

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
COUNTY OF WASHINGTON

**BEAVERTON GRACE BIBLE
CHURCH, an Oregon non-profit
organization, and CHARLES O'NEAL,
an individual,**

Plaintiffs,

v.

**JULIE ANNE SMITH, HANNAH
SMITH, KATHY STEPHENS, and
JASON STEPHENS, individuals,**

Defendants.

Case No. C121174CV

**MEMORANDUM IN SUPPORT OF
SPECIAL MOTIONS TO STRIKE
FIRST AMENDED COMPLAINT**

**SUPPLEMENTAL TO THE SMITH
DEFENDANTS' MEMORANDUM IN
SUPPORT OF THE SPECIAL
MOTIONS TO STRIKE (ORIGINAL)
COMPLAINT**

ORS 31.150, *et seq.*

**JOINTLY FILED BY
DEFENDANTS JULIE ANNE SMITH**

HANNAH SMITH

**Hearing Date:
Closely Related Hearing Presently
Set:
May 21, 2012
9:00 am**

Recording requested

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I. INTRODUCTION.

A. STATUS OF THE CASE.

Plaintiffs Beaverton Grace Bible Church ("Church") and its pastor, Charles (Chuck) O'Neal ("Pastor") filed the original Complaint against defendants Julie Anne Smith, her daughter Hannah Smith, and other former members for "defamation" with this Court, on February 22, 2012. Defendants Julie Anne and Hannah filed timely Special Motions to Strike claims in the original Complaint on April 27, 2012. The Church and Pastor also filed an Amended Complaint ("AC") on April 27, 2012 (Appendix A to this Memorandum.)

According to the Civil Clerk, the Smiths' Special Motion (April 27, 2012) was filed and pending in this Court at 8:30 am. It is time-stamped before the filing of the Amended Complaint in the afternoon of April 27, 2012. Since the Special Motions were pending at the time of amending the complaint, the Amended Complaint does not moot the Special Motion of April 27. The Special Motion against the original Complaint must be heard. *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.*, 122 CalApp4th 1049, 1052, 18 CalRptr3d 882 (2004); *Page v. Parsons*, __OrApp__ (April 25, 2012), slip op at 19, 2012 WL 1416992, *8-9, and discussion in the Special Motions filed this date.

However, should the Court decline to consider the Motions against the original Complaint for any reason, Defendants Julie Anne Smith and Hannah Smith have now filed Special Motions against all the claims in Amended Complaint and file this Supplemental Memorandum regarding the new claims against Julie Anne. ORS 31.150, *et seq.*, particularly ORS 31.150(2)(c) and (d).¹

1. Appendix B to this Memorandum.

Julie Anne relies upon the Smith Defendants' Memorandum in Support filed April 27, 2012, and all other materials submitted therewith, as to all claims against her (original Complaint ¶¶ 9.a-9.k, AC ¶¶ 9.a-9.k), and additionally relies upon this Supplemental Memorandum for the newly stated claims in AC ¶¶ 9.l-9.q. She further relies upon all of the materials filed on April 27, 2012, against the original Complaint for the factual basis and legal authority for striking all of the claims against her in the Amended Complaint. To whatever extent necessary, Defendants incorporate by reference all these documents in the record.

Defendant Hannah Smith has also filed a Special Motion against the Amended Complaint (and to the extent the Court considers that AC as to Hannah) she relies upon the filings referenced above, including the discussion in the Memorandum in Support (April 27, 2012) as to the only claim stated against her, regardless of how it is numbered in the original Complaint or AC.

B. AMENDED COMPLAINT.

In addition to restating the complained-of words with the same paragraph numbers against Julie Anne, the Amended Complaint adds 6 new claims for "defamation" against Julie Anne. The repeated claims are AC, ¶¶ 9.a-9.k, and the new claims against Julie Anne are AC, ¶¶ 9.l-9.q. The AC repeats the same allegation of defamation against Hannah, only renumbering what was Complaint, ¶ 9.n as now AC, ¶ 9.t.

Once again the numerous claims against Julie Anne are based on isolated words plucked from longer statements made on the internet. They remain devoid of context. Specifically, as to the new claims, all of those words and phrases appeared on her blog, *Beaverton Grace Bible Church Survivors* (bgbcsurvivors/blogspot/com), and not on the Plaintiffs' Google

"reviews." Julie Anne described to the Court that she started a blog because Plaintiffs removed many of her "reviews," depriving her of context and interactive feedback. See Declaration of Julie Anne Smith (filed April 27, 2012) ("JAS Decl."), ¶¶ 40-42.

