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**FILED**

**FEB 09 2015**

**RACHELLE L. HARZ**  
J.S.C.

WORLD MISSION SOCIETY, CHURCH OF  
GOD, a NJ Nonprofit Corporation;

Plaintiff,

- against -

MICHELE COLÓN;

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY

DOCKET NO. BER-L-5274-12

Civil Action


**ORDER**

This matter having been presented to the Court by Paul S. Grosswald, attorney for the Defendant, Michele Colón, by way of Motion for Summary Judgment, and the Court having considered all of the papers and arguments submitted in support of and in opposition to said Motion; and for good cause shown;

It is on this 9<sup>th</sup> day of February, 2014, ORDERED as follows:

1. Ms. Colón's Motion for Summary Judgment is GRANTED.
2. All claims against Ms. Colón are hereby dismissed, with prejudice.
3. A copy of this Order shall be served by Ms. Colón's counsel upon all counsel of record, within 3 days of its entry.

*Decision Attached*

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

This Motion was:  
 Opposed  
 Unopposed

PREPARED BY THE COURT

WORLD MISSION SOCIETY, CHURCH  
OF GOD, a NJ Nonprofit Corporation;

Plaintiff,

vs.

MICHELE COLON,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: **BER-L-5274-12**

Civil Action

**OPINION**

In this action, the Plaintiff, the Ridgewood branch of the World Mission Society Church of God (hereinafter "Church"), seeks monetary and injunctive relief stemming from the publication of statements made by the Defendant, Michele Colon, via the internet. Plaintiff asserts these statements are defamatory. Defendant moves for a motion granting summary judgment.

This case centers on balancing the First Amendment rights of online authors to post critically about an organization, against the claims of that organization to be protected from unfavorable commentary of ex-members. For the reasons stated below, this Court grants Defendant's Motion for Summary Judgment.

**I. Background**

**A. The Parties**

World Mission Society Church of God (hereinafter "WMSCOG"), which is not a party to this litigation, is a global organization founded in 1964 in South Korea. WMSCOG has approximately 1.7 million members in approximately 150 countries worldwide. To be clear, the Plaintiff in this case is only the Ridgewood, New Jersey branch of WMSCOG. The Church is a non-profit corporation having its principal place of business located at 305 Godwin Avenue, Ridgewood, New Jersey. As a result of prior motion practice, early on in the litigation of this case, it was determined by this Court and recognized by all counsel that Plaintiff in this case is the

Ridgewood branch of WMSCOG. Nonetheless, Plaintiff intertwines the two entities in its arguments of liability, causation and damages. This Court is mindful that Plaintiff is the Ridgewood branch only.

Defendant was a member of the Church from October 2009, until April 2011. She resides in Passaic County, New Jersey.

In 2009, Defendant brought her then boyfriend to the Church with her. Both Defendant and her then boyfriend began attending the Church regularly. With the advice of their pastor, they were soon married. Defendant began to question her faith in the Church. She ultimately concluded that members of WMSCOG and the Church had misrepresented the teachings and purpose of WMSCOG and that they were a cult. Defendant continued to research about WMSCOG online and discovered similar concerns from ex-members and others.

As Defendant began to question WMSCOG and the Church, her marriage to her husband became strained. Defendant believed that because she was questioning the teachings and purpose of WMSCOG and the Church, the Church members were attempting to keep her husband away from her so that she would not pollute his faith.

Defendant eventually completely separated from the Church and her husband. She strengthened her view that WMSCOG is a cult and through its practices uses mind control and ultimately destroys families. She subsequently authored blogs and a five-part series on the internet describing her personal experiences with the Church and WMSCOG.

In Plaintiff's Second Amended Complaint there are allegations of many defamatory statements published by Defendant. This Court Ordered Plaintiff to produce copies of each of the challenged statements (the defamatory statements published by Defendant) by March 31, 2014. Of the challenged statements described in the Second Amended Complaint, three have been

produced, and are the subject of this litigation. Specifically, these are the five-part series authored by the Defendant entitled “How the WMSCOG Turned My Life Upside Down,” and two blog posts.

