REPORT AND RECOMMENDATION
(Objections submitted for exhibit by Defendant McGill)

On referral to this Court for Determination and/or Report and Recommendation and for a hearing and Order and/or Report and Recommendation as to sanction, if warranted [D.E.149], is the Plaintiff's Notice of Additional Violations of Court Orders and Motion for Order Setting Evidentiary Show Cause Hearing [D.E. 148]. Previously, this Magistrate Judge recommended that both the Defendant McGill and his agent Lucan Chartier be found in contempt of violating the District Court's Orders [D.E. 111 and 136].

Defendant McGill apparently remains elsewhere in this world, with some indication he may be located on the Continent of Africa. Wherever he is, Defendant has internet access through which he effectively uses to continue to guide and direct his agent Mr. Chartier of McNairy County, Tennessee.

Objection: The statement that "Defendant has internet access through which he effectively uses to continue to guide and direct his agent" is an assumption and the on-going basis for issuing further sanctions against Defendant McGill. This "basis" is unfounded in truth.

Counsel has previously published Defendant's contact information for the Court's benefit. Defendant wonders why "Defendant McGill apparently remains elsewhere in this world, with some indication he may be located on the Continent of Africa" is necessary to be included in this report.

During the most recent Evidentiary Hearing on December 16, 2010, Plaintiff and Defendant were represented by their attorneys. Again, Defendant McGill was not in attendance. The only witness present, Mr. Chartier, testified and admitted he has again replaced Church signs after Plaintiff had properly removed them, pursuant to District Court Order, on October 10, 2010. He further acknowledged that he still publishes and edits information on the websites, even though such actions were expressly prohibited by the United States District Court in previous Orders [D.E. 98 and 112]. Mr. Chartier readily conceded his actions were in violation of the District Court's Orders, and testified that he will continue to violate these Orders.

According to the testimony of Mr. Chartier, Defendant McGill and he exchanged messages about his latest sign restorations in October. As such, the Court again finds that Messrs. McGill and Chartier continue to operate in tandem to violate the District Court's Orders, and that their actions are intentional and in contempt of said Orders.

Objection: The Judge again makes an assumption of message content without factual verification. Defendant McGill might have sought to dissuade Mr. Chartier from violating the court's orders within the "exchanged messages." How can the message content be known without direct testimony or examination of the messages themselves?

It is clear that Defendant McGill is able to instruct and manipulate his young protégé to accomplish these contemptible acts. It continues to be apparent that Defendant McGill accomplishes this from a distance, well beyond the reach of this Court.

Objection: The Judge says "It is clear that Defendant McGill is *able*…." Does *ability* or opportunity to do thus and so establish positive testimony of fact? On what grounds does the Judge aver that Defendant McGill is "able to…*manipulate* his young protégé?" The conclusions of the Magistrate are based on speculation only, and nothing respecting his basis for decision is "clear."

Based on the above, the Magistrate determines that Defendant McGill again is guilty of contempt in violating the Court's aforementioned Orders. As the principal, he is liable for the actions of his agent, Mr. Chartier. Additionally, the Defendant is directly responsible for these violations since it appears he instructed and otherwise aided Mr. Chartier to perform these acts in violation of the District Court's Orders.

Objection: The Judge continues making unsubstantiated allegations. He says, "since it *appears* he instructed and otherwise aided Mr. Chartier…," which is in no way based on verifiable evidence. While the Court has defined church members as Defendant's "agents," the structure of Christ's Church is not made up in that way. Each Church member is "the agent" of Christ Himself and not a pastor or elder of the earthly organization.

As to Mr. Charier, he has testified during both hearings, and it appears he seeks a passive confrontation with the Court. Through statements readily admitting the contemptuous acts and affirming, that regardless of what the Court says or does, he will continue in his disobedience, he seems to invite the Court to sanction him with jail time. With some understanding of his youth, his misguided efforts and the instructive influences of Defendant McGill, this Court has been most lenient, even permitting Mr. Chartier not to answer questions that he determines conflict with his beliefs. This Magistrate Judge has had no interest in providing this young man opportunity for a degree of "martyrdom" by recommending jail as a sanction. Nevertheless, Mr. Chartier is in contempt of the District Court Orders, and he indicates he is resolute to remain so.

