Superior Court of New Jersey
Appellate Division
Docket No.

WORLD MISSION SOCIETY CHURCH OF GOD Plaintiff-Respondent v. MICHELE COLÓN Defendant-Appellant	Civil Action On request for leave to appeal the orders denying Defendant's motion to dismiss for failure to state a claim and motion for reconsideration entered in the Superior Court of New Jersey, Bergen County Docket No. BER-L-5274-12 Sat below: Honorable Rachelle L. Harz, J.S.C.

Appendix of Defendant-Appellant
Michele Colón

Volume 1 of 2

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RACHELLE L. HARZ
J.S.C.

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WORLD MISSION SOCIETY CHURCH OF GOD and MARK ORTIZ Plaintiff, vs. **MICHELE COLÓN and TYLER NEWTON,** Defendants.	**SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY** **DOCKET NO. BER-L-5274-12** **Civil Action** **DECISION**

Decided: August 7, 2013

Marco A. Santori, Esq., Diana R. Zborovsky, Esq., Andrew T. Miltenberg, Esq., appearing on behalf of the Plaintiffs, World Mission Society Church of God and Mark Ortiz (NESENOFF & MILTENBERG, LLP).

Paul S. Grosswald, Esq., appearing on behalf of the Defendants, Michele Colón and Tyler Newton.

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

Before this Court, Defendants, Tyler Newton (hereinafter "Newton") and Michele Colón (hereinafter "Colón"), have submitted their Motion to Dismiss Plaintiffs, World Mission Society Church of God (herein after "WMSCOG") and Mark Ortiz's (hereinafter "Ortiz") Second Amended Complaint for failure to state a claim upon which relief can be granted pursuant to Rule 4:6-2(e). Defendant, Newton, also moves to dismiss for lack of personal jurisdiction pursuant to Rule 4:6-2(b).

Background

WMSCOG's initial complaint was filed on July 11, 2012. Defendant Colón's initial Motion to Dismiss was filed on August 24, 2013. Plaintiffs filed their Motion to Amend their Complaint on November 20, 2012. Said Motion was made returnable by this Court the same

date as Colón's Motion to Dismiss which was January 11, 2013. Colón's Motion was denied without prejudice as Plaintiffs' application to file their First Amended Complaint was granted. The First Amended Complaint was filed on January 30, 2013. This Court, by Order of June 7, 2013, allowed the filing of Plaintiffs' Second Amended Complaint. Defendants' renewed Motion to Dismiss the Second Amended Complaint was filed on April 30, 2013. Oral argument was entertained on June 7, 2013.

If, on a Rule 4:6-2(e) motion, "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by Rule 4:46, and all parties shall be given reasonable opportunity to present all material pertinent to such a motion." Rule 4:6-2.

Though Defendants do not move for summary judgment, Rule 4:6-2 permits the Court to treat the motion as one for summary judgment where the Defendant relies upon evidence outside of the scope of the Complaint. If so, then the Defendant must carry the burden of demonstrating that there is no genuine issue of material fact as to any allegation in the Complaint. "A determination whether there exists a genuine issue of material fact that precludes summary judgment requires the trial judge to consider whether the evidence presented, when viewed in the light most favorable to the non-moving party, is sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the nonmoving party." Bd. of Fire Com'rs, Fire Dist. No. 1, Tp. of Millstone v. Cascella, 326 N.J. Super. 142, 145 (Law Div. 1998) aff'd sub nom. Bd. of Fire Com'rs, Tp. of Millstone v. Cascella, 326 N.J. Super. 83 (App. Div. 1999).

This Court, in allowing all parties to be given reasonable opportunity to present all material pertinent to a Summary Judgment Motion has received and reviewed over 1,000 pages contained in:

1. Memorandum of Law in Support of Defendant Colón's Motion to Dismiss the Complaint in Lieu of Answer and Motion to Strike.

2. Certification of Paul S. Grosswald and attached Exhibits 1 – 7.

3. Affidavit of Michele Colón and attached Exhibits A-C.

4. Defendant Colón's Reply Memorandum of Law in Support of Motion to Dismiss the Complaint in Lieu of Answer and Motion to Strike.

5. Second Grosswald Certification and attached Exhibits 8 – 25.

6. Second Colón Affidavit with Exhibit D.

7. Letter Brief in Opposition to the Motion to Amend the Complaint.

8. Third Grosswald Certification and attached Exhibits 26-27.

9. Third Colón Affidavit.

10. Memorandum of Law in Support of Defendants' Motion to Dismiss the Second Amended Complaint in Lieu of Answer and Motion to Strike.

11. Reply Memorandum of Law in Support of Defendants' Motion to Dismiss the Second Amended Complaint.

12. Fourth Certification of Paul S. Grosswald in Support of Defendants' Motion to Dismiss with Exhibits 28 – 41.

13. Fifth Certification of Paul S. Grosswald in Support of Defendants' Motion to dismiss with Exhibits 42 – 47.

14. Fourth Colón Affidavit with Exhibits E and F.

15. Fifth Colón Affidavit with Exhibit G.

16. Affidavits of Tyler Newton with Exhibits A - J.

17. Certification of Diana R. Zborovsky in Opposition to Defendants' Motion to Dismiss, Strike and Disqualify with Exhibits 1 – 7.

18. Memorandum of Law in Opposition to Defendant Michele Colón's Motion to Dismiss.

19. Memorandum of Law in Opposition to Defendants' Renewed Motion to Dismiss.

20. Letter brief in opposition to Defendants' Renewed Motion to Dismiss dated December 14, 2012.

This Court Ordered Plaintiffs on February 13, 2013, to provide to the Defendants all documents referred to in their Complaint pertaining to the internet or text messages containing statements that are alleged to be defamatory.

The Plaintiffs in their Second Amended Complaint allege seven causes of action: (1) defamation and conspiracy as to the WMSCOG, (2) defamation as to Ortiz, (3) false light/defamation by implication and conspiracy as to WMSCOG, (4) false light/defamation by implication and conspiracy as to Ortiz, (5) trade liable as to WMSCOG, (6) intentional infliction of emotional distress as to Ortiz, and (7) breach of contract as to WMSCOG. WMSCOG's First Amended Complaint is identical to WMSCOG's Second Amended Complaint but for this last cause of action which was added, specifically, breach of contract as to WMSCOG.

