

No.

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In the  
**Supreme Court of the United States**

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SHIRLEY JN JOHNSON

*Petitioner,*

v.

NEW DESTINY CHRISTIAN CENTER CHURCH, INC.

a/k/a Paula White Ministries

a/k/a City of Destiny

PAULA MICHELLE MINISTRIES, INC.,

a/k/a Paula White Ministries

PAULA MICHELLE WHITE

a/k/a Paula Michelle Cain

*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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APPENDIX TO THE  
PETITION FOR A WRIT OF CERTIORARI

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APPENDIX A

Case: 18-13940 Date Filed: 05/20/2019

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 18-13940  
Non-Argument Calendar

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D.C. Docket No. 6:15-cv-01698-RBD-TBS

SHIRLEY JOHNSON, individual,  
Plaintiff – Appellant,

Versus

NEW DESTINY CHRISTIAN CENTER CHURCH,  
INC., Florida not for profit corporation, a.k.a. Paula  
White Ministries, PAULA MICHELLE MINISTRIES,  
INC., Florida not for profit corporations, a.k.a. Paula  
White Ministries, PAULA MICHELLE WHITE, indi-  
vidually and in her official capacity as President, Di-  
rector and Senior Pastor of New Destiny Christian  
Center Church, Inc., and as Director and Incorporator  
of Paula Michelle Ministries, Inc., and as Director of  
Resurrection Life THC, Inc., a.k.a. Paula Michelle  
Cain,

Defendants – Appellees,

2a

RESURRECTION LIFE THC, INC. Florida non-profit  
(not for profit) corporation,  
Defendant.

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Appeal from the United States District Court  
for the Middle District of Florida

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(May 20, 2019)

Before TJOFLAT, JORDAN, and BRANCH, Circuit  
Judges.

PER CURIAM:

Shirley Johnson, proceeding *pro se*, appeals from the district court's order declining to award her punitive damages following a bench trial in her successful action against New Destiny Christian Center Church, Inc. ("New Destiny"), Paula Michelle Ministries, Inc. ("PWM"), and Paula Michelle White. We affirm.

**I.**

In 2014, PWM sued Johnson for copyright infringement. Johnson operates a YouTube channel. She uses that channel primarily to criticize White's sermons at New Destiny, frequently posting video clips of those sermons, commenting on and critiquing them, and arguing that White misrepresents the true tenets of Christianity. White's son, the manager of PWM's online presence, consulted with PWM's attorney to determine whether PWM had a viable copyright

claim against Johnson based on her use of clips of White's sermons. Counsel stated he believed there was a valid legal basis for a lawsuit, so PWM brought one. Defendants aver that after some time passed, counsel advised that the legal fees outweighed any benefit from the suit, and PWM voluntarily dismissed it.

Johnson then brought this *pro se* malicious prosecution diversity action under Florida law. Because of Defendants' misconduct during discovery, the district court entered a default judgment against them on the merits. *See Fed. R. Civ. P. 37(b)(2)(vi).* The action then proceeded to a bench trial on damages.

Johnson sought non-economic damages and nominal damages pursuant to 17 U.S.C. § 512(f) and punitive damages pursuant to Fla. Stat. § 768.73. In support of her punitive damages claim, she alleged intentional malice in Defendants' bringing the copyright infringement suit, asserting that White had personally attacked her in her sermons. But evidence on those sermons adduced at trial revealed that White never mentioned Johnson by name. In one sermon that Johnson contends is relevant, White said, "I intend to be a menace to you" and "I am in this battle, and I am going to win this battle." White testified that "this battle" was against Satan as an "enemy to [ ] God's kingdom" and that she never directs her sermons at anything personal. Yet in another sermon, White asserted she was being persecuted and referred to a "legal situation." White admitted that the only lawsuit in which she was a party was Johnson's suit against her and that she could have been referring to Johnson. But she could not say with certainty that "legal situation" meant "lawsuit," as there were other "legal situations" the church faced.

After the bench trial, as stipulated by the parties, the district court awarded \$1,207.93 in economic damages incurred in defending the copyright infringement action. It also awarded \$12,500.00 in damages for emotional distress resulting from that action.

But the court refused to award punitive damages. Citing Florida law, the court explained that it needed to consider several items in light of the evidence presented: the egregiousness of each defendant's conduct; the degree of harm; and each defendant's net worth. The court concluded that although the copyright infringement action may have been motivated in some part by ill will, there was still insufficient evidence to support a punitive damages award. In particular, based partly on its credibility assessments,<sup>1</sup> it found that PWM had a good-faith basis for relying on counsel in initiating the copyright infringement action and that PWM's primary purpose in that action was to prevent infringement.

## II.

Johnson timely appealed. She raises numerous issues before us. These include, at least in her

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<sup>1</sup> White's son had testified that several YouTube channels would be listed in the search results for "Paula White Ministries" or "Paula White," even though those channels were not affiliated with PWM or White. He stated that it was "[v]ery important" to PWM that it "concentrate viewership" of its copyrighted material on its own YouTube channel, over which it had control. The district court credited this testimony, which was intended to show that PWM had a non-malicious motive in protecting its copyrighted materials.

statement of the issues,<sup>2</sup> whether the district court erred in denying punitive damages; whether the district court erred in finding insufficient evidence of

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<sup>2</sup> Later in her briefing, Johnson also raises other arguments that are without merit. First, she argues that “the district court erred in finding that a default judgment was punishment enough for [Defendants]” (capitalization removed). We suspect this point is another way of framing her request for punitive damages. If she means the argument literally, we still reject it. Johnson failed to object to the magistrate judge’s recommendation of default judgment, which the district court adopted. This Court’s rules bar Johnson’s argument on appeal. *See* 11th Cir. R. 3-1 (forbidding challenges on appeal to magistrate judge’s report and recommendation if party had the opportunity to object). To the extent Johnson refers to her request following the default judgment that the district court grant all the relief asked for in her complaint, the district court was not required to grant that request. The scope of the discovery sanction was the district court’s choice. Indeed, we employ an abuse-of-discretion standard in evaluating the district court’s decision to impose a default-judgment sanction under Rule 37. *See Adolph Coors Co. v. Movement Against Racism & the Klan*, 777 F.2d 1538, 1543–44 (11th Cir. 1985) (“On appeal we will . . . find an abuse of discretion if less draconian but equally effective sanctions were available.”). Having reviewed the record, we conclude the district court did not abuse its discretion in declining to award without a hearing the damages for which Johnson prayed in her complaint.

Johnson also later contends that the district court was biased against her. We find no merit in this contention, which is simply a recasting of Johnson’s broader argument: that the district court made inferences from the facts with which Johnson disagrees. We note also that she never moved for the district judge to recuse.

Finally, Johnson appears to believe the district court erred in calculating her compensatory damages. We do not find this issue has been “plainly and prominently” raised, certainly here and perhaps even in the district court, and we therefore deem it abandoned. *See United States v. Jim*, 891 F.3d 1242, 1252 (11th Cir. 2018) (“Under our caselaw, a party seeking to raise a claim or

malice; whether the district court erroneously allowed Defendants to use an advice-of-counsel “affirmative defense”;<sup>3</sup> whether the district court erroneously allowed Defendants to “re-argue” the issue of fair use; and whether various agency law theories apply in this case.<sup>4</sup>

Notwithstanding Johnson’s framing of the issues, our review convinces us that this appeal boils down to one question: whether the district court erred in finding the evidence insufficient to support an award of punitive damages.

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issue on appeal must plainly and prominently so indicate. Otherwise, the issue—even if properly preserved at trial—will be considered abandoned.” (quoting *United States v. Jernigan*, 341 F.3d 1273, 1283 n.8 (11th Cir. 2003)), *petition for cert. filed*, (U.S. Jan. 7, 2019) (No. 18-891).

<sup>3</sup> Johnson appears to suggest the default judgment nullified Defendants’ answer containing their advice-of-counsel affirmative defense, which means they should not have been able to use advice-of-counsel evidence. Yet “even a sanctioned defendant must be permitted to contest the nature and extent of its wrongdoing in the punitive-damages phase of the trial.” *Belle Glade Chevrolet-Cadillac Buick Pontiac Oldsmobile, Inc. v. Figgie*, 54 So. 3d 991, 998 (Fla. 4th DCA 2010). The advice-of-counsel evidence was highly probative of the motive for pursuing the copyright infringement suit.

<sup>4</sup> Johnson argues that PWM and New Destiny are vicariously liable for White’s actions. But that argument is irrelevant to the question of punitive damages. The district court did not deny punitive damages on the grounds that White’s actions could not be imputed to her companies but rather on the grounds that Johnson failed to show intentional misconduct or gross negligence as required for punitive damages under Florida law. Further, the district court directed the clerk to enter judgment for the compensatory damages jointly and severally against all the defendants—White, New Destiny, and PWM.

“After a bench trial, we review a district court’s decision to award or deny punitive damages for abuse of discretion.” *Winn-Dixie Stores, Inc. v. Dolgencorp, LLC*, 746 F.3d 1008, 1035 (11th Cir. 2014). “A district court abuses its discretion if it applies an incorrect legal standard, follows improper procedures in making the determination, or makes findings of fact that are clearly erroneous.” *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1264 (11th Cir. 2009) (quoting *Klay v. Humana, Inc.*, 382 F.3d 1241, 1251 (11th Cir. 2004)). “When findings of fact are based on determinations about witnesses’ credibility, the deference accorded the trial judge is even more significant ‘for only the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener’s understanding of and belief in what is said.’” *Johansen v. Combustion Eng’g, Inc.*, 170 F.3d 1320, 1335 (11th Cir. 1999) (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 575 (1985)).

In a diversity case, we apply state substantive law to determine whether there was sufficient evidence of conduct warranting punitive damages. *See Toole v. Baxter Healthcare Corp.*, 235 F. 3d 1307, 1317 (11th Cir. 2000). Florida law provides that a “defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence.” Fla. Stat. § 768.72(2). “Intentional misconduct” means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.” *Id.* § 768.72(2)(a).

“Gross negligence’ means that the defendant’s conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.” *Id.* § 768.72(2)(b). Given these exacting standards, even for torts where liability also “contain[s] . . . the elements of willfulness, a finding of liability for compensatory damages does not dictate an award of punitive damages.” *Bankers Multiple Line Ins. Co. v. Farish*, 464 So. 2d 530, 533 (Fla. 1985).

Here, the district court did not abuse its discretion in declining to award Johnson punitive damages. The district court correctly applied Florida law, and its factual determinations were not clearly erroneous. The record supports Defendants’ contention, credited by the district court, that they relied on counsel to investigate whether there was a reasonable, good-faith basis to sue Johnson for copyright infringement. The record and the district court’s credibility determinations also demonstrate that the court did not clearly err in concluding that Defendants’ primary motive for the infringement suit was to protect their copyright. As for White’s sermons, they are at best tenuous evidence that White was upset with Johnson—certainly not enough to demonstrate “intentional misconduct or gross negligence” in deciding to bring the copyright infringement suit. Finally, although Johnson’s briefing regularly refers to Defendants’ misconduct during discovery, Defendants have already faced a serious sanction for that misconduct. Any liability for punitive damages turns on Defendants’ tortious conduct before, not during, this lawsuit. *Cf Ault v. Lohr*, 538 So. 2d 454, 456 (Fla. 1898) (finding that, although it does not require a compensatory damages award, a punitive

damages award requires a finding of liability for the underlying cause of action).

Because the record and the district court's credibility determinations support the conclusion Defendants filed the copyright infringement suit to protect their copyright rather than out of malice against Johnson, the district court did not err in declining to award punitive damages.<sup>5</sup> Accordingly, the district court's rulings in all respects are

**AFFIRMED.**

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<sup>5</sup>Johnson moved to amend the judgment under Rule 52(b) of the Federal Rules of Civil Procedure, contending the district court overlooked or disregarded evidence that entitled her to punitive damages. The district court denied that motion, finding Johnson was "simply unhappy with the result" and was impermissibly attempting to relitigate a matter already decided. Johnson also appeals the district court's order denying her motion to amend. Having reviewed the motion, we conclude the district court's characterization was correct: Johnson sought to call the court's attention to evidence already presented and considered. Rule 52(b)'s limited scope forecloses Johnson's strategy. *See Fontenot v. Mesa Petrol. Co.*, 791 F.2d 1207, 1219 (5th Cir. 1986) ("The purpose of [Rule 52(b) motions] is to correct manifest errors of law or fact or, in some limited situations, to present newly discovered evidence. It bears emphasizing that in a district court's Rule 52(a) opinion memorandum of a decision following a bench trial, the court is "not obliged to recite and analyze individually each and every piece of evidence presented by the parties." *Holton v. City of Thomasville Sch. Dist.*, 425 F.3d 1325, 1353 (11th Cir. 2005). As we affirm the district court's decision on the merits, we necessarily also affirm its ruling on Johnson's Rule 52(b) motion.

APPENDIX B

Case 6:15-cv-01698-RBD-TBS  
Document 270 Filed 08/29/18

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

SHIRLEY JN JOHNSON,  
Plaintiff,  
v. Case No.  
6:15-cv-1698-Orl-37TBS

NEW DESTINY CHRISTIAN  
CENTER CHURCH, INC.;  
PAULA MICHELLE MINIST-  
RIES, INC.; and PAULA  
MICHELLE WHITE,

Defendants.

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**ORDER**

Before the Court is Plaintiff's Verified Rule 52(b) Motion to Amend Findings and Judgment. (Doc. 266 ("Motion").) Defendants responded. (Doc. 269.) On consideration, the Court denies the Motion.

Plaintiff brought this action for malicious prosecution against Defendants on October 8, 2015 seeking, among other relief, punitive damages. (Doc. 1.) Following the entry of default judgment against Defendants (Doc. 183), this case proceeded to a two-day bench trial on the issue of Plaintiff's damages (*see*

Doc. 192, 248, 249, 256, 257). The Court then issued a memorandum opinion and order outlining its findings. (Doc. 264 (“**Order**”).) The Order found that Plaintiff was entitled to costs and non-economic damages totaling \$13,707.93; but found that Plaintiff was not entitled to punitive damages. (*Id.* at 15–17.) Plaintiff now moves the Court to amend the Order to find her entitled to punitive damages. (Doc. 266, pp. 1–2.) She contends the Court “overlooked or disregarded material evidence and testimony, and failed to give detailed findings on some of Plaintiff’s evidence, which, if considered, would produce a different outcome.” (*Id.* at 2.) Defendants oppose (Doc. 269), so the matter is ripe.

A Rule 52 motion for the court to or amend its findings is not intended to allow parties to relitigate old issues, advance new theories, or rehear the merits of a case. *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1219 (5th Cir. 1986). Rather, the “purpose” of Rule 52 motions “is to correct manifest errors of law or fact or, in some limited situations, to present newly discovered evidence.” *Id.* Furthermore, in a Rule 52(a) memorandum opinion, a district court is “not obliged to recite and analyze individually each and every piece of evidence presented by the parties.” *Holton v. City of Thomasville Sch. Dist.*, 425 F.3d 1325, 1353 (11th Cir. 2005).

Here, Plaintiff’s Motion claims the Court overlooked or disregarded evidence she submitted that clearly indicates malice and entitles her to punitive damages. (Doc. 266, pp. 2–17.) Yet the Court comprehensively considered all the evidence submitted and found that Plaintiff was not entitled to punitive damages. (See Doc. 264, p.1 (“Having considered the pleadings, evidence, argument, and relevant legal

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authority, and having made determinations on the credibility of the witnesses, the Court hereby renders its decision on the merits of this case pursuant to Federal Rule of Civil Procedure 52."); *see also* Doc. 264, pp. 1–19.) Plaintiff is simply unhappy with the result, so brought this Motion to re-litigate old issues. Such is not grounds to alter or correct the judgment under Rule 52, *see Fontenot*, 791 F.2d at 1207, so the Motion is due to be denied.

Accordingly, it is **ORDERED AND ADJUDGED** that Plaintiff Shirley Jn Johnson's Verified Rule 52(b) Motion to Amend Findings and Judgment. (Doc. 266) is **DENIED**.

**DONE AND ORDERED** in Chambers in Orlando, Florida, on August 29, 2018.



Copies to:  
Counsel of Record  
*Pro Se* Party

APPENDIX C

Case 6:15-cv-01698-RBD-TBS  
Document 264 Filed 07/31/18

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

SHIRLEY JN JOHNSON,  
Plaintiff,

v. Case No.  
6:15-cv-1698-Orl-37GJK

NEW DESTINY CHRISTIAN  
CENTER CHURCH, INC.;  
PAULA MICHELLE MINISTRIES,  
INC.; and PAULA MICHELLE  
WHITE,

Defendants.

