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TWENTIETH JUDICIAL DISTRICT

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July 23, 2012

*RE: Beaverton Grace Bible Church and Charles O'Neal v. Julie Anne Smith, Hannah Smith, Kathy Stephens, Jason Stephens and Meaghan Varela, Wash. Co. Case No. C121174CV*

Counsel,

Plaintiffs Grace Bible Church and its Pastor Charles O'Neal bring this action for defamation against defendants Julie Ann Smith, her daughter Hannah Smith and Meaghan Varela.<sup>1</sup> Pursuant to ORS 31.150, defendants Julie Ann Smith and Hannah Smith each filed a Special Motion to Strike plaintiff's claims pursuant asserting that each of plaintiff's claims was directed at protected speech<sup>2</sup>. While defendant's Special Motions to Strike claims in the original complaint

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<sup>1</sup> Claims against defendants Kathy Stephens and Jason Stephens were dismissed on motion of the plaintiff.

<sup>2</sup> Defendant Meaghan Varela filed Special Motions to Strike on June 12, 2012.

were pending, plaintiff filed an amended complaint. The amended complaint restated the original claims of defamation against defendant Julie Ann Smith and 6 separate claims of defamation were added. The single claim of defamation in the amended complaint against defendant Hannah Smith and the claims of defamation against defendant Varela were unchanged by the amended complaint. Thereafter, the Smith defendants and defendant Varela filed Motions to Strike the claims set forth in the amended complaint.

Defendant Julie Ann Smith's invitation to consider defendant's Special Motions directed against the original complaint in addition to those same Special Motions filed against the claims in the amended complaint is declined. Plaintiff's amended complaint simply adds 6 additional claims of defamation to the claims set forth in the original complaint<sup>3</sup>. No purpose would be served by ruling separately on the claims of the original complaint that are repeated in the amended complaint<sup>4</sup>.

Each Defendant has requested an award of costs and attorneys fees as provided by ORS 31.152(3).

These claims of defamation in the amended complaint began with a dispute regarding church governance between plaintiff O'Neal and defendants that were posted on two internet locations. The claimed defamatory statements by defendant Julie Ann Smith in paragraphs 10(b) – (k), and defendant Hannah Smith in paragraph (t) were posted on plaintiff O'Neal's Google website, and 6 additional claims against defendant Julie Ann Smith in paragraphs 10(l) – (q), and defendant Meaghan Varela in paragraphs 10(x), (y), (z) and (aa) were posted on defendant Julie Ann Smith's internet blog.

The claims of defamation from the amended complaint as regards defendant Julie Ann Smith are as follows<sup>5</sup>:

Paragraph 10(b): *"the pastor has chosen to mislead congregation and destroy relationships"* and *"accuses the pastor of narcissism in the pulpit"*

Paragraph 10(d): *"the pastor of this church thrives on control"* and that sadly, BCBG is more about the reputation of the pastor than real church and it is important for people to have an

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<sup>3</sup> The 6 additional claims appeared on Defendant Julie Ann Smith's internet blog, Beaverton Grace Bible Church Survivors (bgbc survivors/blogspot/com)

<sup>4</sup> *Sylmar Air Conditioning v. Pueblo Contracting Services Inc.*, 122 Cal App 4<sup>th</sup> 1049 (2004) cited by plaintiff is inapposite. In *Sylmar* the trial court had granted a motion to strike the claim, and the amended complaint remained pending requiring another motion to strike to be filed notwithstanding the court's previous ruling dismissing the claim.

<sup>5</sup> Paragraphs (e) and (f) allege republication of paragraph d, paragraph (i) alleges republication of paragraphs (g) and (h), paragraph (j) alleges a republication of paragraph (g), (h) and (i).

understanding of why this church is not a healthy place and would shout from the rooftop if my review prevents another family from getting sucked into the spiritual abusive environment and false teaching of the teaching presented by the current pastor and, To Chuck: if you would have manned up and acknowledged that we were parting ways because we weren't seeing eye to eye on certain issues, you would have never heard from us again. *But for you to lie to the congregation...and ...I am calling you out as a wolf for lying...* and we had information that would be damaging to your reputation...also you are really brilliant Chuck, but not so brilliant. Quite a few people can see through the false teaching and self aggrandizement."

