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October 17, 2013

Via Hand Delivery
The Honorable Rachelle Lea Harz
Superior Court of New Jersey
Bergen County Courthouse
10 Main Street, 3rd Floor
Hackensack, NJ 07601

Re: World Mission Society, Church of God v. Colón
Docket No: BER-L-5274-12

Dear Judge Harz:

I represent the Defendant Michele Colón in the above-referenced matter. I am writing in opposition to Plaintiff's motion for a protective order.

I. The Motion Should Be Denied Because of Plaintiff's Failure to Confer

Plaintiff failed to include the required Rule 1:6-2(c) certification with the motion. In fact, Plaintiff has made no attempt to confer with me regarding the issues raised in its motion. Therefore, by rule, the motion must be denied. Ms. Colón respectfully requests that this motion be removed from the calendar and the hearing currently scheduled in this matter for October 25, 2013 at 1:30 pm be canceled.

II. Mr. Rubin's Certification Must Be Stricken Because It Contains Argument, Hearsay, and Perjury

In the event this Court is still willing to hear the motion, the Court should strike the Certification of Solomon Rubin on the grounds that it fails to comply with Rule 1:6-6:

> If a motion is based on facts not appearing of record or not judicially noticeable, the court may hear it on affidavits made on personal knowledge, setting forth only facts which are admissible in evidence to which the affiant is competent to testify and which may have annexed thereto certified copies of all papers or parts thereof referred to therein. The court may direct the affiant to submit to cross-examination, or hear the matter wholly or partly on oral testimony or depositions.

The rule applies to attorney certifications as well. Venner v. Allstate, 306 N.J. Super. 106, 111 (App. Div. 1997) ("Unless based on the affiant's personal knowledge, the facts set forth in the [attorney] certification should not have been considered by the motion judge."); see also Gonzalez v. Ideal Tile Importing Co., Inc., 371 N.J. Super. 349, 358 (App. Div. 2004) (citing Inglett & Co. v. Everglades Fertilizer Co., 255 F.2d 342, 349 (5th Cir. 1958)) ("We think it an unnatural, if not virtually impossible, task for counsel, in his own case, to drop his garments of advocacy and take on the somber garb of an objective fact-stater."); Jameson v. Great Atlantic and Pacific Tea Co., 363 N.J. Super. 419, 427 (App. Div. 2003) (attorney's hearsay certification "was inadequate to establish" facts asserted therein), cert. denied, 179 N.J. 309 (2004); Cafferata v. Peyser, 251 N.J. Super. 256, 263-64 (App. Div. 1991) (holding that attorney certification should have been stricken by lower court where it contained hearsay and inaccurate facts). "The requirements of the rule are also not met by affidavits containing argument, other forms of hearsay and general factual or legal conclusions." Jacobs v. Walt Disney World, Co., 309 N.J. Super. 443, 454 (App. Div. 1998) (citing Pressler, Current N.J. Court Rules, Comment to R. 1:6-6 (1998)) (internal quotation marks omitted).

Mr. Rubin's certification violates Rule 1:6-6. First, it is riddled with legal arguments, so much so that Mr. Rubin is actually using his certification in lieu of a brief. Second, it is filled with inadmissible hearsay. For instance, Mr. Rubin testifies in his certification about the same facts that are presented in the affidavits of Mr. Whalen and Mr. Pereira. Yet, Mr. Rubin has no personal knowledge of those facts; he is merely repeating what he was told by the witnesses.

Even worse, Mr. Rubin has brazenly committed multiple counts of perjury. He has fabricated a series of facts to support his contention that Ms. Colón and I are using this litigation to pursue personal business interests. For instance, in ¶ 29 of his certification, Mr. Rubin claims that Ms. Colón "has expressed openly to the court that her purpose and the motive for her moving forward is to begin a career in the field of exit counseling[1] both for herself and Grosswald." In fact, Ms. Colón has never said any such thing. Naturally, when that sentence appears in Mr. Rubin's certification, it is not followed up with a citation to the record. That is because Mr. Rubin invented that fact himself.

