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

MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT MICHELE COLON'S MOTION TO DISMISS

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PRELIMINARY STATEMENT

Plaintiff World Mission Society Church of God (Plaintiff "World Mission" or the "Church") respectfully submits this Memorandum of Law in opposition Defendant Michele Colón's ("Defendant Colón's") motion to dismiss.

As an initial matter, the instant motion to dismiss is untimely in light of Plaintiff World Mission's pending motion to amend and the Proposed Amended Complaint. The Proposed Amended Complaint does not change the facts already alleged. It adds a plaintiff and a defendant that are critical to the narrative of this case, together with causes of action based on their involvement. Plaintiff World Mission requests that the instant motion be denied without prejudice to refile it in response to the Proposed Amended Complaint.

Both Complaints tell a story of a woman attempting to use the Church as a scapegoat for a marriage broken beyond repair. Defendant Colon used every tool of internet mass media at her disposal – discussion forums, business review websites, blogs, and even YouTube videos – to communicate to as many people as possible a straightforward message: "The World Mission Society Church of God purposefully ruined my marriage." Likewise, her ultimate goal was straightforward. She sought to turn her husband into a pariah within his congregation, making it so unpalatable for the Church to retain him as a member that they would "let him go" (a phrase she herself used in a message to the Church's Pastor) and she would have her husband back.

Defendant Colón publicly criticized the Church's beliefs, pointing out where they were internally inconsistent or contradicted scripture. The Church does not seek redress for these criticisms; it welcomes religious discourse, however incisive it may be. Indeed, incisive religious discourse is what fueled the Church in its infancy, and continues to fuel it today.

On the contrary, Plaintiffs seek to hold Defendant liable for those instances where her zealotry in winning the hearts and minds of the public crossed a line into the factually false: where Defendant Colón stated that Plaintiff Ortiz was the subject of the Church's "North Korean prisoner-of-war" sleep deprivation and "mind-control tactics"; where she stated that the Church lied to the Internal Revenue Service (the "IRS"); where she stated that the Church required "children and infants" to go without food and water for days at a time; where she stated that the Church only earned the President of the United States' prestigious Volunteer Service Award because it broke the rules of the award program. Plaintiff World Mission also seeks to hold liable Defendant Colón for those instances where – even though not speaking strictly factually – she maliciously painted Plaintiff World Mission in a false light.

In making the instant motion, Defendant Colón compares Plaintiff World Mission to the Church of Scientology at every turn, even where the comparison does not aid her argument. She picks out allegations from the Complaint that are unnecessary to support Plaintiff's causes of action, and names them "deficient" (e.g. Def. M.O.L. pg 14). She creates fictional legal standards from whole cloth. She fails to recognize the distinction between limited and general-purpose public figures, and completely ignores the factual allegations in the complaint that give rise to an inference that she acted with malice.

Worse, Defendant Colón fails to analyze any single publication as a whole, as is required by the long history of case law on the subject. Instead, she takes convenient statements from one communication, helpful words from another, discards the rest, and argues that these statements, when combined, are protected. In rebuttal, Plaintiff takes up each of Defendant Colón's publications *in seriatim* setting forth which statements are actionable and why.

ARGUMENT

I. In Light of Plaintiff's Proposed Amended Complaint, this Motion is Untimely

For the Court's reference, copies of the moving papers for the pending motion to amend are annexed as an exhibit to the Certification of Diana R. Zborovsky Esq. Those papers present a more detailed discussion of the legal standard for a motion to amend, and annex the Proposed Amended Complaint itself. In sum, Plaintiff's prior counsel, the author of the Complaint and architect of the legal strategy set forth therein – John Dozier Esq. – tragically and quite unexpectedly passed away at fifty-six years old. He did so immediately after filing the Complaint in this action, and without sharing his thoughts or strategies with any other attorney at his firm, which his estate dissolved.

This firm, as Plaintiff's new counsel, seeks leave to file an Amended Complaint. To be sure, the proposed Amended Complaint is stylistically different. It also adds a plaintiff, Mark Ortiz, who is Defendant Colón's husband. As set forth therein, Ortiz was the true object of Ms. Colón's campaign and experienced it first-hand. It adds a defendant, Tyler Newton, with whom Defendant Colón conspired to discredit the Church and win back her husband. It adds after-arising facts, including Defendant Colón's sending a threatening text message to Pastor Daniel Lee that succinctly distils her strategy to win back her husband. It amplifies the allegations in the Complaint, adding detail to some circumstances, but it does not change facts already alleged. Finally, it adds a cause of action for intentional infliction of emotional distress, together with theories of recovery based on these after-arising facts and new parties.

Accordingly, the Proposed Amended Complaint does not attempt to evade Defendant Colón's arguments herein by changing already-alleged facts. With the exception of those

arguments that lament a perceived lack of detail, all of Defendant Colón's arguments will still apply to the Proposed Amended Complaint just as they apply to the Complaint as it stands now.

If the Court grants Plaintiff World Mission's motion to amend the complaint, it need not reach a decision on the instant motion to dismiss. It should instead deny this motion without prejudice to refile once Defendant Colón has the opportunity to review the Amended Complaint.

II. Plaintiff has Sufficiently Pled a Cause of Action for Defamation

A motion to dismiss under Rule 4:6-2(e) should be "approach[ed] with great caution" and should only be granted in "the rarest of instances." *Printing Mart-Morristown v. Sharp Elec. Corp.*, 116 N.J. 739, 771-72, 563 A.2d 31 (1989). The Court views the allegations in the complaint with liberality and without concern for the plaintiff's ability to prove the facts alleged therein. *Id.* at 746, 563 A.2d 31. "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." *Donato v. Moldow*, 374 N.J.Super. 475, 482, 865 A.2d 711 (App. Div. 2005). The plaintiff's obligation on a motion to dismiss is "not to prove the case but only to make allegations, which, if proven, would constitute a valid cause of action." *Leon v. Rite Aid Corp.*, 340 N.J.Super. 462, 472, 774 A.2d 674 (App. Div. 2001).

A defamatory statement is one that is false and 1) injures another person's reputation; 2) subjects the person to hatred, contempt or ridicule; or 3) causes others to lose good will or confidence in that person. *Hill v. Evening News Co.*, 314 N.J.Super. 545, 715 A.2d 999 (App. Div. 1998) citing *Romaine v. Kallinger*, 109 N.J. 282 (1988) citing *Leers v. Green*, 24 N.J. 239 (1957). A defamatory statement "tends so to harm the reputation of another so as to lower him in the estimation of the community or to deter third persons from associating or dealing with

him." *Id.* citing Restatement (Second) of Torts § 559 (1977). A plaintiff who is a "public figure" must show that the defendant acted with "actual malice", whereas a non-public figure need only plead that the defamatory statement was made negligently. *Id.* at 1004.

