V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

WORLD MISSION SOCIETY, CHURCH OF GOD, A NJ NONPROFIT CORP.	)	
Plaintiff,	)	
v.	)	**Case No. 2011-17163**
TYLER J. NEWTON	)	
Defendant.	)	

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PROTECTIVE ORDER

Defendant Tyler J. Newton ("Newton"), by counsel, submits this Opposition to Plaintiff World Mission Society Church of God's ("WMSCOG") Motion for Protective Order.

INTRODUCTION

Plaintiff seeks a very broad protective order on ill-defined categories of documents that would effectively prevent the Defendant himself from viewing most documents. There is no legitimate question about the relevance of the requested discovery – Plaintiff has filed a broad based defamation claim and Defendant is unquestionably allowed to obtain discovery to prove the truth of his allegedly defamatory statements. Plaintiff has made no attempt to satisfy the "good cause" requirement for the issuance of a protective order contained in Rule 4:1(c). The only 'harm' Plaintiff identifies is that Defendant has promised to put relevant information about WMSCOG on the internet, exercising his First Amendment rights. Case law roundly rejects Plaintiff's logic and does not support a protective order as described by WMSCOG.

LEGAL STANDARD

There is no question that this Court has the power to issue "any order which justice requires," including appropriate protective orders in civil discovery pursuant to Rule 4:1(c) of the Rules of the Supreme Court of Virginia. However, in its Motion, Plaintiff fails to articulate its actual burden of proof – Plaintiff must show "good cause" for the issuance of a protective order. Rule 4:1(c) ("Upon motion by a party ... and for *good cause shown*, the court ... may make any order which justice requires"(emphasis added)). In this regard the standard imposed by Rule 4:1(c) is nearly identical to the federal counterpart, Rule 26(c) of the Federal Rules of Civil Procedure.[1] Federal courts have universally held that the burden on the moving party to establish "good cause" for a protective order is not a light one. *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d Cir.1986), cert. denied, 484 U.S. 976 (1988) ("Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test."). Courts require "a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements." *United States v. Garrett*, 571 F.2d 1323, 1326, n. 3 (5th Cir.1978). Moreover, the "harm must be significant." *Trans Pacific Ins. Co. v. Trans-Pacific Ins. Co.*, 136 F.R.D. 385, (E.D. Pa. 1991) (*quoting Cipollone*, 785 F.2d at 1121).

ARGUMENT

As WMSCOG seems to acknowledge in its motion, there are two distinct questions wrapped up in its motion for protective order. First, WMSCOG contends, through its objections to discovery and argument, that much of discovery sought in this matter should not be required

[1] As this Court is well-aware, the discovery rules of the Commonwealth mirror the federal rules in most respects and citation to relevant federal interpretation of discovery matters in commonplace. *See e.g., Moyers v. Steinmetz*, 37 Va. Cir. 25 (Va. Cir. Ct., City of Winchester, February 17, 1995) ("Virginia has adopted the Federal Rules of Discovery 'verbatim so far as consistent with Virginia practice ... to enable Virginia lawyers and Circuit Court judges to use federal precedents to guide Virginia practice in the field of discovery.'" *quoting* W. H. Bryson, Handbook on Virginia Civil Procedure 319 (2d ed. 1987)).

to be produced because of "objections of Relevance, Overbreadth, or Undue Burden." Motion at 5. So, as a practical matter, this Court must first decide (and compel pursuant to Rule 4:1(c)) the production of information WMSCOG has categorically refused to provide. Second, this Court must carefully examine whether WMSCOG has demonstrated "good cause" for the issuance and parameters of a protective order or simply, but impermissibly, wishes to keep discovery in this matter quiet.

