benefit from the reasonably necessary disclosure rule. The Legislature clearly  
17 did not intend this type of secondary communication to be privileged.

18 Moreover, this position was considered and rejected by *RCALA*, where communications from one  
19 clergyman to another regarding the well-being of the penitent did not create multiple layers of  
20 privilege. Instead, the court held that the divulgence was evidence that the original communication was  
21 not confidential in the first instance, or alternatively demonstrated a waiver. 131 Cal.App.4th at 447-448

### 22 **III. THE WITHHELD DOCUMENTS ARE WITHIN THE SCOPE OF CIVIL DISCOVERY**

23 Defendants claim that withheld documents 7-14 and 16-18 are not reasonably calculated to lead to  
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25 <sup>5</sup> Defendants claim that in camera review of the subject documents is necessary to determine if the  
26 documents contain privileged statements. Additional review would be a waste of judicial time and  
27 resources, since both the policy and practices of the Jehovah’s Witnesses, and the specific facts of this  
28 case, conclusively establish that any statements made to the judicial committee were likely to be, and  
were, disclosed to third parties. In camera review of the documents cannot change the immutable fact  
that the documents do not contain “penitential communications” and are accordingly not privileged.

1 admissible evidence largely because they were generated after the abuse of Plaintiffs ended. The standard  
2 for what is discoverable is exceedingly broad. *See* Cal. Code Civ. Proc. § 2017.010 (party can get  
3 discovery of any matter that is relevant or reasonably calculated to lead to the discovery of admissible  
4 evidence.)

5 Withheld Documents 12 - 14 are letters written by the Perpetrator to request reinstatement.  
6 According to the deposition testimony of Juan Guardado, he would have expected the Perpetrator's  
7 requests for reinstatement to include a statement that he is repentant for his sins, and possibly an  
8 admission to the wrongful conduct. The Perpetrator could not have been granted reinstatement if he had  
9 not admitted to the conduct. (Plaintiffs' Exhibit 2, at 42:10 - 43:12.) Withheld Documents 7, 9, 16, 17  
10 and 18 contain names of victims of sexual abuse or their parents. Such documents are undoubtedly  
11 within the scope of discovery. Withheld Documents 8, 10 and 11 are relevant toward establishing that  
12 Defendants' treatment of a known pedophile creates liability for ratification or punitive damages. The  
13 subject documents are within the broad scope of discovery and should be produced.


#### 14 IV. FIRST AMENDMENT

15 As discussed above, all statements made to the body of elders following the Dormans' complaint  
16 that the Perpetrator had molested their son, and all correspondence drafted as a result thereof, have been  
17 shared liberally among the elders of the Playa Pacifica Spanish Congregation, and the Branch Office over  
18 the last fifteen years. This practice of liberal access to purportedly "confidential" statements is consistent  
19 with established Jehovah's Witness policy. These truths, without more, doom Defendants' assertion of  
20 privilege. Even if one were to assume that multiple members of a body of elders could cumulatively  
21 qualify as a "member of the clergy," the statements and documents at issue here still would not qualify for  
22 protection under the clergy-penitent privilege because they are not sufficiently confidential. This  
23 treatment of the Defendants is identical to the court of appeal's treatment of the Catholic Archdiocese at  
24 issue in *RCALA*, and clearly raises no real or invented First Amendment concerns.

#### 25 V. CONCLUSION

26 This Court should grant Plaintiffs' motion to compel as to each of the eighteen documents at  
27 issue.

28 Dated: 5/13/11

  
10 Devin M. Storey, Attorney for  
Plaintiffs

**PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO COMPEL FURTHER DOCUMENTS**

MAY 13 2011

PROOF OF SERVICE

By: A. SEAMONS, Deputy

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10 Attorney for Plaintiffs

11 I, Lisa E. Maynes, am employed in the city and county of San Diego, State of  
12 California. I am over the age of 18 and no a party to the action; my business address is 12555  
13 High Bluff Drive, Suite 260, San Diego, CA 92130.

14 On May 13, 2011, I caused to be served:

15 **PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO COMPEL FURTHER**  
16 **DOCUMENTS FROM DEFENDANTS**

17 in this action by placing a true and correct copy of said documents(s) in sealed envelopes  
18 addressed as follows:

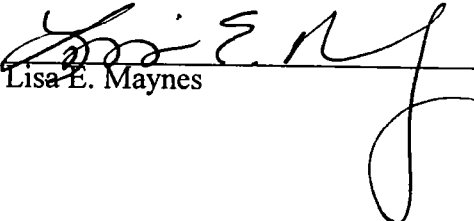
19 **SEE ATTACHED SERVICE LIST**

20 \_\_\_\_\_ (BY MAIL) I am readily familiar with the firm's practice of collection and processing  
21 correspondence for mailing. Under that practice it would be deposited with the U.S.  
22 Postal Service on that same day with postage thereon fully prepaid at San Diego,  
23 California, in the ordinary course of business. I am aware that on motion of the party  
24 served, service is presumed invalid if postal cancellation date or postage meter date is  
25 more than one day after date of deposit for mailing in affidavit.

26  X  (BY PERSON SERVICE) By causing to be delivered by hand to the offices of the  
27 addressee(s).

28 I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

Dated: 5-13-11

  
Lisa E. Maynes

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