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Michele Colón, Plaintiff, v. World Mission Society, Church of God A NJ Nonprofit Corporation, *et al.*, Defendants.	SUPERIOR COURT OF NEW JERSEY BERGEN COUNTY LAW DIVISION Docket No.: BER-L-3007-13 Civil Action
Michele Colón, Plaintiff, v. World Mission Society, Church of God A NJ Nonprofit Corporation, *et al.*, Defendants.	Docket No.: BER-L-6490-16 Civil Action **PROTECTIVE ORDER PURSUANT TO 4. 4:10-3**

THIS MATTER having been opened to the Court by defendants World Mission Society, Church of God A NJ Nonprofit Corporation (the "**Church**"), Tara Whalen, Richard Whalen and Victor Lozada (collectively, "**Defendants**"), by and through their counsel Nissenbaum Law Group, LLC (Steven L. Procaccini, Esq. appearing); upon notice to plaintiff *pro se* Michele Colón ("**Plaintiff**"), and upon notice to defendant Dong Il Lee by and through his counsel Gartenberg Howard, LLP (Thomas S. Howard, Esq. appearing); for an order limiting the scope of discovery pursuant to R. 4:10-3; and the Court having considered Defendants' brief and the certification of Steven L. Procaccini, Esq. in support of the motion; and the opposition and reply filed, if any, and for good cause shown,

IT IS on this 13th day of May, 2018,

ORDERED that:

1. Defendants' motion for a protective order is hereby GRANTED.

2. It has been represented to the Court that Raymond Gonzalez produced certain documents to Defendants in compliance with the September 29, 2017 Order in BER-L-6490-16 ("**Gonzalez Production**"). Within ten (10) days of the entry of the within Order, Plaintiff Michele Colón shall destroy all copies of documents given to her in the Gonzalez Production, whether in electronic form or hardcopy, with the exception of any documents provided to Plaintiff by the Defendants.

3. Within ten (10) days of the entry of the within Order, Plaintiff shall remove herself from digital or other access to the Gonzalez Production, including, but not limited to, through Dropbox and/or Googledrive, with the exception of any documents provided to Plaintiff by the Defendants.

4. Plaintiff shall not disseminate, publish nor otherwise utilize any documents, or information obtained as a result of being in possession of the Gonzalez Production.

5. Plaintiff shall, within ten (10) days of this order, provide a certification to the Court and to Defendants verifying her compliance with this order.

6. Nothing in this order shall be deemed to enable the parties to obtain discovery that is otherwise privileged or undiscoverable.

DENIED

DENIED

RIDER ATTACHED

Denied for the attached decision

7. A copy of this Order shall be served on all parties of record within seven (7) days of receipt of same.

HONORABLE AVIS BISHOP-THOMPSON

HONORABLE RACHELLE L. HARZ

RECORD NOTATION

_____ Oral findings of fact and conclusions of law were made by the Court.
_____ Written findings of fact and conclusions of law were made by the Court.
_____ The Court did not make oral or written findings. The court concludes that explanation is necessary or appropriate.
_____ The Court did not make oral or written findings. Appended hereto is a written statement of reasons by the Court for the entry of this Order.
_____ This motion was opposed.
_____ This motion was unopposed.

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-1025-18

RAYMOND GONZALEZ,

Plaintiff,

vs.

WORLD MISSION SOCIETY, CHURCH OF GOD A NJ NONPROFIT CORPORATION,

Defendant.

CIVIL ACTION

ORDER DECLARING THE JANUARY 1, 2012 "CONFIDENTALITY AGREEMENT" BETWEEN RAYMOND GONZALEZ AND WORLD MISSION SOCIETY, CHURCH OF GOD TO BE INVALID, UNENFORCEABLE AND VOID

THIS MATTER having been opened to the Court by Plaintiff Raymond Gonzalez ("**Plaintiff**"), by and through his counsel Clark Guldin, Attorneys at Law (Peter L. Skolnik, Esq. appearing); upon notice to Defendant World Mission Society, Church of God ("**Defendant**"), by and through its counsel Nissenbaum Law Group, LLC (Steven L. Procaccini, Esq. appearing); seeking an order under *N.J.S.A.* 2A:16-51 *et seq.,* granting a declaratory judgment that the January 1, 2012 "Confidentiality Agreement" between Raymond Gonzalez and World Mission Society, Church of God is invalid, unenforceable and void, and the Court having considered Plaintiff's brief and the certifications of Peter L. Skolnik, Esq. in support of the motion; and the Court having reviewed the oppositions and replies filed, if any, and for good cause shown,

IT IS on this 13th day of May, 2019,
ORDERED as follows:

1. The January 1, 2012 "Confidentiality Agreement" between Raymond Gonzalez and World Mission Society, Church of God is invalid, unenforceable and void.

2. Plaintiff's motion for a Declaratory Judgment is granted.

3. A copy of this Order shall be served on all parties of record within seven (7) days of receipt of same.

HONORABLE AVIS BISHOP-THOMPSON, J.S.C.

RECORD NOTATION

_____ Oral findings of fact and conclusions of law were made by the Court.
_____ Written findings of fact and conclusions of law were made by the Court.
_____ The Court did not make oral or written findings. The court concludes that no explanation is necessary or appropriate.
_____ The Court did not make oral or written findings. Appended hereto is a written statement of reasons by the Court for the entry of this Order.
_____ This motion was opposed.
_____ This motion was unopposed.

UNOPPOSED

See Decision Attached

PREPARED BY THE COURT

Michele Colón, Plaintiff, v. World Mission Society, Church of God A NJ Nonprofit Corporation, *et al.*, Defendants.	SUPERIOR COURT OF NEW JERSEY BERGEN COUNTY LAW DIVISION Docket No.: BER-L-3007-13 Civil Action
Michele Colón, Plaintiff, v. World Mission Society, Church of God A NJ Nonprofit Corporation, *et al.*, Defendants.	Docket No.: BER-L-6490-16 Civil Action
Raymond Gonzalez, Plaintiff, v. World Mission Society, Church of God A NJ Nonprofit Corporation, Defendant.	Docket No.: BER-L-1025-18 Civil Action **DECISION**

I. Introduction

Presently, there are three (3) motions before this Court (1) the motion for declaratory judgment filed by Gonzalez, (2) the motion for a protective order pursuant to Rule 4:-3, filed by WMSNJ in Colon III, and (3) the motion for a protective order pursuant to R. 4:-3, filed by WMSNJ in Colon IV. This omnibus decision addresses the issues presented in all three (3) motions and is signed by both the Hon. Avis Bishop-Thompson, J.S.C. and the Hon. Rachelle Lea Harz, J.S.C. since the factual background and intertwining issues among the cases cannot be separated for purposes of these decisions.

Plaintiff, Raymond Gonzalez's motion for a declaratory judgment is seeking a determination that the confidentiality agreement between a religious organization, WMSNJ, and

an ex-member of the organization, Gonzalez, is invalid, unenforceable and void. These motions are a direct result of a series of unconsolidated, intertwining lawsuits[1] between the World Mission Society Church of God ("WMS"), a global religious organization founded in South Korea, and various ex-parishioners of World Mission Society, Church of God, A NJ Nonprofit Corporation, a 501(c)(3) located in Ridgewood, New Jersey ("WMSNJ"), including Michelle Colón ("Colón") and Raymond Gonzalez ("Gonzalez").

Colón was previously a parishioner of WMSNJ, but left due to, among others, disagreement regarding WMS' teachings, and an active disruption of her marriage. Colón became an outspoken critic of WMS utilizing all media forms to spread her discontent, as well as to advance her belief at conferences and public hearings that WMS is a 'cult'. In response to Colón, and other public criticisms, WMS initiated a defamation lawsuit in the State of Virginia, followed by an identical lawsuit in the State of New Jersey.[2] WMS sought to minimize public exposure and criticism by endeavoring to have all members execute a confidentiality agreement restricting disclosure of WMS religious sermons, religious publications, personal or spiritual counselling, and/or WMSNJ sanctioned events.

Presently, Gonzalez seeks a declaratory judgment voiding the confidentiality agreement he participated in drafting while a participant in the various lawsuits against Colón. Also before this

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[1] World Mission Society Church of God, A New Jersey Non-Profit Corporation v. Colón, No. 2011-17163, filed on December 6, 2011 in Virginia ("Colón I"); World Mission Society Church of God and Mark Ortiz v. Michele Colón and Tyler Newton, No. BER-L-5274-12, filed on July 11, 2012 in Bergen County New Jersey ("Colón II"); Colón v. World Mission Society Church of God, A New Jersey Non-Profit Corporation, No. BER-L-3007-13 aff'd in part and rev'd in part, A-5008-14T4, filed on April 19, 2013 in Bergen County, New Jersey ("Colón III"); Colón v. World Mission Society Church of God, A New Jersey Non-Profit Corporation, No. BER-L-6490-16, filed on August 26, 2016 in Bergen County, New Jersey ("Colón IV"); and Raymond Gonzalez v. World Mission Society Church of God, A New Jersey Non-Profit Corporation, No. BER-L-1025-18, filed on December 22, 2017 as BER-C0326-17 in Bergen County, New Jersey ("Gonzalez").

[2] Colon I was dismissed in March 2012, for lack of personal jurisdiction over Colon in Virginia. In February 2015, Colon was granted summary judgment in Colon II for failure of WMS to establish damages as a public figure under the First Amendment.

Court are motions filed by WMSNJ in Colón III and Colón IV for a protective order seeking to have this Court make a determination regarding the protected status of all documents that have not been produced by WMSNJ to Colón, which have been represented by WMSNJ to be approximately 7,000 – 8,000 pages of discoverable material.

Throughout the course of these matters, various legal doctrines have come to the fore which present a unique paradigm to adjudicate the outstanding issues on their merits. Specifically, the concepts of privilege, the doctrine of relevance, the Church-Autonomy Doctrine, and the definition of confidential as used by the non-disclosure agreement in question, have all been invoked by WMSNJ to protect otherwise discoverable material. These concepts have arguably prevented disclosure of otherwise discoverable materials by operating as a sweeping prohibition against legitimate inquiry into the relevant causes of action before this Court, thereby thwarting discovery that is expressly permitted. However, the aforementioned concepts and doctrines have limitations, and it is the role of this Court to ensure that these doctrines and privileges are not utilized as a sword to oppress rather than a shield to protect. These unconsolidated matters have become increasingly convoluted, requiring this nuanced legal analysis.

II. Factual Background

A. Gonzalez

Gonzalez joined WMSNJ in May 2005. During his tenure Gonzalez served in various roles, both sacred and secular, within WMSNJ. Gonzalez obtained a position as a "Deacon" of which his role as a Deacon has not been made clear.[3] He served as a member of WMSNJ's "litigation control group" ("LCG")[4], and he served on the electrical/technical team ("IT Team") of WMSNJ. Gonzalez's role as a Deacon is not entirely clear. However, the Court may inquire into

[3] The exact role and position of a Deacon within WMS's ecclesiastical hierarchy is not entirely clear.
[4] The members of the LCG remain unclear as they have not been identified in any responses to discovery.

the "proposition advanced by a particular religion… to determine the character of the relationship between a parishioner and his or her bishop," or here, a Deacon. McKelvey v. Pierce, 173 N.J. 26, 50 (2002).