Paragraph 10(g): *"leaders of cults convince their people that their church is the only true place to be...and turn a blind eye to known sex offenders in the church [and this is] spiritual abuse."*

Paragraph 10(h): republication of paragraph (g) adding, *"What we had was indoctrination...That is how cult leaders work. Don't waste your precious lives and relationships by being held emotionally/spiritually captive at this so called church"*

Paragraph 10(i): republication of paragraphs (g) and (h), adding *"how can she forget that her own beloved pastor knew about a sex offender in the church that had access to the nursery and children in the church and did not have any safeguards in place."*

Paragraph 10(k): *"This is a very destructive and disturbing church... The extra biblical teaching is wrong. The gossip/slander, disclosure of what goes on in private counseling sessions, sex offenders having free reign in children's areas with no disclosure to parents... This is not a safe place"*

Paragraph 10(l): *"[people had] suffered at the hands of the pastor of Beaverton Grace Christian Church."*

Paragraph 10(n): *"[Chuck O'Neal was a liar who] was forced to fabricate a lie that we were under church discipline."*

Paragraph 10(o): *"[the pastor] abused them...they were spiritual abuse victims...and spiritual lives are at stake."*

Paragraph 10(q) *"[a] former pastor was interfering in our lives."*

The Claims of defamation as regards defendant Hanna Smith read as follows:

Paragraph 10(t): *"Chuck micro manages everything down to the tiniest detail, like having to have every song approved by him before it's sung. But he ignores, or shoves under the carpet dangerous activities and bullies people to get his way...this is no way biblical. Grace is the last thing you'll find at that church."*

The claims of defamation as regards defendant Varela are as follows:

Paragraph 10(x): “Meaghan Varela posted a comment [on defendant Julie Ann Smith’s blogspot] falsely stating *Chuck yelled all kinds of reviling remarks about us and came to her house with a mob of 30 or more with hatred in their faces*. She also stated [people at the church] were *being blindly persecuted*. Further that many folks were abused at Beaverton Grace Christian (sic) Church and that the website was established by Julie Ann Smith exposing the darkness and deception that existed at Beaverton Grace Bible Church.

Paragraph 10(y) “Meaghan Varela posted a comment [on defendant Julie Ann Smith’s blogspot] *she was harassed by church members*.

Paragraph 10(z) “Meaghan Varela posted a comment [on defendant Julie Ann Smith’s blogspot] stating I cry for the abuse I allowed my children to endure because I was doing what I and my husband thought was the right thing to do...and her children suffered humiliation and shame.

Paragraph 10(aa): “Meaghan Varela posted a comment [on defendant Julie Ann Smith’s blogspot] stating that members of the church were being *spiritually abused and silenced through fear*.

### **1. Defendant’s Special Motions to Strike**

In a civil action involving claims of defamation, the court’s pretrial evaluation of those claims is proscribed by ORS 31.150. The trial court’s review of a Special Motion to Strike the claimed defamatory statements must determine if the statements are protected speech. The evaluation of the claimed defamatory statements occurs in a two part process as set forth in ORS 31.150(2)(c) and (d). First, defendants are required to make a threshold showing the claimed defamatory statements were made in a public forum in connection with an issue of public interest, or implicate constitutional free speech rights in connection with a public issue, or an issue of public interest. If defendants establish those elements, the burden of proof shifts to plaintiffs to demonstrate there is a probability they will prevail on the claims by presenting substantial evidence of a prima facie case. ORS 31.150(3). *Staten v. Steele*, 222 Or App 17 (2008).

#### **a. Whether the Claimed Defamatory Statements Were Made in a Public Forum in Connection With an Issue of Public Interest**

Plaintiff does not dispute that the internet is a public forum. Moreover, the claimed defamatory statements posted on the blogs and websites herein were accessible to the public, which is consistent with other courts holding that the blog posts on the internet is a public forum. The parties however disagree whether the claimed defamatory statements made over the internet constitute an issue of public interest.

