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December 18, 2009

VIA HAND DELIVERY

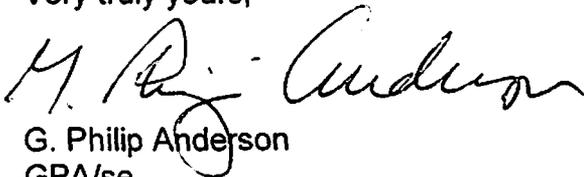
The Honorable Judge Robbie Beal
Williamson County Circuit Court
135 Fourth Avenue
Franklin, TN 37064

RE: Gwen Shamblin, et al vs Rafael Martinez
Williamson County Circuit Court
Docket No. 09476

Dear Judge Beal:

On behalf of the defendant, co-counsel and I have filed a Motion for Summary Judgment which contains CD's with audio and video files identified as Exhibits A through H. At the suggestion of the court clerk, and for the convenience of the Court, I am submitting directly to your office an extra copy of Exhibits A through H.

Very truly yours,



G. Philip Anderson
GPA/se

Enclosures

cc: Samuel J. Harris, Esq.
Attorney for Plaintiffs

IN THE CIRCUIT COURT FOR WILLIAMSON COUNTY, TENNESSEE

GWEN SHAMBLIN and TEDD ANGER,)
)
 Plaintiffs,)
)
 VS)
)
 RAFAEL MARTINEZ,)
)
 Defendant.)

FILED

DEC 18 2009

Debbie McMillan Barrett
Circuit Court

Case No. 09476
JURY DEMAND

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant Rafael Martinez, by and through counsel, moves for summary judgment pursuant to Rule 56 of the Tennessee Rules of Civil Procedure against Plaintiffs Gwen Shamblin and Tedd Anger. In support of his Motion, Reverend Martinez, relies upon the Affidavit (with exhibits), Memorandum of Law, and Statement of Undisputed Material Facts filed herewith, and the pleadings filed in this cause.

Reverend Martinez respectfully submits that there are no genuine issues of material fact in dispute and that he is entitled to judgment as a matter of law.

THIS MOTION IS EXPECTED TO BE HEARD ON THE 22ND DAY OF MARCH, 2010 AT 9:00 A.M.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been sent to the following individual via U.S. Mail, on the 18th day of December 2009:

Samuel J. Harris, Esq.
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G. Philip Anderson, Esq.

IN THE CIRCUIT COURT FOR WILLIAMSON COUNTY, TENNESSEE

GWEN SHAMBLIN and TEDD ANGER,)
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 Plaintiffs,)
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 VS)
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 RAFAEL MARTINEZ,)
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 Defendant.)

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Circuit Court

**MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Defendant Rafael Martinez respectfully requests that this honorable Court enter summary judgment on his behalf, pursuant to Tenn. R. Civ. P. 56, with respect to all claims brought by Plaintiffs Gwen Shamblin and Tedd Anger. Specifically, the Plaintiffs have not stated any claim against Reverend Martinez, and their lawsuit against him, like the one they brought against him previously, was brought solely for the purposes of harassing him and attempting to silence his Constitutionally-protected free speech on a matter of public importance where the Plaintiffs are public figures.

II. SUMMARY OF UNDISPUTED FACTS

It is undisputed that the following facts are either true or have been extensively reported by a variety of news sources.¹

Plaintiff Gwen Shamblin is a best-selling author who is internationally known for her weight-loss books and workshops. She has voluntarily given numerous interviews to various media outlets and has appeared on The Larry King Show, The Tyra Banks show, and various other television shows.

In 1999 Mrs. Shamblin founded The Remnant Fellowship (hereinafter "Remnant"), a church based in Brentwood, Tennessee. She is Remnant's leader and spokesperson, and her sermons, teachings, and/or statements are sometimes broadcast to individuals in other locations via webcast, conference call, and other technologies.

Tedd Anger is one of the leaders of Remnant. Mr. Anger plays a public role within the church, is featured prominently on Remnant's website, and is identified as a church leader. Mr. Anger preaches on various matters, counsels church members on various issues, and sometimes leads recorded conference calls with Remnant

¹ While it would ordinarily be irrelevant that a fact had been "extensively reported" by the media, in this case the reporting of certain "facts" is highly relevant. Specifically, Reverend Martinez has been sued by public figures for making certain assertions. Since he made his assertions in good faith reliance upon the reporting of the mainstream media, the Plaintiffs simply cannot prove that he acted with "malice" as that term has been defined by the Courts, and their claims must therefore fail. Since these media reports, which are filed with Reverend Martinez's affidavit, are not (with the exception of certain recordings of the Plaintiffs themselves) *offered for the truth of the matter asserted*, but rather, are offered by Reverend Martinez to show his reliance upon them, they are not hearsay and should be considered by the Court. See *Caterpillar Financial Services Corp. v. Page*, 1991 Tenn. App. LEXIS (Tenn. Ct. App. 1991); *Butler v. Ballard*, 696 S.W.2d 533, 536-539 (Tenn. Ct. App. 1985).

members. He has also given numerous media interviews, both by himself and alongside Mrs. Shamblin, as described below.

Remnant advocates corporal punishment for children.

Joseph and Sonya Smith were members of Remnant who resided in North Georgia and attended a satellite branch of the church. On at least one occasion, Sonya Smith spoke to Gwen Shamblin about child discipline issues with respect to the Smiths' son Josef. See Exhibit A to the Affidavit of Rafael Martinez. On at least one occasion, Sonya Smith also spoke to Tedd Anger about child discipline issues with respect to her son Josef. See Exhibit A to the Affidavit of Rafael Martinez. After receiving counsel from Mr. Anger, Sonya and her husband removed everything from their son Josef's room except for his Bible and locked him in the room from a Friday until the following Monday. See Exhibit A to the Affidavit of Rafael Martinez.

In 2003, Joseph and Sonya Smith were arrested for beating their son Josef to death. They were charged with murder. The police found bruises over Josef's entire body. The Smiths admitted to striking their son, including using glue sticks. See Exhibits B, C, and F to the Affidavit of Rafael Martinez.

Donations from Remnant members helped the Smiths post bond and hire a high-profile criminal defense attorney from Atlanta. Numerous Remnant members traveled to Georgia to attend the proceedings and support the Smiths. Remnant members maintained a web site devoted to the Smith case.

Mrs. Shamblin and Mr. Anger voluntarily appeared on television and gave a lengthy interview to News Channel 5 television reporter Phil Williams. The interview

covered a variety of topics, including Remnant, its teachings on child discipline, and the Smith murder case. During this interview, Mr. Williams played selections of certain Remnant events wherein Mrs. Shamblin had voluntarily lectured on the topic of child discipline with various third-parties, and allowed these talks to be recorded for distribution within Remnant. A copy of Phil Williams' interview is filed with the Court as **Exhibit B** to the Affidavit of Rafael Martinez. Copies of certain of Mrs. Shamblin's lectures are filed with the Court as **Exhibit A** to the Affidavit of Rafael Martinez.

The topic of Remnant's teachings regarding child discipline has received public attention, as described above. See **Exhibits A-H** to the Affidavit of Rafael Martinez. For instance, a former Remnant member voluntarily gave an interview to a local television news station in which she stated that while she attended Remnant she was "afraid that her son would get beat [sic] severely by another parent." See **Exhibit E** to the Affidavit of Rafael Martinez.

In approximately 2004 search warrants were served on Remnant in connection with the Smith case. See **Exhibit G** to the Affidavit of Rafael Martinez.

During the preliminary trial proceedings, the Smiths' defense attorney apparently announced to the Court that Remnant had made a deal with the prosecution to limit its involvement in the case. This was reported by several news sources, including News Channel 4. See **Exhibits G and H** to the Affidavit of Rafael Martinez.

In 2007, the Smiths were convicted of murder and sentenced to life imprisonment plus thirty years. After the sentencing, Mr. Anger voluntarily gave an interview to the television news media outside the courtroom concerning the case,

wherein he commented on the case, talked about the character of Mr. and Mrs. Smith, said "so much of the evidence did not come out," and talked about his hopes for the appeal process. A copy of this interview is filed with the Court as **Exhibit C** to the Affidavit of Rafael Martinez.