As a member of the IT Team, Gonzalez substantially participated in and personally purchased the parts to build WMSNJ's network, installed the hardware and programmed the software protocol for WMSNJ's email. Gonzalez testified at deposition on November 12, 2018, that he designed the ZionUSA email account, which is the general email account for all WMSNJ members, to automatically create a backup on a flash drive, giving rise to the discovery documents in question. Gonzalez also avers to participating in drafting the non-disclosure agreement in question in coordination with other members and leaders of WMSNJ including Pastor Lee, Tara Whalen (a/k/a Tara Byrne), and others, which, at one time WMSNJ endeavored for all its members to sign. It was this group, and/or members of this group, that facilitated the purported "phishing" expedition creating www.cultwatchahnsahnghong.com ("Cultwatch") and ahnsahnghong.biz to monitor WMS critics. WMSNJ allegedly utilized these websites to obtain Colón's personal information at issue in Colón IV, which was then allegedly utilized to hack into Colón's personal accounts at issue in Colón III. These actions form the basis of the remaining claim in Colón III.

As a member of the LCG, during the pendency of Colón I and Colón II, Gonzalez participated in facilitating these lawsuits on behalf of WMS. Emails in the record show that Gonzalez, along with other WMSNJ members, communicated with various attorneys in an endeavor to secure legal counsel and sought advice about potential causes of action against various individuals, including Colón. Gonzalez also participated in the legal strategy. While WMS and WMSNJ retained legal counsel throughout formal legal proceedings, presently in dispute, is whether or not all of the LCG communications are privileged even when the communications do

not involve an attorney. N.J.R.E. 504 ("communications between lawyer and his client in the course of that relationship and in professional confidence, are privileged.") Due to various factors, Gonzalez testified, he too became disenfranchised with WMSNJ.

In furtherance of these positions and/or as a general member of WMSNJ, on January 1, 2012, Gonzalez and WMSNJ, in the presence of other members, executed the Confidentiality Agreement, or non-disclosure agreement ("NDA"), that Gonzalez now seeks to invalidate.

The Agreement states, in pertinent part:

> This Confidentiality Agreement, referred to in this document hereafter as the "Agreement" is between the World Mission Society Church of God, a federally recognized 501(c)3, including but not limited to include a branch located at 305 Godwin Ave in Ridgewood, New Jersey, referred to hereafter in this document as the "Church" and Raymond Gonzalez residing at 156 Diamond Bridge Rd., Apt 4, Hawthorne, NJ 07506 referred to hereinafter in this document as the "Member".
>
> It is recognized that it may be necessary or desirable to exchange confidential information between Church and Member for the purpose of spiritual or personal understanding. It is also agreed that both the Member and the Church will not record any of the aforementioned exchanges between the Church and Member or by the Member while in/at the Church. The aforementioned recognition, purpose and agreement not to record shall be referred to as the "Purpose" within this document.
>
> 1. Except as otherwise provided in this Agreement, all information disclosed by Church to the Member is Confidential Information, and (1) shall remain the exclusive property of Church, (2) shall be used by the Member only for the Purpose set forth above, (3) shall be protected by the Member, and (4) all confidential information acquired by the Member during mutual membership with Church shall not be disclosed to any third party for any purpose nor transmitted by any means.
>
> 2. Confidential Information shall constitute all information concerning Church (whether prepared by Church, its representatives, members or others), whether furnished before or after the date of this Agreement and regardless of the manner in which it is furnished and includes, without limitation, any:

> (i) Teachings which are recognized to be exclusive Church, Bible studies within the Church, practices of the Church, beliefs and/or doctrine of the Church.
> (ii) Books published by Melchizedek Publishing, Elohist Magazines, New Song Books, Sermon Books or any other information or publication prepared by the Church through any means or transmissions.
> (iii) Information from counseling sessions, member's issues or other personal matter that may require confidentiality.
> (iv) Notes or recording taken by Member in any indoor or outdoor service or event.

Eleven (11) months after signing the NDA and having been a member for seven (7) years, Gonzalez terminated his association with WMSNJ in December 2012.

B. Colón II and Colón III

In April 2013, Colón initiated Colón III, alleging that WMS had fraudulently extracted donations of money, time, and energy, hacked into her private internet accounts, resulting in severe emotional distress. Judge Harz dismissed all claims, which the Appellate Division affirmed in part, and reversed only as to Colón's hacking/invasion of privacy claim which was remanded for further findings of fact. Presently, the hacking claim in Colón III remains active.

A few months later in Colón II, on August 7, 2013, Judge Harz held that part of the NDA dated September 4, 2010, that Colón had executed with WMSNJ was unenforceable. Colón's NDA, which addressed only WMS's Sermon Book, was substantially different than the NDA sub judice. In Colón II, Judge Harz upheld the NDA as to the "terms and conditions for use of the Sermon book" but found "that subparagraph (i)[5] was inconspicuous and was contained in a standard form contract of adhesion executed without the advice of counsel rendering it invalid and

[5] Subparagraph (i), states: "General Agreement: By signing this Agreement, you hereby waive, release, and covenant not to sue the Church of God with respect to ANY matter/information relating to or arising out of your membership and/or attendance at the Church of God. The member agrees not to disclose any information whatsoever relaying to their attendance, membership, teaching at the Church of God."

not binding between the parties." After Judge Harz invalidated portions of the NDA in Colón II, WMSNJ undertook to draft a new NDA. It is now argued by Gonzalez that the prohibitions in the new NDA signed by him in January 2012, are far greater than the ones invalidated in Colón II.

The record reveals, that on or before September 8, 2015, Gonzalez retained Paul S. Grosswald ("Grosswald") to represent him as a fact-witness in Doe v. WMSNJ, Pastor Lee, et al[6]. At the time, Grosswald represented Colón. In Doe, Gonzalez was ordered on March 28, 2016 and again on October 12, 2016 to participate in depositions, while presumably represented by Grosswald.

C. Colón IV

In August 2016, Colón initiated Colón IV as a SLAPP-back action[7] alleging abuse of process in Colón I and Colón II and intentional infliction of emotional distress against WMS, WMSNJ and members of WMSNJ. Colón sought widespread discovery into WMS's religious beliefs and practices, as well as administrative policies, arguing that in order to make out her claims for abuse of process and intentional infliction of emotional distress, it was necessary for her to prove that WMS lacked probable cause to sue her for defamation in Colón I and Colón II, by establishing that her statements were true.

On August 4, 2017, the Hon. Charles E. Powers, Jr., J.S.C. granted WMS's motion limiting the scope of discovery in paragraph three (3) of his order, to "(a) whether defendant(s) had probable cause to file *World Mission Society Church of God, A NJ Non-Profit Corporation v. Colón*, No. 2011-17163 and *World Mission Society Church of God v. Colón,* Superior Court of

[6] Mr. Doe, Ms. Doe and Jane Doe v. World Mission Society, Church of God, A NJ Nonprofit Corporation; Dong Il Lee; Bong Hee Lee; Davina Mazzuckis; Claudia Feliz; World Mission Society Church of God, a South Korea Corporation; Gil Jah Chang a.k.a. Gil Jah Zhang; Joo Cheol Kim; ABC Corporations 1-100; and John and Jane Does 1-100 No. BER-L-3660-15, filed in 2015 in Bergen County, New Jersey ("Doe").

[7] SLAPP is an acronym for Strategic Lawsuits Against Public Participation. LoBiondo v. Schwartz, 199 N.J. 62, (2009).

New Jersey, Law Division: Bergen County (Docket No. BER-L-5274-12)(collectively the "**Lawsuits**"); (b) whether defendant(s) acted with malice in filing the Lawsuits; (c) whether defendant(s) acted intentionally or recklessly with regard to filing the Lawsuits; and (d) the nature and character of defendant(s)' conduct in filing the Lawsuits and during the pendency of the Lawsuits." In addition paragraph four (4) ordered that "[n]otwithstanding the foregoing, Plaintiff shall neither seek nor be entitled to discovery barred by the Church Autonomy Doctrine including discovery regarding any of the defendant' religious doctrine, practice and administration or discovery otherwise barred pursuant to the Appellate Division's ruling in Colón v. World Mission Society Church of God, et al., BER-L-3007-13, *aff'd in part and rev'd in part*, A-5008-14T4." Finally, paragraph five (5) ordered that "[n]othing in this order shall be deemed to enable the parties to obtain discovery that is otherwise privileged or undiscoverable."

Around this time, WMSNJ became aware that Gonzalez provided what they considered privileged and/or confidential information of WMS to Colón and/or to Colón's then-attorney Grosswald, who in turn filed a certification from Gonzalez disclosing alleged protected information of WMS. For this reason, on September 29, 2017, Judge Powers ordered that Grosswald was disqualified from representing any party or witness in the matter[8], Gonzalez's certification was struck from the record in Colón IV, and both Gonzalez and Grosswald were ordered to produce any and all of WMSNJ's protected materials and appear for deposition to discern the extent of disclosure. In addition, paragraph seven (7) ordered that "[a]ll parties shall not file nor otherwise disclose Confidential Information as defined by the January 1, 2012 Confidentiality Agreement between Mr. Gonzalez and World Mission New Jersey."

[8] Grosswald was subsequently disqualified from representing Colon in Colon III on March 22, 2018.

Gonzalez avers he removed what he considered to be privileged material from his document production, and did not share this privileged information with Colón or Gonzalez's current counsel, Peter L. Skolnik, Esq. ("Skolnik"). The discovery dispute at issue in part concerns compliance with the Orders dated August 4, 2017 and September 29, 2017. Those orders, while protecting WMS's legitimate religious beliefs, religious practices, religious teachings and religious publications, permit discovery of relevant information into Colón's causes of action against WMS and/or WMSNJ. A religious organization, such as WMS or WMSNJ, cannot be compelled to publically disclose information about private religious beliefs and/or religious practices.

However, by suing Colón for defamation in Colón I and Colón II, WMSNJ directly put into issue the truth of Colón's criticisms, as well as the circumstances surrounding the impetus for the initiation and the prosecution of Colón I and Colón II. Therefore, WMS' ecclesiastical teachings are not in question, nor have they been inquired into, as they are protected from judgment by the Free Exercise Clause of the Constitution of the United States, as well as the Church-Autonomy Doctrine. Nonetheless, it is unjust for WMS to rely upon those protections against unwanted intrusion into their private affairs, when they have filed a public defamation lawsuit against a former parishioner exercising free speech to criticize WMS, only to then utilize those same protections to defend against litigation for malicious abuse of process and frivolous litigation arising from the defamation lawsuits.

Presently, WMSNJ avers that Gonzalez produced to Colón an enormous amount of irrelevant material that should be returned and/or destroyed. For this reason, WMSNJ now moves for a protective order limiting Colón's discovery to the August 4, 2017, September 29, 2017 and July 20, 2018 Orders in Colón IV, and to the August 21, 2018 Order in Colón III.

Throughout discovery, claims of confidential and privileged materials have played a huge

role in Colón IV. There is no major discovery dispute regarding facially privileged material. Specifically, privileged communications involving attorney work-product and/or attorney-client communications as prescribed by N.J.R.E. 504, are not in dispute. However, communications and documents that are not privileged but are deemed confidential by WMSNJ as defined by the Confidentiality Agreement are presently in question. Therefore, in light of WMSNJ's assertion that all discovery at issue encompassing approximately 7,000 documents is either privileged or confidential, WMSNJ seeks for this Court to discern whether discovery, when not privileged, is confidential, and if not confidential, then is the discovery relevant to Colón's claims in Colón III and Colón IV, and if not relevant to those claims, then WMSNJ maintains the discovery should be protected from disclosure and admissibility at trial.

Since the Order dated September 29, 2017 prohibited disclosure of confidential information as defined by the NDA, this Court's determination of the validity of the Gonzalez NDA directly affects Colón IV. Therefore, discovery in Colón IV is directly impacted by the validity of the Gonzalez NDA presently in question.