Mr. Rubin continues to lie throughout ¶ 29. He refers to an alleged attempt by Ms. Colón to obtain the "names of all the members of the Ridgewood branch," something Ms. Colón has never asked for.[2] He then cites to page 21 of the January 11, 2013 hearing transcript (without including it as an exhibit), in which I was arguing for dismissal of Mr. [redacted] claim for intentional infliction of emotional distress. (See Grosswald Cert., Ex. 1.) Nowhere on that page do I ever mention obtaining the names of Plaintiff members. Nor do I mention a desire held by either Ms. Colón or myself to become "exit counselors."

[1] "Exit counseling" is the process of counseling cult members to "exit" their cult.

[2] Ms. Colón did ask for the names of lost donors for purposes of satisfying the special damages element of Plaintiff's trade libel claim. When Plaintiff refused to produce those names, the Court dismissed the trade libel claim. (See Aug. 7, 2013 Decision.)

Mr. Rubin continues his perjury in ¶ 31:

> The underlying reason for Colon and Grosswald's desire for this list is to build a clientele and gather leads of potential clients for their newly founded intervention business. Their business model is to lure families into believing a family member is in danger, and to hire themselves out as "exit counseling for a lucrative payment.

(end quotation marks missing in original.) Every fact contained in that paragraph is false. (Grosswald Cert. ¶ 3; Colón Cert. ¶ 2.) Mr. Rubin is testifying that he has personal knowledge of the activities of Ms. Colón and myself. Yet, Mr. Rubin has never met Ms. Colón or myself. (Grosswald Cert. ¶ 4; Colón Cert. ¶ 3.) Except for his being copied on a few of Mr. Miltenberg's emails beginning in late September of this year, Mr. Rubin has never had any communication or other interactions with either Ms. Colón or myself. (Grosswald Cert. ¶ 5; Colón Cert. ¶ 4.) He is simply making up facts, and certifying that those facts are true under penalty of perjury.

In ¶ 32, Mr. Rubin adds a new layer of speculation to his perjured testimony. He claims that "there is great potential for relatives of Church members to be harassed and targeted." He does not identify any relatives of Plaintiff members who have been so harassed. Rather, he simply speculates that such harassment could happen. Mr. Rubin is not only fabricating a story about Ms. Colón and I becoming "exit counselors," but he is assuming that if we did become exit counselors, that we would be unethical exit counselors who would violate the accepted standards of the profession by harassing people. He is not saying this because he has any basis for saying it. He just decided to make up some facts, and certify under penalty of perjury that they are true.

In ¶ 35, Mr. Rubin again testifies to facts about which he has no personal knowledge. This time, he claims that Ms. Colón "has also reached out to media contacts to further publicize the case and her libelous statements against the Church." Mr. Rubin does not have any personal knowledge of Ms. Colón reaching out to media contacts, and he certainly has no knowledge of what Ms. Colón has said or would say when reaching out to media contacts. For all Mr. Rubin knows, Ms. Colón could be refraining from discussing the alleged defamation when speaking with the media, and instead she could be talking about all of the facts that she has published online about Plaintiff which Plaintiff does not claim are defamatory.

In ¶ 36, Mr. Rubin claims that I have made a "multitude of statements" which "have nothing to do with the argument or topic of that moment," and which contain "factual inaccuracies." Mr. Rubin fails to cite even one single example of that happening. He then testifies that I have posted documents from this case online, when in fact I have not. (Grosswald Cert. ¶ 6.) Again, this is perjury.

Because Mr. Rubin's certification violates Rule 1:6-6, this Court must necessarily strike it from the record. Nothing contained therein may be considered by this Court in resolving the pending motion.

