

12-Person Jury

Chancery Division Civil Cover Sheet
General Chancery Section

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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2019CH14303

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JAMES MACDONALD

Plaintiff

v.

MATTHEW ERICH MULLER: CUMULUS MEDIA, INC., d/b/a
WLS RADIO: and JOHN DOES 1-5

Defendant

No. 2019CH14303

CHANCERY DIVISION CIVIL COVER SHEET
GENERAL CHANCERY SECTION

A Chancery Division Civil Cover Sheet - General Chancery Section shall be filed with the initial complaint in all actions filed in the General Chancery Section of Chancery Division. The information contained herein is for administrative purposes only. Please check the box in front of the appropriate category which best characterizes your action being filed.

- 0005 Administrative Review
- 0001 Class Action
- 0002 Declaratory Judgment
- 0004 Injunction

- 0007 General Chancery
- 0010 Accounting
- 0011 Arbitration
- 0012 Certiorari
- 0013 Dissolution of Corporation
- 0014 Dissolution of Partnership
- 0015 Equitable Lien
- 0016 Interpleader
- 0017 Mandamus
- 0018 Ne Exeat

- 0019 Partition
- 0020 Quiet Title
- 0021 Quo Warranto
- 0022 Redemption Rights
- 0023 Reformation of a Contract
- 0024 Rescission of a Contract
- 0025 Specific Performance
- 0026 Trust Construction
- Other (specify) _____

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Hearing Date: 4/10/2020 9:30 AM - 9:30 AM
 Courtroom Number: 2402
 Location: District 1 Court
 Cook County, IL

FILED DATE: 12/12/2019 10:32 AM 2019CH14303

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

JAMES MACDONALD,)
)
Plaintiff,)
v.)
) No. 2019CH14303
MATTHEW ERICH "MANCOW" MULLER,)
an individual; CUMULUS MEDIA, INC., a Delaware) JURY DEMANDED
Corporation, d/b/a WLS RADIO; and JOHN DOES 1-5.)
)
Defendants.)

**COMPLAINT FOR INJUNCTION
AND OTHER RELIEF**

Plaintiff James MacDonald, by his attorneys, Schoenberg Finkel Newman & Rosenberg, LLC, complains of defendants as follows:

General Allegations Common to All Counts

A. Parties, Jurisdiction and Venue

1. Plaintiff, James MacDonald, DMin., ("Dr. MacDonald" or "MacDonald"), is a resident of Kane County, Illinois. Dr. MacDonald is the founder and former Senior Pastor of the Harvest Bible Chapel ("HBC"), which started in 1988, with 18 people, and by 2018, under MacDonald's leadership, welcomed 13,000 people weekly among seven Chicago-area campuses. In addition to serving as HBC's Senior Pastor, Dr. MacDonald taught bible and provided ministry as a guest pastor at prestigious evangelical places of faith and fellowship, including Camp of the Woods in Specular, New York, the Billy Graham Training Center at the Cove in Asheville, North Carolina, The Southern Baptist Convention Pastor's Conference, and many leading churches across North America. Recordings of Dr. MacDonald's pulpit ministry at Harvest Bible Chapel were in demand by the late 1990's. This led to the formation of an independent broadcast ministry of Dr. MacDonald in 1997, "Walk in the Word," which was broadcasted initially on radio and later, on both radio and television, and consisted of a daily bible

teaching by Dr. MacDonald. As of December 31, 2018, Walk in the Word drew more than five million viewers and listeners per month and was the third most popular program on the Trinity Broadcast Network. Dr. MacDonald is the author of more than 15 faith-based books distributed worldwide and translated into 7 languages. In 2012, Dr. MacDonald received the Billy Graham Award for Excellence in Biblical Exposition and received awards for his radio and television Walk in the Word broadcasts in 2009 and 2016 from the National Religious Broadcasters, an international association of Christian broadcast communicators in radio, television, internet, and other media. Dr. MacDonald has a doctorate degree in ministry communication, a masters degree in ministry, and a bachelors degree in theology.

2. Defendant, Matthew Erich “Mancow” Muller (“Muller”), is a radio personality and, at relevant times herein, was host of a weekday morning radio program broadcast on WLS A.M. 890 radio, in Chicago. Muller is a resident of Cook County, Illinois. On information and belief, Muller is an employee of Defendant, Cumulus Media, Inc.

3. Defendant, Cumulus Media, Inc. (“Cumulus”), is a Delaware corporation, which owns and operates WLS-A.M. 890 Radio (“WLS”), including through its wholly owned subsidiary, Chicago FM Radio Assets, LLC (Cumulus and Chicago FM Radio Assets, LLC are referred to collectively herein as “Cumulus”). WLS is a radio station, broadcasting throughout the Chicago metropolitan area, from a studio and transmitter in Chicago, Illinois. On information and belief, WLS's radio signal is received throughout the Chicago metropolitan area, in addition to other portions of Illinois, and portions of Indiana, Wisconsin, Iowa, Michigan, and Ohio. In addition, WLS streams Muller’s radio program, concurrent with its radio broadcasts, over the Internet on weekday mornings between 5:30 a.m. and 9:00 a.m. On information and belief, Cumulus was Muller’s employer at all times relevant to this Complaint. On information and belief, Cumulus also distributes a podcast version of Muller’s WLS broadcasts on the Internet (the

“Mancow Daily”), on its own website, www.wlsam.com/mancow, and through Apple Podcasts and other podcast outlets.

4. Defendants, John Does 1-5 (“Doe Defendants”) are unknown individuals and/or entities participating in the production, recording, editing, distribution, and/or ownership of the podcasts referred to herein as the “Mancow Podcast”. The Mancow Podcast, distributed nationwide, consists of content other than, and independent of, Muller’s radio broadcasts on WLS.

5. Jurisdiction and venue are proper in this Court because the statements at issue herein were first published in Chicago, Cook County, Illinois, and the broadcasts and podcasts at issue herein were transmitted, distributed and/or streamed from Cook County, Illinois.