WMSCOG is the Ridgewood, New Jersey branch of a Korean based global church called World Mission Society Church of God. The WMSCOG was founded in 1964 and presently has over a million members worldwide. Colón is a former member of WMSCOG. She began publically criticizing WMSCOG after being a member of the organization for about one year. During that year, she married her husband, the Plaintiff Ortiz. Ortiz was added as a Plaintiff with the filing of the First Amended Complaint represented by the same counsel as WMSCOG. Ortiz is a member of the New Jersey Branch of WMSCOG.

In June of 2011, Colón and Newton began a series of purportedly defamatory attacks against WMSCOG. Newton allegedly created a Facebook group and Colón allegedly created YouTube videos for the purpose of attacking WMSCOG. Additionally, Newton operates an Internet website that criticizes WMSCOG. The website discusses the WMSCOG's teachings, methods, and practices and monitors the WMSCOG's worldwide activities. A number of

allegedly defamatory statements on the website and contained in the social media are enumerated in WMSCOG's Second Amended Complaint. Representative examples of the defamation complained of include allegations of money laundering, intentional destruction of families, deception, intimidation, misappropriation of finances and improper financial relationships between secular corporations, the WMSCOG and its senior leadership.

Colón maintains that WMSCOG is a cult and uses mind control and destroys families. Colón wrote a five-part story describing her experience, called "How the WMSCOG Turned My Life Upside Down" (hereinafter the "Story"). She became an activist, and began attending public meetings of the Ridgewood New Jersey Planning Board where variance issues pertaining to WMSCOG were being discussed. She also organized other members of the community to attend such meetings.

Personal Jurisdiction in New Jersey as to Defendant Newton

WMSCOG's initial Complaint was amended to name Newton, a critic of WMSCOG, whose website examiningthewmscog.com (hereinafter "Website"), publishes some of the alleged defamatory statements authored by Colón. Newton became a critic of the WMSCOG out of his general interest in religion. Colón's interest is as a former member of the WMSCOG. The Website went on-line in February, 2011. The Website contains a collection of articles, opinion pieces, public documents and former member testimony about WMSCOG. All of the materials that Newton has posted to the Website pertaining to WMSCOG were posted exclusively in Virginia.

In the fall of 2011, WMSCOG's prior counsel sent two cease and desist letters to Newton's internet service provider in Bulgaria. Newton refused to remove the Website in response to the letters. WMSCOG filed a lawsuit against him and Colón in Virginia (hereinafter

the "Virginia Case"), in the Nineteenth Judicial Circuit of Virginia, Fairfax County Courthouse, Case No. CL-2011-17163. Colón was dismissed from the Virginia Case on March 16, 2013 for lack of personal jurisdiction and the case continued against Newton. On December 6, 2012, WMSCOG filed a Motion in the Virginia Court for a Protective Order. The Honorable Charles J. Maxfield denied WMSCOG's request for a Protective Order. Judge Maxfield's written opinion dated July 20, 2012, provides in part:

> In response to the perceived defamation, WMSCOG filed a complaint against Colón and Newton with claims for defamation, statutory conspiracy, civil conspiracy, trade libel, tortious interference with a business expectancy, and negligent interference with a business expectancy. WMSCOG requested a permanent injunction requiring the removal of all purportedly defamatory material posted on the internet.
>
> WMSCOG predicates its request for a protective order entirely upon its concern that Newton will publish on the Website any discovery materials obtained. WMSCOG asserts the sole purpose of discovery is to allow parties to prepare for trial, and Newton should not be permitted to share discovery information with the public. WMSCOG contends Newton should be entirely precluded from taking any discovery in the matter. If Newton is permitted discovery, WMSCOG requests the discretion to classify materials as confidential and only viewable by counsel.
>
> WMSCOG filed its Complaint and specifically enumerated sixteen defamatory statements Newton purportedly made. Generally, Newton's interrogatories and requests for production of documents directly address the defamatory statements WMSCOG chose to be the predicate of its Complaint. The discovery propounded clearly seeks to obtain relevant and otherwise discoverable information.
>
> WMSCOG lodges a number of objections and purported classifications of confidential information with respect to Newton's discovery; however, WMSCOG predicates its assertion of good cause entirely upon the possibility Newton will publish discovery materials obtained on the Website. The only harm WMSCOG references are amorphous "threats" and "risks" that could befall the church and its members if Newton is permitted to publish discovery materials. Vague apprehensions with respect to

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

Judge Maxfield ordered discovery to be produced by a certain date. WMSCOG did not provide the requested discovery and Newton filed a motion for sanctions. At that point, WMSCOG made the decision to voluntarily dismiss the Virginia case and it was so dismissed on September 7, 2012. Significant to this Court, the case in Virginia was dismissed without prejudice. Jurisdiction as to Newton was established and uncontested in Virginia.

WMSCOG reinstituted similar litigation here in the State of New Jersey and Newton was added as a Defendant in the New Jersey case on or about January 30, 2013, when WMSCOG filed the First Amended Complaint.

Pursuant to a Consent Order filed on February 25, 2013, counsel for Michele Colón agreed to accept service of process on behalf of Newton without waiving personal jurisdiction. Newton is a resident of Virginia and accordingly, for New Jersey to assert personal jurisdiction over Newton, WMSCOG must establish that Newton has "certain minimum contacts with it, such that the maintenance of the suit does not defend tradition notions of fair play and substantial justice". Lebel v. Everglades Marina, Inc., 115 N.J. 317, 322 (1989).

When analyzing minimum contacts, the New Jersey Supreme Court distinguishes between contacts that establish general jurisdiction and contacts that establish specific jurisdiction. Waste Management v. Admiral Ins. Co., 138 N.J. 106 (1994). General jurisdiction

is established when the defendant's contact with the forum state are continuous and systematic. It is undisputed that Newton has no continuous or systematic contact with New Jersey. He lives in Virginia and does not work in New Jersey. He does not own any assets or property in New Jersey. There is no general jurisdiction over Newton. WMSCOG's assertion of specific jurisdiction over Newton is based on Newton's publication of alleged defamatory statements (hereinafter "challenged statements") on the Website and in a private Facebook group.

The Website provides information about the WMSCOG globally, primarily in the forms of articles organized by categories. The content on the site consists of articles, opinion pieces, public documents, and former member testimony. The Website does not sell any goods or services or raise any money. It does not engage its users in financial transactions of any kind.

The Facebook statement at issue was posted to a private Facebook Group called Former Members World Mission Society Church of God Cult (hereinafter "Facebook Group"). The Facebook Group consists of about 40 members, all of whom identify themselves as critics of the WMSCOG. Postings to the Facebook Group are not visible to the general public and are only visible to other members of the Facebook Group. None of the communications were commercial in nature. The Plaintiffs do not allege that any of the members of the Facebook Group were in New Jersey while interacting with Newton or that Newton would have known that he was interacting with anyone in New Jersey when posting the challenged statement.

