

THE LOCAL CHURCH,	§	IN THE DISTRICT COURT OF
an unincorporated association, et al.,	§	
	§	
Plaintiffs.	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
HARVEST HOUSE PUBLISHERS, an	§	
entity incorporated in Oregon and California;	§	
JOHN ANKERBERG, an individual; and	§	
JOHN WELDON, an individual,	§	80TH JUDICIAL DISTRICT
	§	
Defendants.	§	

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**PLAINTIFFS’ OPPOSITION TO  
DEFENDANTS’ MOTION FOR PARTIAL SUMMARY JUDGMENT**

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**I.**

**INTRODUCTION**

The book that gave rise to this lawsuit maligns “The Local Church.” It does not purport to refer to “members,” “constituents” or “affiliates” of The Local Church. Nor does it state that its charges against “The Local Church” apply to some “members” but not to others. *A fortiori*, it draws no distinction between “member” and “group.” It simply targets an entity (or entities) that bears the name “The Local Church.”

Each of the 97 plaintiffs whose standing to sue is challenged by defendants’ Motion for Partial Summary Judgment is known in the community at large as “The Local Church.”<sup>1</sup> The

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<sup>1</sup> This assertion must not be confused with the argument made by The Local Church located in Fullerton, California, in moving for dismissal for lack of personal jurisdiction in the Oregon lawsuit styled *Harvest House Publishers, Inc. v. The Church in Fullerton Corp.*, Lane County

name “The Local Church” does not merely designate a religious denomination; it is the name most commonly used to refer to each constituent church named as a plaintiff here. By contrast, a Catholic parish may be named St. Paul’s or Holy Cross; a Lutheran congregation may be named Good Shepard. **However, each constituent church in this lawsuit is known in its community as simply, “The Local Church.”** (See Affidavit of Gordon Melton [hereinafter, “Melton Affidavit”] at ¶¶ 9-14; Affidavit of Daniel Towle [“hereinafter, Towle Affidavit”] at ¶¶ 5-10; Affidavit of Climenti Rogers [hereinafter, “Rogers Affidavit”] at ¶¶ 5-9.)

These facts -- which are borne out by the text of the Book and by the declarations submitted herewith -- carry two legal implications, either of which is sufficient to defeat defendants’ motion. First of all, because it is impossible to determine from the challenged portions of defendants’ publication whether the references to “The Local Church” designate the unincorporated association,<sup>2</sup> one (or more than one) Local Church or all of them, those statements are **ambiguous**.

It is well settled that summary judgment may not be granted against plaintiff in a libel case if the challenged statements are ambiguous with respect to the identity of the individual or entity targeted by the libel. *Sellards v. Express-News Corp.*, 702 S.W.2d 677, 679 (Tex. App. 1985); *see also Guisti v. Galveston Tribune*, 105 Tex. 497, 150 S.W. 874 (1912) (holding that summary judgment on an ambiguous statement is improper). Because an ordinary reader could

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Cir. Ct. No. 12-01-24034. In that case, The Local Church located in Fullerton stated that it had never acted for, done business as or been known as The Local Churches. The statement was intended to demonstrate that The Local Church located in Fullerton (the sole defendant in the Oregon lawsuit) was not an agent of the other Local Churches, of Living Stream Ministry or of the unincorporated association The Local Church, and that any jurisdictional contacts that those organizations had with the State of Oregon could not be imputed to The Local Church in Fullerton. The statements made in connection with that motion had nothing whatsoever to do with how the Local Church in Fullerton -- or any other branch of The Local Church -- is commonly referred to and thought of in its community.

<sup>2</sup> The first named plaintiff in the complaint.

understand the challenged statements in this case to refer to the unincorporated association known as The Local Church, each individual church known as The Local Church or any combination thereof, the issue of what readers actually understood is one of disputed fact and must be sent to the jury.

Second, even if we allow that The Local Church referred to in the Book can reasonably be understood by the reader as a “group” and that each of the individual churches can be understood as a “member” of that group, the fact remains that the “group libel rule” relied upon by defendants does not apply here. As will be shown, this case falls into a classic exception to the rule; specifically, the group libel rule only applies when the defamatory statement is directed at “some or **less than all**” of the members of the group. *Wright v. Rosenbaum*, 344 S.W.2d 228 (Tex. App. 1961); *Webb v. Sessions*, 531 S.W.2d 211, 212 (Tex. App. 1975) (group libel rule found applicable where defamatory article “did not refer to [plaintiff deputies] by name and could not be construed to mean and include all the deputies.”).

