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8 **UNITED STATES DISTRICT COURT FOR THE**
EASTERN DISTRICT OF WASHINGTON

9 THOMAS A. WAITE,

10 Plaintiff,

11 vs.

12 THE CHURCH OF JESUS CHRIST OF
 LATTER DAY SAINTS d/b/a CORPORATION
 13 OF THE PRESIDING BISHOP OF THE
 CHURCH OF JESUS CHRIST OF LATTER
 14 DAY SAINTS, a Utah corporation, d/b/a
 CORPORATION OF THE PRESIDENT OF
 15 THE CHURCH OF JESUS CHRIST OF
 LATTER DAY SAINTS, a Utah corporation;
 16 DONALD C. FOSSUM; and STEVEN D.
 17 BRODHEAD,

18 Defendants.

No. **CV-05-399-EFS**

COMPLAINT FOR
DAMAGES FOR
PERSONAL INJURIES AND
DEMAND FOR JURY
TRIAL

19 COMES NOW the plaintiff, THOMAS A. WAITE, by and through his
 20 undersigned attorneys, and alleges as follows:

21 **I. PARTIES**

22 1.1 Plaintiff Thomas A. Waite was, at all times material hereto, a resident of
 23 California, functioning as a full-time missionary on behalf of, and by request of, the
 24 Church of Jesus Christ of Latter Day Saints (hereinafter "LDS Church") in Spokane
 25 County in the state of Washington.

1 1.2 Defendant LDS Church is a corporation headquartered in Salt Lake City,
2 Utah, which operates and does business in Spokane County in the state of Washington.

3 1.3 Defendant Donald C. Fossum (hereinafter "Fossum") was, at all times
4 material hereto, a resident of Utah, functioning as a full-time missionary on behalf of,
5 and by request of, the LDS Church in Spokane County in the state of Washington.

6 1.4 Defendant Steven D. Brodhead (hereinafter "Brodhead") was, at all times
7 material hereto, a resident of the state of Washington.

8 **II. JURISDICTION AND VENUE**

9 2.1 This Court has jurisdiction over the subject matter of this lawsuit pursuant
10 to 28 U.S.C. § 1332 as there is complete diversity between the plaintiff and defendants.
11 This Court has pendent jurisdiction over the state law claims. The amount in
12 controversy exceeds \$75,000.00. As the motor vehicle collision which forms the basis
13 of this Complaint occurred in Spokane County in the State of Washington, venue is
14 proper in the Eastern District of Washington pursuant to 28 U.S.C. § 1391.

15 **III. NATURE OF OCCURRENCE**

16 3.1 On or about August 21, 2003, plaintiff Thomas A. Waite was a passenger
17 riding in the bed of a 2003 Dodge canopied pickup truck owned by the LDS Church
18 and operated by defendant Fossum, an agent of defendant LDS Church. Mr. Fossum
19 was traveling northbound on Adams Road when he stopped at the intersection of
20 Adams and 8th Avenue in Spokane Valley, Washington for a stop sign. There were
21 no visual obstructions for observing traffic approaching from the left. As a fast-
22 moving vehicle approached from the left, Mr. Fossum drove the LDS pickup truck
23 into the intersection. The fast-moving vehicle, a 1988 Honda, was eastbound on 8th
24 Avenue and being driven by defendant Brodhead. The Honda plowed into the LDS
25 Church vehicle. Plaintiff was severely and permanently injured in that crash.

**IV. FIRST CAUSE OF ACTION
NEGLIGENCE OF DEFENDANT FOSSUM**

1
2
3 4.1 The injuries and damages as hereinafter alleged occurred as a proximate
4 result of negligence on the part of defendant Fossum including, but not limited to, the
5 following particulars:

- 6 (a) In failing to exercise due care as required by RCW 46.61.445;
- 7 (b) In failing to keep a proper lookout for traffic; and
- 8 (c) In failing to yield the right of way as required by RCW 46.61.190.

9
10 **V. SECOND CAUSE OF ACTION
NEGLIGENCE OF DEFENDANT BRODHEAD**

11 5.1 Plaintiff hereby realleges and incorporates each and every allegation as
12 set forth in paragraphs 1.1 through 4.1 herein.

13 5.2 The injuries and damages as hereinafter alleged occurred as a proximate
14 result of negligence on the part of defendant Brodhead including, but not limited to, the
15 following particulars:

- 16 (a) In failing to exercise due care as required by RCW 46.61.445;
- 17 (b) In failing to keep a proper lookout for traffic;
- 18 (c) In failing to yield the right of way as required by RCW 46.61.190;
19 and
- 20 (d) In traveling at an unreasonable and excessive rate of speed.