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**MEMORANDUM OPINION AND ORDER**

This cause is before the Court following a two-day bench trial. (See Docs. 248, 249, 256, 257.) Having considered the pleadings, evidence, argument, and relevant legal authority, and having made determinations on the credibility of the witnesses, the Court hereby renders its decision on the merits of this case pursuant to Federal Rule of Civil Procedure 52.

## I. BACKGROUND

Plaintiff Shirley Jn Johnson (“Johnson”) initiated this action against Defendants for, *inter alia*, malicious prosecution under Florida law related to a 2013 copyright infringement suit filed against Johnson by Paula White Ministries. (See Doc. 1); *see also* *Paula White Ministries v. Shirley Jn Johnson*, 6:14-cv-497-GAP-DAB (Mar. 27, 2014), Doc. 1 (“**Copyright Infringement Action**”). Following contentious discovery, the Court entered default judgment against Defendants on Johnson’s malicious prosecution claims. (See Doc. 183.) The matter then proceeded to trial for Johnson’s damages. (See Doc. 192.).

## II. JURISDICTION

The Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332. The parties are diverse, and the Court previously accepted Johnson’s assertion that the amount-in-controversy exceeds \$75,000. (See Doc. 131, pp. 12–16.)

## III. FINDINGS OF FACT

### A. Agreed Findings of Fact<sup>1</sup>

1. Plaintiff operates the YouTube channel “theremnatsnjn.”
2. Plaintiff is the registered owner of the YouTube channel “theremnatsnjn.”
3. Plaintiff is responsible for the content on the YouTube channel “theremnatsnjn.”
4. Plaintiff started her YouTube channel on November 1, 2011

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<sup>1</sup> The parties stipulated to these facts, as provided by their Joint Pre-Trial Statement. (See Doc. 222, pp. 12–13.)

5. Plaintiff created the website <http://www.theremnantsnj.com/>.
6. Plaintiff's website was "built and ready for public consumption" on September 11, 2011.
7. Paula White Ministries sent an initial take-down notification to YouTube on February 2, 2012.
8. On February 6, 2012, YouTube sent Paula White Ministries and Plaintiff a notification that certain content was removed.
9. On February 22, 2012, Plaintiff filed a counter-notification with YouTube requesting her content be reinstated.
10. Plaintiff's YouTube channel was restored on May 14, 2012.
11. Mr. Sadaka sent Plaintiff a Cease & Desist letter on October 7, 2013.
12. The Copyright Infringement Action was filed by attorneys of the NeJame Law Firm on behalf of Paula White Ministries (d/b/a of Paula Michelle Ministries, Inc.) on March 27, 2014.
13. YouTube removed certain content on Plaintiff's YouTube channel as a result of another notification by Paula White Ministries on May 2, 2014.
14. Plaintiff filed a counter-notification with YouTube requesting her content be reinstated on May 14, 2014.
15. Paula White Ministries notified YouTube that the Copyright Infringement Action was filed on May 15, 2014.
16. YouTube declined Plaintiff's request to

reinstate content as Copyright Infringement Action was pending on June 4, 2014.

17. The Copyright Infringement Action was dismissed on January 22, 2015.
18. Plaintiff's YouTube channel was restored on February 10, 2015.
19. This Malicious Prosecution Action was filed on October 8, 2015.
20. Plaintiff's economic damages are limited to monetary damages that she sustained as result of defending against the underlying copyright action. These damages total \$1,207.93.
21. Plaintiff has no other economic damages related to her defense of the underlying copyright action, but Plaintiff also seeks her costs of prosecuting this suit.
22. Plaintiff has not suffered any monetary loss as a result of her YouTube channel being taken down. However, Plaintiff contends she sustained economic damages in getting her YouTube channel restored. Plaintiff is not seeking to recover such damages in this action, but is seeking those damages in a separate action, styled *Shirley Jn Johnson v. New Destiny Christian Center Church, Inc. et al*, 6:17-cv-710-Orl-37GJK.
23. Plaintiff's claim for mental pain and anguish involves the "garden variety" emotional injuries she sustained during the underlying copyright action, which concluded on January 22, 2015.
24. Plaintiff has recovered from her past mental

and emotional injuries.

25. Plaintiff did not seek psychological or psychiatric treatment for injuries, nor was she examined, diagnosed or treated for a specific mental/psychiatric disorder or injury as a result of Defendants' conduct.
26. Defendant White has not specifically referred to Plaintiff by name in any of the sermons or videos Plaintiff has produced in this action or intends to utilize at trial.

**B. Court's Additional Findings of Fact<sup>2</sup>**

**i. Initiation of copyright infringement action**

1. Paula White-Cain ("White") is Senior Pastor at New Destiny Christian Center. She preaches sermons to her congregation, which she personally crafts and writes. (Doc. 256, p. 44:1-19.) Her sermons are recorded, and she sometimes uses parables or discusses her personal life when preaching.
2. Beyond preaching, White is the president of New Destiny Christian Center. (*Id.* at 109:3-6.) She delegates various responsibilities to others involved in her organization, including day-to-day operations, day-to-day management, and working with

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<sup>2</sup>The following facts have been established by a preponderance of credible evidence. To the extent that any of these facts may represent conclusions of law, the Court adopts them as such.

attorneys. (*Id.* at 107:6–15.) White’s Son, Brad Knight (“**Knight**”), served as Operations Manager of the Paula White Ministries (“**PWM**”), and is now employed on a contract basis with New Destiny Christian Center. (*Id.* at 108:11–18; Doc. 257, p. 8:5–18.) Knight handles issues involving YouTube and the online presentation and distribution of White’s sermons. (*See* Doc. 257, pp. 10–12.)

3. Between 2012 and 2015, Knight was responsible for growing PWM’s internet program, which included placing ads on videos of White’s sermons. (*Id.* at 12–15.) Part of this process included sending YouTube takedown notices for videos believed to be violating the Digital Millennium Copyright Act (“**DMCA**”) by “re-uploading [PWM’s] content or using [PWM’s] content.” (*Id.* at 6:2–5.) To that end, Knight and another employee would search YouTube for White and PWM to “see what videos were using [their] content.” (*Id.* at 17:6–11.) In doing this, Knight discovered Johnson’s page, which had high video counts on videos that included clips from White’s sermons. (*Id.* at 17:12–17.) Johnson was then sent a DMCA takedown notice by PWM. (*Id.* at 16:13–15.) In response, Johnson filed a counter-notification and her videos were restored. (*Id.* at 16–18.)
4. About a year and a half later, Knight consulted with attorney Tom Sadaka

about Johnson's videos to see if PWM had a valid basis for a copyright infringement claim against Johnson. (*Id.* at 21:3 –18.) Knight was the "only person that dealt directly with [Sadaka]" concerning Johnson's suit. (*Id.* at 22:22–25.) On review, Sadaka affirmed that PWM "had a reasonable basis for a lawsuit." (*Id.* at 22:10–12.) PWM's "primary intention was the removal of [Johnson's] videos and the concentration of [its] platform on YouTube." (*Id.* at 22:15–17; *see also id.* at 23:1–14.) Knight acted based on his understanding that Johnson was using PWM's content. (*Id.* at 25:5–17.) Knight believed that Johnson's videos did not constitute "fair use," based on his own understanding and based on the advice of Sadaka that there was a reasonable basis for the claim. (*Id.* at 29–30.) Ultimately, as the lawsuit progressed, Knight decided that the costs of litigation and legal fees outweighed the benefits of continuing suit to receive income from YouTube. (*Id.* at 26–27.) So he suggested to Sadaka that they drop the suit. (*Id.* at 27:7–15; *see also id.* at 28.) The Copyright Infringement Action was ultimately dismissed by PWM. (*Id.* at 38.) The Court finds Knight's testimony credible.

5. White's involvement in the Copyright Infringement Action was limited. (*See id.* at 27:16–22.) On being told by her son that a lawsuit against Johnson was "the only

way we could pursue what we wanted to do with YouTube,” White “gave [Knight] the authority to do what [he] thought was best, and [he] proceeded.” (*Id.*; see also *id.* at 37–38.) The Court accepts Knight’s testimony that White had minimal involvement in the Copyright Infringement Action, but that he sought her authorization before initiating suit.

## ii. This action

6. After the Copyright Infringement Action was dismissed, Johnson initiated this action for malicious prosecution against Defendants. (Doc. 1.) She claims White and Defendants had “malice and evil motive” in instigating the Copyright Infringement Action, and sought to injure her personally. (*See id.* ¶¶ 38, 56, 59.) Johnson believes that White knew about her videos and used her sermons to personally attack her, even though White did not mention her by name. (*See id.* ¶¶ 59–65.) At trial, Johnson offered several clips from sermons as support. (Pl. Exs. 9D–9G.)
7. One of Johnson’s clips came from White’s sermon on May 1, 2016, where White discussed loving people despite personal issues you might face with them. (Pl. Ex. 9G.) White focused on John 13:34–35, which says, “A new commandment I give unto you, That ye love another; as I have loved you, that ye also love another. By this shall all men know that ye are my

disciples, if ye have love to one another." (*Id.*.)

8. At some point in the sermon, White gave examples of personal strife she's faced and people who she's had difficulties with. (Defs. Ex. B-79; *see also* Pl. Ex. 9G.) She used these examples to show that it's not easy to love such people, but because God commands it, it must be done. (Defs. Ex. B-79; Pl. Ex. 9G.)
9. Excerpted, she preached:

I see great things happen. Then, that means, Rachel, that I'm going to have to really learn how to love, because love is not just something that comes so naturally to all of us. I mean, we've been hurt. Am I the only person that's ever been hurt in life? Am I the only person that's ever been offended in life? Am I the only person that's ever wanted to knock someone out in a New York second in life? Am I only person that wanted to say, you are saying this about me but let me tell about your—am I the only person that wanted to hire a detective, get some stuff, put it out and publish it and start a blog? Now I know, see, uh, please don't get into the dirty side of my mind—am I the only person that ever wanted to be ruthless and —ok, praise the Lord — wanted somebody who was saved but not sanctified come after you in Jesus' name? But He says, Paula that's not my

disciple. You will know—you will, you will love, you will know that you're a disciple by the love you have for one another. Not just in your tribe, Paula. Not just at New Destiny Christian Center. Not just within your denomination. Not just within your—your personality frame. But within—in every single person who is a born-again believer. You know how many people say you can't preach cuz you're a woman? . . . You will know—this is the new command —Paula are you my disciple? Do you still love? Do you want me to start calling out names? . . . Do you love all the people that put the junk out on the internet? Do you love—I can't call one out because I'm in a present case right now—do you love the one that says this about you? See this is a reality. I'm just telling—you have a story, too — do you love the one that slept with your husband? In church? I'm sorry, I'm just getting real with you right now. OK, she's going, "That's too much love." Not if you're going to be a disci —[laughing]— she's going that's too much love. That's reality. Guys, those aren't something I'm fabricating, I'm just talking to you about my story. Because if I'm going to be a disciple, could you have given me some other new commandment, God? Could you have told me if I love, I'd just work ninety hours a week for you? That I'd be known as a disciple if I fasted and I

prayed a lot? No, I'll be known as a disciple by loving. And loving's not always easy. Loving doesn't always feel good to my flesh. In fact, to whom much is forgiven, they love much/ myself [unintelligible]. God didn't say I have to like you all the time."

(Pl. Ex. 9G)

10. Johnson presented this clip (and others) as evidence of White's "malice" against her. (Doc. 256, p. 31:21–24.)
11. At that time, the only lawsuit White was involved in was this action with Johnson. Without specifically remembering, White admitted that she could have been speaking about Johnson when she was giving examples of situations to still love in and said, "I can't call one out because I'm in a present case right now." (*See id.* at 64–75).
12. The Court finds credible Johnson's assertion that White was referring to her in the May 1, 2016 sermon. But the Court does not find this reference indicates any malice from White directed at Johnson. Rather, this sermon focused on God's command to love others, even those who work against you or bring you difficult situations. (*Id.* at 103:17–25, 104:1–25, 105:1–4. This was White's interpretation of John 13:34-35 from the Bible, and the Court finds no animosity or ill will in this mention. (*Id.* at 103:17–24, 104:1–2;

Defs. Ex. B-79.)

13. Beyond this May 1, 2016 sermon, Johnson provided other clips from White's sermons where White does not mention Johnson by name, but Johnson contends reference her in a negative light. (*See* Pl. Exs. 9D, 9E, 9F.) On review, the Court finds no such reference to Johnson in White's other sermons presented, so rejects Johnson's contentions. In so doing, the Court finds credible White's testimony that she was not referring to Johnson in these clips. (Doc. 256, pp. 105–07.)

### iii. **Johnson's testimony**

14. Johnson testified about her version of the Copyright Infringement Action and its effects on her life. (*See* Doc. 256.)
15. Johnson first became aware of White when she saw her on television back in 2001 or 2002. (Doc. 256, pp. 117–18.) Johnson believed that White was purposefully twisting the Scriptures in her preaching, which prompted her to start speaking out against White. (*Id.* at 118–20.) This began by distributing written documents, but then Johnson began “spreading her message” by developing a website and YouTube channel. (*Id.* at 119–20.) Her videos on YouTube did not contain advertisements or seek revenue. (*Id.* at 123–34.) Johnson has never tried to monetize her videos or receive income from these activities. (*Id.* at 124.)

16. In February 2012, Johnson received notification from YouTube that her channel had been taken down based on a complaint of copyright infringement, which prompted her to start researching copyright infringement and how she could restore her channel. (*Id.* at 125–26.) She then contacted YouTube to file a counter-notification and restore her channel. (*Id.*) The channel was restored in May 2012. (*Id.* at 127.)
17. Almost two years later, in March 2014, Johnson received word from two attorneys of the filing of the Copyright Infringement Action. (*Id.*) They sought to represent her, but Johnson did not feel pressurized or worried at the time because she believed there was no infringement claim. (*Id.* at 127–28.)
18. Once Johnson received the Complaint from the Copyright Infringement Action and read through the allegations, she began to worry. (*Id.* at 128.) Specifically she was alarmed by “the very serious nature” of the allegations and the claims that she “sold [White’s] videos and profited from the sale of those videos.” (*Id.*) Johnson has no legal education, and testified that she thought the Copyright Infringement Action could lead to prison. (*Id.* at 128–29.) She formed this belief after doing her own research into civil and criminal copyright infringement, but Johnson did not seek guidance from an

attorney to verify the accuracy of her beliefs. (*Id.* at 129, 157—58.)

19. Johnson testified that the Copyright Infringement Action caused her reputational harm. (*Id.* at 130-31.) Specifically, she claims to have heard “people whispering and rumoring” about the lawsuit, but she was unable to name these people or provide further details. (*Id.* at 130—31; 149—52.) Furthermore, none of these individuals named her when they were apparently discussing her lawsuit. (*Id.* at 149—52.)
20. Johnson also claims she suffered mental anguish and emotional harm from the Copyright Infringement Action. (*Id.* at 131—32.) Specifically, she claims that she “never really had any peace of mind,” that her “mind was always in turmoil,” she “couldn’t sleep,” and when she could, “it was broken sleep” because her mind was “always active.” (*Id.*) Sometimes, she would “go to bed in tears because [she] thought that [she] would not be able to make it out of this lawsuit because [the] charges were very believable.” (*Id.* at 132.) She also “began to emotionally eat, just eating nonstop,” which caused her to “gain[] probably about 50 pounds.” (*Id.* at 133:1—7.) Furthermore, her personal relationships were affected—she reported that she “couldn’t interact with people,” because “[a]ll [she] could do [was] worry about going to prison, worry about trying

to fight this lawsuit.” (*Id.* at 134:6–14.) Her close relationship with her daughter deteriorated—before the Copyright Infringement Action, they went places and did things together. (*Id.* at 135:23–25.) “That ended” with the suit, as Johnson “didn’t have time” and lost interest.” *Id.* at 134:25, 135:1–7.) And Johnson’s hobbies took the backseat: She used to sew, do carpentry work, and garden; but hasn’t “really been able to do anything but just focus on this lawsuit.” (*Id.* at 136:8–22.) But her anxiety and stress diminished when the motion to dismiss was filed. (*Id.* at 138: 3–12.) She did not seek medical attention for any of these injuries. (*Id.* at 160–61.)

