IN THE CIRCUIT COURT OF ST. CHARLES COUNTY, MISSOURI

DANNY ROBERSON	)	
	)	
Plaintiff,	)	
	)	Case No.: 2411-CC00522
v.	)	
	)	Division: 4
RACHEL HOMOLAK, *et. al*,	)	
	)	
Defendants.	)	

PLAINTIFF'S SUGGESTIONS IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

COMES NOW Plaintiff, Danny Roberson, through undersigned counsel, and in response to Defendants' Special Motion to Dismiss Under Missouri's Anti-SLAPP Statute states as follows:

Introduction

Defendants slandered Plaintiff and now seek to avoid liability by claiming protections to which they are simply not entitled. Their personal verbal attacks constitute neither privileged opinions, nor are they protected by the First Amendment. Defendants' verbal attacks stopped not at simple expression of disagreement with an alleged "transgender agenda," but crossed the line with false allegations and invidious insinuations that Plaintiff herself engaged in criminal and sexual misconduct. Such allegations are abundantly clear and sufficiently pled in Plaintiff's Petition for Damages and are not protected speech in the instant case.

Plaintiff brings her claims for damages solely for the purpose of seeking redress from Defendants for their tortious conduct, and not, as alleged by Defendants, to end or chill their political speech. Plaintiff sufficiently pleads Defendants Puszkar and Hagedorn defamed her, or in the alternative, improperly cast Plaintiff in a false light. Plaintiff pleads sufficient facts to establish her claims fall outside any recognized protections including any implied within the Anti-SLAPP

statute. Defendants' speech went beyond the scope of political opinion to directly attack and defame Plaintiff, a private individual. Defendants impermissibly used Plaintiff as a singular target and the unwilling poster child for their campaign of slurs as part of their general disdain for transgender persons. When Defendants singled out Plaintiff and insinuated she was engaging in criminal and sexual misconduct, they crossed the line from protected free speech into the realm of actionable defamation.

Plaintiff should further be entitled to her own award of attorney fees against Defendants Hagedorn and Puszkar for having to respond to Defendants' frivolous Anti-SLAPP motion. At the very least, should this Court find Plaintiff's pleadings to be insufficient, it should grant Plaintiff leave to amend.

Legal Standard

Missouri is a state with qualified protections for those who speak in a public hearing, public meeting, and state or political subdivision quasi-judicial proceedings, pursuant to R.S.Mo. 537.528. The law aims to expedite judicial consideration of motions to dismiss and prevent unnecessary litigation expenses for cases where money damages are pled. *State ex rel. Diehl v. Kintz,* 162 S.W.3d 152, 157 (Mo. App. E.D. 2005). The statute does not grant any special defenses or immunities, rather expediting the process in which motions to dispose of the case are heard. *Jiang v. Porter*, 2015 U.S. Dist. LEXIS 172215 (Mo. E.D. 2015). Defendants have the right for their motion to be heard quickly but the special rights allotted end there.

"A motion to dismiss for failure to state a claim on which relief can be granted is an attack on the plaintiff's pleadings." *R.M.A. v. Blue Springs R-IV Sch. Dist.,* 568 S.W.3d 420, 424 (Mo. banc 2019). "Such a motion is only a test of the sufficiency of plaintiff's petition." *Id.* This Court

must accept all properly pleaded facts as true, construe all allegations favorably for Plaintiff, and give the pleadings their broadest intendment. *Id.*

Missouri is a fact pleading state. *Id.,* at 425. To survive a Motion to Dismiss under Rule 55.27, Plaintiff must plead sufficient facts to meet the elements of a recognized cause of action. *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 306 (Mo. banc 1993). Although a plaintiff must plead facts, they need not be evidentiary facts, but must at a minimum be ultimate facts. *R.M.A.,* at 425. "If the petition sets forth any set of facts that, if proven, would entitle the plaintiffs to relief, then the petition states a claim." *Hedrick v. Jay Wolfe Imports I, LLC*, 404 S.W.3d 454, 457 (Mo. 2013). Therefore, the Court should only dismiss a lawsuit where the petition fails to plead facts entitling a plaintiff to relief.

