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IN THE CIRCUIT COURT OF ST. CHARLES COUNTY, MISSOURI

Official Court Document Not an Official Court Document Not an Official Court Document

DANNY ROBERSON)

)

Plaintiff,)

Case No.: 2411-CC00522

v.)

Division: 4

RACHEL HOMOLAK, *et. al*,)

)

Defendants.)

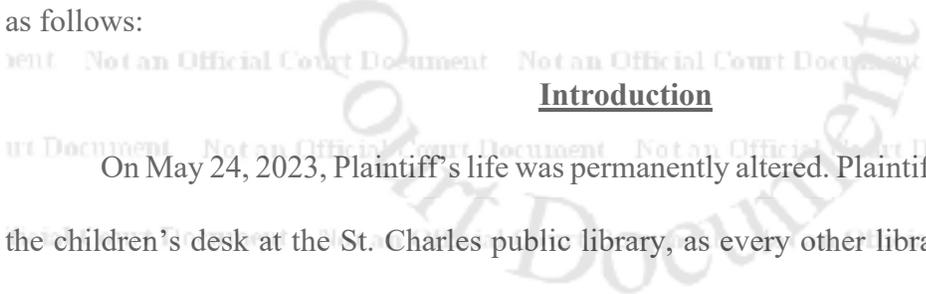
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PLAINTIFF’S SUGGESTIONS IN OPPOSITION TO DEFENDANT HOMOLAK’S MOTION TO DISMISS

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

Introduction

On May 24, 2023, Plaintiff’s life was permanently altered. Plaintiff was peacefully working the children’s desk at the St. Charles public library, as every other librarian must do. Defendant Homolak saw Plaintiff, only the top half of her body, for the first time and quickly made it her mission to persecute Plaintiff for the way she dressed. From the moment Defendant Homolak left the library that day until her last public appearance about Plaintiff on *February 29, 2024*, Plaintiff lived in constant fear and anxiety of what lies and misinformation Defendant Homolak would spread about her. Defendant Homolak allegedly wanted to have a neutral dress code enforced at the library and used Plaintiff as an example to implement this; but in the process, Defendant Homolak grossly exaggerated Plaintiff’s appearance at work and motives for working in the library. Further, even after Defendant Homolak learned that a neutral dress code policy was in place and her speeches would not create any meaningful change, she continued to spread hate and



lies about Plaintiff specifically. Defendant Homolak wants to claim she spoke out on her views of gender ideology and did not mean to harm Plaintiff. However, Defendant Homolak's constant, false, and increasingly worse attacks specifically directed at Plaintiff went beyond expressing her views on gender ideology to targeting and defaming Plaintiff with false accusations of sexual misconduct.

Plaintiff sufficiently pleads Defendant Homolak 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. Defendant's 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 her campaign of hate. When Defendant Homolak singled out Plaintiff and alleged she was engaging in criminal and sexual misconduct, she 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 Defendant Homolak for having to respond to Defendant's frivolous Anti-SLAPP motion.

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). Defendant has the right for her 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.* Finally, evidence outside of the pleadings cannot be considered. *Hedrick v. Jay Wolfe Imports I, LLC*, 404 S.W.3d 454, 458 (Mo. 2013).

Missouri is a fact pleading state. *R.M.A.*, 568 S.W.3d 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*, 404 S.W.3d at 457. 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 Invasion of Privacy, Prima Facia Tort, and Conspiracy claims against Defendant Homolak. Plaintiff’s claims should survive Defendant’s Motion to Dismiss.

I. The Anti-SLAPP statute is not applicable to the current case

Defendant Homolak purports that Plaintiff brought her lawsuit to “chill [Defendant’s] participation in government” for speaking out against Plaintiff’s attire at the library. However,

Plaintiff did not initiate this lawsuit to prevent Defendant Homolak or others from speaking their opinions in government proceedings. Rather, Plaintiff seeks redress for being made the center of a hate campaign that used Plaintiff as an unwitting poster child for transgender people in public spaces. While free speech is extremely valuable and should be protected, there is a distinct line that defamatory statements cannot be stated, particularly about private individuals who have not engaged in any political or governmental actions. Defendant Homolak's statements cannot be shielded just because she spoke them in a public meeting.