B. Nature of Plaintiff’s Claims

6. In December, 2018, Muller was hired by Cumulus to be WLS’ weekday morning drive (5:30 to 9:00 a.m.) talk-radio personality. Muller began working at and broadcasting from WLS in this capacity in January, 2019.

7. Muller had been a radio personality in Chicago, beginning in 1994, with the program, “Mancow’s Morning Madhouse” broadcast on WRCX, then owned by Evergreen Media Corporation (“Evergreen”). During this time, Muller launched an on-air campaign disparaging former Chicago Bear, Keith Van Horne, which culminated in a defamatory broadcast in which Muller falsely charged that Van Horne had physically attacked him at the elevator bank of the radio station, was “extremely violent” and “dangerous”, “chased him down the hall”, was “a violent, violent force”, was “threatening [Muller’s] life”, had “waited for [Muller] to attack [him]”, was a “menace” and a “danger to society”, was “going to end up killing somebody”, and that Muller was “gonna get a restraining order against him” that day. In the broadcast, Muller compared Van Horne to “a Charles Manson who works out.” The false statements Muller made in

that broadcast resulted in a lawsuit against Muller, his on-air sidekick, and Evergreen, for defamation *per se*, and negligent hiring/supervision which was settled, in 2000, for \$1.6 million.

8. In 1999, Muller was a radio personality for Chicago radio station WKQX FM (“Q101”). At that time, Muller launched an on-air campaign, over the course of more than two months, disparaging Janet Dahl, wife of radio personality, Steve Dahl, through multiple defamatory broadcasts in which he repeatedly referred to Mrs. Dahl in vile, derogatory terms, including through false statements that her children were “evil little bastards from [Muller’s] semen”. That defamatory multi-month campaign also resulted in litigation against Muller and WKQX’s then-owner, Emmis Communications for defamation *per se*, false light invasion of privacy, intentional infliction of emotional distress, and negligent hiring/supervision, which settled, confidentially, in 2001 to the satisfaction of the parties.

9. Defendant Cumulus is now the owner of radio station WKQX and Cumulus’ current Chicago Market Manager, Marv Nyren, supervised and fired Muller from that station in 2006. Nyren also played a role in hiring Muller for his current position at WLS.

10. In the course of his most recent employment with Cumulus at WLS, beginning in February, 2019, Muller initiated a campaign to disparage Dr. James MacDonald, then the Pastor of the Harvest Bible Church, on the air at WLS and through other media, through a series of false and defamatory statements.

11. Since his affiliation with WLS in January, 2019, Muller’s on-air statements broadcast on WLS are publicly disseminated by Cumulus on the radio. Muller’s daily radio broadcasts are also streamed in real time on the Internet by and through Cumulus.

12. In addition, on information and belief, Muller’s WLS radio programs are distributed by Cumulus, without traffic, weather, and broadcast commercials, as podcasts on the Internet. These podcasts, known as the “Mancow Daily,” are available nationwide through

Internet sources, including through WLS' website, and podcast outlets such as Apple Podcasts and iHeartRadio.

13. In addition, Muller, individually, or through an entity, creates and distributes "The Mancow Podcast" throughout the country, including through its own website, www.themancowpodcast.com, through Apple Podcasts, and other sources. On information and belief, one or more of the Doe Defendants participated in the recording, production, recording, editing, and/or distribution of the "Mancow Podcasts" complained of herein.

COUNT I
Defamation Per Se
(Against Muller and Cumulus)

14. On February 12, 2019, Muller hosted his radio program on WLS. The program was broadcast by Cumulus to the public by radio and was contemporaneously streamed on the Internet by Cumulus. In addition, these Defendants released and disseminated the broadcast, without commercial content contained in the broadcast, on the Internet, as a distinct episode of the podcast series, "The Mancow Daily", available for downloading and streaming through the Internet generally, including through the WLS website, Apple Podcasts, iHeartRadio.com, and other sources.

15. In the course of the broadcast/stream/podcast, Muller made numerous disparaging statements of and concerning MacDonald. For example, among other things, Muller purported to be speaking with his attorney in the studio, discussing Harvest Bible Chapel. In the course of the broadcast/podcast, Muller stated: "We will bring down the cult of MacDonald. This is going to be great." (Mancow Daily, 2-12-2019, at 47:57-48:32). Muller thanked his lawyer for working "night and day" on a "class action lawsuit" to be filed against Harvest and MacDonald. (*Id.* at 47:57). Muller broadcast that he thought there was a racketeering ("RICO") case and asked his lawyer on the air if he should go to the attorney general and report it. (*Id.* at 55:28). Muller invited

listeners to call in if they wished to “get in on this lawsuit”. (*Id.* at 56:15). Muller stated that he would be filing the class action the following week. (*Id.* at 56:15; 1:03;52). Muller added: “Lets get the victims of James MacDonald their money back.” (*Id.* at 57:18). Muller stated that “We’re gonna get James MacDonald’s tax returns; we’re going to find where our money went.” (*Id.* at 1:01:45). Muller added: “I believe there’s all kinds of secret books and black ops and all kinds of stuff.” (*Id.* at 1:7:26-30).

16. Thus, Muller began his show with negative speculation that MacDonald was involved in a racketeering scheme, suggested to listeners that MacDonald lacked the integrity to be a pastor, and smeared MacDonald’s name generally, communicating to listeners his malice against MacDonald. He then falsely accused MacDonald of engaging in specific bad acts.

17. In the course of the broadcast and podcast, Muller falsely stated that MacDonald planned to place/plant child pornography on Muller’s computer. (*Id.* at 1:08:13-26) He added: “you can never recover from that, somebody found with child porn on a computer, even if its proven that this guy tried to plant it which is what some of my snitch friends were telling me.” (*Id.* at 1:31:15-31). . . . “This guy was trying to get child porn on my computer. That’s what James Mac Donald had planned for me.” “I wouldn’t be able to see my ’f’n’ kids. What would it do if there was kiddie porn found on my phone?” (*Id.* at 1:31:30-45). Muller described that “People...from the [Harvest Bible] Church” told him “that James MacDonald was going to try to put child porn on my computer to get me to shut up.” (*Id.* at 1:08:15-27).

