

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

JAMES S. MACDONALD,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. 2020 L 011785
SALLY WAGENMAKER, WAGENMAKER &)	
OBERLY LLC, an Illinois Corporation, and)	Judge Jerry A. Esrig
SCHECHTER, DOKKEN, KANTER,)	
ANDREWS & SELCER, LTD. d/b/a)	
SCHECHTER, DOKKEN, KANTER CPAs, a)	
Minnesota Corporation.)	
)	
Defendant.)	

AMENDED COMPLAINT

Plaintiff, JAMES S. MACDONALD (“MacDonald”), by and through his attorneys, Roetzel & Andress, LPA, for his Amended Complaint against the Defendants, SALLY WAGENMAKER, in her individual capacity, WAGENMAKER & OBERLY LLC, an Illinois Corporation, and SCHECHTER, DOKKEN, KANTER, ANDREWS & SELCER, LTD., d/b/a SCHECHTER, DOKKEN, KANTER CPAs, a Minnesota Corporation, states as follows:

PARTIES, JURISDICTION & VENUE

1. Plaintiff James S. MacDonald, D.Min. (“Dr. MacDonald” or “MacDonald”), is a resident of Kane County, Illinois. Dr. MacDonald is a founder and former Senior Pastor of the Harvest Bible Chapel (“HBC”). In addition to serving as HBC’s Senior Pastor for nearly 30 years, MacDonald has also brought his ministry and bible teaching to millions of people around the country and the world through his independent broadcast ministry, Walk in the Word (“WITW”).
2. Defendant Wagenmaker & Oberly LLC (“W&O”) is an Illinois law firm located at 53 W. Jackson Blvd., Chicago, IL 60604.

3. Defendant Sally Wagenmaker (“Wagenmaker”), is an individual and an Illinois attorney and is a partner in the law firm W&O.

4. Defendant Schechter, Dokken, Kanter, Andrews & Selcer, Ltd., d/b/a Schechter, Dokken, Kanter CPAs (“SDK”) is an accounting firm located at 100 Washington Avenue South, Suite 1600, Minneapolis, MN 55401.

5. Jurisdiction and venue are proper in this Court because Defendant W&O is located in Cook County and the statements discussed herein were published and disseminated in Cook County, Illinois.

NATURE OF PLAINTIFF’S CLAIMS

6. MacDonald brings this action to recover damages caused by false and defamatory statements made about him by W&O, Wagenmaker and SDK in two Letters authored by the Defendants and published with the Defendants’ consent on the internet on November 21, 2019. True and correct copies of the Wagenmaker Letter and the SDK Letter are attached hereto as Exhibit A and Exhibit B. MacDonald also seeks to recover damages against Wagenmaker and W&O for their role in aiding and abetting other defamatory statements made about MacDonald by HBC. Finally, MacDonald seeks to recover damages from all the defendants for their unlawful intrusion upon his private affairs, and for their role in a conspiracy to defame and discredit him as part of HBC’s legal strategy against MacDonald in an arbitration matter.

7. In February 2019, MacDonald was terminated from his position as the Senior Pastor of HBC. Thereafter, HBC retained W&O, and W&O in turn retained SDK to conduct an ostensibly independent investigation of the church’s governance and finances in the wake of its separation from its long-time Senior Pastor.

8. In November 2019, nine months after MacDonald's departure, HBC convened a meeting of its congregation where two members of its Elder Board read a statement regarding the investigation into MacDonald. Immediately thereafter, HBC posted on its website a letter drafted by Wagenmaker containing a "Summary Legal Evaluation Report" as well as a letter from SDK to Wagenmaker containing a summary of a purported forensic analysis of supposed financial irregularities within HBC conducted by SDK. The statements in the Letters were also foreseeably republished by third parties on social media and reported on by news media. These Letters contain many provably false statements and accusations which sought to destroy MacDonald's reputation among the congregation of HBC as well as the larger Evangelical Christian community and to provide ammunition for HBC to use against MacDonald in an arbitration matter. The intentional and salacious falsehoods contained in these documents, drafted by the defendants and published with their consent, caused MacDonald significant financial, reputational, and emotional damages.

FACTUAL BACKGROUND

9. From its inception in 1988, HBC was governed by an Elder Board, of which MacDonald was a member. The Elder Board directed the affairs of HBC and made decisions by consensus.

10. In 1996, MacDonald began reproducing and selling recordings of his sermons and other teaching ministry under the name "Walk in the Word". In 1998, MacDonald incorporated WITW and obtained its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

11. When WITW was formed, HBC and MacDonald agreed that the material in the sermons MacDonald preached at HBC, once they were preached, belonged solely to MacDonald and that he could use that content in his discretion. This relationship between WITW and HBC

was re-affirmed many times between 1996 and 2018 and is evident in multiple contractual documents and HBC's Elder Board Meeting Minutes.

12. In 2010, WITW entrusted to HBC most of its monetary assets to achieve efficiency from an organizational and legal standpoint.¹ Though organizationally integrated, WITW operated separately from HBC with regard to its finances and its management. WITW maintained separate budgets, financial records, and bank accounts, and had its own CFO, while MacDonald served as WITW's President. Further, it was agreed as a precondition of the 2010 "merger" in documents signed by both boards that WITW's Board would have the authority to remove WITW from HBC in its discretion, thus retaining for WITW an independent right to self-determine its affiliation with HBC. Legal documents from 2010 further state that the WITW Board delegated the authority to implement the resolution governing the continuance or dissolution of the WITW/HBC affiliation to MacDonald's discretion.

13. By the end of 2018, WITW had monthly revenues of approximately \$750,000 and approximately 30,000 monthly recurring donors in addition to its television and radio revenues.

14. In the early 2000's, HBC added thousands of new members, developed new Church campuses, and developed several additional ministry organizations. During this time, HBC's Elder Board, which had grown to over 30 people, took steps to update HBC's governance structure to facilitate governance of the increasingly large and complex organization.

15. During this period, to accommodate HBC's rapid growth, the Elder Board created of the Executive Committee ("EC"), a smaller cabinet of individuals within the larger Elder Board

¹ The WITW, Inc. 501(c)(3) corporation remained in existence and independent from HBC, despite some of its assets being entrusted to HBC.

which was authorized to make decisions on behalf of HBC. Pursuant to HBC's Bylaws, MacDonald as Senior Pastor was an ex officio member of the EC.

16. In or around 2005, HBC's Finance Committee was formed by its then CFO and several deacons who oversaw HBC's finances. The Finance Committee met each month to review financial issues facing the organization and to develop financial policies and controls, then recommend them to the Elder Board for review and adoption. MacDonald was not a member of the Finance Committee, had no authority or control over the Finance Committee, and did not attend meetings of the Finance Committee.

17. In or around 2013, the CFOs of HBC and WITW created two accounts. The first was funded primarily by HBC and was called the Executive Account. The Executive Account was used for salaries and expenses of all Executive staff. The second account was funded primarily by WITW's surplus revenue, and was called the "WITW Reserve", or simply the "Reserve account." The purpose of the WITW Reserve account was to fund "blessing" gifts to faithful servants of the Lord, development expenses, and other approved spending not appropriate to fund through HBC budgeted funds.

18. These accounts were referred to as the "Private Accounts." Despite this nickname, the accounts were not private, and the nature, specific budgets, and purposes of the accounts were always known to HBC's leadership. The budgets of the accounts were approved by the EC. The accounts were overseen by HBC's CFO, Fred Adams, and COO, Scott Milholland. In addition, HBC's treasurer Jeff Smith and/or its assistant treasurer Bill Sperling signed off on every expenditure from the accounts and always had oversight over the accounts.