D. Gonzalez

On December 22, 2017, Gonzalez, then self-represented, initiated Gonzalez by filing a Summons and Complaint in the Chancery Division of the Superior Court of New Jersey, Bergen County seeking a Declaratory Judgment ("DJ action") to declare the NDA as void.[9] Gonzalez alleges that the NDA is overbroad and vague (Count I), is the result of undue influence (Count II) and duress (Count III) of Pastor Dong Il Lee ("Pastor Lee"), who breached his fiduciary duty to Plaintiff (Count IV). Gonzalez also seeks to void the NDA based on the allegations of equitable

[9] Raymond Gonzalez v. World Mission Society, Church of God, A NJ Non-Profit Corporation, No. BER-C-326-17, filed on December 22, 2017 in Bergen County, New Jersey ("Gonzalez").

fraud (Count V), contract of adhesion (Count VI), procedural unconscionability (Count VII), substantive unconscionability (Count VIII), lack of mental competency (Count IX), lack of consideration (Count X), waiver (Count XI) and the Church Autonomy Doctrine (Count XII).

On January 17, 2018, WMS filed a pre-answer motion to transfer the DJ action to the Law Division and consolidate Gonzalez's matter with the related case in Colón IV, arguing that Plaintiff was attempting to avoid producing the documents compelled by the September 19, 2017 Order of Judge Powers in Colón IV. On February 6, 2018, the Hon. Menelaos W. Toskos, J.S.C., granted WMS's motion to transfer but denied consolidation of the DJ action with Colón IV. On April 13, 2018, Judge Powers denied WMSNJ's motion to consolidate Colón IV with Gonzalez finding the Gonzalez matter has "only an attenuated relation to" Colón IV "at this point," granting WMSNJ twenty (20) days to file an Answer in Gonzalez.

On May 4, 2018, WMS answered the Complaint, denying the allegations, asserting numerous affirmative defenses and counterclaims alleging breach of contract (Count I), breach of fiduciary duty to WMS (Count II), conversion (Count III), and seeking injunctive relief (Count IV). WMS advanced that Plaintiff filed the DJ action to avoid complying with September 29, 2017 Order.

On June 8, 2018, after retaining legal counsel, Gonzalez filed a motion permitting him to communicate with his legal counsel, Skolnik. The motion was granted in part, limiting communications to the circumstances surrounding Gonzalez's execution of the NDA, its provisions, and its enforceability, but also prohibited communications regarding "privileged information learned as a member of World Mission's litigation control group." Judge Powers declined to appoint an independent expert to determine which information was privileged and/or barred by the Church Autonomy Doctrine that Gonzalez learned while a member of the LCG. On

July 10, 2018, Plaintiff answered WMSNJ's counterclaims.

Meanwhile, in Colón IV, on June 8, 2018, Judge Powers granted WMSNJ's motion compelling Colón to attend her IME on May 18, 2018, produce medical records and also granted Plaintiff's cross-motion to depose various Colón IV defendants, including Pastor Lee, Victor Lozada, Tara Whalen and Richard Whalen, after the completion of both Grosswald's and Gonzalez's deposition, pursuant to the September 29, 2017 Order. On June 26, 2018, in Colón III, Colón served Gonzalez with a subpoena to appear for deposition and produce documents and correspondence regarding WMS, which Judge Powers held violated his prior orders limiting the scope of discovery to exclude WMS' privileged and/or confidential information. On October 15, 2018, attorney-client communications between Colón and Grosswald after September 29, 2017 in Colón IV were deemed not privileged. Depositions ensued, although were largely unsuccessful due to the repeated invocation of privilege and/or confidentiality by WMSNJ as a grounds to refuse to answer. These depositions, to date, remain incomplete.

As described above, these matters while formally unconsolidated, share common parties, witnesses, attorneys and facts. The matters are so closely related and intertwined that an order issued in one case would inevitably impact the others. For example, Grosswald was disqualified from representing any party or witness in Colón IV which was given effect in Colón III six months later creating a privilege issue for Colón. Gonzalez's certification was struck in Colón IV due to information he possessed and supplied to Colón arising out of his matter, Gonzalez. But then, Colón was sanctioned in Colón IV for serving a subpoena upon Gonzalez in Colón III (which was permitted in Colón III if Colón submitted draft questions to inform the Court of the intended scope of Gonzalez's testimony). Therefore, to end the whipsaw of conflicting orders and their consequences in these unconsolidated matters, as well as to promote judicial efficiency, beginning

in November 2018, all motions and conferences, as well as discovery disputes, for the three cases, Colón III, Colón IV and Gonzalez, were presented together, in one hearing, at the same time before both judges presiding over the unconsolidated WMS matters[10].

Thereafter, on January 10, 2019, Judge Bishop-Thompson entered a case management order suspending all filings in Colón IV until oral argument on January 25, 2019. Following a brief adjournment, oral argument was heard on February 1, 2019 in the related matters of Colón III, Colón IV, and Gonzalez in front of Judge Harz and Judge Bishop-Thompson.

In Colón III, oral argument was heard on Defendant's Motion to Quash. By Order dated February 1, 2019, Judge Harz compelled WMSNJ and Dong Il Lee to produce documents responsive to Colón's Notice to Produce to be bates-stamped 'GONZ____,' compelled Defendant, Jun Lee to produce documents responsive to Colón's Notice to Produce, denied WMSNJ's motion to quash the subpoena of Victor Lozada ("Lozada") and compelled Lozada to appear for deposition after determination of the NDA and to produce documents responsive to Colón's Notice to Produce.

In Colón IV, oral argument was heard on (1) Plaintiff's Motion for Reconsideration and to Compel Discovery; (2) Defendants' Cross-Motion to Enforce Litigant's Rights; (3) Plaintiff's Order to Show Cause; (4) Defendants' Motion to Enforce Litigant's Rights; and (5) Defendants' Order to Show Cause.

By Order dated February 5, 2019 Judge Bishop-Thompson compelled Colón to supply medical records for an in camera review, compelled WMSNJ to produce documents responsive to specific requests in Colón's notice to produce; compelled WMSNJ to produce to Colón the complete "non-confidential" deposition transcript of Gonzalez from November 12, 2018,

[10] At the time of this order, Colon III was assigned to Judge Harz, and Colon IV and Gonzalez was assigned to the Hon. Avis Bishop-Thompson, J.S.C., who succeeded Judge Powers (retired).

compelled WMSNJ to produce to Colón a complete set of documents received from Gonzalez pursuant to the September 29, 2017 Order, to be bates-stamped 'GONZ___,' compelled WMSNJ to produce a privilege log for any assertion of privilege over the documents received from Gonzalez, compelled Gonzalez to share the link to the Dropbox account containing documents relating to WMSNJ that Gonzalez produced to his counsel, Skolnik, which were shared with Colón, and compelled Colón to file an order to delete, which would remove any filings with WMSNJ's confidential information. This Court additionally, directed all privileged or confidential deposition transcripts to be produced directly to chambers, and suspended depositions until a determination of the Gonzalez NDA.

In Gonzalez, this Court heard oral argument on (1) Defendants' Motion to Compel Discovery; (2) Plaintiff's Cross-Motion for Discovery; and (3) Plaintiff's Motion to Consolidate Cases. In Gonzalez, by Order dated February 5, 2019, Judge Bishop-Thompson denied Gonzalez's motion for consolidation but set a briefing schedule for the declaratory judgment action, compelled Gonzalez to share the link to the Dropbox account, compelled WMSNJ to produce electronically stored information including metadata responsive to Gonzalez's request, and compelled WMSNJ to produce a specific Statement of Damages.

Gonzalez now moves for declaratory judgment seeking to invalidate the NDA that he signed on January 1, 2012, on the basis of both procedural and substantive impropriety.

Procedurally, Gonzalez alleges that the NDA is unconscionable due to WMSNJ exerting pressure upon Gonzalez to sign. Specifically, the NDA was signed in a group setting, wherein Gonzalez was not afforded an opportunity to review the NDA with legal counsel; Pastor Lee led Gonzalez to believe that the NDA was not legally enforceable and if he refused WMSNJ's dictates,

Gonzalez would burn in Hell for being expelled from WMSNJ; and, once signed, Gonzalez was not provided a signed copy of the NDA.

Substantively, Gonzalez alleges that the NDA is unconscionable due to the expansive scope and lifetime prohibition of non-disclosure even to Gonzalez's lawyer, accountant, clergy, therapist or spouse, in addition to non-disclosure of information that is already within the public domain and/or that WMSNJ has no legitimate interest in maintaining as confidential.

Additionally, Gonzalez argues that WMSNJ has consistently conflated the doctrine of "privilege" which is comprised of attorney-work product and attorney-client communications, with the definition of "confidential" as that term is used in the NDA having the effect of imposing obligations on Gonzalez as a witness and effectively barring Colón from access to information directly relevant to her claims. Specifically, Gonzalez argues that information or documents that are relevant to Colón IV were continually blocked from inquiry pursuant to the NDA even though Colón's permitted scope of discovery pursuant to Judge Powers' August 4, 2017 Order included whether WMSNJ acted with malice and/or recklessness, WMSNJ's conduct in filing Colón I and Colón II, and whether WMSNJ had probable cause to initiate those actions.

WMSNJ oppose on the grounds that Gonzalez has breached the NDA and therefore there is no longer a justiciable controversy that can be resolved by way of a declaratory action.

Substantively, Gonzalez was assigned duties within WMSNJ as a Deacon, as a member of the IT group and of the LCG. Therefore, WMSNJ argues, the NDA, in essence, embodies the duty of confidentiality incumbent upon those in Gonzalez's positions and "merely memorializes that which he was already obligated to protect" in a fiduciary capacity. Additionally, WMSNJ argues that the NDA is narrow in scope as it only protects information about doctrinal matters not publicly available, financial and/or legal matters Gonzalez received in confidence, and individual members

contact information, religious concerns, and personal problems disclosed in seeking guidance of a religious advisor. Finally, WMSNJ argues that Gonzalez received adequate contractual consideration by remaining in his leadership positions within WMSNJ.

Procedurally, WMSNJ argues that Gonzalez originated the idea, participated in drafting, encouraged others to sign the NDA and voluntarily signed his own NDA with no pressure from WMS or its members. In any event, WMSNJ argues that if any part of the NDA is deemed invalid then only that part of the NDA should be severed, preserving the enforceable portions. According to WMSNJ, the impact of the NDA on Colón III and Colón IV is "very attenuated and clearly not dispositive of the issue at bar" since Colón was granted access to information in Gonzalez's "possession related to her causes of action" in Colón IV, and the disclosures Gonzalez made to Colón is not related to her cause of action in Colón III.

Gonzalez in turn replies that the WMSNJ opposition is rife with inaccuracies including, among others, that Gonzalez was not the primary individual responsible for the IT team, rather it was another WMSNJ member, defendant, Victor Lozada. Gonzalez did not recommend the creation of a new NDA, it was Pastor Lee. Gonzalez did not draft the NDA alone, rather it was initially composed by Tara Whalen and later revised by Paul Cha dictating to Gonzalez. Additionally, Gonzalez argues that the confidentiality is expansively defined within the NDA prohibiting disclosure "to any third party for any purpose nor transmitted by any means." Skolnik Cert., Ex. C., ¶ 1(4). The NDA as written prohibited Gonzalez's communications with counsel until June 8, 2018, when Judge Powers permitted limited attorney/client communications.

Upon leave of court, WMSNJ filed a sur-reply alleging that Gonzalez improperly raised new facts in his reply brief regarding the involvement of Paul Cha in drafting the NDA, but Gonzalez's reply brief alleged no facts that refute Gonzalez's involvement in drafting the NDA.

Gonzalez filed a sur-sur-reply arguing that the Complaint, paragraphs 51 through 72 allege facts regarding WMSNJ's undue influence during formation and execution of the NDA, and argued it is irrelevant which non-lawyer drafted the agreement.

