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5 Attorneys for Church Defendants
6

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

9 THOMAS A. WAITE,

10 Plaintiff,

11 vs.

12 THE CHURCH OF JESUS CHRIST OF
13 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 OF THE CHURCH
16 OF JESUS CHRIST OF LATTER DAY
SAINTS, a Utah corporation; DONALD C.
17 FOSSUM; and STEVEN D. BRODHEAD,

18 Defendants.

Case No.: CV-05-399-EFS

AGREED FACTS AND
STIPULATION IN SUPPORT
OF JOINT MOTION FOR
DISMISSAL OF THE
CHURCH OF JESUS CHRIST
OF LATTER-DAY SAINTS

19 I. AGREED FACTS

- 20 1. Plaintiff filed his Complaint on December 12, 2005.
- 21 2. The Complaint names as defendant The Church of Jesus Christ of
22 Latter-day Saints ("The Church").
- 23 3. The Complaint also lists in the caption Corporation of the Presiding
24 Bishop of The Church of Jesus Christ of Latter-day Saints ("CPB") as a dba of
25 The Church.
- 26 4. The Complaint also lists in the caption Corporation of the President
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28 AGREED FACTS AND STIPULATION IN SUPPORT OF
JOINT MOTION FOR DISMISSAL ... - 1

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WITHERSPOON, KELLEY, DAVENPORT & TOOLE
A PROFESSIONAL SERVICE CORPORATION
ATTORNEYS & COUNSELORS

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1 of The Church of Jesus Christ of Latter-day Saints ("COP") as a dba of The
2 Church.

3 5. COP is not a dba of The Church; it is a Utah corporation.

4 6. CPB is not a dba of The Church; it is a Utah corporation.

5 7. Plaintiff attempted to serve The Church by delivering a copy of the
6 Summons and Complaint to Alisia Johansen at 60 E. South Temple, #1800, in Salt
7 Lake City, Utah.

8 8. Alisia Johansen is the former legal assistant to Von G. Keetch, an
9 attorney at Kirton & McConkie, located at 60 E. South Temple, #1800, Salt Lake
10 City, Utah.

11 9. Mr. Keetch is the registered agent for both COP and CPB, not The
12 Church.

13 10. The Church is not a corporation and has no registered agent, and has
14 never been served in this lawsuit.

15 11. Witherspoon, Kelley, Davenport & Toole in error filed a Notice of
16 Appearance for The Church on February 1, 2006. The notice does not mention
17 COP or CPB.

18 12. Witherspoon, Kelley, Davenport & Toole's Answer erroneously
19 admits that The Church is a corporation headquartered in Salt Lake City which
20 operates and does business in the State of Washington, County of Spokane.

21 13. On June 30, 2006, Judge Thomas Zilly in the United States District
22 Court for the Western District of Washington filed an order in Rinde v. COP, et
23 al., Case No.: C 06-556Z, in which he found that the Mormon Church was an
24 unincorporated association with members in all 50 states.

25 14. Based on this, Judge Zilly found The Church to be a non-diverse
26 defendant, which precluded federal jurisdiction in the Rinde case. That upon

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1 remand to the state court, COP brought a motion to dismiss the Church as an
2 improper party. The motion was granted, and the case is now back in Federal
3 Court. The Church is not a party to the litigation.

4 15. As a religious organization, there exist issues whether The Church
5 does, in fact, have a capacity to be sued under FRCP 17.

6 16. The Church is not a proper party to this litigation as it has taken
7 corporate form through COP and CPB, and therefore, does not exist as a legal
8 entity.

9 17. If the Church is an unincorporated association, then its presence may
10 destroy diversity jurisdiction.

11 **II. STIPULATION**

12 Based on the foregoing, the parties, by and through their counsel, hereby
13 stipulate as follows:

14 1. Although not dba's of The Church, COP and CPB received actual
15 notice of this lawsuit, are proper parties defendant and have defended the case.

16 2. The Church of Jesus Christ of Latter-day Saints may be dismissed
17 from this action with prejudice and without costs to any party.

18 3. Dismissal of The Church of Jesus Christ of Latter-day Saints does not
19 impact any claim or cause of action plead in the Complaint and both CPB and
20 COP will remain as defendants in the case.

21 4. CPB and COP, either or both, will be vicariously liable for any
22 negligence attributed to defendant Donald Fossum under the doctrine of
23 *respondeat superior*.

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DATED this 18th day of April 2007.

**WITHERSPOON, KELLEY, DAVENPORT
& TOOLE**

By: /s/ Brian T. Rekofke
Brian T. Rekofke, WSBA No. 13260
Ross P. White, WSBA No. 12136
Attorneys for Church Defendants and Fossum

**EYMANN, ALLISON, FENNESSY,
HUNTER & JONES, P.S.**

By: /s/ Richard C. Eymann - approved 4/18/07
Richard C. Eymann, WSBA No. 7470
Attorneys for Plaintiff

NORDSTROM & NEES, P.S.

By: /s/ Stephen Nordstrom - approved 4/18/07
Stephen Nordstrom, WSBA No. 11267
Attorneys for Plaintiff

**PAINE, HAMBLIN, COFFIN,
BROOKE & MILLER, P.S.**

By: /s/ Andrew C. Smythe - approved 4/18/07
Andrew C. Smythe, WSBA No. 7498
Attorneys for Defendant Brodhead

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JOINT MOTION FOR DISMISSAL ... - 4

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CERTIFICATE OF SERVICE

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I hereby certify that on the 18th day of April, 2007:

1. I electronically filed the foregoing **AGREED FACTS AND STIPULATION IN SUPPORT OF JOINT MOTION FOR DISMISSAL OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS** 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, Legal Assistant
Witherspoon, Kelley, Davenport & Toole, P.S.
422 W. Riverside Ave., #1100
Spokane, WA 99201-0300
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