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

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

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PRELIMINARY STATEMENT

Defendant Michele Colón has maintained from the beginning of this litigation that this lawsuit is a SLAPP suit. See, e.g., LoBiondo v. Schwartz, 199 N.J. 62, 72 (2009). The Plaintiff's sole purpose in bringing this litigation is to intimidate and harass Ms. Colón. The Plaintiff is a doomsday cult that is predicting the world is going to end by the end of this year. However, just in case its prediction is wrong, the Plaintiff is seeking to achieve two long-term goals with this litigation. First, the Plaintiff is seeking to silence Ms. Colón's truthful and well-justified criticisms of the Plaintiff. Second, the Plaintiff is seeking to gather intelligence on Ms. Colón's activities through discovery. The Plaintiff knows that Ms. Colón has been successful in helping members of the Plaintiff escape the cult. Ms. Colón also provides assistance to families who still have loved ones inside the cult. The Plaintiff wants to put an end to those activities. If this lawsuit is permitted to go forward, the Plaintiff will seek to use the discovery process to learn who Ms. Colón has been talking to, and what strategies she and others are employing to assist the families of the Plaintiff's members, and members of the Plaintiff who want to leave. Armed with such information, the Plaintiff will obviously try to run interference on those efforts and sabotage any opportunities that its members might have to break free. This would lead to devastating, heartbreaking consequences for many people.

None of this is mere speculation. The Plaintiff has already shown its hand in an almost identical lawsuit that was litigated in Virginia earlier this year. That lawsuit was brought against Ms. Colón and Tyler Newton (who the Plaintiff is now seeking to add as a defendant in the instant case). (See Va. Compl., 2nd Grosswald Cert., Ex. 25.) Ms. Colón was dismissed from the case for lack of personal jurisdiction. (See Zborovsky Cert., Ex. 3.) Subsequently, the Plaintiff sought the following discovery from Mr. Newton:

> Interrogatory #11
>
> Identify anyone you claim to be a "victim" and any member of the "families" you claim to have been "administering" as a result of actions of the Plaintiff.
>
> Request for Production #17
>
> Provide copies of any communications, including, but not limiting your response to letters, faxes, or emails, to or from anyone you claim to be a "victim" of the Plaintiff and any member of the "families" you claim to have been "administering" as a result of actions of the Plaintiff.

(Pl.'s 1st Set of Interrogatories & 1st Set of Requests for Production, Apr. 16, 2012, 2nd Grosswald Cert., Ex. 8.) Those discovery demands leave no doubt what the Plaintiff was trying to do — discover which families and individuals its critics are working with, so it can identify which of its members are at risk of defecting, and then take steps to block those defections. It goes without saying that those discovery demands are completely irrelevant in a defamation lawsuit where the challenged statements have nothing to do with any of the specific families or individuals whose identities were being sought.

The Plaintiff showed its hand again in the Virginia lawsuit when it extended a settlement offer to Ms. Colón and Mr. Newton. In that settlement offer, the Plaintiff offered to bring an end to litigation against both Defendants - but not if they merely retracted the challenged statements, as one might expect. Rather, the Plaintiff demanded that, in return for ending the litigation, Ms. Colón and Mr. Newton would have to "remove all references to [the Plaintiff] and all those affiliated in any manner with [the Plaintiff]." (Letter from Dozier to Berlik, May 4, 2012, 2nd Grosswald Cert., Ex. 9.) Ms. Colón and Mr. Newton would have also had to sign on to an "agreement of non-disparagement moving forward." (Id.) In other words, in order to settle the case, Ms. Colón and Mr. Newton would have had to surrender all of their free speech

with respect to the Plaintiff (and all other WMSCOG entities as well) regardless of whether their speech was true or false, defamatory or not. The settlement offer also required "Confidentiality." (Id.) The settlement offer is significant because it reveals that the Plaintiff's desire to suppress speech goes far beyond the challenged statements presented in its pleadings.

The Plaintiff's desire to suppress information even extended to discovery documents. On July 6, 2012, the Plaintiff moved the Virginia court for a protective order. That protective order would have prevented Mr. Newton from disclosing the contents of any documents that the Plaintiff produced in discovery (even if those documents proved that the challenged statements were true). Naturally, on July 20, 2012, the court denied the Plaintiff's motion:

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

World Mission Soc. Church of God v. Colón, Decision & Order, J. Maxfield, CL-2011-17163 (Jul. 20, 2012 Jud. Cir. Va.) (2nd Grosswald Cert., Ex. 10.) Not surprisingly, after that decision the Plaintiff repeatedly asked to push back the discovery due date (the Plaintiff had already received previous extensions). After missing its discovery deadline, and being faced with sanctions, the Plaintiff finally agreed to voluntarily dismiss the case against Mr. Newton on September 7, 2012. (2nd Grosswald Cert., Ex. 11.) The case ended without any significant discovery ever being produced by the Plaintiff.

The actions taken by the Plaintiff in the Virginia lawsuit reveal the Plaintiff's true intentions:

- to silence all criticism of itself, whether that criticism is defamatory or not;
- to discover which families the Plaintiff's critics are cooperating with, so that the Plaintiff can block any attempts by those families to help their loved ones;
- to produce no significant discovery of its own; and
- to never litigate the underlying issues on the merits, while creating repeated delays which wear down its adversary and drive up its adversary's litigation costs.

Those are the quintessential characteristics of a SLAPP-Plaintiff.

That leads to the instant case. Ms. Colón immediately recognized the instant case as another SLAPP suit. The papers filed by the Plaintiff in opposition to Ms. Colón's motion to dismiss only serve to reinforce that point. In its opposition papers, the Plaintiff has made numerous factual assertions that it knows to be false. It repeatedly asserts claims over statements which, on their face, are not of and concerning the Plaintiff. It claims it has been damaged even in circumstances where it could not possibly have been damaged. It has asserted a cause of action that it knows (or at least its lawyers should know) that it has no standing to bring. It pretends there is a controversy over issues even where there is no material disagreement between the parties. Furthermore, although it claims it has suffered damage as a result of members who have defected and stopped donating, it is unwilling to identify who those former members are, so that Ms. Colón may inquire as to the real reasons they left the Plaintiff's church. Perhaps most devastatingly, the Plaintiff has attempted to put forth a justification for its tactic of intimidating witnesses who testify against it — a tactic for which there is no justification at all.

The Plaintiff has now moved to amend its Complaint with "stylistic" changes that are designed to repackage its frivolous claims in a way that supposedly makes them seem legitimate.

Ms. Colón again respectfully requests that this Court recognize this lawsuit for what it is — an illegal and frivolous SLAPP suit — and grant Ms. Colón's Motion to Dismiss and Motion to Strike for the reasons described below. Ms. Colón further requests that this Court find that the filing of this lawsuit was frivolous, and that this Court grant Ms. Colón leave to file a motion for sanctions.

ARGUMENTS IN SUPPORT OF MOTION TO DISMISS

I. The Plaintiff's Complaint Should Be Dismissed Because the Plaintiff Has Used Its Legal Filings to Intimidate Witnesses and Ms. Colón Can No Longer Be Assured of Receiving a Fair Trial

In ¶ 27 and ¶ 28 of the Plaintiff's Original Complaint, the Plaintiff accused Ms. Colón of making defamatory statements during court testimony. Ms. Colón testified in a child-custody hearing. The mother was a member of the Plaintiff and the father was not. Ms. Colón testified on behalf of the father. Her testimony included a description of the Plaintiff's treatment of children.

The Plaintiff's attempt to sue Ms. Colón for that testimony was unlawful, and was probably a crime. As Ms. Colón explained in her initial brief on Pages 10 - 11, such testimony is covered by the litigation privilege and is therefore non-actionable. Suing a person for activity that is non-actionable is a prima facie violation of New Jersey's frivolous litigation statutes. See R. 1:4-8; N.J.S.A. 2A:15-59.1. Lawyers have been sanctioned in the past for attempting to sue witnesses for defamation arising out of witness testimony. See, e.g., Gooch v. Choice Entertaining Corp., 355 N.J. Super. 14, 20 (App. Div. 2002) ("His pursuit of the defamation claim in the face of the absolute immunity warrants . . . the imposition of sanctions under the frivolous litigation statute.") Moreover, the New Jersey Code of Criminal Justice explicitly prohibits retaliation against a witness:

> 2C:28-5. Tampering with witnesses and informants; retaliation against them.
>
> b. Retaliation against witness or informant. A person commits an offense if he harms another by an unlawful act with purpose to retaliate for or on account of the service of another as a witness or informant. The offense is a crime of the second degree if the actor employs force or threat of force. Otherwise it is a crime of the third degree.

Because frivolous claims are unlawful, and because Ms. Colón was harmed by having to defend against the frivolous claim, and because the purpose of the claim was to retaliate against Ms. Colón for her testimony, it would appear that all of the elements of that crime have been established.

The Plaintiff's response has only compounded the problem. The Plaintiff is now denying that it ever complained that Ms. Colón's testimony was defamatory:

> Defendant Colón not only made false allegations on the internet, statements at public hearings, but also in court, during a child-custody battle. Though these statements were salacious and malicious, they are not complained-of as defamatory in the Complaint.

(Pl.'s Br., p. 30.) This is one of quite a few false statements that the Plaintiff has inserted into its brief. The veracity of that assertion can be tested fairly easily by reviewing the manner in which the Plaintiff introduced the issue in ¶ 27 of its Original Complaint:

> Colón's defamatory attacks are continuous and ongoing. As recently as June 27, 2012, Colón appeared at a child-custody trial in New York, during which she repeatedly made outlandish, derogatory, defamatory, and blatantly false statements concerning the World Mission Society, Church of God.

After listing some of Ms. Colón's alleged testimony in ¶ 28, the Complaint transitioned to a new topic in ¶ 29 this way: "Beyond these instances of public defamation . . . ." In other words, the Original Complaint presented Ms. Colón's testimony in ¶ 28, and described it as defamatory in

both the preceding and subsequent paragraphs. The Plaintiff was clearly attempting to bring a defamation claim arising out of Ms. Colón's testimony. It is only now, with the realization that it will be sanctioned if it pursues this claim any further, that the Plaintiff is pretending that it never intended for Ms. Colón's testimony to be litigated in the instant case.

As if denying what the Plaintiff had done was not bad enough, the Plaintiff has gone even further. The Plaintiff has attempted to put forth a justification for its tactic of intimidating witnesses who testify against it. The Plaintiff claims that the inclusion of the testimonial allegations was justified because it "describes a far-reaching campaign on the part of Ms. Colón to defame and destroy Plaintiff World Mission." (Pl.'s Br., p. 30.) This is an unacceptable strategy. The Plaintiff knows that it cannot sue Ms. Colón for her testimony. So instead the Plaintiff is attempting to lump her testimony into a larger category, which the Plaintiff defines as Ms. Colón's "campaign." The Plaintiff is now suing for Ms. Colón's "campaign" instead of suing for Ms. Colón's testimony. Yet, if the Plaintiff were to recover damages arising out of that "campaign," and Ms. Colón's testimony were to be included in that campaign, then the damages recovered would, in part, be damages arising out of Ms. Colón's testimony. In effect, the Plaintiff is attempting to do an end run around the witness immunity rule.

Such a strategy undermines the very purpose of the rule. "The absolute protection afforded [testifying] individuals is designed to ensure that their own personal interests — especially fear of a civil action, whether successful or otherwise — do not have an adverse impact upon the discharge of their public function." Toker v. Pollak, 44 N.Y.2d 211, 219 (1978). In other words, witnesses need to know that they can testify safely, and without fear of being sued. If a testifying witness could be sued simply by having their testimony characterized as being part of a broader "campaign," then the privilege would be eviscerated.

Such a strategy amounts to an attempt at witness intimidation. The Plaintiff had only two purposes for including ¶ 27 and ¶ 28 in the Complaint. The first was to deter Ms. Colón from testifying against the Plaintiff in any other forum. The second was to send a message to anyone else who may be thinking of testifying against the Plaintiff (including potential witnesses in the instant case) that they had better think twice. The inclusion of ¶ 27 and ¶ 28 in the Complaint, and the Plaintiff's subsequent attempt at rationalizing them, proves what Ms. Colón has been saying all along — the instant case is a SLAPP suit, and it was filed to intimidate the Plaintiff's critics, not with the expectation of prevailing on the merits.

Moreover, if the Plaintiff truly believed that Ms. Colón had lied on the witness stand, then it could have contacted the appropriate district attorney's office and filed a perjury complaint. Of course, if the Plaintiff had done that, then the district attorney would have necessarily needed to investigate the Plaintiff's treatment of children in order to determine if Ms. Colón was actually lying or not. It is no surprise that the Plaintiff chose not to pursue that route. Instead, the Plaintiff accused Ms. Colón of lying on the witness stand in the context of a civil suit, where the Plaintiff could simply amend the Complaint and drop the allegation after having sent its message of intimidation to Ms. Colón and any other future witnesses who may be antagonistic to the Plaintiff.

Although the Plaintiff has dropped the testimonial claims from its Proposed First Amended Complaint, the damage has already been done. Amending the complaint does not solve the problem. The Plaintiff has already let it be known that if a witness comes forward to testify against it, they will be sued. The Plaintiff has further let it be known that it will attempt to circumvent the witness immunity rule by lumping witness testimony into a broader category

of activities that are not covered by the immunity rule. The Plaintiff has also let it be known that if anyone tries to hold it accountable for doing these things, it will lie, and deny doing them.

Now that the word is out that the Plaintiff is willing to do these things, Ms. Colón is in the unenviable position of trying to recruit witnesses to help support her case - from a pool of potential witnesses who have now been implicitly threatened by the Plaintiff. Any witness who agrees to cooperate with her is likely to ask for information about the case. Prospective witnesses will want to see the Complaint, and any substantive motion papers that flesh out the litigant's positions. As soon as a prospective witness sees those papers, they will see exactly what the Plaintiff wants them to see — that the Plaintiff neither believes in nor respects the witness immunity rule, and will do what it can to sue the person who testifies against it. Witnesses are not likely to want to cooperate with Ms. Colón after seeing that.

It can now be expected that Ms. Colón is going to have difficulty recruiting cooperating witnesses to assist with her case. Ms. Colón may never even be aware of the extent that the Plaintiff's intimidation is undermining her case. Witnesses who learn of this case and who possess relevant information may simply decide to not come forward, without Ms. Colón or her counsel ever becoming aware that such a witness existed. The result is that Ms. Colón can no longer be assured that she is going to receive a fair trial if this litigation is allowed to continue.

The witness intimidation inflicted by the Plaintiff was not done by accident. All of the Plaintiff's lawyers have been competent and experienced. Mr. Dozier[1] and Mr. Miltenberg both came into this case as specialists in defamation law. They both necessarily had to know about the witness immunity rule. See Gooch, 355 N.J. Super. at 20 (holding that lawyer, "as an

officer of the court, knew, or should have known, the law regarding immunity"). Nevertheless, Mr. Dozier included the testimonial claims in the Original Complaint. Mr. Miltenberg admitted that the inclusion of those testimonial paragraphs was deliberate (not an oversight) and he attempted to justify that decision as a strategic choice. (Pl.'s Br., p. 30.) The Plaintiff and its attorneys should be required to bear full responsibility for their unlawful efforts to intimidate witnesses.

Because Ms. Colón's right to a fair trial has been severely compromised, Ms. Colón respectfully requests that this Court:

1) make a finding that:

   a. the inclusion of ¶ 27 and ¶ 28 in the Original Complaint; and

   b. the Plaintiff's subsequent denial that it was attempting to sue Ms. Colón for her testimony (Pl.'s Br., p. 30); and

   c. the Plaintiff's attempt to justify the inclusion of ¶ 27 and ¶ 28 in the Original Complaint as a strategy that consisted of grouping Ms. Colón's non-actionable testimony into a broader category of allegedly actionable activity (id.);

   were all done in bad faith, solely for the purpose of harassment, delay or malicious injury; and

2) make a finding that the Plaintiff and its attorneys knew, or should have known, that the above actions were without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law; and

3) make a finding that such actions were frivolous; and

4) dismiss all of the Plaintiff's claims, with prejudice.

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[1] Mr. Dozier died before ever being admitted pro hac vice, so he was never an attorney of record in this case. Nevertheless, the Plaintiff has represented that Mr. Dozier was primarily responsible for the contents of the Original Complaint.

II. Ms. Colón's Motion to Dismiss is Timely

In light of the facts presented above illustrating that the Plaintiff has a history of using unwarranted delays as a SLAPP strategy to wear down its adversaries and drive up their litigation costs, it should come as no surprise that the Plaintiff is now asking to delay a decision on the instant motion so that the Court could instead make a decision on a new motion, calendared for a few weeks later. Such a delay is completely unnecessary. The new motion seeks to amend the Complaint. That motion and the Proposed First Amended Complaint were included as exhibits to the attorney certification filed by the Plaintiff. The Plaintiff has conceded that "all of Defendant Colón's arguments will still apply to the Proposed Amended Complaint just as they apply to the Complaint as it stands now." (Pl.'s Br., p. 4.)

Because the substantive arguments raised in Ms. Colón's motion remain the same under either complaint, there is no reason for Ms. Colón to suffer a delay to have this matter resolved. Ms. Colón's motion to dismiss is timely, and she respectfully requests that this Court proceed to address the issues raised in Ms. Colón's motion.[2]

III. Claims for Trade Libel Are Still Lacking In Special Damages and Must Be Dismissed

As explained in Ms. Colón's initial brief on Pages 4 - 7, the Plaintiff has failed to plead the special damages element of its trade libel claims with specificity, as required by New Jersey law. See Juliano v. ITT Corp., 1991 U.S. Dist. LEXIS 1045, *14-15 (D.N.J. Jan. 22, 1991).[3]

[2] This request is without prejudice to Ms. Colón's right to address - at a later time - new issues that have been raised by the Proposed First Amended Complaint and which are not addressed by the instant motion, including, but not limited to, issues pertaining to the addition of new parties.

[3] All unpublished cases cited in this brief and not previously submitted are attached to the 2nd Grosswald Certification as Exhibit 12.

The Plaintiff's Proposed First Amended Complaint also fails to provide the required specificity. Therefore, the Plaintiff's trade libel claims must be dismissed.

The Plaintiff and Ms. Colón disagree as to the pleading standard imposed by New Jersey law for the special damages element of a trade libel claim. Therefore, it may be helpful to flesh out in detail what New Jersey's pleading standard is. As explained in Ms. Colón's original brief:

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

Id. at *14-15.