Defendants rely on the language of ORS 31.152(4) which requires the court to liberally construe

the statute in favor of the defendants and contend that Oregon courts have approved a broad interpretation on “issues of public interest”. Defendants argue the facts in this case demonstrate the claimed defamatory statements concern an issue of church governance touching on issues of salvation, Biblical interpretation and church doctrine, and by their nature concern issues of public interest. Moreover, plaintiffs argue that because the church and its affiliated churches are widespread, and plaintiff’s use of the internet and other media to attract others to his teachings, demonstrate plaintiff treated his beliefs and practices regarding church governance as an issue of public interest.

No Oregon court has directly addressed whether statements involving church practices are matters of public interest. Oregon trial courts have considered situations regarding internal or shareholder communications, newspaper and internet publications regarding statements made in a classroom which were posted on a website, and statements made over the radio regarding business practices and statements by church officials for statements that pastor had misappropriated funds and was dishonest. See *Gardner v. Martino*, 563 F3rd 981 (9<sup>th</sup> Cir 2009). However, Oregon Courts look to California case law for guidance regarding the application of ORS 31.150 to ORS 31.155. *Page v. Parsons*, 249 Or App (2012).

Plaintiffs’ contend that the claimed defamatory are not matters of public interest. They assert the claimed defamatory statements arise from a private controversy and the issue of church governance is a concern to a relatively small audience. However, the public/private distinction analysis in the California cases relied upon by plaintiff is not fully determinative of the issue herein. The record in this case demonstrates the claimed defamatory statements were part of an ongoing conversation regarding church governance that was conducted over the internet which was accessible by the public. In *Traditional Cat Association Inc. v. Gilbreath*, (118 Cal App 4<sup>th</sup> 392 (2004), the court held that statements on a web site regarding a controversy between cat associations concerned a matter of public interest for California’s version of ORS 31.150<sup>6</sup>. In this case, plaintiff O’Neal’s website and defendant Julie Smith’s blogs attracted widespread attention beyond the members of the immediate church.<sup>7</sup> The widespread public interest in the content of the dispute between the plaintiff and his congregation, in addition to the interest in the effect of that relationship with the larger church community is reflected by the number of responses and messages on the blog.

In addition, as regards paragraphs 10 (g), (i) and (k) the issues of child protection and child sexual abuse within the church, are topics of widespread concern and media attention and therefore matters of public interest. Given the record and the plain wording of ORS 31.152(4) which requires the court to liberally construe the statute in favor of the exercise of rights of

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<sup>6</sup> Compare *Weinberg v. Feisel*, 110 Cal 4<sup>th</sup> 1122 (2003) cited by plaintiffs which the court found that because accusations of criminal conduct to a group of 20 enthusiasts was a private dispute about a private controversy.

<sup>7</sup> Exhibits A-F 3<sup>rd</sup> Williams Declaration

expression, the court finds that each of the claimed defamatory statements concern issues of public interest.

**b. Analysis of Plaintiffs Prima Facie Case**

Consequently, the court having found that each of the claims of defamatory statements concern a matter of public interest, the burden shifts to plaintiff to present substantial evidence of a prima facie case of defamation. ORS 31.150(3). Plaintiff must present substantial evidence that defendants made defamatory statements that were published; and plaintiff suffered harm as a result. In identifying what words constitute a defamatory statement, several general principles apply. The 9<sup>th</sup> Circuit Court adopted a three part test to evaluate alleged defamatory statements: 1) The meaning must be evaluated in the full context of the statements; 2) whether the general tenor of the entire work, including the subject of the statements, setting and format negates the impression of a provable fact, and 3) whether the statement is sufficiently factual to be susceptible of being proved true or false. *Underwager v. Channel 9 Australia*, 69 F3rd 361 (9<sup>th</sup> Cir 1995)