21. Johnson chose not to hire a lawyer to represent her. (*Id.* at 136.) This was because “they didn’t believe [her],” and “[she] didn’t feel like [she] would get good, fair representation if the attorney didn’t . . . even believe [her].” (*Id.* at 136:4–7.) Thus, she chose to represent herself, for which she used the local law library’s resources. (*Id.* at 136–37.) “[She] was at the law library almost every day and almost from the time it opened to the time it closed.” (*Id.* at 137:11–13.)
22. Johnson then initiated this malicious prosecution action “[b]ecause [she] wanted justice.” (*Id.* at 140:7.)

23. The Court finds credible Johnson's testimony about mental anguish and emotional harm she suffered as a result of the Copyright Infringement Action, as someone unfamiliar with the legal process faced with a daunting situation.
24. The Court does not find credible Johnson's testimony that her reputation and character were damaged from the Copyright Infringement Action, as she was unable to provide any details about this and no one uttered her name in their supposed "whispers" about her.

iv. **Expert's testimony**

25. Expert Samuel A. Lewis, a board certified intellectual specialist attorney also testified. (Doc. 257, pp. 44–71.) He was asked to evaluate the manner in which the Copyright Infringement Action was brought, the basis of the case, and whether it was brought in good or bad faith. (*Id.* at 47:15–20.) Based on his review, Lewis concluded that at the time the Copyright Infringement Complaint was filed, PWM could make out a *prima facie* case of copyright infringement. (*Id.* at 51:7–10.) This was because PWM "had a registration on the videos," it "own[ed] the videos," and "because [Johnson] was copying those videos and using them and republishing them." (*Id.* at 51: 11–14.) Despite Johnson's claim of "fair use" in publishing her videos, Lewis concluded

that PWM still had a valid basis for bringing suit—as fair use is a defense, not a right, and its validity turns on a highly factual analysis. (*Id.* at 51–52.) What is more, that Johnson took only pieces of White’s sermons did not prevent a finding of copyright infringement, since copyright includes the right to make derivative works. (*Id.* at 52–53.)

26. Lewis concluded “[t]hat there was a reasonable basis for” the Copyright Infringement Action, and based on his analysis of the fair use factors, particularly regarding Johnson’s motivation for the copying, he found “there’s certainly a good basis for finding that [fair use] wouldn’t have applied.” (*Id.* at 54–55.)
27. Lewis also testified that it seemed as though PWM relied on its attorney, Tom Sadaka, for his determination about whether there was a good faith basis for the lawsuit, (*id.* at 54:4–10), and he found no evidence that PWM acted recklessly in filing the Copyright Infringement Action (*id.* at 56:5–10).
28. The Court finds Lewis’ testimony credible.
29. Defendants also presented evidence of their financial statements. (Doc. 256, pp. 208–24.)

#### **IV. CONCLUSIONS OF LAW**

As the Court entered default judgment for Defendants’ liability on the malicious prosecution claims, the

legal conclusions remaining are Johnson's damages. (See Docs. 183, 192.) Johnson seeks economic damages for her costs associated with the Copyright Infringement Action; nominal damages, non-economic damages; punitive damages; costs of this action; and sanctions. (Doc. 222, p. 11.)

#### **A. Economic and Nominal Damages**

1. The parties have agreed that Johnson will receive \$1,207.93 in economic damages for her costs from the Copyright Infringement Action. (Doc. 222, p. 2; Doc. 256, p. 10:3–6.) Thus, the Court will award Plaintiff these damages.
2. Nominal damages are appropriate where proof of actual injury is absent. See *Dykes v. Hosemann*, 743 F.2d 1488, 1500 (11th Cir. 1984). This is not the case here, as Plaintiff's economic injuries could be proven, were stipulated to, and will be awarded. Thus, the Court will not award Plaintiff nominal damages.

#### **B. Non-Economic Damages**

3. In an action for malicious prosecution, "the plaintiff may recover all damages that are the natural and probable consequences of the action complained of." *Ware v. United States*, 971 F. Supp. 1442, 1471 (M.D. Fla. 1997) (citing *Florida Jur. 2d*, False Imprisonment § 39 (1995) But "[t]he damages must be certain and proximate and not uncertain, contingent, or speculative." *Id.* (alteration in original)).

4. The Court finds that Johnson is not entitled to non-economic damages for her claimed injury to character and reputation. Johnson's testimony here was not credible, and the Court finds these claimed damages speculative.
5. Johnson's testimony about the mental anguish she suffered from the Copyright Infringement Action was credible. Specifically, Johnson testified about the lack of sleep, diminished enjoyment in various hobbies, and overall worry about the litigation and its consequences on her life. The Court finds that Johnson, as an individual unfamiliar with the legal process, credibly suffered emotional harm from the Copyright Infringement Action. But as Johnson did not seek medical treatment and her symptoms have abated, the Court finds a minimal award for these damages appropriate. Thus, the Court awards Johnson \$12,500.00 for these damages.

### **C. Punitive Damages**

6. Although the default judgment entered against Defendants entitles Johnson to punitive damages, sufficient evidence must have been presented to determine the amount against each defaulted defendant, if any. See, e.g., *B-K Cypress Log Homes Inc. v. Auto-Owners Ins. Co.*, No. 1:09-cv-211-GRJ, 2012 WL 13018500, at \*11 (N.D. Fla. May 10, 2012); *Bankers Multiple Line Ins. Co. v. Farish*, 464 So. 2d 530, 532 (Fla.

1985). This determination considers the egregiousness of each Defendant's conduct, the degree of harm to Johnson by Defendants' conduct in the Copyright Infringement Action, and each Defendant's net worth. *See Belle Glade Chevrolet-Cadillac Buick Pontiac Oldmobile, Inc. v. Figgie*, 54 So. 3d 991, 997-98 (Fla. 4th DCA 2010) (citing Fla. Stat. § 768.72(2) (2009) and *Humana Health Ins. Co. of Fla., Inc. v. Chippes*, 802 So. 2d 492, 495-96 (Fla. 4th DCA 2001)).

7. On review, the Court finds there is insufficient evidence to award Johnson punitive damages. Specifically, the Court finds that while pursuit of the Copyright Infringement Action may have been motivated, in some part, by ill will toward Johnson, nonetheless, PWM relied on its counsel to investigate whether a good faith basis existed to support the copyright infringement claim. Based on Lewis's testimony, the Court finds credible that PWM had a good faith basis to sue Johnson for copyright infringement, and its primary purpose for initiating the Copyright Infringement Action was to prevent such infringement. Thus, Plaintiff is not entitled to punitive damages here. *Cf. Lawson v. Kroger Co*, 997 F. 2d 214, 217 (6th Cir. 1993) (finding no malice where the defendant sought criminal sanctions against plaintiff for passing bad checks even though the defendant "might have collected on the checks as a corollary to criminal prosecution").

**D. Additional Costs**

30. As to Johnson's claim for costs associated with prosecuting this action, no evidence was presented at trial regarding these costs. But as the prevailing party here, she may seek to recover these costs from the Clerk by filing a Bill of Costs. *See Fed. R. Civ. P. 54 (d)(1); see also <http://www.uscourts.gov/forms/other-forms/bill-costs-district-court>.*

**E. Sanctions**

31. The Court finds additional monetary sanctions are not necessary for Defendants' non-compliance with discovery, as the Court already imposed the harshest sanction of default judgment. (*See* Doc. 183.)

In sum, the Court finds that Johnson is entitled to \$1,207.93 in economic damages and \$12,500.00 in non-economic compensatory damages, totaling \$13,707.93 in damages. In so doing, the Court denies Defendants' oral motion for judgment as a matter of law (Doc. 253) and renewed motion (Doc. 254).

**IV. CONCLUSION**

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

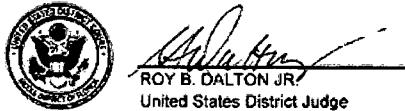
1. Plaintiff Shirley Jn Johnson shall recover from Defendants New Destiny Christian Center Church, Inc.; Paula Michelle Ministries, Inc., and Paula Michelle White \$13,707.93 total in damages.
2. Defendants' ore tenus motion for judgment as a matter of law (Doc. 253) and ore tenus renewed

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motion for judgment as a matter of law (Doc. 254) are DENIED.

3. The Clerk is DIRECTED to enter final judgment in favor of Plaintiff and close the file.

DONE AND ORDERED in Chambers in Orlando, Florida, on July 30, 2018.



Copies to:  
Counsel of Record  
*Pro se* party

APPENDIX D

Case No: 18-13940 Date Filed: 12/21/2018  
No. 18-13940-HH

IN THE UNITED STATES COURT OF APPEALS  
*for the*  
ELEVENTH CIRCUIT

---

Shirley Jn Johnson, individual  
*Appellant-Plaintiff*  
v.

New Destiny Christian Center Church, Inc.,  
Paula Michelle Ministries, Inc.,  
Paula Michelle White.  
*Appellees-Defendants*

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APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE MIDDLE DISTRICT OF FLORIDA  
CASE NO: 6:15-cv-1698-Orl-37TBS  
(Hon. Roy B. Dalton, Jr. & Hon. Thomas B. Smith)

---

APPELLANT/PLAINTIFF SHIRLEY JN JOHNSON'S  
REPLY BRIEF

---

Shirley Jn Johnson  
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Case No. 18-13940-HH  
Shirley Jn Johnson v. New Destiny Christian Center  
Church, Inc., et al

CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 11th Cir. R. 26.1, the Appellant-Plaintiff, Shirley Jn Johnson, *pro se*, submits this Certificate of Interested Persons and Corporate Disclosure, and disclose the following (\*=addition):

1. The names of all trial judges, attorneys, persons, association of persons, firms, partnerships, or corporations that have an interest in the outcome of this case, including subsidiaries, conglomerates, affiliates, parent corporations, any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party:

- Braula, LLC
- Cammack, Krista N., Defense Counsel
- Center Industries \*
- Coward, Clay H., Defense Counsel
- Dalton, Roy B. Jr., Honorable Judge,  
United States District Court for the Middle  
District of Florida
- D'Lugo, Michael R., Defense Counsel
- Ford, Richards H., Defense Counsel
- Guide One Insurance Company, carrier for  
Appellees-Defendants

Case No. 18-13940-HH  
Shirley Jn Johnson v. New Destiny Christian Center  
Church, Inc., et al

CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT-  
(cont.).

- Hires, Eric V., Defense Counsel
- Identity Productions, LLC
- Identity Records, LLC
- Johnson, Shirley Jn, Appellant-Plaintiff
- New Destiny Christian Center Church, Inc., Appellee-Defendant a/k/a Paula White Ministries
- New Destiny Christian Center Church Inc., Appellee-Defendant a/k/a Paula White Ministry Outreach
- Operation Love Outreach
- Paula Michelle Ministries, Inc. a/k/a Paula White Ministries, Appellee-Defendant
- Paula White Enterprises, Inc.
- Prayer Glory, LLC
- Resurrection Life THC, Inc. (Administratively Dissolved 9/23/2016)
- Smith, Thomas B. Hon. Magistrate Judge, United States District Court for the Middle District of Florida
- The Law Office of Eric V. Hires, for Appellees-Defendants

Case No. 18-13940-HH  
Shirley Jn Johnson v. New Destiny Christian Center  
Church, Inc., et al

CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT-  
(cont.).

- White, Paula Michelle, Appellee-Defendant  
a/k/a Paula Michelle Cain
- Wicker, Smith, O'Hara, McCoy & Ford, P.A., for  
Appellees-Defendants
- Williams, Erica K. - Guide One Insurance

I hereby certify that, I am unaware of any conflict  
of interest involving the district judge and magistrate  
judge assigned to this case.

*s/ Shirley Jn Johnson*  
Shirley Jn Johnson, *Pro Se*  
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REPLY

In reply to Appellees-Defendants' Response (Principal Brief), first, Appellees-Defendants misrepresented to this Court (as they, so often, did to the District Court) when they stated that:

"... Ms. Johnson has omitted significant testimony from multiple witnesses who testified during the course of the two-day trial. That testimony is absolutely necessary for this Court to perform its review function. Presumably, Ms. Johnson refused to include this testimony because it does not fit within her narrative of this case." *Appellees' Brief Pg. 17* [emphasis added].

That is absolutely untrue, as there were only five (5) witnesses who testified, as reflected in the trial transcript, Docs. 256, 257: 1) Ms. White; 2) Mr. Knight; 3) Mr. Lewis; 4) Mr. Hardin (who testified regarding Appellees' finances only); and 5) Ms. Johnson (Appellant). Notably, Appellees-Defendants did not name the alleged other multiple witnesses, or include the "absolutely necessary" testimony of the "multiple" witnesses.

All attorneys, as "officers of the court," owe duties of complete candor and primary loyalty to the court before which they practice. ... In England, the first licensed practitioners were called "Servants at law of our lord, the King" and were absolutely forbidden to "decei[ve] or beguile the Court." In the United States, the first Code of Ethics, in 1887, included one

canon providing that “the attorney’s office does not destroy ... accountability to the Creator,” and another entitled “Client is not the Keeper of the Attorney’s Conscience. ...Too many attorneys ... have ... sold out to the client. We must return to the original principle that, as officers of the court, attorneys are servants of the law rather than servants of the highest bidder.” We must rediscover the old values of our profession. The integrity of our justice system depends on it.

*Malautea v . Suzuki Motor Co.Ltd., 987 F.2d 1536, \*1546 [12], \*1547 (11th Cir.1993).*

Second, Appellees-Defendants contend that, “Although Ms. Johnson has asserted that the District Court was biased and prejudiced in her Principal Brief, there is absolutely no record evidence to support this assertion.” Appellees’ Brief Pg. 23. To the contrary, there is sufficient, and very disturbing, record evidence which proves that the District Court’s decision was biased and prejudiced.

#### I. RECORD EVIDENCE OF THE DISTRICT COURT’S BIAS AND PREJUDICE

Out of all the evidence in the record, to support its decision to deny Appellant-Plaintiff entitlement to punitive damages, the District Court relied on only one altered video to disprove malice, and Mr. Lewis’ testimony that Appellees- Defendants had a good faith basis for filing the Copyright Lawsuit because they relied on the advice of their attorney – Mr. Sadaka.

1. In its Memorandum Opinion and Order, (Doc. 264, Pg.8, (Appellant’s Appendix, Vol. I), although

referencing Appellees-Defendants' Exhibit B-79, and Appellant-Plaintiff's Exhibit 9G, the District Court stated that the following excerpt was presented by *Plaintiff* as her Exh. 9G to prove malice against Ms. White. *Doc. 264, Pages 8-9 read:*

9. Excerpted, she preached [*highlighting by Appellant-Plaintiff*]:

I see great things happen. Then, that means, Rachel, that I'm going to have to really learn how to love, because love is not just something that comes so naturally to all of us. I mean, we've been hurt. Am I the only person that's ever been hurt in life? Am I the only person that's ever been offended in life? Am I the only person that's ever wanted to knock someone out in a New York second in life? Am I only person that wanted to say, you are saying this about me but let me tell about your – am I the only person that wanted to hire a detective, get some stuff, put it out and publish it and start a blog? Now I know, see, uh, please don't get into the dirty side of my mind – am I the only person that ever wanted to be ruthless and – ok, praise the Lord – wanted somebody who was saved but not sanctified come after you in Jesus' name? But he says, Paula that's not my disciple. You will know—you will, you will love, you will know that

you're a disciple by the love you have for one another. Not just in your tribe, Paula. Not just at New Destiny Christian Center. Not just within your denomination. Not just within your – your personality frame. But within – in every single person who is a born-again believer. You know how many people say you can't preach cuz you're a woman? ... You will know – this is the new command – Paula are you my disciple? Do you still love? Do you want me to start calling out names? ... Do you love all the people that put the junk out on the internet? Do you love – I can't call one out because I'm in a present case right now – do you love the one that says this about you? See this is a reality. I'm just telling – you have a story, too – do you love the one that slept with your husband? In church? I'm sorry, I'm just getting real with you right now. OK, she's going, "That's too much love." Not if you're going to be a disci – [laughing] – she's going that's too much love. That's reality. Guys, those aren't something I'm fabricating, I'm just talking to you about my story. Because if I'm going to be a disciple, could you have given me some other new commandment, God? Could you

have told me if I love, I'd just work ninety hours a week for you? That I'd be known as a disciple if I fasted and prayed a lot? No, I'll be known as a disciple by loving. And loving's not always easy. Loving doesn't always feel good to my flesh. In fact, to whom much is forgiven, they love much/myself [unintelligible]. God didn't say I have to like you all the time."

