| | |
|---|---|
| WORLD MISSION SOCIETY CHURCH OF GOD<br><br>Plaintiff,<br><br>v.<br><br>MICHELE COLÓN,<br><br>Defendant. | SUPERIOR COURT OF NEW JERSEY<br>LAW DIVISION: BERGEN COUNTY<br><br>DOCKET NO. BER-L-5274-12<br><br>Civil Action |

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS THE COMPLAINT IN LIEU OF ANSWER AND MOTION TO STRIKE**

**PAUL S. GROSSWALD, ESQ., LLC**
140 Prospect Avenue, Suite 8S
Hackensack, NJ 07601
(917) 753-7007

Counsel for Defendant,
**Michele Colón**

On the Brief:
Paul S. Grosswald

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### CASES

**Statutes**



**Court Rules**



**Restatements**

## PRELIMINARY STATEMENT

Defendant Michele Colón, by and through her counsel, Paul S. Grosswald, hereby moves to dismiss this action for failure to state a claim upon which relief can be granted, pursuant to R. 4:6-2(e). Additionally, Ms. Colón moves to strike certain allegations in the Complaint, pursuant to R. 4:6-4.

This lawsuit is a SLAPP suit - a "Strategic Lawsuit Against Public Participation." See, e.g., LoBiondo v. Schwartz, 199 N.J. 62, 72 (2009). SLAPP suits are part of "a nationwide trend in which large commercial interests utilize[] litigation to intimidate citizens who otherwise would exercise their constitutionally protected right to speak in protest against those interests." Id. at 85. "[T]he goal of such litigation [is] not to prevail, but to silence or intimidate the target, or to cause the target sufficient expense so that he or she would cease speaking out." Id. "SLAPP suits are an improper use of our courts." Id. at 86; see also N.J.S.A. 2A:15-59.1 (awarding costs and attorney fees to victims of frivolous litigation); R. 1:4-8 (imposing sanctions for frivolous litigation).

The Plaintiff is the New Jersey branch of a wealthy and powerful Korean-based global church, called the World Mission Society Church of God. (Compl. ¶ 13, attached to Grosswald Cert. as Ex. 1.) The Defendant, Michele Colón, is a former member of the Plaintiff church. The Plaintiff has brought this frivolous SLAPP suit against Ms. Colón for the sole purpose of silencing her legal and truthful criticisms of the Plaintiff.

Ms. Colón began publicly criticizing the Plaintiff after being a member of the Plaintiff organization for about a year. During that time, the Plaintiff systematically manipulated her and her husband until their relationship fell apart. (See "How the WMSCOG Turned My Life Upside

Down," Parts 1-5, attached to Grosswald Cert. as Ex. 2.) Ms. Colón was subjected to intense pressure to spend increasing amounts of time with the Plaintiff, thereby putting a strain on her family relationships. (Id. at Part 2.) When Ms. Colón protested, the Plaintiff began to turn her husband against her, by claiming that Ms. Colón was being "used by Satan." (Id. at Part 4.) At the same time, the Plaintiff attempted to keep Ms. Colón and her husband sleep-deprived. (Id. at Part 4.) Ms. Colón eventually came to realize that she was not the only one this was happening to. She started realizing that many of the married members of the Plaintiff were ending up separated or divorced. (Id. at Part 3) The Plaintiff's own pastor openly expressed the view that "salvation" was a more important priority to the Plaintiff than preserving marriages, and that tithing to the Plaintiff was a requirement to achieve such salvation. (Id. at Part 4.) After reading stories from other victims of the Plaintiff, Ms. Colón discovered "an obvious pattern" of families being torn apart. (Id. at Part 4). After conducting Internet research, Ms. Colón learned about "cults" that use "mind control" to manipulate and control their members. (Id. at Part 3.) Ms. Colón subsequently formed the opinion that the Plaintiff is a cult that uses mind control and destroys families.

Ms. Colón wrote a Five-Part Story describing her experience, called "How the WMSCOG Turned My Life Upside Down" (hereinafter "Five-Part Story"). (Id.; see also Compl. ¶¶ 72 - 87.) She became an activist, and began attending public meetings of the Ridgewood, New Jersey Planning Board where issues pertaining to the Plaintiff were being discussed. (Compl. ¶¶ 22-23.) She also organized other members of the community to attend such meetings. (Id. ¶ 25, 34.) She even testified in a child-custody trial where the Plaintiff's treatment of children was at issue. (Id. ¶¶ 27-28.)

Due to Ms. Colón's growing activism, and her effectiveness as an advocate for the rights of the Plaintiff's victims, the Plaintiff has apparently determined that the only way it will be able to continue uninhibited in its activity is to silence Ms. Colón. Thus, the Plaintiff has filed the instant lawsuit. Ms. Colón respectfully requests that this Court recognize this lawsuit for what it is - an illegal and frivolous SLAPP suit - and grant Ms. Colón's Motion to Dismiss and Strike as described below.

## ARGUMENTS FOR MOTION TO DISMISS

A motion to dismiss a complaint under Rule 4:6-2(e) for failure to state a claim upon which relief can be granted must be evaluated in light of the legal sufficiency of the facts alleged in the complaint. Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989). When reviewing a motion to dismiss for failure to state a claim, courts must accept the facts asserted in the pleading as true, and give the pleader the benefit of all inferences that may be drawn in its favor. New Jersey Sports Productions, Inc. v. Bobby Bostick Promotions, LLC, 405 N.J. Super. 173, 177 (Ch. Div. 2007). A motion to dismiss "is based upon the content of the pleading in and of itself." Id. at 178.

If, on a Rule 4:6-2(e) motion, "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46, and all parties shall be given reasonable opportunity to present all material pertinent to such a motion." R. 4:6-2. However, "an exception to this general rule is that a document integral to or explicitly relied upon in the complaint may be considered without converting the motion [to dismiss] into one for summary judgment." Contel Global Mktg., Inc. v. Dreifuss, 2010 N.J. Super. Unpub. LEXIS 241, *22-23 (App. Div., Feb. 4, 2010) (internal

quotation marks omitted; brackets in original).[1] The New Jersey Supreme Court has adopted the federal standard, stating that when "evaluating motions to dismiss, courts consider 'allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim." Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005) (quoting Lum v. Bank of Am., 361 F.3d 217, 222 n. 3 (3d Cir. 2004), cert. denied, 543 U.S. 918 (2004)).

The Plaintiff has alleged four causes of action: (1) Defamation; (2) Defamation By Implication; (3) Civil Conspiracy (to commit defamation); and (4) Trade Libel. Each cause of action arises out of allegedly defamatory statements that Plaintiff attributes to Ms. Colón.[2] For the reasons presented below, none of the challenged statements are actionable, and each of the four causes of action should be dismissed.

For many of the challenged statements, there are multiple justifications for finding that the statements are not actionable. In such cases, multiple arguments are presented in the alternative. Obviously, if the Court finds that a particular statement is not actionable for any reason, the Court need not reach a decision on the alternative arguments pertaining to that same statement.

## I. Claims for Trade Libel Are Lacking In Special Damages and Must Be Dismissed

The tort of "trade libel" is often referred to as "product disparagement." See Dairy Stores, Inc. v. Sentinel Pub. Co., 104 N.J. 125, 134 (1986). The elements of the tort are: "1) publication 2) with malice 3) of false allegations concerning [Plaintiff's] property, product or business, and 4)

[1] All unpublished cases cited in this brief are attached to the Grosswald Certification as Exhibit 3.

[2] For purposes of this motion, and this motion only, the Court may assume that Ms. Colón has made all of the statements that Plaintiff attributes to her in its Complaint. However, with the exception of the Five-Part Story (see Grosswald Cert., Ex. 2; Compl. ¶ 72 - 87), Ms. Colón does not admit to making any of the statements described in the Complaint, and reserves the right to challenge the authorship of such statements at a later time.

special damages, i.e., pecuniary harm." Juliano v. ITT Corp., 1991 U.S. Dist. LEXIS 1045, *10-11 (D.N.J. Jan. 22, 1991). "An action for product disparagement is designed to protect the economic interests of a vendor because it provides a remedy for pecuniary loss suffered because statements attacking the quality of his goods have reduced their marketability." Id. at *13. "Because this cause of action is designed to protect the economic interests of a vendor, the plaintiff must plead and prove special damages with particularity." Id. A product disparagement action "is only loosely allied to defamation, being rather an action on the case for special damages flowing from the interference to business." Id. (internal quotation marks omitted). "The action requires special damage in all cases, unlike ordinary defamation." Id., citing Henry v. Vaccaro Constr. Co. v. A.J. DePace, Inc., 137 N.J. Super. 512, 517 (Law Div. 1975) (emphasis omitted).

In Juliano, the court, applying New Jersey law, held that a plaintiff failed to sufficiently plead the special damages element of a trade libel claim. The plaintiff had alleged that:

> it has incurred advertising and legal expenditures to counteract the letters written by [defendants]. [The plaintiff] also alleges that its ability to sell financial services products has suffered and will continue to suffer. Finally, [the plaintiff] alleges it has suffered irreparable harm to its business reputation and goodwill.

Juliano, 1991 U.S. Dist. LEXIS 1045 at *13-14. The court held that those allegations did not satisfy the plaintiff's burden. Rather, the court held:

> It is necessary for the plaintiff to allege either the loss of particular customers by name, or a general diminution in its business, and extrinsic facts showing that such special damages were the natural and direct result of the false publication. If the plaintiff desired to predicate its right to recover damages upon general loss of custom, it should have alleged facts showing an established business, the amount of sales for a substantial period preceding the publication, the amount of sales for a [period] subsequent to the publication, facts showing that such loss in sales were the natural and probable result of such publication, and facts showing the plaintiff could not

> allege the names of particular customers who withdrew or withheld their custom.

Id. at *14-15. In other words, the court determined that the plaintiff had failed to establish special damages, because the plaintiff "failed to plead and prove with particularity the loss of particular customers or a general diminution in its business." Id. at *15; see also Zinn v. Seruga, 2007 U.S. Dist. LEXIS 63693, *11-12 (D.N.J. Aug. 29, 2007) (holding that pleadings for special damages in trade libel claim must include "allegations of either the loss of identified customers or a general diminution in business plus extrinsic facts showing that the false publication directly caused the diminution."); Floorgraphics, Inc. v. News Am. Mktg. In-Store Servs., 2006 U.S. Dist. LEXIS 70834, *20-21 (D.N.J. Sept. 29, 2006) (same); Mayflower Transit, L.L.C. v. Prince, 314 F. Supp. 2d 362, 378 (D.N.J. 2004) (same).

Likewise, the Plaintiff in the instant case has failed to plead special damages with particularity. The Plaintiff alleges only that "Defendant's statements played a material part in inducing others not to deal with Plaintiff" (Compl. ¶ 156), and that "Plaintiff has suffered losses in the form of decreased membership and donative revenue" (Compl. ¶ 157). However, the Plaintiff does not identify the names of any members who have left the church or withheld donations as a result of the challenged statements. Nor does the Plaintiff allege any facts explaining why it is unable to provide the names of such people. Nor does the Plaintiff allege how much "donative revenue" it had been receiving for a substantial period prior to the occurrence of the alleged trade libel. Nor does the Plaintiff allege how much less donative revenue it has received after the occurrence of the alleged trade libel. Nor does the Plaintiff allege how many members it had for a substantial period prior to the occurrence of the alleged trade libel. Nor does the Plaintiff allege how many fewer members it has after the occurrence of the alleged trade libel. Moreover,

Plaintiff does not allege any facts explaining how its alleged "decreased membership" and "[decreased] donative revenue" were directly caused by Ms. Colón's statements.

Because the Plaintiff has failed to sufficiently plead the special damages element, Ms. Colón respectfully requests that this Court dismiss all of the Plaintiff's claims for trade libel.

## II. Claims for Statements Which Fall Outside the Statute of Limitations Must Be Dismissed

The statute of limitations for a defamation action in New Jersey is one year, measured from the date of publication of the challenged statement. N.J.S.A. 2A:14-3. Moreover, the New Jersey Supreme Court has adopted the "single publication rule," which holds that:

> where an issue of a newspaper, magazine or edition of a book contains a libelous statement, plaintiff has a single cause of action and the number of copies distributed is considered as relevant for damages but not as a basis for a new cause of action -- the single publication rule.

Barres v. Holt, Rinehart & Winston, Inc., 131 N.J. Super. 371, 374-75 (Law Div. 1974), aff'd, Barres v. Holt, Rinehart & Winston, Inc., 141 N.J. Super. 563, 564 (App. Div. 1976), aff'd, Barres v. Holt, Rinehart & Winston, Inc., 74 N.J. 461 (1977). The single publication rule has been extended to Internet publications:

> Internet publication of a document, where that document remains unchanged after its original posting, is subject to a one-year statute of limitations that runs from the date of publication of the alleged libel or slander.