Oral argument was heard on March 29, 2019 before both Judge Bishop-Thompson and Judge Harz for Gonzalez's declaratory judgment and WMSNJ's protective orders. Of note, Gonzalez's counsel acknowledged the need to protect personal information of WMSNJ's parishioners including, if necessary, executing a new NDA to protect disclosure of the parishioner's personal information. Counsel also re-affirmed that Gonzalez is not seeking to, and will not disclose WMSNJ's legitimate privileged attorney work-product or attorney-client communications. WMSNJ acknowledged that Gonzalez did not produce to Colón documents "he deemed privileged."

At oral argument, WMSNJ argued that Gonzalez personally added section 1.4 of the NDA, and in any event, even in the absence of the NDA, Gonzalez had a pre-existing duty of confidentiality to WMSNJ and its members. WMSNJ also advanced that WMSNJ, as a non-profit corporation officially encompasses approximately twenty-five (25) branches located along the eastern seaboard of the continental United States. Accordingly, WMSNJ argues the NDA is limited in scope to the geographical region that comprises WMSNJ.

III. Legal Analysis – Declaratory Judgment

A. Justiciable Controversy

"A person interested under a...contract...may have determined any question of construction or validity arising under the...contract." N.J.S.A. 2A:16-53. Such a determination is permitted "either before or after a breach thereof." N.J.S.A. 2A:16-54. However, if not ripe "a declaratory judgment should be withheld when the request is in effect an attempt to have the court

adjudicate in advance the validity of a possible defense in some expected future law suit." State v. Eatontown Borough, 366 N.J. Super. 626, 638 (App. Div. 2004) (citing Donadio v. Cunningham, 58 N.J. 309, 325 (1971)). Additionally, "there is ordinarily no reason to invoke the provisions of the Declaratory Judgments Act where another adequate remedy is available." Rego Indus., Inc. v. Am. Modern Metals Corp., 91 N.J. Super. 447, 453 (App. Div. 1966).

In the instant matter, Gonzalez, then self-represented, initiated this action in the Chancery Division seeking a declaration that the WMSNJ's NDA is unenforceable. The matter was transferred to the Law Division on January 17, 2018, only after WMS filed a motion to do so. At the time, WMSNJ argued that the entire controversy doctrine compelled consolidation with Colón IV, wherein Gonzalez was only a third-party witness. However, Judge Bishop-Thompson denied Gonzalez's motion to consolidate the instant action with Colón IV on February 5, 2019, following the previous denial of motions filed by WMS to consolidate Colón III with Colón IV, and Gonzalez with Colón IV. Therefore, for Gonzalez, no "adequate remedy is available" at law, id., as Gonzalez seeks to invalidate a contract that purportedly is procedurally and substantively unconscionable. No amount of money can relieve his burden of silence.

Finally, while WMSNJ argues that the validity of the NDA is not justiciable, it was Gonzalez who brought the declaratory action seeking to invalidate the NDA. At the time of filing, WMSNJ had not yet brought a breach of contract action, or a breach of fiduciary duty claim, as later asserted in its Answer and Counterclaim. WMSNJ asserts a counterclaim against Gonzalez for breach of fiduciary duty which purportedly encompasses Gonzalez's breach of the NDA for disclosing WMSNJ's confidential information learned in the course of his various positions within WMSNJ. In short, at the time Gonzalez filed the Complaint seeking a declaration that the NDA is unenforceable, WMSNJ was not yet seeking a "coercive remedy." Eatontown Borough, 366

N.J. Super. at 637 (citing Id.). In fact, WMSNJ had not even filed a Complaint seeking to enforce the NDA as of December 22, 2017, almost three (3) months after the September 29, 2017 Order in Colón IV, which order WMSNJ now avers prompted Gonzalez to file his Complaint in an attempt to avoid compliance to produce WMSNJ's documents.

Considering that WMSNJ was not attempting to enforce the NDA against Gonzalez when he filed the Complaint on December 22, 2017, that WMSNJ continues to advance the sweeping discovery prohibitions of the NDA in Colón III and Colón IV without clear articulation of parameters, that WMSNJ refuses to produce relevant discovery responsive to Colón's defined causes of action in spite of court orders delineating the appropriate inquiry, and since "it rests in the sound discretion of the trial court whether declaratory relief under the Act should be granted," id. at 637 (citing Passaic Valley Sewerage Comm'n v City of Paterson, 113 N.J. Super. 148, 151, 273 A.2d 359 (App.Div.1971)), this Court concludes that the validity of the NDA is ripe for adjudication.

B. Standard for Confidentiality Agreements/Non-Disclosure Agreements

This Court is unaware of New Jersey law that has previously addressed the question of whether a confidentiality agreement or non-disclosure agreement between a religious organization and a member in a leadership position is enforceable. New Jersey courts have construed employee contracts, Conscientious Employee Protection Act claims, Law Against Discrimination claims, as well as non-compete/restrictive agreements (Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25 (1971)), holdover clauses (Ingersoll-Rand Co. v. Ciavatta, 110 N.J. 609 (1988)), trade secrets (Sun Dial Corp. v. Rideout, 16 N.J. 252, 259 (1954)), arbitration agreements (Kernahan v. Home Warranty Adm'r of Fla., Inc., 236 N.J. 301 (2019)), jury waiver provisions (Fairfield Leasing Corp. v. Techni-Graphics, Inc., 256 N.J. Super. 538 (Super. Ct. 1992)) and contracts of adhesion (Vitale v.

Schering-Plough Corp., 231 N.J. 234, 239 (2017)). Additionally, neither party has cited to binding case law governing the validity of a confidentiality agreement or a non-disclosure agreement executed by a religious organization and a member of the association, or binding case law governing the validity of a confidentiality agreement or non-disclosure agreement between a religious organization and a member who is not compensated as an employee, but who holds various leadership positions such as a Deacon within the WMSNJ's hierarchy, as a member of the litigation control group (as defined by WMSNJ), and as a member of the IT/technology team (as customarily defined).

Irrespective of the contract's title, formation of an enforceable NDA requires (1) competent parties, (2) proper, legal subject matter, (3) valid consideration, (4) mutuality of agreement (offer and acceptance), and (5) mutuality of obligation. See, West Caldwell v. Caldwell, 26 N.J. 9, 24-25, 138 A.2d 402 (1958). A contract also "must be sufficiently definite 'that the performance to be rendered by each party can be ascertained with reasonable certainty.'" Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992) (citing Id.) If the contract is to aid in the prospective determination of mutual obligations, then "[t]he writing is to have a reasonable interpretation. Disproportionate emphasis upon a word or clause or a single provision does not serve the object of interpretation.... It is the revealed intention that is to be effectuated, the sense that would be given the integration by a reasonably intelligent person." W. Caldwell, 26 at 25. Once a contract is validly executed and the face of the contract reveals a clear manifestation "Courts are generally obligated to enforce contracts based on the intent of the parties, the express terms of the contract, surrounding circumstances and the underlying purpose of the contract," Caruso v. Ravenswood Developers, Inc., 337 N.J. Super. 499, 506 (App. Div. 2001), and "as long as the agreement does

not violate public policy, parties may bargain freely." Marchak v. Claridge Commons, 134 N.J. 275, 281-82 (1993).

C. Substantive Analysis of the NDA

The central dispute in these matters presently involves the scope of the NDA, and what constitutes "Confidential Information" as defined in the NDA. Throughout, Colón III and Colón IV, WMSNJ has consistently advanced that the NDA encompasses all confidential information that Gonzalez learned in his roles as a member of the LCG and the IT team, as well as WMS's doctrinal material, privileged information, WMSNJ's personal information of its members and communications to and from members and information regarding websites, both fake and legitimate, among others. This expansive definition has had the effect of a blanket prohibition preventing authorized disclosure of relevant information to Colón, who is permitted discovery into the elements of her various causes of action against WMS and/or WMSNJ.

Absent binding case law governing this matter, the substantive issue at hand, as Gonzalez argues, is determined by New Jersey's general contract law applicable to non-disclosure agreements, analyzing whether the NDA "clearly defines what is protected, is not overly broad, and its terms are reasonable." As stated below, Section 2 of the NDA does not clearly define what is protected, but rather deems confidential "all information concerning" WMS. In contrast, WMSNJ asserts that the NDA is narrow in scope as it only protects information about doctrinal matters not publicly available, financial and/or legal matters Gonzalez received in confidence, and individual members contact information, religious concerns, and personal problems disclosed in seeking guidance of a religious advisor. This Court finds WMSNJ's position is not supported by the face of the NDA.

Gonzalez further argues that the scope of the NDA is overbroad, encompassing a global geographic area, in perpetuity without any definitive term or timeframe. WMSNJ's rebuttal, to this argument is that that the NDA is limited to the geographical area comprising the twenty-five (25) branches located along the eastern seaboard of the continental United States that are incorporated under WMSNJ, as a federally recognized 501(c)3. Specifically, the NDA states the "Agreement is between the World Mission Society Church of God, a federally recognized 501(c)3, including but not limited to include a branch located at 305 Godwin Ave in Ridgewood, New Jersey, referred to hereafter in this document as the "Church"...and the 'Member'." This Court finds this language in the NDA imposes expansive geographic obligations as it facially encompasses more than the eastern seaboard of the continental United States of America. This Court also agrees with the position of Gonzalez that there is no timeframe or definitive term set forth in the NDA; the NDA exists in perpetuity.

When a contract imposes sweeping prospective obligations after execution, a litigant is entitled to a "limited measure of relief within the terms of the noncompetitive agreement which is reasonably necessary to protect their legitimate interests, will cause no undue hardship on the defendant, and will not impair the public interest." Solari Indus., Inc. v. Malady, 55 N.J. 571, 585 (1970). "Nonetheless an employee's covenant will be given effect if it is reasonable under all the circumstances of his particular case; [then] it will generally be found to be reasonable if it 'simply protects the legitimate interests of the employer, imposes no undue hardship on the employee, and is not injurious to the public.'" Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 32-33 (1971) (citing Solari Indus., 55 N.J. at 586).

Therefore, "[t]he first two parts of the *Solari/Whitmyer* test focus on the protection of the legitimate interests of the employer and the extent of the hardship on the employee." Ingersoll-

Rand Co. v. Ciavatta, 110 N.J. 609, 634-35 (1988). "The *Solari/Whitmyer* test is a multi-part, fact-intensive inquiry. Not only must multiple interests of differing parties and entities be identified, but also, those interests must be gauged for reasonableness and legitimacy." Maw v. Advanced Clinical Communs., Inc., 179 N.J. 439, 447 (2004), while "[t]he third requires the reviewing court to analyze the public's broad concern." Id.

Gonzalez argues that WMSNJ, as a non-profit religious corporation, cannot seek to protect information as a trade secret pursuant to N.J.S.A. 56:15-2, since WMSNJ cannot show they derive an economic benefit from its competitors not knowing its information about parishioners or its legal strategy. WMSNJ opposes that like a trade secret, sensitive information or information that is valuable to a party may be protected by a confidentiality agreement, Rohm & Haas Co., 689 F.2d at 429-30, subject to the Solari/Whitmyer standard as articulated in Ingersoll-Rand Co., 110 N.J. 609 (1988). Accordingly, even publicly available information may be protected from misuse, Lamorte Burns & Co., Inc. v. Walters, 167 N.J. 285, 299 (2001), when the relationship of the parties and the intended use of the information indicates an intent that the information remain confidential. Id. (citing *Zippertubing Co. v. Teleflex, Inc.*, 757 F.2d 1401, 1407-10 (3d Cir.1985)).