A. Plaintiff's Defamation Claim is Timely under the Doctrines of Equitable Tolling and Substantial Compliance

Defendant Colón argues that the cause of action for defamation is not timely. In doing so, she ignores that she was served with process and a Complaint alleging the same facts and causes of action as the one in this action on or around January 2012 well within the one-year limitation period for defamation claims. This Complaint was brought in the Circuit Court of Fairfax County, Virginia, under Index Number 2011-17163. Copies of the relevant documentation are annexed to the Certification of Diana R. Zborovsky, Esq., submitted herewith. Defendant Colon appeared in that action and did not contest service of process. On the contrary, she specifically argued that the proper forum for that Complaint was in the State of New Jersey, and that the Virginia Court lacked jurisdiction over her. After motion practice, the Virginia Court dismissed, agreeing that the Complaint ought to be brought in New Jersey instead. Now that Plaintiff World Mission brings this very same case in New Jersey, as Defendant Colón herself argued it ought to do, she contends that the New Jersey statute of limitation ought to grant her repose.

New Jersey courts have uniformly rejected this argument in favor of the Doctrine of Equitable Tolling. Under this doctrine, the statute of limitations for a New Jersey action is tolled by the prior filing of a complaint in another jurisdiction, where the out of state complaint is dismissed for lack of personal jurisdiction. *E.g.*, *Galligan v. Westfield Centre Serv., Inc.*, 82 N.J. 188, 412 A.2d 122 (1980) (action commenced in New Jersey federal court tolled statute of

limitation in New Jersey state court where federal action dismissed for lack of diversity jurisdiction); *Mitzner v. West Ridgelawn Cemetery, Inc.*, 311 N.J.Super. 233, 709 A.2d 825 (App. Div. 1998) (action commenced in New York State court tolled statute of limitation in New Jersey for Bergen County Court where New York action dismissed for lack of personal jurisdiction). New Jersey courts have also rejected this argument in favor of a similar doctrine, the Doctrine of Substantial Compliance. *Negron v. Llarena,* 156 N.J. 296, 716 A.2d 1158 (1998) (action commenced in New York federal court tolled statute of limitation in New Jersey where New York action dismissed for lack of subject matter jurisdiction).

Both doctrines balance the defendant's right to repose against the essential forfeiture of justice for the plaintiff. *Galligan*, 82 N.J. 188 at 192. Ultimately, "it has been recognized that a mistake in the selection of a court having questionable or defective jurisdiction should not defeat tolling of the statute when all other purposes of the statute of limitations have been satisfied." *Id.* *Galligan* and *Negron* each collect abundant case law showing the various applications of the doctrines, and all come to the same conclusion:

> The filing of a lawsuit itself shows the proper diligence on the part of the plaintiff which statutes of limitations were intended to insure. Since the plaintiff exhibited this very diligence before the expiration of [one year] from the date of [publictation], he cannot be said to have 'slept on his rights... None of the purposes of [the statute of limitation] would be served by dismissing plaintiff's ...cause of action.

Id. (citations omitted). As such, under the Doctrines of Equitable Tolling and the Court should not dismiss Plaintiff World Mission's defamation causes of action.

B. Each Complained-of Publication Contains Actionable Statements of Fact

Defendant Colón would have this court believe that statements of opinion are not actionable, and must be dismissed. Indeed, this premise is critical to her argument. At the

outset, though, this premise is false. It fails to make the well-settled distinction between statements of "pure opinion" and statements of "mixed opinion". *Lynch v. New Jersey Educ. Ass'n*, 161 N.J. 152, 735 A.2d 1129 (1999) citing *Dairy Stores*, 104 N.J. at 147 and Restatement (Second) of Torts § 566, comment (b). Only statements of pure opinion are immune to liability for defamation. *Id.*[1]

A statement of pure opinion occurs when the defendant explicitly states the facts on which she bases her opinion of the plaintiff, and then states her opinion. Restatement (Second) of Torts § 566, comment (b). The defendant is not liable for the opinion, but could still be liable if the stated facts upon which the opinion are based are false. *Id.* A statement of mixed opinion is one that, while an opinion in form or context, is apparently based on facts regarding the plaintiff that have not been stated by the defendant or assumed to exist by the reader. *Id.* The expression of this kind of opinion gives rise to the inference that there are undisclosed facts that justify the forming of the opinion expressed by the defendant. *Id.* The Restatement gives concise examples: To say "the plaintiff is a thief" without explaining why is actionable because it could just implies to the listener "that he has committed acts that come with the common connotation of thievery." *Id.* Similarly, to say "the plaintiff is utterly devoid of moral principles" is actionable because it implies to the listener "that he has been guilty of conduct that would justify reaching that conclusion." *Id.*

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[1] Just as Defendant Colón failed to apprehend the distinction between pure and mixed opinion, she also failed to give the correct standard on the resolution of close questions of fact vs opinion. She would have this court believe the nonsensical assertion that "if a statement could be construed as either fact or opinion, a defendant should not be held liable." (Def. M.O.L. p 34) This is neither logical nor the correct standard. On the contrary, "when the language at issue is capable of both a defamatory and a nondefamatory meaning, *there exists a question of fact* for a jury to decide. *Karnell*, 206 N.J.Super. at 88 citing *Lawrence*, 89 N.J. at 459.

Karnell v. Campbell, 206 N.J.Super. 81, 501 A.2d 1029 (App. Div. 1985) gives a good example of mixed opinion by explaining the holding in *Rinaldi v. Holt, Rinehart & Winston, Inc.*, 42 N.Y.2d 369, 366 N.E.2d 1299, 397 N.Y.S.2d 943 (1977). In *Rinaldi*, a judge sued publishers of a book that was highly critical of him. After setting forth examples of the judge's decisions, the book concluded that he was "incompetent," "probably corrupt" and "suspiciously lenient." The court ruled that statement that he was "incompetent," was based on specific disclosed facts, and so was a constitutionally protected statement of opinion. However, statements that he was "probably corrupt" and "suspiciously lenient" were not accompanied by explicit factual support, and implied the existence of undisclosed facts. These opinions, therefore, were not protected from attack in a defamation suit.

The facts of *Lawrence v. Bauer Pub. & Print Ltd.*, 89 N.J. 451, 459, 446 A.2d 469 (1982) are also instructive. Therein, a newspaper published articles reporting that plaintiffs "might be charged with criminal forgery and false swearing of oaths and affidavits as witnesses to certain petition signatures." *Karnell* explains that the "unambiguous import of the two articles is to cast doubt on the reputations of plaintiffs" and that the statement that they "may be" charged with crimes "is little different from an assertion that plaintiffs have actually been charged with certain crimes." *Id.* Accordingly, they were actionable statements of mixed opinion.

The court in *Mangan v. Corporate Synergies Group, Inc.*, 834 F.Supp.2d 199 (D.N.J. 2011), tackled a similar issue, wherein the defendants stated that plaintiff "engaged in financial improprieties," and separately that they "cooked the books". Implied by both statements, the court found, are facts indicating that not only did Plaintiff lie about financial information, but also that Plaintiff engaged in financial improprieties by "cooking the books". It found that the

implicit facts underlying the mixed opinion statements and with sufficient evidence, are capable of being proven objectively false by Plaintiff.