I. The Information Sought By Defendant is Paramount to His Defense of Plaintiff's Defamation Claim

"Because a defamatory statement must be false to be actionable, truth is an absolute defense to an action for defamation." *Spencer v. American Intern. Group Inc.*, 2009 WL 47111 at *5 (E.D. Va. Jan 6. 2009) (*citing Alexandria Gazette Corp. v. West*, 198 Va. 154, 159 (1956)). Therefore, to understand the scope of relevant discovery, one must first look to the allegedly defamatory statements[2] that Plaintiff WMSCOG has marshaled in its Complaint:

- WMSCOG is a "religious cult." Complaint at ¶¶ 39, 41,46, 47, 48, 54, 74, among others.
- WMSCOG "destroys families." Complaint at ¶¶ 39, 41, 45, 46, 47, 48, 72, 73, 74, 75, among others.
- WMSCOG "brainwashes members in order to take all of their money from them." Complaint at ¶¶ 41, 43, 47, 48
- WMSCOG "deceives people into listening to them." Complaint at ¶ 44.
- WMSCOG "purposely withholds information in order to deceptively recruit." Complaint at ¶ 44
- WMSCOG launders money. Complaint at ¶¶ 33, 108
- WMSCOG has "an inappropriate financial relationship with the for-profit corporation Big Shine Worldwide, Inc, the president of which happens also to be Plaintiff's [WMSCOG's] pastor." Complaint at ¶ 55, see also ¶ 56.
- WMSCOG lies to the Internal Revenue Service. Complaint at ¶¶ 55, 102, 104, 108, 113, 116.

[2] In its Complaint, Plaintiff alleges some statements were made by Defendant Newton and some by dismissed Defendant Colon. However, Plaintiff alleges that all statements were part of a conspiracy to defame WMSCOG (Counts III and IV of Complaint) and, therefore, the allegedly defamatory nature (and/or truth) of all cited statements remain relevant to the dispute.

- WMSCOG "lies about how their [sic] church was founded on their [sic] tax exempt status." Complaint at ¶ 58.
- WMSCOG is "'controlled by the main location' in South Korea." Complaint at ¶ 59.
- WMSCOG "uses mind control and sleep deprivation to control its members." Complaint at ¶¶ 76,99
- WMSCOG "uses fear and guilt as their main tactics." Complaint at ¶ 99.
- WMSCOG "uses fear to prevent its members from going on vacation." Complaint at ¶ 99.
- WMSCOG inappropriately nominated itself for awards. Complaint at ¶ 87.
- Senior church officials, including Dong Il Lee and Jae Hoon Lee, receive and make payments among and between WMSCOG, Big Shine Worldwide and themselves in an inappropriate fashion. Complaint at ¶¶ 105, 106, 107, 108.
- WMSCOG misuses "missionary expenses." Complaint at ¶ 116.

Simply put, Defendant is entitled to discovery for the purpose of ***proving each and every one of these statements true***, along with any other statements cited in Plaintiff's Complaint. If WMSCOG believes these topics to be overbroad or unduly burdensome, it has only itself to blame by reason of the wide breadth of its defamation action.[3]

While each of the discovery requests at issue easily fall within the scope of the statements contained above, focusing on two that may seem particularly intrusive may be instructive. For example, Defendant's discovery requests seek significant information related to the membership of WMSCOG, including the names and addresses of *current and former* individual members as well as their donations to WMSCOG. Each current member (and, ***certainly***, each former member) will have relevant information regarding: the tactics used by WMSCOG to teach doctrine and increase donations ("brainwashing," "mind control," "sleep deprivation," and "fear and guilt," above); the effect and teachings of WMSCOG on broader familial relationships

[3] Plaintiff calls the breadth of the requested discovery a "fishing expedition" designed to provide "some basis" for these statements that "he did not previously have." Motion at 6. Plaintiff seems to miscomprehend its burden related to its defamation claims. The relevance of proof of truth/falsity in defamation is that "truth is an absolute defense," – not as Plaintiff seems to suggest, that "'the ***ability to prove*** truth at ***the time a statement is made***' is an absolute defense."

("destroying families," above); donations, legitimate and non-legitimate expenses ("laundering money," "lying to the IRS," "misuse of missionary expenses," above, among others); and, in the case of former members, the reasons why each person left, and whether their leaving was related to Defendant's allegedly defamatory statements. In *Seattle Times v. Rhinehart*, 467 U.S. 20 (1984) similar information was compelled of the religious organization suing the Seattle Times for defamation. 467 U.S. at 25 (district court compelled production of membership and donation information). Second, focusing specifically on the financial relationship of WMSCOG with and among outside corporations and senior WMSCOG leadership, those questions are at the heart of the allegedly defamatory statements concerning money laundering and deceptive IRS practices. As another court noted in a different context:

> Given the Federal Rules' policy of favoring broad disclosure during discovery, Plaintiff cannot seriously expect such charges as defamation, racketeering and noncompliance with the banking laws to go uncontested. He also cannot expect to conduct the litigation on ground rules that he selects. Chemical's request goes to the very heart of the subject matter at issue. The conclusion of relevance is, therefore, inescapable.

