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7 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

8 THOMAS WAITE,

9 Plaintiff,

10 v.

11 CHURCH OF JESUS CHRIST,
12 LATTERDAY SAINTS, et al.,

13 Defendants.

NO. CV-05-399-EFS

AMENDED SCHEDULING ORDER¹

14
15 A telephonic status conference was held in the above-entitled matter
16 on August 22, 2006. Richard Eymann and Stephen Nordstrom appeared on
17 behalf of Plaintiff. Brian Rekofke and Andrew Smythe appeared on behalf
18 of Defendants. A Joint Status Certificate (Ct. Rec. 6) was filed by the
19 parties. The Court having reviewed the documents in the file and
20 discussed the adoption of a scheduling order with counsel, now enters the
21 following Scheduling Order. The dates set forth in this Order may be
22 amended **only** by Order of the Court and upon a showing of good cause.

23 **IT IS ORDERED:**

24 1. Parties shall exchange Federal Rule of Civil Procedure 26(a)(1)
25 material no later than **September 22, 2006**.

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¹The year has been corrected in paragraphs 2(b) and 2(c).

1 2. Rule 26(a)(2) Expert Identification and Reports - Parties are
2 warned that failure to timely identify experts and provide reports in
3 accordance with Rule 26 and this scheduling order may result in exclusion
4 of such testimony absent good reason. See *Wong v. Regents of the Univ.*
5 *of Cal.*, 410 F.3d 1052 (9th Cir. 2005).

6 a. Plaintiff shall identify his experts, serve those experts'
7 Rule 26(a)(2) reports on Defendants, and file the Rule 26(a)(2) reports
8 with the Court no later than **November 5, 2006**. Plaintiff shall also
9 provide dates for which those experts can be available for deposition.

10 b. Defendants shall identify their experts, serve those
11 experts' Rule 26(a)(2) reports on Plaintiff, and file the Rule 26(a)(2)
12 reports with the Court no later than **January 6, 2007**. Defendants shall
13 also provide dates for which those experts can be available for
14 deposition.

15 c. Plaintiff shall identify his rebuttal experts, serve those
16 experts' Rule 26(a)(2) reports on Defendants, and file the Rule 26(a)(2)
17 reports with the Court no later than **February 27, 2007**. Plaintiff shall
18 also provide dates for which those experts can be available for
19 deposition.

20 3. All discovery, including depositions and perpetuation
21 depositions, shall be completed by **May 11, 2007** ("Discovery Cutoff").
22 All interrogatories, requests for production, and requests for admission
23 shall be served on the opposing party no later than 70 days prior to the
24 Discovery Cutoff. All motions for protective orders must be filed and
25 served no later than 40 days prior to the Discovery Cutoff. All motions
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1 to compel discovery must be filed and served no later than 30 days prior
2 to the Discovery Cutoff.

3 4. **THE PARTIES SHALL FILE NO DISCOVERY EXCEPT THOSE PORTIONS**
4 **NECESSARY TO SUPPORT MOTIONS OR OBJECTIONS.**

5 5. All dispositive and *Daubert* motions shall be **FILED AND SERVED** on
6 or before **May 25, 2007**. Responses to dispositive and *Daubert* motions
7 shall be filed and served within 21 days after service of the motion.
8 The reply of the moving party shall be filed and served 5 days, excluding
9 federal holidays and weekends, after service of the opposing party's
10 response. The parties shall also file a Joint Statement of
11 Uncontroverted Facts no later than 3 days (excluding federal holidays and
12 weekends) after service of the reply, with a courtesy copy e-mailed to
13 "Sheaorders@waed.uscourts.gov" in WordPerfect or text-only format.

14 No supplemental responses or supplemental replies to any dispositive
15 or *Daubert* motion may be filed unless the Court grants a motion to file
16 such documents. Contrary to the Local Rules, dispositive and *Daubert*
17 motions shall be noted for hearing at least **45 days** after the date of
18 filing. The parties will receive only one hearing date per month for
19 dispositive motions of up to five issues per party.