Fatally, Defendant Colón's fails to analyze any publication as a whole on these principles. She fails to take any single publication and explain why, *in the context of that publication*, it is a pure opinion. Instead, she analyzes her own manufactured *categories* of publications, including "Cult and Mind Control Statements" and "Destroying Family Statements." To create these categories, she borrows convenient statements from one publication, helpful words from another, discards the rest, and argues that these statements, when combined into a new, fictional publication, are protected. This approach permits her to address only a few of the more conclusory statements in each publication – like her statements that Plaintiff is a "cult" and "destroys families" – while ignoring the bulk of the factually false statements supporting those conclusions. This approach has been roundly rejected by courts in New Jersey and any other jurisdiction for that matter. Instead, the court should evaluate the content of each statement in the context of its publication. *Hill*, 314 N.J.Super. at 552; *DeVries v. McNeil Consumer Products Co.*, 250 N.J.Super. 159, 593 A.2d 819 (App. Div. 1991); *Foxtons*, 2008 WL 465653 at *5-6; *Molin v. The Trentonian*, 297 N.J.Super. 153, 159, 687 A.2d 1022 (App.Div. 1997). Such is the approach that Plaintiff World Mission takes herein.

1. Each Business Review is an Actionable Publication of Mixed Opinion

On local.com, Defendant Colón stated in seven different posts that Plaintiff World Mission is a "religious cult" that "destroy[s] families", and that it "will destroy your family and take all of your money." (the "Local.com Posts"). Local.com is a business review website where people may post their experiences with local businesses for others to read. Each of Defendant

Colón's posts are textbook statements of mixed opinion. Like the examples given in the Restatement and adopted by *Lynch* and *Dairy Stores*, *supra*, of "Plaintiff is a thief" or "Plaintiff cooked the books", they disclose no factual basis. Instead, they imply that Defendant Colón knows of undisclosed facts giving rise to these statements. A reasonable reader could conclude any number of undisclosed, but false, defamatory facts to support them: that Church doctrine or practice requires members to cease telephone, email and in-person contact with non-believing family members; that Church doctrine or practice requires members to move out of their family homes and into Church-owned facilities; that the Church administration demands access to its members' banking information; or that Church members physically take money from their members. Indeed, all of these facts, while false in the context of Plaintiff World Mission, have been true of other organizations labeled "cults", including the Heaven's Gate "suicide" cult (based out of San Diego, California from 1970-1997) and the Church of Scientology, which Defendant Colon herself refers to throughout her moving papers. Because Defendant Colon gave no factual support of her own of these statements, but did label Plaintiff World Mission a "cult", it would be entirely reasonable for a reader to assume these, or any number of other false facts, did support them. That these statements were published on a business review website – where a reader expects the author of the review to recount their personal experience with a business – only compounds the perception that the author possesses some factual experience supporting her conclusion.

On yellowbot.com, Defendant Colón stated that Plaintiff World Mission "is a religious cult" that "wil [sic] destroy your family and take all of your money," and that "[m]any have had their marriages and families torn apart by this destructive mind control group." (the "Yellowbot.com Post") Worse than the local.com posts, this post actually states that families

exist, which have been torn apart. It also states that Plaintiff World Mission is a mind-control group. This "mind control" comment, which Defendant Colon has made in several of the complained-of publications, is, at best, a statement of mixed opinion. A reasonable reader would assume any number of false, undisclosed, facts support it: that the Church uses hypnosis; that the Church uses subliminal messaging; or that the Church imposes change-of-diet techniques. These techniques have been employed to notoriety by the "Children of God" cult based out of Huntington Beach, California in the 1970s and 80s, by the "Branch Davidians" who, led by David Koresh, famously holed up in a Waco, Texas Compound against an ATF raid in the 1990s, or the "People's Temple" at the Jonestown commune in the 1960s. Defendant Colon labels Plaintiff a "religious cult" in this post, which immediately triggers these kinds of associations in the mind of the reader. Moreover, like local.com, yellowbot.com is a business review website. It instructs its readers to post their personal experiences on the site, and that is precisely what readers will expect to see. The site's "About" page says: "You've been there, you've had an experience, people that you know were there (or else you want them to know what they missed). We just provide the framework for you to do that." (available at yellowbot.com/about/about.html).

On patch.com, another business review website, Defendant Colón stated that Plaintiff World Mission is a "religious cult" that "destroy[s] families" and "will destroy your family and take all of your money." (the "Patch.com Post") This is another actionable statement of mixed opinion, wherein Defendant Colón set forth no facts to support her claims. Like the Local.com Posts, she left the reader to assume she possessed knowledge of false facts that supported them.

On findlocal.latimes.com, she stated "[the] World Mission Society Church of God deceives people" and that "the World Mission Society Church of God…purposefully withhold[s]

information in order to deceptively recruit." (the "LAtimes.com Post") These statements are likely statements of pure fact, but they are, at minimum, mixed opinion that give rise to an inference of underlying information that was withheld from potential members in order to deceive them.

On aidpage.com, Defendant Colón stated that Plaintiff World Mission "destroys families. (the "Aidpage.com Post"). This is another actionable mixed opinion implying defamatory facts.

On kudzu.com, Defendant Colón stated that Plaintiff World Mission is a "religious cult" that "destroy[s] families" (the "Kudzu.com Post") This is another actionable mixed opinion implying defamatory facts.

On socialcurrent.org, she stated that Plaintiff World Mission is a "religious cult" that "destroy[s] families." (the Socialcurrent.com Post") This is another actionable mixed opinion implying defamatory facts.

On chamberofcommerce.com and dexknows.com, Defendant Colón stated that Plaintiff World Mission is a "religious cult" that "wil [sic] destroy your family and take all of your money". (the "chamberofcommerce.com Post") This is another actionable mixed opinion implying defamatory facts.

On maps.google.com, she pinpointed the address of Plaintiff World Mission and stated that the "so called church is a cult" that "will tear apart your marriage and your family," and that Plaintiff "brainwash[es] members in order to take all of their money from them. (the "Google.com Post") This is another actionable mixed opinion implying defamatory facts. Specifically, it implies that the Church has deceived its members as to something important enough that it would allow it to take their money from them.

2. The Rick Ross Institute Web Forum Post Contains Actionable Statements of Fact

As part of her campaign, Defendant Colón used her fake names to post false statements on the website for the Rick Ross Institute Internet Archives for the Study of Destructive Cults. (the "Rick Ross Forum Posts") First, Defendant Colón stated the a false fact: "THE WORLD MISSION SOCIETY CHURCH OF GOD LIES ABOUT HOW THEIR CHURCH WAS FOUNDED ON THEIR APPLICATION FOR TAX EXEMPT STATUS!" Defendant Colón supported this false conclusion by stating a false fact. She reports that an Internal Revenue Service form asked:

> "Does the organization control or is it controlled by any other organization?. The WMSCOG checked off "NO". The WMSCOG locations are NOT independent and are all controlled by the main location in Seoul, S. Korea. Why would they answer "NO" to this question?"

In fact, the WMSCOG is not "controlled by the main location in Seoul S. Korea." It is a legally, practically and functionally independent entity. Defendant Colón then concluded, on the basis of these false facts, that Plaintiff World Mission is "a destructive mind-control cult." As such, the Rick Ross Forum Posts contain simple statements of fact, and then a conclusion based on those false facts.