Sneirson v. Chemical Bank, 108 F.R.D. 159 (D. Del. 1985) (compelling the production of subpoenaed documents). There can be no serious dispute that Defendant is entitled to prove the allegedly defamatory statements cited by WMSCOG in its Complaint are true.

II. WMSCOG Has Not Demonstrated "Good Cause" for a Protective Order to Issue

Having established the core relevance and scope of the requested information and documents, the question the Court must now address is whether a protective order should issue, and if so, under what terms.

A. WMSCOG has Failed to Make A Particularized Showing of Harm

While it is completely absent from Plaintiff's Motion for Protective Order, there is no question that Plaintiff must show "good cause" for the issuance of a protective order, armed with

more than conclusory allegations. "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test." *Cipollone v. Liggett Group, Inc.*, 785 F.2d at 1121. In the section of its brief where WMSCOG allegedly describes the harm it will face, essentially WMSCOG makes one argument, that the *public dissemination itself* will harm WMSCOG. Motion at 6-7 ("Given Newton's stated intention to publish discovery responses, this court should craft a suitably restrictive protective order"). WMSCOG's Motion fails to address any of the actual touchstones for the issuance of a protective order pursuant to Rule 4:1(c) ("annoyance, embarrassment, oppression or undue burden[4] or expense").

And while there is no question that WMSCOG would consider the public dissemination of any information about this case to be 'annoying' or 'embarrassing,' a large and public organization like WMSCOG cannot simply proffer embarrassment as a shield – embarrassment must rise to a protectable level.

> As embarrassment is usually thought of as a nonmonetizable harm to individuals, it may be especially difficult for a business enterprise, whose primary measure of well-being is presumably monetizable, to argue for a protective order on this ground to succeed, a business will have to show with some specificity that the embarrassment resulting from dissemination of the information would cause a significant harm to its competitive and financial position.

Cipollone, 785 F.2d at 1121. This principle can be seen in application in *Seattle Times*, where in a defamation case potential harm justifying a protective order was concretely shown by the movant by reference to the effect of prior newspaper articles as demonstrated by a loss of membership, donation revenue, and physical attacks and threats against members – all supported by affidavits. 467 U.S. at 26-27 and n.2. Put more succinctly by another court, "negative press

[4] Undue burden is mentioned in WMSCOG's discussion of the validity of its objections, but as described *supra* at 3-5, the breadth (and therefore burden) of Defendant's discovery requests is directly controlled by the breadth of the allegedly defamatory statements Plaintiff has chosen to highlight in its suit.

... standing alone, does not amount to good cause for the issuance of a protective order." *Marisol A v. Giuliani*, 1997 WL 630183, *7 (S.D.N.Y. Oct. 10, 1997).

B. Public Disclosure, in and of Itself, Is Not Harm Sufficient to Justify a Protective Order

Turning to the only "harm" that WMSCOG describes – the public dissemination of the discovery material – *U.S. ex rel. Davis v. Prince*, 753 F. Supp.2d 561 (E.D. Va. 2010), is directly on point. While WMSCOG characterizes the case as "inapposite," a simple review of the case proves otherwise. In *Prince*, the U.S. District Court was reviewing a protective order entered by a magistrate, and found its primary fault to be a core over-breadth. *Id.* However, the court issued a direct response to an argument of the defendants in that case (the protected party trying to defend the magistrate's order) that "there [was] good cause to prohibit public dissemination of all discovery materials because plaintiff's counsel has stated her intent to publish all non-confidential discovery materials on her website." *Id.* at 568.

> It cannot logically be the case that good cause exists to prohibit the public disclosure of discovery materials because a party states an intent to disseminate those materials in accordance with the law. In other words, a party cannot lose the right to disseminate all discovery materials not protected by a protective order simply by stating an intent to exercise that very right. To show good cause, a party must demonstrate more than that an opposing party intends to disseminate discovery materials; rather, it must show that the disclosure of those materials will cause specific prejudice or harm, such as annoyance, embarrassment, oppression, or undue burden or expense. And, importantly, the fact that public disclosure of discovery materials will cause some annoyance or embarrassment is not sufficient to warrant a protective order; the annoyance or embarrassment must be particularly serious.

