IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND – BALTIMORE DIVISION

ALBERT SNYDER,
Plaintiff,
vs. Case No. 1:06-cv-1389-RDB

FRED W. PHELPS, SR.;
SHIRLEY L. PHELPS-ROPER;
REBEKAH A. PHELPS-DAVIS; and,
WESTBORO BAPTIST CHURCH, INC.,
Defendants.

**DEFENDANTS FRED W. PHELPS'S AND WESTBORO BAPTIST CHURCH'S POST-TRIAL MOTIONS, INCLUDING:**
**MOTION FOR JUDGMENT AS A MATTER OF LAW;**
**MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT;**
**MOTION FOR RECONSIDERATION AND REHEARING;**
**MOTION TO ALTER OR AMEND THE JUDGMENT;**
**MOTION FOR NEW TRIAL AND/OR REMITTUR;**
**MOTION FOR RELIEF FROM JUDGMENT;**
**AND/OR**
**MOTION FOR ANY OTHER RELIEF IN LAW AND EQUITY WARRANTED UNDER THE FACTS AND LAW**

Defendants Fred Phelps, Sr. and Westboro Baptist Church ("Defendants") respectfully move for post-trial relief, including judgment in their favor, in full, on all counts and theories, as a matter of law; judgment in their favor, in full, on all counts and theories notwithstanding the verdict; reconsideration and rehearing on all counts, issues and theories; an order altering or amending the judgment on all counts, issues and theories; relief from judgment on all counts, issues and theories; new trial on all counts, issues and theories; strictly in the alternative and under protest, remittur of the compensatory damages and of the punitive damages; and/or, any other relief warranted in law and equity, under the laws and facts of this case; all pursuant to Rules 50, 52, 59 and

60, Fed. R. Civ. P., and all other applicable rules and authorities; and ultimately relief from the verdict of October 31, 2007 and the related judgment of November 5, 2007, with a full setting aside of the same.

The grounds for this Motion are set forth in the accompanying Memorandum of Points and Authorities.

WHEREFORE, defendants pray for all post-trial relief set forth above, and for full relief from all aspects of the illegal verdict of October 31, 2007 and related judgment of November 5, 2007.

Respectfully submitted,

___/s/_____

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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion was served by the CM/ECF filing system on November 14, 2007, to:

Sean E. Summers, Esq.
Craig Tod Trebilcock, Esq.

Becky Phelps-Davis (by mail only)
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Topeka, KS 66604

Shirley Phelps-Roper (by mail only)
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Topeka, KS 66604

____/s/_____
Jonathan L. Katz

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND – BALTIMORE DIVISION

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Plaintiff,
vs. Case No. 1:06-cv-1389-RDB

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REBEKAH A. PHELPS-DAVIS; and,
WESTBORO BAPTIST CHURCH, INC.,
Defendants.

**DEFENDANTS FRED W. PHELPS'S AND WESTBORO BAPTIST CHURCH'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF: POST-TRIAL MOTIONS, INCLUDING: MOTION FOR JUDGMENT AS A MATTER OF LAW; MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT; MOTION FOR RECONSIDERATION AND REHEARING; MOTION TO ALTER OR AMEND THE JUDGMENT; MOTION FOR NEW TRIAL AND/OR REMITTUR; MOTION FOR RELIEF FROM JUDGMENT; AND/OR MOTION FOR ANY OTHER RELIEF IN LAW AND EQUITY WARRANTED UNDER THE FACTS AND LAW**

Rebekah A. Phelps-Davis and Shirley L. Phelps-Roper, as pro se defendants herein, hereby jointly move for post-trial relief, including judgment in their favor, in full, on all counts and theories, as a matter of law; judgment in their favor, in full, on all counts and theories notwithstanding the verdict; reconsideration and rehearing on all counts, issues and theories; an order altering or amending the judgment on all counts, issues and theories; relief from judgment on all counts, issues and theories; new trial on all counts, issues and theories; strictly in the alternative and under protest, remittur of the

compensatory damages and of the punitive damages; and/or, any other relief warranted in law and equity, under the laws and facts of this case; all pursuant to Rules 50, 52, 59 and 60, Fed.R.Civ.P., and all other applicable rules and authorities; and ultimately relief from the verdict of October 31, 2007 and the related judgment of November 5, 2007, with a full setting aside of the same. In submitting this motion and brief of arguments, defendants are not waiving any other issue on appeal which may not be specifically addressed herein. Also, Defendants reincorporate by reference all oral motions made by Defendants during the trial under Fed. R. Civ. P. 50.