Defendant Homolak seeks to have Counts 4, 5, 9, 10, and 11 dismissed under Missouri's Anti-SLAPP statute. 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.

It is undisputed that Counts 4, 5, and 9 arose directly from Defendant Homolak's statements during public meetings (two St. Charles City-County Council meetings and a library board meeting). These counts fall under the Anti-SLAPP statute (though the statute still does not apply to these counts and this argument should be disregarded). However, Counts 10 and 11 are based on Defendant Homolak's repeated postings on Facebook about a St. Charles City-County Council meeting at which she spoke. While the video took place in a public hearing, Defendant Homolak is promoting her speech beyond the public hearing space and into a private Facebook page. Counts 10 and 11 should not be considered under the anti-SLAPP motion. As detailed in the sections below, Defendant Homolak undoubtedly engaged in defamatory behavior during the public meetings when she spoke about Plaintiff. Thus, the anti-SLAPP law does not apply and should be disregarded.

Defendant Homolak's conduct went beyond speaking her alleged "opinions" out of concern for the community. Defendant Homolak spoke at the St. Charles City-Council public meeting and St. Charles library board meeting where the main purpose of her discussion was to discuss Plaintiff, Plaintiff's attire, and Plaintiff's employment at the library. Defendant Homolak accused Plaintiff of sexual misconduct and being abusive to children. *Plaintiff's Pet.* ¶¶ 55–6, 81–3, 140 (claiming during these meetings that Plaintiff wore inappropriate clothing including a dress that opens around the crotch area and BDSM-like kink drag, and further stating Plaintiff was pushing her sexual agenda on children meaning Plaintiff was engaging in sexually predatory behavior). Defendant cannot accuse Plaintiff of such impropriety with complete disregard for the truth and expect her speech to be protected. Defendant Homolak went beyond expressing her

opinion and concerns by accusing Plaintiff of specific actions and motives with no regard whatsoever for the falsity of her statements or how her false statements would impact Plaintiff. Missouri's Anti-SLAPP statute does not protect Defendant Homolak's false, defamatory statements, and her motion should be denied.

Further, Defendant Homolak erroneously claims her case is analogous to *Terry v. Davis Cmty. Church*, a California case. The *Terry* case is a far cry from Plaintiff's claims. The Plaintiffs in that case were accused of inappropriate, sexually based relations with a youth member. *Terry v. Davis Cmty. Church*, 131 Cal.App.4th 1534, 1539 (2005). Davis Community Church and local authorities completed an intense investigation into the allegations, based on several eyewitness accounts of inappropriate interactions and text messages showing the sexually charged nature of Plaintiff's communications. *Id.* at 1540–43. The court in the *Terry* case had significant amounts of information to show that the claims made by Davis Community Church had a bearing on the public interest because it was clear the Plaintiff had previously engaged in inappropriate behaviors with a minor. *Id.*

In her argument, Defendant Homolak states that Plaintiff was “inappropriately dressed in sexually provocative attire at the library and works in the children’s section.” Defendant’s Motion pg. 14. The Petition for this case never states that Plaintiff was inappropriately dressed in sexually provocative attire, actually the opposite. Plaintiff wore gender nonconforming, business casual clothing. *Plaintiff’s Pet.* ¶¶ 9–11. Defendant Homolak inserted her own facts to boost her claim without any support from the Petition, which is outside the scope of what can be considered in a Motion to Dismiss. Defendant Homolak had no basis for her defamatory statements, which would make them a matter of public interest. She never sought more information about Plaintiff and instead based her accusations on a short interaction looking at the way Plaintiff dressed, which she

grossly overexaggerated for her own purposes. Defendant Homolak's argument is off base and should be disregarded.

II. Plaintiff sufficiently pled all the elements of defamation

Plaintiff pled allegations of defamation of her character in the forms of slander, i.e. spoken statements made about her to others that were of a defamatory nature, and libel, written statements made about Plaintiff to others that were of a defamatory nature, all made by Defendant Homolak. To establish a claim of Defamation, Plaintiff must plead that Defendant 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. The publication element is met when a person communicates a defamatory matter to a third person. *Id.*, at 313. 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).

