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WORLD MISSION SOCIETY CHURCH)
OF GOD,)
)
Plaintiff,)
)
vs.)
)
COLON,)
)
Defendant.)

TRANSCRIPT
OF
MOTION

Place: Justice Center
10 Main St.
Hackensack, NJ 07601
Date: January 11, 2013

BEFORE:

HONORABLE RACHELLE L. HARZ, J.S.C.

TRANSCRIPT ORDERED BY:

ALLISON A. DUGGAN, Paralegal (Nesenoff & Miltenberg, LLP)

APPEARANCES:

MARCO A. SANTORI, ESQ. (Nesenoff & Miltenberg, LLP)
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1 THE COURT: All right, please be seated, thank
2 you.

3 MR. SANTORI: Thank you.

4 MS. ZBOROVSKY: Thank you.

5 THE COURT: We're here on World Mission Society
6 Church of God vs. Colon, et al, BER-L-5274-12.

7 Counsel, could I have your appearances please.

8 MR. SANTORI: Marco Santori for Nesenoff &
9 Miltenberg representing the plaintiff.

10 THE COURT: Mr. Santori.

11 MS. ZBOROVSKY: Diana Zborovsky from Nesenoff &
12 Miltenberg representing the plaintiff.

13 THE COURT: Zborovsky.

14 MS. ZBOROVSKY: Zborovsky.

15 THE COURT: Ms. Zborovsky.

16 MS. ZBOROVSKY: Yes.

17 THE COURT: Thank you very much.

18 MS. ZBOROVSKY: Uh-hum.

19 MR. GROSSWALD: Paul Grosswald representing
20 Michelle Colon, the defendant.

21 THE COURT: Okay. Thank you. And Ms. Colon is
22 here.

23 This court has multiple applications and
24 significant submissions by counsel. The first application
25 I believe we should address is the application is to amend

1 the complaint. The Court is acutely aware of what is
2 different between the first complaint and the proposed
3 amended complaint. The Court is aware that the amended
4 complaint seeks to add [REDACTED] the husband of Ms.
5 Colon, as a plaintiff, and add Tyler Newton as a
6 defendant. It is known to this court that Tyler Newton
7 does not reside in New Jersey, is based in Virginia.
8 There was -- I am familiar, cause I've read the papers
9 that there was prior Federal Court litigation -- no, State
10 Court litigation in Virginia. That matter was ultimately
11 dismissed voluntarily I believe?

12 MR. SANTORI: It was dismissed as to Ms. Colon
13 on a motion for -- on a motion to dismiss based on lack of
14 personal jurisdiction, she argued that the case should be
15 brought here. But as to Mr. Newton that was dismissed
16 voluntarily.

17 THE COURT: Thank you. And now you seek to add
18 him as a defendant here in New Jersey?

19 MR. SANTORI: Yes Your Honor.

20 THE COURT: I mean the issue of service and all
21 those issues are not before the Court right now, your
22 seeking to add him as a defendant, and file an addi --
23 this as an amended complaint.

24 MR. SANTORI: Correct Your Honor.

25 THE COURT: Okay. I -- I reviewed your

1 opposition Mr. Grosswald regarding the amended complaint.
2 You know, most respectfully, our court rules are very
3 lenient with regard to amendment of complaints. I am
4 aware of the history of prior counsel on behalf of the
5 plaintiff, and the amended complaint is filed by new
6 counsel. The original complaint was filed by John Dozier,
7 and he was lead counsel until his death in August, 2012.
8 His law firm dissolved immediately thereafter. He was the
9 only attorney at the firm working on the case.

10 MR. GROSSWALD: Excuse me Your Honor, that --
11 that's not correct. We know from the communications with
12 Mr. Newton's lawyer and the other lawyers that there were
13 numerous lawyers involved, at least three or four lawyers
14 were involved in that case, it was not just Mr. Dozier. I
15 mean he was the lead attorney, it was his firm, but he had
16 associates working with him.

17 THE COURT: Are you referring to the case in
18 Virginia?

19 MR. GROSSWALD: In Virginia, yes.

20 THE COURT: You -- I think with regard to this
21 case here in New Jersey, correct me if I'm wrong, it was
22 his firm that put together the first complaint?

23 MR. GROSSWALD: In this case?

24 THE COURT: Yes.

25 MR. GROSSWALD: That is correct. And -- and he

1 had Batya Wernick was the New Jersey counsel who signed
2 it, that's correct.

3 THE COURT: Right.

4 MR. SANTORI: If I could just address that?

5 THE COURT: Uh-hum.

6 MR. SANTORI: That -- that -- respectfully,
7 that's -- that's not our information, so we clearly have
8 different sets of information as to who worked on the
9 complaint. I've tried my darndest to contact everybody
10 who worked at that law firm.

11 THE COURT: You know I -- I think really in
12 terms of where this case is going and what we have before
13 us and the history, I think the amendment to this
14 complaint is the least of our issues. I mean we have in
15 our Court Rules 4:9-1, and the motion for leave to amend
16 is liberally granted without consideration of the ultimate
17 merits of the amendment, okay.

18 The Court understands Mr. Grosswald you are
19 concerned with the ultimate merits of adding Mr. [REDACTED] and
20 the defendant, but that is not something that I am
21 addressing today. It's just a function of allowing the
22 filing of the pleading, and it's a liberal pleading State.

23 The Court cites Notte vs. Mer -- Merchants
24 Mutual. "An amendment of a complaint should be allowed as
25 of course if the litigation has just commenced, and the

1 complaint would otherwise be subject to dismissal for
2 failure to state a claim." Which is what you are alleging
3 as well.

4 MR. GROSSWALD: I'm sorry.

5 THE COURT: Yes.

6 MR. GROSSWALD: Your Honor, so it's my
7 understanding that if you were to allow them to file, we
8 would then be allowed to do a motion to dismiss on the
9 merits?

10 THE COURT: Yes. But I'm going to kind of
11 address -- I'm kind of two steps ahead of you.

12 MR. GROSSWALD: Okay.

13 THE COURT: I'm kind of going to address that in
14 the context of your motion to dismiss as to the original
15 complaint that was filed. Because I'm anticipating -- but
16 see no one has appeared on behalf of Mr. Tyler?

17 MR. GROSSWALD: Mr. Newton, that's correct. Mr.
18 -- Mr. -- no one -- Tyler Newton.

19 THE COURT: Tyler Newton.

20 MR. GROSSWALD: No one has appeared for him, he
21 hasn't been served yet.

22 THE COURT: And he hasn't been served, and
23 there's all these service issues. There's a lot --
24 there's many layers of legal issues and applications here,
25 so I'm trying to make -- have organ -- organization on

1 some level.

2 So, with regard to allowing the filing of the
3 first amended complaint, the Court will do that. The
4 Court doesn't have any power or authority not to allow
5 that, okay, based upon 4:9-1.

6 Now, on the -- before we move on to anything
7 else, I have to ask you Mr. Santori or Ms. Zborovsky, I
8 recognize the role that Tyler Newton plays in this
9 litigation, okay. After having reviewed the papers and I
10 was provided a great deal of information about your client
11 by virtue of the papers submitted and exhibits submitted,
12 I have to ask you are you going to be amending the
13 complaint to add the Rick A. Ross Institute, for example?
14 I mean where is this going to end?

15 MR. SANTORI: Right. At this time we don't have
16 any plans to include Mr. Ross or -- or his institute. As
17 to where it's going to end you know litigation is an
18 uncertain path, but right now and even any plans for the
19 future we have no plans to add anybody else to this
20 lawsuit. Unless discovery uncovers something that we
21 didn't expect to see, then I -- I can say I can -- I can
22 at least make a disclosure now that -- that we don't have
23 anybody else to add.

24 THE COURT: I mean I -- I was given certain
25 websites by virtue of the papers submitted, and, for

1 example, let's see it's exhibit 13 of Mr. Grosswald's
2 certification, and I just randomly looked at one, it's 15
3 pages. I mean are you going be suing all these people who
4 made comments about your church -- your client's church?

5 MR. SANTORI: No Your Honor. The reason that
6 we've -- that --

7 THE COURT: Where -- where they indicate that
8 they're a cult. Not just opinions, but they -- they indi
9 -- they indicate that they're a cult and their negative
10 experiences there. The internet is vastly infiltrated
11 with such comments waiving on just that of what your
12 alleging of Ms. Colon and Mr. Newton. So, that is why I'm
13 asking you that, where does this end?

14 MR. SANTORI: I -- I think that's actually a
15 very good point. And -- and having dealt with -- with
16 these sorts of internet issues before, I think that it's
17 important that people who do have or entities who do have
18 some public presence have a -- a thick skin about this,
19 and that there are plenty of people out there who are
20 going to say nasty things about you. Not all of those
21 things are actionable to be fair, some of them are, but it
22 doesn't mean that you after all the actionable things.
23 And I -- I appreciate what the Court is saying.

24 In this case we're not dealing with just a
25 couple of comments offhand, we're dealing with a

1 widespread and systematic attempt to terrorize Mr. -- to
2 -- to terrorize Mr. -- Mr. [REDACTED] and the church to a point
3 where -- where he would become such a pariah, so that --
4 so that his own congregation would reject him. This is
5 why we've -- this is why we're bringing the case against
6 Ms. Colon.

7 THE COURT: Isn't that a cause of action in the
8 matrimonial action? I personally inquired to the judge's
9 significantly embedded in the Family Division, because I
10 in all of my experience in civil litigation have never
11 seen an action of one spouse against another or civil
12 union partner against another alleging intention
13 infliction of emotional distress in a civil lawsuit --
14 initiated in a civil lawsuit. The place where that exists
15 is in a matrimonial action, and then it is severed having
16 to do with matrimonial issues. So, I am a little at a
17 loss for the cause of action on beha -- behalf of Mr.
18 [REDACTED] in this venue.

19 You indicated in your papers that they are in
20 the midst of divorce. Isn't that allegation already being
21 pled and dealt with in the matrimonial litigation?

22 MR. SANTORI: I -- you know I'm not familiar
23 with -- with the -- with the procedural posture of a
24 matrimonial litigation. I -- I -- I don't think that that
25 would be the right venue for this though at least. I -- I

1 admit that I don't know the -- the law of what belongs in
2 matrimonial litigation, I'm not a matrimonial attorney.

3 THE COURT: I'm not saying I do either, okay. I
4 just -- it's something I have never seen before, so I
5 inquired and that --

6 MR. SANTORI: That makes two of us.

7 THE COURT: Okay. And I actually checked our
8 rules of evidence in terms of testimony as between husband
9 and wife, and actually involves civil union partners as
10 well, and it was quite explicit in the context of -- of
11 criminal matters. There's nothing that I found on my
12 cursory evaluation involving a civil matter such as this,
13 and that is something I'm not sure about.

14 MR. SANTORI: Well, if your speaking legally,
15 these are cognizable causes of action, and they can be
16 brought in this civil action. But if your speaking
17 practically, which is I -- I don't know maybe it's a
18 little bit of both. If your speaking practically the
19 explanation, the story that's being told here, the
20 narrative if -- if you -- and clearly Your Honor has read
21 the amended complaint - it is a coherent and cohesive
22 narrative, it tells a very relevant story that -- that
23 doesn't include a bunch of extra crazy facts. It's --
24 it's everything in there is relevant to these causes of
25 action. And so this is why they're part of the story, and

1 why they're a part of the case. As far as whether
2 strategically they would be better brought in the
3 matrimonial action, I -- I don't know.

4 THE COURT: Your client is the World Mission
5 Society Church of God congregation in Ridgewood; correct?

6 MR. SANTORI: Correct Your Honor.

7 THE COURT: Okay. That was another question I
8 had. All right. They call themselves World Mission
9 Society Church of God, that's their legal name entity?

10 MR. SANTORI: I can follow-up on the -- on the
11 incorporated entity name if -- if you'd like, I don't have
12 that in front of me right now.

13 THE COURT: Okay, cause I -- I was perplexed are
14 you bringing this on behalf of the million members of the
15 World Mission Society Church of God throughout the world
16 or just Ridgewood?

17 MR. SANTORI: Ridgewood Your Honor.

18 THE COURT: Just Ridgewood.

19 MR. SANTORI: Yes.

20 THE COURT: Okay.

21 MS. ZBOROVSKY: If I may Your Honor.

22 THE COURT: Uh-hum.

23 MS. ZBOROVSKY: Because on the earlier point
24 with regard to the discussion about whether to bring in
25 Matrimonial Court and if that venue would more

1 appropriate, I think a lot of this -- a lot of our action
2 is regarding the fact that Ms. Colon's actions were not
3 just towards Mr. [REDACTED] but towards the church and it was
4 very cohesive with both. So, to separate -- separate the
5 [REDACTED] action from the church we're going down the same
6 path, but in two different courts.

7 THE COURT: Well, his claim is emotional
8 distress, isn't it?

9 MS. ZBOROVSKY: Right. But as -- as we claim --

10 THE COURT: Your client isn't claiming emotional
11 distress?

12 MS. ZBOROVSKY: No, no.

13 MR. SANTORI: Actually, the -- the -- this is --
14 this is part of this reason. The claims -- for example,
15 emotional distress is just for Mr. [REDACTED], but defamation
16 is both for the church and Mr. [REDACTED]. And a lot of these
17 -- a lot of these statements pertain both to Mr. [REDACTED] and
18 the church, and so this is what -- this is I think what --

19 MS. ZBOROVSKY: Yes.

20 MR. SANTORI: -- Ms. Zborovsky is saying.

21 THE COURT: Okay. So -- so, my -- so -- yes.

22 MR. GROSSWALD: Could I just add something to
23 the record. None of the statements are defamatory for
24 Mark, because they were all anonymous and she never names
25 Mark anywhere. I mean this is all just a fabrication to

1 justify a harassment lawsuit. All right. And this is a
2 slap suit, this is a suit designed to silence a critic.
3 But there's nothing in the statements that talks about
4 [REDACTED]. And -- and I don't even know that he's even aware
5 that this proceeding is taking place. He is not here,
6 he's -- his law -- he's under the influence of this cult,
7 which is paying the lawyers, and I don't know that Mr.
8 [REDACTED] even understands that this legal proceeding is
9 taking place on his behalf at all. So, the notion that
10 there's defamation pertaining to Mr. [REDACTED] is just -- it's
11 just not an honest representation.

12 MR. SANTORI: First and foremost, many of these
13 statements were made in the context of Mr. [REDACTED] and Ms.
14 Colon's community at the variance hearings.

15 THE COURT: At the what?

16 MR. SANTORI: At the variance hearings.

17 THE COURT: You gave me the discs from that.

18 MR. GROSSWALD: Well, now -- now hold on. Okay.
19 Let me just explain the history of this, so we're not
20 confused. The initial complaint was trying to sue --
21 didn't have anything to do with [REDACTED] right?

22 THE COURT: No.

23 MR. GROSSWALD: The initial complaint was trying
24 to sue Ms. Colon because she's an activist, she attended
25 some planning board hearings where the church was trying

1 to get a variance. And the community was very upset with
2 the church, because at all times they have traffic
3 problems, people are there all hours of the night, the
4 neighbors are complaining, they don't want this variance.
5 And Ms. Colon was in the audience, she attempted to speak
6 at one of the hearings, their lawyer objected, and she
7 didn't speak at all.

8 THE COURT: That's my understanding --

9 MR. GROSSWALD: Right.

10 THE COURT: -- from what I can glean.

11 MR. GROSSWALD: So, they're suing her saying you
12 tried to block our -- our variance application. And, of
13 course, the facts are she had nothing to do with it, it
14 was all the other neighbors, it was the fact that the
15 plaintiff wasn't answering the planning board's questions,
16 they withdrew their own application before this complaint
17 was filed. So, Ms. Colon had nothing to do with it.

18 THE COURT: That record --

19 MR. GROSSWALD: So, we complained in our brief,
20 right.

21 THE COURT: -- but that record speaks for
22 itself --

23 MR. GROSSWALD: Right.

24 THE COURT: -- and it would be hard to believe
25 that the planning board and the zoning board would be

1 molded by one persons statement given the response to the
2 application.

3 MR. GROSSWALD: Right. So, the pla -- so, we
4 pointed that out in our first brief. The response we got
5 back was okay, we're going to amend the complaint, this
6 time we're going to say not that Ms. Colon was trying to
7 go to the planning board hearings to stop the application,
8 this time we're going to say that while she was at the
9 planning board hearings she called us a cult and there
10 were other church members there who heard it, and that's
11 the defamatory.

12 THE COURT: My understanding is she never spoke.

13 MR. GROSSWALD: Well, she never spoke --

14 THE COURT: At the hearing.

15 MR. GROSSWALD: -- at the hearing.

16 THE COURT: Correct.

17 MR. GROSSWALD: But they're saying that she
18 spoke you know in a si --in the hallway or on the side,
19 you know some -- somewhere at that in the room she spoke,
20 but not formally at the hearing. So they changed it, they
21 changed it from she's attacking us at the hearing to she's
22 physically at the hearing, but having a side conversation
23 that turned out to be defamatory. So, that's what they're
24 -- that's what they're doing now.

25 But that's -- that's only a small part. Even --

1 even if for the sake of argument and we're not conceding
2 this, but if for the sake of argument if those statements
3 were defamatory, that's only a few statements at one -- on
4 one day. They're claiming that all the statements on the
5 internet are giving rise to an intentional infliction of
6 emotional stress claim for Mr. [REDACTED] That the entire --
7 everything she's ever said on the internet, everything
8 that's anonymous is causing him emotional distress, and
9 that's just ridiculous. I mean if -- I mean the only
10 statements that have anything to do with Mr. [REDACTED] if
11 they have anything to do with Mr. [REDACTED] at all, are the
12 ones at that variance board hearing. Which, frankly,
13 didn't cause any damage to anybody, because they have not
14 alleged and I don't think they can allege that any of the
15 church members who heard those statements subsequent
16 stopped donating money or stopped contributing to the
17 church.

18 So, the -- the corporation had suffered no
19 damage as a result of anything that she said, and they're
20 not alleging that that happened. They just ha -- they
21 just make these generalized claims that people have
22 stopped donating, but they're not willing to name who they
23 are, and they don't say that any person who stopped
24 donat --

25 THE COURT: Well, they will have to, if they're

1 going to continue with the lawsuit --

2 MR. GROSSWALD: They will have to --

3 THE COURT: -- to prove their damages.

4 MR. GROSSWALD: -- absolutely.

5 THE COURT: Correct.

6 MR. GROSSWALD: And for trade liability I think
7 they should be doing that now. But there -- there is no
8 allegation that anybody who heard her say -- her say
9 anything at a planning board hearing subsequently changed
10 their -- their attachment to the church in anyway. So --

11 THE COURT: Well, they'll have to prove that.

12 MR. GROSSWALD: But they're not even alleging
13 it.

14 MR. SANTORI: On the contrary.

15 MR. GROSSWALD: There's not -- there's not even
16 an allegation in that.

17 MR. SANTORI: On the contrary, we do --

18 MR. GROSSWALD: Oh, I have -- I have the --

19 MR. SANTORI: -- in both the original complaint
20 and the amended complaint.

21 THE COURT: But they're going to --

22 MR. GROSSWALD: -- I have --

23 MR. SANTORI: Mr. Grosswald's covering a lot of
24 ground here that is not in response to your original
25 question --

1 THE COURT: Well, this is going to involve --

2 MR. SANTORI: -- which I can respond to.

3 THE COURT: I mean just -- we're -- we're
4 getting --

5 MR. SANTORI: Yeah.

6 THE COURT: -- ahead of ourselves, but --

7 MR. SANTORI: Yeah.

8 THE COURT: -- this is going to involve getting
9 involved with testimony from those who actually made the
10 decision on the planning board and zoning board regarding
11 this application.