(Pl. Ex. 9G.)

10. Johnson presented this clip (and others) as evidence of White's "malice" against her. (Doc. 256, p. 31:21-24.) [underline added].

Appellant-Plaintiff (Johnson) did not present the above clip, Appellees-Defendants did, which is Def.'s Exh. B-79, not Pla.'s Exh. 9G.

MR. COWARD: The May 2016 clip was taken from a sermon, when we [Defendants] showed the larger portion [Def. Exh. B-79 above cited as Pla. Exh. 9G], of the sermon -- and the Court will have the entire thing in evidence. It was taken from a sermon about loving people, loving people who you had some conflict with. But you couldn't have known that from looking at the plaintiff's snippet of it or her clip [Pla. Exh. 9G highlighted]. We had to show the larger portion to show the context of it. [emphasis added].

Doc. 257. Pg. 84. Lns. 15-22 (Appellees' Supp. Appendix Vol. II, Pg. 120).

2. The District Court took a "snippet" of Appellant-Plaintiff's Exh. 9G and inserted that portion into the above clip, which is Appellees-Defendants' Exh. B-79, then the District Court cited the above clip as "Pla.Ex. 9G", and stated "**Johnson** presented *this clip* and others) as evidence of White's 'malice' against her." [emphasis added]. Not only does this demonstrate extreme bias and prejudice on the part of the District Court, but it is also purposefully misleading. The Appellees-Defendants presented that clip (B-79) as evidence to *disprove* malice, and to *rebut* Appellant-Plaintiff's Exhibit 9G. However, the District Court combined the two exhibits, and then stated that Appellant-Plaintiff submitted the combined exhibits as her Exhibit 9G to *prove* malice.

3. In its Memorandum Opinion and Order (Doc. 264, Pg. 9), the District Court further stated that [underline added]:

11. At that time [May 1, 2016], the only lawsuit White was involved in was this action [malicious prosecution] with Johnson. Without specifically remembering, White admitted that she could have been speaking about Johnson when she was giving examples of situations to still love in and said, "I can't call one out because I'm in a present case right now." (See *id* at 64 –75).

12. The Court finds credible Johnson's assertion that White was referring to

her in the May 1, 2016 sermon. But the Court does not find this reference indicates any malice from White directed at Johnson. ...

The Trial Court itself pointed out that what was in the mind of the Appellees-Defendants at the time they filed the Copyright Infringement Complaint determined whether or not Appellees-Defendants acted with deliberate indifference, malice, or wanton disregard.

THE COURT: I take your point. I'm just sharing with you that what was in the mind of Ms. White and her organization when the underlying claim was filed is what, to me, is determinative of the question of whether or not it was done with deliberate indifference, malice, or wanton disregard, not what was in Ms. Johnson's mind. [underline added].

Doc. 256. Pg. 169. Lns. 4-10 (Appellees Supp. Appendix Vol. I, Pg. 199).

Notably Mr. Coward stated at trial, as well:

The April of 2016 clip in which she said, "I got in a legal situation I regret," Paula White said and testified she may have been referring to the plaintiff with regard to that. It was left at that. There was no questioning by the plaintiff as to why she would have regret. Perhaps in retrospect with the span of time, being a defendant in a lawsuit, was it worth it? Regret two years later does not equate to animus at the time of the lawsuit. It's speculation.

Doc. 257, Pg. 85, Lns. 7-16 (Appellees' Supp. Appendix Vol. II, Pg. 121).

4. The April 28, 2016 clip is part of Appellant-Plaintiff's Exh. 9G, which the District Court ignored, which will be discussed in detail, later. But, by that same reasoning and logic, preaching love 2 years later, does not *disprove* malice at the time the lawsuit was filed, either. Yet as the only evidentiary proof, when determining whether malice existed at the time Appellees-Defendants filed the copyright complaint, the District Court chose to rely on parts of a sermon which Ms. White preached in 2016, which was two (2) years after, Appellees-Defendants filed the Copyright Complaint, and over one (1) year after the Copyright Action was closed. This equates to bias and prejudice.

5. Moreover, the District Court ignored or disregarded material, relevant parts of Plaintiff's Exhibit 9G which prove that Ms. White acted with malice. Appellant-Plaintiffs Exhibit 9G consists of three (3) different clips; 1) February 7, 2016, April 28, 2016, and May 1, 2016.

THE COURT: 9-G will be received.

(Plaintiff's Exhibit 9-G was received in evidence.)

THE COURT: I noted February 7, 2016; April 28, 2016; and May 1, 2016. Those are the clips that were shown as far as 9-G is involved.

Doc. 256, Pg. 65, Lns. 15-20 (Appellees' Supp. Appendix Vol. I, Pg. 95).

MR. COWARD: -- on this 9-G -- because, as Ms. Johnson said, I believe there may

be three together. I just want to make sure as each one is played, we get the date of them down there. Because they show on the video, but I want to make sure it's on the record because the time of the video may be important. [underline added].

*Doc. 256, Pg. 64, Lns. 10-15* (Appellees' Supp. Appendix Vol. I, Pg. 94).

6. The Trial Court knew that Plaintiff's Exhibit 9G consisted of three different clips, yet the District Court chose to focus only on part of the third clip – May 1, 2016. Below – in its entirety – is the 3<sup>rd</sup> clip which *Plaintiff* submitted:

Do you know how many people have written articles about what a Jezebel, money whore I am. Oh come on guys. Do you-y'all know how many protesters have stood outside. **You will know. This is a new command. Paula are you my disciple? Do you still love? Do you want me to start calling out names? Do you still love R.T.?** I'm sorry. I'm just gone bring it on down. Do you still love the woman that started the fist fight, when Ms. B. got up and broke it up? Thank you B. I do love you for breaking up that fist fight. I'm like, Lord have mercy. Welcome to New Destiny Christian Center. Do you love the man that sued you when he was the one that was stealing and that was doing wrong and you had to be quiet? I didn't call his name out, but I should.

And he was on staff at New Destiny Christian Center. Oh come on, I just gotta make it real guys. See, it will go out everywhere. Do you still love L.G. after he wrote that about you? Do you love all the people that put the junk out on the internet? Do you love? I can't call one out because I'm in a present case right now. Do you love the one that says this about you? Matthew Chapter 18, offenses must come. Not might come. They must come. You will be persecuted. You will be betrayed. You will be talked about. It has to happen. ... And so, let 'em keep writing. They're not going to stop. Let 'em keep hating.

Pla. Exh. 9G (3<sup>rd</sup> clip) – parts of May 1, 2016 sermon

7. The above clip reads nothing like what the District Court presented as Pla. Ex. 9G, on pages 8-9 of its Memorandum Opinion and Order (Doc. 264), except for what is highlighted. Importantly, the District Court also concluded that on May 1, 2016, the only lawsuit (“present case”) that Ms. White was involved in was the malicious prosecution action (which stemmed from the underlying copyright infringement action); the District Court accepted that Ms. White was speaking of Ms. Johnson in the combined May 1, 2016 clip. Ms. White was also speaking of Ms. Johnson in the above May 1, 2016 clip, taken from the same sermon. Appellant-Plaintiff presented the above clip to demonstrate that Ms. White filed or authorized the underlying copyright infringement complaint, as a personal vendetta, which constitutes malice. Ms.

White was speaking of past events in which she felt that she had been persecuted by people who had written about, talked about, protested against her, and put the junk out on the internet [You Tube], and "says this" about her. Ms. White stated, "Let 'em keep writing." "Let 'em keep hating." There was no mention of copyright infringement.

8. The District Court simply disregarded Clips 1 and 2 of Exhibit 9G, which also establish that Ms. White filed or authorized the underlying copyright infringement complaint for an improper purpose, and as a personal vendetta which constitutes actual malice, or at the very least legal malice, which warrants punitive damages.

Excerpt, - Plaintiffs Exhibit 9G (2<sup>nd</sup> clip in its entirety), April 28, 2016, Ms. White preached:

Isn't this great? I got myself in a few messes in my life. But one of the messes I got myself in is I took on a situation of somebody that was persecuting me so I let it go into a legal situation and took it there when I should have just realized, hey don't even bother with this because this is not even about you because persecution comes before, for the Word's sake. So when they are calling you every name in the book it's really not even about you, it's about what you are carrying. In fact, if you are not being persecuted, if somebody is not hating on you, if somebody is not talking about you, then chances are, you don't have too much seed in you.

Pla. Exh. 9G, (2<sup>nd</sup> clip)

9. In the above video clip, Ms. White stated that she had gotten herself into a mess, because someone was persecuting her and she let it go into a legal situation “and took it there,” when she should have just let it go. This proves that *Ms. White* filed the copyright infringement lawsuit as a personal vendetta because she felt that *she was being persecuted* – and not for copyright infringement.

Ms. White testified that it was possible that the legal situation that she was referring to was the underlying Copyright Infringement Lawsuit.

Q: Were you speaking of the underlying copyright infringement complaint, that you regretted having filed that complaint against me? Is that what you were referring to?

A: It's possible ....

Doc. 256, Pg. 74, Lns 17-21; See also Pg. 76, Lns. 4-12  
(Appellees' Supp. Appendix Vol. I, Pgs. 104, and 106).

See also Mr. Coward's statement:

The April of 2016 clip in which she said, “I got in a legal situation I regret,” Paula White said and testified she may have been referring to the plaintiff with regard to that.

Doc. 257, Pg. 85, Lns. 7-10 (Appellees' Supp. Appendix, Vol. II, Pg. 121).

10. Ms. White testified that it was possible that she was talking about Appellant-Plaintiff and the underlying Copyright Infringement Lawsuit, yet the District Court simply disregarded this evidence, and trial testimony, which is direct evidence that *Ms. White*

filed the copyright infringement lawsuit for an improper purpose. This equates to bias and prejudice.

Excerpt - Pla. Exh. 9G (1<sup>st</sup> clip in its entirety):

There are fans all in that stadium. They don't know the first thing about the people except for what they see by the media, which is driven by the devil, most of it. OK. And so, or someone else's opinion. There's no such thing left as fair journalism anymore, hardly. So, so it's driven by that. Anything goes. And by the way, public figures have different laws than you do. Which means, like if you are a public figure, I'm considered a public figure legally, [personal names] considered a public figure legally which means there's a different set of laws. If they talk against you and write something and it's not true, Sonya, you can sue them and own them. And you can own 'em. Oh, let it, I'll teach you how to own 'em. Praise the Lord. If they do it against me, it's fair game. They can say whatever they want against me. They can pay people. And people under the Amendment and under their Constitutional rights never have to disclose who they are. So they can say all kinds of stuff, which they have. I can still sue. It's just much more difficult for me. So If you're gone get on the field, and you're gonna be a superbowl champion, there are gonna be reporters that write against you. You don't, you don't play real music. She doesn't preach real truth. That

person doesn't know how to play. They're not a real champion. You gotta block all that stuff out.

Pla. Exh. 9G (clip 1)

11. The District Court ignored or disregarded this part of Appellant-Plaintiff's Exhibit 9G. Ms. White was speaking of how people had talked against her, and had written about her, claiming that she doesn't preach real truth; there was no mention of copyright infringement.

Additionally, the District Court stated that:

Beyond this May 1, 2016 sermon, Johnson provided other clips from White's sermons where White does not mention Johnson by name, but Johnson contends reference her in a negative light. (See Pl. Exs. 9D, 9E, 9F.) On review, the Court finds no such reference to Johnson in White's other sermons presented, so rejects Johnson's contentions. In so doing, the Court finds credible White's testimony that she was not referring to Johnson in these clips. (Doc. 256, pp. 105-07.) [emphasis added].

Doc. 264, Pg. 10, ¶13.

12. Ms. White did not mention by name, or reference Ms. Johnson in *any* of her sermons, (Pla. Exhs. 9D, 9E, 9F, 9G) presented as evidence. Yet the District Court chose to believe that in the May 1, 2016 clip (Appellees-Defendants' Exhibit B-79, and the "snippet" of Appellant-Plaintiff's Exhibit 9G), Ms. White "was" referring to Ms. Johnson – because Ms.

White was preaching a message of love, which depicts Ms. White in a favorable light.

13. Even after Ms. White testified to, and her attorney Mr. Coward confirmed that Ms. White testified that she may have been referring to Ms. Johnson in the April 28, 2016 clip, the District Court still chose to disregard this direct evidence, because it is unfavorable to Ms. White, and it proves malicious intent. This equates to bias and prejudice.

14. Again, in Appellees-Defendants' Exhibit B-79, and the "snippet" of Appellant-Plaintiffs Exhibit 9G, Ms. White did not refer to Appellant-Plaintiff by name, yet the District Court chose to believe Ms. White that she was speaking of Appellant-Plaintiff (2 years after the fact), because the message was about love, even though only 5 months before filing the Copyright Infringement Complaint, and six (6) days after sending Appellant-Plaintiff a Cease and Desist letter (on October 7, 2013) threatening a lawsuit, Ms. White was preaching that she was in a battle, in which she intended to inflict damage to, become a menace to, and stop the enemy, on October 13, 2013.

Excerpt - Pla. Exh. 9E (1<sup>st</sup> Clip in its entirety) – 5 months before filing the Copyright Lawsuit):

(10/13/13): I'm in this battle, but I'm gone win this battle. It's a fixed fight. Which means I've gotta learn how to war effectively, then. I am going to come against everything that come against me. You have to make up your mind that you don't accept the adversity, the bad and the evil that the enemy wants to disgrace you with. So you gotta make a decision,

I'd write it real big in my notes, I will stop the enemy. And I'm gone to teach you how. Let's stop the enemy. Come on let's stop the enemy that we will no longer be a reproach. So once you make that decision like the Psalmist in Psalm 22 verse 6 through 8. He says but I am a worm and not a man. Scorned by men and despised by people. All who see me mock me. They hurl insults. Shaking their heads. But verse 18 says enough. The enemy has mocked me, he's reproached me, he's tried to bring shame to my family, shame to my name, shame to my situation, but enough. A threat means an expression of intention to inflict damage, a menace. The enemy does not care about you until you become a threat. When you become a threat, it literally means that you express an intention to inflict damage. You express intention to be a menace. I intend to be a menace to you. I am a headache and you're gonna have to deal with me.

Pla. Exhibit 9E received into evidence.

Excerpt - Pla. Exh. 9F (1st Clip in its entirety):

(10/13/13): Well let me tell you guys something, Satan is not hiding his agenda for your life. He's not, he's not quiet about it. He's not hiding it. Elder he's got a real clear plan. And God says this is his plan. Greg, I wanna kill you. I wanna destroy you. So what's gonna happen if I come to you and say I'm gone kill

you? I'm gonna destroy you? Because the plan of the enemy is to kill, steal and de.. Oh, and besides destroying you and killing you, I'm gone steal from you. I'm gone steal your family, steal your wife, steal your children, steal your money, steal your reputation. You ain't gone sit there, you gone go, what! Those are fighting words. You don't even have to do the first action. See my blood's boiling right now just thinking about it. Those are fighting words. I will kick someone's, you look at me wrong and act like you gone take, come, come let me think you're gone mess with this church. Let me think you're gone mess with one of the sheep in here. I will knock you out. Plain and simple. Let me think you're gone mess with my money, mess with my body, mess with my children. You gone see a different side. This is called survivor. Don't let this little small body confuse you. I will take you down or get somebody to do it. (gesture) And that's for real.

Pla. Exhibit 9F received into evidence

15. The only reason that the District Court gave for rejecting Appellant-Plaintiff's assertion that Ms. White was speaking of her in the above clips – Pla. Exhs. 9E, 9F (and 9D), is because Ms. Johnson was not mentioned by name. However, strong inference can be made that Ms. White was referring to Ms. Johnson, because she preached the threats, and stated that she was in a "battle" which she would win, just six (6) days after sending Ms. Johnson a Cease and

Desist Letter (Jnt. Exh 8, Appellant's Appendix, Vol II, Tab C) threatening a lawsuit if Ms. Johnson did not cease and desist.