Churchill v. State, 378 N.J. Super. 471, 478 (App. Div. 2005).

In other words, the limitations period for each statement posted to the Internet runs from the date the statement was first posted online. Because the Complaint was filed on July 11, 2012,

this Court should dismiss all of the Plaintiff's defamation claims to the extent they arise out of any statements posted to the Internet prior to July 12, 2011.

The Plaintiff has failed to provide the dates for most of the challenged statements in its Complaint. (The only challenged statements for which dates have been pleaded are the statements referenced in ¶¶ 22, 23, 24, 27, and 28.) The omission of such dates should be regarded as a fatal defect in the pleading. New Jersey requires defamation claims to be plead with particularity. See, e.g., Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 768 (1989); Kotok Bldg. v. Charvine Co., 183 N.J. Super. 101, 103-05 (Law Div. 1981); see also Zoneraich v. Overlook Hosp., 212 N.J. Super. 83, 101 (App. Div. 1986) (affirming dismissal of defamation claim where Complaint failed to allege, among other things, when plaintiff was defamed).

Moreover, other jurisdictions have held that a defamation claim must be dismissed if it is unclear from the pleadings on what date the challenged statements were made. For instance, the Eastern District of Pennsylvania explained:

> The instant action was filed on July 6, 2001. I have just concluded that any defamatory remarks published before July 7, 2000, are barred by the one year statute of limitations for defamation actions. However, any defamatory statements made on or after July 7, 2000 would remain actionable, and the filing of this action may have tolled the limitations period on any claims involving those statements. But, since Plaintiff's Complaint is unclear as to the exact dates the defamatory remarks were "repeated," I cannot conclude that they have adequately plead any actionable claims.

Morris v. Hoffa, 2002 U.S. Dist. LEXIS 5975, *11 (E.D. Pa. Apr. 8, 2002); see also Wilder v. Brewer, 1994 Conn. Super. LEXIS 2386, *9 (Super. Ct. Sept. 19, 1994) ("plaintiffs must either specifically allege the date and manner of the alleged republication(s) by the defendant, or, in the alternative, remove from the pleading the allegation that defendant "republished" allegedly defamatory statements."). Therefore, Ms. Colón respectfully requests that this Court dismiss all

of the Plaintiff's claims to the extent they arise out of any challenged statements for which the dates have not been specifically pleaded.

Additionally, some of the challenged statements have been located online by Ms. Colón's counsel, and the dates accompanying those statements reveal that they were posted online prior to July 12, 2011. For instance, the statements referenced in the Complaint at:

- ¶¶ 41-42 were posted on July 5, 2011[3] (Grosswald Cert., Ex. 4);
- ¶ 44 were posted on July 5, 2011 and July 9, 2011 (id.);
- ¶ 48 were posted on July 5, 2011 (id.);
- ¶ 49 were posted on July 5, 2011 (id.);
- ¶ 50 were posted on July 4, 2011 and July 5, 2011 (id.);
- ¶ 56 were posted on June 26, 2011 (id.);
- ¶ 57 were posted on July 3, 2011 (id.);
- ¶¶ 58 - 59 were posted on July 3, 2011 (id.);
- ¶ 60 were posted on June 26, 2011 (id.);
- ¶ 61 were posted on June 27, 2011 (id.);
- ¶ 62 were posted on July 3, 2011 (id.);
- ¶ 63 were posted on July 2, 2011 (id.);
- ¶ 102 were posted on June 20, 2011 (id.); and
- ¶¶ 105 - 121 were posted on June 21, 2011 (id.).

Therefore, all of the defamation claims arising out of the allegations in those paragraphs should be dismissed, with prejudice.

[3] The exhibit containing this online statement lists the date as July 5, but does not include the year. Nevertheless, it lists the day of the week as Tuesday, which suggests that the year was 2011.

In summary, Ms. Colón respectfully requests that this Court dismiss with prejudice all defamation claims arising out of the statements referenced in the following paragraphs of the Complaint: ¶¶ 41, 42, 44, 48, 49, 50, 56, 57, 58, 59, 60, 61, 62, 63, 102, and 105 - 121.

Furthermore, Ms. Colón respectfully requests that this Court dismiss without prejudice all defamation claims arising out of all of the remaining challenged statements in the Complaint, except for the statements referenced in ¶¶ 22, 23, 24, 27, 28, for which the dates have been sufficiently plead.

## III. Claims for Statements Which Were Made During Court Testimony Must Be Dismissed

There are two Paragraphs in the Complaint which refer to statements allegedly made while Ms. Colón was testifying in a child-custody trial in New York, on June 27, 2012. (Compl. ¶¶ 27-28.) The mother in the child-custody trial was a member of the Plaintiff church. (Colón Aff. ¶ 5.) The father, however, had many concerns about the Plaintiff and its abusive behavior towards its members, especially with respect to the treatment of children. (Id. at ¶ 6.) The father did not believe that it would be in the best interests of his child to be raised in the custody of a member of the Plaintiff church. (Id. at ¶ 7.) Therefore, Ms. Colón was asked to testify to what she witnessed as a member of the Plaintiff, with respect to the way in which the Plaintiff treated children. (Id. at ¶ 8.) Ms. Colón is alleged to have testified that the Plaintiff forces mothers to give their children wine, forces mothers to have their children fast, and keeps children in a room all day, and refuses to let them leave.[4] (Compl. ¶¶ 28(a)-28(c).) Ms. Colón is also alleged to

[4] Ms. Colón maintains that the description of her testimony presented in the Complaint does not accurately reflect her actual testimony. Nevertheless, the Court may assume, for purposes of this Motion only, that the Plaintiff's description of Ms. Colón's testimony is accurate - but her testimony is still not actionable.

have testified that the Plaintiff destroyed her marriage. (Id. at ¶ 28(d).)

Under New York law, a witness testifying in a judicial proceeding is covered by an absolute privilege, which grants the witness immunity from liability in a defamation suit arising out of statements made during the witness' testimony. "The absolute protection afforded such individuals is designed to ensure that their own personal interests - - especially fear of a civil action, whether successful or otherwise - - do not have an adverse impact upon the discharge of their public function." Toker v. Pollak, 44 N.Y.2d 211, 219 (1978); see also Restatement (First) of Torts § 588 (1938) ("A witness is absolutely privileged to publish false and defamatory matter of another in communications preliminary to a proposed judicial proceeding and as a part of a judicial proceeding in which [s]he is testifying, if it has some relation thereto.") "[T]he privilege embraces anything that may possibly be pertinent." Martirano v. Frost, 25 N.Y.2d 505, 507 (1969). Therefore, "a statement, made in open court in the course of a judicial proceeding, is absolutely privileged if, by any view or under any circumstances, it may be considered pertinent to the litigation." Id.

There is no question that Ms. Colón's statements about the treatment of children by the Plaintiff, given during a child-custody trial in which one of the parents was a member of the Plaintiff, were pertinent to the litigation. Therefore, those statements are not actionable, and the Plaintiff's claims arising out of those statements must be dismissed.

## IV. Claims for Statements Made By People Other Than Ms. Colón Must Be Dismissed

One of the alleged statements in the Complaint is alleged to have been made not by Ms. Colón, but rather by another critic of the Plaintiff, Tyler Newton. According to the Complaint, Mr. Newton "published the false and defamatory statement that Plaintiff 'totally ha[s] to be

laundering money.'" (Compl. ¶ 36.) But Mr. Newton is not a named defendant in the instant case. Moreover, the Plaintiff has not alleged any facts, other than conclusory allegations of a "conspiracy," that would cause liability for Mr. Newton's statements to attach to Ms. Colón. See, e.g., Grippi v. Spalliero, 2008 N.J. Super. Unpub. LEXIS 2754, *19-20 (App. Div. Nov. 24, 2008) (dismissing conspiracy claim because plaintiffs "failed to allege sufficient facts to show that there was an agreement by defendants to commit the alleged wrongs"). Therefore, the Plaintiff's claims arising out of the alleged statement of Mr. Newton must be dismissed.

## V. Claims for Statements Which Were Made at or Pertaining to the Planning Board Hearings for Plaintiff's Variance Application Must Be Dismissed

In the Complaint at ¶¶ 22 - 26, and ¶ 34, the Plaintiff claims that Ms. Colón tried to block Plaintiff's efforts to obtain a building variance from the Ridgewood Planning Board. First, the Plaintiff alleges:

> ¶ 23: Colón attended both meetings. At the meetings Colón attacked Plaintiff by telling persons at the meeting that Plaintiff "damage[s] families, [and] ruined [her] marriage." Colón stated that "the Church takes its members' money."

The allegations in ¶ 23 are deficient because they fail to describe the "circumstances of publication," which is required by New Jersey in a defamation pleading. See, e.g., Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 768 (1989); Kotok Bldg. v. Charvine Co., 183 N.J. Super. 101, 103-05 (Law Div. 1981); Zoneraich v. Overlook Hosp., 212 N.J. Super. 83, 101 (App. Div. 1986). The Plaintiff fails to allege at which meetings Ms. Colón made which statements, and to whom Ms. Colón made the alleged statements and in what context. Plaintiff fails to allege any facts as to whom these "persons at the meeting" were, whether they were fellow

activists, and in what context the statements were made, whether in private conversation or public record. As the New Jersey Supreme Court has explained:

> It is not enough for plaintiffs to assert . . . that any essential facts that the court may find lacking can be dredged up in discovery. A plaintiff can bolster a defamation cause of action through discovery, but not file a conclusory complaint to find out if one exists. . . . [A] plaintiff must plead the facts and give some detail of the cause of action.

Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 768 (1989) (internal quotation marks and brackets omitted). Therefore, the Plaintiff's claims should be dismissed to the extent they arise out of the statements referenced in ¶ 23.

Next, the Plaintiff alleges:

> ¶ 24: Newton attended the meeting on September 6, 2001, where he secretly video recorded the second meetings' proceedings and persons present using his iPad tablet computer.

There are no facts alleged in ¶ 24 that have any relevance to any of the Plaintiff's four causes of action. The fact that Mr. Newton video recorded a public meeting does not relate to any of the elements for defamation, defamation by implication, or trade libel. Nor is it a sufficient fact for proving a "conspiracy." The inclusion of such an allegation is frivolous. Therefore, the Plaintiff's claims should be dismissed to the extent they arise out of Mr. Newton's actions referenced in ¶ 24.

The Plaintiff continues to make frivolous allegations in ¶¶ 25 and 34:

> ¶ 25: Colón actively encouraged other persons to attend the Planning Board meetings to defame Plaintiff and block its efforts at obtaining a variance approval from the Ridgewood Planning Board.
>
> ¶ 34: [Colón] also encouraged members of the Facebook Group to attend a third scheduled Ridgewood Planning Board meeting to attack Plaintiff's reputation at the public hearing as a way to block Plaintiff's efforts at gaining a variance approval.

Paragraphs 25 and 34 are deficient because they, too, fail to specifically describe the "circumstances of publication," as required by New Jersey law. See, e.g., Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 768 (1989); Kotok Bldg. v. Charvine Co., 183 N.J. Super. 101, 103-05 (Law Div. 1981); Zoneraich v. Overlook Hosp., 212 N.J. Super. 83, 101 (App. Div. 1986). Neither paragraph provides any of the statements that Ms. Colón allegedly made to encourage other people to attend the Planning Board meetings. Instead, these paragraphs contain only the Plaintiff's conclusory characterizations of what Ms. Colón allegedly said. While the Plaintiff is not required to provide a "verbatim transcription of the words spoken," Kotok, 183 N.J. Super. at 105, the Plaintiff must provide something more than conclusory characterizations and paraphrasing. See, e.g., Zoneraich, 212 N.J. Super. at 101 (affirming dismissal of defamation claim where Complaint failed to allege, among other things, "by what words" plaintiff was defamed). "[A] plaintiff must plead the facts and give some detail of the cause of action." Printing Mart-Morristown, 116 N.J. at 768. Moreover, neither ¶ 25 nor ¶ 34 alleges that anyone who Ms. Colón encouraged to attend a Planning Board meeting actually attended such a meeting. The Complaint does not allege that any defamatory comments were made to the Planning Board, or that the Planning Board relied on any defamatory comments when taking action adverse to the Plaintiff. Such allegations are not sufficient to sustain a cause of action.