12 MR. SANTORI: It wouldn't Your Honor, we're not
13 claiming that as damages, and we were -- we've never been
14 claiming that as damages. Mr. Grosswald's apparently has
15 only read -- seems only to have read half of our amended
16 complaint, at least the first half, but not the internet
17 stuff. What we're act -- what -- we're not just alleging
18 damages from things she said on the internet, we're
19 alleging damages from things that she said in person,
20 again at the variance hearing, things she said on the
21 internet, and things she said over the phone to Mr.
22 [REDACTED] family. She ousted Mr. [REDACTED] in front -- in front
23 of his family in a horrifying and false way claim that --
24 that -- that the church was going to kidnap him and take
25 him to South Korea and never see him again. This -- this

1 is at the very core of intentional infliction of emotional
2 distress. We're not even talking about his family, we're
3 talking about a wife who tricked her husband, said please,
4 come and see a marriage counselor with me. The husband
5 says no, he refused, I'm not really into that. She says
6 no, no, he's highly regarded and he comes highly
7 recommended. Then after who knows how long of a -- of --
8 of explaining his innermost thoughts, desires, and
9 feelings to this man, he reveals that he's not -- he's --
10 he's not a marriage counsel at all, but a cult
11 deprogrammer. And this man finds himself in the midst of
12 -- of -- of a person that he's given all of -- all of his
13 innermost thought to tricked by his own wife. This is --
14 this is the core of an intentional infliction of emotion
15 distress.

16 MR. GROSSWALD: Your Honor, may -- may I just --

17 THE COURT: And you --

18 MR. SANTORI: And even the points arguable,
19 there should be, at least, on a motion to dismiss an issue
20 for the jury --

21 MR. GROSSWALD: Your Honor, can --

22 MR. SANTORI: -- and discovery.

23 THE COURT: Oh, no, no, no, it's not an issue --
24 we're not at the point of an issue for a jury. A motion
25 to dismiss means that there's a reasonable basis to go

1 forward at this point looking at the allegations put forth
2 in the pleading, it doesn't mean you make it to the jury.

3 MR. SANTORI: At least to discovery Your Honor.

4 MR. GROSSWALD: But Your Honor I just want to
5 point out that as a matter of law I think it's highly
6 inappropriate for this court to say that as a -- that you
7 can have an emotional distress claim arising out of a
8 family member trying to do an intervention for another
9 family member. Because if that's the precedent that this
10 court establishes, what does that do to every family who
11 has a kid on drugs where they bring the kid to a drug
12 counselor, and the kid says well, I don't have a drug
13 problem your causing me emotion distress, now I have a
14 tort that I can sue you for. Right. Any -- any person
15 who tries to do a suicide intervention for a family member
16 is going to be accused of inflicting emotional distress,
17 because the person doesn't want the help.

18 I mean -- I mean it -- emotional distress the
19 tort is supposed to be for extreme and outrageous
20 behavior. This court should not say that it is extreme
21 and outrageous for a family member to try to do an
22 intervention for another family member in a crisis,
23 because that would just be devastating for families who
24 are trying to get help for loved ones. There has to be
25 something extreme and outrageous.

1 And the cases that they cite are cases where an
2 employer is -- is trying to harass an employee to try to
3 get them into bed. You know those are the kinds of things
4 that -- that give rise to a tort for emotional distress
5 not a family member doing an intervention. And so I think
6 as a matter of law, that should not be allowed to be the
7 basis of a tort.

8 And with respect to the -- to the variance
9 hearing paragraph 70 and 71 it says on a separate
10 occasions -- I'm reading from the -- the amended
11 complaint. "On a separate occasion at a public hearing
12 concerning plaintiff World Mission's application to obtain
13 a building code variance approval defendant Colon
14 -- Colon publicly stated that plaintiff damaged his
15 family, ruined her marriage" --

16 THE COURT: I saw that.

17 MR. GROSSWALD: -- "marriage, takes his members
18 money." Right, and those are the statements.

19 The next paragraph says "the audience consisted
20 of the local church commu -- plaintiff [REDACTED] local
21 church community, who was familiar with the church and
22 with plaintiff [REDACTED] and as such they would have
23 understood the statements to be of and concerning them.

24 There's no allegation saying that any of those
25 people then subsequently stopped donating money to the

1 church. The corporation doesn't have a claim arising out
2 of that. Even if Mr. [REDACTED] does, the corporation doesn't.
3 They're not alleging that the corporation was damaged from
4 that. So, to that extent that claim has to go with
5 respect to the corporation at least.

6 And as I said the emotional distress claim
7 should not stand when it's arising out of a family
8 intervention. That -- that's just as a matter of law
9 would be a very dangerous precedent to set.

10 MR. SANTORI: This -- this was not some kind of
11 disembodied family intervention where -- where a son or a
12 daughter is addicted to heroin, and someone is begging him
13 to go to a methadone clinic. Heroin is an objectively bad
14 thing for the society. There's public policy against it,
15 there's laws against it. But this is a church who Ms.
16 Colon has decided based on her own authority and Mr.
17 Grosswald has -- clearly has as well is a cult. It's
18 their opinion, and now they're forcing their religious
19 beliefs on Mr. Col --

20 THE COURT: It's their opinion.

21 MR. GROSSWALD: Their opinion, why are you
22 suing?

23 THE COURT: It's their opinion.

24 MR. SANTORI: The cult -- that it's a cult is an
25 opinion, yes Your Honor.

1 MR. GROSSWALD: Your suing over that?

2 MR. SANTORI: Yet now he asserts that -- and yet
3 now he asse -- no, we're not suing over that, we're suing
4 over all of the factual allegations that give rise to the
5 conclusion that it's an opinion that -- the conclusion
6 that the church is a cult. She didn't walk around saying
7 the church is a cult, the church is a cult, the church is
8 a cult, this didn't happen. What she did was allege very
9 specific false factual allegations publically, and from
10 those she concludes it is a cult. These are what we're
11 saying are the factual allegations.

12 MR. GROSSWALD: Your suing for calling it a
13 religious fraud, for saying --

14 THE COURT: Those --

15 MR. GROSSWALD: -- it's a religious cult.

16 THE COURT: Okay. Well, those factual
17 allegations just since we're having this discussion as
18 part of this motion are a little off tract, but let --
19 let's -- let's -- let's deal with that.

20 MR. SANTORI: Sure. Let's go -- what we can do
21 is -- we can do it as -- as Your Honor would -- would
22 prefer, the law asks us to -- to do a -- a communication
23 by communication approach, taking -- taking into
24 consideration the context of that communication. So is --
25 is -- would you like to go one by one for them or --

1 THE COURT: Well, just -- just for example --

2 MR. SANTORI: Okay.

3 THE COURT: -- because I -- I have to tell you I
4 am cognizant of the amount of information on the internet
5 that describes this religious organization World Mission
6 Society Church of God as a cult. This --

7 MR. SANTORI: Yeah.

8 THE COURT: -- is not just a statement made by
9 Ms. Colon.

10 MR. SANTORI: Right. And -- and, again, people
11 should have thick skins about this kind of thing. If Ms.
12 Colon simply was going around saying it's a cult, people
13 would probably take that as an opinion, and so the -- the
14 church would have to roll with that essentially. But this
15 is not what she did, what she did was make state -- was
16 make statements of either mixed opinion or statements of
17 fact. Both are actionable, we're not going -- we're not
18 going after --

19 THE COURT: Such as, such as.

20 MR. SANTORI: Such as. So -- so, there are two
21 different kinds of actionable statements. The first is a
22 statement of pure fact, which doesn't require too much
23 exposition. But it's the statement of mixed opinion that
24 is -- is a little nuisance. A statement of mixed opinion
25 is something that seems to be an opinion in form or

1 context, but also seemed to be based on facts that the
2 speaker didn't disclose. Whereas the statement of pure
3 opinion is where somebody discloses all of the factual
4 allegations, and then makes a -- draws a conclusion from
5 those allegations. The conclusion is not actionable,
6 because everybody knows that that's just her opinion based
7 on these facts. The facts, well, the facts they're
8 actionable. This is -- this is embodied under a statement
9 and applied by New Jersey Courts.

10 There's one case that give excellent guidance on
11 this, it's -- it's the Carmel (phonetic) case that we
12 cited in our brief, which is -- gives an in depth analysis
13 of the Rinaldi case in the New Jersey Supreme Court. In
14 the Rinaldi case a book -- a judge sued a book that was
15 critical of the judge for saying three things. One, that
16 the judge was incompetent; two, that the judge was
17 suspiciously lenient; and, three, that the judge was
18 probably corrupt. There was no factual development for
19 this allegation -- for -- for these allegations, except
20 for incompetent. The person actually said this is why I
21 think the judge is incompetent, and he's incompetent.
22 That was not actionable the incompetence statement. And
23 it just so happened the -- the judge didn't allege that
24 any of the factual allegations were false. But
25 suspiciously lenient, probably corrupt, they seem like

1 opinion. Oh, he's -- she's suspiciously lenient, he's
2 suspiciously lenient, it seems like an opinion, but it's
3 not it's mixed opinion. And the Supreme Court of the
4 United States, as well as Supreme Court of New Jersey in
5 Rinaldi has held that those are actionable. So, taking
6 these statements one by one.

7 MR. GROSSWALD: But -- but there's a --

8 THE COURT: So, you're going right -- right to
9 the point of the claim made by Ms. Colon that money is
10 being improperly funneled from the church to other
11 entities, that's what you're talking about?

12 MR. SANTORI: That -- that is a very good
13 example of --

14 THE COURT: Okay. All right.

15 MR. SANTORI: Well, that actually might just
16 simply be a statement of fact, that may not be mixed
17 opinion.

18 THE COURT: Okay. That the church requires
19 people to provide a certain percentage of their income to
20 the church. Is that what you're talking about?

21 MR. SANTORI: We didn't make that allegation, I
22 think that's just a tie that --

23 THE COURT: Okay. So, give me an example --

24 MR. SANTORI: Yeah.

25 THE COURT: -- of the type of allegation that

1 Ms. Colon has made or you allege she has made that would
2 be similar to in the Rinaldi case saying that the judge
3 was probably corrupt.

4 MR. SANTORI: On yellowblog.com (phonetic) Ms.
5 Colon said many have had their marriages and family torn
6 apart by this destructive mind controlling cult. That is
7 not only a statement of fact, that the church uses mind
8 control, al -- but also a statement of fact that -- that
9 there -- there exist families who have been torn apart by
10 this church. This is -- the mind control statement is --
11 is clearly a statement of fact, mind control is subliminal
12 messaging, change of diet techniques, hypnosis. These are
13 -- these are techniques that Mr. Grosswald, who happens to
14 be a -- an expert in cults, knows that -- that other cults
15 have used on their members be it Scientology or the
16 Heaven's Gate Cult in California in the -- in the 1990s
17 the Kool-Aid and white sneakers, those people who are
18 waiting for the space ship to come down. These people
19 actually used these techniques --

20 THE COURT: Isn't this --

21 MR. SANTORI: -- that is a statement of fact.

22 THE COURT: -- doesn't this organization believe
23 the world is going to come to an end?

24 MR. SANTORI: I -- I'm not a member of the
25 church, I don't -- I don't know that. But I -- I think a

1 lot of religions think the world is going to come to an
2 end, mainstream Christians certainly do.

3 THE COURT: And I want you to know that the only
4 information I have is what was provided to me, I didn't do
5 any of my own independent research.

6 MR. SANTORI: I -- I -- I certainly believe
7 that. I -- I just want to conference the church on that
8 information that was provided to you, it was not the
9 product of discovery, it is entirely hearsay. It's -- as
10 far as I can tell --

11 THE COURT: No, it was on the internet. The
12 very same thing that you are --

13 MR. SANTORI: Your Honor, that's --

14 THE COURT: -- bringing this action --

15 MR. SANTORI: -- that's -- that's --

16 THE COURT: -- about vis-a-vi Ms. Colon, and --

17 MR. SANTORI: We -- we don't --

18 THE COURT: -- well, partially with Ms. Colon,
19 but certainly with the proposed new defendant.

20 MR. SANTORI: Respectfully Your Honor --

21 THE COURT: I'm -- I'm trying to like --

22 MR. SANTORI: -- we don't know that those are on
23 the internet. There's been no factual development, all we
24 have is -- is Mr. Grosswald who says he found it on the
25 internet. We don't know whether it's -- whether it's been

1 changed, when it was posted, how it's been modified. We
2 don't know who -- we -- we -- all our allegations are that
3 he wr -- are -- are that Ms. Colon wrote it. This is the
4 kind of thing that has developed in discovery.

5 THE COURT: You -- I'm just confused with that
6 comment, because there's -- it's obviously your position
7 that these postings on the internet --

8 MR. SANTORI: I thought we weren't talking -- I
9 didn't think we were talking about those. I thought you
10 were talking about the -- the research that Mr. Grosswald
11 conducted and presented to Your Honor --

12 THE COURT: No, no --

13 MR. SANTORI: -- instead of taking --

14 THE COURT: -- it wasn't research, it was just,
15 for example, your organization -- well, actually it's --
16 it's their -- it's their literature. Here, here's the
17 head office, World Mission Society Church of God, it's
18 exhibit 20. And then we have the Church of God News,
19 which is their newsletter, exhibit 21. And we have
20 exhibit 22.

21 MR. SANTORI: But Your Honor is assuming that
22 all of that is -- is true. There's -- there's been no
23 authentication of --

24 THE COURT: But this is your publication.

25 MR. SANTORI: Once again, I -- I don't know that

1 it is Your Honor.

2 THE COURT: Oh, I'm -- I'm representing -- oh, I
3 don't think that Mr. Gro -- Grosswald --

4 MR. SANTORI: But we don't know --

5 THE COURT: -- fabricated it.

6 MR. GROSSWALD: Unless --

7 MR. SANTORI: -- he has no personal -- he has no
8 person -- he's the attorney, he has no personal knowledge
9 of what my client's published or didn't. But nonetheless
10 this truth --

11 MR. GROSSWALD: It's on the internet, of course
12 I did, I can see it.

13 THE COURT: I -- I --

14 MR. SANTORI: It's on the internet, so it must
15 be true?

16 THE COURT: No, no, no, no --

17 MR. GROSSWALD: This -- this is --

18 THE COURT: -- no, not that it must be true.

19 Let me just make the record clear. That that was a
20 publication of the --

21 MR. GROSSWALD: World Mission.

22 THE COURT: -- organization.

23 MR. GROSSWALD: Right.

24 MR. SANTORI: We --

25 THE COURT: Not that it's true, but that was a.

1 publication of the organization. I don't believe Mr.
2 Grosswald somehow on his own created this document to
3 mislead you or the Court --

4 MR. SANTORI: I -- and I would --

5 THE COURT: -- that this --

6 MR. SANTORI: -- never accuse him of --

7 THE COURT: -- was a publication.

8 MR. SANTORI: -- of doing that.

9 THE COURT: I think -- I think that -- that's
10 why it was annexed as an exhibit. Okay.

11 MR. SANTORI: Okay. So -- so, the question is
12 do -- does the World Mission Society Church of God believe
13 the world is going to come to an end?

14 THE COURT: No, no, no, no, I'm trying to focus
15 in on what it is that Ms. Colon, and I know we're kind of
16 off the actual issue of the motions, but what it is that
17 she has done that you believe, pursuant to the Rinaldi
18 case, comes to that same level of the judge being called
19 dishonest?

20 MR. SANTORI: She has called the church a -- she
21 has alleged the church uses mind control. She has alleged
22 that the -- that she has personal experience of the church
23 using North Korean mind -- North Korean torture techniques
24 or sleep deprivation techniques.

25 MR. GROSSWALD: Your Honor, that's not what she

1 said.

2 THE COURT: I -- I read what she wrote.

3 MR. SANTORI: She -- she's -- I -- I -- I have
4 the quote as well. She said --

5 THE COURT: Your talking about her story?

6 MR. GROSSWALD: In the five part story.

7 MR. SANTORI: I believe it's the five part
8 story.

9 THE COURT: Okay.

10 MR. SANTORI: Do you have the quote?

11 MR. GROSSWALD: I believe it's in part.

12 MR. SANTORI: Yeah, I know. She says --

13 MR. GROSSWALD: Okay, it's in part three --

14 MR. SANTORI: Oh, here it is.

15 MR. GROSSWALD: -- of the five party story.

16 THE COURT: Okay. What --

17 MR. SANTORI: The church was said to have
18 been --

19 MR. GROSSWALD: The most --

20 MR. SANTORI: -- using the same --

21 THE COURT: Can I just -- I just want to get the
22 -- the page please, what exhibit is it please?

23 MR. GROSSWALD: Okay. It's exhibit 2 of our --
24 my first --

25 THE COURT: Yes.

1 MR. GROSSWALD: -- certification.

2 THE COURT: Yes.

3 MR. GROSSWALD: And we don't have page numbers
4 unfortunately --

5 THE COURT: That's okay.

6 MR. GROSSWALD: -- but it's the part -- part
7 three. If you go through part one, part two, part
8 three --

9 THE COURT: Okay.

10 MR. GROSSWALD: -- and then turn to the second
11 page of part three.

12 THE COURT: Just wait, wait, wait, let me get
13 there please.

14 MR. SANTORI: No, your Honor, we can't read from
15 his -- from -- from his version of facts. The facts in
16 the complaint must be -- must be taken as true as alleged.
17 We don't know if this has been modified, changed. This is
18 just his evidence, he's conducted his own discovery.

19 THE COURT: Well, your -- your -- your the one
20 bringing the lawsuit.

21 MR. SANTORI: In that case we should read from
22 the complaint.

23 THE COURT: So, where are you getting the
24 information of what she alleged, if not from this article?
25 Where are you getting it from?

1 MR. SANTORI: It should -- it should be alleged
2 -- it should be taken as truth, since it's alleged in the
3 complaint.

4 THE COURT: What are you alleging? Let me first
5 hear what your alleging.

6 MR. GROSSWALD: Can I may a quick point while
7 he's looking at that?

8 THE COURT: Uh-hum.

9 MR. GROSSWALD: I su -- I submitted to -- to the
10 plaintiff in December a five day demand under Rule : --
11 4:18-2, which says if -- if a statement is referenced in
12 the complaint, but note recited verbatim and not annexed
13 to the complaint, I can get it within five days. So, I
14 made a five day demand. I basically said I want you to
15 give me every one of the challenged statements that you're
16 talking about in your complaint. They refused to give it
17 to me. So now they're saying --

18 THE COURT: Okay.

19 MR. GROSSWALD: -- the ones I found are not the
20 right ones, they're not accurate, but they won't give me
21 the right ones.

22 MR. SANTORI: That's because that is what's done
23 in discovery, this is a --

24 THE COURT: No, let --

25 MR. SANTORI: -- motion to dismiss.

1 THE COURT: -- no, let --

2 MR. SANTORI: I'm sorry, I --

3 THE COURT: Well, it's a motion to dismiss, so
4 I'm trying to --

5 MR. SANTORI: Right.

6 THE COURT: -- understand.

7 MR. SANTORI: This -- this -- this was the
8 statement. "The church was said to have been using the
9 same mind control tactics used on POWs in North Korea. I
10 cannot ignore the similarities to what I experienced at
11 the church." She's saying she experienced similar mind
12 con -- North Korean mind control techniques that this --
13 that this per -- in the church that this person says was
14 used on POWs in North Korea. Th -- this is a statement of
15 fact, this isn't even a mixed opinion. She say she ma --
16 she had these experiences, there can be no more factual
17 statement then that. This is not --

18 MR. GROSSWALD: Can I just remind Mr. Santori
19 that it is sanctionable and -- and punishable for him to
20 be making false representations to the Court. The
21 statement does not say what he says it says. What it says
22 is "the most disturbing information that I had come across
23 was that the WMSCOG was said to have been using the same
24 mind control tactics used on U.S. Prisoners of War in
25 North Korea. I also learned about Robert J. Lifton's

1 thought reform (indiscernible). When I finally read an
2 article that explained how the Jehovah's Witnesses used
3 the same tactics, referring back Robert Lifton, to control
4 their members I could not ignore the similarities to what
5 I had experience in the WMSCOG." She's talking about the
6 Lifton model, and it's different --

7 MR. SANTORI: I -- I can't --

8 MR. GROSSWALD: -- because --

9 MR. SANTORI: -- I can't believe --

10 MR. GROSSWALD: -- the North Korean model
11 implies people are being held prisoner. And the
12 breakthrough work that Robert Lifton did was he was a
13 psychologist who discovered you can get info -- you can
14 control people and get influence over them without putting
15 them in prison the way they did North Korea, that's his
16 big breakthrough. So, she's saying you know I learned
17 about the North Korean stuff, then I learned about how
18 Robert Lifton modified it --

19 THE COURT: I read that.

20 MR. GROSSWALD: -- and then I related it to --

21 MR. SANTORI: It is --

22 MR. GROSSWALD: -- my experience.

23 THE COURT: I read that.

24 MR. SANTORI: -- it is absolutely unacceptable
25 for Mr. Grosswald to -- to be submitting this on a motion

1 to dismiss. This has not been -- this -- this has not
2 been tested by any discovery. We have no idea whether
3 that statement was the statement that was on the internet
4 a month ago, will be on the internet a month from now, or
5 was -- or was the statement that -- that Ms. Colon made.
6 To the contrary, the allegation on the complaint is that
7 she made a different statement.