Defendants submit the following brief with legal arguments and authorities in support of this motion is submitted herewith:

Introduction

The jury verdict of October 31, 2007 is the product of passion, prejudice and bias, based upon disagreement with defendants' religion. Further, there is no basis in law or fact for the fact or amount of the verdict; it is not supported by any evidence that would warrant any verdict, let alone an outrageous verdict of this size. In addition to a verdict that punishes speech based on content, the verdict also constitutes a violation of the Free Exercise Clause of the First Amendment in that it clearly targeted one religious viewpoint.

Damages

The verdict and related judgment for alleged damages in this case should be set aside; and/or a new trial should be allowed because of the various factual and legal flaws

in the verdict; and/or, strictly in the alternative, under protest, defendants move for remittur, for at least these reasons:

1. The amount of compensatory damages awarded violates the statutory cap under Maryland law for non-economic damages of $650,000. *See* Md. Ann. Code, Cts. & Jud. Proc. art. 11-108. Plaintiff has not claimed any economic injury; instead, he has only claimed an indefinable emotional injury and exacerbation of diabetes.

2. Further, the amount of compensatory damages, even if remitted to the $650,000 statutory cap, is not warranted by the evidence. The evidence – in the light most favorable to plaintiff – supports nothing but a slight increase to depression and diabetes, both of which pre-existed the alleged wrongs listed in the Complaint, and both of which are very well under control even with the combination of his son's death and his alleged injuries because he didn't like defendants' words.

3. With regard to punitive damages, the instruction given by the Court was not sufficient to provide a clear standard for assessing and determining the amount of punitive damages; as such, the jury was left to insert its extreme passion and hatred for defendants' religious views into the equation, and render a runaway and absurdly large verdict, all contrary to the requirements of due process through the Fifth Amendment. See *Darcars Motors of Silver Spring, Inc. v. Borzym*, 150 Md.App. 18, 65-66, 818 A.2d 1159, 1185-1186 (2003).

> As the law historically focused on the evil of excessive punitive damages awards, the common law of Maryland has always provided a defendant with the right to seek a reduction, initially from the trial court and, should that effort fail, from the appellate court. "[L]ike any award of damages in a tort case, the amount of punitive damages

> awarded by a jury is reviewable by the trial court for excessiveness." *Ellerin v. Fairfax Savings*, 337 Md. 216, 242, 652 A.2d 1117 (1995); *Bowden v. Caldor*, 350 Md. At 21, 710 A.2d 267. In line with the relatively recent Supreme Court decisions in *Pacific Mutual Life Insurance co. v. Haslip*, 499 U.S. 1, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991); *Honda Motor Co. v. Oberg*, 512 U.S. 415, 114 S.Ct. 2331, 129 L.Ed.2d 336 (1994); and *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996). Maryland now recognizes that a defendant also enjoys an additional constitutional right, under the Due Process Clause of the Fourteenth Amendment, not to be subjected to an excessive punitive damages award. *Alexander v. Evander*, 88 Md.App. 672, 709-15, 596 A.2d 687 (1991); *Bowden v. Caldor*, 350 Md. At 25-26, 710 A.2d 267.

4. In addition to violating due process because of its excessiveness, the punitive damages award violates due process because the jury could have – and obviously did – consider alleged harm to others and/or other matters beyond what injury plaintiff allegedly experienced. See *Philip Morris USA v. Williams*, ---- U.S. ----, 127 S.Ct. 1057, 166 L.Ed.2d 940 (2007).

5. A trial court should not hesitate to set aside a jury's verdict, where it is so grossly excessive as to be explainable only on the basis of sympathy or prejudice. See *Ford Motor Co. v. Mahone*, 205 F.2d 267, 272-273 (4th Cir. 1953).

6. Further, under Maryland law, reference to religion to inflame the passions of the jury is improper and prejudicial, and should result in mistrial and/or a new trial. See *Tierco Maryland, Inc. v. Williams*, 381 Md. 378, 410-412, 849 A.2d 504, 523-524 (2004). "Respondents employed race overtly to overwhelm the material issues of provocation and of the reasonableness *vel non* of the actions of the Six Flags employees. It is apparent to us from our review of the record that the focus of the trial shifted to the propriety of the decision not to let Shaniqua enjoy the

ride." *Id.* at 411. Equally, here, it is apparent that the focus of this trial shifted to what Defendants believe.

7. Under Maryland law, punitive damages have to be supportable under the facts. *See* Maryland Code, Art. 10, § 913.

8. Maryland law says the amount of punitive damages must not be disproportionate to the gravity of the defendants' wrong. *Bowden v. Caldor*, Inc., 350 Md. 4 , 28 (1998). Defendants followed the law; stayed in public places; and said what they believe to be true according to the Scriptures.