There is quite a bit of substance packed into that rule, so to assist the court, the undersigned will attempt to unpack the rule and restate it in a workable organizational framework. To start with, the Juliano rule states that New Jersey law provides two approaches for plaintiffs seeking to plead trade libel claims. The first approach is to allege the loss of particular customers by name (hereinafter the "Customer Identification Approach"). The second approach is to allege a general diminution in the Plaintiff's business (hereinafter the "Lost Profits Approach"). However, as Juliano explains, the Plaintiff may only rely on the Lost Profits Approach if it also alleges facts showing that it could not utilize the Customer Identification Approach. In other words, the Customer Identification Approach is the preferred approach, because it is more reliable and leads to far less speculation as to the damages. Moreover, if the

Plaintiff relies on the Lost Profits Approach, then there are three additional sets of facts that must be pled: facts showing an established business; facts showing the amount of sales for a substantial period preceding the publication; and facts showing the amount of sales for a period subsequent to the publication. See also Floorgraphics, Inc. v. News Am. Mktg. In-Store Servs., 2006 U.S. Dist. LEXIS 70834, *21-22 (D.N.J. Sept. 29, 2006) (stating that requirement to allege pre- and post-disparagement sales is only applicable to a plaintiff that uses the Lost Profits Approach). Regardless of which approach the Plaintiff takes, the Plaintiff must always allege causation facts, or "extrinsic facts showing that such special damages were the natural and direct result of the false publication." Juliano v. ITT Corp., 1991 U.S. Dist. LEXIS 1045, *14.

As will be shown below, both of the Complaints submitted by the Plaintiff fail to satisfy the pleading standard under either the Customer Identification Approach or the Lost Profits Approach.

A. Customer Identification Approach

Under the Customer Identification Approach, the Plaintiff must plead two sets of facts:

1) The names of specific customers who withheld their business; and

2) extrinsic facts showing that those customers withheld their business as the natural and direct result of the false publication.

See Juliano v. ITT Corp., 1991 U.S. Dist. LEXIS 1045, *14-15.

The Customer Identification Approach can be summed up as two elements: the Names Element and the Causation Element. Neither of the Plaintiff's two complaints provide the names of any particular people who stopped donating to the Plaintiff, or who discontinued their membership with the church, as a result of any of the challenged statements. Therefore, both of

the Plaintiff's complaints fail to allege the two elements of Names and Causation. That means that the Plaintiff has failed to satisfy the pleading standard for the special damages element of a trade libel claim under the Customer Identification Approach.

B. Lost Profits Approach

Under the Lost Profits Approach, the Plaintiff must satisfy three elements. The first element can be referred to as the "Lost Sales Element," and it requires the Plaintiff to establish that it is running a business (or a nonprofit) and that it has suffered a loss of sales (or donations) during the relevant time frame. Next, the Plaintiff must establish the "Causation Element." Similar to the Causation Element of the Customer Identification Approach, this element requires the Plaintiff to show that the loss in sales (or donations) was the natural and direct result of the false publication. Finally, the Plaintiff must satisfy what will hereinafter be referred to as the "Justification Element," which requires the Plaintiff to plead facts showing that the Plaintiff could not utilize the Customer Identification Approach, and is therefore justified in relying on the Lost Profits Approach.

1. Lost Sales Element

There are three sets of facts that the Plaintiff must plead in order to satisfy the Lost Sales Element:

1) facts showing an established business (or nonprofit);

2) facts showing the amount of sales (or donations) for a substantial period preceding the publication; and

3) facts showing the amount[4] of sales (or donations) for a period subsequent to the publication.

See Juliano v. ITT Corp., 1991 U.S. Dist. LEXIS 1045, *14-15.

The Plaintiff has only pled the first one. It has pled that it is a nonprofit organization which survives on donations. However, it has not pled any facts showing the amount of its donations for a period before the challenged publications, and it has not pled any facts showing the amount of its donations after the challenged publications. Therefore, the Plaintiff has not satisfied the Lost Sales Element of the Lost Profits Approach.

2. Causation Element

The Plaintiff has also failed to satisfy the Causation Element of the Lost Profits Approach. The Causation Element requires the Plaintiff to plead extrinsic facts that show that the business loss occurred as the natural and direct result of the challenged statements being published. See Juliano v. ITT Corp., 1991 U.S. Dist. LEXIS 1045, *14-15. This rule is stated in a slightly different way in the two New Jersey trade libel cases cited by the Plaintiff, Patel and Graco. Each of those cases state that the plaintiff must prove that the business loss was not caused by any other factors. See Patel v. Soriano, 369 N.J. Super. 192, 249 (App. Div. 2004); Graco, Inc. v. PMC Global, Inc., 2009 U.S. Dist. LEXIS 26845, *121-22 (D.N.J. Mar. 31, 2009).

The Plaintiff's brief offers three alleged facts to try to establish causation:

[4] While the rule expressed in Juliano and its progeny explicitly states that the "amount of sales" must be pled, other cases, such as Graco, Inc. v. PMC Global, Inc., 2009 U.S. Dist. LEXIS 26845, *122 (D.N.J. Mar. 31, 2009), seem to be willing to accept a description of how and when the sales dropped off in lieu of actual amounts, provided that other indicia of reliability are present in the pleadings, such as allegations providing a degree of certainty regarding damages and allegations establishing "but for" causation. Nevertheless, the instant Plaintiff's pleadings do not contain allegations establishing certainty or causation, as discussed below.

- Plaintiff has lost members who have been intimidated by Defendant's attacks on Plaintiff;
- Members who fear harassment at work and in public from those who have read Defendant Colón's false attacks have left the Church; and
- The Complaint alleges that the Plaintiff has lost prospective members.

(See Pl.'s Br., p. 33.) There is an obvious problem with the Plaintiff's attempt to use those three facts to support its trade libel claim. All three of those facts come from ¶ 20 of the Original Complaint. Yet, Ms. Colón moved to strike that paragraph from the Original Complaint, and the Plaintiff responded by agreeing to withdraw all of the ¶ 20 language. (Pl.'s Br. p. 35.) Therefore, those facts are no longer available to the Plaintiff to support its trade libel claim.

Nevertheless, the Plaintiff argues that it should not have to adhere to such a strict pleading standard. To support its position, the Plaintiff cites Graco, Inc. v. PMC Global, Inc., 2009 U.S. Dist. LEXIS 26845 (D.N.J. Mar. 31, 2009). Yet, in Graco the trade libel claimant alleged causation facts that were quite substantial. The trade libel claimant was a defendant who brought the trade libel cause of action as a counterclaim against the plaintiffs, including Graco, Inc. The claimant alleged that Graco had sent a letter to all of the nationwide distributors within a particular industry. Id. at *17. In that letter, Graco threatened to stop doing business with any distributor that did business with the trade libel claimant. Id. The claimant alleged that Graco intended that letter to deter distributors from doing business with the claimants, thereby establishing causation. Id. at *17-18. This is in stark contrast to the allegations in the instant case, where the Plaintiff asserts that Ms. Colón's motive was to rescue her husband from the cult and save her marriage, rather than to deter donors from making contributions to the Plaintiff. (See, e.g., Proposed First Am. Compl. ¶ 2, 73, 78.)

The Graco claimant further established causation by alleging that since the letter was sent, it had been unable to find any new customers, and its existing customers stopped buying from it. Graco, 2009 U.S. Dist. LEXIS 26845, at *18. The claimant then went on to allege facts showing that it was offering a high quality product line. Id. In other words, the claimant alleged facts that excluded one of the most likely alternative explanations for its troubles - that its product line was deficient. There are no such equally powerful allegations being made in the instant case. The instant Plaintiff fails to allege any facts (in either complaint) that suggest that it is deserving, or would be able to obtain, any meaningful revenues even if the challenged statements had never been published.

Perhaps the most important causation fact alleged in Graco is the allegation "that distributors said that they would have carried or continued to carry [the claimants'] products but for Graco's refusal to deal with any distributor carrying competing products." Id. This fact explicitly established Graco's letter as the cause of the claimant's lost business and excluded all other possible contributing factors. There is no such similar fact alleged in the instant case. The instant Plaintiff never claims that "but for" the challenged statements, it would have continued receiving a certain amount of donations. The claimant in Graco had no qualms about repeating in its pleadings what the distributors had told it regarding their reasons for cutting off their business relationship. Yet, the instant Plaintiff never mentions in either of its two complaints what any former members or former donors have said to the Plaintiff about their reasons for cutting ties. Presumably, that is because their reasons for leaving the church have more to do with the Plaintiff's own abusive practices than with anything that Ms. Colón has said about those practices.

The Plaintiff also seems to believe, incorrectly, that it can satisfy its pleading obligations simply by adopting a very loose "substantial factor" standard. On Page 31 of its brief, the Plaintiff points to a New York case applying New York law, Sandler v. Simoes, 609 F. Supp. 2d 293 (E.D.N.Y. 2009). That case holds that "[a] party alleging trade libel must establish that the communication was a substantial factor in inducing others not to conduct business with it . . . ." Id. at 302. That case is obviously not applicable in New Jersey.[5] While in New Jersey there are some cases that have utilized "substantial factor" language, those same cases still impose very strict causation standards, especially where lost profits are being used instead of customer identification. For instance, Patel employs a variation of the substantial factor standard when it states that "plaintiff must show the falsehood was communicated to a third person and played a material and substantial part in leading others not to deal with plaintiff." Patel, 369 N.J. Super. at 248 (App. Div. 2004). However, Patel also states that when using the Lost Profits Approach rather than the Customer Identification Approach, "the possibility that other factors caused the loss" must be "satisfactorily excluded." Id. at 249. Therefore, the Plaintiff has failed to satisfy the Causation Element of the Lost Profits Approach.

3. Justification Element

The Justification Element requires the Plaintiff to plead facts justifying its decision to rely on the Lost Profits Approach rather than the Customer Identification Approach. The Plaintiff cites two cases to support its contention that it does not need to make use of the Customer Identification Approach — Patel and Graco. However, both of those cases impose

[5] Incidentally, the New York case cited by the Plaintiff also requires that when pleading special damages for trade libel, "the persons who ceased to be customers must be named and the losses itemized." Sandler, 609 F. Supp. 2d at 303. It appears that in any jurisdiction, the Plaintiff has failed to sufficiently plead its trade libel claim.

strict standards that do not favor the Plaintiff. Both Patel and Graco state that lost profits may substitute for customer identification only if customer identification is unreasonable. Patel, 369 N.J. Super. at 248-49; Graco, 2009 U.S. Dist. LEXIS 26845, at *121-22. Moreover, even where customer identification is unreasonable, lost profits do not always constitute an acceptable substitute. The cases say that lost profits "may suffice," which means that sometimes lost profits suffice and sometimes they do not. Patel, 369 N.J. at 248-49; Graco, 2009 U.S. Dist. LEXIS 26845, at *122. The cases also identify the most important factors in determining whether lost profits will suffice. The first of those factors is that the loss must be established with reasonable certainty. Patel, 369 N.J. at 248-49; Graco, 2009 U.S. Dist. LEXIS 26845, at *122. The second of those factors is that the possibility of other factors causing the loss must be satisfactorily excluded. Patel, 369 N.J. at 248-49; Graco, 2009 U.S. Dist. LEXIS 26845, at *122. (The second factor obviously overlaps with the Causation Element discussed above.)

In applying those rules, Graco held that the special damages element of trade libel was adequately pled, even though customers were not specifically named.[6] Graco, 2009 U.S. Dist. LEXIS 26845, at *122. The court allowed lost sales allegations to substitute for customer identification in the pleadings because the allegations satisfied both of the two factors discussed above — Certainty and Causation.

First, the loss was pled with reasonable certainty. The claimants alleged that Graco's letter containing the trade libel was sent to all of the distributors nationwide within the relevant industry. Id. at *17. Such an allegation created certainty because there was a finite number of

[6] Patel never applied the above rules to pleading requirements. Rather, it applied appellate review to a final judgment issued by the lower court after a bench trial, and says nothing that would suggest that the pleading requirements discussed in other trade libel cases should be lowered.

distributors, and it was known that they had all received the letter in question. In contrast, the instant Plaintiff asserts that the challenged statements at issue were read by "millions of people," a number that was pulled out of thin air by the Plaintiff. (See Proposed First Am. Compl. ¶ 31, ¶ 112.) The Plaintiff's assertion that the challenged statements were read by "millions of people" sounds very much like the plaintiff's assertion in Mayflower Transit, LLC v. Prince, 314 F. Supp. 2d 362, 378-79 (D.N.J. 2004). The Mayflower plaintiff claimed that it was damaged by a defendant's website "because of the reach of the Internet." Id. The court held such a claim to be insufficient to make out a prima facie case for trade libel. Id. Likewise, the instant Plaintiff makes no attempt to identify who actually read the challenged statements, or to distinguish people who left the church because they read the challenged statements from people who left the church for other reasons. In fact, the instant Plaintiff does not even claim that anyone who left the church or stopped donating ever read any of the challenged statements at all. Thus, the certainty factor is lacking.

The second factor that allowed the Graco claimant to use lost profits instead of customer identification was the causation factor. As explained above, the claimant explicitly pled "but for" causation. The claimant also presented facts to exclude the possibility that its lost profits were the result of an inferior product line. Again, the instant Plaintiff has presented no similar facts. Therefore, the Plaintiff is not justified in relying on the Lost Profits Approach, and it must name the donors who have allegedly withheld their contributions as a result of the challenged statements.

In summary, the Graco court gave the claimant a pass on the obligation to name customers because the satisfaction of the two alternative factors (Certainty and Causation) gave the court confidence that the claim had enough merit to go to discovery, and was not simply a

fabricated claim designed to harass an adversary. In the instant case, where the allegations suggest an uncertain and apparently unlimited amount of damage (i.e. - "millions of people have read the posts"), and where allegations of causation are conclusory at best, this Court cannot have any confidence that the Plaintiff's claim is legitimate, and that the instant case is not a SLAPP suit.

It is also important to note that even though the Graco court allowed the claimant to use the Lost Profits Approach rather than the Customer Identification Approach, the court explicitly stated that such leeway only applied at the pleadings stage. The court warned the claimant that to prevail on the trade libel claim, the claimant would eventually have to "identify the businesses who stopped dealing with it, or explain why it cannot prove lost profits with reasonable certainty while excluding the other factors that could cause the loss." Graco, 2009 U.S. Dist. LEXIS 26845, at *122. This is extremely significant, because the Plaintiff has taken the position that it should never have to disclose its former donors. (Pl.'s Br., p. 34.) Even if this Court were to determine that the Plaintiff's trade libel complaint without donor identification is sufficient to survive a motion to dismiss, the Plaintiff is now admitting that it never intends to provide the donor identification that it must prove to ultimately prevail on its claim.

The Plaintiff argues that customer identification is not required by law and that the Plaintiff should be permitted to prove its claim with other proofs. Yet, the cases cited by the Plaintiff, particularly Graco, demonstrate that customer identification is central to the trade libel cause of action, and that a high bar must be met in order for a trade libel plaintiff to be excused from its customer identification obligation. Because the Plaintiff has stated that it is opposed to disclosing its donor "customers," and because the Plaintiff has failed to plead facts sufficient to

show that its obligation to disclose donors should be excused, the Plaintiff's trade libel claim must fail.

Moreover, the alternative proofs offered by the Plaintiff fall short. The Plaintiff says it can prove its case with "numeric differences in volunteers, attendance, and donations, or a professional accounting." (Pl.'s Br., p. 34.) None of those proofs would exclude the possibility that other factors caused the loss. Variations in volunteers, attendance, or donations could all be attributed to any number of causes, including the economy, a change of seasons or weather, competition from other nonprofit organizations, and most likely, the Plaintiff's own delusional and abusive beliefs and practices.[7]

It would be extremely dangerous to free speech if any time a critic's comments coincided with a drop in an organization's financial numbers, the organization could force the critic into discovery, without having to show any greater connection between the speech or the alleged damages. That is why the Customer Identification Approach is the preferred approach. The customers are in the best position to explain what motivated them to withhold their business. Customer testimony eliminates the need for the fact-finder to try to interpret the numbers that are produced in a "professional accounting" and to speculate as to why the numbers look the way they do. By forcing a trade libel plaintiff to identify specific customers in the pleadings, it helps to screen out bogus claims right at the beginning of the litigation.

[7] For instance, the Plaintiff teaches its members that the world is going to come to an end by the close of 2012. There is a good chance that by January of next year, many members of the Plaintiff will renounce their membership and cease their contributions. However, that will not happen because of anything that a critic of the Plaintiff has published on the Internet. It will be because the world will still be here, and the Plaintiff will have been proven wrong.

Moreover, the argument presented by the Plaintiff for refusing to disclose its donors is utterly frivolous. The Plaintiff asserts that divulging the identities of its donors would violate the freedom of association rights of the donors. To make that argument, the Plaintiff cites to the historic case of Bates v. City of Little Rock, 361 U.S. 516 (1960). In Bates, two municipalities passed laws requiring the NAACP to disclose its membership list. The NAACP resisted the disclosure out of fear that its members would be subjected to harassment and bodily harm. Id. at 523-24. The Supreme Court ruled that the laws requiring the compulsory disclosure of the NAACP's membership violated the First Amendment because they infringed on the members' right to associate with the NAACP. Such a case is completely inapplicable here. First of all, the Plaintiff is not being subjected to compulsory disclosure of its donors. The Plaintiff voluntarily came to this court seeking to sue Ms. Colón for $5.35 million. (Original Compl., p. 23.) The names of the donors who have withheld donations because of Ms. Colón's alleged actions constitute critically important pieces of evidence, which the Plaintiff must disclose in order to prove its case. As discussed above, courts have held that such information must be included in the pleadings, unless sufficient alternative facts are pled. To suggest that the Plaintiff is being subjected to compulsory disclosure of its donors in the same manner as the NAACP during the segregation era in the Deep South is patently absurd. African-Americans who were exposed as NAACP members during that time and in that place were at risk of being tortured and killed. The members of the instant Plaintiff have not been subjected to anything similar. In fact, some would argue that the Plaintiff's members suffer significantly more abuse from the Plaintiff itself than from anyone else.

