PAUL S. GROSSWALD
Attorney at Law
140 Prospect Avenue, Suite 8S
Hackensack, NJ 07601
(917) 753-7007
Attorney for Defendant,
Michele Colón

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 **DEFENDANT MICHELE COLÓN'S NOTICE OF MOTION FOR RECONSIDERATION**

TO: ANDREW T. MILTENBERG, ESQ.
Nesenoff & Miltenberg, LLP
363 Seventh Avenue, 5th Floor
New York, NY 10001

COUNSEL:

PLEASE TAKE NOTICE that the undersigned, attorney for Defendant Michele Colón will apply to the Superior Court of New Jersey, Law Division, Bergen County, located at the Justice Center, 10 Main Street, Hackensack, New Jersey, on Tuesday, August 27, 2013, at 1:30 pm, or as soon thereafter as counsel can be heard, pursuant to Rule 4:49-2, for an Order amending the Court's August 7, 2013 Order to:

1) dismiss all of Plaintiff World Mission's claims for false light invasion of privacy;

2) dismiss all claims arising out of statements that do not explicitly reference Plaintiff World Mission on their face, including all claims arising out of statements that were never produced by Plaintiff World Mission; and

3) dismiss all claims arising out of statements that are legally protected as opinion.

PLEASE TAKE FURTHER NOTICE that in support of said Motion, Ms. Colón shall rely upon the accompanying Letter Brief, the Certification of Paul S. Grosswald in Support of Ms. Colón's Motion for Reconsideration, and attached Exhibits A - D.

PLEASE TAKE FURTHER NOTICE that oral argument is requested if this application is opposed.

A proposed form of Order is attached.

No pre-trial conference, arbitration proceeding, calendar call or trial date has been set.

A discovery end date has not been assigned to this matter.

PAUL S. GROSSWALD
Attorney for Defendant,
Michele Colón

Dated: August 9, 2013

By: Paul Grosswald
PAUL S. GROSSWALD

PAUL S. GROSSWALD
Attorney at Law

140 Prospect Avenue, Ste. 8S
Hackensack, NJ 07601
Admitted in NJ & NY

Phone: (917) 753-7007
Fax: (212) 671-1321
pgrosswald@hotmail.com

August 9, 2013

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

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

Dear Judge Harz:

I represent the Defendant Michele Colón in the above-referenced matter. I am submitting this letter brief in support of Ms. Colón's motion for reconsideration, pursuant to Rule 4:49-2.

I. False Light

On August 7, 2013, the Court issued a written Order and Decision (hereinafter, the "Decision") pertaining to the Defendants' Motion to Dismiss. (Grosswald Cert. in Support of Ms. Colón's Mot. for Reconsideration, Exs. A & B). In the Order, the Court dismissed every count in the Second Amended Complaint except for Counts 1 and 3. In the Decision, the Court presented the reasons for keeping Count 1 in the case, and the reasons for dismissing Counts 2, 4, 5, 6, and 7. However, the Court failed to provide the reasoning pertaining to Count 3, which is the claim of False Light Invasion of Privacy as to Plaintiff World Mission.

As the Defendants argued in their motion to dismiss papers (see Ms. Colón's Dec. 3, 2013 Reply Br., pp. 88-89), a corporation such as Plaintiff World Mission has no standing to sue for invasion of privacy. N.O.C., Inc. v. Schaefer, 197 N.J. Super. 249, 253 (Law Div. 1984); see also Oberweis Dairy, Inc. v. Democratic Cong. Campaign Comm., Inc., 2009 U.S. Dist. LEXIS 18514, *3-5 (N.D. Ill. Mar. 11, 2009) (collecting cases from around the country holding that corporations have no standing to sue for privacy torts, including false light).[1] Therefore, there is no legal basis for allowing Count 3 of the Second Amended Complaint to go forward.

Moreover, it appears that the Court does not understand the damages that Plaintiff World

[1] All unpublished cases cited in this letter brief are attached to the Grosswald Certification as Exhibit C.

Mission is attempting to recover with its false light claim. On page 17 of the Decision, the Court stated:

> 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.