8 MR. GROSSWALD: But if we find the statement --

9 THE COURT: She -- she's not the only one who
10 has indicated that there's been mind control tactics used
11 by your organization, so how many people are you going to
12 sue?

13 MR. GROSSWALD: Again, Your Honor, these other
14 people haven't conducted the systematic widespread attack
15 on the church and -- and Mr. [REDACTED] --

16 THE COURT: Okay. Let's --

17 MR. GROSSWALD: -- she has and so we're suing
18 her.

19 THE COURT: So, Mr. [REDACTED] is a member of the
20 church, so your representing him, it's almost as if like
21 -- he's not an employee, but --

22 MR. GROSSWALD: He's a parishioner. A
23 parishioner --

24 THE COURT: He's a parishioner.

25 MR. GROSSWALD: -- a member of the congregation.

1 THE COURT: He's a parishioner.

2 MR. SANTORI: And we represent him individually.

3 MR. GROSSWALD: And probably a donor.

4 MR. SANTORI: We -- we represent him
5 individually, and we represent the church individually.

6 THE COURT: Okay. So, you're talking about the
7 systematic activity resulting in defamation. What -- what
8 has happened to our organization as a result of the
9 alleged defamation?

10 MR. SANTORI: We have, one, lost members.

11 THE COURT: How do you know that? Because of
12 Ms. [REDACTED] has done.

13 MR. SANTORI: Right. Because --

14 THE COURT: How do you know that?

15 MR. SANTORI: -- because Ms. [REDACTED] --

16 MR. GROSSWALD: Ms. Colon.

17 MR. SANTORI: Sorry.

18 THE COURT: Oh, Ms. Colon. How -- how do you
19 know that?

20 MR. SANTORI: The -- be -- for the re -- for the
21 reasons we allege in the complaint. That --

22 THE COURT: And why --

23 MR. SANTORI: -- that Ms. --

24 THE COURT: -- is that actionable --

25 MR. SANTORI: -- that Ms. --

1 THE COURT: -- losing members?

2 MR. SANTORI: -- that's --

3 THE COURT: If people leave a congregation, why
4 is that actionable for --

5 MR. SANTORI: If -- if --

6 THE COURT: -- the organization?

7 MR. SANTORI: -- if they left the congregation
8 because of Ms. Colon's statements, then it is an element
9 of damages. Now --

10 THE COURT: How?

11 MR. SANTORI: Because Ms. -- because them
12 leaving the church is the -- Ms. Colon's statement is the
13 proximate of them leaving the church. It's --

14 THE COURT: Let's say someone wants to leave
15 their church, let's make it not your church, let's make it
16 synagogue or --

17 MR. SANTORI: Sure.

18 THE COURT: -- a -- a Moslem temple or a
19 catholic church, a protestant church, and a parishioner is
20 not happy with whoever is the leader of that particular
21 facility, and comments are made and that worshiper goes to
22 another place to worship, are you telling me that's
23 actionable?

24 MR. SANTORI: No.

25 THE COURT: So why is this actionable?

1 MR. SANTORI: Because Ms. Colon specifically
2 targeted the church publicly, she used key words that she
3 knew people would search for if they wanted information on
4 the church. She is the -- she even pinpointed the church
5 on Goggle Maps to -- their specific address. Anybody
6 looking for information on this church would find her
7 comments, and she made sure of that that was her goal.

8 THE COURT: Okay.

9 MR. SANTORI: Moreover, she -- she went to a
10 variance hearing where people from the church's community
11 were going to be there, so that they could hear more about
12 the church. We've alleged abundant facts connecting her
13 actions to these losses.

14 THE COURT: The loss of the members.

15 MR. SANTORI: The loss of the members, the loss
16 of goodwill, and the loss of perspective members, which
17 companies do all the time, it's more of -- it's -- it's a
18 more -- it --

19 THE COURT: But how -- how would you separate
20 that from the -- most respectfully, how would you separate
21 that from the 62 sites, which is just a partial list of
22 internet sites providing public comment on your -- your
23 church? Or for that --

24 MR. SANTORI: Are --

25 THE COURT: -- I mean I looked at the one --

1 MR. SANTORI: -- again, are you looking at Mr.
2 Colon's re -- Mr. Grosswald's --

3 THE COURT: I went --

4 MR. SANTORI: -- research?

5 THE COURT: No. No, no, I went to some of the
6 sites. I -- I did, I printed out some of them.

7 MR. SANTORI: You -- you did your own research
8 too.

9 THE COURT: I looked at -- no.

10 MR. SANTORI: Oh.

11 THE COURT: I went to the sites that were -- no
12 one's changing the site, I went to it myself --

13 MR. SANTORI: Okay.

14 THE COURT: -- from what was given to me by --
15 by defense counsel. To -- because what is being presented
16 to the Court defense counsel is that there's multiple
17 sites on the internet, and individuals on the internet
18 making similar if not same comments as Ms. Colon. And,
19 therefore, how would you as the plaintiff say that such
20 and such happened to your client as a result of her
21 actions, as opposed the myriad of other people who were
22 doing the same thing.

23 At -- and, for example, I went to the individual
24 who you just named, the individual -- I'm sorry, it's in
25 the first set, the Rick A. Ross Institute. So, I -- I --

1 I -- I'm focusing in on the crux of the matter being you
2 have designed Ms. Colon -- because right now I'm not
3 really getting involved with Mr. Newton, Tyler Newton?

4 MR. GROSSWALD: Mr. Newton, yeah.

5 THE COURT: Tyler Newton. How is she being
6 isolated from all of these other individuals or entities?
7 Or how about -- how about You Tube, how about Google? I
8 was noticing - this is on exhibit 13 - there is a site
9 Wikipedia, there is a site Church of God World Mission
10 Society cult. You tube, are you going to sue You Tube?
11 Yahoo. Is the World Mission Society Church of God a cult?
12 Yahoo.

13 So, where I am inquiring is how do you separate
14 your alleged damages from Wikipedia, You Tube, Yahoo, and
15 the other items I mentioned from Ms. Colon?

16 MR. SANTORI: There -- two -- in two different
17 ways. First, Ms. Colon's statements were on You Tube and
18 Yahoo, so that -- that's a fact for -- for some -- at
19 least some of those. But in any event, the -- two ways.
20 It would be the same way that any company determines what
21 kind of business was lost after some market event. Plenty
22 of other things happen in the market that can cause a
23 stock, for example, to fluctuate up and down. But there
24 -- but we -- we would probably bring in an expert of how
25 -- of assessing damages like this who would be able to

1 determine from say the date of the posting connected with
2 -- with discovery that we would find of -- of
3 communications between people, and people talking about
4 what happened -- about what Ms. -- Ms. Colon said.

5 THE COURT: Okay. But -- but and your damages
6 just so I understand focus on these parishioners leaving
7 the congregation.

8 MR. SANTORI: Our -- our monetary damages focus
9 on parishioners leaving the congregation, recruitment
10 numbers coming down or not going up as much as they were
11 before the statements, and, three, loss of goodwill. But
12 we -- but much of these are defamation per se. I mean we
13 -- we -- we would also ask for -- for injunctive relief,
14 so -- which is as a disclosure the client's primary goal
15 here is to -- is -- is to clean up it's good name, it's
16 not so much to collect a whole bunch of money.

17 THE COURT: I saw the proposed settlement offer.

18 MR. SANTORI: Can I -- I -- I -- I cannot
19 believe that -- that settlement -- the confidential
20 settlement discussions were submitted as evidence to the
21 Court, that -- that -- I -- I can't believe that that's
22 something that a court could consider --

23 THE COURT: Oh, I'm not considering it.

24 MR. SANTORI: -- for -- for -- for any purpose.

25 Okay.

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THE COURT: I'm not considering it for any purpose.

MR. SANTORI: Okay.

THE COURT: I mean it's not saying anything different than what you just said, quite frankly, that's --

MR. SANTORI: Yeah.

THE COURT: -- what you're looking for.

MR. SANTORI: Yeah, I -- I -- I -- at -- at no point --

THE COURT: So, there's nothing confidential about that, you just said exactly what that --

MR. SANTORI: Well, in that case --

THE COURT: -- letter communicated.

MR. SANTORI: -- yeah.

MR. GROSSWALD: Your Honor, can I just --

MR. SANTORI: What I --

MR. GROSSWALD: -- say something?

MR. SANTORI: Wait.

MR. GROSSWALD: Hang on. I brought the cease and desist letters that preceded the lawsuit, and cease and desist letters are not covered by the settlement rule. So, those say the same thing, basically demanding that the entire website be taken down not just specific --

1 THE COURT: Which -- which website, the one --

2 MR. GROSSWALD: The examining website, Mr.

3 Newton's website.

4 MR. SANTORI: It's because Mr. Newton was -- was
5 a defendant there. I mean that's -- it's --

6 MR. GROSSWALD: No, that was before --

7 MR. SANTORI: -- it's some --

8 MR. GROSSWALD: -- before any lawsuits were
9 filed, they --

10 MR. SANTORI: Before the lawsuit was filed where
11 he was named as a defendant. This isn't some --

12 MR. GROSSWALD: Right.

13 MR. SANTORI: -- some overreaching ki -- either
14 way, these are settlement discussions.

15 MR. GROSSWALD: These -- these are not
16 settlement discussions, these are cease and desist letters
17 which say that the entire website referring to the -- Mr.
18 Newton's website is -- is defamatory and malicious, and
19 they want the whole thing taken down. They do not
20 identify specific statements, they don't say this sentence
21 is defamatory take it down, they say the entire thing has
22 to come down. I can submit those to the Court, and they
23 are not settlement offers.

24 MR. SANTORI: And nonetheless. So -- so, in --
25 in any event we are seeking injunctive relief, and that's

1 -- and this is -- this is the -- this is exactly the sort
2 of thing that -- that we would -- we would be seeking.

3 So, there's monetary damages, and we believe
4 that we can --

5 THE COURT: Are you going to do the same thing
6 to You Tube, and you going to do the same thing to Yahoo
7 and Wikipedia make them take down all their sites?

8 MR. SANTORI: We --

9 MR. GROSSWALD: Ms. Colon never made a statement
10 on Yahoo, and they're not alleging that by the way. That
11 was incorrect when you said that she was on Yahoo --

12 MR. SANTORI: Oh, okay, I thought there was a --

13 MR. GROSSWALD: -- that's not an allegation.

14 MR. SANTORI: -- I thought that there was a sub-
15 domain on Yahoo --

16 MR. GROSSWALD: No.

17 MR. SANTORI: -- somewhere.

18 THE COURT: And please understand I didn't
19 thoroughly look at all -- I mean it would be hard for the
20 record to explain how much information is before the
21 Court, I couldn't even bring it all out to my bench. But
22 I've familiarized myself you know comfortably to be able
23 to have this discussion.

24 MR. SANTORI: There is a lot of ground to cover.

25 THE COURT: Okay. What I -- I still don't

1 understand and maybe you could explain to me again, how
2 you are -- your -- your damages that you are alleging as
3 against Ms. Colon vis-a-vi the church has to do with lost
4 membership, loss of goodwill --

5 MS. ZBOROVSKY: Loss of future --

6 THE COURT: Pardon me.

7 MS. ZBOROVSKY: -- loss of future membership as
8 well.

9 THE COURT: Lost of future --

10 MS. ZBOROVSKY: Perspective members.

11 MR. SANTORI: Perspective members.

12 THE COURT: Okay. And you believe you are going
13 to be able to submit proofs particular to her, as opposed
14 to the myriad of other forces that are out there in
15 discussion regarding this church?

16 MR. SANTORI: Yeah, this is not a -- this is not
17 a -- a unique situation in the context of securities
18 litigation. For example, if something happens in the
19 world on such and such a date and the stock price dips,
20 but plenty of other things happened on that date as well.
21 And it's a question of fact as to whether this was caused
22 by the complained of event or caused by or to what extent
23 it was caused by the other things that happened in the
24 market. And this is -- this is -- this is exactly why we
25 have discovery and why we have jury's, so that -- so that

1 we can develop the factual bases for arguing wh -- for --
2 for connecting an event to damages, and so they can
3 determine whether these factual bases really do meet our
4 burden.

5 MR. GROSSWALD: Your Honor, there is only one
6 way for them to prove what they need to prove, that is we
7 have to take the depositions of the people who left the
8 church, and ask them why they left and what they read
9 before they decided to leave.

10 THE COURT: Correct.

11 MR. GROSSWALD: That can't happen. And the
12 reason it can't happen is because they are asserting
13 constitutional protection over their former members.
14 They're saying that they don't have to disclose. Remember
15 in the trade liable argument when I said you have to plead
16 the names of people for -- to plead trade liable. They
17 responded by saying no, the -- the people who are
18 associated with our church are covered by the Constitution
19 and we don't have to disclose them to you, and we're not
20 going to disclose them to you. Even after the motion to
21 dismiss, in discovery they're not going to disclose them
22 to us.

23 THE COURT: I -- I -- I missed it, where --
24 where is that present --

25 MR. GROSSWALD: That's in their brief, in their

1 the November 19th brief, the opposition to the motion to
2 dismiss. Let me just find the trade liable section.

3 THE COURT: I have it.

4 MR. GROSSWALD: Claims for trade liable page 32
5 -- page 34. Page 34 of their brief, do you have it?

6 THE COURT: Yes.

7 MR. GROSSWALD: All right. "Forcing plaintiff
8 World Mission to divulge the identities of the innocent
9 victims of defendant Colon's attacks would be similarly
10 unreasonable here, specifically it would violate its
11 members right to free association under the First
12 Amendment to the United States Constitution. The First
13 Amendment of the Constitution of the United States
14 protects freedom of association, including the right to
15 privacy with respect to that association. For example,
16 the United States Supreme Court held in Bates v. Little
17 Rock that compulsory disclosure of names of members and
18 perspective members for the NAACP would create unjustified
19 interference with" --

20 THE COURT: I did --

21 MR. GROSSWALD: -- "the members freedom of
22 association" --

23 THE COURT: -- I did re --

24 MR. GROSSWALD: -- "which is protected by the
25 First Amendment and prohibited by the due process clause.

1 Similarly, compelling members of the church to disclose
2 their affiliation with a religious group is an invasion of
3 members privacy, and a significant interference with their
4 freedom of association. Religious association, which
5 telegraphs a persons' religious belief, is a highly
6 personal and private matter. It is particularly
7 unreasonable in light of the litany of other means by
8 which plaintiff World Mission can demonstrate its
9 damages."

10 So, they're not going to give us any witnesses
11 to depose to ask them if they read her statements, and
12 then decided to leave.

13 THE COURT: Is that going to be your position?

14 MR. SANTORI: Your Honor, I -- I can't take a
15 position on that now, because it's not before the Court.
16 And we -- to be perfectly honest the -- this is not a
17 unique situation when -- to continue the example in the
18 securities lawsuit when you have to determine damages
19 defendants don't go out and interview everybody who bought
20 and sold the security on that day, and say why did you do
21 it? Are you sure you did it because of this? Tell me
22 why? They --

23 THE COURT: I mean you're going to have --

24 MR. SANTORI: -- this could be --

25 THE COURT: -- I mean just -- just --

1 MR. GROSSWALD: The church only has 400 members.

2 THE COURT: I was just going to ask how many
3 members do you have? I know that the church as a whole
4 has over a million members; correct?

5 MR. SANTORI: Worldwide, yes.

6 THE COURT: Worldwide, okay.

7 MR. SANTORI: But not that --

8 MR. GROSSWALD: They're mostly in Korea. I mean
9 in New Jersey it's only about 400 or so, we could -- and
10 not all of them left. So maybe what 10 people left, 20
11 people left, we --

12 THE COURT: So, there's 400.

13 MR. GROSSWALD: -- can depose them.

14 THE COURT: Okay.

15 MR. GROSSWALD: There enough, we can depose
16 them. And how many people actually left the New Jersey
17 church after these statements were published? You don't
18 have a number?

19 MR. SANTORI: Again, the -- first of all, we
20 don't have to show this, this is -- this -- we don't have
21 to show damages for any of the defamation claims. What
22 we're speaking about right now seems to be only trade
23 liable, I just want that to be clear before the Court.
24 These -- this is all defamation per se, defamation to be
25 proven.

1 MR. GROSSWALD: But the argument he's saying
2 we're -- if -- if the argument is Constitutional
3 protection, that argument is obviously going to apply for
4 defamation as well when we get to discovery. So, rather
5 than wasting everyone's time and letting the case go
6 forward only to have us be blocked --

7 MR. SANTORI: It's no surprise --

8 MR. GROSSWALD: -- the Court can decide now that
9 it's not worth going forward.

10 MR. SANTORI: -- it's no surprise that the
11 defendant doesn't want her time wasted. There's case --

12 THE COURT: Doesn't want what?

13 MR. SANTORI: Her time wasted.

14 But there is case law on this issue. One of the
15 cases that -- that we cited - could you grab it really
16 quick --

17 MS. ZBOROVSKY: Yes.

18 MR. SANTORI: -- the case that we cited says
19 where it would be otherwise unreasonable for plaintiff to
20 name the names of its customers lost, this is a widget of
21 some kind, where it would be otherwise unreasonable to --
22 to name the names of the -- of its clients or customers --

23 MR. GROSSWALD: That's when you have a cash
24 business and you don't know their names, or when you have
25 a million customers --

1 THE COURT: Okay.

2 MR. GROSSWALD: -- not 20 people who left the
3 church.

4 MR. SANTORI: So, if I could just -- if I could
5 just finish, it's -- it's not 20 people. We haven't
6 alleged --

7 THE COURT: But, most respectfully, you would
8 have the burden of proof to establish --

9 MR. SANTORI: We cer --

10 THE COURT: -- that these people left --

11 MR. SANTORI: -- we certainly would.

12 THE COURT: -- the church, because of Ms. Colon.

13 MR. SANTORI: We cer --

14 THE COURT: You would have that burden of proof.

15 MR. SANTORI: I -- and no one's -- no one's
16 disputing that, no one's disputing.

17 MS. ZBOROVSKY: Right.

18 THE COURT: And you would have to turn over
19 those names --

20 MR. SANTORI: Your Honor --

21 THE COURT: -- so that there's an opportunity --

22 MR. SANTORI: -- we would not have to turn over
23 those names. And -- and the -- this is -- this is --

24 THE COURT: Well, how are you going to do that
25 without their deposition or affidavit or -- or sworn

1 testimony?

2 MR. GROSSWALD: They're going to bring in an
3 expert --

4 MR. SANTORI: The Patel (phonetic) case is
5 clear, it says when -- when it's unreasonable to require
6 the -- the disclosure of names of lost customers, it is
7 sufficient to plead -- to plead lost customers, lost
8 perspective customers, and valuable goodwill.

9 MR. GROSSWALD: When it's unreasonable, there's
10 nothing --

11 MR. SANTORI: Mr. --

12 MR. GROSSWALD: -- unreasonable.

13 MR. SANTORI: There -- there's nothing
14 unreasonable, Ms. -- Ms. Colon is asking us to go to each
15 of our members and say -- and say hey, we're going to tell
16 all of these people that we're a member of an unpopular
17 religion, are you okay with that?