Regarding all the complained-of words, including the blog, Plaintiffs again allege the words are "false" [AC ¶¶ 11, 14]; and again make a vague, unsupported allegation of falsity in "innuendo." AC ¶ 14. Once again, they concede that they must prove the highest degree of "fault" for Julie Anne and Hannah. They allege that the phrases they complain of were made with "reckless disregard as to whether the accusations * * * were truthful or not." AC ¶ 15.

As discussed at length in the Smith Defendants' Memorandum in Support (April 27, 2012), at pp. 37-39, this degree of fault is "actual malice" and requires clear and convincing evidence of the subjective intent of each defendant to ignore the truth. *Id.*

Each Plaintiff still seeks \$250,000.00 in damages. AC., ¶ 20. Plaintiffs once again repeat the frivolous allegation that intend to seek "punitive damages." This is remains completely unfounded in Oregon law.²

II. FACTS.

Julie Anne and Hannah rely on the Facts stated at pp. 6-11 of the Memorandum In Support (April 27, 2012) and declarations in the record. As to the newly stated claims about her blog posts in the Amended Complaint, Julie Anne does have a personal blog hosted by Blogspot. JAS Decl., ¶ 42-3. She occasionally posts material on a variety of topics, usually on religious and family-themed matters: personal impressions, news stories, articles and texts

2. In *Wheeler v. Green*, 286 Or 99, 117-19, 593 P2d 777 (1979), the Oregon Supreme Court held that punitive damages cannot be imposed against any defamation defendant under any circumstances because of the prohibition in Oregon Constitution, Article I, § 8.

and other information she finds interesting. While expressing her spiritual thoughts in daily life and on religious practices generally, the blog entries do often mention Julie Anne's experiences with Plaintiffs, including the "excommunication" of her family by Plaintiffs and in responses to comments posted by others who dissented from Plaintiffs' Biblical interpretations and practices. JAS Decl., ¶¶ 40, 42. Her blog is interactive and allows anyone to respond to her statements and share comments or experiences. *Id.*, ¶ 43. It receives hundreds of hits daily. *Id.* The appearance and graphic presentation of the blog is readily discerned by Exhibits A-F, Third Declaration of Linda Williams ("3rd Williams Decl.") It has well over 11,000 page views by late April. *Id.*

Plaintiffs also rely upon discussion and incorporate by reference, Memorandum in Support (April 27, 2012), §§ II.B.1-3 "Summary of Special Motion Procedure and Facts," pp. 5-11.

III. DEFENDANTS MEET THE "ARISING OUT OF" PRONG.

A. INTERNET REVIEWS, BLOGS AND COMMENTS ARE ALL PART OF A PUBLIC FORUM.

Hannah's allegedly defamatory statements appeared on public internet forums. AC ¶¶ 8, 16. Julie Anne's words appeared on the Plaintiffs' "review" site and in her blog. The internet is a "public forum" for defamation purposes as discussed in Memorandum in Support (April 27, 2012) at § III.A, p. 12. A personal site maintained as an interactive site is itself a public forum. In *Gilbert v. Sykes*, 147 CalApp4th 13, 23, 53 CalRptr3d 752 (2007), the Court noted that the so-called defamation appeared on a site that was interactive and included "a contact page where readers can share their own experiences" [*Id.*] increasing the ability of the public to contribute to the topics under discussion. Such interactivity is recognized as having legal significance in defamation law: it engages the public and also offers the same

forum to the potential defamation plaintiff "to set the record straight." *Gardner v. Martino*, 563 F3d 981, 989 (2009), applying ORS 31.150.

Blogs are now recognized as a particular internet form and forum for speech. See, *Obsidian Finance Group, LLC v. Cox*, 812 FSupp2d 1220, 1224 (D Or 2011) (Appendix C.)