III. Plaintiff's Request to Prevent Discovery From Being Had Should Be Denied Because the Issues Raised Have Already Been Ruled On By This Court

In the event this Court is actually willing to address the merits of the pending motion in light of the above, this Court should recall that it has already ruled on every one of the document production issues raised by Plaintiff. At the August 27, 2013 case management conference, the Court went through each discovery request one by one and ruled on them. Plaintiff is now attempting to re-litigate those same issues, even the ones it previously prevailed on. Such a motion is frivolous and serves no purpose other than to drive up Ms. Colón's legal bill.

For instance, Plaintiff is frivolously litigating the requests for insurance agreements and engagement letters, even though Ms. Colón withdrew those requests, without prejudice, at the August 27 conference. Plaintiff is frivolously litigating the request for Big Shine documents, even though the Court narrowed those requests and ordered the narrowed version of the requests to be produced. Plaintiff is frivolously litigating Request #26, asking for documents sufficient to show the size of the WMSCOG's membership, even though Mr. Miltenberg agreed to produce such documents, if they exist. Plaintiff is frivolously litigating the request for information about Joo Cheol Kim's citizenship, even though that request was granted by this Court on August 27 with no objection from Plaintiff. Kim's citizenship status is obviously relevant to the issue of whether the Presidential Volunteer Service Award Article is defamatory, since the article discusses Mr. Kim's citizenship status and the fact that his citizenship status made him ineligible to receive the award. (See Grosswald Cert., Ex. 2.)

Of course, all of this reinforces the importance of Rule 1:6-2(c), requiring a good faith attempt at a conference prior to filing discovery motions. Had Plaintiff's counsel conferred with me, I would have reviewed this Court's August 27 decisions with them and explained that their efforts to raise these issues again were duplicative and unnecessary. If at that time we had a disagreement as to what the Court's August 27 rulings were, we could have defined those specific issues and presented them jointly to the Court for resolution. However, this Court should not reward counsel's failure to comply with Rule 1:6-2(c) by allowing them an opportunity to re-litigate issues that have already been decided.

IV. Plaintiff Has Not Met the Standard for a Sealing Order

The standard for sealing court records is set forth in Rule 1:38-11:

> (a) Information in a court record may be sealed by court order for good cause as defined in this section. The moving party shall bear the burden of proving by a preponderance of the evidence that good cause exists.
>
> (b) Good cause to seal a record shall exist when:
>
> > (1) Disclosure will likely cause a clearly defined and serious injury to any person or entity; and

> (2) The person's or entity's interest in privacy substantially outweighs the presumption that all court and administrative records are open for public inspection pursuant to R. 1:38.

Plaintiff's evidence is directed only at the first good cause test - whether "[d]isclosure will likely cause a clearly defined and serious injury to any person or entity." As explained below, Plaintiff has failed to show by a preponderance of the evidence that good cause exists for sealing the record of this case.

A. The Charge That Defendant and Defendant's Counsel Are Seeking to Further Their Careers Is Baseless and Derived From Mr. Rubin's Perjured Testimony

The allegation that Ms. Colón and I are seeking discovery to further our own careers, rather than to prove Ms. Colón's defenses, is baseless. As explained above, the allegation is based entirely on the perjured testimony of Mr. Rubin.

Moreover, the case cited by Mr. Rubin in ¶¶ 21-23 of his certification is inapposite. In Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978), the Supreme Court denied a media request for access to tapes in the custody of a federal district court, where the tapes were made by President Nixon and were used in third-party trials. The Supreme Court based its decision on the fact that the public was entitled to gain access to the tapes through the Presidential Recordings and Materials Preservation Act, such that there was no need for the district court to release the tapes. Nixon, 435 U.S. at 603-08. That reasoning is inapplicable here, where a sealing order would prevent the public from accessing the litigation documents, with no alternative means of gaining the information.

Therefore, this Court should reject Plaintiff's argument that the activities of Ms. Colón and I create a need to seal the court record.