That is not true. In fact, the relief sought by Plaintiff World Mission in its false light claim is very different from the relief sought in its defamation and trade libel claims. In the defamation and trade libel claims, Plaintiff World Mission seeks to recover damages from lost donations allegedly resulting from the publication of the challenged statements. In the false light claim, however, Plaintiff World Mission seeks to recover for the emotional damages allegedly suffered by its members who had their privacy invaded by the publication of the challenged statements. As explained by Plaintiff World Mission in its December 14, 2012 Letter Reply Brief for the Motion to Amend:

> Ms. Colon, on the other hand, did not lie about a corporation's inanimate product: she did not claim that, for example, XYZ Corporation's widgets were defective or that ABC Corporation's repair services were inferior. In those scenarios, the corporation has no standing to sue because neither the widgets nor the services - inanimate and unfeeling - can be said to have suffered any cognizable harm, emotional or otherwise. In the case at bar, however, Ms. Colon lied about the beliefs and activities of World Mission's members - real people with rights to privacy like any other. Ms. Colon did not generally target everyone in New Jersey, and she did not harm everyone in New Jersey; she specifically targeted and harmed Plaintiff World Mission's members, and she should be held liable for it.

(Pl.'s Dec. 14, 2012 Letter Br., pp. 13-14.) In other words, Plaintiff World Mission is claiming that its members suffered emotional damages from a privacy invasion, and it - the corporation - wants to be compensated for those emotional damages. Plaintiff World Mission clearly has no standing to make such a claim. The people who have supposedly suffered this emotional damage have not decided to sue Ms. Colón. Yet, the corporation is attempting to recover damages on behalf of all of those people. It should be noted that if this Court were to allow the corporation to recover such damages, the corporation would have no obligation to give that money to the people who actually suffered the emotional damage, and in whose name the money was recovered. Rather, the church could simply pass the money on to its headquarters in Korea, where the money could be used however the leaders saw fit. The members who supposedly suffered the emotional damage would likely never even know that money had been recovered on their behalf. In short, the false light claim represents nothing more than an attempt by the church to mislead the Court into giving it money it is not entitled to. The false light claim is not being made in an attempt to advance a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. The claim is simply frivolous.

Therefore, Ms. Colón respectfully requests that Count 3 be dismissed. If this Court is not willing to dismiss Count 3 then Ms. Colón respectfully requests that this Court state on the record what the legal basis is for allowing a corporation to sue for invasion of privacy.

I. Of and Concerning

The Court decided not to dismiss any of the challenged statements from the case on "of and concerning" grounds. This is an extremely surprising ruling in light of the lack of ambiguity with respect to certain statements that explicitly refer to other branches of the church which are not parties in this case. The reasoning provided by the Court for rejecting Ms. Colón's of and concerning argument is as follows:

> 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.

(Dec., p. 24.) The Court went on to say that "Discovery for both parties shall be conducted on this issue." (Id., p. 25.)

Respectfully, this Court has misunderstood and misapplied the law. The Defendants were not bringing a summary judgment motion with respect to the of and concerning issue. The Defendants were bringing a motion to dismiss. On a motion to dismiss, documents referenced in the Complaint are incorporated by reference into the Complaint and treated as part of the pleadings. See, e.g., Contel Global Mktg., Inc. v. Dreifuss, 2010 N.J. Super. Unpub. LEXIS 241, *22-23 (App. Div., Feb. 4, 2010) ("a document integral to or explicitly relied upon in the complaint may be considered without converting the motion [to dismiss] into one for summary judgment") (internal quotation marks omitted; brackets in original). The New Jersey Supreme Court has adopted the federal standard, stating that when "evaluating motions to dismiss, courts consider 'allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim." Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005) (quoting Lum v. Bank of Am., 361 F.3d 217, 222 n. 3 (3d Cir. 2004), cert. denied, 543 U.S. 918 (2004)).

Thus, each of the challenged statements described in the Second Amended Complaint is incorporated by reference into the pleadings. Moreover, the challenged statements were produced by Plaintiff World Mission, and the printed documents produced each contain Plaintiff World Mission's Bates stamp. Those documents were presented to the Court in the following exhibits:

1. Exhibit 32 of the Fourth Grosswald Certification, filed with the Defendants' April 30, 2013 brief;

2. Exhibit 38 of the Fourth Grosswald Certification, filed with the Defendants' April 30,

2013 brief (consisting of two video files)[1]; and

3. Exhibit 46 of the Fifth Grosswald Certification, filed with the Defendants' May 31 Reply Brief (consisting of additional pages from the Rick Ross Website posts).