B. THE STATEMENTS ARE ON TOPICS OF PUBLIC INTEREST.

Hannah and Julie Anne rely upon and incorporate Memorandum in Support (April 27, 2012), at § III.B, pp. 13. Further, to demonstrate the "public interest" in reading and sharing personal thoughts on Scripture, salvation, church practices and the preaching and disciplinary practices of Plaintiffs in particular, Julie Anne's blog, *Beaverton Grace Bible Church Survivors*, has received over 11,000 page views since February, 2012 [see "pageviews" on each of Exs. A-F, 3rd Williams Decl.]. It averages about 200 page views a day. It has many comments, some on the general topics, as well as from those who are undergoing some form of discipline based on shaming and ostracism which they attribute to Plaintiffs' particular Biblical interpretations and application of doctrine. The blog is on topics of public interest.

Therefore, the burden now shifts again to Plaintiffs to produce substantial evidence on each element of their claims for defamation as set out in RESTATEMENT (2D) TORTS, § 613(1):

(a) the defamatory character of the communication,

* * *

(f) special harm resulting to the plaintiff from its publication,

(g) the defendant's negligence, reckless disregard or knowledge regarding the truth or falsity and the defamatory character of the communication, and

(h) the abuse of a conditional privilege.

IV. PLAINTIFFS' MUST NOW MEET HEAVY BURDENS.

Defendants have discussed that the requirement that Plaintiffs offer "substantial evidence" to establish a "probability" of prevailing links "probability" to the strength of the evidence. *Staten v. Steel*, 222 Or App 17, 31, 191 P3d 778 (2008). Defendants incorporate by reference Memorandum in Support (April 27, 2012), § IV, pp. 13-14. Plaintiffs' burden is a heavy. *Id.*

Further, we note that the pleadings are defective in supplying any context for evaluation by this Court and the claims should be dismissed as not stating defamation on that basis. The allegedly defamatory statements range from a single adjective ("abusive" ¶ 9.o) to sentence fragments taken completely out of the context of the far longer blog essays of several hundred words each, and without the context supplied by the many blog entries as a whole.

In *Obsidian Finance Group, LLC v. Cox*, *supra*, 812 FSupp2d at 1237, n5, the Court notes that Plaintiff's failure to reference hyperlinks precluded the court from deciding Plaintiff's claim. Here Plaintiffs have isolated 3 or 5 words out of far longer blog entries which include hyperlinks and quotations which are accurately attributed.

Defendant included links to primary source documents in her blog post, but plaintiffs failed to include those in their filing. The disclosure of relevant, historical, or other background facts to a dispute may provide a factual basis for a challenged statement such that the challenged statement may be read as the author's "personal conclusion about the information presented, not as a statement of fact." *Partington*,³ 56 F3d at 1156 (internal quotation and emphasis omitted). Plaintiffs' omission of the linked documents precludes, on this record, an informed analysis of this issue.

3. *Partington v. Bugliosi*, 56 F3d 1147 1153 (9th Cir 1995).

V. ALL CLAIMS IN ¶ 9 AGAINST JULIE ANNE AND HANNAH SHOULD BE DISMISSED.

Both Hannah and Julie Anne rely upon and incorporate by reference the Memorandum in Support (April 27, 2012), §§ V.A-G, pp. 15, 27, and every other relevant discussion and case authority already submitted in support of the following motions.

A. "CONTEXT" FOR FEDERAL ANALYSIS INCLUDES ENTIRE THREADS AND DISCUSSIONS ON BLOGS, INCLUDING HYPERLINKS.

The only factual distinction between the claims against Julie Anne in the original Complaint and in the AC is that the new allegations of defamation against Julie Anne in the AC relate to words on her own blog.

The legal context for a blog includes the entire "work" to be evaluated for its overall tenor, much like a book.⁴ In *Obsidian Finance Group, LLC v. Cox*, *supra*, the Court reviewed dozens of critical statements made by a blogger on two different sites. All of the blogger's many blog entries on her blog at "obsidianfinancesucks.com" were read for overall context; none were defamatory taken in that context. However, her single blog entry on "bankruptcycorruption.com" had no similar broad context and "the reader is unable to view it in the context of the dozens of serial posts defendant has placed" on the other site. *Id.*, at 1238.

