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7 Attorneys for Plaintiff

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

10 THOMAS A. WAITE,

No. CV-05-399-EFS

11 Plaintiff,

12 vs.

**DECLARATION OF STEPHEN L.
 NORDSTROM IN OPPOSITION
 TO DEFENDANTS' MOTION TO
 CONTINUE EXPERT
 DISCLOSURE DATES FOR
 NEUROPSYCHOLOGY
 OPINIONS**

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

19 Defendants.

20 Stephen L. Nordstrom, being first duly sworn, declares and states:

21 1. I am one of the attorneys for plaintiff in the above-referenced matter.

22 I make this declaration of my own personal knowledge and in opposition to
 23 Defendants' Motion to Continue Expert Disclosure Dates for Neuropsychology
 24 Opinions.

25
 26
 27 DECLARATION OF STEPHEN L. NORDSTROM IN
 OPPOSITION TO DEFENDANTS' MOTION TO
 CONTINUE EXPERT DISCLOSURE DATES FOR
 NEUROPSYCHOLOGY OPINIONS - 1

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1 2. What defendants fail to advise the Court in their motion is that defendants
2 have already requested and been granted permission for neuropsychological testing of
3 plaintiff Thomas Waite prior to commencement of this litigation. Indeed, Mr. Waite
4 did submit to a neuropsychological examination at the request of defendant LDS
5 Church at St. Luke's Rehabilitation Institute on December 6, 2004. As such,
6 defendants have already had their one bite of the apple. By allowing defendants yet
7 another neuropsychological evaluation of Mr. Waite would allow an unfair advantage
8 to defense counsel.

9 3. Attached hereto and incorporated by reference herein as Exhibit "A" is
10 a true and correct copy of the December 6, 2004 Report of Neuropsychological
11 Evaluation prepared by Angelique G. Tindall, Ph.D., which was conducted at
12 defendants' request.

13 4. Plaintiff's counsel are unwilling to agree to such an examination when
14 Fed.R.Civ.P. 35(a) specifically states:

the Court in which the action is pending may order the party
to submit to a physical or mental examination by a suitably
licensed or certified examiner or to produce for examination
the person in the party's custody or legal control.

17 Plaintiff Thomas Waite has already submitted to a mental examination by a certified
18 examiner at St. Luke's Rehabilitation Institute. To order Thomas Waite to submit to
19 a second medical examination is in contradiction to CR 35(a).

20 5. Plaintiff will agree to produce to defense expert Dr. Wise copies of the
21 raw data and testing performed by plaintiff's expert William Burkhart, Ph.D. It would
22 be more appropriate for Dr. Wise to review and compare Thomas' prior testing from
23 all neuropsychological testers and examiners and prepare his report from those sources
24 than to require Mr. Waite to submit to yet another examination and further testing.
25

1 I certify under penalty of perjury of the laws of the State of Washington that the
2 foregoing is true and correct to the best of my knowledge.

3 DATED this 18th day of January, 2007 at Spokane, Washington.
4

5 s/Stephen L. Nordstrom
6 **STEPHEN L. NORDSTROM**
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26 DECLARATION OF STEPHEN L. NORDSTROM IN
27 OPPOSITION TO DEFENDANTS' MOTION TO
CONTINUE EXPERT DISCLOSURE DATES FOR
NEUROPSYCHOLOGY OPINIONS - 3

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CERTIFICATE OF SERVICE

I, STEPHEN L. NORDSTROM, hereby certify that on the 18th day of January, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following participants:

Brian T. Rekofke
Witherspoon Kelley Davenport & Toole
1100 U.S. Bank Building
422 W. Riverside Avenue
Spokane, WA 99201

Andrew C. Smythe
Paine Hamblen Coffin Brooke & Miller
717 W. Sprague Avenue, Suite 1200
Spokane, WA 99201

s/Stephen L. Nordstrom
STEPHEN L. NORDSTROM

DECLARATION OF STEPHEN L. NORDSTROM IN
OPPOSITION TO DEFENDANTS' MOTION TO
CONTINUE EXPERT DISCLOSURE DATES FOR
NEUROPSYCHOLOGY OPINIONS - 4

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EXHIBIT "A"