In this case, defendants’ indiscriminate and undifferentiated use of the name The Local Church suggests to readers that **all** entities that bear the name are involved in the abhorrent practices described by the authors. At the very least, a genuine issue of fact exists as to what readers actually understood.

The unusual facts of this case facilitate the application of the foregoing analysis. The Local Church stands falsely accused of the most heinous, repulsive acts imaginable: child molestation, murder, financial fraud and more. The enormity of charges is heightened by the fact that they are leveled against religious organizations. Accusations of this gravity remain imprinted in the reader’s mind and will be connected with **any** entity that bears The Local Church name. This is especially true given that the authors of these charges wield enormous

influence among evangelical Christians. John Ankerberg and John Weldon have written dozens of purportedly fact-based publications for the Christian audience. Ankerberg appears regularly on his own highly rated Christian television program. (Melton Affidavit at ¶ 17.) Accusations made by these individuals -- particularly those that appear in a book touted as an “Encyclopedia” -- have tremendous, sustained impact in the evangelical Christian community. They are far more likely to be construed broadly than charges from a more obscure source. (Melton Affidavit at ¶ 17; Towle Affidavit at ¶ 14.)

In sum, defendants’ motion for partial summary judgment cannot be granted under these facts. In this brief, plaintiffs will establish that (1) a genuine issue of fact exists with respect to whether the phrase “The Local Church” can reasonably be understood to refer to **any** of the 97 individual churches who are known by that name in their communities; and (2) a genuine issue of fact exists with respect to whether the book’s reference to “The Local Church” can reasonably be understood to refer to **all** of those churches. The existence of either of these jury questions precludes summary judgment.

## **II.**

### **STATEMENT OF FACTS**

This action arises from defendants’ publication of a book entitled ENCYCLOPEDIA OF CULTS AND NEW RELIGIONS (the “Book”). The Book consists primarily of descriptions of various religious organizations that the authors identify as “cults.” Preceding these descriptions is a lengthy introductory section which informs the reader that all of “the groups contained herein deserve the title ‘cult.’” The Book then purports to define “cults.” It states, for example, that “cults” engage in abhorrent practices and possesses repugnant attributes, including subjecting members to “physical” “harm” (p. xxiv), engaging in “fraud or deception” concerning

“fund-raising” and “financial costs” (p. xxiv), accepting “shamanism” (p. xxiv), “engag[ing] in drug smuggling and other criminal activity including murder” (p. xxv), “deny[ing] their followers blood transfusions and medical access” (p. xxv), “encourag[ing] prostitution” (p. xxv), “rap[ing] women” (p. xxv), “molest[ing] children” (p. xxv), “beat[ing] their disciples” (p. xxv), and practicing “black magic and witchcraft” (p. xxv). The Book also contains a “doctrinal index” that imputes additional illegal, immoral and unwholesome practices and attributes to the religious organization it had denominated as “cults.” (See Complaint at pp. 8 and 9.) The Book devotes an entire section to The Local Church. In so doing, the Book identifies The Local Church as a cult with all that the word “cult” entails -- under the Book’s own definition of the term. (See excerpts from ENCYCLOPEDIA OF CULTS AND NEW RELIGIONS, attached as Exhibit A to the Affidavit of Deborah Drooz [hereinafter, “Drooz Affidavit”], submitted herewith.)

This action was filed by the unincorporated association that bears the name The Local Church, by the California corporation Living Stream, Inc., and by 97 individual churches. Each of those individual churches is a corporation. In accordance with state corporations laws, each has adopted a corporate name. These names identify each by location, *e.g.*, the Church in Fullerton Corporation. However, the individual churches are not commonly known by their corporate names. Rather, each and every church is referred to in its community simply as “The Local Church.” (Melton Affidavit at ¶¶ 9-14; Towle Affidavit at ¶¶ 5-10; Rogers Affidavit at ¶¶ 5-9.) The use of “The Local Church” by these different entities is no accident. It is intended to emphasize the unity and equality of all the churches and all believers within those churches. (See Towle Affidavit at ¶ 11.) Anyone who is familiar with The Local Church knows that all constituent churches are known by the same name. (See Towle Affidavit at ¶¶ 5-10; Melton Affidavit at ¶¶ 9-14; Rogers Affidavit at ¶¶ 5-9.) Indeed, these churches have been referred to in

various writings as The Local Church. (See Towle Affidavit at ¶¶ 7-8 and exhibits thereto; Melton Affidavit at ¶ 7 and Exhibit B thereto.) Even the media has consistently referred to these individual churches as The Local Church. (See Towle Affidavit at ¶¶ 9-10 and exhibits thereto.)