16. Ms. Johnson responded to the C & D letter on October 21, 2013, stating her intent to lawfully continue doing what she was doing. Five (5) months later, on March 27, 2014, Ms. White filed or authorized the bogus ("fixed") copyright infringement complaint against Ms. Johnson. The District Court chose not to make this inference, which equates to bias and prejudice.

17. On November 12, 2015, Ms. White preached:  
Excerpt - Pla. Exh. 9F (2<sup>nd</sup> clip in its entirety):

And we take captive every thought to make it obedient to Christ. Go on with verse six. And we will be ready to punish! Every act of disobedience once your obedience is complete. You aren't hearing what I am saying. You, You, You better let the devil know. Ok. You messed with the wrong one. You, You messed with the wrong one. Go ahead do all you want. I'm gonna punish yo butt! It's on because this is my mandate. I get it. I get it. As long as I have breath in my body. See you don't hear me. You messed with Dr. Zach? You really want me to go there? You messed with New Destiny Christian Center? You messed with our families. You messed with our children. You messed with our reputation (tapping herself on the chest). Are you for real? You gone try to hold me to something that the Blood has already forgiven me for? You better punish the devil! And that's the problem. You are, oooohhh, don't, I'm gone say something

I'm gone regret. It's gone go viral and y'all gone have to defend your pastor, again. Come on. You gotta punish! the enemy! It's a mandate on you! We execute punishment on you! I'm gonna execute punishment on you, and I'm gonna enjoy every minute of it!

Pla. Exh. 9F (2<sup>nd</sup> clip) received into evidence – same as (Jnt. Exh. 26)

18. Just one month after Appellant-Plaintiff filed the malicious prosecution lawsuit, Ms. White was shouting about punishing someone (and enjoying every minute of it) for trying to hold her to something that the "Blood" had forgiven her for, and for messing with her church – New Destiny Christian Center – and *her* reputation, yet the District Court again rejected this evidence simply because it did not mention or reference Ms. Johnson by name. By filing the malicious prosecution action, Appellant-Plaintiff, was attempting to hold Ms. White liable for filing or authorizing the underlying SLAPP copyright infringement action, which Ms. White felt that she had already been forgiven for. The District Court chose not to make this inference. This demonstrates bias and prejudice.

19. The one time in which the evidence could be inferred favorably toward Ms. White, the District Court accepted that Ms. White *was* referring to Ms. Johnson. But all the other evidence which reflects dis-favorably to Ms. White, and proves or strongly infers malice, the District Court rejected Ms. Johnson's assertion that Ms. White was talking about her.

This equates to bias and prejudice.

**II. THERE IS SUFFICIENT RECORD EVIDENCE TO AWARD PUNITIVE DAMAGES**

1. In its Memorandum Opinion and Order (Doc. 264, Pg. 17, ¶7), the District Court held that there was “insufficient evidence” to award punitive damages, because even though Appellees-Defendants acted partly with ill-will, they relied upon their attorney that there was a good faith basis for filing the Complaint. To the contrary, there is more than sufficient evidence to award punitive damages as demonstrated thus far in this Reply, and in Appellant-Plaintiff’s Opening Brief, her Rule 52(b) Motion (Doc. 266), and her Findings of Fact and Conclusions of Law (Doc. 260).

2. Mr. Sadaka, was merely a “hired gun” who conspired with, and aided and abetted Defendants in filing the SLAPP (sham) copyright infringement lawsuit which he “fixed” with false allegations, that he copied verbatim from someone else’s Complaint (Pla. Exh A3 which was received into evidence) (Appellant’s Appendix, Vol. II, Tab E). The District Court ignored this direct evidence. This shows bias and prejudice.

3. Appellees-Defendants have admitted under oath that they read a draft of the Complaint, and have admitted that the allegations were false. (Jnt. Exhs. 55, 63, 73, Appellant’s Appendix, Vol. II, Tabs J,K,L). Again, the District Court simply ignored this direct evidence, and made no mention of it in its Memorandum Opinion and Order (Doc. 264). This shows bias and prejudice.

4. Mr. Sadaka admitted under oath in his Affidavit that, “Beyond filing the Copyright Infringement Complaint, in early 2014, I submitted a takedown

notice to You Tube and complied with the takedown requirements of 17 U.S.C. 512(f). I also advised You Tube of the pending litigation and, as a result, YouTube refused to reinstate several videos posted by Ms. Johnson.” (Jnt. Exh.10, ¶20, Appellant’s Appendix, Vol. II, Tab M). Mr. Sadaka willfully, and knowingly submitted a false DMCA takedown notification to You tube which caused the removal of at least 56 non-infringing videos from Appellant’s You Tube channel.

5. Mr. Sadaka admitted under oath that he went beyond advising his clients to aiding and abetting, by actually participating in the DMCA takedown process, and the [Appellee]-Defendants authorized, or at least allowed it. See *Nye & Nissen v. US*, 336 U.S. 613, \*618 (1949):

In order to **aid and abet** another to commit a crime it is necessary that a defendant ‘in some sort associate himself with the venture, that he **participate** in it as in something **that he wishes to bring about**, that he seek **by his action to make it succeed**.’ L. Hand, J., in *United States v. Peoni*, 2 Cir., 100 F.2d 401, 402. [emphasis added].

See also *U.S. v. Walser*, 3 F. 3d 380, HN13, \*382, \*387-89 (11th Cir. 1993); *United States v. Gellene* 182 F. 3d 578, \*594-\*97 (7th Cir. 1999) (“We next ask, therefore, whether Mr. Gellene’s abuse of his role as attorney for the debtor significantly facilitated the commission of the perjury. The district court determined that it did;”) [underline added].

6. Mr. Lewis, a paid witness who receives \$600.00

per hour for his services, testified that even if Appellees-Defendants had cut and pasted their complaint from another lawsuit, their complaint was still legitimate. Contrary to Mr. Lewis' testimony, cut-and-pasted allegations which are known to Appellees-Defendants, and their attorney to be false does not amount to a legitimate Complaint, but rather equates to sham litigation.

7. Apparently, cut-and-paste jobs in general (even from one's own prior documents) are disfavored and frowned upon by most Courts, which are too numerous to list here. But, see *de Palo v. Countryside Station Limited Liability Company*, Case No. 6:12-cv-204-Orl-31KRS; 2012 WL 1231968 at \*2, \*3 (M.D. Fla. Apr. 12, 2012):

“Either the Plaintiff has happened upon 40 or so unrelated businesses scattered across the Middle District of Florida that are violating the ADA in 19 identical ways, and no others – which seems unlikely to put it mildly – or the Plaintiff has a generic list of violations that he plops down in every case whether it applies or not. The generality of this cut-and-paste list prevents the Plaintiff from using it to establish that he has suffered the required injury-in-fact.” [emphasis added].

8. The fact that Appellees-Defendants' attorney, Mr. Sadaka, cut-and-pasted all 26 allegations (even the ones that were inapplicable to non-ISPs, or were “typos” as Mr. Lewis put it), against Appellant-Plaintiff, verbatim from Case No. 6:14-cv-337-ORL-31KRS, *BWP Media USA*,

*Inc. d/b/a Pacific Coast News v. All Access Fans, Inc.*, also prevents Appellees-Defendants from using those allegations to establish that they suffered damages, and that they relied on the advice of their attorney. The District Court showed bias and prejudice in accepting Mr. Lewis' testimony that Appellees-Defendants had a good faith basis for filing the Copyright Lawsuit, even after they admitted that the allegations were false.

9. Further, Appellees-Defendants falsely alleged in their Complaint that the basis for filing the Complaint was to stop Appellant-Plaintiff from infringing their copyrights, and profiting from the sale of their copyrighted videos and photographs on her website. (Jnt. Exh. 1). However, Mr. Knight testified that the primary basis for filing their Complaint was to remove Appellant-Plaintiff's videos from You Tube so that Appellees-Defendants' videos would appear first on You Tube, and get a higher view count. Mr. Knight did not mention copyright infringement, at all. See Doc. 257, Pg. 23, Lns.5-13. (Appellees-Defendants' Supp. Appendix, Vol. II, Pg.59). The District Court disregarded this evidence, which shows bias and prejudice.

10. The District Court showed bias and prejudice in accepting Mr. Knight's testimony as true even though his overall testimony was inconsistent and contradictory. See Appellant-Plaintiff's Findings of Fact and Conclusions of Law, Doc. 260, Pgs. 9-19).

11. Ms. White testified that she delegated authority to her son Mr. Knight. Doc. 256, Pg. 108, Lns. 11-18 (Appellees' Supp. Appendix Vol. I, Pg. 138). The District Court chose to ignore the fact that Ms. White is President of the corporations with complete control,

and that she gave the final approval. (See Doc. 260, Pg. 8, Lns. 209-213; Pg. 9, Lns. 214-225). Mr. Knight could not act without Ms. White's approval. The District Court chose to believe Mr. Knight's testimony that Ms. White's involvement was minimal. This demonstrates bias and prejudice.

### III. STANDARD OF REVIEW

1. The proper standard of review is *de novo*. The District Court stated that its reason for denying punitive damage was "insufficient evidence," which is a matter of law. *Johansen v. Combustion Engineering, Inc.*, 170 F. 3d 1320, \*1331 708 (11th Cir. 1999) ("We conclude that, upon determination of the constitutional limit on a particular award, the district court may enter a judgment for that amount as a matter of law."). Not only did the District Court ignore material evidence, it went so far as to alter the one piece of evidence that it used to make its determination that malice was not present, and therefore denied punitive damages. A *de novo* review is required to correct a manifest injustice. Furthermore, Appellees-Defendants moved for judgment as a matter of law on the issue of malice, compensatory and punitive damages which the District Court denied.

2. Moreover, as alleged throughout this Action, Appellees-Defendants did not have probable cause (a good faith basis) to bring the SLAPP (sham) Copyright Action. Malice, and probable cause present questions of law. The Fifth Circuit Court of Appeals in *Nesmith v. Alford* 318 F. 2d 110, \*123 (5th Cir. 1963) stated:

The consequence is that the trial Court erred in not giving the instruction in various forms charging the jury as a matter of

law that there was no probable cause for the arrest and prosecution of the Plaintiffs. ... 'Malice may be defined to be any 'indirect motive of wrong.' Any motive, not a bona fide purpose, of bringing a person to punishment as a violator of criminal [or civil] law, is a malicious motive on the part of the person who acts under its influence' . . . [A] Court as a matter of law can rule that a prosecution was commenced or continued with malice. Absence of probable cause – which we have just held to be established as a matter of law – does in Alabama afford a basis from which to infer malice. [underline added].

Such is the same in Florida courts, which Appellant-Plaintiff cited in her Opening Brief.

The Court of Appeals characterized "sham" litigation as one of two types of "abuse of ... judicial processes": either "misrepresentations...in the adjudicatory process" or the pursuit of "a pattern of baseless, repetitive claims" instituted "without probable cause, and regardless of the merits." 944 F. 740 2d, at 1529 (quoting *California Motor Transport Co. v. Trucking* 741 Unlimited, 404 U.S. 508513,512 (1972). [underline added].

Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc., 508 US 49, \*54 (1993).

Appellant-Plaintiff also alleged in her Complaint that Appellant-Defendants filed their complaint

in retaliation as a personal vendetta of Ms. White, with intent to harm (and did harm) Appellant-Plaintiff, which is also a matter of law. See *In re Jennings*, 670 F. 3d 1329, \*1331 (11th Cir. 2012). However, at \*1334, this Court also stated:

“Malicious” means “wrongful and without just cause or excessive even in the absence of personal hatred, spite or ill-will.” [citations]. To establish malice, “a showing of specific intent to harm another is not necessary.” [citation]. [underline added].

3. Sufficient evidence, and the greater weight of the evidence demonstrate that Appellees-Defendants did not have probable cause to file the underlying copyright infringement complaint, and Appellees-Defendants acted with actual malice, legal malice, wanton disregard and reckless indifference to Appellant-Plaintiffs legal rights.

#### IV. CONCLUSION

The District Court should not be allowed to turn a blind eye to material, relevant evidence, and inferences; and only consider evidence that the District Court itself altered to appear more favorable to Appellees-Defendants, in determining whether malice existed. The District Court chose to ignore Plaintiffs direct evidence, and only focus on Appellees-Defendants’ and their witnesses’ testimonies which were conflicting, contradictory, and incredible as a matter of law in determining the existence of probable cause (good faith basis). This shows bias and prejudice. In *Kingsland v. City of Miami*, 382 F. 3d 1220, \*1228 (11th Cir. 2004), this Court agreed with the plaintiff that the

defendant-officer's investigation was constitutionally-deficient in determining probable cause because the defendants turned a blind eye to information that was available to them, but instead chose to focus upon selected facts. The *Kingsland* Court also stated that:

“We cannot allow a probable cause determination to stand principally on the unsupported statements of interested officers, when those statements have been challenged and countered by objective evidence.” [underline added].

In this present case, Appellant-Plaintiff has submitted sufficient evidence, including Appellees-Defendants' own sworn Admissions, and their witnesses' testimonies, to demonstrate the egregiousness, and reprehensibility of Appellees-Defendants' conduct, and to prove the absence of probable cause warrants punitive damages.

WHEREFORE, in the interest of justice, Appellant-Plaintiff prays that this Honorable Court make a *de novo* review, vacate or amend the District Court's Final Judgment, and enter an Order to include an award of punitive damages based on the record evidence and inferences drawn from the evidence.

Dated: December 19, 2018

Respectfully submitted:

s/ Shirley Jn Johnson

Shirley Jn Johnson, *Pro Se*

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation set forth in Rule 32(a)(7)(B)(ii) and 32(f) of the Federal Rules of Appellate Procedure. This brief uses Times New Roman 14-point typeface, Microsoft Word 2013, and contains 6,488 words, in accordance with Federal Rules of Appellate Procedure 32(a)(5)(A) and 32(a)(6).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on, December 19, 2018, this Appellant's Reply Brief was sent via Priority U.S. Mail to be filed with the Clerk of the Court and a true and correct copy was sent via Priority U.S. Mail Michael R. D'Lugo and Krista Cammack, Wicker, Smith, O'Hara, McCoy & Ford, PA – P. O. Box 2753, Orlando, FL 32802-2753.

s/ Shirley Jn Johnson

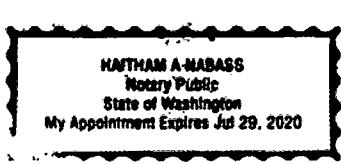
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VERIFICATION

Under penalty of perjury, I declare that I have read the foregoing Appellant-Plaintiffs Reply Brief and the facts alleged therein are true and correct to the best of my knowledge and belief, except as to matters alleged on information and belief, and, as to those, I believe them to be true.

On this 19 day of Dec. 2018, before me personally appeared SHIRLEY JN JOHNSON who    is personally known to me or X who produced a WASHINGTON driver's license bearing her name and photograph as identification, and who executed this Reply Brief.

*/s/ Haitham A. Nabass* Commission Expires:  
Notary Public



APPENDIX E

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

SHIRLEY JN JOHNSON,  
Plaintiff,

v.

CASE NO  
6:15-cv-1698-Orl-37GJK

NEW DESTINY CHRISTIAN  
CENTER CHURCH, INC.,  
PAULA MICHELLE  
MINISTRIES, INC., PAULA  
MICHELLE WHITE; and  
RESURRECTION LIFE THC, INC.,

Defendants.

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DEFENDANT NEW DESTINY CHRISTIAN  
CENTER CHURCH, INC.'S RESPONSE TO  
PLAINTIFF'S VERIFIED FIRST REQUEST  
FOR ADMISSIONS

Defendant, NEW DESTINY CHRISTIAN CENTER CHURCH, INC. ("New Destiny"), by and through the undersigned attorneys, and pursuant to Fed. R. CIV.P. 36, hereby responds to Plaintiff's Verified First Request for Admissions dated August 10, 2016 as follows:

JOINT  
EXHIBIT  
D-55  
FEDCO 00000000000000000000000000000000

**First Set of Admissions, Request No. 1:** When you assumed ownership of the fictitious name 'Paula White Ministries', you, your representatives, agents or employees were aware that Paula White Ministries was the plaintiff in a copyright infringement lawsuit. Admit or Deny?

**RESPONSE:** New Destiny admits it became aware at some point in time that Paula White Ministries was the Plaintiff in a copyright infringement action but after a reasonable inquiry and based on known and readily available information, is unable to determine an exact date.

**First Set of Admissions, Request No. 2:** You, your representatives, agents or employees read the copyright infringement complaint and were aware of the allegations contained therein. Admit or Deny?