This Court recognizes that Defendant has been involved with examiningthewmscog.com, a website that is critical of WMSCOG. This site’s owner, Tyler Newton, a Virginia resident, was a previously named defendant in this New Jersey litigation. This Court dismissed Mr. Newton as a defendant for lack of personal jurisdiction on August 27, 2013. Prior litigation was instituted by Plaintiff against Ms. Colon and Tyler Newton (another critic of WMSCOG) in the Circuit Court of the Commonwealth of Virginia, County of Fairfax, on December 6, 2011. Ms. Colon was dismissed from the Virginia litigation for lack of person jurisdiction on March 16, 2012. Plaintiff filed its original complaint in the case *sub judice* on July 11, 2012, which was substantially similar to the complaint filed in Virginia. Plaintiff discontinued the Virginia litigation on September 7, 2012.

This Court dismissed Plaintiff’s ex-husband, Mark Ortiz, as a plaintiff, on August 7, 2013.

**B. Allegations and Claims of the Church**

Plaintiff, the Church, claims Defendant lashed out publicly, blaming the Church for her failed marriage. In Plaintiff’s Second Amended Complaint, there are a myriad of claimed defamatory comments made by Defendant. At the close of discovery, three challenged statements were substantiated as having been drafted by Defendant. The challenged statements include a five-part series titled “How The WMSCOG Turned My Life Upside Down,” and two blog posts posted by “Hailey Stevens,” who was determined to be Defendant, (hereinafter “internet posts”).

Plaintiff claims that Defendant used the internet to attack the beliefs of the Church and defame their reputation. Plaintiff alleges a variety of damages, including, but not limited to, loss of revenue, decrease in membership and reputational damage.

Plaintiff alleges that Defendant's internet posts were factually false. The posts included statements about: whether married couples could study together, the length of time of group study, recruiting efforts that targeted individuals in their twenties and thirties, the length of time members are expected to fast, the number of divorced couples who are part of the church, mind control tactics, and finally, that WMSCOG and the Church are like a cult.

Plaintiff contends that Defendant acted with malice in her mission to defame the Church. Defendant argues that this suit was brought to silence her critical opinions of the Church and WMSCOG and that she at no time acted with malice. Plaintiff also alleges that Defendant's statements put Plaintiff in a false light that would be highly offensive to a reasonable person.

## **II. Discussion**

### **A. Legal Standards**

#### **1. Motion for Summary Judgment**

Motions for summary judgment are controlled by R. 4:46-2, which states, in relevant part:

The judgment or order sought shall be rendered forthwith if the pleadings ... together with the affidavits ... show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the nonmoving party, would require the submission of the issue to the trier of fact.

The Supreme Court of New Jersey interpreted R. 4:46-2 in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995). In Brill, the Supreme Court of New Jersey held that:

the determination whether there exists a genuine issue with respect to a material fact challenged requires the motion judge to consider whether the competent

evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.”

Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523.

## 2. Defamation

“At the heart of the First Amendment is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern.” Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 50 (1988). The New Jersey State Constitution recognizes these freedoms. “Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech[.]” N.J. Const. (1947) Art. I, ¶ 6.

The elements of the cause of action for defamation, in addition to damages, are: “(1) the assertion of a false and defamatory statement concerning another; (2) the unprivileged publication of that statement to a third party; and (3) fault amounting at least to negligence by the publisher.” Leang v. Jersey City Bd. of Educ., 198 N.J. 557, 585 (2009) (citing DeAngelis v. Hill, 180 N.J. 1, 13 (2004)). In determining whether the statements are defamatory, the court must consider the content, verifiability, and context of the challenged statements. Ward v. Zelikovsky, 136 N.J. 516, 529 (1994).

“In a general defamation case, a plaintiff claiming to be damaged by a false statement will succeed if he shows that the speaker acted negligently in failing to ascertain the truth of the statement. However, we give greater protection to speech involving public officials [and public figures.]” Senna v. Florimont, 196 N.J. 469, 474 (2008). When the plaintiff is a public official or a public figure, the plaintiff must establish that the defendant knowingly or with reckless disregard for the truth published the false statements. Courts have referred to this standard as “actual

malice.” DeAngelis v. Hill, 180 N.J. 1, 13 (2004) (citing New York Times Co. v. Sullivan, 376 U.S. 254, 279–80 (1964)). “The actual-malice standard tolerates more falsehood and harm to reputation than the negligence standard in order to shield highly valued speech from ruinous lawsuits.” Senna v. Florimont, 196 N.J. 469, 474 (2008). Importantly, New Jersey has “expanded application of the requirements of proof of actual malice to statements regarding private citizens in matters of public concern” as well. W.J.A. v. D.A., 210 N.J. 229, 242 (2012).