Moreover, the NAACP was fighting to protect the identity of its current members. The instant Plaintiff, on the other hand, is fighting to protect the identity of its former members. In

other words, the Plaintiff is attempting to withhold the names of people who no longer want to be associated with the Plaintiff. Therefore, the freedom of association concerns that were present in Bates do not exist here. In fact, it is not even clear why the Plaintiff believes it has a right to speak on behalf of its former members. Many of the people who terminated their membership with the Plaintiff may be very happy to speak out about the reasons they left, just as Ms. Colón is. It appears that the Plaintiff is trying to conceal the identity of its former members because it is concerned that the former members would blame the Plaintiff, and not Ms. Colón, for their decision to leave the church.

To the extent that there are former members or former donors who do not want to cooperate with this litigation, the argument set forth by the Plaintiff (that "a person's religious beliefs [are] a highly personal and private matter") is not sufficient to justify such a lack of cooperation. The Plaintiff has had no qualms about forcing Ms. Colón to litigate this "highly personal and private matter" which arose out of the Plaintiff's efforts to break up her marriage. Any person who is called to testify in this case will be able to raise a proper objection at the appropriate time. However, the Plaintiff does not have the right to unilaterally declare that it will withhold the names of all relevant witnesses in the case, especially when a certain degree of donor identification is required at the pleading stage, as discussed above. Moreover, if the Plaintiff really believes that former members would be harmed by having their names publicly disclosed, then the Plaintiff should have included the names in its Complaint and then moved to have its Complaint filed under seal pursuant to R. 1:38-11.

To summarize, if the Plaintiff does not want to disclose its donors it is free to drop this case at any time, but it cannot sue for millions of dollars and simultaneously refuse to disclose the most important evidence that is relevant to the case (the names of donors who withheld

donations as a natural and direct result of the challenged statements.) The fact that the Plaintiff would adopt such a strategy proves the point that Ms. Colón has been trying to make from the very beginning — that the Plaintiff is not serious about litigating this case on the merits. Rather, this case is a frivolous SLAPP suit. The lawsuit's only purpose is to harass Ms. Colón by driving up her litigation costs and by forcing her to produce discovery regarding the families and individuals that she has been cooperating with. Therefore, Ms. Colón respectfully requests that this Court find that the Plaintiff's strategy of asserting a damages claim based on donors who have stopped donating, while simultaneously refusing to disclose the names of those donors, is frivolous.

IV. Claims Arising out of ¶ 33 of the Original Complaint Must Be Dismissed Because No Actionable Conduct Is Alleged

The Plaintiff has failed to adequately address the problems with ¶ 33 of its Original Complaint. That paragraph is frivolous and irrelevant, as it tries to hold Ms. Colón liable for encouraging other people "to combat . . . comments on the bottom of [an] article" published by an online newspaper, without stating what comments were being combated or how those comments applied to the Plaintiff.

The Plaintiff has not responded by providing any additional detail to ¶ 33. Instead, the Plaintiff claims that ¶ 33 "describes just how far Defendant Colón went in rallying support and online following for her campaign." (Pl's. Br., p. 31.) To the contrary, ¶ 33 does not suggest that Ms. Colón went far in rallying support at all. All it says is that she encouraged people to post responses to comments following an article. That is no different than what millions of people do every day with social media.

Moreover, the Plaintiff argues that ¶ 33 is relevant because it shows how Ms. Colón "encouraged others to defame Plaintiff World Mission as well." (Id.) Yet, ¶ 33 does no such thing. The paragraph does not even allege that Ms. Colón made any false statements, or that she encouraged anyone else to make false statements. All it says is that she encouraged other people to post comments to respond to other comments at the bottom of an article. That is not a tort. The Plaintiff is attempting to use non-actionable conduct to build up its case that Ms. Colón engaged in actionable conduct. Apparently it could not find enough actionable conduct to fill up its Complaint.

The Plaintiff also claims that the allegations in ¶ 33 "are critical to some formulations of the trade libel cause of action which require that a Plaintiff establish the Defendant's Communication was a substantial factor in inducing others not to conduct business with it." (Id.) The trade libel pleading requirements are discussed above, and there is no need to repeat them here. However, there is nothing in ¶ 33 to suggest that Ms. Colón induced others not to conduct business with the Plaintiff. The Plaintiff has made more allegations on Page 31 of its brief (where it discusses ¶ 33) than in ¶ 33 itself.

Finally, the Plaintiff has removed ¶ 33 and the facts it alleges from its Proposed First Amended Complaint. Therefore, Ms. Colón respectfully requests that this Court dismiss all claims arising out of ¶ 33 and find that the inclusion of ¶ 33 in the Complaint was frivolous.

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

As a threshold matter, the Plaintiff has argued that the public figure issue should not be decided on a motion to dismiss. New Jersey case law requires that actual malice be pled with particularity. Donato v. Moldow, 374 N.J. Super. 475, 501 (App. Div. 2005). However, the

actual malice requirement only applies to a public figure plaintiff or where the challenged statements address an issue of public concern. Thus, it is necessary for this Court to first determine if the actual malice standard applies before determining if actual malice has been sufficiently pled.

Obviously, if the facts alleged in the Complaint are too ambiguous for the court to be able to resolve the actual malice issue, then it would be prudent for the court to delay a decision until later in the case. However, where the allegations in the Complaint clearly show that the plaintiff is a public figure, or that the challenged statements address issues of public concern, then there is no reason for the court not to impose an obligation for actual malice to be pled. The Plaintiff asserts that "Defendant Colón has not cited a single New Jersey case resolving the question of public figure status prior to discovery." (Pl.'s Br., p. 23.) Actually, in the New Jersey case of Vasquez v. Addiego, 2010 N.J. Super. Unpub. LEXIS 890 (App. Div. Apr. 23, 2010), the court did resolve the public figure question prior to discovery. In fact, the court dismissed the complaint without prejudice, finding that:

> plaintiff, a public figure, made "bare conclusary [sic] assertions . . . that defendants knew or reasonably should have known that the statement was false with no other factual reference to lend support to the contention[,]" and failed to satisfy the "actual malice" standard to sustain a defamation claim.

Id. at * 3. The plaintiff then filed a second complaint, and once again the court dismissed it with prejudice for failure to sufficiently allege actual malice. Id. at *3-4. Finally, on the third try, the court denied a motion to dismiss, finding that the third complaint "established a sufficient factual basis supporting [the plaintiff's] claim that defendants knew or recklessly disregarded" the truth. Id. at *4. In other words, New Jersey courts are more than willing to address actual malice issues at the pleading stage, when there is enough information present at the pleading

stage to determine that the case involves a public figure plaintiff or an issue of public concern. The Vasquez case is consistent with the case cited by the Plaintiff, Ciemniecki v. Parker McCay P.A., 2010 U.S. Dist. LEXIS 55661, *40 (D.N.J. June 7, 2010). Yet, in Ciemniecki there was not sufficient information provided by the pleadings to determine if there was an issue of public concern, hence the court was "reticent to decide" the actual malice issue. (Id.)

In the instant case, as explained below, there is sufficient detail in the pleadings to show that the Plaintiff is either a general-purpose public figure, or a limited-purpose public figure for purposes of the controversy surrounding the Plaintiff's own beliefs and practices. There is also sufficient detail in the pleadings to establish that the challenged statements are all related to issues of public concern. However, with one exception described below, there is not sufficient detail to establish that Ms. Colón acted with actual malice.

A. Plaintiff is a Public Figure

In Ms. Colón's initial brief, she explained how the facts presented in ¶ 13 and ¶ 14 of the Original Complaint illustrate that the Plaintiff is a general-purpose public figure. Those paragraphs reveal that the Plaintiff is actively engaged in efforts to seek public attention, as defined in Gertz v. Robert Welch, 418 U.S. 323, 342 (1974), and that it seeks to "play an influential role in ordering society," through its extensive network of churches, evangelical efforts and self-promotion, as explained in Gospel Spreading Church v. Johnson Publ'g Co., 454 F.2d 1050, 1051 (D.C. Cir. 1971) and Church of Scientology v. Siegelman, 475 F. Supp. 950, 954 (S.D.N.Y. 1979). The Plaintiff's primary response was to offer an amended complaint in which those two paragraphs, and all the facts contained therein, are missing. The Plaintiff cannot get around its "public figure" problem by pulling back facts that it has already admitted to in its Original Complaint.

Moreover, the Plaintiff insists that it cannot be a general-purpose public figure because its name is not a "household word."[8] It distinguishes the Church of Scientology cases by declaring that Scientology "has been the subject of multiple feature Hollywood films, innumerable books and television programs, and has headlined in nearly every conceivable mass-media market since its inception in 1952." (Pl.'s Br., pp. 19 - 20.) What the Plaintiff fails to mention is that Scientology was not the author of those films, books and television programs. Those productions and publications were all generated by Scientology's critics (Scientology's version of Ms. Colón). However, it was not the work of Scientology's critics that caused Scientology to be deemed a public figure. It was Scientology's own attempt to recruit new members, and raise money, and grow its enterprise, that caused it to be deemed a public figure. See Siegelman, 475 F. Supp. at 954 (finding Church of Scientology plaintiffs to be public figures because they "have taken affirmative steps to attract public attention, and actively seek new members and financial contributions from the general public"). The instant Plaintiff has admitted to taking similar affirmative steps (at least it did prior to withdrawing those admissions in its Proposed First Amended Complaint). Therefore, the Plaintiff is a general-purpose public figure.

That is not to say that the existence of critical movies, books and television shows is not relevant to the public figure issue. If the existence of such critical media shows that the plaintiff's own actions have caused itself to be thrust to the forefront of a public controversy,

[8] In 2006, a nationwide poll found that more Americans could name Snow White's Dwarves than could name Supreme Court Justices. So under the Plaintiff's "household word" standard, "Dopey" is a general-purpose public figure, but Justice Scalia is not. See http://www.businesswire.com/news/home/20060814005496/en/National-Poll-Finds-Americans-Snow-Whites-Dwarfs (last visited December 1, 2012).

then the plaintiff should be deemed a limited public figure, at least with respect to that controversy. See Hill v. Evening News Co., 314 N.J. Super. 545, 555 (App. Div. 1998). The public controversy surrounding the WMSCOG is substantial. A Google search for the phrase <"world mission society church of god is a cult"> turns up 10,700 hits. (See 2nd Grosswald Cert., Ex. 13.) If the search is broadened to <"world mission society church of god" cult>, the hits jump to 225 thousand. (Id.) Attached to the Second Grosswald Certification in Exhibit 13, is a small sampling of website addresses containing public comment about the WMSCOG. Even a brief visit to those sites will reveal innumerable comments showing that, despite the Plaintiff's best efforts to make it appear that Ms. Colón has created the current controversy (see Pl.'s Br., p. 21), the controversy surrounding the WMSCOG actually arises out of the church's own practices. Moreover, the controversy surrounding the WMSCOG has been well underway since at least 2005, well before Ms Colón was even a member. Therefore, at minimum, the Plaintiff should be deemed to be a limited public figure for purposes of the public controversy surrounding its own abusive practices. See, e.g., Art of Living Found. v. Does, 2011 U.S. Dist. LEXIS 63507, *24 (N.D. Cal. June 15, 2011) ("Plaintiff is part of a 'public controversy' with respect to the allegations that Plaintiff is a 'cult.'")

B. The Challenged Statements Discuss Matters of Public Concern

All of the issues discussed in the challenged statements are matters of public concern. In fact, the Plaintiff concedes that at least some of the challenged statements discuss issues of public concern (the Presidential Award article, the Variance Hearing Statements, the Financial Info Video and the Rick Ross Forum Posts). (Pl.'s Br., p. 23.)

The Plaintiff is taking the untenable position that the other statements (which discuss cults, mind control, fear and guilt manipulation, sleep deprivation, destroying families, and

"taking money") are not issues of health and safety, and therefore not issues of public concern.[9] The Plaintiff is expressing a common bias that causes many people to assume that mental and emotional pain should be taken less seriously than physical pain. If Ms. Colón were accusing the Plaintiff of chopping off people's arms, the Plaintiff would have no trouble recognizing that as an issue of public concern. However, because the pain she describes is mental and emotional, the Plaintiff dismisses it as a "private and interpersonal drama." (See Pl.'s Br., p. 24.) Mental health issues are frequently marginalized in this way. Because mental conditions do not show up on an X-ray, they are considered to be less "real" than physical conditions.

Nevertheless, governments around the world and in the United States have devoted significant resources to studying the cult phenomenon, precisely because it implicates concerns about public health and safety. For instance, in 1998, the State of Maryland established a task force to study the issue of cults on college campuses. That task force found that although the number of students harmed by cults "is statistically very small," when a student is harmed by a cult, "that harm can be very severe." (See Report of the Task Force to Study the Effects of Cult Activities on Public Senior Higher Education Institutions, 2nd Grosswald Cert., Ex. 14.) Private institutions also express concerns about cults. The NYU Law School "Campus Safety" webpage warns:

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[9] Actually, those are some of the same issues that are discussed in the Variance Hearing Statements, which the Plaintiff concedes implicate issues of public concern. The Plaintiff defines the Variance Hearing Statements as statements made by Ms. Colón at a variance hearing in which she stated that the Plaintiff "damage[s] families, "ruined [her] marriage," and "takes its members' money." (Pl.'s Br., p. 18.) The Plaintiff admits that the Variance Hearing Statements "are largely identical to those made in the Business Reviews." (Id.) Because the Plaintiff admits that the Variance Hearing Statements discuss matters of public concern (id. at p. 23), then all other statements discussing those same issues must also be deemed to be discussing matters of public concern.

> Members of cults periodically recruit in the Greenwich Village area. They may approach you in your residence hall, in Washington Square Park, or on the streets outside of classroom buildings. In addition to sharing with you the answers they have found to life's questions, they may seek to enlist your time, energy, and resources in endeavors they believe to be worthwhile. In short, they may ask you to join their group and make substantial contributions of time and money to their causes. Some of these groups may use recruiting tactics that are intrusive, deceitful, manipulative, and coercive.

(2nd Grosswald Cert., Ex. 15.) Such a warning is not needed to protect people from "a private and interpersonal drama." The warning has arisen out of an issue of public concern.

C. Except for One Allegation, the Complaint Still Does Not Allege Any Non-Conclusory Facts to Support a Finding of Actual Malice

As explained in Ms. Colón's initial brief, to prove actual malice (for both defamation and trade libel) the plaintiff must prove that the defendant published the challenged statements about the plaintiff with knowledge that such statements were false, or with reckless disregard of whether or not they were false. New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964) (defamation); Juliano v. ITT Corp., 1991 U.S. Dist. LEXIS 1045, *12 (D.N.J. Jan. 22, 1991) (trade libel). Actual malice must be plead with particularity, not with conclusory allegations. See, e.g., Donato v. Moldow, 374 N.J. Super. 475, 501 (App. Div. 2005) ("The conclusory allegation that [the defendant] published the defamatory statements with actual malice is not sufficient to withstand a motion to dismiss on the pleadings.").

In Ms. Colón's initial brief, she pointed out that the Plaintiff had failed to allege any non-conclusory facts showing that Ms. Colón knew that anything she said was false, or that she acted with reckless disregard for the truth of her statements. The Plaintiff's Proposed First Amended Complaint makes a slight improvement. There is now one non-conclusory allegation

establishing actual malice, pertaining to only one of the challenged statements. For every other challenged statements, there are still no non-conclusory allegations of actual malice.

The one non-conclusory allegation establishing actual malice is found in ¶ 39 of the Proposed First Amended Complaint. That paragraph alleges:

> Defendants stated that "I noticed that married couples and families did not study together unless there was a longer study being offered on a Sunday afternoon." This statement is false. Defendant Colón could never have noticed that married couples and families "did not study together unless there was a longer study being offered" because couples frequently study together, and often studied together in the presence of Defendant Colón. The statement implies that Plaintiff World Mission separates families when it does not.

Those allegations, if they were true (and they are not), would establish actual malice by revealing what Ms. Colón personally witnessed, and by showing that what she witnessed was different from what she wrote. That is the level of detail that is required to plead actual malice for each of the challenged statements. None of the other challenged statements are pled with that same level of detail. Presumably, that is because there is a limit to how much the Plaintiff and its lawyers are willing to fabricate in a court filing. (As will be explained below, the assertion that Ms. Colón "could never have noticed" married couples being separated is demonstrably false.)

The Plaintiff attempts to satisfy the actual malice standard with respect to every other challenged statement by relying on ¶¶ 76 - 79 of the Proposed First Amended Complaint. In those paragraphs, the Plaintiff asserts that Ms. Colón had the "opportunity," the "means," and the "motive." Yet, in providing the detail, the Proposed First Amended Complaint reveals that Ms. Colón only had the opportunity to know the truth regarding three of the issues that are discussed in the challenged statements: the use of sleep deprivation; the use of mind control

techniques; and the participation of infants in the church's fasting rituals. (Pl.'s Br., ¶ 76.) Interestingly, the Proposed First Amended Complaint never says what it is that Ms. Colón actually knew about those three issues. The Proposed First Amended Complaint also never says that Ms. Colón had the opportunity to know the truth about any of the other issues discussed in the challenged statements, such as whether the relationship between the Plaintiff and Big Shine Worldwide, Inc. is "quite suspect"; whether the Plaintiff improperly claimed $300,000 in missionary expenses; whether the Plaintiff has lied to the IRS; and whether the Plaintiff is controlled by the main location in South Korea (just to provide a non-exhaustive list of examples). In fact, the Plaintiff fails to provide non-conclusory allegations of actual malice pertaining to any of the statements which the Plaintiff concedes are subject to the actual malice standard because they discuss matters of public concern (the Presidential Award article, the Variance Hearing Statements, the Financial Info Video and the Rick Ross Forum Posts). (See Pl.'s Br., p. 23.)

Moreover, the actual malice-related allegations in ¶¶ 77 - 79 are irrelevant. In ¶ 77, the Plaintiff alleges that Ms. Colón knew that her status as a former member of the Plaintiff would give her "credibility" and an "air of truth," but neither of those things is an element of actual malice. In ¶ 78, the Plaintiff alleges that Ms. Colón had a "motive" and a "vendetta" against the Plaintiff. Again, those things are not elements of actual malice. In ¶ 79, the Plaintiff again resorts to conclusory allegations that are completely devoid of detail. As explained in Ms. Colón's initial brief, "a plaintiff must plead the facts and give some detail of the cause of action." Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 768 (1989) (internal quotation marks and brackets omitted).