19. From at least 2013 through 2018, HBC was audited each year by Capin Crouse, LLC. The Executive and WITW Reserve Accounts were subject to annual review along with the rest of HBC's finances.

20. Prior to 2019, no one at HBC or Capin Crouse ever expressed any concern regarding the existence, purpose, spending, or controls related to these two accounts, nor was a material control failure noted in relation to these accounts.

21. In or around 2010, HBC's Compensation Committee ("Comp Committee") was formed. From 2010 to 2018, the Comp Committee met annually to set the compensation for MacDonald and other high-ranking members of HBC's leadership. MacDonald was not a member of the Comp Committee, had no authority or control over the Comp Committee, and did not attend meetings of the Comp Committee.

22. The Comp Committee regularly sought and received guidance from several outside sources regarding appropriate compensation for MacDonald as Senior Pastor, including: HBC's long-time audit firm Capin Crouse; the law firms of Winters & King and Anthony & Middlebrook, both of whom work extensively with churches and non-profits; and the Evangelical Council on Financial Accountability ("ECFA"), an organization which sets integrity and due diligence standards for Evangelical churches on financial and governance matters.

23. Between 2010 and 2018, the Comp Committee commissioned several compensation evaluation studies from these outside sources. These studies provided comparative data showing the compensation for Senior Pastors and other leaders of large Evangelical churches and ministries nationwide.

24. The Comp Committee used these studies to determine an appropriate level of compensation for MacDonald and the other executive staff. MacDonald's compensation for each

year from 2010 to 2018 was within the normal range of other Evangelical pastors in similarly sized churches.

25. The Comp Committee kept detailed minutes of its annual meetings, which documented its rationale for setting MacDonald's compensation. The Minutes reflect that the Comp Committee members discussed appropriate levels of compensation for MacDonald considering applicable IRS regulations, and the education, tenure, and responsibility of MacDonald, as well as the size and complexity of HBC and the related entities he oversaw.

Termination of MacDonald & Initial Settlement with HBC

26. In 2017 and 2018, issues arose between MacDonald and certain individuals within HBC's leadership involving MacDonald's management of Harvest Bible Fellowship ("HBF"), a ministry organization within HBC.

27. In early February 2019, the Elders decided to terminate MacDonald from his position as Senior Pastor in response to pressure from disgruntled former staff members.

28. Almost immediately following MacDonald's termination, most of HBC's Elder Board resigned, leaving a small Interim Elder Board in control of HBC from late February through April 2019.

29. Following his termination, MacDonald attempted to come to a resolution with HBC regarding HBC's contractual obligations to him by participating in mediation with the Church through Crossroads Mediation Services.

30. The mediation culminated in a settlement agreement which was signed by both MacDonald and an authorized representative of HBC on or about April 12, 2019. Pursuant to the agreement, HBC agreed, among other things, to transfer WITW out of HBC and back to its previous 501(c)(3), allowing MacDonald to form a new board to govern WITW outside of HBC.

In exchange, MacDonald agreed not to institute any legal proceedings against HBC. HBC's mortgage lender, the Evangelical Christian Credit Union ("ECCU") was given authority to approve or disapprove of the settlement agreement.

Interference with Settlement

31. In or around late March 2019, HBC hired Wagenmaker and her law firm W&O to investigate the church's finances and governance under the leadership of the recently terminated MacDonald. Wagenmaker did not participate in the mediation between HBC and MacDonald.

32. Within days of being retained, and despite not being involved in the settlement negotiations or even having read the terms of the settlement agreement, Wagenmaker advised HBC that it was of critical importance that they not finalize any settlement agreement which provided MacDonald with any financial compensation of any kind.

33. On or around May 1, 2019, the Interim Elder Board stepped down, and a new nine-member Elder Board took its place, led by Brian Laird (the "Laird Elders"). By design, the newly elected Elders were comprised entirely of individuals who had not served in positions of leadership during MacDonald's tenure as Senior Pastor and who did not know MacDonald personally.

34. On May 2, 2019, ECCU exercised its authority to negate the settlement agreement, rendering it null and void. Upon information and belief, ECCU exercised its authority to negate the settlement agreement in response to a directive from Wagenmaker.

35. One day later, HBC's new Elder Board published a statement on its website stating that they were "encouraged" that the settlement had been negated by ECCU. Echoing Wagenmaker's advice, the new Elders' stated further that "none of Harvest Bible Chapel's or Walk in the Word's donations or assets have gone to James [MacDonald], and we will not be giving him anything in the future."

Wagenmaker & SDK Investigation

36. Wagenmaker and her law firm W&O began its purportedly independent investigation into HBC's finances and governance in or around April 2019.

37. According to HBC, Wagenmaker's investigation was done as a matter of Elder accountability to help bring healing to its congregation after MacDonald's termination, and was unrelated to any potential litigation between HBC and MacDonald.

38. W&O hired Defendant SDK, an accounting firm, to perform a "forensic accounting investigation" of certain transactions made by the Senior Pastor's Office from the Executive and WITW Reserve Accounts. Wagenmaker and SDK began to refer to these accounts pejoratively as "secret" or "black box" accounts.

39. SDK knew that to develop a full understanding of the transactions within the Executive and Reserve Accounts, it was necessary to interview those individuals who had contemporaneous knowledge of the transactions.

40. Wagenmaker and SDK were aware that none of the current employees of HBC had contemporaneous knowledge of the transactions within the Executive and Reserve Accounts. Moreover, they knew that MacDonald, Kostal, Adams, Milholland, and the former members of the EC *did* have contemporaneous knowledge of the transactions.

41. Wagenmaker and SDK were also aware that MacDonald, Kostal, and Adams all sought to talk to them and answer questions about HBC's finances during MacDonald's tenure as Senior Pastor.

42. Nevertheless, during their investigation, Wagenmaker and SDK did not attempt to contact MacDonald or any of the individuals who had served on the EC during MacDonald's tenure as Senior Pastor. They also did not attempt to contact Adams, HBC's CFO from 2010

through 2017; Milholland, HBC's COO from 2013 - 2018; or Kostal, MacDonald's executive assistant who kept itemized records of all financial transactions through the Senior Pastor's office.

43. During the spring of 2019, as the investigation was ongoing, Kostal made repeated attempts to communicate with individuals at HBC who were aiding W&O and SDK in their investigation.

44. Kostal provided HBC personnel with voluminous records and back-up documentation regarding spending from the Senior Pastor's office for the years 2015 - 2018, including credit card statements, check registers, and detailed explanations of the funding sources for various accounts. Kostal also provided copies of cancelled checks showing MacDonald reimbursing HBC for expenses on many occasions.

45. Upon information and belief, the information Kostal sent to HBC was forwarded to Wagenmaker, who willfully ignored it and instructed HBC to ignore it.

46. During the investigation, Wagenmaker and SDK became aware of a checking account and related credit card in the name of an entity called Vanilla Bean LLC ("Vanilla Bean"). Wagenmaker inquired about Vanilla Bean to HBC's general counsel Chris Nudo.

47. In addition to his responsibilities at HBC, Nudo provided separate legal services to several members of HBC's leadership. In that capacity, Nudo created Vanilla Bean for MacDonald. Nudo explained to Wagenmaker that Vanilla Bean was an entity he had created to keep MacDonald's payment of his household expenses private. Vanilla Bean was created as part of a strategy to provide an extra layer of privacy and security for MacDonald's personal finances, which had been the subject of inflammatory and sensationalized blog posts. Nudo explained to Wagenmaker that there were no payments made to or from Vanilla Bean to HBC, and that Vanilla Bean had no connection to the purported financial improprieties at HBC.