Obsidian discusses dozens of blog statements made by Cox which were derogatory, accusatory, even vituperative, but which, as a matter of law, in the context of the entire series

4. In *Partington v. Bugliosi*, *supra*, n3, 56 F3d at 1152-53, the defendant's book, AND THE SEA WILL TELL, implied that the plaintiff attorney represented his clients poorly in a murder trial. *Id.* at 1150-51. The statements in the book were not defamatory because the book's "general tenor" made clear that the defendant's statements were from his personal viewpoint, and not assertions of an objective fact. *Id.* at 1153.

of blog entries, were not actionable defamations. J. Hernandez explains [*Obsidian Finance Group, LLC v. Cox*, 812 FSupp2d supra, 1223-4]:

While the inquiry in any given case is fact-specific, certain themes are discernable and worth noting here. First, statements made as part of an acknowledged heated debate often negate the impression that the defendant was asserting an objective fact. * * *. *Art of Living Found. v. Does* 1-10, No. 10 CV-05022-LHK, 2011 WL 2441898, at *7 (ND Cal June 15, 2011) (readers less likely to view statements made on blogs with "heated discussion and criticism," as assertions of fact) * * *. Second, while generally, "online speech stands on the same footing as other speech," *In re Anonymous Online Speakers*, 661 FedAppx 1168, 1173, No. 09-71265, 2011 WL 61635, at *2 (9th Cir Jan 7, 2011), blogs [FN1] are a subspecies of online speech which inherently suggest that statements made there are not likely provable assertions of fact. Eg, *Art of Living Found.*, 2011 WL 2441898, at *7 (statements made on obviously critical blog with "heated" discussion and criticism less likely to be viewed as assertions of fact); *Nicosia*, 72 FSupp2d at 1101 (statements made on personal website and through online discussion group less likely to be seen as assertions of fact); see also *Too Much Media, LLC v. Hale*, 206 NJ 209, 234-35, 20 A3d 364, 378-79 (2011) (noting that "online message boards provide virtual, public forums for people to communicate with each other about topics of interest" and "promote a looser, more relaxed communication style") (internal quotation and brackets omitted); *Sandals Resorts Int'l, Ltd. v. Google, Inc.*, 925 NYS2d 407, 415-16, 86 AD3d 32, 43-44 (NY AppDiv 2011) (noting that the "low barrier to speaking online allows anyone with an Internet connection to publish his thoughts, free from the editorial constraints that serve as gatekeepers for most traditional media of disseminating information [] [o]ften result[ing] in speech characterized by grammatical and spelling errors, the use of slang, and, in many instances, an overall lack of coherence"; observing that readers give less deference to allegedly defamatory remarks published on online message boards, chat rooms, and blogs, than to similar remarks made in other contexts) (internal quotation omitted).

FN1. As explained by one court, an online blog is a "frequently updated website consisting of personal observations, excerpts from other sources, or, more generally, an online journal or diary." *Quixtar, Inc. v. Signature Mgmt. Team, LLC*, 566 FSupp2d 1205, 1212 (DNev 2008). Thus, a blog is distinct from other online speech affiliated with, for example, a major media publication.

"*Nicosia*" is *Nicosia v. De Rooy*, 72 FSupp2d 1093 (ND Cal 1999). In that case De Rooy, an "investigator," made statements on her own website and internet discussion groups regarding her disagreement with plaintiff's handling of Jack Kerouac's estate and literary legacy after the death of Kerouac's heir, Jan. The statements, "[Plaintiff] killed Jan Kerouac,"

covered up "embezzlement of at least \$33,000 from Jan Kerouac's heirs," that he was a "self-serving fraud and criminal," "acted illegally," and was "a man who has alienated, betrayed or lied to everyone in the Beat community," were all found to be hyperbole, or opinion based on facts disclosed during a long course of defendant's discussion of the Kerouac literary affairs. *Id.*, at 1101.

"*Art of Living*" is *Art of Living Foundation v. Does*, brought by a yoga teaching program against disgruntled yogi and yogini bloggers.

Plaintiff's third claim is that Defendants use the blogs to intentionally disparage and defame Plaintiff, the Art of Living Foundation, and Ravi Shankar. * * * (providing list of 18 alleged examples of defamatory statements on the blogs). For example, one statement on one of the blogs is: "The truth is more disgruntled people should come out to do something about all the illegal activities that occur thru and in his organization, ranging from exploitation, to swindling, to cheating, to physical abuse, to sexual harassment and fondling, *etc.*"[]].

The Court held:

In the broad context, the statements are made on obviously critical blogs ("Leaving Art of Living" and "Beyond Art of Living") with heated discussion and criticism of the Art of Living Foundation and Ravi Shankar. In this context, readers are less likely to view statements as assertions of fact rather than opinion.