**RESPONSE:** New Destiny admits its agents or employees read a draft of the copyright infringement complaint. New Destiny admits it was aware of the general allegations contained within the copyright infringement complaint.

**First Set of Admissions, Request No. 3:** You, your representatives, agents or employees visited Plaintiff's You Tube channel and website ("websites") and saw copies of Paula White Ministries' copyrighted videos, paid advertisements, merchandise offered for sale and instructions for forwarding copies of Paula White Ministries' videos to Facebook, Instagram and Twitter before continuing to prosecute the underlying copyright infringement lawsuit using the fictitious name Paula White Ministries. Admit or Deny?

**RESPONSE:** New Destiny admits that it visited Plaintiff's You Tube channel and website and saw

copies of Paula White Ministries' copyrighted videos and other content before the underlying copyright Infringement lawsuit was filed by Paula White Ministries. The remaining portions of this Request are denied.

**First Set of Admissions, Request No. 4:** You, your representatives, agents or employees knew that the allegations in the copyright infringement complaint were false. Admit or Deny?

**RESPONSE:** Denied that New Destiny/Paula White Ministries knew the allegations in the copyright infringement complaint were false.

**First Set of Admissions, Request No. 5:** Paula White is the president of New Destiny Christian Center Church, Inc. Admit or Deny?

**RESPONSE:** Admitted.

**First Set of Admissions, Request No. 6:** Doug Shackelford is on staff at New Destiny Christian Center Church, Inc. and his job title is executive pastor. Admit or Deny?

**RESPONSE:** New Destiny admits that Doug Shackelford is on staff at New Destiny, but denies that Doug Shackelford's job title is executive pastor.

**First Set of Admissions, Request No. 7:** Brad Knight is on staff at New Destiny Christian Center Church, Inc. and his job title is vice president and data analyst. Admit or Deny?

**RESPONSE:** Denied Brad Knight is on staff and New Destiny Church and that his job title is vice president and data analyst.

**First Set of Admissions, Request No. 8:** In 2014, Brad Knight was on staff as Chief Financial Officer

(CFO) at Paula White Ministries and had knowledge of Paula White Ministries' alleged financial damages due to Plaintiff allegedly infringing PWM's copyrights. Admit or Deny?

**RESPONSE:** Denied Brad knight was on staff as CFO at Paula White Ministries in 2014 and denied Brad Knight had knowledge of Paula White Ministries' alleged financial damages due to Plaintiff infringing PWM's copyrights in 2014.

**First Set of Admissions, Request No. 9:** Every response in your Amended Answer and Affirmative Defenses (Doc. 48) is true. Admit or Deny?

**RESPONSE:** New Destiny Church objects to this request to the extent it calls for a legal conclusion regarding the viability of its affirmative defenses. New Destiny admits all responses and affirmative defenses asserted in its Answer and Affirmative Defenses have merit.

**First Set of Admissions, Request No. 10:** Every answer you, or your representative stated in your "Amended Answers to Plaintiff's First Set of Interrogatories" in this malicious prosecution action is true. Admit or Deny?

**RESPONSE:** New Destiny admits it truthfully answered Plaintiffs First Set of Interrogatories in this malicious prosecution action.

**First Set of Admissions, Request No 11:** The Insurance policy which you produced to Plaintiff was an unaltered complete, true and correct copy of the original policy. Admit or deny?

**RESPONSE:** New Destiny admits the insurance policy produced was a complete, true, and correct copy of

the original policy.

**First Set of Admissions, Request No. 12:** The by-laws for Resurrection Life THC, Inc. that you produced to Plaintiff was a true and correct legal copy of its original bylaws. Admit or Deny?

**RESPONSE:** New Destiny admits the bylaws produced to Plaintiff were a true and correct copy of Resurrection Life THC, Inc.'s original bylaws.

**First Set of Admissions, Request No. 13:** Any further documents (including electronic communications, videos, etc.) that you produce as evidence in this malicious prosecution case are unaltered and authentic. Admit or Deny?

**RESPONSE:** New Destiny admits it will not produce documents in this action that are altered or un-authentic, unless the Federal Rules of Civil Procedure, Federal Rules of Evidence, and/or the Local Rules of the Middle District of Florida require or allow for such alteration.

VERIFICATION OF RESPONSES TO PLAINTIFF'S  
REQUEST FOR ADMISSIONS

STATE OF \_\_\_\_\_  
COUNTY OF FLORIDA

By: \_\_\_\_\_  
Pastor Doug Shackelford, New  
Destiny Christian Center Church

Under penalty of perjury, Doug Shackelford, duly sworn upon oath, deposes and says that the foregoing responses to request for admissions are true and correct to the best of my knowledge and belief. The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2016, by Doug Shackelford, who is personally known to me or who has produced as identification and who did take an oath.

---

Notary Public

---

Printed Name of Notary

Commission No:

My Commission Expires:

**CERTIFICATE OF SERVICE**

I hereby certify that on September 9, 2016, a copy of Defendant NEW DESTINY CHRISTIAN CENTER CHURCH, INC., Response to Plaintiff's SHIRLEY JN JOHNSON Verified First Request for Admissions was electronically served via e-mail to: Eric Vincent Hires: Eric@Hireslegal.com, Alicia@-HiresLegal.com and Erica K. Williams: ewilliams@guideone.com, HMcCauley@guideone.com.

I further certify that a true and correct copy of the foregoing has been furnished via U.S. Mail to:

Shirley Jn Johnson  
P.O. Box 58818  
Seattle, WA 98138  
253/846-6805  
Pro Se

/s/ Richards H. Ford  
Richards H. Ford, Esquire (Trial  
Counsel)  
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Phone: (407) 843-3939  
Fax: (407) 649-8118  
Attorneys for Defendants New Des-  
tiny Christian Center Church, Inc.,  
Paula Michelle Ministries, Inc., and  
Paula Michelle White, and Resur-  
rection Life THC, Inc.

VERIFCATION OF RESPONSES TO PLAINTIFF'S  
REQUEST FOR ADMISSIONS

By: s/ Doug Shackelford  
Pastor Doug Shackelford, New  
Destiny Christian Center Church

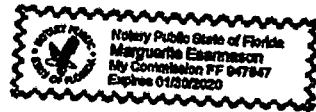
STATE OF Florida  
COUNTY OF FLORIDA Orange

Under penalty of perjury, Doug Shackelford, duly  
sworn upon oath, deposes and says that the foregoing  
responses to request for admissions are true and cor-  
rect to the best of my knowledge and belief. The fore-  
going Instrument was acknowledged before me this

9 day of Sept. by Doug Shackelford, who is personally known to me or who has produced as identification and who did take an oath.

*s/ Marguerite Esannason*  
Notary Public

Marguerite Esannason  
Printed Name of Notary  
Commission No: FF 947947  
My Commission Expires:  
1/30/2020



CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2016, a copy of Defendant NEW DESTINY CHRISTIAN CENTER CHURCH, INC., Response to Plaintiff's SHIRLEY JN JOHNSON Verified First Request for Admissions was electronically served via e-mail to: Eric Vincent Hires: Eric@Hireslegal.com, Alicia@Hires-legal.com and Erica K Williams: ewilliams@guide-one.com, HMc-Cauley -@guideone.com

APPENDIX F

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

SHIRLEY JN JOHNSON,  
Plaintiff,

CASE NO.

v. 6:15-cv-1698-0rl-37GJK

NEW DESTINY CHRISTIAN CENTER  
CHURCH, INC., PAULA MICHELLE  
MINISTRIES, INC., PAULA  
MICHELLE WHITE, and  
RESURRECTION LIFE THC, INC.,  
Defendants.

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DEFENDANT PAULA MICHELLE WHITE'S  
RESPONSE TO PLAINTIFF'S VERIFIED FIRST  
REQUEST FOR ADMISSIONS

Defendant PAULA MICHELLE WHITE ("White"), by and through the undersigned attorneys, and pursuant to FED. R. CIV. P. 36, hereby responds to Plaintiff's Verified First Request for Admissions dated August 10, 2016 as follows:

**First Set of Admissions, Request No. 1:** You, your representative(s) or employees visited and viewed Plaintiffs YouTube channel and website ("websites")



and personally saw copies of Paula White Ministries' copyrighted videos, paid advertisements, merchandise for sale to the public along with tools and technology for forwarding copies of Paula White Ministries' videos to social media providers such as Facebook, Instagram and Twitter, before seeking the advice of an attorney to file a copyright infringement complaint on behalf of Paula White Ministries. Admit or Deny?

**RESPONSE:** White admits that her representatives or employees visited Plaintiff's YouTube channel and website and saw copies of Paula White Ministries' copyrighted videos and other content before the underlying copyright infringement lawsuit was filed by Paula White Ministries. The remaining portions of this Request are denied.

**First Set of Admissions, Request No. 2:** As incorporator and a director for Paula Michelle Ministries, Inc. a/k/a Paula White Ministries, you read the copyright infringement complaint and was aware of the allegations contained therein. Admit or Deny?

**RESPONSE:** White admits she read a draft of the copyright infringement complaint and was aware of the general allegations contained within the copyright infringement complaint.

**First Set of Admissions, Request No. 3:** As Incorporator and a Director of Paula Michelle Ministries, Inc. a/[k]/a Paula White Ministries, you verified the accuracy of the allegations contained in the underlying copyright infringement lawsuit. Admit or Deny?

**RESPONSE:** White did not verify the accuracy of the allegations contained in the underlying copyright infringement lawsuit and therefore denies this portion of Plaintiff's request. White admits Paula White

Ministries retained counsel in the underlying copyright infringement action and relied on counsel to draft allegations in accordance with facts surrounding the underlying action.

**First Set of Admissions, Request No. 4:** You filed or authorized the filing of the underlying copyright infringement lawsuit. Admit or Deny?

**RESPONSE:** White denies she filed or authorized the filing of the underlying copyright infringement lawsuit.

**First Set of Admissions, Request No. 5:** The underlying copyright infringement lawsuit was filed as a personal vendetta, because as a public figure you felt that you were being criticized, persecuted, reproached and talked about. Admit or Deny?

**RESPONSE:** White denies the underlying copyright infringement lawsuit was filed as a personal vendetta. White admits she is a public figure and as such is criticized and talked about.

**First Set of Admissions, Request No. 6:** You knew the allegations against Plaintiff in the copyright infringement complaint, were false. Admit or Deny?

**RESPONSE:** White denies she knew the allegations against Ms. Johnson in the copyright Infringement complaint were false.

**First Set of Admissions, Request No. 7:** You and Mark Nejame of Nejame Law Firm are friends? Admit or Deny?

**RESPONSE:** White admits she is friends with Mark Nejame of the Nejame Law Firm.

**First Set of Admissions, Request No. 8:** Your attorney who prosecuted the copyright infringement

lawsuit aided you in preparing the allegations contained in the copyright infringement complaint. Admit or Deny?

**RESPONSE:** White did not prepare the allegations contained within the copyright infringement complaint and therefore denies this portion of Plaintiff's Request. White admits Paula White Ministries retained counsel in the underlying copyright infringement action and relied on counsel to draft the allegations contained within the copyright Infringement complaint.

**First Set of Admissions, Request No. 9:** As Incorporator and a director of Paula Michelle Ministries, Inc. and president of the board of directors for New Destiny Christian Center Church, Inc. you had full control over the copyright infringement litigation. Admit or Deny?

**RESPONSE:** White denies she had full control over the copyright infringement litigation.

**First Set of Admissions, Request No. 10:** On June 22, 2012, (on behalf of Paula White Ministries) you, or someone you authorized, applied for a copyright registration/certificate which covered Paula White's sermons for the years 2010-2011. Admit or Deny?

**RESPONSE:** White admits Paula White Ministries registered the Paula White Ministries Sermons 2010-2011 with the United States Copyright Office on June 22, 2012.

**First Set of Admissions, Request No. 11:** When Paula White Ministries filed a copyright infringement notification to YouTube against Plaintiff's channel on February 6, 2012, you knew Paula White Ministries did not have a valid copyright certificate/registration

on file with the United States Copyright Office (USCO) for any of Paula White's sermons. Admit or Deny?

**RESPONSE:** White admits Paula White Ministries registered the Paula White Ministries Sermons 2010-2011 with the United States Copyright Office on June 22, 2012.

**First Set of Admissions, Request No. 12:** You are president of New Destiny Christian Center Church, Inc. Admit or Deny?

**RESPONSE:** White admits she is President of New Destiny Christian Center Church, Inc.

**VERIFICATION OF RESPONSES TO PLAINTIFF'S  
REQUEST FOR ADMISSIONS**

By: s/Paula Michelle White  
Paula Michelle White

STATE OF FLORIDA  
COUNTY OF FLORIDA ORANGE

Under penalty of perjury, Paula Michelle White, duly sworn upon oath, deposes and says that the foregoing responses to request for admissions are true and correct to the best of my knowledge and belief. The foregoing instrument was acknowledged before me this 9 day of Sept., 2016, by Paula Michelle White, who is personally known to me or who has produced as identification and who did take an oath.

s/Marguerite Esannason

Notary Public

Marguerite Esannason

Printed Name of Notary

Commission No: FF 947947

My Commission Expires: 1/30/2020



CERTIFICATE OF SERVICE

I hereby certify that on September 9<sup>th</sup>, 2016, a copy of Defendant PAULA MICHELLE WHITE'S Response to Plaintiff's SHIRLEY JN JOHNSON Verified First Request for Admissions was electronically served via e-mail to: Eric Vincent Hires: Eric@Hires-legal.com, Alicia@HiresLegal.com and Erica K. Williams: ewilliams@guideone.com, HMcCauley@guideone.com.

I further certify that a true and correct copy of the foregoing has been furnished via U.S. Mail to:

**Shirley Jn Johnson**  
P.O. Box 58818  
Seattle, WA 98138  
253/846-6805  
Pro se

/s/ Richards H. Ford  
Richards H. Ford, Esquire (Trial  
Counsel)  
Florida Bar No. 288391  
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Jennifer N. Yencarelli, Esquire  
Florida Bar No. 0058020  
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Phone: (407) 843-3939  
Fax: (407) 649-8118  
Attorneys for Defendants New Destiny  
Christian Center Church, Inc., Paula  
Michelle Ministries, Inc., and Resurrec-  
tion Life THC, Inc

APPENDIX G

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

SHIRLEY JN JOHNSON,  
Plaintiff,

v. CASE NO.  
6:15-cv-1698-Orl-37GJK

NEW DESTINY CHRISTIAN CENTER  
CHURCH, INC., PAULA MICHELLE  
MINISTRIES, INC., PAULA MICHELLE  
WHITE, and RESURRECTION LIFE  
THC, INC.,  
Defendants.

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DEFENDANT PAULA MICHELLE MINISTRIES,  
INC.'S RESPONSE TO PLAINTIFF'S VERIFIED  
FIRST REQUEST FOR ADMISSIONS

Defendant PAULA MICHELLE MINISTRIES, INC. ("PMMI"), by and through the Undersigned attorneys, and pursuant to FED. R. CIV. P. 36, hereby responds to Plaintiff's Verified First Request for Admissions dated August 10, 2016 as follows:

**First Set of Admissions, Request No. 1:** You (a/k/a Paula White Ministries), your representatives, agents,



or employees visited Plaintiff's YouTube channel and website ("websites") and saw copies of Paula White Ministries' copyrighted videos, paid advertisements, merchandise offered for sale, and instructions for forwarding copies of Paula White Ministries' videos to Facebook, Instagram and Twitter before seeking the advice of an attorney to file a copyright infringement complaint. Admit or Deny?

**RESPONSE:** PMMI admits that it visited Plaintiff's YouTube channel and website and saw copies of Paula White Ministries' copyrighted videos and other content before the underlying copyright infringement lawsuit was filed by Paula White Ministries. The remaining portions of this Request are denied.

**First Set of Admissions, Request No.2:** When consulting with your attorney, you (a/[k]/a Paula White Ministries), your representatives, agents or employees, made a full and fair disclosure of all material facts regarding Plaintiff and her ("websites"). Admit or Deny?

**RESPONSE:** Objection to the extent the Request seeks attorney-client privileged communication. Otherwise, the Request is denied.

**First Set of Admissions, Request No. 3:** Your attorney who prosecuted the copyright action aided you (a/[k]/a Paula White Ministries), your representatives or employees in preparing your allegations contained in the copyright complaint. Admit or Deny?