48. Shortly after Nudo explained to Wagenmaker that he had helped MacDonald create Vanilla Bean and his reasons for doing so, he was asked to resign from his position as General Counsel. Nudo resigned on or around June 1, 2019.

49. Upon information and belief, Wagenmaker recommended to HBC that Nudo be terminated due to his resistance to Wagenmaker's apparent bias in her investigation.

50. Following Nudo's departure in summer of 2019, HBC's CFO Jeff Sharda also investigated the Vanilla Bean bank account and credit card. Sharda reported back to Wagenmaker and SDK that he did not believe MacDonald had done anything improper with respect to Vanilla Bean and that there was no suspicious activity in the Vanilla Bean accounts.

Arbitration & Drafting of Summary Report

51. In the summer of 2019, MacDonald initiated an arbitration claim against HBC with the Institute for Christian Conciliation ("ICC") seeking, among other things, the return of all WITW assets, his intellectual property, his Deferred Compensation account, and personal property unlawfully held by HBC.

52. In August 2019, shortly after being served with MacDonald's arbitration demand, HBC turned to Wagenmaker to assist with their defense against MacDonald's claims. Wagenmaker recommended HBC hire another lawyer, her former colleague Kevin Todd, to lead its defense in the arbitration.

53. In response to MacDonald's arbitration claims, HBC and its attorneys agreed to conduct a public smear campaign to publicize false and defamatory information about MacDonald to the HBC congregation and the wider Evangelical Christian community.

54. As part of this concerted legal strategy, Wagenmaker was tasked by HBC with drafting a summary of her confidential May 2019 report to the Elders that could be published to HBC's congregation and the outside world.

55. Wagenmaker, Todd, and HBC agreed that they would delay responding to MacDonald's arbitration demand until after they published the defamatory information against him, and that they would aggressively pursue counterclaims against him in the arbitration once the publication had been made.

56. In October 2019, Wagenmaker attended a meeting of the Laird Elders. Prior to this meeting, the Elders asked three former members of the EC who had served with MacDonald to read Wagenmaker's May 2019 report. Subsequently, the former EC members attended the October meeting to give their feedback on that report to the Laird Elders and Wagenmaker.

57. During that meeting, the former EC members expressed strong disagreement with many of Wagenmaker's initial findings, including claims of MacDonald's self-dealing and claims that the EC failed to uphold its duty of care and loyalty to the church.

58. On information and belief, at least two of the former EC members took issue with Wagenmaker's findings regarding the Comp Committee and the inference that the EC had not adhered to appropriate policies and due diligence standards in setting MacDonald's compensation.

59. During the meeting, Wagenmaker offered to draft a new summary of her findings which could be disseminated publicly, and that the new version would remove references to other members of HBC leadership and only reference MacDonald by name, thus preserving the other individuals' reputations, and focusing the report on MacDonald alone.

60. The former Chairman of the Elder Board, Ron Duitsman, who was known to dispute many of Wagenmaker's findings, was not invited to this meeting or sought out to give feedback on Wagenmaker's legal report.

61. Similarly, former CFO Fred Adams offered to come before the Laird Elders and Wagenmaker to answer questions about HBC's finances, but he too was not invited to the October meeting.

62. Wagenmaker did not incorporate any of the first-hand testimony provided by the former EC members offered in refutation of her report at the October meeting. Rather, Wagenmaker chose to ignore their superior knowledge and contradiction of her findings.

63. During the fall of 2019, SDK was also tasked with preparing a summary of the findings from its purportedly forensic accounting investigation.

64. SDK initially prepared a 5-page report but cautioned Wagenmaker and HBC that it should not be publicly disseminated due to its preliminary nature.

65. After receiving SDK's initial report, HBC and Wagenmaker asked SDK for a second report which included more detail as to MacDonald's alleged wrongdoing.

66. Ignoring its previous concerns with the preliminary nature of its findings, SDK complied with this request and drafted a 10-page Letter containing its report which was, according to HBC's treasurer Tim Stoner, "beefed up per our request". Wagenmaker assisted in drafting SDK's second report.

67. Following a teleconference with HBC Elders and a Wagenmaker associate, SDK gave its consent to Wagenmaker and HBC that its 10-page Letter could be published with the understanding that the Letter would be publicized by HBC and broadly available online.

68. In November 2019, Wagenmaker also assisted in drafting a statement to be read aloud in front of HBC's congregation by Brian Laid and Tim Stoner, members of HBC's Elder Board. The statement was designed to be read just prior to the broad dissemination of the newly drafted Wagenmaker and SDK Letters.

69. As part of its concerted strategy to destroy MacDonald's reputation, the Laird Elders also conducted a separate investigation to determine whether MacDonald was "biblically disqualified" from serving as a Pastor.

70. Upon information and belief, HBC and its attorneys Wagenmaker and Todd believed that a more detailed and thorough determination that MacDonald was biblically disqualified as a Pastor would aid in their claims and defenses in the Christian arbitration against MacDonald. The Laird Elders reflected this bias by forming what they called a "DQ Team," with the predetermined goal of assuring that MacDonald could no longer serve as a pastor and elder.

71. The Elder Board began its disqualification investigation 6 months after MacDonald had been terminated and only after he filed for arbitration after the mediated settlement was cancelled. At the time of the investigation, MacDonald was no longer an Elder or a member of HBC, and the Elder Board had had no authority over him for 6 months.

72. Upon information and belief, Wagenmaker and Todd advised the Laird Elders on the disqualification investigation. Multiple witnesses in the disqualification investigation were asked to read the Wagenmaker Legal Evaluation prior to being interviewed in an effort to influence their interview responses regarding MacDonald's character.

73. The disqualification investigation culminated with a written statement that was to be published on HBC's website (hereinafter, "DQ Statement").

Publication of Defamatory Statements & Aftermath

74. On November 3, 2019, HBC posted the DQ Statement on its website. A true and correct copy of the DQ Statement is attached hereto as Exhibit C.

75. The DQ Statement states that MacDonald exhibited a “substantial pattern of sinful behavior” which disqualified him from serving as Pastor or as an Elder of HBC. *See Ex. C*, p. 2.

76. Specifically, the DQ Statement states that MacDonald “made repeated efforts to profit himself beyond what was honorable,” and that he displayed a “pattern of extravagant spending utilizing church resources resulting in personal benefit.” *Id.*

77. These statements are false and defamatory in that they falsely accuse MacDonald of misappropriating church resources for his own personal benefit and engaging in conduct showing a lack of integrity as a pastor.

78. Upon information and belief, Wagenmaker advised HBC in its drafting of the DQ Statement. Much of the content of the DQ Statement accusing MacDonald of financial malfeasance drew upon the Wagenmaker and SDK content which was published less than three weeks later.

79. In the DQ Statement, HBC found that MacDonald did not meet several of the Biblical qualifications of being an Elder and a Pastor, allegations which were enormously damaging to MacDonald’s reputation as a well-respected Pastor for 35-plus years.

80. On November 21, 2019, Tim Stoner and Brian Laird read aloud the written statement (that Wagenmaker had helped prepare) in front of hundreds of HBC congregants. This statement described many of the findings of the newly drafted Wagenmaker and SDK summaries in detail prior to their publication, also including intentionally false and salacious details which were not included in the published versions of the Wagenmaker and SDK Letters. Despite

Wagenmaker's significant involvement in advising HBC in its arbitration dispute against MacDonald, Stoner and Laird misrepresented to the congregation that Wagenmaker had conducted an "independent" review.