“The [possible] damages which may be recovered in an action for defamation are: (1) compensatory or actual, which may be either (a) general or (b) special; (2) punitive or exemplary; and (3) nominal.” W.J.A. v. D.A., 210 N.J. 229, 239 (2012) (citing Prosser and Keeton on Torts § 111 at 771 (5th ed. 1984)). Presumed damages fall within the notion of actual damages. “Presumed damages are a procedural device which permits a plaintiff to obtain a damage award without proving actual harm to his reputation.” W.J.A. v. D.A., 210 N.J. 229, 239 (2012) (citing Rodney A. Smolla, Law of Defamation § 9:17 (2d ed. 2008)). In a matter involving private plaintiffs commenting on private matters, presumed damages may be permitted. However, in cases involving public figures or matters of public concern, presumed damages are not permitted. Rather, an economic or pecuniary loss will have to be proven. See W.J.A. v. D.A., 210 N.J. 229 (2012).

Once the court has determined that the cause of action involves a public figure or a matter of public concern, the “appropriate summary judgment question will be whether the evidence in the record could support a reasonable jury finding either that the plaintiff has shown actual malice by clear and convincing evidence or that the plaintiff has not.” Berkery v. Kinney, 397 N.J. Super. 222, 230 (App. Div. 2007) (citing Schiavone Constr. Co. v. Time, Inc., 847 F.2d 1069, 1089 (3d Cir.1988)).

### 3. False Light

Plaintiffs also bring a claim for false light.

To prove the tort of false light, a plaintiff must satisfy two elements. He must show (1) that “the false light in which [he] was placed would be highly offensive to a reasonable person” and (2) that the defendant “had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the [plaintiff] would be placed.” The second prong of a false-light claim parallels the requirements of the actual-malice standard in First Amendment jurisprudence and our own common law.

Durando v. Nutley Sun, 209 N.J. 235, 249 (2012) (citing Restatement (Second) of Torts, *supra*, § 652E).

The analysis for false light is parallel to that of defamation.

#### B. Analysis

The central issue is whether the statements made by Defendant on the internet criticizing Plaintiff is speech that is protected by the actual malice standard. Therefore, it must be determined whether Plaintiff is a public figure, or in the alternative, whether the statements made by Defendant relating to Plaintiff are a matter of public concern.

#### Public Figure

A public figure is one who “by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention” achieves a certain stature. Gertz v. Robert Welch, Inc., 418 U.S. 323, 342 (1974).

Plaintiff argues that it does not meet that criteria. Plaintiff contends that it is simply a church that participates in community services. Plaintiff states that since the Church is not a “house-hold name,” it has not achieved public figure status. It argues that simply soliciting public attention is not enough to achieve a public figure status. Defendant asserts that Plaintiff has voluntarily assumed public-figure status.



Plaintiff actively reaches out to the community and is involved in public service. Plaintiff is a non-profit organization that advocates good work in the community and has received several accolades for its community service. Its members and members of other branches have been awarded Presidential Volunteer Service Awards. Local and national leaders have recognized the humanitarian efforts of the Church and WMSCOG. The Church and members of WMSCOG were singled out and thanked by Governor Christie for their work during Hurricane Sandy while attending a senior picnic on another community service project. On December 1, 2013, 1,200 members of WMSCOG, which included members from the Church, were specially trained in Hackensack, New Jersey, as part of a Community Emergency Response Team. The training was organized exclusively for WMSCOG and the Church due to the extraordinary efforts and actions they showed during Hurricane Irene and Hurricane Sandy. It was attended by many County officials, who then participated in an awards ceremony where WMSCOG was presented with several awards. Kathleen Donovan, the then Bergen County Executive, thanked all of the Church members for participating in the training. News 12, New Jersey, publicized the story the following day on television.

Plaintiff has appeared on local radio and television stations. Plaintiff has taken affirmative steps to attract the public's attention by doing community services and publicizing such events on its website. Plaintiff has received many awards for its community outreach. Such awards include but are not limited to: an award dated November 27, 2013, from the Community Blood Services; a certificate of commendation dated December 1, 2013, from County Executive Kathleen Donovan; a distinguished achievement award dated December 1, 2013, from the Division of Senior Services; a certificate of appreciation dated December 1, 2013, from the New Jersey

Department of Health and; a certificate of appreciation dated December 2, 2013, from Englewood Hospital and Medical Center Foundation's 2013 Walk for Awareness.

