

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

WORLD MISSION SOCIETY, CHURCH)
OF GOD A NJ NONPROFIT CORP.)
)
Plaintiff,)
)
v.)
)
TYLER J. NEWTON)
)
Defendant.)
)

Case No. 2011-17163

DEFENDANT’S MOTION FOR SANCTIONS

Defendant Tyler J. Newton (“Newton”), by counsel, submits this Motion for Sanctions against Plaintiff, World Mission Society, Church of God a NJ Nonprofit Corporation (“WMSCOG”) for their total failure to comply with this Court’s Order dated July 20, 2012 (attached hereto as Exhibit A). It has been nearly eight months since WMSCOG brought this frivolous defamation case, and it continues to refuse to provide any meaningful discovery responses, even after being ordered to do so by the Court. The Court should dismiss the action, with prejudice, pursuant to Rule 4:12(b)(2)(C), and award Mr. Newton reasonable attorneys’ fees incurred as a result of WMSCOG’s failure to comply with the Court’s Order.

FACTUAL BACKGROUND

Eight months ago, Plaintiff filed a multi-million dollar defamation and conspiracy action against Mr. Newton, claiming that he conspired with a New Jersey resident (former Defendant Michele Colon) to harm WMSCOG by allowing Ms. Colon to publish an essay (among other statements claimed to be defamatory) on Mr. Newton’s website concerning her experiences while a member of WMSCOG. (See Compl. ¶¶ 8, 67-72). As the truth or falsity of these

statements will be a key issue at trial, Mr. Newton issued his First Set of Interrogatories and First Set of Requests for Production of Documents to Plaintiff on April 2, 2012, seeking various forms of information calculated to enable Mr. Newton to prove at trial that all the factual assertions on his website are true. After a series of agreed-upon extensions, WMSCOG responded to these requests almost entirely with objections and accompanied by a Motion for Protective Order.

The Court denied WMSCOG's Motion for Protective Order and ordered WMSCOG to answer the interrogatories and produce the requested documents by August 3, 2012 (14 days from July 20, 2012, the date the Order was entered). (See Ex. A).

WMSCOG has made no effort whatsoever to comply with the Order compelling substantive responses. Instead, it used the past 2-3 weeks to step up its efforts to obtain discovery from Mr. Newton. At a time when WMSCOG should have been working diligently on its discovery responses and document production, it chose instead to focus its efforts on continuing to harass Mr. Newton, making multiple threats to file a motion to compel. (See, e.g., Email from Laura K. Marston, Exhibit B (which began with her forwarding a nine-page, single-spaced letter regarding alleged discovery deficiencies and giving Mr. Newton just three business days to respond)).

August 3rd has come and gone, and WMSCOG did not lift a finger to comply with the Court's July 20th Order. To date, no supplemental interrogatory answers have been provided, and not a single document has been produced. It is as if the Order compelling discovery was never entered. At the end of the day on August 3, 2012, Mr. Newton's counsel sent an email to all three of the attorneys representing WMSCOG in this case, asking them to state when the discovery would be provided. WMSCOG's counsel ignored this correspondence, too.

On August 6, 2012, Mr. Newton's counsel informed WMSCOG's counsel that Mr. Newton would be moving for sanctions in light of the total and complete failure to comply with the discovery Order. WMSCOG's counsel responded curtly that WMSCOG would simply take a nonsuit and re-file the case in New Jersey.¹ When Plaintiff's counsel was reminded of § 8.01-380's requirement that "no new proceeding on the same cause of action or against the same party shall be had in any court other than that in which the nonsuit was taken," and that WMSCOG would need to re-file its case (if at all) in Fairfax County, she responded, "To the extent you take issue with our re-filing in New Jersey, you may raise such objections at the appropriate time. I'm sure you are aware that our client has a legal right to this non-suit, regardless of whether or not you consent." (See Email from Laura K. Marston, attached as Exhibit C).

ARGUMENT

WMSCOG has demonstrated a complete lack of respect for the Court's Order compelling discovery, as it did not even attempt to comply with its terms. WMSCOG should not be permitted to maintain a defamation action, claiming that Mr. Newton is responsible for spreading lies about its practices and activities, and then refuse to provide any discovery regarding those practices and activities, particularly when such information is within WMSCOG's control and will be difficult or impossible to obtain from other sources. This is information WMSCOG will be required to produce at trial to prove its case, so there is absolutely no excuse for refusing to produce it in discovery.