**i. Claimed Defamatory Statements by Defendant Julie Ann Smith**

Applying the foregoing analysis to the claims against Julie Ann Smith, the claimed defamatory statements can be separated into two groups. The first group must be viewed in the context of the entire blog posts that concern plaintiff O'Neal's manner of church governance.<sup>8</sup> If the statements viewed in their context cannot be taken literally as assertions fact then they are not actionable. *Art of Living Foundation v. Does* 2011 WL 2441898 (ND Cal June 15, 2011). Said differently,

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<sup>8</sup> Paragraph 10(b): "the pastor has chosen to mislead congregation and destroy relationships" and [accuses the pastor of] narcissism in the pulpit", Paragraph 10(d): "the pastor of this church thrives on control" and...is more about the reputation of the pastor than real church and it is important for people to have an understanding of why this church is not a healthy place and would shout from the rooftop if my review prevents another family from getting sucked into the spiritual abusive environment and false teaching of the teaching presented by the current pastor and, To Chuck: if you would have manned up and acknowledged that we were parting ways because we weren't seeing eye to eye on certain issues, you would have never heard from us again. But for you to lie to the congregation...and ...I am calling you out as a wolf for lying... and we had information that would be damaging to your reputation...also you are really brilliant Chuck, but not so brilliant. Quite a few people can see through the false teaching and self aggrandizement." Paragraph 10(h): "What we had was indoctrination...That is how cult leaders work. Don't waste your precious lives and relationships by being held emotionally/spiritually captive at this so called church", Paragraph 10(i): "[people had] suffered at the hands of the pastor of [BGC C]." Paragraph 10(n): "[Chuck O'Neal was a liar who] was forced to fabricate a lie that we were under church discipline", Paragraph 10(o): "the pastor] abused them...they were spiritual abuse victims...and spiritual lives are at stake", Paragraph 10(q) "[a] former pastor was interfering in our lives."



none of the claimed defamatory statements in paragraphs 10(b), (d), (h), (l) and (o) can be characterized as provable assertions of fact. The claimed defamatory statements in these paragraphs are expressions of defendant's subjective belief that her values and ideals regarding plaintiff's manner of church governance are superior. Each of defendant Julie Ann Smith's claimed defamatory statements read in their context internally, and as a group, within the ongoing internet discussion between the parties, are critical of the manner in which plaintiff O'Neal managed the relationship with his parishioners and conducts his church practices. Plaintiff has the right to govern his congregation in the manner in which he chooses, and defendant Julie Ann Smith is authorized by law to express her disagreement with his performance of those activities. Consequently, the foregoing claimed defamatory statements are dismissed.

As regards the second group of statements involving issues of child protection within the church identified in paragraphs 10 (g)(i) and (k), given the emotional nature of this issue, the court will comment specifically to explain the courts finding these statements also constitute opinion and do not amount to factual accusations. The claimed defamatory statement that the "*pastor knew about a sex offender in the church that had access to the nursery and children in the church and did not have any safeguards in place.*", or the claim that "*sex offenders having free reign in children's areas with no disclosure to parents... [and] is not a safe place*" are not factual allegations of criminal activity on behalf of plaintiff O'Neal. Defendant's statements argue plaintiff did not appreciate the risk or appropriately evaluate the dangerousness of others - which is her opinion. For example, who or what a "sex offender" is, can be interpreted differently by reasonable people. Consequently, whether or not "sufficient safeguards [were] in place" is defendant Julie Ann Smith's opinion.

**ii. Claimed Defamatory Statements Made by Defendant Hannah Smith**

As regards defendant Hanna Smith, the court finds that the claimed defamatory statement she posted on the internet, viewed internally and in the context of her internet discussion herein is an opinion<sup>9</sup>.

**iii. Claimed Defamatory Statements Made by Defendant Meaghan Varela**

As regards defendant Meaghan Varela, the court finds for the same reasons stated above, that the claimed defamatory statement she posted on the internet, viewed internally, and in the context of the defendant Varela's other internet postings herein, are opinions<sup>10</sup>.

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<sup>9</sup> Paragraph 10(t): "Chuck micro manages everything down to the tiniest detail, like having to have every song approved by him before it's sung. But he ignores, or shoves under the carpet dangerous activities and bullies people to get his way...this is no way biblical. Grace is the last thing you'll find at that church."