Defendant Homolak does not argue on the elements of defamation related to publication and damages. Rather, she asserts she did not make statements specifically about Plaintiff, her words were not defamatory statements but truthful statements or opinions, and the required degree of fault should be higher than Plaintiff pled. This is simply not the case and Plaintiff's defamation claims must stand.

a. Plaintiff is not required to plead specific statements *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. 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). Statements that are considered slander are not required to be pled with the exact words but rather there must be “certainty as to what is charged.” *Nazeri*, 860 S.W.2d at 313 (quoting *Hester*, 723 S.W.2d 544 at 557). Counts 2–5, 7, 9, 10, 12, 13, and 17–19 are all based on slanderous statements; thus Defendant’s argument should be wholly ignored related to these counts.

Libel, written, statements are treated differently than statements of slander, verbal communication. “To be sufficient as a pleading for libel per se the petition must set out the defamation published in *haec verba* - - *or, at the very least*, a paraphrase of what is charged as the libel.” *Hester v. Barnett*, 723 S.W.2d 544, 556–57 (Mo. Ct. App. 1987) (emphasis added). In instances where statements of libel are insufficiently pled, the Court should allow Plaintiff the opportunity to file an amended petition where the specificity of the statements are included. *Missouri Church of Scientology v. Adams*, 543 S.W.2d 776, 777–78 (Mo. 1976). 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.

Counts 1, 6, 8, 11, and 14–16 are all libel claims. Plaintiff stated the exact words of defamation in counts 6, 8, 11, and 14–16. *See, Plaintiff’s Pet.* ¶¶ 99–100, 121–22, 155, 189, 195, 198, 204–6. The only libel count in which Plaintiff did not plead the defamatory statements *in haec verba* is count 1. In this Facebook post, Defendant Homolak stated that a “man was dressed in DRAG in front of children working THE CHILDREN’S desk. . . I DO NOT consent to MY tax

dollars being spent on individuals forcing their sexuality on my kids.” Plaintiff’s Exhibit A. Further she stated that library staff should not be allowed to “push any kind of sexual ‘identity’ on the public, especially children.” *Id.* Plaintiff’s petition states a few exact words from the Facebook post and summarized that Defendant Homolak overexaggerated her appearance through which she said Plaintiff was dressed in drag. See, *Plaintiff’s Pet.* ¶¶ 25–31. Later in the petition, Plaintiff stated that Defendant Homolak “accused Plaintiff of sexual misconduct by saying Plaintiff was dressed in drag and forcing her sexuality on children.” See, *Plaintiff’s Pet.* ¶ 245. While Plaintiff did not plead every defamatory word from the Facebook post, she pled some of words and at the very least, accurately paraphrased Defendant Homolak’s post. Plaintiff appropriately pled and attached an exact copy of the Facebook post containing the defamatory statements but if this court does not find so, should be allowed the opportunity to amend her petition to meet this requirement.

b. Plaintiff is the subject of all counts

Defendant Homolak represents she was not speaking about Plaintiff in Counts 6, 8, 10, 11, 15, and 16. Words “must be understood by others as referring to Plaintiff” in order to be actionable defamation. *May v. Greater Kan. City Dental Soc’y*, 863 S.W.2d 941, 944 (Mo. App. W.D. 1993) (internal citations omitted). “A fact issue exists if some question remains as to whether the claimed offensive words were spoken of and concerning the plaintiff.” *Chastain v. Kan. City Star*, 50 S.W.3d 286, 288 (Mo. App. W.D. 2001) (citing *Hoeffner v. W. Leather Clothing Co.*, 161 S.W.2d 722, 727 (Mo. App. 1942)). Meaning if there is a question of whether Defendant Homolak’s statements were of and concerning Plaintiff, these questions should be decided by a jury. *Id.* Thus Defendant Homolak’s argument is not ripe for discussion.

Assuming arguendo that this is a question for the court to decide in a Motion to Dismiss, Plaintiff undoubtedly pled facts that show Defendant Homolak spoke directly about Plaintiff as explained in the following paragraphs.