WMSCOG has over 1.7 million members in about 150 countries around the world, with several branches across the United States. WMSCOG seeks out members to join its religious organization in numerous capacities. Plaintiff has voluntarily injected itself into controversy, and such controversy is a public one. See Hill v. Evening News Co., 314 N.J. Super. 545, 554 (App. Div. 1998). The Plaintiff is a part "of a large world-wide religious movement [which] ha[s] taken affirmative steps to attract public attention, and actively seek[s] new members and financial contributions from the general public." Church of Scientology of California v. Siegelman, 475 F. Supp. 950, 954 (S.D.N.Y. 1979).

This court finds Plaintiff is a public figure.

#### **Matters of Public Concern**

This court will now address whether the statements made by Defendant criticizing the Church are a matter of public concern.

The Plaintiff argues that this matter involves a private individual's concern with an issue of church governance. There is no matter of public interest at stake, Plaintiff asserts, because it is only Defendant's private concerns with her family and revenge with the Church that is at issue. Thus Plaintiff claims that the comments made by Defendant are a matter of private controversy only. Defendant argues that the Church is nationally known and that it used the internet to attract a wide range of followers. The Defendant argues that the subject of the challenged statements are a matter of public concern, because they involve whether the nationally known WMSCOG should be viewed as a cult.

In analyzing the content, form, and context of the challenged statements, this Court must consider the identity of the speaker and the targeted audience. See Senna v Florimont, 196 N.J. 469, 492 (2008). The statements were made on the internet and were part of an ongoing conversation regarding the teachings of the Church. The speaker was an ex-member of the Church who believed she was discouraging cult-like behavior for the benefit of the public. Church governance, and whether a specific religious organization is akin to a cult, is a matter of public concern.

The Court finds that the internet posts published by Defendant involve a matter of public interest or concern.

#### **Failure to Prove Actual Malice**

The actual malice standard is applicable to a public figure or a matter of public concern. As this Court has found that this cause of action involves not only a public figure, but also a matter of public concern, the actual malice standard is applicable. Therefore, Plaintiff must establish by clear and convincing evidence that Defendant knowingly, or with reckless disregard for the truth, published false statements. The Court must determine whether the evidence in the record could support a reasonable jury finding that Plaintiff can show actual malice by clear and convincing evidence.

Plaintiff argues that Defendant purposely and with malice lied about the Plaintiff in her statements. Plaintiff maintains that Defendant had a vendetta against the Plaintiff because she felt that the Plaintiff destroyed her marriage. Plaintiff claims that because Defendant was a member on the Church, and had inside information, she had to have known that the statements she made were false.

Defendant asserts that her statements were made based on her opinion and belief as a member of the Church. Defendant openly admits she is an activist against WMSCOG and the Church. Defendant asserts that the instant case was initiated to silence her. She stresses that her internet posts are, in her opinion, truthful and well-justified criticism of an organization of which she was a member.

This Court has reviewed the five-part series and two blog posts which are the challenged statements at issue. Plaintiff must be able to establish “that the Defendant made the statement with a ‘high degree of awareness of [its] probable falsity.’ ” Durando v. Nutley Sun, 209 N.J. 235, 251 (2012) (citing Garrison v. Louisiana, 379 U.S. 64, 74 (1964)). There must be sufficient evidence that Defendant in fact entertained serious doubts as to the truth of the publication of her five-part series and her two blog posts. See Durando v. Nutley Sun 209 N.J. 235 (2012). Here, Defendant does not believe any of the challenged statements are false and still maintains their veracity. Defendant maintains that she did not imagine these scenarios or fabricate the internet posts. Defendant published her own experiences as she saw them. The statements were Defendant’s opinions regarding her involvement with the Church and WMSCOG. The fact that she believes Plaintiff and WMSCOG act like a cult and that their practices are destructive to families is opinion based on her own experience.

This Court finds that Plaintiff has failed to demonstrate sufficient facts to allow a reasonable jury to find by clear and convincing evidence that Defendant knowingly, or with reckless disregard for the truth, published false statements. Accordingly, Plaintiff has not met the actual malice standard.

### **Failure to Prove Statements are Defamatory**

Plaintiff has also failed to show that the internet posts made by Defendant are defamatory. In determining whether the statements are defamatory, we must consider the content, verifiability, and context of the challenged statements. Ward v. Zelikovsky, 136 N.J. 516, 529 (1994). “Opinion statements are generally not capable of proof of truth or falsity because they reflect a person's state of mind. Hence, opinion statements generally have received substantial protection under the law.” Ward v. Zelikovsky, 136 N.J. 516, 531 (1994). The fact that the internet posts of Defendant are unfavorable commentary regarding her impressions of the Church, do not make them defamatory.