20 6. When a party relies on deposition testimony to support a
21 position it takes in support or opposition to an issue, that party
22 shall provide the Court with only the pertinent excerpts of the
23 deposition testimony relied upon and shall cite to page and line
24 numbers of the deposition it believes supports its position. See
25 generally LR 56.1(e). Submission of the entire deposition and/or
26 failure to cite to specific portions of the deposition may result in

1 the submission being stricken from the record. See *Orr v. Bank of*
2 *America*, 285 F.3d 764, 774-75 (9th Cir. 2002). In addition, when a
3 party references a document previously filed with or by the Court,
4 that party shall cite to the document by the record number given to
5 the document by the Clerk of the Court, e.g. (Ct. Rec. 43).

6 Furthermore, because the Court is able to easily review previously
7 filed court records, no such documents shall be attached as exhibits
8 to any filing.

9 7. Although Motions to Reconsider are disfavored, any Motion to
10 Reconsider shall be filed no later than 10 days after the filing date
11 of the Order which is the subject of the motion, and shall be noted
12 for hearing **without oral argument**. No responses or replies to Motions
13 to Reconsider shall be filed, unless the Court expressly requests
14 responses or replies. Counsel shall follow CR 7(h) of the United
15 States District Court **Western District of Washington** local rules.

16 **Motions to Reconsider shall not exceed five pages.**

17 8. Parties are to comply with Local Rule 7.1(h) when noting
18 motions for hearing, except as modified by this Court for dispositive
19 and *Daubert* motions as set out above. If oral argument is necessary,
20 counsel shall contact the Courtroom Deputy at 509-376-7262 to obtain a
21 hearing date and time.

22 If there is need to have a motion heard on an expedited basis, the
23 party must file a Motion for Expedited Hearing and an accompanying
24 memorandum establishing need for an expedited hearing. The Motion for
25 Expedited Hearing shall be noted for hearing, without oral argument,
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1 no sooner than two days after the filing date of the motion, absent
2 good cause shown.

3 9. Witness/Exhibit lists shall be filed and served and exhibits
4 made available for inspection or copies provided to the parties on or
5 before **July 13, 2007**. For each witness, the witness list shall
6 include a brief description of the witness, a brief summary of the
7 witness' anticipated testimony, whether the witness will be called as
8 an expert, and any known trial date/time conflicts that witness has.
9 For each exhibit, the exhibit list shall include a brief description
10 of the exhibit. Additionally, all exhibits shall be pre-marked;
11 Plaintiffs' exhibits are to be numbered 1-499; Defendant's exhibits
12 shall be numbered 500-999.

13 Objections to witnesses/exhibits shall be filed and served on or
14 before **July 20, 2007**, AND SHALL BE HEARD AT THE PRETRIAL CONFERENCE.
15 All objections to witnesses shall set forth a legal basis and
16 explanation for the objection. Objections to an exhibit or the
17 portion to which there are objections, shall be accompanied by a full
18 and complete copy of the exhibit in question and set forth a short
19 legal basis and explanation for the objection. The party seeking the
20 admission of the witness or exhibit has five days, excluding federal
21 holidays and weekends, to file a response to the opposing party's
22 objection; no reply is to be filed.

23 10. Designation of substantive, as opposed to impeachment,
24 deposition or prior testimony to be used at trial shall be highlighted
25 in yellow by Plaintiff or in blue by Defendant in a complete
26 transcript of the deposition or prior testimony and served on or

1 before **July 13, 2007**. Cross-designations shall be highlighted in
2 yellow by Plaintiff or in blue by Defendant in the transcript
3 containing the opposing party's initial designations and shall be
4 served on or before **July 27, 2007**.

5 All objections to designated deposition or prior testimony and the
6 legal bases for the objections, shall be filed and served on or before
7 **August 3, 2007**. Any designated deposition or prior testimony objected
8 to shall be underlined in black in a complete yellow/blue highlighted
9 copy of the deposition/prior testimony transcript described above. A
10 paper copy of the underlined document shall be filed and served with
11 the objections. The party seeking admission of the testimony has 5
12 days, excluding federal holidays and weekends, to file a response; no
13 reply is to be filed. If the deposition was videotaped, and the
14 videotape is to be used at trial, the party seeking to use the
15 videotaped deposition shall indicate the relevant portion on both the
16 written transcript and the videotape. Similarly, objections shall be
17 made on the written transcript as explained above along with the
18 applicable time stamp on the video tape noted. All objections to
19 deposition and prior testimony designations shall be heard and
20 resolved at the pretrial conference.