3. The Examining Series of Articles Contains Actionable Statements of Fact

Defendant Colón published a series of articles, each a day or so apart from each other. The series was titled "How The WMSCOG Turned my Life Upside Down." and was labeled from "our correspondent from New Jersey." (the "Examining Articles") Defendant Colón stated that "I noticed that married couples and families did not study together unless there was a longer

study being offered on a Sunday afternoon." As set forth in the Complaint and the Proposed Amended Complaint, this is a false statement of fact. Defendant Colón could never have noticed that married couples and families "did not study together unless there was a longer study being offered" because couples frequently study together, and often studied together in the presence of Defendant Colón. Even if it was a mixed opinion, this statement implies that Plaintiff World Mission separates families when it does not.

Defendant Colón further stated that "Members…would attend an approximately six-hour long group study." As set forth in the Complaint and the Proposed Amended Complaint, this statement is false. Group study is never for six hours. Study lasts for, at most, one hour at a time. Even if it was a mixed opinion, this statement implies that the Church unreasonably demands long blocks of its members' time without permitting breaks.

Defendant Colón stated that her research had uncovered that "the WMSCOG was said to have been using the same mind control tactics used on US prisoners of war in N. Korea." She further stated that she "could not ignore the similarities to what she had experienced in the WMSCOG." As set forth in the Complaint and the Proposed Amended Complaint, this is a false statement of fact. Plaintiff World Mission does not use North Korean-style mind control techniques (or any mind control "techniques") at all. It is at minimum a statement of mixed opinion that implies false facts for the same reason as the Local.com statements, set forth *supra*. This statement is particularly damaging because the Church was founded in South Korea. Defendant Colón injected racial and historical half-truths to fuel her falsehood.

Defendant Colón stated that the Church, during its recruiting efforts, was "targeting people in their 20s and 30s since we never approached anyone that appeared to be older than that." As set forth in the Complaint and the Proposed Amended Complaint, this statement is

false. The Church does not target people in their 20s and 30s and frequently approaches people of all ages when it recruits. Even if it was a mixed opinion, the statement falsely implies that the Church targets the youthful and inexperienced when it recruits.

Defendant Colón stated that her husband "was in his second day of a three day fast…fasting means no food or water…participation in the fast is expected from all members, including children and infants." As set forth in the Complaint and the Proposed Amended Complaint, this statement is false. The Church does not require or even expect fasting from any member, and is *specifically prohibited* from children and infants for myriad reasons, especially health reasons. Even if it was a statement of mixed opinion, it would statement falsely imply that the Church set up a program that was dangerous to the health and safety of infants and children.

Defendant Colón asked "why are there so many divorced or separated members?" This question is, at best, a mixed opinion that implies false facts, namely that there are many divorced or separated members. As set forth in the Complaint and Proposed Amended Complaint, this statement is false. Very few Church members, less than one in one hundred, are separated or divorced.

Defendant Colón stated that her husband "informs me that he had been recently chosen to participate in an intense Bible study training course where he would learn to teach 30 subjects in 30 days." As set forth in the Complaint and Proposed Amended Complaint, this statement is false. The Church did not choose her husband to participate in the program at issue. On the contrary, he volunteered. This false statement implies an improper motive on the part of Plaintiff World Mission in tune with the thesis of Defendant Colón's articles: that the Church maliciously selected her husband for a "special" program, so as to wrest his free time away from his wife.

Moreover, as set forth in the Proposed Amended Complaint, the course was to teach 3 subjects in 30 days, not 30 subjects in 30 days. This is another purely factual and false statement. It also falsely implies that the Church hastily and poorly glosses over doctrine that it claims is important to it, because the teaching is only pretext for dominating its members' time and keeping them away from their families.

It is only based on this procession of *false, factual*, statements that Defendant Colón finally concludes that Plaintiff World Mission is a "cult" and a "destructive organization" that "destroyed her marriage." There can be no doubt that the Examining Series of Articles is an actionable, defamatory publication containing both false statements of fact and mixed opinion.

4. The PVSA Article Contains Actionable Statements of Fact

Defendant Colón published an article titled "The WMSCOG 'Awarded by President Obama'?" (the "PVSA Article"), which stated:

> According to the representative of the Presidential Volunteer Service Award office, the WMSCOG should not have nominated their Ridgewood, New Jersey location for the award since the "certifying organization" would in essence be awarding themselves.

(emphasis in original). Defendant Colón further stated: "my church isn't signing up to nominate itself to receive such a prestigious award." As set forth in the Complaint and Amended Complaint, the PVSA article is false. No "representative" of the Presidential Volunteer Service Award office ever advised Defendant Newton that "the WMSCOG should not have nominated their Ridgewood, New Jersey location for the award." (emphasis in original) Organizations are permitted to certify the volunteer hours of their own members and other branches of the same organization so that they may be recognized by this award. Even if this statement could be

considered one of mixed opinion, it implies that the award was made to Plaintiff World Mission dishonestly, and that Plaintiff World Mission should not, under established rules, have received the award. This is also false.

5. The Destroys Families Video Contains Actionable Statements of Mixed Opinion

Defendant Colón created a series of YouTube videos using a movie-making service provided by the company Xtranormal. Xtranormal offers a service through its website that allows its users to create cartoon videos. The user submits written dialogue content. The cartoon characters speak this dialogue aloud in the generated cartoon video.

Through a fake username "HaileyStevens10", in one such video, entitled "The World Mission Society Church of God – Destroys Families", Defendant Colón stated: "The World Mission Society Church of God uses mind control tactics on its members in order to tear them apart from their families." (the "Destroys Families Video") This is yet another statement of mixed opinion. The Destroys Families Video gives no additional facts to explain this opinion, only implied facts that would give rise to such a conclusion.

Defendant Colón further stated "The World Mission Society Church of God uses fear and guilt to prevent its members from going on vacation." This statement is another textbook statement of mixed opinion. Left without factual cues, the watcher is left to assume that there exists some factual basis for this conclusion. Defendant Colón then stated "The World Mission Society Church of God uses sleep deprivation as a means to make their members more vulnerable to the indoctrination process." This is another actionable statement of mixed opinion suggesting undisclosed facts.

6. The Financial Info Video Contains Actionable Statements of Fact and Mixed Opinion

Defendant Colón also made statements in a similar Xtranormal video, titled "World Mission Society Church of God – Public Financial Info!" (the "Financial Info Video") Defendant Colón states in the Financial Info Video that she is reading an IRS filing from one of the Church's branches in the video and notes that the form reports receipt of "a little over $26,000 from a, quote, parental church." She then states that the form does not also report a corporate subsidiary relationship to its parent church headquartered in South Korea, and that this is suspect. Plaintiff World Mission is not a corporate subsidiary of the parent church headquartered in South Korea. As such, this statement is both factually false and implies that Plaintiff World Mission made dishonest statements to the IRS.

7. The Variance Hearing Statements were Mixed Opinion

At a public hearing concerning Plaintiff World Mission's application to obtain a building code variance approval, Defendant Colón publicly stated to those present at the meeting that Plaintiff "damage[s] families, "ruined [her] marriage," and "takes its members' money." (the "Variance Hearing Statements") These statements are largely identical to those made in the Business Reviews – textbook statements of actionable, mixed opinion.