Moreover, the allegations in ¶ 25 and ¶ 34 are nothing more than an attempt to intimidate Ms. Colón and punish her for exercising her First Amendment rights. Such litigation tactics constitute an abuse of the court system, and are strictly prohibited by New Jersey law. In Structure Building Corporation v. Abella, a developer sued homeowners for malicious abuse of

process, malicious use of process, and tortious interference with prospective economic advantage after the homeowners brought legal action to challenge the actions of the planning board. The court granted summary judgment to the homeowners:

> The right of homeowners to participate in hearings and oppose zoning applications that affect their property is recognized and encouraged by laws which require they be given notice and an opportunity to be heard -- an opportunity to participate actively in the approval process. . . . Plaintiff's complaint seeks to punish defendants for the exercise of these rights. To vindicate these rights the courts have developed the Noerr-Pennington doctrine under which those who petition the government for redress are afforded immunity for their action. New Jersey recognizes this doctrine . . . . [W]e don't want to chill resident[s'] rights to object, and they have a right to object, and when they come out and exercise that right, the last thing they want to happen to them was to be hit with a law suit. So, if we didn't have Noerr-Pennington Doctrine, the Court would have to create one, because certainly that's unfair to the residents and to persons who wish to object to the actions of developers."

Structure Bldg. Corp. v. Abella, 377 N.J. Super. 467, 471-72 (App. Div. 2005) (internal quotations omitted). Ms. Colón's activism with respect to the Plaintiff's variance application has been far less aggressive than the action taken by the homeowners in Abella. While the Abella homeowners filed a lawsuit to challenge the planning board, Ms. Colón did nothing more, according to the Plaintiff's Complaint, than attend Planning Board meetings and encourage others to attend planning board meetings. Nevertheless, the Plaintiffs are threatened by Ms. Colón's activism and are determined to silence her with frivolous litigation.

Perhaps the most outrageous Planning Board-related allegation in the Complaint is the one in ¶ 26, which states that "Plaintiff has not been granted a variance approval." The Plaintiff presumably placed that allegation into its Complaint in order to create the impression that Ms. Colón's actions caused the Plaintiff to not receive its variance. In fact, this is an extremely

misleading presentation of the facts, one which constitutes a violation of New Jersey's frivolous litigation laws. See N.J.S.A. 2A:15-59.1; R. 1:4-8. Ms. Colón had nothing to do with the Plaintiff's failure to get its variance. Moreover, the Plaintiff is very much aware of the fact that Ms. Colón had nothing to do with the Plaintiff's failure to get its variance, as is anyone who has reviewed the public record of the matter.

According to the public record, at the July 19, 2011 hearing, the Planning Board's attorney complained that the Plaintiff's application was "incomplete." (Audio CD: Ridgewood Planning Board Hearing (July 19, 2011, 7:42:49 - 7:44:24 pm), attached as Ex. B to Newton Aff.) The board chairman also complained of "inconsistencies" in the Plaintiff's application. (Id. at July 19, 2011, 7:46:05 - 7:46:26 pm.) Rather than provide the Planning Board with the additional information it requested, the Plaintiff continually refused to cooperate. At another hearing on September 6, 2011, the Planning Board's attorney again complained that the Plaintiff's plans were not complete. (Id. at Sept. 6, 2011, 9:39:23 - 9:39:27 pm.) In fact, one board member complained that he "started to create a list of things that were missing and it's just growing with every statement." (Id. at Sept. 6, 2011, 10:17:06 - 10:17:17 pm.)

The Plaintiff undermined its own case even further by demonstrating a gross lack of respect for the authority of the Planning Board or the rule of law. For instance, even after some residents complained that the Plaintiff had illegally repaved its parking lot without getting approval from the Planning Board, the Plaintiff brazenly continued to perform illegal work on its property. (Id. at Sept. 6, 2011, 8:26:45 - 8:28:58 pm; 9:37:10 - 9:37:23 pm.) As a result, the Plaintiff received two summonses. (Id.) The Plaintiff subsequently admitted on the record that the work it had done required Planning Board approval, and that the work was done without such approval. (Id. at 8:31:30 - 8:31:48 pm).

The public record also shows that many people in the community were opposed to the Plaintiff receiving the variance. In fact, Mayor Paul Aronsohn stated on the record that the Plaintiff's application had been "a bone of contention . . . for many years." (Id. at June 21, 2011, 7:37:51 - 7:38:09 pm.) At the September hearing, some of the residents testified to the Planning Board that even without the variance, traffic at the church was already extensive. (Id. at Sept. 6, 2011, 10:34:55 - 10:38:26 pm.) Moreover, the traffic often occurs at strange hours, with "long lines of cars leaving the back of that parking lot at 5:30, 6:00 in the morning." (Id. at 10:32:45 - 10:34:06 pm.) The frustrations that the residents feel towards the Plaintiff were summed up by one neighbor:

> I'm kind of shocked and insulted by the casualness of some of the answers and some of the "oh I don't know" or "I didn't know that was there" or "gee." I mean how do you get involved in a project like this and not know what exists, not know what you wanna do, not know how you wanna do it. So on the whole I find that extremely offensive.

(Id. at 10:39:27 - 10:42:04 pm.)

After a series of public humiliations suffered by the Plaintiff at the Planning Board hearings, the Plaintiff finally gave up. On July 3, 2012, the Plaintiff withdrew its application for the variance. (See Colón Aff., Ex. A.) So when the Plaintiff filed its Complaint against Ms. Colón eight days later, the Plaintiff knew very well that it was the Plaintiff's own actions, and not the actions of Ms. Colón, that were responsible for the failure to obtain the variance.[5] In fact, there is nothing in the public record to suggest that Ms. Colón had any impact on the proceedings, or that any statement made by Ms. Colón was ever considered by the Planning Board. To the

[5] Moreover, the allegation in ¶ 26 creates the impression that the Plaintiff is still struggling through the application process, which is obviously untrue.

contrary, the public record reveals that Ms. Colón made one unsuccessful attempt to be heard by the Planning Board. At the July 19, 2011 hearing, Ms. Colón stood up and stated:

> I was a former member of the World Mission Society Church of God for about a year, a little over a year and I just wanted to let the community know that this group is . . . ."

(Id. at July 19, 2011, 7:55:42 - 7:55:58 pm.) At that point, David L. Rutherford, attorney for the Plaintiff, objected. (Id.) No other statement regarding the Plaintiff or the World Mission Society Church of God was made on the record by Ms. Colón.

Nevertheless, the Plaintiff's Complaint alleges in ¶ 26 that the "Plaintiff has not been granted a variance approval." The only purpose for including such an allegation in the Complaint is to intimidate Ms. Colón into believing that she is going to be held legally responsible for the Plaintiff's failure to obtain a variance approval, in order to punish her for the exercise of her rights. That is not a legitimate purpose for filing a claim.

In other words, even if all of the allegations made in ¶¶ 22 - 26, and ¶ 34, of the Plaintiff's Complaint are true, at most all it shows is that Ms. Colón attempted to exercise her First Amendment rights to organize the community around a zoning issue of public concern, an effort which ultimately proved to have no effect on the outcome. Because Ms. Colón was not the cause of the Plaintiff's failure to obtain a variance, having withdrawn its application of its own volition, Ms. Colón therefore cannot be held liable for any damages resulting from such failure. Therefore, all of the Plaintiffs claims should be dismissed to the extent they arise out of the allegations contained in ¶¶ 22 - 26 and ¶ 34 of the Complaint.

## VI. Claims for Statements Which Merely Encourage People to Respond to an Online News Article Must Be Dismissed

In ¶ 33 of the Complaint, the Plaintiff alleges:

> [Colón] encouraged Facebook Group members "with aliases" - that is, with false Internet handles to hide their identities - to "feel free to combat . . . comments on the bottom of [an] article" published by the online newspaper NorthJersey.com praising Plaintiff's and its members' volunteer flood damage cleanup efforts with their own comments.

In other words, the Plaintiff is attempting to hold Ms. Colón liable for exercising her First Amendment rights and encouraging others to do the same. There are no facts presented in ¶ 33 which relate in any way to any of the elements of the Plaintiff's four causes of action (Defamation, Defamation by Implication, Conspiracy, Trade Libel). Moreover, Ms. Colón's statement clearly refers to combatting "comments on the bottom of an article" and not the contents of the article itself. Plaintiff fails to allege any facts that show what the comments were that Ms. Colón wanted to combat, or how any such comments applied to the Plaintiff. The allegation in ¶ 33 is utterly frivolous, and serves no purpose other than to harass and intimidate Ms. Colón for her activism. Accordingly, the Plaintiffs claims should be dismissed to the extent they arise out of the allegations in ¶ 33.

## VII. All Defamation and Trade Libel Claims Must Be Dismissed Because the Plaintiff Has Failed to Plead Actual Malice With Particularity

The elements of a defamation claim are: "(1) the assertion of a false and defamatory statement concerning another; (2) the unprivileged publication of that statement to a third party; and (3) fault amounting at least to negligence by the publisher." DeAngelis v. Hill, 180 N.J. 1, 12-13 (2004). However, the fault requirement is raised to a standard of actual malice where the Plaintiff is a public figure, or where the challenged statements are pertaining to an issue of public concern. Senna v. Florimont, 196 N.J. 469, 496 (2008). As explained below, the instant case involves both a public figure plaintiff and statements of public concern. Therefore, the actual

malice standard should be applied to all of the Plaintiff's defamation claims. Under the actual malice standard, Ms. Colón cannot be held liable unless she published the challenged statements about the Plaintiff with knowledge that such statements were false, or with reckless disregard of whether or not they were false. New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964).

Moreover, malice is also a required element of the Plaintiff's trade libel claims. The elements of trade libel are: "1) publication 2) with malice 3) of false allegations concerning [the Plaintiff's] property, product or business, and 4) special damages, i.e., pecuniary harm." Juliano v. ITT Corp., 1991 U.S. Dist. LEXIS 1045, *10-11 (D.N.J. Jan. 22, 1991).

As explained below, the "malice" standard is generally the same for both defamation and trade libel, and the Plaintiff has failed to satisfy the malice standard in its pleadings.

**A. Plaintiff is a Public Figure**

The question of whether an entity is a public figure for purposes of applying the actual malice standard is a question of law for the court to decide. See Rosenblatt v. Baer, 383 U.S. 75, 88 (1966). A public figure is one who achieves a certain public status "by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention." Gertz v. Robert Welch, 418 U.S. 323, 342 (1974). In the instant case, WMSCOG's own pleadings reveal that it has thrust itself into the public eye voluntarily and assumed public-figure status. For instance, the Plaintiff describes itself as:

> a non-profit organization that, beyond sharing its members' faith and beliefs, does good works in its community. Plaintiff has received several accolades for its community service. Most recently, Plaintiff's members and several of the Church's branches has [sic] been awarded Presidential Volunteer Service Awards.

(Compl. ¶ 14.) This paragraph reveals that the Plaintiff is actively engaged in efforts to seek public attention, as defined in Gertz. First, this paragraph reveals that at least part of the Plaintiff's mission is to publicly evangelize, by "sharing its members' faith and beliefs." Second, the Plaintiff seeks public attention by doing works in the community. Moreover, the Plaintiff does not do its community work privately or quietly. Rather, it seeks and obtains public recognition for those efforts, from people as prestigious as the President of the United States. Because the Plaintiff has actively sought and captured the public's attention, it must be treated as a public figure for purposes of defamation.

Moreover, many other courts have applied the public figure designation to religious organizations, including religious organizations that are often criticized for being "cults." For example, the Church of Scientology has brought several defamation cases, and every reported decision has explicitly found or treated the Church as a public figure subject to the actual malice standard. See, e.g., Church of Scientology Int'l v Eli Lilly & Co., 778 F. Supp. 661, 666 n.3 (S.D.N.Y. 1991) ("the visibility of plaintiffs . . . easily subjects their allegation to this high standard [public figure/actual malice]."); Church of Scientology v. Siegelman, 475 F. Supp. 950, 954 (S.D.N.Y. 1979) (holding that church is a public figure); Church of Scientology of Cal. v. Cazares, 455 F. Supp. 420, 423 (M.D. Fla.1978) (same); Church of Scientology of Cal. v. Dell Publ'g Co., 362 F. Supp. 767, 769 (N.D. Cal.1973) (applying actual malice standard); see also Church of Scientology v. Daniels, 992 F.2d 1329, 1331 (4th Cir. 1993) (church admitted status as public figure and court applied actual malice standard). Other religious institutions bringing defamation claims have likewise been categorized as public figures. See, e.g., Contemporary Mission, Inc. v. N.Y. Times Co., 842 F.2d 612, 617-18 (2d Cir. 1988) (religious organization deemed a public figure with respect to both questions about religious controversy and business

controversy); Gospel Spreading Church v. Johnson Publ'g Co., 454 F.2d 1050, 1051 (D.C. Cir.1971) (same); Velle Transcendental Research Ass'n v Sanders, 518 F. Supp. 512, 517 (C.D. Cal. 1981) (holding that religious organization's efforts to influence public opinion are reasons to treat it as public figure).