Count 6 and 8: Facebook Posts and Comments (Exhibit I, K and L)

Exhibit I is the basis of Count 6 and shows a Facebook post made by Homolak on the St. Charles Library Mama Bear Facebook page. The post has a quote stating "... All I'm saying is that if the phrase 'leave the kids alone' is an attack on a certain group, then maybe that group deserves to be attacked." Plaintiff's Exhibit I. While responding to a comment on the post, Defendant Homolak states "Confusing kids and forcing sexual ideology and expression on them is child abuse." *Id.* As explained in the petition, the St. Charles Library Mama Bear page was created as a direct result of Defendant Homolak learning about Plaintiff's existence and to further her attacks on Plaintiff. *Plaintiff's Pet.* ¶¶ 68, 149, 163, 624. These comments are a repeat of similar, prior false statements Defendant Homolak stated about Plaintiff where Plaintiff and/or the library dress code issue were referenced.

Count 8 is based on another post in the St. Charles Library Mama Bear page. In Exhibit K, Defendant Homolak reposted an article about the dress code debate in the St. Charles library. In Exhibit L, a comment on Exhibit K's post, Defendant Homolak commented, "why don't you go ask Danny the drag librarian yourself. HE will tell you all about his provocative outfits HE wears." While this post and comments were already clearly about Plaintiff because of the group it was posted in, Defendant Homolak uses Plaintiff's name and a drag reference she had used repeatedly in the past to identify Plaintiff, making it obvious that the topic of the social media post was Plaintiff.

Count 10 and 11: Facebook repost of Council Meeting (Exhibit O and P)

Exhibit O is the basis of Count 10 and is a repost of the Gays Against Groomers tweet with a recording of the July 31, 2023, St. Charles City-County Council meeting. Defendant Homolak posted this on her St. Charles Library Mama Bear page, which as previously discussed was used primarily to spread misinformation about Plaintiff and her presence in the library. Exhibit P, the basis of Count 11, is another repost of the Gays Against Groomer's tweet with the caption "SHOULD CROSSDRESSING MEN RUN THE CHILDREN'S SECTION OF THE LIBRARY??? The answer is NO!" The only person that Defendant Homolak could be reasonably referring to is Plaintiff as Defendant Homolak repeatedly called Plaintiff the "drag librarian" or stated Plaintiff is a crossdressing person working in the library. Further, Defendant Homolak directly talks about Plaintiff in the recording. By reposting a video of her speech, Defendant Homolak brought Plaintiff into her posts yet again.

Count 15: Facebook Comment (Exhibit V)

Count 15 is rooted in a Facebook comment Defendant Homolak made after posting a conversation with a transgender journalist. In the comments someone asks, "is there a pedophile at the library!!!" Defendant Homolak replies with a link to Exhibit T, a recording of her speech on a talk show where she clearly references Plaintiff. The person replied with the statement "maybe I am old because I don't understand some of this groomer drag stuff is the librarian a pedophile!!!" to which Defendant Homolak replied "any grown man who wants to sexually express himself in front of children, seems like a pedophile to me." Plaintiff's Exhibit V. Beyond the reference to Plaintiff in Exhibit T, Defendant Homolak is discussing a librarian dressed in drag, which is how she refers to Plaintiff. Count 15 is clearly referring to Plaintiff.

c. Defendant Homolak's statements are not protected opinion or truthful in substance

Defendant Homolak contends her statements are either truthful or protected opinions rather than defamatory statements. The defense of truth is measured by if the alleged defamatory statement is "substantially true." *Nigro v. St. Joseph Med. Ctr.*, 371 S.W.3d 808, 818 (Mo. App. W.D. 2012). In suits for slander or libel, evidence can be introduced to prove the truth of a statement but a jury, under the court's direction, is to determine the facts. Mo. Const. Art. I, § 8. There are no facts pled that make Defendant Homolak's words truthful and this must be a factual question for a jury to decide, not upon a Motion to Dismiss. Defendant Homolak is also not entitled to opinion privilege or constitutional protections in the present matter. Defendant's speech lost all protections once she 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." Defendant Homolak 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*, 860 S.W.2d 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.”
Id., 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.”