¹ Plaintiff's counsel, Laura K. Marston, also informed Defendant's counsel of the sad news that John Dozier, owner of the law firm representing WMSCOG, passed away unexpectedly on August 6, 2012. She indicated that Mr. Dozier's passing is unrelated to her client's decision to seek a nonsuit and gave no indication that his passing was in any way related to the failure of WMSCOG to comply with the Order.

Nor should WMSCOG be permitted to disregard the orders of this Court, then thumb its nose at both Mr. Newton and the Court by taking a nonsuit without consequence. Mr. Newton anticipates that WMSCOG will be filing nonsuit papers in the near future. While the Plaintiff generally has a right to take a nonsuit, it does not have the right or ability to use the procedure as a device for escaping sanctions. *See Williamsburg Peking Corp. v. Kong*, 270 Va. 350 (2005) (holding that a trial court can consider motions for sanctions even after granting plaintiff a nonsuit).

Given Plaintiff's strident refusal to respond to this Court's Order compelling discovery, the breadth of subjects Plaintiff has stonewalled and the critical nature of the information sought, Mr. Newton respectfully requests that the Court grant the following relief:

- The Court should dismiss Plaintiff's claims, with prejudice, pursuant to Rule 4:12(b)(2)(C). It is clear that Plaintiff is engaging in discovery and litigation abuse, and that it never had a genuine interest in taking this case to trial. Its sole purpose is to intimidate Mr. Newton against exercising his right of free speech.
- Alternatively, the Court should declare, pursuant to Rule 4:12(b)(2)(A), that all statements on Mr. Newton's website are true and cannot support a defamation action.
- Additionally, the Court should award reasonable attorneys' fees pursuant to Rule 4:12(b)(2).

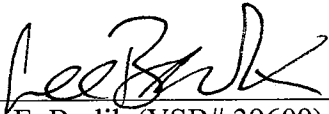
Plaintiff's steadfast refusal to comply with the rules of this Court justify a stiff sanction. Plaintiff concurrently has stonewalled affirmative discovery required to show the truth/falsity of the statements at the heart of its complaint while aggressively seeking discovery irrelevant to its case - discovery whose true purpose is to expose those within and associated with Plaintiff's

church willing to talk about Plaintiff's practices and simultaneously imposing costs on Defendant. These tactics show Plaintiff is not conducting this lawsuit or discovery in good faith.

CONCLUSION

Plaintiff has completely ignored this Court's July 20, 2012 order and, to date, nearly eight months after filing its multi-million dollar defamation case, Plaintiff has failed to produce *any* substantive information to support its claims. The Court should use the power conferred by Rule 4:12 to end this abusive lawsuit or issue such other relief as the Court may find appropriate.

TYLER J. NEWTON
By Counsel



Lee E. Berlik (VSB# 39609)
Jay M. McDannell, Of Counsel (VSB# 45630)
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1818 Library Street, Suite 500
Reston, Virginia 20190
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LBerlik@berliklaw.com
JMcDannell@berliklaw.com

Counsel for Defendant Tyler Newton

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2012, a true and correct copy of the foregoing Motion for Sanctions was served via facsimile on:

Laura K. Marston, Esq.
Dozier Internet Law, P.C.
11520 Nuckols Road, Suite 101
Glen Allen, Virginia
Fax: (804) 346-0800



Lee E. Berlik

Exhibit A

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

**WORLD MISSION SOCIETY CHURCH
OF GOD, A NJ NONPROFIT CORP.**

Plaintiff,

v.

MICHELLE COLON, et al.,

Defendants.

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CL-2011-17163

ORDER

This matter came before the Court on July 6, 2012, upon Plaintiff's Motion for a Protective Order;

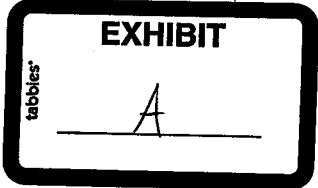
IT APPEARING that for the reasons stated in the Court's Letter Opinion of July 20, 2012 that the Motion a Protective Order should be denied;

It is therefore **ORDERED** that the Motion for a Protective Order is **DENIED**;

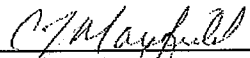
It is further **ORDERED** that the Court's Letter Opinion of July 20, 2012, is incorporated into this Order.