C. Plaintiff is Not a Public Figure

Defendant Colón argues that Plaintiff is a "public figure", and so must plead a higher level of scienter: that Defendant Colón acted not with mere negligence, but with "actual malice" in making the complained-of statements. Defendant Colón's Memorandum of Law gives only a generalized and selectively-quoted presentation of the law on public figure status. Specifically, she fails to distinguish between a limited-purpose public figure and a general-purpose public

figure, fails to cite directly-controlling case law that gives the requirements for each, and fails to describe why courts typically answer this fact-laden question on summary judgment rather than a motion to dismiss. To remedy this, a comprehensive recapitulation of the New Jersey public figure analysis follows.

In New Jersey, the law of defamation distinguishes between public figures and non-public figures. There are two species of public figures. The first is a so-called general-purpose public figure, or one who has assumed "a role of especial prominence in the affairs of society." *Hill.* 314 N.J.Super. at 554 citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). Limited-purpose public figures are those who have "thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved" *Id.* Because a defendant's defamatory communication can itself thrust the plaintiff into a public controversy, the rule usually applied is that public figure status is determined on the basis of facts preexisting the alleged defamation. *Vassallo v. Bell*, 221 N.J.Super. 347, 366 (App. Div. 1987) citing *Bruno & Stillman, Inc. v. Globe Newspaper Co.*, 633 F.2d 583, 591 (1st Cir.1980); *Waldbaum v. Fairchild Publications, Inc.*, 627 F.2d 1287, 1295 n. 19 (D.C.Cir.1980), cert. den. 449 U.S. 898 (1980).

1. Plaintiff World Mission is Not a General-purpose Public Figure.

Defendant Colón argues that Plaintiff is a general-purpose public figure. Instead of actually explaining the standards for a general-purpose public figure, though, she creates her own standards. She asks to believe the legal test is whether the Church's "public footprint caused it to be a public figure." (Def. M.O.L. Pg 22) Worse, she asks the court to believe the dubious contention that this "public footprint" is somehow "substantially similar" to that of the Church of

Scientology, which has been the subject of multiple feature Hollywood films innumerable books and television programs, and has headlined in nearly every conceivable mass-media market since its inception in 1952. Instead of debating non-existent legal standards and plainly-inapplicable comparisons, Plaintiff recapitulates New Jersey's black-letter law:

A general-purpose public figure is a person whose "name is a household word", generally a well-known athlete, entertainer or politician. *Vassallo,* 221 N.J.Super. at 366 citing *Gertz*, 418 U.S at 352; *see Partington v. Bugliosi*, 825 F. Supp. 906 (D. Haw. 1993), aff'd, 56 F.3d 1147 (9th Cir. 1995). The bar for general-purpose public figure status is a high one; being well-known in one's community is not sufficient. *Id.* The Plaintiff must have achieved "pervasive fame or notoriety" and "especial prominence in the affairs of society, the trademark of all-purpose public figures." *Sisler v. Gannett Co.*, Inc., 104 N.J. 256, 269 (1986). A general-purpose public figure "knowingly relinquishes his anonymity in return for fame and fortune, so it is reasonable to attribute a public character to all aspects of their lives." *Tavoulareas v. Piro*, 817 F.2d 762 (D.C. Cir. 1987).

It would be difficult to believe that Plaintiff's "name is a household word" or that Plaintiff has achieved "pervasive fame", "notoriety" or "especial prominence in the affairs of society", if at all, let alone beyond the bounds of its small community. Neither a single fact, nor any collection of facts alleged in the Complaint suggests this conclusion. To be sure, Plaintiff does good works in its community, but under *Gertz, Sisler* and *Vasallo*, this is insufficient.

2. Plaintiff World Mission is Not a Limited-purpose Public Figure

The test for a limited-purpose public figure is somewhat more complex than that for a general-purpose public figure. The mere fact that an event was newsworthy does not

conclusively resolve the public figure issue. *Hill.* 314 N.J.Super. at 545. Indeed, a non-public figure "is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention." *Id.* Likewise, solicitation of public attention is not the dispositive consideration for limited purpose public figure status. The law calls for a case-by-case examination "looking to the nature and extent of an individual's participation in the particular controversy giving rise to the defamation" *Gertz*, 418 U.S. at 352. In New Jersey, the Appellate Division has set forth four requirements for a limited-purpose public figure: A limited-purpose public figure must have 1) voluntarily injected himself into a controversy; 2) the controversy had to be a public one; 3) by virtue of the public controversy, the individual became a public figure for a limited range of issues; and 4) the person had to assume a "special" prominence in the resolution of the public question. *Hill.* 314 N.J.Super. at 545 citing *Gertz*, 418 U.S. at 351.

Defendant Colón has not even stated this black-letter test, let alone attempted to explain what "public controversy" existed besides the one she herself created. The Complaint does not allege, and Defendant Colón has not identified, a single public controversy into which Plaintiff has voluntarily injected itself and assumed a "special" prominence in the resolution of the public question.

To be sure, the very object of Defendant Colón's statements was to stir up a public controversy, but any defamation defendant can, by her own salacious words, manufacture a public controversy where there was none before. Allowing this kind of fabricated controversy would render the standard meaningless. As such, it is well-settled that the question of whether a public controversy existed is answered as of a date prior to the complained-of statements. See, e.g., *Stepnes v. Ritschel*, 663 F.3d 952 (8th Cir. 2011) (determining whether public controversy

existed as of date of date of news broadcast); *Hatfill v. The New York Times Co.*, 532 F.3d 312 (4th Cir. 2008) (determining whether public controversy existed as of date of newspaper columns); *Gray v. St. Martin's Press, Inc.*, 221 F.3d 243 (1st Cir. 2000) (determining whether public controversy existed as of date of book publication); *Little v. Breland*, 93 F.3d 755, (11th Cir. 1996) (determining whether public controversy existed as of date of news article).

3. In Any Event, the Question of whether the Plaintiff is a Public Figure Should not be Decided on a Motion to Dismiss

The classification of a plaintiff as a public or private figure is a question of law to be determined initially by the Court. *Hill*, 314 N.J.Super at 545 citing *Marcone v. Penthouse Int'l Magazine for Men*, 754 F.2d 1072, 1082 n. 4 (3d Cir. 1985), cert. denied, 474 U.S. 864. However, as set forth, *supra*, the question of public figure status is fact-intensive one, and the Court is required to make specific findings of fact on that status. *Vassallo v. Bell*, 221 N.J.Super. 347, 534 A.2d 724 (App. Div. 1987) citing *Barasch v. Soho Weekly News, Inc.*, 208 N.J.Super., 173 (App. Div. 1986).

Accordingly, many courts have found that the question of public-figure status cannot be properly disposed of on a motion to dismiss, where plaintiff has had no opportunity to present evidence in support of its allegations. Instead, it is properly determined on summary judgment after discovery and factual development. *Marous Brothers Const., LLC v. Alabama State University*, 2008 WL 370903 at *3 (M.D.Ala. 2008); *e.g. Isuzu Motors Ltd. v. Consumers Union of U.S., Inc.*, 12 F.Supp.2d 1035, 1044 n. 1 (C.D.Cal.1998) (applying California defamation law and noting that "it would be premature to determine, on a motion to dismiss, whether [plaintiff] is a public figure or whether the alleged statements were made with actual malice"); *Zerbe v. Guzman Pinal*, 2005 WL 2671339, at *1 & n. 1 (D.Puerto Rico Oct.18, 2005) (whether plaintiff

was a public figure "was more appropriately addressed in the context of a motion for summary judgment").

