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Honorable James L. Robart

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BRIAN JACOBSEN, CONNIE  
JACOBSEN, RYAN KILDEA and ARICA  
KILDEA,

Plaintiffs,

vs.

MARK DRISCOLL and JOHN SUTTON  
TURNER,

Defendants.

No. 2:16-CV-00298 JLR

DECLARATION OF BRIAN FAHLING  
IN SUPPORT OF PLAINTIFFS'  
OPPOSITION TO DEFENDANTS  
TURNER AND DRISCOLL MOTIONS  
TO DISMISS WITH PREJUDICE AND  
TURNER'S MOTION FOR  
SANCTIONS

NOTED ON MOTION CALENDER:  
JULY 8, 2016

I, Brian Fahling, declare as follows:

I am over the age of eighteen years and I am competent to testify to the matters herein.

I am the attorney for Plaintiffs in the above-captioned matter.

1           1.       In April 2014, I was retained by a group of former Mars Hill Church (MHC)  
2 staff, elders and members after they had learned that MHC planned to implement a new email  
3 retention policy that would have required the deletion of all emails older than 90 days. The  
4 group was concerned that the policy was a deliberate attempt to destroy documents that might  
5 be prejudicial to MHC and its leadership in potential litigation. I sent a preservation letter  
6 (data retention request) to MHC and its general counsel requesting that the church stop the  
7 implementation of the new email deletion policy and requested that MHC preserve the stored  
8 data in anticipation of litigation. In the letter, I indicated that areas of anticipated litigation  
9 included RICO, fraud, conspiracy, libel, slander and intentional infliction of emotional  
10 distress. At the time I was contacted, I was only vaguely aware of the name Mark Driscoll  
11 and I had never heard of Sutton Turner, I simply did not, and do not care who they are, I  
12 cared only that the facts and the law in the case against them easily met the heightened  
13 pleading requirements for RICO and fraud. It was on that basis alone that I agreed to  
14 represent Plaintiffs in the litigation against Defendants. The only interest I have had  
15 throughout has been to represent my clients to the best of my ability.

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18           2.       In November 2014, I was contacted again by former MHC members, including  
19 Plaintiffs, regarding representing them against MHC and its leadership, and on December 24,  
20 2014, I sent a letter to MHC general counsel, identifying potential defendants, including  
21 Turner and Driscoll, and reiterating Plaintiffs desire for mediation and detailing the basis for  
22 a potential RICO lawsuit. I did not hear anything from Driscoll, Turner, or attorneys  
23 representing them in response to my letter and I took no further action.  
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1           3.       In December 2015, Plaintiffs authorized me to begin drafting a complaint. I  
2 spent much of the next three months conducting extensive research, legal and fact based, in  
3 preparation for, and drafting the complaint.

4           4.       Up until this point, I had been paid by funds that had been raised through a  
5 GoFundMe account, so I agreed to draft the complaint in anticipation of filing based upon the  
6 reasonable expectation that donated funds would continue to be sufficient to pay legal fees  
7 and expenses. I continued to be paid into February 2016 for my work drafting the complaint.

8           5.       Plaintiffs were confident that people would continue donating to the  
9 GoFundMe account and I agreed to file the complaint anticipating that people would donate  
10 to the litigation costs.

11           6.       I explained to Plaintiffs that once the lawsuit was filed, they would have 90  
12 days to raise sufficient funds to begin effective prosecution of the litigation. I estimated that it  
13 would cost \$250,000 to litigate the case, which would include responding to motions to  
14 dismiss, the discovery process, summary judgment motions, pre-trial prep, briefing and  
15 motions, trial, and post-trial motions. I estimated that \$100,000 would need to be raised  
16 before the Defendants could be served to ensure that we could get well into the discovery  
17 process and perhaps beyond. I also explained that if sufficient funds were not raised and, as a  
18 result, Defendants could not be served within the 90-day period prescribed by Rule 4(M), that  
19 the Court would dismiss the case without prejudice.

20           7.       The necessary funds to begin prosecution of the case never materialized, so I  
21 did not serve Defendants.

1           8.       On March 6, 2016, Plaintiffs notified me that Sutton Turner had contacted  
2 them via email through a third party. In his email, Turner “ask[ed] that this communication  
3 be totally off the record and I would ask the Jacobsens and Kildeas to not communicate a  
4 possible meeting with anyone. Bringing attorneys into this discussion might hamper or even  
5 block Christian reconciliation.” I instructed my clients not to respond because of the pending  
6 litigation and explained that any communications with Turner would have to be conducted  
7 through his attorney.  
8

9           9.       On April 7 and 13, 2016, I received an email and letter respectively, from  
10 Defendant Turner’s attorney, Aaron Bigby. In both the email and letter, he stated that he  
11 would waive service on behalf of Turner. At the time I received the email, Plaintiffs did not  
12 have sufficient funds to begin prosecution of the case as they had expected. Since the only  
13 response I could give to Mr. Bigby was that my clients lacked the resources to proceed, I  
14 chose not to respond. I believed it would be unethical to disclose the financial difficulty my  
15 clients were having. With nearly two months still remaining to effect service of process  
16 before the 90-day period for service expired, I anticipated that I would be able to accept his  
17 offer to waive service. If sufficient funds to proceed had been available, I would have  
18 immediately accepted waiver of service for Turner and proceeded to serve Driscoll as well.  
19

20           10.       When the Jacobsens realized that donations to the GoFundMe account would  
21 not be adequate for me to have the Defendants served, they told me they would finance the  
22 litigation themselves. I refused to accept their offer because I knew that the Jacobsens would  
23 be using their retirement savings to finance the litigation, and I also knew that Mr. Jacobsen  
24 had been unemployed for two years. We were all mistaken in our belief that the GoFundMe  
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1 account would fund the litigation, but I could not allow the Jacobsens to sacrifice their  
2 retirement, that was not what I agreed to. If it had been up to them, the Defendants would  
3 have been timely served.

4 I certify under penalty of perjury under the laws of the State of Washington that the  
5 foregoing is true and correct to the best of my knowledge.

6 DATED this 5<sup>th</sup> day of July, 2016, in Kirkland , Washington.

7  
8 By: /s/Brian Fahling  
9 WSBA #18894  
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12 Kirkland, WA 98033  
13 Telephone: 425.202.7092

14 Attorney for Plaintiffs  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 5th, 2016, I mailed via First Class Mail and Email, and electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

**VIA CM/ECF**

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**VIA FIRST CLASS MAIL**

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Attorneys for Defendant Mark Driscoll  
DATED this 5<sup>th</sup> day of July, 2016, in Kirkland, Washington.

/s/ Brian Fahling  
Brian Fahling