18. Muller caused the publication of these statements to be broadcasted in the course of his WLS radio program and on the internet.

19. Cumulus caused such statements to be broadcasted over WLS A.M., streamed live on the Internet, and distributed on the Internet through the “Mancow Daily” podcast.

20. The statements set forth in paragraph 17 above imputed to MacDonald criminal conduct, including but not limited to child pornography, and of conduct showing a lack of integrity as a pastor. Such statements were false, were known to be false by Muller when spoken, and constitute defamation *per se*.

21. In fact, MacDonald has never possessed child pornography, has no knowledge how to “plant” material on someone’s computer, never planned to place child pornography on Muller’s computer, never told any person that he planned to do so, never “tried to get child porn” on Muller’s computer, and never threatened to do so to get Muller to “shut up” or for any other reason.

22. Muller intentionally and knowingly fabricated these accusations, or acted in reckless disregard for the truth in publishing them, so as to constitute actual malice.

23. Defendant Cumulus facilitated Muller’s ability to maliciously defame MacDonald to the public, and published those statements through its radio broadcast and internet stream of Muller’s WLS radio show, and through the Mancow Daily podcast.

24. As a proximate result of Defendants’ defamatory statements, MacDonald sustained injury to his reputation, humiliation, anxiety, embarrassment, mental anguish, the termination of his position as Senior Pastor of HBC, and monetary damages.

25. Muller announced MacDonald’s termination as the lead statement of his WLS broadcast on February 13, 2019, as broadcasted, streamed, and distributed as the Mancow Daily Podcast by Cumulus. (Muller 2-13-2019 broadcast/podcast at 00:15).¹

¹ In the same broadcast, stream and podcast, Muller maliciously repeated that he thought there was a RICO case and that MacDonald was a “con man.” (*Id.* at 3:53-4:27). Muller stated, that with HBC having fired MacDonald, his stated and intended “class action lawsuit” would not be filed. (*Id.* at 1:16:30). Muller further stated that MacDonald was a “big fake” and that “people are being stolen from”. (*Id.* at 1:18:13), notifying listeners and Cumulus of Muller’s malice for

WHEREFORE, Plaintiff, James MacDonald respectfully requests that Judgment be entered in his favor and against Matthew “Mancow” Muller and Cumulus jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and all other relief the Court deems appropriate.

COUNT II
Defamation Per Se
(Against Muller and Cumulus)

26. On February 18, 2019, Muller hosted his radio show on WLS. The program was broadcasted by Cumulus on the radio and streamed and distributed by Cumulus on the Internet. In addition, these Defendants released and disseminated the broadcast, without its commercial content, news, or weather on the Internet, as a distinct episode of the podcast series, “The Mancow Daily,” available for downloading and streaming through the Internet generally, including through the WLS website, Apple Podcasts, iHeartRadio.com, and other sources.

27. Muller had a guest on that show, Anne Green, who stated that she was on a mission trip to California years before with James MacDonald and others from Harvest Bible Church. Green stated that on the return private plane trip, James MacDonald sat next to her, and at some point, leaned his head on her shoulder, and reached across her, placing his hand on her right side, “next to her crotch.” (*Id.* at 59:08-50). Muller described MacDonald in the course of the program as a man who “feels up women” and that MacDonald was “running his hand over Green’s crotch.” (*Id.* at 1:07:45). (*Id.* at 1:02:00).

28. Anne Green’s statements on Muller’s radio show and their implications were false. MacDonald did not make any inappropriate physical contact with Green, much less “next to her

MacDonald, his continued targeting of MacDonald in the course of his radio broadcasts, streams, and podcasts and his message that MacDonald lacked integrity as a pastor.

crotch”. Further, contrary to Muller’s false statements, MacDonald does not feel “women up” and did not “run (his) hand over Green’s crotch”. (1:07:45).

29. Muller’s false statements, broadcasted, streamed, and podcasted by Cumulus, falsely charged MacDonald with having committed the offense of battery, with being a serial sexual abuser of women, and with conduct showing a lack of integrity as a pastor. Such statements were false and constitute defamation *per se*.

30. Muller intentionally and knowingly fabricated these accusations and imputations or acted in reckless disregard for the truth in publishing them, so as to constitute actual malice.

31. Defendant Cumulus facilitated Muller’s ability to maliciously defame MacDonald to the public and published those statements through its broadcast and internet stream of Muller’s WLS radio show, and through the Mancow Daily podcast.

32. As a proximate result of Defendants’ defamatory statements, MacDonald sustained injury to his reputation, humiliation, anxiety, embarrassment, monetary damage, and mental anguish.

WHEREFORE, Plaintiff James MacDonald respectfully requests that Judgment be entered in his favor and against Matthew Erich “Mancow” Muller and Cumulus, jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and all other relief the Court deems appropriate.

COUNT III

Defamation Per Se

(Against Muller and Doe Defendants 1-5)

33. On or about February 19, 2019, Muller and one or more of the Doe Defendants participated in the publication of a podcast known as “The Mancow Podcast,” and distributed same through the Internet. On that date, Muller referred to his radio broadcast on WLS the

preceding day and reiterated that Anne Green was “molested or felt up” by MacDonald.

(February 19, 2019 Mancow Podcast at 4:00-15; 7:00-09).

34. In the podcast, Muller also stated that MacDonald held “boot parties” where people, at MacDonald’s choosing, got beaten up, and where MacDonald “has sent people that . . . will physically rough you up if you get out of line.” (*Id.* at 6:45-7:00).

35. Muller further stated “I have some things that I know that law enforcement should probably know about James MacDonald and I feel like if I go to the cops - - Its part of what I call the nuclear option here, if things don’t change. But I think I’m probably smart. While I don’t know that they will happen because like you’ve got a lot of cops in his pocket, he’s proud of that. He’s proud of being a “mafioso executive committee.” (*Id.* at 33:22-49).

