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7 Attorneys for Plaintiff

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

10 THOMAS A. WAITE,
 11
 12 vs. Plaintiff,

No. CV-05-399-EFS

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

**DECLARATION OF
 RICHARD C. EYMANN
 IN RESPONSE TO
 SECOND AFFIDAVIT OF
 BRIAN T. REKOFKE IN
 SUPPORT OF MOTION
 TO COMPEL**

18 Defendants.

19 I, RICHARD C. EYMANN, declare under penalty of perjury under the
 20 laws of the State of Washington that the following is true and correct:
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22 1. I am one of the attorneys for the plaintiff in the above-referenced
 23 matter. I make this declaration from my own personal knowledge.

24 2. Responding directly to the Second Affidavit of Brian T. Rekofke in
 25 Support of Motion to Compel [Ct. Rec. 104], with all due respect to a long
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1 friendship that I have had with Mr. Rekofke, I do take issue with portions of his
2 affidavit but not with any of the first ten paragraphs.

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4 3. Concerning Mr. Rekofke's ¶11, is correct that we agreed there
5 would be no further questions of Church deponents concerning meetings with
6 Mr. Rekofke and Mr. Walk. With regard to Mr. Rekofke's alleged "second
7 agreement," as I stated in my original Declaration [Ct. Doc. 93], the only
8 conversation that occurred outside of the deposition room was between
9 Mr. Rekofke and I, when no one else was present. At that time, no specific
10 names of missionaries were discussed nor was the subject of whether it should be
11 placed on the record discussed. This conversation between Mr. Rekofke and I
12 was secondary to discussions regarding a stipulated dismissal of certain Church
13 entities. As stated above, it occurred outside of the deposition room and
14 definitely was outside the presence of Mr. Walk and Stephen Nordstrom because
15 Mr. Nordstrom was very reluctant to enter into any sort of stipulation to dismiss
16 any of the Church entities. Mr. Rekofke and I were speaking quietly because of
17 the sensitivity of the Church entity issue as Mr. Walk had been pushing very hard
18 to get the stipulation in place and Mr. Nordstrom had been resisting it, leaving
19 Mr. Rekofke and I to try to reach a compromise on stipulation language. When
20 our conversation turned to speaking with missionaries, as stated in my original
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1 Declaration, I took the very strong position that the Wright v. Group Health
2 Hospital, 103 Wn.2d 192, 691 P.2d 564 (1984) case entitled us to speak to non-
3 speaking agents including former missionaries. Mr. Rekofke said he would
4 return to his office to look at the case and if he felt I was wrong, he would bring a
5 motion for protective order.
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8 4. With regard to Mr. Rekofke's ¶¶12 and 13, I have no disagreement
9 with his representations.

10 5. Likewise, Mr. Rekofke is correct with regard to his ¶¶14 and 15.

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12 6. Regarding his ¶16, this alleged agreement simply never occurred.

13 As stated above, the conversation was left with Mr. Rekofke wanting to go back
14 and review the Wright case and that if he felt I was wrong, he would bring a
15 motion for protective order. I never agreed to bring a motion, nor would I have
16 agreed because I flat out knew I was correct in my interpretation of the Wright
17 case.
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20 7. Regarding Mr. Rekofke's ¶17, I have no doubt that he met with
21 Mr. Walk on the dates alleged.

