

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY, MISSOURI

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

**PLAINTIFF’S SUGGESTIONS IN OPPOSITION TO
DEFENDANT GRACE CHURCH STL’S MOTION TO DISMISS**

COMES NOW Plaintiff, Danny Roberson, through undersigned counsel, and in response to Defendant Grace Church STL’s (“Grace Church”) Motion to Dismiss, or in the Alternative, Motion for More Definite Statement, states as follows:

Introduction

This case is about the defamation of Plaintiff’s character by Defendants. It has nothing to do with Defendants’ religious liberties or the exercise of their faith and this Court should not be fooled by Defendants’ pretense of religious persecution. It is not an assault on the Defendants’ religious freedoms or their constitutionally protected speech rights. Defendants portray themselves as victims in hopes this Court will excuse their salacious misconduct while glossing over the core matter that Defendants made specific, false accusations about Plaintiff Danny Roberson falsely attributing to her heinous sexual misconduct and thereby damaged Plaintiff through their intentional actions. Now that they are called onto the carpet, Defendants disingenuously seek to use their faith as a shield and an escape hatch as they hope to avoid the consequences of their illegal conduct.

Defendants may permissibly oppose LGBTQIA+ persons *generally* as part of their individual or even group practice of faith. They may express opinions *generally* that LGBTQIA+ persons are the vilest of sinners, worthy of hate, and unworthy of love. What they may not do is single out Plaintiff specifically, falsely attribute to her claims of grooming, sexualizing, and abuse of children with wholesale disregard for the truth or lack thereof and, without Plaintiff's consent, use her as their unwilling poster child in a broader campaign of hate. Such conduct obliterates the boundaries of protected free speech and moves squarely into the realm of actionable defamation.

Legal Standard

“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 not dismiss a lawsuit unless the petition fails to plead facts entitling a plaintiff to relief. In the present case, Plaintiff's pleadings are undoubtedly sufficient.

Argument and Analysis

Plaintiff clearly pleads Defendant Grace Church defamed her and engaged in civil conspiracy with multiple other Defendants to defame Plaintiff. In the alternative, Plaintiff properly pleads Defendant Grace Church cast Plaintiff in a false light. And as a second alternative, Plaintiff sufficiently pleads Defendant is liable to her for engaging in *prima facie* tort conduct designed to cause harm to Plaintiff. Plaintiff further pleads sufficient facts to establish Defendants' conduct falls outside any recognized protections. Defendants' speech, and especially those Defendants with whom Defendant Grace Church conspired, went beyond the scope of protected opinion to directly attack and defame Plaintiff, a private individual, by making objectively false accusations of sexual misconduct and child abuse. Defendants further impermissibly singled out Plaintiff as the target and unwilling "poster child" of their campaign of hate.

When Defendant Grace Church 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 Grace Church 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, facilitating 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 see. The law and Plaintiff's pleadings clearly support her cognizable cause of action for defamation.

In defamation cases, a plaintiff need only plead the unified defamation elements set out in MAI 23.01(1) and 23.01(2). *Nazeri*, 860 S.W.2d., at 313 (Mo. Banc 1993). Therefore, 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 what is charged as the defamation. *Nazeri*, 860 S.W.2d at 313. Further, 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 and RSMo § 509.210. Exhibits attached to and incorporated by reference are part of a pleading for all purposes. Rule 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). Plaintiff is neither a "public figure" nor a "limited public figure;" thus the requisite standard of fault with regard to the defamatory statements in the present case is simple negligence. *Topper v. Midwest Div., Inc.*, 306 S.W.3d 117, 128 (Mo. App. W.D., 2010).

In addition to the foregoing, Missouri applies a two-prong test for determining whether a plaintiff's claim of defamation may survive a motion to dismiss for failure to state a claim. *Castle*

Rock Remodeling, LLC v. Better Bus. Bureau of Greater St. Louis, Inc., 354 S.W.3d 234, 239 (Mo. App. E.D. 2011). First, the Court must determine whether the statements alleged to be defamatory are capable of having a defamatory meaning. *Id.* “Whether language is defamatory and actionable is a question of law.” *Id.* Second, if the Court finds the alleged language is capable of defamatory meaning, then the Court must determine whether one or more privileges shield the speaker from legal action. *Id.*, at 241.