When evaluating the fair play and substantial justice elements in the context of asserting personal jurisdiction, the Court must consider five factors: (1) the burden on the defendant; (2) the interest of the forum State; (3) the Plaintiffs' interest in obtaining relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the

shared interest of the several States in furthering fundamental substantive social policies. McKesson Corp. v. Hackensack Med. Imaging, 197 N.J. 262 (2009).

WMSCOG suffered no burden from litigating this matter in Virginia as they initially filed this case in Virginia. Notably, Virginia has a statute that imposes conditions on a party seeking a nonsuit or as we term it in New Jersey, seeking to voluntarily dismiss an action.

> §8.01-380. Dismissal of action by nonsuit; fees and costs.
>
> A. A party shall not be allowed to suffer a nonsuit as to any cause of action or claim, or any other party to the proceeding, unless he does so before a motion to strike the evidence has been sustained or before the jury retires from the bar or before the action has been submitted to the court for decision. After a nonsuit no new proceeding on the same cause of action or against the same party shall be had in any court other than in which the nonsuit was taken, unless that court is without jurisdiction, or not a proper venue, or other good cause is shown for proceeding in another court, or when such new proceeding is instituted in a federal court. If after a nonsuit an improper venue is chosen, the court shall not dismiss the matter but shall transfer it to the proper venue upon motion of any party.

Va. Code Ann. § 8.01-380 (emphasis added). The purpose of this statute was explained by the Fourth Circuit:

> The policies underlying Virginia's voluntary nonsuit procedure are manifestly those that traditionally have underlain this ancient procedure in its common law and statutory forms: to protect claimants having the laboring oar of proof from the common mischances of litigation, while at the same time protecting the courts and opposing parties from abuses of the nonsuit privilege.... [The venue restriction's] purpose is to minimize the risks of abuse by minimizing the potential benefits of being able once to recommence without prejudice and free of any limitations bar. In particular it scotches any opportunity to engage in secondary forum shopping with benefit of a trial run in a court of first choice. By this means claimants are encouraged to get it right the first time while a limited safety valve is yet preserved. The risk of wasted effort by the court venue choice is minimized, both by the in terrorem discouragement of nonsuits taken for forum shopping purposes, and, when nonsuit is taken, by the possibility that the

> earlier investment of judicial resources may be of value on retrial in the same court.

Yaber v. Allstate Ins. Co., 674 F.2d 232, 236-37 (4th Cir. 1982).

This Court recognizes that the Virginia nonsuit statute sets forth specific provisions to prevent forum shopping. In the Virginia Case, WMSCOG sought a protective order that would prevent Newton from publishing WMSCOG's discovery materials on the Website which was rejected by the Virginia Court. Thereafter, WMSCOG subsequently nonsuited (voluntarily dismissed) the case and refilled against Newton in New Jersey. At the time when WMSCOG made the decision to voluntarily discontinue the case, a discovery end date and trial date had been set. The case was litigated for nine months and based upon Newton's Second Affidavit in Support of Defendants' Motion to Dismiss, Newton had incurred significant legal fees. It is this type of litigation history and forum shopping that the Virginia nonsuit statute was enacted to prevent. There are no New Jersey policies that would be frustrated by this Court recognizing the purpose behind Virginia's nonsuit statute and enforcing that purpose in determining jurisdictional issues as to Newton.

There was no reason for WMSCOG to discontinue its prior case against Newton where jurisdiction was not contested, other than its disfavor with Judge Maxfield's decision. WMSCOG institutes this action against Newton here in New Jersey, arguing jurisdiction based on strained analysis of case law that does not involve internet issues. WMSCOG has failed to establish personal jurisdiction over Newton here in New Jersey: Virginia law required WMSCOG to reinstitute their suit and claims against Newton in Virginia. Furthermore, WMSCOG has failed to establish personal jurisdiction, either general or specific, over Newton in the State of New Jersey.

Newton's motion to dismiss for lack of personal jurisdiction is granted.

Mr. Ortiz's Causes of Action

As this Court has determined that Newton is not a viable Defendant in this action for reasons set forth above, this Court is focusing only on Defendant Colón's arguments to dismiss Ortiz's causes of action.

Plaintiff Mark Ortiz and Defendant Michele Colón were married on May 9, 2010. On July 27, 2012, Mr. Ortiz filed for divorce in the Superior Court of New Jersey, Family Division in Bergen County, New Jersey. On or around January 30, 2013, Mr. Ortiz was added as a Plaintiff in the instant case, with the filing of the First Amended Complaint. Mr. Ortiz's causes of actions in the Second Amended Complaint are defamation, false light/defamation by implication and conspiracy and intentional infliction of emotional distress.

This Court holds that any tort claims Mr. Ortiz has against Colón must be brought as part of the pending divorce proceeding. "The entire controversy doctrine requires that all claims between parties arising out of or relating to the same transactional circumstances be joined in a single action." Brennan v. Orban, 145 N.J. 282, 290 (1996) (internal quotation marks and ellipsis omitted). "New Jersey courts have held that this policy of mandatory joinder applies to family actions." Id. Specifically, the New Jersey Supreme Court has held that "marital torts, as a class, are to be considered as related to, not 'independent' of, divorce suits." Id., citing Tevis v. Tevis, 79 N.J. 422 (1979). Ortiz's tort claims in this action are against his wife. In New Jersey, a husband suing his wife for tortious conduct and seeking monetary damages for same, is a matter to be brought in the Family Division and not the Civil Division of the Superior Court of New Jersey.

Furthermore, Mr. Ortiz's claims are not so closely linked with the Church's claims so as to make it necessary for this Court to carve out an exception to the general rule of joining marital

torts with the divorce proceeding. The church's claims arise primarily out of allegedly defamatory statements that were posted to the Internet. Ortiz's claims arise primarily out of the meeting with Rick Ross, Colón's communication to Ortiz's mother and intentional infliction of emotional distress. Ortiz claims in the Second Amended Complaint reputational damage from Colón revealing his religious affiliation to those Ortiz did not want it revealed to, and reputational damage in that he is held in lowered estimation in the mind of his mother and family. These claims are specific to him and are not the same claims as WMSCOG.

This Court recognizes that Ortiz was not a party to the prior Virginia litigation against Newton. This Court wishes to parenthetically comment that the only challenged statements published by Newton that refer to Ortiz are those contained in Colón's Story. This Court has read the Story in its entirety and confirms the Story does not mention Ortiz by name.