81. Minutes after Stoner and Laird made their statement before the congregation, HBC posted the Letters drafted by Wagenmaker and SDK to its website. The Letters remained publicly accessible on the HBC website until at least June 2020.

82. Wagenmaker and SDK consented to HBC's publication of their Letters, with the knowledge and understanding that their publicly posted Letters would be re-published, linked to and shared over social media, and reported on by news media.

83. Within minutes of the Wagenmaker and SDK Letters being posted online, they were re-posted and reported on by several blogs and online publications. In the days after the Letters were posted, numerous Chicago area newspapers and historic Christian publications reported on the Letters and the accusations against MacDonald contained therein. *See* Collected Media Articles and Social Media Posts, attached hereto as Group Exhibit D.

84. In the aftermath of the publication of the Wagenmaker and SDK Letters, MacDonald lost numerous speaking engagements and book publishing contracts, and was told by leading search firms that he was unemployable as a Pastor in light of the allegations against him. From November 2019 until the present date, MacDonald has had no publishing or significant ministry opportunities offered to him.

COUNT I - DEFAMATION *PER SE*
(Against Wagenmaker and W&O)

85. MacDonald restates the allegations contained in Paragraphs 1 - 84 as if fully set forth herein.

86. On November 21, 2019, HBC posted the Letter drafted by Wagenmaker (“Wagenmaker Letter”) containing the new summary she had drafted, which is on W&O letterhead.

87. Wagenmaker provided the Letter to HBC knowing it would be posted to the HBC website, publicized by HBC, and disseminated generally. Wagenmaker also reasonably understood that anything posted on HBC’s website would be republished and reported on by other sources soon after its initial publication.

88. The Wagenmaker Letter begins by stating:

“Based on our law firm’s review of available information, we determined that a massive corporate governance failure apparently developed over several years at HBC, primarily due to the following factors:

- MacDonald’s powerful and subversive leadership style;
- His development of an inner-circle leadership group through which he could control HBC;
- His marginalization of broader leadership, particularly the former HBC Elders; and
- His other aggressive tactics that thwarted healthy nonprofit governance.

Directly resulting from such problems, MacDonald appears to have extensively misused HBC’s financial resources for improper financial benefit.”

* * *

“such failure is perhaps most glaring in terms of HBC’s finances, with shifted control to MacDonald and executive staff, diminished board involvement, and too much discretion within MacDonald’s inner circle.”

See Ex. A, pp. 1-2.

89. Wagenmaker’s Letter goes on to repeatedly falsely accuse MacDonald of specific bad acts and of misusing HBC’s assets to enrich himself:

MacDonald reaped “significant personal financial benefits, avoiding accountability to any governing board, and with heavy-fisted exclusionary leadership,” *Id.* at 5;

“Such actions are obvious and patent, such as through lack of appropriate financial controls over certain bank accounts, the removal of MacDonald from the conflict of interest policy’s coverage, his spending, and the lack of proper executive compensation evaluations.” *Id.* at 6.

90. The statements included in Paragraphs 88 and 89 falsely charge MacDonald with committing fraud by manipulating HBC’s governance structure, misappropriating church funds for his own personal benefit, and conduct showing a lack of integrity as a pastor.

91. Wagenmaker wrote the statements included in Paragraphs 88 and 89 despite having spoken to former members of the EC who specifically denied that there was any self-dealing during MacDonald’s tenure and having been provided with extensive documentation showing that there in fact *were* appropriate financial controls over the Executive and WITW Reserve accounts. Additionally, Wagenmaker was aware that both accounts were subject to annual independent audit.

92. Moreover, MacDonald was never “removed” from HBC’s conflict of interest policy as Wagenmaker states.

93. With respect to HBC’s Comp Committee, Wagenmaker wrote that the procedures used to determine MacDonald’s compensation:

“lacked the requisite independence, evidence of appropriate due diligence, transparency regarding pastoral compensation determinations, sufficiently high quality of compensation evaluation, and any accompanying minutes or report reflecting such required information.” *Id.*, p. 4.

94. The statements included in Paragraph 93 falsely claim that the Comp Committee and EC lacked independence, implying that MacDonald manipulated HBC’s governance for his own benefit.

95. Wagenmaker wrote the statements contained in Paragraph 93 despite having spoken to former members of the EC and Comp Committee who specifically refuted her

conclusions and having reviewed detailed Minutes from several years of Comp Committee meetings which clearly showed the committee's independence, due diligence, and transparency. Wagenmaker also failed to mention that each of the compensation evaluations commissioned by the Comp Committee found that MacDonald's compensation was within established national norms for a Senior Pastor of a church of HBC's size.

96. Wagenmaker's Letter also claims that MacDonald's alleged financial abuses had put HBC at risk of violating numerous IRS regulations. Specifically, Wagenmaker states that MacDonald's compensation was unreasonably high for a 501(c)(3) organization:

"Compensation will be deemed reasonable if: (i) it is negotiated at arm's length (i.e., by an independent board); (ii) the amount is reasonable in light of the responsibilities and activities performed; and (iii) it is not merely a device for distributing profits. (Rev. Rul. 69-383, 1969-2 C.B. 113). MacDonald's compensation does not appear to meet these criteria, particularly since insufficient comparable executive compensation study data was obtained and HBC's "profitability" (or at least its cash flow) seems to have been relevant to MacDonald's pay (as he requested in 2010 per the Winters & King Study's inclusion of HBC's profitability as a legitimate factor)." *Id.* at 6.

97. The statements included in Paragraph 96 falsely claim that MacDonald's salary was unreasonable pursuant to IRS regulations, implying that MacDonald put the church at risk of violating IRS regulations for his own benefit.

98. Wagenmaker reviewed years' worth of Comp Committee Minutes which flatly contradict the statements included in Paragraph 96 regarding the appropriateness of MacDonald's compensation, though not once does she refer to them, quote them, or acknowledge their existence. Wagenmaker was also aware of multiple written opinion letters from Capin Crouse attesting that the materials relied on by the Comp Committee were adequate to satisfy IRS regulations and that MacDonald's compensation fell within industry norms.

99. Further, Wagenmaker reviewed the December 2017 Memorandum of Understanding (“MOU”) signed by the Executive Elders and HBC’s Treasurer which was a significant milestone document as CFO Fred Adams concluded his tenure. In that MOU, drafted by HBC’s legal counsel, MacDonald’s true compensation is clearly set apart from his pension/deferred compensation which is described as “make up” and “catch up.” Wagenmaker knew that MacDonald’s compensation appeared larger due to more than 20 years of pension neglect and that “catch up” was part of an Elder approved succession plan.

100. Wagenmaker intentionally ignored the MOU, as well as other documents and individuals who had information which was at odds with the defamatory picture of MacDonald her bias had manufactured.

101. Later, Wagenmaker states that any argument MacDonald might bring in response to allegations that he violated IRS regulations would be suspect. Wagenmaker states:

“Nor it is otherwise necessarily reasonable for HBC to accept that such use of its charitable resources constitutes wise ministry stewardship, particularly against the backdrop of marginalized leadership, secretively maintained bank accounts, and clearly conflicted leadership controlling the funds at issue.” *Id.* at 8.

102. The statements included in Paragraph 101 falsely claim that during MacDonald’s tenure, HBC’s leadership was marginalized and clearly conflicted, again falsely implying that MacDonald put HBC at risk of violating IRS regulations.