B. There Is No Admissible Evidence to Show That the Publicizing of Court Records Has Incited Harassment or Criminal Activity Against Plaintiff or Its Members

Plaintiff has pointed to the actions of one individual - Daniel Gerard Abbamont - as the basis of its argument that the publicizing of court records will cause it and its members to be harassed. Yet, there is no admissible evidence that Mr. Abbamont's actions were caused in whole or in part because of any court document being publicly accessible. Mr. Rubin tries to provide such evidence by testifying that:

> Abbamont has no relation to the church or any of its members. He launched this campaign based solely on Ms. Colon's publication of the Court filings.

(Rubin Cert. ¶ 55; see also Rubin Cert. ¶ 69.) Yet, again, Mr. Rubin is testifying to things for which he has no personal knowledge. Mr. Abbamont's claim that he was motivated by Ms.

Colón's complaint is inadmissible hearsay. It is just as likely - perhaps even more likely - that he was motivated by something else (such as Plaintiff's bad behavior) and he simply used Ms. Colón's complaint as an excuse to act out. It is even possible that he is a devoted member of Plaintiff, and that he staged his bad actions in order to discredit Ms. Colón. Moreover, the fact that Ms. Colón tweeted a link to Mr. Abbamont's protest is not sufficient to make her "complicit" in Mr. Abbamont's actions. (See Rubin Cert. ¶ 62.) Plaintiff has not presented any evidence to show that Ms. Colón knew what Mr. Abbamont was going to do before he did it, or that she condoned his actions after he did it.

Likewise, the certifications of Mr. Pereira and Mr. Whalen also rely on inadmissible hearsay to connect Ms. Colón to Mr. Abbamont. Mr. Pereira tries to make the connection in ¶ 18 of his certification:

> Once I read the links on the website provided on the Flyer, I understood the reason behind the harassing messages and derogatory article was Ms. Colon's 5 part series and the posting of the Colon Complaint . . . . There was a correlation between the words written by Colon and what was written on the website listed on the Flyer.

In other words, Plaintiff is attempting to use Mr. Abbamont's online statements to prove the truth of the matter asserted - that Mr. Abbamont's actions were motivated by the filing of Ms. Colón's complaint. Therefore, Mr. Abbamont's online statements are inadmissible hearsay.

Mr. Whalen's certification is also defective. In ¶ 26, he testifies that "It is believed and presumed that Ms. Colón was aware of Abbamont's course of actions . . . ." Such testimony is inadmissible under Rule 1:6-6. Claypotch v. Heller, Inc., 360 N.J. Super. 472, 489 (App. Div. 2003) ("The mandate of Rule 1:6-6 that an affidavit supporting a motion must be based on 'personal knowledge' is not satisfied by a statement based merely on 'information and belief.'"); Jacobs v. Walt Disney World, Co., 309 N.J. Super. 443, 454 (App. Div. 1998) ("Because Rule 1:6-6 mandates that certifications be based on personal knowledge, factual assertions based merely upon 'information and belief' are patently inadequate").

Moreover, the facts offered by Mr. Pereira and Mr. Whalen show that the most recent incident of "harassment" took place last May - over five months ago. The actions of one individual, terminating five months ago, are not sufficient to establish that "[d]isclosure will likely cause a clearly defined and serious injury" as required by the good cause standard of Rule 1:38-11.

Moreover, Plaintiff's own evidence seems to suggest that the "threat" faced by Plaintiff is overblown. For instance, Mr. Pereira and Mr. Rubin each testify that the flyer attached to the Lincoln Grill's window left glue reside which caused damage to the window. (Pereira Cert. ¶9; Rubin Cert. ¶ 64.) Mr. Rubin elaborates by calling it "irreparable damage." (Rubin Cert. ¶ 64.) Mr. Pereira claims that the window has been "damaged ever since." (Pereira Cert. ¶ 9.) Yet, in the police report submitted with Mr. Pereira's certification, the police officer notes:

> All glass was intact and there was no major damage visible to the windows other than where Arcesio removed the sticker on the door. I advised Arcesio that he could purchase window cleaning products and remove the remaining glue residue without issue.