18 THE COURT: No, no, these are the people who
19 left.

20 MR. SANTORI: And this is, in fact, his
21 response. He's essentially asking us, asking -- no,
22 asking this court --

23 THE COURT: You know who left.

24 MR. SANTORI: -- to go to people -- he's asking
25 this court to people to -- to ask them. This is -- this

1 is what the -- the jury must ask and what the Court must
2 ask. Excuse me sir, have you ever been a Jew? It is
3 ab --

4 THE COURT: No, that's not the question.

5 MR. SANTORI: That's -- that is exactly the
6 question.

7 THE COURT: The question is --

8 MR. SANTORI: Because we would have --

9 THE COURT: -- did you leave the synagogue
10 because --

11 MR. SANTORI: He doesn't --

12 THE COURT: -- Ms. --

13 MR. SANTORI: -- but no, we would have to
14 identify the names of these people. That's the issue,
15 that's what they want, they want us to identify the names.
16 They want a list of names of these people.

17 THE COURT: Well, how do you even prove your
18 case?

19 MR. SANTORI: Your Honor, we can do this via
20 experts. People do this all the time --

21 THE COURT: No, no, no, no, excuse me, I've been
22 litigating a long time. How are you going to prove that X
23 number of people left your church as a result of the
24 defamatory remarks, and everything else your alleging
25 against Ms. Colon without having their testimony to

1 indicate that, in fact, what your saying is true?

2 MR. SANTORI: We use --

3 THE COURT: You can't just allege it --

4 MR. SANTORI: Right.

5 THE COURT: -- you have to prove that.

6 MS. ZBOROVSKY: Right.

7 MR. SANTORI: To be fair I -- just so we're
8 clear at this stage that is all we have to do. But your
9 right, at some point we will have to carry our burden, and
10 how -- at this point as a disclosure how we plan to carry
11 our burden is taking membership members on one date,
12 taking membership numbers on another date, seeing the
13 change over time between those dates, and what happened
14 between those dates.

15 If there were no -- for example, if there were
16 no other postings between the time a member was a member
17 of the church and the time a member left the church --

18 THE COURT: This isn't securities law.

19 MR. SANTORI: -- and it was only --

20 THE COURT: This isn't secur -- your making an
21 analogy to explaining why a stock --

22 MR. SANTORI: That -- that --

23 THE COURT: -- price changed, and there's
24 insider trade --

25 MR. SANTORI: -- it's -- it happens to be done,

1 yeah --

2 THE COURT: Okay.

3 MR. SANTORI: -- in securities law.

4 THE COURT: Okay.

5 MR. SANTORI: But the -- I think the
6 analogies --

7 THE COURT: You -- you can't -- mo -- most
8 respectfully, I -- I do not believe that your proposed
9 theory of proofs is adequate, okay. That's -- that's not
10 before me today, but you're going to have to show that
11 these people left, not over a period of time when certain
12 blogs went up, you don't know what blogs they read. You
13 don't know if their grandmother in California asked them
14 to leave the church.

15 MR. SANTORI: Maybe she did because she read the
16 blog.

17 THE COURT: Well then you --

18 MR. GROSSWALD: And we need a deposition --

19 THE COURT: -- have to give that name.

20 MR. SANTORI: And -- and we would have to prove
21 it. You right, then we would have to prove it.

22 THE COURT: Your going to have to give that
23 name, all right.

24 MR. GROSSWALD: Well, Your Honor, the trade
25 liable issue is before the Court, and they did not plead

1 the names as required for a trade liable pleading. So, at
2 least, this could dismiss the trade liable claims to that
3 extent even if you're not going to dismiss the defamatory
4 claims.

5 MR. SANTORI: Your Honor, that's not required at
6 the pleading stage. Everything that Your Honor has said
7 is that we will be required to prove it, and we understand
8 that's our burden and we -- and we intend to prove it.

9 But at the pleading stage the Patel ca -- it's
10 the Patel case it says -- it says that this is sufficient.
11 This is -- this is -- this is exactly an unreasonable
12 situation or at least at the pleading stage it certainly
13 is. He's asking us to name names and give away peoples
14 religions, we're not going to do that especially here
15 where the very crux of the issue --

16 THE COURT: No, I'm not asking you to name
17 peoples religions.

18 MR. SANTORI: Well, you would be, because if you
19 name a person clearly they were a member of the church.

20 THE COURT: No, no, no, no. No, no, no, no.

21 MR. SANTORI: Why else would we name the person?

22 THE COURT: I have here the application for a
23 protective order that was filed, I know it's not before me
24 today, I'm not sure when this is before me.

25 MR. SANTORI: I think it was -- we just for a

1 matter of convenience we made it returnable today.

2 THE COURT: Oh, okay. I -- I saw the various
3 discovery requests that were served. Defendant's first
4 set of requests for production directed to plaintiff World
5 Mission --

6 MR. GROSSWALD: Your Honor, I just want to point
7 out they never did a --

8 THE COURT: -- in interrogatories.

9 MR. GROSSWALD: -- meet and confer with me. If
10 they had done a meet and confer with me, what I would have
11 said to them is I want to get -- I initially started with
12 a five day demand, I want everything that your referring
13 to in the complaint, okay. And then I repeated that
14 demand in the 35 day demand because I anticipated I
15 wouldn't get it after the 5 day demand. If they had done
16 a meet and confer, I would have said give me the stuff
17 from the complaint, and then -- and there's a few other
18 things that I think they should give me right away. If
19 they give me those things, I'm willing to negotiate with
20 them and say okay, for the other stuff because, obviously
21 things are going to be affected by any decision the Court
22 makes, we can defer those until after we get a decision on
23 the motion to dismiss. But I at least want to get the
24 stuff that they can give me right now that's in the
25 complaint, I should be able to get that right away.

1 THE COURT: Okay. Can I ask --

2 MR. GROSSWALD: And that's what I would have
3 said --

4 THE COURT: Okay.

5 MR. GROSSWALD: -- if they had conferred with
6 me.

7 THE COURT: Can I ask a question. The comments
8 made by Ms. Colon, for example, as to the interaction
9 between World Mission Society and this other entity,
10 Sunshine?

11 MR. GROSSWALD: Big Shine.

12 THE COURT: Big --

13 MR. GROSSWALD: Big Shine.

14 THE COURT: -- Big Shine, okay. Truth is a
15 defense. So, the documents that they're going to be
16 asking regarding the financial transactions among and
17 between these entities will have to be produced. And from
18 what I can glean in terms of you don't even want to give
19 over the names of the people who left the church, you're
20 going to say you're not entitled to that. If you're going
21 to bring this case all of this is going to be
22 discoverable.

23 MR. GROSSWALD: And they dropped the Virginia,
24 because they didn't want to turn over that information.
25 That's what Mr. Newton was trying to get, and they kept

1 putting back -- they kept pushing back the discovery
2 deadline and pushing it back. Finally, the judge said no,
3 it's due on a date certain. They missed the deadline, Mr.
4 Newton filed a motion for sanctions, and then they said
5 okay, we voluntarily -- voluntarily dismiss.

6 THE COURT: That's why you voluntary --

7 MR. GROSSWALD: They brought it as long as they
8 could to harass him, and then they said we're not turning
9 this over and we're done. And now they're suing him here.

10 MR. SANTORI: I -- I -- I would find that Mr.
11 Grosswald's analysis of my client's intentions and inner
12 desires is probably off, but I wasn't the attorney then,
13 so I -- I can't speak to that. In --

14 THE COURT: I guess I'm -- I'm -- I'm talking
15 like this, because to hear that your taking issue with the
16 proofs of giving the names of the individuals who left the
17 church, it's your analogy to say well, I am a Jew or I am
18 a Catholic or I am a Buddhist, that's not the issue. the
19 issue is why did you leave this church? Whatever their
20 religious affiliation is is of no moment.

21 MR. SANTORI: But you would still be req -- but
22 the Court could still be requiring us to disclose what
23 these peoples religions were. Depend -- what -- whatever
24 -- whatever questions are asked in a deposition, they --
25 we -- they're asking us to produce the names of people who

1 were members. We're not going to produce any na -- a
2 list. These -- these are -- all of them, these are
3 members, this is who -- what their religion is, we can't
4 do that, that's contrary to the First Amendment.

5 MR. GROSSWALD: They're -- they're willing to
6 use Mr. [REDACTED] to sue Ms. Colon over very intimate marital
7 issues, you don't have a problem with that being
8 disclosed. But if somebody else has to say yes, I was a
9 member of this church that -- that's too much privacy --

10 MR. SANTORI: Mr. [REDACTED] is willing to do this,
11 whereas these -- these ex-members --

12 THE COURT: What exactly is he willing to do?
13 I'm just curious, what is it, --

14 MR. SANTORI: What --

15 THE COURT: -- what is he doing?

16 MR. SANTORI: I'm sorry.

17 MR. GROSSWALD: He's unemployed. He's living
18 with other church members full time, and he's unemployed.

19 THE COURT: No, what does he want from Ms.

20 [REDACTED]

21 MR. SANTORI: I don't know the relevance of
22 that --

23 THE COURT: What damages does he want?

24 MR. SANTORI: -- it's really -- it's ad hominem.

25 THE COURT: What -- what damages does he want

1 from Ms. [REDACTED]

2 MR. SANTORI: I think he wants --

3 MR. GROSSWALD: \$5 million is what they're
4 asking for.

5 THE COURT: He wants?

6 MR. SANTORI: Obviously, there's -- there's --
7 there's a monetary component.

8 THE COURT: Do -- isn't that something that
9 would be handled in the matrimonial litigation?

10 MR. SANTORI: Again, I -- I don't think that is,
11 I think that would be splitting up vital components to
12 this story. When -- it -- it would be splitting up a
13 narrative, it would be putting chapter 1 in this case, and
14 chapter 13 there, and chapter 2 here. It's -- it's a --
15 it's -- it's -- it's not a good way of going about
16 explaining what happened here. This is -- this is not a
17 one -- defamation, it's nothing somebody walking down the
18 street and said plaintiff's a thief. It didn't happen.
19 This is -- this is a widespread and systematic effort that
20 -- that requires real narrative and factual exposition,
21 that's why it should be in this case. But as far as what
22 -- what Mr. [REDACTED] wants, I think he wants the same thing
23 that -- that -- that the church wants. He wants his name
24 to be cleared, that he is not the tool of some -- of some
25 faceless worldwide entity, that he makes decisions for

1 himself, he wasn't mind controlled.

2 THE COURT: Most respectfully, I -- I read the
3 article, his name is not in there.

4 MR. SANTORI: Anybody who read that article who
5 knew Mr. [REDACTED] would know that -- that his -- that it was
6 about him.

7 MR. GROSSWALD: How many people is that, --

8 MR. SANTORI: And people --

9 MR. GROSSWALD: -- two people, five people? I
10 mean how many people is that?

11 MR. SANTORI: We can -- we can determine through
12 discovery.

13 MR. GROSSWALD: With an expert?

14 MR. SANTORI: We can get a list of --

15 MR. GROSSWALD: I mean you're not going to give
16 us the names.

17 MR. SANTORI: No, we can get a list of hits from
18 the website, we can see who viewed the website and when,
19 servers keep logs. This is why discovery is important.

20 THE COURT: You haven't done that yet before
21 bringing the lawsuit?

22 MR. SANTORI: We hadn't done -- seen -- we -- we
23 have to determine our damages, but this is -- we have to
24 send subpoenas in order to do that. That's not something
25 we can do pre-action.

1 MR. GROSSWALD: But -- but the people who know
2 him who read it you have access to them, because Mr. [REDACTED]
3 can just talk to his friends and family and find out
4 who --

5 THE COURT: So, you're telling me that people --

6 MR. GROSSWALD: -- who read it. So --

7 THE COURT: -- people who are a member --

8 MR. SANTORI: Mr. [REDACTED] can't speak to the --

9 THE COURT: -- of this or -- I'm just -- I may
10 ask your husband. I'm trying to get -- understand this.
11 People who are a member of this church are embarrassed to
12 say they're a member of this church?

13 MR. SANTORI: Some people might be, and I think
14 early Christians were too. This is -- this is -- you have
15 to understand this is --

16 MR. GROSSWALD: It's an indication it's a cult;
17 right? I mean --

18 MR. SANTORI: Yes, Christianity is a cult Mr.
19 Grosswald.

20 MR. GROSSWALD: No, no, not the Christianity.
21 If people are embarrassed --

22 MR. SANTORI: Every -- every religion is a cult.

23 MR. GROSSWALD: -- if people are embarrassed to
24 admit their affiliation --

25 THE COURT: Yes, well that's -- that's what I'm

1 asking --

2 MR. GROSSWALD: -- with it that --

3 THE COURT: -- are they --

4 MR. GROSSWALD: -- gives rise to an opinion that
5 it's a cult --

6 THE COURT: I mean we're in --

7 MR. GROSSWALD: -- that uses mind control.

8 THE COURT: -- we're -- we're in America, it's
9 freedom of religion. I think the very same Constitution
10 that allows your church to have from what I'm gleaning to
11 be unorthodox, I think you use the word unorthodox
12 Christian beliefs?

13 MR. SANTORI: It's -- it's -- it's beliefs that
14 mainstream Christians might -- might consider strange.

15 THE COURT: Okay. So, the very same
16 Constitution that allows your client to have a
17 congregation and be situation in Ridgewood and have this
18 expression of religion as they chose, is the same
19 Constitution that allows freedom of speech with regard to
20 that religion.

21 MR. SANTORI: Yeah, I -- I think that's really
22 going to be one of -- one of the core issues this case,
23 whether it be in discovery determining who gets what
24 documents or in front of a jury trying to sway look,
25 freedom of religion versus freedom of speech. This is you

1 -- you've -- you've put your finger on -- on an important
2 issue. But freedom of speech does not extend to
3 defamatory statements, and it does not extend to -- to
4 statements that cause emotional distress or trade liable
5 or false light. These are -- these are all -- this is why
6 we're before you, because they are -- they are cognizable
7 causes of action.

8 MR. GROSSWALD: But a false light is not
9 cognizable by a corporation, that's ridiculous
10 corporations don't have privacy.

11 MR. SANTORI: And hi -- and --

12 MR. GROSSWALD: It's black letter law
13 corporations have no privacy.

14 MR. SANTORI: -- Mr. Grosswald, this is one of
15 many theories in his brief that he simply appeals to his
16 own authority on, and cites no New Jersey precedent for.
17 This isn't a situa --

18 MR. GROSSWALD: I cite a case.

19 MR. SANTORI: -- this is -- I think a Federal
20 Court case in --

21 MR. GROSSWALD: NOC v. Schaefer, 197 N.J. Super.
22 249, Law Division 1984, the tort of invasion of privacy
23 focused on -- focuses on the humiliation and intimate
24 personal distress suffered by an individual as a result of
25 intrusive behavior. While the corporation may have its

1 reputation or business damage as a result of intrusive
2 activity, it is not capable of emotional suffering.

3 MR. SANTORI: This is --

4 MR. GROSSWALD: And it cited the restatement,
5 and the restatement applies that logic to all four
6 invasion, privacy, torts, including false light. It's an
7 -- an emotional --

8 THE COURT: Okay. So, there's no emotional
9 distress component for obviously --

10 MR. GROSSWALD: A corporation.

11 THE COURT: -- an entity. Right.

12 MR. GROSSWALD: Right. They can sue for
13 defamation, but not false light.

14 MR. SANTORI: We're not -- this is not a
15 situation, this is not some company who sold widgets, and
16 Ms. Colon says these widgets don't perform as they ought
17 to perform. This is a collection of members, of people,
18 of individuals. We don't have a factory that pumps out
19 products. This is -- what we're -- what we're suing for
20 is the false light, invasion of privacy of our membership,
21 and New Jersey has explicitly endorsed this approach.

22 MR. GROSSWALD: But the members aren't --

23 THE COURT: Can I ask you a question --

24 MR. GROSSWALD: -- plaintiffs.

25 THE COURT: -- just so I can understand your

1 line of thinking. I'm just going to gi -- as you a
2 question.

3 There are organizations who publish information
4 and make statements that the Holocaust never existed, and
5 it is something that is fabricated by Jewish organizations
6 for their own financial gain or to put certain states and
7 other religions in -- in negative perspective. Based upon
8 what you're saying, would these Jewish organizations that
9 they are saying are -- would -- would Jewish organizations
10 have the right to sue these particular entities indicating
11 that the Holocaust never existed for defamation?

12 MR. SANTORI: There are millions of Jews
13 worldwide. There are, as Mr. Grosswald said, only so many
14 members of this specific church and that's what we're
15 suing on. So, the answer is no, I don't -- I -- I -- I
16 don't think the --

17 THE COURT: So, your saying --

18 MR. SANTORI: -- anti-defamation league, for
19 example, could -- could sue for damages to all Jews on the
20 planet, that's -- it's too generalized. This is -- this
21 is not a generalized statement that she made. Everything
22 -- everything that -- that -- that we have alleged shows
23 that she targeted this one church, these members. This is
24 -- this is what we're suing.

25 MR. GROSSWALD: But the statements are not even

1 of and concerning the plaintiff. I mean the state -- I
2 showed you the statements. See, they're talking about to
3 the branches of the church or --

4 THE COURT: Yes, I saw that.

5 MR. GROSSWALD: -- statements that refer to the
6 church as a whole and not New Jersey.

7 THE COURT: For -- for example, you know I saw
8 that, the paragraph 41, 42 involves Deer Park, Texas.
9 Paragraph 44 --

10 MR. GROSSWALD: Those are paragraph numbers from
11 the original complaint just to be clear.

12 THE COURT: I'm sorry.

13 MR. GROSSWALD: Right. No, that's fine.

14 THE COURT: But the point being --

15 MR. GROSSWALD: But it's the same -- the same
16 statements are carried over into the new complaint.

17 THE COURT: -- but there's Santa Fe, California;
18 Rosita, California; Bloomingdale, Illinois; Deer Park,
19 Texas. I mean it goes on and on, just -- obviously,
20 congregations that are not Ridgewood.

21 MR. SANTORI: The reason that we think that Mr.
22 Grosswald thinks those are not about Ridgewood are based
23 on -- not on the allegations in the complaint, but
24 allegations in his un -- unauthenticated research. We
25 don't know whether that was changed since it was first

1 made, republished, modified. This is all things that we
2 -- we can determine in discovery.

3 MR. GROSSWALD: That's when I asked for the five
4 day demand --

5 MR. SANTORI: This is --

6 MR. GROSSWALD: -- you should have turned it
7 over, and I could have seen what it originally said. You
8 have it; right? You have it in your possession, don't
9 you?

10 MR. SANTORI: The -- the allegations in the
11 complaint --

12 MR. GROSSWALD: Turn it over.

13 MR. SANTORI: -- are to be taken in true --

14 MR. GROSSWALD: And --

15 MR. SANTORI: -- are to be taken as true, that's
16 the point of a motion to dismiss. If Mr. Grosswald wants
17 to make a motion based on discovery, he can do so at
18 summary judgment whenever he likes. He can do so in a
19 week if he wants to.

20 MR. GROSSWALD: You see what they're doing,
21 they're not turning it over, because if they turned it
22 over it would show exactly what I found that these are
23 talking about other people, and they would -- they
24 wouldn't have their case. So, to harass Ms. Colon they
25 have to get through the pleading stage, and to get through

1 the pleading stage they have to get the Court to look at
2 what they say the statement says, rather than what the
3 statement actually says. And that's why they won't turn
4 it over, so we can see what the statement actually says.