Id., at 314. The court then went on to find that First Amendment privilege of opinion did not apply in *Nazeri*. *Id.*

When statements that appear as opinions are stated in a way to strongly imply underlying facts, those statements are no longer just opinion and reach into defamatory conduct. *Id.*, at 314.

Opinions are statements that cannot be “provable as false.” *Smith*, 519 S.W.3d at 798. The Nazeri court created a test to determine if statements are opinions. If “a reasonable factfinder could conclude that the statement implies an assertion of objective fact,” the statement can be defamatory in nature. *Id.*, at 800 (quoting *Nazeri*, 860 S.W.2d at 314). Additionally, “[m]atters of sexuality and sexual conduct are intensely private, intensely sensitive, and a false public statement concerning them is particularly harmful.” *Nazeri*, 860 S.W.2d at 312. Stated plainly, when someone accuses another of sexual misconduct, those statements are held as highly impactful and damaging to one’s reputation, warranting redress.

Defendant Homolak continuously accused Plaintiff of sexual misconduct around children. She represented to the St. Charles City-County Council that Plaintiff wore highly inappropriate clothing while working with children, including a dress that is open around the groin area. *Plaintiff's Pet.* ¶ 53–56. At the Saint Charles library board meeting, Defendant Homolak asserted Plaintiff wore BDSM-like kink drag to work. *Plaintiff's Pet.* ¶ 82. Defendant Homolak knew there was already a neutral dress code at the library, which was enforced, and that no library staff wore inappropriate clothing while working there. *Plaintiff's Pet.* ¶¶ 115–16. Defendant Homolak continuously accused Plaintiff of sexual inappropriateness around children while working at the library, all because of the way she dressed, which she was informed could not be the case. *Plaintiff's Pet.* ¶¶ 210, 214. These statements accusing Plaintiff of sexual misconduct are exactly the type Nazeri discussed that are intensely sensitive and particularly harmful. Further, there is no basis to prove that Defendant Homolak's statements were substantially true or close to the truth as Plaintiff never dressed in a sexualized manner which is what Defendant Homolak repeatedly insisted was true of Plaintiff. Defendant Homolak accused Plaintiff of other acts of misconduct which are detailed in the following examples.

Count 7: July 10, 2023, Bott Radio Network Appearance (Exhibit J)

During the talk show, Defendant Homolak stated that Plaintiff wore high heels, miniskirts, fishnet leggings, and a harness to work at the library, which are all false statements regarding her dress and portrays Plaintiff in a highly sexualized manner. *Plaintiff's Pet.* ¶ 103. Further, as Defendant Homolak failed to state in her motion, she stated that Plaintiff was sexually expressing herself in front of children and that because the library hired Plaintiff, they were promoting the sexualization of children. *Plaintiff's Pet.* ¶¶ 106–07. While Defendant Homolak may have been talking about transgender people as a whole when she stated that “they” are pushing sexual

ideology on children, resulting in pedophilia, the entire interview was about Plaintiff and her impact on the library. When taken in the context of the talk show, Homolak may have been speaking about the transgender community as a whole but specifically targeted Plaintiff and accused her of being a pedophile.

When Defendant Homolak claimed that Plaintiff was sexually expressing herself in front of children, paired with oversexualized descriptions of her attire, she paints a picture of someone acting inappropriately around children in a sexual manner. Sexual orientation and gender identity do not equate to sexually expressing oneself. Plaintiff never wore sexually suggestive or inappropriate clothing while working in the library that would constitute sexually expressing oneself.

Count 8: Facebook Comment (Exhibit L) and

America's Mom Talk Show Appearance (Exhibit T)

As explained previously, Defendant Homolak posted a recording of a talk show she was on and in the comments stated, "why don't you go ask Danny the drag librarian yourself. HE will tell you all about his provocative outfits HE wears." Plaintiff's Ex. L. It is clear in this case that there is a strong misunderstanding of the term drag and how it can be used falsely and negatively against transgender persons. Drag as defined by the Merriam-Webster's dictionary is "entertainment in which performers caricature or challenge gender stereotypes (as by dressing in clothing that is stereotypical of another gender, by using exaggeratedly gendered mannerisms, or by combining elements of stereotypically male and female dress) and often wear elaborate or outrageous costumes." (https://www.merriam-

webster.com/dictionary/drag#:~:text=%3A%20entertainment%20in%20which%20performers%20caricature,wear%20elaborate%20or%20outrageous%20costumes, last visiting September 12,