A reasonable reader would not believe that Defendant's five-part series and two posts, which this Court has read in full, contain assertions of fact about Plaintiff, as opposed to the opinions of the author. Rather, a reasonable person would view said statements as Defendant's opinion which is not verifiable. Defendant's statements about the Church are her opinions written from a critical perspective. Defendant did not post verifiable assertions of fact. She asserted her critical comments about a religious organization. That she may believe the organization asserts mind control over its members or destroys families is her opinion. Readers can decide for themselves whether or not they agree with the author's conclusion that she presents on various subjects pertaining to the practices and teachings of WMSCOG.

### **Failure to Prove Damages**

Plaintiff has failed to substantiate any economic damages prior to the discovery end date of May 29, 2014. Damages is an essential element to Plaintiff's claims of defamation.<sup>1</sup>

Plaintiff alleges in its Second Amended Complaint that the damage it suffered is in the form of lost revenue. However, Plaintiff has failed to produce any relevant financial documents

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<sup>1</sup> As this Court has found Plaintiff is a public figure and involves matters of public concern, presumed damages are not permitted. See W.J.A. v D.A., 210 N.J. 229 (2012).

in discovery or to date. Defendant demanded all documents relating to Plaintiff's revenue from 2009 to date. Specifically, Defendant requested balance sheets, bank statements, tax returns, audits and accounts receivable and accounts payable. The financial demands have not been complied with despite multiple orders of this Court.

On January 11, 2013, the Court heard oral argument on Defendant's Motion to Dismiss. This Court made clear that Plaintiff would need to produce financial documents to prove damages. On August 27, 2013, at a case management conference, this Court again reiterated that fact. This Court ordered Plaintiff to respond to the discovery demands requesting financial documents by December 30, 2013. The discovery end date was then January 11, 2014. On December 24, 2013, Defendant moved to extend the discovery end date. On January 15, 2014, after not receiving the financial documents requested, Defendant filed a Motion to Dismiss for failure to provide discovery. On January 31, 2014, this Court extended the discovery end date to May 29, 2014. This Court also directed that all outstanding discovery requests for each party be produced by March 3, 2014. This Court adjourned Defendant's Motion to Dismiss until after the March 3, 2014, deadline.

Plaintiff provided thousands of pages of discovery by March 3, 2014. However, no financial documents were included. On April 4, 2014, this Court ordered all outstanding discovery to be produced, including financial documents. Defendant's motion to dismiss for failure to provide discovery was then adjourned until July 11, 2014. The discovery end date was May 29, 2014, and as of that date, Plaintiff had not produced the financial documents.

On July 11, 2014, this Court held oral argument. Plaintiff asserted that the financial documents had been produced, however, all that had been produced at that time regarding financial damages was a single page document. The page referred to the statistics of membership for the

WMSCOG's entire East Coast branch. No financial information was included on the page. This Court, in an abundance of caution and wanting to allow Plaintiff every possible opportunity to supply the necessary discovery, granted Plaintiff one more week to produce the necessary documents.

Thereafter, on July 18, 2014, Plaintiff produced eight pages of documents to allegedly substantiate its claim of economic damages. The documents were balance sheets and profit and loss statements from 2009 through 2012 that were prepared and compiled by the Church and/or WMSCOG. No underlying documentation that supported the figures was provided. The documents did reveal that the Church in fact increased its net income over this period of time from \$1.8 million to over \$3.6 million.

On August 8, 2014, Defendant filed a motion for summary judgment. On October 17, 2014, in Plaintiff's opposition papers to the summary judgment motion, Plaintiff included two expert reports that had not been previously served. One expert report, authored by Stan V. Smith, contains a financial analysis. The second expert report, authored by Keith A. Frankel, is an analysis of Defendant's online presence and internet usage with respect to WMSCOG, concluding that Defendant's internet activity is harmful to WMSCOG because her postings are placed and crafted on the internet to receive a maximum number of readers.

Defendant argues that she is prejudiced by the late production of the expert reports and furthermore, that service of these reports in opposition to a motion for summary judgment is procedurally improper. Defendant further argues Plaintiff failed to provide notice during the discovery period as to the identify of its proposed experts or the documents upon which the experts would be relying.