Id., 2011 WL 2441898 at *7.

As to the specific context the Court considers the "content of the allegedly defamatory statements, which includes the extent of figurative and hyperbolic language and the reasonable expectations of the readers." Certain statements are obviously critical, and do use words like "embezzle," "fraud," and "abuse." For example, there are statements that: "they obtained money from participants on false, deceitful declarations"; "companies, individuals give money to AOL organisation for specific projects, but the money never reaches those projects ... None of this money goes toward helping any poor or disadvantaged people"; and "if you ... want to launder your black money ... then AOL is for you." Plaintiff has its strongest case for defamation when these particular statements are read in isolation. With context, however, these statements of hyperbole reflect poorly on Art of Living, but do not amount to factual accusations of criminal activity, especially on Blogs that readers obviously expect are critical of Art of Living.

Id. (citations omitted, emphasis supplied).

In contrast to the extreme hyperbole and vitriol of the bloggers in *Art of Living* and *Obsidian* decisions, Julie Anne's complete blog entries (3rd Williams Decl., Exs. A-F), are in the form of essays with stated themes, expressed with literary techniques and an orderly exposition of ideas. Anyone visiting the site would understand it has a strong point of view from the name, *Beaverton Grace Bible Church Survivors*, and take that into consideration for context. The blog obviously contains opinion, opinion based on stated facts and religious convictions. Though critical of Plaintiffs' religious teaching and practices, the general tenor of her commentary is moderate and considered.

B. HANNAH SMITH'S MOTION: ANY AND ALL CLAIMS BASED ON COMPLAINT ¶ 9.n and RESTATED IN AMENDED COMPLAINT ¶ 9.t SHOULD BE DISMISSED.

Hannah made an internet posting critical of the Pastor's management style, based on her years of church attendance, which includes:

Chuck micro-manages everything down to the tiniest detail, like having EVERY song approved by him before its sung. But he ignores, or shoves under the carpet dangerous activities and bullies people to get his way.

...that is no-way Biblical. Grace is the Last thing you'll find at that church.

AC ¶ 9.t.

Hannah relies upon the Memorandum in Support (April 27, 2012), at § V.H., pp. 27-28, for the detailed discussion why these words are not defamatory and protected by the state and federal constitutions.

C. JULIE ANNE SMITH'S MOTIONS.

1. FIRST MOTION: ANY AND ALL CLAIMS BASED ON COMPLAINT ¶ 9.a THROUGH ¶ 9.k AND AMENDED COMPLAINT ¶ 9.a THROUGH ¶ 9.k SHOULD BE DISMISSED.

Julie Anne Smith restates each of her motions and all discussion and case authority in support of each motion in the Memorandum in Support (April 27, 2012) in support of

dismissing claims against her stated in Complaint ¶¶ 9.a-k and AC ¶¶ 9.a-k. Memorandum in Support (April 27, 2012), at pp. 28-37.

2. SECOND MOTION: ANY AND ALL CLAIMS BASED ON AMENDED COMPLAINT ¶ 9.1 SHOULD BE DISMISSED.

AC, ¶ 9.1 alleges that Julie Anne, "stated on her blog that people 'suffered at the hands of the pastor of Beaverton Grace Christian [*sic*] Church.'" The full blog essay is 3rd Williams Decl., Ex. A, "Introduction."

As noted previously, in the Memorandum in Support (April 27, 2012), Julie Anne stated that she would supply further context for her opinions on her blog site (Compl. 9.g), which she did. AC 9.g alleges that

"I am working on compiling numerous pages of notes that were taken over the time we were active at this church ...this will be posted to a website for all to see."

is "defamatory." But as discussed, the statement is not false, nor defamatory. It is a statement of intention.

Now that Julie Anne has a blog, in AC ¶ 9.1, Plaintiffs complain the following italicized phrase is "defamatory."

This blog has been set up primarily as a safe haven for those who *suffered at the hands of the pastor and/or members (perhaps unknowingly) of Beaverton Grace Bible Church*. If you would like me to post your story, please send to: bgbc survivors@gmail.com Because of the nature of this situation, I understand that some will want to remain anonymous and I fully respect that choice.