Based on the foregoing, this Court dismisses without prejudice all causes of action by Ortiz as to Colón in this Civil Division litigation.

Breach of Contract Claim

This claim of the WMSCOG arises out of a non-disclosure agreement that Colón signed on September 4, 2010 while a member of WMSCOG. This Court has reviewed the non-disclosure agreement which was signed at the time that Colón received a copy of a book entitled Sermon Preaching Practice Level 1 (hereinafter the "Sermon Book").

The document is a one page document which states at the top "Church Of God Member Agreement" (hereinafter the "Agreement"). It is specifically stated that the object of the agreement is as follows: "The object of this Agreement is a book entitled Sermon Preaching Practice Level 1 (2-3B1007-1), hereinafter referred to as the "sermon book". The Sermon Book that has been given for use to the aforementioned member (initial) remains official property of

the Church of God". Thereafter, the terms of use are listed as subparagraphs a – i. The terms of use concerning subparagraphs a – h all concern the Sermon Book itself. The provision of subparagraph i is:

> General Agreement: By signing this Agreement, you hereby waive, release, and covenant not to sue the Church of God with respect to ANY matter/information relating to or arising out of your membership and/or attendance at the Church of God. The member agrees not to disclose any information whatsoever relating to their attendance, membership, teaching at the Church of God.

At the bottom of the Agreement, there is a clause that sets forth "By signing below, I agree to the terms and conditions for use of the sermon book." Colón signed her name, along with two witnesses below this clause.

It is clear to this Court that subparagraph i, which substantially deviates from the subject matter of the Agreement pertaining to the Sermon Book, imposes a broad restrictive covenant. On its face, the Agreement appears to have specific provisions all pertaining to the Sermon Book, however subparagraph i provides that Colón is prohibited from speaking about any aspect of her experience in the Church, to any person, for the rest of her life. Arguably, this could be interpreted to mean that she could not discuss with an attorney, an accountant, another religious advisor, or anyone in her family, anything having to do with WMSCOG.

There is no section in this Agreement with a separate heading calling to one's attention potential litigation issues or relinquishment of one's rights to access to the judicial system. The only sections that are delineated on the one page agreement are "Object of Agreement" and "Terms of Use". The font utilized in subparagraph i is the same font of the entire document except for the top heading which states "CHURCH OF GOD MEMBER AGREEMENT" and the two delineated sections "OBJECT OF AGREEMENT" and "TERMS OF USE", which are in

capital letters. There is nothing conspicuous about subparagraph i which is a relinquishment and waiver of access to the judicial system or freedom of speech.

In Fairfield Leasing Corp. v. Techni-Graphica, Inc., 256 N.J. Super. 538 (1992), the trial court declined to enforce a jury waiver clause that was not negotiated, was inconspicuous and was contained in a standardized form contract of adhesion executed without advice of counsel. All of those same elements are present in the case *sub judice* with the only difference being the focus was a jury waiver clause as opposed to this more inclusive clause which provides that by signing the Agreement, the individual waives, releases, and covenants not to sue the Church of God with respect to any matter/information relating to or arising out of their membership and/or attendance at the Church of God. The member also agrees not to disclose any information whatsoever relating to their attendance, membership or teaching at the Church of God. *A fortiori,* these provisions should be even more conspicuous than would be required by law in the State of New Jersey when one is waiving a jury trial. They are not.

A contract provision waiving access to the Courts and the right of a trial by jury, like other contract provisions, is subject to our jurisprudence on adhesion contracts and unconscionability. In deciding enforceability of an adhesion contract, courts consider not only the take-it-or-leave-it nature of the standardize form of the document by also the subject matter of the contract, the parties' relative bargaining positions, and the public interests affected by the contract. Id.

When determining whether a contract is unconscionable, the Court considers two factors: (1) unfairness in the formation of the contract, and (2) excessively disproportionate terms. These two elements have been labeled as "procedural" and "substantive" unconscionability, respectively. Williams v. Walker-Thomas Furniture Co., 350 F.2d 445 (D.C. Cir. 1965).

The second factor, substantive unconscionability, suggests the exchange of obligations so one-sided as to shock the court's conscience. Sitogum Holdings, Inc. v. Ropes, 352 N.J. Super. 555 (Ch. Div. 2002). WMSCOG argues that:

> In exchange for a book that is presumably important to the Church and its members, Plaintiff World Mission requested the member's agreement not to disclose any information relating to the book and the member's attendance, membership, and teaching at the Church. Certainly the sharing of a book that contains important and sacred information to a religious group may warrant the promise to keep that information, and any information related to the teachings from the book, is a logical and rational request, and not one that would shock the conscience of the court.

This Court finds that is not what was requested. What was requested by WMSCOG was far greater than that as the restrictions were not just related to the Sermon Book, membership, and teachings of the church, but entailed relinquishment of one's rights to sue WMSCOG with respect to any matter and complete non-disclosure as to any information relating to any aspect of the church to anyone.

This Court finds that subparagraph i was inconspicuous and was contained in a standard form contract of adhesion executed without the advice of counsel rendering it invalid and not binding between the parties.

In addition to the foregoing, the Agreement was not signed by a representative of WMSCOG and a review of the actions of both Colón and WMSCOG after September 4, 2010, signifies to this Court that neither party understood or believed there was a non-disclosure provision in place.

During this New Jersey litigation, this Court was advised in April, 2013 that Plaintiff had discovered a WMSCOG Agreement with Colón and sought to amend the Complaint for a second time to add a breach of contract claim. The conduct of the parties after they entered into this

Agreement and before they discovered that they disagreed with one another is significant evidence to this Court of their agreed intent regarding this non-disclosure provision. "The conduct of the parties after execution of the contract is entitled to great weight in determining its meaning." Joseph Hilton and Assoc., Inc. v. Evans, 201 N.J. Super. 156, 171 (App. Div. 1985). WMSCOG would have brought a breach of contract claim against Colón in their prior Virginia and New Jersey complaints had they truly believed a valid non-disclosure agreement existed between the church and Colón.

In reviewing Colón's Story, Colón describes that in April, 2011, the pastor of WMSCOG, Pastor Lee, asked her to sign a non-disclosure agreement which she refused to do. There is no dispute between the parties that Pastor Lee sought to have Colón sign a non-disclosure agreement on April 22, 2011. Clearly, if Pastor Lee had believed that Colón had previously entered into a non-disclosure agreement with WMSCOG on September 4, 2010, there would have been no reason for him to ask her to sign such an agreement in April, 2011. A course of previous dealing can fairly be regarded as establishing a basis for interpreting and giving meaning to the intention of parties as it relates to a contract. It is clear from a review of the actions and course of dealing between the parties, as well as the history of this litigation, that there was never an understanding between the parties that Colón had signed a non-disclosure agreement with WMSCOG. After Colón refused to sign the non-disclosure agreement in April, 2011, her association with the church ended.