Because all of those documents were produced by Plaintiff World Mission, there can be no dispute about the authenticity of the challenged statements presented in Exhibits 32, 38, and 46. All the Court needs to do is read or view those statements. Those statements that fail to explicitly mention the New Jersey church must necessarily be dismissed from the case for failure to state a claim (specifically, failure to plead the of and concerning element of defamation). There is no legal basis for requiring discovery to determine if the statements in Exhibits 32, 38, and 46 mention the New Jersey church or not. It is highly inappropriate to allow Plaintiff World Mission to drag Ms. Colón through a year or more of discovery just to determine whether or not the challenged statements make a reference to the New Jersey church, when the answer to that question is readily apparent on the face of the documents contained in Exhibits 32, 38, and 46, all of which are part of the pleadings.

Therefore, Ms. Colón respectfully requests that this Court take another look at the of and concerning issue, and dismiss the following statements from the case on the grounds that they explicitly refer to the WMSCOG as a group or to branches of the church other than the New Jersey branch:

- the statement alleged in SAC ¶ 30(h) (chamberofcommerce.com) (Ex. 32, Colón 68-70), which explicitly refers to the WMSCOG in Santee, California;

- the statement alleged in SAC ¶ 33 ("Lying to the IRS" Statement) (Ex. 32, Colón 71-72), which explicitly refers to the WMSCOG of California;

- the statement alleged in SAC ¶ 34 ("Organizational Control" Statement) (Ex. 32, Colón 73), which explicitly refers to the WMSCOG of Illinois, WMSCOG of Seoul, Korea, and WMSCOG as a group;

- the statement alleged in SAC ¶ 36 ("Cult" Statement) (Ex. 32, Colón 74), which explicitly refers to the WMSCOG of Illinois;

- the statements alleged in SAC ¶¶ 54 - 57 (Destroys Families Video), which explicitly refer to the WMSCOG only as a group;

- the statements alleged in SAC ¶ 62 (Financial Info Video), which explicitly refer to the WMSCOG of Illinois; and

- the statements alleged in SAC ¶ 64 (Financial Info Video), which explicitly refer to the WMSCOG of Illinois.

[1] Ms. Colón also provided the Court with transcriptions of the videos, the accuracy of which was never disputed by Plaintiff World Mission. (See 1st Colón Aff., Ex. C & 2nd Colón Aff. Ex. D.)

Because each of those challenged statements is incorporated by reference into the pleadings, and each fails to make any reference to the New Jersey church, each of those challenged statements should be dismissed. If this Court is unwilling to dismiss those statements, then the Court should state on the record what the legal basis is for allowing the New Jersey church to sue over statements which do not mention the New Jersey church. The failure of the Court to dismiss challenged statements that are explicitly not referencing Plaintiff World Mission constitutes clear, reversible error, and should be remedied immediately.

Moreover, the following challenged statements which were not produced by Plaintiff World Mission should be dismissed from the case on the grounds that Plaintiff World Mission has no factual basis for any claims arising out of such statements: SAC ¶ 30(a); 30(b), 30(c), 30(d), 30(f), 30(g), 30(i). In fact, ¶ 30d of the SAC does not even allege that the challenged statement described therein was about Plaintiff World Mission.

II. Opinion Versus Fact

On the issue of opinion versus fact, the Court applied the incorrect legal standard. The standard applied by the Court was as follows:

> 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.

That is not the standard to be applied when addressing the opinion versus fact issue. That last line - saying that the issue must be given to the trier of fact if the words are susceptible of either a defamatory or non-defamatory meaning - is not applicable to the opinion versus fact determination. To see this, the Court need look no further than the case from which that language came. The Court failed to cite that case, but Ms. Colón cited it on page 40 of her December 3, 2012 Reply Brief on the first motion to dismiss. The complete language, with case citation is as follows:

> Whether language is defamatory on its face is a question of law for a court to resolve. In so doing the judge must evaluate the statement in context, construing it according to the meaning that a reasonable recipient would give it. When the language at issue is capable of both a defamatory and a nondefamatory meaning, there exists a question of fact for a jury to decide.

Karnell v. Campbell, 206 N.J. Super. 81, 88 (App. Div. 1985) (internal citations omitted). Up to this point it appears as if Karnell is articulating the same rule applied by this Court. Yet, two paragraphs later in Karnell, the Appellate Division made a very significant distinction:

> The question of whether the statement has a defamatory meaning does not even arise, however, unless the statement is an assertion or implication of "fact."

