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8 Attorneys for Corporation of the President and
9 Corporation of the Presiding Bishop and Donald C. Fossum

10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON

12 THOMAS A. WAITE,

13 Plaintiff,

14 vs.
15 CORPORATION OF THE PRESIDING
16 BISHOP OF THE CHURCH OF JESUS
17 CHRIST OF LATTER DAY SAINTS, a
18 Utah corporation, CORPORATION OF
19 THE PRESIDENT OF THE CHURCH OF
20 JESUS CHRIST OF LATTER DAY
21 SAINTS, a Utah corporation; DONALD C.
22 FOSSUM; and STEVEN D. BRODHEAD,

23 Defendants.

Case No.: CV-05-399-EFS

AFFIDAVIT OF THOMAS D.
WALK

24 STATE OF UTAH)
25 County of Salt Lake)
26 :ss

27 Thomas D. Walk, being first duly sworn, upon oath, deposes and says:

28 **A. BACKGROUND**

1. I am an attorney licensed by the State of Utah, and I am a shareholder/partner with the law firm of Kirton & McConkie in Salt Lake City, Utah. Kirton & McConkie provides outside legal counsel to The Church of Jesus Christ of Latter-day Saints, its corporate entities, affiliates, etc. I have been involved in the defense of this case and attended a number of the depositions.

I make this Affidavit based upon my personal knowledge.

1 2. I was present during depositions of defendant Fossum and other
2 representatives of the Church corporate defendants on November 9 and 10, 2006
3 in Salt Lake City.

4 3. At these depositions referenced above, the topic of ex-parte contact
5 by plaintiff's counsel directly with other witnesses/former missionaries was
6 discussed between counsel.

7 4. At these depositions and present for the discussions mentioned above
8 were myself, Brian Rekofke, defendants' lead trial counsel from Spokane, Mr.
9 Eymann, and Mr. Nordstrom (both plaintiff's counsel). The deponents at Salt
10 Lake City were all affiliated with the Church corporate defendants. They
11 included former missionaries, (Donald Fossum and Tyler Ryan), the former
12 Mission President of the Spokane Mission (Kevin Ludlow), and an area fleet
13 manager employed by Corporation of the Presiding Bishop (Irv Rencher).

14 5. During the deposition of Donald Fossum questions were asked of him
15 concerning the specifics topics of discussion at a meeting between myself and
16 Donald Fossum. Mr. Rekofke objected to the line of questioning and a discussion
17 was had on and off the record concerning the plaintiff's counsels' inquiry as to
18 discussions between defense counsel, Donald Fossum and other Church corporate
19 defendant deponents.

20 6. Moreover, during the deposition of another former missionary, Tyler
21 Ryan, plaintiff's counsel quoted from a prior statement of Mr. Ryan and used the
22 prior statement to frame other questions.

23 7. Following these events, a major discussion was held with plaintiff's
24 counsel, myself and Mr. Rekofke, for all defendants. Specifically, two things
25 were discussed and agreed to by all present and concerned. First, plaintiff's
26 counsel agreed that they would not ask any further questions of the Church
27 deponents concerning any meetings or discussions they had with defense counsel.
28 Second, plaintiff's counsel admitted that they had prior ex-parte contact with

1 Church missionaries, and plaintiff's counsel agreed not to have further ex-parte
2 contact with Church missionaries, including James Ross, Dillon Hansen and Tyler
3 Ryan. Mr. Rekofke asked both plaintiff's counsel if this agreement needed to
4 placed on the record - and they said, No, that it did not need to be placed on the
5 record.

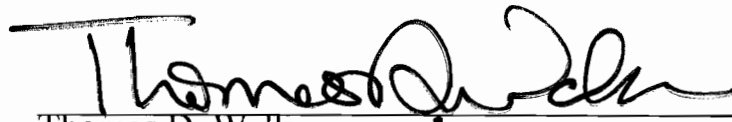
6 8. After the discussion and agreement, plaintiff's counsel made no
7 further inquiry at the Salt Lake City depositions concerning any meetings or
8 discussions between the Church deponents and defense counsel.

9 9. Furthermore, there have been other depositions of Church deponents.
10 At each of those depositions, again plaintiff's counsel abided by the agreement
11 reached earlier that they would not inquire into any meetings or discussions
12 between the Church deponents and defense counsel.

13 10. Following the depositions in Salt Lake City in early November 2006,
14 I learned in late November 2006 from James Ross, a former missionary in the
15 Washington Spokane Mission, that plaintiff's counsel had directly contacted him
16 and interviewed him without advising defense counsel of this ex-parte
17 communication.

18 11. In my discussion with James Ross I learned that he had recently
19 signed a Declaration prepared by plaintiff's counsel. I learned that James Ross
20 had not been given a copy of his declaration.

21 12. Further affiant sayeth not.

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24 Thomas D. Walk

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SUBSCRIBED AND SWORN to before me this 27th day of April, 2007.

Craig A. Bliss



Print Name: CRAIG A. BLISS
Notary Public in and for the State
of Utah, residing in Salt Lake County
My Commission expires: 10-20-2008

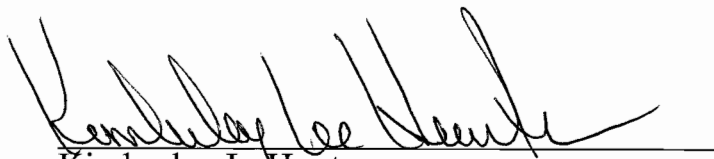
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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of April, 2007:

1. I electronically filed the foregoing **AFFIDAVIT OF THOMAS D. WALK** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

(for Waite) Richard C. Eymann and Stephen L. Nordstrom;
(for Brodhead) Andrew C. Smythe
2. I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants at the address listed below: **None**.
3. I hereby certify that I have hand delivered the document to the following participants at the addresses listed below: **None**



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