The authors of the Book, who hold themselves out as scholars in the field of religion and purport to have compiled the material in the Book through exhaustive research, could not have failed to be aware that the individual churches are commonly known as, and called by the name, The Local Church.

Even though each church plaintiff is commonly known as The Local Church and even though defendants' own Book expressly refers to "The Local Church" in its pages, defendants contend that the Book does not "mention" the plaintiff churches and is therefore not "of and concerning" any of them. Plaintiffs submit that this theory is contrary to the facts and unsupported by the law. Defendants hope to capitalize on an ambiguity of their own creation to deny a remedy to plaintiffs who they named and therefore targeted with their libels.

### III.

#### **WHETHER THE BOOK'S REFERENCES TO THE LOCAL CHURCH CAN REASONABLY BE UNDERSTOOD TO REFER TO ANY OR ALL OF THE CHURCH PLAINTIFFS IS A QUESTION OF FACT FOR THE JURY**

Defendants' Partial Summary Judgment Motion is predicated on a single theory, to wit, that the Book's references to The Local Church **cannot** be understood to refer to any or all of the 97 constituent church plaintiffs. As defendants put it, "The 96 [sic] Local Church Corporations are not mentioned or referred to anywhere ... in the book ..." (Defendants' Motion For Partial Summary Judgment at p.2.) In making this argument, defendants perfunctorily cite the "of and concerning the plaintiff" doctrine, *i.e.*, the general rule that, in order to be actionable by any given plaintiff, the defamatory statement must be reasonably understood as a reference to that

plaintiff. Defendants also invoke the corollary rule on “group libel,” *i.e.*, that individual members of a defamed group ordinarily do not have standing to sue for defamation. Defendants conveniently fail to cite the well established rule that it is not necessary that the plaintiff be “mentioned,” *i.e.*, referred to by name, in the defamatory publication. All that is required is that “those who knew or were acquainted with the plaintiff” reasonably “understood from reading the publication that it referred to plaintiff.” *Gibler v. Houston Post Co.*, 310 S.W.2d 377 (Tex. App. 1958); *Newspapers, Inc. v. Matthews*, 161 Tex. 284, 289, 339 S.W.2d 890 (Tex. App. 1960).

Defendants’ superficial recitation of the “of and concerning” and group libel rules is no substitute for the intensively fact-based analysis that is required to apply them. The application of these rules requires an objective inquiry into the “extrinsic circumstances” surrounding publication. *Taj Mahal Travel, Inc. v. Delta Airlines, Inc.*, 164 F.3d 186, 189 (3d. Cir. 1999) (“... it must appear that some person who saw or read it was familiar with the circumstances and reasonably believed that it referred to the plaintiff.”); *see also* Rodney Smolla, LAW OF DEFAMATION, 2d ed. ©, West Group 2001, § 4:69. In this case, the facts show that each constituent church is commonly referred to as The Local Church, and that the Book’s references to The Local Church can reasonably be understood to “concern” any and all entities that are known by that name. Thus anyone seriously attempting to apply the “of and concerning” doctrine and the group libel rule to the facts of this case quickly encounters very “genuine issues of fact” on those issues.

On summary judgment, however, defendants must show that there is **no** genuine issue of material fact with respect to the point in question. *Wilcox v. St Mary’s University of San Antonio, Inc.*, 531 S.W.2d. 589, 592-93 (Tex. 1975). To prevail in a summary judgment motion in a libel case on the “of and concerning” issue, defendants must establish that the challenged

statements that make express reference to “The Local Church” are “unambiguous[ly]” incapable of being understood as a reference to the constituent churches known by that **same name**. “**If the statement is ambiguous, that is if the statement may have a defamatory meaning [as to plaintiff] but it is not necessarily defamatory [as to him], the issue must be submitted to a jury.**” *Sellards*, 702 S.W.2d at 679, *citing Guisti*, 105 Tex. at 497.

