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Electronically Filed
FIRST CIRCUIT
1CCV-20-0000390
18-APR-2022
06:47 PM
Dkt. 365 MEO

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

N.D.,

Plaintiff,

vs.

MAKAHA, HAWAII CONGREGATION
OF JEHOVAH'S WITNESSES, a Hawaii
non-profit unincorporated religious
organization, a.k.a. MAKAHA
CONGREGATION OF JEHOVAH'S
WITNESSES and KINGDOM HALL,
MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES;
WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC., a New
York corporation; KENNETH L. APANA,
Individually; and Does 1 through 100,
inclusive,

Defendants.

Civil No. 1CCV-20-0000390 DEO
(OTHER NON-VEHICLE TORT)

DEFENDANTS/CROSSCLAIMANTS
MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES, HAWAII
and WATCHTOWER BIBLE AND
TRACT SOCIETY OF NEW YORK,
INC.'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
RULE 37 MOTION TO HOLD THE
DEFENDANTS IN CONTEMPT FOR
FAILURE TO COMPLY WITH THE
COURT'S ORDER AND FOR THE
(caption continued on next page)

Hearing:

Date: April 26, 2022
Time: 9:00 a.m. (via Zoom)
Judge: Honorable Dean E. Ochiai

Trial: June 20, 2022
Judge: Honorable Dean E. Ochiai

MAKAHA, HAWAII CONGREGATION OF JEHOVAH'S WITNESSES, a Hawaii non-profit unincorporated religious organization, a.k.a. MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES and KINGDOM HALL, MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES; and WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a New York corporation,

Crossclaimants,

vs.

KENNETH L. APANA, Individually,

Crossclaim Defendant.

IMPOSITION OF SANCTIONS INCLUDING THE ENTRY OF JUDGMENT ON THE ISSUE OF LIABILITY PURSUANT TO RULE 37(b)(2)(B) AND FOR THE ADDITIONAL SANCTION OF REVOCATION OF PRO HAC VICE STATUS OF JOEL TAYLOR FILED APRIL 5, 2022 [DOC. 333]; DECLARATION OF WILLIAM S. HUNT; EXHIBITS "A" - "H"; CERTIFICATE OF SERVICE

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. RELEVANT BACKGROUND FACTS..... 2

III. LEGAL STANDARD 2

IV. ARGUMENT..... 4

 A. RELIGIOUS DEFENDANTS DID NOT VIOLATE THIS COURT’S
 PRIOR ORDER 4

 B. *PRO HAC VICE* COUNSEL HAS NOT ACTED IN BAD FAITH; HE
 DID NOT MAKE THE FINAL DECISION TO REDACT THE
 SENTENCE IN QUESTION AND HE HAS NEVER BEEN
 SANCTIONED BY ANY COURT 5

 C. PLAINTIFF FAILED TO MEET AND CONFER IN “GOOD FAITH” 6

 D. NO CAUSE EXISTS TO REVOKE MR. TAYLOR’S *PRO HAC VICE*
 ADMISSION 7

 1. Plaintiff Intentionally Misrepresents The Facts And The
 Requirements Of Supreme Court Rule 1.9 In A Transparent
 Attempt To Bias The Court Against Mr. Taylor 7

 2. The Claim That Watchtower Is Engaged in A Practice of Hiding
 Relevant Discovery is Absurd..... 8

 3. Plaintiff Misrepresents the Religious Defendants’ Practices..... 9

 E. THE MOTION VIOLATES DUE PROCESS REQUIREMENTS
 NECESSARY IN ORDER TO REVOKE *PRO HAC VICE* STATUS 11

V. CONCLUSION..... 13

**DEFENDANTS/CROSSCLAIMANTS MAKAHA CONGREGATION OF
JEHOVAH’S WITNESSES, HAWAII and WATCHTOWER BIBLE AND
TRACT SOCIETY OF NEW YORK, INC.’S MEMORANDUM IN
OPPOSITION TO PLAINTIFF’S RULE 37 MOTION TO HOLD THE
DEFENDANTS IN CONTEMPT FOR FAILURE TO COMPLY WITH THE
COURT’S ORDER AND FOR THE IMPOSITION OF SANCTIONS
INCLUDING THE ENTRY OF JUDGMENT ON THE ISSUE OF
LIABILITY PURSUANT TO RULE 37(b)(2)(B) AND FOR THE
ADDITIONAL SANCTION OF REVOCATION OF PRO HAC VICE
STATUS OF JOEL TAYLOR FILED APRIL 5, 2022 [DOC. 333]**

I. INTRODUCTION

DEFENDANTS/CROSSCLAIMANTS MAKAHA CONGREGATION OF JEHOVAH’S WITNESSES, HAWAII (“Makaha”) and WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. (“Watchtower”), (the “Religious Defendants” or “Makaha”) by and through their counsel, submit this opposition to PLAINTIFF’S RULE 37 MOTION TO HOLD THE DEFENDANTS IN CONTEMPT FOR FAILURE TO COMPLY WITH THE COURT’S ORDER AND FOR THE IMPOSITION OF SANCTIONS INCLUDING THE ENTRY OF JUDGMENT ON THE ISSUE OF LIABILITY PURSUANT TO RULE 37(b)(2)(B) AND FOR THE ADDITIONAL SANCTION OF REVOCATION OF PRO HAC VICE STATUS OF JOEL TAYLOR FILED APRIL 5, 2022 [DOC. 333] (“Motion”).

This Motion is baseless. It should be denied for four independent reasons:

First, Plaintiff is intentionally misinterpreting the underlying order and misleading the court about its scope and effect. In truth, that order did **not** apply to the attorney-client privilege, in fact the motion was based **solely** on redactions based upon the clergy privilege (HRE 506). The order was not violated in any way. In context, the order never contemplated redactions of attorney-client privileged redactions.

Second, the Plaintiff is overreaching: this Motion is about a phrase on one page in a document produced by one defendant that was redacted based upon a decision made by Hawai`i counsel, not *pro hac vice* counsel. The effort to sanction **all** defendants and revoke Mr. Taylor’s *pro hac vice* status is unfounded.

Third, Plaintiff did not meet and confer, as required. There was a phone call between Mr. Davis and Mr. Hunt, but Mr. Davis did not mention any planned motion for contempt, sanctions, or revocation of Mr. Taylor’s admission.

Fourth, there is no cause to revoke Mr. Taylor’s admission and, even if there were, this Motion does not satisfy due process or justify the penalty Plaintiff seeks.

II. RELEVANT BACKGROUND FACTS

To be clear, *all* the documents this Court examined *in camera* have been produced to Plaintiff in the exact same unredacted format that the court reviewed them. Although the issue is not clearly presented in Plaintiff’s moving papers, the Motion only addresses a single redaction for attorney-client privilege of a few words in one sentence on one of the eighteen unredacted pages Plaintiff received. That one sentence was NOT the subject of the motion to compel filed under seal with this Court on November 23, 2021 (“Motion to Compel”), a copy of which is filed under seal and attached hereto as Exhibit “A”. Nor was that sentence raised during oral argument on the Motion to Compel, as demonstrated by the: (1) hearing minutes for arguments held on January 19, 2022 and March 7, 2022, attached hereto as Exhibits “E” and “F” or (2) the transcript for the January and March hearings, attached hereto as Exhibits “G” and “H”. Nor was that sentence considered or discussed by this Court as reflected in its Order, attached hereto as Exhibit “B.”

On the contrary, the Motion to Compel was directed solely to redactions made based upon the clergy privilege, not the attorney client privilege. Thus, Plaintiff’s allegation that the Religious Defendants failed to comply with the Order is false and completely frivolous. Furthermore, contrary to Plaintiff’s claims, *pro hac vice* counsel for Watchtower (Mr. Joel Taylor) has never been sanctioned by any Court, nor was he the attorney who made the final decision to redact the portion of the sentence at issue here; that was done by local counsel, as further discussed below.

III. LEGAL STANDARD

Hawai‘i circuit courts have the inherent power and authority to control the litigation process before them and “ ‘to curb abuses and promote fair process[,] ... including[, for example,] the power to impose sanctions ... for ‘abusive litigation practices.’ ” *Bank of Hawaii v. Kunimoto*, 91 Hawai‘i 372, 387, 984 P.2d 1198, 1213 (1999) (citations omitted). A circuit court's inherent powers, however, must “**be exercised with restraint and discretion.**” *Id.* (emphasis added) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44, 111 S.Ct. 2123, 115 L.Ed.2d 27, *reh'g denied*, 501 U.S. 1269, 112 S.Ct. 12, 115 L.Ed.2d 1097 (1991); *see also Enos v. Pacific Transfer & Warehouse, Inc.*, 79 Hawai‘i 452, 458, 903 P.2d1273, 1279, *recon. denied*, 80 Hawai‘i 187, 907 P.2d 773 (1995); *United States v.*

International Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, 948 F.2d 1338, 1345 (2d Cir.1991).