5 MR. SANTORI: We won't turn it over, because we
6 don't have the whole -- we don't have the whole story
7 that's --

8 MR. GROSSWALD: Then how did you write --

9 MR. SANTORI: -- discovery.

10 MR. GROSSWALD: -- the complaint?

11 THE COURT: Well, how did you --

12 MR. GROSSWALD: Your quoting --

13 THE COURT: -- I don't understand.

14 MR. GROSSWALD: -- statements in the complaint.

15 MR. SANTORI: Absolutely, this is -- this is --

16 THE COURT: How did you write that?

17 MR. SANTORI: Complaints are notice pleadings.

18 THE COURT: No, no, how did you write that, you
19 don't have it?

20 MR. GROSSWALD: It's fact pleading in New
21 Jersey. There's no notice pleading in New Jersey, it's
22 fact pleading.

23 THE COURT: How -- how did you write that --

24 MR. SANTORI: Fact --

25 THE COURT: -- if you didn't have it?

1 MR. SANTORI: -- fact pleading, excuse me.

2 Say again?

3 THE COURT: How did you write that if you didn't
4 have it?

5 MR. SANTORI: Oh, no --

6 THE COURT: How -- how did you write the
7 allegations?

8 MR. GROSSWALD: They're quoting specific words
9 from --

10 THE COURT: I know.

11 MR. GROSSWALD: -- the statements --

12 THE COURT: I know.

13 MR. GROSSWALD: -- they have to have something.

14 THE COURT: You ha -- of course you have it.
15 Where did you have it from?

16 MR. SANTORI: The internet clearly.

17 MR. GROSSWALD: Well, that's the --

18 MR. SANTORI: The internet.

19 MR. GROSSWALD: -- same place I got it. You
20 think I changed it and then printed it out?

21 MR. SANTORI: This is -- this is why -- this is
22 why at this stage if it's -- if it's Ms. Colon's word
23 versus the church's word, we take the churches word, and
24 then discovery bears this out.

25 MR. GROSSWALD: Unless the church is

1 suspiciously unwilling to hand over documents.

2 MR. SANTORI: Not suspiciously, he's trying
3 to --

4 MR. GROSSWALD: The rule says five days. I made
5 a five day demand, and the rule says --

6 MR. SANTORI: -- he's trying to --

7 MR. GROSSWALD: -- I have five days to get. And
8 if you're not willing to comply with a basic demand that
9 calls into question the integrity of your pleading.

10 MR. SANTORI: Okay, let's -- let's -- let's take
11 what Mr. Grosswald is saying as true. That we on -- that
12 all of the copies of what we have, in fact, show that Ms.
13 Colon did not say the things -- sorry - all the copies
14 that we have show that Ms. Colon said something different
15 then we say she said. There's no reason to think that --
16 that what -- what we have, the actual documents that --
17 that -- that's he's requesting. Not what was actually
18 there, but copies that we -- that -- that we -- that we
19 hypothetically printed out on one day actually show what
20 was -- what was there now, what was there before we
21 printed it out, what was there in the interim, when it was
22 changed and who changed it. This is why we have discovery
23 so --

24 MR. GROSSWALD: They're not alleging the
25 statements were changed.

1 MR. SANTORI: -- so that we can -- so -- so that
2 we can subpoena non-parties and get ch -- access records,
3 get change records. This is -- this is why we do it, this
4 is --

5 MR. GROSSWALD: Your Honor --

6 MR. SANTORI: -- this is exactly why we do this.

7 MR. GROSSWALD: -- Your Honor, they're not
8 alleging that the statements were changed. They're
9 alleging that statements were posted that said this. They
10 have to have a copy of it in order --

11 MR. SANTORI: No.

12 MR. GROSSWALD: -- to make that pleading.

13 MR. SANTORI: Why would we have to have a copy?

14 MR. GROSSWALD: So, your guessing, your guessing
15 that there might be a statement that talks about your
16 client, but you don't know --

17 MR. SANTORI: Not at all.

18 MR. GROSSWALD: -- your just guessing so you
19 could go fishing --

20 MR. SANTORI: Not at all, a member could --

21 MR. GROSSWALD: -- in discovery.

22 MR. SANTORI: -- anybody could have logged onto
23 the internet and seen that this is what the post says.
24 And then a week later somebody goes and prints it out, is
25 it the same thing? A week has passed, the internet can

1 change like this. We -- we -- there's -- there's no
2 reason why what Mr. Grosswald has produced on a motion to
3 dismiss --

4 MR. GROSSWALD: But the only person -- first of
5 all, these are websites that re --

6 MR. SANTORI: -- should be taken as true --

7 MR. GROSSWALD: -- these are websites that
8 require --

9 MR. SANTORI: -- they're allegations --

10 THE COURT: Why --

11 MR. SANTORI: -- in the complaint.

12 THE COURT: -- why do you think your client is
13 en -- entitled to greater protection somehow then other
14 religions?

15 MR. SANTORI: I wouldn't say greater protection,
16 it's not as if there's some different standard under the
17 Constitution. I think it's important that the Court is
18 sensitive to the fact that its -- it is a new and
19 virgining religion and unpopular one. And so those sorts
20 of things can -- those sorts of issues can come into play
21 when -- when trying to determine why, for example,
22 somebody wouldn't want to tell somebody right away that --
23 that they're a member of this religion, but might want to
24 get to know them first. Or don't -- doesn't want to tell
25 their mother, because they believe their mother just wants

1 them to go to church on Sunday like -- like a good
2 Christian.

3 THE COURT: I mean we -- we can't ignore you
4 know negative comments made about so many religions,
5 unfortunately, it's the state of our society. But we --
6 we would be putting our head in the sand if we didn't
7 recognize, for example, unfortunately comments that are
8 dealt with on a regular basis.

9 Let's say for example now, especially sine 9/11
10 regarding the Moslem religion, and what that has meant to
11 the Moslem community. I -- I -- I am bringing this out
12 only because you indicated that it's a new religion and
13 people look negatively on them, because they don't
14 understand them. So, I trying to understand why they
15 would be in any different position then perhaps someone of
16 -- of also a sensitive religion, and there are many of
17 them.

18 MR. SANTORI: I -- I think everything you said
19 is true. Absolutely, there -- there are -- there are many
20 -- there are many situations in which a rel -- in which
21 religion becomes a sensitive topic. This happens to be
22 one of them.

23 THE COURT: Okay.

24 MR. GROSSWALD: Can I -- can I make another
25 point?

1 THE COURT: Yes, go ahead.

2 MR. GROSSWALD: The plaintiff has the burden to
3 plead the statute of limitations. None of the -- in the
4 -- in the original complaint and in the new complaint
5 there are not dates. The original complaint actually has
6 a few dates for -- for like -- for her testimony in court,
7 but they drop that because they knew they were going to
8 get sanctioned for that. So -- but the stuff that's
9 remaining in the new complaint, there's no dates. Now, up
10 until now we were relying on the fact that when I found
11 these statements there are dates on them, and we were
12 going just with those dates, right. So --

13 THE COURT: I'm -- I'm sorry, which statements
14 are you referring?

15 MR. GROSSWALD: The -- in my initial
16 certification --

17 THE COURT: Okay.

18 MR. GROSSWALD: -- exhibit 4.

19 THE COURT: Okay, just wait, just wait. Okay,
20 exhibit 4, yes.

21 MR. GROSSWALD: Exhibit 4, like paragraph 41 and
22 42, I believe there's a date on there somewhere, let me
23 see if I can find it.

24 THE COURT: I see.

25 MR. GROSSWALD: You see, okay.

1 THE COURT: Okay.

2 MR. GROSSWALD: I -- I don't see it, where --
3 where's the date?

4 THE COURT: No, I'm looking.

5 MR. GROSSWALD: Okay. Oh --

6 UNIDENTIFIED PARTY: Right here.

7 THE COURT: There's an add there that has a
8 date.

9 MR. GROSSWALD: Oh, yeah, like July 20 -- yeah.
10 Yeah, like Haley Stevens (phonetic), Tuesday, July 5th.
11 Okay.

12 So, now we initially argued that that's outside
13 the statute of limitations, cause July 11th is the date
14 the complaint was filed a year later. They're saying the
15 equitable tolling from Virginia. Okay. Well, regardless
16 of whether or not this court is willing to give them the
17 equitable tolling, that's the date we were relying on July
18 5th, because it's in the document I found. If they're now
19 going to say that they're not accepting this as the
20 correct document, then they have no date, because the
21 pleadings don't have any dates. And without dates for a
22 statute of limitations they haven't met their pleading
23 burden, and -- and the complaint has to be thrown out.

24 THE COURT: Okay.

25 MR. SANTORI: There's no author --

1 THE COURT: Just I want to make sure I
2 understand. I'm looking at exhibit 4. If you can just
3 come forward, I just want you to point out to me.

4 MR. GROSSWALD: Oh.

5 THE COURT: And, for example, I'm looking on
6 this page that says July 29, I don't see the year.

7 MR. GROSSWALD: No, no, that's not Haley
8 Stevens, Haley Stevens is the one they're --

9 THE COURT: Could you show me?

10 MR. GROSSWALD: Haley Stevens, Tuesday, July --
11 this is the religious cult complaint is the one they're
12 suing over.

13 MR. SANTORI: Could I see which one?

14 MR. GROSSWALD: So, there's a date Tuesday, July
15 5th. Is that right?

16 THE COURT: Yes.

17 MR. GROSSWALD: Okay.

18 THE COURT: And that would be what year?

19 MR. GROSSWALD: Well, it's 2011, because Tuesday
20 -- July 5th was on a Tuesday in 2011, so it would have to
21 be 2011. The other ones all have years on them.

22 MR. SANTORI: Could I just see what -- what he's
23 pointing out when you finish with it?

24 THE COURT: Sure, right here.

25 MR. SANTORI: Is it beware of the religious

1 cult --

2 MR. GROSSWALD: Beware of the religious cult,
3 right.

4 MR. SANTORI: -- and appropriate comments, and
5 the date is Tuesday, July 5th at 1:37 --

6 MR. GROSSWALD: Right.

7 MR. SANTORI: -- p.m.

8 MR. GROSSWALD: Okay. Now, if Mr. Santori
9 doesn't want to give me his version of the documents and
10 he doesn't want to plead the dates in his pleadings, we
11 have no way to do -- we have no way to do a statute of
12 limitations analysis. And the burden is on the plaintiff
13 to show that the cause of action took place within the
14 statute of limitations. So on that ground alone the case
15 has to be dismissed.

16 MR. SANTORI: That's -- that's simply not true.
17 There is -- there is not only no authority saying that,
18 there's -- there's -- there's authority to the contrary,
19 which -- which we briefed. Because these statements were
20 made on the internet and were made anonymously, we don't
21 have a letter with a date on it that -- that we can show
22 the Court and say look, this is what she said, this is
23 what was said.

24 MR. GROSSWALD: I've got dates on the ones I
25 found.

1 THE COURT: The statute of limitations is one
2 year.

3 MR. GROSSWALD: It's one year prior to July 11th
4 -- it was filed July 11th, 2012, the statute of
5 limitations would go back to July 12th, 2011, anything
6 before that.

7 MR. SANTORI: And we initially filed the
8 complaint just a couple of months -- a few months after
9 that, and I believe it was January of 2012 in Virginia.

10 MR. GROSSWALD: You talking Virginia, the
11 Virginia was filed in December, and Ms. Colon was let
12 out --

13 MR. SANTORI: In December --

14 MR. GROSSWALD: -- in March --

15 MR. SANTORI: -- there you go.

16 MR. GROSSWALD: -- so there could be three
17 months of equitable tolling.

18 MR. SANTORI: Well within the statute of
19 limitations.

20 MR. GROSSWALD: Right. Now -- now, we argue
21 that they don't deserve equitable tolling, because it was
22 a slap suit. I mean if they -- if they're going to drop
23 the case against Mr. Newton --

24 MR. SANTORI: There is no slap statute --

25 MR. GROSSWALD: -- they're not producing

1 discovery --

2 MR. SANTORI: -- in New Jersey.

3 MR. GROSSWALD: -- they shouldn't be able to say
4 that that case is valid for -- for equitable tolling.

5 MR. SANTORI: Mr. Grosswald is again appealing
6 to his own authority here, there's -- there -- there is no
7 slap statute in New Jersey. If the legislator --
8 legislature want --

9 THE COURT: Did you repre --

10 MR. SANTORI: -- wanted enact one, it could
11 have.

12 THE COURT: -- did you -- were you involved in
13 the Virginia litigation?

14 MR. SANTORI: I was not Your Honor.

15 MR. GROSSWALD: And that was the lawyer who died
16 was involved in that.

17 MR. SANTORI: Mr. -- Mr. Dozier was the one --

18 THE COURT: Mr. Do --

19 MR. GROSSWALD: Mr. Dozier.

20 THE COURT: -- Dozier.

21 MR. GROSSWALD: Right.

22 MR. SANTORI: -- in New Jersey litigation.

23 MR. GROSSWALD: But what I'm saying is it almost
24 doesn't matter how the Court resolves the equitable
25 tolling issue, because we have no dates to work from

1 whether there's equitable tolling or not because they're
2 not being plead.

3 MR. SANTORI: New Jersey law is clear that when
4 -- when -- especially when a post is made anonymously and
5 there's no way to determine when that post was made
6 initially. That if the -- if a plaintiff can't plead it,
7 he can't be the -- he can't the victim of -- of Ms.
8 Colon's own anonymity.

9 MR. GROSSWALD: But these anonymous statements
10 all have dates on them, you can absolutely figure it out.

11 MR. SANTORI: Your anonymous statements have
12 dates on them. Again, we have no idea whether this was
13 changed.

14 MR. GROSSWALD: Well, then how do you know
15 you've been damaged? Because if the statements were
16 posted two years before people started leaving, how do you
17 -- how do you -- your arguing that you -- that the damage
18 is connected and you're going to have an expert show --

19 THE COURT: How many people left from when to
20 when?

21 MR. SANTORI: I -- I can't tell you as I'm
22 standing here.

23 MR. GROSSWALD: Well, you have to know that
24 before you filed the complaint --

25 MR. SANTORI: No --

1 MR. GROSSWALD: -- that's part of the
2 reasonable --

3 MR. SANTORI: -- we don't, dam --

4 MR. GROSSWALD: -- inquiry under the
5 circumstances.

6 MR. SANTORI: -- no we don't, damages --

7 MR. GROSSWALD: Reasonable inquiry under the
8 circumstances is what the frivolous litigation law
9 requires.

10 MR. SANTORI: Mr. Grosswald insists on pushing
11 this -- this sanctions angle, and -- and -- as -- as if
12 the attorneys here have somehow harmed him, but there's
13 absolutely no grounds for this. A pleading is taken as
14 true. As far as what the good faith belief is, this is
15 why we have allegations in the statement. Documents are
16 not the end all and be all of this, it's the internet.
17 People see the internet all the time without printing
18 these things out. My clients have seen these statements,
19 and this is why like many clients --

20 MR. GROSSWALD: But you should be able to know
21 the time period when people left the church, and that
22 would give you an opportunity to plead statute of
23 limitations.

24 MR. SANTORI: Again, if Mr. --

25 MR. GROSSWALD: On or about this month a

1 statement was made, and people started leaving the
2 church. You're not even putting that in the complaint.

3 MR. SANTORI: If Mr. Grosswald would -- would
4 like that kind of information on -- on granular damages,
5 that's something that he can request in discovery. But as
6 of this we've pled the facts that we have, and we've pled
7 the connections between those facts and the cause of
8 action.

9 What Mr. Grosswald has done is engaged in his
10 own one sided discovery of this trying to hit fast forward
11 on this case, so that it can be resolved right now. And I
12 can't blame him, he represents the defendant. But there
13 must be some opportunity for us to subpoena non-parties,
14 to depose non-parties --

15 MR. GROSSWALD: The New Jersey case law says --

16 MR. SANTORI: -- and find out exactly --

17 MR. GROSSWALD: -- that defamation must be pled
18 with particularity. And when they say particularity
19 they're talking in part about the words were used to
20 defame, and when the defamation happened. That's part of
21 the particularity that has to be included.

22 And with the Zone -- you have the Zoneraich
23 case, Z-o-n-e-r-a-i-c-h, vs. Overlook Hospital, which --
24 which talks about how they didn't plead with
25 particularity. One of the things they didn't plead was

1 when the plaintiff was defamed. I mean that's got to be
2 -- to be part of the pleading. And if you're not going to
3 rely on our date -- if you're not going to accept the
4 statements I found and use those dates, and you're not
5 going to give us --

6 THE COURT: You said --

7 MR. GROSSWALD: -- any other statements with
8 dates --

9 MR. SANTORI: That same case it says that when
10 the plaintiff posts or -- or the next case that we cite it
11 says that when the plaintiff posts anonymously, she cannot
12 use this kind of -- she cannot use her anonymous posting
13 as sword to defeat summary -- to defeat a complaint. If
14 -- if that was the case, everybody would simply be able to
15 post anonymously without putting the dates on their
16 posting.

17 THE COURT: How do you now the defendant is this
18 individual?

19 MR. SANTORI: We have a good faith belief Your
20 Honor based on --

21 THE COURT: Based on --

22 MR. SANTORI: -- all -- based -- based -- based
23 on the -- the -- the -- based on the timing, based on her
24 relationship to Mr. [REDACTED] based on the text message that
25 she sent to -- that she sent to the pastor saying let him

1 go or all -- I'm paraphrasing since Mr. Grosswald wants to
2 -- wants to sanction me. I'm paraphrasing, let him go or
3 all your secrets will -- will be revealed to the
4 congregation.

5 THE COURT: And it came from this address?

6 MR. GROSSWALD: Right.

7 MR. SANTORI: Your Honor, what we're -- what we
8 --- we have -- we have pled -- this is -- this is -- this
9 is particularly why keeping the narrative together makes
10 sense. Things like malice, things like public figure
11 status, all of the objections that -- that Mr. Grosswald
12 has made the courts regularly have held that this is --
13 this -- they're not appropriately determined on a motion
14 to dismiss, because they are so fact intensive. And we
15 have -- we cannot plead malice, except for circumstantial
16 evidence, and this -- this is -- this is what all the case
17 law says, and it's common among plaintiff's. We cannot
18 plead her mental state, we have no -- we can't look into
19 her mind --

20 MR. GROSSWALD: What happens if --

21 MR. SANTORI: -- what we can is allege facts.
22 We can tell a story that gives rise to this conclusion,
23 and that's the story that --

24 MR. GROSSWALD: -- what happens if we go to
25 discovery, we get the statements, and it turns out it

1 shows all the same things we have. It shows that she's
2 talking about other branches, it shows that -- that the
3 dates are what we say they are, there's no other changes
4 to the statement. And so we're now litigated for months
5 and months, and have spend how many lawyer hours and how
6 much money litigating this, and then we find out we were
7 right all along. How much money do we get paid after
8 that?

9 MR. SANTORI: Then he's right, and the American
10 system says each party bears its own attorneys fees.

11 THE COURT: Well, I don't know. You know from
12 our conversation he filed a frivolous litigation letter.

13 MR. SANTORI: Yes, he's --

14 MR. GROSSWALD: Right, yes.

15 MR. SANTORI: -- he -- to -- to all of the
16 junior associates who have no ability to withdraw the
17 complaint even if they wanted to.

18 MR. GROSSWALD: No, I -- no, a junior associate
19 has an ethical responsibility to.

20 THE COURT: No, no, no. No, no, no, it is just
21 I -- basically my understanding is you put your client,
22 World Mission Society Church of God, on notice --

23 MR. GROSSWALD: Right.

24 THE COURT: -- that if they do not have the
25 basis upon which to prove their case, they are responsible

1 for your legal fees --

2 MR. GROSSWALD: Right.

3 THE COURT: -- reasonable legal fees from the
4 date you wrote that letter.

5 I believe they --

6 MR. GROSSWALD: What --

7 THE COURT: -- have 20 days --

8 MR. GROSSWALD: -- from the date -- from the
9 date the letter or from the --

10 THE COURT: I think --

11 MR. GROSSWALD: -- date they filed their
12 frivolous pleading that I'm complaining about in the
13 letter?

14 THE COURT: It depends upon the stat -- the rule
15 and statute indicate from the date of the letter. But I
16 believe they have 20 or 30 days from which to withdraw the
17 complaint.

18 MR. GROSSWALD: Yesterday was the 28th day, and
19 we're still here, so he did not withdraw it.

20 THE COURT: Oh, okay.

21 MR. GROSSWALD: The letter was written 29 days
22 ago.

23 THE COURT: Could we go off-the-record for a
24 second. I'm going to go off the record.

25 (Off-the-record)

1 THE COURT: I want the record to reflect that I
2 went off to express with counsel my overall sense and
3 concern of where this litigation is, and where it would be
4 going, and how discovery issues from where I'm sitting are
5 going to be significant. It's apparent from what
6 transpired in Virginia and from the submission given to me
7 by plaintiff's counsel regarding a protective order that
8 the items that would be necessary for defendant to prove
9 their truth of their statement or for plaintiff to prove
10 their case are sensitive documents that perhaps this
11 church, given its present posture in the community, would
12 not want to make public, and have part of litigation.