Based upon the foregoing WMSCOG's breach of contract claim is dismissed with prejudice.

Trade Libel

Plaintiffs' Second Amended Complaint as and for a fifth cause of action asserts trade libel as to Plaintiff WMSCOG. In this cause of action, WMSCOG asserts that as a non-profit organization WMSCOG depends on revenue generated from the donations of its members and other benefactors to pursue its good works in the community to and for the continuation of its mission. The Complaint further alleges that Colón made false statements in the Local.com Post, the Yellowbot.com Post, the LAtimes.com Post, the Aidpage.com Post, the Kudzu.com Post, the Socialcurrent.com Post, the Chamberofcommerce.com Post, the Google.com Post, the Rick Ross Forum Post, the Examining Articles, the PVSA Article, the Destroys Families Video, the Variance Hearing Statements and the Financial Info Video. It is alleged in that these statements were false and communicated to millions of people via the internet at large and that as a result the WMSCOG has suffered reputational damage and pecuniary damage in that the statements have diminished WMSCOG membership growth, thereby diminishing the donated revenue WMSCOG receives from its members.

This Court notes that the relief sought in WMSCOG's cause of action for trade libel is identical to that sought in their causes of action for defamation and conspiracy and false light/defamation by implication and conspiracy.

The elements of trade libel are: 1) publication; 2) with malice; 3) of false allegations concerning its property, product or business, and 4) special damages, i.e. pecuniary harm. See, e.g., System Operations Inc. v. Scientific Games Development Corp., 555 F.2d 1131, 1140 (3d Cir. 1988); Lithuanian Commerce Corp. v. Sara Lee, 47 F. Supp. 2d 523, 537 (D.N.J. 1999); New Jersey Automobile Ins. Plan v. Sciarra, 103 F. Supp.2d 388, 409 (D.N.J. 1998). A product disparagement plaintiff must show "the publication of matter derogatory to plaintiff's business in

general of a kind calculated to prevent others from dealing with plaintiff or otherwise to disadvantageously interfere with plaintiff's relations with others." Binkewitz v. Allstate Ins. Co., 222 N.J. Super. 501, 516 (App. Div. 1988). Mayflower Transit, L.L.C. v. Prince, 314 F. Supp. 2d 362, 378 (2004).

Unlike ordinary defamation actions, an action for product disparagement "requires special damage in all cases ...." System Operations Inc., 555 F.2d at 1144 (citing Henry v. Vaccaro Const. Co. v. A.J. DePace, Inc., 137 N.J. Super. 512 (1975)). See also Restatement (Second) of Torts § 626 ("proof of special harm is required in all cases."). Additionally, "because this cause of action is designed to protect the economic interests of a vendor, the plaintiff must plead and prove special damages with particularity". Mayflower Transit, L.L.C. v. Prince, 314 F. Supp. 2d at 378 (citing Juliano, 1991 U.S. Dist. LEXIS 1045, 1991 WL 10023, at *5). As at least one court in this State has noted, the need to prove such special damages requires that Plaintiffs "allege either the loss of particular customers by name, or a general diminution in its business, and extrinsic facts showing that such special damages were the natural and direct result of the false publication." Id. Moreover, if predicating its claim on a general diminution in business, plaintiff "should have alleged facts showing an established business, the amount of sales for a substantial period preceding the publication, the amount of sales for a [period] subsequent to the publication, facts showing that such loss in sales were the natural and probable result of such publication, and facts showing the plaintiff could not allege the names of particular customers who withdrew or withheld their custom." Id.

WMSCOG in the instant case does not plead special damages with particularity and argues that it is not necessary to do so. At prior oral argument, pertaining to other applications, this Court had directed Plaintiffs' counsel to provide to defense counsel the names of individuals

who left WMSCOG as a result of the actions of Colón. Such a list and information was never provided. It was maintained by Plaintiffs' counsel at prior oral argument as well as in written submission that to provide personally identifying information of WMSCOG members is not required. It is the position of plaintiffs' counsel as set forth on Page 34 of its Memorandum of Law in Opposition to Defendant Michele Colón's Motion to Dismiss, that:

> Forcing Plaintiff World Mission divulge the identities of the innocent victims of Defendant Colón's attacks would be similarly unreasonable here. Specifically, it would violate its members' right to free association under the First Amendment to the United States Constitution. The First Amendment of the Constitution of the United States protects freedom of association, including the right to privacy with respect to that association. For example, the United States Supreme Court held in Bates v. Little Rock, 361 U.S. 515, 527 (1960) that compulsory disclosure of names of members and prospective members for the National Association for the Advancement of Colored People (NAACP) would create unjustified interference with the members' freedom of association, which is protected by the First Amendment and prohibited by the Due Process Clause of the Fourteenth Amendment. Similarly, compelling members of the Church to disclose their affiliation with a religious group is an invasion of members' privacy and a significant interference with their freedom of association. Religious association, which telegraphs a person's religious beliefs, is a highly personal and private matter. It is particularly unreasonable in light of the litany of other means by which Plaintiff World Mission can demonstrate its damages: numeric differences in volunteers, attendance, and donations, or a professional accounting. To compel disclosure of the identity of members or donors is wholly inappropriate, unnecessary, and unconstitutional, infringing on the freedom of association allotted to the Church's members. It is particularly unreasonable at this early stage of pleading.

This Court disagrees.

In Bates, two municipalities passed laws requiring the NAACP to disclose its membership list. Id. The NAACP resisted the disclosure out of fear that its members would be subjected to harassment and bodily harm. Id. at 523-24. The Supreme Court ruled that the laws

requiring the compulsory disclosure of the NAACP's membership violated the First Amendment because they infringed on the members' right to associate with the NAACP. Such a case is completely inapplicable here. WMSCOG is not being subjected to compulsory disclosure of its donors. WMSCOG voluntarily filed this action and asserted a claim for trade libel which requires proof of special damages.