The circuit court’s broad discretion to issue discovery sanctions is limited. *See generally, Aloha Unlimited, Inc. v. Coughlin*, 79 Hawai’i 527, 904 P.2d 541 (1995). Sanctions under HRCP Rule 37(b)(2) are not warranted when there has been no violation of a prior order compelling discovery. *Azer v. Courthouse Racquetball Corp.*, 9 Haw.App. 530, 542, 852 P.2d 75, 82-83 (1993); *see also Fujimoto v. Au*, 95 Hawai’i 116, 166, 19 P.3d 699, 749 (2001). There has been no violation here.¹

Further, once an out-of-state attorney has been granted *pro hac vice* status in a particular case before a particular judge, the out-of-state attorney gains a “limited property interest” that is held pursuant to Rules of the Supreme Court of the State of Hawai’i (“RSCH”) Rule 1.9. *Kunimoto*, 91 Hawai’i at 388, 984 P.2d at 1214. The deprivation of this property interest—“previously held under state law”—must be in accord with requisite constitutional safeguards. *Id. (citing Leis v. Flynt*, 439 U.S. 438, 442–43, 99 S.Ct. 698, 58 L.Ed.2d 717 (per curiam), *reh’g denied*, 441 U.S. 956, 99 S.Ct. 2185, 60 L.Ed.2d 1060 (1979)(citation omitted). Thus, as a threshold matter, before a trial court may revoke an out of state attorney’s *pro hac vice* status, the trial court must afford the *pro hac vice* attorney with procedural due process and provide advanced notice that the trial court is considering immediate revocation of the *pro hac vice* status. *See Kunimoto*, 91 Hawai’i at 388, 984 P.2d at 1214. Revocation of *pro hac* status also implicates a party’s state and federal constitutional right to counsel of choice. *See State v. Maddagan*, 95 Hawai’i 177, 179, 19 P.3d 1289, 1291 (2001).

Last, Plaintiff’s Motion for Contempt does not conform to Rule 37(d), which requires a certification that the movant make a “good faith” effort to obtain the discovery in dispute without court action.”

¹ “A good faith dispute concerning a discovery question can, in a proper case, constitute ‘substantial justification’ for refusing to give discovery.” *Fujimoto v. Au*, 95 Hawai’i at 167, 19 P.3d at 750 (*citing Lothspeich v. Sam Fong*, 6 Haw.App. 118, 123, 711 P.2d 1310, 1314 (1985). Sanctions are not to be assessed without full and fair consideration by the court as they act as a symbolic statement about the quality and integrity of an attorney’s work—a statement which may have tangible effect upon the attorney’s career. *Fujimoto v. Au*, 95 Hawai’i at 168, 711 P.2d at 1315 (citations omitted).

IV. ARGUMENT

Plaintiff's Motion should be summarily denied for several reasons. First and foremost, it is riddled with incorrect factual statements, unfounded assumptions and unsupported argument. It is also procedurally deficient and egregiously inflammatory without factual or legal support. The facts show that (1) the Religious Defendants did not violate any order from this Court; (2) local counsel is responsible for the sole redaction at issue; and (3) Mr. Taylor's *pro hac vice* certification was complete and truthful and remains so. This Court should not countenance the false statements contained in Plaintiff's Motion and supporting Declaration.²

A. RELIGIOUS DEFENDANTS DID NOT VIOLATE THIS COURT'S PRIOR ORDER

It is telling that Plaintiff did not attach to her Motion copies of the most relevant and necessary documents for this Court to make any decision on the Motion. First, Plaintiff did not attach a copy of her Motion to Compel. Even a cursory review of Exhibit "A" (Plaintiff's Motion to Compel) proves that Plaintiff never requested an order compelling the Religious Defendants to produce any documents withheld or redacted due to the attorney client privilege.

Second, Plaintiff also failed to attach a copy of the Order she is seeking to enforce. Exhibit "B" proves that the Court did not address any request to produce attorney-client privileged documents.

Third, Plaintiff did not attach under seal the only document in question, which is attached hereto as Exhibit "C" (sealed). Watchtower redacted a few words from one

² Mr. Davis has no personal knowledge as to the purported "facts" and source of letters attached to the Declaration. He improperly relies on a October 10, 2002 letter from **non-party Watchtower Bible and Tract Society of Australia** to elders in Australia and a April 9, 2012 letter from **non-party Christian Congregation of Jehovah's Witnesses**, to ascribe to the Religious Defendants conduct by "the National Church." Those documents were never requested by Plaintiff nor produced by the Religious Defendants during discovery in this action because they do not belong to the Religious Defendants. Hunt Declaration at ¶¶ 13-14. None of those letters are properly authenticated by Mr. Davis's declaration. References to those irrelevant letters in the Motion is improper. It is the proponent of the evidence who must prove that the item is what the proponent claims it is. See *Martin v. C. Brewer & Co., Ltd.*, 129 Hawai'i 106, 2013 WL 639320 *7 (App. 2013). Mr. Davis did not, and cannot, do that.

sentence, which began with the words “The legal department indicates that . . .” That sentence is unquestionably an attorney-client communication subject to privilege. Plaintiff has not provided any argument to the contrary. She merely contends that the court’s Order for production of “all disputed documents” required this undisputed redaction to be removed, even though it was never considered by this Court.

This unprofessional and legally unsupported attempt at obtaining a disfavored judgment on liability³ speaks not to the conduct of the Religious Defendants, but to the weaknesses inherent in the legal theories upon which Plaintiff hopes to recover damages. At its core this Motion in nothing more than a thinly veiled attempt to circumvent the judicial process for fear of an adverse judgment.

B. PRO HAC VICE COUNSEL HAS NOT ACTED IN BAD FAITH; HE DID NOT MAKE THE FINAL DECISION TO REDACT THE SENTENCE IN QUESTION AND HE HAS NEVER BEEN SANCTIONED BY ANY COURT

“An attorney admitted to appear *pro hac vice* is subject to the [same professional and] ethical standards and supervision of the court [as local counsel].” *Kunimoto*, 91 Hawai‘i at 389–90, 984 P.2d at 1215-16 (citations omitted)(brackets added). The circuit court’s revocation of an out-of-state attorney’s *pro hac vice* status is a sanction imposed pursuant to the circuit court’s inherent powers. *See* RSCH Rule 1.9. It is well settled that a court may not invoke its inherent powers to sanction an attorney without a specific finding of bad faith. *See Enos*, 79 Hawai‘i at 458–59, 903 P.2d at 1279–80 (“holding that a necessary [condition] precedent to any sanction of attorney’s fees under the court’s inherent powers was the finding that the attorney’s conduct ‘constituted or was tantamount to bad faith’ ”)(citations omitted).

Plaintiff’s Motion requests that Mr. Taylor’s *pro hac vice* status be revoked due to the decision to redact a portion of a sentence described above, supposedly because that redaction violated the Order, and Mr. Taylor had been sanctioned in another case on the mainland. Memo. in Support of Motion at 3-8. Both suppositions are untrue. Further, the redaction does not rise to the level of bad faith.

³ *See Azer v. Courthouse Racquetball Corp.*, 9 Haw.App. at 540, 852 P.2d at 81 where the Court of Appeals reversed a Rule 37 sanction (a preclusion order) because a “full trial on the merits is favored.” An appellate court will uphold severe sanctions “only where the record clearly shows delay or contumacious conduct and where lesser sanctions would not serve the best interest of justice.”

Here, it was local counsel's decision to redact the words that contained information protected by the attorney-client privilege, not Mr. Taylor's. As set forth in the Declaration of William S. Hunt ("Hunt Declaration"), attached hereto, local counsel made the final decision that the redaction was appropriate and required to avoid any argument that the Religious Defendants waived the attorney-client privilege. The Order compelling production of unredacted documents was premised solely on the Religious Defendants' assertion of the clergy privilege, and did not request an order to compel the removal of redactions related to the attorney-client privilege. *See* Exhibit "A" (Plaintiff's Motion to Compel). Nowhere in Plaintiff's motion to compel did she request the redactions made due to the assertion of the attorney-client privilege be removed. *See generally*, Exhibit "A". This Court granted the Motion to Compel, but did not specifically order the removal of any reaction based on the attorney-client privilege. *See* Exhibits "E" and "F" (hearing minutes for proceedings in January and March) and Exhibit "B" (Order Granting Motion to Compel) and Exhibits "G" and "H" (transcripts of proceedings in January and March). Further, Plaintiff's reliance on a Montana case cannot be used to form the basis to support a sanction here and Plaintiff provides no legal support for her assertion. *See* Memo. in Support of Motion at 5-8. The Hawai'i Courts have regularly looked at the actions of the out of state counsel within the bounds of the case before them, and have not relied on outside cases to support a finding of bad faith. *See Kunimoto*, 91 Hawai'i at 392-93, 984 P.2d at 1218-19.

C. PLAINTIFF FAILED TO MEET AND CONFER IN "GOOD FAITH"

HRCF Rule 37(b)(2)(B) requires this type of motion be supported by the movant's certification that the movant put forth a "good faith" effort to resolve the dispute "without court action." Mr. Davis' Declaration falls woefully below that standard because it contains no "good faith" language. *See generally*, Declaration of Mark S. Davis to Motion. It does not inform the court what the dispute is about, what additional document or information is in dispute or how the Religious Defendants responded to a request for that additional material. *Id.* Mr. Davis only states that he initiated a telephone conference on March 31, 2022. *Id.* at ¶ 2.

The Hunt Declaration shows that when Mr. Davis contacted Mr. Hunt on March 31, 2022, the attorneys discussed only one redaction – to the document attached as Exhibit "C". Hunt Declaration at ¶¶ 8-9. Mr. Hunt took the position that the redaction was appropriate. *Id.* at ¶ 9. He reminded Mr. Davis that this single redaction was never addressed in the

Plaintiff's motion to compel. *Id.* The substance of that communication was then reconfirmed in an e-mail exchange between Mr. Hunt and Mr. Davis, attached hereto as Exhibit "D". That conversation can hardly be considered a "good faith effort" to avoid court action. *See generally*, Exhibit "D". Mr. Davis never bothered to ask who made that decision nor did he provide any rationale for claiming that the decision was wrong or that it was made by Mr. Taylor. *Id.* He simply filed this motion a few days later, falsely accusing Mr. Taylor of misconduct and seeking extreme sanctions. As there can be no finding of bad faith on Mr. Taylor's part, and the Motion is not supported by a "good faith" showing through Mr. Davis' Declaration, the Motion should be denied in its entirety.