36. In the same podcast, Muller also falsely stated and repeated that MacDonald told him that he wanted to put “kiddie porn” on Muller’s computers to ruin his career. (*Id.* at 53:30-38). Muller added that he was advised by his lawyer to talk about that threat on the air and go to the “Feds” about that. (*Id.* at 53:39-54). Muller closed that show by referencing again his so-called “nuclear option” and said that he did not want to exercise that option but that the books of Harvest Bible Chapel needed to be opened. (*Id.* at 56:45-57:10).

37. Muller’s statements falsely accused MacDonald of the crimes of child pornography, battery, and conduct showing a want of integrity as a pastor. Such statements were false, were known to be false by Muller when spoken, and constitute defamation per se.

38. Contrary to Muller’s false statements, MacDonald never had “boot parties” or other events where he sent anyone to beat anyone up, never directed anyone to beat others up, never threatened to have persons beaten up, or “roughed up,” has never been part of a “mafioso executive committee,” never threatened that he would place or wanted to place child porn on

Muller's computer, never threatened to ruin Muller's career, never possessed "child porn," and never "molested" or "felt" up Anne Green.

39. Muller intentionally, and knowingly, fabricated these accusations or acted with reckless disregard for the truth in publishing them so as to constitute actual malice.

40. As a proximate result of Defendants' defamatory statements, MacDonald sustained injury to his reputation, humiliation, anxiety, embarrassment, monetary damage, and mental anguish.

WHEREFORE, Plaintiff James MacDonald respectfully requests that Judgment be entered in his favor and against Matthew Erich "Mancow" Muller and the Doe Defendants, jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and all other relief the Court deems appropriate.

COUNT IV
Defamation Per Se

(Against Muller and Doe Defendants 1-5)

41. On or about May 21, 2019, in the course of The Mancow Podcast published by Muller and one or more of the Doe Defendants, Muller stated that MacDonald had approached him and asked if he could "find someone to plant kiddie porn on someone's computer." Muller claimed that he replied to MacDonald affirmatively. (Mancow Podcast, 5:21:19, 4:19-4:37).

42. In the same podcast, Muller stated that subsequently, MacDonald approached him and "wanted to have someone killed for him, that he wanted a hitman. . . to kill one of his rivals." (*Id.* at 4:38-5:00). Muller added that MacDonald "really wanted him to find a hitman" as Muller had gotten "other people to do things for him," and that MacDonald "wanted him to find someone to kill someone for him." (*Id.* at 5:01-5:36).

43. Muller further stated that he was in fear of MacDonald and afraid that he wouldn't be able to come to the broadcast studio without MacDonald "killing him." (*Id.* at 6:55).

44. Muller added that he was “very afraid” of MacDonald; was afraid as he was broadcasting his show (*Id.* at 1:49-2:01, 2:31-2:40) and that “people are afraid of James MacDonald for their very lives.” (*Id.* at 10:32-37).

45. Muller also broadcasted, “this great man of God asked me to find him a hitman.” (*Id.* at 12:50-13:01).

46. Muller further broadcasted that MacDonald had committed “conspiracy to commit murder.” (*Id.* at 17:30-39).

47. At the end of the podcast, a voice stated that Mancow had “just contacted the authorities” and encouraged others with information of James MacDonald’s participation in any illegal conduct to “please do the same.” (*Id.* at 18:09).

48. The disclosure of the alleged “murder-for-hire” scheme of MacDonald was described by Muller as his “nuclear option” which he had threatened on the radio to carry out since February, 2019.

49. On or about May 16, 2019, Muller appeared at the Wilmette, Illinois police station and reported that MacDonald’s so-called murder-for-hire solicitation occurred in December, 2018. Muller allegedly stated that he wished for no police investigation into his allegations and that his report was for “documentation only.” (*Id.*).

50. On information and belief, Muller used the story of the false “murder for hire” and “child porn” solicitations to build up listener interest for his radio/podcast shows, not because such solicitations had been made to him in fact.

51. The above statements imputed to MacDonald solicitation to distribute child pornography, solicitation to commit murder, and conduct showing a want of integrity as a pastor. Such statements were false, were known to be false by Muller when spoken, and constitute defamation *per se*.

52. MacDonald never asked Muller if he could find someone to plant “kiddie porn” on someone’s computer, never asked Muller to find a hitman or any person to kill any of his rivals, and did not conspire to commit murder.

53. Muller intentionally and knowingly fabricated his accusations or acted with reckless disregard for the truth in publishing the above statements so as to constitute actual malice.

54. As a proximate result of Defendants’ defamatory statements, MacDonald sustained an injury to his reputation, humiliation, anxiety, embarrassment, monetary damage, and mental anguish.

WHEREFORE, Plaintiff James MacDonald respectfully requests that Judgment be entered in his favor and against Matthew Erich “Mancow” Muller and the Doe Defendants, jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and all other relief the Court deems appropriate.

COUNT V
False Light Invasion of Privacy
(Against Muller and Cumulus)

55. MacDonald realleges paragraphs 14 through 22 of Count I.

56. The complained of February 12, 2019 statements broadcasted, streamed, and podcasted by Defendants placed MacDonald in a false light before the public which would be highly offensive to a reasonable person in that they falsely accused him of child pornography, and of conduct showing a want of integrity as a pastor.

57. Defendant Cumulus facilitated Muller’s ability to maliciously depict MacDonald in a false light to the public, through its radio broadcast and internet stream of Muller’s WLS radio show, and through the Mancow Daily podcast.

58. As a proximate result of Defendants' conduct, MacDonald was publicly depicted in a false light, and sustained humiliation, anxiety, embarrassment, mental anguish, injury to his reputation, the termination of his position as Senior Pastor of HBC, and monetary damages.

WHEREFORE, Plaintiff, James MacDonald respectfully requests that Judgment be entered in his favor and against Matthew "Mancow" Muller and Cumulus jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and all other relief the Court deems appropriate.

COUNT VI
False Light Invasion of Privacy
(Against Muller and Cumulus)

59. MacDonald realleges paragraphs 26 through 31 of Count II.

60. The statements broadcasted, streamed, and podcasted by Defendants placed MacDonald in a false light before the public in that they falsely accused him of battery and with conduct showing a want of integrity as a pastor.

