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IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF UTAH

LESTER JON RUSTON,
 Plaintiff,

v.

THE CHURCH OF JESUS CHRIST OF
 LATTER-DAY SAINTS; GORDON B.
 HINCKLEY; VICTOR JAMES RUSTON;
 MARGARET ELIZABETH RUSTON;
 JERRY HENDERSON; ALLISON RUSTON-
 SMITH; MEL CHADWICK; KENT
 ROBERTSON; IAN JAMES RUSTON;
 BRAD OATES; AND LARRY K.
 HERCULES,

Defendants.

**CHURCH DEFENDANTS MOTION TO
 STRIKE PLAINTIFF'S TRAVERSE TO
 DEFENDANTS' REPLY BRIEF**

Case No.: 2:06cv00526DB

Judge Dee Benson

Magistrate Judge David Nuffer

Defendants The Church of Jesus Christ of Latter-day Saints ("LDS Church" or "the Church"), Gordon B. Hinckley, and any other defendant (if any) sued in his or her capacity as an ecclesiastical leader in the LDS Church (the "Church Defendants"), through counsel, submit this motion to strike Ruston's latest filing, captioned as Plaintiff's Traverse to Defendants Reply

Brief in Support of the Church Defendants Motion to Dismiss and Memorandum in Opposition to Defendants (Plaintiff's) Motion to Amend Complaint.

Although hesitant to respond for fear of lending any credence to Ruston's continued ramblings, the Church Defendants feel it necessary to point out that Ruston has changed his story. In his memorandum in opposition to the Church Defendants' motion to dismiss, Ruston represented that he was being detained in federal prison under 18 U.S.C. § 4241, which is for a pretrial determination of mental competency to stand trial. In his most recent filing Ruston now states that "[i]f the Defendant's would actually study law and live in the World of 'reality', they could easily determine that Plaintiff is held under 18 U.S.C. § 4243(c)," which is the confinement statute for defendants found not guilty by reason of mental defect.¹ (Plaintiff's motion to proceed *in forma pauperis* is sealed so the Church Defendants are not aware of what representations it may contain.)

The Church Defendants' motion to dismiss has been fully briefed. Under DUCivR7-1(b)(3), "No additional memoranda will be considered without leave of court." Therefore, Ruston's latest filing, and all future filings relating to the motion to dismiss, should be stricken unless Ruston complies with the local rule.

DATED this 2nd day of February, 2007.

~~RIRTOM~~ & McCONKIE



Matthew K. Richards

Justin W Starr

Attorneys for The Church of Jesus Christ of Latter-day Saints and Gordon B. Hinckley

¹ Regardless of which representation is true, Ruston is still a prisoner under 28 U.S.C. § 1915(h). More important, as the Church Defendants noted in their reply brief, 28 U.S.C. § 1915(e) requires dismissal of any frivolous complaint filed by a plaintiff who is proceeding *in forma pauperis*, apart from whether or not the plaintiff is a prisoner. See *Michau v. Charleston County, South Carolina*, 434 F.3d 725, 728 (4th Cir. 2006); *Fogle v. Pierson*, 435 F.3d 1252, 1257 (10th Cir. 2006).

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of February, 2007, I caused a true and correct copy of the foregoing **CHURCH DEFENDANTS MOTION TO STRIKE PLAINTIFF'S TRAVERSE TO DEFENDANTS' REPLY BRIEF**

to be mailed to the following:

Lester J. Ruston, No. 26834-177
P.O. Box 4000
Springfield, Missouri 65801

/s/ Debra Domenici

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