D. NO CAUSE EXISTS TO REVOKE MR. TAYLOR'S *PRO HAC VICE* ADMISSION

1. Plaintiff Intentionally Misrepresents The Facts And The Requirements Of Supreme Court Rule 1.9 In A Transparent Attempt To Bias The Court Against Mr. Taylor

Supreme Court Rule 1.9(b)(2) requires an out-of-state attorney's request for *pro hac vice* admission to be supported by a certification that must include four things enumerated in subparts (A) through (D). Plaintiff's Motion only address the requirements of subpart (B), which requires the attorney to certify that s/he:

(B) is not currently, and has not been in the past, suspended or disbarred from the practice of law before any court or has otherwise been disciplined or, if the attorney has been disciplined or is the subject to a pending disciplinary proceeding, providing material information about those proceedings.

Without citation to any legal authority to explain the meaning of "discipline," Plaintiff claims that Mr. Taylor has been disciplined by a court in Montana, which is untrue. The Supreme Court of Hawai'i has explained that court action of the kind Plaintiff suggests is not the kind of "discipline" that requires reporting. Simply stated, attorney disciplinary proceedings are "conducted in accordance with the provisions of Rule 2, to implement [the Supreme C]ourt's authority to regulate the practice of law." *In re Disciplinary Bd. of Hawai'i Supreme Court*, 91 Hawai'i 363, 369 (1999).⁴

⁴ The order attached to Plaintiff's Motion sanctioned a litigant, not an attorney. Regardless, as demonstrated, *infra*, a sanction is not a "disciplinary proceeding."

Disciplinary proceedings that are required to be reported in a *pro hac vice* declaration for admission only include complaints about an attorney’s conduct, that have been substantiated and where the Disciplinary Board of the Hawai‘i Supreme Court institutes either “non-disciplinary proceedings for minor misconduct” or formal disciplinary proceedings before a hearing committee or officer.” *Id.*⁵ Plaintiff cannot offer evidence (none exists) that any such disciplinary proceedings have ever been instituted against Mr. Taylor for the simple reason that no such thing has happened. Yet Plaintiff makes libelous accusations and argues that a sanction order against a *party* in Montana constitutes a past disciplinary action against an *attorney*. No report of the Montana order was required under Rule 1.9(b)(2).

And as Mr. Taylor’s certification in his application for *pro hac vice* admission demonstrates, he has never been sanctioned by any Court at any time, in Hawai‘i or in Montana, so there was nothing for him to disclose and that has not changed.

2. The Claim That Watchtower Is Engaged in A Practice of Hiding Relevant Discovery is Absurd

Plaintiff argues that the privileges asserted by Religious Defendants here, and by Mr. Taylor as counsel for Watchtower, are “frivolous.” Memo. in Support of Motion at 6-7. Although she mentions *both* the “clergy privilege and attorney-client privilege” (*id.* at 6), Plaintiff specifically argues that “Defendants and Mr. Taylor should not be permitted to frivolously claim attorney-client privilege.” *Id.* at 7. It is improper to raise a new issue when requesting sanctions for failure to comply with a past order. Thus, it is essential to again note that Plaintiff’s Motion to Compel did not address the attorney-client privilege and this Court’s Order did not decide that issue. See Exhibits “A” (Motion to Compel), “E” (hearing minutes January 2022), “F” (hearing minutes March 2022), “G” (transcript of January 2022 hearing), and “H” (transcript of March 2022 hearing). Regardless, Plaintiff supports her claim by citing to a trial court order from a lawsuit in Montana, and not to this Court’s Order. See Exhibit B to Plaintiff’s Motion (Montana Order). Without re-litigating the Montana lawsuit in Hawai‘i, Plaintiff ignorantly or intentionally misrepresents the key point about the Montana order: The dispute was over whether Watchtower had *waived* an existing privilege, not whether the privilege *existed*. The attorney-client privilege existed

⁵ See also RSCH 2.6(b)(2) and (3) which require Office of Disciplinary Counsel and the Disciplinary Board to investigate complaints and dispose of them by (1) dismissal, (2) informal admonition, or (3) formal disciplinary proceedings.

and was not deemed a frivolous argument there. Moreover, that argument is inapposite here where the only privilege at issue was the clergy privilege, not the attorney-client privilege.

It is also worth noting that the Supreme Court in Montana recognized that the Religious Defendants were exempted from reporting allegations of abuse when they learned of the allegations in a confidential setting pursuant to their religious beliefs and practices (as was the case herein). *Nunez v. Watchtower Bible and Tract Society of New York, Inc.*, 455 P.3d 829 (Mont. 2020) (“... Jehovah’s Witnesses were not mandatory reporters under § 41-3-201, MCA, in this case because . . . The reporting statute as written accommodates Jehovah’s Witnesses’ definition and practice of confidentiality.”) The very clergy privilege that Plaintiff here calls “frivolous” was recognized as statutorily based and applicable in *Nunez*.

Plaintiff’s claim that Watchtower and Mr. Taylor assert “frivolous” privileges is not supported by the exhibit on which Plaintiff relies. This irrelevant argument by Plaintiff is a smokescreen, designed to distract this Court from the obvious deficiencies in her case.

3. Plaintiff Misrepresents the Religious Defendants’ Practices

The Motion also misrepresents the Religious Defendants’ religious practices regarding reports of child molestation, the handling of subpoenas, and the reporting of criminal conduct by making overly broad, erroneous statements about all Jehovah’s Witnesses congregations. *See* Memo. in Support of Motion at 5-6. Plaintiff’s contention that “Jehovah’s Witnesses have engaged in an active process of concealing discoverable evidence regarding the identification and investigation of child molesters” (*id.* at 5.) is blatantly false and is improperly being used to hammer away at some undefined “National Church”. The Religious Defendants produced documents that identify the perpetrator, Defendant Apana, and disclosed information obtained during inquiries into the child molestation accusations made against Defendant Apana. *See* Exhibits 1-5, 7-9 to Exhibit “A” (Plaintiff’s Motion to Compel). Plaintiff’s assertions that the identification or investigation of Defendant Apana were withheld are plainly false.

In support of her baseless smear campaign, Plaintiff relies on four letters attached as exhibits to the Davis Declaration, although only one of the letters existed during the period of her abuse, *i.e.*, during the 1992 calendar year. That letter, dated July 1, 1989 (“July 1989 Letter”) does not support Plaintiff’s assertion that any Defendant “advises its member churches not to comply with subpoenas without consulting the National legal office.” A plain reading of the July 1989 Letter, informs elders what a subpoena is, and instructs them not to

“reveal any **confidential matter** sought by subpoena without receiving direction from the Legal Department.” Exhibit A to the Motion at 3 (July 1989 Letter)(emphasis added). Elders are not legally trained, and their experience with the congregation is limited to teachings of the Bible that do not encompass deciding legal matters. *See id.* at 1. The July 1989 Letter provided elders with guidance on where to turn to for legal questions, but does not implicitly or explicitly instruct the elders “not to comply with subpoenas.” Rather, the letter reminds elders that confidential information should not be revealed without some form of legal guidance, as would be prudent for any non-legal person. *See id.* at 1-3 (July 1989 Letter).

As a threshold matter, the letter dated August 1, 1995 (“August 1995 Letter”) is irrelevant to this case because it was written three years after Plaintiff’s abuse. Moreover, contrary to Plaintiff description of the August 1995 Letter, it absolutely does NOT instruct elders to not report criminal conduct. *See* Exhibit A to the Motion at 1 (August 1995 Letter). Rather, the letter informs elders that each state has its own reporting law, and that the Legal Department will help the elder determine whether the state they live in has a mandatory reporting law. *Id.*

In only what can be describe as a bizarre legal strategy, Plaintiff also misrepresents a letter dated October 10, 2002 (“October 2002 Letter”) (more than a decade after Plaintiff’s abuse) from a **non-party** Australian corporation, written to elders in Australia as if it was a letter from the Religious Defendants. Not so. The October 2002 Letter is patently irrelevant to any issue in this case, although it does speak to Plaintiff’s desperation. Notwithstanding, it’s irrelevance, the October 2002 Letter does not stand for the proposition that Plaintiff imagines. It apparently informs elders in Australia that if the law requires an elder to report a matter, its Legal Department has always advised elders to do so. *See* Exhibit A to the Motion (October 2002 Letter).

Lastly, Plaintiff relies on a letter dated April 9, 2012 (“April 2012 Letter”) (two decades after Plaintiff’s abuse) from **non-party** Christian Congregation of Jehovah’s Witnesses to suggest that elders “conceal evidence in criminal and civil cases on the basis that the Bible does not deem the failure to provide information as a sin akin to lying.” *See* Memo. in Support of Motion at 5-6. Nothing could be further from the truth. None of the letters say anything of the kind, even if they had been relevant to the facts of this case (they are not). *See generally*, Exhibit A to the Motion.

**E. THE MOTION VIOLATES DUE PROCESS REQUIREMENTS
NECESSARY IN ORDER TO REVOKE *PRO HAC VICE* STATUS**

Plaintiff's Motion correctly notes that "Defendants have a right to choice of counsel" and that an attorney admitted to practice has a "limited property interest" in his admission that triggers due process rights. Memo. in Support of Motion at 3-4. But Plaintiff glosses over the significance of those rights, which are at a level that triggers state and federal Constitutional safeguards. *Kunimoto*, 91 Hawai'i at 388, 984 P.2d at 1214 (explaining that deprivation of a property interest in *pro hac vice* status previously held under state law "must be in accord with requisite constitutional safeguards."); *see also Brotherhood of R.R. Trainmen v. Virginia ex rel. Va. State Bar*, 377 U.S. 1, 6-7 (1964) ("... in regulating the practice of law a State cannot ignore the rights of individuals secured by the Constitution . . . by invoking the power to regulate the professional conduct of attorneys, [and] infringe in any way the right of individuals and the public to be fairly represented in lawsuits..."); *Wisconsin v. Constantineau*, 400 U.S. 433 (1971) ("a protectable liberty interest is implicated '[w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him [or her.]'").