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

62. Defendant Cumulus facilitated Muller's ability to maliciously depict MacDonald in a false light to the public, through its radio broadcast and internet stream of Muller's WLS radio show, and through the Mancow Daily podcast.

63. As a proximate result of Defendants' conduct, MacDonald was publicly depicted in a false light, and he sustained humiliation, anxiety, embarrassment, mental anguish, monetary damage, and injury to his reputation.

WHEREFORE, Plaintiff, James MacDonald respectfully requests Judgment be entered in his favor and against Matthew "Mancow" Muller and Cumulus, jointly and severally, for

compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and all other relief the Court deems appropriate.

COUNT VII
False Light Invasion of Privacy
(Against Muller and Doe Defendants 1-5)

64. MacDonald realleges paragraphs 33 through 39 of Count III.

65. The statements made, streamed and podcasted by Defendants placed MacDonald in a false light before the public in that they falsely accused him of battery, child pornography, and conduct showing a want of integrity as a pastor.

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

67. As a proximate result of Defendants' conduct, MacDonald was publicly depicted in a false light, and he sustained humiliation, embarrassment, mental anguish, monetary damage, and injury to his reputation.

WHEREFORE, Plaintiff, James MacDonald respectfully requests that Judgment be entered in his favor and against Matthew "Mancow" Muller, and the Doe Defendants, jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and any other relief the Court deems appropriate.

COUNT VIII
False Light Invasion of Privacy
(Against Muller and Doe Defendants 1-5)

68. MacDonald realleges paragraphs 41 through 53 of Count IV.

69. The statements made, streamed, and podcasted by Defendants placed MacDonald in a false light before the public in that they falsely accused him of solicitation to distribute child pornography, solicitation to commit murder, and of conduct showing a want of integrity as a pastor.

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

71. As a proximate result of Defendants' conduct, MacDonald was publicly depicted in a false light and sustained humiliation, anxiety, embarrassment, mental anguish, monetary damage, and injury to his reputation.

WHEREFORE, Plaintiff, James MacDonald respectfully requests that Judgment be entered in his favor and against Matthew "Mancow" Muller and the Doe Defendants jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and all other relief the Court deems appropriate.

COUNT IX
Intentional Infliction of Emotional Distress
(Against Muller and Cumulus)

72. MacDonald realleges paragraphs 14 through 22 of Count I.

73. The statements broadcast, streamed, and podcasted by Defendants were extreme, outrageous and would be offensive to a reasonable person.

74. Defendants knew that there was a high probability that their conduct would cause severe emotional distress.

75. Defendants' conduct proximately caused severe emotional distress to MacDonald, and further caused him severe humiliation, anxiety, embarrassment, mental anguish, injury to his reputation, and monetary damages.

WHEREFORE, Plaintiff, James MacDonald respectfully requests that Judgment be entered in his favor and against Matthew "Mancow" Muller and Cumulus, jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and all other relief the Court deems appropriate.

COUNT X
Intentional Infliction of Emotional Distress
(Against Muller and Cumulus)

76. MacDonald realleges paragraphs 26 through 31 of Count II.

77. The statements broadcasted, streamed, and podcasted by Defendants were extreme, outrageous and would be offensive to a reasonable person.

78. Defendants knew that there was a high probability that their conduct would cause severe emotional distress.

79. Defendants' conduct proximately caused severe emotional distress to MacDonald, and further caused him severe humiliation, anxiety, embarrassment, injury to his reputation, monetary damage, and mental anguish.

WHEREFORE, Plaintiff, James MacDonald respectfully requests that Judgment be entered in his favor and against Matthew "Mancow" Muller and Cumulus, jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and any other relief the Court deems appropriate.

COUNT XI
Intentional Infliction of Emotional Distress
(Against Muller and Doe Defendants 1-5)

80. MacDonald realleges paragraphs 33 through 39 of Count III.

81. The statements streamed and podcasted by Defendants were extreme, outrageous and would be offensive to a reasonable person.

82. Defendants knew that there was a high probability that their conduct would cause severe emotional distress.

83. Defendants' conduct proximately caused severe emotional distress to MacDonald, and further caused him severe humiliation, anxiety, embarrassment, injury to his reputation, monetary damage, and mental anguish.

WHEREFORE, Plaintiff, James MacDonald respectfully requests that Judgment be entered in his favor and against Matthew “Mancow” Muller and the Doe Defendants, jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and all other relief the Court deems appropriate.

COUNT XII
Intentional Infliction of Emotional Distress
(Against Muller and Doe Defendants 1-5)

84. MacDonald realleges paragraphs 41 through 53 of Count IV.

85. The statements streamed and podcasted by Defendants were extreme, outrageous and would be offensive to a reasonable person.

86. Defendants knew that there was a high probability that their conduct would cause severe emotional distress.

87. Defendants’ conduct proximately caused severe emotional distress to MacDonald, and further caused him severe humiliation, anxiety, embarrassment, injury to his reputation, monetary damage, and mental anguish.

WHEREFORE, Plaintiff, James MacDonald respectfully requests that Judgment be entered in his favor and against Matthew “Mancow” Muller and the Doe Defendants, jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and any other relief the Court deems appropriate.

COUNT XIII
Negligent Hiring
(Against Cumulus)

88. MacDonald realleges paragraphs 1-31 above.

89. Cumulus had a duty to exercise reasonable care in the employment and selection of radio personalities who will not defame and/or depict third persons in a false light in the course of its radio broadcasts, live Internet streams, and podcasts.