(Pereira Cert., Ex. 2, p. 3.)

Likewise, Mr. Whalen is exaggerating the facts. Mr. Whalen claims that he "felt even more fearful and panicked" when he visited the Facebook page of a WMSCOG critic who had posted a picture of a 3D printable gun and commented on using it against the government. (Whalen Aff., ¶ 16; Whalen Aff., Ex. 4.) That post said nothing about the WMSCOG and was clearly not directed at Plaintiff or Mr. Whalen. The fact that Plaintiff has to rely on threats that are not directed at itself in order to create the appearance that it is threatened only serves to illustrate the point that Plaintiff is actually not under any serious threat.

In other words, Plaintiff has not shown by a preponderance of the evidence that "[d]isclosure will likely cause a clearly defined and serious injury to any person or entity," as required by Rule 1:38-11. On the other hand, if this Court does believe that Plaintiff has made a prima facie showing that it has satisfied the standard under Rule 1:38-11, then Ms. Colón respectfully requests that she be permitted to depose Mr. Pereira and Mr. Whalen pursuant to Rule 1:6-6, prior to this Court making a final decision on the pending motion.

C. Allegations of Plaintiff's Criminal Behavior Are Not Automatically Confidential

Plaintiff claims that:

> Under NJ Court Rule 1:38-3, regarding court records excluded from public access, subheading C notes that all criminal records and documents are not part of public record. There is a reason that all criminal cases are automatically confidential, so as not to implicate a defendant or plaintiff [3] as allegations are brought forth until the party's innocence is proven.

(Rubin Cert. ¶ 83.) One would suppose that every criminal defendant who has ever been made to do a "perp walk" in front of the evening news cameras would be very surprised to learn that "all criminal cases are automatically confidential." The rule obviously does not say that all criminal cases are automatically confidential. Rather, the rule identifies twelve categories of documents that are excluded from the general rule requiring public access to documents. Plaintiff does not argue that any of the documents in the instant case are analogous to any of those twelve categories, such that the policy justifying nondisclosure under Rule 1:38-3 should be incorporated into the sealing order standard in Rule 1:38-11.

[3] It is not clear why Mr. Rubin thinks that a "plaintiff" would be implicated in a criminal proceeding.

Moreover, the allegations of criminality made by Ms. Colón in court documents are substantially the same as those made in the challenged statements identified in Plaintiff's pleadings. Plaintiff did not feel the need to place this case under seal when it first put those challenged statements into the public record by filing this case back in July 2012. It is only now, less than three months before Plaintiff's document production is due, that Plaintiff has decided that it needs to have a sealing order to prevent the public from learning its secrets.

For the foregoing reasons, Plaintiff has not met the standard for a sealing order set forth in Rule 1:38-11.

V. Plaintiff Has Not Met the Standard for a Confidentiality Order

Confidentiality orders are governed by Rule 4:10-3 (g). That rule states that:

> the court, for good cause shown or by stipulation of the parties, may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including, but not limited to, one or more of the following:
>
> * * *
>
> (g) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

R. 4:10-3(g). Plaintiff has failed to show that the discovery materials sought fall into any of those categories. Ms. Colón is not seeking trade secrets, confidential research, development, or commercial information from Plaintiff. Therefore, Plaintiff's request for a confidentiality order should be denied.

Moreover, Ms. Colón is willing to agree that prior to disclosing any document produced by Plaintiff, she will redact all personal information contained therein which pertains to third parties. (Colón Cert. ¶ 5.) For purposes of such an agreement, "personal information" will be defined to include social security numbers, phone numbers, home addresses, and email addresses. (Id.) Such an agreement should be sufficient to alleviate Plaintiff's concerns. In return, Ms. Colón expects that Plaintiff will be fully compliant with its discovery obligations and will produce all of its discovery materials in unredacted form. (Id.)