Plaintiff also admits that this Court may only revoke an attorney's *pro hac vice* status if the court provides the attorney with notice and a meaningful opportunity to respond. Memo. in Support of Motion at 4. However, Plaintiff argues that a court is not required to conduct an evidentiary hearing and that the opportunity to brief the issue fully satisfies due process requirements, citing to *Pacific Harbor Capital v. Carnival Airlines*, 210 F.3d 1112, 1118 (9th Cir. 2000). Plaintiff's assertion is misplaced as the facts here are clearly distinguishable from *Kunimoto* and *Pacific Harbor*.

In *Kunimoto*, local counsel was notified orally, on July 23, 1996, that the *pro hac vice* status of Kunimoto's out of state attorneys, Cappello and Hudgens, was in jeopardy because the form of payment they received from Kunimoto's father for their attorneys' fees. *Kunimoto*, 91 Hawai'i at 389, 984 P.2d at 1215. On July 31, 1996, Hudgens appeared in court and was personally notified that his and Cappello's *pro hac vice* status was in jeopardy because of their acceptance of the form of payment for their attorneys' fees and Hudgens was directed by the court to notify Cappello, his law partner of the payment issue. *Id.* Then at the October 18, 1996 hearing, which neither Cappello nor Hudgens appeared, the trial court, concerned with due process considerations, continued the hearing, for the fourth time, until

November 22, 1996. *Id.* At the October hearing, the trial court specifically instructed Kunimoto's local counsel to notify both Cappello and Hudgens that their *pro hac vice* status was in jeopardy and that sanctions would be imposed on November 22, 1996, regardless if Cappello and Hudgens were present. *Id.* The Hawai'i Supreme Court determined that the Kunimoto trial court's oral notice (1) to local counsel on July 23, 1996, (2) to Hudgens on July 31, 1996, and (3) to local counsel on October 18, 1996 constituted reasonable notice of the specific charges with respect to both Cappello and Hudgens and that Hudgens and Cappello were not denied procedural due process with regard to the revocation of their *pro hac vice* status. *Id.*⁶

In *Pacific Harbor*, the court witnessed, first hand, the conduct of the sanctioned *pro hac vice* attorney (Mermelstein). This included his representation that he did not understand when the TRO went into effect, and his advice to his client that they could continue to violate the TRO, which the court found to have been made in bad faith. *Pacific Harbor Capital*, 210 F.3d at 1118. The court eventually issued sanctions against Mermelstien, but only after a contempt hearing where the court expressed displeasure with Mermelstein's conduct and indicated that it intended to issue an order prospectively barring him and members of his firm from appearing *pro hac vice* in the district. *Id.*, 210 F.3d at 1120.

The courts in both *Kunimoto* and *Pacific Harbor* provided some indication in prior hearings, of the sanctioned attorney's mis-behavior and provided the sanctioned attorneys with several opportunities to remedy their alleged violations of the Court's orders. Here, this Court has not provided any indication, written or oral, of any displeasure with Mr. Taylor and has made no indication and provided no warning it intends to revoke Mr. Taylor's *pro*

⁶ Due process is not a fixed concept requiring a specific procedural course in every situation. *Sandy Beach Defense Fund v. City Council of the City and County of Honolulu*, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989); *cf. Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748–49, 6 L.Ed.2d 1230 (1961). Rather, due process is flexible and calls for such procedural protections as the particular situation demands. *Sandy Beach Defense Fund*, 70 Haw. at 378, 773 P.2d at 261; *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972). The basic elements of procedural due process of law require notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Sandy Beach Defense Fund*, 70 Haw. at 378, 773 P.2d at 261; *see also Mathews v. Eldridge*, 424 U.S. 319, 333 [96 S.Ct. 893, 902, 47 L.Ed.2d 18] ... (1976); *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 605–06, 95 S.Ct. 719, 721–22, 42 L.Ed.2d 751 (1975; *see also* U.S. Const. amend. XIV, § 1; Haw. Const. art. I, § 5.

hac vice status based on any perceived bad actions. Revocation of Mr. Taylor's *pro hac vice* status without any notice from this court would be a violation of the procedural due process owed to Mr. Taylor as contemplated by the Hawai'i State Constitution. This is especially true where Mr. Taylor has committed no actions in this case or in this jurisdiction that would rise to the level of bad faith sufficient to strip him of his *pro hac vice* status.

Allowing only the opportunity to brief the issues is insufficient to fully satisfy the due process requirements. Due process also requires the Court allow the Religious Defendants to be represented by the attorney of their choice, and that Mr. Taylor's good name and reputation be cleared from the Plaintiff's libelous accusations.

V. CONCLUSION

For the reasons set forth above, the Religious Defendants respectfully request that this Court deny the Motion and award the Religious Defendants their attorney's fees incurred in filing this memorandum.

DATED: Honolulu, Hawai'i, April 18, 2022.

/s/ William S. Hunt

WILLIAM S. HUNT

JENNY J.N.A. NAKAMOTO

Attorneys for Defendants/Crossclaimants
MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES, HAWAII and
WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC.

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FIRST CIRCUIT
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18-APR-2022
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EXHIBIT “B”

OF COUNSEL:
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30-MAR-2022
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Dkt. 319 ORDG

LAW OFFICES OF JAMES S. ROGERS
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Email: jsr@jsrogerslaw.com

Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

N.D.,

Plaintiff,

vs.

MAKAHA, HAWAII CONGREGATION OF
JEHOVAH'S WITNESSES, a Hawaii non-profit
unincorporated religious organization, a.k.a.
MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES and KINGDOM
HALL, MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES; WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW
YORK, INC., a New York corporation;
KENNETH L. APANA, Individually; and Does
1 through 100, inclusive,

Defendants.

CIVIL NO. 1CCV-20-0000390
(Non-Motor Vehicle Tort)

**ORDER GRANTING PLAINTIFF'S
MOTION TO COMPEL DOCUMENTS
FROM DEFENDANTS WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW
YORK, INC. AND MAKAHA, HAWAII
CONGREGATION OF JEHOVAH'S
WITNESSES, a.k.a. MAKAHA
CONGREGATION OF JEHOVAH'S
WITNESSES AND KINGDOM HALL,
MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES**

Hearing:

Date: March 7, 2022

Time: 9:00 a.m.

Judge: Honorable Dean E. Ochiai

EXHIBIT "B"

MAKAHA, HAWAII CONGREGATION OF
JEHOVAH'S WITNESSES, a Hawaii non-profit
unincorporated religious organization, a.k.a.
MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES and KINGDOM
HALL, MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES; and
WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC., a New York
corporation,

Crossclaimants,

vs.

KENNETH L. APANA, Individually,

Crossclaim Defendant.

Trial Date: June 20, 2022

Judge: Honorable Dean E. Ochiai

**ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL DOCUMENTS FROM
DEFENDANTS WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.
AND MAKAHA, HAWAII CONGREGATION OF JEHOVAH'S WITNESSES, a.k.a.
MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES AND KINGDOM HALL,
MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES**

*Plaintiff's Motion to Compel Documents from Defendants Watchtower Bible and Tract
Society of New York, Inc. and Makaha, Hawaii Congregation of Jehovah's Witnesses, a.k.a.
Makaha Congregation of Jehovah's Witnesses and Kingdom Hall, Makaha Congregation of
Jehovah's Witnesses* (Motion to Compel) filed November 18, 2021 came on for hearing on
March 7, 2022, at 9:00 a.m. before the Honorable Dean E. Ochiai. Mark S. Davis and Matthew
C. Winter and appeared for Plaintiff. Joel Taylor, William Hunt and Jenny Nakamoto appeared
for Defendants/Crossclaimants Makaha Congregation of Jehovah's Witnesses, Hawaii and
Watchtower Bible and Tract Society of New York, Inc. (Jehovah's Witnesses). Defendant
Kenneth L. Apana appeared pro se.

The Court, having considered the memoranda and documents filed by the parties relating to the motion and having heard the arguments of counsel, and for good cause,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Compel is hereby granted at issue. Defendants Jehovah's Witnesses are to produce documents by March 9, 2022 at 4:30 p.m. HST with no redactions.

DATED: Honolulu, Hawai'i, March 30, 2022.

/s/ Dean E. Ochiai



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

/s/ Jenny J.N.A. Nakamoto
WILLIAM S. HUNT
JENNY J.N.A. NAKAMOTO
JOEL M. TAYLOR (*Pro Hac Vice*)
Attorneys for Defendants
MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES,
HAWAII and WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC.

Kenneth L. Apana
Defendant, Pro Se

N.D. vs. MAKAHA, HAWAII CONGREGATION OF JEHOVAH'S WITNESSES, et al.; Civil No. 1CCV-20-0000390; **ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL DOCUMENTS FROM DEFENDANTS WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND MAKAHA, HAWAII CONGREGATION OF JEHOVAH'S WITNESSES, a.k.a. MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES AND KINGDOM HALL, MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES**

NOTICE OF ELECTRONIC FILING

**Electronically Filed
FIRST CIRCUIT
1CCV-20-0000390
30-MAR-2022
02:58 PM
Dkt. 320 NEF**

An electronic filing was submitted in Case Number 1CCV-20-0000390. You may review the filing through the Judiciary Electronic Filing System. Please monitor your email for future notifications.

Case ID: 1CCV-20-0000390

Title: N.D. vs. Makaha, Hawaii Congregation of Jehovah's Witnesses

Filing Date / Time: WEDNESDAY, MARCH 30, 2022 02:58:24 PM

Filing Parties: Mark Davis

Loretta Sheehan

Matthew Winter

James Rogers

Case Type: Circuit Court Civil

Lead Document(s):

Supporting Document(s): 319-Order Granted

Document Name: 319-Order Granting Plaintiff's Motion to Compel Documents from Defendants Watchtower Bible and Tract Society of New York, Inc. and Makaha, Hawaii Congregation of Jehovah's Witnesses, a.k.a. Makaha congregation of Jehovah's Witnesses and Kingdom Hall, Makaha Congregation of Jehovah's Witnesses

If the filing noted above includes a document, this Notice of Electronic Filing is service of the document under the Hawai'i Electronic Filing and Service Rules.