90. Before Cumulus hired Muller as a radio show host, Muller repeatedly participated and engaged in defamatory broadcast speech in the course of his radio broadcasts. Such conduct received widespread media attention and proximately resulted in harm to third persons. Muller's history of defaming others in the course of his radio broadcasts was known to Cumulus prior to its hiring of Muller through the following facts:

a. Prior to its hiring of Muller, Cumulus knew or should have known of a defamation complaint and lawsuit pending against Muller, radio station WRCX and Evergreen Media Corporation in the Circuit Court of Cook County as Case No. 94 L 15006, entitled *Keith Van Horne v. Muller, et al.* That lawsuit was predicated upon Muller's November 11, 1994 broadcast at WRCX, FM, in which Muller falsely stated that Van Horne physically attacked him at the radio station, threatened to kill him, was a menace who was going to kill somebody, and described him as "Charles Manson who works out." In addition, Cumulus knew or should have known the court in that case found that a cause of action had been stated against Muller, WRCX and Evergreen for defamation *per se* based upon Muller's November 11, 1994 statements.

b. In addition, Cumulus knew, or should have known, from January 30, 1998 forward that the Illinois Appellate Court reinstated counts of defamation against Muller's on-air sidekick for her participation in Muller's statements and the defamatory broadcast.

c. Indeed, on or about July 7, 1998, prior to hiring Muller, Cumulus' predecessor as owner of Chicago radio station WKQX FM, Emmis Communications Corp., affirmatively participated in the *Van Horne* litigation and participated in an Amicus Brief filed in the Illinois Supreme Court, urging that Evergreen Media Corporation, a defendant in that case, should not be held accountable for negligently hiring and supervising Muller.

d. In addition, Cumulus knew, or should have known that the Illinois Supreme Court affirmed the defamation counts against Muller's on-air sidekick for her participation in Muller's defamatory broadcast.

e. In addition, Cumulus knew or should have known that the *Van Horne* defamation and false light case against Muller, his sidekick, and the station owner, settled in 2000 for \$1.6 million as such settlement was widely reported, public information.

f. Prior to hiring Muller, Cumulus also knew or should have known that in 1999, Janet Dahl, the wife of Chicago radio personality, Steve Dahl, sued Muller for defamation, false light invasion of privacy, and intentional infliction of emotional distress, for speech Muller broadcast on WKQX FM, a station purchased and currently owned by Cumulus, and formerly owned by Cumulus' predecessor, Emmis Communications. Emmis was sued in that case for defamation, false light invasion of privacy, intentional infliction of emotional distress, and negligent hiring and supervision of Muller, based on Muller's false and defamatory on-air speech that Ms. Dahl was a "whore," a "disgusting skank," that she "sounded like a stupid dirty slut," that her children were "evil little bastard's from [Muller's] semen," and other disgusting and vile statements. The case was filed in the Circuit Court of Cook County, Law Division and docketed as Case No. 99 L 6585.

g. Prior to hiring Muller Cumulus also knew or should have known that in 2001, Dahl's lawsuit was settled confidentially as the settlement was widely reported by the media.

91. As a consequence of the above, when Cumulus hired Muller, it knew or should have known about Muller's history of defamatory and malicious broadcast speech in the course of his radio broadcasts, the harm that such conduct caused to third persons, the legal consequences

and liability resulting from his on-air speech and of his propensity to injure others through defamatory speech, and depictions of individuals in a false light in the course of his radio broadcasts.

92. When Cumulus hired Muller, it breached its duty of reasonable care, given Muller's history of defamatory speech in the course of his radio broadcasts which caused harm to third persons. Indeed, Cumulus actively courted Muller and hired him in spite of and as a consequence of such speech and the media attention generated by such speech, and without reasonable care for the harm Muller's on-air speech had caused and was reasonably likely to cause to third persons.

93. In fact, Muller was hired at WLS by Cumulus' Vice President and marketing manager, Marv Nyren, who had fired Muller in 2006 at WKQX when Nyren was Regional Vice President and Market Manager for EMMIS Communications, and was well aware of Muller's history of defamatory broadcast speech. Despite his knowledge of Muller's propensity to defame, depict in a false light, demean, and humiliate victims through his on-air speech, in December, 2018, Nyren bragged of Muller's hiring at WLS: "To have one of Chicago's all-time personalities back on WLS AM 890 solidifies the station as the place to go for world, national and local coverage of what's happening today." Nyren further stated, "if you want it real . . . no one delivers like Mancow." (RobertFeeder.com, December 23, 2018).

94. Cumulus' breach of its duty of reasonable care by hiring Muller, despite his history of engaging in defamatory speech in the course of his radio broadcasts permitted Muller the ability to maliciously defame MacDonald and depict him in a false light over the public airwaves and the internet and proximately caused him humiliation, anxiety, embarrassment, mental anguish, emotional distress, monetary damage, and injury to his reputation.

WHEREFORE, Plaintiff James MacDonald respectfully requests that Judgment be entered in his favor and against Cumulus for compensatory damages in excess of \$50,000, costs of suit, and all other relief the Court deems appropriate.

COUNT XIV
Reckless Hiring
(Against Cumulus)

95. MacDonald realleges paragraphs 1-31 above, and paragraphs 89-91 above.

96. When Cumulus hired Muller, it breached its duty of reasonable care and acted in reckless disregard for Muller's history of engaging in defamatory and malicious speech in the course of his radio broadcasts which caused harm to third persons. Moreover, Cumulus actively courted Muller and hired him in spite of and as a consequence of Muller's defamatory and malicious speech and the media attention generated by such speech and with reckless disregard for the harm Muller's speech had caused and was reasonably likely to cause to third persons.

97. Cumulus' breach of its duty of reasonable care and reckless disregard for Muller's history of engaging in defamatory speech in the course of his radio broadcasts permitted Muller the ability to maliciously defame MacDonald and depict him in a false light over the public airwaves and the internet and proximately caused him humiliation, anxiety, embarrassment, mental anguish, emotional distress, monetary damage, and injury to his reputation.

WHEREFORE, given Cumulus' reckless disregard for Muller's history of and propensity to engage in defamatory, and malicious speech, Plaintiff James MacDonald respectfully requests that judgment be entered in his favor and against Cumulus Media, for compensatory damages in excess of \$50,000, punitive damages to be decided at trial, costs of suit, and any other relief the Court deems appropriate.

