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The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KENNETH FLEMING, JOHN DOE, R.K.  
and T.D.  
  
Plaintiff,  
  
v.  
  
THE CORPORATION OF THE  
PRESIDENT OF THE CHURCH OF  
JESUS CHRIST OF LATTER-DAY  
SAINTS, a Utah corporation sole, a/k/a  
"MORMON CHURCH"; LDS SOCIAL  
SERVICES a/k/a LDS FAMILY SERVICES,  
a Utah corporation  
  
Defendants.

NO. 04-2338 RSM

**AGREED MOTION FOR  
CONTINUANCE OF  
DISPOSITIVE MOTIONS  
DEADLINE AND MEDIATION  
DEADLINE**

**NOTE ON MOTION CALENDAR:  
November 30, 2005**

**I. RELIEF REQUESTED**

Plaintiffs and defendants jointly request a continuance of the dispositive motions deadline from November 30, 2005 to January 5, 2006, and the mediation deadline from December 16, 2005 to January 12, 2006.

**II. FACTUAL BACKGROUND**

This case is scheduled to be called for trial on April 10, 2006. The current dispositive motions deadline is November 30, 2005. For the following reason, plaintiffs

AGREED MOTION FOR CONTINUANCE OF  
DISPOSITIVE MOTIONS AND MEDIATION DEADLINE - 1  
7566-025226

**STAFFORD FREY COOPER**

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1 and defendants request a continuance of the dispositive motions deadline and  
2 mediation deadline.

3 (1) Counsel for plaintiffs and counsel for defendants have just completed a  
4 four-week trial in King County Superior Court. The trial of this state court case, and the  
5 intensive preparations for it, have consumed the time and attention of lead counsel for  
6 all parties in this case for the last two months.

7 (2) There have been several complications related to discovery in this case.  
8 For example, the alleged perpetrator of the sexual abuse lives in Canada. The  
9 procedure for taking the deposition of a Canadian witness involves seeking letters  
10 rogatory from the provincial government, which will review the materials and inform  
11 counsel of its decision. Although the necessary papers have been filed, counsel do not  
12 anticipate clearance to taken the deposition until December 2005. By agreement,  
13 counsel for plaintiffs and defendants have scheduled the remaining depositions to be  
14 taken in the next month.

15 (3) Since the case was filed and the case scheduling order was entered, the  
16 above-captioned case has grown from two plaintiffs to four plaintiffs. Although each  
17 plaintiff alleges sexual abuse by the same perpetrator, each plaintiff has unique factual  
18 and legal circumstances that apply to his claims.

19 (4) The trial of this case is currently scheduled for April 10, 2006. The  
20 continuation of the dispositive motions deadline should have no impact on the trial date  
21 because dispositive motions, if filed by January 5, 2006, will be fully briefed over two  
22 months before the case is called for trial. Counsel understands and regrets, however,  
23

1 that their requested continuance will compress the time period in which the Court will  
2 have to consider the motions.

3 (5) Counsel for plaintiffs and defendants have discussed various mediators  
4 who are acceptable to both parties. The mediation of this case is estimated to take two  
5 days. The availability of experienced mediators is extremely limited at this time of year  
6 due to the holidays and the desire of many attorneys or their clients to settle cases by  
7 the end of the year. Mediators, however, have greater availability in January 2006, at  
8 which time the parties will have worked through many remaining issues and will have a  
9 better idea regarding the strengths and weaknesses of their cases. The parties have  
10 reserved January 9, 2006 and January 12, 2006 with Commissioner Joanne Tompkins.

### 11 III. ARGUMENT

12 The decision whether to continue a deadline is within the discretion of the District  
13 Court. Smith v. Ford Motor Co., 626 F.2d 784, 794 (10<sup>th</sup> Cir. 1980), cert. denied, 450  
14 U.S. 918 (1981); Clarksville-Montgomery Sch. Sys. v. United States Gypsum Co., 925  
15 F.2d 993 998 (6<sup>th</sup> Cir. 1991); Dabney v. Montgomery Ward & Co., 761 F.2d 494, 498  
16 (8<sup>th</sup> Cir.), cert. denied, 474 U.S. 904 (1985). For the reasons set forth above, plaintiffs  
17 and defendants jointly request an extension of the dispositive motions deadline so that  
18 they can complete discovery and refine the factual and legal issues relevant to  
19 dispositive motions before they are filed. An extension of the dispositive motions  
20 deadline to January 5, 2006, will not put the trial date at risk. An extension of the  
21 mediation deadline will allow the parties to schedule a mediation of appropriate length  
22 with a more experienced mediator for these types of claims.

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DATED this 30<sup>th</sup> day of November, 2005.

STAFFORD FREY COOPER

s/ Thomas D. Frey via ECF

Thomas D. Frey, WSBA #1908

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Marcus B. Nash, WSBA #14471

Email: mnash@staffordfrey.com

DATED this 30<sup>th</sup> day of November, 2005.

GORDON THOMAS HONEYWELL MALANCA  
PETERSON & DAHEIM

s/ Michelle Meneley via ECF

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Counsel for Plaintiffs

**Certificate of Service**

I certify that on the date noted below I electronically filed this document entitled AGREED MOTION FOR CONTINUANCE OF DISPOSITIVE MOTIONS AND MEDIATION DEADLINE with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons:

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DATED this 30<sup>th</sup> day of November, 2005, at Seattle, Washington.

/s/ via ECF  
Thomas D. Frey, WSBA #1908