The special damages element necessary to allege trade libel connecting WMSCOG's alleged decreased membership and donated revenue as being caused by Colón's statements has not been plead with specificity. It has been represented to this Court that WMSCOG will not disclose financial or membership information which this Court determines would be necessary to prove its claim for trade libel. WMSCOG will not provide Colón with their accounting and financial records or membership lists over any period of time. While the church argues to do so infringes on their constitutional rights, it was the church's decision to initiate and litigate this cause of action against Colón and she in turn has her rights as to their satisfying its burden of proof. A religious organization such as the WMSCOG is held to the same burden of proof standard as any other Plaintiff asserting a cause of action for trade libel.

Based on the foregoing, Plaintiff WMSCOG's cause of action for trade libel is dismissed with prejudice.

Variance Hearing Statements

Plaintiffs' Second Amended Complaint suggests that Colón attempted to hinder WMSCOG's efforts to obtain a building variance from the Ridgewood Planning Board. Paragraph 70 alleges that Colón publically stated that Plaintiff "damage[s] families, ruined [her] marriage, and takes its members' money."

This Court was provided with the audio and text of the Ridgewood Planning Board minutes from meetings which occurred on June 21, 2011, July 19, 2011, September 6, 2011, October 18, 2011, and January 17, 2012, by way of Newton's Affidavit dated August 22, 2012.

There is nothing in the public record indicating that Colón had any impact on the proceedings, or that any statement made by Colón was ever considered by the Planning Board. To the contrary, the public record reveals that Colón made one comment heard by the Planning Board. At the July 19, 2011 hearing, Colón stated, "I was a former member of the World Mission Society Church of God for about one year, a little over a year, and I just wanted to let the community know that this group is". At that point, the attorney for WMSCOG objected. No other statement regarding WMSCOG was made on the record by Colón.

At the July 19, 2011 hearing, the Planning Board's attorney found that the Plaintiff's application was incomplete. The board chairman found inconsistencies in the Plaintiff's application. On September 6, 2011, the Planning Board's attorney again found that the Plaintiff's plans were not complete.

The public record reveals that some people in the community were opposed to the Plaintiff receiving the variance. At the September hearing, some of the residents testified to the Planning Board that even without the variance, traffic at the church was already extensive.

On July 3, 2012, the WMSCOG withdrew its application for the variance. WMSCOG's counsel has provided nothing to this Court to indicate that Colón did in fact make the alleged statements at the variance hearings before the Ridgewood Planning Board and that the audio and text of the planning board meetings provided to this Court are not valid.

This Court finds that as a matter of law, WMSCOG cannot establish any claim that WMSCOG did not receive a variance from the Village of Ridgewood as a result of any defamatory statement made by Colón at the hearings before the Ridgewood Planning Board.

Defamation Analysis

The elements of a defamation claim are: "(1) the assertion of a false and defamatory statement concerning another; (2) the unprivileged publication of that statement to a third party; and (3) fault amounting at least to negligence by the publisher." DeAngelis v. Hill, 180 N.J. 1, 12-13 (2004). However, the fault requirement is raised to a standard of actual malice where the Plaintiff is a public figure, or where the challenged statements are pertaining to an issue of public concern. Senna v. Florimont, 196 N.J. 469, 496 (2008).

a. Public Figure

The question of whether an entity is a public figure for purposes of applying the actual malice standard is a question of law for the court to decide. See Rosenblatt v. Baer, 383 U.S. 75, 88 (1966). A public figure is one who achieves a certain public status "by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention." Gertz v. Robert Welch, 418 U.S. 323, 342 (1974).

WMSCOG agrees with Colón that the classification of a plaintiff as a public or private figure is a question of law to be determined initially by the Court. Hill v. Evening News Co., 314 N.J. Super. 545, 554-55 (App. Div. 1998) (citing Marcone v. Penthouse Int'l Magazine for Men, 754 F.2d 1072, 1082 n. 4 (3d Cir. 1985)). Defense counsel maintains the question of public figure status is a fact-intensive one, and the Court is required to make specific findings of fact on that status. Vassallo v. Bell, 221 N.J. Super. 347 (App. Div. 1987) (citing Barasch v. Soho Weekly News, Inc., 208 N.J. Super., 173 (App. Div. 1986)).

This Court agrees with WMSCOG's position that this issue of public figure status can be determined only after the facts are more fully developed on that issue through discovery. The question of public figure status of WMSCOG cannot be properly disposed of at this stage of the litigation as Plaintiff has had no opportunity to present evidence in support of its position that it is not a public figure.

b. Public Concern

To determine whether the challenged speech discusses matters of public concern, "a court should consider the content, form, and context of the speech." Senna v. Florimont, 196 N.J. 469, 497 (2008).

This Court will address whether or not the challenged statements involve matters of public concern at the time it will entertain the analysis as to whether or not WMSCOG is a public figure.

c. Actual Malice

In the event that this Court finds that WMSCOG is a public figure or that the challenged statements are pertaining to public concern, it will then have to be determined whether or not the statements were made with actual malice.

The First Amendment strictures on the law of defamation, are set forth in New York Times Co. v. Sullivan, 376 U.S. 254 (1964). The Court recognized that "debate on public issues should be uninhibited, robust and wide open, and ... may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials." Id. To give effect to this precept, the Court held that a public official may not recover for defamatory falsehood related to his official conduct unless it is proven with convincing clarity that the statements were made with actual malice, which means with knowledge that it was false or with reckless

disregard of whether it was false or not. Id. Reckless disregard means that the defendant entertained serious doubts as to the truth of his publication. St. Amant v. Thompson, 390 U.S. 727 (1968).

Whether or not Colón acted with or without actual malice requires discovery prior to this Court's determination on that issue. Such a determination cannot be made at this stage of the litigation.

d. "Of and Concerning" the Plaintiff

"An indispensable prerequisite to an action for defamation is that the defamatory statements must be of and concerning the complaining party." Durski v. Chaneles, 175 N.J. Super. 418, 420 (App. Div. 1980). The Plaintiff has a significant burden to plead the of and concerning element of a defamation claim with specificity. When the statements concern groups, as here, Plaintiffs face a more difficult task. The rationale for this rule is to protect freedom of public discussion, except to prevent defamatory statements reasonably susceptible of special application to a given individual.

Significant argument and documentation has been provided to this Court regarding defamatory statements put forth by the Plaintiffs which the Defendants maintain are not "of and concerning" the Plaintiff WMSCOG, the branch of the World Mission Society Church of God located in Ridgewood, New Jersey. Plaintiffs have responded by indicating that the Defendants have not carried their burden in a summary judgment motion in demonstrating that all of the publications are not "of and concerning" the Plaintiff WMSCOG. This Court agrees.