Id. at 89. In other words, the opinion versus fact issue is a threshold question that must be decided first. Only if the Court determines that the challenged statement is a statement of fact may the Court then move on to the second question - which is whether or not the factual statement has a defamatory or nondefamatory meaning. It is at that point, and only at that point, that a statement that is capable of both a defamatory and nondefamatory meaning presents a factual dispute for a jury to decide.

However, when deciding the first question of opinion versus fact, the standard is as described on page 40 of Ms. Colón's December 3, 2012 Reply Brief on the first motion to dismiss:

> If a statement could be construed as either fact or opinion, a defendant should not be held liable. An interpretation favoring a finding of "fact" would tend to impose a chilling effect on speech.

Lynch v. New Jersey Educ. Ass'n, 161 N.J. 152, 168 (1999). In other words, when a statement can be construed as either fact or opinion, the proper course of action is not to order discovery to determine if the statement is a fact or opinion. Rather, the proper course of action is to defer to the defendant's First Amendment rights, and dismiss the claim to avoid imposing a chilling effect on speech. When following such a course of action, the Court should never arrive at the second question of whether the statement has a defamatory or nondefamatory meaning. Therefore the rule cited by the Court - finding that there is an issue to be decided by the trier of fact - should have never been applied. Ms. Colón respectfully requests that this Court analyze the opinion versus fact issue again, applying the correct legal standard as described above. If this Court is not willing to apply the standard from Lynch, then the Court should state on the record what the legal basis is for distinguishing Lynch or otherwise refusing to be bound by a decision of the New Jersey Supreme Court.

Finally, the Court must not allow itself to be distracted by the red herring that the Plaintiff World Mission keeps harping on - the fact that Ms. Colón filed a tort suit against the church and related people and entities. Ms. Colón's suit is irrelevant because the people reading the challenged statements online would not have known about Ms. Colón's tort suit. According to Karnell, "the judge must evaluate the statement in context, construing it according to the meaning that a reasonable recipient would give it." Karnell, 206 N.J. Super. at 88. Therefore, the challenged statements have to be read with an eye towards the factual content that is self-contained within the statements themselves, not with an eye to the factual content that was injected into the author's tort suit two years later. After all, a statement can be treated as an opinion for purposes of defamation law, and yet the factual basis for that opinion may still form a

cause of action in a separate case. The sleep deprivation example cited by the Court on page 26 of the Decision illustrates this point perfectly.

With respect to the sleep deprivation issue, the complete challenged statement, as produced by Plaintiff World Mission in the Destroying Families Video, is as follows:

> World Mission Society Church of God also uses sleep deprivation as a means to make their members more vulnerable to the indoctrination process. Members often do not leave the organization until 12:00 am and are encouraged to wake up at 5:00 am every morning to pray.

(Destroying Families Video 4th Grosswald Ex. 38; Destroying Families Tr., 2nd Colón Aff., Ex. D.) When viewed in context, it is clear that the second sentence is a factual assertion. The first sentence is an opinion based on the disclosed factual assertion contained in the second sentence. Nevertheless, Plaintiff World Mission is not claiming that the second sentence - the factual sentence - is defamatory. (See SAC ¶ 56.) Rather, Plaintiff World Mission is only claiming that the first sentence - the opinion sentence - is defamatory. (Id.) In other words, Plaintiff World Mission is attempting to separate the conclusion sentence from its underlying factual basis, so that it will only have to litigate the conclusion, without litigating the underlying facts. It is not difficult to infer why Plaintiff World Mission is choosing this strategy. There are countless former members of Plaintiff World Mission who can testify that it is true that "Members often do not leave the organization until 12:00 am and are encouraged to wake up at 5:00 am every morning to pray." If Plaintiff World Mission was to litigate that fact, it would not only lose, but it would also be subject to frivolous lawsuit sanctions because of the lack of good faith it would necessarily need to have to assert that such a statement is false. So instead, Plaintiff World Mission is focusing on Ms. Colón's characterization of the fact - that the church "uses sleep deprivation as a means to make their members more vulnerable to the indoctrination process" - on the assumption that Ms. Colón's characterization will be harder for Ms. Colón to prove true. The problem is, once Plaintiff World Mission separates Ms. Colón's characterization from its underlying factual basis, the characterization must necessarily be treated as an opinion, for all the reasons discussed in Ms. Colón's prior briefs. See, e.g., Restatement (Second) of Torts § 566, comment (b) ("The simple expression of opinion, or the pure type, occurs when the maker of the comment states the facts on which he bases his opinion of the plaintiff and then expresses a comment as to the plaintiff's conduct, qualifications or character. The statement of facts and the expression of opinion based on them are separate matters in this case . . . .) (emphasis added). Because the opinion in the first sentence is based on a disclosed fact - as expressed in the second sentence - the opinion in the first sentence is treated separately from the second sentence, and must be regarded as nonactionable protected speech. The only way that the first sentence could be found to be defamatory is if Plaintiff World Mission had alleged in the SAC that the second sentence (which forms the basis for the first sentence) was defamatory, which it did not do - and cannot do without violating the frivolous litigation law. Therefore, the only correct legal conclusion is for the Court to find, as a matter of law, and based on the pleadings - which includes the challenged statements in Exhibits 32, 38, and 46 - that the sleep deprivation statement alleged in ¶ 56 of the SAC is a nonactionable opinion.

