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

IN THE MATTER OF THE UNITED
EFFORT PLAN TRUST, (Dated November
9, 1942, Amended April 10, 1946, and
Amended and Restated on November 3,
1998); and its TRUSTEES, including known
trustees TRUMAN BARLOW, WARREN
JEFFS, LEROY JEFFS, WINSTON
BLACKMORE, JAMES ZITTING and
WILLIAM E. JESSOP a/k/a WILLIAM E.
TIMPSON AND DOE TRUSTEES I
THROUGH IX.

**SETTLEMENT PROPOSAL
LIMITED TO THE MJ ACTION**

Civil No. 053900848

Judge Denise P. Lindberg

MJ aka Elissa Wall, through her undersigned counsel, appears in this probate proceeding for the purpose of submitting the following settlement proposal limited to the MJ action. The primary purpose of MJ's proposal is to facilitate the expedited conveyance of homes built on United Effort Plan Trust ("UEP Trust") land to UEP Trust participants ("Trust Participants"), regardless of religious affiliation, as contemplated by the Reformed Declaration of Trust of the United Effort Plan Trust ("Reformed Trust Declaration").

PROCEDURAL BACKGROUND

1. On December 12, 2005, MJ brought suit against Warren Jeffs, the Fundamentalist Church of Jesus Christ of Latter Day Saints, the Corporation of the President of the Fundamentalist Church of Jesus Christ of Latter Day Saints, and the Corporation of the Presiding Bishop of the Fundamentalist Church of Jesus Christ of Latter Day Saints (collectively “Warren Jeffs and the FLDS Church”).

2. On March 8, 2006, MJ filed her First Amended Complaint naming the UEP Trust as an additional defendant.

3. Subsequently, Warren Jeffs and the FLDS Church were each served with MJ’s First Amended Complaint, each failed to respond and their defaults were entered: Warren Jeffs (served 10/24/06, Default Certificate entered 01/30/07), the Fundamentalist Church of Jesus Christ of Latter Day Saints (served 10/24/06, Default Certificate entered 01/30/07), the Corporation of the President of the Fundamentalist Church of Jesus Christ of Latter Day Saints (served 02/27/07, Default Certificate entered 03/26/07), the Corporation of the Presiding Bishop of the Fundamentalist Church of Jesus Christ of Latter Day Saints (served 02/27/07, Default Certificate 03/26/07).

4. On June 7, 2006, the UEP Trust, through its court-appointed Special Fiduciary, filed an Answer with cross-claims against Warren Jeffs and the FLDS Church. Warren Jeffs and the FLDS Church have not appeared to respond to the cross-claims. Thus, in the three and one-half years since the MJ action was commenced, the UEP Trust is the only defendant that has appeared; all others have elected not to contest MJ’s factual allegations and legal claims and have allowed defaults to be entered against them.

5. On October 24, 2007, the UEP Trust filed a Motion to Dismiss or Transfer Venue causing the MJ action to be transferred from the Fifth Judicial District Court to the Third Judicial District Court where it was assigned to the Honorable Sandra N. Peuler. Subsequently, this Court denied the UEP Trust's request that the MJ action be consolidated with this probate matter.

6. On November 21, 2007 the UEP Trust filed a Motion for Summary Judgment causing MJ to respond with some 1,600 pages of written testimony and evidence. That evidence addresses issues raised by the Motion for Summary Judgment, including, for example, whether (prior to this Court's 2005 exercise of jurisdiction over the UEP Trust) the UEP Trust and the FLDS Church were one and the same or the alter ego of each other and Warren Jeffs, and whether past presidents of the FLDS Church/UEP Trust have historically used their power and authority over that joint entity to compel underage marriages and sexual relations between men and young girls, like MJ.¹

7. On October 8, 2008, at a hearing before this Court on a motion to disqualify former legal counsel for the FLDS Church/UEP Trust because of conflicts of interest, former FLDS counsel represented that those organizations had always been one and the same. *See* Exhibit A. Current UEP Trust counsel, Jeffery L. Shields, further explained how the UEP Trust was used to compel underage marriages:

It was an unlawful detainer action. The facts are unbelievable. Lenora Holm had a 15-year old daughter and the leadership in the community said we would like your

¹In September of 2007, Warren Jeffs was convicted in the Fifth Judicial District Court on two felony counts of rape as an accomplice for compelling MJ—against her will and at 14 years of age—to enter into an unlawful “spiritual marriage” with her adult cousin and for keeping her in that unlawful “spiritual marriage” for some three and one-half years under orders to submit herself mind, body and soul to her “husband.”

daughter to marry an older man, a 40-year old man and she said, yes, in an evening meeting and during the night she couldn't sleep. In the morning she called and said I can't do this, I withdraw my consent for my 15-year old daughter to be married to this man. The case is in the pleadings and *within five to ten minutes there was a person knocking at her door as a representative of [the] United Effort Plan Trust saying, because you don't agree to the principles that we've espoused, you are going to be evicted* and it went to court and not surprisingly, the trust lost because of the facts and then the trust won on appeal. But—and this again overlaps—Mr. [Rodney] Parker was taking the position in that case for the trust, that this is a charitable trust, you have no right to the property, we can control who lives on this for things like having your underage daughter married to an older man.