This notification is being electronically mailed to:

Jenny Jun Nee Ayako Nakamoto (*jenny.nakamoto@Dentons.com*)

William S. Hunt (*william.hunt@dentons.com*)

First Circuit Court 7th Division (*7thdivision.1cc@courts.hawaii.gov*)

Matthew Caulfield Winter (*mwinter@davislevin.com*)

Loretta A. Sheehan (*lsheehan@davislevin.com*)

Mark S. Davis (*mdavis@davislevin.com*)

The following parties need to be conventionally served:

James Steven Rogers

ALL PARTIES-RE DOCKET ONLY-NOT PARTY RE SERVICE REQUIREMENT

Kenneth L Apana

Christian Congregation of Jehovah's Witnesses

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18-APR-2022
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Dkt. 370 EXH

EXHIBIT “D”

From: Mark Davis <MDavis@davislevin.com>
Sent: Thursday, March 31, 2022 2:46 PM
To: Hunt, William S.
Subject: Re: N.D. redacted document

[WARNING: EXTERNAL SENDER]

I get your position. Thanks

DAVIS
LEVIN
LIVINGSTON

Mark S. Davis
[851 Fort Street, Ste. 400](#)
[Honolulu, HI 96813](#)
[\(808\) 524-7500](#)
[www.DavisLevin.com](#)

On Mar 31, 2022, at 8:34 PM, Hunt, William S. <william.hunt@dentons.com> wrote:

Mark- after our phone conference I checked your motion, which only addresses and requests removal of the redactions on documents withheld due to the clergy privilege, so clearly the Court did not consider and did not order production of any attorney client documents. The only document we redacted for attorney client privilege is p. WTNY-C 000012, where a memo written 20 years after the fact states:

“The legal department indicates . . . “ There can be no question we are entitled to withhold that under the attorney client privilege, Bill



William S. Hunt
Partner

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Jiménez de Aréchaga, Viana & Brause > For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

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EXHIBIT “E”

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|-----|-------|---|--|--|-------------|----------|
| 267 | *MINH | <p>*MINH 1/19/22: Audio/CV#9 (11:00AM - 11:45AM) Counsels made their appearance via Zoom video. Counsel Joel Taylor place arguments on the record regarding redacted documents and cited Rule 506. Counsel Mark Davis placed his arguments on the record. Later, further representations made. By Court, Defense to file in camera by 1/22/22. Further Hearing set for March 23, 2022 at 9:00am.</p> | | <p>Mark S. Davis Loretta A. Sheehan Matthew C. Winter William S. Hunt James S. Rogers Jenny J. Nakamoto</p> | 19-JAN-2022 | 11:00:00 |
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EXHIBIT “F”

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|-----|-------|--|--|---|-------------|----------|
| 300 | *MINH | <p>*MINH 03/07/22: CV#9/Audio 9:01am-916am Counsels made their appearance along with Kenneth Apana for a Further Hearing. Counsels Mr. Winter and Mr. Taylor and Mr Apana made their representations regarding this further hearing. The Court reviewed the documents in camera and to remove everything that has been redacted on production to the plaintiff. Further the Court reviewed Rule 506 and it is inapplicable. Mr. Winter to prepare the Courts Finding of Facts and Conclusion and order. Mr. Davis request to produce within 48 hours since they have the documents. Mr. Taylor made further representations. The Court ordered to produce documents by 3/9/22 at 4pm. The Courts Oral Ruling of 3/9/22 stands. Mr. Taylor made further representations.</p> | | Mark S. Davis Loretta A. Sheehan Matthew C. Winter William S. Hunt James S. Rogers Jenny J. Nakamoto | 07-MAR-2022 | 09:00:00 |
|-----|-------|--|--|---|-------------|----------|

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EXHIBIT “G”

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

| | | | |
|----|--------------------------------|---|--------------------------|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | N.D., |) | |
| 5 | |) | |
| 6 | |) | |
| 7 | Plaintiff, |) | |
| 8 | |) | |
| 9 | vs. |) | CASE NO. 1CCV-20-0000390 |
| 10 | |) | |
| 11 | MAKAHA, HAWAII CONGREGATION OF |) | Plaintiff's Motion to |
| 12 | JEHOVAH'S WITNESSES, et al., |) | Compel Documents |
| 13 | |) | |
| 14 | Defendants. |) | |
| 15 | _____ |) | |

TRANSCRIPT

of the proceeding held Wednesday, January 19, 2022, before the Honorable Dean E. Ochiai, Judge presiding.

APPEARANCES

| | | |
|----|----------------|-------------------------|
| 14 | MARK DAVIS | Attorneys for Plaintiff |
| 15 | MATTHEW WINTER | |
| 16 | JAMES ROGERS | |
| 17 | RALPH TORREN | |

| | | |
|----|--------------|--------------------------|
| 17 | JOEL TAYLOR | Attorneys for Defendants |
| 18 | WILLIAM HUNT | |

LAHELA KAMALANI-MOE
Official Court Reporter
CSR 321/RPR
First Circuit Court
State of Hawaii

1 Wednesday, January 19, 2022 11:01:17 A.M.

2 --oOo--

3 THE CLERK: (In progress.) -- 000390, N.D.
4 versus Makaha, et al., for Plaintiff's motion to compel
5 documents from Defendants Watch Tower Bible and Tract
6 Society of New York, Incorporated, and Makaha Hawaii
7 Congregation of Jehovah's Witnesses, a.k.a. Makaha
8 Congregation of Jehovah's Witnesses and Kingdom Hall.
9 Appearances, please.

10 MR. DAVIS: Good morning, Your Honor. Mark
11 Davis, Matt Winter, James Rogers, and Ralph Torren are
12 representing the plaintiffs.

13 THE COURT: Okay. Thank you.

14 MR. HUNT: Good morning, Your Honor. William
15 Hunt and Joel Taylor representing Defendants. Mr. Taylor
16 will be presenting the argument for us today.

17 THE COURT: Okay. Well, let me tell you what my
18 inclination is. I'd rather focus energies on resolving the
19 case so my inclination would be off you guys go to
20 mediation. If you can't resolve the case in mediation, then
21 I guess we go the long, hard road down the path. And
22 because no documents or privilege lists were submitted to me
23 to take a look at, my current inclination is you're gonna
24 have to cough it all up.

25 So my cards are on the table. Mr. Hunt, you know

1 what the motion is for so what would you like to do?

2 MR. HUNT: Uh, Mr. Taylor will re --

3 THE COURT: Okay.

4 MR. HUNT: Mr. Taylor can respond, Your Honor.

5 THE COURT: Okay. Mr. Taylor.

6 MR. TAYLOR: Uh, yes, Your Honor. Thank you very
7 much for your frankness and, uh, letting us know where your
8 cards lie. And it certainly is a privilege to appear before
9 Your Honor today.

10 Your Honor, I would simply say that the documents
11 had been produced to plaintiff's counsel. They have been
12 produced in redacted form. If the court would like to see
13 those documents in unredacted form for in camera review, we
14 would certainly have no objection to that process.

15 Obviously the redactions relate to statements
16 made by the accused, Mr. Apana, in connection with his
17 spiritual evaluation of his qualifications. We know that
18 Rule 506 allows there to be an exception for communications
19 to clergy. There's no question that the elders were acting
20 in their role as clergy, that there is no question that
21 these communications were made privately to them.

22 Plaintiff's counsel has made the argument that
23 while there has been a secondary disclosure and in fact in
24 their reply brief you'll note on Page 9 of their reply brief
25 -- excuse me -- they refer to a decision involving Jehovah's

1 Witnesses in Cathcart versus Watch Tower which talks about
2 the contours of a privilege somewhat similar to the one
3 that's under consideration in Hawaii. But interestingly the
4 District Court, the Federal District Court, after reviewing
5 the records in camera, found out on -- or cited on a
6 different side of the issue.

7 And so while it is true that they quote from the
8 judge's decision, you aren't -- you aren't really privy to
9 the whole story. And so what happened as a result of this
10 order was that the judge reviewed the documents in camera,
11 and in her order, which is from July 30th, 2021, this is
12 what she says about one class of documents. And this is the
13 class of documents that relate to communications from a
14 congregation to elders in New York.

15 "Information relayed in a commun" -- "a
16 confession from an individual to a church official acting in
17 their official capacity is privileged under the
18 clergy-penitent privilege so long as the communication was
19 made in a confidential manner." Although the elders who
20 received the confession then repeated the information to
21 members of the Watch Tower New York organization, the
22 Montana Supreme Court has found that this kind of internal
23 dissemination of information does not dispel confidentiality
24 within the Jehovah's Witnesses' faith. As a result she
25 concluded that the document was intended to be confidential,

1 and that also contains the confession made to congregation
2 elders acting in his official capacity, and she determined
3 that the document was privileged.

4 So while it is true that they cite to this case
5 in their reply brief, they did not disclose to you the
6 ultimate finding of the court when the court reviewed the
7 documents in camera. And this is of course on Pacer so they
8 can look at the record on Pacer and confirm the accuracy of
9 my statements.

10 The court found this one class of documents,
11 communications from a congregation to an elder or to elders
12 in New York to be privileged to the extent those
13 communications related to a confessional statement by the
14 abused. And in this case those communications are attached
15 to the plaintiff's moving papers and they are attached as
16 Makaha Exhibit No. 4 and Makaha Exhibit No. 5. The Bates
17 numbers on those documents are Makaha 11 and Makaha 3 and 4.