**to Declaration of
Stephen L. Nordstrom**

Medical Record #: G140292
Account #: G636340

ST. LUKE'S REHABILITATION INSTITUTE
711 S. COWLEY STREET
SPOKANE, WASHINGTON 99202

**REPORT OF NEUROPSYCHOLOGICAL EVALUATION
CONFIDENTIAL**

| | |
|----------------------------|------------------|
| NAME: | Waite, Thomas L. |
| AGE: | 21 |
| BIRTHDATE: | |
| HANDEDNESS: | Right-handed |
| MARITAL STATUS: | Single |
| OCCUPATION: | Missionary |
| DATE OF INJURY: | 8-21-03 |
| DATE OF ASSESSMENT: | 12-6-04 |

REASON FOR REFERRAL: Thomas Waite is a 21-year-old, right-handed, Caucasian male with a history of traumatic brain injury suffered in a motor vehicle accident that occurred on August 21, 2003. He was hospitalized at Deaconess Medical Center from until September 10, 2003, and was transferred to Rancho Los Amigos National Rehabilitation Center in California where he stayed until October 2, 2003. Since that time he has participated in 2 neuropsychological evaluations, in October of 2003 and May of 2004. He was referred for repeat neuropsychological evaluation to determine his current level of cognitive functioning and assist in treatment planning.

CURRENT COMPLAINTS AND GOALS AS OBTAINED FROM PATIENT: Thomas reported his primary concern as his ability to acquire new skills in pursuing a career. He is also fearful of getting another head injury and no longer participates in previously enjoyed activities such as surfing, dirt bike riding and rock climbing. His goal is to pursue a college degree in engineering or a career in communications as a writer and/or artist.

HISTORY OF INJURY AS OBTAINED FROM PATIENT: Thomas reported that his last memory prior to the accident was riding his bike through Spokane approximately 2 weeks before the accident. His next clear memory is being in California at Rancho Los Amigos. He has been told that he was riding in the back of a truck with 5 other missionaries. The accident occurred when another vehicle struck the truck and Thomas was thrown from the truck.

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PHYSICAL/PSYCHOLOGICAL SYMPTOMS AND CHANGES AS OBTAINED FROM PATIENT: Thomas reported no weakness or numbness in any parts of his body. He noted no hand tremor, history of arthritis or change in the ability to use his hands. He remembered that his balance has improved but is not as good as it was prior to the injury. He reported a constant ringing in his left ear with hearing loss in that ear related to the injury. He reported no changes in his vision and no history of auditory or visual hallucinations. Thomas stated that he has lost his sense of smell since the injury, but has no current problems with nausea. He reported his appetite as normal, but admitted that he does not eat when stressed. He described his sleep pattern as normal if he takes Trazodone. He added that he has cut his Trazodone to one quarter of a 50 mg. tablet. He noted that his endurance has decreased secondary to changes in his activity level. He reported no current problems with fainting spells, dizziness or headaches and no history of seizures.

Thomas described his mood as fluctuating, admitting that he gets anxious if he "doesn't like a person." He reported that he experiences emotions more intensely since the injury. He admitted that he is more irritable and tense since his injury. He added that he was more "laid back" and tolerant of others prior to the injury. He reported no current suicidal ideation, history of suicide attempts or previous psychiatric history. He reported no family psychiatric history.

COGNITIVE CHANGES AS DESCRIBED BY PATIENT: Thomas reported that he has difficulty following conversations in that he misinterprets content. He report occasional word finding difficulty, but this has improved. He reported no changes in his handwriting, problems with reading comprehension or problems with calculation ability. He admitted that he is easily distracted and reported his short-term memory as diminished. He stated that he tends to forget names and activities from the previous week.

RELEVANT BACKGROUND:

FAMILY/MARITAL HISTORY: Thomas was born in Los Angeles and raised in Fullerton, California by his adoptive parents. He was adopted as an infant and has one brother, age 22, who was also adopted. He is single, never married and has no children.

EDUCATIONAL HISTORY: Thomas graduated from high school and participated in one semester of junior college. He remembered that he made B's, C's and D's. He participated in home study from his sophomore year until his senior year, because his social life was too distracting and his grades diminished. He reported his worst subject as math and his best subject as English.

OCCUPATIONAL HISTORY: Thomas worked for his uncle, who is a civil engineer, and was employed in a machine shop for a brief time. He is currently a missionary for the Church of Jesus Christ of Latter Day Saints. He reported that he has completed 19 months of his 2-year missionary work.

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MEDICAL HISTORY AS OBTAINED FROM PATIENT: Thomas described himself as mostly healthy with a history of asthma. He reported no previous history of head injury or loss of consciousness. Current medications include Trazodone 50 mg.

SUBSTANCE USE HISTORY: Thomas reported no history of alcohol or illegal drug use/abuse.

LEGAL HISTORY: Thomas reported no legal history.