Objection: To suppose that Mr. Chartier seeks an "opportunity for a degree of 'martyrdom,'" is additional evidence of the Magistrate's imaginative inventions. The Court may discover truth with time and rational investigation.

On balance with the leniency shown Mr. Chartier, it is time to hold him accountable for the contemptible actions, misguided or not. During Mr. Chartier's presentation in court, on both occasions, he has attempted to set out the reasoning why he and Defendant McGill are entitled to use the Plaintiff Church's name. Mr. Chartier argues that they are entitled to do so because they believe the Plaintiff Church has strayed at some level from the beliefs of the founder(s), and as such, Defendant McGill and Mr. Chartier, as ones who more closely follow the founder(s), are now able to use the name.

Objection: While some of what the Judge states in the above paragraph is true, he misses the salient *reason* for our use of "Creation Seventh Day Adventist." It is the name Almighty God has given us to employ in our "religious observances and missionary services." We are under Divine mandate to use that name. And in keeping with that mandate, the name describes who we are. If the Court wishes to change "who we are," Defendant is not willing to submit.

As consistently pointed out by the Magistrate Judge, this dispute should have been resolved within their Church channels. Understandably, the Courts have no role in such controversies. However, Defendant McGill and Mr. Chartier chose a radically different path by starting their own church, creating websites and co-opting the name of Plaintiff Church. Thus, relying on their own interpretation of Biblical scripture,[1] the two ignore the federal trademark law.

Objection: The Judge's assertion is that "Defendant McGill and Mr. Chartier…[started] their own church…." But nothing could be farther from the truth. Mr. Chartier was not involved in any of the foundation plans of the Creation Seventh Day Adventist Church. Defendant McGill did not "start" any church. It was founded by YAHWEH and by His explicit commands. Defendant McGill and others in concert with him merely obeyed the mandates of the Creator as Moses did in the wilderness of Sinai. Mr. Chartier only accepted the history of the Church's foundation principles.

In doing so, they fail to grasp two significant concepts important to civil government and religion in this Country. First, they fail to grasp the importance of obeying the federal trademark law.

Objection: Defendant McGill and Mr. Chartier respect properly applied commercial trademark law. They advocate the long-held concept of separation of civil government and religion and decry the use of civil government to enforce religion by law. When the State regulates "religious observances and missionary services" via trademark law, they violate, not only the principles of the US Constitution but, the law of God itself.

Such law exists for the protection of the original, so that the user of a trademarked service, product or in this case, church name, knows it is the real thing and not something else.

Objection: It is impossible to decide "the original" religion via trademark law. Religion is based in the tenets of the beliefs. The *original beliefs* make up the *original religion.* The separation of church and state forbids courts from deciding religious originals. Therefore, trademark law is an inappropriate device for "protecting" or deciding "the real thing."

If Plaintiff Church did not have its name protected with a trademark, anyone could use the Plaintiff's name, regardless of beliefs.

Objection: This statement implies that the courts have jurisdiction in protecting the beliefs of religious organizations (which is not true).

However, more than that, the Seventh-day Adventist Church existed from 1863 until 1981 without a trademarked name. That amounts to 118 years of no "protection" by the government via trademark law. During those years, dilution of the name was not a matter of concern. It is significant to understand that only a few splinter groups formed outside of the mother church during those years.

It is remarkable to note that since the "protection" of trademarks became the Plaintiffs' chosen option in 1981, no less than 150 different groups have been threatened with litigation

for "unauthorized use" of the name Seventh-day Adventist. It is the "dilution of the name" *within* the denomination that has resulted in so many off-shoot groups desirous of using the name.

How many McGills and Chartiers, with differing theologies, would it take for the name of Plaintiff Church to become diluted to the point of non-recognition?