However, it is ultimately WMSCOG's burden and not Colón's burden to prove that the alleged defamatory publications are "of and concerning" the Plaintiff WMSCOG. There is no burden shifting analysis pertaining to such an issue. WMSCOG has provided to Colón the

challenged statements that are being alleged as defamatory and it is the burden of WMSCOG to establish that that alleged statements are "of and concerning" the Ridgewood Branch of World Mission Society Church of God. Colón, as a defense, may assert that a statement is not "of and concerning" WMSCOG, however, it is not Colón's ultimate burden of proof to carry. Discovery for both parties shall be conducted on this issue.

e. Opinion, Opinion Mixed with Fact, and Opinions Impliedly Based Upon Unknown Facts

This Court has been provided with printouts of all of the alleged defamatory statements in WMSCOG's possession regarding the various on-line posts, complete copies of the Examining Articles, copies of the YouTube videos of the Destroys Families Video and Financial Info Video, together with transcriptions, as well as significant information pertaining to the PVSA Article, as well as other information pertaining to the Business Reviews, Rick Ross Forum Posts and Facebook Posts. In this case, this Court must decide whether the opinions contained in these forums are non-actionable opinions, actionable opinions mixed with fact or actionable opinions that are impliedly based upon unknown facts. Generally the question of whether a communication is defamatory is a question of law. See Farber v. City of Paterson, 440 F. 3d 131 (3d Cir. 2006). However, if the words are susceptible of either a defamatory or non-defamatory meaning resolution must be left to the trier of fact. Critical to the question of whether or not Defendant's statements are actionable are three factors: "(1) the content, (2) the verifiability, and (3) the context of the challenged statement." Ward v. Zelikovsky, 136 N.J. 516 (1994).

WMSCOG has not engaged in discovery. Colón cannot carry the burden at this stage of the litigation of demonstrating that there is no genuine issue of material fact as to whether the challenged statements are non-actionable opinions, actionable opinions mixed with fact or actionable opinions that are impliedly based upon unknown facts.

"A determination whether there exists a genuine issue of material fact that precludes summary judgment requires the trial judge to consider whether the evidence presented, when viewed in the light most favorable to the non-moving party, is sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the nonmoving party." Bd. of Fire Com'rs, Fire Dist. No. 1, Tp. of Millstone v. Cascella, 326 N.J. Super. 142, 145 (Law Div. 1998) aff'd *sub nom.* Bd. of Fire Com'rs, Tp. of Millstone v. Cascella, 326 N.J. Super. 83 (App. Div. 1999).

Issues of material fact that preclude summary judgment are apparent. Significantly, Colón has recently filed a Complaint on April 19, 2013, against WMSCOG, BER-L-3007-13, wherein she asserts many allegations similar to the challenged statements. As counsel for WMSCOG points out, Colón pleads many of the same statements in her Complaint as fact that she argues are opinion in the defense of this case. For example, in her Complaint Colón states that the WMSCOG uses fraudulent means to gain tax exemption, lied to the IRS, funnels profits from businesses for tax reasons, is a criminal business enterprise, is a profit-making enterprise that recruits employed people who can donate more to the Church, and that its goal is not to advance religion but to commit crimes. She specifically pleads as fact that the WMSCOG deprived her of sleep to weaken her mind.

The argument presented by WMSCOG of Judicial Estoppel, which prevents a party from making a factual assertion in one proceeding when it had made a contradictory assertion in another proceeding, is duly noted by this Court.

Discovery must be conducted as to whether the challenged statements are opinion, opinion mixed with fact, or opinions impliedly based upon unknown facts.

Statute of Limitations

The statute of limitations for a defamation action in New Jersey is one year, measured from the date of publication of the challenged statement. N.J.S.A. 2A:14-3. Moreover, New Jersey has adopted the "single publication rule," which holds that:

> where an issue of a newspaper, magazine or edition of a book contains a libelous statement, plaintiff has a single cause of action and the number of copies distributed is considered as relevant for damages but not as a basis for a new cause of action -- the single publication rule.

Barres v. Holt, Rinehart & Winston, Inc., 131 N.J. Super. 371, 374-75 (Law Div. 1974), aff'd, Barres v. Holt, Rinehart & Winston, Inc., 141 N.J. Super. 563, 564 (App. Div. 1976), aff'd, Barres v. Holt, Rinehart & Winston, Inc., 74 N.J. 461 (1977). The single publication rule has been extended to Internet publications:

> Internet publication of a document, where that document remains unchanged after its original posting, is subject to a one-year statute of limitations that runs from the date of publication of the alleged libel or slander.

Churchill v. State, 378 N.J. Super. 471, 478 (App. Div. 2005).

Accordingly, the limitations period for each statement posted to the Internet runs from the date the statement was first posted online and remains unchanged. The initial New Jersey Complaint was filed on July 11, 2012.

WMSCOG has not provided the dates for many of the challenged statements in its pleadings. The omission of such dates must be remedied. New Jersey requires defamation claims to be plead with particularity. See, e.g., Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 768 (1989); Kotok Bldg. v. Charvine Co., 183 N.J. Super. 101, 103-05 (Law Div. 1981).

WMSCOG argues that its Statute of Limitations runs from January, 2012 when their Virginia Complaint was filed in the Circuit Court of Fairfax County, Virginia, under Index No. 2100-17163 (it is not clear to this Court the exact date the Complaint was filed in January). WMSCOG argues that the Statute of Limitations of one year from July 11, 2012 does not apply pursuant to the Doctrine of Equitable Tolling. This Court cannot address this issue at the present time as the dates of the publications of many of the alleged defamatory statements have not been provided and accordingly, this Court cannot make a determination as to any applicable issue pertaining to the Statute of Limitations. It is also noted that the Complaint filed in Virginia is not identical to the initial Complaint or Amended Complaints filed in the New Jersey action. Therefore, this Court needs to not only determine the date a challenged statement was published, but also whether or not it was pled in the Virginia litigation, thereby allegedly placing Colón on notice of the claim.

WMSCOG shall provide the dates of the alleged defamatory statements during discovery in order that the issue of Statute of Limitations can be appropriately addressed by this Court at a later date.

Conclusion

Based upon the foregoing, Defendants Motion to Dismiss the First Count as to defamation and conspiracy as to the WMSCOG is DENIED; the Second Count as to defamation as to Ortiz is GRANTED; the Third Count as to false light/defamation by implication and conspiracy as to WMSCOG is DENIED; the Fourth Count as to false light/defamation by implication and conspiracy as to Ortiz is GRANTED; the Fifth Count as to trade liable as to WMSCOG is GRANTED; the Sixth Count as to intentional infliction of emotional distress as to

Ortiz is GRANTED; and the Seventh Count as to breach of contract as to WMSCOG is GRANTED.