Defendants have not even endeavored to demonstrate a lack of ambiguity here. It is well settled that the trial court may not grant summary judgment on an ambiguous statement. *Denton Publishing Co. v. Boyd*, 460 S.W.2d 881, 884 (Tex. 1970); *Gartman v. Hedgpeth*, 138 Tex. 73, 157 S.W.2d 139, 141 (Tex. App. 1941); *Raymer v. Doubleday & Co.*, 615 F.2d 241, 246 (5th Cir. 1980), *cert. denied*, 449 U.S. 838 (1980). When questions of defamatory meaning exist, it is for the jury to determine how the statement would have been interpreted by the ordinary reader. *Denton Publishing*, 460 S.W.2d at 884.

It hardly need be stated that, in determining whether summary judgment is proper, the court must view the evidence in the light most favorable to the non-movant and must resolve all doubts concerning the existence of a material fact in the non-movant’s favor. *Gravis v. Abbott Laboratories*, 462 S.W.2d 410, 414 (Tex. App. 1970), *aff’d in part, rev’d in part* (on other grounds), 470 S.W.2d 639 (Tex. 1971). Plaintiffs submit that their evidence, in the form of sworn affidavits and exhibits, raises issues of material fact under these standards.

#### IV.

#### **THE CHALLENGED STATEMENTS ARE AMBIGUOUS WITH RESPECT TO THE IDENTITY OF THEIR SUBJECT**

The challenged statements in this case are ambiguous as to the identity of the entity (or entities) referred to in the Book as The Local Church because (with the exception of Living

Stream ministry) all of the plaintiffs herein are known by that name. It has long been the majority view -- and the view adopted by the Restatement (Second) of Torts -- that “a defamatory communication is made concerning the person to whom its recipient, correctly or mistakenly but reasonably, understands that it was intended to refer.” Restatement (Second) of Torts, § 564 (1977) (see, e.g., *Qsp, Inc. v. Aetna Cas. and Sur. Co.*, 256 Conn. 343, 773 A.2d 906 (Conn. 2001)). Texas law is in accord. It has been uniformly held that “if the language [of a publication] and the surrounding circumstances are such as to cause those to whom the matter is supposed to refer, or their friends and acquaintances, to understand that it was so intended, then an action will lie.” *Harris v. Santa Fe Townsite Company*, 58 Tex. Civ. App. 506, 507, 125 S.W. 77 (1910); *Gibler v. Houston Post Co.*, 310 S.W.2d 377 (Tex. App. 1958); *Granada Biosciences, Inc. v. Forbes, Inc.*, 49 S.W.3d 610, 616 (Tex. App. 2001) (citing *Croixland Props. Ltd. v. Corcoran*, 174 F.3d 213, 216 (D.C. Cir. 1999) (holding that the “of and concerning” requirement may be satisfied even when plaintiff is not expressly named or is misnamed provided that defamatory statements can reasonably be understood to refer to plaintiff)).

In cases where a defamatory charge is leveled against one of two or more entities having confusingly similar or identical names, it has been held that either entity may sue for defamation. The classic illustration of this principle is *Golden Bear Distributing Systems v. Chase Revel, Inc.*, 708 F.2d 944 (5th Cir. 1983), a case decided under Texas law. In that case, an investment magazine ran an article that imputed fraudulent business practices to a company whose name was Golden Bear Corporation of California. The article also made non-defamatory comments about the operation of a separate and independent corporation named Golden Bear Corporation of Texas. The Texas corporation sued for libel. Even though the article contained no defamatory statements about the Texas corporation, the court held that the statements concerning

the fraudulent practices of Golden Bear of California created the impression that Golden Bear of Texas was engaged in similarly illegal activities.

In this same vein, when several entities are referred to in an interchangeable and undifferentiated manner, courts have held that a defamatory statement concerning one can reasonably be understood to refer to another. In *Desnick v. ABC, Inc.*, 24 Media L. Rep., 1996 WL 189305 (BNA 2238 (N.D. III 1996)), *on remand from* 44 F.3d 1345, 23 Media L. Rep. (BNA 1161 (7th Cir. 1995)), the court denied summary judgment on the “of and concerning” issue where the network’s defamatory broadcast referred to plaintiff’s several separate businesses interchangeably. The court found that the viewer could reasonably understand that the defamatory statements referred to the wrong business. *See also, Granada Biosciences v. Forbes, Inc.*, 49 S.W.3d 610, 621 (Tex. App. 2001) (defendants’ undifferentiated reference to parent corporation, “Granada,” created ambiguity such that the average reader could reasonably understand defamatory statements to refer to subsidiaries).