A. Financial Information of a Nonprofit Tax-Exempt Entity Should Not Be Confidential

The financial information of a nonprofit tax-exempt entity does not fall into any of the confidentiality categories set forth in Rule 4:10-3 (g). Such information does not consist of trade secrets, confidential research, development, or commercial information. Rather, Plaintiff is basing its application for confidentiality on an assertion of "privacy." This is absurd, because corporations have no right to privacy. 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 privacy). To the contrary, corporations are creatures of the state. In the case of Plaintiff, it is not just any corporation - it is a corporation that receives special benefits from the government, such as tax exemption. That status imposes on it a higher duty of disclosure than that which is imposed on a private corporation or a private individual:

> The general public has a vital interest in knowing whether federal and local religious tax exemptions are being properly applied . . . Such matters are all of public concern.

Gospel Spreading Church v. Johnson Publ'g Co., 454 F.2d 1050, 1050-51 (D.C. Cir.1971). In Gospel Spreading Church the court was concerned with the public figure issue in a defamation case, rather than with confidentiality, but the principal is still applicable. As long as Plaintiff continues to receive tax benefits from the government, and as long as it maintains a corporate identity separate and distinct from the individuals who run it, then it is has no right to privacy and it is not entitled to keep its financial activities hidden from public scrutiny. To the extent that Plaintiff's disclosures may cause individuals to lose their privacy, Ms. Colón's agreement to redact personal information before disclosing Plaintiff's documents is sufficient to remedy such privacy invasion.

B. Religious Doctrines Should Not Be Confidential

Plaintiff's request to keep its religious doctrines confidential should be summarily denied because its argument is based on one unpublished opinion and that opinion was not served on Ms. Colón. (See Rubin Cert. ¶ 80.) According to Rule 1:36-3:

> No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel.

Presumably, Plaintiff failed to serve the unpublished opinion on the Court as well. Even worse, Mr. Rubin committed perjury by testifying in his certification that the unpublished opinion was included in Plaintiff's motion papers, when in fact it was not. (Rubin Cert. n.1; Grosswald Cert. ¶ 8.) Because of Plaintiff's failure to serve the unpublished opinion, Plaintiff is prohibited by rule from relying on the cited case.

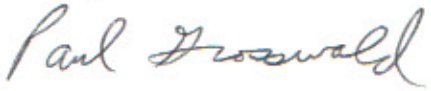
In any event, Plaintiff is citing the unpublished case to make a point about privacy. (See Rubin Cert. ¶ 80.) If Plaintiff had produced the case, the case undoubtedly would have revealed that the privacy at issue was the privacy of a human being, not a corporation. As explained above, corporations have no right to privacy. 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). To the extent that Plaintiff's disclosures may cause individuals to lose their privacy, Ms. Colón's agreement to redact personal information before disclosing Plaintiff's documents is sufficient to remedy such privacy invasion.

Moreover, religious doctrines do not fall into any of the Rule 4:10-3 (g) categories. The information sought does not consist of trade secrets, confidential research, development, or commercial information.

Finally, Plaintiff has not articulated any significant reason why its religious beliefs should be kept secret. Plaintiff provides no evidence to support its assertion that WMSCOG members in other countries would suffer persecution as a result of disclosure. (See Rubin Cert. ¶ 80.) Obviously, the real reason that Plaintiff wants to keep its religious doctrines confidential is so that it can continue to recruit unsuspecting people who are unaware of what they are getting involved in. That is not a legitimate basis for court-ordered confidentiality. Moreover, because secret beliefs are one of the hallmarks of a cult, it is frivolous for Plaintiff to claim that the "cult" label is defamatory at the same time that it is attempting to preserve the secrecy of its beliefs with a confidentiality order.

For the foregoing reasons, Plaintiff's motion for a protective order should be denied. Thank you for your attention to this matter.

Sincerely,



Paul S. Grosswald

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