Id. (emphasis added). Mr. Shields continued:

We have filed a lawsuit, a test case to say if you don't pay your taxes, you don't pay your occupancy fees and you don't sign the agreements, you're not going to live on UEP land; *far different approach than a few years earlier where it was you don't give up your 15-year old daughter, you can't live on UEP land.*

Id. (emphasis added). Additional admissions related to the single nature and purpose of the FLDS Church/UEP Trust are contained in Exhibit B.

8. All of this additional evidence was obtained after the Motion for Summary Judgment was fully briefed and, therefore, not considered by Judge Peuler. Regardless, on December 8, 2008, based on the 1,600 page record already before her, Judge Pueler denied the UEP Trust's Motion for Summary Judgment. *See* Exhibit C.

9. Judge Peuler also set a March 1, 2009 date for certifying the MJ action as ready for trial. MJ and her counsel were and remain ready to try the case.

10. Prior to a hearing in St. George on November 14, 2008 regarding the needed sale of property to help fund the Special Fiduciary's work, this Court ordered a stand-down on UEP Trust litigation, which also effectively stayed the MJ action, so the parties could explore settlements.

11. As ordered, counsel for MJ were present for all mediation sessions of which they had been made aware, but they were not invited into the room where the actual negotiations took place, and, as a result, have not been able to participate in any discussions regarding the UEP Trust or a possible settlement of MJ's claims against the UEP Trust.

12. On May 27, 2009, a status conference was held in which this Court ordered the various parties to the UEP Trust-related cases to submit their settlement proposals in writing to the Court by June 15, 2009. Accordingly, MJ submits this settlement proposal as to her action.

13. Although Judge Peuler is presiding over the litigation of the MJ action, MJ has no objection to this Court acting as a settlement facilitator (or designating a third-party neutral) in order to attempt a mediation of the MJ action between the parties with standing: MJ and the UEP Trust. Having voluntarily forfeited their control over the UEP Trust and also having defaulted in the MJ action years ago, Warren Jeffs and the FLDS Church have no legal right to object to or participate in such discussions.

14. Finally, although MJ cannot compel the UEP Trust through the Special Fiduciary, to agree to settle on the terms outlined below (or any others), she does request that the Court instruct her and the Special Fiduciary (as well as the Attorneys General, to the extent they are interested) to promptly participate in mediation in good faith.

FACTS RELATED TO MJ'S ACTION AND DAMAGES

The facts alleged by MJ are generally disputed by the UEP Trust, but admitted by Warren Jeffs and the FLDS Church through their respective defaults. The facts are set forth in detail in the Third Amended Complaint, which is attached as Exhibit D.

There are no comparable cases from which to obtain reliable guidance as to the amount of special, general and punitive damages a Utah jury would likely award MJ under the circumstances. In the event the Special Fiduciary and MJ are unable to agree to the amount of appropriate compensation and punitive damages, perhaps a jury trial on damages alone would facilitate a settlement that could be submitted to Your Honor for approval.²

MJ'S SETTLEMENT PROPOSAL

MJ requests that discussions with the Special Fiduciary regarding the settlement of the MJ case begin on the following proposed terms:

1. MJ and the UEP Trust will stipulate, subject to this Court's approval, to a monetary judgment in an amount to be determined in mediation or at a damages-only trial.
2. Pursuant to the judgment, MJ will receive monetary compensation in the total amount of \$308,375.00 and file a partial satisfaction of judgment in that amount.
3. Pursuant to the judgment, MJ will receive 21 acres of undeveloped UEP Trust land, to be identified by her, as additional compensation for her and to compensate her attorneys.³

²Although Warren Jeffs and the FLDS Church can no longer contest the liability of any of the defendants, they would be entitled to raise a damages-only defense at trial as to themselves, should MJ elect to proceed to a judgment against them. Indeed, MJ may welcome Warren Jeffs and the FLDS Church's participation at trial believing that their participation (voluntary or involuntary) will facilitate a more just award of general and punitive damages.

³As the Court will recall, Brent Jeffs and the "Lost Boys" plaintiffs previously reached a settlement with the UEP Trust which provided for them to receive some 21 undeveloped lots. The annual Washington County property taxes on all 21 acres is \$0.84 per year (based on the 2007 tax assessment). The undeveloped acres selected by MJ would likely have a similarly low taxable value because the property does not currently have water. MJ may need to execute on her judgment to obtain water rights or shares for this and other undeveloped or developed residential and commercial land, and reserves the right to do so. MJ will file a partial satisfaction of judgment for the value of the undeveloped land and water interests.