13 So, right now what we're doing is we're looking
14 at what is actually being considered defamatory on Mr.
15 Newton's website, and we are being focused to the
16 complaint; correct?

17 MR. SANTORI: Correct Your Honor. So, we can --
18 we can begin at paragraph -- as far as we'll take each
19 cause of action --

20 THE COURT: Which paragraph please?

21 MR. SANTORI: Right. So, we'll take each cause
22 of action separately. Beginning at paragraph --

23 MR. GROSSWALD: Hold, hold, paragraph --

24 THE COURT: Do you --

25 MR. GROSSWALD: -- 38.

1 THE COURT: -- do you need a break? Does anyone
2 need a break, we've been going a while?

3 MR. SANTORI: Maybe --

4 THE COURT: Does any need a break?

5 MR. SANTORI: -- maybe a br -- I mean --

6 MR. GROSSWALD: We're ready to go, but --

7 THE COURT: Do you need a break?

8 MR. GROSSWALD: -- if the -- if the Court wants
9 a break, certainly the Court can have a break.

10 THE COURT: No.

11 MR. SANTORI: We can continue. I mean --

12 THE COURT: Okay, I'm fine.

13 MR. SANTORI: -- it -- it really depends on --
14 on how much more discussion the Court would like.

15 MR. GROSSWALD: Let's verify are --

16 THE COURT: I'm only going to have to take a
17 break at 12:00, because I have a telephone conference, but
18 I'm fine.

19 MR. GROSSWALD: -- are we focusing on the
20 examining website now, Mr. Newton's website only.

21 THE COURT: I'm -- I'm trying to determine,
22 because, just so the record understands, my question I
23 guess being practical is what is trying to be achieved by
24 this lawsuit and where is it going? And the response was
25 to have certain comments, not the website taken down of

1 Mr. Newton, but certain statements taken down, and I want
2 to discuss those.

3 MR. SANTORI: All right. So, if --

4 MR. GROSSWALD: There are eight statements --

5 MR. SANTORI: -- we begin on --

6 MR. GROSSWALD: Well, there were eight -- eight
7 in the five party story that are being challenged right
8 now.

9 MR. SANTORI: So, we can begin on paragraph 83
10 where we list -- which is something the original complaint
11 done, this lists all of the statements by -- that were
12 holding Mr. Newton --

13 MR. GROSSWALD: No, that -- that just lists
14 categories of statements.

15 MR. SANTORI: No, no, no, no.

16 MR. GROSSWALD: The actual statements --

17 MR. SANTORI: No it doesn't. If I could just
18 finish I feel like I can probably --

19 MR. SANTORI: No.

20 MR. SANTORI: -- explain this adequately.

21 THE COURT: Okay.

22 MR. SANTORI: So, beginning with the PVSA
23 articles, that a defined term for the Presidential
24 Volunteer Service Award, so we can -- if you'd like to
25 just take them one by one we can -- can start there.

1 THE COURT: I'm looking at the proposed first
2 amended complaint --

3 MR. SANTORI: Yes.

4 THE COURT: -- paragraph?

5 MR. SANTORI: Eighty-three.

6 THE COURT: Okay.

7 MR. SANTORI: So, what -- the reason I'm giving
8 you paragraph 83 is because it collects all the statements
9 where we're seeking to hold Mr. Newton liable for, and
10 then we can -- we can go to the factual development for
11 each of those statements and see what -- what they were as
12 alleged.

13 So, the first one is the PVSA articles.

14 THE COURT: I actually have a printout of that.

15 MR. GROSSWALD: Well, we gave it to you as an
16 exhibit.

17 MR. SANTORI: Again, Your Honor --

18 MR. GROSSWALD: Do you have the exhibit or do
19 you have your own printout?

20 MR. SANTORI: -- I --

21 THE COURT: Your exhibit.

22 MR. GROSSWALD: Right, that's the exhibit is it
23 5?

24 MR. SANTORI: -- again, Your Honor, I know it's
25 -- it's tempting to look at those as -- and take those as

1 the facts alleged, but they're not the facts alleged.

2 THE COURT: No, but it gives me an idea of what
3 the -- what your talking about.

4 MR. SANTORI: I'm -- I'm not sure it that it
5 does. In fact, there's -- there has been no showing that
6 it does. If this is going to be an evidentiary hearing,
7 we can have one.

8 MR. GROSSWALD: This -- this is dishonest and
9 this is -- I mean Mr. Santori has no basis for believing
10 that the statement that I've presented --

11 THE COURT: But what -- what I --

12 MR. GROSSWALD: -- is not the one he had --

13 THE COURT: -- what --

14 MR. GROSSWALD: -- in his possession --

15 THE COURT: -- what --

16 MR. GROSSWALD: -- when he wrote the complaint.

17 THE COURT: -- what I understand is this
18 Presidents Service Volunteer Award requirement what is
19 being suggested is I think an entity gives a certain
20 amount of time and effort, and if they do by a certain
21 number of hours they have this recognition. And the --
22 the focus of what I can glean is that the church is
23 maintaining that they did these hours of service, that
24 they did receive this award, and what's being suggested is
25 that it was self awarded and they didn't do those hours of

1 work.

2 MR. SANTORI: And there's even more than that,
3 there's -- there's something that is strictly factual that
4 Ms. Colon claims that she contacted a representative at
5 the PVSA office. And the PVSA office told her that these
6 were the rules, and so the church must have been in
7 violation of the rules. We allege she didn't do that, in
8 fact, she couldn't have because those are not the rules.

9 MR. GROSSWALD: But they are, they say they are
10 the rules.

11 MR. SANTORI: And -- and nobody from --

12 MR. GROSSWALD: He says --

13 MR. SANTORI: -- and nobody from --

14 MR. GROSSWALD: -- they allege that -- that --

15 THE COURT: Okay.

16 MR. GROSSWALD: -- the rules that you allege
17 are --

18 THE COURT: So, we talk --

19 MR. GROSSWALD: -- the same rules that we
20 allege, --

21 THE COURT: -- we're talking about --

22 MR. GROSSWALD: -- there's no -- there's --

23 THE COURT: -- we're talking about the issue
24 having to do with the award, okay.

25 MR. GROSSWALD: Right.

1 THE COURT: All right, the next one?

2 MR. GROSSWALD: Tell me what you think the rule
3 is? I want Mr. Santori to say on the record what he
4 thinks the rule is with respect to who get this award,
5 tell me the rule?

6 MR. SANTORI: I -- okay. Do you have a question
7 for me Your Honor, I will gladly answer it?

8 THE COURT: Well, I'm trying to focus on what
9 items need addressing, and then perhaps we can mold
10 something that is agreeable to all parties.

11 MR. SANTORI: I -- I think that if -- if we're
12 going to go about that I think the parties fairly well
13 understand what -- without having to sort of bilaterally
14 litigate, the parties understand what -- what statements
15 are at issue. If -- if we're looking toward some
16 resolution, then that's -- that's something we're
17 absolutely willing to discuss.

18 THE COURT: Well, I'm trying to figure out what
19 that is, just -- it would be this article?

20 MR. GROSSWALD: I think where your going is if
21 they can point out that some things defamatory, would Mr.
22 Newton agree to down that one sentence and maybe we can
23 chip it off the case, and make the case easier to manage.

24 THE COURT: Thank you.

25 MR. SANTORI: Yeah, I think --

1 MR. GROSSWALD: Right.

2 MR. SANTORI: -- yeah, that's -- then -- then
3 we're --

4 MR. GROSSWALD: And --

5 MR. SANTORI: -- on the same page.

6 MR. GROSSWALD: -- and --

7 MR. SANTORI: And I would be happy to do that
8 with -- with Mr. Newton if -- if he's going to appear in
9 the case or if he doesn't want to appear we can do it off
10 the record. But as far as having --

11 THE COURT: From what I'm --

12 MR. SANTORI: -- settlement discussions --

13 THE COURT: -- from what --

14 MR. SANTORI: -- on the record it's really
15 not --

16 THE COURT: No. From what I'm gathering is we
17 have this website of Mr. Newton, and there are specific
18 items, not the whole website, but there are specific
19 statements of alleged defamatory content. And if we could
20 come to an agreement or if the parties could come to an
21 agreement to those statements, we may be able to resolve
22 the differences.

23 MR. GROSSWALD: And the only problem there is I
24 don't want to speak for Mr. Newton, because as soon as I
25 speak for him he's now making appearance and I don't want

1 to create jurisdiction for him by speaking for him.

2 MR. SANTORI: Oh, I'm happy to waive at least
3 that argument. If -- if Mr. Grosswald is -- is -- is
4 telling us that he can, at least, in some capacity
5 represent Mr. Newton in the context of -- of this discu --
6 discussion --

7 THE COURT: But you're not --

8 MR. SANTORI: -- for the resolution of the case,
9 we won't go after him for personal jurisdiction on the
10 basis of --

11 THE COURT: Okay.

12 MR. SANTORI: -- of him having made these
13 comments --

14 THE COURT: Fair comment.

15 MR. SANTORI: -- on the record.

16 THE COURT: Okay.

17 MR. GROSSWALD: In that case --

18 MR. SANTORI: Although we should probably
19 discuss this off-the-record if we're really going to
20 discuss a resolution as to a party or a --

21 MR. GROSSWALD: No, because it's not -- it's not
22 going to get resolved, and I can explain why it won't get
23 resolved.

24 MR. SANTORI: Okay.

25 THE COURT: Why is that?

1 MR. GROSSWALD: All right. So, Mr. Newton is
2 absolutely willing to pull down any statement that -- if
3 it can be shown to him that it's defamatory or false, he's
4 absolutely willing to cooperate. He -- he takes pride in
5 fact that his -- he -- he's -- he's an -- he's -- he takes
6 pride in the fact that he's accurate, that he -- he
7 researches things before he publishing them. He makes
8 sure that he's right, he -- he takes pride in his
9 credibility. So, if he's shown to be wrong, he'll take
10 corrective action.

11 The problem with this article is they're
12 admitting that we're right, if you actually read their
13 complaint and read the brief. Here's what the rule is
14 that -- that is stated in the article. The rule is that
15 if -- I'm -- I don't --

16 THE COURT: The volunteer service reward
17 requirements.

18 MR. GROSSWALD: Right. The rule is that who can
19 -- who can become a certifying organization
20 representative. Okay.

21 THE COURT: And --

22 MR. GROSSWALD: According to their --

23 THE COURT: -- I --

24 MR. GROSSWALD: Oh, yeah, here's the thing.

25 THE COURT: -- it is true that they are their

1 own certifying organization --

2 MR. GROSSWALD: Right.

3 THE COURT: -- we all know that's true. They're
4 saying that it's okay that they're their own certifying
5 organization.

6 MR. GROSSWALD: But if you read -- all right,
7 you know what, I need to read the -- I need to read what
8 it says in the complaint, because their complaint is where
9 they actually say what the rule is. Let me --

10 MR. SANTORI: Paragraph 50.

11 MR. GROSSWALD: Fifty?

12 MR. SANTORI: Yeah. Page -- paragraph 49 starts
13 the discussion with the PVSA article. We say the article
14 stated according to the representative of the Presidential
15 Volunteer Service Award Office, the WMLS -- the WMSL --
16 WMSCOG --

17 THE COURT: What paragraph?

18 MS. ZBOROVSKY: Forty-nine.

19 MR. SANTORI: Right. And paragraph 50 reads
20 the --

21 MR. GROSSWALD: Paragraph 51 is the -- is the
22 one that we want.

23 Paragraph 51, the PVSA article is false on
24 information, I believe no representative of the office
25 ever advised the defendants that they should not have

1 nominated themselves. The information is confidential.

2 It's that final sentence, does Your Honor have
3 it, paragraph 51?

4 THE COURT: Organizations are permitted to
5 certify the volunteer hours of their own members --

6 MR. GROSSWALD: Own members.

7 THE COURT: -- and other branches --

8 MR. GROSSWALD: Other branches.

9 THE COURT: -- of the same organization, so they
10 may be recognized for this award.

11 MR. GROSS: Right. So, there's two groups of
12 people who can get the award. You individual volunteers,
13 and other branches, but not the corporation entity that's
14 doing the certifying. Because otherwise your certifying
15 yourself, and there's an integrity problem; right. If I
16 have an organization and the organization simply declares
17 yeah, we did the hours, we're going to give ourselves the
18 award, there's no integrity. But if another individual
19 has to do the work and your supervising them or certifying
20 them, now you've got separation. The person getting the
21 award and the person doing the certifying are two
22 different people. So, that's the way it's set up that you
23 can certify an individual --

24 THE COURT: Okay.

25 MR. GROSSWALD: -- in your group --

1 THE COURT: Okay.

2 MR. GROSSWALD: -- or you can certify another
3 branch. But they gave it to themselves, --

4 THE COURT: I understand.

5 MR. GROSSWALD: -- their own corporate entity.
6 So, the article says they shouldn't have done that. And
7 they're -- and they're agreeing that's what the rule is --

8 MR. SANTORI: Mr. Grosswald, your adding --

9 MR. GROSSWALD: -- but they're trying to act
10 like it's defamatory.

11 MR. SANTORI: -- he's adding a lot of language
12 to this article that was not in the article. He's adding
13 lots of explanation, clarifies facts that are false. Such
14 as according -- that -- that Ms. Colon called a
15 representative of the Present -- of the PVSA office, and
16 then that representative told her that they should not
17 have nominated their Ridgewood, New Jersey.

18 MR. GROSSWALD: But if you're telling me that
19 the rule is that you're not supposed to nominate yourself,
20 how can you say it's wrong --

21 MR. SANTORI: Look, I -- I admire Mr.
22 Grosswald's passion --

23 THE COURT: Your saying what didn't happen --

24 MR. SANTORI: -- but I would very much like to
25 finish.

1 THE COURT: -- your saying that Ms. Colon didn't
2 call?

3 MR. SANTORI: I'm saying it didn't, in fact, it
4 couldn't -- not only did it not happen, it couldn't have
5 happened.

6 THE COURT: How do you know that?

7 MR. SANTORI: Be -- because -- because it
8 couldn't have happened, because -- because -- because the
9 -- she -- she alleges that the -- that the representative
10 said that the WMLS -- MSCOG should not have nominated
11 their Ridgewood, New Jersey location. She's saying that
12 the representative said that. A repr -- a repre --

13 MR. GROSSWALD: But you saying that too.

14 MR. SANTORI: No.

15 MR. GROSSWALD: You saying in paragraph 51 --

16 MR. SANTORI: No we're not.

17 MR. GROSSWALD: -- that they can't award their
18 own location.

19 MR. SANTORI: No we are not. We said that's
20 what she is saying the representative said.

21 MR. GROSSWALD: Paragraph 51 --

22 MR. SANTORI: And we're saying --

23 MR. GROSSWALD: -- says --

24 MR. SANTORI: -- that's what she said in the
25 article, that's what's false.

1 MR. GROSSWALD: -- paragraph 51 says they can
2 award it to their own members and other branches, not to
3 your own location. So, where's the -- so, how can you --
4 if that's the ruling your saying in paragraph 51, how is
5 the statement wrong?

6 MR. SANTORI: I -- I don't know if we can
7 continue this, if Mr. Grosswald continues to shout over
8 what I'm saying.

9 MR. GROSSWALD: I'm sorry, okay.

10 MR. SANTORI: I -- I ha -- I mean there's a
11 record here, and I'd -- I'd just like to preserve it
12 that's all.

13 MR. GROSSWALD: Go ahead.

14 MR. SANTORI: So -- so, Ms. Colon says a few
15 things, it's a few fact -- she makes a few factual
16 statements. She says one, that she contacted a
17 representative of -- of the PVSA.

18 MR. GROSSWALD: That's irrelevant if the -- if
19 the contact resulted in --

20 MR. SANTORI: It's --

21 MR. GROSSWALD: -- in the same rule that your --

22 MR. SANTORI: -- it is --

23 MR. GROSSWALD: -- already saying in paragraph
24 51.

25 MR. SANTORI: -- it is not irrelevant, it is a

1 factual representation.

2 The second factual representation is that that
3 representative told her that the church should not have
4 been nominated -- should not have nominated their
5 Ridgewood, New Jersey location for the award, since the
6 certifying organization would, in essence, be awarding
7 themselves. She said that is what that person told her.

8 MR. GROSSWALD: And that's what you're saying in
9 paragraph 51.

10 MR. SANTORI: And in paragraph 51 -- in
11 paragraph 51 we say that that person could not have told
12 her that, because that is not -- that -- because that
13 would not lead to the conclusion that they should not have
14 nominated their Ridgewood, New Jersey location, it would
15 lead to the opposite conclusion that it's perfectly okay
16 for them to nominate their New Jersey location.

17 MR. GROSSWALD: But no, you're saying they can
18 only give it to their volunteers in the other branches,
19 you're not --

20 MR. SANTORI: I don't know --

21 MR. GROSSWALD: -- saying they can give it to
22 themselves.

23 MR. SANTORI: -- I don't know why you're telling
24 what I'm saying, when I'm simply saying it.

25 MR. GROSSWALD: Cause I'm reading paragraph 51,

1 you're not saying in paragraph 51 that your allowed to
2 certify yourself, your only allowed to certify volunteers
3 or other ranches. And the comment is about the
4 certification of the corporate entity.

5 MR. SANTORI: I -- I don't even understand what
6 -- what Mr. Grosswald saying.

7 MR. GROSSWALD: The Ridgewood Corporation
8 certified the Ridgewood Corporation for an award. The
9 rule says the Ridgewood Corporation could certify a
10 volunteer or another branch, but the Ridgewood Corporation
11 can't certify the Ridgewood Corporation, because otherwise
12 they're just giving themselves an award and there's no
13 integrity to that.

14 MR. SANTORI: The point is this person did not
15 say this, they would not have said it.

16 MR. GROSSWALD: Why wouldn't they say it, it's
17 the same rule you have in paragraph 51?

18 THE COURT: So, you want --

19 MR. SANTORI: No it's not.

20 THE COURT: Okay. So -- wait a minute.

21 MR. SANTORI: She would not say that they should
22 not have nominated their Ridgewood, New Jersey location.

23 THE COURT: Okay. So, if you look -- so -- so
24 in this -- so on the website there's the comment about
25 what this individual said, the Presidential Volun -- the

1 representative of the Presidential Volunteer Service
2 Award. You want that one statement deleted, what the
3 representative of the Presidential Volunteer Service Award
4 said.

5 MR. SANTORI: If whatever we end up with simply
6 says they shouldn't have nominated themselves or something
7 like that and doesn't give any factual false support --

8 THE COURT: Your fine with that.

9 MR. SANTORI: -- then we're okay with it because
10 it's not defamatory.

11 THE COURT: So, the only thing they want
12 deleted --

13 MR. SANTORI: Again, this is in the context of I
14 have to say it settlement and res --

15 THE COURT: Right.

16 MR. SANTORI: -- and resolving this matter.

17 THE COURT: I understand. What they want
18 deleted --

19 MR. SANTORI: This isn't our position on the
20 matter.

21 THE COURT: -- isn't the conclusion that they
22 shouldn't have awarded it to themselves. What they want
23 deleted is that there was a conversation with a
24 representative of the Presidential Volunteer Service Award
25 who said that.

1 MR. SANTORI: Because that gives it heft, it
2 gives it factual heft that's why it's actionable.

3 MR. GROSSWALD: Well, I -- I listened to the
4 conversation so you lose, and you're going to get
5 sanctioned if you pursue it.