2024). As explained by the National Center for Transgender Equality, drag is an entertainment style where people take on a separate persona from their everyday life. (chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://transequality.org/sites/default/files/docs/resources/Understanding-Drag-April-2017.pdf, last visited September 12, 2024). Drag does not mean someone is transgender and being transgender does not mean that the person dresses in drag every day. Plaintiff wore a combination of male and female clothing, all of which was business professional. Defendant misclassified Plaintiff and if she wants to argue this is not true, that is a question of fact for a jury to decide. Defendant Homolak also made accusations about people dressed in drag such as claiming, “drag exists because of sex and because of that, they keep going for the children.” *Plaintiff’s Pet.* ¶ 48. Defendant Homolak made very clear that when she was discussing drag, she meant a highly sexualized person that is dangerous to children, furthering her assertions that Plaintiff fit into this category.

Calling Plaintiff the drag librarian creates a false picture of her work at a library. In today’s political climate, that can be extremely damaging to a transgender librarian because there are currently laws being promoted and sometimes passed banning drag performers from libraries. Adding that Plaintiff wore “provocative” clothing makes it seem as though Plaintiff is trying to be overly sexual while at work with children. Plaintiff just wanted to work as a librarian while dressing in a way that conforms with her gender. Again, Plaintiff never wore explicitly sexual attire or anything that could be classified as provocative. Non gender conforming clothing does not mean provocative and nothing in Plaintiff’s pleadings can be construed to prove she wore highly sexual clothing. By making this statement, Defendant Homolak wrote an untruthful, harmful statement about Plaintiff and how she dressed at work.

Similar to above, in Exhibit T during an interview on the America's Mom Talk Show, Defendant Homolak again called Plaintiff Danny the drag librarian. During the interview, the host noted that Defendant Homolak was on the show to discuss issues at the library, specifically regarding Plaintiff. Plaintiff's Ex. T. The host claimed that Plaintiff twerked in front of children and that Defendant Homolak thought this was wrong and was thus considered a bully. As defined by Merriam-Webster Dictionary, twerking is "sexually suggestive dancing characterized by rapid, repeated hip thrusts and shaking of the buttocks especially while squatting." (<https://www.merriam-webster.com/dictionary/twerking>, last visited September 12, 2024). Again, Defendant Homolak falsely called Plaintiff a drag queen but further allowed the host to state that Plaintiff twerked in front of children, which by definition is a sexually suggestive dance move. The host stated this in the context that Defendant Homolak was being bullied for saying that. This makes it so Defendant Homolak had promoted those ideas and at the very least, did not stop the talk show host from promoting these ideas and defaming Plaintiff.

Count 14: Rosary Rally Flier (Exhibit U)

Plaintiff pled in her petition that Defendant Homolak organized the Rosary Rally with another organization. *Plaintiff's Pet.* ¶ 188. Defendant Homolak's name is listed as a contact person for the flier and Plaintiff pled that based on the information she knew, Defendant dispersed the fliers. *Plaintiff's Pet.* ¶¶ 189-90. Plaintiff adequately pled facts that support Defendant Homolak created and dispersed the Rosary Rally flier.

Defendant Homolak claims the flier is talking about the LGBTQ community as a whole rather than specifically Plaintiff. However, it is clear that the flier is addressing both the community and Plaintiff specifically because it starts with "A man in our library dresses as an overly sexualized woman..." Plaintiff's Ex. U. The flier states that Plaintiff is *a part* of the community

that they claim are attempting to “groom and sexualize our young, innocent children.” Defendant Homolak is not claiming that just the community is doing this but also Plaintiff specifically.