4. Pursuant to the Judgment, MJ will receive title to 2 developed lots of UEP Trust land, which are the lot upon which her father and spouse(s)'s current home is built (the "Wall home") and the lot upon which her husband, Lamont Barlow's, father and spouse(s)'s current home is built (the "Barlow home").⁴

5. MJ will personally receive no further compensation, but will execute on her remaining judgment to facilitate the UEP Trust's goal of conveying the homes built on UEP Trust land to Trust Participants.

6. In order to convey homes to Trust Participants upon entry of the judgment and in the future as Trust Participants request deeds to their individual homes, the Special Fiduciary's work surveying UEP Trust land will need to be accepted and approved by Hildale City and Colorado City and then subdivided by the cities (or counties, if required) in conformity with the Special Fiduciary's requests so that each acre and lot can be given a recordable legal description.⁵

7. Due to the FLDS Church's power and control over Hildale and Colorado City, the Special Fiduciary has been prevented from obtaining the cooperation he needs to complete the survey and subdivision of UEP Trust land, thus, possibly requiring MJ to fully maximize and execute on her judgment in order to obtain sufficient property for proper subdivision and conveyances.

⁴MJ will file a partial satisfaction of judgment in a stipulated amount for each home. MJ will quit claim the Wall home to her father and his spouse(s) in equal shares, and similarly, quit claim the Barlow home to her father-in-law and spouse(s) in equal shares.

⁵Completion of the survey and subdivision is necessary for numerous reasons. In fact, without recordable legal descriptions, the Special Fiduciary has never been able to transfer deeds to Brent Jeffs and the Lost Boys plaintiffs as part of the 2007 court-approved settlement of their claims. Moreover, because substantial occupancy fees have not been paid, he has not timely or fully funded the Lost Boys Settlement Fund which provides certain educational and emergency assistance to Trust Participants.

8. To the extent legal fees, subdividing costs or other expenses, including any taxes, fees, assessments or other obligations of any kind, are incurred by MJ to accomplish the purposes of the settlement, she shall execute her judgment against undeveloped or commercial property held by the UEP Trust (but not homes), as may be necessary and use the proceeds to pay such expenses.

9. Each home conveyed by title, or, at the home owners' election, through a spendthrift trust shall have a value as stipulated with the UEP Trust for purposes of satisfying MJ's judgment and she will file partial satisfactions of judgment as conveyances of homes (or water interests) occur.

10. Homes will be conveyed by deed or in trust so that the husband and his spouse(s) each receives equal interests in the home; however, no Trust Participant shall be required to receive their home from the UEP Trust, and to the extent Trust Participants do not request or are not awarded their homes, their homes shall remain in the UEP Trust subject to the terms and conditions of the Reformed Declaration of Trust, including the payment of occupancy fees.

11. Trust Participants electing to request the conveyance of their homes shall contact the Special Fiduciary or, after appointment, the UEP Trust Board of Trustees with their request and all decisions about which homes to convey to which Trust Participants will be made by the UEP Trust's Housing Committee as it is now constituted or as modified with this Court's approval.

12. After receiving conveyance requests from the Special Fiduciary or Board of Trustees, MJ will determine whether to make the conveyance requested in partial satisfaction of her judgment, but she shall not otherwise have authority to alter Housing Committee decisions.

13. After giving preference to the primary settlement objective of conveying homes to Trust Participants, MJ may elect to partially satisfy her judgment to fund the MJ Fund to accomplish purposes similar to those initially being accomplished by the Lost Boys Settlement Fund.

14. To the extent MJ's judgment is not fully satisfied after 8 years, the judgment will expire and the remaining UEP Trust Land will remain in the UEP Trust.

15. Any settlement of the MJ action shall be set forth in a proposed settlement agreement and contract signed by her and the Special Fiduciary on behalf of the UEP Trust and submitted to this Court for approval.

CONCLUSION

MJ is interested in exploring a settlement of her claims that will secure or convey all of the homes built on UEP Trust land to Trust Participants—regardless of their religious affiliation—as contemplated by the Reformed Declaration of Trust. Therefore, she requests that this Court order her and the Special Fiduciary to undertake good faith efforts to reach a settlement with a respected third-party mediator or this Court acting as a settlement facilitator.

DATED this 2nd day of June, 2009.

HOOLE & KING, L.C.

Roger H. Hoole
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Attorneys for MJ aka Elissa Wall

APPROVED AS TO CONTENT:

Elissa Wall

CERTIFICATION OF MAILING

I hereby certify that on the 2nd day of June, 2009, a true, correct and complete copy of the foregoing was served upon the following in the manner indicated below:

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