6 MR. SANTORI: I -- I don't --

7 THE COURT: But the same conclusion can be
8 written. In other words, the conclusion that they --

9 MR. GROSSWALD: But the phone call happened.

10 MR. SANTORI: Your Honor, can we just --

11 MR. GROSSWALD: I can prove it happened.

12 MR. SANTORI: -- can we just stop talking about
13 sanctioning the lawyers here.

14 THE COURT: Yes, we're going to, okay.

15 MR. GROSSWALD: Okay.

16 MR. SANTORI: This is -- this is -- this is
17 like --

18 THE COURT: Okay.

19 MR. GROSSWALD: But --

20 THE COURT: I'm not sanctioning anybody.

21 MR. GROSSWALD: -- the phone call happened.

22 THE COURT: Okay, the phone called happened.

23 MR. GROSSWALD: So -- so your asking him to take
24 off the phone call. And then so he takes down the phone
25 call, and then now there's a lawsuit saying --

1 MR. SANTORI: I -- I think --

2 MR. GROSSWALD: -- then the lawsuit is well, but
3 you said this and you didn't disclose the facts.

4 MR. SANTORI: Maybe -- maybe --

5 MR. GROSSWALD: How many times are they
6 complaining --

7 MR. SANTORI: -- maybe -- maybe Mr. Grosswald is
8 right.

9 MR. GROSSWALD: -- how many times --

10 MR. SANTORI: -- Maybe --

11 MR. GROSSWALD: -- are they complaining about
12 undisclosed facts not being disclosed?

13 MR. SANTORI: -- maybe Mr. -- well, it just so
14 happens that these facts are false. Mr. Grosswald may be
15 right. If he's a witness to this conversation, then he
16 should be a witness to this conversation. He should get
17 up on the stand and make that representation, in which
18 case he can't be Ms. Colon's lawyer.

19 MR. GROSSWALD: No, no, I didn't --

20 THE COURT: But your --

21 MR. GROSSWALD: -- listen to it live.

22 THE COURT: -- your -- your saying that this
23 isn't true, but you have no basis upon which to say that
24 it's not true.

25 MR. SANTORI: I -- again, in the context of

1 settlement discussion from -- from my -- my -- what --
2 what I understand is that representatives of the church
3 called the -- called this office, the PVSA office, and
4 asked them about this. And they said absolutely not, we
5 would never tell anybody about this. They then asked
6 around the office, did you ever speak about this? Did you
7 talk about this to anybody? They said no, no, of course
8 not. This is the conversation that I had with my clients.
9 It's privileged, but in this case I think it's -- it's
10 certainly worth mentioning.

11 THE COURT: What's -- what's the next thing that
12 they would want have taken down?

13 MR. GROSSWALD: Can I just point out something?

14 THE COURT: Uh-hum.

15 MR. GROSSWALD: The same article talks about how
16 the award was given to leaders of the church who are not
17 U.S. Citizens, and that that violates the rule. And
18 they're not suing over that, and that's a lot more
19 damaging to their reputation. Cause basically what's
20 happening is you got these foreign nationals going around
21 the country or going around the world using the President
22 of the Unites States giving them an award as propaganda to
23 say look how great we are, we're not a cult --

24 MR. SANTORI: The Court --

25 MR. GROSSWALD: -- the President of the United

1 States gave us this award.

2 MR. SANTORI: -- cannot allow Mr. Grosswald to
3 pontificate and further his own individual agenda on the
4 record. He wants to talk about how everyone's --

5 MR. GROSSWALD: That's --

6 MR. SANTORI: -- a cult, so he can --

7 MR. GROSSWALD: No, what I'm saying is that's an
8 indication of a frivolous lawsuit, that you would
9 completely ignore --

10 MR. SANTORI: What, that we're choosing our
11 causes of action carefully. This is -- this is -- this is
12 not -- this is --

13 MR. GROSSWALD: When --

14 MR. SANTORI: -- this has gone through
15 argument --

16 MR. GROSSWALD: -- when an -- but when an entity
17 is suing --

18 MR. SANTORI: -- I -- I don't even know what
19 this is.

20 MR. GROSSWALD: How many people -- how many
21 people do you think read this thing about the phone call
22 and said you know I'm going to stop donating to the
23 church, compared with the -- the non-citizens getting an
24 award and the propaganda, and -- and that's so much more
25 offensive.

1 MR. SANTORI: I --

2 MR. GROSSWALD: And the fact that --

3 THE COURT: I just --

4 MR. SANTORI: -- I'd truly appreciate --

5 MR. GROSSWALD: -- but that would -- that would
6 subject you -- that would subject the leaders of the
7 church to discovery. So, your picking on a statement that
8 would -- that would protect the leaders of the -- of the
9 church from having to go to discovery about -- about how
10 they got the award, and your picking on this little minor
11 thing about a phone call.

12 MR. SANTORI: If Your Honor --

13 MR. GROSSWALD: I mean it's like --

14 MR. SANTORI: -- would like to have an oral
15 argument about the facts and the law, then we -- we are --
16 we are happy to do it. But if -- if we want to talk about
17 nasty my client is, then we should probably not do it in
18 this context, it's just not relevant.

19 THE COURT: Okay. I was just really trying to
20 get a sense of the items.

21 MR. SANTORI: I think that you -- I think -- I
22 think you were -- you wanted to talk about--

23 THE COURT: Yes, I just want to --

24 MR. SANTORI: -- each of these --

25 THE COURT: -- just -- just --

1 MR. SANTORI: -- and I'm happy to do it.

2 THE COURT: -- I just want to hear a list of the
3 items. Okay, it's -- it's that statement on that. And
4 what else?

5 MR. SANTORI: Okay. So, there's -- there's the
6 PVSA article. If you go back 83 --

7 THE COURT: So, it --

8 MR. SANTORI: -- 83, it'll tell us what the next
9 one is. And that --

10 THE COURT: Okay, what paragraph was that?

11 MR. SANTORI: -- and the -- oh, sorry paragraph
12 83 it sa --

13 THE COURT: Right.

14 MR. SANTORI: Right. It says --

15 THE COURT: Having to do with the phone call to
16 the Presidential, okay.

17 MR. SANTORI: Right. And so the next is the
18 examining -- I skipped that, that came first. So, the
19 examining articles, and that's -- that's the examining
20 series of articles. And that begins on paragraph 38. And
21 I think we actually do go paragraph by paragraph for each
22 statement. Sometimes we talk about several that are
23 relevant together, but here I think we go sentence by
24 sentence. So, that begins on paragraph 38, but, also,
25 paragraph 39 is where we say I notice that marries couples

1 and fam -- married couples and families did not study
2 together, unless there was a longer study being offered on
3 a Sunday afternoon. That's the first statement.

4 MR. GROSSWALD: And how is it any different from
5 all the other websites that Your Honor saw where people
6 are criticizing the church for taking over their time?

7 MR. SANTORI: We're not suing those other
8 people.

9 THE COURT: I know --

10 MR. GROSSWALD: And why not?

11 MR. SANTORI: That's none of your business Mr.
12 Grosswald. The -- the -- the plaintiff has -- has a right
13 to bring as many different causes of action as it wants.
14 If -- if they want --

15 MR. GROSSWALD: None of their frivolous and
16 false they don't.

17 MR. SANTORI: There has been no -- it's your
18 client's statements that are false.

19 THE COURT: Your saying her statement implies
20 the plaintiff World Mission separates families when it
21 does not.

22 MR. GROSSWALD: We've got --

23 THE COURT: Which --

24 MR. GROSSWALD: -- photographic evidence of men
25 and women being separated. This is what she says. I

1 couldn't sit with my husband, I couldn't sit with my son,
2 the --

3 MR. SANTORI: Then we can --

4 MR. GROSSWALD: -- women and the men are
5 separated.

6 MR. SANTORI: -- then we can depose the people
7 who took those photographs and ensure that they're
8 authentic, and all of the things --

9 MR. GROSSWALD: So, your denying that these are
10 authentic?

11 MR. SANTORI: No, I am applying the standard on
12 a motion to dismiss.

13 THE COURT: Okay, I'm not --

14 MR. GROSSWALD: Your Honor, with all due
15 respect --

16 THE COURT: -- I'm not --

17 MR. GROSSWALD: -- I understand what you said
18 about not sanctioning anybody, but I --

19 THE COURT: -- I'm not sanctioning anybody.

20 MR. GROSSWALD: -- don't see how this is not
21 sanctionable.

22 THE COURT: Okay. this what we're go --

23 MR. GROSSWALD: How is it not sanctionable Your
24 Honor?

25 THE COURT: Okay, the -- your saying that the --

1 the --

2 MR. GROSSWALD: The church separates men and
3 women, they're saying --

4 THE COURT: -- there -- there --

5 MR. GROSSWALD: -- we don't and we're suing you.

6 THE COURT: -- there are other religious
7 organizations that separate men and women, --

8 MR. SANTORI: Yes.

9 THE COURT: -- so she's indicating that the men
10 and women are separated. That's I think part --

11 MR. SANTORI: Orthodox Jews do that for example.

12 THE COURT: -- I think that's part of what they
13 do.

14 MR. SANTORI: In the context of -- of -- of
15 other statements where she says it destroys families and
16 ruins marriages, this is why it can be damaging. And this
17 is why it is defamatory per se, because she's -- this is
18 -- this is one of the elements of how they -- this is
19 under her systematic theory of convincing people not to go
20 to this church. This is why, because they destroy
21 families separating them, they ruin marriages by
22 separating them. In particular, they never pray together.
23 This is --

24 MR. GROSSWALD: But that does --

25 MR. SANTORI: -- this is why they make those

1 statements.

2 THE COURT: But it --

3 MR. GROSSWALD: -- that does have a damaging --

4 THE COURT: -- they -- they --

5 MR. GROSSWALD: -- affect for some people.

6 She's saying in her experience it had a detrimental effect
7 on her marriage.

8 THE COURT: I'm going to have to --

9 MR. SANTORI: No, she's saying in her experience
10 married couples and families did not study together. That
11 is a factual statement, and it's actionable. We have --
12 we -- we are allowed to prove that through discovery.

13 THE COURT: I mean are they going --

14 MR. GROSSWALD: She --

15 THE COURT: -- to have video au --

16 MR. SANTORI: We -- just as they might -- look,
17 they might say that they have photograph evidence that in
18 -- that on -- on one occasion people were split on the
19 occasion where that photograph was taken.

20 MR. GROSSWALD: So, your --

21 THE COURT: How is --

22 MR. GROSSWALD: -- your suggesting --

23 THE COURT: -- how is it defamatory --

24 MR. GROSSWALD: -- that they only did it once
25 for the picture --

1 THE COURT: -- how is it --

2 MR. GROSSWALD: -- and never did it again?

3 THE COURT: -- how is it defamatory to say that
4 the men and women don't study together?

5 MR. SANTORI: Right. So, that is defamatory
6 when she's saying this is part of why the church splits up
7 families -- sorry - destroys families and ruins marriages.
8 She's saying this is part --

9 THE COURT: From her perspective that's what
10 happened to her.

11 MR. SANTORI: No, this is -- that might be from
12 her perspective, this is a factual allegation. Remember,
13 there's a distinction between how -- between statements of
14 pure opinion and statements of mixed opinion.

15 MR. GROSSWALD: The factual allegation is
16 whether she noticed that married couples and families were
17 separated, and they were clearly separated. So, she --

18 MR. SANTORI: Your Honor, I would -- I would
19 love --

20 MR. GROSSWALD: -- noticed it and it happened.
21 So --

22 MR. SANTORI: -- to get a thought out.

23 THE COURT: Okay.

24 MR. SANTORI: I would love to get to answer the
25 question and just get a thought out. I -- I do appreciate

1 the --

2 THE COURT: Okay.

3 MR. SANTORI: -- passion and I admire it, but
4 I --

5 THE COURT: What I'm going to do I have a
6 telephone conference at 12:00, when I'm done with that
7 conference I'm going to come back out. And I am keenly
8 aware that there is a significant amount of money involved
9 in litigation of this nature, and I'm significantly aware
10 that Ms. Colon doesn't have such funds, okay. We will
11 isolate to begin with -- well, first we have to serve the
12 amended complaint. We're going to isolate and streamline
13 the discovery, so that it is not --

14 MR. SANTORI: Well --

15 THE COURT: Actually, let me -- let me take a
16 break now, it's 5 of 12:00, I have a conference call at
17 12:00. When I'm done with the conference call I'll come
18 back, and then we'll pick up, okay.

19 MR. SANTORI: Thank you, Your Honor.

20 MS. ZBOROVSKY: Thank you.

21 MR. GREENWALD: Do we have to --

22 (Break)

23 THE COURT: Everyone please seated, thank you.

24 Okay, we're back on the record World Mission vs.
25 Colon, BER-L-5274-12.

1 From a procedural perspective the amended
2 complaint has to be filed and served from a procedural
3 perspective. The motion to dismiss is a motion pertaining
4 to the original complaint, so theoretically isn't going to
5 be decided by the Court today by any means. Because the
6 motion to dismiss will have to be the motion to dismiss as
7 to the amended complaint which hasn't yet been filed.

8 I think it's important to say on the record that
9 these papers and these motions have been in my chambers
10 for a number of months, and because of issues of counsel
11 substitution, hurricane Sandy, and a myriad of other
12 issues we -- all of these applications have come to
13 fruition on today's date.

14 I have -- have significant pause with regard to
15 you know claims made that what's on the internet for the
16 defense point of view isn't accurate according to the
17 plaintiff, but yet when they look at things on the
18 internet this is what the internet says. Because the
19 basis of their complaint is things that were posted on the
20 internet.

21 I also have concern over the fact that it's
22 clear that there are multiple, multiple sites on the
23 internet, multiple authors on the internet regarding this
24 particular plaintiff. And the plaintiff isn't pled
25 correctly, the plaintiff is -- is only supposed to be the

1 entity located in Ridgewood. And there is nothing before
2 this court at this juncture to show what, if any,
3 background information plaintiff has to substantiate its
4 claims as against Ms. Colon. For example, the fact that
5 they lost membership because of her actions, as opposed to
6 the myriad of other material and information out there by
7 other authors similarly indicating that this particular
8 church group, not specifically the one in Ridgewood, but
9 the World Mission Society Church of God is a cult of -- of
10 varying sorts.

11 I don't understand why plaintiff's counsel have
12 not -- has not provided to provided to the defendant
13 information upon which it bases its allega -- factual
14 allegation; correct?

15 MR. GROSSWALD: That's right, we made a five day
16 demand for the statements referenced in the complaint, and
17 they're not giving them to us.

18 MR. SANTORI: That's he made a demand for
19 documents --

20 THE COURT: A document demand.

21 MR. SANTORI: -- which is -- it's -- it's -- I
22 -- it seems pedantic, but it's -- it's a very important
23 distinction because documents are not the only form of
24 proof, especially -- especially --

25 MR. GROSSWALD: It's not up to you --

1 MR. SANTORI: -- at the pleading stage.

2 MR. GROSSWALD: -- to decide that what I asked
3 for isn't -- isn't what you want to give me.

4 MR. SANTORI: You know we just --

5 MR. GROSSWALD: If I asked for it, you have to
6 give it to me.

7 THE COURT: Well -- well --

8 MR. SANTORI: -- we -- we --

9 MR. GROSSWALD: It doesn't matter that you
10 don't --

11 THE COURT: -- let --

12 MR. SANTORI: -- we just got back and I -- I
13 feel like this is starting us off on a bad foot. I would
14 -- I would really like --

15 THE COURT: Okay.

16 MR. SANTORI: -- to just finish what I'm saying,
17 and then --

18 THE COURT: Okay.

19 MR. SANTORI: -- I promise I'll -- I'll stop
20 talking, Mr. Grosswald can speak.

21 I -- I -- I -- documents are not the only form
22 of evidence, there's also personal experience and
23 testimony. And so if Mr. Grosswald is going to try to
24 dismiss or ch -- or modify the allegations of the
25 complaint based on just documentary evidence, he's putting

1 the cart before the horse.

2 MR. GROSSWALD: The Five Day Rule is
3 unconditional, if I ask for it I get it in five days. It
4 doesn't say if I want to use it for this purpose, I can't
5 use it for that purpose. You says you give me what I ask
6 for in five days, and then the Court can decide if I can
7 use it or not. But they can't withhold documents, because
8 they don't like the way I might use it.

9 MR. SANTORI: Mr. Grosswald just finished
10 telling the Court a very in -- in depth story about how
11 his client doesn't want to be put through all of the
12 stress and cost --

13 THE COURT: No, it's the expense.

14 MR. SANTORI: -- and -- and --

15 THE COURT: It's the expense.

16 MR. SANTORI: -- ex -- expense. Expense.

17 MR. GROSSWALD: And stress.

18 THE COURT: It's a huge --

19 MR. GROSSWALD: And stress Your Honor.

20 MR. SANTORI: And -- and -- and expense of going
21 through discovery yet he -- before the issues are
22 determined, and now he's asking us to do that.

23 MR. GROSSWALD: Okay. Look, I -- I just told
24 you I --

25 MR. SANTORI: Our -- our court -- our

1 client is not --

2 MR. GROSSWALD: -- I would have worked with you
3 -- if you did a meet and confer I would have worked with
4 you on -- on more time on those things, if you had given
5 me the five day stuff. Because the stuff in the complaint
6 is very important, and we need to see -- in order for the
7 Court to do an analysis even at this early stage of
8 whether these are of and concerning your client, and
9 whether the date is within the statute of limitations --

10 THE COURT: Well like, for example --

11 MR. GROSSWALD: -- you got to have the
12 statements.

13 THE COURT: Right. For example --

14 MR. SANTORI: I think that's --

15 THE COURT: -- the issue having to do --

16 MR. SANTORI -- fundamentally false.

17 THE COURT: -- issue having to do with the tax
18 return of --

19 MR. GROSSWALD: Illinois and California.

20 THE COURT: Right. I mean obviously that --
21 that's going to be dismissed, that's not your client.
22 That is not your client.

23 MR. SANTORI: If -- if the Court so finds,
24 there's certainly the possibility of adding those -- those
25 entities as plaintiffs.

1 THE COURT: Oh, let me tell you something. I am
2 not going to allow this pleading to have multiple,
3 multiple amendments. You have over a million members, I
4 don't know how many chapters there are. I mean this is an
5 internet world, and these allegations are about the World
6 Mission Society Church of God which is worldwide, okay.
7 And the number of defendants is my biggest concern.
8 Because I realize you have right to come to court, but you
9 have to have a reasonable basis to believe that what your
10 alleging as against your client in Ridgewood, you can
11 prove as against Ms. Colon. And so far there's nothing
12 before me, nothing in all of this paperwork to suggest
13 that you can prove that.

14 MR. SANTORI: Your Honor, this is -- this is --
15 again, it's -- it's -- your talking about proof, and we're
16 -- respectfully we're putting the cart before the horse.
17 It's not within the Court's discretion to demand that --
18 that a plaintiff prove its case prior to even there being
19 an answer.

20 THE COURT: No, no.

21 MR. GROSSWALD: There has to be --

22 THE COURT: No, I understand that.

23 MR. GROSSWALD: -- a reasonable inquiry under
24 the circumstances.

25 THE COURT: No, no, I understand that. But, for

1 example, I -- I indicated you know how many people have
2 left because of Ms. Colon, and you have no idea.

3 MR. GROSSWALD: So, you haven't --

4 THE COURT: So, it's --

5 MR. SANTORI: It's -- it's not that --

6 MR. GROSSWALD: -- done a reasonable inquiry
7 under the circumstances.

8 MR. SANTORI: -- it's -- it's not that -- it's
9 not that we don't have any idea, it's that I'm not
10 prepared to give a number. This is not what we're here --
11 this isn't what we're here today to do.

12 THE COURT: But you also indicated that you're
13 not willing to give the names of the individuals who have
14 left the church.

15 MR. SANTORI: We're not prepared to give a
16 number today, but we can certainly give -- give abundant
17 mathematical and statistical proof of this, and we're
18 willing to do that.

19 MR. GROSSWALD: This is what a slap plaintiff
20 does, they drag it out. Just let us get passed this
21 motion, we'll drag it out, we'll drag it out.

22 MR. SANTORI: But the -- I don't know why this
23 -- this -- he keeps saying it's a slap plaintiff, there's
24 no slap laws in New Jersey. If he's saying it simply for
25 harassment, then congratulations, he's the first defendant

1 ever to say he's being harassed.