103. Wagenmaker wrote the statement included in Paragraph 101 despite there being no evidence that MacDonald had “marginalized leadership,” “secretively maintained bank accounts,” or had “clearly conflicted leadership controlling the funds at issue.” Indeed, Wagenmaker actively ignored evidence which would have proven these accusations false.

104. Discussing MacDonald’s intellectual property, Wagenmaker states that “the only pertinent document” relating to his IP was the January 2015 Covenant of Commitments. *Id.* at 4.

105. The statement in Paragraph 104 is false, as Wagenmaker was furnished with numerous other documents detailing the long-standing IP agreements between HBC and MacDonald which she willfully ignored.

106. With respect to the agreement between HBC and MacDonald in the Covenant of Commitments, Wagenmaker states:

“This arrangement is otherwise problematic as explained below, since it provides for HBC’s relinquishment of its own charitable assets and for which MacDonald was already compensated as part of his pastoral duties.
Id. at 5.

107. The statement in Paragraph 106 is false because it misrepresents the Covenant of Commitments and ignores the previous agreements between HBC and MacDonald regarding MacDonald’s IP. Moreover, Wagenmaker’s statement that MacDonald was “already compensated” for use of his IP “as part of his pastoral duties” is simply not true.

108. Several times throughout her Letter, Wagenmaker refers to MacDonald’s “inner circle” who she claims helped him take advantage of HBC and avoid proper accountability. *Id.*, at p. 1, 2, 3, and 5. Despite these multiple references to MacDonald’s “inner circle,” Wagenmaker never mentions who these individuals are, or how they assisted MacDonald’s alleged malfeasance.

109. The statements detailed in Paragraph 108 are false, as MacDonald did not have an “inner circle” who helped him evade accountability. Wagenmaker intentionally and knowingly fabricated this allegation in reckless disregard for its truth.

110. Wagenmaker also falsely accuses MacDonald of abusing HBC’s charitable resources for his own personal benefit, and strong-arming anyone who attempted to hold him accountable. Wagenmaker states

“With MacDonald’s reportedly strong and subversive leadership and other factors, it is not surprising that he could take advantage of HBC financially and otherwise”

* * *

“MacDonald seems to have acted in his own personal interests - reaping significant personal financial benefits, avoiding accountability to any governing board, and with heavy-fisted exclusionary leadership.” *Id.* at 5.

111. The statements included in Paragraph 110 falsely charge MacDonald with committing fraud by manipulating HBC’s governance structure, misappropriating church funds for his own personal benefit, and conduct showing a lack of integrity as a pastor.

112. With respect to Vanilla Bean, Wagenmaker writes:

“This account and card were apparently used to confidentially manage [MacDonald’s] personal expenses. Such information raises concerns with respect to specific expenses that may have been paid by HBC and attributable as taxable income to MacDonald, as well as broader concerns about MacDonald’s financial improprieties involving his inner circle of leadership and secretiveness.

We understand that significant changes have now been made to end such secretive and highly improper financial management of HBC assets.” *Id.* at p. 3.

113. The statements in Paragraph 112 are false as Wagenmaker wrote this after HBC’s general counsel Chris Nudo had explained to her Vanilla Bean’s origin and purpose, and after HBC’s CFO Jeff Sharda had thereafter investigated Vanilla Bean and found that there was no suspicious activity involving Vanilla Bean and no connection to HBC. Despite having no factual basis and her awareness of first-hand testimony to the contrary, Wagenmaker included these statements in her Letter to imply that Vanilla Bean was part of alleged “financial improprieties” committed by MacDonald.

114. Later, Wagenmaker cites statements in the Covenant of Commitments regarding transparency and oversight, but then states that:

“Despite such statements it seems questionable whether MacDonald’s compensation was appropriately set.” *Id.* at 4.

115. The statement in Paragraph 114 falsely implies that MacDonald obtained excessive compensation, which is directly refuted by the compensation studies gathered by the Comp Committee and the Comp Committee minutes which Wagenmaker reviewed.

116. Wagenmaker also writes that:

“Many of MacDonald’s expenditures do not seem to satisfy the required ‘ordinary and necessary’ business expense requirements for exclusion from his taxable income.” *Id.* at 8.

117. The statements in Paragraph 116 again falsely accuse MacDonald of failing to comply with IRS regulations, putting HBC at risk of IRS liability.

118. Wagenmaker made this statement even though she had intentionally prevented MacDonald from offering the ‘ordinary and necessary’ purpose of the expenditures during her investigation. Wagenmaker ignored key documents and written explanations provided by Kostal and failed to even attempt to interview key individuals such as MacDonald, Adams or Milholland, despite her knowledge of the crucial nature of participation in the investigation by those with contemporaneous knowledge of the transactions.

119. With respect to WITW, Wagenmaker states that

“Since WITW was treated as a separate ministry—and of MacDonald, not of HBC—the Elder Board persistently treated its assets separately from the church’s assets. However, WITW was a fully integrated ministry of the church, and actually was the church operating under an assumed name. HBC not only fully controlled and owned WITW, it was the same corporate entity.” *Id.*, p. 2.

120. The statements in Paragraph 119 are false and intentionally omit material facts to present a misleading view of WITW. Namely, Wagenmaker fails to mention that WITW had been entirely separate from HBC for 14 years prior to its affiliation with HBC, and that even after becoming affiliated with HBC in 2010 it had legally maintained its right to self-determine the length of its affiliation with HBC, had a separate CFO, and maintained separate books.

121. Moreover, Wagenmaker reviewed numerous contracts and covenants between HBC and WITW as well as HBC corporate minutes evidencing that MacDonald had been given authority by the outgoing WITW board to remove itself from HBC at any time he believed it was in the best interest of WITW to return to separate status. Therefore, WITW was always an independent entity subject to being removed from HBC at any time per the governing documents.

122. The Wagenmaker Letter concludes by once again falsely accusing MacDonald of “abuse of HBC’s charitable resources.” *Id.* at 9.

123. The statements set forth in the Wagenmaker Letter detailed above in Paragraphs 88 through 122 imputed to MacDonald criminal conduct including fraud and tax evasion, dishonesty, and conduct showing a lack of integrity as a pastor. These statements were false, were known to be false by Wagenmaker when written and published, and constitute defamation *per se*.

124. To the extent that any of the above statements in Paragraphs 88 through 122 can be construed as opinions, they are nonetheless defamatory as they imply the existence of false and defamatory facts to be reasonably understood by a reasonable reader.

125. Wagenmaker intentionally and knowingly fabricated these accusations against MacDonald and/or acted in reckless disregard for the truth of the statements in publishing them, so as to constitute actual malice.

126. Wagenmaker’s and W&O’s actual malice was further demonstrated by the biased, one-sided investigation during which they ignored key documents provided to them and purposely avoided interviewing or considering information from individuals with actual knowledge of the events they were investigating, including MacDonald, Kostal, Milholland and Adams.

127. Wagenmaker's actual malice was also demonstrated by her Letter's intentional omission of material exculpatory information which contradicted her bias and nullified her intentionally damaging conclusions.

128. Moreover, Wagenmaker's misleading inclusion of Vanilla Bean in her Letter, after Nudo and Sharda had told her that there was no wrongdoing connected with Vanilla Bean, demonstrates her actual malice towards MacDonald.

129. As a proximate result of Defendants' defamatory statements, MacDonald lost income, has been unable to gain employment, sustained injury to his public and professional reputation, and suffered public humiliation, embarrassment, and emotional damages.