Nothing in that analysis changes just because Ms. Colón filed a tort suit, alleging facts pertaining to sleep deprivation. Unlike Plaintiff World Mission, Ms. Colón has made it clear in her Complaint that she is intending to litigate all of the underlying facts supporting the sleep deprivation statement. Therefore, by the time the jury receives Ms. Colón's case, the sleep deprivation statement will have been infused with such specific factual content that the jury will be able to determine whether the sleep deprivation accusation is true or false. The jury in the defamation case, however, will never be able to determine if the sleep deprivation accusation is true or false because Plaintiff World Mission is not willing to inject the statement with factual content by litigating the underlying facts. In fact, the only thing the defamation jury would ever learn about the underlying sleep deprivation facts is that Ms. Colón asserts that "Members often do not leave the organization until 12:00 am and are encouraged to wake up at 5:00 am every morning to pray," and that Plaintiff World Mission does not challenge the truth of that assertion. At that point, the only thing left for the jury to do is decide whether or not the opinion that Ms. Colón formed based on that fact is true for false - something which a jury has no business deciding.

In other words, in defamation law, context is king. The way in which a statement is framed when presented to the jury changes its context, such that a statement can be deemed to be an opinion in one case and a factual assertion in another. If that result seems unfair to Plaintiff World Mission, then it is only because of Plaintiff World Mission's cynical strategy of separating Ms. Colón's characterizations from the underlying facts, in order to prop up a case that has no legal or factual basis to be brought.

The same analysis discussed herein with respect to the sleep deprivation statement applies equally to each of the other challenged statements. This is especially true with respect to the statements accusing Plaintiff World Mission of being a "cult" that uses "mind control." It should be noted that in Ms. Colón's Complaint, she never explicitly calls the WMSCOG a "cult," and the only appearance of the phrase "mind control" occurs in the attached exhibit which consists of a website that was created and published by the WMSCOG. Therefore, Ms. Colón respectfully requests that this Court re-evaluate each of the challenged statements with respect to each statements' status as a fact or opinion, in light of the correct legal standard described herein.

Finally, since the Court has "duly noted" Plaintiff World Mission's judicial estoppel argument, "which prevents a party from making a factual assertion in one proceeding when it had made a contradictory assertion in another proceeding" (Dec., p. 26), the Court should also take note of the following exchange that took place at the January 11, 2013 hearing in this matter:

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

THE COURT: It's their opinion.

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

THE COURT: It's their opinion.

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

(Jan. 11, 2013 Tr. 23:10-25, Grosswald Cert., Ex. D.) After admitting in that proceeding that Ms. Colón is expressing an opinion when she calls Plaintiff World Mission a "cult," counsel for Plaintiff World Mission has continued to litigate the "cult" statements as if they were factual. Duly noted.

For the foregoing reasons, Ms. Colón respectfully requests that this Court grant her motion for reconsideration, pursuant Rule 4:49-2. Thank you for your attention to this matter.

Sincerely,

Paul Grosswald

Paul S. Grosswald

cc by email: Andrew T. Miltenberg, Esq. (amiltenberg@nmllplaw.com)
Marco A. Santori, Esq. (msantori@nmllplaw.com)
Diana R. Zborovsky, Esq. (dzborovsky@nmllplaw.com)

PAUL S. GROSSWALD
Attorney at Law
140 Prospect Avenue, Suite 8S
Hackensack, NJ 07601
(917) 753-7007
Attorney for Defendant,
Michele Colón

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 _____ day of _____, 2013,

ORDERED that Ms. Colón's Motion for Reconsideration is GRANTED 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

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

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

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 _____ days of its entry.

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

This Motion was:
____ Opposed
____ Unopposed