One of these cases discusses in greater detail how the public figure analysis should be applied to religious institutions. In Church of Scientology v. Siegelman, the court looked at the totality of the public presence of the Church to determine its status as a public figure:

> The plaintiffs are component parts of a large world-wide religious movement which claims to have over five million adherents . . . the instant plaintiffs have taken affirmative steps to attract public attention, and actively seek new members and financial contributions from the general public. As was found in regards to another religious institution (the Gospel Spreading Church) this Court believes the Church of Scientology to be "(a)n established church with substantial congregations . . . (which) seeks to play 'an influential role in ordering society.'" Gospel Spreading Church v. Johnson Publ'g Co., 454 F.2d 1050, 1051 (D.C. Cir. 1971). The Church of Scientology has thrust itself onto the public scene, and accordingly should be held to the stringent New York Times burden of proof in attempting to make out its case for defamation.

Siegelman, 475 F. Supp. at 954 (some citations omitted). The court essentially concluded that the Church's public footprint caused it to be a public figure. That meant that when the church brought a defamation claim challenging statements concerning the church's allegedly abusive practices, the claims were subjected to the actual malice standard. See also Art of Living Found. v. Does, 2011 U.S. Dist. LEXIS 63507, *24 (N.D. Cal. June 15, 2011) ("Plaintiff is likely a limited public figure because it is part of a relatively well-known international organization and voluntarily solicits media attention.")

The pleadings in the instant case reveal that the Plaintiff has a substantially similar public footprint to the Church of Scientology. ¶ 13 of the Complaint states:

> Plaintiff is a New Jersey branch of the World Mission Society Church of God. The World Mission Society Church of God, with its roots in Christianity, was founded in 1964. The Church has over 1.2 million members in about 150 countries around the world, with several branches across the United States.

In other words, the WMSCOG seeks to "play an influential role in ordering society," through its extensive network of churches, evangelical efforts and self-promotion. This prominent role in society means that WMSCOG is, in fact, a public figure and must expect critical examination and analysis of its conduct in society, justifying the heightened burden of actual malice.

**B. The Challenged Statements Discuss Matters of Public Concern**

To determine whether the challenged speech discusses a matter of public concern, "a court should consider the content, form, and context of the speech." Senna v. Florimont, 196 N.J. 469, 497 (2008).

When analyzing the content, the court should look at whether the speech advances a vital public interest, or the economic interests of the speaker. Id. In the instant case, the content of the challenged statements clearly relate to matters of public concern. The challenged statements are designed to serve as warnings to the public about what will happen to them if they join the Plaintiff church. There is nothing in any of the statements described in the Complaint that suggests that the author is attempting to advance her own economic interests.

When looking at context, the court should consider the identity of the speaker and the speaker's ability to exercise due care, as well as the identity of the targeted audience. Id. Here, assuming Ms. Colón is the author of the challenged statements, the speaker is a former member of the Plaintiff. She has the ability to exercise due care in making sure that her statements are

accurate because she personally witnessed and experienced first-hand the Plaintiff's abusive practices which she describes. Moreover, the target audience consists of anyone who is currently being victimized by the Plaintiff's abusive practices, or who might be so victimized in the future. The target audience does not include clients or customers, or potential clients or customers. The challenged statements are not selling anything or soliciting anyone for money.

Moreover, the New Jersey Supreme Court has recognized that certain types of speech "will always fall within the category of protected speech that implicates the actual-malice standard." Id. "Public policy and common sense" suggest that such protected speech include any speech discussing a significant risk to public health and safety. Id. Many of the challenged statements in the Plaintiff's Complaint are discussing significant risks to public health and safety. For instance, the challenged statements describe the systematic methods of abuse that the Plaintiff uses on its own members, including deception (Compl. ¶ 47), the withholding of information (Compl. ¶ 47,) sleep deprivation (Compl. ¶¶ 81, 102(d)); control of the members' time (Compl. ¶¶ 75, 102(e)); the setting of unattainable goals (Compl. ¶¶ 79, 80); fear and guilt manipulation (Compl. ¶¶ 80, 102(b), 102(c)); and the use of brainwashing tactics similar to those used on Korean POWs (Compl. ¶ 83). Other statements describe how the Plaintiff uses those abusive practices to persuade its members to give large sums of money to the Plaintiff (Compl. ¶¶ 23, 42, 44, 45, 46, 49, 50, 51). The statements also explain how the Plaintiff's abusive practices have deleterious effects on families and marriages, causing relationships to fall apart. (Compl. ¶¶ 23, 28(d), 42, 44, 45, 46, 48, 49, 50, 51, 56, 72, 75, 76, 78, 102, 102(a)). The statements describe how the author recognized patterns of abuse in the stories of other former WMSCOG members. (Compl. ¶ 78.) All of those statements are clearly speaking to issues of public health and safety, which justifies the actual malice standard.

The actual malice standard applies even where the challenged statements are using emotionally charged words to discuss an issue of public concern, such as the statements that accuse the Plaintiff of being a "cult" (Compl. ¶¶ 42, 44, 45, 46, 48, 49, 50, 51, 57, 77, 79), that uses "mind control" or "brainwashing" (Compl. ¶¶ 44, 51, 57, 79, 102(a)). See, e.g., Art of Living Found. v. Does, 2011 U.S. Dist. LEXIS 63507, *24 (N.D. Cal. June 15, 2011) ("Plaintiff is part of a 'public controversy' with respect to the allegations that Plaintiff is a 'cult.'")

Other challenged statements do not focus on the Plaintiff's abusive practices towards its members, but are still related to issues of public concern. For instance, some of the challenged statements relate to the Plaintiff's attempt to receive a zoning variance. (Compl. ¶¶ 22 - 26, 34). The variance was very controversial among local residents. (see Section V above.) Other challenged statements deal with the circumstances by which the Plaintiff obtained an award from the President of the United States. (Compl. ¶¶ 88 - 97.) This, too, is clearly an issue of public concern.

Finally, many of the challenged statements relate to the Plaintiff's alleged financial and tax improprieties. (Compl. ¶¶ 56, 58, 59, 60, 61, 62, 63, 64, 105, 106, 107, 108, 109, 110, 111, 115, 116, 118, 119, 120, 121, 127.) Among the alleged improprieties is the allegation that the Plaintiff is abusing its tax exemption by maintaining an improper relationship with a taxable, secular business named Big Shine Worldwide, Inc. Such allegations should give rise to an issue of public concern. The case of Gospel Spreading Church v. Johnson Publishing Company is instructive. In that case, the allegedly defamatory statements had to do not only with a religious organization, but also with the tax exempt status of that organization, and alleged financial improprieties with respect to the outside business interests of a church official. See Gospel Spreading Church v. Johnson Publ'g Co., 454 F.2d 1050, 1050-51 (D.C. Cir.1971). The Court held that "[a]s an

established church with substantial congregations it seeks to play 'an influential role in ordering society,' and may properly be considered to be a public institution." Id. at 1051 (citation omitted, emphasis in original). But perhaps more interestingly, the court directly addressed the public interest in examining the financial arrangements that the Gospel Spreading Church claimed were private matters:

> The general public has a vital interest in knowing whether federal and local religious tax exemptions are being properly applied and in knowing whether the housing program of the federal Government is being abused. Such matters are all of public concern.

Id. The court therefore applied the actual malice standard. Id.

Likewise, because the Plaintiff receives a tax exemption and other special treatment by the government, the receipt of such benefits, and the manner in which such benefits are utilized by the Plaintiff, are plainly matters of public concern. Therefore, any statements pertaining to the Plaintiff's alleged abuse of its tax exemption, as well as statements pertaining to alleged financial improprieties relating to the Plaintiff's outside business interests, are subject to the actual malice standard.

Finally, it makes no difference that Ms. Colón is not a professional journalist. The New Jersey Supreme Court has held that "the actual malice standard should apply to non-media as well as to media defendants." Dairy Stores, Inc. v. Sentinel Pub. Co., 104 N.J. 125, 153 (1986).

### C. The Complaint Does Not Allege Any Non-Conclusory Facts to Support a Finding of Actual Malice

Pursuant to New York Times, the actual malice standard requires the Plaintiff to prove that the defendant published the challenged statements about the plaintiff with knowledge that such statements were false, or with reckless disregard of whether or not they were false. New

York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964). The same definition is applied to the malice element of a trade libel claim. See, e.g., Juliano v. ITT Corp., 1991 U.S. Dist. LEXIS 1045, *12 (D.N.J. Jan. 22, 1991) ("In order to establish malice, [the plaintiff] must demonstrate that [the defendant] knew that the statements were false or that they were written with reckless disregard for their truth or falsity.") Even if everything in the Plaintiff's Complaint is taken as true, the Plaintiff has failed to satisfy the actual malice standard for any of its claims.

The Plaintiff makes a number of conclusory allegations to suggest that the actual malice standard has been satisfied in this case. For instance, in ¶ 125 of the Complaint, the Plaintiff alleges:

> Defendant made these statements knowing the statements, or the inferences to be drawn from them, were false or, in the alternative, made the statements with reckless disregard for the truth of the statements or inferences.

The Plaintiff makes similar allegations in ¶¶ 133, 142, and 154. But other than those conclusory allegations of actual malice, the Plaintiff does not allege any facts showing that Ms. Colón knew that anything she said was false, or that she acted with reckless disregard for the truth of her statements.

For instance, there are no allegations in the Complaint that suggest that, as a member of the Plaintiff, Ms. Colón was exposed to facts that are different from the facts that are described in the challenged statements. There are no allegations that suggest that Ms. Colón did not actually have the experiences as a member of the Plaintiff that she says she had. There are no allegations that suggest that the things that Ms. Colón claims were said and done to her by the Plaintiff's pastor and other representatives of the Plaintiff were not actually said or done. There are no allegations to suggest that the Plaintiff's IRS filings that are cited in the challenged statements do

not contain the information that the challenged statements claim they contain. In short, there are no non-conclusory allegations in the Complaint to suggest that Ms. Colón acted with actual malice.

"The conclusory allegation that [the defendant] published the defamatory statements with actual malice is not sufficient to withstand a motion to dismiss on the pleadings." Donato v. Moldow, 374 N.J. Super. 475, 501 (App. Div. 2005). "It is not enough for plaintiffs to assert . . . that any essential facts that the court may find lacking can be dredged up in discovery. A plaintiff can bolster a defamation cause of action through discovery, but not file a conclusory complaint to find out if one exists." Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 768 (1989) (internal quotation marks and brackets omitted). "[A] plaintiff must plead the facts and give some detail of the cause of action." Id.

Because the Plaintiff has not provided any detail to illustrate that Ms. Colón knew that what she was publishing was false, or acted with reckless disregard for the truth, the Plaintiff's defamation and trade libel claims must be dismissed in their entirety.

## VIII. Claims for Statements That Were Made Without Actual Malice Regarding the President's Volunteer Service Award Must Be Dismissed

The allegations contained in ¶¶ 88 - 97 of the Complaint arise out of an article entitled "The WMSCOG 'Awarded by President Obama'?" (See Grosswald Cert., Ex. 5.) The article describes the procedure by which "any individual, family, or group can receive Presidential recognition for volunteer hours earned over a 12-month period or over the course of a lifetime at home or abroad." (Id.) To earn these awards, "[i]ndividuals must submit their hours to a certifying organization that will review, verify hours served, order and distribute the award." (Id.)

(emphasis in original). The article contains a section explaining who can become a "certifying organization":

> Nonprofit, community and faith-based organizations, businesses, schools and colleges, membership and trade associations, and federal, state or local government agencies can all serve as certifying organizations. In order to become a certifying organization, the entity is required to fill out a short application that will be reviewed within 10-15 business days. Once approved, the certifying organization orders the awards and present them to the nominees. The cost of each award varies between $1.00-$4.75 each.

(Id.)

The article then goes on to say that the author learned from "[a] representative of the Presidential Volunteer Services Award office" that the Plaintiff registered itself as a certifying organization, and that the Plaintiff subsequently certified and ordered numerous awards for fifteen WMSCOG locations, including the Plaintiff's own Ridgewood, New Jersey location. (Id.) Moreover, the article states that according to the representative from the award office, the Plaintiff "should not have nominated their Ridgewood, New Jersey location for the award since the 'certifying organization' would in essence be awarding themselves." (Id.) (emphasis in original). The Plaintiff claims that such a statement is defamatory, because the rules of the award program allow it to certify the hours of its own volunteers, and the hours of other branches. (Compl. ¶ 92.) But the statement at issue accuses the Plaintiff of improperly giving an award to its own branch, not to its own volunteers or to other branches. The Plaintiff does not deny in its Complaint that such behavior is a violation of the award program's rules.