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, though such speakers are not immune to suit. R.S.Mo. § 537.528. Defamation is one of the specifically enumerated causes of action contemplated as an exception within the statute. *Id.*, at 537.528.5. RSMo. § 537.528 is intended to deter suits brought solely for the purpose of chilling a citizen’s right to free speech and participation in the described public meetings. *See, Id.*, at 537.528.1. 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.

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

a. Plaintiff has pled sufficient ultimate facts supporting claims of Defamation against Defendant Grace Church in Counts 23, 24, and 25.

In the present case, Plaintiff brings claims of Defamation (Counts 23, 24, and 25) and Civil Conspiracy (Count 29) against Defendant Grace Church. All exhibits attached to Plaintiff’s petition were incorporated by reference therein. *Plaintiff’s Pet.* ¶ 6. As such, all exhibits are part

of Plaintiff's pleadings. Rule 55.12, and *Ocello v. Koster*, 354 S.W.3d, at 197. Plaintiff directly referenced specific exhibits related to Counts 23, 24, and 25 within her petition. *Plaintiff's Pet.* ¶¶ 799, 824, and 849. Exhibit G pertains to Count 23 (*Plaintiff's Pet.* ¶ 799), exhibit R pertains to Count 24 (*Plaintiff's Pet.* ¶ 824), and exhibit S pertains to Count 25 (*Plaintiff's Pet.* ¶ 849). The referenced exhibits must thus be considered in the Court's determination related to the sufficiency of Plaintiff's pleadings as to each count of defamation alleged. Rule 55.12, and *Ocello*, at 197.

To establish a submissible case of defamation, 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). The associated exhibits related to Counts 23, 24, and 25 are precise copies of social media posts made by Defendant Grace Church and constitute a precise record and recitation of the defamatory remarks published by Defendant. In fact, all exhibits attached to Plaintiff's Petition for Damages are either exact copies of social media posts, blog posts, or recordings of public comments made during public meetings and reproduce precisely the language Plaintiff alleges is defamatory in addition to identifying the speaker, providing sufficient information to identify Plaintiff as the person about whom the defamatory statements were made, and publication of the defamatory statements. In this age of social media, it is hard to imagine it possible for a Plaintiff to make an insufficient pleading of defamation when they attach copies of the precise posts alleged to be defamatory to their Petition for Damages given the reproduced posts provide a clear record of the alleged defamatory speech. The fact that Plaintiff was able to copy the exhibits from publicly available social media platforms attributable to Defendant and reproduce them as exhibits to her pleading seems self-proving as to the sufficiency of Plaintiff's pleadings concerning at least the first three elements of the claims. Plaintiff has

therefore established that Defendants 1) published, 2) a defamatory statement, 3) that identified Plaintiff. Thereafter, all that remains to address are the following elements: 4) that such statement is false, 5) that was published with the required degree of fault, and 6) damaged Plaintiff. *Id.*

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. Mo. Sup. Ct. R. 55.20, and RSMo. § 509.210. Plaintiff has not only generally averred the statements were made about her but has also pled sufficient factual allegations showing the defamatory statements were made about her. In her Petition, Plaintiff has asserted the following: that upon seeing Plaintiff at the Kathryn Linneman branch of the library, Defendant Homolak left the building and subsequently called Plaintiff's supervisor to complain about Plaintiff. *Plaintiff's Pet.* ¶¶ 3–4, 15–19. In response to seeing Plaintiff and following her conversation with Plaintiff's supervisor, Defendant Homolak made her first social media post asking others to support her defamatory efforts, identified Plaintiff by description, and accused Plaintiff of forcing her sexual identity onto children. *Plaintiff's Pet.* ¶¶ 24–29. Plaintiff was the only gender non-conforming employee at the library who fit the physical description provided by Homolak. *Plaintiff's Pet.* ¶ 36. Homolak identified Plaintiff multiple times by describing her appearance and identifying where she worked. *Plaintiff's Pet.* ¶¶ 43–45, 47, 49–51, and 55–57. Homolak repeatedly referred to Plaintiff as the “drag queen librarian.” *Plaintiff's Pet.* ¶ 58. The public facing veil of a “library employee dress code” during the June 20, 2023, library board meeting was a front for discussing Plaintiff and her gender non-conforming appearance. *Plaintiff's Pet.* ¶ 78.