Because actual malice has not been sufficiently pled, except for the allegations in ¶ 39 of the Proposed First Amended Complaint, Ms. Colón respectfully requests that all claims other than those arising out of ¶ 39 of the Proposed First Amended Complaint be dismissed with prejudice. (The claims arising out of ¶ 39 should be dismissed on other grounds, as will be discussed below.)

VI. Plaintiff Has Still Not Established That Many of the Challenged Statements Are "Of and Concerning" the Plaintiff

On Pages 32 - 33 of Ms. Colón's initial brief, Ms. Colón presented a list of challenged statements which, on their face, are not of and concerning the Plaintiff. That list of challenged statements will hereinafter be referred to as the "Non-Plaintiff Statements." Ms. Colón argued that all claims arising out of the Non-Plaintiff Statements must be dismissed. That is because the Plaintiff is the New Jersey branch of a global church, but the Non-Plaintiff Statements refer to other branches of the church, or to the church as a group. Therefore, under the Group Libel Doctrine, the of and concerning element of defamation cannot be established with respect to those statements. Because the Proposed First Amended Complaint addresses the same Non-Plaintiff Statements as the original Complaint, the new Complaint is deficient for the same reasons.

The Plaintiff has responded by claiming that the Group Libel Doctrine does not exist in New Jersey. The Plaintiff asserts that instead of the Group Libel Doctrine, New Jersey is governed by the Foxtons rule (Pl.'s Br., p. 27), which states:

> if the defamatory comment fails to mention any specific name but is directed toward a group or class of individuals, a plaintiff may still establish a claim for libel. Under such circumstances, a successful plaintiff must show "he is a member of the defamed class and must establish some reasonable application of the words to himself."

Foxtons, Inc. v. Cirri Germain Realty, 2008 N.J. Super. Unpub. LEXIS 189, at *10 (App. Div. Feb. 22, 2008) (internal citations omitted). This rule is, of course, just a restatement of the Group Libel Doctrine. In other words, New Jersey does recognize the Group Libel Doctrine, it just doesn't call it that. Nevertheless, the undersigned will continue to refer to the Group Libel Doctrine for ease of discussion.

Because there do not appear to be any reported cases in New Jersey in which the Group Libel Doctrine is applied to cults, it is helpful to look at some cases from other jurisdictions. For instance, Ms. Colón's initial brief cited to three Group Libel Doctrine cases which are similar to the instant case. In all three cases, the plaintiffs had been accused of being "cults," among other things, and were suing for defamation. In all three cases, the plaintiffs failed to overcome the Group Libel Doctrine. See Art of Living Found. v. Does, 2011 U.S. Dist. LEXIS 63507 (N.D. Cal. June 15, 2011); Friends of Falun Gong v. Pac. Cultural Enter., 288 F. Supp. 2d 273, 282 (E.D.N.Y. 2003); Church of Scientology Int'l v. Time Warner, 806 F. Supp. 1157, 1161 (S.D.N.Y. 1992) (internal citations omitted). Two of those cases (Falun Gong and Scientology) are particularly relevant to the instant case because they involved plaintiffs which were individual branches within larger global organizations, just like the instant Plaintiff.

The Plaintiff's position is that this Court should not look at those very relevant and on-point cases from other jurisdictions, but instead should only look at the New Jersey Foxtons case. Yet, even under the Foxtons rule, the Non-Plaintiff Statements still have to be dismissed. That is because the Plaintiff has not pled sufficient facts to establish that those statements have "some reasonable application" to the Plaintiff, as required by Foxtons. See Foxtons, 2008 N.J. Super. Unpub. LEXIS 189, at *10.

The Plaintiff tries to overcome this deficiency by pointing to three facts which it alleges in its Proposed First Amended Complaint:

- Defendant Colón was only a member of Plaintiff World Mission in New Jersey, not to any other branch of the World Mission Society Church of God;
- Defendant Colón's Husband was also a member of Plaintiff World Mission in New Jersey;
- Defendant Colón publicly stated how Plaintiff World Mission "ruined her marriage" and "destroyed her family."

(Pl.'s Br., p. 28.) Based on those three facts, the Plaintiff concludes: "It is unlikely that any reader would believe that her statements could not be 'of and concerning' Plaintiff World Mission." (Id.) However, the Plaintiff's presentation of those three facts is dishonest. The Plaintiff alleges, in both of its Complaints, that Ms. Colón used aliases when posting the Non-Plaintiff Statements. In fact, in the Plaintiff's original Complaint, the Plaintiff actually accused Ms. Colón of using anonymity for nefarious purposes:

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

(Original Compl., ¶ 18.) In other words, in the original Complaint, the Plaintiff took the position that Ms. Colón was doing a terrible thing by hiding her identity; now the Plaintiff expects this Court to believe that everyone who reads the Non-Plaintiff Statements will know that the identity of the statements' author is Ms. Colón, and that she was a member of the New Jersey branch. These two positions are inconsistent and irreconcilable. Such intellectual dishonesty is a result of the fact that the Plaintiff is scrambling to salvage a case with no merit.

The truth is that the Non-Plaintiff Statements were all posted anonymously. To confirm this, the Court need look no further than Exhibits 2, 4, and 5 of the Grosswald Certification, submitted with Ms. Colón's initial brief. Because the Non-Plaintiff Statements do not disclose the identity of the author, the identity of the author's husband, or the location where the events discussed took place, the three alleged facts relied on by the Plaintiff are insufficient to establish some reasonable application of the words to the Plaintiff. Therefore, the Plaintiff cannot overcome the Foxtons rule (or the Group Libel Doctrine).

Moreover, New Jersey courts have applied the Group Libel Doctrine to large groups more strictly than to small groups:

> The size of the group to which the defamatory allusion is made has been the most significant factor in determining whether relief should be granted. Where the group is small there is great likelihood that others will understand that the defendant intended to attribute certain qualities, beliefs, or acts to each member. Moreover, others are more likely to believe the statement to be based on information concerning each particular individual rather than that it is a generalization drawn from the observation of a few. As the group becomes larger, it is less likely that the statement will be understood as referring to each member of the group and its character as a generalization becomes clearer.

Mick v. American Dental Assoc., 49 N.J. Super. 262, 285 (App. Div. 1958) (internal quotation marks omitted). In fact, the Group Libel Doctrine is applied very strictly when the subject of a challenged statement is a group consisting of more than 25 people. Id. "When the group becomes smaller than that . . . the courts have been willing to permit the conclusion that the finger of defamation is pointed at each individual member." Yet, the Plaintiff admitted in its original Complaint that World Mission "has over 1.2 million members in about 150 countries

around the world, with several branches across the United States."[10] (Original Compl., ¶ 13.) That is significantly more than 25 people. Therefore, any statement that refers to World Mission as a group is barred by the Group Libel Doctrine, as are any statements that refer to branches of World Mission other than the Plaintiff.

For the foregoing reasons, Ms. Colón respectfully requests that all claims arising out of the Non-Plaintiff Statements be dismissed, as set forth in Ms. Colón's initial brief, on pages 30 - 34. Ms. Colón further requests that this Court find that all claims arising out of the Non-Plaintiff Statements are frivolous. Finally, Ms. Colón requests that this Court find that the statement on Page 28 of the Plaintiff's brief, stating that "It is unlikely that any reader would believe that her statements could not be 'of and concerning' Plaintiff World Mission," is frivolous, in light of the fact that all of the challenged statements in this case were posted anonymously.

VII. Each of the Challenged Statements Contains Opinion, Is Substantially True, or Fails to Cause Damage to the Plaintiff

Throughout its Original Complaint and its Proposed First Amended Complaint, the Plaintiff has tried to hold Ms. Colón liable for the expression of her opinions. The Plaintiff repeatedly tries to characterize Ms. Colón's opinions as either "mixed opinions of law and fact" or just "fact." As a threshold matter, it is important that the Court have a clear understanding of what standard is to be applied in close questions of fact versus opinion (notwithstanding the fact that neither Ms. Colón nor the undersigned believes the fact versus opinion issues in this case

[10] Interestingly, the Plaintiff dropped these facts in its Proposed First Amended Complaint. After being confronted with the Group Libel Doctrine, the Plaintiff no longer wants to brag about how large the World Mission church really is.

are close). In Ms. Colón's initial brief, she cited to the New Jersey Supreme Court case of Lynch v. New Jersey Educ. Ass'n, 161 N.J. 152, 168 (1999) for the following proposition:

> If a statement could be construed as either fact or opinion, a defendant should not be held liable. An interpretation favoring a finding of "fact" would tend to impose a chilling effect on speech.

(Def.'s Br., p. 34.) The Plaintiff refers to this proposition as "nonsensical," but fails to distinguish Lynch from the instant case, or explain why this Court should not be bound by a decision of the New Jersey Supreme Court. (Pl.'s Br., p. 7, n. 1.) Instead, the Plaintiff cites to a completely different rule:

> When the language at issue is capable of both a defamatory and a nondefamatory meaning, there exists a question of fact for a jury to decide

Karnell v. Campbell, 206 N.J. Super. 81, 88 (App. Div. 1985) (Pl.'s Br., p. 7, n. 1). The rule cited by the Plaintiff addresses close questions on the issue of whether a challenged statement has a defamatory meaning. That is a separate question from whether the challenged statement is a fact or opinion. On the issue of fact versus opinion, close questions are to be resolved in favor of deeming the challenged statement to be an opinion, in order to maximize protection of free speech. Lynch, 161 N.J. at 168.

The Plaintiff incorrectly asserts that Ms. Colón failed to highlight the distinction between pure opinion and mixed opinion. In fact, Ms. Colón did discuss that distinction, just not in the organizational framework that the Plaintiff would have preferred. Plaintiff also incorrectly asserts that Ms. Colón failed to analyze the content of each statement in the context of its publication. To the contrary, Ms. Colón did discuss the context of the statements, but again not in the Plaintiff's preferred organizational framework.

To simplify the analysis, this Court should employ the organizational framework used by the federal court in the NXIVM[11] case, a case which is directly on point and which was discussed at length in Ms. Colón's initial brief. The organizational framework used in NXIVM was as follows. The Court needed to determine if the challenged statements were defamatory. NXIVM Corp. v. Sutton, 2007 U.S. Dist. LEXIS 46471, *23 (D.N.J. June 27, 2007). To do that, the Court looked at three factors: content, verifiability, and context. Id.

When analyzing the content factor, the court took an approach that is very similar to the approach advocated by the Plaintiff. That is to say, the court analyzed whether the statements involved opinion, fact, or mixed fact and opinion. The court paid special attention to whether the statements "adequately state the facts upon which the authors' opinions are based," id. at *26; or whether the defendants had "undisclosed evidence that supports the conclusion that Plaintiffs' organization constitutes a cult"; id. at *25. In other words, the NXIVM Court did exactly what the Plaintiff is asking this Court to do — make a determination of whether the challenged statements imply the existence of other non-disclosed facts. The NXIVM Court then took the next step — a step which the Plaintiff never mentions in its analysis. That step requires the Court to analyze the factor of verifiability.

The Plaintiff's failure to discuss the verifiability factor is a glaring omission. Verifiability is important in any defamation case, but its importance increases by orders of magnitude when the challenged statement is not one that has been uttered, but rather, one that has not been uttered, yet inferred to exist. Without verifiability, there is no way to know what non-disclosed

[11] Pronounced "Nexium."

facts are to be inferred in a "mixed opinion" case. The New Jersey Supreme Court has emphasized the importance of verifiability[12]:

> The significance of opinion/fact and non-fact/fact distinctions centers on the concept of verifiability. Requiring that a statement be verifiable ensures that defendants are not punished for exercising their First Amendment right to express their thoughts. Unless a statement explicitly or impliedly rests on false facts that damage the reputation of another, the alleged defamatory statement will not be actionable. We require verifiability because "[i]nsofar as a statement lacks a plausible method of verification," the trier of fact who is charged with assessing a statement's truth "will have considerable difficulty returning a verdict based upon anything but speculation."
>
> Thus, only if [the defendant's] statement suggested specific factual assertions that could be proven true or false could the statement qualify as actionable defamation. The higher the "fact content" of a statement, the more likely that the statement will be actionable. Plaintiff prevails, however, only if the underlying or implied facts are untrue. "[L]oose, figurative or hyperbolic language" will be less likely to imply specific facts, and thus more likely to be deemed nonactionable as rhetorical hyperbole or a vigorous epithet.

Ward v. Zelikovsky, 136 N.J. 516, 531-32 (1994) (internal citations omitted).

In other words, a statement will only be deemed to be a mixed opinion which implies the existence of undisclosed facts if those undisclosed facts are "specific factual assertions that

[12] The Ward Court discussed the opinion / fact issue under the verifiability factor, rather than under the content factor as the NXIVM Court did. This indicates that there is overlap among the factors, and the courts have not agreed on a consistent framework for organizing the factors and eliminating the overlap. Nevertheless, under any framework, the outcome should be the same.

could be proven true or false." Id. at 531. None of the cases cited in the Plaintiff's brief remove the factor of verifiability from the equation.[13]

The Ward rule means two things. Obviously, it means that the undisclosed challenged statements must be verifiable. However, it also means that there must be a way to verify from the disclosed statements what the undisclosed statements are that are being challenged. That is why the New Jersey Supreme Court used the word "specific" in front of the words "factual assertions." Id. The Plaintiff is not allowed to just pull any undisclosed statement out of thin air that it fancies might arise out of the disclosed statements, and then hold Ms. Colón liable for defaming it with that statement. Such a result would be preposterous. If the Court were to adopt the Plaintiff's approach, then Ms. Colón would end up being held liable for statements she never uttered and never intended to utter. Even worse, she would be forced to proceed through this litigation without even knowing what facts she has to prove in order to establish truth as an affirmative defense. The Plaintiff's approach is precisely the strategy one would expect from a SLAPP-Plaintiff.

By way of example, it would be helpful to analyze the statements accusing the Plaintiff of being a "religious cult" that will "destroy your family and take all of your money." In order to determine whether those statements constitute "mixed opinions," the Plaintiff asserts that

[13] This is probably why the Plaintiff is trying to get this Court to focus on the Restatement on Page 7 of its brief - the Restatement seems to neglect verifiability altogether. Nevertheless, the Restatement comment which asserts that it would be actionable to accuse someone of being "utterly devoid of moral principles" is not consistent with the case law in New Jersey, or in other jurisdictions for that matter. No serious lawyer would believe that such a statement, without more, could be actionable. For a scathing criticism of the Restatement approach, see Marc A. Franklin & Daniel J. Bussel, Defamation and the First Amendment: New Perspectives: The Plaintiff's Burden in Defamation: Awareness and Falsity, 25 Wm. & Mary L. Rev. 825, 880-85 (1984) (2nd Grosswald Cert., as Ex. 16) ("The Restatement never makes clear how one knows what facts to infer in a so-called 'mixed' case.")

there are "any number of undisclosed, but false, defamatory facts to support them." (Pl.'s Br., p. 10.) The Plaintiff then goes on to list a wide variety of possible undisclosed facts that it might want to sue Ms. Colón for. The first glaring problem with this approach is that none of those undisclosed facts are alleged in the Complaint, or in the Proposed First Amended Complaint. So the "challenged statements" that Ms. Colón must defend against are not actually part of the case at all. The second glaring problem with this approach is that the Plaintiff never informs Ms. Colón which of those undisclosed facts, or how many of them, or in what combination, must Ms. Colón prove in order to assert substantial truth as an affirmative defense.

The third glaring problem with the Plaintiff's approach is that it is not even clear that the undisclosed statements set forth by the Plaintiff are actually related to the disclosed statements, or that a reasonable reader would read the disclosed statements in a way that would imply the undisclosed statements. For instance, one of the undisclosed facts offered by the Plaintiff is that "[a] reasonable reader could conclude that Church doctrine or practice requires members to cease telephone, email and in-person contact with non-believing family members." (See Pl.'s Br., p. 10.) However, that is not necessarily what a reasonable reader might conclude. A reasonable reader might conclude that communications are maintained between cult members and non-believing family members, where the non-believer is in a position to provide financial assistance to the cult member, which the cult member will then donate back to the cult, much to the chagrin of the non-believing family member. It is unclear which of those two "destroy families" and "take your money" scenarios that Ms. Colón would have to prove is true in order to prevail.

Another undisclosed fact offered by the Plaintiff is "that Church doctrine or practice requires members to move out of their family homes and into Church-owned facilities." (Id.)

However, that is not a universal characteristic of cults. The Church of Scientology, which is often labeled a cult, allows most of its members to live in their own private homes. Prominent Scientologists such as Tom Cruise and John Travolta have not only remained in their family homes, they have continued enjoying successful professional careers, even while being outspoken about their membership in the group. So to win the case, would Ms. Colón have to prove that some members of the Plaintiff have moved into church-owned facilities? What if she proved that only one member of the Plaintiff has done that? Would that be sufficient?

The final undisclosed fact offered by the Plaintiff on Page 10 of its brief is "that the Church administration demands access to its members' banking information; or that Church members physically take money from their members." However, there is no reason for a reasonable reader to assume that a "cult" does those things. Those kinds of behaviors would create legal problems for the cult. Most cults stay in business by getting their members to transfer money to the cult in a manner that at least creates the appearance that the cult member made a legal and voluntary donation. After all, if the cult convinces its members that the only way to obtain salvation is by tithing to the cult, the members will hand over their money under their own power, without the cult needing to resort to legally questionable tactics. One might make the argument that the voluntariness of the donations in a cult is merely an illusion, and that the donors are acting under psychological coercion. Yet, no one would assume, without more evidence, that the cult was demanding banking information or using physical force. So why are those the undisclosed facts being offered by the Plaintiff?

Of course, if the Plaintiff is allowed to simply make up its own undisclosed facts and declare that those undisclosed facts are the facts to be litigated, then presumably Ms. Colón should be allowed to do the same thing. Perhaps the undisclosed fact that proves the Plaintiff is

a cult is the fact that the Plaintiff sends its members to recruit in crowded shopping areas, then uses aggressive tactics that cause the store security to throw them out. That is a fact that many people associate with cults. Even better, it is a fact that has been alleged in Ms. Colón's Five-Part Story, and the Plaintiff has not alleged that such a fact is false or defamatory. (See Five-Part Story, Part 3, Grosswald Cert., Ex. 2.) Does that mean Ms. Colón has proven the truth of her cult claim? How about the fact that the Plaintiff has repeatedly predicted the end of the world, and after being wrong, just pushes the date further out and makes the prediction again? That is an undisclosed fact that a reasonable reader might conclude after reading that the Plaintiff is a "cult." So why is the Plaintiff not offering the "end of the world" fact as the undisclosed fact that needs to be proven?