WHEREFORE, Plaintiff, JAMES S. MACDONALD, respectfully requests that judgment be entered in his favor and against Defendants WAGENMAKER & OBERLY, LLC and SALLY WAGENMAKER for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, and all other relief this Court deems necessary and just.

COUNT II - FALSE LIGHT INVASION OF PRIVACY
(Against Wagenmaker and W&O)

130. MacDonald restates the allegations contained in Paragraphs 86 - 129 of Count I, as if fully set forth herein.

131. The statements contained in the Wagenmaker Letter published with Wagenmaker and W&O's consent on November 21, 2019 placed MacDonald in a false light before the public which would be highly offensive to a reasonable person, in that they falsely accuse MacDonald of financial crimes, dishonesty, and conduct showing a want of integrity as a pastor.

132. To the extent that any of the statements contained in Paragraphs 86 - 129 contain literally true statements, those statements are presented in a misleading way which intentionally omits material facts to give a negative implication to the statements.

133. Wagenmaker and W&O had knowledge that these statements were false and/or acted in reckless disregard as to the falsity of the publicized matter and the false light in which MacDonald would be placed as a result of publication, so as to constitute actual malice.

134. Wagenmaker's actual malice was also demonstrated by her Letter's intentional omission of material exculpatory information which contradicted her bias and nullified her intentionally damaging conclusions.

135. As a proximate result of the Wagenmaker Letter placing him in a false light, MacDonald lost income, has been unable to gain employment, sustained injury to his public and professional reputation, and suffered public humiliation, embarrassment, and emotional damages.

WHEREFORE, Plaintiff, JAMES S. MACDONALD, respectfully requests that judgment be entered in his favor and against Defendants WAGENMAKER & OBERLY, LLC and SALLY WAGENMAKER for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, and all other relief this Court deems necessary and just.

COUNT III - DEFAMATION PER SE
(Against SDK)

136. MacDonald restates the allegations contained in the Paragraphs 1 - 84, as if fully set forth herein.

137. On November 21, 2019, HBC posted the Summary Report Letter drafted by SDK ("SDK Letter") containing the summary of SDK's findings.

138. SDK provided the Letter to Wagenmaker with the knowledge that she would provide it to HBC to be published on the HBC website, publicized by HBC, and disseminated generally. SDK consented to HBC's publication of its Letter in this manner. SDK also reasonably understood that its Letter would be republished and reported on by other sources soon after its initial publication.

139. The SDK Letter contains numerous false and defamatory statements about MacDonald, specific transactions made by the Senior Pastor's office during MacDonald's time as the Senior Pastor, and MacDonald's family.

140. SDK's letter states that between 2016 and early 2019,

“approximately \$3.1 million was spent through the Private Accounts, which were controlled by James MacDonald and his close associates.

Approximately \$1.9 million was used for other spending, apparently at James MacDonald's direction.”

See Ex. B, at pp. 2-3.

141. The statements and implications included in Paragraph 140 are false, as MacDonald never had direct control over any HBC accounts. SDK fails to explain who is meant by MacDonald's “close associates.”

142. Further, SDK's characterization that \$1.9 million in spending from the Private Accounts was done “at James MacDonald's direction,” is false and misleading. Every dollar spent from the so-called Private Accounts was reviewed and approved by HBC's CFO and treasurer under the direction of the EC as well as other senior leadership as appropriate depending on the transaction.

143. The SDK Letter continues:

“The Private Accounts lacked financial controls as the disbursement procedures deviated from HBC's internal standard operating procedures.

There was no independent oversight, which is consistent with the Summary Legal Evaluation's general finding that James MacDonald was continually able to avoid accountability.

Most expenditures lack supporting documentation adequate to determine who authorized the purchases and whether the expenditures served a purpose for HBC or were of a personal nature. The responsibility to substantiate expenses rested primarily with James MacDonald as the

Senior Pastor and as the individual most involved with the spending through the Private Accounts.” *Id.* at p. 3.

144. The statements and implications contained in Paragraph 143 falsely accuse MacDonald of avoiding accountability and oversight and falsely state that he had primary responsibility over the so-called Private Accounts.

145. SDK made these statements despite its knowledge of evidence of robust oversight exercised by the Finance Committee, the EC, and HBC’s treasurer and CFO over these accounts. The documents reviewed by SDK in its investigation showed that the Accounts did not “lack financial controls”, and that MacDonald never attempted to “avoid accountability”, and that the way in which the oversight of the Executive and Reserve accounts “deviated from HBC’s internal standard operating procedures” actually represented a *higher* standard of review than the standard accounting procedures of the church.

146. Further, SDK knew or reasonably should have known that MacDonald never signed a single check relating to these accounts and did not have primary responsibility to substantiate expenses. SDK was also aware that MacDonald substantially reimbursed HBC for numerous expenses and had provided the church with copies of cancelled checks as evidence thereof.

147. SDK’s statement in Paragraph 143 about a lack of supporting documentation for expenses also fails to mention that SDK purposefully avoided interviewing or gathering documentation from anyone who had contemporaneous knowledge of the transactions made from the Senior Pastor’s Office, even though they knew it was essential to their investigation.

148. SDK’s Letter also includes the following false and misleading statements regarding expenditures made by the Senior Pastor’s Office through the so-called “Private Accounts” that allegedly benefitted MacDonald:

“\$142,058 was paid directly for James MacDonald’s known personal expenses, of which \$48,127 was added to his W-2 as additional compensation.”

“\$120,660 was spent for the direct personal benefit of James MacDonald’s family members.”

“\$416,139 was spent on travel (including those expenses related to James MacDonald’s “refreshment”), of which \$94,046 was added to his W-2s as additional compensation.”

\$170,851 was spend on hunting and fishing trips and related expenses. Expenses within this category include hunt cost, airfare, lodging, gas, food, gratuities, apparel, guns, and taxidermy (and related shipments)”

Id. at pp. 3-4.

149. Each of the statements contained in Paragraph 148 is misleading. First, the amount paid for MacDonald’s known personal expenses (\$142,058) and the amount for MacDonald’s family members (\$120,660) were entirely approved and authorized by the EC and HBC’s treasurer. Among the expenditures included in those amounts were expenses related to MacDonald’s cancer treatments and counseling, which were initiated, authorized, and approved by the EC. Also included were tuition reimbursement payments for MacDonald’s daughter, which fully conformed to HBC’s staff policy on tuition reimbursement, a policy which was frequently accessed by other HBC employees at every level of the organization. A responsible review of available documentation would have necessarily uncovered these facts.

150. The figures in Paragraph 148 do not incorporate multiple pages of cancelled checks provided by MacDonald to HBC leadership prior to March 2019 which evidence MacDonald’s reimbursement of the church for personal expenses.

151. The statements in Paragraph 148 also include special mention of MacDonald’s “refreshment” expenses, implying that they were improper despite being approved yearly and documented annually in Comp Committee Minutes which SDK reviewed. MacDonald was not a

member of the Comp Committee and had no role in setting his own compensation. Further, SDK apparently double-counts by including the refreshment accounts in MacDonald's compensation totals and separately as discretionary spending.

152. The statements in Paragraph 148 regarding travel expenses fail to mention that MacDonald routinely traveled to speak at Churches, conferences, and other events throughout the country and internationally on behalf of HBC and that this travel was approved by the EC on behalf of the Elder Board. SDK's figures do not include reimbursements by these outside organizations for travel expenses incurred in relation to MacDonald's ministry-related trips.