18 Those are communications from New York -- or from
19 Hawaii to New York. And the very case they rely on stands
20 for the proposition that those communications, except only
21 that language that is from the accused, is subject to
22 appropriate redaction.

23 The second category of documents that are in
24 discussion here are the internal notes of the congregation
25 elders. There's been an effort underfoot and I think it is

1 called "the measure of confusion." Religiously Jehovah's
2 Witnesses use the term "investigation," and I believe
3 plaintiffs are operating under the misunderstanding that
4 that word implies some secular connotations.

5 But as events by the declaration attached to the
6 opposition motion, Elder Jefferson explains that this use of
7 the term "investigation" is not in a secular context but in
8 a religious context. So documents attached as Exhibit 1 to
9 their motion, which is Makaha Pages 1 and 2, and documents
10 attached as Exhibit 2, which is Makaha Pages 5 to 9, and
11 also Exhibit No. 3, which is Makaha 10, are all notes
12 related to meetings that the elders had with Mr. Apana.

13 The only portion of those notes that are redacted
14 are statements from Mr. Apana. Mr. Apana gave those
15 communications that he believed to elders who were members
16 of the clergy. His intent was that those communications
17 remain confidential and those documents have remained
18 confidential. They were in a sealed envelope under lock and
19 key.

20 Unlike some faiths that only hear confessions
21 orally, Jehovah's Witnesses document those things, those
22 confessions in paper and then those are retained under lock
23 and key. The mere fact that they document those confessions
24 or statements under lock and key does not somehow then
25 render them outside the purview of protection afforded Rule

1 No. 506 under Hawaii's evidence rule.

2 And so I think it's important that we discuss the
3 characteristics of these documents to help the court
4 understand that these aren't personnel files. These are
5 records related to an individual's religious standing, his
6 statements of sin and repentance, and then his everlasting
7 salvation.

8 I would direct the court to the Jefferson
9 declaration, Paragraph 37, which indicates that these
10 records were only available to individuals with the need to
11 know. They were not made public or generally available to
12 the public at large.

13 And then also I think it's important for the
14 court to take note of Rule 511. Rule 511 of the rule of
15 evidence -- Hawaii Rules of Evidence indicate that only the
16 holder of the privilege can weigh them. And it's been clear
17 from Mr. Apana's testimony throughout that his intent has
18 been that his statements to these members of the clergy or
19 similar functionaries was to remain confidential. And to
20 that point the only things redacted in the documents are
21 these communications from Mr. Apana. All the other
22 information is unredacted excepting the names of a few third
23 parties in some of the documents.

24 But of course that's not the subject of this
25 motion. The subject is his communications. Everything

1 other than his communications has been produced and is not
2 redacted in those pages. There are not additional
3 documents. The entire universe of the documents they have.
4 But the statements from Mr. Apana to elders are the only
5 things that are redacted in those documents.

6 And we would be pleased to have the court look at
7 the documents in camera and the court can evaluate them in
8 the light of the actual holding in the Cathcart case and the
9 court will likely reach a similar conclusion that these
10 confessions or statements made by Mr. Apana were indeed
11 confidential pursuant to Rule 506.

12 THE COURT: These statements made by Mr. --

13 MR. DAVIS: Your Honor --

14 THE COURT: -- Apana to his other elders, were
15 those in the course of an internal investigation as to Mr.
16 Apana's status with the church?

17 MR. TAYLOR: It was in -- in the course of his --
18 not only his status, his membership, whether or not he would
19 be considered in good standing and could remain one of
20 Jehovah's Witnesses, whether or not he had enough work
21 (inaudible) repentance or if his misconduct required
22 something more than simply not being able to be an elder
23 anymore much like in the Catholic model where there may be
24 an opportunity to speak to a priest and you're able to bear
25 your soul and the priest might tell you what steps you need

1 to take. Say five Hail Marys or do this.

2 What Jehovah's Witnesses follow is an approach of
3 confessional communication; however, it's done with more
4 than one elder, with three, but all three are bound by the
5 same level of confidentiality as one Catholic priest

6 THE COURT: And how were appellate decisions
7 coming down on the discoverability of Catholic Church
8 internal investigations?

9 MR. TAYLOR: And so this -- again this is an area
10 of confusion. Catholic internal investigations has to deal
11 with the personnel records of priests. The process followed
12 by Jehovah's Witnesses, whether Mr. Apana was an elder or
13 just a congregant, is the exact same because the
14 congregation has no employees. He was not an employee of
15 anyone.

16 This is the same process that would happen to
17 anyone who was a baptized member of Jehovah's Witnesses in
18 need of spiritual comfort and healing. They would follow
19 the process explained in the Bible, Book of James, Chapter 5
20 Verses 13 to 15. They would call the elder men to them and
21 then they would bear their soul, and the elder men would
22 provi -- elders would then in turn provide spiritual
23 assistance and guidance.

24 So if Your Honor were to examine the notes which
25 plaintiff's counsel have, you will see that all of these

1 discussions begins and end with prayer, and also the
2 citations to scripture are throughout these conversations
3 because these are spiritual discussions, not personnel
4 discussions. The congregation does not have personnel.

5 THE COURT: Mr. Davis?

6 MR. DAVIS: Thank you, Your Honor.

7 Um, let me, um, first of all respond to your
8 comment with regard to the position and to the extent that
9 you're inclined to push us into mediation. Um, you know,
10 our -- I communicated with Mr. Hunt that, you know, we're
11 always open to resolving these cases. But let me, um,
12 begin.

13 But I do, because of the arguments put on the
14 record, feel I need to respond and I will begin by saying
15 that on Monday I took the 30(b)(6) deposition of the
16 (inaudible) in this case who was then given -- uh, who had
17 nothing to do with any spiritual counseling or anything.
18 They were just designated as the representative and had only
19 been associated with this congregation for ten years or
20 something to that effect. And they didn't provide him the
21 complete unredacted copy which he had in front of him and
22 then instructed him not to testify about anything that was a
23 part of the redaction.

24 So I go into this deposition, and he knows the
25 identity of witnesses that came forward to report this

1 abuse. I do not. He -- they have the substantive
2 narratives that some of these witnesses provided about this
3 man's abuse of multiple children. I do not. They have the
4 name of victims which they have redacted and I do not.

5 And so they would like for us -- and they have
6 whatever Mr. Apana may have told them in the course of this
7 investigation which I do not. And of course the only thing
8 we know about what he said because of the redactions is that
9 the committee concluded that he was lying and they rejected,
10 you know, his presentation of the facts and imposed
11 discipline.

12 Um, they rely on a -- so we would go into this
13 trial where they would know the identity of witnesses, they
14 would know statements by the defendants, they would know the
15 identity of other victims who may have, you know,
16 discoverable evidence, and they did do it all within the
17 context which they do all over the country I might add of a
18 proposition that somehow this is a, uh, a, uh, a parishioner
19 seeking the spiritual guidance of the church with an
20 expectation that it was confidential.

21 And of course we know from even examining the
22 redacted comments that there was not a word of spiritual
23 counseling and there wasn't information that he disclosed in
24 confidence. This whole thing was convened because witnesses
25 came forward to the church and saying one of their clergy --

1 I called them "clergy," but they're all elders so that's
2 what they -- that's what they described -- the people who
3 are designated to speak of the word of God to. So they're
4 elders reviewing the conduct of a -- of a -- of an elder.

5 And the information which came forward which
6 they're seeming to protect is information which was
7 presented by third parties. And, uh -- um, and that's why
8 they convened. And that's obvious from reviewing even the
9 redacted portion. They rely on, uh, on Page 6 of their
10 opposition on a case called Scott versus Hammock which is a
11 Utah case and what the Utah supreme court describes as the
12 privileged communication entitled to protection which is not
13 an issue we, you know, take issue with.

14 Of course, if a person comes in to their minister
15 or priest and confesses sins with the expectations that that
16 information would be, you know, held in confidence and was
17 in need of spiritual counseling, we don't take issue about
18 the existence or the virtue of privilege -- that privileged
19 information. But the Utah Supreme Court said, you know,
20 fundamental elements of these communications between
21 layperson and cleric are privileged if they are made for the
22 purpose of seeking spiritual counseling from the cleric
23 acting in their professional role.

24 And the term "confession" is construed to only
25 apply to a penitent confession to a priest and that is not

1 what this document is. This is a doc -- this is a judicial
2 document by -- convened by what they call a judicial
3 committee investigating the misconduct of the, um -- uh --
4 well, one of their fellow clergy. And they're using this
5 privilege to simply conceal their own liability, conceal the
6 conduct of their abuser cleric, and they expect that this is
7 just a way to protect themselves from unnecessary lawsuits
8 which they have published policies about.

9 So just by -- I mean if the court wants to look
10 at the unredacted documents and to verify that, you know,
11 this included information that identifies witnesses,
12 identifies factual summaries that people can provide,
13 identify other victims, all of which would have discoverable
14 evidence, we certainly have no objection if you need to do
15 that. But you don't need to because on the face of the
16 redacted documents which they did produce there isn't one
17 word of him confessing anything or any spiritual counseling
18 which he's seeking.

19 In fact whatever story they told him which is
20 revealed in the redacted -- in the unredacted version they
21 concluded was a lie and they didn't believe him. And then
22 they imposed disciplinary action. So that is a far cry
23 from, you know, what this privilege was intended to do and
24 it is, you know, a complete perversion as a vehicle in order
25 to conceal the -- and to protect the child molester and to

1 protect themselves from liability.

2 And, you know, the idea that, uh -- and they
3 have certainly been unabashedly pursuing this throughout the
4 country in terms of trying to protect themselves from the
5 lawsuits that arise out of these allegations against child
6 witnesses. And I think that just on the -- on the face of
7 it, you know, the court, you know, can't sanction this type
8 of deceit. That's exactly what it is.