Id. The court's conclusion was based in no small part on its survey of case law reaching the conclusion that "where discovery materials are not protected by a valid protective order, parties may use that information in whatever manner they see fit." *Id., citing Jepson, Inc. v. Makita Elec. Works, Ltd.*, 30 F.3d 854, 858 (7th Cir.1994) ("Absent a valid protective order, parties to a

law suit may disseminate materials obtained during discovery as they see fit."); *San Jose Mercury News, Inc. v. United States Dist. Ct.*, 187 F.3d 1096, 1103 (9th Cir.1999) ("It is well-established that the fruits of pretrial discovery are, in the absence of a court order to the contrary, presumptively public."); *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 780 (1st Cir.1988) ("Indeed, the Supreme Court has noted that parties have general first amendment freedoms with regard to information gained through discovery and that, absent a valid court order to the contrary, they are entitled to disseminate the information as they see fit."); *Oklahoma Hosp. Ass'n v. Oklahoma Pub. Co.*, 748 F.2d 1421, 1424 (10th Cir.1984) ("parties to litigation have a constitutionally protected right to disseminate information obtained by them through the discovery process absent a valid protective order ..."); *Exum v. U.S. Olympic Committee*, 209 F.R.D. 201, 206 (D.Colo.2002) ("In the absence of a showing of good cause for confidentiality, the parties are free to disseminate discovery materials to the public").

Despite the plain conclusion of *Prince* and the myriad cases it cites, the central thesis of WMSCOG's Motion is that "discovery is essentially a private process." Motion at 4 (quoting *In re Worrell Enterprises, Inc.*, 14 Va. App. 671(Va. Ct. App. 1992), *abrogated by Hertz v. Times-World Corporation*, 259 Va. 599 (2000)). At some level, that statement is undoubtedly true, as parties traditionally conduct depositions in private and do not file discovery with the court in most jurisdictions. But the statement simply does not have the broad meaning that WMSCOG ascribes to it – that discovery "must" be a private process. The problem with WMSCOG's interpretation is not only that it is incorrect, but also that it flips the burden of a protective order on its head.

> A plain reading of the language of Rule 26(c) demonstrates that the party seeking a protective order has the burden of showing that good cause exists for issuance of that order. It is equally apparent that the obverse also is true, i.e., if good cause is not shown, the

> discovery materials in question should not receive judicial protection and therefore would be open to the public for inspection.... Any other conclusion effectively would negate the good cause requirement of Rule 26(c): Unless the public has a presumptive right of access to discovery materials, the party seeking to protect the materials would have no need for a judicial order since the public would not be allowed to examine the materials in any event.

In re Agent Orange Product Liability Litigation, 821 F.2d 139, 145–46 (2d Cir. 1987), cert. denied, 484 U.S. 926 (1987), aff'g 104 F.R.D. 559, 567 (E.D.N.Y. 1985) *overruled on other grounds by statute* (2000 amendment to F.R.C.P. Rule 5d). Ultimately, "[d]etermining whether good cause exists 'requires a balancing of the potential harm to litigants' interests against the public's right to obtain information concerning judicial proceedings.'" *Star Scientific Inc. v. Carter*, 204 F.R.D. 410, 415 (S. D. Ind. 2001) *quoting Makar–Wellbon v. Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D.Wis.1999). Simply put, if there was no right to freely disseminate materials produced in discovery than there would ***never*** be a need for a protective order pursuant to Rule 26(c).

C. Seattle Times Does Not Support Plaintiff's Position

While Plaintiff seems to suggest that the holding of Seattle Times is particularly relevant to this case, the actual holding of *Seattle Times* is far different from the *dicta* cited by Plaintiff.[5] The argument presented by the Seattle Times was essentially that the First Amendment should "trump" a civil discovery order, and this was the central point of the Court's analysis:

> We therefore hold that where, as in this case, a protective order is entered on a showing of good cause as required by Rule 26(c), is limited to the context of pretrial civil discovery, and does not restrict the dissemination of the information if gained from other sources, it does not offend the First Amendment.