This Court finds WMSNJ's confidential information does not rise to the level of a trade secret. At the time of execution of the NDA, Gonzalez held various positions within WMSNJ where he had access to information that was otherwise confidential, and protected from public view, including to WMSNJ's general members. To this end, WMSNJ clearly valued that its doctrinal information was not publicly disseminated, so much so that it endeavored to protect that information initially with a confidentiality agreement like the one signed by Colón, and then by the NDA signed by Gonzalez. As discussed above, however, the information that was protected by Colón's Agreement, and later the Gonzalez NDA, while facially limiting Confidential

Information to doctrinal teachings, in reality inconspicuously encompassed a broad universe of information that was not associated with WMS's doctrinal teachings while imposing sweeping obligations upon Gonzalez not to disclose said information "to any third party for any purpose nor transmitted by any means" including to legal counsel. To this end, the "protection of the legitimate interests of the employer" in preventing public disclosure of religious doctrinal materials, does not outweigh "the extent of the hardship on the employee," Gonzalez, who is prohibited from disclosing information not related to WMSNJ's religious teachings and spiritual guidance.

Additionally, WMSNJ's argument that the NDA is enforceable against Gonzalez because it, in essence, embodies the pre-existing duty he owed to WMS as a member within the ranks of WMSNJ's leadership, is not compelling. As a leader and trusted member, Gonzalez had access to confidential information that other WMSNJ members did not, for which the NDA "merely memorializes that which he was already obligated to protect" in a fiduciary capacity. A fiduciary duty, however, arises when "one party places trust and confidence in another who is in a dominant or superior position." F.G. v. MacDonell, 150 N.J. 550, 563 (1997). While this question is not presently before the Court, even though WMSNJ is asserting a counterclaim for breach of fiduciary duty against Gonzalez, it is clear that Gonzalez did not have a dominant or superior position to WMSNJ as to be a fiduciary, rather the inverse was true. For this reason, Gonzalez's purported fiduciary duty cannot serve as a basis for enforcement of the NDA, in the absence of adjudication that Gonzalez breached said duty.

Upon review, it is clear that the face of the NDA envisions a prohibition against disclosure of doctrinal teachings, doctrinal publications, information from counselling sessions and/or teachings supplied to members for "missionary" work espousing the ecclesiastical views of WMSNJ. In conjunction with the "agreement," stated at the outset, "both the Member and the

Church will not record any of the aforementioned exchanges between the Church and Member or by the Member while in/at the Church." In this manner, the NDA reads like a non-compete agreement which protects from public exposure WMSNJ's unique form of worship and/or interpretation of religious sources which others could copy, steal or modify to compete against WMSNJ. This interpretation is consistent with the "Church of God Member Agreement" ("Agreement") that was partially invalidated in Colón III, by Judge Harz's Order dated August 7, 2013. There, Colón's Agreement, subparagraphs a – h concerned the Sermon Book of WMS, however Judge Harz held "that subparagraph i, which substantially deviates from the subject matter of the Agreement pertaining to the Sermon Book, imposes a broad restrictive covenant." The same pattern exists here.

At first glance, the NDA is restricted to the doctrinal teachings and publications of WMSNJ. This narrow definition becomes expansive by the inclusion of a few phrases which, either intentionally or unintentionally, convolute the scope of the NDA and invite the problems of interpretation that have plagued discovery. For example, the NDA appears to concisely define the term "Confidential Information" in section 2, enumerating only four (4) subparagraphs. However, the NDA also prescribes that "Confidential Information shall constitute all information concerning Church (whether prepared by Church, its representatives, members or others), whether furnished before or after the date of this Agreement and regardless of the manner in which it is furnished and includes, without limitation, any" (i) doctrinal teachings, (ii) publications, (iii) personal guidance and (iv) missionary work. Additionally, the NDA also prescribes that "all confidential information acquired by the Member during mutual membership with Church shall not be disclosed to any third party for any purpose nor transmitted by any means." Finally, pursuant to section 1.1 of the NDA, all information, including the Member's exchange of confidential information "shall remain

the exclusive property of Church." Thus while at first glance it appears the term "Confidential Information" is narrowly defined and limited in scope, the term quickly loses its contours and definition when read in conjunction with the other provisions of the contract.

Considering, that the NDA is not sufficiently clear as to guide the actions and expectations of the parties, that persistent discovery issues in these matters have arisen from application of the NDA, and that the NDA presently at issue, unlike Colón's Agreement, does not include a jury waiver provision, nor does the NDA clearly prescribe the remedies available to WMSNJ in event of a breach, and since "substantive un-conscionability…generally involves harsh or unfair one-sided terms," Muhammad v. Cty. Bank of Rehoboth Beach, Del., 189 N.J. 1, 15 (2006) (citing Sitogum Holdings, Inc. v. Ropes, 352 N.J. Super. 555, 565 (Super. Ct. 2002)), this Court concludes that the NDA is substantively unconscionable.

D. Procedural Unconscionability

Gonzalez alleges that the NDA is procedurally unconscionable due to the pressure WMSNJ exerted upon Gonzalez to sign the NDA. Specifically, the NDA was executed in a group setting, from which Gonzalez was not afforded an opportunity to review the entire NDA with legal counsel. Pastor Lee led Gonzalez to believe that the NDA was not legally enforceable and, if he refused WMSNJ's dictates, Gonzalez would burn in Hell for being expelled from WMSNJ, and, once signed, Gonzalez was not provided a signed copy of the NDA. In response, WMSNJ argues that Gonzalez originated the idea, participated in drafting, encouraged others to sign the NDA and voluntarily signed his own NDA with no pressure from WMSNJ or its members.

Procedural unconscionability "arises out of defects in the process by which the contract was formed and "'can include a variety of inadequacies, such as age, literacy, lack of sophistication, hidden or unduly complex contract terms, bargaining tactics, and the particular setting existing

during the contract formation process.'" Rodriguez v. Raymours Furniture Co., 436 N.J. Super. 305, 317 (App. Div. 2014) (citing Muhammad v. Cnty. Bank of Rehoboth Beach, 189 N.J. 1, 15 (2006)).

The facts of record reveal, that at the time of execution, there was disparate bargaining power between WMSNJ and Pastor Lee as a spiritual advisor, on one-side, and Gonzalez, as a substantially younger, devout member on the other. The facts also reveal that the NDA was executed in a group session, subjecting Gonzalez to peer pressure to sign the NDA just like all the other members present. Additionally, Gonzalez avers that he was led to believe that disobedience to WMSNJ and its dictates, such as refusing to sign the NDA, would result in adverse spiritual consequences. Further, Gonzalez's reluctance to execute the Agreement for fear of being bound provides further proof of his awareness that the Agreement contained provisions that would prohibit disclosure and release of WMSNJ confidential information.

The facts of record also indicate that Gonzalez participated in drafting the NDA, certainly enough to have knowledge of the provisions now in question. However, whether Gonzalez controlled the drafting of the NDA or was scrivener merely recording directions, is disputed. Nonetheless, Gonzalez certainly was aware of the provisions that were included in the final NDA[11]. However, his participation does not obviate recourse to legal counsel to ascertain the extent of the legal obligations imposed by the final, complete NDA as a whole. Finally, there is no proof that any legal professional was consulted throughout the drafting process regarding the enforceability of the NDA, thus the legal effect of any provision is not patently obvious to a lay

[11] WMSNJ appears to argue that Gonzalez's participation in drafting the NDA entitles any ambiguity in the contract to be construed against Gonzalez. This position, to the extent that WMSNJ advances it, is inconsistent with the facts of record. The facts reveal that Gonzalez, in his various capacities within WMSNJ worked exclusively for the benefit of WMS. Thus, any ambiguity is construed against WMSNJ as the entity drafting the NDA, not against Gonzalez himself as an individual member of the organization who participated in its creation.

person. Therefore, whether Gonzalez drafted part or all of the NDA and/or revised some terms of the NDA which WMSNJ's now argues supports the inference that Gonzalez was aware of the legal effect of the document is not dispositive of the instant motion. Upon completion but prior to execution, Gonzalez, as a member of WMSNJ, remained entitled to seek legal advice regarding the effect of the NDA even if Gonzalez participated in creating the document.

Considering that the NDA was drafted without advice of a lawyer, signed in a group setting, that Gonzalez was led to believe a failure to execute the NDA would result in adverse spiritual consequences, and was not afforded an opportunity to confer with counsel regarding the legal effects and consequences of the NDA as a whole, including what rights and remedies Gonzalez waived upon execution, this Court concludes that the NDA is procedurally unconscionable.

E. Consideration

Finally, Gonzalez avers that the NDA is not binding since he did not receive valid contractual consideration. Generally, "[t]he law will not inquire as to the adequacy of consideration when the thing to be done is asked to be done, be it ever so small. *Williston on Contracts* (*rev. ed.* 1936), *sec.* 115. Whether a "peppercorn" ... is sufficient consideration for a promise depends only on whether it was the requested detriment to the promisee induced by the promise." Lucky Calendar Co. v. Cohen, 19 N.J. 399, 415 (1955).

The question then is what benefit or promise did Gonzalez receive from WMSNJ in exchange for keeping WMSNJ's information confidential. According to WMSNJ, "Plaintiff was able to continue rendering counsel to members; continue to be a member of the Litigation Control group, participating in litigation decisions on behalf of the Church; and be the head of the IT Department, all of which gave him access to highly confidential and privileged information." (Def.'s Opp, p. 33). In this matter, Gonzalez was the promisor, delivering to WMSNJ a promise

not to reveal information received in confidence as the promisee of the NDA. Therefore, in order for WMSNJ to bind Gonzalez to the NDA, valid contractual consideration must take the form of a benefit that Gonzalez has requested WMSNJ bestow upon him in exchange for his silence. Absent this showing, there is simply insufficient contractual consideration to enforce the NDA.

At the outset, the NDA memorializes that the "Purpose" is to "exchange confidential information between Church and Member for the purpose of spiritual or personal understanding." This recital however is insufficient to establish valid consideration because, as WMSNJ avers, Gonzalez "would not have been removed from the Church had he not signed the agreement"/NDA. Therefore, the spiritual guidance conferred upon Gonzalez as a member cannot serve as consideration supporting the NDA within WMSNJ's leadership positions, when there are no consequences if Gonzalez fails to execute the NDA and WMSNJ did not change its position in reliance upon Gonzalez's promise.

Since, the NDA does not expressly memorialize any consideration, the Court must infer whether valid consideration exists, if any, from the facts of record. However, the facts reveal that Gonzalez received no monetary compensation or any tangible benefit. Additionally, the facts of record reveal that Gonzalez did not impose any affirmative or reciprocal obligation upon WMSNJ. WMSNJ was not asked to refrain from doing something, nor was WSMNJ required to do something it otherwise would not have.

The only benefit that WMSNJ argues it bestowed upon Gonzalez, was the right to remain in his various positions within the WMSNJ. As stated above, "Plaintiff was able to continue rendering counsel to members; continue to be a member of the Litigation Control group" and continue in his role with the "IT Department." However, as Gonzalez held these positions prior to the execution of the NDA, the legal doctrine that "past consideration is not consideration" belies

WMSNJ's position. Broad St. Nat'l Bank v. Collier, 112 N.J.L. 41, 45 (1933) ("the doctrine that past consideration is no consideration is well recognized and universally enforced"). WMSNJ's attempt to construe Gonzalez's retention of his leadership positions as present consideration, fails for simply changing the perspective of the word to the present tense whereby Gonzalez is permitted to "retain his leadership roles." Further, according to WMSNJ, Gonzalez "would not have been able to retain his leadership roles" had he not signed the NDA. The notion that Gonzalez would be penalized for failing to assent and execute the NDA is inconsistent with the type of valid contractual consideration required to deem the NDA enforceable, and only invites analysis of the NDA as a contract of adhesion. However defined, the roles Gonzalez occupied prior to the execution of the NDA cannot now serve as valid contractual consideration.