**RESPONSE:** PMMI did not prepare the allegations contained within the copyright infringement complaint and was not a party to the underlying copyright infringement lawsuit; therefore, PMMI denies this portion of Plaintiff's request PMMI admits Paula

White Ministries retained counsel to draft the allegations contained within the copyright infringement complaint in accordance with applicable law.

**First Set of Admissions, Request No. 4:** You (a/k/a Paula White Ministries), your representatives, agents or employees knew that the allegations in the copyright infringement complaint were false. Admit or Deny?

**RESPONSE:** Denied that New Destiny Church/Paula White Ministries knew the allegations in the copyright infringement complaint were false.

**First Set of Admissions, Request No. 5:** When Paula White Ministries filed the copyright infringement notification with YouTube against Plaintiff on February 6, 2012, Paula White Ministries did not have a valid copyright certificate/registration on file with the United states Copyright Office (USCO) for any of Paula White's sermons. Admit or Deny?

**RESPONSE:** PMMI admits Paula White Ministries registered the Paula White Ministries Sermons 2010-2011 with the United States Copyright Office on June 22, 2012.

**First Set of Admissions, Request No. 6:** On June 22, 2012, Paula White Ministries applied for a copyright registration which covers Paula White's sermons from 2010 - 2011. Admit or Deny?

**RESPONSE:** PMMI admits Paula White Ministries registered the Paula White Ministries sermons 2010-2011 with the United States Copyright Office on June 22, 2012.

**First Set of Admissions, Request No. 7:** Every response in your Amended Answer and Affirmative

defenses (Doc. 48) to this malicious prosecution action was true. Admit or Deny?

**RESPONSE:** PMMI objects to this request to the extent it calls for a legal conclusion regarding the viability of its affirmative defenses. PMMI admits all responses and affirmative defenses asserted in its Answer and Affirmative Defenses have merit.

**First Set of Admissions, Request No. 8:** Every answer you stated in your "Amended Answers to Plaintiff's First Set of Interrogatories" in this malicious prosecution action was true. Admit or Deny?

**RESPONSE:** PMMI admits it truthfully answered Plaintiff's First Set of Interrogatories in this malicious prosecution action.

**First Set of Admissions, Request No. 9:** Before, your dissolution, you sold religious books, CDs, DVDs, and/or other items via the Paula White Ministries website. Admit or Deny?

**RESPONSE:** PMMI admits before its dissolution, it you sold religious books, CDs, DVDs. and/or other items via the Paula White Ministries website.

**VERIFICATION OF RESPONSES TO PLAINTIFF'S  
REQUEST FOR ADMISSIONS**

By: s/Doug Shackelford  
Doug Shackelford Representative  
of Paula White Ministries, Inc.

**STATE OF FLORIDA**  
**COUNTY OF FLORIDA ORANGE**

Under penalty of perjury, Doug Shackelford, duly sworn upon oath, deposes and says that the foregoing

responses to request for admissions are true and correct to the best of my knowledge and belief. The foregoing Instrument was acknowledged before me this 9 day of Sept., 2016, by Doug Shackelford, who is personally known to me or who has produced as identification and who did take an oath.

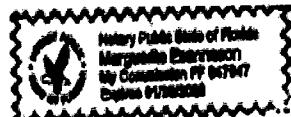
s/Marguerite Esannason

Notary Public

MARGUERITE ESANNASON

Printed Name of Notary

Commission No. FF 947947



My Commission Expires: 1/30/2020

I hereby certify that on September 9, 2016, a copy of Defendant PAULA MICHELLE MINISTRIES, INC.'S Response to Plaintiff's SHIRLEY JN JOHNSON Verified First Request for Admissions was electronically served via e-mail to: Eric Vincent Hires: Eric@Hireslegal.com, Alicia@Hires-legal.com and Erica K. Williams: Ewilliams@guide-one.com, HMcCauley@-guideone.com.

I further certify that a true and correct copy of the foregoing has been furnished via U.S. Mail to:

**Shirley Jn Johnson**  
P.O. Box 58818  
Seattle, WA 98138  
253/846-6805  
Pro Se

s/Richards H. Ford  
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Jennifer N. Yencarelli, Esquire  
Florida Bar No. 0058020  
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Fax: (407) 649-8118  
Attorneys for Defendants New Des-  
tiny Christian Center Church, Inc.,  
Paula Michelle Ministries, Inc., and  
Paula Michele White, and Resur-  
rection Life THC, Inc.

APPENDIX H

Case 6:14-cv-00497-GAP-DAB  
Document 1 Filed 03/27/14

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

CASE NO.  
6:14-CV-497-Orl-31DAB

PAULA WHITE MINISTRIES  
Plaintiff,  
v.

SHIRLEY JN JOHNSON  
Defendant.

---

Paula White Ministries, by and through its undersigned counsel, for its Complaint against Defendant Shirley Jn Johnson states and alleges as follows:

**INTRODUCTION**

1. Plaintiff, Paula White Ministries, is a global ministry in both vision and reach. Utilizing the Internet, Television, Radio, Literature, and Public Speaking as its primary vehicles of communication. It is guided by the God-inspired vision of Paula White who founded it with a strong desire to see lives transformed



for the better through relationship with God.

2. Defendant operates a You Tube channel “theremnntsjn” and a web-site known as <http://www.theremnntsjn.com>/(collectively referred to herein as the “Websites”) and without permission or authorization from Plaintiff copied, modified, and displayed Plaintiff’s photograph(s) and videos on the Websites and engaged in the misconduct knowingly in violation of the United States copyright laws.

#### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. § 1331. The Court has supplemental jurisdiction over the claims arising under state law pursuant to 28 U.S.C. §1337 (a) in that the state claims are so related to the claims over which the court has original jurisdiction that they form part of the same case or controversy. Additionally this court has subject matter jurisdiction over all of the videos, inclusive of the unregistered images. (*See e.g. Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F. 3d 1146, 1154 [9th Cir. 2007]; *Olan Mills, Inc. v. Linn Photo Co.*, 23 F.3d 1345, 1349 [8th Cir 1994]; *Pac. & S. Co., Inc., v. Duncan*, 744 F.2d 1490, 1499 n. 17 [11th Cir 1984].)
4. This court has jurisdiction over the Defendant because she purposely directs substantial activities at the residents of Florida

by means of the website described herein. This court also has personal jurisdiction over the Defendant under the applicable long-arm jurisdiction statutes of Florida. *See e.g. Internet Solutions Corporation v. Marshall*, 39 So. 3d 1201 (Fla. 2010).

5. Venue is proper under 28 U.S.C. §1391(a)(2) because Paula White Ministries does business in this Judicial District, and/or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

#### **PARTIES**

6. Paula White Ministries maintains its principal place of business in Orange County, Florida.
7. Shirley Jn Johnson is an individual over the age of 18 and is liable and responsible to Plaintiff based upon the facts herein alleged.

#### **FACTUAL ALLEGATIONS**

8. Plaintiff is the legal and beneficial owner of a multitude of photographs and videos and has invested significant time and money in building its video portfolios.
9. Plaintiff has obtained several active and valid copyright registrations with the United States Copyright Office (the “USCO”), which registrations cover many of its videos and many others are the subject of pending copyright applications.
10. Plaintiff's photographs and videos are original creative works in which Plaintiff owns

protectable copyright interest.

11. Defendant is the registered owner of the Websites and is responsible for its content.
12. The Websites are monetized in that they contain paid advertisement and/or sell merchandise to the public and, on information and belief, Defendant profits from these activities.
13. Without permission or authorization from Plaintiff, Defendant copied, modified, and/or displayed Plaintiff rights protected videos (hereinafter collectively referred to as "Videos"), as set forth in Exhibit "1" which is annexed hereto and incorporated in its entirety herein, on the Websites.
14. On information and belief the videos were copied without license or permission, thereby infringing on the Copyrights (hereinafter collectively referred to as the "Infringement(s)").
15. As is set forth more fully in Exhibit 1, each listed infringement contains the URL ("Uniform Resource Locator") for a fixed tangible medium of expression that was sufficiently permanent or stable to permit it to be communicated for a period of more than transitory duration and constitutes a specific item of infringement. (See 17 U.S. C. §106(5); *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1160 [9th Cir. 2007]).
16. On information and belief, Defendant was aware of facts or circumstances from

which the determination regarding the Infringement was apparent. Based on the totality of the circumstances, Defendant cannot claim that she was not aware of the infringing activities, including specific Infringements, which form the basis of this Complaint, on the Website since such a claim would amount only willful blindness to the Infringement on the part of the Defendant.

17. On information and belief, Defendant engaged in the Infringement knowing and in violation of applicable United States Copyright Laws.
18. Additionally, on information and belief, Defendant, with “red flag” knowledge of the Infringement, failed to promptly remove same. (*See 17 U.S.C. §512(c)(1)(A)(i).*)
19. On information and belief, Defendant has received a financial benefit directly attributable to the Infringement. Specifically, by way of the Infringement, the Websites had increased traffic. (*See 17 U.S.C. §512 (c)(1)(B)).*
20. As a result of Defendant’s misconduct, Plaintiff has been substantially harmed.

**FIRST COUNT**

*(Direct Copyright Infringement, 17 U.S.C §501 et seq)*

21. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs numbered 1 - 20 as if set forth in full herein.

22. The Videos are original, creative works in which Plaintiff owns protectable copyright interests.
23. Plaintiff has not licensed Defendant the right to use the Videos in any manner, nor has Plaintiff assigned any of its exclusive rights in the Copyrights to Defendant.
24. Without permission or authorization from Plaintiff and in willful violation of its rights under 17 U.S.C. 106, defendant improperly and illegally copied, reproduced, distributed, adapted, and/or publically displayed works copyrighted by Plaintiff.
25. Defendant's reproduction of the Videos and display of the Videos on the Website constitutes willful copyright infringement.
26. On information and belief, thousands of people have viewed the unlawful copies of the Videos on the Website.
27. On information and belief, Defendant had knowledge of the copyright infringement alleged herein and had the ability to stop the reproduction and display of Plaintiff's copyrighted material.
28. As a direct and proximate result of Defendant's misconduct, Plaintiff has been substantially harmed in an amount to be proven at trial.

**SECOND COUNT**

***Contributory Copyright Infringement***

29. Plaintiff incorporates, as though fully set forth herein, each and every allegation

contained in the preceding paragraphs, numbered 1 - 20, as though set forth in full herein.

30. In the event that the Videos were hyperlinked into the Website, and thereby not stored directly on the Defendant servers, Defendant is liable as contributory infringers since she had actual and/or constructive knowledge of another's infringing conduct and induced, caused and/or materially contributed to that conduct.
31. For example, Defendant has caused, enabled, facilitated and materially contributed to the infringement complained of herein by, providing the tools and instruction for infringement via her Website and has directly and indirectly promoted the infringement and refused to exercise her ability to stop the infringement made possible by their distribution.
32. Defendant's infringement is and has been willful, intentional, purposeful, and in disregard of the rights of Plaintiff, and has caused substantial damage to Plaintiff.
33. As a direct and proximate result of Defendant's misconduct, Plaintiff has been substantially harmed in an amount to be proven at trial.

**THIRD COUNT**

*Inducement of Copyright Infringement*

34. Plaintiff incorporates, as though fully set

forth herein, each and every allegation contained in the preceding paragraphs, numbered 1 - 20, as though set forth in full herein.

35. Defendant has induced and continued to induce infringement by, for example, providing technology on the Website to download and/or forward a copy to such social media providers such as Facebook, Instagram, and Twitter and/or failing to block or diminish access to infringing material even though there are technological means to do so that are known to the Defendant.
36. Defendant's infringement is and has been willful, intentional, purposeful and in disregard of the rights of Plaintiff, and has caused substantial damage to Plaintiff.
37. As a direct and proximate result of Defendant's infringement, Plaintiff has been substantially harmed in an amount to be proven at trial.

**THIRD COUNT**

***Injunction Pursuant to 17 U.S.C. §502***

38. Plaintiff incorporates, as though fully set forth herein, each and every allegation contained in the preceding paragraphs, numbered 1 - 20, as though set forth in full herein.
39. Plaintiff requests a permanent injunction pursuant to 17 U.S.C. §502(a) prohibiting Defendant from displaying the

Infringements.

**FOURTH COUNT**

***Attorney Fees and Costs Pursuant to 17 U.S.C. §505***

40. Plaintiff incorporates, as though fully set forth herein, each and every allegation contained in the preceding paragraphs, numbered 1 - 20, as though set forth in full herein.
41. Plaintiff requests, pursuant to 17 U.S.C. §505, its attorney fees and costs for the prosecution of this action.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That the Court enter a judgment finding that Defendant has infringed directly, contributory and/or vicariously as well has induced others to violate Plaintiffs rights to the Infringements in violation of 17 U.S.C. §501 *et seq* and award damages and monetary relief as follows:
  - a. Statutory damages against Defendant pursuant to 17 U.S.C. §504(c) of \$150,000 per infringement or in the alternative Plaintiff's actual damages and the disgorgement of Defendant's wrongful profits in an amount to be proven at trial; and
  - b. A permanent injunction against Defendant pursuant to 17 U.S.C. §502; and
  - c. Plaintiff's attorney's fees pursuant to 17 U.S.C. §505; and
  - d. Plaintiffs costs; and

2. Such other relief that the Court determines is just and proper.

Dated March 25, 2014

By: s/ Thomas A. Sadaka  
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APPENDIX I

Case 6:14-cv-00337-GAP-KRS  
Document 1 Filed 02/28/14

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

BWP Media USA Inc. d/b/a Pacific Coast News,  Plaintiff(s),  vs.  All Access Fans. Inc., Defendant(s).	6:14-CV 337-ORL-31LRS  Docket No:  COMPLAINT JURY TRIAL DEMANDED
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BWP Media USA Inc. d/b/a Pacific Coast News ("BWP") (hereinafter collectively "*Plaintiff(s)*") by and through its undersigned counsel, for their Complaint



against Defendants All Access Fans, Inc. (hereinafter collectively referred to as *Defendant(s)*) states and alleges as follows:

**INTRODUCTION**

1. Plaintiff(s) provide entertainment-related photojournalism goods and services and own the rights to a multitude of photographs featuring celebrities, which it licenses to online and print publications. Plaintiff(s) have obtained U.S. copyright registrations covering many of its photographs, and others are the subject of pending copyright applications.

2. Defendant(s) own and operate a website known as [www.allaccessfans.com](http://www.allaccessfans.com) (the website(s) are collectively referred to herein as the “*Websites*”) and without permission or authorization from Plaintiff(s) copied, modified, and displayed Plaintiff(s)’ photographs(s) on the Websites and engaged in this misconduct knowingly and in violation of the United States copyright laws.

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. § 1338(a) and 28 U.S.C. § 1331. The Court has supplemental jurisdiction over the claims arising under state law pursuant to 28 U.S.C. § 1337(a) in that the state claims are so related to the claims over which the court has original jurisdiction that they form part of the same case or controversy. Additionally, this Court has subject matter jurisdiction over all of the photographs, inclusive of the unregistered images. (See e.g. *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F. 3d 1146,1154 [9<sup>th</sup> Cir. 2007]; *Olan Mills, Inc. v. Linn Photo Co.* 23 F. 3d 1345,

1349 [8<sup>th</sup> Cir. 1994]; *Pac. & S. Co., Inc. v. Duncan*, 744 F. 2d 1490, 1499 m.17 [11<sup>th</sup> Cir. 1984]).

4. This Court has personal jurisdiction over All Access Fans, Inc. because All Access Fans, Inc. maintains its principal place of business in Florida and purposely directs substantial activities at the residents of Florida by means of the website described herein. This Court also has personal jurisdiction over the Defendant(s) under the applicable long-arm jurisdictional statutes of Florida.

5. Venue is proper under 28 U.S.C. §1391(a)(2) because All Access Fans, Inc. does business in this Judicial District and/or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

#### PARTIES

6. BWP is a California Corporation and maintains its principal place of business in Los Angeles County, California.

7. On information and belief, Defendant All Access Fans, Inc., is a Florida Corporation with a principal place of business in OSCEOLA County, Florida and is liable and responsible to Plaintiff based on the facts herein alleged.

#### FACTUAL ALLEGATIONS

8. Plaintiff(s) are the legal and beneficial owners of a multitude of photographs which they license to online and print publications and have invested significant time and money in building their photograph portfolios.