9 When they come forward and say, oh, you know,
10 that, uh, Mr. Apana was there seeking spiritual counseling
11 and the elders decided he's lying to them, you know, my
12 feeling about it is -- and I think the court knows me from
13 our many cases like this that we've handled together that
14 I'm very sensitive to confidentiality and protecting the
15 interest of things that, you know, really need to be
16 confidential. But, uh -- but any action which serves to
17 protect abusers risks, you know, the abuse of other children
18 by virtue of their secrecy and lack of transparency is
19 something that can't be sanctioned by the court and is
20 something that we are absolutely entitled to if we should
21 pursue -- if this matter does go to trial.

22 Thank you.

23 THE COURT: Okay. Mr. Taylor.

24 MR. TAYLOR: Your Honor, just, uh -- I -- I
25 appreciate that Your Honor's a very astute judge and that

1 you will be -- will not be swayed by allegations about other
2 things happening in other countries or other states.

3 Just to correct some of the misstatements made by
4 Mr. Davis, uh, first, no witness testimony has been
5 redacted. I'll say that one more time. No witness
6 testimony has been redacted. The only statements that have
7 been redacted are those made by Mr. Apana. Again, no
8 witness testimony was redacted.

9 Secondly, we're here on a motion to compel the
10 unredaction of clergy-penitent communication, not on a
11 motion to compel the unredaction of third parties. If Mr.
12 Davis would like to make a motion, we would be pleased to
13 address the arguments relative to privacy of third parties
14 identified in this -- in the records who are not members of
15 the congregation or who are not elders in the -- we can
16 discuss that, but that's not the subject of this motion.

17 Thirdly, Mr. Davis has done this repeatedly in
18 his briefing, and that is he has added requirements to Rule
19 506 that do not exist by the legislature. The legislature
20 has determined that the will of the people in Hawaii is that
21 they will protect certain communications made to clergy.

22 Now whether I think it's right or I think it's
23 wrong, is immaterial. Whether it hides this or hides that
24 is not the question. It is the will of the people in Hawaii
25 and they have passed this rule. The rule does not require

1 that the communication be penitential in nature. The rule
2 says that the communication need only be confidential, and
3 that is what Mr. Apana has repeatedly asserted.

4 There is no dispute that Mr. Apana talked to
5 clergy. There is no dispute that he has repeatedly said
6 that as the holder of the privilege, he does not want his
7 information disclosed. There is no dispute that these
8 records in particular, those records I identified to the
9 court earlier that were either handwritten or typed notes,
10 have been in a sealed envelope since Mr. Apana's meetings
11 with the elders. And in addition, as I mentioned, there is
12 no requirement in Rule 506 that only a layperson can come to
13 the clergymen. That's not a requirement in Hawaii's Rule
14 506.

15 So Mr. Davis' discussion about distinctions and
16 Utah law are immaterial. They miss the mark of what the
17 plain language of Rule 506 says and its application in a
18 constitutional setting where the penitent or where Mr. Apana
19 in his communications to clergy has said that he does not
20 want his statements -- again the only things redacted are
21 his statements. We would be pleased to provide it to the
22 court, and the court can confirm that the only thing that
23 has been redacted is his statements.

24 MR. DAVIS: Uh, may I -- I -- don't take my word
25 for it. The court can look at the exhibits which is Exhibit

1 No. 1 which is the redacted document we're fighting over.
2 And this is what it reads. Uh, because Mr. Taylor said that
3 there's nothing in there other than the disclosures that Mr.
4 Apana said, no witness summaries, this is what the document
5 says on Bates Stamp No. 1.

6 And it says, uh, "Informed of the charge is of
7 loose conduct. Two witnesses are Ardel" -- uh, "are
8 available to testify identified as" -- and then they have
9 two initials. "Asked to relate what occurred" and then the
10 initials of one of the witnesses. And we don't know if
11 they're victims or who they are.

12 Then, um -- um, -- uh, then there's a blacked out
13 thing where she's apparently relating what occurred which
14 was what the redacted document said. It then says "At
15 first" something "but later." And then there's another
16 paragraph that's redacted saying "Inquired as to the conduct
17 toward her daughter," and then there's another substantive
18 amount that's disclosed. And, uh, it says, "After further
19 questioning," and then there's another paragraph.

20 So there's virtually very little in this that
21 appeared, at least in this portion of the redacted document,
22 that is other than a witness statement which Mr. Taylor
23 said, you know, uh, wasn't contained in the, uh -- uh, in
24 the report. So the, uh -- in fact, you know, there is
25 nothing in the report where he talks about his own

1 misconduct or any kind of spiritual counseling that you
2 would expect in this type of a protection.

3 But as I said, don't take my word for it. Um --
4 uh, you know, you can look at the documents yourself.
5 Because even though they're redacted and you can tell
6 exactly what was going on at this hearing, which was simply
7 a review by some clergy evaluating criminal conduct of
8 another member of the clergy, and all for the purposes of
9 figuring out whether they should kick him out or not. And
10 they concluded that, uh, as you can, uh -- um -- uh -- uh,
11 that they concluded in reviewing whatever they reviewed in
12 the witnesses summary that he wasn't telling the truth.

13 So the idea that this falls within that privilege
14 on its face fails. And the fact that he distinguishes Utah
15 law, this is the case they relied on and quoted in their
16 brief. So I wasn't, you know, uh -- and that's what I wrote
17 -- and that's what I was arguing on the Utah law. But as I
18 said, it's self-explanatory. Yeah.

19 Unlike other fights over other redacted documents
20 where you -- where we really have no idea what's in them,
21 they left enough in them to understand that they've
22 identified witnesses, they provided narratives, uh, they
23 provided names of victims in another one of the documents
24 all of which is calculated to lead to discoverable evidence
25 and does not under any circumstances fall into this concept

1 he's telling all these things with the expectation that it
2 will be held confidential.

3 And, uh -- and I might add there's nothing in
4 there in terms of his report saying that what I'm telling
5 you I understand will not be interpreted. And he knows that
6 these reports were sent off to the Watch Tower organization
7 and to their service department which handles these
8 administrative things.

9 THE COURT: Okay. Well, my inclination hasn't
10 changed.

11 MR. DAVIS: Okay.

12 THE COURT: So what I'm thinking still yet is
13 whether or not you get these documents really adds no value
14 to your case. Your case lives and dies on your client and
15 that's why I'm recommending at this point you know your
16 case. Both sides know your cases. Try and resolve it
17 because my inclination is everything sees the light of day
18 when it comes to court.

19 Of course I have wickered protective orders on a
20 lot of things, and people who breach those, absent it going
21 to public trial, can be subject to severe sanctions. But
22 I'd rather not go down that path. I'd rather see energies
23 directed towards resolving this case.

24 So tell me now. You folks don't wanna go to
25 mediation, okay, I'll rule. You wanna give it a shot, I'll

1 defer.

2 Mr. Taylor?

3 MR. TAYLOR: Your Honor, at this point it would
4 be premature for us to commit to mediation. We think that
5 there are significant legal issues that are gonna require
6 court review.

7 THE COURT: Mr. Taylor --

8 MR. TAYLOR: Uh, I know Your Honor --

9 THE COURT: Mr. Taylor, one thing I've told
10 everybody --

11 MR. TAYLOR: Yes, Your Honor.

12 THE COURT: -- and this is your first time in
13 front of me --

14 MR. TAYLOR: Yes, sir.

15 THE COURT: -- every case is fluid. And in every
16 storm and every hurricane that we've seen here in Hawaii the
17 trees that survive are the ones that can bend and be
18 flexible. The ones that are rigid snap and have to be
19 hauled away to the dump.

20 So, you know, Mr. Hunt has been involved in some
21 very large cases here in Hawaii along the similar vein. In
22 fact he and Mr. Davis resolved one of the saddest ones in
23 the history of this state at least between their respective
24 clients, and I've got other pieces of that still ongoing.

25 So if you telling me you don't wanna move forward

1 with mediation at this point and see where -- if it can
2 resolve the case, I'll rule.

3 MR. TAYLOR: Your -- Your Honor, unfortunately I
4 must tell you a little bit of our history. In the history
5 of Jehovah's Witnesses we've only ever had two trials go to
6 jury ever. Two. So, uh, you -- we -- we take to heart Your
7 Honor's understanding on this issue of flexibility which is
8 why I said at this point it would be premature. But I do
9 think that, uh --

10 THE COURT: What is premature about it, Mr.
11 Taylor? You folks conducted a full investigation, and based
12 upon what I've seen the church took action against the
13 alleged transgressor in a very strong way, basically --

14 MR. TAYLOR: Undisputed.

15 THE COURT: -- like Clan of the Cave Bear. You
16 ex-communicated.

17 MR. TAYLOR: Yes, sir.

18 THE COURT: So I'm sure Mr. Davis has shared with
19 you everything about the plaintiff and what the plaintiff's
20 position is. I don't think he's holding anything back
21 because it behooves him to give you everything.

22 MR. TAYLOR: Your Honor, uh, look, the
23 legislature made Rule 506, not me. I'm -- I'm -- I'm simply
24 trying to --

25 THE COURT: And I'm interpreting Rule 506, like I

1 said, my inclination hasn't been changed because I looked at
2 Exhibit 1. You folks categorize it as judicial committee,
3 judicial --

4 MR. TAYLOR: Yes, Your Honor.

5 THE COURT: -- judicial hearing regarding
6 accusation. I don't see this in any way as being what could
7 be termed as "confessional for religious purposes." It was
8 a hearing, a quasijudicial process held in private.

9 MR. TAYLOR: Your Honor, uh, these practices are
10 deeply founded in the Bible. And if Your Honor feels that
11 Your Honor's best able to identify what a religion practice
12 is and whether or not it's constitutional or
13 unconstitutional or subject to protection, that is in Your
14 Honor's prerogative. And we have no intention to be
15 offensive to Your Honor. We'll just await Your Honor's
16 ruling.