WMSNJ argues, in the alternative, that members of voluntary associations, including religious institutions such as WMS, may be subject to contracts of adhesion in order to participate in the organization. Leeds v. Harrison, 9 N.J. 202, 216 (1952). The legal conclusion is premised upon the notion that members and their respective associations "assented to be bound by those laws, usages, and customs." Id. (citing First Presbyterian Church of Louisville v. Wilson, 14 Bush 252 (Ky. Ct. Apps. 1878). "Religious and *quasi*-religious societies may adopt a constitution and laws for the regulation of their affairs, if conformable and subordinate to the charter and not repugnant to the law of the land; and they are binding upon the membership until modified or repealed in due course." Id. at 217.

But that is not the case here. The NDA in question is not a constitution or law governing the entire membership. Rather, the NDA is a contract between the individual member, Gonzalez, and WMSNJ, as the organization, allegedly memorializing a promise to keep information

confidential learned while in service to the organization, rather than simple participation in the organization.

Additionally, the record presents no facts that indicate Gonzalez was an employee of WMSNJ for which the NDA as a contract of adhesion was ancillary or was otherwise compensated for his work benefitting WMSNJ. Rather the facts indicate that Gonzalez occupied various leadership roles in WMSNJ on a volunteer basis, receiving only personal and spiritual guidance as a member while providing benefits exclusively to WMSNJ through its parishioners in his role as a Deacon and a member of the LCG and the IT team.

To this end, the purported benefits of Gonzalez's various leadership roles inured solely to the benefit of WMSNJ. Gonzalez's participation in the LCG and the IT/technology team provided no identifiable benefit that flowed independently to Gonzalez. Gonzalez benefitted WMS, WMSNJ and the members of WMSNJ as a whole by facilitating litigation on behalf of WMSNJ and by establishing the email infrastructure and protocol to facilitate WMSNJ's objectives.

Additionally, Gonzalez's role as a Deacon inured solely to the benefit of WMSNJ. The Court has not actively inquired into the religious roles within WMSNJ, but has gleaned that Gonzalez took "confessions" of members and provided spiritual guidance to WMSNJ's parishioners. This Court, however, will not inquire further into the personal benefit that Gonzalez received from dispensing spiritual guidance to WMSNJ parishioners. First, because the Church Autonomy Doctrine prevents judicial determination of the merits of a religious practice. But also because the proper inquiry is not into the quality of the consideration, but only as whether said consideration "was the requested detriment to the promisee induced by the promise." Lucky Calendar Co., 19 at 415. The record does support a finding that Gonzalez was an agent of WMSNJ, entrusted with spiritual publications and teachings in an effort to obtain more members. However,

these roles as a member, Deacon or missionary benefitted WMSNJ more than any tangible benefit conferred upon Gonzalez.

Considering, that within the context of the relationship of the parties to one another there are no facts of record that indicate Gonzalez received any identifiable benefit that is contemporaneous with the execution of the NDA, and that Gonzalez's leadership roles solely benefitted WMSNJ, this Court concludes the NDA lacks valid contractual consideration to enforce the agreement.

F. Public Policy

The third, yet-to-be addressed factor of the Solari/Whitmyer test requires balancing the interests of the parties against prevailing public policy. Additionally, the equitable nature of a declaratory judgment, and the other legal doctrines addressed herein require an inquiry into the public policy presently at issue in the instant matter. For these types of matters, the Supreme Court of New Jersey has affirmed the proper paradigm to determine when public policy may override a private contractual arrangement, noting:

> the dictates of public policy may require invalidation of private contractual arrangements where those arrangements directly contravene express legislative policy or are inconsistent with the public interest or detrimental to the common good. Our power to declare a contractual provision void as against public policy must be exercised with caution and only in cases that are free from doubt. We must employ a balancing test, weighing the legislative policy and the public interest against the enforcement of the contractual provision, to determine whether the contractual provision at issue is void.

Briarglen II Condo. Ass'n, Inc. v. Twp. of Freehold, 330 N.J. Super. 345, 355 (App. Div. 2000) (rev'd in part Ramapo River Res. Homeowners Ass'n v. Borough of Oakland, 186 N.J. 439, 449 (2006)).

Recently, the political winds have shifted regarding non-disclosure agreements and confidentiality agreements. Private non-disclosure agreements have come into public focus for

repeated use in high-profile sexual harassment cases as a tool to "silence accusers and deny them the opportunity to seek justice through the courts." Suzette Parmley, *Murphy Signs Bill Curtaining Workplace Nondisclosure Agreements,* 225 N.J. L.J. 11 (2019). To prevent such tools from becoming a means to suppress in New Jersey, the State Senate introduced bill S. 121. On March 18, 2019, Governor Phillip Murphy signed the bill into law restricting the use of nondisclosure agreements in public employment contracts and settlement agreements. The bill

> bar[s] provisions in employment contracts that waive certain rights or remedies. It would also bar certain agreements that conceal details relating to discrimination claims.
>
> Under the bill, a provision in any employment contract that waives any substantive or procedural right or remedy relating to a claim of discrimination, retaliation, or harassment would be deemed against public policy and unenforceable. S. 121 (2018).

Thus, depending upon the underlying purpose of the silencing agreement, legislative and public policy can supersede private contractual provisions. The recent legislative policy prohibiting non-disclosure of information in an employment setting, and given the public interest in disfavoring the use of non-disclosure agreements to protect institutions that leveraged their position to silence critics, outweighs WMSNJ's private contract of complete nondisclosure of religious and secular information in all aspects, with no time limitation, without review by legal counsel regarding the ramifications and/or significance of signing, which additionally does not satisfy the fundamentals of contract formation. This Court finds that the NDA in question is violative of public policy, and it is not in the public interest for this Court to enforce.

Contrary to WMSNJ's position, this Court cannot excise portions of the NDA that obfuscate the intent of the drafter to make a better contract for WMSNJ. "It is not the function of the court to make a better contract for the parties, or to supply terms that have not been agreed

upon." Graziano v. Grant, 326 N.J. Super. 328, 342 (App. Div. 1999) (citing Schenck v. HJI Associates, 295 N.J. Super. 445, 450 (App. Div.), cert. denied, 149 N.J. 35, (1996)).

This Court having found that the definition of "Confidential Information" as defined in the NDA is overbroad, that the NDA has an undefined expansive application, that the NDA is procedurally unconscionable, that the NDA lacks a remedies clause in event of breach, that the NDA lacks identifiable valid consideration, that the NDA is against public policy, and that portions cannot be excised to make an valid NDA and for the aforementioned reasons, this Court holds that the NDA is invalid, unenforceable and void against Gonzalez.

IV. Protective Order

In the context of the facts outlined above, and simultaneous with Gonzalez' motion for declaratory judgment, WMSNJ presently moves for a fourth protective order applicable to both Colón III and Colón IV seeking "the return or destruction of all documents from the Gonzalez Production in Plaintiff's possession not received by the Defendants' in compliance with the February Orders and preventing the disclosure of that information." WMSNJ avers it first learned on February 1, 2019 at oral argument that Gonzalez produced to Colón "all relevant non-attorney client communications between Mr. Gonzalez and any member of World Mission that relate directly or indirectly to the instant matter." WMSNJ argues that the universe of documents produced to Colón by Skolnik from Gonzalez "far exceed the scope of what could even possibly be considered relevant to Plaintiff's [Colón's] causes of action in either Colón III or Colón IV." In this manner, WMSNJ seeks to enforce the scope of discovery by limiting disclosure to only those documents that Gonzalez produced to WMSNJ, in conjunction with the prior protective orders outlining by their interpretation the scope of permissible discovery.

In support, WMSNJ argues that the first protective order, entered on August 4, 2017 by Judge Powers in Colón IV "limits Plaintiff's discovery solely to her causes of action" incorporating by reference the discovery limitations pursuant to the Church Autonomy Doctrine as articulated in Colón III. The second protective order, entered on September 29, 2017 in Colón IV by Judge Powers, required Gonzalez to return all information he retained when he left WMSNJ. WMSNJ previously averred that Gonzalez "stole" the documents in question. After much refutation of that term, WMSNJ now avers that Gonzalez "took" the disputed discovery documents. Gonzalez avers that he "came into lawful possession of them during his membership" in WMSNJ. Gonzalez testified at deposition on November 12, 2018 that within the course of his positions, but before his disassociation with WMSNJ, Gonzalez initiated software that created an automatic backup of the ZionUSA email account to a flash-drive, creating the cache of documents now in question.

The third protective order entered on August 21, 2018 in Colón III by Judge Harz, permitted Colón's deposition of Gonzalez to proceed, albeit limited to Colón's remaining cause of action for hacking, in accordance with the September 29, 2017 and January 19, 2018 Orders in Colón IV, and required, according to R. 4:14-7, "any documents produced by Mr. Gonzalez shall be provided to the Church ten (10) days before Ms. Colón to provide the Church with the right to object to the provision to her." WMSNJ interpreted this provision as imposing a continuing ten (10) day window in which WMSNJ can object to the production of any document to Colón. At oral argument, on March 29, 2019, Judge Harz did not agree with WMSNJ's interpretation, clarifying that the ten (10) day provision was applicable only to the deposition of Gonzalez, as explained in the Rider to the Order dated August 21, 2018 -"[t]his court is not privy to all aspects of that litigation [Colón IV] and directs this decision only to Mr. Gonzalez's testimony as it relates to the cause of action and claims involved in Colón III." WMSNJ acknowledges this limitation,

stating in its moving brief that "[t]he protective order allowed for the deposition of Mr. Gonzalez to go forward, but it required Mr. Gonzalez to first provide to the Church any document he intended to produce in accordance with the subpoena." Therefore, all the documents in question that could be produced by Gonzalez are now subject of the present dispute and as such, will be addressed by this decision and order. For this reason, the ten (10) day window provision in the order of Judge Harz entered August 21, 2018 that previously applied to permit WMSNJ time to review documents subpoenaed for production is now moot and no longer applies in any related matter.

Colón opposes the instant motion for a protective order on several grounds, arguing as follows. First, WMSNJ has violated prior court orders by refusing to produce documents relevant to Colón's causes of action that reveal the validity of Colón's public statements for which WMSNJ sued her for defamation in Colón I and Colón II. WMSNJ has ignored the February 5, 2019 Order compelling production of a complete set of documents to Colón by providing only what WMSNJ deems is relevant, producing a second set of 'irrelevant' documents to the court for an *in camera* review encompassing approximately 5,000 documents. Second, the Church-Autonomy Doctrine privilege asserted by WMSNJ, as a grounds for refusing to disclose any document that references WMS's doctrinal material in any form, is improper when the doctrine prevents judicial inquiry into the validity of a religious principal, but does not prevent a determination whether a religious practice is in fact practiced, whether a religious teaching is in fact taught by that religion, or whether a religious organization in the past took a particular action or position. Third, WMSNJ has redacted non-privileged portions of documents, such as publically available names of individuals who may serve as a potential witness, in an effort to prevent disclosure to Colón. In short Colón argues, WMSNJ has become the gatekeeper of discovery, determining what information is privileged, what information is doctrinal, what information is irrelevant, and what

information Colón may access to establish her causes of action. For these reasons, Colón argues, this Court should pierce the various privileges asserted by WMSNJ according to the standard articulated in In re Kozlov, 79 N.J. 232 (1979).

WMSNJ replies that responsive documents relevant to the time period that Colón was a member have been produced to Colón. Therefore, the instant motion regards the documents outside the scope of Colón's discovery, which according to WMSNJ are in Colón's possession, and for this reason should be protected from disclosure and Colón should be compelled to destroy any copies.