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

Dated: August 7, 2013

FILED
AUG 07 2013
RACHELLE L. HARZ
J.S.C.

HONORABLE RACHELLE L. HARZ, J.S.C.
Superior Court of New Jersey, Law Division
Bergen County Justice Center
10 Main Street, Chambers 453
Hackensack, New Jersey 07601
(201) 527-2685

This Order is prepared and filed by the Court:

WORLD MISSION SOCIETY CHURCH OF GOD and MARK ORTIZ Plaintiffs, vs. **MICHELE COLÓN and TYLER NEWTON,** Defendants.	**SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY** **DOCKET NO. BER-L-5274-12** **Civil Action** **ORDER**

THIS MATTER having been opened to this Court by Defendants seeking to dismiss Plaintiffs' Second Amended Complaint pursuant to Rule 4:6-2(e) and Defendant Tyler Newton seeking to dismiss the Second Amended Complaint for lack of personal jurisdiction pursuant to Rule 4:6-2(b), and this Court having considered all submissions and oral argument having been held on June 7, 2013,

IT IS on this 7th day of August, 2013,

ORDERED that Defendants Motion to Dismiss the First Count as to defamation and conspiracy as to the World Mission Society Church of God (hereinafter "WMSCOG") is DENIED, the Second Count as to defamation as to Mark Ortiz is GRANTED, the Third Count as to false light/defamation by implication and conspiracy as to WMSCOG is DENIED, the Fourth Count as to false light/defamation by implication and conspiracy as to Mark Ortiz is GRANTED, the Fifth Count as to trade liable as to WMSCOG is GRANTED, the Sixth Count as to intentional infliction of

emotional distress as to Mark Ortiz is GRANTED and the Seventh Count as to breach of contract as to WMSCOG is GRANTED pursuant to this Court's written Decision; and it is further

ORDERED that Defendant Michele Colon shall answer Plaintiffs' Second Amended Complaint as to Counts One and Three within thirty (30) days; and it is further

ORDERED that a Case Management Conference shall be held on August 27, 2013 at 1:30 p.m. in Judge Harz's relocated Chambers 312 to set down a discovery schedule.

This a copy of this Court's Decision of same date and Order has been provided to all counsel by the Court.

Honorable Rachelle Lea Harz, J.S.C.

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Attorney at Law
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Attorney for Defendant,
Michele Colón

FILED
OCT 04 2013
RACHELLE L. HARZ
J.S.C.

WORLD MISSION SOCIETY CHURCH OF GOD, et al. Plaintiffs, v. MICHELE COLÓN, et al. Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY DOCKET NO. BER-L-5274-12 Civil Action **ORDER**

THIS MATTER having been presented to the Court by Paul S. Grosswald, attorney for Defendant Ms. Colón, by way of Motion for Reconsideration, and the Court having considered all of the papers and arguments submitted in support of and in opposition to said Motion; and for good cause shown;

IT IS on this 4th day of October, 2013,

ORDERED that Ms. Colón's Motion for Reconsideration is ~~GRANTED~~ Denied pursuant to Rule 4:49-2 be granted; and it is further

ORDERED that all of Plaintiff World Mission's claims for false light invasion of privacy are hereby DISMISSED; and it is further Denied

ORDERED that all claims arising out of statements that do not explicitly reference Plaintiff World Mission on their face, as delineated in the attached Rider, are hereby DISMISSED; and it is further Denied

Denied

ORDERED that all claims arising out of statements that were never produced by Plaintiff World Mission, as delineated in the attached Rider, are hereby DISMISSED; and it is further

Denied

ORDERED that all claims arising out of statements that are legally protected as opinion, as delineated in the attached Rider, are hereby DISMISSED; and it is further

ORDERED that a copy of this Order shall be served by the Defendants' counsel upon all counsel of record, within 7 days of its entry.

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

This Motion was:
X Opposed
_ Unopposed

The provisions of 4:49-2 have not been met. Defendant Michele Cedón restates the same arguments relied on in previous applications to this Court.

FILED
FEB 13 2013
RACHELLE L. HARZ
J.S.C.

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Attorney for Defendant,
Michele Colón

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

THIS MATTER having been presented to the Court by Paul S. Grosswald, attorney for Defendant Michele Colón, by way of Motion to Dismiss for Failure to Make Discovery, and the Court having considered all of the papers and arguments submitted in support of and in opposition to said Motion; and for good cause shown;

IT IS on this 13th day of February, 2013,

ORDERED ~~that~~ Defendant Colon's ~~Motion to~~ Dismiss Plaintiff World Mission's Complaint be granted without prejudice, pursuant to R. 4:23-5(a)(1); and it is further

ORDERED that counsel for Plaintiff World Mission, pursuant to R. 4:23-5(a)(1), shall forthwith serve a copy of this Order on Plaintiff World Mission by regular and certified mail, return receipt requested, accompanied by a notice in the form prescribed by Appendix II-A of the Rules Governing the Courts of the State of New Jersey, specifically explaining the consequences of (1) failure to comply with its discovery obligations and (2) failure to file and serve a timely motion to restore; and it is further

* See attached Rider

DA 1

ORDERED that Plaintiff World Mission pay to Defendant Colón the reasonable expenses incurred in obtaining this Order, including attorney's fees, pursuant to Rule 4:23-1(c); and it is further

ORDERED that a copy of this Order shall be served by Defendant Colón's counsel upon all counsel of record within 3 days of its entry.

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

This Motion was:
✓ Opposed
___ Unopposed

RIDER

World Mission Society Church of God v. Michele Colon
Docket No. BER-L-5274-12

Before this Court are two motions. Plaintiff's counsel has filed a Motion for a Protective Order and defense counsel filed a Motion to Dismiss the Complaint as against Michele Colon for failure to make discovery.

On today's date, this Court conducted a telephone conference call with counsel on the record. For reasons set forth on the record, it is hereby,

ORDERED that Plaintiff provide by April 15, 2013, all documents referred to in the First Amended Complaint pertaining to the internet or text messages containing statements that are alleged to be defamatory, and it is further

ORDERED that all other aspects of these applications are denied without prejudice until determination of Defendant's pending Motion to Dismiss, which shall be heard on May 3, 2013 at 11:00 a.m., and it is further

ORDERED that a telephone conference call shall be conducted on the record on April 12, 2013 at 10:00 a.m.