REVIEW OF MEDICAL RECORDS: Please refer to the report by Dr. Duane Greene for a thorough review of the medical records pertaining to this injury.

A psychologist at Rancho Los Amigos in California evaluated Thomas in September 2003. This evaluation included a neuropsychological assessment. It was concluded that his traumatic brain injury resulted in deficits in complex attention, speed of processing, mental organization and memory retrieval. It was recommended that he delay return to his mission in order to allow more time for recovery. At the time of this evaluation, there was no evidence of mood disturbance or difficulty with adjustment.

Dr. Duane Greene evaluated Thomas in May 2004. Dr. Greene's neuropsychological assessment concluded that Thomas is suffering from a cognitive disorder related to his traumatic brain injury with decreased speed of processing, diminished attention and concentration and "variable memory functions." He was diagnosed with a Depressive Disorder NOS secondary to residuals of his closed head injury. Dr. Greene recommended that Thomas participate in psychological counseling for his depression and work with vocational rehabilitation services for long-term career planning. Dr. Greene was concerned about Thomas' feelings of inadequacy and low self-esteem.

BEHAVIORAL OBSERVATIONS: Thomas presented as an alert, oriented, 21-year-old, right-handed male in no acute distress. He ambulated independently and no gross motor problems were observed during the evaluation. He was dressed in business attire and his grooming and hygiene were excellent. His speech was spontaneous, but there was evidence of concrete thinking and mild difficulty with higher-level language processing in his conversation. This was evidenced as problems with conciseness and missing the point in answering questions. Rate and prosody of speech were normal. There was no evidence of word finding difficulty in his conversation and receptive language appeared intact. His affect was flat and his mood was serious throughout the evaluation. In previous evaluations, it was noted that he displayed a sense of humor. There was no evidence of a sense of humor during this evaluation and, at times, he appeared irritated with the process. His speed of processing appeared mostly normal for his age group and his energy level was normal. He put forth good effort throughout the evaluation, but displayed some impulsivity that may be related to irritability. He had no difficulty understanding

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test instructions. These results are believed to be an accurate representation of his current cognitive functioning.

PROCEDURES: Wechsler Adult Intelligence Scale – Third Edition (WAIS-III), Wide Range Achievement Test, Revision 3 (WRAT-3, Word Recognition and Arithmetic Subtests only), Wechsler Memory Scale – Third Edition (WMS-III, Logical Memory and Family Pictures Subtests only), Controlled Oral Word Association Test (COWAT), Boston Naming Test, Trail Making Test (Parts A and B), Wisconsin Card Sorting Test (WCST), Rey-Osterreith Complex Figure Test (CFT), Rey Auditory Verbal Learning Test (RAVLT), Grooved Pegboard Test, Benton Judgment of Line Orientation Test, Symptom Checklist 90 – Revised (SCL-90-R) and clinical interview.

EXAMINATION RESULTS: Thomas' pre-injury functioning was estimated to be in at least the average range based upon his reported educational history.

HIGHER ORDER COGNITIVE FUNCTIONING: On the WAIS-III, he achieved a Verbal IQ score of 114 (82nd percentile), a Performance IQ score of 113 (81st percentile), and a Full Scale IQ score of 114 (82nd percentile). These scores are in the high average range for verbal ability, visual-spatial ability and overall intellectual functioning. Verbal Conceptualization was in the superior range, Perceptual Organization was high average while Processing Speed was average. Examination of subtest scaled scores revealed that all scores were in the above average range with the exception of a low average score on a test of mental calculation and an average score on a complex visual motor test that is sensitive to speed of processing and the effects of traumatic brain injury.

ACADEMIC FUNCTIONING: His current performances in the basic skills of word recognition and arithmetic were assessed with the WRAT-3. His scores were consistent with his educational history. He scored in the average range on word recognition and the low average range on arithmetic achievement.

COGNITIVE FLEXIBILITY: Thomas performed in the above average range on a complex problem-solving test requiring him to generate and test hypotheses in the face of changing rules. This test required that he alter his strategy in order to succeed on the task.

FINE MOTOR SPEED/COORDINATION: Speed on a pegboard task, that places demands on manual dexterity, was mildly below average with the preferred hand and below average with the non-preferred hand. Coordination was mostly normal.

LANGUAGE FUNCTIONING: Associative word fluency, measured by having the patient think of words beginning with a specified letter of the alphabet, was in the average range but inconsistent with his above average verbal intellectual skills. Category fluency, measured by having the patient think of examples from a specific category, was also average. His

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performance on a confrontation-naming task was mildly below average for his age and education and primarily attributed to word retrieval difficulty.