The facts of the instant case mandate denial of summary judgment even more strongly than those of *Harris* and its progeny, *Golden Bear* and *Desnick*. The plaintiffs in this case are commonly known by identical names. The Book attacks an entity or entities by that name. It does not allow the reader to draw the inference that its references are to one or a few but not the others. On the contrary, it sends the message that any entity known by that name is implicated.

Evidence on these points is clear and undisputed. At paragraphs 7-8 of his affidavit, Gordon Melton, a widely reputed scholar of and expert on the religious organizations in the evangelical Christian community, including The Local Church, testifies that “virtually all of the persons that I met or know [in the communities throughout the United States in which he has attended worship services at constituent Local Churches] who had knowledge of the church in

any particular city refer to the church as The Local Church. At paragraph 9 of his affidavit, Dr. Melton points out that he has always referred to constituent churches as The Local Church in his published books and articles. The affidavit of Daniel Towle confirms at paragraphs 6-7 that community members virtually always refer to his church as The Local Church. Mr. Towle's affidavit also establishes that critics also refer to the constituent churches as The Local Church. The Towle affidavit further establishes that constituent churches are consistently referred to as The Local Church by the media. (See Towle Affidavit at ¶¶ 9-10 and exhibits thereto.) Additional confirmation appears in the declaration of Climenti Rogers. Mr. Rogers states that people in his community refer to his church as The Local Church. Some of the constituent churches have been referred to as The Local Church by the media.

Not only are the challenged statements capable of being understood as references to the constituent churches, but in fact they **have** been understood in that way. Mr. Towle testifies that he, together with friends and neighbors who have read the relevant portions of the challenged text, believed that the references to The Local Church targeted the constituent church in his community as well as the other churches known by that name. (Towle Affidavit at ¶¶ 12-13.) Similar averments can be found in the Rogers Affidavit at paragraphs 10 through 12.<sup>3</sup>

One point, touched upon in the introduction, deserves re-emphasis here. The courts of this state have held, again and again, that summary judgment in a libel case cannot be granted when, as in this case, the defamatory statement is ambiguous. (See cases cited on p.2, *supra*.) Indeed, this state's court of appeal has held that ambiguity in the defamatory statement is sufficient to defeat summary judgment brought on "of and concerning" grounds. In *Sellards v.*

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<sup>3</sup> Plaintiffs are prepared to amend their complaint to aver that the 97 constituent church plaintiffs are commonly known as The Local Church and that the Book's references to The Local Church were understood to refer to each such plaintiff by its members and/or members of its community.

*Express-News Corp.*, 702 S.W.2d at 679, the court of appeal reversed a grant of summary judgment in a case in which a newspaper accused “one or more” of four victims of an auto crash of consuming illegal drugs. Summary judgment had been granted on the ground that the drug charge was not “of and concerning” the individual plaintiff who was one of the crash victims.

The court of appeal disagreed:

“To determine whether a statement is libelous we must look at it from the point of view it would have on the mind of the ordinary reader. We must construe it as a whole in light of all the surrounding circumstances. If the statement is ambiguous, that is, if the statement may have been defamatory but is not necessarily defamatory, the issue must be submitted to the jury.... We believe an ordinary reader could take the statements to mean Demarais [plaintiff] was involved with drugs and suicide. An ordinary reader could also take them to mean only the driver was involved with drugs and suicide. The statement is ambiguous and it is, therefore, error for the trial court to grant summary judgment and not submit the issue to the jury.”

*Id.* at 679.

Plaintiffs submit that the challenged statements here can lead reasonable readers to believe that each of the constituent churches, or all of them, are involved in the odious practices that defendants have attributed to The Local Church. On that ground alone, defendants’ motion must fail.