21
22 **VI. THIRD CAUSE OF ACTION
NEGLIGENCE OF DEFENDANT LDS CHURCH**

23 6.1 Plaintiff hereby realleges and incorporates each and every allegation as
24 set forth in paragraphs 1.1 through 5.2 herein.

25 6.2 The injuries and damages as hereinafter alleged occurred as a proximate
26 result of negligence on the part of defendant LDS Church including, but not limited to,
27 the following particulars:

- 1 (a) The LDS Church knew or should have known that allowing
2 missionaries to ride unrestrained in the bed of the canopied pickup
3 truck greatly increased the likelihood of injury in the event of any
4 collision;
- 5 (b) In failing to exercise reasonable care to protect its missionaries,
6 including plaintiff Thomas Waite, by providing adequate
7 transportation;
- 8 (c) In failing to have a policy in place prohibiting missionaries from
9 riding in beds of pickups or for having a policy which created the
10 inference that such conduct was acceptable;
- 11 (d) For failure to exercise reasonable care in the training of its driver
12 missionaries;
- 13 (e) In failing to exercise reasonable care in the entrustment of the
14 pickup to defendant Fossum; and
- 15 (f) The LDS Church is vicariously liable under the doctrine of
16 *respondeat superior* for all actions of defendant Fossum as alleged
17 herein.

18 **VII. FOURTH CAUSE OF ACTION**
19 **BREACH OF FIDUCIARY DUTY**

20 7.1 Plaintiff hereby realleges and incorporates each and every allegation as
21 set forth in paragraphs 1.1 through 6.2 herein.

22 7.2 At the time of the motor vehicle collision, a “special relationship” existed
23 between the missionaries riding in the canopied pickup truck and the LDS Church.
24 Each of the missionaries had been asked by the LDS Church to leave his state of
25 residence and move to the state of Washington for two years.

1 7.3 While in the state of Washington, the missionaries were required to devote
2 all of their time to missionary work and were not allowed to seek employment, nor
3 accept monetary compensation. Each missionary was monetarily dependent on the
4 LDS Church for all of his basic needs including, but not necessarily limited to, medical
5 care, housing, food and transportation. Because of this vulnerability, a “special
6 relationship” existed between plaintiff Thomas Waite and the LDS Church, giving rise
7 to several duties owed to Mr. Waite by the LDS Church.

8 7.4 Each missionary was expected to dutifully follow specific rules and accept
9 direction from the LDS Church 24 hours a day. As a result of these expectations,
10 plaintiff Thomas Waite could not and did not question riding in the bed of the canopied
11 pickup truck.

12 7.5 As a result of the negligent failure of defendant LDS Church to adequately
13 supervise, train and otherwise protect plaintiff Thomas Waite, he suffered injuries and
14 damages arising from this motor vehicle collision. Thomas Waite has incurred medical
15 expenses to the date of this Complaint in excess of \$200,000.00.

16 7.6 The breach of duty complained of herein has caused and continues to cause
17 additional difficulties for plaintiff Thomas Waite in his religious and personal life.

18 **VIII. INJURIES AND DAMAGES**

19 8.1 As a direct and proximate result of each defendant’s negligence, plaintiff
20 Thomas Waite sustained injury including, but not limited to, physical and emotional
21 injury, past and future pain and suffering, loss of enjoyment of life, disfigurement,
22 economic loss in the form of past and future medical bills and associated expenses, past
23 and future wage loss, lost earning capacity and permanent partial disability, all in
24 amounts to be proven at trial.

IX. LIMITED PHYSICIAN-PATIENT WAIVER

9.1 Plaintiff hereby waives the physician-patient privilege ONLY to the extent required by RCW 5.60.060, as limited by the plaintiff's constitutional rights of privacy, and the ethical obligation of physicians and attorneys not to engage in *ex parte* contact between a treating physician and the patient's legal adversaries.

X. JURY DEMAND

10.1 A jury trial is requested.

PRAYER

WHEREFORE plaintiff prays for judgment against the defendants, and each of them, for both general and special damages, as follows:

1. For plaintiff's special and general damages, all in amounts to be proven at trial;
2. For plaintiff's loss of future wages and lost earning capacity, all in amounts to be proven at trial;
3. For prejudgment interest;
4. For plaintiff's costs and disbursements incurred herein;
5. For reasonable attorneys' fees; and
9. For such other and further relief as the Court may deem just and equitable.

DATED this 9th day of December, 2005.

EYMANN ALLISON FENNESSY
HUNTER JONES, P.S.

BY 
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