Argument and Analysis

Plaintiff in the present case sufficiently pled ultimate facts supporting her Defamation, False Light, and Conspiracy claims against Defendants Puszkar and Hagedorn. In defamation cases, the plaintiff need only plead the unified defamation elements set out in MAI 23.01(1) and 23.01(2). *Nazeri v. Missouri Valley College,* 860 S.W.2d at 313. Distinctions between slander *per se* and slander *per quod* are no longer necessary. *Id.* A pleading of defamation in slander, or spoken defamation, need not set out the slander "*in haec verba*." *Id.* "All that is required is that there be certainty as to what is charged as the slander." *Id.,* (internal quotes and citation omitted).

I. Plaintiff Sufficiently Pled the Elements of Defamation for a Private Individual.

a. Plaintiff has pled a claim of defamation sounding in slander, not libel, and need not plead the defamatory words *in haec verba.*

As an initial matter, Defendants misdirect the Court, asserting incorrectly this Court should apply the *in haec verba* pleading requirements for libel to Plaintiff's slander claims. Plaintiff has made no allegation cognizable as libel concerning Defendants Hagedorn and Puszkar, thus

Defendant's red herring argument can and should be wholly ignored. However, if this Court does find that Plaintiff should plead statements *in haec verba*, Plaintiff should be granted leave to amend her pleadings. Leave to amend shall be freely given when justice so requires. Rule 55.33.

Plaintiff pled allegations of defamation of her character in the form of slander, i.e. spoken statements made about her to others that were of a defamatory nature, made by Defendants Hagedorn and Puszkar. As to the claims against these two defendants, Plaintiff must plead that Defendants 1) published, 2) a defamatory statement, 3) that identified Plaintiff, 4) that is false, 5) that was published with the required degree of fault, and 6) damaged Plaintiff. *Smith v. Humane Soc'y of United States,* 519 S.W.3d 789, 798 (Mo. 2017). Plaintiff need not plead the defamatory words with specificity, but need only establish with certainty what is charged as the defamation. *Nazeri v. Missouri Valley College,* 860 S.W.2d at 313. It is not necessary for Plaintiff to plead extrinsic facts showing the defamation applies to Plaintiff, but it is sufficient to state generally that the defamation was spoken about Plaintiff. Rule 55.20. Exhibits attached to and incorporated by reference are part of a pleading for all purposes Mo. Sup. Ct. R. 55.12. *See also, Ocello v. Koster,* 354 S.W.3d 187, 197 (Mo. 2011) (stating attached exhibits are included when deciding on the sufficiency of pleadings on a motion for judgment on the pleadings). And finally, because Plaintiff is not a public figure, the requisite standard of fault with regard to the veracity of the statements made is negligence. *Topper v. Midwest Div., Inc.,* 306 S.W.3d 117, 128 (Mo. App. W.D., 2010).

As to Defendant Hagedorn, Plaintiff has satisfied all pleading requirements. Plaintiff attached to her Petition for Damages Exhibits E and H, which are video recordings of the public comment sections of the St. Charles City-County Council meeting of June 12, 2023, and the St. Charles County Library Board meeting of June 20, 2023, respectively. The videos captured Defendant Hagedorn's spoken words during those meetings and were specifically incorporated

into her Petition by reference. Plaintiff's Pet. ¶ 6. By incorporating into her Petition the aforementioned exhibits, which themselves demonstrate all of the elements of her defamation claims, Plaintiff has met her pleading burden for pleading the defamatory statements.

Plaintiff further pled Defendant Hagedorn spoke at both of these public meetings, where her comments were published in an open and public forum to anyone in attendance. Plaintiff's Pet. ¶¶ 60 and 92. The publication element is met when a person communicates a defamatory matter to a third person. *Nazeri,* 860 S.W.2d at 313. Defendants concede the publication of their speech with the assertion of Anti-SLAPP protections in their motion to dismiss, incorrectly alleging Plaintiff is trying to chill their participation in public debate. Plaintiff has met her burden as to the publication element.