Reverend Rafael Martinez resides in Cleveland, Tennessee, where he plays an active role in his local church, works a secular job, and runs an organization known as Spiritwatch Ministries ("Spiritwatch"). Spiritwatch's mission is to "counter the influence and spread of spiritually deceptive and religiously abusive groups," a mission which Reverend Martinez and his wife fulfill by engaging in outreach to those adversely affected by such groups. See Affidavit of Rafael Martinez.

On August 13, 2008, Reverend Martinez made the following internet post in response to an article he read on the internet (the response will be referred to herein as the "Statement"):

An equally dangerous cult called Remnant Fellowship found itself under scrutiny when two of its members were arrested, tried and convicted of murdering one of their children when they followed the child-rearing directions of the cult's leadership, self-anointed "prophetess" Gwen Shamblin and her sycophant lieutenant Tedd Anger. When the members, Joseph and Sonya Smith went to trial, however, Remnant was able to cop a deal with the prosecutors and avoid getting dragged into the murder trial.

As the Church Lady would say "How conVEEEEenient."

So that twisted woman Gwen Shamblin to this day strolls around from coterie to coterie in her little Southern cult hothouse, blindly followed by about 1100 or so people, many of whom are children who are just as vulnerable to the practical lifestyle excesses Shamblin advances as "God's Way" ...and who likely have endured abuses that would make you swallow hard.

Sad that it's only when children die in the horrific ways that cults set up for them that this issue EVER pierces the national conscience. After all, Britney Spears lack of underwear and the premiere of the next action flick installment at the metroplex are far more important.

Murderous ministries are afoot everywhere. They are as American and home grown as mom, apple pie, and McDonalds. The problem is everyone forgets about them when they drop off the front page—except the victims of these cults and those very few activists and ministers who can't let this evil be forgotten and who do what we can to get people out of these groups and aid them in getting a firm foundation on reality again.

See Complaint, Answer, and Affidavit of Rafael Martinez.

On August 12, 2009, Mrs. Shamblin and Mr. Anger sued Reverend Martinez for the Statement, asserting in Count I of their complaint that it was an invasion of their privacy and in Count II that it was defamatory.

The facts stated herein are undisputed, as reflected by the record before this honorable Court, including the pleadings and the Affidavit of Rafael Martinez (with exhibits). The Complaint filed by Mrs. Shamblin and Mr. Anger is completely without merit, and summary judgment should be entered for the Defendant.

III. STANDARD OF REVIEW

Summary judgment is appropriate when “there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Tenn. R. Civ. P. 56.04. The Tennessee Supreme Court stated recently in *Giggers v. Memphis Housing Authority*:

The party seeking the summary judgment has the ultimate burden of persuasion “that there are no disputed, material facts creating a genuine issue for trial . . . and that he is

entitled to judgment as a matter of law.' *Id.* at 215. [*Byrd v. Hall*, 847 S.W.2d 208 (Tenn. 1993)] If that motion is properly supported, the burden to establish a genuine issue of material fact shifts to the non-moving party. In order to shift the burden, the movant must either affirmatively negate an essential element of the nonmovant's claim or demonstrate that the nonmoving party cannot establish an essential element of his case. *Id.* at 215 n.5; *Hannan v. Altell Publ'g Co.*, 270 S.W.3d 1, 8-9 (Tenn. 2008). '[C]onclusory assertion[s]' are not sufficient to shift the burden to the non-moving party. *Byrd*, 847 S.W.2d at 215; see also *Blanchard v. Kellum*, 975 S.W.2d 522, 525 (Tenn. 1998). Our state does not apply the federal standard for summary judgment....

Courts must view the evidence and all reasonable inferences therefrom in the light most favorable to the non-moving party. *Robinson v. Omer*, 952 S.W.2d 423, 426 (Tenn. 1997). A grant of summary judgment is appropriate only when the facts and the reasonable inferences from those facts would permit a reasonable person to reach only one conclusion. *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 89 (Tenn. 2000). In making that assessment, this Court must discard all countervailing evidence. *Byrd*, 847 S.W.2d at 210-11. Recently, this Court confirmed these principles in *Hannan*.

Giggers v. Memphis Housing Authority, 277 S.W.3d 359, 363- 364 (Tenn. 2009).

This case affirms the standard previously set out by the Supreme Court in *McCarley v.*

West Quality Food Service, where the Court stated:

The movant must either affirmatively negate an essential element of the non-movant's claim or conclusively establish an affirmative defense. *Id.* 215 n. 5 [*Byrd v. Hall*, 847 S.W.2d 208 (Tenn. 1993)]. If the movant does not negate a claimed basis for the suit, the non-movant's burden to produce either supporting affidavits or discovery materials is not triggered and the motion for summary judgment fails. *Id.*

If, however, the movant does successfully negate a claimed basis for the suit, the non-movant may no longer simply rely upon the pleadings. *Id.* The non-moving party must then establish the existence of the essential elements of the claim. *Id.* The non-movant's burden may be met by:

- (1) pointing to evidence establishing material factual disputes that were over-looked or ignored by the moving party;
- (2) rehabilitating the evidence attacked by the moving party;
- (3) producing additional evidence [**7] establishing the existence of a genuine issue for trial; or
- (4) submitting an affidavit explaining the necessity for further discovery pursuant to Tenn. R. Civ. P., Rule 56.06.

Id. at 215 n. 6. The non-moving party's evidence shall be taken as true. *Id.* Moreover, summary judgment shall be denied if 'any doubt whether or not a genuine issue exists.' *Id.* at 211.

McCarley, 960 S.W. 2d 585, 588 (Tenn. 1998).

In this case, Reverend Martinez did not defame the Plaintiffs or invade their privacy. The law is clear that based upon the undisputed facts as set forth in Section II above, summary judgment must be entered in his favor and this lawsuit must be dismissed.

IV. DISCUSSION

It is well settled that "[t]o establish a *prima facie* case of defamation, the plaintiff must prove that (1) a party published a statement; (2) with knowledge that the statement was false and defaming to the other; or (3) with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement." *Hibdon v. Grabowski*, 195 S.W.3d 48, 58 (Tenn. Ct. App. 2005). In addition, "[i]f the plaintiff in a case of libel is a public official or public figure, they must

also prove that the libelous statements were made with 'actual malice'-that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *Id.* (citing *New York Times Co. v. Sullivan*, 276 U.S. 254, 279-80, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964).) Finally, a "public figure must demonstrate evidence of actual malice with 'convincing clarity'." *Id.*

Tennessee Courts are clear that only false statements are actionable and that truth is a "near-absolute" defense to a claim of defamation. *Dolan v. Poston*, 2005 Tenn. App. LEXIS 631, *13 (Tenn. Ct. App. September 29, 2005). Likewise, statements of opinion are also not actionable. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20, 110 S. Ct. 2695, 111 L. Ed. 2d1 (1990). Furthermore, statements of religious opinion are subject to an additional level of Constitutional protection.

Anderson v. Watchtower Bible & Tract Society of N. Y., Inc., 2007 Tenn. App. LEXIS 29 (Tenn. Ct. App. January 17, 2007). As the Tennessee Court of Appeals discussed:

One court likened a statement of religious belief to statements of opinion, which are not actionable as defamatory because the *First Amendment's* freedom of speech provision bars defamation claims based on statements that are expressions of ideas or opinions and that 'cannot be reasonably interpreted as stating actual facts about an individual.' *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20, 110 S. Ct. 2695, 111 L. Ed. 2d1 (1990). In *Sands v. Living Word Fellowship*, 34 P.3d 955 (Alaska 2001), the court held that statements that the plaintiff was a 'cult recruiter' and that his church was a 'cult' were not actionable in defamation because they were pronouncements of a religious belief and opinion not factually verifiable. *Id.* at 960.

...

Religious belief, opinion, and interpretation are subject to an additional constitutional protection. While statements of opinion in general, such as political opinion, are not actionable [footnote omitted] statements of religious opinion are doubly protected by the *First Amendment*. They are not amenable to proof of their truth or falsity, and secular courts have no jurisdiction to determine their truth or falsity.

