

Jon A. Wilson  
Brett C. Jensen  
BROWN LAW FIRM, P.C.  
315 North 24<sup>th</sup> Street  
P.O. Drawer 849  
Billings, MT 59103-0849  
Tel. (406) 248-2611  
Fax (406) 248-3128

Joel M. Taylor, Esq. (appearing *pro hac vice*)  
MILLER MCNAMARA & TAYLOR LLP  
100 South Bedford Road, Suite 340  
Mount Kisco, New York 10549  
Tel./E-Fax (845) 288-0844  
*Attorneys for Defendant Watchtower Bible and Tract Society of New York, Inc.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

TRACY CAEKAERT, and CAMILLIA  
MAPLEY,

Plaintiffs,

vs.

WATCHTOWER BIBLE AND  
TRACT SOCIETY OF NEW YORK,  
INC., WATCH TOWER BIBLE AND  
TRACT SOCIETY OF  
PENNSYLVANIA, and BRUCE  
MAPLEY SR.,

Defendants.

Cause No. CV 20-52-BLG-SPW

**DEFENDANT WATCHTOWER  
BIBLE AND TRACT SOCIETY OF  
NEW YORK, INC.’S BRIEF IN  
SUPPORT OF MOTION FOR  
LEAVE TO FILE SURREPLY  
PURSUANT TO LOCAL RULE  
7.1(d)(1)(D).**

WATCHTOWER BIBLE AND  
TRACT SOCIETY OF NEW YORK,  
INC.

Cross-Claimant,

vs.

BRUCE MAPLEY SR.,

Cross-Claim Defendant.

---

**COMES NOW**, Defendant Watchtower Bible and Tract Society of New York, Inc. (“WTNY”), by and through its attorneys of record, and respectfully submits its Brief in Support of its Motion for Leave to File a Surreply Pursuant to Local Rule 7.1(d)(1)(D). For the reasons explained herein, WTNY respectfully requests leave to file a surreply to Doc. 208.

### **ARGUMENT**

Local Rule 7.1(d)(1)(D) provides a surreply cannot be filed “without prior leave.” Generally, courts permit surreplies in order to respond to new arguments or evidence that were not raised in the original motion or in the initial briefing. *See, e.g., Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996) (new evidence in reply may not be considered without giving the non-movant an opportunity to respond). U.S. District Courts have the discretion to either permit or refuse a surreply. *See U.S. ex rel. Meyer v. Horizon Health Corp.*, 565 F.3d 1195, 1203 (9th Cir. 2009).

Here, Plaintiffs have switched course entirely and attempt to convert their Motion to Compel documents for in camera review into a new motion—now, they attempt to file an ordinary motion to compel in the guise of a reply brief, thereby depriving WTNY from any substantive response. (Doc. 208, p.3, fn 1). Such conduct ought not be tolerated by the Court and speaks to the lack of merit underlying Plaintiffs’ claims. The proper course of action would have been for Plaintiffs to file a new motion with new briefing, affording WTNY an opportunity to file a response brief.

Since Plaintiffs have asked for entirely different relief – which runs the risk of disclosure of privileged documents – this Court should either: (a) disregard Plaintiffs’ reply brief in total, or (b) permit WTNY to file a surreply to address Plaintiffs’ new request. Indeed, in *Harris v. Escamilla*, 2016 WL 7210113, at \*2 (E.D. Cal. Dec. 12, 2016), the Eastern District of California allowed a surreply to remain in the record even though the party did not first seek leave to file it, and did so precisely because the surreply addressed a new motion the other party raised for the first time in its reply brief. *Id.* at \*2. The Court reasoned that because the party “is entitled to be heard on this issue, there exists a “valid reason” for additional briefing.” *Id.* (internal citation omitted).

If the Court declines to reject Plaintiffs' reply brief in total, WTNY respectfully submits there is "valid reason" for it to provide additional briefing to be heard on this new relief in Plaintiffs' purported reply brief.

DATED this 28<sup>th</sup> day of February, 2023.

By: /s/ Jon A. Wilson

Jon A. Wilson

BROWN LAW FIRM, P.C.

*Attorneys for Defendant Watchtower  
Bible and Tract Society of New York,  
Inc.*

**CERTIFICATE OF COMPLIANCE**

Pursuant to L.R. 7.1(d)(2)(E), the undersigned hereby certifies this brief complies with L.R. 7.1(d)(2)(A). According to the word-processing unit used to prepare this brief, the word count is 452 words excluding caption, table of contents and authorities, exhibit index, and certificates of service and compliance.

DATED this 28<sup>th</sup> day of February, 2023.

By: /s/ Jon A. Wilson

Jon A. Wilson

BROWN LAW FIRM, P.C.

*Attorneys for Defendants Watchtower  
Bible and Tract Society of New York,  
Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that, on February 28, 2023, a copy of the foregoing was served on the following person(s):

1. U.S. District Court, Billings Division
2. Robert L. Stepans/Ryan R. Shaffer/James C. Murnion  
MEYER, SHAFFER & STEPANS, PLLP  
430 Ryman Street  
Missoula, MT 59802
3. Matthew L. Merrill (appearing *pro hac vice*)  
MERRILL LAW, LLC  
1863 Wazee Street, Suite 3A  
Denver, CO 80202
4. Gerry P. Fagan/Christopher T. Sweeney/Jordan W. FitzGerald  
MOULTON BELLINGHAM PC  
P.O. Box 2559  
Billings, MT 59103-2559
5. Bruce G. Mapley Sr.  
3905 Caylan Cove  
Birmingham, AL 35215

by the following means:

|                               |   |
|-------------------------------|---|
| <u>1-4</u> CM/ECF             | <u>        </u> Fax                         |
| <u>        </u> Hand Delivery | <u>        </u> E-Mail                      |
| <u>5</u> U.S. Mail            | <u>        </u> Overnight Delivery Services |

By: /s/ Jon A. Wilson  
Jon A. Wilson  
BROWN LAW FIRM, P.C.  
*Attorneys for Defendant Watchtower  
Bible and Tract Society of New York,  
Inc.*