At the June 12, 2023, St. Charles City-County Counsel meeting Defendant Hagedorn specifically referred to Plaintiff when she referred to the "man dressed as a woman working at the public library in the children's section." She further referred to Plaintiff when she stated, "this individual" and referred to Plaintiff using the definite pronoun "him" two times. The definite references to "this individual" and to "him" two different times in Hagedorn's speech are not references to some person generally but related specifically to Plaintiff. As indicated by both the context of Hagedorn's comments and their plain meaning, her words refer back to the specific person who is alleged to be the "man dressed as a woman working in the children's section of the St. Charles County Library," and who was previously referred to as ***the*** "Drag Queen Librarian" in comments made by Co-defendant Homolak just minutes before. Plaintiff's Pet. ¶¶ 57–58. Plaintiff is not required to plead extrinsic facts demonstrating that she is the subject of the spoken defamation, but need only aver generally that the statements were made about her. Rule 55.20. Nonetheless, Plaintiff has here demonstrated that the words spoken were clearly about her. The

definite references and context simply do not allow for a different interpretation. It is clear from the context and from Hagedorn's own words that she spoke about Plaintiff. *See, Nazeri,* 860 S.W.2d at 311 (holding that words must be considered in context, and although "technically" not made directly about the plaintiff by omission of Plaintiff's name from a statement insinuating sexual misconduct, such statements must be viewed in context and in accord with the natural ideas they are calculated to convey). Thus, Plaintiff sufficiently pled in her Petition for Damages that Hagedorn's statements were made specifically about Plaintiff at the June 12, 2023, meeting.

At the June 20, 2023, library board meeting, Hagedorn repeated her previous speech and again used definite pronouns in reference to Plaintiff. The speech is incorporated as part of Plaintiff's pleadings in Exhibit H. Plaintiff pled that just like at the June 12, 2023, meeting, Hagedorn's speech followed Homolak's, and the context of the statements shows they both spoke about Plaintiff. Plaintiff's Pet. ¶¶'s 76–95. Defendants may not evade liability by simply claiming they did not know the name of the individual about whom they spoke at the time they uttered their defamatory statements. They clearly referred to a specific person, namely Plaintiff, when making their comments. Plaintiff has sufficiently alleged Hagedorn's comments were made about Plaintiff.

Plaintiff further pled that Hagedorn published false defamatory statements that identified Plaintiff by insinuating Plaintiff was an abuser of children and that Plaintiff was sexually expressing herself to children by the way she dressed while working in the children's section of the public library. Plaintiff's Pet. ¶¶ 61–67 and 92–95. Missouri recognizes that any false allegation of serious sexual misconduct is particularly harmful and actionable for defamation. *Nazeri,* 860 S.W.2d at 312. Plaintiff has further alleged that Hagedorn's allegations of criminal and sexual misconduct attributed to Plaintiff were false (Plaintiff's Pet. ¶¶ 66, 94, 95, 751, 762, 765, 776, 786, and 789), that all such statements were made with the requisite degree of fault (Plaintiff's Pet. ¶¶

753, 754, 755, and that Hagedorn's comments damaged Plaintiff's reputation in the community (Plaintiff's Pet. ¶¶ 757, 766, 781, and 790). Plaintiff has met her pleading requirements regarding all claims against Defendant Hagedorn.

Concerning Defendant Puszkar, Plaintiff has likewise met all pleading requirements. Plaintiff's pleadings include allegations that Puszkar spoke at the June 20, 2023, library board meeting, the recording of which is attached to her petition and incorporated by reference as Exhibit H. Puszkar, like Hagedorn, spoke following Co-defendant Homolak's comments, made sufficient references to the man dressed as a woman working at the Kathryn Linneman Branch of the library and working specifically in the children's section. Puszkar further used the terms transvestite and drag queen in referring specifically to Plaintiff. While bigoted terms themselves are not actionable as defamation, they are useful for illustrating Defendant Puszkar's intent to make her comments about Plaintiff specifically, and to further illustrate the intended context of her defamatory remarks. Plaintiff has alleged that Puszkar spoke about Plaintiff specifically and accused Plaintiff of wanting to "indoctrinate" children. Plaintiff's Pet. ¶¶ 87–91. The context of Puszkar's words clearly impute nefarious sexual misconduct to Plaintiff as well as a nefarious sexual motive. (*See,* subsection c. *infra,* wherein Plaintiff discusses the *Nazeri* case and the "context" of the alleged defamatory speech as a necessary part of the court's legal analysis when determining the defamatory nature of spoken words). Plaintiff has alleged the comments made by Puszkar were defamatory, were false, were made with the requisite degree of fault, and that Puszkar's comments damaged Plaintiff's reputation in the community. Plaintiff's Pet. ¶¶ 874–882. Plaintiff has sufficiently pled ultimate facts supporting her claims of defamation against Defendants Hagedorn and Puszkar. Defendants Hagedorn and Puszkar's motion to dismiss should be denied.

b. Plaintiff is a private individual and need not plead malice or reckless indifference, only negligence regarding the degree of fault.