Anderson at *101.²

In this case, the undisputed record demonstrates that the Plaintiffs' claims must fail. Reverend Martinez is entitled to summary judgment, since the Plaintiffs are public figures and the record is clear that the assertions in the Statement are either true or Reverend Martinez reasonably believed them to be true when he made them. Furthermore, other portions of the Statement are either non-defamatory on their face, do not apply to the Plaintiffs, or are clearly expressions of personal opinion.

A. GWEN SHAMBLIN AND TEDD ANGER ARE "PUBLIC FIGURES" INVOLVED IN A "PUBLIC CONTROVERSY" AND THEREFORE MUST PROVE BY CLEAR AND CONVINCING EVIDENCE THAT REVEREND MARTINEZ ACTED WITH "MALICE" IN MAKING THE STATEMENT.

As the Tennessee Court of Appeals stated in 2007, "[s]ummary judgments are particularly well-suited for false light and libel claims because the determination concerning whether the plaintiff is a public figure is a question of law [internal citation omitted] as is the determination of whether a public figure has come forward with clear and convincing evidence that the defendant was acting with actual malice." *Lewis v. NewsChannel 5 Network, L.P.*, 238 S.W.3d 270, 283 (Tenn. Ct. App. 2007).

In this case, the question of whether the Plaintiffs are public figures is of paramount importance, and is also easy to answer. The Court of Appeals in *Hibdon v.*

² The *Anderson* Court went on to further illustrate this holding by providing a lengthy list of examples of protected "opinion"-based speech, citing cases where the use of such terms as "blackmail" and "traitor" were found to be non-defamatory, as these words were "rhetorical hyperbole" and were part of robust public debate. See *Anderson* at 101, Footnote 21.

Grabowski, stated that “[i]n determining the ‘public figure’ status of Appellant, we are again guided by our Supreme Court in *Press, Inc*:

The term ‘public figure’ includes...those who have thrust themselves into the vortex of important public controversies; those who achieve such pervasive fame or notoriety that they become public figures for all purposes, and in all contexts; those who voluntarily inject themselves, or are drawn into public controversies, and become public figures for a limited range of issues; and those who assume special prominence in the resolution of public questions. *Press, Inc. v. Verran*, 569 S.W.2d at 441. More commonly, those classed by the courts as public figures have thrust themselves to the forefront of a particular public controversy in order to influence the resolution of the issues involved, inviting attention and comment.”

Hibdon at 58-59.

The *Hibdon* Court went on to state that there are two steps in determining if a plaintiff is a public figure. It must first be determined whether there is a public controversy. Then, the plaintiff’s role in the controversy must be examined.

In *Hibdon*, the Plaintiff sold jet skis and made various statements and claims on the internet regarding his jet skis and modifications he had made to them to make them go faster. The Defendants responded by posting conflicting statements and claims in internet chat rooms. On those facts, the Court concluded that “the undisputed facts show that a public controversy developed over the purported success of Hibdon’s jet ski modifications.” *Hibdon* at 60. The Court then concluded that Mr. Hibdon was a “limited purpose public figure” because he had “injected himself into the public controversy voluntarily by boasting about his jet ski modifications and speeds thereof on rec.sport.jetski. Hibdon had access to and used effective means of communication, both through the news group and through *SPLASH Magazine*, in order

to counteract the Defendant's statements." *Hibdon* at 60-62.

Based upon this precedent, there can be no doubt whatsoever that the Statement at issue in this case concerns a public controversy and that Gwen Shamblin and Tedd Anger are public figures.

1. **THE ROLE OF REMNANT AND ITS LEADERSHIP, INCLUDING GWEN SHAMBLIN AND TEDD ANGER, IN THE JOSEPH AND SONYA SMITH TRIAL CONSTITUTES A PUBLIC CONTROVERSY. IN ADDITION, THE ROLE OF THE CHURCH IN THE COMMUNITY AND ITS TEACHINGS ON CHILD DISCIPLINE ARE MATTERS OF PUBLIC CONCERN AND CONSTITUTE A PUBLIC CONTROVERSY.**

In *Hibdon*, the Court of Appeals concluded that an internet chatroom "debate" amongst jet ski aficionados constituted a "public controversy" since it was published in a public forum. See *Hibdon* at 59-62. By this standard, there is no conceivable way for the Plaintiffs to argue that the matters at issue in this case are not part of a public controversy. Specifically, Remnant has been the subject of a firestorm of news, debate, and criticism. Remnant has been picketed, which was reported by the local television news. It has been called a cult, and former members have gone public with their stories. Remnant maintains a web site and affirmatively markets itself to would-be members. Remnant is closely associated with its principal agent, Gwen Shamblin, who appears on its behalf in a wide-variety of national media.

The Smith trial garnered extensive and national news coverage. Remnant was served with a search warrant and received extensive news coverage, with Channel 4 News at one point using the phrase "Faith on Trial" in conjunction with their newscasts. See Exhibit F to the Affidavit of Rafael Martinez. Remnant helped pay for the Smiths'

attorney and posted bond for the Smiths. Members of the Church attended certain of the Smith proceedings and received news coverage for doing so. See Exhibits F, G and H to the Affidavit of Rafael Martinez. Gwen Shamblin and Tedd Anger gave public news interviews on behalf of Remnant to communicate Remnant's position on the Smith case and the teachings of Remnant to the general public. See Exhibits B and C to the Affidavit of Rafael Martinez.

In short, the controversy at the heart of this case is not a personal matter. It is at the heart of the communities of Brentwood, Williamson County, Tennessee, the greater area of Atlanta, Georgia and beyond. It is in the news, on the web, on television, on people's minds, and it is rightly the subject of their discussions.

2. GWEN SHAMBLIN IS A PUBLIC FIGURE FOR ALL PURPOSES AND IN ALL CONTEXTS.

Mrs. Shamblin is a best-selling author who repeatedly holds herself out to the public as Remnant's leader and spokesman. She voluntarily gives interviews to national media outlets, appears on national television shows, moderates conference calls and call-in seminars, broadcasts web-casts, publishes, and comments on a wide variety of issues. She has voluntarily taken on the role of a public figure and she has ample opportunity and resources to respond to criticisms and to have her opinions heard.

In the alternative, if she is not a public figure for all purposes, she is, at a minimum, a limited purpose public figure.

3. TEDD ANGER IS A LIMITED PURPOSE PUBLIC FIGURE WITH RESPECT TO THE ISSUES ARISING FROM AND RELATING TO THE SMITH CASE AND REMNANT'S TEACHINGS ON CHILD DISCIPLINE.

If a man (Mr. Hibdon) who posts comments about the speed of jet skis on an internet bulletin board is a "limited purpose public figure," then Mr. Anger, who holds a position of leadership in Remnant, who speaks regularly on behalf of Remnant, who has spoken out publicly regarding the Smith case and attended portions of their trial in Georgia, who voluntarily gave interviews about the Smith case on the courthouse steps and on news programs, and who has otherwise gone to great lengths to "thrust" himself "into the vortex" of an important public controversy, to "voluntarily inject" himself into such a public controversy and to assume "special prominence in the resolution" of a public question must surely be, at the very least, a "limited purpose public figure." See *Hibdon* at 58 and Exhibits B and C to the Affidavit of Rafael Martinez.

Mr. Anger cannot voluntarily take center stage and speak to an audience of hundreds of thousands, if not millions, for his own purposes, and then claim that he is not a public figure with respect to the very controversy about which he was speaking.

B. THE PLAINTIFFS CANNOT PROVE BY CLEAR AND CONVINCING EVIDENCE THAT REVEREND MARTINEZ MADE THE STATEMENT WITH "ACTUAL MALICE"—THAT IS, WITH KNOWLEDGE THAT IT WAS FALSE OR WITH RECKLESS DISREGARD OF WHETHER IT WAS FALSE OR NOT."