COUNT XV
Negligent Supervision and Retention
(Against Cumulus)

98. MacDonald realleges the paragraphs 1-32, and 91-93 above.

99. Prior to his first defamatory broadcast about James MacDonald alleged above in Count I, Muller posted multiple statements on his Twitter feed publicly disparaging MacDonald. For example, on February 6, 2019, Muller tweeted: “Macdonald is a performer nothing more. Elmer Gantry. “Articles... 2 biggies... soon... but I really think these (Harvest Bible Chapel) “elders” are such emasculated nothings that they’ll follow Boss Macdonald no matter! Manson family or Macdonald Family?”

100. On February 8, 2019 Muller tweeted: “Con man Boss James MacDonald OUT of Harvest Church!”

101. On February 9, 2019, Muller further tweeted: “... The Toys for Tots motorcycle drives I did with hard-core bikers were w/better men than Boss MacDonald. This con man “Pastor” needs to be put to pasture.”

102. On February 10, 2019, Muller tweeted: “The devil can quote the Bible (and twist it) so can Boss MacDonald the con man of Harvest Cult.”

103. On February 11, 2019, Muller tweeted: “Tomorrow ANOTHER step in redemption for those of us abused by cult leader James Macdonald! Be listening at 7:30 a.m. WLS am.” Muller included media journalist Robert Feder as a recipient to this tweet in addition to posting a oversized photo attachment promoting the February 12, 2019 broadcast on WLS.

104. On February 11, 2019, Muller also tweeted: “Most pastors I believe are great Godly men. I just happened upon a cultish charismatic con man James Macdonald. Oops!”

105. From Muller’s tweets of and concerning MacDonald in the period February 6-11, 2019 Cumulus knew or should have known that Muller had animus and bias against MacDonald

and, when viewed against his past history of targeting and defaming individuals in the course of his radio broadcasts, was reasonably likely to defame MacDonald on the air unless controls were placed upon his broadcast speech through reasonable supervision.

106. Notwithstanding its knowledge of Muller's history of defamatory on-air broadcast speech, after his hiring at WLS, Cumulus allowed Muller the discretion and ability to engage in, malicious, and defamatory speech in the course of his WLS radio broadcasts and podcasts, without reasonable supervision and without regard to the harm such conduct had caused and would continue to cause to third persons and without regard to Muller's history of injuring others through defamatory speech in the course of his employment as a radio personality.

107. When Cumulus failed to reasonably supervise Muller, it breached its duty of reasonable care, given Muller's prior history of defamatory speech in the course of his radio broadcasts.

108. Cumulus' breach of its duty of reasonable care by failing to adequately supervise Muller and retaining Muller despite its knowledge of his history of defamatory speech in the course of his radio broadcasts resulted in Muller's defamation of MacDonald and his public depiction of MacDonald in a false light on WLS radio, through Internet streams of his WLS radio broadcasts, and in the Mancow Daily Podcasts and proximately caused injury to MacDonald's reputation and his being depicted in a false light.

109. As a proximate result of Cumulus' negligent supervision of Muller, MacDonald was defamed, depicted in a false light, and suffered humiliation, anxiety, embarrassment, mental anguish, monetary damage, and injury to his reputation.

WHEREFORE, Plaintiff, James MacDonald respectfully requests Judgment be entered in his favor and against Cumulus for compensatory damages in excess of \$50,000, costs of suit, and any other relief the Court deems appropriate.

COUNT XVI
Reckless Supervision and Retention
(Against Cumulus)

110. MacDonald realleges paragraphs 1-32, 89-93, and 91-106 above.

111. When Cumulus failed to supervise Muller, it recklessly breached its duty of reasonable care and acted in reckless disregard of Muller's prior history of defamatory speech in the course of his radio broadcasts.

112. Cumulus' recklessness in failing to adequately supervise Muller and retaining Muller despite his defamatory speech permitted Muller the discretion and ability to maliciously defame MacDonald and depict him in a false light over the public airwaves, on the Internet, and in the Mancow Daily Podcasts, and proximately caused damage to his reputation.

113. Cumulus' breach was reckless in light of its own experience and knowledge of Muller's propensity to defame subjects of his radio broadcasts and its Vice President and Marketing Manager of Cumulus Chicago, Marv Nyren's prior termination of Muller at WKQX (Q101), knowledge of Muller's speech at issue in the *Dahl* and *Van Horne* cases, and knowledge of the settlements in those cases based upon Muller's on-air speech.

114. As a proximate result of Cumulus' reckless supervision of Muller, MacDonald was defamed, depicted in a false light, and suffered humiliation, anxiety, embarrassment, mental anguish, monetary damage, and injury to his reputation.

WHEREFORE, Plaintiff, James MacDonald respectfully requests Judgment be entered in his favor and against Cumulus for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and any other relief the Court deems appropriate.

COUNT XVII
Eavesdropping
(Muller and Cumulus)

115. MacDonald realleges paragraph 14 above.

116. On February 12, 2019, in the course of Muller's WLS broadcast and internet stream, and as published by Cumulus through podcast on the Internet via The Mancow Daily, Muller played excerpts from a surreptitiously intercepted recording of James MacDonald's voice in which MacDonald was depicted as making derogatory comments about persons known in Christian evangelical circles, Mark Galli, Harold Smith, and Julie Roys. (See the Mancow Daily, February 12, 2019 podcast at 1:07:38-1:08:00; 1:08:00-04; 1:08:45-1:09:02; 1:19:43-1:19:57; 1:23:05-1:254:31).

117. MacDonald's statements, as broadcasted, streamed and otherwise published by Muller and Cumulus, was a private conversation between James MacDonald speaking on the telephone in the presence of Walk in the Word employees Daniel Sumpter and Wayne Shepard on one side, and Johnnie Moore, a noted Christian evangelical leader and public relations specialist, on the other side, from an enclosed and soundproof studio at the Harvest Bible Chapel campus in Elgin, Illinois with no outsiders or extraneous participants known to be listening, invited to listen, or listening with MacDonald's knowledge, authorization or consent.

118. Unknown to MacDonald, in the course of or prior to the conversation, a confederate had turned on the live microphone of the studio so the private telephone conversation could be heard, intercepted, and recorded in the next room, without MacDonald's or Moore's knowledge, authorization or consent.