Moreover, the article discloses that the source for its conclusion - that the Plaintiff improperly awarded itself - comes from information that was supplied by a representative of the award program. (Grosswald Cert., Ex. 5.) That fact defeats the actual malice standard that the

Plaintiff has to prove. The actual malice standard, as explained above, requires the Plaintiff to prove that the author knew that what she was writing was false, or else that she acted with reckless disregard for the falsity of what she was writing. See New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964). Yet, the fact that the author reached out to a representative of the award program, and asked that representative to clarify and explain the rules for the award prior to publishing the article, indicates that the author was engaged in a diligent search for the truth, and was not acting with actual malice. Therefore, the Plaintiff's claims must be dismissed to the extent they arise out of the allegations contained in ¶¶ 88 - 97 of the Complaint.

## IX. Claims for Statements Which Are Not "Of and Concerning" the Plaintiff Must Be Dismissed

"An indispensable prerequisite to an action for defamation is that the defamatory statements must be of and concerning the complaining party." Durski v. Chaneles, 175 N.J. Super. 418, 420 (App. Div. 1980). The Plaintiff has a "significant burden" to plead the "of and concerning" element of a defamation claim with specificity. Foxtons, Inc. v. Cirri Germain Realty, 2008 N.J. Super. Unpub. LEXIS 189, *13 (App. Div. Feb. 22, 2008). "[W]hen the statements concern groups, as here, plaintiffs face a more difficult and sometimes insurmountable task." Art of Living Found. v. Does, 2011 U.S. Dist. LEXIS 63507, *16 (N.D. Cal. June 15, 2011). "The rationale for this rule is to protect freedom of public discussion, except to prevent defamatory statements reasonably susceptible of special application to a given individual." Id. at *17. In Art of Living Foundation, the defamation plaintiff was a California corporation and the United States branch of a global organization based in India. "However, Plaintiff, which has the same name as the international organization (and presumably the same name as some 140 other international

branches), ha[d] not established that the allegedly defamatory statements at issue . . . [we]re "of and concerning" [the plaintiff]." Id. Some jurisdictions refer to this as the "group libel doctrine":

> [U]nder the "group libel doctrine," a plaintiff's defamation claim is "insufficient if the allegedly defamatory statements referenced the plaintiff solely as a member of a group." Abramson v. Pataki, 278 F.3d 93, 102 (2d Cir. 2002) (quoting Church of Scientology Int'l v. Time Warner, Inc., 806 F. Supp. 1157, 1160 (S.D.N.Y. 1992); see also Provisional Gov't of Republic of New Africa v. Amer. Broad. Cos., Inc., 609 F. Supp. 104, 108 (D.D.C. 1985) (noting that defamation is personal such that statements which refer to an individual do not implicate the organization of which plaintiff is a member while statements which refer to an organization do not implicate its members). In order to overcome the group libel doctrine, a plaintiff must demonstrate that "the circumstances of the publication reasonably give rise to the conclusion that there is a particular reference to the member." Church of Scientology, 806 F. Supp. at 1160 (quoting Restatement (Second) of Torts, § 564A(b)).

Friends of Falun Gong v. Pac. Cultural Enter., 288 F. Supp. 2d 273, 282 (E.D.N.Y. 2003).

The group libel doctrine has also been applied to churches, such as the Church of Scientology. In one case, the plaintiff was the Church of Scientology, International, known as "CSI," or the "mother church":

> The Article also contains repeated references to "Scientology," the "Church of Scientology," the "church," and the "Los Angeles based church." CSI's suggestion that any reference to Scientology is necessarily a reference to CSI encounters the bar of the group libel rule. CSI is one of hundreds of Scientology entities implicated by a reference to "Scientology." Because CSI has failed to demonstrate that the references in the Article to "Scientology" particularly refer to CSI, as differentiated from the hundreds of other Scientology entities, the Article's references to "Scientology" do not support a finding that CSI has sufficiently pleaded the "of and concerning" requirement.

Church of Scientology Int'l v. Time Warner, 806 F. Supp. 1157, 1161 (S.D.N.Y. 1992) (internal citations omitted).

Just like the Art of Living Foundation and the Church of Scientology, the Plaintiff in the instant case is one branch of a global organization. Specifically, the Plaintiff is the New Jersey branch of a global church. (Compl. ¶ 13.) The name of the global church is the same as the name of the Plaintiff. (Id.) Presumably, the other branches of the global church have the same or similar names. Therefore, any statement that refers to the "WMSCOG" or the "World Mission Society Church of God," can be referring to any number of entities, not necessarily the Plaintiff. No such statements can be actionable, because the of and concerning element is not satisfied, pursuant to the group libel doctrine.

The following paragraphs from the Complaint contain statements that refer not to the Plaintiff specifically, but to the WMSCOG as a group: ¶¶ 47, 56, 60, 61, 63, 102, 105, 120. Therefore, Ms. Colón respectfully requests that this Court dismiss all of the Plaintiff's claims arising out of the statements alleged in those paragraphs, for failure to plead the of and concerning element.

Moreover, for many of the challenged statements it is impossible to ascertain from the Complaint alone whether the of and concerning element has been satisfied, because the Plaintiff has edited the statements so as to leave out the exact words that were used to refer to the entity being discussed. Nevertheless, counsel has located some of the challenged statements online and it turns out that many of the statements, when viewed in unedited form, are not of and concerning the Plaintiff. For instance, the statements referenced in the Complaint at:

- ¶¶ 41-42 were of and concerning WMSCOG of Deer Park, Texas (Grosswald Cert., Ex. 4);
- ¶ 44 were of and concerning WMSCOG of Santee, California and WMSCOG of Meriden, Connecticut (id.);

- ¶ 48 (and appearing on kudzu.com) were of and concerning WMSCOG of Reseda, California (id.);
- ¶ 49 were of and concerning WMSCOG of Bloomingdale, Illinois (id.);
- ¶ 50 were of and concerning WMSCOG of Santee, California, and WMSCOG of Deer Park, Texas (id.);
- ¶ 56 were of and concerning WMSCOG as a group, WMSCOG of Bloomingdale, Illinois; and a WMSCOG branch in California (id.);
- ¶ 57 were of and concerning WMSCOG as a group (id.);
- ¶ 60 were of and concerning WMSCOG of Bloomingdale, Illinois, and a WMSCOG branch in California (id.);
- ¶ 61 were of and concerning WMSCOG of Bloomingdale, Illinois, and a WMSCOG branch in California, and WMSCOG as a group (id.);
- ¶ 62 were of and concerning WMSCOG of Seoul, Korea, a WMSCOG branch in California, and WMSCOG as a group (id.); and
- ¶ 63 were of and concerning WMSCOG of Bloomingdale, Illinois, and a WMSCOG branch in California (id.).

Therefore, Ms. Colón respectfully requests that this Court dismiss all of the Plaintiff's claims arising out of those statements, for failure to plead the of and concerning element.

The following paragraphs from the Complaint also contain statements that have been edited by the Plaintiff so as to make it impossible to ascertain from the pleadings whether the of and concerning element has been satisfied, but counsel has not located the statements online: ¶¶ 36, 45, 46, 48, 51, 58, 59. Therefore, Ms. Colón respectfully requests that this Court order the Plaintiff to provide the complete unedited statements that correspond to each of those paragraphs

in the Complaint, pursuant to R. 4:6-4(a) (unless the claims arising out of those paragraphs have been dismissed on other grounds).

## X. Claims for Statements Which Consist of Opinions Must Be Dismissed

"Under the First Amendment there is no such thing as a false idea. Gertz v. Robert Welch, 418 U.S. 323, 339 (1974). "Statements of opinion, as a matter of constitutional law, enjoy absolute immunity." Dairy Stores, Inc. v. Sentinel Pub. Co., 104 N.J. 125, 147 (1986). "If a statement could be construed as either fact or opinion, a defendant should not be held liable." Lynch v. New Jersey Educ. Ass'n, 161 N.J. 152, 168 (1999). "An interpretation favoring a finding of 'fact' would tend to impose a chilling effect on speech." Id. Whether a particular statement is a statement of fact or an expression of opinion is a question of law for the court.[6] Kotlikoff v. Comty. News, 89 N.J. 62, 67 (1982).

### A. Cult and Mind Control Statements

Many of the challenged statements refer to the Plaintiff as a "cult," (see Compl. ¶¶ 42, 44, 45, 46, 48, 49, 50, 51, 57, 77, 79), or claim that the Plaintiff uses "mind control" or "brainwashing," (see Compl. ¶¶ 44, 51, 57, 79, 102(a)). Moreover, some of the challenged statements accuse the Plaintiff of having specific characteristics that are commonly attributed to cults, or employing specific techniques that are commonly associated with mind control or brainwashing, such as deception and withholding of information (Compl. ¶ 47); control of

[6] The analysis is the same even where the plaintiff couches its defamation claim as a trade libel or product disparagement claim. "Because the common law historically has held the interest in one's reputation as more worthy of protection than the interest of a business in the products that it makes, it follows that the right to make a statement about a product should exist whenever it is permissible to make such a statement about the reputation of another." Dairy Stores, Inc. v. Sentinel Pub. Co., Inc., 104 N.J. 125, 137 (1986).

members' time (Compl. ¶ 75, 102(e)); use of sleep deprivation (Compl. ¶¶ 79, 81, 102(d)); setting of unrealistic goals for its members (Compl. ¶¶ 79, 80); and use of fear and guilt manipulation (Compl. ¶ 80, 102(b), 102(c)). Collectively, all of those challenged statements will hereinafter be referred to as the "Cult and Mind Control Statements."

The Cult and Mind Control Statements are not actionable in defamation. In 2007, the federal district court in New Jersey decided a case similar to the instant one, and found that the word "cult" was not actionable under New Jersey defamation or product disparagement law.[7] NXIVM Corp. v. Sutton, 2007 U.S. Dist. LEXIS 46471, *26-27 (D.N.J. June 27, 2007). In NXIVM, an alleged cult (pronounced "Nexium") sued its critics for defamation. At issue were articles written by two cult critics, Paul Martin and John Hochman. Also at issue were statements appearing on the website "Ross Institute Internet Archives for the Study of Destructive Cults, Controversial Groups and Movements" (the same website discussed in ¶ 53 of the instant Complaint, on which some of the challenged statements in the instant case were posted).

To begin its analysis, the NXIVM Court determined that it must look at the content, verifiability, and context of the challenged statements. Id. at *23; see also Lynch v. New Jersey Educ. Ass'n, 161 N.J. 152, 167 (1999) ("Whether a statement is defamatory depends on its content, verifiability, and context.").

**1. Content**

"The content analysis requires an evaluation of the language in question according to the fair and natural meaning that would be given it 'by reasonable persons of ordinary intelligence.'"

[7] The court determined that because New Jersey law and New York law were the same, no choice of law analysis was necessary. NXIVM, 2007 U.S. Dist. LEXIS 46471, at *18-19.

Id. at *23 (quoting Romaine v. Kallinger, 109 N.J. 282, 290 (1988)). A statement that expresses a "pure" opinion on matters of public concern will not give rise to an action for defamation. Kotlikoff, 89 N.J. at 68-69. "A pure opinion is one that is based on stated facts or facts that are known to the parties or assumed by them to exist." Dairy Stores, 104 N.J. at 147. "[A] mixed opinion is one not based on facts that are stated or assumed by the parties to exist." Lynch, 161 N.J. at 168. "Where an opinion is accompanied by its underlying nondefamatory factual basis, a defamation action premised upon that opinion will fail, no matter how unjustified, unreasonable or derogatory the opinion might be." Kotlikoff, 89 N.J. at 72-73. "This is so because readers can interpret the factual statements and decide for themselves whether the writer's opinion was justified." Id.

Applying that standard, the NXIVM Court came to the conclusion "that a reasonable reader would not believe that the articles contain assertions of fact that Plaintiffs' organization constitutes a cult." NXIVM, 2007 U.S. Dist. LEXIS 46471, at *25. The court found that "the articles adequately state[d] the facts upon which the authors' opinions are based." NXIVM, 2007 U.S. Dist. LEXIS 46471, at *26. Specifically, Martin stated that he relied on the academic work of Robert Jay Lifton, an expert in thought reform, or mind control, who is known for having identified the common, shared characteristics that are typical in cults. Id. at *27. Next, Martin reviewed the materials that the alleged cult, NXIVM, had distributed to its members. Id. Martin then performed an analysis, comparing Lifton's cult characteristics and mind control techniques with the characteristics and techniques of NXIVM. Id.