Defendant Colón has not cited a single New Jersey case resolving the question of public figure status prior to discovery. It is Plaintiff's position that this issue should be determined on summary judgment, once the facts are more fully developed.

D. Only Three of the Complained-of Communications Involve Matters of Public Concern

The only communications that touch on any issue of public concern are the PVSA Communication, the Variance Hearing Communication, the Financial Info Video and the Rick Ross Forum Posts.

In her Memorandum of Law, Defendant Colón argues that the remaining communications are subject to a malice standard because they concern the "public health and safety". To support this argument, Defendant Colon takes the same approach she used to defend her position on actionable fact vs opinion. She carefully selects convenient bits of statements from one publication, helpful pieces from another completely different publication, mashes them together (discarding the unhelpful bulk of each communication) and then displays this jumble of statements as something that involves "public health and safety." For example, she takes one statement from a publication recounting how the Church allegedly monopolizing her husband's time, then another from a different communication, published days after, about how the church allegedly expects their members to wake early to pray, and yet another about cajoling members into making donations. Not a single communication from which these statements were taken is about public health and safety. Her approach here should be rejected for the same reasons it was rejected in determining actionable fact vs opinion, *supra*.

Still, even allowing for the moment this approach, her argument fails. The statements cited by Defendant Colon suggest, at worst, only private and interpersonal drama, not "public health and safety". Defendant's best examples (cited in her Memorandum of Law at p. 24) fall woefully short: The Church uses deception on its own members (Def. M.O.L. p. 24); the Church withholds information from its own members; the Church controls members' time; the Church sets unattainable goals; the Church uses fear and guilt. These statements (even when woven together as Defendant has done here) are a far cry from the "public health and safety" contemplated by the New Jersey case law on the issue. In *Turf Lawnmower Repair, Inc. v. Bergen Record Corp.*, for example, 139 N.J. 392, 410 (1995), the New Jersey Supreme Court analyzed its holding in *Dairy Stores, Inc. v. Sentinel Pub. Co., Inc.*, 104 N.J. 125, 516 A.2d 220 (1986), where it concluded, "not everything that is newsworthy is a matter of legitimate public concern." The protections afforded to speech about matters of public health and safety applies only to "speech that affects the health and safety of the citizenry, or involves a highly regulated industry." The court then stressed the core of its concern: "we extended the heightened standard of proof only to defamatory communications regarding activities that affect the *public interest*." (emphasis in original) In *Dairy Stores*, the complained-of statements accused the defendant of distributing contaminated water to millions of people. The Court explained:

> Because the bottling and selling of drinking water was regulated by the State of New Jersey and drinking water was an essential of life, we held in Dairy Stores that the subject matter of the newspapers' articles, drinking water, was a legitimate concern of the public because of the long history of this state's regulation in that area.

Id. Defendant's statements about "fear and guilt" are simply not "public health and safety" issues of the kind contemplated by New Jersey law.

On the contrary, each communication recounts Defendant Colón's own private experience with a church that she believes "destroyed *her* family" and "ruined *her* marriage." In her Memorandum of Law, however, she attempts to rhetorically generalize these statements to concern a church that will destroy *everyone's* family and ruin *everyone's* marriage. This is, at best, a lawyers' gambit. Her original statements had nothing to do with any threat to the public health and safety, only the perceived threat to her family.

Finally, like all issues implicating the malice standard, courts are reluctant to determine the fact-laden issue of "public concern" on a pre-discovery motion to dismiss *Ciemniecki v. Parker McCay P.A.*, 2010 WL 2326209 at *13 (D.N.J 2010) ("the Court is reticent to decide, upon a motion to dismiss, that the speech in question was a matter of public concern sufficient to implicate the actual malice standard"). The Court should not determine them here.

E. Plaintiff Has Alleged Sufficient Facts to Establish Malice

Like the issue of whether a defamation plaintiff is a public figure or whether the matter is one of public concern, courts are reluctant to determine prior to discovery, without any factual development, the fact-laden question of whether a defamation defendant acted with malice. Evidence of actual malice "is uniquely within the control of Defendants and, therefore, generally should not be tested at this early stage of the litigation." *Metabolife Intern., Inc. v. Wornick*, 72 F.Supp.2d 1160 (S.D.Cal.,1999) citing *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 511 n. 30 (1984); *Flowers v. Carville* 310 F.3d 1118 (9th Cir. 2002). Indeed, when confronted with the question of malice in *Trump v. O'Brien*, 422 N.J.Super. 540, 549 (App. Div. 2011) and *Maressa v. New Jersey Monthly*, 89 N.J. 176, 197, 445 A.2d 376, (1982) the Appellate

Division stated "courts have recognized that an analysis of a defendant's state of mind in a defamation action does not readily lend itself to summary disposition."

Malice does not require that the defendant make the complained-of statement "with ill will or spite, just knowledge that it was false or with reckless disregard of whether it was false or not." Hill, 314 N.J.Super. at 545. Hence to find actual malice, the Plaintiff must ultimately prove that "the defendant in fact entertained serious doubts about the truth of the statement or that defendant had a subjective awareness of the story's probable falsity." *Williams v. Associated Press*, 2001 WL 1346730 at *7-8 (App. Div. 2001). The Appellate Division went on to explain that "it will be a rare situation when the plaintiff will be able to present direct evidence to meet that burden." Consequently, "a plaintiff might show actual malice by demonstrating that the defendant had obvious reasons to lie or that internal inconsistencies or contradictions exist to cast doubt on the defendant's assertions." *Id.*

The allegations already before the Court are rife with obvious reasons for Defendant Colón to lie about her experiences with the Church. Defendant Colón was a member of Plaintiff World Mission who had a vendetta against the Church. She felt that the church had destroyed her family and taken her husband from her. As she concedes in the Examining Articles, she had inside knowledge of, among other things, the Church's doctrinal beliefs, daily rituals, requirements from members and bible study practices. This personal experience gave her the most effective conceivable means for determining whether their statements were true or false. She was there to witness whether, for example, the Church used "North-Korean style" sleep deprivation or mind-control techniques. She saw, in person, that the church did not require fasting from infants. Defendant Colón's Memorandum of Law itself concedes this on page 23: "Ms Colón… had 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." Finally, Defendant Colón was Plaintiff Ortiz's wife: he shared with her his most private experiences, and she was privy to his most intimate thoughts. To be sure, Defendant Colón should have known whether he was being "sleep deprived" or "mind controlled."

