

1 Brian T. Rekofke  
Ross P. White  
2 Witherspoon, Kelley, Davenport & Toole  
1100 US Bank Building  
3 422 West Riverside  
Spokane, WA 99201  
4 (509) 624-5265

5 Attorneys for LDS Church and Donald C. Fossum

6 UNITED STATES DISTRICT COURT  
7 FOR THE EASTERN DISTRICT OF WASHINGTON

8  
9 THOMAS A. WAITE,  
10 Plaintiff,  
11 vs.  
12 THE CHURCH OF JESUS CHRIST OF  
LATTER DAY SAINTS d/b/a  
13 CORPORATION OF THE PRESIDING  
BISHOP OF THE CHURCH OF JESUS  
14 CHRIST OF LATTER DAY SAINTS, a  
Utah corporation, d/b/a CORPORATION  
15 OF THE PRESIDENT OF THE CHURCH  
OF JESUS CHRIST OF LATTER DAY  
16 SAINTS, a Utah corporation; DONALD C.  
FOSSUM; and STEVEND. BRODHEAD,  
17 Defendants.  
18

Case No.: CV-05-399-EFS

AFFIDAVIT OF BRIAN T.  
REKOFKE IN SUPPORT OF  
MOTION TO COMPEL

19 STATE OF WASHINGTON )  
20 ) :ss  
County of Spokane )

21 BRIAN T. REKOFKE, being first duly sworn, upon oath, deposes and says:

22 1. I am one of the attorneys for the Church defendant and Donald  
23 Fossum, and make this Affidavit on personal knowledge.

24 2. On February 26, 2007, I caused to be served on plaintiff's counsel  
25 Interrogatories and Third Request for Production concerning Mr. Nordstrom's  
26 contacts with missionaries or former missionaries of the Church.  
27  
28

1 3. This discovery was served because there had been agreement reached  
2 among counsel on or about November 8, 2006, that there would be no ex parte  
3 contact by Plaintiff's counsel with former Church missionaries or other  
4 individuals affiliated with the LDS Church, unless and until the contact issue was  
5 framed and decided by the Court.

6 4. Subsequent to this agreement, Plaintiff's counsel filed the Declaration  
7 of James Ross, a former missionary.

8 5. Not only was the Ross declaration signed and filed after the  
9 agreement of no ex parte contact, the body of the declaration reveals there were  
10 other contacts and perhaps even taped conversations.

11 6. Plaintiff answered the interrogatories on March 27, 2007, a copy of  
12 which is attached hereto as Exhibit A.

13 7. Plaintiff provided no information as requested in Interrogatories 2 -  
14 5 regarding the date, location, type of contact and whether any documents were  
15 created. No documents or privilege log were produced.

16 8. On April 2, 2007, I wrote a letter to Mr. Nordstrom requesting  
17 answers to the interrogatories.

18 9. By letter dated April 5, 2007, Plaintiff's counsel indicated memoranda  
19 of witness' oral statements were work product and therefore not discoverable.

20 10. Information concerning when the contacts occurred, who made them,  
21 what was discussed is not protected and defendants are entitled to information in  
22 that regard, particularly in view of the apparent breach of an agreement to have  
23 no ex-parte contact with former missionaries.

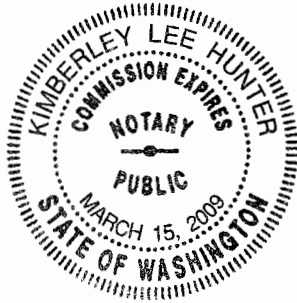
24 11. Accordingly, Defendants seek answers to Interrogatories No. 2-5 and  
25 respectfully reserve the right to move to compel production of documents  
26 generated depending on the facts and circumstances of the contacts.

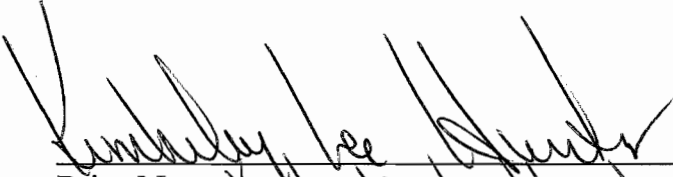
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

  
\_\_\_\_\_  
Brian T. Rekofke

SUBSCRIBED AND SWORN to before me this 11th day of April,  
2007.



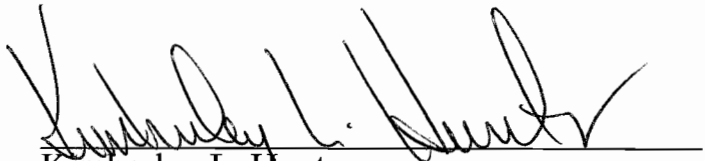
  
\_\_\_\_\_  
Print Name: Kimberley Lee Hunter  
NOTARY PUBLIC in and for the State  
of Washington, residing in Spokane  
My Commission expires: 3/15/09

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on the 11<sup>th</sup> day of April, 2007:

1. I electronically filed the foregoing **AFFIDAVIT OF BRIAN T. REKOFKE IN SUPPORT OF MOTION TO COMPEL** 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**



Kimberley L. Hunter  
Witherspoon, Kelley, Davenport & Toole, P.S.  
422 W. Riverside Ave., #1100  
Spokane, WA 99201-0300  
Phone: 509-624-5265  
Fax: 509-478-2728  
[kimh@wkdtlaw.com](mailto:kimh@wkdtlaw.com)