It is further **ORDERED** that all discovery produced in this matter shall be produced in unredacted form. Prior to either party's production of discovery materials all "personal information" of third parties shall be redacted. "Personal information" is defined to include social security numbers, phone numbers, home addresses, and email addresses.

It is further **ORDERED** that Plaintiff respond to Newton's interrogatories and request for production of documents within fourteen (14) days of the entry of this Order.

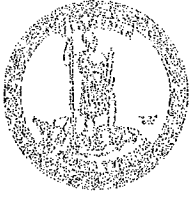


Entered on this 20 day of July, 2012.



Judge Charles J. Maxfield

**ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD IS WAIVED IN THE DISCRETION OF THE COURT
PURSUANT TO RULE 1:13 OF THE RULES OF THE SUPREME COURT OF VIRGINIA.**



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009

703-246-2221 • Fax: 703-365-4432 • TDD: 703-352-4139

DENNIS J. SMITH, CHIEF JUDGE

MARCUS D. WILLIAMS
JANE MARUM ROUSH
LESLIE M. ALDEN
JONATHAN C. THACHER
R. TERRENCE NEY
RANDY I. BELLOWES
CHARLES J. MAXFIELD
BRUCE D. WHITE
ROBERT J. SMITH
DAVID S. SCHELL
JAN L. BRODIE
LORRAINE NORDLUND
BRETT A. KASSABIAN
MICHAEL F. DEVINE

JUDGES

COUNTY OF FAIRFAX

CITY OF FAIRFAX

BARNARD F. JENNINGS
THOMAS J. MIDDLETON
THOMAS A. FORTKORT
RICHARD J. JAMBORSKY
JACK B. STEVENS
J. HOWE BROWN
F. BRUCE BACH
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ARTHUR B. VIEREGG
KATHLEEN H. MACKAY
ROBERT W. WOOLDRIDGE, JR.
MICHAEL P. McWEENEY
GAYLORD L. FINCH, JR.
STANLEY P. KLEIN
RETIRED JUDGES

July 20, 2012

John W. Dozier, Jr., Esq.
Dozier Internet Law, P.C.
11520 Nuckols Road, Suite 101
Glen Allen, VA 23059
Counsel for Plaintiff

Lee E. Berlik, Esq.
BerlikLaw, LLC
1818 Library Street, Suite 500
Reston, VA 20190
Counsel for Defendant Tyler Newton

*Re: World Mission Society Church of God, A NJ Nonprofit Corp. v. Michelle
Colon et al., Case No. CL-2011-17163*

Dear Counsel:

This matter came before the Court on July 6, 2012 on Plaintiff's Motion for a Protective Order. Upon consideration of the respective briefs, oral arguments, and controlling authorities, the motion is Denied.

FACTUAL BACKGROUND

Plaintiff, World Mission Society Church of God, A NJ Nonprofit Corporation ("WMSCOG"), is a branch of the World Mission Society Church of God. The World Mission Society Church of God was founded in 1964 and boasts of over a million members worldwide.

Re: World Mission Society Church of God, A NJ Nonprofit Corp. v. Michelle Colon et al.
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In June of 2011, defendants Michelle Colon¹ and Tyler J. Newton ("Newton") began a series of purportedly defamatory attacks against WMSCOG. Newton allegedly created a Facebook group and YouTube videos for the purposes of attacking WMSCOG. Additionally, Newton operates an Internet website ("Website") that criticizes WMSCOG.² The Website discusses the World Mission Society Church of God's teachings, methods, and practices and monitors the World Mission Society Church of God's worldwide activities. A number of allegedly defamatory statements on the Website are enumerated in WMSCOG's complaint. Representative examples of the defamation complained of include allegations of money laundering, intentional destruction of families, deception, intimidation, misappropriation of finances, and improper financial relationships between secular corporations, the WMSCOG and its senior leadership.

In response to the perceived defamation, WMSCOG filed a complaint against Colon and Newton with claims for defamation, statutory conspiracy, civil conspiracy, trade libel, tortious interference with a business expectancy, and negligent interference with a business expectancy.³ WMSCOG requested a permanent injunction requiring the removal of all purportedly defamatory material posted on the Internet. WMSCOG requested compensatory damages of five million dollars and requested the compensatory damages be trebled in accordance with Virginia Code §18.2-500. WMSCOG additionally requested a punitive damages award of ten million dollars.