The point is, there is no basis for this Court or any of the litigants to know which of all of the possible undisclosed facts are the facts that are to be litigated. What makes it worse is that those facts have no limit to them. The Plaintiff ended this section of its brief by saying that "it would be entirely reasonable for a reader to assume these, or any number of other false facts." (See Pl.'s Br., p. 10.) That last declaration by the Plaintiff is utterly absurd — "any number of other false facts." The Plaintiff's approach makes it impossible to place any limit on the scope of the case, or for Ms. Colón to be on notice as to what exactly she is being sued for.

Perhaps the most sinister aspect of the Plaintiff's approach is that it places no limit on the scope of discovery. As explained above, the discovery requests previously served by the Plaintiff in the related Virginia case were seeking to discover highly inflammatory information regarding the friends and relatives of Plaintiff members who have sought the assistance of Ms. Colón and Mr. Newton. Under the Plaintiff's approach (where there is no limit to the undisclosed facts) the Plaintiff will be able to come up with endless justifications for why it

should be able to access confidential information from Ms. Colón that is not really relevant to any of the challenged statements, but which the cult will use to sabotage its critics and the families of its members. That is precisely what one would expect a SLAPP-Plaintiff to do.

Obviously, the Plaintiff's approach is unworkable. Under the Plaintiff's approach, the parties would first have to litigate what the undisclosed statements are, before litigating whether the undisclosed statements are true or false. However, the fact that it is necessary to litigate what the undisclosed statements are illustrates that the issue being litigated is a matter of opinion. As Judge Cavanaugh explained:

> That they must offer criteria by which to define or describe cult-like behavior underscores the fact that "cult" is a term without a universal or concrete meaning and is not a verifiable fact

NXIVM, 2007 U.S. Dist. LEXIS 46471, at *33. In other words, in order to litigate the truth or falsity of undisclosed statements, there must be no reasonable disagreement about what the undisclosed statements are. That is precisely why the Ward case requires the undisclosed facts to be "specific." Ward, 136 N.J. at 531. That is also why the defamation case law is saturated with discussions of "verifiability."[14] See, e.g., NXIVM, 2007 U.S. Dist. LEXIS 46471, at *26-34; Ward, 136 N.J. at 530-32. The only reasonable way to reconcile the "mixed opinion" rule with the "verifiability" factor is to say that if a disclosed statement implies the existence of an unlimited number of undisclosed facts, then it really implies no undisclosed facts at all. Such a statement should necessarily be treated as protected opinion for defamation purposes. It is with

[14] After analyzing content and verifiability, the third factor of the defamation analysis is context. NXIVM, 2007 U.S. Dist. LEXIS 46471, at *23. Ms. Colón stands by the discussion of context that she presented in her initial brief.

that principle in mind that each of the challenged statements should be analyzed, as discussed below.

A. Business Review Websites

For the following reasons, Ms. Colón respectfully requests that this Court find that all claims arising out of the challenged statements contained on the Business Review Websites are frivolous.

As a threshold matter, it must be pointed out that the Plaintiff has failed to provide either the Court or Ms. Colón with complete copies or descriptions of any of the challenged statements that were allegedly posted to business review websites. In both the Original Complaint and the Proposed First Amended Complaint, the Plaintiff uses selective editing (riddled with bracketed letters, ellipses, and incomplete sentence fragments) to describe the challenged statements. Nevertheless, the undersigned has been able to locate many of the challenged statements online, and screenshots of those were included in Ms. Colón's previous submission. (See Grosswald Cert., Ex. 4.) However, some of the challenged statements have not been located. It appears that such statements are no longer online, if they ever were.

The Plaintiff alleges that challenged statements were posted to ten business review websites. (Proposed 1st Am. Compl. ¶ 30.)

First, the Plaintiff alleges that seven challenged statements were posted to local.com. (Proposed 1st Am. Compl. ¶ 30(a).) Only one of those challenged statements has been located, and it was included with Ms. Colón's previous submission. (See Grosswald Cert., Ex. 4.)

Second, the Plaintiff alleges that a business review containing a challenged statement was posted to yellowbot.com. (Proposed 1st Am. Compl. ¶ 30(b).) Actually, in its Original Complaint, the Plaintiff alleged that two business reviews containing challenged statements were

posted to yellowbot.com. (Orig. Compl. ¶ 44.) The Plaintiff's new complaint describes the two business reviews as if they were merged into a single business review. Nevertheless, the undersigned has located two business reviews from that site that appear to fit the Plaintiff's description, and those were included with Ms. Colón's previous submission. (See Grosswald Cert., Ex. 4.)

Third, the Plaintiff alleges that a challenged statement was posted to patch.com. (Proposed 1st Am. Compl. ¶ 30(c).) That statement has not been located.

Fourth, the Plaintiff alleges that a challenged statement was posted to findlocal.latimes.com. (Proposed 1st Am. Compl. ¶ 30(d).) That statement has not been located.

Fifth, the Plaintiff alleges that a challenged statement was posted to aidpage.com. (Proposed 1st Am. Compl. ¶ 30(e).) That statement has been located, and it was included with Ms. Colón's previous submission. (See Grosswald Cert., Ex. 4.)

Sixth, the Plaintiff alleges that a challenged statement was posted to kudzu.com. (Proposed 1st Am. Compl. ¶ 30(f).) That statement has been located, and it was included with Ms. Colón's previous submission. (See Grosswald Cert., Ex. 4.)

Seventh, the Plaintiff alleges that a challenged statement was posted to socialcurrent.org. (Proposed 1st Am. Compl. ¶ 30(g).) That statement has been located, and it was included with Ms. Colón's previous submission. (See Grosswald Cert., Ex. 4.)

Eighth, the Plaintiff alleges that a challenged statement was posted to chamberofcommerce.com. (Proposed 1st Am. Compl. ¶ 30(h).) That statement has been located, and it was included with Ms. Colón's previous submission. (See Grosswald Cert., Ex. 4.)

Ninth, the Plaintiff alleges that a challenged statement was posted to dexknows.com. (Proposed 1st Am. Compl. ¶ 30(h).) That statement has been located, and it was included with Ms. Colón's previous submission. (See Grosswald Cert., Ex. 4.)

Finally, the Plaintiff alleges that a challenged statement was posted to maps.google.com. (Proposed 1st Am. Compl. ¶ 30(i).) That statement has not been located.

Thus, the following challenged statements have been located and been submitted to the Court to be analyzed, and shall hereinafter be referred to as the "Located Statements":

- one business review posted to local.com;
- two business reviews posted to yellowbot.com;
- one business review posted to aidpage.com;
- one business review posted to kudzu.com;
- one business review posted to socialcurrent.org;
- one business review posted to chamberofcommerce.com; and
- one business review posted to dexknows.com.

The following challenged statements have not been located and shall hereinafter be referred to as the "Missing Statements":

- six business reviews allegedly posted to local.com;
- one business review allegedly posted to patch.com;
- one business review allegedly posted to findlocal.latimes.com; and
- one business review allegedly posted to maps.google.com.

The Located Statements should be analyzed by the Court and, for the reasons presented below, be deemed to be protected opinions. The claims arising out of the Missing Statements should be dismissed on the grounds that the Plaintiff has failed to satisfy its burden of pleading.

1. The Located Statements All Contain Protected Opinion

a. Facts May Be Disclosed Through A Cross-Reference to a Website

The Plaintiff cannot support its claim that "Each Business Review is an Actionable Publication of Mixed Opinion." (See Pl.'s Br., p. 9.) The Plaintiff's position relies on the false assertion that the business reviews "disclose no factual basis," and are therefore "textbook statements of mixed opinion." However, the Plaintiff is overlooking the fact each of the Located Statements contains within it an address to a website, examiningthewmscog.com (the "Examining Website"), where the reader can go to gather more information.[15] On that website, the reader would find Ms. Colón's Five-Part Story, containing all of the facts underlying her criticism of the Plaintiff. The reader would also find many stories from other former members of the Plaintiff, and articles containing research and other critical information about the Plaintiff. By cross-referencing to that website, the business reviews are disclosing the underlying facts, and therefore they must be treated as pure opinion rather than mixed opinion.

In support of her argument in her initial brief, Ms. Colón cited to the case of Franklin v. Dynamic Details, Inc., 116 Cal. App. 4th 375, 388 (Cal. Ct. App. 2004). (Def.'s Br., p. 37-38.) In Franklin, the court was asked to analyze whether allegedly defamatory emails had disclosed the factual basis for the opinions contained therein. However, the emails did not contain all of

[15] In one of the Located Statements - the one posted to dexknows.com, labeled "Paragraph 50(B) (Grosswald Cert., Ex. 4) - the portion of the statement containing the Examining Website address was inadvertently cut off in the screenshot submitted to the Court. Nevertheless, the dexknows.com statement is identical to the one posted to chamberofcommerce.org, labeled "Paragraph 50(A)," which does contain the Examining Website address. The author clearly cut and pasted identical statements to both websites, as evidenced by the fact that both contain the same misspelled word - "wil."

the factual details supporting the author's opinion. Rather, the emails referred the reader to websites where the factual support could be found. The court held that the disclosure of the websites was sufficient to find that the factual basis for the opinions had been disclosed. The court explicitly rejected the plaintiff's argument that a reasonable reader would not be able to discern that the referenced websites were the basis for the opinions. (Id.) Although the reader would necessarily have to take some additional steps to access the supporting information, "the dispositive point is those factual bases were disclosed and were accessible to the reader." (Id.) As the court explained:

> The reader . . . was invited to view the Web sites. He was free to accept or reject the author's opinion based on [his] own independent evaluation of the facts and free to form another, perhaps contradictory opinion from the same facts.

Id. at 388-89 (internal citations and quotation marks omitted).

The Franklin case stands for the proposition that if the factual basis for an opinion is presented in the form of a website address that leads the reader to a website containing such factual basis, then the factual basis is deemed to have been disclosed and the opinion will be protected as a pure opinion. Although Ms. Colón cited to the Franklin case, the Plaintiff failed to offer any rebuttal to the Franklin rule in its brief.

Nevertheless, each of the Located Statements discloses the factual basis for the opinions contained therein. Those disclosures are made in the form of a website address that leads the reader to a website containing all of the factual support. The reader is free to visit that website and conduct an independent evaluation of the facts. The reader can then accept or reject the opinion presented in the business reviews. The reader is also free to form another, perhaps contradictory opinion from the same facts. See also Kotlikoff v. Comty. News, 89 N.J. 62, 72-

73 (1982) ("Where an opinion is accompanied by its underlying nondefamatory factual basis, a defamation action premised upon that opinion will fail, no matter how unjustified, unreasonable or derogatory the opinion might be. This is so because readers can interpret the factual statements and decide for themselves whether the writer's opinion was justified.")

Although the Franklin rule has not yet been cited in any reported New Jersey case, the rule is critically important for preserving the Internet and social media. The Internet is a very different medium than a book, or even a newspaper or magazine. Those mediums are designed for an author or publisher to compile all of the detailed facts pertaining to an issue into one place. On the other hand, the great strength of the Internet is that it has the ability to store information in many different places, enabling users to quickly access that information by moving from one Internet location to another. Certain areas on the Internet, such as business reviews sites, are convenient because they are generally short and easy to browse through. If every person who posted a critical commentary to such a site was required to list all of the factual details supporting every opinion, the sites would become unwieldy. The Internet allows people to post the factual details on a website that is designed to handle the bulk, and then refer people to that location with shorter statements posted elsewhere. If this Court fails to apply the Franklin rule, it will create a legal precedent that will force Internet users to change the way they use the medium. Such a legal precedent would encourage Internet behavior that is highly impractical - such as cutting and pasting entire webpages into areas of the Internet that are designed to host short, pithy commentary. Such a decision could have a devastating impact on certain technologies that actually do not allow for large postings to be made. For instance, Twitter is known for famously imposing a 140-character limit on each "tweet." Brevity is a requirement for using the service. Without the Franklin rule, there would be no way for an

individual to express opinionated criticism of a powerful corporation on Twitter without running the risk of being sued over "undisclosed facts" — which could not be disclosed because of the space limitations imposed by the technology. This Court should apply New Jersey's defamation law in a manner that will foster, rather than hinder, the continued use and development of 21st Century communications technologies. Therefore, this Court should adopt the Franklin rule.[16]

b. The Located Statements Do Not Imply Any Specific Undisclosed Facts

In the event that this Court declines to follow Franklin, and instead finds that the Located Statements do not disclose the factual basis for the opinions expressed, the Located Statements would still not be actionable. That is because, as discussed above, the statements accusing the Plaintiff of being a "cult" that "will destroy your family and take all of your money" do not imply any specific undisclosed facts. To the extent they imply any undisclosed facts at all, those undisclosed facts are invariably non-specific. As a result, there is no way to verify what those undisclosed facts are. As the Plaintiff admitted, the number of such undisclosed facts could be "any number." (Pl.'s Br., p. 10.) That is the same as no undisclosed facts being implied at all. Therefore, the Located Statements must necessarily be treated as pure opinion.

[16] Ironically, it might actually be in the Plaintiff's interest for this Court to adopt the Franklin rule. Right now, a reader must go to the Examining Website in order to obtain all of the facts contained in Ms. Colón's Five-Part Story. Without the Franklin rule, those facts, or similar facts, would have to be published on every website or blog that refers to the Plaintiff as a "cult"— of which there are many. The Plaintiff may come to decide that such a result is highly undesirable.

2. The Court Cannot Analyze the Fact Content of the Missing Statements Because the Plaintiff Has Not Met Its Pleading Burden

The Plaintiff argues (apparently in bad faith) that Ms. Colón has failed to analyze the challenged statements in their complete context. (Pl.'s Br., p. 9). The Plaintiff is very much aware that it has failed to provide either the Court or Ms. Colón with complete copies or descriptions of any of the challenged statements. In both the Original Complaint and the Proposed First Amended Complaint, the Plaintiff describes the challenged statements with selective editing. In other words, the Plaintiff has gone out of its way to prevent the Court from being able to analyze the full context of the challenged statements, and then complains that a full contextual analysis is lacking from Ms. Colón.

Fortunately, the problem has been overcome with respect to the Located Statements. However, with respect to the Missing Statements, the problem remains. The Plaintiff is playing hide-the-ball with the Missing Statements, and then insisting that the full context of those statements be analyzed by the Court. The Plaintiff is assuming that the Court will simply embrace the edited versions of the statements as presented in the Plaintiff's pleadings, and analyze the "context" of those.

The problem with that approach is that the editing used by the Plaintiff is misleading. As discussed above, each of the Located Statements contains a cross-reference to the Examining Website. Yet, the Plaintiff's editing deliberately omits that cross-reference. Such is the case in every one of the Plaintiff's allegations pertaining to the Located Statements, both in the Original Complaint and in the Proposed First Amended Complaint. The references to the Examining Website are simply never mentioned. That omission is highly significant. As explained above, the cross-references to the Examining Website are dispositive (or at least ought to be) on the

issue of pure opinion versus mixed opinion. The Plaintiff has gone out of its way to prevent the Court from learning about the Examining Website cross-references. Had the undersigned not located some of the business reviews and submitted them to the Court, the Court still would not be aware of those cross-references.

On information and belief, the Missing Statements also contain cross-references to the Examining Website. If so, then that would necessarily mean that the Missing Statements should be treated as pure opinion for the same reason as the Located Statements. However, the Court has no way of making that determination, because all it has to go on are the Plaintiff's edited versions of the Missing Statements, which do not make clear one way or the other whether the cross-references are included. New Jersey law requires that defamation cases be pled with specificity. See, e.g., Printing Mart-Morristown, 116 N.J. at 768 ("[A] plaintiff must plead the facts and give some detail of the cause of action.") Obviously, the Plaintiff is not required to provide a "verbatim transcription of the words spoken," Kotok Bldg. v. Charvine Co., 183 N.J. Super. 101, 105 (Law Div. 1981). However, the Plaintiff must at least describe the statements with sufficient detail so that it is clear whether or not a cross-reference exists to another website, even if the Plaintiff does not quote the cross-reference verbatim.

In both the Plaintiff's Original Complaint, and in its Proposed First Amended Complaint, the Plaintiff fails to allege - for any of the Missing Statements - that there are no cross-references to any other sources contained in the posts. In fact, the Plaintiff fails to allege that there are no other disclosed facts of any kind contained in the posts. Based on the way that the Plaintiff has written its allegations, one could not be faulted for assuming that the challenged posts probably contain not only a cross-reference to the Examining Website, but also a long list of facts supporting the challenged opinions.

Because the Plaintiff has not pled its allegations regarding the Missing Statements with sufficient particularity for the Court to determine the fact content of the statements, all claims arising out of the Missing Statements must be dismissed.

B. Rick Ross Institute Web Forum Posts

For the following reasons, Ms. Colón respectfully requests that this Court find that all claims arising out of the challenged statements contained on the Ross Institute Website (the "Ross Website") are frivolous.

The Plaintiff complains about three separate statements posted to the Ross Website. The first two statements are separate statements which the Plaintiff has improperly merged together. First, the Plaintiff complains about a "conclusion" statement that asserts that the Plaintiff "LIES ABOUT HOW THEIR CHURCH WAS FOUNDED ON THEIR APPLICATION FOR TAX EXEMPT STATUS!" (Proposed 1st Am. Compl. ¶ 33.) That Statement will hereinafter be referred to as the "Lying to the IRS" Statement. (2nd Grosswald Cert., Ex., 17.)

Second, the Plaintiff alleges that the conclusion statement is supported by the following statement:

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

(Proposed 1st Am. Compl. ¶ 35.) That statement will hereinafter be referred to as the "Organizational Control" Statement. (2nd Grosswald Cert., Ex. 18.) Both the "Lying to the IRS" Statement and the "Organizational Control" Statement were included with Ms. Colón's

prior submission, but have been resubmitted with additional supporting documentation. (See 2nd Grosswald Cert., Exs. 17 - 18.)

The third challenged statement posted to the Ross Website says that the Plaintiff is "a destructive mind-control cult." (Proposed 1st Am. Compl. ¶ 36.) That statement will hereinafter be referred to as the "Cult" Statement. (See 2nd Grosswald Cert., Ex. 19).