119. Muller took the unauthorized, surreptitiously recorded statements, edited them, and, with Cumulus on February 12, 2019, published the edits in the course of his WLS radio

program, depicting MacDonald to the general public in a threatening, malicious, and unfavorable light.

120. The recording was made through eavesdropping as defined in 720 ILCS 5/14-1 as MacDonald had a reasonable expectation of privacy in the private telephone conversation that took place in a closed-door, soundproof room, and he had not given authorization or consent to uninvited third parties outside the room to listen to the private conversation via an electronic device or record same and lacked knowledge that the conversation had been intercepted through a listening device and was being recorded.

121. Muller knew, or should have known, that the telephone conversation was private and was recorded unlawfully, and without notice, consent, or authorization. The content of the conversation was of a sensitive nature and the means through which Muller received the recording, was not through an official channel or through the auspices of Harvest Bible Chapel, Walk in the Word, or MacDonald. Indeed, Muller acknowledged on the air that the recording had been provided to him “anonymously”.

122. Muller did not have consent from any party to the conversation to edit and/or broadcast and disseminate to the public the private telephone conversation before broadcasting selective portions of it on the air through Cumulus or distributing same through streams and/or podcasts through any other source.

123. One who uses or discloses any information he knows or reasonably should know was obtained from a private conversation is liable for eavesdropping in violation of ILCS 720 §5-14-2(s)(5) unless he does so with the consent of all the parties.

124. The microphone used to surreptitiously intercept the private telephone conversation of James MacDonald was an eavesdropping device as defined in 720 ILCS §5/14-1(a).

125. At the time Muller published the excerpts from the illegally recorded private conversation on WLS radio he was acting as the agent of Cumulus.

126. As a proximate result of Muller's eavesdropping, MacDonald suffered mental anguish, humiliation, anxiety, monetary damage and injury to his reputation.

127. Muller's conduct in broadcasting portions of an illegally recorded, private telephone conversation was done with a wanton disregard for MacDonald's rights and privacy.

WHEREFORE, Plaintiff, James MacDonald respectfully requests that Judgment be entered in his favor and against Matthew "Mancow" Muller, Cumulus Media , jointly and severally, that a injunction be entered to permanently restrain Muller and Cumulus from broadcasting any further portions of, or repetitions of MacDonald's private conversations without MacDonald's consent or authorization, compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and any other relief the Court deems appropriate.

COUNT XVIII
Eavesdropping
(Muller and Does 1-5)

128. MacDonald realleges paragraph 33 above.

129. On February 19, 2019, in the course of Muller's The Mancow Podcast, Muller broadcasted excerpts from a surreptitiously recorded telephone conversation with a third party in which MacDonald was depicted as making derogatory comments about persons known in Christian evangelical circles, Mark Galli, Harold Smith, and Julie Roys.

130. MacDonald's statements, as broadcasted, streamed and otherwise published by Muller and Does 1-5, was a private conversation between James MacDonald speaking in the presence of Walk in the Word officers, Daniel Sumpter and Wayne Shepard on one side, and Johnnie Moore, a noted Christian evangelical leader and public relations specialist on the other

side, from an enclosed and soundproof studio at the Harvest Bible Chapel campus in Elgin, Illinois with no outsiders or extraneous participants known to be listening, invited to listen, or listening with MacDonald's knowledge, authorization or consent.

131. Unknown to MacDonald, in the course of, or prior to, the conversation, a confederate had turned on the live microphone of the studio so the private telephone conversation could be heard, intercepted, and recorded in another part of the facility, without MacDonald's or Moore's knowledge, authorization or consent.

132. Muller took the unauthorized, surreptitiously recorded statements, edited them, and on the Mancow Podcast on February 19, 2019, published portions thereof to the public through the Internet, depicting MacDonald to the general public in a threatening, malicious, and unfavorable light.

133. The recording was made through eavesdropping as defined in 720 ILCS 5/14-1 as MacDonald had a reasonable expectation of privacy in the private telephone conversation that took place in a closed-door, soundproof room, and he had not given authorization or consent to uninvited third parties outside the room to listen to the private conversation via an electronic device or record same and lacked knowledge that the conversation had been intercepted through a listening device and was being recorded.

134. Muller, knew, or should have known, that the telephone conversation was private and was recorded unlawfully, and without notice, consent, or authorization. The content of the conversation was of a sensitive nature and the means through which Muller received the recording, was not through an official channel or through the auspices of Harvest Bible Chapel, Walk in the Word, or MacDonald. Indeed, Muller acknowledged on the air that the recording had been provided to him "anonymously".

135. Muller did not have consent from any party to the conversation to broadcast and disseminate to the public the private telephone conversation before disseminating portions of on the Internet through streams and/or podcasts.

136. One who uses or discloses any information he knows or reasonably should know was obtained from a private conversation is liable for eavesdropping in violation of ILCS 720 S 5-14-2(s)(5) unless he does so with the consent of all the parties.

137. The microphone used to surreptitiously intercept the private telephone conversation of James MacDonald was an eavesdropping device as defined in 720 ILCS 5/14-1(a).

138. At the time Muller published the excerpts on the Mancow Podcast, Mancow acted individually and/or with one or more of Doe Defendants 1-5.

139. As a proximate result of Muller's eavesdropping, MacDonald suffered mental anguish, humiliation, anxiety, monetary damage, and injury to his reputation.

140. Muller's conduct in broadcasting portions of an illegally recorded, private telephone conversation was done with a wanton disregard for MacDonald's rights and privacy.

WHEREFORE, Plaintiff, James MacDonald respectfully requests that Judgment be entered in his favor and against Matthew "Mancow" Muller and Doe Defendants 1-5, jointly and severally, that a injunction be entered to permanently restrain Muller and Doe Defendants 1-5 from disseminating any further portions of, or repetitions of MacDonald's private conversations without MacDonald's consent or authorization, compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and any other relief the Court deems appropriate.

Respectfully submitted,

By: /s/ Phillip J. Zisook
One of the Attorneys for James MacDonald

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