## V.

### **THE GROUP LIBEL RULE IS INAPPLICABLE WHEN THE DEFAMATORY STATEMENTS CAN REASONABLY BE UNDERSTOOD TO REFER TO ALL MEMBERS OF THE GROUP OR CLASS**

Before embarking upon a discussion of the applicable exception to the group libel rule, a preliminary issue must be addressed: This is not a “group libel” case within the ordinary meaning of that term. In group libel cases, defendant directs defamatory speech against an

identified group, *e.g.*, “local high school teachers,”<sup>4</sup> or “Hell’s Angels brides.”<sup>5</sup> Typically, the plaintiff in the resulting lawsuit is a member of the group who is not expressly or implicitly referred to in the defamatory statement. Plaintiff’s identity is distinct (and readily distinguishable) from that of the group. That is, plaintiff is known by one name and the group is known by another. In the *O’Brien* case for example, plaintiff’s name was “O’Brien,” whereas the maligned group was identified as “local school teachers.” In this case, by contrast, the “group” and its “members” have identical names.<sup>6</sup> Because the Book uses the name The Local Church in an undifferentiated manner, the reader can only infer that its references to The Local Church extend to any or all entities that are known by that name. And, unlike the defamatory language in a typical group libel case, the Book **does** make specific reference to each of the constituent churches by employing the phrase “The Local Church.” In light of these distinctions, the applicability of the “group libel” rule is dubious at best. But even if The Local Church could be identified as a defamed “group,” the group libel rule does not operate to exclude the constituent church plaintiffs.

It has long been recognized that, when defamatory speech can reasonably be understood as a reference to all members of the group defamed, any member has standing to sue. Over 50 years ago, Judge Augustus Hand put it this way: “**When [the defamatory statements] reflect on**

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<sup>4</sup> *O’Brien v. Williamson Daily News*, 735 F. Supp. 218 (E.D. Ky. 1990).

<sup>5</sup> *Barger v. Playboy Enterprises*, 564 F. Supp. 1151 (N.D. Cal.); aff’d, 732 F.2d 163 (9th Cir. 1984).

<sup>6</sup> This fact distinguishes this case from group libel cases involving other religious bodies, including the Church of Scientology. Unlike The Local Churches, branches of the Church of Scientology have specific names in addition to the generic denominational designation, “Church of Scientology.” For example, the branch of the Church of Scientology that is located in Hollywood California is known as The Celebrity Center Church. (*See* Church of Scientology website at [www.scientology.org](http://www.scientology.org).) No individual Local Church is commonly known by such a distinctive name.

**every member of a class, each one may have an action because the charge is made broadly against all.”** *American Civil Liberties Union, Inc. v. Kiely*, 40 F.2d 451, 453 (2d Cir. 1930) (emphasis added); *see also, Louisville Times Co., v. Emrich*, 252 Ky. 210, 215, 66 S.W.2d 73, 75 (1933). Although the courts of this state have not had occasion to apply this rule affirmatively, they have repeatedly considered it in the group libel context. For example, in *Webb v. Sessions*, 531 S.W.2d 211, 212 (Tex. App. 1975), the court found the group libel rule applicable in a case in which the defamatory publication “... could not be construed to mean and include **all** of the deputies, agents and employees of the Dallas County Sheriff’s office and thus does not libel each deputy, agent or employee of the Dallas County Sheriff’s office.” *Id.* (emphasis added). Similarly, in *Evans v. Dolcefino*, 986 S.W.2d 69, 77 (Tex. App. 1999), the court acknowledged that a “member of a group has no cause of action for a defamatory statement **directed to some or less than all of the group.**” *Id.* (emphasis added). *See Eskew v. Plantation Foods, Inc.*, 905 S.W.2d 461, 462 (Tex. App. 1995) (same); *Wright v. Rosenbaum*, 344 S.W.2d 228, 231-32 (Tex. App. 1961) (same). The same rule is stated in defendants’ leading case on the group libel issue, *Kentucky Fried Chicken of Bowling Green v. Sanders*, 563 S.W.2d at 9: “To defame a class, the statement must be applicable to every member of the class.” *Id.*

In this case, the defamatory statements can reasonably be understood to target every member of the “group.” The most obvious support for this conclusion lies in the fact that the challenged text refers to “The Local Church” and thus uses the common name of each and every constituent church that is a plaintiff herein. Thus, each plaintiff “member” is “singled out” by the challenged statements.