Ms. Colón has stated in her writings that she relied on substantially the same type of information as Martin. For instance, in her Five-Party Story (see Grosswald Cert., Ex. 2; Compl. ¶¶ 72 - 87), she discusses the sources she relied on in forming her opinions about the Plaintiff.

Just like Martin, she states that she relied on Lifton's academic work and the alleged cult's own materials (which she refers to as "WMSCOG doctrine"). (Five-Part Story, Part 3, Grosswald Cert., Ex. 2.) She also states that she relied on the stories of former WMSCOG members, articles that discussed the brainwashing of POWs, and articles that discussed the control tactics of other religions, such as the Jehovah's Witnesses. (Id.) Reliance on such sources is perfectly acceptable when forming an opinion about a cult. For instance, in Church of Scientology v. Siegelman, 475 F. Supp. 950, 955-56 (S.D.N.Y. 1979), the court dismissed defamation claims where the challenged statements were "replete with opinions and conclusions about the methods and practices used by the Church of Scientology and the effect such methods and practices have . . . ." Those statements had been based in part on what the authors had been told by former members and journalists during the course of their investigation. Id. at 956, n.14. The court held that none of the challenged statements "go beyond what one would expect to find in a frank discussion of a controversial religious movement . . . and thus none of these statements may be the basis for an action in defamation." Id. at 956. Likewise, Ms. Colón has engaged in "a frank discussion of a controversial religious movement" and has disclosed the facts that form the basis of her opinion that the Plaintiff is a "cult" that uses "mind control." Therefore, her use of the words "cult" and "mind control" to describe the Plaintiff is not actionable.

It makes no difference that many of the challenged statements fail to repeat all of the factual details that are disclosed in Ms. Colón's Five-Part Story. In the challenged statements that fail to make such disclosures, the statements instead inform the reader that more information could be obtained from the website, examiningthewmscog.com. (See Grosswald Cert., Ex. 4.) Any person visiting that website could find Ms. Colón's Five-Part Story, along with many other factual articles which give support to the opinion that the Plaintiff is a cult which uses mind

control. "Although the process of accessing the factual bases for the opinions involved clicking onto [the examiningthewmscog.com] website, the dispositive point is those factual bases were disclosed and were accessible to the reader." Franklin v. Dynamic Details, Inc., 116 Cal. App. 4th 375, 388 (Cal. Ct. App. 2004).

Therefore, the content analysis leads to the conclusion that the Cult and Mind Control Statements are opinions.

**2. Verifiability**

"The verifiability factor requires the Court to determine whether describing a group as a 'cult' constitutes a verifiable statement of fact; or instead, if characterizing a group as a 'cult' is a non-actionable expression of opinion." NXIVM, 2007 U.S. Dist. LEXIS 46471, at *26-27. In NXIVM, the court first focused on the comparative analysis that Martin had performed. Martin had reviewed Lifton's scholarly work, in which Lifton explains his theory of common cult characteristics and mind control techniques. Id. at *27. Martin then compared Lifton's cult characteristics and mind control techniques with the characteristics and techniques of NXIVM, which he gleaned from the alleged cult's own materials. Id.

The court ruled that such an analytical exercise is an exercise of opinion, which is not subject to a verifiability analysis. Id. at *27-28. In making that ruling, the court flatly rejected a unique argument from NXIVM. The alleged cult had argued that the statement "that Plaintiffs constitute a cult that employs mind control techniques" is verifiable by matching up the cult criteria identified in the Martin and Hochman articles with the Plaintiff's actual characteristics. Id. at *32. But the court recognized that such an analytical exercise does not lead to verifiability. "That they must offer criteria by which to define or describe cult-like behavior underscores the

fact that 'cult' is a term without a universal or concrete meaning and is not a verifiable fact." Id. at *33.

Moreover, the court made it clear that the treatment of the word "cult" should be the same whether the word is explicitly used as a label for the plaintiff, or whether such a label is implied. Martin's article never explicitly stated that NXIVM was a "cult," id. at *27, while Hochman's article explicitly labeled the plaintiff with a modified version of the word: "cult-like," id. at *28. In both cases, the court found no verifiable statements of fact. Id. at *27, *30. But if the authors had explicitly labeled the plaintiff a "cult," it would not have changed the result. "[I]t is the finding of this Court that 'cult' is not a verifiable assertion of fact," id. at *30, because it "is not a term with a concrete meaning." Id. at *34. "Thus, when an individual states or opines that a group constitutes a 'cult' or is 'cult-like,' no verifiable fact is communicated to the listener or reader." Id. at *34. This reasoning is consistent with the holdings of courts in other jurisdictions which have found that the word "cult" is not actionable in defamation. See, e.g., Beaverton Grace Bible Church v. Smith, No. C1121174CV, pp. 6-7 (Cir. Ct. Or. July 23, 2012) (Grosswald Cert., Ex. 3); Harvest House Publishers v. Local Church, 190 S.W.3d 204, 212 (Tex. App. 2006); Sands v. Living Word Fellowship, 34 P.3d 955, 960 (Alaska 2001).

The same reasoning should be applied to the instant case. Ms. Colón came to the realization that the Plaintiff was a cult by engaging in the same kind of analytical exercise that was at issue in NXIVM. For instance, at one point she wrote:

> This lead me to do a google search on the WMSCOG. To my surprise, I found a website that claimed that the WMSCOG was a cult! [The site is no longer online]. My anxiety levels continued to increase as I sat reading information about the contradictions in the WMSCOG doctrine, questionable practices, and former members' stories about how they had been hurt by the WMSCOG. The most disturbing information that I had come across was that the

> WMSCOG was said to have been using the same mind control tactics used on US prisoners of war in N. Korea. I also learned about Robert J. Lifton's thought reform model. When I finally read an article that explained how the Jehovah's Witnesses used the same tactics to control their members I could not ignore the similarities to what I had experienced in the WMSCOG.

(Five-Part Story, Part 3, Grosswald Cert., Ex. 2.) (hyperlinks omitted) (see also Compl. ¶ 83). In other words, Ms. Colón began to learn about Lifton's description of cult characteristics and mind control techniques, the same ones referenced in NXIVM. She also learned about mind control tactics that were used on POWs, and she learned about control tactics that were used in other religious groups. As she became more familiar with the characteristics of cults, and the techniques of mind control, she began to compare those characteristics and techniques with what she had experienced and observed as a member of the Plaintiff. Her conclusion that the Plaintiff was a cult, which uses mind control, was the result of that intellectual analysis. And just like the analysis that was presented to the federal court in NXIVM, Ms. Colón's analysis is a matter of opinion. The fact that she had to learn the definitions of and criteria for definining the terms "cult" and "mind control" and "brainwashing" by doing research on the Internet "underscores the fact" that those terms are without "universal or concrete meaning" and are not verifiable facts. See NXIVM, 2007 U.S. Dist. LEXIS 46471, at *33.

Moreover, Ms. Colón's analysis is an opinion regardless of whether she engages in a large-scale analysis or a small-scale analysis. When engaged in a large-scale analysis, she focuses on her broad opinion that the Plaintiff is a "cult" (see Compl. ¶¶ 42, 44, 45, 46, 48, 49, 50, 51, 57, 77, 79), which uses "mind control," or "brainwashing" (see Compl. ¶¶ 44, 51, 57, 79, 102(a)). When engaged in a small-scale analysis, she focuses on particular details of cult-like behavior, or

particular mind control techniques. For instance, some of the small-scale opinions she has formed about the Plaintiff which are based on experts' criteria for cults are that the Plaintiff:

- uses deception and withholds information from its members (Compl. ¶ 47);
- controls its members' time (Compl. ¶ 75, 102(e));
- subjects its members to sleep deprivation (Compl. ¶¶ 79, 81, 102(d));
- sets unrealistic goals for its members (Compl. ¶¶ 79, 80); and
- uses fear and guilt manipulation on its members (Compl. ¶ 80, 102(b), 102(c)).

Each of these conclusions, large-scale and small-scale, are the result of the analysis that Ms. Colón engaged in when she began reflecting on her experience with the Plaintiff in the context of what she learned from reading the widely-available literature about cults and mind control. Even if different people might have conducted the analysis differently, or come to different conclusions, Ms. Colón's analysis is still a protected opinion. See, e.g., Standing Comm. on Discipline of the United States Dist. Court v. Yagman, 55 F.3d 1430, 1440 (9th Cir. 1995) ("Readers were free to form another, perhaps contradictory opinion from the same facts").

### 3. Context

In analyzing the context of the challenged statements, the NXIVM Court emphasized the fact that the NXIVM critics were academic scholars who wrote "an academic critique or analysis of Plaintiff's program." NXIVM, 2007 U.S. Dist. LEXIS 46471, at *26. The court found that the authors were "offering their opinions based on their academic and occupational training. A reasonable reader would discern that the authors' conclusions do not constitute fact, but rather, the opinion of an individual who is writing from a particular perspective." Id. Moreover, the court determined that the Ross Institute website provided "a particular viewpoint on cults and

their techniques" and did not "purport to offer reporting coverage or news on cults." Id. at *36-37.

This is in contrast to the context of anti-cult statements in other cases which have been held actionable. For instance, in Eli Lilly, statements that were critical of Scientology were found to be factual because they were written in a manner that was "substantially equivalent to an internal memo, and its tone [was] business-like and solemn." Church of Scientology Int'l v. Eli Lilly & Co., 778 F. Supp. 661, 668 (S.D.N.Y. 1991). And in Landmark Education Corporation v. Conde Nast Publication, No. 114814/93, 1994 WL 836356 (N.Y. Sup. July 7, 1993), statements which identified the plaintiff as a "cult" were published in "Self" magazine, which is a monthly, national women's magazine, published by Conde Nast, a major publishing company. In other words, the Self magazine article purported to be "a piece of reporting." NXIVM, 2007 U.S. Dist. LEXIS 46471, at *33. The NXIVM Court determined that academic scholarly writing on cults, and a website by an anti-cult activist, are less news-like than an investigative report that appears in a national magazine, see id. at *33, and less business-like than the Eli Lilly memo, id. at *36-37. As such, the information contained in the academic scholarly writing, and the anti-cult website, would be viewed by a reasonable reader as being "rife with opinions and viewpoints." Id. at *37.

Moreover, statements "made on obviously critical blogs with heated discussion and criticism" have generally been treated as opinions. Art of Living Found. v. Does, 2011 U.S. Dist. LEXIS 63507, *19 (N.D. Cal. June 15, 2011). "In this context, readers are less likely to view statements as assertions of fact rather than opinion." Id., citing Nicosia v. De Rooy, 72 F. Supp. 2d 1093, 1101 (N.D. Cal. 1999) (statements made on personal website, through Internet discussion groups, and as part of heated debate are less likely viewed as statements of fact). This

is especially true where the blogs link to the website of the plaintiff, or to other favorable information about the plaintiff, "evincing a forum for debate and discussion." Art of Living Found., 2011 U.S. Dist. LEXIS 63507, at *21.

In the instant case, most of the statements at issue were made on "obviously critical blogs," such as examiningthewsmcog.com (Compl. ¶ 69), the Ross Institute website (Compl. ¶ 53), or the Facebook group called "Former Members World Mission Society Church of God Cult" (Compl. ¶ 30). Statements that were not posted directly to those blogs contained links to those blogs (see Grosswald Cert., Ex. 4).

Moreover, statements that were not posted directly to those blogs were instead posted in forums that were designed to promote "heated discussion and criticism," such as local.com (Compl. ¶ 39); yellowbot.com (Compl. ¶ 44); meridenpatch.com (Compl. ¶ 45); santee.patch.com (Compl. ¶ 46); findlocal.latimes.com (Compl. ¶ 47); aidpage.com (Compl. ¶ 48); kudzu.com (Compl. ¶ 48); socialcurrent.org (Compl. ¶ 49); chamberofcommerce.com (Compl. ¶ 50); dexknows.com (Compl. ¶ 50); maps.google.com (Compl. ¶ 51); YouTube (Compl. ¶ 98); and ridgewood.patch.com (Compl. ¶ 126). As evidence that those websites are designed to promote opinions and criticism, this Court need look no further than the fact that the areas of those websites where the challenged statements appear are generally labeled with words such as "Reviews," "Comments," or "Ratings." (See Grosswald Cert., Ex. 4.) In fact, many of the challenged statements are accompanied by a star-based rating system, in which people who comment about the WMSCOG are able to assign it between one and five stars based on how they feel about the organization. (Id.) Any statements appearing in such an environment will necessarily be viewed by a reasonable person as statements of opinion.