21 11. All unresolved substantive or evidentiary issues that may
22 foreseeably arise during trial shall be addressed by MOTIONS IN LIMINE
23 to be filed and served on or before **July 20, 2007**. Such motions will
24 be addressed and resolved at the pretrial conference.

25 12. An **in person** pretrial conference will be held at **10:00 a.m.**
26 **on August 28, 2007**, in Richland, Washington.

1 13. A JOINT PROPOSED PRETRIAL ORDER prepared in accordance with
2 Local Rule 16.1(b) shall be filed on or before **August 20, 2007**.
3 Counsel is instructed to e-mail the Pretrial Order, in WordPerfect or
4 text only format, to "Sheaorders@waed.uscourts.gov".

5 14. The list of exhibits contained in the Joint Proposed Pretrial
6 Order shall reflect the exhibit marking scheme described above. In
7 preparing the Joint Proposed Pretrial Order, the parties shall confer
8 regarding duplicative exhibits and determine which party will submit
9 such exhibits for trial. Counsel shall prepare and file a list of all
10 exhibits which will be admitted without objection no later than
11 **September 7, 2007**.

12 15. In accordance with Local Rule 83.1(g), each party shall bring
13 to trial, the pretrial conference, and any other hearing on the
14 merits, photocopies of their relevant pre-marked exhibits for the
15 Court, opposing counsel, and testifying witness, unless it is not
16 possible to do so because of the nature of an exhibit. Photocopies
17 for these different individuals are to be organized into separate
18 binders by exhibit number.

19 16. Trial briefs, requested voir dire, and joint proposed jury
20 instructions shall be filed and served on or before **September 7, 2007**.

21 The parties' joint proposed jury instructions shall be presented
22 in the following format: (1) "Table of Contents" shall list the
23 proposed instructions by number, brief title/subject-matter, and
24 authority, *i.e.* Ninth Circuit Model Instruction No. ____, statute
25 citation, or case citation; (2) "Section I: Preliminary Instructions"
26 shall include the language of all instructions the parties would like

1 the Court to provide prior to opening statements, including a
2 "statement of the case" and "undisputed facts" instructions. One
3 instruction per page if possible, with citation to the authority for
4 the instruction; (3) "Section II: Final Instructions" shall include
5 the language for all instructions the parties would like the Court to
6 provide prior to closing arguments. One instruction per page if
7 possible, with citation to the authority for the instruction; and (4)
8 "Section III: Verdict Form" shall include a proposed verdict form.

9 The Final Instructions section shall, at a minimum, include
10 instructions regarding the elements of each claim or defense, the
11 relief sought, and otherwise comply with Local Rule 51.1(c). If the
12 parties are unable to agree on certain instructions, they are to
13 submit individually proposed jury instructions no later than the date
14 the joint proposed instructions are due. All individually submitted
15 proposed jury instructions must adhere to the format described above
16 for joint proposed instructions and not include instructions the
17 parties are in agreement on.

18 Counsel are instructed to e-mail courtesy copies of their joint
19 and individually proposed jury instructions, in WordPerfect or text
20 only format, to "Sheaorders@waed.uscourts.gov".

21 Any objections to the opposing party's individually submitted
22 proposed instructions must be filed no later than 5 days, excluding
23 federal holidays and weekends, after the individual proposed
24 instructions were filed. All objections shall set forth the basis for
25 the objection and briefly explain why the instruction in question
26 should not be used or should be altered.

1 17. Any time-sensitive materials should be faxed to Chambers at
2 509-372-3051.

3 18. The estimated 2 week jury trial shall commence at **9:00 a.m.**
4 on **September 17, 2007**, in **Spokane**, Washington. **Counsel shall meet**
5 **with the Court in Chambers at 8:30 a.m. on the day of trial.**

6 IT IS SO ORDERED. The District Court Executive is hereby
7 directed to enter this Order and to furnish copies to counsel.

8 **DATED** this 24th day of **August, 2006**.

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S/ Edward F. Shea
EDWARD F. SHEA
United States District Judge

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