Since the Plaintiffs are public figures, in order to recover, they must prove, by clear and convincing evidence, that Reverend Martinez made the Statement with

“malice” as that term was defined by the United States Supreme Court in *New York Times Co. v. Sullivan*. The Tennessee Court of Appeals has held:

...where the actual malice standard applies, the ‘burden is upon plaintiff to show with “convincing clarity” the facts which make up the “actual malice.” [Internal citation omitted.] Thus, ‘a public figure cannot resist a...motion for summary judgment under Tenn. R. Civ. P. 56 by arguing that there is an issue for the jury as to malice unless he makes some showing, of the kind contemplated by the Rules, of facts from which malice may be inferred.’ [Internal citation omitted.]

Lewis at 283.

Reverend Martinez made the Statement in the wake of an on-going public controversy and only after viewing numerous news stories that reported substantially the same information. All factual assertions within the Statement are based on the public reports that Mr. Martinez viewed or read. These reports were consistent with information he had learned in his role as a counselor to those affected by cults. There is no assertion of fact in the Statement that the Plaintiffs can point to that is not supported by voluminous material in the public record. See Affidavit of Rafael Martinez.³

The Plaintiffs cannot prove that any part of the Statement was made with the

³ The Plaintiffs attempt to avoid their burden by misquoting the Statement (even though they reprint it in its entirety earlier in their Complaint). By way of example, in Paragraph 13 of their Complaint, the Plaintiffs allege that “The Statement, *inter alia*, directly and indirectly state [sic] that the Plaintiffs directed actions leading to the death of a child and further that the Plaintiffs negotiated a deal with prosecutors to escape justice. This statement is libelous and completely false.” See Complaint, ¶13.

This allegation is factually incorrect. The Statement does not say that the Plaintiffs “directed” the Smiths’ actions. Likewise, the Statement does not assert that the Plaintiffs negotiated a deal with prosecutors—it states that Remnant made a deal with prosecutors. Remnant is not a party to this case.

the contrary, Reverend Martinez has proven that he reasonably and justifiably relied upon the extensive reporting of mainstream journalists in reaching the conclusions that he asserts in the Statement. In short, even if the Court were to conclude that the assertions in the Statement were false, they were not made with reckless disregard of the facts.

C. THE PLAINTIFFS' CLAIMS ARE FURTHER BARRED SINCE THE ASSERTIONS IN THE STATEMENT ARE EITHER TRUE, ARE EXPRESSIONS OF OPINION OR ARE NOT DEFAMATORY IN NATURE.

A careful examination of the Statement reveals that much of it is simply not defamatory, or not directed at the Plaintiffs, and further reveals that the assertions that compose the Statement are either true or are clearly the personal opinion of Mr. Martinez.

The Statement can be broken down as follows:

"An equally dangerous cult called Remnant Fellowship..."

This is a statement of opinion. Tennessee Courts have held that the characterization of a religion or church as a "cult" is a matter of opinion and is not actionable. See *Anderson* at *101. In addition, Mr. Martinez believed this statement to be true, and still considers this statement to be true. Finally, this statement does not apply to the Plaintiffs, but rather, to Remnant, which is a Tennessee non-profit corporation. Remnant is not a plaintiff in this lawsuit.

“...found itself under scrutiny when two of its members were arrested, tried and convicted of murdering one of their children...”

This statement is true, and is therefore not actionable. See *Dolan* at *13.

“...when they followed the child-rearing directions of the cult’s leadership, self-anointed “prophetess” Gwen Shamblin and her sycophant lieutenant, Tedd Anger.”

The Smiths did follow the child-rearing directions of Remnant’s leadership. It is undisputed that the Smiths received advice on child discipline from both Mrs. Shamblin and Mr. Anger, and that this advice included specific advice on corporal punishment and locking the child in his room with nothing but a Bible. See **Exhibit A** to the Affidavit of Rafael Martinez. There has also been considerable public discussion about whether Mrs. Shamblin believes that she is a “prophetess.” She has voluntarily discussed this issue on television with journalist Phil Williams. See **Exhibit B** to the Affidavit of Rafael Martinez. The characterization of Mr. Anger as a “sycophant” is opinion, and is therefore not actionable.⁴ The characterization of Mr. Anger as a lieutenant is true to the extent that Mr. Anger is one of the “leaders” of Remnant and is in a leadership position inferior to that of Mrs. Shamblin. Mr. Anger’s appearance alongside Mrs. Shamblin in the Phil Williams’ interview further supports the characterization of him as a “lieutenant.” See **Exhibit B** to the Affidavit of Rafael Martinez.

⁴ “Sycophant” is defined by Merriam-Webster’s online dictionary, found at www.merriam-webster.com, as “a servile self-seeking flatterer.”

“When the members, Joseph and Sonya Smith went to trial, however, Remnant was able to cop a deal with the prosecutors and avoid getting dragged into the murder trial.”

This factual assertion was widely reported by the news media. See **Exhibits G and H** to Affidavit of Rafael Martinez. Mr. Martinez believed it to be true when he wrote it and still believes it to be true. See Affidavit of Rafael Martinez. Since he based his belief in good faith on the reports of numerous journalists, he did not make this assertion with any malice or reckless disregard for the truth as those terms are defined by law, and this assertion is therefore not actionable. Furthermore, this assertion does not apply to the Plaintiffs, but rather, to Remnant, which is a Tennessee non-profit corporation. Remnant is not a plaintiff in this lawsuit. For these reasons, this statement is not actionable.

“As the Church Lady would say ‘How conVEEEEenient.’”

This statement is not defamatory. It makes no statement of fact. It is opinion. It is not actionable.

“So that twisted woman Gwen Shamblin to this day strolls around from coterie to coterie in her little Southern cult hothouse, blindly followed by about 1100 or so people, many of whom are children who are just as vulnerable to the practical lifestyle excesses Shamblin advances as ‘God’s Way’...and who likely have endured abuses that would make you swallow hard”

This statement applies only to Mrs. Shamblin. Mrs. Shamblin is undisputedly a public figure. This statement contains unflattering opinions (e.g., the characterization of Mrs. Shamblin as "twisted"), but it does not contain actionable statements of fact. Furthermore, since Mrs. Shamblin is a public figure, this statement is not actionable, since the heightened standard applicable to public figures cannot be met. This statement was not made with malice or a reckless disregard for the truth as those terms are defined by law. Rather, this is a statement of Mr. Martinez's personal opinion of a public figure who has voluntarily become involved in various public controversies. This is precisely the sort of "rhetorical hyperbole" that the Court of Appeals in *Anderson* deemed protected, so that there may be "robust debate on public issues." See *Anderson* at *101, *Lewis* at 292.

Sad that it's only when children die in the horrific ways that cults set up for them that this issue EVER pierces the national conscience. After all, Britney Spears lack of underwear and the premiere of the next action flick installment at the metroplex are far more important.

There is no actionable statement of fact that would apply to either of the Plaintiffs in this statement. This statement concerns an issue of public importance and reflects the personal opinions of the Defendant.

Murderous ministries are afoot everywhere. They are as American and home grown as mom, apple pie, and McDonalds. The problem is everyone forgets about them when they drop off the front page—except the victims of these cults and those very few activists and ministers who can't let this evil be forgotten and who do what we can to get people out of these groups and aid them in getting a firm foundation on reality again.

There is no actionable statement of fact that would apply to either of the Plaintiffs in this statement. This statement concerns an issue of public importance and reflects the personal opinions of the Defendant. Once again, this is an example of protected "rhetorical hyperbole." See *Anderson* at *101.

D. THE PLAINTIFFS' INVASION OF PRIVACY CLAIM FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

The cause of action of false light, which is the particular brand of invasion of privacy that the Plaintiffs seem to allege in their Complaint, is quite similar to defamation. In particular, the same analysis must be performed to determine if the plaintiff in a false light case is a public figure, and if he is, then the heightened "actual malice" standard applies. See *Lewis* at 303-304.

In this case, for the reasons set forth above, the Plaintiffs are public figures and they cannot meet the heightened "actual malice" standard. Therefore, their false light claims must fail.

V. CONCLUSION

Summary Judgment is appropriate if the moving party can negate an essential element of the non-moving party's case, or if the moving party can establish an affirmative defense. In this case, the Defendant has successfully negated several essential elements of the Plaintiffs' claims, and has established numerous affirmative defenses.