Pursuant to Rule 4:17-7, any amendments to answers to interrogatories must be provided twenty days prior to the end of discovery. R. 4:17-7. Defendant cites Smith v. Schalk, 360 N.J. Super. 337 (2003) in support of its Motion for Summary Judgment. There, the Appellate Division reversed a trial court in an automobile negligence matter for allowing the introduction of new medical evidence which had been obtained one month prior to trial, and served three and five days prior to trial, for the reasons that Plaintiff had not provided a certification of due diligence pursuant to Rule 4:17-7. There is nothing before this Court that even remotely suggests that the expert reports, and the subject matter discussed within the reports, could not have been served prior to the discovery end date. The trial date of this case was scheduled for February 2, 2015.

Mr. Smith's financial report includes nine tables, three graphs, and his opinion that the WMSCOG suffered a decrease in attendance, baptism growth and financial contributions since 2011. Mr. Smith also concludes that future growth in membership and contributions are likely to further decrease at rates higher than already experienced.

This Court finds that Mr. Smith's expert report fails as a matter of law as the economic report does not identify Plaintiff in this matter. The numbers in the tables represent "all of the East Coast locations" of WMSCOG. None of the data referenced by Mr. Smith in his tables and report refer to the Ridgewood branch of WMSCOG, Plaintiff in this case. The expert report refers to East Coast branches which include Connecticut, Boston, Virginia, Philadelphia and New York City.

In his report, Mr. Smith states that from 2006 to 2011, there was an average annual growth rate for offerings of 39.9 percent. Defendant allegedly began defaming Plaintiff on the Internet in 2011. Mr. Smith states in his report that the annual growth rate for offerings in 2012 nonetheless met the expected amount for contributions. However, Mr. Smith stated, on page eight of his report,



that the 2013 contributions “fell short” of their expected amount. He writes that, “This would correlate with an increase in popularity of Defendant’s online publications and supports the assumption that the financial harm to the Church will be compounded in the future as the amount of views of the online material continues to grow.” This Court has significant concern regarding any potential admissibility of this opinion pursuant to N.J.R.E. 701.

A further deficiency to Mr. Smith’s analysis is the fact that the information he utilized has never been produced to Defendant or this Court. This information is listed in his report and includes, but is not limited to: data regarding WMSCOG attendance from 2004 through 2013; data regarding WMSCOG baptisms, from 2001 through 2014; data regarding WMSCOG offerings and tithes from 2005 through 2013; data regarding WMSCOG Passover attendance from 2006 through 2013; bank statements from 2009 through 2012 and; interviews with numerous church members. None of the underlying documents that were relied upon were even attached to the expert report.

Furthermore, there is no consideration or mention in his report regarding any other possible reasons for contributions to have fallen “short” in 2013. His report is silent as to other factors that could account for monetary contributions to have been altered, such as a change in the economy, loss of jobs, or members relocating. He does not consider any other negative commentary regarding WMSCOG which is on the internet. He does not explain why the East Coast locations (which is not even the plaintiff in this action) would be effected differently than the other locations of WMSCOG.

This Court finds that because Mr. Smith’s report and the documents relied on by him were inexcusably withheld by Plaintiff during the discovery period, (and even to date) his report is not now admissible in opposition to Defendant’s Motion for Summary Judgment. However, even if this Court were to accept the late submission of Mr. Smith’s report, given the lack of competent

data that comprises his report, and the absence of analysis regarding the specific Plaintiff in this matter, together with the other previous deficiencies discussed, Plaintiff as a matter of law has failed to produce any competent evidence of economic damages.

A second report authored by Keith A. Frankel, an individual with experience in digital marketing, development and design, was submitted by Plaintiff in opposition to the Summary Judgment Motion. The purpose of this report was to connect the economic damages claimed in Mr. Smith's report with Defendant's internet posts. Mr. Frankel's report and conclusion includes information not only about Ms. Colon's online presence, but also consider and encompasses the entire website [www.examinethewmscog.com](http://www.examinethewmscog.com), as well as other internet information pertaining to WMSCOG. As this Court has already determined economic damages have not been established by Mr. Smith's report, the strength or relevance of the causation elements addressed in Mr. Frankel's report do not require any further comment.

### **III. Conclusion**

Plaintiff is public figure and this litigation involves matters of public concern. Plaintiff has failed to prove actual malice or that the internet posts are defamatory. The Plaintiff has failed to show that a reasonable jury could find actual malice by clear and convincing evidence. Plaintiff has failed to prove damages. For the reasons stated, the Court grants Defendant's Motion for Summary Judgment.<sup>2</sup>

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<sup>2</sup> Because the Court finds that the actual-malice standard is applicable, a separate discussion for false light is unnecessary.