1. The "Lying to the IRS" Statement Is Not Actionable

The "Lying to the IRS" Statement discusses the Form 1023 (application for tax exemption) submitted by the California branch of the church. (2nd Grosswald Cert., Ex. 17.) The "Lying to the IRS" Statement is obviously not of and concerning the Plaintiff.

Moreover, if the Court reads the "Lying to the IRS" Statement in its entirety, the Court will see that the accusation of lying is supported by a number of disclosed facts. Specifically, the post explains that when asked on the Form 1023 to provide an explanation of the organization's history, the California WMSCOG gave a description that does not match up with the description that is generally given by the WMSCOG to its own members. The Plaintiff does not claim that those disclosed facts are defamatory. Therefore, the conclusion statement (that the WMSCOG lied on its tax exempt application about how its church was founded) is a pure opinion. The readers can look at the disclosed facts and make up their own minds about whether or not to agree with the conclusion that the WMSCOG lied to the IRS. Therefore, the "Lying to the IRS" statement is not actionable.

2. The "Organizational Control" Statement Is Not Actionable

The "Organizational Control" Statement discusses the Form 1023 submitted by the Illinois branch of the church. (2nd Grosswald Cert., Ex. 18.) The "Organizational Control" Statement is also not of and concerning the Plaintiff.

The "Organizational Control" Statement also consists of opinion. There is not enough factual content in the statement for it to be proven true or false. The statement deals with the issue of "control" versus "independence." However, those are both concepts that exist on a sliding scale. It is unclear how much influence the headquarter church in South Korea would have to exert over the Plaintiff before it became "true" that the headquarter church was "controlling" the Plaintiff.

There is no dispute that the headquarter church exerts some degree of influence over the Plaintiff. In ¶ 64 of its Original Complaint, the Plaintiff admitted that it "may look to the headquarter Church in South Korea for guidance." Yet, the headquarter church in South Korea claims to be more than just a "guidance provider." The headquarter church actually refers to itself as the "Head Office":

> The Head Office of the World Mission Society Church of God is the center of the 1,400 local Churches of God throughout the world, and it supports each local Church with preaching, education, administration, management, overseas mission, and culture & arts, so that they can spread the message of salvation to all peoples, following the will of Elohim.

(http://usa.watv.org/intro/headquarters.asp) (last visited Nov. 30, 2012) (2nd Grosswald Cert., Ex. 20). So while the Plaintiff insists it is not "controlled" by the "Head Office," the Head Office claims it is at the "center" of the local churches, including the Plaintiff. A central head office that lends administration and management support to branch offices around the world can fairly be said to be asserting "control" over the branch offices.

Moreover, in Ms. Colón's Five-Part Story, she asserts additional facts that lend support to the opinion that the headquarter church controls the local branches, and the Plaintiff does not dispute any of those facts. For instance, in Part 3 of her story, Ms. Colón says that after she

pointed out an error in a church book to the New Jersey pastor, the pastor responded by saying that he would notify "the general assembly in Korea to correct the error." (Five-Part Story, Part 3, Grosswald Cert., Ex. 2.) This fact suggests that there is a governing body in Korea that is responsible for "controlling" the religious texts that are used by the local branches. Then, in Part 4 of her story, a reference was made to a formula for calculating the dates of the feasts. Apparently, only the general pastor in Korea knows the formula. (Id. at Part 4.) That necessarily means that all of the local branches are dependent on the headquarter church to find out when they are supposed to celebrate their feasts. Such dependency suggests that the local branches are subject to far more control than the mere "guidance" suggested by the Plaintiff. Again, the Plaintiff does not dispute any of those facts.

The fact that the Plaintiff is incorporated as an independent entity is not dispositive of the control issue. The challenged statement does not claim that the author is using the word "control" in the context of formal corporate structure. Rather, the author is using the word "control" in a looser sense. The author is expressing frustration about the fact that the WMSCOG branch in Illinois was not more candid about disclosing the headquarter church's role in its affairs on its IRS form. At most, the use of the word "control" constitutes rhetorical hyperbole.

Because there is no quantifiable way to determine how much "control" is needed in order to make the "Organizational Control" Statement true, the statement must be treated as rhetorical hyperbole and opinion. There are no specific undisclosed facts being implied that could be proven true or false. Alternatively, if "control" is a factual assertion that can be proven true or false, then it has been proven substantially true by the undisputed facts that the headquarter church constitutes the "Head Office" at the "center" of the local branches; the

headquarter church's governing body controls the texts used by the local branches; and the headquarter church's general pastor determines the dates for the feasts that are celebrated by the local branches. For the foregoing reasons, the claims arising out of the Organizational Control Statement must be dismissed.

3. The "Cult" Statement is Not Actionable

The "Cult" Statement is not actionable because it expresses a pure opinion and is contained in a post which discloses all of the facts upon which the opinion is based. (2nd Grosswald Cert., Ex. 19.) The post begins by analyzing the bylaws of a WMSCOG entity, but it does not specify which one. The post is therefore not of and concerning the Plaintiff.

After discussing various provisions of the bylaws, the author points out that there is a "no-refund" policy for donations. Then the author describes how, according to the bylaws, members can be kicked out of the group for not keeping up with their financial obligations to the group, even though the author questions whether WMSCOG members are willing to admit to such facts. The author also notes that, according to the bylaws, the WMSCOG kicks out members who damage the church's reputation. The author interprets this rule to mean that the church will kick out people who say something negative about the church, even it is true. After presenting all of those facts, none of which are disputed by the Plaintiff, the author concludes that "[t]he WMSCOG seems to go to great lengths to protect their image." Referring to the fact that the WMSCOG protects its image by kicking out members who make truthful but non-flattering statements about it, the author then declares: "Yet another characteristic of a destructive mind control cult."

The Plaintiff does not dispute any of the factual assertions in that post. The only portion of that post that the Plaintiff disputes is the last line, referring to the WMSCOG as a

"destructive mind control cult." However, because all of the factual statements supporting the author's "cult" conclusion are disclosed, the readers can decide for themselves whether or not they agree with the author's conclusion. Therefore, the "cult" conclusion is a pure opinion, and is non-actionable. Alternatively, the "cult" conclusion does not imply any specific non-disclosed facts, and is therefore non-actionable.

C. Ms. Colón's Five-Part Story

For the following reasons, Ms. Colón respectfully requests that this Court find that all claims arising out of the challenged statements contained in Ms. Colón's Five-Part Story are frivolous.

Truth is a defense to a defamation claim. G.D. v. Kenny, 205 N.J. 275, 293 (2011). "The law of defamation overlooks minor inaccuracies, focusing instead on "substantial truth." Id. at 294. "A court must consider a statement as a whole to determine the impression it will make on a reader." Id. "Minor inaccuracies do not amount to falsity so long as 'the substance, the gist, the sting, of the libelous charge be justified.'" Id. With the substantial truth doctrine in mind the Court should find that all of the challenged statements in Ms. Colón's Five-Part Story are either substantially true or constitute protected opinions, and are therefore not actionable.

1. Separation of Families

Mr. Miltenberg and his law firm have committed a very serious ethical violation by making blatantly false assertions, or allowing their client to do so, with respect to the separation of families issue. Mr. Miltenberg is an experienced lawyer. He no doubt understands that he is an officer of the court and that he has an obligation to tell the truth in all legal papers that he files with the Court. He is also necessarily familiar with New Jersey's prohibition on frivolous litigation:

> The signature of an attorney or pro se party constitutes a certificate that the signatory has read the pleading, written motion or other paper. By signing, filing or advocating a pleading, written motion, or other paper, an attorney or pro se party certifies that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (3) the factual allegations have evidentiary support or, as to specifically identified allegations, they are either likely to have evidentiary support or they will be withdrawn or corrected if reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support; and
>
> (4) the denials of factual allegations are warranted on the evidence or, as to specifically identified denials, they are reasonably based on a lack of information or belief or they will be withdrawn or corrected if a reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support.

R. 1:4-8. Frivolous litigation is also prohibited by RPC 3.1:

> A lawyer shall not bring or defend a proceeding, nor assert or controvert an issue therein unless the lawyer knows or reasonably believes that there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law, or the establishment of new law.

Additionally, Mr. Miltenberg is bound by RPC 4.1, requiring "Truthfulness in Statements to Others":

> (a) In representing a client a lawyer shall not knowingly:
>
> (1) make a false statement of material fact or law to a third person; or
>
> (2) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

In spite of all of those provisions, Mr. Miltenberg has made, or allowed his client to make, the following allegations in ¶ 39 of its Proposed First Amended Complaint:

> Defendants stated that "I noticed that married couples and families did not study together unless there was a longer study being offered on a Sunday afternoon." This statement is false. Defendant Colón could never have noticed that married couples and families "did not study together unless there was a longer study being offered" because couples frequently study together, and often studied together in the presence of Defendant Colón. The statement implies that Plaintiff World Mission separates families when it does not.

Those allegations are demonstrably false. Moreover, the evidence of its falsity is easily obtainable by any lawyer who makes "a reasonable inquiry," as is required by R. 1:4-8.

The WMSCOG website contains photographs. Those photographs depict the church engaging its members in worship services and in bible study groups. The photographs portray those activities taking place at various WMSCOG locations around the world. Some of the photographs portray those activities taking place at the Plaintiff's church, or at its missions. Almost all of the photographs depicting worship services and study groups have one thing in common. They show the men and women being separated, just as Ms. Colón described in her Five-Part Story. The photographs prove that the challenged statement referenced in ¶ 39 is substantially true, if not literally true. The WMSCOG branches all over the world separate married couples and families, and the practice is no different at the Plaintiff's locations in New Jersey and New York. In other words, the Plaintiff is lying when it claims that Ms. Colón "could never have noticed" that married couples and family members were separated during study sessions. The fact is, anyone could notice that — if they just visit the WMSCOG's website. (See 2nd Grosswald Cert., Ex. 21.)

Mr. Miltenberg could have, and should have, discovered such photographs simply by conducting a reasonable inquiry (i.e. - browsing the website of his client's church). There is no excuse for him to make, or to allow his client to make, the false representations contained in ¶

39 of the Proposed First Amended Complaint. Ms. Colón respectfully requests that this Court find that the allegations in ¶ 39 of the Proposed First Amended Complaint are frivolous.

2. Six-Hour Group Study

The Plaintiff continues to make false statements in ¶ 40 of the Proposed First Amended Complaint:

> Defendants stated that "Members ... would attend an approximately six-hour long group study." This statement is false. Group study is never for six hours. Study lasts for, at most, one hour at a time. This statement implies that the Church requires long, uninterrupted blocks of its members' time without permitting breaks.

The Plaintiff does require long blocks of its members' time, as do all of the local branches of the WMSCOG. Again, the church's own website gives it away — this time with a story about a "sleepy-head" who became magically invigorating in the church:

> One sister, who is usually sleepy-headed, started to join the early morning preaching, overcoming the sleep. After only a couple of days she excitedly exclaimed that she had never felt so much energy and excitement and is continuously preaching the gospel vigorously.

(2nd Grosswald Cert., Ex. 22.) Moreover, Ms. Colón asserts numerous facts in her Five-Part Story that support the contention that the Plaintiff demands large blocks of time from its members. None of those facts are disputed by the Plaintiff. For instance, from Part 2 of her story (Grosswald Cert., Ex. 2):

- [M]ost members spent their entire Saturday, from about 9 am to 10 pm, in the church attending services and in between, studying the Bible, watching videos … or reading books . . . .

- The "older sister" replied that "God commanded the Sabbath day not the Sabbath hour or one Sabbath service."

- I remember one of the missionaries mentioning that members of strong faith don't question the amount of time you are supposed to spend in the church on the Sabbath. I started to view these

subliminal messages during services as ways to suggest feelings of guilt among members. I decided to keep my concerns about this to myself. It didn't take long for the pressure to build, so we started attending two services on Saturdays.

- Shortly after, I began receiving text messages on Fridays or Saturdays from the "older sister" assigned to watch over me, asking what time I would be there for service. My boyfriend would receive the same from one of the "older brothers" assigned to watch over his progress. This "buddy system" that I observed seemed increasingly odd as the frequency of the text messages increased to every day. I remember being at work and getting a text message that read something like "GBU sister, when do you think you will be coming to Zion to continue your Bible studies?" Again, I felt that this was more pressure to spend more time in the church.

- After a while, Saturdays were not enough. We were pressured to return on Sundays too. The WMSCOG holds what they call a "preaching assembly" on Sunday mornings followed by recruiting for the rest of the afternoon. When members return, they typically spend more time in the church studying.

- And then there were the feasts during which members were required to attend services at 5 am and then again at 7:30 pm for sometimes 10 days at a time. I tried the 5 am services but it was nearly impossible for me considering that I normally went to bed around 2 am. So I would attend the 7:30 pm services despite being exhausted after a long day at work.

- During the first year of my membership at the WMSCOG, my family was quite concerned with the amount of time that I was spending at the church.

- I soon found myself feeling pressured to choose between the WMSCOG and my family. I remember telling my sister that I could not attend my nephew's birthday party because it was on a Saturday. I dropped off a gift and went on my way to the church for the rest of the day. I regret this now. But this would only be the beginning of conflicts with my family due to my involvement with the WMSCOG.

And from Part 3 of her story:

- When we returned, the pressure to spend more time in the church increased even more.

- He went on to explain that the non-believing spouses usually had a problem with how much time the member spent in the church and usually would end up trying to make the member choose between the church and the marriage. The deaconess sitting to my right went on to explain that she divorced her husband due to similar circumstances . . . .

And from Part 4 of her story:

- My husband would soon explain that he needed to spend more time in the church because he needed to "learn and study more". This of course made me furious because it appeared to be a blatant attempt to cannibalize all of my husband's time in order to keep him away from me.

- The arguments between us increased and the time we spent together decreased.

- Soon he began going to the church every day after work and coming home after midnight. We were newlyweds and we rarely saw each other or spent any time together. I became increasingly frustrated and angry as time went on.

And from Part 5 of her story:

- Our anniversary was fast approaching and my husband seemed disinterested in making plans to do something special. I suggested that we go away for a couple of days and he refused. He explained that he could not be away from the WMSCOG because "father was coming soon" and he needed to be ready when the time came. On the day of our one year anniversary, he still hadn't committed to any plans or even made any suggestions about what we would be doing together.

- Now going to the WMSCOG right after working and coming home after midnight was not enough. My husband would also stay up reading the WMSCOG books until almost 2 am. Then he would wake up at 5 am to pray. The WMSCOG was keeping the both of us sleep deprived. The strain on our marriage continued.

- At this point, things seemed to be hopeless. I wasn't spending any time with my husband because he was never home.

- He admitted that "the church was always the problem" and he would under no circumstances compromise the amount of time he spent at the WMSCOG in order to try and work on our marriage.

Again, none of those facts are disputed by the Plaintiff. All of those facts show that the Plaintiff does in fact require large blocks of its members' time. Therefore, Ms. Colón's statement about the six-hour long group study properly captured the gist, or the sting, of the truth. Even if it is not literally true that there is a six-hour block of time which the Plaintiff labeled as a "group study," the Plaintiff does command large amounts of time from its members using a variety of different ploys. Some members certainly have spent as much as six hours or more a day at the Plaintiff's church. Therefore, Ms. Colón's statement is substantially true, and non-actionable.

3. North Korean Mind Control Techniques

In ¶ 44 of its Proposed First Amended Complaint, the Plaintiff alleges:

> Defendants stated that Colón's research had uncovered that "the WMSCOG was said to have been using the same mind control tactics used on US prisoners of war in N. Korea." Defendants further stated that Colón "could not ignore the similarities to what she had experienced in the WMSCOG." This statement is false. Plaintiff World Mission does not use North Korean-style mind control techniques. This statement is particularly damaging because the Church was founded in South Korea. As such, Defendants injected racial and historical half-truths to fuel their falsehoods.

The Plaintiff has used selective editing to alter the meaning of Ms. Colón's words. The complete quote is as follows:

> The most disturbing information that I had come across was that the WMSCOG was said to have been using the same mind control tactics used on US prisoners of war in N. Korea. I also learned about Robert J. Lifton's thought reform model [more on this]. When I finally read an article that explained how the Jehovah's Witnesses used the same tactics to control their members I could

> not ignore the similarities to what I had experienced in the WMSCOG. [For our readers, she is referring to this article].

(Five-Part Story, Part 3, Grosswald Cert., Ex. 2.) From the complete paragraph it is clear that the sentence discussing "similarities to what [she] had experienced in the WMSCOG" was referring to the tactics described in Robert J. Lifton's thought reform model, not the North Korean mind control techniques. Ms. Colón simply referred to the fact that other WMSCOG critics had claimed that the WMSCOG was using North Korean mind control techniques. Yet, the Plaintiff is not suing those other critics.

Even if Ms. Colón's statement could be interpreted to say that she was accusing the Plaintiff of using "North Korean-style mind control techniques," such a statement does not contain enough factual content to be proven true or false. Such a comment is similar to the comments labeling the Plaintiff a "cult." It does not imply any specific non-disclosed fact. It arguably implies an unlimited number of non-disclosed facts, which is the same as implying no specific non-disclosed facts at all. The Plaintiff never alleges what non-disclosed facts are being implied.

Rather, the Plaintiff simply denies that it uses such techniques, without ever defining what those techniques are. (Proposed First Amended Complaint ¶ 44.) It is impossible to even know what techniques the Plaintiff is denying using. For instance, as explained above, the Plaintiff demands large blocks of its members' time, often inducing sleep deprivation and exhaustion as a result. Some would argue that those are "North Korean-style mind control techniques." Yet, as explained above, the Plaintiff is not denying the long list of facts asserted by Ms. Colón that establishes that it uses those tactics. Thus, there is arguably at least one North Korean-style mind control technique that the Plaintiff does not deny using — sleep

deprivation. The Plaintiff does not explain how it reconciles its denial of the use of "North Korean-style mind control techniques" with its tacit admission that the sleep deprivation facts asserted by Ms. Colón are true. As a result, it is impossible for Ms. Colón to ascertain what facts she must prove to be true in order to assert truth as a defense. The statement referencing North Korean-style mind control techniques is clearly an opinion statement, and is not actionable.

4. Targeting People in Their 20s and 30s

In ¶ 41 of its Proposed First Amended Complaint, the Plaintiff alleges:

> Defendants stated that the Church, during its recruiting efforts was "targeting people in their 20s and 30s since we never approached anyone that appeared to be older than that." This statement is false. The Church does not target people in their 20s and 30s and frequently approaches people of all ages when it evangelizes. This statement falsely implies that the Church targets the youthful and inexperienced when it evangelizes.