Specifically, much of the Statement at the center of this litigation is not defamatory on its face. Other portions are clearly statements of opinion. Other portions apply to Remnant, but not to the Plaintiffs. The Defendant believed the entire Statement to be true on the date he authored it, and he still believes it to be true to this day. He bases this belief on voluminous public reporting by legitimate news organizations, his own personal research and dealings with former Remnant members, and his years of training and work in the area of countercult ministry.

The Plaintiffs in this case are public figures. Mrs. Shamblin is a public figure for all purposes, and is known world-wide as a celebrity. Mr. Anger is a public figure for limited purposes, who has voluntarily thrust himself into the public eye on a range of issues, from the Smith case to child discipline. While they may not agree with the Statement, their public status gives them ample opportunity to rebut it, whether through television interviews, their numerous web-sites, or their weekly sermons, webcasts, and conference calls.

The issues that prompted the publication of the Statement are issues of public importance and public controversy. The Smith case attracted intense media coverage.

The issue of child discipline and the appropriate boundaries and forms of child discipline is an important topic of public debate amongst parents, educators, and child psychologists. The mere existence of Remnant has been extremely controversial, leading to public and well-documented (via television, print, and the internet) doctrinal disputes over the nature of the Trinity, numerous allegations that Remnant is a cult, public protests in the streets, and controversy over things such as local election laws.

The United States Constitution, the Constitution of the State of Tennessee, and the state common law all protect the right of free speech. Political and religious speech are afforded special protection. The lawsuit filed by the Plaintiffs is wholly without factual or legal merit, and was brought solely in an attempt to silence one of Remnant's many critics and to chill the speech of others.

For all of these reasons, Reverend Martinez respectfully requests that his Motion for Summary Judgment be granted, and that Summary Judgment be entered on his behalf, and that all claims in the Complaint be dismissed, with prejudice.

Respectfully submitted,



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Co-Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been sent to the following individual via U.S. Mail, on the 18th day of December 2009:

Samuel J. Harris, Esq.
320 East Broad Street #200
Cookeville, TN 38501
(T): (931) 854-0237



G. Philip Anderson

IN THE CIRCUIT COURT FOR WILLIAMSON COUNTY, TENNESSEE

GWEN SHAMBLIN and TEDD ANGER,)
)
Plaintiffs,)
)
VS)
)
RAFAEL MARTINEZ,)
)
Defendant.)

FILED
DEC 18 2009
Debbie McMillan Barrett
Circuit Court
Case No. 09476
JURY DEMAND

AFFIDAVIT OF RAFAEL MARTINEZ

REVEREND RAFAEL MARTINEZ, being first duly sworn, hereby states and testifies as follows:

1. My name is Rafael Martinez. I am forty-nine (49) years old and competent to testify.

2. I am a minister of the gospel and use the title "reverend." I responded to the call of the ministry in 1983 and was licensed as an exhorter with the Church of God (Cleveland, Tennessee) in 1992, a year after my graduation from Lee University in 1991 in formal training for the pastoral ministry. I graduated after five years of study with a Bachelor of Science degree in Biblical Education, with a professional sequence in pastoral studies. I academically double majored in both Biblical / theological studies as well as in Christian Education. My residence is in Cleveland, Bradley County, Tennessee, where I reside with my wife, Joy Martinez. I am a member of the South Cleveland Church of God, one of the congregations of our denomination that has approximately seven hundred fifty (750) members. I am not the senior pastor there nor am I an official part of pastoral staff. I volunteer my ministerial services there when and where needed in cooperative assistance to the church staff on a variety of

congregational ministries.

3. In addition to my duties with the South Cleveland Church of God, my wife and I are also co-founders of Spiritwatch Ministries (Spiritwatch). Spiritwatch grew out of an outreach program started in 1993 and originally sponsored by our former church, the Westmore Church of God, also in Cleveland. It was an outreach of the Westmore congregation until 2002 when my wife and I left to join the South Cleveland church. Spiritwatch is dedicated to the proclamation and defense of the historic Christian Faith and the restoration of the victims of spiritual deception and abuse in our region. The ministry maintains a website at www.spiritwatch.org.

4. Spiritwatch's mission, as described on its website, is to counter the influence and spread of spiritually deceptive and religiously abusive groups that exist in the Tennessee Valley (and beyond). Accordingly, Spiritwatch's website contains commentary, links, and postings on the issue of cults and other groups that advocate extreme beliefs and behavior that are contrary to the teachings of Christianity and responsible social order as I understand them. This is what is known as "counter cult ministry" and I have personally worked in this field since 1983. We have directly engaged in outreach to those adversely affected by such groups since Spiritwatch's founding, using church venues, religious abuse support group gatherings and confidential personal counsel to assist a wide variety of people from all walks of life. I have both preached and taught on this subject regularly with my wife and ministry team's assistance all across the nation. Spiritwatch is a member ministry of the Evangelical Ministries to New Religions coalition, which maintains a website at www.emnr.org. This is an association of Christian counter cult ministries that engage in the same kind of work.

5. The fulfillment of this mission as part of my involvement with Spiritwatch was what I was fully engaged with when I became familiar with the Remnant Fellowship (Remnant), the Weigh Down Workshop (WDW), Gwen Shamblin (Shamblin) and Tedd Anger (Anger). My understanding is that the WDW is a faith-based diet program Shamblin started in the early 1990's that spread nationwide and attracted many adherents. Anger and his wife were involved with WDW and subsequently joined the

Remnant church movement that Shamblin started in 1999. In 2002, my wife and I first came into contact with relatives of Remnant members who were concerned over the behavioral aberrancies that their relatives were exhibiting as a result of the doctrinal and practical positions the WDW and Remnant advocated. We attended a formal meeting of these family members held at a Nashville area Church of Christ and first began to personally hear testimony from them concerning these issues. The issues involved the strains of marital and family ties, the division of families over the controversial teachings of the WDW and Remnant and the adverse effects of the WDW when applied to children. The fact that the meeting had to be kept confidential so Shamblin and her followers would not find out about it and even had to be moved to another church location was an indication of just how polarizing and divisive the issue had become among everyone involved long before I ever met any of them personally.

I had previously engaged in study of the WDW and Remnant's teachings through the books and videos it was then circulating (namely "Rise Above" a book authored by Shamblin and the "Weigh Down Advanced" curricula) and became gravely concerned with the directions they advocated which not only contradicted orthodox Christian thought but advanced a dangerous social and spiritual elitism. From my past experience and research this elitism is always evident in dangerous cultic movements no matter what theology they advance. My interaction with these people solidified my conviction that the WDW was being used as a recruitment front to advance the Remnant's goals of proselytization through unethical and abusive means. From that point on, we began to regularly receive and conduct the same kind of confidential spiritual counsel that we had been previously engaged in with victims of other abusive groups.

We were told that Shamblin sent Remnant members to conduct surveillance of the meeting with video cameras to identify the people who were there. She hosted a meeting of these people to view the videos so as to identify their known non-Remnant family members and pressure them into silence. I had long suspected that there were people lurking outside on the church grounds that evening, and this confirmation was supplied by another member of the Remnant who subsequently left the group. The

testimony of these family members and the former Remnant member's recollection of the videotaping incident demonstrated to me that WDW and Remnant were seeking to coerce Remnant members and their families into submission to their demands, so as to silence dissent and control thought. This control of behavior through unethical means, to me, was further indication that the WDW and Remnant were freely engaging in antisocial behavior that is typical of similar authoritarian groups.

6. Over the years, I have met with, interviewed, and counseled a number of former Remnant members as well as family members of active Remnant membership. They represent a wide cross section of relationships and socio-economic backgrounds. One group involves husbands whose Remnant wives divorced them because the husbands refused to submit to Shamblin's influence. Another group are parents and family who have experienced a disruption of relationships with their children/siblings because they sought spiritual counsel with me and other former Remnant members. Still another group includes grandparents who have witnessed their grandchildren's dysfunctional behavior and hunger which they believed stemmed from their involvement with Remnant. There are many more kinds of relational descriptions I could give here. While they live across the country from literally one end of the nation to another, their stories are tragically the same and revolve around what I believe to be illegitimate and unethical intrusion of Shamblin's authoritarian control into the family lives of Remnant membership. The subsequent adverse spiritual, emotional, psychological and physical impact that these families have endured has been both staggering and troubling. As a minister of the gospel, charged by my calling to provide pastoral care for all impacted by cultic movements like Remnant, I am committed to assisting all who request my help.