Pursuant to Rule 4:1 of the Rules of the Supreme Court of Virginia, Newton propounded written interrogatories and requests for production of documents on WMSCOG. WMSCOG generally refused to respond to Newton's discovery requests and stated that it would not fully respond until a protective order was entered.

ARGUMENTS

WMSCOG predicates its request for a protective order entirely upon its concern that Newton will publish on the Website any discovery materials obtained. WMSCOG asserts the sole purpose of discovery is to allow parties to prepare for trial, and Newton should not be permitted to share discovery information with the public. WMSCOG contends Newton should be entirely precluded from taking any discovery in the matter. If Newton is permitted discovery, WMSCOG requests the discretion to classify materials as confidential and only viewable by counsel.

¹ Colon's Motion to Dismiss for lack of jurisdiction was granted by Judge Bellows on March 16, 2012.

² The website at issue is <http://www.examinethewmcog.com/>

³ Judge Brodie sustained Newton's demurrer to the tortious interference with a business expectancy and negligent interference with a business expectancy on March 13, 2012.

Re: *World Mission Society Church of God, A NJ Nonprofit Corp. v. Michelle Colon et al.*
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Newton concurs with WMSCOG's conclusion that the sole purpose of discovery is preparation for trial. Newton subsequently lists sixteen specific allegations of defamation listed in the Complaint and argues he is entitled to discovery with respect to each of the allegations and all other claims made in WMSCOG's Complaint. Newton further contends WMSCOG has not articulated a particularized harm that would occur in the absence of the issuance of a protective order and argues a fear of public dissemination of discovery materials is insufficient to allege good cause. Although Newton requests unredacted discovery materials, Newton represents all identifying personal information of third parties will be redacted prior to publication.

ANALYSIS

The issuance of protective orders is governed by Rule 4:1(c) of the Rules of the Supreme Court of Virginia. According to Rule 4:1(c), a protective order may be granted upon motion and a demonstration of good cause. VA. SUP. CT. R. 4:1(c). Virginia courts have not articulated good cause in this context. Virginia's Rule 4:1(c) and Rule 26(c) of the Federal Rule of Civil Procedure are substantially similar with respect to the demonstrations necessary to grant a protective order.⁴ Therefore, this Court will examine the federal standards applied to protective orders for guidance.

When applying Rule 26(c) of the Federal Rules of Civil Procedure, federal district courts have concluded the issuance of a protective order requires both an allegation of significant harm and a demonstration of good cause. *Trans. Pacific Ins. Co. v. Trans-Pacific Ins. Co.*, 136 F.R.D. 385 (E.D. Pa. 1991). Furthermore, the significant harm must be demonstrated by specific factual assertions. *United States v. Garrett*, 571 F.2d 1323, 1326 n.3 (5th Cir. 1978).

In Virginia, parties may properly issue discovery with respect to any relevant issue that is not otherwise privileged. VA. SUP. CT. R. 4:1(b)(1). Even if the discovery requested would not be admissible at trial, a discovery request is not improper if it would lead to the discovery of admissible information. *Id.* To obtain such discovery, parties are permitted to utilize methods such as interrogatories, depositions, and requests for production of documents. VA. SUP. CT. R. 4:1 (a). The sole justification for obtaining discovery is to assist parties with trial preparation. *Shenandoah Publ. House v. Fanning*, 235 Va. 253, 260, 368 S.E.2d 253, 256 (1988)(citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34-36 (1984)).

⁴ Under the Federal rules, a protective order may be granted "for good cause [...] to protect a party or person." FED. R. CIV. P. 26(c)(1).

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The fact that discovery can only be obtained for the purposes of trial preparation does not necessarily preclude discovered information from being used beyond solely trial preparation. The dissemination of discovered information is subject to the control of a trial court; however, no general rule prohibits the publication of admissions and documents obtained via discovery. *Cf. Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34-36 (1984) (noting that access to discovered materials is subject to the control of trial courts). The threat or fear of publication, standing alone, has repeatedly been deemed insufficient to justify the issuance of a protective order. *See, e.g., Jepson Inc. v. Makita Elec. Works, Ltd.*, 30 F.3d 854, 858 (7th Cir. 1994). Judge Ellis of the Eastern District of Virginia recently considered the issue of public dissemination of discovery materials. *United States ex rel. Davis v. Prince*, 753 F.Supp.2d 561 (E.D. Va. 2010). Judge Ellis specifically rejected the proposition of issuing a protective order conditioned entirely upon a party's intent to publish discovery materials. *Id.* at 567. Judge Ellis concluded:

It cannot logically be the case that good cause exists to prohibit the public disclosure of discovery materials because a party states an intent to disseminate those materials in accordance with the law. [...] To show good cause, a party must demonstrate more than that an opposing party intends to disseminate discovery materials; rather, it must show that the disclosure of those materials will cause specific prejudice or harm, such as annoyance, embarrassment, oppression, or undue burden or expense. And, importantly, the fact that public disclosure of discovery materials will cause some annoyance or embarrassment is not sufficient to warrant a protective order; the annoyance or embarrassment must be particularly serious.

Id. at 567-68.

WMSCOG filed its Complaint and specifically enumerated sixteen defamatory statements Newton had purportedly made. Generally, Newton's interrogatories and requests for production of documents directly address the defamatory statements WMSCOG chose to be the predicate of its Complaint. The discovery propounded clearly seeks to obtain relevant and otherwise discoverable information.

WMSCOG lodges a number of objections and purported classifications of confidential information with respect to Newton's discovery; however, WMSCOG predicates its assertion of good cause entirely upon the possibility Newton will publish discovery materials obtained on the Website. The only harm WMSCOG references are amorphous "threats" and "risks" that could befall the church and its members if Newton is permitted to publish discovery materials. Vague

Re: World Mission Society Church of God, A NJ Nonprofit Corp. v. Michelle Colon et al.
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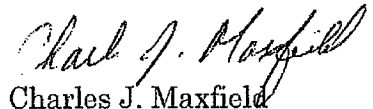
apprehensions with respect to potential publication are insufficient to demonstrate the requisite good cause necessary to issue a protective order.

WMSCOG failed to articulate a single serious harm likely to occur if Newton publishes the discovery material he obtains. Any annoyance or embarrassment WMSCOG suffers is directly related both to WMSCOG's decision to institute the current action and the extensive scope of the allegations propounded against Newton. The only embarrassment to members of the church will be a result only of their membership in WMSCOG.⁵ Neither of these concerns justify issuing a protective order.

CONCLUSION

Accordingly, WMSCOG failed to demonstrate any good cause sufficient to issue a protective order. The motion for a protective order is DENIED.

Sincerely,



Charles J. Maxfield
Fairfax County Circuit Court

⁵ Newton requested that any order granted with respect to WMSCOG's motion for a protective order contain a provision that all third-party identifying information beyond names obtained through discovery will be redacted by *Newton* prior to any publication, and the Order will reflect Newton's request.

Exhibit B

Lee E. Berlik

From: Laura K. Marston <Laura@cybertriallawyer.com>
Sent: Tuesday, July 24, 2012 6:14 PM
To: Jay M. McDannell; Lee E. Berlik
Subject: World Mission Society, Church of God v. Newton - Meet and Confer Letter/Trial Dates

Gentlemen,

You are demanding more time to respond to the meet and confer letter than the local rules usually give to respond to a Motion to Compel. If you take two weeks, the Motion to Compel will take at least another two weeks to be heard, at which time we will have burned another month. Furthermore you objected without seeking a protective order, thus attempting to transfer Newton's burden to the Plaintiff. See, e.g. *Whalen v. Nelson*, 68 Va. Cir. 485, 486 (Va. Cir. Ct. 2001). Do you have any present intention of withdrawing your objections and providing full and complete responses? Unless you stand ready to affirmatively represent that you do, our attempt to meet and confer has been rejected and we will file our Motion. Let's get the matter calendared with Judge Maxfield.

We also still need to get your available dates for rescheduling the trial date. The Court has the following dates available: December 10, 2012; January 14, 2013; and, January 28, 2013. I'm going to place the trial rescheduling on the calendar control docket. Please advise whether I should calendar the Motion to Compel as well.

Sincerely,

Laura Marston

Laura K. Marston, Esq.
Dozier Internet Law, P.C.
11520 Nuckols Road
Suite 101
Glen Allen, VA 23059
Phone: (804) 346-9770, Ext. 313
Fax: (804) 346-0800
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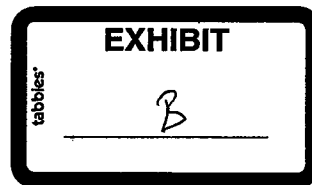
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From: Jay McDannell [mailto:jmcdannell@berliklaw.com]
Sent: Monday, July 23, 2012 6:40 PM
To: Laura K. Marston
Cc: Lee E. Berlik; Dov M. Szego; John W. Dozier, Jr.
Subject: RE: World Mission Society, Church of God v. Newton - Meet and Confer Letter/Trial Dates

Laura,

I am in receipt of you letter of July 20. In it you detail numerous alleged deficiencies with our May discovery responses and demand that if we do not respond within three days, July 25, 2012, you will file a Motion to Compel with the Court.