This is yet another case of selective editing. The complete sentence is:

> I had a sense that we were targeting people in their 20s and 30s since we never approached anyone that appeared to be older than that.

(Five-Part Story, Part 3, Grosswald Cert., Ex. 2.) Ms. Colón was clearly expressing a perception, not a fact. She is stating that in her experience, she and the other people she recruited with never approached older people. She is not claiming that the church does not ever recruit older people, just that she and the other recruiters she was with did not approach older people. This actually makes sense, because Ms. Colón is herself young and attractive, and young people would be more likely to be drawn to her than older people. If the Plaintiff wanted to recruit older people, it would probably want to use a recruiter who is older than Ms. Colón. Therefore, the Plaintiff's assertion that it recruits people of all ages is not contradicted by Ms.

Colón's assertion that, in her experience, she was being used to target young people. The Plaintiff actually does not deny that Ms. Colón had that experience, or that she was used to target young people. The Plaintiff simply denies that it targets exclusively young people on a global level. However, because the Plaintiff does not deny the specific facts that Ms. Colón says she experienced as a recruiter, the "targeting young people" statement must be deemed to be substantially true, and therefore not actionable.

Moreover, even if Ms. Colón's statement could be interpreted to mean that the Plaintiff only targets young people, such a statement is not defamatory. There is nothing inherently wrong with an organization focusing its recruiting efforts on young people. The targeting of young people creates the impression that the organization is trendy, idealistic, and energetic. Older people, in fact, are often more vulnerable to exploitation from a cult than young people because older people usually have more money to give to the cult. Moreover, older people often suffer more serious health consequences from the long hours and lack of sleep that they experience in a cult. Back in the 1990s, Modern Maturity magazine, a publication of the AARP, published a cover story entitled "Cults: Forget Kids. Now They're After You." (2nd Grosswald Cert., Ex. 23.) The article details how cults exploit senior citizens, and explains why older people are particularly vulnerable to such exploitation. Because older people are so vulnerable to cults, the Plaintiff's admission that it recruits older people actually could do more harm to the Plaintiff's reputation than Ms. Colón's statement about targeting young people.

Finally, the Court should take a moment to read through the entire paragraph containing the "targeting young people" statement:

> When we returned, the pressure to spend more time in the church increased even more. There was also a huge focus on "bearing ten talents" or recruiting. I remember going out with "sisters" to

> "preach" to new members. I had a sense that we were targeting people in their 20s and 30s since we never approached anyone that appeared to be older than that. We always went to crowded areas like stores and shopping malls. I was told that crowded areas were best and we would get to talk to the most people. I had a difficult time with this because I didn't feel comfortable walking up to strangers and asking them if they had "ever heard about god the mother in the Bible". The rejection from most people didn't help. A lot of people would just walk away or tell us that they were atheists. Security asked us to leave after receiving complaints from customers.

(Five-Part Story, Part 3, Grosswald Cert., Ex. 2.) The image painted by this paragraph (recruiters going to crowded shopping areas, walking up to strangers, opening conversations with bizarre theological questions that have no context for the people being approached, inducing angry complaints from people leading security to remove them from the store) is very close to the image that most people have when they think of a "cult." Except for the part about targeting young people, the Plaintiff does not challenge any of those facts.

5. Fasting

In ¶ 42 of its Proposed First Amended Complaint, the Plaintiff alleges:

> Defendants stated that Plaintiff Ortiz "was in his second day of a three day fast . . . fasting means no food or water . . . participation in the fast is expected from all members, including children and infants." This statement is false. The Church does not require or expect fasting from any member, and fasting is <u>specifically prohibited</u> from children and infants for myriad reasons, especially health reasons. This statement falsely implies that the Church set up a program that was dangerous to the health and safety of infants and children.

(emphasis in original). Again, the Plaintiff has made assertions that can be proven false by visiting the WMSCOG website. As a threshold matter, it should be noted that the Plaintiff's denial is broader than the statement it is denying. The Plaintiff says that it "does not require or expect fasting." However, the statement from Ms. Colón that the Plaintiff is responding to only

says that fasting is "expected." It is undeniable that the Plaintiff "expects" its members to fast. The WMSCOG holds a number of feasts and ceremonies throughout the year in which fasting is included as part of the ritual. These fasting rituals are described on the WMSCOG website. (2nd Grosswald Cert., Ex. 24.) If a church declares fasting to be part of a religious ritual, then it is a fair characterization to say that the church has created an "expectation" that its members will participate.

Moreover, the WMSCOG website specifically states:

> All the members of the Church of God participate in the suffering of Christ by fasting from the Passover midnight to 3 pm at the Feast of Unleavened Bread . . . .

(Id.) That statement from the WMSCOG is unqualified. "All the members" do it — including the children. There is nothing on that web page to indicate that children or infants are excluded. In fact, the Plaintiff expressed more concern for the health and safety of children in ¶ 42 of its Proposed First Amended Complaint then the WMSCOG expresses on its website. Based on the representations made on the WMSCOG website, Ms. Colón's statements about fasting must be deemed to be substantially true, and not actionable.

6. So Many Divorced or Separated Members

In ¶ 43 of the Plaintiff's Proposed First Amended Complaint, it alleges:

> Defendants asked "why are there so many divorced or separated members?" This question implies false facts, namely that there are "so many" divorced or separated members. This statement is false. On information belief, very few Church members, less than one in one hundred, are separated or divorced.

This statement constitutes rhetorical hyperbole. The phrase "so many" is undefined. There is no way to know how many members of the Plaintiff would have to be divorced or separated in order for Ms. Colón to assert truth as a defense.

Even if such a statement could be subject to being proven true or false, Ms. Colón asserts enough undisputed facts in her Five-Part Story to establish that the statement is substantially true. For instance:

> [The pastor] explained that the members had no choice but to leave their spouses because of the persecution they received. He went on to explain that the non-believing spouses usually had a problem with how much time the member spent in the church and usually would end up trying to make the member choose between the church and the marriage. The deaconess sitting to my right went on to explain that she divorced her husband due to similar circumstances and that her husband had also committed adultery. It is important to point out that she had never once mentioned that her husband had committed adultery to me before. The other times that she had discussed leaving her husband with me, her reasons were that he had tried to stop her from tithing and attending the church as often.

(Five-Part Story, Part 3, Grosswald Cert., Ex. 2.) The Plaintiff does not dispute that either the pastor or the deaconess made the statements that are attributed to them. Based on those statements, Ms. Colón could reasonably pose the question she posed about why so many members are divorced or separated. "This question is pointed, and could certainly arouse a reader's suspicion." Chaplin v. Knight-Ridder, Inc., 993 F.2d 1087, 1094 (4th Cir. 1993). "A question can conceivably be defamatory, though it must be reasonably read as an assertion of a false fact; inquiry itself, however embarrassing or unpleasant to its subject, is not accusation." Id.

Moreover, under the substantial truth doctrine, Ms. Colón correctly described the "gist" regarding the Plaintiff's views on marriage and family. That "gist" is reinforced by an article on the WMSCOG website which appears to encourage church members to neglect their families. The article tells the story of a church member who lived in D.C. prior to the WMSCOG establishing a chapter there. (2nd Grosswald Cert., Ex. 22.) The church member drove about

four hours every Friday to keep the Sabbath day in "New York Zion" (the Plaintiff's church). (Id.) The story explains that the church member made that drive every week for about a year, "[d]espite persecution from his wife." (Id.) Instead of the article's author being appalled at the fact that this church member was neglecting his wife every Friday night for a year, and instead of offering solutions for this church member to repair his marital bond, the author stated: "I feel God was really moved by his faith." (Id.) In other words, the act of choosing the church over one's spouse is perceived by the church as an act of "faith." That is the "gist" that Ms. Colón was getting at when she posed her question. Because Ms. Colón correctly captured the "sting" (that the Plaintiff encourages its members to sacrifice their families for the church) the question posed by Ms. Colón is non-actionable.

7. 30 Subjects in 30 Days

In ¶ 45 of its Proposed First Amended Complaint, the Plaintiff alleges:

> Defendants stated that Plaintiff Ortiz "informs me that he had been recently chosen to participate in an intense Bible study training course where he would learn to teach 30 subjects in 30 days." This statement is false. Plaintiff Ortiz was never chosen to participate in the program at issue. On the contrary, he volunteered. This false statement implies an improper motive on the part of Plaintiff World Mission in tune with the thesis of Defendants' articles: that the Church maliciously selected her husband for a "special" program, so as to wrest his free time away from his wife, Defendant Colón. Moreover, the course was to teach 3 subjects in 30 days. This statement falsely implies that the Church hastily and poorly glosses over doctrine that it claims is important to it, and that the teaching is only pretext for dominating its members' time and keeping them away from their families.

First, the Plaintiff disputes that the program involved teaching thirty subjects in thirty days, and says it was only three subjects. Yet, in the challenged statement, Ms. Colón is merely repeating what her husband, Mr. Ortiz, told her. It is possible that Mr. Ortiz mistakenly told

Ms. Colón the wrong information. Nevertheless, the Plaintiff never disputes that Mr. Ortiz told her it was thirty subjects.

In any event, such a statement is not defamatory. The difference between three subjects or thirty subjects does not cause any harm to the Plaintiff's reputation. There is no merit to the Plaintiff's assertion that the reader will assume that "the Church hastily and poorly glosses over doctrine," (Proposed 1st Am. Compl. ¶ 45), because Ms. Colón's statement does not ever discuss the subjects being taught or how complicated they are. The reader would simply assume that each of the thirty subjects was short enough to be taught effectively in a single day.

Nor is there any merit to the Plaintiff's complaint that Mr. Ortiz volunteered for the program, as opposed to being chosen. Even if Mr. Ortiz volunteered, that still does not mean that he did not tell Ms. Colón that he was "chosen," in order to make himself sound more important. Again, the Plaintiff does not dispute Ms. Colón's claim about what Mr. Ortiz told her. Therefore, the challenged statements are not actionable.

8. "The Cult or Me"

In ¶¶ 46 - 48 of its Proposed First Amended Complaint, the Plaintiff complains that various conclusions drawn by Ms. Colón are defamatory: calling the Plaintiff a "cult" and a "destructive organization," stating that the Plaintiff "destroyed her marriage," and asserting that the Plaintiff's "intention was to cause division between my husband and I."

The facts set forth in Ms. Colón's Five-Part Story clearly justify Ms. Colón coming to each of those conclusions. As explained above, the vast majority of those facts are not disputed by the Plaintiff. Those facts that are disputed are only disputed because the Plaintiff is willing to lie to this Court, in spite of unassailable evidence on its own church's website which reveals that Ms. Colón has been telling the truth.

D. Presidential Award Article

The Plaintiff's brief illustrates that there is very little dispute between the parties regarding the underlying facts with respect to the article entitled "The WMSCOG 'Awarded by President Obama'?" (hereinafter the "Presidential Award Article," Grosswald Cert., Ex. 5), which is referenced in ¶¶ 88 - 97 of the Original Complaint and ¶¶ 49 - 52 in the Proposed First Amended Complaint. The following is a list of facts on which both parties agree:

- the Presidential Volunteer Service Award Program rules allow organizations to apply to become "certifying organizations";
- a certifying organization has the right to certify other branches of the same organization to receive a Presidential Volunteer Service Award;
- a certifying organization has the right to certify its own members to receive a Presidential Volunteer Service Award;
- pursuant to the rules of the program, the Plaintiff became a certifying organization;
- as a certifying organization, the Plaintiff certified a number of other World Mission Society Church of God entities around the country to receive Presidential Volunteer Service Awards;
- as a certifying organization, the Plaintiff certified a number of its own members to receive Presidential Volunteer Service Awards;
- the Plaintiff did not violate the program's rules with respect to the awards given to other World Mission Society Church of God entities around the country;[17]
- the Plaintiff did not violate the program's rules with respect to the awards given to its own members;[18] and

[17] Ms. Colón agrees with this fact on information and belief and for purposes of this motion only, and without prejudice to her right to assert that the Plaintiff did violate the program rules in this regard if she learns information to that effect.

[18] Ms. Colón agrees with this fact on information and belief and for purposes of this motion only, and without prejudice to her right to assert that the Plaintiff did violate the program rules in this regard if she learns information to that effect.

- the Plaintiff also certified itself for an award.

The only significant disagreement between the parties is whether the Plaintiff violated the program rules by certifying itself for an award. As the Plaintiff alleges in ¶ 50 of the Proposed First Amended Complaint:

> The article stated:
>
> > According to the representative of the Presidential Volunteer Service Award office, the WMSCOG **should not have nominated their Ridgewood, New Jersey location** for the award since the "certifying organization" would in essence be **awarding themselves**.
>
> (emphasis in original). Defendants further stated: "my church isn't signing up to nominate itself to receive such a prestigious award."

The Plaintiff then goes on to allege that the Presidential Award Article is "false." (Proposed 1st Am. Compl. ¶ 51.) Thus, it appears that the parties disagree on whether self-certification is permitted by the rules of the program.

Yet, in fact, there is no such disagreement between the parties. The Plaintiff has had four opportunities to state what the rule is governing the awards. First, the Plaintiff stated the rule in its initial complaint against Ms. Colón in Virginia. (Va. Compl., ¶ 89, 2nd Grosswald Cert., Ex. 25.) Then in the instant case, the Plaintiff stated the rule in it is Original Complaint. (Original Compl. ¶ 92, Grosswald Cert., Ex. 1.) The Plaintiff stated the rule again in its Proposed First Amended Complaint. (Proposed First Am. Compl. ¶ 51.) Finally, the Plaintiff stated the rule in its brief opposing the instant motion. (Pl.'s Br., p. 16.) On all four occasions, the Plaintiff described the rule in exactly the same way:

> Organizations are permitted to certify the volunteer hours of their own members and other branches of the same organization so that they may be recognized by this national award.

This rule, as stated four times by the Plaintiff, allows a certifying organization to certify an award for only two classes of recipients: 1) other branches of the same organization; or 2) individual people who are members of the certifying organization. The Plaintiff's own statement of the rule does not include the right of a certifying organization, such as the Plaintiff, to certify itself for an award. Although the Plaintiff has had four opportunities to set forth its interpretation of the rule, on none of those four occasions has the Plaintiff ever asserted that the rule allows for self-certification. Yet, that is what the Plaintiff must assert in order to create an actual controversy. Because the Plaintiff is not making such an allegation, and has never made such an allegation, there is no basis for holding the author of the Presidential Award Article liable. The Presidential Award Article claim is yet another frivolous claim, brought by a SLAPP-Plaintiff, trying to pretend there is a controversy where none exists, just to get the opportunity to take discovery on an adversary.

There is one other minor fact that the parties disagree on with the respect to the Presidential Award Article. That fact is whether the author of the Presidential Award Article was telling the truth when asserting that the author spoke to a representative from the Presidential Volunteer Service Award office who confirmed that self-certification is not permitted under the rules.[19] Nevertheless, this fact is irrelevant, since the Plaintiff's own

[19] The Plaintiff's assertion on Page 16 of its brief that "No 'representative' of the Presidential Volunteer Service Award office ever advised Defendant Newton that 'the WMSCOG should not have nominated their Ridgewood, New Jersey location for the award'" is highly inappropriate. Putting aside the fact that Mr. Newton is not currently a defendant, there is no way that the Plaintiff could justify making such a statement. Obviously, the author of the Presidential Award Article did not contact the representative of the award office in the presence of the Plaintiff, so there is no way for the Plaintiff to know that such a phone call did not occur. The statement asserts something which the Plaintiff cannot possibly know to be true. By signing on to such a statement, Mr. Miltenberg and his law firm have violated R. 1:4-8 (Frivolous Litigation) and RPC 4.1 (Truthfulness in Statements to Others).

description of the rule does not allow for self-certification. Because there is no dispute between the parties that self-certification violates the program's rules, the discussion of the rule violation in the Presidential Award Article is not actionable.

Finally, even if the statements regarding self-certification gave rise to an actionable claim, the Plaintiff would not be able to establish that it suffered damages from those statements. That is because those statements appear alongside much more damaging statements in the same article. Pursuant to the Incremental Harm Doctrine:

> [F]alsehoods which do no incremental damage to the plaintiff's reputation do not injure the only interest that the law of defamation protects. A news report that contains a false statement is actionable only when significantly greater opprobrium results from the report containing the falsehood than would result from the report without the falsehood . . . Falsehoods that do not harm the plaintiff's reputation more than a full recital of the true facts about him would do are thus not actionable.

Haynes v. Alfred A. Knopf, Inc., 8 F.3d 1222, 1228 (7th Cir. Ill. 1993) (citations and quotation marks omitted). In the instant case, even if the self-certification statements are defamatory, they would not cause more harm to the Plaintiff's reputation than if the same article were published without the self-certification statements. That is because the article contains the following accusation:

> The WMSCOG added their award to the English site here (click on "THE WHITE HOUSE WASHINGTON") and in contrast to their English site, the WMSCOG added the award they presented to Joo Cheol Kim on their official Korean site here. Why did they choose to omit Joo Cheol Kim's award from their English site? Could it be because one of the requirements of the award is that the volunteer must be a U.S. Citizen?

(Presidential Award Article, Grosswald Cert., Ex. 5.) The suggestions made by that statement are far more inflammatory than the accusation that the Plaintiff improperly self-certified itself for

an award. Yet, the Plaintiff has raised no objection to that statement. Even if the Plaintiff were somehow able to prove that it suffered damage as a result of the Presidential Award Article containing the self-certification statements, the Plaintiff would have suffered the same damage had the article been published without the self-certification statements. Therefore, under the Incremental Harm Doctrine, the Presidential Award Article is non-actionable.

For the foregoing reasons, Ms. Colón respectfully requests that this Court find that all claims arising out of the Presidential Award Article are frivolous.

E. The Variance Hearing Statements

For the following reasons, Ms. Colón respectfully requests that this Court find that all claims arising out of the Variance Hearing Statements are frivolous.