Objection: History has shown that the more groups there are using a name, the wider the influence of the particular religion. The name "Baptist" should suffice for one example. Facts will show that within the Seventh-day Adventist Church itself there are widely varying theologies, which has done more than anything else to "dilute" the religion. The dilution of the religion *within* the denomination itself is what has spawned so many off-shoots that wish to use the name.

Extending Defendant's logic, one could open a Church using the name of Plaintiff, support it with websites and then attempt to make, for example, Presbyterians or Buddhists of the congregants. Trademark laws protect against such practices, and like it or not, protect against what Defendant McGill is doing on his own and through Mr. Chartier, even though Defendant "believes" he is more correct in his dogma than Plaintiff Church.

Objection: This "exten[sion of] Defendant's logic" is hypothetical at best. The Judge demonstrates no knowledge of the *religion* of Seventh-day Adventism. Even in the SDA Church's present apostate condition, the above scenario could not happen. It is an impossibility that use of the name Seventh-day Adventist could result in the confirmation of congregants with Presbyterian or Buddhist beliefs. This is totally absurd!

Second, Defendant McGill and Mr. Chartier still have the freedom to practice their own religious beliefs and may form churches from South McNairy County, Tennessee to Africa and back again, so long as their church name is different and distinguishable

[1] Acting in this fashion, Messrs. Chartier and McGill ignore the numerous exhortations within Bible for believers to obey the civil authorities, institutions and law. *See* Romans 13:1, 2, 4 and 7; 1 Peter 2:13 and 16; and Titus 3:1. Matthew 22:21contains the spoken words of Jesus, "Render unto Caesar the things that are Caesar's and to God the things that are God's."

from Plaintiff Church.[2]

Objection: The Judge consistently distorts matters of fact. It is *impossible* to practice *Creation Seventh Day Adventism* without employing the name "Creation Seventh Day Adventist." The Judge in *Kinship* admitted that members of a religion have no other options for a name than the name of their religion.

In conclusion, this Court can no longer ignore the continuing and contemptible violations of the District Court Orders by both Defendant McGill and Mr. Chartier. Therefore, it is the recommendation of this Magistrate Court that Messrs. McGill and Chartier, each be fined $500, that Defendant McGill reimburse Plaintiff for its attorneys' fees associated with the filing of this current motion and appearing in Court on December 16, 2010 and finally, that Defendant McGill and Mr. Chartier each be sentenced to serve thirty (30) days in the custody of the U.S. Marshal

Service. Further, the Court recommends that twenty (20) days of Mr. Chartier's sentence be suspended pending his good behavior.

Objection: There is no evidence to suggest further sanctions are necessary against the Defendant if the December 16th hearing is the sole basis of such recommendations. In the alternative, if there are to be sanctions issued for the Defendant, they should not be of the nature of "criminal contempt" which insinuates "punitive measures." Defendant's "civil disobedience" has from the outset been in conflict with the Plaintiffs and not the Court's authority per se.

Respectfully submitted this 23rd day of December, 2010,

s/Edward G. Bryant
EDWARD G. BRYANT
U.S. MAGISTRATE JUDGE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.

2 Acts 4 and 5 of the Bible involve Peter and others disobeying civil authority when they are ordered not to speak of Jesus or in His name, which is clearly not analogous in the present case.

General Objection:

Defendant avers that the Magistrate's use of Bible texts in the legal process is highly irregular and unnecessary. This is particularly made apparent by the Judge's own admission when saying, "As consistently pointed out by the Magistrate Judge, this dispute should have been resolved within their Church channels. Understandably, the Courts have no role in such controversies."

Obviously, the Magistrate holds different beliefs from Defendant and Mr. Chartier with respect to meanings and application of Bible Scripture. Never the twain shall meet. "Spiritual things are spiritually discerned," and legal matters are legally discerned. Defendant prays that what belongs to God will be left alone by Caesar. Certainly, what belongs to Caesar shall be yielded by Defendant.

Respectfully submitted,

Defendant McGill
January 7, 2011