VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

WORLD MISSION SOCIETY CHURCH OF GOD, A NEW JERSEY NON-PROFIT CORPORATION,	
Plaintiff,	
v.	**Case No. 2011-17163**
MICHELE COLON and TYLER J. NEWTON	
Defendants.	

DEFENDANT TYLER J. NEWTON'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF HIS DEMURRER

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INTRODUCTION

Defendant Tyler J. Newton, pursuant to Va. Code § 8.01-273, demurs to the Complaint filed by Plaintiff World Mission Society, Church Of God A NJ Nonprofit Corporation[1] ("WMSCOG" or "Plaintiff"). Plaintiff has failed to plead sufficient facts to support any of its claims in this matter, and the facts as alleged do not support any cause of action against Mr. Newton. The entire lawsuit is based on a series of alleged statements critical of the Plaintiff's religious organization, its leadership, its teachings, and/or its methods. The statements are non-actionable expressions of opinion, and they enjoy protection under the First Amendment no matter how much Plaintiff may disagree with them.

ARGUMENT

I. THE COMPLAINT FAILS TO STATE A CLAIM FOR DEFAMATION OR TRADE LIBEL. (Counts 1, 2, and 5)

Not every unflattering or critical remark will constitute actionable defamation. *Lamb v. Weiss*, 2003 WL 23162338, *1 (Winchester Cir. Ct. July 9, 2003) ("There is common agreement that a communication that is merely unflattering, annoying, irksome, or embarrassing, or that hurts the plaintiff's feelings, without more, is not actionable") (citation omitted). To be defamatory, a statement must be more than merely critical; it must "make the plaintiff appear odious, infamous, or ridiculous." *Chapin v. Greve*, 787 F. Supp. 557, 562 (E.D. Va. 1992) (applying Virginia law). To assert a claim of defamation, a plaintiff must show that a defendant published such a statement, that it was both factual in nature and false, and that it concerns and harms the plaintiff or the plaintiff's reputation. *Jackson v. Hartig*, 274 Va. 219, 227-28 (2007); *Food Lion v. Melton*, 250 Va. 144, 150 (1995). Expressions of opinion are not actionable as defamation. *Hyland v. Raytheon Tech. Servs. Co.*, 277 Va. 40, 47 (2009). A plaintiff in a

[1] On information and belief, the Complaint contains a misnomer with respect to the Plaintiff's actual corporate name.

defamation action must plead the statement with particularity, identifying the exact words claimed to be defamatory. *Federal Land Bank v. Birchfield*, 173 Va. 200, 215 (1939); *see Koegler v. Green*, 78 Va. Cir. 478, 485 (Hanover 2009) (sustaining demurrer where plaintiff failed to allege specific words).

In addition, the First Amendment requires that in defamation actions brought by "public figures" such as WMSCOG,[2] the plaintiff must prove that the allegedly defamatory statement was made with "actual malice," meaning that it was made "with knowledge that it was false or with reckless disregard of whether it was false or not." *Hatfill v. The New York Times Co.*, 532 F.3d 312, 317 (4th Cir. 2008).

Neither Count 1 nor Count 2 contains sufficient facts upon which to base a defamation action against Defendant Newton. There is only a single statement attributed to Mr. Newton: that "Plaintiff 'totally ha[s] to be laundering money.'" (*See* Compl. ¶ 33). This statement alone cannot support a defamation action against Mr. Newton for several reasons.

First, the statement has not been pled with particularity. Plaintiff's use of brackets around one of the letters shows that it is paraphrasing the statement, and Plaintiff has failed to quote the statement in its entirety, choosing to isolate only a part of it. Second, as a result of Plaintiff's failure to quote the entire statement, it is unclear whether the statement "concerns and harms" the plaintiff itself—the New Jersey branch of a larger religious organization—as opposed to the church headquarters, one of its leaders, or one of its other branches. Third, the alleged statement would not be reasonably understood to be an assertion of fact but merely

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[2] The plaintiff in this case is a branch of a church boasting "over 1.2 million members" around the world (Compl. ¶ 12); as such, the plaintiff is a public figure and must allege and prove that Defendants acted with actual malice. *See Church of Scientology of California v. Siegelman*, 475 F. Supp. 950, 954 (S.D.N.Y. 1979) (holding the Church of Scientology of California and the Founding Church of Scientology of Washington, D.C., two branches of a larger religious organization, to be public figures for purposes of their defamation action).

rhetorical hyperbole, which is not actionable. *See CACI Premier Tech., Inc. v. Rhodes*, 536 F.3d 280, 300-02 (4th Cir. 2008) (affirming summary judgment for talk show host on ground that her statements that government contractor had employees in Iraq who "could kill without being held to account" and were "all over the country, killing people" were quintessential examples of non-actionable rhetorical hyperbole rather than statements offered as actual facts). Finally, the Complaint lacks any factual allegations to support the conclusory assertion that Mr. Newton made the statement with actual malice.