Count 15: Facebook Post (Exhibit V)

Defendant Homolak linked to a recording of another talk show (Exhibit T) she had appeared on in the comments section of a Facebook post, Plaintiff’s Exhibit V. In that talk show, she defamed Plaintiff and accused her of sexual misconduct as described above. Farther down in the comments, Defendant Homolak stated that “any grown man who wants to sexually express himself in front of children, seems like a pedophile to me.” She was replying directly to a question on if there was a pedophile in the library and the previous comments contained her talk show appearance where she has accused Plaintiff of sexually expressing herself in front of children, a clear sign of pedophilia. Plaintiff’s Exhibits T and V. While Defendant used the words “seem,” she provided plenty of other information to make a reader believe Plaintiff was a pedophile working at the library. Defendant Homolak stated specific facts that could lead an ordinary reader to think Plaintiff is a pedophile.

d. Plaintiff is not a limited public figure

Defendant argues that Plaintiff has failed to plead “actual malice” and proceeds 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).

Defendant incorrectly asserts 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. Furthermore, Defendant seems to hone in on the fact that Plaintiff worked in the children’s section of the library, implying that because she decided to work in that portion of the library with a gender nonconforming appearance, Plaintiff thrust herself into the public spotlight and attention. Defendant disregards the fact that Plaintiff only worked periodic shifts in the children’s section because of a universal requirement that all librarians work in that section of the library. *Plaintiff’s Pet.* ¶ 14. 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.

Plaintiff 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). Defendant Homolak based all of her accusations about Plaintiff after one encounter in which she did not even see Plaintiff’s full attire. Defendant Homolak relied on other’s information about Plaintiff without ever seeking to find the truth of the matter and instead engaged in a defamatory campaign against Plaintiff with a willful disregard for the truth. Plaintiff has alleged Defendant Homolak either knew

or should have known her statements were false, and/or acted with willful disregard and recklessness regarding her statements; thus she has met and/or exceeded her standard of pleading in the present matter. See, *Plaintiff's Pet.* ¶¶ 248, 273, 298, 325, 349, 373, 398, 423, 449, 472, 497, 523, 548, 573, 599, 626, 652, 678.

III. Plaintiff pled False Light – Invasion of Privacy as an alternative count

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 false light invasion of privacy as an alternate to her claims of defamation.

Further, 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*, 519 S.W.3d at 803. The Court examined the differences between defamation and false light claims, finding that defamation protects a person's interest in their reputation while a false light claim protects a person's right to be left alone. *Sullivan v. Pulitzer Broadcasting Co.*, 709 S.W.2d 475, 479 (Mo. 1986).

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 Defendant Homolak who thrust Plaintiff private identity into public scrutiny without

her consent and she has been damaged by Defendant Homolak's 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) or lack of damage in reputation, Plaintiff should be allowed to pursue her alternative pleading for the unreasonable invasion Defendant Homolak has created by making her the unwilling "poster child" for her 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.

IV. Prima Facia Tort claim is an alternative count and thus viable

Plaintiff pleads claims of Prima Facia Tort in the alternative to her Defamation and False Light Invasion of Privacy claims, not as additional counts to Plaintiff's Defamation claims. As stated above, Missouri Supreme Court Rule 55.10 allows a Plaintiff to plead "one or more" alternative claims. (emphasis added). A reasonable reading of Rule 55.10 clearly supports a finding that Plaintiff has made an appropriate alternative pleading of her counts, pleading prima facia tort as an alternate to her claims of defamation. As such, they are properly pled.

While the Missouri Supreme Court did state that a prima facie tort is not a "duplicative remedy" for other intentional tort claims, the court does recognize that "it may be possible for a plaintiff to plead facts that could establish a count in prima facie tort as an alternative to a separate recognized claim." *Nazeri*, 860 S.W.2d at 315–16. This case shows that alternative claims can arise out of a single incident if the Plaintiff can adequately plead the appropriate elements for each claim brought. The elements to a prima facie tort claim include: "(1) an intentional lawful act by defendant; (2) defendant's intent to injure the plaintiff; (3) injury to the plaintiff; and (4) an absence of or insufficient justification for defendant's act." *Id.* at 315 (citations omitted). In Plaintiff's

Alternative Counts 1 through 19, she clearly pleads these elements. See, *Plaintiff's Pet.* ¶¶ 262–68, 286–292, 313–19, 338–44, 363–69, 387–93, 412–18, 437–43, 462–68, 486–92, 512–18, 537–43, 562–68, 588–94, 614–20, 641–47, 666–72, 692–98, 717–23. If Defendant Homolak is not found of wrongdoing in the original claim and first alternative, Plaintiff pled Defendant Homolak committed an intentional lawful act. Plaintiff pled an intent to injure Plaintiff, that there was an injury, and Defendant Homolak lacked sufficient justification for her actions. Plaintiff adequately pled her claims of Prima Facie Tort and Defendant Homolak's motion should be denied.