As set forth in greater detail in the Proposed Amended Complaint, Defendant Colón sent a text message to the Church's Pastor, wherein she sets forth the most obvious reason to lie: to get her husband back. Specifically, the text message said: "Mr. BigShine: All of your secrets will be revealed to your congregation if you do not let him go." (Am. Cplt. ¶73)

F. All of Defendant's Complained-of Statements are "of and concerning" Plaintiff

Defendant Colón argues that her statements generally to the World Mission Society Church of God only as a group, and not to Plaintiff World Mission specifically. In support of this argument, Defendant Colón relies entirely on something called the Group Libel Doctrine. There is no Group Libel Doctrine in New Jersey. Indeed, the only cases Defendant Colón cites to support her Group Libel Doctrine theory are federal courts in New York and California. The only New Jersey case cited by Defendant Colón is *Foxtons, Inc. v. Cirri Germain Realty*, 2008 WL 465653 (App. Div. 2008). Defendant Colón fails to quote the relevant portion of the decision, which explicitly holds that a plaintiff may establish a claim for defamation even where the complained-of communication "is directed toward a group or class of individuals." Under such circumstances, "a successful plaintiff must show he is a member of the defamed class and must establish some reasonable application of the words to himself." (citations omitted).

Plaintiff World Mission has pled abundant facts to establish that Defendant Colón's statements have "some reasonable application" to it. The Complaint clearly alleges that Defendant Colón was only a member of Plaintiff World Mission in New Jersey, not to any other branch of the World Mission Society Church of God. The Complaint alleges that Defendant Colón's Husband was also a member of Plaintiff World Mission in New Jersey. The Complaint alleges that Defendant Colón publicly stated how Plaintiff World Mission "ruined her marriage" and "destroyed her family." It is unlikely that any reader would believe that her statements could not be "of and concerning" Plaintiff World Mission.

G. Defendant is Liable for the Variance Hearing Statements

Defendant Colón argues that, in addition to pleading the elements of claim for defamation, a complaint must also plead some other vaguely-defined non-element: "the circumstances of publication." (Def. M.O.L. ¶ 23). In support of this argument, she cites *Kotok Bldg. v. Charvine Co.*, 183 N.J. Super. 101, 103-05 (Law Div. 1981). *Kotok* makes only an obtuse reference to "circumstances of publication," and gives no indication what they might be, besides the well-established elements of the cause of action itself. Defendant Colón also cites *Printing Mart-Morristown v. Sharp Electronics Corp.*, 116 N.J. 739 (1989). Similarly, *Printing Mart* uses the phrase "circumstances of publication", but only goes on to require that the elements of the cause of action be pled. *Printing Mart* does cite *Zoneraich v. Overlook Hosp.*, 212 N.J.Super. 83, 101 (App.Div. 1986), also cited by Defendant Colón, but *Zoneraich* makes no mention of the "circumstances of publication" at all.

This is because there is no such requirement. The "circumstances of publication" is not some independent pleading requirement of defamation, it was a simple shorthand for a description of its elements. In point of fact, *Zoneraich* explicitly rejects Defendant Colón's

unfounded interpretation, stating that a complaint "must state the essential elements of a cause of action simply, concisely and directly. In the case of a complaint charging defamation, plaintiff must plead facts sufficient to identify the defamatory words, their utterer and the fact of their publication." *Id.*

No other New Jersey defamation cases (or any cases in the Third Circuit, for that matter) use this terminology to require the pleading of any new element of defamation. Nonetheless, Defendant Colón uses this non-existent requirement to launch into a perplexing six-page analysis as to why seemingly randomly-selected allegations fail to satisfy it. The inclusion of this analysis is of dubious relevance. For example, Defendant Colón quotes the allegations in paragraph 25 and 34 describing how Defendant Colón encouraged others to attend the planning board meeting and hear her false and defamatory statements, both in her community and on the internet through her Facebook Group. Defendant Colón, without much in the way of support, simply calls these statements "frivolous". To the contrary, Plaintiff World Mission includes these allegations because (i) for the purpose of a damages analysis, they speak to how Defendant Colón solicited an audience for her false and defamatory statements, thereby increasing Plaintiff's damages; and (ii) for the purposes of a "matter of public concern" analysis, how she sought to manufacture a public controversy where none existed.

In any event, Plaintiff World Mission's allegation as to Defendant Colón's Variance Hearing Statements is sufficiently pled. On July 19, 2011 and again on September 6, 2011, Defendant Colón attended a New Jersey Planning Board public hearing, held in a town-hall-style format. One of the issues on the agenda was to determine whether Plaintiff World Mission should be allowed a variance from local zoning code to construct a building improvement. At each of these meetings, Defendant Colón falsely stated that Plaintiff World Mission "damages

families, and ruined her marriage." She also stated that "the Church takes its members' money." These statements were (i) injurious to Plaintiff's reputation, (ii) subjected Plaintiff to hatred, contempt and ridicule and (iii) caused the people to whom she spoke to lose good will and confidence in Plaintiff World Mission. Defendant Colón has not cited authority requiring that Plaintiff plead more.

Defendant Colón does give a single block-quotation from *Structure Bldg. Corp. v. Abella*, 377 N.J. Super. 467 (App. Div. 2005), standing for the proposition that "Plaintiffs are [sic] threatened by Ms. Colón's activism and are [sic] determined to silence her with frivolous litigation." Yet, *Structure Bldg. Corp* is not even a defamation case. Worse, in *Structure Bldg.*, the Plaintiff's theory was that the defendant interfered with a prospective economic advantage by speaking out against it at a public hearing. This is a far cry from the case here, where Plaintiff World Mission alleges that Defendant Colón's statements were *false*, and Defendant Colón herself concedes that she did not even speak on the record.

Defendant Colón's illusory "circumstances of publication" requirement cannot manufacture pleading requirements were none exist. The Variance Hearing Statements sufficiently plead a cause of action.

H. Plaintiff does not Complain of Statements Made in the Context of Court Testimony

The Complaint describes a far-reaching campaign on the part of Ms. Colón to defame and destroy Plaintiff World Mission. Defendant Colón not only made false allegations on the internet, statements at public hearings, but also in court, during a child-custody battle. Though these statements were salacious and malicious, they are not complained-of as defamatory in the Complaint. They are included to describe the breadth of her campaign to defame the Church.

III. Statements which Encourage People to Respond to Defendant's other Statements are Critical for Determining Damages, and Relevant to Trade Libel

Defendant Colón complains that paragraph thirty-three of the Complaint is "utterly frivolous, and serves no purpose other than to harass and intimidate Ms. Colón for her activism." (Def. M.O.L. p. 18-19) Far from serving no purpose, paragraph thirty-three describes just how far Defendant Colón went in rallying support and online following for her campaign, and encouraged others to defame Plaintiff World Mission as well. Moreover, these allegations are critical to some formulations of the trade libel cause of action which require that a Plaintiff establish the Defendant's Communication was a substantial factor in inducing others not to conduct business with it. *See, e.g., Sandler v. Simoes*, 609 F. Supp. 2d 293, 303 (E.D.N.Y. 2009).