Given that your letter is 9 pages long (single-spaced) and that you have had the discovery responses in question for nearly two months before issuing the arbitrary 3 day deadline, we do not think the proposed timeline is reasonable nor reflects the professional courtesy we have extended your firm over the past few months. Moreover, the substance of many of the concerns you raise with our discovery responses can only be described as "amazingly hypocritical" given the positions your client has taken in discovery up to this point.

That being said, we intend to address the substantive concerns you raise in a serious fashion and the timeframe you described is simply incompatible with that goal. As a result, we promise to respond to your letter no later than August 6, 2012.

Also, we are in the process of finalizing third-party subpoenas for a number of senior WMSCOG leaders and for Big Shine. Please let us know if you are representing those parties and will accept service of those subpoenas, as, in the alternative, we will make the necessary arrangements to have those individuals served whenever/wherever in the ordinary course.

Jay

Jay M. McDannell, Of Counsel
BerlikLaw, LLC
1818 Library Street, Suite 500
Reston, VA 20190
(703) 722-0588
(703) 718-0171 (direct)
www.BerlikLaw.com
www.VirginiaLitigationBlog.com

-----Original Message-----

From: "Laura K. Marston" <Laura@cybertriallawyer.com>

Sent: Friday, July 20, 2012 4:41pm

To: "Lee E. Berlik" <lberlik@berliklaw.com>, "Jay M. McDannell" <jmcdannell@berliklaw.com>

Subject: World Mission Society, Church of God v. Newton - Meet and Confer Letter/Trial Dates

Gentlemen,

I have attached Plaintiff World Mission Society, Church of God's Meet and Confer letter. Please respond by Wednesday, July 25, 2012, or we will file a Motion to Compel with the Court.

Also, can you all give me your avoid dates from November through March or so, so we can get the trial rescheduled. According to the Court, our 2nd day of trial falls on election day and would require a break in trial. I will contact the Court on Monday to obtain their available dates.

Sincerely,

Laura Marston

Laura K. Marston, Esq.
Dozier Internet Law, P.C.
11520 Nuckols Road
Suite 101
Glen Allen, VA 23059
Phone: (804) 346-9770, Ext. 313
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Exhibit C

Lee E. Berlik

From: Laura K. Marston <Laura@cybertriallawyer.com>
Sent: Tuesday, August 07, 2012 10:34 AM
To: Lee E. Berlik
Cc: Jay M. McDannell; Dov M. Szego
Subject: RE: World Mission Society, Church of God v. Newton

Lee,

We tried to call you this morning to get you to sign off on the revised Motion for Non-suit, that removes the sentence with which you had a problem. We have not heard back from you so we are moving forward with our Motion for Non-suit. By removing this sentence, we are not in any way representing to you that we will not file the case against Newton in New Jersey. To the extent you take issue with our re-filing in New Jersey, you may raise such objections at the appropriate time. I'm sure you are aware that our client has a legal right to this non-suit, regardless of whether or not you consent.

As this is now not an Agreed Motion, we must note it for a hearing day. We are going to note the hearing for August 17, 2012. Please confirm that you have that date available.

With John's death yesterday, I'm sure you can imagine that things are hectic around here. We are doing our best to come to terms with his passing, and to handle things in a timely manner and in the manner in which John directed us. I would sincerely appreciate your understanding during this difficult time.

Best,

Laura Marston

Laura K. Marston, Esq.
Dozier Internet Law, P.C.
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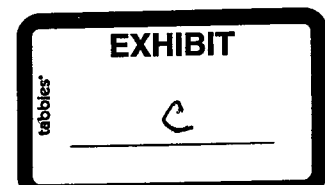
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From: Lee E. Berlik [mailto:lberlik@berliklaw.com]
Sent: Tuesday, August 07, 2012 7:55 AM
To: Laura K. Marston
Cc: Jay M. McDannell; Dov M. Szego
Subject: RE: World Mission Society, Church of God v. Newton

Laura: If you intend to sign, please use the attached version:

With best regards,



Lee E. Berlik
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From: Lee E. Berlik
Sent: Monday, August 06, 2012 6:39 PM
To: Laura K. Marston
Cc: Jay M. McDannell; Dov@cybertriallawyer.com
Subject: RE: World Mission Society, Church of God v. Newton

Laura: Attached are my edits to your proposed motion and order. If you agree not to pursue Mr. Newton in New Jersey, please sign and return, and I will take care of the filing. Thank you.