[5] Plaintiff's use of *Seattle Times* shows the danger of the quote. Essentially WMSCOG takes *dicta* about the origin of 'liberal' discovery, eventually drops the word "liberal" from its quoted use of Seattle Times (Motion at 6) and turns it into the holding of *Seattle Times*. *Compare* Motion at 3-4 *to* Motion at 6.

467 U.S. at 37. The major distinction to be made between that case and the instant facts is that Defendant does not claim, as the Seattle Times did, that he has the right to disregard or strike a valid protective order "entered on a showing of good cause" because it violates his First Amendment rights.[6] Defendant simply points out that Plaintiff has not shown good cause – and, absent a valid protective order, he certainly has First Amendment rights and does intend to use them.

Courts have examined precisely the interpretation of *Seattle Times* raised by WMSCOG and soundly rejected it. In *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775 (1st Cir. 1988), Liggett and *amici* argued that *Seattle Times* evidenced a policy consideration that "the public should not be afforded access to discovery materials." *Id.* at 789. In rejecting that argument, the court held:

> All of the cases upon which Liggett and *amici* rely are cases where the claimed right of access was based not on the federal rules, but on the common law or the first amendment. They are cases where, in essence, litigants put forth common law and constitutional arguments in an effort to *trump* application of the federal rules standard for protective orders.... Liggett and *amici* would have us turn these cases on their heads by holding that privacy and litigative efficiency concerns ought to work independently of the federal rules, actually limiting a district court's ability to *deny* protection under Rule 26(c), even when no good cause is shown. We are not willing to do so. This case involves a claim of access to discovery materials under the federal rules and we believe that the merits of the claim must be judged by the text of the rules and the applicable cases interpreting the rules.

[6] Plaintiff's quotations of *Seattle Times* are through a Virginia Supreme Court case, *Shenandoah Pub. House, Inc. v. Fanning*, 235 Va. 253 (1988). In *Shenandoah*, the court was addressing an unchallenged finding of 'good cause' in the entry of a protective order. *Id.* at 262. Additionally, Shenandoah's applicability is particular strained since it involved a third-party's (media) challenge to the agreed-upon and approved protective order, not a restriction on a party's use of discovery received in the ordinary course of litigation. *Id.* at 254-55.

Id. (emphasis in original). This same conclusion has been reached by Judge Posner on the Seventh Circuit, in *Citizens First Nat. Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943 (7th Cir. 1999):

> ...the public at large pays for the courts and therefore has an interest in what goes on at all stages of a judicial proceeding.... The determination of good cause cannot be elided by allowing the parties to seal whatever they want, for then the interest in publicity will go unprotected unless the media are interested in the case and move to unseal.

Id. at 945. In summary, Defendant objects to the imposition of a broad, sweeping protective order not because it would affront his First Amendment rights, but because WMSCOG has failed to demonstrate "good cause" for a broad, sweeping protective order. That distinction makes the holding of *Seattle Times* far less relevant to the question before this Court.

D. Public Policy Does Not Support a Blanket Protective Order

Throughout this motion, Defendant has highlighted several public policy concerns that militate against the requested protective order: the public interest in and "presumption of public access to discovery materials, *Citizens*, 178 F.3d at 946; that the presumptively private nature of discovery advanced by Plaintiff would render Rule 4:1(c)/FRCP Rule 26(c) meaningless and superfluous, *In re Agent Orange*, 821 F.2d at 145–46; and that Defendant cannot lose his First Amendment constitutional right simply by promising to use it, *Prince* 753 F. Supp.2d at 568.

There is one additional public policy concern that is unique to this particular circumstance. Plaintiff WMSCOG has very publicly chosen to pick this fight. There are scores, if not hundreds, of websites and thousands of public comments devoted to exposing WMSCOG as a cult and highlighting the devastating effects WMSCOG has on families. *See* Ex. A (partial list of websites and repositories of public comment). In this suit WMSCOG has chosen to pick one of those commentators (the Defendant) and publicly and loudly proclaim he is lying. It is

simply unfair to suggest that Defendant cannot publicly demonstrate, as evidence is adduced in this proceeding, that in fact WMSCOG is a cult and does destroy families. It is not the case, as Plaintiff contends, that "the church [WMSCOG] is obliged to defend itself..." Motion at 9. WMSCOG chose to bring this action, but now asks for this Court to prevent the necessary and proper consequences of its allegations – public light into the truth of the allegedly defamatory statements. This Court should not countenance Plaintiff's desire to have it both ways.