Furthermore, many of the challenged statements are posted alongside statements that are favorable to the Plaintiff. (See, e.g., Grosswald Cert., Ex. 4 [¶ 41-42; 44; 48].) The Ross Institute website, on which many of the challenged statements appear, offers a link to the WMSCOG website. (Grosswald Cert., Ex. 6.) The website examiningthewms.com, on which many other challenged statements appear, frequently offers links to the WMSCOG website and sermons. (Grosswald Cert., Ex. 7.) Such facts "evinc[e] a forum for debate and discussion." Art of Living Found., 2011 U.S. Dist. LEXIS 63507, at *21.

In summary, the websites, blogs and Internet forums containing the challenged statements in the instant case all create a context of opinion. This context is only reinforced by the fact that Ms. Colón identifies herself as a former member of the Plaintiff who has been personally and emotionally impacted by her experience with the Plaintiff. She makes no effort to hide her true feelings about the Plaintiff, or to pretend that she is an objective, neutral reporter. Therefore, her statements must be viewed as opinions.

For those reasons, Ms. Colón respectfully requests that this Court dismiss all of the Plaintiff's claims to the extent that they arise out of the Cult and Mind Control Statements.

**B. Destroying Family Statements**

Many of the challenged statements refer to the Plaintiff "destroying families" or "destroying marriages." (Compl. ¶¶ 23, 28(d), 42, 44, 45, 46, 48, 49, 50, 51, 56, 72, 75, 76, 78, 102, 102a.) Collectively, those challenged statements will hereinafter be referred to as the "Destroying Family Statements." The Destroying Family Statements consist entirely of opinion.

### 1. Content

As explained above, "[w]here an opinion is accompanied by its underlying nondefamatory factual basis, a defamation action premised upon that opinion will fail, no matter how unjustified, unreasonable or derogatory the opinion might be." Kotlikoff v. Comty. News, 89 N.J. 62, 72-73 (1982). Ms. Colón's Five-Part Story discloses all of the facts that give rise to her claim that the Plaintiff destroys families and marriages. She explains in detail how families are separated at the church, and men and women are not allowed to sit together. (Five-Part Story, Part 2, Grosswald Cert., Ex. 2.) She describes how she was assigned an "older sister" to watch over her, while her then-boyfriend and eventual husband was assigned a "big brother." (Id.) She discusses how she was pressured to spend increasingly more time at the Plaintiff's location, to the point where she no longer had time for her family. (Id.) As a result of that pressure, she missed her nephew's birthday party. (Id.) "But this would only be the beginning of conflicts with [her] family due to [her] involvement with the WMSCOG." ( Id.).

She writes that she eventually started realizing that many of the married members of the Plaintiff were ending up separated or divorced. (Id. at Part 3) In fact, she learned that the woman who had recruited her left her husband because he did not want to attend the Plaintiff's church anymore. (Id.). At one point, the Plaintiff's pastor, Dong Il Lee, said to Ms. Colón that members of the Plaintiff often got divorced because the non-believing spouse usually had a problem with how much time the believing spouse spent in church. (Id.). A deaconess for the Plaintiff admitted that she had gotten divorced for that same reason. (Id.). After conducting some Internet research, Ms. Colón discovered some blog entries written by people who had family members involved with the Plaintiff. (Id. at Part 4.) "Soon an obvious pattern emerged. I read story after story about how the WMSCOG had either ruined their marriage or family." (Id.).

Shortly after that, her husband was given many new time-intensive assignments by the Plaintiff, so that he no longer had time to spend with her. (Id.) The Plaintiff began to turn her husband against her by teaching him that she was going to hell, and that she was being "used by Satan." (Id.). In fact, at one point the Plaintiff's pastor said to her "what difference does it make [if your husband leaves you] if you're both gonna die." (Id.). In other words, the Plaintiff believes that its members should be more concerned with their salvation than with their marriages (and salvation requires tithing large amounts of money to the Plaintiff). (Id.) Ms. Colón also talked about how, in the year that she was a member of the Plaintiff, the topic of marriage and its importance was never discussed. (Id.).

The Plaintiff then attempted to sow division between Ms. Colón and her husband by telling her husband in an ex-parte conversation that Ms. Colón had posted critical information about the Plaintiff to the Internet. (Id.). After Ms. Colón stopped returning to the Plaintiff's church, the Plaintiff caused Ms. Colón's husband to spend even more time at the church, so that it became impossible for them to see each other. (Id. at Part 5). Ms. Colón's husband did not even have time to spend with her for their first wedding anniversary. (Id.) In fact, the Plaintiff made Ms. Colón's husband feel guilty about spending time with her. (Id.) The Plaintiff also attempted to keep both Ms. Colón and her husband sleep deprived. (Id.) The Plaintiff required Ms. Colón's husband to stay at the church very late. (Id.) He would not come home until after midnight, and would be required to stay up until almost two in the morning reading the Plaintiff's books. (Id.). Then he would be required to wake up at five in the morning to pray. (Id.) The Plaintiff also convinced Ms. Colón's husband that he should not aspire to have children with her, because Ms. Colón was not willing to let her children be baptized by the Plaintiff so the children would end up

being "spiritually dead." (Id.) Eventually, Ms. Colón's husband told her that he no longer wanted to be with her. (Id.) He admitted to her that "the church was always the problem." (Id.)

Based on all of those disclosed facts, Ms. Colón formed the opinion that the Plaintiff "destroys families" and "destroys marriages." Moreover, the Plaintiff does not dispute the truth of the disclosed facts. Other than conclusory allegations that Ms. Colón's statements are "false" and "defamatory," the Plaintiff's Complaint does not allege that the Plaintiff does not destroy families. Nor does it allege any facts that suggest that it does not destroy families. Most importantly, it does not allege any facts that refute the facts offered by Ms. Colón, which show that the Plaintiff does, in fact, destroy families. To the contrary, the Plaintiff's own pastor has admitted that members of the Plaintiff often get divorced because of the time commitment that the Plaintiff imposes on its members. (Id. at Part 3). The pastor has expressly stated that salvation through the Plaintiff's church is a more important priority to the Plaintiff than preserving the marriages of its members. (Id. at Part 4). The Plaintiff's own deaconess has confirmed that she was divorced for that reason. (Id. at Part 3.) None of those facts are challenged in the Plaintiff's Complaint.

Because the facts underlying the "Destroying Family Statements" are uncontroverted, the question of whether the Plaintiff may be characterized as "destroying families" comes down to a question of opinion. For instance, to a person who believes in the Plaintiff's ideology, the practice of believing spouses divorcing non-believing spouses does not destroy families. Rather, it helps people to achieve salvation, and provides them with the opportunity to form a stronger family by remarrying with a true believer. On the other hand, to a person who does not believe in the Plaintiff's ideology, the practice of sacrificing families and marriages to serve the greater interests of the Plaintiff is cruel and immoral, and can fairly be characterized as "destroying families." In other words, it comes down to a pure opinion.

### 2. Verifiability

The Destroying Family Statements must be treated as opinions because they are not verifiable. A statement is an opinion if it is "too loose and hyperbolic to be susceptible to being proven true or false." Art of Living Found., 2011 U.S. Dist. LEXIS 63507, at *22. "Thus, mere insults and rhetorical hyperbole, while they may be offensive, are not defamatory." Lynch v. New Jersey Educ. Ass'n, 161 N.J. 152, 167-68 (1999). "Courts have extended First Amendment protection to such statements in recognition of the reality that exaggeration and non-literal commentary have become an integral part of social discourse." Art of Living Found., 2011 U.S. Dist. LEXIS 63507, at *20. Such protection is designed to "provide[] assurance that public debate will not suffer for lack of 'imaginative expression' or the 'rhetorical hyperbole' which has traditionally added much to the discourse of our Nation." Id. at *20-21, citing Milkovich v. Lorain Journal Co., 497 U.S. 1, 20 (1990).

The Destroying Family Statements constitute rhetorical hyperbole. There is no benchmark for measuring how much damage to families the Plaintiff is actually causing. Nor is there a benchmark for measuring how much damage to families the Plaintiff would have to cause before it became "verified" that the Plaintiff was destroying families. Therefore, the Destroying Family Statements are not verifiable.

### 3. Context

The Destroying Family Statements were made in the same context as the other challenged statements, and should be treated as opinions for the same reasons presented above in the Context Section regarding the Cult and Mind Control Statements.

Thus, Ms. Colón respectfully requests that this Court dismiss all of the Plaintiff's claims to the extent they arise out of the Destroying Families Statements.

### C. Taking Money Statements

Many of the challenged statements refer to the Plaintiff "taking money." (Compl. ¶¶ 23, 42, 44, 45, 46, 49, 50, 51.) Collectively, those challenged statements will hereinafter be referred to as the "Taking Money Statements."

#### 1. Content

Once again, a statement is non-actionable if it expresses an opinion accompanied by its underlying nondefamatory factual basis. Kotlikoff v. Comty. News, 89 N.J. 62, 72-73 (1982). And once again, Ms. Colón has disclosed the underlying fact that gives rise to her opinion. Specifically, Ms. Colón reveals that the Plaintiff teaches its members that the only way they can achieve salvation is, among other things, through keeping the Sabbath and Passover, and tithing to the Plaintiff. (Part 4.) This fact is uncontroverted. The Plaintiff does not allege that it does not require its members to tithe. Nor does the Plaintiff allege that Ms. Colón's statement (that the Plaintiff believes that tithing to the Plaintiff is required for salvation) is false.

Based on the disclosed, uncontroverted fact that the Plaintiff requires its members to tithe to it as a condition of salvation, Ms. Colón's assertions that the Plaintiff "takes money" is pure opinion. To a person who believes in the Plaintiff's ideology, the act of donating money to the Plaintiff will be seen as a legitimate act of charity. Such a person might characterize the act of tithing as "giving money" rather than "taking money." But to a person who does not believe in the Plaintiff's ideology, the claim that the only way to salvation is to give money to the Plaintiff seems ridiculous and coercive. Such a person is likely to characterize the act of tithing as "taking

money" rather than "giving money." In other words, the characterization one uses to describe the tithing will be determined by one's opinion about the Plaintiff.

**2. Verifiability**

If the Taking Money Statements were to be taken literally, then they could be verified simply by pointing out that the Plaintiff collects donations from its members, potential members, and other benefactors, a fact which the Plaintiff admits to in ¶ 21 of its Complaint. But in that case, the Taking Money Statements would not be defamatory, because they would be literally true.

Perhaps a more appropriate way for this Court to treat the Taking Money Statements is as rhetorical hyperbole. When read in context, the statements are not conveying the verifiable fact that the Plaintiff collects donations. Rather, the statements are conveying the opinion that the donors are being coerced into making the donations and are being taken advantage of by the donee. When read that way, the Taking Money Statements are "too loose and hyperbolic to be susceptible to being proven true or false." See Art of Living Found., 2011 U.S. Dist. LEXIS 63507, at *22.

Whether the Taking Money Statements are literally true, or an "imaginative expression" of opinion (as described in Lynch v. New Jersey Educ. Ass'n, 161 N.J. 152, 167-68 (1999)), they are not actionable either way.

**3. Context**

The Taking Money Statements were made in the same context as the other challenged statements, and should be treated as opinions for the same reasons presented above in the Context Section regarding the Cult and Mind Control Statements.

Therefore, Ms. Colón respectfully requests that this Court dismiss all of the Plaintiff's claims to the extent they arise out of the Taking Money Statements.

**D. Big Shine Statements**

Many of the challenged statements refer to a suspicious relationship between the tax-exempt Plaintiff and a secular, taxable entity called "Big Shine Worldwide, Inc.," (hereinafter, "Big Shine") (Compl. ¶¶ 56, 58, 59, 60, 65, 105, 107, 108, 109, 110, 111, 127.) Collectively, those challenged statements will hereinafter be referred to as the "Big Shine Statements."

**1. Content**

The Big Shine Statements are not actionable because they express opinions while disclosing the underlying facts that give rise to those opinions. See Kotlikoff v. Comty. News, 89 N.J. 62, 72-73 (1982). For example, the Plaintiff complains about statements posted on the Ross Institute website expressing the opinion that the "higher ups" who work for the Plaintiff are the same "higher ups" who work for Big Shine. (Compl. ¶ 59, 108.) Those statements also point out that there is a lot of "overlap" in the locations of the WMSCOG and Big Shine throughout the United States and around the world. (Compl. ¶ 59, 110.) Yet, the underlying facts supporting those opinions are also presented on the Ross Institute website. A post dated July 3, 2011 presented a list of the WMSCOG's "Founding Directors," and identifies which of those directors have positions of responsibility in Big Shine. (Grosswald Cert., Ex. 4 [¶¶ 58-59(B)].) The post also identifies the sources of the information - WMSCOG's application for tax exempt status as well as Big Shine's business filings with New Jersey. (Id.) That same post provides a list of the countries around the world where both the WMSCOG and Big Shine have branches. (Id.)