V. Plaintiff's conspiracy claim stands

Defendant Homolak 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.*

As stated previously, Defendant Homolak clearly engaged in defamatory conduct towards Plaintiff, meeting the fourth element of a conspiracy claim. For each claim, all of the co-conspirators planned to defame Plaintiff by accusing her of sexual misconduct. The next element Defendant Homolak contests is that she did not engage in any meeting of the minds with the other defendants named as conspirators. Plaintiff pled facts that support Defendants Homolak had a meeting of the minds with Defendant Barrett to speak about Plaintiff and accuse her of sexual misconduct around children through evidence that they arrived together to the St. Charles City-County Council Meeting, spoke about Plaintiff's presence in the library, recorded each other's

speeches and shared social media posts. *Plaintiff's Pet.* ¶¶ 974, 976–80. They both had the same objective to assert Plaintiff should not be allowed children because of sexual misconduct.

Plaintiff does not allege that Defendants Homolak, Puszkas and Grace Church St. Louis (GCSTL) are allowed to engage in the free exercise of religious beliefs. Plaintiff pled that “GCSTL called upon its congregants, including Homolak and Puszkas, to openly oppose, attack, combat, and engage in active and open hostile discrimination against transgender persons, including Plaintiff.” *Plaintiff's Pet.* ¶ 956, see also ¶¶ 215–30. These defendant’s behaviors went beyond expressing their religious views into attacking Plaintiff and making baseless accusations about her matters of serious public concern. In regard to the conspiracy with Defendant Barrett, he and Defendant Homolak had the unlawful objective of defaming Plaintiff.

When Defendant GCSTL called its congregants to action from the pulpit, incited its congregants to engage in open, public, civic opposition to LGBTQIA+ persons, and subsequently openly and knowingly publicized the false defamatory statements of other Defendants to its congregants, it crossed the line from protected free speech into the realm of actionable defamation. *See, e.g., Lovelace v. Van Tine*, 545 S.W.3d 381, 383 (Mo. App. E.D., 2018) (“Publication is simply the communication of the defamatory matter to a third person), and *Id.*, at 384 (“Defamatory statements made by company officers or supervisors to non-supervisory employees constitute a publication for purposes of a defamation action.”). Just like a supervisor or company officer communicating defamatory statements to a non-supervisor, when a church leader, officer, or agent causes to be published or promotes the communication of defamatory statements to a congregant, the act constitutes a publication for purposes of defamation. *See, Id.* Defendant GCSTL further engaged in a civil conspiracy with Defendants Homolak and Puszkas by encouraging, enabling, and prompting them to take the actions they did, publishing the efforts of

Puszkar and especially Homolak, facilitated support for Homolak's efforts by encouraging church members to attend the events at which Homolak spoke and to speak with her in support of her defamation, and by hosting and reposting her defamatory comments about Plaintiff through the church's social media accounts for other congregants to hear. Plaintiff's ex. G, *Plaintiff's Pet.* ¶¶ 69–91. The law and Plaintiff's pleadings clearly support her cognizable cause of action for defamation.

Plaintiff met all the requirements to plead conspiracy counts against Defendant Homolak. Thus, Plaintiff's conspiracy claims against Defendant Homolak must stand.

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, Defendant Homolak's arguments in support of her Special Motion are wholly without merit and serve no other purpose than to delay the present proceeding. This Court should so find in overruling Defendant's motion and award Plaintiff the attorney fees to which she is entitled.

Conclusion

WHEREFORE, Plaintiff respectfully requests this Court deny Defendant's Special Motion to Dismiss, award attorney fees in Plaintiff's favor against Defendant Homolak 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,

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Certificate

I hereby certify that a copy of the foregoing was served on all parties of record on this 13th day of September 2024, via the court's electronic filing system, and via electronic mail, to:

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