E. Unknown Scope of Plaintiff's Requested Protective Order

Setting aside the previously discussed legal, policy and factual deficiencies with Plaintiff's Motion for Protective Order, it is simply unclear what Plaintiff seeks. Plaintiff spends pages 7-10 of its Motion discussing "Categories of Protection," but no clear enunciation is contained therein – nor has Plaintiff provided a draft of a proposed protective order. At the top of page 9, WMSCOG seems to suggest a two-category protective order, "confidential" and "highly confidential – attorney's eyes only." Both categories could not be shared with the public, with attorney's eyes only not even being allowed to be shared with the Defendant.[7] In the next paragraph, however, WMSCOG identifies three more categories it should be permitted to designate documents: "privileged," "confidential," (perhaps the same as the earlier "confidential") and "proprietary." It remains completely unclear what the restrictions on "privileged" or "proprietary" documents would be, what classes of documents might be so

[7] "Attorney's Eyes Only" (AEO) protection seems particularly ludicrous in this context. The instant action is one for defamation. If the Defendant is unable to review the documents, it will be nearly impossible for him to testify as to how they demonstrate the truth of his statements. *See Klayman v. Judicial Watch*, 247 F.R.D. 19 (D.D.C. 2007) (denying AEO protection and noting protection is usually reserved for Rule 26(c)(7) issues, "trades secret or other confidential research, development or commercial information.") *Klayman* also highlighted a three prong test for AEO protection, "(1) the harm posed by disclosure to the client must be substantial and serious; (2) the protective order must be narrowly drawn and precise; and (3) there must be no alternative means of protecting the public interest which intrudes less directly on the attorney-client relationship.

marked, or whether WMSCOG intends to mark all documents with one mark or another. However, WMSCOG is not done. On page 10 it further demands, without any legal citation whatsoever, that Defendant must make a "showing of cause...to contact third parties[8] identified through discovery." In its Conclusion WMSCOG asks that the protective order also "preclud[e] dissemination of discovery responses to Michele Colon.[9] Finally, also in its Conclusion, WMSCOG seeks to "preclud[e] dissemination of discovery responses through publication including postings to the Internet."[10]

The sheer generality of WMSCOG's claims of harm are mirrored in the lack of specificity regarding the categories of its proposed protective order. In practice, WMSCOG wants this Court to issue a blanket protective order covering every piece of discovery. While blanket orders are sometimes used in civil discovery when *both* parties agree to essentially seal all aspects of a case, even that voluntary practice is under attack in case law because it cloaks itself in the authority of the court. *See Citizens*, at 945-46 (rejecting the protective order in that case as a "standardless, stipulated, permanent, frozen, overbroad blanket order"). *Citizens* makes

[8] WMSCOG attempts to protect "third parties" – as described by WMSCOG, both its members and its business affiliates and partners – from the same nondescript harm it apparently fears throughout its Motion. However, WMSCOG does not have standing to assert the interests of third-parties when seeking a protective order to benefit itself – third-parties must seek to intervene or otherwise protect their own interests. *See In re Vega*, 2010 WL 3282656 *3 (D.P.R. Aug. 17, 2010) (party "does not have standing to seek a protective order asserting the rights of third parties to protect their privileged, proprietary or confidential information.")

[9] WMSCOG's desire to keep documents out of the hands of Michele Colon is particularly galling. Ms. Colon was an original defendant in this action (since dismissed), and for some inexplicable reason is still listed in Plaintiff's caption. WMSCOG contends that the vast majority of the allegedly defamatory statements were uttered by Ms. Colon. Ms. Colon will unquestionably be a key witness in a trial on the merits – both related to her allegedly defamatory statements and to the actual truth thereof – her first-hand account of WMSCOG's destructive influence on families and status as a religious cult. It would be nearly impossible for Defendant to put on his case without the involvement of Ms. Colon to help understand the relevance and importance of material produced in discovery.