Defendants argue that Plaintiff has failed to plead "actual malice" and proceed to cite the pleading standard for a limited public figure. However, Plaintiff is a private individual and not subject to the heightened burden of pleading and ultimately proving malice that applies to a public figure or limited public figure.

In *Gertz v. Robert Welch* the United States Supreme Court discussed what makes a person a "public figure" requiring the higher standard of pleading and proof of actual malice. *Gertz v. Robert Welch,* 418 U.S. 323 (1973). "Absent clear evidence of general fame or notoriety in the community, and pervasive involvement in the affairs of society, an individual should not be deemed a public personality." *Id.,* at 352. Where a plaintiff has neither taken steps to "thrust [her]self into the vortex of this public issue, nor … engage the public's attention in an attempt to influence its outcome," she cannot be considered a public figure. *Id. See also, Stepnes v. Ritschel,* 663 F.3d. 952, 964 (8th Cir. 2011).

Defendants incorrectly assert that because Plaintiff chose to work in a public library and is gender nonconforming in a public space that she has somehow made herself a limited public figure. If Defendants are correct, then anyone who expresses gender in a public space, i.e. any person who leaves their home, becomes a public figure by virtue of having a gender and being anywhere other people are present. This simply cannot be the case. Defendants cite *Stepnes,* an 8th Circuit federal case, for the idea that based on **Minnesota** law, Plaintiff should be considered a public figure in Missouri. Defendants allege Missouri law to be identical to Minnesota law but do so without citation to any Missouri standards and with no allegations that Plaintiff has thrust herself to the forefront of a public matter for the purposes of trying to influence public opinion or to garner attention.

Assuming *arguendo* that Defendants' assertion of Minnesota law is correct for Missouri, the standard Defendant applies is still incorrect as applied to Plaintiff in the present matter. The *Stepnes* court cited by Defendants clearly held that Minnesota courts look to whether the plaintiff voluntarily participated in an existing public controversy, whether the plaintiff played a prominent role in any debate of that public matter, and whether the plaintiff had access to effective channels of communication to counteract false statements. *Id.,* at 963. In the present case, Plaintiff simply went to work as herself and was dragged into the community spotlight against her will. Plaintiff did not play a prominent role, or participate at all, in the public meetings where her appearance was debated and scrutinized. Furthermore, Missouri and the particular law of this case fully recognize the very private nature of the defamatory statements made about Plaintiff. *See, Nazeri,* 860 S.W.2d at 312 ("Matters of sexuality and sexual conduct are intensely private, intensely sensitive, and a false public statement concerning them is particularly harmful").

Inapposite to the foregoing standard, Plaintiff was thrust to the fore of a public issue against her will by Defendants and cannot be considered a public figure in any sense of the term, limited or otherwise. Plainitff is a private individual. Because Plaintiff is a private individual, she need only meet a "negligence" standard regarding Defendants' knowledge of the truth in pleading and in proving her claims. *Topper v. Midwest Div. Inc.,* 306 S.W.3d 117, 127 (Mo. App. W.D., 2010). Plaintiff has alleged Defendants Hagedorn and Puszkar either knew or should have known their statements were false, and/or acted with willful disregard and recklessness regarding their statements; thus she has met and/or exceeded her standard of pleading in the present matter. *See, Plaintiff's Pet.* ¶¶ 753, 755, 763, 777, 787, 876, and 888. Again, assuming *arguendo* that Defendants' position of Plaintiff being a limited public figure is correct, Plaintiff still met the burden required for malice as Defendant cites a standard which requires the speaker either has

knowledge of the falsity of their statements or a reckless disregard for the truth. As admitted by Defendants, they were unaware of Plaintiff's name, though they were aware of who she was by description of her appearance and employment position, and location of her employment when they spoke about Plaintiff at public meetings. Defendants accused Plaintiff of serious criminal (child abuse) and sexual misconduct (sexualizing herself in front of children or seeking access to children for the purposes of "indoctrinating" them for sexual abuse) without checking the factual support for their claims about Plaintiff. Plaintiff pled that Defendants spoke with a willful disregard and recklessness about their statements because of their lack of research into the person they were speaking about. Plaintiff met her required burden of pleading negligence when she pled the unrequired malice standard. Defendants motion must be denied.