As I have gone through this process personally and have read books, scoured the internet for understanding of what we went through, I am aware that others who may not have gone to BGBC will venture upon the site. You may read something here that sounds very similar to your church experience, just as I did on other blogs/websites. You are free to comment and respond, too. Sadly, this is not an isolated church experience and my heart goes out to you, too! You are not alone.

When you post anonymously on my Blogger blog, I am unable to see any identifiable information (ISP addresses, etc), so please know that this is a safe place to share your story or comment.

If you have ideas for discussion, please send them along to:
bgbsurvivors@gmail.com

3rd Williams Decl., Ex. A

Plaintiffs rely upon the discussion in the Memorandum in Support (April 27, 2012), in particular, pp. 8-10, that in context the words are related to and a continuation of the religious dispute described in JAS Decl., ¶¶ 10-37, which began about the time of the termination of the Evangelism Coordinator, Don Miller. Julie Anne's words of opinion, her offer to provide materials, the entire blog and the "Introduction" to the blog, are protected by the Free Exercise clauses of the state and federal constitutions. The blog entry is opinion fully protected by the First Amendment and Oregon Constitution, Article I, § 8.

3. THIRD MOTION: ANY AND ALL CLAIMS BASED ON AMENDED COMPLAINT ¶ 9.m SHOULD BE DISMISSED.

AC, ¶ 9.m alleges that Julie Anne, "stated on her blog that 'lives are at risk' due to 'abuse of power going on' at Beaverton Grace Christian [sic] Church." The full blog essay is 3rd Williams Decl., Ex. B, "Chuck's Review of Me on Google and Threat of Lawsuit for Defamation." This entry is several hundred words in length and quotes two long "reviews" by Pastor, each highly critical of Julie Anne. The first "review" by the Pastor is quoted at p. 10 of Memorandum in Support (April 27, 2012) and is Exhibit B to the Declaration of Linda Williams (filed April 27, 2012). The second "review" by the Pastor (since removed from the Plaintiffs' Google review site) concerns the instant lawsuit:

Chuck O'Neal - Feb 25, 2012

DEFAMATION IS A CRIME: Pastor Chuck O' Neal, his wife, his children, and Beaverton Grace Bible Church as a whole, have suffered JulieAnne's hateful lying

slander for well over three years. After seeking counsel from a pastor on staff with Grace Community Church (under Pastor John MacArthur) and reading him several excerpts from JulieAnne's endless defamation, he recommended that we FILE A LAWSUIT in an appeal to Caesar as the Apostle Paul did when falsely accused of crimes against God and the state. The lawsuit has been filed in the Washington County courthouse. JulieAnne and many of those involved in her present and historic slander will be served within the week. Her many lies and vicious criminal accusations will not stand in the light of day in the Washington County courthouse or in the coming courtroom before God. OVER THREE YEARS AGO the reviewer known as JulieAnne or "BROWN" was Biblically put out of Beaverton Grace Bible Church for ongoing vicious slander. You can see my 2009 response to her in the reviews below.

Julie Anne's commentary must be read in the full context of the church dispute and rest of the blog, as well as the entire lengthy entry [3rd Williams Decl. Ex. B] and the actual surrounding text:

He will have a hard time in court proving that my words ar defaming. I wouldn't waste my time on defamation - what is there to gain in that? I will, however, sacrifice my time and energy in speaking the truth when there is *an abuse of power going on and lives are at risk.*

In the context of the blog and the understandable reaction to a lawsuit, the statement clearly emphasizes that the religious convictions and opinions in the blog are important to Julie Anne because of the perceived risk to spiritual "lives." As a believer, she sees threats to spiritual growth as risks to eternal life. No reasonable person would see this as an allegation of fact, such as an accusation of threatened murder. The words, the entire entry--the blog *in toto*--are not defamatory. This is simply strongly phrased opinion based on religious conscience.

4. FOURTH MOTION: ANY AND ALL CLAIMS BASED ON AMENDED COMPLAINT ¶ 9.n SHOULD BE DISMISSED.

AC, ¶ 9.n alleges that Julie Anne, "stated on her blog that Chuck O'Neal was a liar who 'was forced to fabricate a lie.'" The full blog essay is 3rd Williams Decl., Ex. C, "Candidacy for Spiritual Abuse: Don't Develop Your Independent Thinking Skills." Read in context, this is further explication about the differences in interpretation of church doctrine and disciplinary

actions. The Smiths dispute, *inter alia*, that they were properly disciplined, and believe that the discipline was imposed "falsely," to quiet their questioning of the dismissal of Don Miller. JAS Decl., ¶¶ 10-32; Memorandum in Support (April 27, 2012), pp. 8-10. The Court cannot either decide the propriety of the discipline, shunning and church criticisms of them, nor can it entertain evidence that the discipline was (or was not) a fabrication. Julie Anne believes it was. It remains a matter of church governance and individual dissent. First Amendment; Oregon Constitution, Article I, §§ 2-3, 8.