Defendant Grace Church aided and abetted Defendant Homolak in committing defamation against Plaintiff at the June 20, 2023, library board meeting. *Plaintiff's Pet.* ¶¶ 69–75. Homolak reiterated many of the same statements she had made previously about Plaintiff, went even further

in her defamatory claims, and again identified Plaintiff by description of her appearance and place of work. Defendant Puszkar similarly referred to Plaintiff specifically as the drag queen at the library for the purposes of identifying Plaintiff. *Plaintiff's Pet.* ¶¶ 80–90. Defendant Homolak continued to identify Plaintiff by description of clothing and work in July 2023 and then began identifying Plaintiff specifically by openly using Plaintiff first name to describe the target of her defamation. *Plaintiff's Pet.* ¶¶ 104–107, and 120–124. At the July 31, 2023, St. Charles City County Counsel (SCCCC) meeting, Defendant Barrett directly referred to Plaintiff and Homolak again specifically referred to Plaintiff by name. *Plaintiff's Pet.* ¶¶ 132 and 137–138. Barrett subsequently referred to Plaintiff by description of her clothing and work location in a defamatory social media post. *Plaintiff's Pet.* ¶ 145.

In August 2023, Defendant Grace Church invited Defendant Homolak to speak at Grace Church's Civic Engagement Meeting on August 10, 2023, during which Homolak identified Plaintiff by her first and last name, stated where Plaintiff works, and alleged her use of Plaintiff's name during the SCCC had been censored out of the recording. The meeting moderator from Grace Church told Homolak not to worry, they were not going to censor Defendant Homolak for using Plaintiff's name. The foregoing statements clearly identified Plaintiff as the target of Defendants' defamatory comments both on that occasion and prior occasions. *Plaintiff's Pet.* ¶¶ 158–169. Exhibit U to Plaintiff's Petition for Damages identifies Plaintiff by physical description and place of work while making defamatory comments about Plaintiff. *Plaintiff's Pet.* ¶ 189. On or about July 31, 2023, Plaintiff was identified by name and workplace when her work schedule was published in a Facebook group called SCCPA *Official* along with reference to photographs of Plaintiff being available through Defendant Homolak if group members wanted to see them, identifying Plaintiff specifically as the target. *Plaintiff's Pet.* ¶¶ 200–03. The post in Exhibit W

was part of the ongoing, months long campaign targeting Plaintiff specifically. *Id.*, and *See, Plaintiff's Pet.* generally. Plaintiff has properly alleged civil conspiracy between Defendant Grace Church and Defendants Homolak and Puszkas in which the conspirators acted in concert for the purpose of defaming Plaintiff specifically, and Plaintiff is readily identified as the target of the defamatory statements. *Plaintiff's Pet.* ¶¶ 953–971. Plaintiff has clearly pled sufficient facts establishing she was the target of all defamatory statements alleged in her petition.

The fourth element Plaintiff must plead is that the defamatory statements made about her were false. *Smith v. Humane Soc'y of United States*, 519 S.W.3d, at 798. Plaintiff has repeatedly averred that all defamatory statements made about her were false. *See, Plaintiff's Pet.* generally. Truth in response to defamation is an affirmative defense, and it is incumbent upon the defendant to submit evidence of truth. *Nigro v. St. Joseph Med. Ctr.*, 371 S.W.3d 808, 818 (Mo. App. W.D., 2012). At this stage of the pleading, Plaintiff has sufficiently pled the comments by Defendants attributing sexualized behavior, sexual misconduct, and abusive conduct to her were false.

The fifth element of plaintiff's claim is pleading the requisite degree of fault. *Smith v. Humane Soc'y of United States*, 519 S.W.3d., at 798. The degree of fault is dependent upon whether the Plaintiff is a private individual or a public figure. *Gertz v. Robert Welch*, 418 U.S. 323, 352 (1973).

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. *Id.* “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, Stepmes 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. In the present matter, there is simply no evidence 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.