c. Defendants' Statements are not Protected Opinion

Defendants are not entitled to opinion privilege or constitutional protections in the present matter. Defendants' speech lost all protections once they falsely attributed child abuse and sexual misconduct to Plaintiff couched in the guise of opinions and went beyond the expression of mere disagreement with the so called "transgender agenda." Defendants crossed the line into harmful false assertions of fact, insinuating Plaintiff herself engaged in the alleged misconduct towards children.

A review of the *Nazeri* case, which Plaintiff has already cited at length, provides appropriate guidance in the present matter. In *Nazeri*, the defendant accused the plaintiff, Janet Nazeri, of living with another woman who the defendant claimed was a well-known homosexual, and further stated that the plaintiff had lived with her for years. *Nazeri*, at 307. The defendant stated that Nazeri had left her husband and children to go live with the other woman, and that he "would not tolerate fags on campus." *Id*. The defendant in *Nazeri* contended that his remarks did

not insinuate Janet Nazeri was homosexual, an adulteress, or an unchaste person; or that she left her husband and family. *Id.* at 311. The defendant also contended he did not accuse the plaintiff of criminal misconduct and that the references to homosexuality only alluded to Ms. Nazeri's roommate. *Id*. He contended that his words could therefore not be defamatory of Ms. Nazeri and that his speech constituted protected opinion. The court disagreed. The Missouri Supreme Court said:

> "Although respondent's argument has technical merit, an objective reading simply does not allow these words an innocent sense. Respondent's comments clearly insinuate that appellant is a homosexual adulteress. In our vernacular, 'living with' somebody is a common euphemism for a sexual relationship. The allegation that appellant left her husband and children to live with a 'well known homosexual' would most obviously and naturally be interpreted to mean that appellant abandoned her family for the purpose of engaging in an adulterous and unchaste relationship with a lesbian woman."

Nazeri, at 311.

> "The remarks pleaded in the petition consist of outright expressions of fact and ostensible expressions of opinion which very strongly imply underlying facts. Moreover, the statements do more than merely suggest to the ordinary reader that respondent disagrees with appellant's conduct, and they are not too imprecise to be actionable. (internal citation omitted). To a large degree, these are highly specific statements that declare or imply objective facts."

Nazeri, at 314.

The court then went on to find that First Amendment privilege of opinion did not apply in *Nazeri. Id.*

In the present case, Plaintiff's Petition attributes to Defendant Hagedorn, a chain of statements which Hagedorn claims are "opinion," but which demonstrably insinuate false, objective facts about Plaintiff. Hagedorn stated that Plaintiff's appearance constituted sexual expression which is abusive to children. Plaintiff's Pet. ¶s 61-64. Hagedorn accused Plaintiff of sexually expressing herself in front of children which factually is not true and cannot be construed as uprovable opinion when there are objective measures under Missouri criminal and family law

for determining when a person has engaged in misconduct of a sexual nature involving children. Hagedorn's comments are provable as false. Hagedorn further stated the sexual behavior she attributed to Plaintiff was confusing to children and constituted abuse. Plaintiff's Pet. ¶ 62. Taken as true for the purposes of the motion to dismiss, Defendant Hagedorn's statements clearly insinuated as objective fact, that Plaintiff is sexually abusive of children.