"The purpose of punitive damages is not to bankrupt or impoverish a defendant." *Bowden v. Caldor*, Inc., 350 Md. 4 , 28. Of course, the purpose of punitive damages is not to bankrupt and impoverish defendants so they will stop saying words plaintiff does not want to hear.

Maryland law says that the deterrence value of the amount awarded should be considered. *Bowden v. Caldor*, Inc., 350 Md. 4, 29. The problem with applying that factor here is that the law does not allow parties to use civil court actions to silence protected activity. There is no history by defendants of noncompliance "with known statutory requirements," and in fact the evidence shows the opposite – defendants always comply with the law, and self-regulate in terms of reasonable (and beyond) time, place and manner restrictions. The record in this case (as discussed further below) shows that there is *no* time, place or manner in which plaintiff would be satisfied, or which the Court would apply. Hence the jury was

given the legally flawed open-ended power to try to punish to the point of silencing.

Maryland law says a comparison should be made to other punitive damages awards, especially in comparable cases. *Bowden v. Caldor*, Inc., 350 Md. at 31. Of course, this trial is unique in that it is rare to put people on trial for their religious beliefs. In *Bowden*, the court noted that the largest punitive damages award that had been upheld by that court was $700,000. Others were in the amount of $100,000, $40,000, $35,000 and $20,000. "We recognize that the awards involved in the older cases cited above, if adjusted for inflation, would be larger in terms of present dollars. Nonetheless, a multi-million dollar award of punitive damages is entirely beyond the range of punitive damages awards previously upheld by this Court." *Id.* at 33.

Maryland law says where separate torts are alleged out of a single occurrence or episode, that fact should be considered when reducing punitive damages awards. *Bowden v. Caldor*, Inc., 350 Md. at 34. In this case, lots of questions were put on the verdict form – with no guidance, and no requirement that the jury articulate which words they relied on for finding liability and issue punitive damages – giving the jury many opportunities to keep adding millions of dollars.

Maryland law says the reasonable costs and fees incurred by plaintiff should be provided to the jury, which would give them the "'aid of one fairly definite factor which they may take into account in fixing the amount' of punitive

damages," *Bowden v. Caldor*, Inc., 350 Md. at 36. That would have at least provided *one* standard in this case. Since the compensatory damages award was so far beyond the evidence – there was *zero* evidence left to justify the punitive damages award. In this case, plaintiff has maintained a Web page through his attorneys – http://www.matthewsnyder.org (last checked Nov. 13, 2007) -- through which he has solicited funds throughout these proceedings. That information should have been given to the jury. Further, his attorneys have stated publicly they are doing this case pro bono, so plaintiff has not incurred fees. This factor militates against this ridiculously large verdict, and further underscores it is the product of passion, prejudice, bias, and religious hostility.

Maryland law says that the ratio of punitive damages to compensatory damages should be considered: "Although courts in cases not controlled by statutory provisions have not regularly drawn analogies to such treble damage statutes, nonetheless we believe that the three to one ratio frequently appearing in statutory provisions is some indication of public policy concerning the relationship of monetary punishments to actual damages. While this public policy may appropriately be considered along with other factors, we do not suggest that punitive damages awards in most cases must reflect this ratio." *Bowden v. Caldor*, Inc., 350 Md. at 39.

In this case, since Maryland law limits nonpecuniary damages to $650,000 (which amount the evidence does not in any way support in this case, given the very limited nature of any alleged injury), that is the figure – at most – that should

be considered for the ratio. That means that the punitive damages of $8 million were over ten times the amount of compensatory damages.

The standards set out in *Bowden* mandate a new trial (or strictly in the alternative, under protest, a remittur). There were no life-threatening injuries here and in fact no permanent injury. There was no pecuniary loss. The events were of very short duration, and involved words flowing from the religious beliefs of the Defendants in public arenas. There is no method by which the jury could have determined the arbitrary figures awarded – as to compensatory damages or punitive damages.

Finally, for all the reasons set forth during trial and in Defendants' Summary Judgment filings, a Motion for Judgment as a matter of law under Fed. R. Civ. P. 50 should be granted on the basis of insufficient evidence to permit a verdict, coupled with several errors in the Court's legal instructions to the jury at the beginning and end of trial.

WHEREFORE, Defendants move for all post-trial relief set forth above – including, but not limited to, a new trial and remittur, and for full relief from all aspects of the excessive and wrongly-decided verdict of October 31, 2007. Defendants also request all necessary reconsideration of prior rulings necessary to correct the error reflected in the verdict and judgment.

Respectfully submitted,

___/s/_____

Jonathan L. Katz