5. FIFTH MOTION: ANY AND ALL CLAIMS BASED ON AMENDED COMPLAINT ¶ 9.o SHOULD BE DISMISSED.

AC, ¶ 9.o alleges that Julie Anne, "stated on her blog that the pastor 'abused' them, that they were 'spiritual abuse victims,' and that 'spiritual lives are at stake.'" The full blog essay is 3rd Williams Decl., Ex. D, "Rest, Little Kitty."

The verb "abused" has no context and seems to be some sort of conclusory allegation. It is not defamation. The remaining words do not refer to either of the Plaintiffs, but to the general topic of "spiritual abuse," starting with the parallel between a frightened kitten and those who have unfortunate church experiences. The "them" and "they" that the allegation references are not the Smiths or anyone else specifically. As the italics show, after discussing the general topic, Julie Anne sums up that churchgoers, in general, should become more aware.

If the abuse was spiritual, there can be lasting effects. Some *spiritual abuse victims* will leave a church, never to return.

The pastor represents our shepherd and we, the congregants, are the sheep. In the Bible, our true Shepherd is God. Very often in our minds, The Shepherd (God) and the shepherd of a church (pastor) get confused. If we believe that God placed the shepherd (pastor) in the church for us and this shepherd abused us, sometimes that gets equated with God doing the abusing - even though we know that cognitively to be false. That is why it must be stopped. *Spiritual lives are at*

stake. Who wants to risk going back to a church where someone is in authority? How can I worship God when he placed these pastors in my path? Oh, it gets very confusing. Sometimes it's just easier to leave church altogether.

I think over time as kitty sees that we love her and she sees that we will never hurt her, she will begin to trust. I hope one day she will get to experience the sweet peaceful feeling of resting in a warm lap and falling asleep. She's missing out. Shame on those who use their position as pastor in to lord over people in a way that makes it difficult to trust.

3rd Williams Decl., Ex. D

Even if these statements did directly concern the Plaintiffs, the Court cannot decide whether the imposition of church discipline, or the policies or practices involving the termination of Don Miller, were "correct," or that Julie Anne is "false" in having different religious interpretations and opinion because of the church autonomy doctrine. First Amendment; Oregon Constitution, Article I, §§ 2-3.

6. SIXTH MOTION: ANY AND ALL CLAIMS BASED ON AMENDED COMPLAINT ¶ 9.p SHOULD BE DISMISSED.

AC, ¶ 9.p alleges that Julie Anne, "stated on her blog that Beaverton Grace Christian [*sic*] Church had an 'oppressive and abusive environment.'" The full blog essay is 3rd Williams Decl., Ex. E, "Yesterday's Comment." The essay is approximately 600 words in length and a thoughtful meditation, built on quotes from WHEN SHOULD A CHRISTIAN LEAVE A CHURCH?, By John G. Reisinger. At the second page Julie Anne quotes this passage and the complained-of phrase (*italics*) is in her comments:

" ...The next time some key families leave a church, don't be too quick to believe that the "duly authorized" pastor and his devotees were right and the people who left were all "rebels against authority." It just may be that the pastor was a power mad paranoid that had begun to think of himself as the infallible voice of God. It is possible that the power structure in a church can be wrong!"

Sadly, the sheep sitting in the pews may have lost their ability to think clearly under the *oppressive and abusive environment*. They even accept it when Scripture

is used completely out of context. It takes a very powerful person to be able to leave a church like this - it takes amazing strength and courage. And that is why I have this blog - we were silenced and possibly shunned, but now we have the opportunity to openly dialogue about what happened, what we went through, how it affected us, how to move on, how to find healthy new churches, how to get support, etc.

(The complained-of phrase is at 3rd Williams Decl., Ex. E, p. 2.)