153. Similarly, the statements in Paragraph 148 highlight the money spent on hunting and fishing trips, but intentionally omit that the purpose of the trips was fundraising and that the amounts raised from the trips significantly exceeded the associated costs. Specifically, SDK leaves out the fact that the donors who accompanied MacDonald on those donor development trips over the years donated a total of \$8.4 Million to HBC and its subsidiaries during the time period under review, resulting in a massive net benefit to HBC through MacDonald's efforts.

154. Later in the SDK Letter, they falsely state that the so-called Private Accounts

“were intentionally kept beyond the control and oversight of HBC's governing board.” *Id.* at p. 6.

155. The statement in Paragraph 154 is provably false, as the EC, the cabinet of the Elder Board, had direct control over the accounts. Moreover, HBC's Finance Committee, Treasurer, Assistant Treasurer, CFO, COO, and other senior leadership as appropriate for the transactions each had access to and/or oversight over the accounts.

156. SDK's letter also discusses a short-term incentive compensation plan (STIP) which was given to certain members of HBC's executive leadership, stating:

“James MacDonald received bonuses, apparently under the STIP, of \$130,000 and \$143,125 for 2016 and 2017, respectively.” *Id.* at p. 3

157. The statement in Paragraph 155 lacks necessary context. Missing from this statement is the fact that the STIP plan was created by Scott Milholland and approved by the Comp Committee. MacDonald had no role whatsoever in the creation of STIP or in determining how much he should be paid. Further, SDK fails to mention that it was MacDonald who became uncomfortable with the STIP plan and insisted that it be discontinued in 2018.

158. SDK, like Wagenmaker, was furnished with extensive Comp Committee Minutes which fully explain the purpose of the STIP plan and willfully ignored these documents in service of painting a misleading picture of MacDonald’s compensation.

159. Regarding expenditures for meals and entertainment, SDK states that

“Once again, a lack of supporting documentation for most transactions has prevented us from evaluating meals and entertainment expenses for reasonableness with regard to cost or ministry purpose. This lack of substantiation means that these expenditures cannot be deemed as ‘reasonable’ within the meaning of applicable tax requirements.” *Id.* at 12.

160. The statements in Paragraph 159 falsely claims that the expenditures from the Senior Pastor’s office were not reasonable. This accusation ignores SDK’s own failure to interview key individuals or review the supporting documentation provided to HBC by Kostal.

161. SDK knew that it was impossible to form an opinion as to whether the expenditures were reasonable and necessary without communicating with those who had contemporaneous knowledge of the transactions yet failed to take this necessary step during its investigation. Instead, SDK implies that MacDonald’s staff in the Senior Pastor’s Office failed to keep records of its expenditures, which is false.

162. The statements set forth in the SDK Letter and contained in Paragraphs 140 through 159 imputed to MacDonald dishonest and/or criminal conduct and a lack of integrity as a pastor. Such statements were false, were known to be false by SDK when written and published, and constitute defamation *per se*.

163. SDK intentionally and knowingly fabricated these accusations against MacDonald and/or acted in reckless disregard for the truth in consenting to HBC's publication of the statements, so as to constitute actual malice.

164. SDK's actual malice was further demonstrated by the biased, one-sided investigation it conducted during which it purposefully avoided the truth by failing to attempt to gain information from individuals who they knew had actual and contemporaneous knowledge of the transactions they were investigating, including MacDonald, Kostal, Adams and Milholland.

165. Moreover, SDK's actual malice was demonstrated by its intentional omissions of material exculpatory information it was aware of which contradicted the intentionally damaging implications of the statements.

166. As a proximate result of SDK's defamatory statements, MacDonald lost income, was unable to gain employment, sustained injury to his public and professional reputation, public humiliation, embarrassment, and emotional damages.

WHEREFORE, Plaintiff, JAMES S. MACDONALD, respectfully requests that judgment be entered in his favor and against Defendant SCHECHTER, DOKKEN, KANTER, ANDREWS & SELCER, LTD., for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, and all other relief this Court deems necessary and just.

COUNT IV - FALSE LIGHT INVASION OF PRIVACY
(Against SDK)

167. MacDonald restates the allegations contained in Paragraphs 137 through 166 of Count III as if fully set forth herein.

168. The statements contained in the SDK Letter published with SDK's consent on November 21, 2019 placed MacDonald in a false light before the public which would be highly offensive to a reasonable person, in that they falsely accuse MacDonald of financial crimes, dishonesty, and conduct showing a want of integrity as a pastor by making it appear as though MacDonald was abusing HBC's charitable resources for his own personal benefit.

169. SDK's public statements regarding MacDonald's and his family's personal finances unreasonably placed him before the public in a false and negative light which would be highly offensive to a reasonable person.

170. SDK had knowledge that these statements were false and/or acted in reckless disregard as to the falsity of the publicized matter and the false light in which MacDonald would be placed as a result of the publication of the SDK Letter, so as to constitute actual malice.

171. SDK's actual malice was further demonstrated by the biased, one-sided investigation it conducted during which it purposefully avoided the truth by failing to attempt to gain information from individuals who they knew had actual and contemporaneous knowledge of the transactions they were investigating, including MacDonald, Kostal, Adams and Milholland.

172. Moreover, SDK's actual malice was demonstrated by its intentional omissions of material exculpatory information it was aware of which contradicted the intentionally damaging implications of the statements.

173. As a proximate result of SDK's conduct, MacDonald lost income, was unable to gain employment, sustained injury to his public and professional reputation, public humiliation, embarrassment, and emotional damages.

WHEREFORE, Plaintiff, JAMES S. MACDONALD, respectfully requests that judgment be entered in his favor and against Defendants SCHECHTER, DOKKEN, KANTER, ANDREWS & SELCER, LTD., for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, and all other relief this Court deems necessary and just.

COUNT V - INVASION OF PRIVACY (INTRUSION ON SECLUSION)
(Against All Defendants)

174. MacDonald restates the allegations contained in Paragraphs 1 - 86 as if fully set forth herein.

175. During their investigation into MacDonald, Wagenmaker and SDK improperly intruded into MacDonald's private affairs which had nothing whatsoever to do with their investigation into HBC's governance and finances during MacDonald's tenure, specifically by investigating the bank account and financial information associated with Vanilla Bean.

176. Wagenmaker and SDK invaded the private financial information of MacDonald by improperly obtaining and reviewing the private information of Vanilla Bean, an LLC which was created solely for the protection of MacDonald's personal household expenses which had nothing to do with HBC whatsoever.

177. Even after being told by HBC's general counsel and its CFO that there was nothing improper with respect to Vanilla Bean, Wagenmaker and SDK continued to dig through Vanilla Bean's accounts and documents.

178. MacDonald had a reasonable expectation of privacy with respect to his personal financial affairs which had nothing to do with his employment at HBC. Wagenmaker and SDK

were also aware that MacDonald had separately retained Nudo to create Vanilla Bean specifically so he could maintain privacy and security over his personal finances.

179. Through their unwarranted and intrusive investigation, Wagenmaker and SDK destroyed MacDonald's reasonable expectation of privacy.

180. Wagenmaker and SDK's intentional intrusion upon MacDonald's private affairs was of a kind which would be highly offensive to a reasonable person. The investigation into Vanilla Bean and MacDonald's private financial affairs was well outside the bounds of any legitimate investigation into HBC's finances or governance during MacDonald's tenure.

181. Upon information and belief, Wagenmaker and SDK further intruded upon MacDonald's seclusion by unreasonably intruding into his proprietary private data including credit reports during their investigation.