Judge Bishop-Thompson found on February 1, 2019, that the disputed discovery documents that were turned-over to WMSNJ, pursuant to the September 29, 2017 Order, did in fact belong to WMSNJ because Gonzalez, who was working on WMSNJ's IT team, instituted a file storage protocol for the benefit of WMSNJ. Basically, this protocol was a back-up system for WMSNJ's email database. This Court also found that WMSNJ, as the holder of the privilege, must create a privilege log when asserting privilege as a basis for withholding discovery. WMSNJ has produced pursuant to R. 4:10-2(e)(1), a privilege log for materials it claims are shielded by the work-product doctrine including non-attorney communications and a privilege log for materials it claims are shielded by the Church Autonomy Doctrine. Colón strongly contests the adequacy of the privilege log on many levels.

A. Legal Analysis

Generally, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or

defense of the party seeking discovery or to the claim or defense of any other party." R. 4:10-2(a). However, pursuant to R. 4:10-3,

> [o]n motion by a party or by the person from whom discovery is sought, the court, for good cause shown or by stipulation of the parties, may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including, but not limited to, one or more of the following:
>
> ...
>
> (b) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
>
> ...
>
> (d) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

In addition, case law requires that the movant bear the burden of persuasion in showing that good cause exists for the issuance of a protective order. Kerr v. Able Sanitary and Environmental Services, Inc., 295 N.J. Super. 147, 155 (App. Div. 1996). "Good cause" is determined by a court upon a detailed analysis of the circumstances of the parties and issues involved. Mugrage v. Mugrage, 335 N.J. Super. 653, 349 (Ch. Div. 2000); Pansy v. Borough of Stroudsburg, 23 F.3d 772, 786 (3d Cir. 1994) ("[g]ood cause is established on a showing that disclosure will work a clearly defined and serious injury to the party seeking closure. The injury must be shown with specificity.")

Presently, WMSNJ seeks to protect three categories of materials – (1) privileged work-product; (2) information and/or documents irrelevant to Colón's outstanding claims in Colón III and Colón IV; and (3) doctrinal materials containing WMS's sermons, teachings, etc. Therefore, as an initial matter, determining whether any of WMSNJ's materials relate to Colón's remaining causes of action in Colón III and Colón IV requires an evaluation of "their relevance to the issues

raised in this litigation," Payton v. N.J. Tpk. Auth., 148 N.J. 524, 535 (1997), prior to a determination that a specific privilege applies to protect relevant information from disclosure.

B. Irrelevant/Relevant Information

New Jersey's discovery rules are to be construed liberally in favor of broad pretrial discovery. Jenkins v. Rainner, 69 N.J. 50, 56 (1976) (stating "our court system has long been committed to the view that essential justice is better achieved when there has been full disclosure so that the parties are conversant with all the available facts."). Under the rules, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. . . ." R. 4:10-2(a). "Relevant evidence," although not defined in the discovery rules, is defined elsewhere as "evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action." Payton v. New Jersey Turnpike Authority, 148 N.J. 524, 535 (1997) (citing N.J.R.E. 401). As noted above in the instant matter, Colón's permitted scope of discovery is limited to the elements of her causes of action in both Colón III and Colón IV.

In Colón III, the Appellate Division reversed dismissal of Colón's hacking claim and the motion to amend that claim permitting Colón to engage in discovery "necessary to pursue the claim" of hacking. The Appellate Division noted that "Colón alleged defendants acknowledged obtaining Colón's IP and email address directly from the websites involved." Accordingly, as stated by the Appellate Division, Colón is permitted to inquire into the claim of hacking/invasion of privacy, and for this reason, is permitted access to information relevant to her claim and/or "any fact of consequence to the determination of the action," Id., that is not otherwise limited by privilege.

Similarly, per Judge Powers August 4, 2017 Order, the scope of permitted discovery in Colón IV includes "(a) whether defendant(s) had probable cause to file *World Mission Society Church of God, A NJ Non-Profit Corporation v. Colón*, No. 2011-17163 and *World Mission Society Church of God v. Colón,* Superior Court of New Jersey, Law Division: Bergen County (Docket No. BER-L-5274-12)(collectively the "Lawsuits"); (b) whether defendant(s) acted with malice in filing the Lawsuits; (c) whether defendant(s) acted intentionally or recklessly with regard to filing the Lawsuits; and (d) the nature and character of defendant(s)' conduct in filing the Lawsuits and during the pendency of the Lawsuits." Accordingly, Colón is permitted a broad line of inquiry in Colón IV regarding the filing of Colón I and Colón II including WMSNJ's probable cause to file, WMSNJ's malice in filing, WMSNJ's intent and/or recklessness in filing as well as the nature and character of WMSNJ's conduct in filing and throughout the lawsuits. Such questions are answerable by the documents and materials in WMSNJ's possession, and are arguably included in the documents that Gonzalez provided to WMSNJ.

For this reason, on February 5, 2019, WMSNJ was ordered to produce to Colón the entire universe of documents Gonzalez produced to WMSNJ pursuant to the September 29, 2017 Order in Colón IV representing approximately seven-thousand documents. The ordered production was in furtherance of providing Colón with materials relevant to Colón's remaining causes of action in Colón III and Colón IV.

Presently, WMSNJ moves for a fourth protective order limiting discovery to only those documents that WMSNJ produced to Colón out of the universe of documents WMSNJ received from Gonzalez pursuant to the September 29, 2017 Order in Colón IV. If this Court was to grant WMSNJ's requested relief, in the absence of a determination of what specific information is actually relevant to Colón's claims, it would only condone WMSNJ's attempt to unilaterally

determine what discovery is relevant to Colón's remaining causes of action. This request is untenable. A determination of relevance is reserved for the Courts. State v. Scharf, 225 N.J. 547, 580 (2016) ("we shall impose on trial courts, as gatekeepers to the admissibility of such evidence, the obligation to perform an express *Rule* 403 weighing of evidence in addition to an assessment for relevance.") Additionally, a determination of relevance is only possible when the discovery materials to be examined are identifiable. For this reason, there has been no judicial determination as to the relevance of the documents WMSNJ now seeks to protect from disclosure as to prevent Colón from utilizing "any documents, or information obtained as a result of being in possession of the Gonzalez Production." In essence, the instant application seeks to "claw back" documents Colón has already been provided by Gonzalez, and seeks an order directing Colón to only utilize those documents WMSNJ has unilaterally determined are permissible and/or relevant.

C. Privileged Information

"Although relevance creates a presumption of discoverability, that presumption can be overcome by demonstrating the applicability of an evidentiary privilege." Id. at 539; R. 4:10-2(a). "A privilege reflects a societal judgment that the need for confidentiality outweighs the need for disclosure." Id.; Hague v. Williams, 37 N.J. 328, 335 (1962). Our Supreme Court has cautioned, that "[d]espite the existence of privileges, however, our desire to attain truth through the adversarial process has led to a disfavoring of such a categorical approach to concerns about confidentiality…in favor of case-by-case balancing." Id.; see United States v. Nixon, 418 U.S. 683, 710 (1974); Dixon v. Rutgers Univ., 110 N.J. 432, 446-47 (1988); State v. Briley, 53 N.J. 498, 505-06 (1969); Hague, 37 N.J. at 335; State v. Szemple, 263 N.J. Super. 98, 101-02 (App. Div.1993), aff'd, 135 N.J. 406 (1994).

At the outset, WMSNJ acknowledges that Gonzalez did not produce documents to Colón containing communications between WMSNJ's legal counsel and the LCG. (Def.'s Brief, pp. 9 & 11, fn. 10). Therefore, the present discovery dispute regarding privilege involves attorney work-product prepared in anticipation of litigation by non-lawyers in pursuit of WMSNJ's objectives and communications among non-lawyers regarding WMSNJ's legal issues and strategy.

The work product doctrine "protects from disclosure those documents and other tangible things that a party or a party's representative prepares in anticipation of litigation." Rivard v. Am. Home Prods., Inc., 391 N.J. Super. 129, 155 (App. Div. 2007) (quoting Laporta v. Gloucester County Bd. of Chosen Freeholders, 340 N.J. Super. 254, 259 (App. Div. 2001)). "Generally, a document will be deemed to have been prepared in anticipation of litigation when the dominant purpose in its preparation was concern for potential litigation, the prospect of which was objectively reasonable." Id. (citing Miller v. J.B. Hunt Transp., Inc., 339 N.J. Super. 144, 150, 770 A.2d 1288 (App. Div. 2001)); see Kelly v. Ford Motor Co. (In re Ford Motor Co.), 110 F.3d 954, 968 (3d Cir. 1997) (that the documents "do not necessarily include legal advice is, as a matter of law, irrelevant provided, as we note above, they were prepared in anticipation of litigation.")

In the instant matter, while there are documents that WMSNJ still contends fall within the purview of attorney-client communications, those documents are appropriately classified as attorney-work product prepared by members of the LCG as a representative of WMSNJ at the behest of legal counsel. Specifically, the communications in question reflect correspondence among members of the LCG regarding "draft testimony of members prepared in anticipation of litigation." Thus, in the absence of the personal involvement of any legal counsel, the discovery documents are appropriately categorized as attorney-work product prepared in anticipation of litigation, rather than attorney-client communications.

When discovery documents are produced in anticipation of litigation, a party may still obtain the documents "only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means." R. 4:10-2(c). Our Supreme Court has articulated, that to pierce a privilege "[t]here must be a legitimate need of the party to reach the evidence sought to be shielded. There must be a showing of relevance and materiality of that evidence to the issue before the court." In re Kozlov, 79 N.J. 232, 243-44 (1979); In re Farber, 78 N.J. 259, 276-77 (1978) (to pierce a privilege requires a showing "by a fair preponderance of the evidence including all reasonable inferences, that there was a reasonable probability or likelihood that the information sought by the subpoena was material and relevant to his defense, that it could not be secured from any less intrusive source, and that the defendant had a legitimate need to see and otherwise use it.")

In the instant matter, Colón seeks to pierce the privilege of WMSNJ's attorney work-product privilege on the basis that the information withheld by WMSNJ is highly relevant to proving her remaining claims in Colón III and Colón IV. Colón directly connects samples of information withheld by WMSNJ to the elements of her claims in Colón III and Colón IV.

Regarding Colón IV, Colón cites to a communication uploaded to the Cultwatch website, which WMSNJ produced as GONZ_0000417, that describes how various individuals felt WMS alienated family members. Such information is directly relevant to Colón's claim that WMS had no probable cause to file a defamation suit when WMS was aware that Colón's public statements regarding the alienation of family members was generally true, in that others actually made those statements as a matter of historical fact. It is important to make clear that such a determination of relevance does not however pass judicial judgment upon the religious practices of WMSNJ, as the

communications are only relevant to show that the practices of WMS and/or the actions of its members had a tendency to isolate individuals from their family, just as Colón advanced in her public comments. Colón argues that this information was not listed on either privilege log produced by WMSNJ, and avers that this information was also not produced by WMSNJ until ordered on February 5, 2019.

In addition, Colón argues that information produced pursuant to the February 5, 2019 Order establishes WMSNJ's malice in filing Colón I and Colón II, a permitted line of inquiry in Colón IV. Specifically, Colón argues that GONZ_0000312-313 reveal that WMSNJ obtained Colón's IP address to be able to connect her to the criticisms discovered on the Cultwatch website. This information, Colón avers, was then disclosed to Colón's former husband, Mark Ortiz, under the pretense that her IP addressed was obtained lawfully through subpoena, in an effort to compel Colón to cease her public criticisms. When WMSNJ's efforts failed, Colón claims that WMSNJ then utilized the information to motivate Ortiz to divorce Colón, which action he initiated shortly thereafter. Colón further avers that when the divorce proceeding did not stop her public criticisms on the website www.examiningthewmscog.com ("Examine Site"), WMSNJ sent cease and desist letters to the hosting company. When the hosting company refused to terminate its services for the Examine Site, WMSNJ filed Colón I. Colón states that none of these documents were produced to her which tend to establish malice and as well as "the nature and character of defendant's conduct in filing Colón I" which is a permitted line of inquiry in Colón IV.