Second, because each church is known by The Local Church name, the publication of repugnant and, in some instances, gruesome accusations about “The Local Church” causes each

individual church to be subject to “intense suspicion” from readers of those accusations. When confronted with “group libel” challenges, the courts in many jurisdictions have employed an “intensity of suspicion” test to determine whether individual members of defamed groups have standing to sue. For example, in *Fawcett Publications, Inc. v. Morris*, 377 P.2d 42 (Okla. 1962), the court found that plaintiff -- 1 of 60 members of an Oklahoma football team that had been accused of taking amphetamines -- had standing to sue for libel. In that case, the court rejected the theory that group size is the sole determinant of whether an individual member of a group may sue. Instead, the court found that plaintiff was identified by the public by his membership in the football team and therefore was subject to “intense suspicion” as a result of the publication of the defamatory article. From this, the court concluded that any reader with knowledge of the team would infer from the article that the plaintiff was using amphetamines. *Id.* at 51-52.

The intensity of suspicion test was also applied in *Brady v. Ottaway Newspapers*, 84 A.D. 2d 226 (N.Y. 1981). There, a newspaper article stated that 18 members of the police department had been indicted for various misdeeds and that the whole department was under a cloud. An action brought by 27 members of a group of 53 unindicted officers. The lawsuits were upheld over group libel challenges on the ground that it is the “intensity of suspicion” cast upon the unnamed, individual members of a defamed group -- rather than the number of persons in the group -- that determines whether a publication is actionable by a group member as one “of and concerning” him. *Id.* at 235-36. The court emphasized that the application of the test required a **factual inquiry** to be made to determine the degree that the defamatory accusations can be understood to focus on each member of the group.

In this case, it can hardly be denied that the Book’s sordid accusations against “The Local Church” will result in an “intense suspicion” toward entities known as The Local Church.

Evidence to that effect (if logic is not enough) can be found in the Towle, Rogers and Melton affidavits, each of which avers that the challenged passages can be and have been understood to refer to constituent churches.

The challenged statements can be reasonably understood to refer to the constituent churches for two additional reasons: the accusations are heinous and the authors are prominent. When authors accuse a religious organization of “beat[ing] its disciples,” “molest[ing] children,” “engag[ing] in drug smuggling” and “deny[ing] its followers blood transfusions,” they are not engaging in temperate criticism that will be read and forgotten. On the contrary, they know that their charges will inevitably induce feelings of outrage and deep repulsion in the reader. They also know that their accusations will become indelibly associated with the accused and gain currency with repetition over time. In recognition of these facts, courts have taken into account the egregiousness of the defamatory statements in determining whether individual members of a defamed group have standing to sue.

For example, in *Farrell v. Triangle Publications, Inc.*, 399 Pa. 102, 159 A.2d 734, 736 (1960), the court of appeal reversed the dismissal of plaintiff’s complaint on the ground that readers of the publication who had not previously known the identity of all of the accused township commissioners were impelled by the scandalous nature of the charges (ones of crime and corruption) to make inquiry as to who the commissioners were. The court reasoned that, by engaging in that process, the reader would inevitably connect plaintiff’s name with the charges of corruption in office. The same principle applies in this case but more strongly since the readers need not make inquiry as to the identity of the accused: The accuser has expressly informed them that it is The Local Church. (*See also, Spangler v. Glover*, 50 Wash. 2d 473, 313

P.2d 354 (1957) (one of a number of union members accused of being “pro-employer” during a union election campaign had standing to sue).)

Consideration should also be given to the fact that the authors of the defamatory publication are widely known and influential in the community at which the challenged publication was aimed. (Melton Affidavit at ¶ 17; Towle Affidavit at ¶ 14.) When these individuals speak, their words have impact and staying power. Common sense tells us that when an influential speaker accuses a named entity of serious misdeeds, his words catch the public’s attention and hold it. Under these circumstances, it is highly likely that the charges will be associated in the readers’ minds with all entities that bear the name of the accused. The affidavits submitted herewith establish that it is not only likely that such an association will be made but that it has in fact been made. (Rogers Affidavit at ¶¶ 10-11; Towle Affidavit at ¶¶ 12-13.)

## VI.

### **DEFENDANTS’ AUTHORITIES DO NOT SUPPORT THE GRANT OF SUMMARY JUDGMENT IN THIS CASE.**

In support of a motion that would result in judgment against 97 churches, leaving them with no legal recourse against those who have falsely charged an entity bearing their name with the most atrocious acts imaginable, defendants cite a total of four cases. Each of those cases is distinguishable from the case at bar and none justifies the grant of summary judgment here.