9. Plaintiff(s) have obtained several active and valid copyright registrations with the United States Copyright Office (the “USCO”), which registrations cover many of their photographs and many others are the subject of pending copyright applications.

10. Plaintiff(s)’ photographs are original, creative works in which Plaintiffs own protectable copyright interests.

11. Defendant(s) are the registered owner of the Websites and are responsible for their content.

12. The Websites are monetized in that they contain paid advertisements and/or sell merchandise to the public and, on information and belief, Defendant(s) profit from these activities.

13. Without permission or authorization from Plaintiff(s), Defendant(s) copied, modified, and/or displayed Plaintiff(s) rights protected photographs (hereinafter collectively referred to as “*Photograph(s)*”) as set forth in Exhibit “1” which is annexed hereto and incorporated in its entirety herein, on the Websites.

14. On information and belief, the *Photograph(s)* were copied without license or permission, thereby infringing on the Copyrights (hereinafter collectively referred to as the “*Infringement(s)*”).

15. As is set forth more fully in Exhibit “1”, each listed infringement contains the URL (“*Uniform Resource Locator*”) for a fixed tangible medium of expression that was sufficiently permanent or stable to permit it to be communicated for a period of more than transitory duration and constitutes a specific item of infringement. (See 17 U.S.C. §106(5); *Perfect 10, Inc. v. Amazon.com, Inc.* 508 F. 3d 1146, 1160 [9th Cir.

2007]).

16. On information and belief, Defendant(s) were aware of facts or circumstances from which the determination regarding the Infringement(s) was apparent. Based on the totality of the circumstances, Defendant(s) cannot claim that they were not aware of the infringing activities, including the specific Infringement(s) which form the basis of this complaint, on the Website(s) since such a claim would amount to only willful blindness to the Infringement(s) on the part of Defendant(s).

17. On information and belief, Defendant(s) engaged in the Infringement(s) knowingly and in violation of applicable United States Copyright Laws.

18. Additionally, on information and belief, Defendant(s), with “red flag” knowledge of the infringements failed to promptly remove same. (See 17 U.S.C. §512(c)(1)(A)(i)).

19. On information and belief, Defendant(s) have received a financial benefit directly attributable to the Infringement(s). Specifically, by way of the Infringement(s), the Websites had increased traffic to the and, in turn, realized an increase their advertising revenues and/or merchandise sales. (See 17 U.S.C. §512(c)(1)(B)).

20. As a result of Defendant(s)’ misconduct, Plaintiff(s) have been substantially harmed.

FIRST COUNT

*(Direct Infringement, 17 U.S.C. §501 et seq.)*

21. Plaintiff(s) repeat and incorporate by

reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

22. The Photograph(s) are original, creative works in which Plaintiff(s) own protectable copyright interests.

23. Plaintiff(s) have not licensed Defendant(s) the right to use the Photograph(s) in any manner, nor have Plaintiff(s) assigned any of its exclusive rights in the Copyrights to Defendant(s).

24. Without permission or authorization from Plaintiff(s) and in willful violation of their rights under 17 U.S.C. §106, Defendant(s) improperly and illegally copied, reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff.

25. Defendant(s)' reproduction of the Photograph(s) and display of the Photograph(s) on the Website(s) constitutes willful copyright infringement.

26. On information and belief, thousands of people have viewed the unlawful copies of the Photograph(s) on the Website(s).

27. On information and belief, Defendant(s) had knowledge of the copyright infringement alleged herein and had the ability to stop the reproduction and display of Plaintiff(s)' copyrighted material.

28. As a direct and proximate result of Defendant(s)' misconduct Plaintiff(s) have been substantially harmed in an amount to be proven at trial.

29. Plaintiff(s) incorporate, as though fully set forth herein, each and every allegation contained in the preceding paragraphs, as though set forth in full herein.

**SECOND COUNT**

*(Contributory Copyright Infringement)*

30. In the event that the Photograph(s) were hyperlinked into the Website(s), and thereby not stored directly on the Defendant(s) servers, Defendant(s) are liable as contributory infringers since they had actual and/or constructive knowledge of another's infringing conduct and induced caused and/or materially contributed to that conduct. (*See e.g., Perfect 10, Inc. v. Amazon.com Inc.*, 508 F.3d. 1146, 1171 [9th Cir. 2007]; *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 929-30 [2005]; *A&M Records, Inc. v. Napster, Inc.* 239 F.3d 1004, 1019 [9th Cir. 2001]; *Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417 [1984]).

31. For example, Defendant(s) have caused enabled, facilitated and materially contributed to the infringement complained of herein by, providing the tools and instruction for infringement via their Website(s) and have directly and indirectly promoted the infringement and refused to exercise their ability to stop the infringement made possible by their distribution.

32. Defendants' infringement is and has been willful, intentional, purposeful, and in disregard of the rights of Plaintiffs, and has caused substantial damage to Plaintiffs.

33. As a direct and proximate result of Defendant(s)' misconduct. Plaintiff(s) have been substantially harmed in an amount to be proven at trial.

**THIRD COUNT**

*(Vicarious Copyright Infringement)*

34. Plaintiff(s) incorporate, as though fully

set forth herein, each and every allegation contained in the preceding paragraphs, as though set forth in full herein.

35. Defendant(s) enjoyed a direct financial benefit from the infringing activity of its users and declined to exercise the right and ability to supervise or control that infringing activity, despite their legal right to stop or limit the directly infringing conduct as well as the practical ability to do so.

36. Accordingly, Defendant(s) are liable as vicarious infringers since they profited from direct infringement while declining to exercise a right to stop or limit it. (See e.g., *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d. 1146, 1171 [9th Cir. 2007]; *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 929-30 (2005)).

37. As a result of Defendant(s)' misconduct, Plaintiff(s) have been substantially harmed in an amount to be proven at trial.

**FOURTH COUNT**  
*(Inducement of Copyright Infringement)*

38. Individuals using the Websites that Defendant(s) created, distributed and promoted, have been provided with the means and mechanisms through such Websites to directly infringe and are directly infringing Plaintiff(s)' copyrights, by, for example, creating unauthorized reproductions of Plaintiff(s)' copyrighted works and distributing copies of such works in violation of Plaintiff(s)' exclusive rights (17 U.S.C §§106 and 501).

39. Defendant(s) have induced and continue to induce infringement by, for example, providing technology on the Websites to download and/or forward an

image to such social media providers such as Facebook, Instagram, and Twitter and/or failing to block or diminish access to infringing material even though there are technological means to do so that are known to Defendant(s).

40. Defendant(s)' infringement is and has been willful, intentional, purposeful and in disregard of the rights of Plaintiff(s)), arid has caused substantial damage to Plaintiff(s).

41. As a direct and proximate result of Defendant(s)' infringement, Plaintiff(s) have been substantially harmed in an amount to be proven at trial.

FIFTH COUNT

*(Injunction Pursuant 17 U.S.C. §502)*

42. Plaintiff(s) incorporate, as though fully set forth herein, each and every allegation contained in the preceding paragraphs, as though set forth in full herein.

43. Plaintiff(s) request a permanent injunction pursuant to 17 U.S.C. §502(a) prohibiting Defendants from displaying the Infringements.

SIXTH COUNT

*(Attorney Fees and Costs Pursuant to 17 U.S.C. §505)*

44. Plaintiff(s) incorporate, as though fully set forth herein, each and every allegation contained in the preceding paragraphs, as though set forth in full herein.

45. Plaintiff(s) request, pursuant to 17 U.S.C. §505, their attorney fees and costs for the prosecution of this action.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff(s) respectfully requests

judgment as follows:

1. That the Court enter a judgment finding that Defendants have infringed directly, contributorily and/or vicariously as well have induced other to violation Plaintiff(s)' rights to the Photograph(s) in violation of 17 U.S.C. §501 et seq. and award damages and monetary relief as follows:
  - a. Statutory damages against Defendant(s) pursuant to 17 U.S.C. §504(c) of \$150,000 per infringement or in the alternative Plaintiff(s)' actual damages and the disgorgement of Defendant(s)' wrongful profits in an amount to be proven at trial; and
  - b. A permanent injunction against Defendants pursuant to 17 U.S.C. §502; and
  - c. Plaintiff(s)' attorneys' fees pursuant to 17 U.S.C. §505; and
  - d. Plaintiff(s)' costs; and
2. Such other relief that the Court determines is just and proper.

DATED: February 11, 2014

SANDERS LAW, PLLC

s/Craig B. Sanders

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File No.: 104059

110a

REQUEST FOR JURY TRIAL

Plaintiff hereby demands a trial of this action by jury.

DATED: February 11, 2014

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File No.: 104059

## APPENDIX J

**Constitutional Provisions Involved****United States Constitution – Amendment XIV**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

**Federal Statutes Involved**

**18 U.S.C. § 1503 (a) (Chapter 73)**

**18 USC §1503: Influencing or injuring officer or juror generally**

(a) Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or

communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede the due administration of justice, shall be punished as provided in subsection (b). If the offense under this section occurs in connection with a trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

**28 U.S.C. § 453**  
**28 U.S.C. § 453: Oaths of justices and judges**

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, \_\_\_\_\_ do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as \_\_\_\_\_ under the Constitution and laws of the United States. So help me God."

**28 U.S.C. § 455 (a) and (b) (1)**  
**28 U.S.C. § 455: Disqualification of justice, judge, or magistrate judge**

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

**Florida Statutes Involved**

**Title XLV Chapter 768.73 (1) (c)**

**768.73 Punitive Damages' Limitations; —**

(1)(c) Where the fact finder determines that at the time of injury the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there shall be no cap on punitive damages.

**Title XLV Chapter 768.72 (2)**

**768.72 Pleading in civil actions; claim for punitive damages.**

(2) A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence. As used in this section, the term:

(a) "Intentional misconduct" means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.

(b) "Gross negligence" means that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

(3) In the case of an employer, principal, corporation, or other legal entity, punitive damages

may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets the criteria specified in subsection (2) and:

(a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;

(b) The officers, directors, or managers of the employer, principal, corporation, or other legal entity knowingly condoned, ratified, or consented to such conduct; or

(c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

(4) The provisions of this section shall be applied to all causes of action arising after the effective date of this act.

History.—s. 51, ch. 86-160; s. 1172, ch. 97-102; s. 22, ch. 99-225.

**768.725 Punitive damages; burden of proof.**—In all civil actions, the plaintiff must establish at trial, by clear and convincing evidence, its entitlement to an award of punitive damages. The “greater weight of the evidence” burden of proof applies to a determination of the amount of damages.

**Federal Rules of Civil Procedure Involved**

**Fed. R. Civ. P 17 (a) (1)**

**Rule 17. Plaintiff and Defendant; Capacity; Public Officers**

**(a) Real Party in Interest.**

(1) *Designation in General.* An action must be

prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

**Other Relevant Provisions Involved**

**Ch. 2: Code of Conduct for United States Judges**

**Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently**

The duties of judicial office take precedence over all other activities. The judge should perform those duties with respect for others, and should not engage in behavior that is harassing, abusive, prejudiced, or biased. The judge should adhere to the following standards:

**A. Adjudicative Responsibilities.**

- (1) A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.
- (2) A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings.
- (3) A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge should require similar conduct by those subject to the judge's control, including lawyers to the extent consistent with their role in the adversary process.

Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities

- A. *Respect for Law.* A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. *Outside Influence.* A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

Canon 1: A Judge Should Uphold the integrity and independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

**Florida Code of Judicial Conduct**

Canon 3:

A Judge Shall Perform The Duties Of Judicial Office Impartially And Diligently

B. Adjudicative Responsibilities.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socio-economic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so. This section does not preclude the consideration of race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors when they are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

**COMMENTARY**

*Canon 3B(5). A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.*

*A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in*

*a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.*

APPENDIX K

**CASE LAW COMPLETE QUOTATIONS**

*Caperton v. A.T. Massey Coal Company, Inc.*, 556 U.S. 868, \*876 (2009):

“In all the circumstances of this case, due process requires recusal. Pp. 2259 – 2267.

(a) The Due Process Clause incorporated the common-law rule requiring recusal when a judge has a ‘direct, personal, substantial, pecuniary interest’ in a case, *Tumey v. Ohio*, 273 U.S. 510, 523, 47 S. Ct. 437, 71 L.Ed. 749, but this Court has also identified additional instances which, as an objective matter, require recusal ‘where the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable’ *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L.Ed. 2d 712).”

*City of Hollywood v. Coley*, 258 So. 2d 828, \*833 [10] (Fla. 4th DCA 1971):

“Therefore, since as Wrains, *supra*, concludes, actual malice is one of the elements of the tort of malicious prosecution, the verdict of the jury awarding plaintiff in the instant case compensatory damages for malicious prosecution constitutes a sufficient finding of malice to justify the award of punitive damages. We must, therefore, reverse the order of the trial judge setting aside the jury award of punitive damages to plaintiff on the malicious prosecution count.”

*Clemons v. State Risk Management Trust Fund*, 870 So. 2d 881, \*882 [2][3] (Fla. 1st DCA 2004).

“This is untrue because, even though an element of malicious prosecution is malice, the Florida Supreme

Court has held that '[i]n an action for malicious prosecution it is not necessary for a plaintiff to prove actual malice; legal malice is sufficient and may be inferred from, among other things, a lack of probable cause, gross negligence, or great indifference to persons, property, or the rights of others.' *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1357 (Fla. 1994)."

***Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*** 532 U.S. 424, \*436, 121 S. Ct. 1678, 149 L. Ed. 2d 674 (2001) (citing *Ornelas v. United States*, 517 U.S. 690, 697 (1996));

"Likewise, in *Ornelas*, we held that trial judges' determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal."

"Finally, *de novo* review tends to unify precedent and 'stabilize the law.' " 517 U.S., at 697-98, 116 S.Ct. 1657."

***Crosby v. State***, 97 So. 2d 181, \*184 (Fla. 1957):

"The language of this court in *State ex rel Davis v. Parks*, 141 Fla. 516, 194 So. 613, 615), is peculiarly apropos in the present instance. There we said:

'This Court is committed to the doctrine that every litigant is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of the Courts to scrupulously guard this right and to refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is seriously brought in question. The exercise of any other policy tends to discredit the judiciary and shadow the administration of justice.

'It is not enough for a judge to assert that he is free from prejudice. His mein and the reflex from his court room speak louder than he can declaim on this point. If he fails through these avenues to reflect justice and square dealing, his usefulness is destroyed.' The attitude of the judge and the atmosphere of the court room should indeed be such that no matter what charge is lodged against a litigant or what cause he is called upon to litigate, he can approach the bar with every assurance that he is in a forum where the judicial ermine is everything that it typifies, purity and justice. The guaranty of a fair and impartial trial can mean nothing less than this.' We hold that the trial judge should have disqualified himself and declined to proceed further in the case."

*Dimick v. Schiedt*, 293 US 474, \*486 (1935):

"Where the verdict returned by a jury is palpably and grossly inadequate or excessive, it should not be permitted to stand; but, in the event, both parties remain entitled, as they were entitled in the first instance, to have a jury properly determine the question of liability and the extent of the injury by an assessment of damages."

*Durkin v. Davis*, 814 So.2d, 1246, HN 5 (Fla. 2nd DCA 2002):

"As to malice on the part of the defendants, the plaintiff need not allege actual malice; legal malice is sufficient and may be inferred from among other things, a lack of probable cause, gross negligence, or great indifference to persons, property, or the rights of others."

*Kingsland v. City of Miami*, 382 F. 3d 1220, \*1228 (11th Cir. 2004) the Court stated:

“Appellant argues that the district court erroneously concluded as a matter of law that the officers conducted a constitutionally-deficient investigation, thereby objectively officers should not be permitted to turn a blind eye to exculpatory information that is available to them, and instead support their actions on selected facts they chose to focus upon. We agree.”

***Philip Morris USA v. Williams***, 549 US 346,\*353 (2007), held that:

“For these and similar reasons, this Court has found that the Constitution imposes certain limits, in respect to both procedure for awarding punitive damages and to amounts forbidden as ‘grossly excessive’ See *Honda Motor Co. v. Oberg*, 512 U.S. 415, 432, 114 S. Ct. 2331, 129 L.Ed. 2d 336 (1994) (requiring judicial review of the size of punitive awards); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.* 532 U.S. 424, 443, 121 S. Ct. 1678, 149 L. Ed. 2d 674 (2001) (review must be de novo)”