Similarly, Plaintiff's Petition attributes to Defendant Puszkar, a chain of statements which Puszkar claims are "opinion," but which demonstrably insinuate objectively false facts about Plaintiff. Puszkar referred to Plaintiff as the drag queen at the Kathryn Linneman Branch of the library and stated a "drag queen" working at the library is harmful to children. Plaintiff's Pet. ¶¶ 89. Puszkar thereby insinuated Plaintiff is dangerous to children, an objectively false statement of fact, which can be proven or disproven, rather than an uproveable opinion. Puszkar asserted Plaintiff's purpose for being employed at the library was to "indoctrinate" children and to gain access to children for that purpose. Plaintiff's Pet. ¶¶ 83, 87 and 90. Plaintiff's motives for working at the library cannot be opinions of another person, and Defendant Puszkar stated false factual reasons for Plaintiff's motives that strongly imply Plaintiff is engaging in sexual and criminal misconduct with children. Defendant Puszkar's statements unmistakably state false facts which claim Plaintiff is a child predator and insinuate Plaintiff is a sexual abuser of children as asserted objective fact and not simple opinion.

Defendants then close their red herring arguments stating, "Ms. Hagedorn makes clear that she has no hate or malice in her heart, 'in fact just the opposite.'" Defendants' Suggestions in Support, p. 15, citing Plaintiff's Exhibit E. Defendants' subjective beliefs and feelings about Plaintiff have zero bearing on the defamatory nature of their statements. *Nazeri,* 860 S.W.2d at

314. Defendants' statements were not opinions, rather false facts slyly stated in a way to imply they were truthful statements masquerading as opinion. Defendant's motion should be overruled.

d. A public recording/reporting privilege does not apply

Defendants further incorrectly assert a public recording/reporting privilege based on Missouri's adoption of the Restatement (Second) of Torts § 611 pertaining to publication of defamatory matter within a report of an official proceeding or meeting open to the public dealing with a matter of public concern. Defendants' Suggestions in Support, p. 10. Defendants' reliance upon the stated privilege is completely misplaced. The privilege of § 611 pertains to the news press and/or reporter repeating the defamatory comments as part of making a report on proceedings of public interest, not to the Defendants as the original speakers of the defamatory comments. *Lami v. Pulitzer Pub. Co.,* 723 S.W.2d 458, 459 (Mo. App. 1986). *See also, Hyde v. Columbia,* 637 S.W.2d 251, 267 (Mo. App. 1982). Defendants stretch the claimed privilege well beyond its intended protections by asserting their own defamatory comments become privileged simply because someone included them as part of a record about a matter of public interest. If Defendants' position were correct, their clearly unprotected defamatory remarks suddenly enjoy protection by the fiat of an unconnected third party choosing to make a report about their defamatory comments. Defendants' defamatory statements are not protected by mere inclusion in the recording of a public proceeding.

II. Plaintiff Adequately States Alternative Claims for False Light

Plaintiff pleads claims of False Light Invasion of Privacy in the alternative to Defamation, not as additional counts to Plaintiff's Defamation claims. As such, they are properly pled.

> A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two

> or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or equitable grounds.

Mo. Sup. Ct. R. 55.10.

A reasonable reading of Rule 55.10 clearly supports a finding that Plaintiff has made an appropriate alternative pleading of her counts, pleading invasion of privacy as an alternate to her claims of defamation. Defendants assert Plaintiff has not stated a claim for invasion of privacy but provide no explanation as to why Plaintiff's alternative pleadings are deficient. Rule 55.10 not only allows Plaintiff to plead in the alternative, but it also further directly states that Plaintiff's pleading is **not made insufficient** by an alleged insufficiency of an alternative statement. *Id.* (emphasis added). Defendants further assert that they did not know Plaintiff's name in support of their arguments. Regardless whether Defendants knew Plaintiff's specific name, they still thrust her into the public view with enough information to make her readily identifiable by speaking about her appearance, employment at the library, and work assignment location within the library at different public, highly attended meetings, with sufficient specificity for a listener to readily identify Plaintiff. Defendants provided sufficient context within their statements to make Plaintiff's identity clear to the general public by her position, even if they did not know her name. Whether true or not, Defendants asserted lack of knowledge of Plaintiff's namehas no bearing on the sufficiency of Plaintiff's alternative pleadings.