7. Spiritwatch's website contains numerous posts and links regarding other organizations that advocate extreme beliefs that are contrary to the teaching of Christianity and responsible social order. The Remnant, the WDW and the leadership of Shamblin and Anger are only one manifestation of a larger social problem that we believe confronts the world as well as the church with controversial claims and self-representations, this being the problem of cultism in contemporary society today. A major portion of our ministry work is to provide alternative perspectives to the claims

and representations that such groups make. It is our desire that those involved with such groups and those who may be considering involvement with them be supplied a far more informed choice than that which cultic recruitment sales pitches supply. We would assert that the teachings and claims of the WDW and Remnant as directed by Shamblin merit this kind of response, evaluation and critique.

8. In the years leading up to August 13, 2008, I became even more familiar with the controversial nature of Remnant, and I learned about many aspects of Remnant teachings. Beginning in 1999, Shamblin's unveiling of her "Remnant Fellowship" vision and incorporation led her to also make public her rejection of the orthodox doctrine of the Trinity which became a news item circulated in Christian publications and news casts. This was how I first became aware of Shamblin, the WDW and Remnant. I became a collector of WDW curricula including audio tapes, video tapes, CD audio recordings, DVD's and several WDW program kits. I monitored WDW and Remnant webcasts that were available on the internet and downloaded several of them. I studied their publications, including workbooks and actual books as well. Former WDW and RF members made many of these available to me over the years. I also monitored any online or TV broadcast media that featured news stories about the WDW diet as well as the various controversies Shamblin stirred up – as well as the response of the popular media to her WDW's weight loss claims, which was substantial.

9. In November 2003, I first learned from discussion with an ex-WDW adherent that two Remnant members, Joseph and Sonya Smith, had been arrested and charged with beating their 8 year old son, Josef, to death. I was able to immediately corroborate this from media (television and newspapers) accounts of the case and the general public that was discussing the case. To keep from alarming other ex-Remnant members and non-Remnant family members we were in touch with, we did not discuss the issue publicly with them or anyone else until January, 2004, and then only after a second gathering of ex-Remnant and non-Remnant family members was held. At that point, media coverage and police investigation of the tragic event was becoming widely circulated.

10. It was at this second gathering held in early January, 2004, that an ex-Remnant member gave me two audio tapes of Shamblin's directives on the topic of child discipline. These two tapes were from a conference call Shamblin held with members of her Remnant chapter in Dallas, Texas and a live conference call made during one of her Remnant services in Nashville. The ex-member turned them over to me as our meetings ended with a set of other assorted tapes that contained recordings of other Remnant services. These tapes were labeled and professionally produced and were clearly duplicated for widespread distribution just as the worship services of Christian churches might do likewise.

11. One tape included Shamblin in a live Remnant service talking to Sonya Smith on the topic of child discipline. In the taped conversation, Mrs. Smith details the advice that she had previously received from Anger on the same subject. In addition to talking about spanking her son Josef, Mrs. Smith told Shamblin how she had removed everything from Josef's room except for his Bible and how she had then locked him in the room from a Friday to a Monday. The other tape contains Shamblin's mandate on how children are to be disciplined that she delivered in completely non-negotiable terms. Another one of her Remnant leaders, David Martin, reinforced her teaching with his comment on what he called a "showdown spanking," in which he repeatedly applied corporal punishment to his young daughter as a form of discipline that Shamblin clearly approved of in the taped call to the Remnant members in Dallas.

12. Only a day or so after the second gathering, mentioned above, ended, I was contacted by Phil Williams, an investigative journalist for television news channel WTVF in Nashville, Tennessee. Mr. Williams had been made aware of the existence of these recordings by an ex-Remnant member and found out that I had a copy of them. Upon his request, I provided a copy of these two audio recordings to Mr. Williams. Not long after that, he interviewed Shamblin and Anger on television in broadcasts aired in early February, 2004. In his interview he asked them about the content of these tapes. Shamblin claimed that one tape had been "doctored", stating, "that tape has been made or tampered or whatever - I totally deny that that has ever been said by anyone!" At the conclusion of the broadcast of the interview, Mr. Williams stated on camera that

Shamblin had subsequently retracted this claim and her only regret was that the tape had gotten out of Remnant's inner circle. Shamblin and Anger displayed no remorse for the undue influence I believe she wielded over the Remnant members including the Smiths concerning the treatment of their children.

13. Subsequent to providing a copy of the audio to Mr. Williams, I received a call from the lead investigator in the Smith case in Atlanta, detective David Schweizer of the Cobb County Sheriff's Office. This occurred almost a day or so after Mr. Williams had contacted me. He also asked if I had the original tapes, and I told him that I did. At that time, Schweizer stated that the Cobb County District's attorney was requesting that they be turned over as evidence for the prosecution in the Smith murder trial. Later the following week, at his request, my wife and I met with Schweizer and provided him with the original tapes in Dalton, Georgia. In my discussion with Schweizer, which lasted about forty minutes, Schweizer informed me that he had personally interviewed both of the Smiths and had been an observer during the autopsy of Josef Smith. Schweizer felt that they were both very defensive of Shamblin and Remnant and that Joseph, the father, readily admitted to various punitive acts that left severe scarring on the boy's body. Schweizer felt that the tapes provided information that the prosecutor's office would be interested in reviewing and that they could be used as exhibits in any future trial. A search warrant was served on Remnant in May of 2004 by the Cobb County, Georgia, authorities who enlisted the support of the Franklin police department to execute the search warrant.

14. I followed the news coverage of the Smith case from 2004 to 2007 and was aware that Remnant was providing moral support to the Smiths during this time. The news coverage revealed that Shamblin and/or Remnant helped the Smiths in hiring a high-profile Atlanta attorney to represent the Smiths. I also learned in this time period that Shamblin and Remnant helped the Smiths post bond. I was aware that certain members of Remnant were traveling to Georgia to attend the early legal proceedings. It was during coverage of the jury selection that I heard reporter Laura MacPherson on WSMV in Nashville state in their television news broadcast that before the process began on February 5, 2007, the Smith's lawyer announced to the Court that they had

"made a deal" with the Prosecution so that Remnant would not be involved in the case. A verbatim transcript and the video of this information was posted on the WSMV website which to this day is still online.

15. This took place during the same general time I was preparing to defend myself from the first lawsuit that Shamblin and a number of Remnant members had filed against me alleging slander in early 2007. All of the above media information is embedded firmly in the public record through the Internet and media archives readily available to anyone wishing to study them. Four of those same plaintiffs, who were leaders in Shamblin's church and business dealings, have since left the Remnant movement after a major disagreement within the leadership circle in May of 2009. This dispute was so severe that special meetings and discussions were called by Shamblin and Remnant to explain to the membership what was happening. In a mid-month live conference webcast made to Remnant faithful, the dissenters were likened to a "lynch mob" by Anger and Shamblin. This is again consistent, in my opinion, with how dissent is handled in the leadership of cultic organizations - it is redefined as slanderous attack on an innocent and untouchably righteous chief leader and the dissenters are demonized, isolated and discredited.

16. On August 13, 2008, I posted the following comment (the Statement) to an article on the Celebgalz.com web site regarding the death of another child due to the teachings of a religious cult in Baltimore, Maryland, called One Mind Ministries. The Statement now forms the basis of this litigation:

"An equally dangerous cult called Remnant Fellowship found itself under scrutiny when two of its members were arrested, tried and convicted of murdering one of their children when they followed the child-rearing directions of the cult's leadership, self-anointed "prophetess" Gwen Shamblin and her sycophant lieutenant Tedd Anger. When the members, Joseph and Sonya Smith went to trial, however, Remnant was able to cop a deal with the prosecutors and avoid getting dragged into the murder trial.

As the Church Lady would say "How conVEEEEient."