CONSTRUCTIONAL ABILITIES: His copy of a multi-faceted geometric design (CFT) was mildly below average secondary to impulsivity and attention errors in the organization and planning of the copy of the figure. The Block Design subtest of the WAIS-III involves assembling geometric designs from colored blocks. His performance was in the high average range on this test. There was no evidence of constructional impairment on these tasks.

ATTENTION/CONCENTRATION: Recall of digits forward and backward on the WAIS-III was in the high average range for his age group (9 forward, 5 backward). The relative difference between his digits forward and backward score, however, suggests that he has problems with working memory. His performance on the arithmetic subtest of the WAIS-III, that requires mental calculations, was in the low average range and attributed to problems with working memory.

VISUAL PERCEPTION: His performance on a test of spatial perception and orientation (Benton Judgment of Line Orientation) was average.

VISUAL MOTOR SPEED: His performance on a test involving visual search, motor speed, mental flexibility and attention was average (Trail Making Test). On the Digit Symbol subtest of the WAIS-III, his performance was in the average range for his age group but the lowest score amongst the entire performance subtest scaled scores.

VISUAL LEARNING AND MEMORY: Memory for the complex figure (CFT) was average on the immediate and delayed recall trials. Recognition memory was mildly below average, suggesting that he was able to remember the central configuration, but struggled in recalling details. He was asked to incidentally recall the symbols from the Digit Symbol subtest of the WAIS-III. He recalled all 9 symbols, which is an above average performance.

Thomas was given the Family Pictures subtest from the WMS-III, which provides a measure of structured visual memory. He performed in the above average range on the immediate and delayed recall trials of this test.

NEW VERBAL LEARNING AND MEMORY: Verbal learning and memory were assessed with the RAVLT, which is a list-learning task. He demonstrated some capacity for incremental learning over the learning trials but he plateaued quickly. The overall information learned across the trials was below average for his age group. His delayed recall was also below average for his age group. Recognition memory was average but he made omission and false positive errors.

Thomas was given the Logical Memory Subtest from the WMS-III, which is a story memory test. His performance on the learning trial was in the low average range but improved on the

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delayed recall trial. This pattern of performing better on a story task versus a list-learning task suggested that his memory improves when he is given structure with multiple exposures.

EMOTIONAL/BEHAVIORAL FUNCTIONING: His responses on the Symptom Checklist - 90 - Revised suggested awareness of cognitive difficulties and significantly low self-esteem. There is also evidence of loss of self-confidence along with symptoms of depression.

SUMMARY/IMPRESSIONS: Thomas Waite is a 21-year-old, right-handed male with a history of traumatic brain injury. Specific individual findings related to the neuropsychological functions previously described are summarized below for the procedures used in Mr. Waite's evaluation.

His overall intellectual functioning based upon reported educational history was estimated to be in at least the average range. Testing suggested overall intellectual functioning in the high average range with superior verbal skills and high average visual-spatial skills. Measures of speed of processing, however, were in the average range. Word recognition and arithmetic achievement were consistent with his educational history. Cognitive flexibility was above average. Verbal fluency was in the average range and inconsistent with his above average verbal intellectual skills. Confrontation naming was mildly below average and attributed to difficulty with word retrieval. Organization and planning of a complex figure was mildly below average secondary to impulsivity and attention errors. Visual motor speed and speed of information processing was average. His performance on a visual perception test was average. Speed on a pegboard task was mildly below average with the preferred hand and below average with the non-preferred hand. New verbal learning and memory were below average for unstructured material and average for structured material. Memory for non-verbal information was average to above average. Psychological measures revealed low self-esteem and diminished self-confidence with some depressive symptomatology.

Thomas' performance on neuropsychological testing continues to show problems with diminished verbal memory for unstructured material. In the face of above average verbal skill, he is experiencing average to low average speed of processing of verbal information and some difficulty with high level verbal organization skills. This affects his ability to glean context from conversations in which he has to attend to body language, voice inflection and language to comprehend intent. When compared to the previous neuropsychological evaluations, Thomas has made significant gains. With these gains comes an increased awareness of his deficits. Often when patients experience increased awareness of deficits they experience increased symptoms of depression related to recognizing that they are not performing at their previous level of functioning. This affects self-esteem and ultimately self-confidence.