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23 8. Regarding ¶18, I am without knowledge as to what Mr. Walk did
24 concerning James Ross but the second clause of that paragraph is incorrect
25 because there was no such "agreement" in the context alleged by Mr. Rekofke.
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1 9. Regarding Mr. Rekofke's ¶¶19 and 20, I have no way of knowing
2 whether the information is correct as stated, but I presume it is.
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4 10. Regarding Mr. Rekofke's ¶21, I have no basis upon which to
5 disagree with the first sentence – that Mr. Rekofke saw the Ross declaration had
6 been signed on November 27th, but I disagree with the use of the word
7 “agreement.” With regard to Mr. Rekofke's call to me sometime in January
8 2007, it is indeed correct that he called, was upset and protested and claimed
9 there had been an agreement.
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11 11. Regarding Mr. Rekofke's ¶22, after Mr. Rekofke claimed that he
12 thought there had been an agreement, I told him that I could understand why he
13 was unhappy but I never “confirmed” the existence of an agreement, nor that it
14 had been breached. However, Mr. Rekofke is correct that I told him that
15 Mr. Nordstrom's contact was a follow-up to earlier contact (which I was aware
16 of) and that it did not make any difference whether I was correct (that there was
17 not an agreement) or that he was correct (that there was an agreement), because
18 under *Wright*, such contact was permissible. Mr. Rekofke is correct that it was
19 never discussed nor agreed that ex-parte contact was appropriate if it was
20 “follow-up” contact. I did concede that point but at the same time he conceded
21 that under *Wright*, such contact was permissible.
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1 12. Regarding Mr. Rekofke's ¶¶23 and 24, it is indeed correct that we
2 have had conversations at the Blue Spark Restaurant, as we often do concerning
3 our cases we have against each other, but when I brought up the issue of
4 Mr. Ross' declaration, he curtly told me he was going to handle that issue with
5 Mr. Nordstrom and that was all that was said on the issue. Mr. Rekofke's
6 statement in his ¶24, never occurred.
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9 13. With regard to Mr. Rekofke's ¶25, again, Mr. Rekofke is incorrect
10 with regard to the allegation that I never "disavowed the existence of the
11 agreement or breach thereof" because there was never such an agreement
12 regarding ex-parte contact with missionaries except that I agreed Mr. Refkoke
13 would take a look at the Wright case and if he felt I was wrong, he would bring a
14 motion.
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17 14. With regard to Mr. Rekofke's ¶26, my response is, that as an officer
18 of the Court, and as someone who has worked with Mr. Rekofke as my opposing
19 counsel on numerous cases, it is clear from his affidavit and from my declaration
20 that we have very different memories of what transpired regarding the issue of
21 ex-parte contact with non-speaking agents of the defendants. As a practical
22 matter, I never would have entered into the oral agreement that Mr. Rekofke
23 alleges without fully involving my co-counsel, Mr. Nordstrom. And similar to
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1 what Mr. Rekofke did with regard to the dismissal of certain Church entities, I
2 would have insisted on a written stipulation. Despite my long-time friendship
3 with Mr. Rekofke, I would never go behind my co-counsel's back and make the
4 kind of concessions as alleged by Mr. Rekofke.
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6 15. Finally, with regard to the Affidavit of Thomas D. Walk [Ct. Rec.
7 105] and specifically his ¶7, for the same reasons stated above, Mr. Walk is
8 incorrect that there was any agreement in his presence (or out of his presence) to
9 not have further ex-parte contact with Church missionaries. Indeed, no names
10 were ever mentioned in that regard. The only agreement was that Mr. Rekofke
11 would have the opportunity to go back and look at the Wright case. Mr. Walk
12 was not present at that conversation held outside the deposition room and I do not
13 know what Mr. Rekofke told Mr. Walk in that regard.
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17 DATED this 11th day of May, 2007 at Spokane, Washington.
18

19 s/Richard C. Eymann
20 RICHARD C. EYMANN
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1 CERTIFICATE OF SERVICE

2 I, Richard C. Eymann, hereby certify that on the 11th day of May, 2007, I
3 electronically filed the foregoing with the Clerk of the Court using the CM/ECF
4 System which will send notification of such filing to the following participants:

5 Brian T. Rekofke
6 Witherspoon Kelley Davenport & Toole
7 422 W. Riverside Avenue, Suite 1100
8 Spokane, WA 99201-0302

9 Andrew C. Smythe
10 Paine Hamblen Coffin Brooke & Miller
11 717 W. Sprague Avenue, Suite 1200
12 Spokane, WA 99201-3503

13 s/Richard C. Eymann
14 RICHARD C. EYMANN