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THOMAS A. WAITE,

v.

11 CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS 12 CHRIST OF LATTER DAY SAINTS, a Utah corporation; 13 CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST 14 OF LATTER DAY SAINTS, a Utah Corporation; DONALD C.

FOSSUM, and STEVEN D.

BRODHEAD,

Defendants.

Plaintiff,

NO. CV-05-0399-EFS

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

ORDER DENYING CHURCH DEFENDANTS' MOTION TO COMPEL

Before the Court, without oral argument, is the Church of Jesus Christ of Latter-Day Saints and Donald Fossum's (hereinafter "Church Defendants") Motion to Compel (Ct. Rec. 83), based upon a discovery dispute that arose when it became clear to defense counsel that Plaintiff's counsel had ex parte contact with several witnesses who were former missionaries allegedly after an agreement prohibiting such contact. In order to obtain details of the ex parte contacts, Church Defendants ask the Court to compel Plaintiff to fully answer Interrogatories 2-5 and Request for Production No. 8, arguing any work product privilege has been waived and Plaintiff's counsel breached an agreement between counsel prohibiting ex parte contact with missionaries. Plaintiff opposes the motion, arguing that counsel did not reach an agreement and the work product privilege has not been waived for all information and materials. After reviewing the submitted material and relevant authority, the Court is fully informed. As explained below, the Court denies the Church Defendants' motion.

First, the Court finds the requested information and material is work product. In addition, under Wright v. Group Health Hospital, 103 Wash. 2d 192 (1984), it was not inappropriate for Mr. Nordstrom to contact James Ross, or other non-speaking agents, ex parte. Plaintiff has no obligation to produce additional information or material than was previously provided as the disclosure of some work product does not waive the privilege as to other materials. See 8 ALAN WRIGHT, ARTHUR MILLER & RICHARD MARCUS, FEDERAL PRACTICE & PROCEDURE: CIVIL § 2024 (2d ed. 2007 In addition, the Court finds Plaintiff's response to the update). discovery request sufficient under Federal Rule of Civil Procedure 26(b)(5)(A). Plaintiff's answer to Interrogatory No. 1 is self evident and the following detailed Interrogatories do not have to be answered to comply with the subsection. The Court also notes that information of mode of contact as requested in Church Defendants' interrogatories was already provided by Mr. Ross' declaration (telephone) and Mr. Eyman's preliminary recitation to Mr. Ryan during his deposition (telephone call in 2005).

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Counsel disagree on the existence of an agreement prohibiting Plaintiff's counsel from ex parte contact with former missionaries of the Church Defendants. Regrettably, even counsel who enjoy an affable and mutually respectful professional relationship occasionally disagree on the existence and nature of oral agreements. Such is the present situation. Counsels' respective declarations on this issue generate heat but not light. On this record, the Court declines to find the existence of an oral agreement prohibiting Plaintiff's counsel from having ex parte contact with former missionaries, contact otherwise permitted by Wright v. Group Health Hospital, 103 Wash. 2d 192 (1984). Accordingly, IT IS HEREBY ORDERED: Church Defendants' Motion to

Compel (Ct. Rec. 83) is DENIED.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and provide copies to counsel.

DATED this 14^{th} day of June 2007.

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17 S/ Edward F. Shea

EDWARD F. SHEA United States District Judge

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