Treatment for Thomas needs to be focused on psychological counseling to build his self-esteem and self-confidence. It is best to work with a professional who is familiar with traumatic brain injury and understands the course of recovery. He also needs vocational services that will

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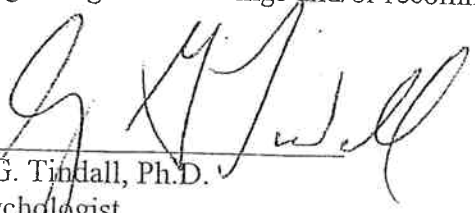
advocate for him as he returns to school and work following his mission. He will need to be in contact with Student Services in a university setting to receive assistance with accommodations for learning new material, having extra time to take tests, and being able to keep up with note taking during lectures. He will also need career counseling. For example, with his math skills background, he will likely struggle with an engineering curriculum.

DIAGNOSTIC IMPRESSION: An appropriate diagnosis at this time is Cognitive Disorder NOS secondary to Traumatic Brain Injury (DSM-IV: 294.9). His deficits appear to be in the mild range of impairment. He is also experiencing an Adjustment Disorder with symptoms of depression (DSM-IV: 309.0). These symptoms are primarily related to his reaction to the changes in his ability and lifestyle related to the injury.

RECOMMENDATIONS:

1. Thomas needs to pursue counseling with a professional who has experience with traumatic brain injury. This person could give him information as to future expectations and assist in increasing his self-esteem and self-confidence. It will be particularly important to have this assistance when he returns to college or a new career.
2. If Thomas decides to pursue college, it is recommended that he be involved with Student Services. He is likely to need extra time for taking tests. He will also need to be allowed to tape record lectures so that he has multiple exposures to material to make learning easier.
3. Thomas needs to have vocational assistance with return to school and choice of career.
4. It may be useful to consider antidepressant medication to address Thomas' irritability and depressive symptomatology. This medication may assist in decreasing his frustration.

Thank you for the referral of this patient. Please do not hesitate to contact me if you have questions regarding these findings and/or recommendations.



Angelique G. Tindall, Ph.D.
Clinical Psychologist
(509) 473-6791

AGT/slc

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TEST RESULTS

Wechsler Adult Intelligence Scale- Third Edition

Full Scale IQ Score 114 - 82nd percentile
 Verbal IQ Score 114 - 82nd percentile
 Performance IQ Score 113 - 81st percentile

| Verbal Scaled Scores | | Performance Scaled Scores | |
|----------------------|----|---------------------------|----|
| Vocabulary | 12 | Picture Completion | 12 |
| Similarities | 17 | Digit Symbol | 9 |
| Arithmetic | 7 | Block Design | 12 |
| Digit Span | 12 | Matrix Reasoning | 14 |
| Information | 12 | Picture Arrangement | 13 |
| Comprehension | 14 | Symbol Search | 11 |

Wide Range Achievement Test - Revision 3

| | Std Score | Percentile |
|------------|-----------|------------|
| Reading | 103 | 58 |
| Arithmetic | 89 | 23 |

Wisconsin Card Sorting Test

Errors 13 77th percentile
 Perseverative Responses 8 81st percentile
 Categories Completed 6 > 16th percentile

Grooved Pegboard Test

| | Time (sec.) | Drops | T score |
|-------------------|-------------|-------|---------|
| Preferred Hand | 72 | 0 | 37 |
| Nonpreferred Hand | 84 | 2 | 33 |

Handwritten: 12-17-07

Benton Judgment of Line Orientation

Score= 25 56th percentile

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Trail Making Test

| | Time (sec.) | Errors | T Score |
|--------|-------------|--------|---------|
| Part A | 29 | 0 | 41 |
| Part B | 52 | 0 | 50 |

Rey Auditory Verbal Learning Test

| | Raw Score | z score |
|------------------|-----------|---------|
| Total Words | 43 | -1.3 |
| Delayed Recall | 7 | -1.7 |
| Recognition Hits | 12 | -0.2 |
| False Positives | 2 | |

Complex Figure Test

| | Raw score | T Score | Percentile |
|------------------|-----------|---------|------------|
| Copy | 33 | | 11 - 16 |
| Immediate Recall | 23 | 46 | 34 |
| Delayed Recall | 22 | 43 | 24 |
| Recognition | 19 | 32 | 4 |

Wechsler Memory Scale - Third Edition

| | Scaled Score |
|--------------------|--------------|
| Logical Memory I | 8 |
| Logical Memory II | 11 |
| Family Pictures I | 14 |
| Family Pictures II | 14 |

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Controlled Oral Word Association

Corrected Total Words 43 67th percentile

Boston Naming Test

Total Words 78
T score 37

Symptom Checklist-90-Revised

GSI = 0.56 T score = 64