Plaintiff also seeks to impose liability on Mr. Newton for agreeing to post on his website certain articles critical of the WMSCOG that were allegedly authored by Defendant Michele Colon. Overlooking for a moment the fact that the articles consist purely of non-actionable opinion, mere republication of a defamatory statement written by someone else does not impose liability on the person who republishes the statement unless the republication is an independent act done without the authority of the author. *Weaver v. Beneficial Fin. Co.*, 199 Va. 196, 199 (1957). Here, Plaintiff alleges that Ms. Colon, the author of the allegedly defamatory statements on Mr. Newton's website, "acted in concert with and conspired with Defendant Newton to publish false and defamatory statements" on the site. (*See* Compl. ¶ 67). Because Plaintiff alleges that Ms. Colon wrote the articles and approved their publication on the website, the facts as alleged fail to state a cognizable claim against Mr. Newton.

Finally, Count 5 is for "trade libel." "Trade libel" has never been recognized as a cause of action by the Virginia Supreme Court. Therefore, Count 5 should be dismissed.

II. THE COMPLAINT FAILS TO STATE A CLAIM FOR STATUTORY OR COMMON LAW CONSPIRACY. (Counts 3 and 4)

Under Va. Code § 18.2-499, the business conspiracy statute, an actionable conspiracy arises where "Any two or more persons...combine, associate, agree, mutually undertake or

concert together for the purpose of...willfully and maliciously injuring another in his reputation, trade, business or profession." An act is "willful and malicious" under the statute if it was undertaken to "injure the plaintiff intentionally, purposefully, and without legal justification." *Simmons v. Miller*, 261 Va. 561 (2001). A common law conspiracy exists under Virginia law where "two or more persons combined to accomplish, by some concerted action, some criminal or unlawful purpose, or some lawful purpose by a criminal or unlawful means." *Commercial Business Systems, Inc. v. Bellsouth Services, Inc.*, 249 Va. 39 (1995).

The Complaint is completely devoid of any allegations of unlawful or criminal activity. Such allegations are necessary to survive demurrer to a conspiracy claim. *See Station #2, LLC v. Lynch*, 280 Va. 166, 173 (2010) (affirming dismissal of statutory conspiracy claim, noting that "to survive demurrer, an allegation of conspiracy, whether criminal or civil, must at least allege an unlawful act or an unlawful purpose") (citing *Hechler Chevrolet, Inc. v. General Motors Corp.*, 230 Va. 396, 402 (1985)). The only facts alleged in the Complaint relate to statements allegedly made by the Defendants that criticize the Plaintiff church. Because these statements were protected opinion and otherwise not defamatory, any supposed agreement to publish them online would not constitute an "unlawful act" or "unlawful purpose." Therefore, the Court should sustain the Demurrer.

III. THE COMPLAINT FAILS TO STATE A CLAIM FOR TORTIOUS INTERFERENCE. (Counts 6 and 7)

To state a claim for tortious interference with a business expectancy, a plaintiff must demonstrate (1) the existence of a valid business expectancy; (2) knowledge of the expectancy on the part of the interferor; (3) intentional interference inducing or causing a termination of the expectancy; (4) that the defendant employed improper means or methods to interfere with the expectancy; and (5) resultant damage to the party whose relationship or expectancy has been

disrupted. *Maximus, Inc. v. Lockheed Info. Mgmt. Sys. Co., Inc.*, 254 Va. 408, 414 (1997); *see also Duggin v. Adams*, 234 Va. 221, 226-227 (1987).

Virginia law protects only specific expectancies. *See American Tel. & Tel. Co. v. Eastern Pay Phones, Inc.*, 767 F. Supp. 1335, 1340 (E.D. Va. 1991), *vacated on other grounds*, 789 F. Supp. 725 (E.D. Va. 1992) ("The expectancy of remaining in business is too general to support a tortious interference claim under Virginia law"). Likewise, the defendant's knowledge must be similarly specific. *See, e.g., Levine v. McLeskey*, 881 F. Supp. 1030, 1058 (E.D. Va. 1995) (applying Virginia law); *Long v. Old Point Bank*, 41 Va. Cir. 409, 428 (1997) (noting that knowledge of the *specific* business expectancy is sufficient to sustain the knowledge element in a claim of tortious interference) (emphasis added).

The Court should sustain the Demurrer to Count 6 because the Complaint fails to allege the existence of any specific business expectancy, other than to refer generally to WMSCOG's expectancy vis-à-vis its unnamed "members" and "other benefactors." (*See* Compl. ¶ 161). Similarly, Mr. Newton's alleged knowledge that WMSCOG depends on donations from these unnamed sources for its "general survival" is insufficient upon which to base a tortious interference claim. The Complaint also lacks any allegations connecting the allegedly defamatory statements with any specific donor's decision to stop sending money to the WMSCOG. Count 6 should be dismissed for these reasons.

Finally, Count 7 seeks to recover for "Negligent Interference with Business Expectancy." A claim for tortious interference requires that the actor's conduct be intentional and willful. *Maximus*, 254 Va. at 414. Therefore, Court 7 fails to state a claim and should be dismissed.

CONCLUSION

The Court should sustain the Demurrer because the Complaint fails to set forth any legal cognizable cause of action against Mr. Newton.

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By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2012, a true and correct copy of the foregoing Memorandum of Points and Authorities was served by facsimile on:

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