So that twisted woman Gwen Shamblin to this day strolls around from coterie to coterie in her little Southern cult hothouse, blindly followed by about 1100 or so people, many of whom are children who are just as vulnerable to the practical lifestyle excesses Shamblin advances as "God's Way" ..and who likely have endured abuses that would make you swallow hard.

Sad that it's only when children die in the horrific ways that cults set up for them that this issue EVER pierces the national conscience.

After all, Britney Spears lack of underwear and the premiere of the next action flick installment at the metroplex are far more important.

Murderous ministries are afoot everywhere. They are as American and home grown as mom, apple pie and McDonalds. The problem is everyone forgets about them when they drop off the front page - except the victims of these cults and those very few activists and ministers who can't let this evil be forgotten and who do what we can to get people out of these groups and aid them in getting a firm foundation on reality again."

17. At the time I wrote the Statement, I believed it to be true. However subjective my opinion may be it is still Constitutionally protected speech based upon my own personal observations and no intent of malice or slander motivated its expression. Certainly, certain portions of the Statement are matters of opinion that could probably not be proven to be true or false; for example, my characterization of Anger as a "sycophant." To hear Anger's routinely flattering exaltation of Shamblin's allegedly divine authority in public meetings, in my opinion, certainly is an example of profound sycophancy. That is, however, my own opinion.

18. At the time I wrote the Statement, I did not have any improper motive. Rather, I intended to comment on matters of legitimate public concern that have been the source of considerable public discussion and public controversy. They were stimulated from my reading of the news reports about the Baltimore area cultic group.

19. Any factual assertions in the Statement, for example, that the Smiths were members of Remnant, that they were arrested, that they were convicted, and that the Remnant "made a deal" were made in good faith. Irrefutable historical evidence attests to these plain facts. I believed them to be true at the time, and I still believe them to be true. My belief in the truth of these assertions results from my inquiry, my attention to the news stories concerning these issues, and my study of the public record.

20. Shamblin is a public figure. She has held herself out to the world via her books, website, writings, teachings, preaching, marketing, public appearances, and public statements. She regularly appears on network variety television shows to promote her WDW diet and cites this media attention as a sign of divine favor and legitimization of her message and authority as a prophet of God.

21. Anger is a public figure. He routinely functions as a WDW and Remnant "shepherd" and "counselor". He appears prominently on the Remnant website, he is a public spokesman for Remnant and WDW, he participates, and sometimes leads, the Remnant webcasts and conference calls which are broadcast across the United States. He has injected himself into the controversy surrounding the Smith case and the issue of child discipline by making public statements, preaching, teaching and by making public appearances. He has voluntarily given interviews on television to speak about Remnant, child discipline and other issues involving Remnant.

24. The Smith case is a public controversy and was the subject of numerous news stories in both Tennessee and Georgia.

25. The presence of Remnant in Tennessee is a matter of public concern and public controversy, which has been followed by the news media. Remnant, its leadership, and its teachings have been the subject of extensive public discussion and debate, which has included public protests, public statements by former members, and lawsuits. Remnant recently celebrated its tenth year of existence and continues to use the WDW diet philosophy as a means to recruit new members. Shamblin has gone to great lengths to archive and preserve Remnant teaching for the future generations of her movement.

26. Remnant's teachings regarding child discipline constitute a matter of public concern and public controversy, and have been the subject of numerous news stories as well. Remnant and its leadership actively promote these teachings by oral tradition as well as the circulation of recordings in which Shamblin's mandates are routinely reinforced. Remnant has created and circulated a document purporting to be legal advice on how to deal with the TN Department of Children's Services and who to call if a DCS caseworker calls on homes where Remnant members use Remnant sanctioned parenting methodology. I received this document from another ex-Remnant member. Furthermore, there has been public discussion and controversy regarding the use of glue sticks by Remnant members for child discipline.

27. By commenting on the Smith case, Remnant and its leadership, and their teachings on child discipline, I intended to assert my Constitutionally protected free speech on a matter of great public importance involving public figures, public controversy and the health and welfare of children.

28. Shamblin and Anger have now sued me twice for libel. Their first case (which they filed with numerous co-Plaintiffs) was filed November 6, 2006, and was voluntarily dismissed after a hearing on my Motion to Dismiss. In the first lawsuit and in this lawsuit Shamblin and Anger sued me for punitive damages, even though they know that I have limited means. After the hearing on my Motion to Dismiss the first lawsuit their counsel stated in a television interview that he knows I do not have substantial financial means and didn't think they could collect the amount of damages they were requesting.

29. I work a secular job to support my wife and myself and perform ministry in non-traditional settings wherever possible. These lawsuits have caused me to expend time and money and have caused me personal distress. I believe both lawsuits to be without any merit whatsoever.

30. Attached as Exhibits A through H are CD's which contain audio recordings of Remnant lessons on child discipline taught or moderated by Shamblin and video recordings of various television news reports on Remnant, Shamblin, Anger or the Smith murder trial. I listened to and/or viewed each of these recordings before ever making the Statement. These are true and accurate copies I made for purposes of this affidavit.

Exhibit A

RF Audiotapes 1 and 2

RFA2303SSMITH. Women's conference call with Gwen Shamblin. Sonya Smith describing her conversation with Tedd Anger regarding disciplining her child, Josef.

RFCC discipline. Remnant recorded lesson about child discipline.

Exhibit B

RF firmbeliefs 1 and 2. Channel 5 News, Phil Williams' report of Remnant Fellowship's Firm Beliefs; possible contribution to Smith murder; interviews with Tedd Anger & Gwen Shamblin, former church members Terri & David Phillips; former church recruit Adam Brooks; church member David Martin & Joseph Smith; use of glue sticks, medication, Gwen Shamblin as a prophet.

Exhibit C

032707-childabuser eyes 12n[1]. Channel 11 (Cobb County, GA) News report regarding sentencing hearing of Sonya and Joseph Smith. Shows Tedd Anger interview at courthouse regarding character of defendants and possible appeal.

Exhibit D

Remnant lawsuit 0326. Channel 2 WKRN News; Mitch Roberts report regarding Remnant Church lawsuit against anonymous blogger and Spiritwatch Ministries. Remnant counsel acknowledges they do not expect to collect from Martinez.

Exhibit E

Ex RFmember 0208. News 2 News report of Scott Fralich interview with former Remnant Church member regarding discipline of children and her fear that her children would be beaten by other church members.

Exhibit F

10961953.200K. Channel 4 News Laura McPherson report of Smith murder trial. Includes police testimony regarding marks on child's body; babysitter's testimony regarding child discipline. References of Remnant Church members' support of defendants.

Exhibit G

10947770.200K. Channel 4 News Allen Frio report regarding pre-trial hearing on Smith murder trial. Includes police investigation, police raid on Remnant church, Gwen Shamblin, and reference to deal with prosecution to limit involvement of Remnant Church in the Smith Murder case.

Exhibit H

10937365.200K. Channel 4 News Laura MacPherson report of Smith murder trial jury selection; reference to defense attorney statement that a deal was made with prosecutor's to limit Remnant Church's involvement in Smith murder case.

31. I submit this affidavit in support of the Motion for Summary Judgment that my attorneys have filed, asking that this lawsuit be dismissed with prejudice.

SIGNATURE PAGE FOLLOWS

Further the Deponent saith not.

Dated this 14th day of November, 2009.

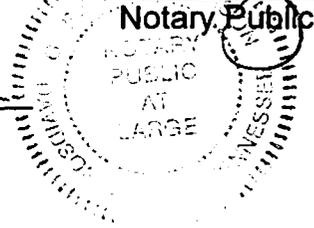

Rafael Martinez

State of Tennessee
County of Williamson

Sworn to and subscribed before me this 14th day of November, 2009.



My commission expires 7.3.2012



IN THE CIRCUIT COURT FOR WILLIAMSON COUNTY, TENNESSEE

GWEN SHAMBLIN and TEDD ANGER,)
)
 Plaintiffs,)
)
 VS)
)
 RAFAEL MARTINEZ,)
)
 Defendant.)