From: Lee E. Berlik
Sent: Monday, August 06, 2012 6:01 PM
To: 'Laura K. Marston'
Cc: Jay M. McDannell
Subject: RE: World Mission Society, Church of God v. Newton

Laura: You cannot re-file this case in New Jersey. If you are going to re-file, you need to do so in Fairfax, per the requirements of 8.01-380. Please confirm that you will *not* re-file this case in New Jersey. If you will not do that, we will not consent to your nonsuit and will proceed with the Motion for Sanctions we had intended to file today. I refrained from filing that motion on the understanding that your client had a change of heart about the wisdom of this litigation and was dropping the case. Apparently I misunderstood. I will plan on filing our Motion for Sanctions at 12:00 noon tomorrow unless you confirm before then that WMS does not intend to re-file this frivolous case in New Jersey.

With best regards,

Lee E. Berlik
BerlikLaw, LLC
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Reston, VA 20190
(703) 722-0588
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From: Laura K. Marston [<mailto:Laura@cybertriallawyer.com>]
Sent: Monday, August 06, 2012 5:25 PM
To: Jay M. McDannell
Cc: Lee E. Berlik
Subject: RE: World Mission Society, Church of God v. Newton

Gentlemen,

I have attached my draft of the Agreed Motion to Nonsuit. Please let me know of any proposed changes, and if none, please sign and return. I'd like to get this filed tomorrow, at which time Judge Maxfield's law clerk has indicated it should only take a day or two to get signed by the Judge. I plan to note my appearance when I file the Agreed Motion.

Sincerely,

Laura Marston

Laura K. Marston, Esq.
Dozier Internet Law, P.C.
11520 Nuckols Road
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Glen Allen, VA 23059
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From: Jay McDannell [<mailto:jmcdannell@berliklaw.com>]
Sent: Monday, August 06, 2012 3:45 PM
To: Laura K. Marston
Cc: Lee E. Berlik; Dov M. Szego
Subject: RE: World Mission Society, Church of God v. Newton

Laura,

We will consent to the non-suit. I'll keep an eye out for your draft.

Jay

-----Original Message-----

From: "Laura K. Marston" <Laura@cybertriallawyer.com>
Sent: Monday, August 6, 2012 3:17pm
To: "Jay McDannell" <jmcdannell@berliklaw.com>
Cc: "Lee E. Berlik" <iberlik@berliklaw.com>, "Dov M. Szego" <Dov@cybertriallawyer.com>
Subject: RE: World Mission Society, Church of God v. Newton

Jay,

Thank you for your kindness and understanding. We truly appreciate it.

Will you agree to the non-suit? It is our one non-suit as a matter of right, but the way it's drafted will depend on whether you all sign onto it or not. Per Judge Maxfield's law clerk, if you all agree to the non-suit, we can simply file an Agreed Motion and Order, which the law clerk represented could be signed in a matter of days. If you dispute the non-suit, then we have to file our own Motion and notice it for a motions day. It would be a one-week motion and you are not entitled to a response (per the law clerk). Please let us know your position as soon as possible, and I will get you the draft non-suit motion today. Thanks again, Jay.

Best,

Laura

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From: Jay McDannell [<mailto:jmcdannell@berliklaw.com>]

Sent: Monday, August 06, 2012 12:53 PM

To: Laura K. Marston

Cc: Lee E. Berlik; Dov M. Szego

Subject: World Mission Society, Church of God v. Newton

Laura,

Thanks for the call this morning. Again, let me express my condolences to you, Dov and John's family. Best wishes during this difficult time.

On the WMSCOG matter, please forward us a copy of the non-suit as soon as possible, preferably by tomorrow. As you know, we have a lot going on in that case (including a completed Motion for Sanctions I have stuck in the drawer based on your call), and I just want to make sure the matter is timely non-suited for the benefit of my client.

Jay

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