For these reasons, Colón has established a legitimate need for specific information relevant to her limited claims. This information, while initially in the possession of Gonzalez, was produced to WMSNJ who is also the holder of the applicable privileges. Accordingly, the information necessary for Colón to establish her causes of action in Colón III and Colón IV is now

within the control of WMSNJ, who has resisted production throughout the discovery process, based mainly upon the belief that Colón improperly obtained the information from Gonzalez. In any event, a blanket piercing of WMSNJ privilege is inappropriate. Rather an individual determination of relevance of each document, as the initial inquiry, is required prior to piercing any privilege.

D. Doctrinal Materials

Pursuant to the September 29, 2017 Order, Colón was prohibited from inquiring into religious information protected by the Church Autonomy Doctrine. Specifically, paragraph four (4), states that "Plaintiff shall neither seek nor be entitled to discovery barred by the Church Autonomy Doctrine including discovery regarding any of the defendant' religious doctrine, practice and administration or discovery otherwise barred pursuant to the Appellate Division's ruling in Colón v. World Mission Society Church of God, et al., BER-L-3007-13, *aff'd in part and rev'd in part*, A-5008-14T4." Accordingly, the applicable standard, as applied in Colón III and affirmed on appeal, requires:

> Before barring a specific cause of action, a court first must analyze each element of every claim and determine whether adjudication would require the court to choose between "competing religious visions," or cause interference with a church's administrative prerogatives, including its core right to select, and govern the duties of, its ministers. In so doing, a court may "interpret provisions of religious documents involving property rights and other nondoctrinal matters as long as the analysis can be done in purely secular terms." (citation omitted). The court must next examine the remedies sought by the plaintiff and decide whether enforcement of a judgment would require excessive procedural or substantive interference with church operations.
>
> If the answer to either of those inquiries is in the affirmative, then the dispute *is* truly of a *religious nature*, rather than theoretically and tangentially touching upon religion, and the claim is barred from

> secular court review. If, however, the dispute can be resolved by the application of purely neutral principles of law and without impermissible government intrusion (e.g., where the church offers no religious-based justification for its actions and points to no internal governance rights that would actually be affected), there is no First Amendment shield to litigation. McKelvey v. Pierce, 173 N.J. 26, 51-52 (2002).

Therefore, the operative inquiry is whether there is excessive procedural interference with church operations, or excessive substantive interference with church operations. Accordingly, a minor, incidental or tangential touching upon religion does not bar judicial inquiry. Additionally, judicial inquiry is not prohibited if the religious organization "offers no religious-based justification for its actions and points to no internal governance rights that would actually be affected." Id. In such a situation, where the religious organization can offer no justification for its actions or identify an internal right that is affected, government inquiry is permissible.

WMSNJ argues that the Church-Autonomy Doctrine prevents inquiry into any doctrinal matters such as "lesson plans for teaching religious lessons and over two years' worth of Sermons and notes." However, WMSNJ also seeks to prohibit inquiry into whether any statement or action was even made, rather than preventing judicial inquiry into the truth or validity of its content.

Importantly, the matters presently in dispute, are not the same as those raised in the Colón III. There, Colón claimed WMSNJ was a cult that had defrauded its members, which allegation could not be resolved without inquiry into the validity of WMSNJ's beliefs and practices. Crucially, the Appellate Division permitted inquiry into Colón's claim of hacking, a secular inquiry, by reversing dismissal of that claim to permit the parties to engage in discovery. The Appellate Division expressed no reservation as to the impropriety of Colón pursuing her claim of invasion of privacy/hacking.

Presently, no inquiry into WMSNJ's beliefs and/or practices is required, as the inquiry is solely whether WMSNJ did or did not take the actions Colón stated publicly it did. Additionally, this Court, under the auspices of Judge Powers, while providing for the protections afforded WMSNJ by the Church Autonomy Doctrine, similarly permitted Colón to inquire into the elements of her cause of action for malicious abuse of process and intentional infliction of emotional distress. Again, the court has not prohibited Colón from pursing her claims. Accordingly, this court does not, and has not inquired whether the actions of WMSNJ are good or bad, but seeks only to determine whether those actions occurred as relevant to Colón's claims in Colón III and Colón IV.

In short, none of the discovery sought is intended to pass any judgment upon the truth or falsity of WMS and/or WMSNJ's religious principal, religious teaching or religious actions that would prevent judicial inquiry, but rather merely seeks discovery as to whether the religious principal, teaching or action 'in fact' exists and/or occurred at some time. Whether a religious practice is valid is a subjective determination, impermissible for adjudication. However, whether a religious practice actually occurred and was actually practiced is a purely an objective, secular question, requiring no inquiry into the validity of the belief behind the practice. Thus, whether fasting occurred is an objective, secular determination, as the Court is not inquiring whether fasting is good or bad, or desirable or detestable. The Court simply takes no position on the practice, while acknowledging the historical record that the practice occurred at some time and in some manner, at the instigation of WMSNJ.

E. Appointment of a Special Discovery Master

Presently, WMSNJ seeks a fourth protective order to prevent Colón from obtaining approximately 5,000 pages of documents WMSNJ deems irrelevant and therefore, according to

WMSNJ are outside the scope of permissible discovery in Colón III and Colón IV. WMSNJ has produced this universe of documents to this Court for *in camera* review. WMSNJ represents that the entire universe of documents presently in dispute comprises approximately seven thousand pages of material. Previously, WMSNJ represented it can produce the entire universe of documents, which this Court ordered to be produced within ten (10) days on May 3, 2019.

Prior to oral argument on March 29, 2019, WMSNJ produced to Colón approximately 1200 pages of documents that WMSNJ deemed relevant to Colón's remaining causes of action. WMSNJ did not produce to Colón documents deemed subject to the work-product privilege or attorney-client communications that were not removed from the document production by Gonzalez prior to producing same to WMSNJ pursuant to the September 29, 2017 Order. In place of producing privileged materials, WMSNJ produced a privilege log to Colón, which Colón contests. Additionally, WMSNJ did not produce approximately 1800 pages of doctrinal teachings and/or documents purportedly protected by the Church Autonomy doctrine, but rather produced a privilege log, which Colón also contests.

In short, while WMSNJ invoked all the right buzz-words to prevent any inquiry into its organization and/or potential relevant information, WMSNJ, here-to-date, was only successful upon a facial analysis of these doctrines, without any in depth inquiry of the documents in question for fear of entangling the court in the actions of a religious organization. However, with a full command of the nuanced issues in these unconsolidated related matters, and a recognition that the documents in question are no longer strictly within production phase of discovery, but now occupy the realm of admissibility at trial, it is the opinion of this Court that a conclusive determination of the discovery in dispute is warranted.

Heretofore, only a cursory investigation of the contents of these documents was necessary. The facts of record reveal that Judge Powers in issuing the orders in Colón IV regarding the production of discovery, did not undertake a detailed analysis of the documents in question. Of the various orders, Judge Powers previously determined the legitimacy of WMSNJ's objections to producing documents responsive to Colón's demands, as well as outlined Colón's permitted lines of inquiry, based upon representations by counsel. However, neither of these determinations involved the production or subsequent inspection of the disputed documents for relevancy or privilege. The facts of record do not indicate that any document was produced for actual review by the court. Accordingly, the prior orders in these related matters inquired only into the peripheral production of these disputed documents, but did not substantially inquire into the relevancy or the contents of the documents.

In this context, it is apparent, that a fourth protective order is not the answer. Rather a comprehensive determination is warranted of what information is non-privileged and relevant that may satisfy the elements of Colón's remaining causes of action. For these reasons, this Court cannot continue with the adjudication of these related matters solely upon a facial analysis of the disputed documents, and considering the breadth of discovery documents at issue and the availability of scant judicial resources, the Court appoints Joseph Castiglia, Esq., as a Special Discovery Master to discern whether:

1. Discovery is relevant to Colón's cause of action in:
    a. Colón III regarding hacking/invasion of privacy, as permitted by the Appellate Division; and
    b. Colón IV regarding malicious abuse of process and intentional infliction of emotional distress as outlined by the August 4, 2017 Order.

2. Discovery found to be relevant in paragraph (A) above is protected by privilege including:
    a. Attorney-client communications;
    b. Attorney-work product; and
    c. The Church-Autonomy Doctrine;
3. Discovery found to be relevant and privileged is nonetheless admissible based upon a determination of a legitimate need on the part of Michele Colón to establish her causes of action in Colón III and Colón IV, set forth in paragraph (A) above;
4. Discovery materials are irrelevant to Colón's causes of action in Colón III and Colón IV, which shall then be protected from disclosure.

Previously, WMSNJ actions evinced a determination to unilaterally function as the arbiter of relevance. Specifically, WMSNJ willfully failed to provide Colón with relevant discovery permitted by judicial order, either through a consistent conflation of the concepts of privilege and confidential, or by a broad application of the Gonzalez NDA, presently, held to be unenforceable. WMSNJ has unilaterally determined what is privileged and confidential, as well as relevant, thereby depriving this Court of an in camera review of doctrinal materials to determine the accuracy of WMSNJ's claims.

On May 3, 2019, in furtherance of the objectives of this court, and disagreeing with WMSNJ's position that there is no requirement to turnover to this Court documents that WMSNJ alone deems privileged or confidential, and to obtain a complete set of documents for review, this Court ordered WMSNJ to produce "to the Court the complete universe of documents received from Raymond Gonzalez pursuant to the September 29, 2017 Order within ten (10) days of the date of this Order," and also ordered Gonzalez to "produce to this Court an accurate and complete

copy of the flash drive submitted to Defendant, World Mission Society pursuant to the September 29, 2017 Order on compact disc(s) within ten (10) days of the date of this Order."

In response to this Court's May 3, 2019 Order, WMSNJ filed an Order to Show Cause, on May 6, 2019, seeking for this Court to reconsider its order and once again seeking to prevent this Court from reviewing what WMSNJ considers attorney-client and work-product related communications, even on an in camera review basis. On May 13, 2019, WMSNJ filed an Emergent Appeal with the Appellate Division as this Court had not yet responded to WMSNJ filed Order to Show Cause.

It is the opinion of this Court that WMSNJ has engaged in a continuum of behavior of is inapposite with the rules of discovery, usurping this Court's role in determining relevancy and privilege by failing to provide this Court with the requested documents, and lacking faith in this Court to protect appropriately privileged and/or confidential information. Based on the forgoing, WMSNJ shall at this time be responsible to pay for the services of the Special Discovery Master hereinafter appointed to review and categorize the disputed discovery documents. The responsibility of WMSNJ to pay the fees of the Special Discovery Master is subject to allocation at the conclusion of these cases.

V. Conclusion

For the aforementioned reasons,

- The Gonzalez's Motion for Declaratory Judgment is GRANTED and the Gonzalez NDA is held to be invalid, unenforceable and void against Gonzalez;
- WMSNJ's Motion for a protective order in Colón III and Colón IV is DENIED WITHOUT PREJUDICE; and

- Joseph Castiglia, Esq. is hereby appointed as a Special Discovery Master pursuant to the Order Appointing Joseph P. Castiglia, Esq., To Serve As Special Discovery Master entered May 13, 2019.

May 13, 2019

Hon. Avis Bishop-Thompson, J.S.C.

Hon. Rachelle Lea Harz, J.S.C.