" Oppressive" and "abusive" are subjective terms. Julie Anne's summary of her opinion and choice of adjectives is not defamatory. As discussed, the opinions are based on her personal experiences and the controversial shunning of her family. It is opinion based on stated facts. It is protected expression. See, *Standing Committee v. Yagman*, 55 F3d 1430 (9th Cir 1995), and discussion at Memorandum in Support (April 27, 2012), pp. 16-17.

7. SEVENTH MOTION: ANY AND ALL CLAIMS BASED ON AMENDED COMPLAINT ¶ 9.q SHOULD BE DISMISSED.

AC, ¶ 9.q alleges that Julie Anne, "stated on her blog that a 'former pastor' was 'interfering with our lives.'" The full blog entry is 3rd Williams Decl., Ex. F, "Comparing the Two, part 3." The essay uses metaphor and parallelism to compare human needs for civic and spiritual freedom. Other commentators had shared experiences with her on the blog about their treatment by Plaintiffs and treatment by others.

Julie Anne was served with the Complaint on March 1. It is not surprising that she would perceive the Complaint, filed by her former shepard, as further "interfering" with her life. A lawsuit is a serious matter. Finding an Oregon attorney while in the Richland, Washington area can be daunting. \$500,000 damages is a lot of money. It is a devastating threat of financial ruin to a family with a stay-at-home mom and seven children. Allegations about "punitive damages" are empty threats with no legal basis--but seemed threatening to

Julie Anne. Perceiving that Plaintiffs were "interfering" with her peace of mind is not defamatory. It is Julie Anne's opinion. It is protected speech.

VI. EVEN IF ANY PHRASE *MIGHT* BE DEFAMATORY, THE SPECIAL MOTIONS SHOULD BE GRANTED BECAUSE PLAINTIFFS CANNOT PROVIDE SUBSTANTIAL EVIDENCE OF SUBJECTIVE "ACTUAL MALICE."

We have shown that in this case it would not be possible to show even negligence on the part of Julie Anne or Hannah, since each their statements were religious beliefs, opinions and opinions based on stated information. However, in their Amended Complaint, Plaintiffs have once again alleged and undertaken the burden of proving "malice" as the level of fault. AC, ¶ 15.

Defendants' rely upon their discussion of the requirement for a showing of actual malice based on the public figure status of each Plaintiff and because of Defendants' common law privileges. Memorandum in Support (April 27, 2012), pp. 39-43.

VII. PLAINTIFFS MUST PROVIDE SUBSTANTIAL EVIDENCE OF DAMAGES.

Plaintiffs immediately removed Hannah's and Julie Anne's complained-of reviews from the site. Plaintiffs must now provide substantial evidence of the probability that any damages they claim were the "result" of Hannah's one statement in December 2011 or any of Julie Anne's thoughtful essays on her blog in the past few months.

While it is true that Pastor is a member of the clergy and that is his "profession," he cannot sue lay persons for remarks he finds offensive about his pastoral techniques or teachings which intrude on religious beliefs of the speaker. Clergy cannot sue attendees or congregants for spiritual disagreements or critiques relating to performance of clerical/pastoral duties. Such matters are within the church autonomy doctrine.

Subjecting lay members liable for freely speaking about their confessor/counselor would interfere with their protected rights of religious conviction. No matter how offensive or heated the religious dispute or subjective the criticism of the pastoral conduct. *Singleton v. Christ the Servant Evangelical Lutheran Church*, 541 NW2d 606 (Minn CtApp 1996) (accusations that pastor had breached a duty of confidentiality to a congregant, discriminated in performing funeral services, and was "paranoid" protected by religious clauses of the constitution); *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F3d 648 (10th Cir 2002) (statement that youth minister not fit to work with children because she was homosexual, also protected in church dispute). See Memorandum in Support (April 27, 2012), pp. 24-6.

VIII. CONCLUSION.

Based on the foregoing discussion and the materials submitted by Defendants in the record of this case, Defendants' Special Motion to Strike should be granted as to the claims against them in the Plaintiffs' Complaint, and/or Plaintiffs' Amended Complaint, and both pleadings should be dismissed as to Julie Anne Smith and Hannah Smith. ORS 31.150, *et seq.*

Defendants will each request reasonable attorney fees for time expended in responding

to the Amended Complaint. ORS 31.152(3).

Dated: May 1, 2012

Respectfully Submitted,

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