Defendants state their strongest argument hinges on the *Church of Scientology of California v. Adams*, 584 F.2d 893 (9th Cir. 1978). In that case, the Church of Scientology of California sued a St. Louis newspaper that had published disparaging statements about the St. Louis Scientology office. The article also contained some comments about the Scientology

movement in general. *Id.* at 898. In *dicta*, the court stated that “we think there is serious doubt that the articles refer to the appellant.” From this, defendants apparently argue that, since comments regarding a church movement in general were not “of and concerning” a regional branch of that movement, neither should they be here.

*Scientology* is not persuasive. First and foremost, the court never actually reached the issue of whether the statements were “of and concerning” the appellant. The case was decided against the appellant on personal jurisdiction grounds. The “serious doubts” statement upon which defendants place so much weight is pure *dicta* and entirely without precedential weight.

Second, the challenged statements in *Scientology* referred to the Missouri branch of the church, thus negating the possibility that other branches were intended or implied. (*See Newspapers, Inc. v. Matthews*, 339 S.W.2d. 890, 894 (Tex. 1960).) No argument can be made that the challenged statements in *Scientology* referred to all branches of the “church.” (*See* p.13, at fn.6, *supra*.) In this case, by contrast, no particular Local Church is singled out. Accordingly, each and every is equally implicated.

*Newspapers, Inc. v. Matthews*, 161 Tex. 283, 339 S.W.2d 890 (1960), which defendants rely upon for their generic formulation of the “of and concerning” rule, does not support the grant of summary judgment on “of and concerning” grounds. Indeed, *Matthews* expressly provides that it is not necessary that plaintiff be named in the defamatory publication if those who know or are acquainted with plaintiff understand that the publication refers to him.

*Kentucky Fried Chicken of Bowling Green v. Sanders*, 563 S.W.2d 8 (Ky. 1978), actually supports plaintiff’s position on the group libel issue by making it clear that the group libel rule does not apply when the defamatory statement can reasonably be understood to refer to all members of the group. *Id.* at 9.

*Eskew v. Plantation Foods, Inc.*, 905 S.W.2d 261 (Tex. App. 1995), is also clearly distinguishable from this case for group libel purposes. In *Eskew*, the defamatory statement unambiguously applied to some but **not all** of the group. Specifically, defendant stated “I don’t think everyone we let go had something to do with this...,” “this” referring to irregularities in the company’s maintenance department. Thus, because of the “all members” exception, *Eskew* is a classic group libel case that does not apply to the plaintiffs in this case. In this case, by contrast, readers can reasonably infer that all “members” of the “group” are being maligned.

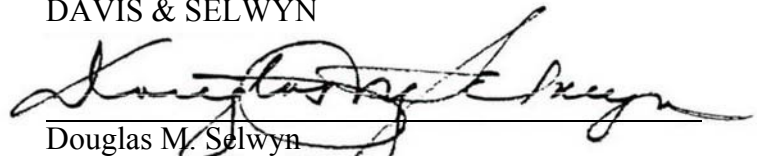
## VII.

### CONCLUSION

For all the foregoing reasons, plaintiffs respectfully request that defendants’ Motion for Partial Summary Judgment be denied.

Respectfully submitted,

DAVIS & SELWYN



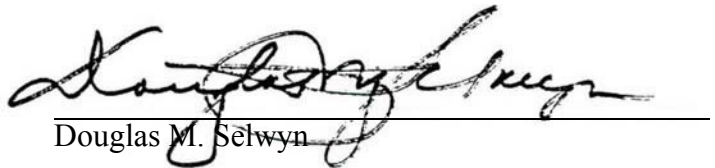
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Plaintiffs= Opposition to Defendants= Motion for Partial Summary Judgment, by and through their attorney, Thomas J. Williams, Haynes and Boone, LLP, 201 Main Street, Suite 2200, Fort Worth, Texas 76102-3126, via Federal Express and to Donald Jackson, Esq., Haynes and Boone, LLP, 1000 Louisiana Street, Suite 4300, Houston, Texas 77002-5012 via hand delivery on this 22<sup>nd</sup> day of July 2002.

  
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