IV. Plaintiff States a claim for Defamation by Implication

A claim for Defamation by Implication, or False Light, involves "publicity that unreasonably places the other in a false light before the public." *Leang v. Jersey City Bd. of Educ.*, 198 N.J. 557, 969 A.2d 1097 (2009) citing *Romaine v. Kallinger*, 109 N.J. 282, 293, 537 A.2d 284 (1988). This tort has two elements: (1) "the false light in which the other was placed would be highly offensive to a reasonable person"; and (2) "the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." *Id.* (quoting Restatement (Second) of Torts, § 652E). "Highly offensive to a reasonable person" means "when there is such a major misrepresentation of his character, history, activities or beliefs that serious offense may reasonably be expected to be taken by a reasonable man in his position." *Liebholz v. Harriri*, 2006 WL 2023186 (D.N.J. 2006) The false light "need not necessarily be a defamatory one, although it very often is, so that a defamation action will also lie." *Devlin v. Greiner*, 147 N.J.Super. 446 (N.J.Super.L. 1977).

Defendant Colón does not address whether the Complaint states such a claim. It does. In fact, the Complaint takes a statement-by-statement approach to describing in detail how each complained-of statement casts Plaintiff World Mission in a false light by implying, *e.g.*: that "Plaintiff lies to the Internal Revenue Service" (Cplt. ¶ 59); "Plaintiff is hiding a corporate relationship with Big Shine Worldwide, Inc." (Cplt. ¶ 65); and "Plainiff is a cult that destroys families." (Cplt. ¶ 77). Each of these implications would be highly offensive to a reasonable person. As set forth in detail, supra, Defendant Colón acted with malice, having knowledge of, or acting in reckless disregard as to the falsity of each matter and the false light in which Plaintiff World Mission would be placed.

To the extent that Plaintiff's election of this cause of action is not clear, the Proposed Amended Complaint makes it clear. At minimum, Plaintiff World Mission should be granted leave to explicitly name this cause of action.

V. Claims for Trade Libel Plead Special Damages to the Extent Required by the Common Law and the United States Constitution

Defendant Colón argues that Plaintiff World Mission's claims for trade libel fail for a failure to plead special damages with particularity. Plaintiff brings trade libel claims in its capacity as a nonprofit business that relies on the donations of its membership to survive and continue its mission in the community. The tort is also known as injurious falsehood, disparagement of property, or commercial disparagement. *Patel v. Soriano*, 369 N.J.Super. 192, 848 A.2d 803 (App. Div. 2004) citing *Prosser & Keeton on Torts* § 128 at 963 (5th ed. 1984). However, the tort is broader in scope than any of those terms would indicate, and is probably as broad as any injurious falsehood which disturbs prospective advantage. *Id.* It is similar to the tort of intentional interference with one's economic relations, rather than a branch of the general

harm to reputation involved in libel and slander. *Id.* It speaks specifically to false statements that disparage the "character of plaintiff's business as such". *Id.* Accordingly, reputational damages are not presumed; the tort requires that the plaintiff plead special damages. *Id.*

The Complaint alleges that Defendant Colón made her libelous statements either (i) on the internet in general and *business review* sites in particular, using key words that would trigger results for people specifically searching for Plaintiff World Mission, or (ii) in person to members of the local community at a public hearing who had arrived specifically to discuss Plaintiff World Mission and its application for a variance. It goes on to allege that these statements have damaged Plaintiff World Mission because it has lost members who have been intimidated by Defendant's attacks on Plaintiff. Members who fear harassment at work and in public from those who have read Defendant Colón's false attacks have left the Church. Moreover the Complaint alleges that Plaintiff World Mission has lost prospective members.

Defendant Colón argues that this is not enough. She demands that the Church divulge the personally-identifying information of the very members she is victimizing. At the outset, this demand is unsupported by law. In *Patel*, for example the defendant demanded that the Plaintiff, a vascular surgeon who alleged trade libel, give the identity of the patients allegedly lost because of the trade libel. The court held that this was an unreasonable request, and, on summary judgment, proof of lost profits would suffice. In the instant matter, the Court should not require more at the pleading stage. The Court in *Graco, Inc. v. PMC Global, Inc.*, 2009 WL 904010 at *34-35 (D.N.J. 2009) faced the same question, and citing *Patel*, it found that where it would be unreasonable to require more, it is sufficient to plead lost customers, lost prospective customers and valuable goodwill.

Forcing Plaintiff World Mission divulge the identities of the innocent victims of Defendant Colón's attacks would be similarly unreasonable here. Specifically, it would violate its members' right to free association under the First Amendment to the United States Constitution. The First Amendment of the Constitution of the United States protects freedom of association, including the right to privacy with respect to that association. For example, the United States Supreme Court held in *Bates v. Little Rock*, 361 U.S. 515, 527 (1960) that compulsory disclosure of names of members and prospective members for the National Association for the Advancement of Colored People (NAACP) would create unjustified interference with the members' freedom of association, which is protected by the First Amendment and prohibited by the Due Process Clause of the Fourteenth Amendment. Similarly, compelling members of the Church to disclose their affiliation with a religious group is an invasion of members' privacy and a significant interference with their freedom of association. Religious association, which telegraphs a person's religious beliefs, is a highly personal and private matter. It is particularly unreasonable in light of the litany of other means by which Plaintiff World Mission can demonstrate its damages: numeric differences in volunteers, attendance, and donations, or a professional accounting. To compel disclosure of the identity of members or donors is wholly inappropriate, unnecessary, and unconstitutional, infringing on the freedom of association allotted to the Church's members. It is particularly unreasonable at this early stage of pleading.

VI. Defendant Colón's Motion to Strike is without Merit

Defendant Colón worries that paragraph 20 of the Complaint "creates a false impression that Ms. Colón has been harassing members of the Plaintiff at work and in public. Paragraph 20 does no such thing. In context, it reads:

> 19. Defendant Colón's defamatory statements have seriously damaged, and continue to seriously damage, Plaintiff
>
> 20. 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.

Defendant assumes – without support – that this allegation means Plaintiff World Mission members fear that *Defendant Colón* will visit them in person at work and in public to harass them. That is just preposterous.

First, that is not what the paragraph says. In context, it is obvious that Defendant Colón's defamatory attacks – the ones alleged in detail in the Complaint – have caused others to believe falsehoods about the Church, and that its members will face harassment because of the false beliefs of the public and their co-workers. Second, there is no contextual indication in the entire document that Defendant Colón done any physical violence on Plaintiff World Mission members. The complaint is about verbal and oral attacks. Defendant read about a grass-eating creature with four hooves and a mane, and immediately thought "African Mountain Zebra!" instead of the obvious "horse".

Nonetheless, because it makes no difference to Plaintiff's Complaint, Plaintiff will consent to inserting clarifying language into an Amended Complaint. To avoid this issue, the language has been removed entirely from the Proposed Amended Complaint.

CONCLUSION

By reason of the foregoing, Plaintiff World Mission respectfully requests that Plaintiff deny this Motion to dismiss without prejudice to refile it in response to the Proposed Amended Complaint. In the alternative, the court should deny this motion with prejudice.

Respectfully submitted,

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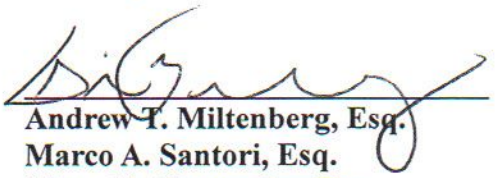
Attorneys for Plaintiff

By: 

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