Case No. 09476
JURY DEMAND

FILED
DEC 18 2009
Debbie McMillan Barrett
Circuit Court

DEFENDANT'S STATEMENT OF UNDISPUTED MATERIAL FACTS

Defendant Rafael Martinez, by and through counsel, submits this Statement of Undisputed Material Facts, pursuant to Rule 56.03, in support of his Motion for Summary Judgment:

1. Gwen Shamblin founded the Weigh Down Workshop. (See Affidavit of Rafael Martinez, ¶ 5.)

RESPONSE:

2. Gwen Shamblin has authored at least one book. (See Affidavit of Rafael Martinez, ¶ 5.)

RESPONSE:

3. Gwen Shamblin founded the Remnant Fellowship in 1999. (See Affidavit of Rafael Martinez, ¶ 5.)

RESPONSE:

4. Joseph and Sonya Smith were members of the Remnant Fellowship. (See Affidavit of Rafael Martinez, ¶ 9.)

RESPONSE:

5. The audio file numbered "RFA2303SSMITH" and included as part of Exhibit A to the Affidavit of Rafael Martinez contains true and accurate copies of excerpts of a women's conference call led by Gwen Shamblin. (See Affidavit of Rafael Martinez, ¶ 30 and Exhibit A.)

RESPONSE:

6. As part of the conference call referenced in Statement Number 5 above (irrespective of what the Plaintiffs want to call it), Gwen Shamblin spoke directly to Sonya Smith about the topic of child discipline. (See Affidavit of Rafael Martinez, ¶¶ 10, 11, 30 and Exhibit A.)

RESPONSE:

7. As part of the conference call referenced in Statement Numbers 5 and 6 above, Gwen Shamblin spoke directly to Sonya Smith about the advice that Mrs. Smith said she had received from Tedd Anger with respect to disciplining her son, Josef. (See Affidavit of Rafael Martinez, ¶¶ 10, 11, 30 and Exhibit A.)

RESPONSE:

8. The audio file numbered "RFCC discipline" and included as part of Exhibit A to the Affidavit of Rafael Martinez contains true and accurate copies of excerpts of a recorded lecture or sermon (irrespective of what the Plaintiffs would call it) led by Gwen Shamblin on the subject of child discipline. (See Affidavit of Rafael Martinez, ¶¶ 10, 11, 30 and Exhibit A.)

RESPONSE:

9. As part of the lecture referenced in Statement Number 8 above, Gwen Shamblin spoke with a Remnant member and approved of his spanking his child "over and over and over and over and over and over again." (See Affidavit of Rafael Martinez, ¶¶ 10, 11, 30 and Exhibit A.)

RESPONSE:

10. Gwen Shamblin permitted the conference call referenced in Statement Number 5 above to be recorded. (See Affidavit of Rafael Martinez, ¶ 10.)

RESPONSE:

11. Gwen Shamblin permitted the lecture referenced in Statement Number 8 above to be recorded. (See Affidavit of Rafael Martinez, ¶ 10.)

RESPONSE:

12. Gwen Shamblin acquiesced in the broadcast of the conference call referenced in Statement Number 5 above and the lecture referenced in Statement Number 8 above to various third parties, including members of Remnant Fellowship. (See Affidavit of Rafael Martinez, ¶ 10.)

RESPONSE:

13. Joseph and Sonya Smith were arrested and charged with beating their eight year old son, Josef, to death. (See Affidavit of Rafael Martinez, ¶ 9.)

RESPONSE:

14. The Smith murder trial was widely reported by the news media. (See Affidavit of Rafael Martinez, ¶¶ 9, 14.)

RESPONSE:

15. Gwen Shamblin and Tedd Anger voluntarily participated in a sit-down interview with television news channel WTVF investigative reporter Phil Williams. (See Affidavit of Rafael Martinez, ¶ 12.)

RESPONSE:

16. The interview referenced in Statement Number 15 above was broadcast on the nightly news in Nashville, Tennessee. (See Affidavit of Rafael Martinez, ¶¶ 12, 30 and Exhibit B.)

RESPONSE:

17. The interview referenced in Statement Number 15 above covered a variety of topics, including, but not limited to, Gwen Shamblin's statements on the topic of child discipline, whether Gwen Shamblin was a "prophet," and the Smith murder trial. (See Affidavit of Rafael Martinez, ¶¶ 12, 30 and Exhibit B.)

RESPONSE:

18. Both Gwen Shamblin and Tedd Anger spoke during the interview referenced in Statement Number 15 above, and their words and images were broadcast on the nightly news in Nashville. (See Affidavit of Rafael Martinez, ¶¶ 12, 30 and Exhibit B.)

RESPONSE:

19. During the interview referenced in Statement Number 15 above, portions of the recordings referenced in Statements Number 5 and 8 were played. (See Affidavit of Rafael Martinez, ¶¶ 12, 30 and Exhibit B.)

RESPONSE:

20. When the recordings were played on air, as referenced in Statement Number 19 above, Gwen Shamblin stated that at least one of the recordings had been tampered with. (See Affidavit of Rafael Martinez, ¶¶ 12, 30 and Exhibit B.)

RESPONSE:

21. Gwen Shamblin later conceded that the recording referenced in Statement 20 above had not been tampered with. (See Affidavit of Rafael Martinez, ¶¶ 12, 30 and Exhibit B.)

RESPONSE:

22. A search warrant was served on Remnant Fellowship in May of 2004 by the Georgia authorities in charge of prosecuting the Smith case. (See Affidavit of Rafael Martinez, ¶ 13.)

RESPONSE:

23. Gwen Shamblin and Tedd Anger publicly defended Sonya and Joseph Smith during the course of their trial. (See Affidavit of Rafael Martinez, ¶¶ 14, 30 and Exhibit C and E.)

RESPONSE:

24. Gwen Shamblin and Tedd Anger were involved, directly or indirectly, in efforts by the Remnant Fellowship to assist the Smiths in hiring an attorney and posting bond. (See Affidavit of Rafael Martinez, ¶¶ 14, 30 and Exhibit C and E.)

RESPONSE:

25. It was reported by WSMV that Remnant Fellowship "made a deal" to avoid further involvement in the Smith murder trial, as reflected in Exhibit G and H to the Affidavit of Rafael Martinez. (See Affidavit of Rafael Martinez, ¶¶ 14, 30 and Exhibits G and H.)

RESPONSE:

26. Tedd Anger and other members of the Remnant Fellowship traveled to Georgia for various portions of the Smith case. (See Affidavit of Rafael Martinez, ¶¶ 14, 30 and Exhibit C and E.)

RESPONSE:

27. Sonya and Joseph Smith were convicted of murder and were given lengthy prison sentences. (See Affidavit of Rafael Martinez, ¶ 30 and Exhibit C.)

RESPONSE:

28. At the conclusion of the Smith case, Tedd Anger voluntarily gave an interview outside of the courthouse in Georgia. (See Affidavit of Rafael Martinez, ¶¶ 14, 30 and Exhibit C.)

RESPONSE:

29. At the time that Rafael Martinez wrote the Statement set forth at paragraph 16 of his Affidavit, he believed the factual assertions therein to be true. (See Affidavit of Rafael Martinez, ¶¶ 17-19.)

RESPONSE:

30. Certain portions of the Statement set forth at paragraph 16 of Rafael Martinez's Affidavit apply to the Remnant Fellowship, and not to the Plaintiffs. (See Affidavit of Rafael Martinez, ¶¶ 16, 19, 25.)

RESPONSE:

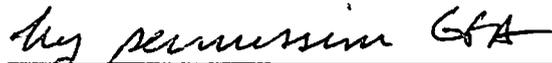
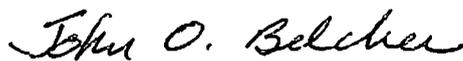
31. Certain portions of the Statement set forth at paragraph 16 of Rafael Martinez's Affidavit are matters of personal opinion and are not assertions of fact. (See Affidavit of Rafael Martinez, ¶¶ 16, 17.)

RESPONSE:

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been sent to the following individual via U.S. Mail, on the 18th day of December 2009:

Samuel J. Harris, Esq.
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Cookeville, TN 38501
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