Although the Missouri Supreme Court has not yet recognized a claim of False Light Invasion of Privacy, it has not foreclosed the possibility that such a claim could be recognized in the right circumstance. *Smith v. Humane Soc'y of United States,* 519 S.W.3d at 803. In the present case, whether some of the allegations related to Plaintiff's sex assigned at birth or her manner of

dress are true or not, she has sufficiently alleged her privacy was tortiously invaded by Defendants who thrust her private identity into public scrutiny without her consent and she has been damaged by Defendants' intentional conduct. This case is precisely the type of case in which Plaintiff's alternative pleading should give rise to consideration of a false light claim, where, if Defendant can prove a defense of truth (although Plaintiff knows Defendants cannot), Plaintiff should be allowed to pursue her alternative pleading for the unreasonable invasion Defendants have created by making her the unwilling "poster child" for their slur campaign against transgender persons in St. Charles County. This Court should allow Plaintiff's alternately pled claims for invasion of privacy to remain in place.

III. No Argument Contesting Plaintiff's Alternative Claims for *Prima Facie* Tort

Defendants make no argument regarding the sufficiency of Plaintiff's claims in *Prima Facie* Tort. Therefore, Plaintiff's claims in *Prima Facie* Tort must be allowed to proceed even if all other claims are dismissed.

IV. Conspiracy Claim Against Defendant Puszkar

Defendant Puszkar participated in a civil conspiracy against Plaintiff. A civil conspiracy is an agreement or understanding between persons to do an unlawful act, or to use unlawful means to do a lawful act. *Oak Bluff Partners, Inc. v. Meyer*, 3 S.W.3d 777, 780–81 (Mo. 1999). There must be "a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement." *Id*. at 781. A claim of conspiracy must establish: (1) two or more persons; (2) with an unlawful objective; (3) after a meeting of the minds; (4) committed at least one act in furtherance of the conspiracy; and (5) the Plaintiff was thereby damaged. *Id*.

Defendant claims Plaintiff did not plead facts to prove Defendant Puszkar engaged in a meeting of the minds with two other defendants, Grace Church St. Louis ("GCSTL") and Rachel Homolak. Plaintiff pled facts to show how these two individuals and GCSTL interacted together to conspire against Plaintiff, most prominently when GCSTL held a sermon about "Real Christiantity in a Woke Culture." Plaintiff's Pet. ¶ 215. GCSTL's Pastor Ron Tucker promoted the exact actions Puszkar and Homolak took against Plaintiff; confronting and taking action against individuals in the LGBTQ+ community. Plaintiff's Pet. ¶¶ 216–18. Defendant claims she has a right to engage in services at church, specifically GCSTL in this case, as protected free speech and free association. Plaintiff does not claim that Puszkar, GCSTL and Homolak unlawfully congregated to have a meeting of the minds. Plaintiff rather asserts that the meeting resulted in an unlawful objective to defame Plaintiff and/or invade her privacy. Defendants may have the right to have discussion regarding public issues as claimed in their motion, but Plaintiff does not contest their ability to meet and have discussion, rather the promotion and follow through by congregants (i.e. Puszkar and Homolak) of the ideas that GCSTL promoted to publicly attack individuals like Plaintiff.

Defendant asserts Plaintiff did not plead any damages. However Plaintiff pled damages in the form of mental anguish, emotional distress, mental distress, as well as damage to reputation, and other damages which affect Plaintiff to this day.

The conspiracy claim against Puszkar should not be dismissed as the underlying claim of defamation is viable and Plaintiff pled sufficient facts to show a meeting of the minds between Homolak, Puszkar, and GCSTL.

V. Defendant's Conduct is Beyond the Scope of Missouri's Anti-SLAPP Statute.

Missouri's Anti-SLAPP statute does not apply to Defendants' speech as they spoke beyond the protections granted. The Anti-SLAPP statute protects those who wish to engage in government or public debate at a public hearing from lawsuits intended solely to chill their free speech, but does not allow speakers to circumvent other laws, or avoid liability for defamation, just because the speech occurs in a public hearing.

The Anti-SLAPP statute is a "procedural law with remedial provisions." *Jiang v. Porter*, 2015 U.S. Dist. LEXIS 172215 (Mo. E.D. 2015). Importantly, the statute does not create a special cause of action. "The statute does not provide any special defenses or immunities' instead, it recognizes that many such suits are intended to prevent participation in governmental matters and accelerates the consideration of motions to dispose of such obstructive efforts." *Hallmark Cards, Inc. v. Monitor Clipper Partners, LLC*, No. 08-0840-CV-W-ODS, 2010 U.S. Dist. LEXIS 124102 (W.D. Mo. Nov. 22, 2010).