1. The Variance Hearing Statements Have Not Caused Any Damage to the Plaintiff

The Plaintiff rebuts Ms. Colón's arguments regarding the Planning Board hearings by spending quite a bit of time arguing that it has no obligation to plead the "circumstances of publication" for each of the challenged statements. The Plaintiff then concedes that it must plead "facts sufficient to identify the defamatory words, their utterer and the fact of their publication." (Pl.'s Br., p. 29, citing Zoneraich v. Overlook Hosp., 212 N.J. Super. 83, 101 (App. Div. 1986). Some would characterize those requirements as the "circumstances of publication," but the Plaintiff objects to that term. Nevertheless, for the reasons explained in Ms. Colón's initial brief, the Plaintiff has failed to satisfy those requirements in ¶¶ 22-26 and ¶ 34 of its Original Complaint

The Plaintiff seems to agree with that assessment, because all of those paragraphs have been removed in the Plaintiff's Proposed First Amended Complaint. The Plaintiff is no longer

complaining that Ms. Colón was trying to block its variance application. Nor is it complaining any more about its failure to obtain a variance. The Plaintiff's decision to drop those allegations is a tacit admission by the Plaintiff that those allegations were frivolous, as explained in Ms. Colón's initial brief on Pages 12 - 18. Therefore, Ms. Colón respectfully requests that this Court find that those allegations were frivolous.

The Planning Board hearing allegations have now been replaced in the Proposed First Amended Complaint with ¶ 70 and ¶ 71, which read:

> ¶ 70: On a separate occasion, at a public hearing concerning Plaintiff World Mission's application to obtain a building code variance approval, Defendant Colón publicly stated that Plaintiff "damage[s] families, "ruined [her] marriage," and "takes its members' money." (the "Variance Hearing Statements") As set forth in detail, supra, these statements are false. Further, they suggest further hidden facts.
>
> ¶ 71: The audience of the Variance Hearing Statements consisted of Plaintiff Ortiz's local church community, familiar with the Church and with Plaintiff Ortiz. As such, much of the audience would have understood these statements to have been of and concerning Plaintiff Ortiz, Defendant Colón's husband. These statements implied that Plaintiff Ortiz allowed the Church to "damage" and "ruin" his marriage to [Defendant] Colón.

Because Mr. Ortiz is not currently a party in this case, Ms. Colón will not address the merits of Mr. Ortiz' claims at this time. However, Ms. Colón will address the claims of Plaintiff World Mission arising out of those statements.

Even if all of the allegations in ¶ 70 and ¶ 71 are true, Plaintiff World Mission could not have suffered any damages. The alleged audience for the Variance Hearing Statements was Mr.

Ortiz and his church friends.[20] (Proposed 1st Am. Compl. ¶ 71.) The Plaintiff does not allege that any of the church members who heard the Variance Hearing Statements, including Mr. Ortiz, subsequently left the church or stopped donating money to it. The Plaintiff does not allege that the statements were made to the general public, where prospective recruits may have heard them. The Plaintiff does not allege that the statements were made to the Planning Board members, which could have had an impact on its variance application. In the absence of any such allegations, there is no basis for the Plaintiff to sustain a damages claim.

The fact that the Plaintiff would invest the time and money to sue over statements that clearly caused it no injury illustrates just how petty and frivolous this lawsuit is. Ms. Colón respectfully requests that this Court dismiss, with prejudice, all claims of the Plaintiff World Mission arising out of the Variance Hearing Statements, without prejudice to any claims that Mr. Ortiz may have arising out of such statements, and without prejudice to Ms. Colón's right to move to dismiss any such claims of Mr. Ortiz.

2. The Variance Hearing Statements Contain Protected Opinion

The variance hearing statements constitute protected opinion for the same reasons as the statements in the Business Reviews. The Plaintiff admits that the Variance Hearing Statements and the Business Review statements "are largely identical." (Pl.'s Br., 18.) In summary, the Variance Hearing Statements do not imply the existence of any specific undisclosed fact that is capable of being proven true or false.

[20] The Plaintiff is attempting to gloss over that fact by arguing in its brief that the Variance Hearing Statements were made "to those present at the meeting." (Pl.'s Br., p. 18.) Apparently, the lawyer who drafted the brief did not consult with the lawyer who drafted the Proposed First Amended Complaint. The Proposed First Amended Complaint provides significantly more detail about who was in the audience for the Variance Hearing Statements. (See Proposed 1st Am. Compl. ¶ 71.)

Moreover, the context of the Variance Hearing Statements clearly indicates that they are opinion statements. The alleged audience for those statements consisted of Mr. Ortiz and his church friends. (Proposed 1st Am. Compl. ¶ 71.) The Plaintiff freely admits that people in that audience would have understood the statements to be of and concerning Mr. Ortiz. (Id.) Therefore, the statements would have been understood by any reasonable listener to be the opinions of a woman who was upset about losing her husband to the church. No reasonable listener would have understood Ms. Colón to be a journalist, or a government official, or anyone else who is responsible for reporting hard facts. Therefore, the Variance Hearing Statements are opinion statements and not actionable.

F. The "Families Video"

In ¶¶ 54 - 58 of its Proposed First Amended Complaint, the Plaintiff complains about a You Tube video entitled "World Mission Society Church of God - Destroys Families" (hereinafter, the "Families Video"). The transcript of the Families Video is attached to Ms. Colón's Second Affidavit, as Exhibit D. That transcript reveals that the Families Video never discusses the Plaintiff. It only discusses the WMSCOG as a group. Therefore, the Families Video is not of and concerning the Plaintiff, and the Plaintiff's claims regarding the Families Video must be dismissed.

Even if the Families Video were of and concerning the Plaintiff, it would not be actionable because it contains protected opinions, supported by undisputed disclosed facts. For instance, the Families Video expresses the opinion that "[t]he World Mission Society Church of God uses mind control tactics on its members in order to tear them apart from their families." (Proposed 1st Am. Compl. ¶ 54.) The video supports that opinion by disclosing certain facts that are undisputed by the Plaintiff. For instance, the video states that the WMSCOG teaches

its members to "believe that everyone else in the world that is not a member of the organization, including their spouse, parents, children, etc., are controlled by Satan." (Colón Aff., Ex. D.)

The Plaintiff also complains that the Families Video accuses the WMSCOG of using "fear and guilt to prevent its members from going on vacation." (Proposed 1st Am. Compl. ¶ 55.) However, the full statement explains more fully how the fear and guilt works:

> The World Mission Society Church of God uses fear to prevent its members from going on vacation by telling them that Christ, or Father, will return at any given moment and that they should not be found anywhere else but the church when this happens.

(Colón Aff., Ex. D.) The Plaintiff does not deny that it tells its members that Christ will return at any moment and that they must be in the church when He arrives. Whether or not that belief induces people to not want to take vacations is a matter of opinion.

The Plaintiff also complains that the Families Video accuses the WMSCOG of using "sleep deprivation as a means to make their members more vulnerable to the indoctrination process." (Proposed 1st Am. Compl. ¶ 56.) As explained previously, Ms. Colón's Five-Part Story presents a long list of facts, undisputed by the Plaintiff, that suggests that the Plaintiff does exactly that. (Five-Part Story, Grosswald Cert., Ex. 2.) Moreover, the Families Video ends with a request for the viewer to visit the Examining Website, where Ms. Colón's Five-Part Story can be found, among other things. (Colón Aff., Ex. D.) Therefore, the facts supporting the sleep deprivation claim are fully disclosed to the viewer through the cross-reference to the Examining Website. Because those supporting facts are not challenged by the Plaintiff, the "sleep deprivation" statement is not actionable.

Similarly, the statement "Every waking moment must be focused on controlling the member's mind," complained of by the Plaintiff in ¶ 57 of its Proposed First Amended Complaint

is not actionable. That statement is supported by the assertion that "Members are encouraged to get rid of anything or anyone that gets in the way of spending time in the WMSCOG." (Colón Aff., Ex. D.) That fact is not disputed by the Plaintiff.

Finally, the Plaintiff alleges that, taken together, the statements in the "Families Video" imply undisclosed facts. (Proposed 1st Am. Compl. ¶ 58.) However, the Plaintiff does not say what those undisclosed facts are. Nevertheless, anyone who views the Families Video or reads the transcript can discern that all of the supporting facts are disclosed. Because the supporting facts are not challenged by the Plaintiff, the statements in the Families Video are not actionable.

For the foregoing reasons, Ms. Colón respectfully requests that this Court find that all claims arising out of the Families Video are frivolous.

G. The "Financial Info" Video

In ¶¶ 59 - 64 of its Proposed First Amended Complaint, the Plaintiff complains about a video entitled "World Mission Society Church of God - Public Financial Info!" (hereinafter, the "Financial Video"). The transcript of the Financial Video is attached to Ms. Colón's first Affidavit, as Exhibit C. That transcript reveals that the Financial Video discusses primarily the WMSCOG branch in Bloomingdale, Illinois. It makes only a few references to the Plaintiff, but none of those references are challenged in the Plaintiff's Proposed First Amended Complaint. Therefore, the Financial Video is not of and concerning the Plaintiff, and the Plaintiff has no standing to bring claims arising out of it.

Moreover, the Financial Video presents all of the facts that its conclusions are based on. The speaker is reading from an IRS Form for the Illinois branch of the WMSCOG. The speaker tells the viewers how to obtain those documents so they can verify the information for themselves. The speaker talks through the IRS form and explains how all of the conclusions are

reached. The Plaintiff does not dispute any of the material facts that give rise to those conclusions.

Nevertheless, in ¶¶ 60 - 61 of the Proposed First Amended Complaint, the Plaintiff complains about a series of statements that accuse the non-profit WMSCOG of maintaining a relationship that is "quite suspect" with a for-profit entity called Big Shine Worldwide, Inc. As explained on Page 52 of Ms. Colón's initial brief, all of the facts supporting those statements are disclosed in the video, and are not controverted by the Plaintiff. Specifically, the disclosed facts reveal that the WMSCOG and Big Shine share personnel and office space at numerous locations around the world. The Plaintiff's brief fails to explain why such uncontroverted facts are not sufficient to support the opinion that the relationship between WMSCOG and Big Shine is "quite suspect."

In ¶¶ 62 the Proposed First Amended Complaint, the Plaintiff alleges:

> Defendant Colón states in the Financial Info Video that she is reading an IRS filing from one of the Church's branches in the video and notes that the form reports receipt of "a little over $26,000 from a, quote, parental church." She then states that the form does not also report a corporate subsidiary relationship to its parent church headquartered in South Korea, and that this is suspect.

The Plaintiff explicitly admits in that paragraph that the IRS filing in question pertains to "one of the Church's branches." Actually, the challenged statements are referring to the WMSCOG branch in Bloomingdale, Illinois. In other words, the allegations in that paragraph are not of and concerning the Plaintiff. Yet, in the next paragraph of its Proposed First Amended Complaint, the Plaintiff alleges:

> Plaintiff World Mission is not a corporate subsidiary of the parent church headquartered in South Korea. As such, this statement falsely implies that Plaintiff World Mission made dishonest statements to the IRS.

Actually, the challenged statement implies that the WMSCOG branch in Illinois made dishonest statements to the IRS, not the Plaintiff. Nevertheless, the support for the allegation of a dishonest statement by the Illinois branch is presented in the video - the fact that the branch claimed not to have any chapters, branches, or affiliates, yet still claimed that it had received a little over $26,000 from a "parental church."

Finally, the Plaintiff alleges in ¶ 64 of its Proposed First Amended Complaint that:

> Defendant Colón states in the Financial Info Video that Plaintiff World Mission claimed "$300,000 in missionary expenses" but states that Plaintiff's members pay their own expenses when they do missionary work. She then promises "[m]ore information on the WMSCOG's questionable business connections and tax filings to come." These statements imply the existence of false facts, namely that Plaintiff World Mission lies to the IRS about the source and use of its funding.

As explained on Pages 56 - 57 of Ms. Colón's initial brief, the Plaintiff does not deny that the Illinois branch of the WMSCOG claimed $300,000 in missionary expenses on an IRS form. Nor does the Plaintiff deny that WMSCOG members are required to pay their own expenses when they do missionary work. Therefore, the challenged statements must be deemed to be true, and are not actionable.

For the foregoing reasons, Ms. Colón respectfully requests that this Court find that all of the claims arising out of the Financial Video are frivolous.

VIII. Plaintiff's False Light Claim Is Frivolous Because It Has No Standing to Bring Such a Claim

The Plaintiff's Proposed First Amended Complaint "makes it clear" that the Plaintiff is asserting claims for false light invasion of privacy. (Pl.'s Br., p. 32.) This is yet another frivolous claim. The Plaintiff is a corporation, and corporations have no standing to sue for

false light. N.O.C., Inc. v. Schaefer, 197 N.J. Super. 249, 253 (Law Div. 1984). As explained in N.O.C.:

> The tort of invasion of privacy focuses on the humiliation and intimate personal distress suffered by an individual as a result of intrusive behavior. While a corporation may have its reputation or business damaged as a result of intrusive activity, it is not capable of emotional suffering.

N.O.C., Inc. v. Schaefer, 197 N.J. Super. 249, 253 (Law Div. 1984); see also Oberweis Dairy, Inc. v. Democratic Cong. Campaign Comm., Inc., 2009 U.S. Dist. LEXIS 18514, *3-5 (N.D. Ill. Mar. 11, 2009) (collecting cases from around the country holding that corporations have no standing to sue for privacy torts, including false light).

The only reason the Plaintiff's false light claim is included in the Proposed First Amended Complaint is to continue to harass Ms. Colón. Mr. Miltenberg and his law firm market themselves as specialists in defamation and privacy law. Yet, Mr. Miltenberg willfully filed a bogus false light claim on behalf of a corporation as if he was a first-year law student who had not yet gotten to the chapter on privacy. It is simply not possible that he would not have known that a corporation is not permitted to bring a false light claim. Moreover, he is not presenting an argument for a non-frivolous extension, modification, or reversal of existing law or the establishment of new law. See R. 1:4-8 (frivolous litigation). The only reason the Plaintiff's false light claim exists is to force Ms. Colón and her lawyer to have to spend time and money responding to it. Therefore, Ms. Colón respectfully requests that this Court find that all of the Plaintiff's false light claims are frivolous, and dismiss them with prejudice.

IX. The Plaintiff is Not Entitled to Equitable Tolling Because It Has "Unclean Hands"

The Plaintiff should not be permitted to toll the statute of limitations for the time that elapsed during the pendency of the case against Ms. Colón in Virginia. "Tolling is an equitable

remedy." Morrison v. Goff, 91 P.3d 1050, 1057 (Colo. 2004); see also Braxton v. Zavaras, 614 F.3d 1156, 1161 (10th Cir. 2010) (same). "[E]quity avoids rewarding a party with unclean hands." Munoz v. Perla, 2011 N.J. Super. Unpub. LEXIS 3096, *46 (App. Div. Dec. 20, 2011); see also Sell v. United States DOJ, 585 F.3d 407, 410 (8th Cir. Mo. 2009) ("Tolling is an equitable remedy that is applied when the plaintiff is blameless"). The purpose of the "unclean hands" doctrine "is to effectuate the principle that relief should not be granted to a wrongdoer." Munoz, 2011 N.J. Super. Unpub. LEXIS 3096, *46. The doctrine is applicable "when the totality of circumstances indicates that the claimant stands to reap a reward despite its unjust conduct." Id. "This means that the claimant produced the situation and created the attendant hardship." Id. (internal quotation marks omitted).

The case that the Plaintiff filed in Virginia was an unlawful SLAPP suit. Frivolous lawsuits are illegal in Virginia just as they are in New Jersey. See, e.g. Va. R. Prof. Conduct 3.1. The recognition, for equitable tolling purposes, of the Plaintiff's SLAPP suit filing in another jurisdiction would undermine the State of New Jersey's public policy against SLAPP suits. That policy was articulated in LoBiondo v. Schwartz, 199 N.J. 62, 72 (2009). The Plaintiff should not be allowed to toll the statute of limitations by relying on the filing of a case in another jurisdiction which it never should have filed in the first place.

The reasons why the Plaintiff never should have filed the Virginia case are obvious. As explained in the Preliminary Statement above, the Plaintiff never intended to litigate the case on the merits. The Plaintiff took a shot at getting Mr. Newton to disclose the names of the families he has cooperated with, so that the Plaintiff could wreak havoc on those families. (2nd Grosswald Cert., Ex. 8.) That attempt failed. Next, the Plaintiff tried to delay the inevitable production of its discovery. The Plaintiff then proposed an offer to the Defendants — all the

Defendants had to do was permanently trade their freedom of speech (including truthful speech) for freedom from litigation. (Id., Ex. 9.) That attempt failed as well. The Plaintiff then tried to get a protective order that would shield all of its produced documents from public view. (Id., Ex. 10.) That did not work either. Eventually, the Plaintiff missed its discovery deadline, and was threatened with sanctions by Mr. Newton. Finally, the Plaintiff finally agreed to voluntarily dismiss the case against Mr. Newton on September 7, 2012. (Id., Ex. 11.)

As explained in the Preliminary Statement, the actions taken by the Plaintiff in the Virginia lawsuit reveal the Plaintiff's true intentions:

- to silence all criticism of itself, whether that criticism is defamatory or not;
- to discover which families the Plaintiff's critics are cooperating with, so that the Plaintiff can block any attempts by those families to help their loved ones;
- to produce no significant discovery of its own; and
- to never litigate the underlying issues on the merits, while creating repeated delays which wear down its adversary and drive up its adversary's litigation costs.

Those characteristics indicate that the Plaintiff is a SLAPP-Plaintiff, and the lawsuit it filed in Virginia was a SLAPP suit. Pursuant to the doctrine of unclean hands, the Plaintiff should not be permitted to use the filing of the Virginia case to toll the statute of limitations in the instant case.

ARGUMENTS FOR MOTION TO STRIKE

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

The Plaintiff has not offered any rebuttal to Ms. Colón's motion to strike ¶ 18 from the Original Complaint. Therefore, Ms. Colón respectfully requests that this Court adopt the

reasoning presented in Ms. Colón's initial brief on Pages 58 - 59, and grant the motion to strike ¶ 18.

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

Because the Plaintiff has agreed that ¶ 20 of its Complaint "makes no difference" to its Complaint (Pl.'s Br., p. 35), and has agreed to withdraw the language contained therein (id.), Ms. Colón respectfully requests that this Court grant Ms. Colón's motion to strike ¶ 20.

CONCLUSION

For all of the foregoing reasons, Ms. Colón respectfully requests that this Court grant her Motion to Dismiss and Strike, with prejudice. Ms. Colón further requests that this Court find that the filing of the instant lawsuit was frivolous, and that this Court grant leave to Ms. Colón to file a motion for sanctions.

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

Dated: December 3, 2012

By: Paul Grosswald
PAUL S. GROSSWALD