2 MR. GROSSWALD: The New Jersey Supreme Court
3 recognizes that slap suits are improper use of our courts.
4 I cited a case LoBiondo v. Schwartz.

5 MR. SANTORI: The legislature has -- has chosen
6 to pass a new law.

7 MR. GROSSWALD: The New Jersey Supreme Court
8 says slap suits --

9 THE COURT: No, the --

10 MR. GROSSWALD: -- are improper.

11 THE COURT: -- the basis of what defendant is
12 saying is that your client is undertaking this litigation
13 whether it be here or Virginia, then back in Virginia for
14 the purpose of having Ms. Colon and Mr. Newton stop
15 posting that which they are posting, to silence them.

16 That's --

17 MR. SANTORI: I think that's absolutely right --

18 THE COURT: -- that's --

19 MR. SANTORI: -- we are trying to silence them
20 from posting --

21 THE COURT: And that they --

22 MR. SANTORI: -- false defamatory statements.

23 THE COURT: No, but the pur -- basis of a slap
24 suit is I think it would have to have some sort of public
25 meaning.

1 MR. GROSSWALD: Well --

2 THE COURT: Pu -- public.

3 MR. SANTORI: And that's another thing.

4 THE COURT: So, for example, with the Ridgewood
5 -- the Ridgewood application so that in the event that
6 they had another application there, she would be inhibited
7 or -- or be afraid to go forward, because you in turn
8 would then sue here again for voicing her public opinion,
9 if she did voice her public opinion at such -- at such a
10 hearing. I think that's what the --

11 MR. GROSSWALD: Your -- Your Honor --

12 THE COURT: -- said.

13 MR. GROSSWALD: -- LoBiondo v. Schwartz the case
14 did arise under like zoning issue as your describing, but
15 the court framed it as if it inhibits your freedom to
16 petition or freedom of speech. So, it doesn't have to be
17 speech in front of a government body. I mean that's very
18 often where slap cases come about is people speaking in
19 front of a government body, and the getting sued. But the
20 Supreme Court in -- the New Jersey Supreme Court talked
21 about freedom of petition or freedom of speech being
22 inhibited.

23 THE COURT: Okay.

24 MR. GROSSWALD: So, in this case if she's just
25 an activist trying to warn people about this group and

1 that speech is inhibited, then it's a slap suit and --

2 THE COURT: Okay.

3 MR. GROSSWALD: -- it's a harassment suit and
4 it's so allowed.

5 THE COURT: What we're going to do now is we're
6 going to file the amended complaint. Then I know you have
7 advised the Court that there's absolutely no problem
8 getting jurisdiction over Mr. --

9 MR. GROSSWALD: Newton.

10 THE COURT: -- Newton. Okay. I make no comment
11 as to that. I am going -- once that amended complaint is
12 in and if there is an appearance for this defendant, okay,
13 I am then going to entertain the motion to dismiss. And
14 having had this approximately two hour preliminary oral
15 argument has armed the Court with more information, and
16 the Court must go through each allegation in the complaint
17 and the various causes on a one by one basis in -- in its
18 determination and decision. So, that is what I'm going to
19 do.

20 The only thing I'm doing today is allowing the
21 amendment of the complaint. And after that complaint is
22 theoretically served, I am assuming there is going to be
23 -- you do not have to re-file the same motion to dismiss
24 papers. If you wish to a --

25 MR. GROSSWALD: Well, the -- the motion to

1 dismiss sort of -- the original motion to dismiss talks
2 about the original complaint, and then our --

3 THE COURT: True.

4 MR. GROSSWALD: -- reply sort of merges them
5 both together.

6 THE COURT: That's true.

7 MR. GROSSWALD: So, do you need a clarified
8 statement that goes through each thing?

9 THE COURT: No. No, I think what -- I can't
10 make a decision unless I know and I -- in this court, as
11 well as Virginia Court at some point may have an interest
12 in this, as to whether or not Mr. Tyler Newton is a part
13 of this lawsuit.

14 MR. GROSSWALD: So, I need to file a motion on
15 his jurisdictional issues I guess?

16 THE COURT: If you are going to -- if you are
17 going to represent him.

18 MR. GROSSWALD: Right.

19 THE COURT: I don't know how you're going to
20 serve him. How are you going to serve him? Well, that's
21 up to you. You will serve him according to how you
22 believe you should serve him, and then we will take it
23 from there.

24 But I -- I am -- as to the motion to dismiss I
25 am denying it without prejudice.

1 MR. GROSSWALD: Okay.

2 THE COURT: And as to the motion to amend I am
3 granting.

4 I am not going to entertain the issue with
5 regard to the document requests, but I am telling counsel
6 now, so you can advise your client, I am going to have
7 allow full and complete discovery of everything that is
8 reasonable in this case. Including the names of their
9 parishioners who they claim left, because directly of Ms.
10 Colon's defamatory activity, as well as all information
11 that's relevant to the defense of the defamatory claims,
12 and they should be prepared for that. They are not
13 insulated, because they are a religious organization.

14 MR. SANTORI: If -- so to -- to clarify for the
15 record. This is a final determination that the church
16 will be compelled to give up the names of its members, and
17 its -- and its ex-members.

18 THE COURT: The present members?

19 MR. SANTORI: It's present members and former
20 members.

21 THE COURT: The -- my understanding is the
22 question is --

23 MR. GROSSWALD: The damages to former members.

24 THE COURT: -- they want to know the names of
25 the individuals who have left, because of Ms. Colon.

1 MR. SANTORI: I see. So, if --
2 THE COURT: Not the present members --
3 MR. SANTORI: -- so -- so --
4 THE COURT: -- no.
5 MR. GROSSWALD: That's the --
6 THE COURT: That's --
7 MR. GROSSWALD: -- damage from present members.
8 THE COURT: -- that's not relevant.
9 MR. SANTORI: -- so -- so, there's -- so,
10 there'll be no -- so, what the Court is -- sorry, I -- at
11 this stage it's -- it's somewhat important, especially
12 given the concerns that Your Honor put forth earlier. The
13 Court is not obligated to give up names of its current
14 members.
15 THE COURT: No.
16 MR. SANTORI: But it is -- no. Right. So, but
17 it is obligated to give up the names -- at some point in
18 discovery it is ob -- it is -- it is obligated to give up
19 the names of those members who allegedly left the church,
20 because of Ms. Colon's --
21 THE COURT: Defamation.
22 MR. SANTORI: -- or --
23 THE COURT: Actions.
24 MR. SANTORI: -- action -- actions. Right.
25 MR. GROSSWALD: And just to clarify though.

1 MR. SANTORI: Okay.

2 MR. GROSSWALD: But we are entitled to current
3 members to the extent that they have information that
4 proves the truth of this. I mean if -- if there's an
5 issue of what the church is doing and the church is
6 denying doing it, and -- and there are current members who
7 are there supposedly witnessing it we --

8 THE COURT: We'll cross that bridge another day.

9 MR. GROSSWALD: Okay.

10 THE COURT: The only -- the only issue that I
11 had a great concern with is --

12 MR. GROSSWALD: The former members.

13 THE COURT: -- the whole basis of this in terms
14 of defamation is the damage to this Ridgewood parish and
15 -- is it called a parish?

16 MR. SANTORI: It's -- it's just --

17 THE COURT: Church.

18 MR. SANTORI: -- a branch of the church.

19 THE COURT: Ridgewood branch of the church at
20 the -- at the outset the Court had asked you know in terms
21 of getting a sense of where this case is going, this is a
22 significant piece of litigation. I mean who are they
23 claiming -- who are they claiming left and who are they
24 claiming has not joined. And if they can't because they
25 don't know, that's information -- that's an answer.

1 MR. GROSSWALD: Well, is it an answer that stops
2 the case from going forward or is it an --

3 THE COURT: No, I'm saying it's an answer.
4 I'm --

5 MR. GROSSWALD: Right.

6 THE COURT: If they say we can't tell you who
7 left because of Ms. Colon's defamatory statements, that's
8 an answer too. Either they know or they don't know,
9 that's part of their proofs.

10 MR. SANTORI: And -- and that --

11 THE COURT: And --

12 MR. SANTORI: -- will be addressed at -- at the
13 -- at the proof stage during whatever --

14 THE COURT: Right.

15 MR. SANTORI: -- whoever -- whenever we get to
16 that.

17 MR. GROSSWALD: Your Honor, not --
18 notwithstanding I --

19 THE COURT: And I -- and the reason why the
20 Court is asking this at this juncture, okay, is because I
21 am acutely aware as to the finances involved in this type
22 of litigation, and I am concerned over the number of
23 internet sources out there regarding comments about the
24 church indicating cult like activities. The Court is not
25 saying it is or is not, and that's not of any moment or

1 concern. But the fact that these comments are made saying
2 that they are, so how is the plaintiff going to prove
3 their claims as against Ms. Colon as opposed to these
4 other entities. That is what the Court is concerned with.

5 So, as of today I am just signing the motion to
6 amend the complaint. And the motion to dismiss is denied
7 without prejudice.

8 MR. GROSSWALD: Your -- Your Honor, but there
9 are certain -- there are certain issues that could be
10 disposed of fairly quickly. I mean the issue of not
11 pleading the names for trade liable. I mean I think
12 that's --

13 THE COURT: I'll -- well, I am going to
14 obviously hear the motion to dismiss again at a future
15 time.

16 MR. GROSSWALD: Okay. So -- so, that will be
17 deferred, okay.

18 THE COURT: And at that point I have a lot of
19 homework to do in terms of the law, each allegation, each
20 cause of action, each paragraph.

21 MR. GROSSWALD: And -- and what about the Rick
22 Ross of and concerning statements where the tax return is
23 about Illinois. Can we get rid of those at least? I mean
24 this --

25 THE COURT: At the motion to dismiss.

1 MR. GROSSWALD: At the motion to dismiss.

2 THE COURT: The Court will be prepared to do
3 items like that.

4 MR. GROSSWALD: So Your Honor --

5 MR. SANTORI: Thank you, Your Honor.

6 MR. GROSSWALD: Well, okay, I just -- I'm sorry,
7 I just have a couple more things --

8 THE COURT: Sure.

9 MR. GROSSWALD: -- I just wanted to say then.

10 So, if -- if the original complaint then is
11 basically out of the case, I guess is what the Court is
12 saying.

13 THE COURT: Correct. The amended complaint will
14 be filed within I'll --

15 MR. GROSSWALD: If it's possible Your Honor, I'd
16 like to get a ruling at least that certain portions of
17 that original complaint where they're suing her for her
18 testimony.

19 THE COURT: It doesn't exist anymore.

20 MR. GROSSWALD: All right. Can --

21 THE COURT: In other words, once you have an
22 amended complaint, that first complaint is of no import in
23 the litigation.

24 MR. GROSSWALD: Can I get a finding that it was
25 frivolous, that it should not have been filed?

1 THE COURT: No. No. We -- we can deal with
2 that -- the second amended complaint supersedes it.

3 MR. GROSSWALD: Right.

4 THE COURT: I'm sorry, the amended complaint
5 supersedes it, so once Newton Tyler is served or --

6 MR. GROSSWALD: Tyler Newton.

7 THE COURT: -- Tyler Newton or you put in --

8 MR. GROSSWALD: But -- but here's my concern.
9 There were frivolous claims in that original complaint
10 which were covered by the safe harbor letter, so why
11 can't --

12 THE COURT: Oh, but they didn't -- they didn't
13 do that first complaint.

14 MR. GROSSWALD: Well, Batya Wernick did, and I
15 served her with a safe harbor letter.

16 THE COURT: Okay. All issues --

17 MR. GROSSWALD: Can I sanction her?

18 THE COURT: -- all -- all issues having to do
19 with frivolous litigation are determined at the end of the
20 litigation.

21 MR. GROSSWALD: Okay.

22 THE COURT: Okay.

23 MR. GROSSWALD: Not as we go along?

24 THE COURT: No.

25 MR. GROSSWALD: Okay.

1 THE COURT: So if ultimately there is a final
2 adjudication and the case is dismissed, at that juncture
3 you file your application pursuant to your frivolous
4 litigation, statute rule for legal fees --

5 MR. GROSSWALD: Okay. So then --

6 THE COURT: -- at the -- once there's a final
7 adjudication of the underlying action.

8 MR. GROSSWALD: -- so then what is the standing
9 of Ms. Wer -- your saying that they're not responsible for
10 what Ms. Wernick did, Ms. Wernick's --

11 THE COURT: Not neces --

12 MR. GROSSWALD: -- saying she's not responsible.

13 THE COURT: -- not necessarily, but it's up to
14 the discretion of the Court --

15 MR. GROSSWALD: Okay.

16 THE COURT: -- to determine what is and is not
17 reasonable attorneys fees.

18 MR. GROSSWALD: And which attorney has to pay
19 for it, because -- cause they're going to say it was her
20 fault, and she's going to say they superseded me it's
21 their fault.

22 MR. SANTORI: Or whether the attorneys would be
23 liable at all. This is all --

24 THE COURT: Oh.

25 MR. SANTORI: -- a whole body of law that --

1 THE COURT: Gen -- gen -- generally speaking, I
2 mean there's -- there's a statute and a rule, one pertains
3 to counsel, one pertains to the client. It --

4 MR. GROSSWALD: But we have substituted counsel
5 where the initial counsel --

6 THE COURT: But the client's the same.

7 MR. GROSSWALD: The client's the same. So that
8 the client would be liable either way. The client's going
9 to say advice of counsel, and that counsel --

10 THE COURT: I -- I --

11 MR. GROSSWALD: -- was substituted out. So,
12 they're -- everybody's going to point their finger at
13 somebody else, and I want to --

14 THE COURT: -- I've had other situations --

15 MR. GROSSWALD: Right.

16 THE COURT: -- like that, and -- and I had to
17 deal with hit.

18 MR. GROSSWALD: Okay, I trust you Your Honor.

19 THE COURT: Okay. But we don't reach -- we
20 don't reach that point most respectfully until there's a
21 final adjudication on the merits, and there's a judgment I
22 mean by -- by verdict or bench trial. I mean if there's a
23 settlement or resolution, there is no frivolous litigation
24 applicable.

25 MR. GROSSWALD: If there's a judgment by

1 resolution.

2 THE COURT: Well, it has to be a final
3 adjudication by trial.

4 MR. GROSSWALD: Oh right. In order --

5 THE COURT: Okay.

6 MR. GROSSWALD: -- in order to find frivolous
7 litigation?

8 THE COURT: Correct. In other words, if the
9 case settles.

10 MR. GROSSWALD: Well, what if they drop it
11 voluntarily, cause they don't want to produce discovery
12 like in Virginia?

13 THE COURT: It -- it -- it -- it is alive and
14 well, your frivolous claim is -- is valid.

15 MR. GROSSWALD: Okay. And so if Mr. Newton
16 respond -- if they serve Mr. Newton and he responds with a
17 motion objecting to jurisdiction, I assume he can make an
18 appearance that won't waive jurisdiction just the limited
19 purpose; right? I want to make sure he's going to be able
20 to challenge the jurisdiction without submitting to the
21 court.

22 THE COURT: I can't give you legal advice, I'm
23 sorry.

24 MR. GROSSWALD: Okay. So, I'll -- I'll work
25 that out, okay. All right.

1 THE COURT: All right. Let me give you the
2 orders, okay.

3 THE COURT CLERK: You want to go off the record?

4 THE COURT: Yes, we can go off the record.
5 Thank you.

6 MR. SANTORI: Thank you, Your Honor.

7 MR. GROSSWALD: So --

8 THE COURT: Okay.

9 MR. GROSSWALD: -- so is the Court -- I'm sorry,
10 is the Court going to give a deadline when it has to be
11 served by?

12 THE COURT: Yes, I'm going to put in 20 days.

13 MR. GROSSWALD: Twenty days.

14 THE COURT: The motion to dismiss -- yes, I'm
15 going to give you an order. The motion to dismiss strike,
16 this denied without prejudice.

17 MR. SANTORI: We do have some concern on the --
18 on the deadline to serve Mr. Newton, so when you get to
19 that point.

20 THE COURT: No, the answer has to be filed.

21 MR. SANTORI: Oh, answer has to be filed. Thank
22 you.

23 THE COURT: I'm sorry.

24 MR. SANTORI: The -- the amended complaint.

25 THE COURT: The amended has to be filed.

1 MR. SANTORI: Has to be filed in 20 days. And
2 then service has its own rules under the -- under the
3 rules.

4 MR. GROSSWALD: And -- and -- and I -- well, I
5 just want to say for the record then that I think it would
6 be an ethical violation for him to file this complaint on
7 behalf of two clients who have a conflict of interest.
8 Just -- I do not believe --

9 THE COURT: I've read those papers.

10 MR. GROSSWALD: Yeah. I do not believe Mr.
11 [REDACTED] interests are in line with the -- with the church.

12 THE COURT: You're talking about the plaintiff --

13 MR. GROSSWALD: Right --

14 THE COURT: -- Mr. [REDACTED]

15 MR. GROSSWALD: -- the plaintiff. Mr. [REDACTED] has
16 legal interest that are not in line with the church. If
17 he decides to leave as Ms. Colon has had, he might have
18 claims against the church. They should not be represented
19 by the same lawyers. And one lawyer filing for two
20 conflicting clients I think makes the complaint invalid,
21 and creates an ethical violation that taints the
22 proceedings.

23 THE COURT: Looking for the order. Here it is.

24 What's today's date please?

25 MS. ZBOROVSKY: The 11th.

1 THE COURT CLERK: Today is the 11th.

2 MR. GROSSWALD: The 11th.

3 Can I just say one more thing for the record. I
4 mean he's talking about adding other plaintiffs for the
5 other entities, but after the first complaint I complained
6 that these were not of and concerning the plaintiff, and
7 when they did the new complaint they could have added
8 those new plaintiffs. By not --

9 THE COURT: They're not going to have -- most
10 respectfully, I don't understand how they would ever get
11 jurisdiction.

12 MR. GROSSWALD: For the plaintiffs? Well, the
13 plaintiffs have jurisdiction.

14 THE COURT: if they're in Iowa?

15 MR. GROSSWALD: Well, if the statements were
16 posted in New Jersey, the defendants --

17 MR. SANTORI: He's saying there's always
18 jurisdiction over the plaintiff --

19 MR. GROSSWALD: Over the defendant; --

20 MR. SANTORI: -- because --

21 MR. GROSSWALD: -- right?

22 MR. SANTORI: The question is whether --

23 MR. GROSSWALD: The defendant.

24 MR. SANTORI: -- the defendant would have --

25 MR. GROSSWALD: The defendant's in New Jersey,

1 so the plaintiffs from out of state can come into New
2 Jersey to sue her in New Jersey. But what I'm saying is
3 the opportunity to add them has already come and passed in
4 their -- in their amended complaint, so now they're
5 going --

6 MR. SANTORI: It has not come and passed,
7 there's been no determination on that. There can always
8 leave given if -- if -- if that's before the Court, and
9 that's not before the Court today.

10 THE COURT: I don't think that's going to
11 happen.

12 MR. GROSSWALD: You don't think they're going to
13 add the other plaintiffs.

14 THE COURT: I'll give these to you.

15 MR. SANTORI: Thank you, Your Honor.

16 MS. ZBOROVSKY: Thank you.

17 MR. GROSSWALD: Thank you.

18 (Proceedings Concluded)

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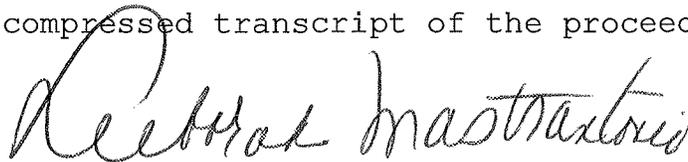
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CERTIFICATION

1
2 I, Deborah A. Mastrantonio, the assigned transcriber, do
3 hereby certify the foregoing transcript of proceedings,
4 digitally recorded from 10:02:25 to 12:30:43, is prepared
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10 Deborah A. Mastrantonio, AOC #474
11 G & L TRANSCRIPTION OF N.J.

Date: February 14, 2013

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