17 THE COURT: Well, I'm -- I'm bound by Hawaii law,
18 Mr. Taylor.

19 MR. TAYLOR: Um-hmm.

20 THE COURT: I can tell you for sure I have never
21 relied on Louisiana law and so far can't see anything on the
22 horizon other than perhaps some pollution issues that I
23 would rely upon Louisiana law. But I find absolutely
24 instructive and I absolutely follow even to my detriment
25 every single appellate decision in this state.

1 I had a case going up in which I was reversed by
2 the Intermediate Court when I was on the criminal bench
3 because I invalidated a criminal statute. They told me I
4 can't do that. Okay. Next trial that came, I applied the
5 statute strictly, resulted in a conviction, and they took
6 that one up also.

7 The first case, State versus King, our supreme
8 court took cert and reversed the ICA and reinstated my
9 invalidating of the statute. So, okay, I get affirmed on
10 that. But I get reversed on the second case because I do
11 follow appellate procedure and precedent. So I haven't seen
12 Hawaii rule in the way that you're positing at this point.

13 MR. TAYLOR: We were unable to find any Hawaii
14 law that was directly on point, Your Honor, which is why
15 both sides went to the other 50 states to provide some sign
16 of guidance. But, Your Honor, I would simply say if Your
17 Honor looks at 506 and looks at our records, then the
18 question becomes who is the best arbiter to describe what a
19 religion does. Is it the religion or the court?

20 If the court feels that it's in the best place to
21 determine what we do is subject to First Amendment
22 protection or not, we understand that and we will evaluate
23 that decision. But, Your Honor, 506 is clear that there are
24 certain communications that don't see the light of day.
25 It's clear.

1 And whether or not these communications fall
2 under 506 is within Your Honor's prerogative to decide. And
3 we appreciate Your Honor's desire for judicial economy to
4 move the parties to resolution. And I'm not saying that
5 we're opposed to that, but what I'm saying is that the
6 issues right now are too premature for us to have any
7 meaningful discussion about resolution because in the --

8 THE COURT: What more --

9 MR. TAYLOR: -- coming day's --

10 THE COURT: What --

11 MR. TAYLOR: -- Your Honor will be --

12 THE COURT: What more do you need, Mr. Taylor?

13 MR. TAYLOR: Okay, Your Honor, we need an
14 understanding of whether or not the revival statute applies
15 to employees or to volunteers. The statute as worded says
16 "employed by," and of course it's clear to the plaintiffs
17 now that there -- there was no employee. So there needs to
18 be a legal determination as to whether or not the
19 resurrection statute even applied.

20 And then beyond that, Your Honor, Mr. Apana's
21 activities were outside the course and scope of any
22 obligation or work in connection with the faith. This was a
23 private babysitting arrangement that had nothing to do with
24 the congregation. And so there are a number of questions
25 about liability that still remain open that require legal

1 review.

2 And so to have a meaningful discussion about
3 settlement is going to require at least some more light shed
4 on these legal issues including this one involving Rule 506
5 and whether or not Mr. Apana's communications to members of
6 the clergy are confidential.

7 And I would just remind the court that 506
8 doesn't describe all of these other conditions that are now
9 being placed on the communication. This looks like a ju --
10 uh, judicial -- well, nothing in 506 says it can't. And
11 this judicial setting, while it uses the term "judicial,"
12 it's in a religious setting.

13 And I would just simply refer the court to the
14 affidavit attached to our opposition which explains the
15 scriptural basis for the activities that were taking place.
16 I know it's a nontraditional faith, but if Your Honor has
17 the opportunity to read the declaration, it will -- it will
18 highlight the religious and biblical foundations for the
19 activities that took place in this congregation with no
20 desire, no desire at all to protect a pedophile, none at
21 all, just simply to follow the scripture.

22 THE COURT: Well, Mr. Taylor, in just reviewing
23 your redacted documents, nonparties appeared at these
24 hearings. In the attorney-client context if a nonparty is
25 privy to that conversation, that privilege is destroyed.

1 MR. TAYLOR: So that's -- that's also an area
2 that needs a little insight. So we've already had the
3 testimony. These witnesses were available to be called as
4 testimony. They all testified at deposition. They weren't
5 present. They were available but they were not present.
6 They did not participate in these meetings. The only ones
7 in these meetings were the elders and Mr. Apana. The only
8 ones. Which is why I would invite the court to look at the
9 document and then be able to assess them under Rule 506.

10 THE COURT: How many total --

11 MR. TAYLOR: And the court will prefer --

12 THE COURT: -- documents --

13 MR. TAYLOR: -- contrary to Mr. Davis' statement
14 --

15 THE COURT: -- are we looking at here?

16 MR. TAYLOR: We haven't redacted any third-party
17 witnesses' testimony at all.

18 THE COURT: So, Mr. Taylor, for this entire
19 proceeding how many pages are we talking about?

20 MR. TAYLOR: Eleven over the course. Uh, I think
21 that plaintiff's service identified somewhere between 11 and
22 maybe 15 pages. But the entirety of the documents from
23 Makaha related to Mr. Apana's sin and repentance numbered to
24 the page number of 11.

25 And then I think there were -- Mr. Davis will

1 correct me, but I think that there were at least two or
2 three additional pages that were from Watch Tower that were
3 also included and subject to this motion. I'm not a hundred
4 percent sure, but it's under 20, Your Honor, in its
5 entirety.

6 THE COURT: Okay.

7 MR. TAYLOR: I think Mr. Davis. Am I right? I
8 hope I didn't misstate that. I think it's --

9 MR. DAVIS: I haven't counted the pages, you
10 know, but I -- I -- I think your representation, um -- and
11 there is no question that these documents do identify
12 witnesses, uh, do identify victim that's we don't know
13 about.

14 Um, there, uh -- you know, there's references to
15 initials of witnesses that occurred in it and in terms of,
16 uh -- but it seems to me that, you know, despite our
17 willingness to sit down and talk about (inaudible)
18 dissolving this case, Mr. Taylor has raised what every
19 single defendant in every one of these cases raise, that
20 they didn't have notice; that they didn't, you know, they
21 aren't responsible for the, you know, the authority of, um,
22 uh, et cetera, you know. We get -- we get that argument in
23 every single case.

24 And, um, some are, you know, resolved on summary
25 judgment. Maybe some are not. At any rate it's their call

1 as to whether they want to go forward with that. It's just
2 our call about, you know, that if they don't want to go
3 forward with that, then I think it's appropriate for the
4 court just to order the production of the documents.

5 And, um -- um, uh, you know, 'cause there are --
6 certainly is absolutely -- and it's not a question of you
7 setting aside the viability of the privilege. It's just a
8 question of whether this judicial hearing falls within this
9 kind of seeking spiritual guidance protection that the Rules
10 of Evidence provide.

11 So that's exactly what the, um -- uh, you know,
12 that's all that's required by this case. And, you know, in
13 light of their position about their -- you know, they don't
14 want to mediate, we urge you to just go ahead and issue the
15 order that allows us to look at the records.

16 THE COURT: Okay. I tell you what. I'm gonna
17 order that the defendants file for in camera review all of
18 the disputed documents. I'll review.

19 And can we give them a further hearing date.

20 And we'll have a further hearing date in which
21 I'll announce my findings and assign either party the task
22 of preparing the appropriate order.

23 MR. TAYLOR: Okay.

24 THE COURT: So I want the unredacted documents
25 filed in camera by January 21 close of business. That's

1 this Friday.

2 MR. TAYLOR: Your Honor --

3 THE COURT: Yes.

4 MR. TAYLOR: -- to assist the court, we'll put
5 the unredacted on the front and the redacted on the back of
6 each page so you could see as you compare what we've
7 redacted right there in one document. You don't have to
8 look into another exhibit.

9 THE COURT: That's fine. I appreciate that, Mr.
10 Taylor.

11 And when can we reconvene, Ana?

12 THE COURT: Okay. Yeah, our calendar is full of
13 red right now so my court clerk is searching for a time.

14 MR. HUNT: Your Honor, just to be clear, um --

15 THE COURT: Yes.

16 MR. HUNT: -- you want hard copies sent -- you
17 want hard copies then delivered to your chambers by Friday;
18 right? That's what we're talking about? In camera?

19 THE COURT: Well, in camera you can up load them
20 and we seal it.

21 MR. HUNT: Okay.

22 THE COURT: So nobody can look at it, not even
23 you guys, once you put it in there. Yeah.

24 MR. HUNT: Okay.

25 THE COURT: It's -- it's --

1 MR. HUNT: We'll do that.

2 THE COURT: It's there as a part of the record
3 for appellate review.

4 MR. HUNT: All right. We'll do it that way.

5 THE COURT: Okay. Thank you, Mr. Hunt.

6 Okay. Court will rule on March 23rd, 2022, at
7 9:00 A.M. We will further the hearing until then.

8 MR. TAYLOR: Thank you for your patience, Your
9 Honor.

10 THE COURT: Okay.

11 MR. TAYLOR: And thank Mr. Davis for his able
12 argument.

13 THE COURT: All right. Okay. Thank you,
14 everybody.

15 MR. DAVIS: Thank you.

16 MR. HUNT: All right.

17 (Proceeding concluded at 11:43:40 A.M.)

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C E R T I F I C A T E

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I, Lahela Kamalani-Moe, Official Court Reporter, First Circuit Court, State of Hawaii, certify the foregoing Pages 1 through 30 comprise a full, true, and correct transcript of the proceeding held on January 19, 2022, before the Honorable Dean E. Ochiai, judge presiding, and was transcribed from electronic media to the best of my ability.

/s/L.Kamalani-Moe - CSR/RPR - April 18, 2022.