Missouri's Anti-SLAPP statute anticipates the issue of citizens using the statute to enable defamatory talk during public hearings. The statute specifically states, "Nothing in this section limits or prohibits the exercise of a right or remedy of a party granted pursuant to another constitutional, statutory, common law or administrative provision, including civil actions for defamation." R.S. Mo. § 537.528(5). Missouri's lawmakers clearly wanted to establish that just because someone speaks at a public meeting, that does not give them free reign to commit defamation of character. By specifically stating civil actions for defamation are not prohibited by the statute, lawmakers made clear that defamation of a person's character will not be protected speech just because such statements were made during a public hearing.

Defendant's conduct went beyond speaking their alleged "opinions" out of concern for the community. Defendants Hagedorn and Puszkar spoke at a library board meeting where the main

purpose of that meeting was to discuss Plaintiff, Plaintiff's attire, and Plaintiff's employment at the library. Defendants accused Plaintiff of sexual misconduct, being abusive to children, and other improprieties. Defendants cannot accuse Plaintiff of such impropriety with complete disregard for the truth and expect their speech to be protected. Defendants went beyond expressing their opinion and concerns by accusing Plaintiff of specific actions and motives with no regard whatsoever for the lacking veracity of their statements or how their false statements would impact Plaintniff. Missouri's Anti-SLAPP statute does not protect Defendant Hagedorn's and Puzskar's false, defamatory statements, and their motion should be denied.

VI. Attorney Fees Authorized by RSMo. § 537.528.2.

RSMo. § 537.528.2 states, "If the court finds that a special motion to dismiss or motion for summary judgment is frivolous or solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney fees to the party prevailing on the motion." RSMo. § 537.528.2. As described above, Defendants' arguments in support of their alleged "privilege" and Special Motion are wholly without merit and serve no other purpose than to delay the present proceeding. This Court should so find in overruling Defendants' motion and award Plaintiff the attorney fees to which she is entitled.

VII. Leave to Amend

In the event this Court finds Plaintiff's pleading wanting, this Court should grant Plaintiff leave to amend her Petition for Damages. Certain exceptions aside, a pleading may only be amended by leave of court and "leave shall be freely given when justice so requires." *Clark v. Shaffer,* 662 S.W.3d 137, 142 (Mo. App. 2023) (citing Mo. Sup. Ct. Rule 55.33(a)). "[Up]on

sustaining a motion to dismiss a claim … the court shall freely grant leave to amend." *Id.* (citing Mo. Sup. Ct. Rule 67.06). "It is within the trial court's sound discretion to allow or disallow amendments to pleadings." *Id.* Allowing Plaintiff to amend her pleadings would serve the interests of justice, should this Court find her pleadings are deficient. *Clark*, at 142.

Conclusion

Plaintiff has clearly and appropriately pled claims of defamation with alternate claims for false light invasion of privacy and prima facie tort. Her cause of action is not brought for the improper purpose of chilling protected speech as incorrectly alleged by Defendants. Rather, she seeks redress as a private individual, who Defendants used as an unwilling "poster child" for their own anti-transgender agenda. Defendants crossed the line into defamation of Plaintiff's character when they falsely attributed to her criminal and sexual misconduct with utter disregard for the truth. They have shamed Plaintiff and damaged her reputation in the community through their willful, illegal conduct and are therefore liable to Plaintiff. This Court should deny Defendants' motion to dismiss.

WHEREFORE, Plaintiff respectfully requests this Court deny Defendant's Special Motion to Dismiss, award attorney fees in Plaintiff's favor against Defendants Hagedorn and Puszkar pursuant to RSMo. § 537.528.2 as the prevailing party on Defendants' motion to dismiss finding it to be frivolous or otherwise solely intended to cause unnecessary delay, alternatively grant her leave to amend her Petition if this Court deems it necessary, and for any further relief this Court deems appropriate.

Respectfully Submitted,

MISSOURI KANSAS QUEER LAW

_/s/ Mary Madeline Johnson

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Certificate

I hereby certify that a copy of the foregoing was served on all parties of record on this 19th day of July 2024, via the court's electronic filing system, and via electronic mail, to:

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