182. As a result of Wagenmaker and SDK's intentional intrusion upon MacDonald's private affairs, MacDonald lost income, was unable to gain employment, sustained injury to his public and professional reputation, public humiliation, embarrassment, and emotional damages.

WHEREFORE, Plaintiff, JAMES S. MACDONALD, respectfully requests that judgment be entered in his favor and against Defendants WAGENMAKER & OBERLY LLC, SALLY WAGENMAKER, and SCHECHTER, DOKKEN, KANTER, ANDREWS & SELCER, LTD, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, and all other relief this Court deems necessary and just.

COUNT VI - AIDING AND ABETTING DEFAMATION PER SE
(Against Wagenmaker and W&O)

183. MacDonald restates the allegations contained in Paragraphs 1 - 86 as if fully set forth herein.

184. On November 21, 2019, Tim Stoner and Brian Laird, on behalf of HBC, read a statement before hundreds of members of HBC's congregation. In this oral statement, Stoner and Laird quoted many of the defamatory statements set forth above in the Wagenmaker and SDK Letters and paraphrased others.

185. In the statement, Stoner and Laird also expanded upon details for certain expenditures which were not included in the published Wagenmaker and SDK Letters.

186. Stoner and Laird stated that payments made to MacDonald's daughter for college tuition reimbursement totaling \$22,000 were not justified despite HBC having possession of a letter from its own general counsel stating that the tuition reimbursement had been approved. Stoner and Laird failed to mention that many other HBC employees had sought and received tuition reimbursement for many years according to established staff policy.

187. Stoner and Laird also mentioned the purchase of two motorcycles for \$16,000 and \$17,000, but failed to mention that those motorcycle purchases were approved in advance by the CFO, treasurer, and EC and were publicly given as gifts to Pastors of HBC-affiliated churches to honor their faithful service.

188. The statements and implications made by Stoner falsely charged MacDonald with misappropriating HBC resources for the benefit of his family members and friends. These statements were false, were known to be false by HBC when they were spoken, and constitute defamation *per se*.

189. HBC had knowledge that these statements were false and/or acted in reckless disregard as to the falsity of the publicized matter as a result of the publication to the congregation, so as to constitute actual malice.

190. Wagenmaker aided and abetted HBC's defamation *per se* of MacDonald by drafting the statement that Stoner and Laird read to the congregation, which was based on her own and SDK's false and defamatory Letters that would be published immediately after.

191. Wagenmaker knew that the statement she drafted for Stoner and Laird would be read before the HBC congregation and disseminated generally.

192. Upon information and belief, Wagenmaker also advised HBC in drafting the DQ Statement, which also contained numerous false and defamatory statements regarding MacDonald.

193. As a proximate result of Wagenmaker's aiding and abetting of HBC's defamation *per se*, MacDonald lost income, was unable to gain employment, sustained injury to his public and professional reputation, public humiliation, embarrassment, and emotional damages.

WHEREFORE, Plaintiff, JAMES S. MACDONALD, respectfully requests that judgment be entered in his favor and against Defendants SALLY WAGENMAKER and WAGENMAKER & OBERLY LLC for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, and all other relief this Court deems necessary and just.

COUNT VII - AIDING AND ABETTING FALSE LIGHT INVASION OF PRIVACY
(Against Wagenmaker and W&O)

194. MacDonald restates the allegations contained in Paragraphs 1 - 86, and Paragraphs 184 - 193 of Count VI, as if fully set forth herein.

195. In addition to the defamatory statements read aloud by Stoner, the statement read by Stoner also contained several statements which placed MacDonald in a false light before the public by attributing characteristics and conduct to MacDonald which are false, and publicly depict him in a highly negative and highly offensive light.

196. Stoner and Laird stated that over \$250,000 had been spent on home security for MacDonald's home.

197. This statement lacks necessary context and is presented in a way to make it appear that MacDonald spent HBC's money on frivolous concerns, or worse was using HBC's funds to simply improve his home.

198. Stoner and Laird failed to mention that MacDonald had been the target of credible threats to he and his family's safety, and that all spending on security measures was predicated upon the conclusions of an analysis provided by HBC's head of security, a retired Chicago police officer. Further, Stoner and Laird failed to mention that HBC's treasurer Jeff Smith had consulted with HBC's attorneys and signed a letter of approval for the spending.

199. Such statements publicly depicted MacDonald in a false light that would be highly offensive to a reasonable person.

200. HBC had knowledge that these statements were false and/or acted in reckless disregard as to the falsity of the publicized matter as a result of the publication to the congregation, so as to constitute actual malice.

201. Wagenmaker aided and abetted HBC in putting MacDonald in a false light by drafting the statement that Stoner and Laird read to the congregation, which was based on her own and SDK's false and defamatory Letters that would be published soon after.

202. Wagenmaker knew that the statement she drafted for Stoner would be read before the HBC congregation and disseminated generally.

203. Upon information and belief, Wagenmaker also advised HBC in drafting the DQ Statement, which contained numerous statements that placed MacDonald in a false light before the public.

204. As a proximate result of Wagenmaker's aiding and abetting of HBC's putting MacDonald in a false light, MacDonald lost income, was unable to gain employment, and sustained injury to his reputation, public humiliation, embarrassment, and emotional damages.

WHEREFORE, Plaintiff, JAMES S. MACDONALD, respectfully requests that judgment be entered in his favor and against Defendants SALLY WAGENMAKER and WAGENMAKER & OBERLY LLC for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, and all other relief this Court deems necessary and just.

COUNT VIII - CIVIL CONSPIRACY
(Against All Defendants)

205. MacDonald restates the allegations contained in Paragraphs 1 - 204 as if fully set forth herein.

206. After MacDonald filed his arbitration demand against HBC during the summer of 2019, certain members of the Laird Elder Board, Wagenmaker, and SDK entered into an agreement that as part of their overall legal strategy against MacDonald, they would make a concerted effort to destroy MacDonald's reputation and credibility and prevent him from gaining employment as a Senior Pastor at another Evangelical church. The co-conspirators set about to accomplish this unlawful purpose by conducting biased investigations into MacDonald and thereafter by publicizing false and misleading negative information about him.

207. Wagenmaker and W&O committed several overt tortious acts in furtherance of this conspiracy. Wagenmaker intruded on MacDonald's seclusion in conducting her biased investigation, defamed MacDonald, and placed him a false light before the public. Wagenmaker drafted her defamatory Letter and consented to its publication on the internet; oversaw HBC's biased investigation into whether MacDonald was Biblically disqualified as a Pastor; and assisted

in drafting the oral statement which was read aloud by Stoner and Laird on November 21, 2020, which also was defamatory and painted MacDonald in a false light.

208. SDK also committed overt tortious acts in furtherance of the conspiracy by drafting its defamatory Letter and consenting to Wagenmaker and HBC’s requests to publish a “beefed up” version of the Letter on the internet, even though it contained false and misleading statements presented under the guise of preliminary findings.

209. As a proximate result of the civil conspiracy and the Defendants’ overt tortious acts in furtherance of it, MacDonald lost income, was unable to gain employment, and sustained injury to his reputation, public humiliation, embarrassment, and emotional damages.

WHEREFORE, Plaintiff, JAMES S. MACDONALD, respectfully requests that judgment be entered in his favor and against Defendants SALLY WAGENMAKER, WAGENMAKER & OBERLY LLC and SCHECHTER, DOKKEN, KANTER, ANDREWS & SELCER, LTD for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, and all other relief this Court deems necessary and just.

Dated: February 18, 2021

Respectfully submitted,

JAMES S. MACDONALD

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