Similar facts are disclosed in the You Tube video complained of in ¶¶ 105 - 121 of the Complaint. (Colón Aff., Ex. B; see also http://www.youtube.com/watch?v=-a-2yJ7YYdU).

The Plaintiff does not controvert any of those facts. The Plaintiff does not allege that it is untrue that WMSCOG and Big Shine share senior personnel and office space, nor does the Plaintiff deny that both organizations have many of their locations in the same cities around the world. Because of the disclosed, uncontroverted facts, the Big Shine Statements fall under the category of pure opinion, and are not actionable.

**2. Verifiability**

The Big Shine Statements are not verifiable because they revolve around a single question: "Why such a strong connection to a [sic] Big Shine Worldwide?" (Compl. ¶ 59.) "This question is pointed, and could certainly arouse a reader's suspicion." Chaplin v. Knight-Ridder, Inc., 993 F.2d 1087, 1094 (4th Cir. 1993). "A question can conceivably be defamatory, though it must be reasonably read as an assertion of a false fact; inquiry itself, however embarrassing or unpleasant to its subject, is not accusation." Id. "The question simply provokes public scrutiny of the plaintiffs' activities." Id. "Voluntary public figures must tolerate such examination." Id.

Moreover, a defamation defendant's "use of a question mark serves two purpose[s]: it makes clear his lack of definitive knowledge about the issue and invites the reader to consider the possibility of other justifications for the defendants' actions." Partington v. Bugliosi, 56 F.3d 1147, 1157 (9th Cir. 1995). Where the question is presented in a manner that invites the reader to draw their own conclusions, the question is not actionable. Phantom Touring, Inc. v. Affiliated Publications, 953 F.2d 724, 731 (1st Cir. 1992). Where the question is presented in a manner that tells the readers that only one conclusion is possible, then it becomes actionable. Id.

In the instant case, the Big Shine Statements do not claim that there are no other conclusions that may be drawn from the facts presented. The statements simply express one conclusion about the disclosed facts (that there is a suspicious connection between WMSCOG and Big Shine), but the audience is free to review the disclosed facts and come to a different conclusion. Therefore, the Big Shine Statements cannot be verified as being true or false. (To the extent that some of the Big Shine Statements contain factual assertions which can be verified true or false, the Plaintiff has not controverted the truth of any such factual assertions, as explained above in the previous section discussing the content of the Big Shine Statements.)

#### 3. Context

The Big Shine Statements were made in the same context as the other challenged statements, and should be treated as opinions for the same reasons presented above in the Context Section regarding the Cult and Mind Control Statements.

Therefore, Ms. Colón respectfully requests that this Court dismiss all of the Plaintiff's claims to the extent they arise out of the Big Shine Statements.

### E. The Corporate Structure Statements

Some of the challenged statements refer to alleged improprieties regarding WMSCOG's corporate structure. (Compl. ¶¶ 62, 63.) Collectively, those challenged statements will hereinafter be referred to as the "Corporate Structure Statements."

#### 1. Content

The statements at issue are:

> The WMSCOG denies that they have any relationship to another organization despite having a clear connection to the WMSCOG in California.

(See Compl. ¶ 62; Grosswald Decl.., Ex. 4.)

> Is this an attempt to minimize the appearance of their growth and remain under the IRS's radar?

(See Compl. ¶ 63; Grosswald Decl.., Ex. 4.)

These two statements express nothing more than the opinion of a WMSCOG critic as to what the WMSCOG is trying to do with its corporate structure. And once again, the underlying facts giving rise to that opinion are disclosed. In the same post and in surrounding posts, it is revealed by the same author that the California and Illinois branches of the WMSCOG have obtained separate EIN tax numbers from the IRS, even though both organizations are controlled by the same pastor, Joo Cheol Kim. (Grosswald Cert., Ex. 4 [¶ 63].) It is also revealed that, even though all WMSCOG branches are controlled by the main headquarters in Seoul, Korea, one WMSCOG branch nevertheless stated on an IRS form that it neither controls nor is controlled by any other organization. (Id. [¶ 62].)

Again, the disclosed facts are not controverted by the Plaintiff. The Plaintiff freely admits that it and other branches of the WMSCOG "are separately organized entities for financial and tax purposes" which report to the IRS as "independent corporate entities." (Compl. ¶ 64.) The Plaintiff does not deny that the WMSCOG branches around the world are subject to the control of the headquarters in Seoul. In fact, the Plaintiff admits that it looks "to the headquarter Church in South Korea for guidance." (Id.) Because of those disclosed uncontroverted facts, the Corporate Structure Statements constitute pure opinion.

### 2. Verifiability

The Corporate Structure Statements are not verifiable because they revolve around a single question: "Is this an attempt to minimize the appearance of their growth and remain under the IRS's radar?" (Compl. ¶ 63.) As explained above, questions are not verifiable assertions of fact if the readers are left to draw their own conclusions. Phantom Touring, Inc. v. Affiliated Publications, 953 F.2d 724, 731 (1st Cir. 1992).

Once again, the statements at issue do not claim that there are no other conclusions that may be drawn from the facts presented. Because the audience is free to draw its own conclusions about the disclosed facts, the Corporate Structure Statements are not verifiable. (To the extent that some of the Corporate Structure Statements contain factual assertions which can be verified true or false, the Plaintiff has not controverted the truth of any such factual assertions, as explained above in the previous section discussing the content of the Corporate Structure Statements.)

### 3. Context

The Corporate Structure Statements were made in the same context as the other challenged statements, and should be treated as opinions for the same reasons presented above in the Context Section regarding the Cult and Mind Control Statements.

Thus, Ms. Colón respectfully requests that this Court dismiss all of the Plaintiff's claims to the extent they arise out of the Corporate Structure Statements.

### F. The Financial Impropriety Statements

Many of the challenged statements refer to alleged financial improprieties committed by the Plaintiff. (Compl. ¶¶ 106, 115, 116, 118, 119, 120, 121, 127.) Collectively, those challenged statements, most of which appear in a You Tube video, will hereinafter be referred to as the "Financial Impropriety Statements."

#### 1. Content

The Financial Impropriety Statements are not actionable because they are opinion statements. Specifically, the challenged statements express the opinion that an IRS filing made by the WMSCOG is "untruthful and suspect." (Compl. ¶ 116.) Yet, the facts underlying that opinion are disclosed in the You Tube video. Specifically, the video reveals that, according to the IRS filing in question, a WMSCOG branch had received $26,000 from a "parental church." (Colón Aff., Ex. B; see also http://www.youtube.com/watch?v=-a-2yJ7YYdU). Yet, that same IRS filing fails to indicate that the Plaintiff is a subsidiary of a parental entity, as required by the IRS. (Id.) Moreover, the video points out that, according to the IRS filing, the WMSCOG branch claimed $300,000 in missionary expenses, even though WMSCOG members are required to pay their own expenses when they do missionary work. (Id.) Finally, the video complains about the lack of transparency of the Plaintiff, which does not make any financial disclosures to its members. (Id.)

The Plaintiff does not controvert any of those facts in its Complaint. The Plaintiff does not deny that a WMSCOG branch had received $26,000 from the "parental church," or that the parental church is not reported to the IRS as a formal corporate parent. The Plaintiff does not deny that a WMSCOG branch claimed $300,000 in missionary expenses on an IRS form, nor does

it deny that WMSCOG members are required to pay their own expenses when they do missionary work. Finally, the Plaintiff does not refute the assertion that it does not make any financial disclosures to its members.

Based on those disclosed, uncontroverted facts, the Financial Impropriety Statements are pure opinion.

**2. Verifiability**

The opinion expressed in the Financial Impropriety Statements - that the financial activities of the WMSCOG are "quite suspect" (see Colón Aff., Ex. B, p. 3.) - is not verifiable, because the term "quite suspect" is too loose and figurative to be measured against any benchmark. (To the extent that some of the Financial Impropriety Statements contain factual assertions which can be verified true or false, the Plaintiff has not controverted the truth of any such factual assertions, as explained above in the previous section discussing the content of the Financial Impropriety Statements.)

**3. Context**

The Financial Impropriety Statements were made in the same context as the other challenged statements, and should be treated as opinions for the same reasons presented above in the Context Section regarding the Cult and Mind Control Statements.

Thus, Ms. Colón respectfully requests that this Court dismiss all of the Plaintiff's claims to the extent they arise out of the Financial Impropriety Statements.

## ARGUMENTS FOR MOTION TO STRIKE

"On the court's or a party's motion, the court may either (1) dismiss any pleading that is, overall, scandalous, impertinent, or, considering the nature of the cause of action, abusive of the court or another person; or (2) strike any such part of a pleading or any part thereof that is immaterial or redundant." R. 4:6-4. Certain allegations contained in the Complaint, as explained below, are impertinent, immaterial, or scandalous, and should be stricken from the pleading.

### I. Allegations Imputing Bad Motives to Users of Anonymous Speech Are Impertinent and Immaterial and Must Be Stricken

Paragraph 18 of the Complaint alleges:

> Defendant acted with a total disregard for the rights of Plaintiff. Beyond the intentional conduct alleged herein, this fact is further evinced by Defendant's use of phony Internet handles in an attempt to mask her identity and avoid being held accountable by Plaintiff.

With that paragraph, the Plaintiff is attempting to use Ms. Colón's alleged use of anonymity as evidence that she "acted with a total disregard for the rights of Plaintiff." Such an allegation is highly inappropriate. The right to engage in anonymous speech is a well-established right. Dendrite Intern., Inc. v. Doe No. 3, 342 N.J. Super. 134, 148 (App. Div. 2001). For example, the earliest and most famous American experience with freedom of the press, the 1735 Zenger trial, centered around anonymous political pamphlets. McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 361 (1995) (Thomas, J., concurring). Furthermore, the Federalist Papers, which argued for ratification of the United States Constitution, were initially published anonymously. Id. at 360 (Thomas, J., concurring). "Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent." McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 357 (1995). Yet, the Plaintiff is attempting to use Ms.

Colón's alleged exercise of anonymity as evidence that she behaved in a pernicious manner. To allow such an argument would eviscerate the right to anonymous speech, by putting future speakers on notice that their decision to speak anonymously can be used against them in subsequent litigation.

Moreover, "total disregard for the rights of Plaintiff" is not the correct standard of fault to be applied in a defamation case. As explained above, the standard of fault where the plaintiff is a public figure or the statements at issue discuss issues of public concern, is actual malice - meaning that the Plaintiff must allege non-conclusory facts that show that Ms. Colón knew her statements were false, or acted with reckless disregard for whether the statements were false. The use of anonymity when publishing statements on the Internet is not relevant for determining what the publisher knew about the truth or falsity of her statements. An anonymous person can publish a statement that she believes to be true just as easily as she can publish a statement that she believes to be false. The existence or non-existence of anonymity does not resolve the issue of fault one way or the other. The Plaintiff should not be permitted to use Ms. Colón's alleged exercise of a constitutional right as a substitute for satisfying the actual malice standard. Therefore, this Court should strike ¶ 18 from the Complaint.

## II. Allegations Implying That Ms. Colón Has Harassed Members of the Plaintiff Are Impertinent, Immaterial and Scandalous and Must Be Stricken

Paragraph 20 of the Complaint creates a false impression that Ms. Colón has been "harassing" members of the Plaintiff at work and in public:

> Plaintiff has lost members who have been intimidated by Defendant's attacks on Plaintiff. Members who fear harassment at work and in public have left the Church. Moreover, Plaintiff is losing prospective membership because of Defendant's conduct.

Such an allegation is utterly frivolous. The Plaintiff alleges that most of Ms. Colón's statements have been made online. The Plaintiff does not allege that Ms. Colón has ever contacted any member of the Plaintiff at work or in public. Ms. Colón herself has stated in her affidavit that she has not contacted any member of the Plaintiff without that member's consent. (Colón Aff., ¶ 25.) The fact that the Plaintiff does not provide any specific facts to support this harassment allegation, and the fact that the Plaintiff has not included any claims for harassment in its Complaint, suggests that the Plaintiff is very much aware of the fact that Ms. Colón has not engaged in any such harassment. Nevertheless, the above allegation was included in the Complaint for the sole purpose of scandalizing Ms. Colón, and subjecting her to abuse. In the absence of any specific alleged facts that show that Ms. Colón has ever harassed any of the Plaintiff's members, ¶ 20 of the Complaint should be stricken.

## CONCLUSION

For all of the foregoing reasons, Ms. Colón respectfully requests that this Court grant her Motion to Dismiss and Strike.

**PAUL S. GROSSWALD, ESQ., LLC**
Attorney for Defendant
**Michele Colón**

Dated: August 24, 2012

By: Paul Grosswald
**PAUL S. GROSSWALD**