[10] One has to wonder whether that includes responses to discovery WMSCOG has filed in open court attached to the instant motion. Motion at Ex. 3.

it clear that a protective order can only issue if the judge is confident that the parties can 1) apply its provisions to well-reasoned and narrowly tailored categories of documents and 2) provides for the explicit right for a party to challenge the secreting of particular documents. *Id.* at 946.

III. Defendant Does Not Object to a Narrowly Tailored Protective Order

One of the consistent red herrings in Plaintiff's Motion is the repeated suggestion that Defendant is "unwilling to agree to a protective order." Motion at 2. WMSCOG uses this "fact" as its only way to distinguish the *Prince* case (Motion at 7), and cites to an email exchange allegedly proving its assertion (Motion, Ex. 4). Not only does the Defendant propose herein the specific parameters of a narrowly-tailored and reasonable protective order, but the very email WMSCOG cites says the same, in clear contrast to Defendant's claim. Motion, Ex. 4 (offering to "craft a narrow protective order" but recognizing "that [WMSCOG] wants something far broader than that...")

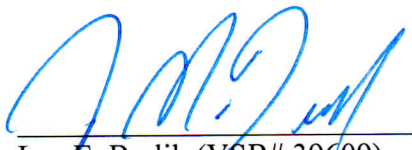
While Defendant believes he is both entitled to the requested discovery to defend himself in the instant action, and as a general proposition, entitled to do with discovery "what he sees fit" (*Jepson*, 30 F.3d at 858), Defendant has no desire to publish information which, as a practical matter, could be misused by third parties. Therefore, Defendant proposes a simple protective order that would:

- require that any published or disseminated discovery information have "personal information" redacted. For the purposes of the protective order, "personal information" includes social security numbers, phone numbers, home addresses and personal email addresses. Since "personal information" may be relevant to Defendant in contacting prospective witnesses, redaction will be done by Defendant, before any information is shared to any third party not signing a Protective Order Acknowledgement (below)
- require that any person who views unredacted discovery in this case (attorney, Defendant, witness or expert) sign a Protective Order Acknowledgement, indicated an understanding of the limitation described above and agreeing to be bound by it.

While Defendant believes that WMSCOG has failed to demonstrate good cause for even this relief (not evidencing, by affidavit or otherwise, any "harassment" of any member or former member as a result of Defendant's disclosures or allegedly defamatory statements), Defendant earnestly wishes to prevent the possibility of harm to individuals who may have already been victimized by Plaintiff's cult.

CONCLUSION

Plaintiff has utterly failed to demonstrate "good cause" for the issuance of a protective order. There can be no honest dispute about the relevance of the requested discovery in a defamation action. The mere fact that Defendant intends to share relevant information concerning WMSCOG on the internet is not, itself, protectable harm. Plaintiff ultimately seeks to have it both ways - to publicly call the Defendant a liar but prevent him from publicly demonstrating that he is not. For these reasons and the reasons cited herein, Defendant Tyler Newton respectfully requests that this Court deny Defendant's Motion for Protective Order, compel the production of documents pursuant to Rule 4:1(c), issue a protective order consistent with the proposal contained herein, and grant such other relief as the Court might find appropriate.



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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2012, a true and correct copy of the foregoing Opposition to Motion for Protective Order was served via facsimile on:

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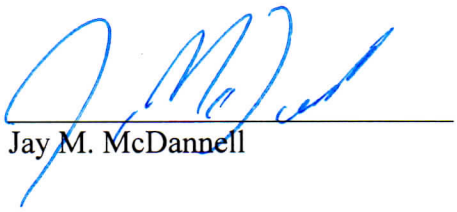

Jay M. McDannell

Exhibit A

Partial List of Internet Sites Providing Public Comment on Plaintiff

http://www.yaledailynews.com/news/2008/feb/06/korean-church-solicits-elm-city/
http://www.freedomofmind.com/Info/infoDet.php?id=227&title=World_Mission_Society_Church_of_God_-_WMSCOG
http://www.washingtoncitypaper.com/blogs/housingcomplex/2012/05/23/broken-windows-theory/
http://www.confessionalsbytes.com/2010/07/world-mission-society-church-of-god.html
http://yacawa.org/2010/07/16/god-the-mother/
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