In determining whether a Plaintiff should be considered a public figure, 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. 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).

Plaintiff has alleged Defendants 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.* ¶¶ 802, 811, 827, 837, 852, and 862. 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.

The final element of Plaintiff’s claim is that she must plead that she was damaged. *Smith v. Humane Soc’y of United States*, 519 S.W.3d, at 798. Plaintiff has clearly met her pleading burden

with regard to damages. Plaintiff pled that she was damaged when her safety was threatened at work and her work schedule had to be altered due to Defendants' conduct. *Plaintiff's Pet.* ¶¶ 21–23. Plaintiff's reputation in the community was damaged and she suffered extreme distress, embarrassment, and public humiliation. *Plaintiff's Pet.* ¶ 39. Plaintiff was placed in fear for her personal safety and was forced to endure hatred openly directed at her in public. *Plaintiff's Pet.* ¶ 98. Plaintiff suffered public embarrassment and humiliation as a result of Defendants' actions at the July 18, 2023, library board meeting. *Plaintiff's Pet.* ¶ 118. Defendants' conduct has interfered with Plaintiff's job performance. *Plaintiff's Pet.* ¶¶ 21, 806, 831, 856. Plaintiff's reputation in the community was damaged to the point someone came to her place of employment and wanted to provoke Plaintiff so he could justify committing a battery against her. *Plaintiff's Pet.* ¶¶ 238–243. Plaintiff has also suffered mental anguish, pain and suffering, loss of enjoyment of life, loss of self-esteem, and invasion of her privacy. *Plaintiff's Pet.* ¶¶ 806, 831, 856. Missouri recognizes the foregoing types of consequential damages as recoverable. *See, e.g.* RSMo. § 213.010 et seq. commonly referred to as the Missouri Human Rights Act.

As to Defendant Grace Church, Plaintiff has satisfied all pleading requirements. Defendant's Motion to Dismiss must be denied.

b. Plaintiff has sufficiently pled ultimate facts supporting her allegation of civil conspiracy in Count 29.

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 Grace Church engaged in a meeting of the minds with two other defendants, Jane Puszkar and Rachel Homolak. Contrary to Defendant's assertions, Plaintiff pled facts to show how these two individuals and Grace Church interacted together to conspire against Plaintiff. Grace Church held a sermon about "Real Christianity in a Woke Culture." *Plaintiff's Pet.* ¶ 215. Grace Church'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. In response, Defendants claim they have a right to engage in services at church as protected free speech and free association. Plaintiff does not claim that Puszkar, Grace Church, 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, and 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 Grace Church promoted to publicly attack individuals like Plaintiff forms the basis of the conspiracy.

Defendant Grace Church claims there can be no conspiracy because it alleges Puszkar and Homolak did not commit any unlawful acts or achieve an unlawful purpose. As established in other argument, that is simply not the case. Both Homolak and Puszkar made false accusations of sexual misconduct, attributed that conduct to Plaintiff, and Plaintiff was damaged. They did so at the urging of and with the support of Grace Church who promoted and publicized Defendants Homolak's and Puszkar's activities. The conspiracy claim should not be dismissed as the

underlying claims of defamation are viable and Plaintiff pled sufficient facts to show a meeting of the minds between Homolak, Puszkas, and Grace Church.

II. 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 Defendants a chain of statements which Defendants allege are “opinion,” but which demonstrably insinuate false, objective facts about Plaintiff. Defendants accused Plaintiff of sexually expressing herself in front of children which factually is not true and cannot be construed as unprovable 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. Defendants’ comments are provable as false. 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 assertions of facts slyly stated in a way to imply they were truthful statements masquerading as opinion. Defendant’s motion should be overruled.

III. 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 name has 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.

IV. *Prima Facie* Tort claim is an alternative count and is 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* at 315-16. Meaning 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 27 and 28, she clearly pleads these elements. See, *Plaintiff's Pet.* ¶¶ 922–27, 947-52. Importantly, and contrary to Defendant's claims, Plaintiff did not plead in this alternative count that Defendant Barrett made false statements against Plaintiff. Rather, if Defendant Barrett is not found of wrongdoing in the original claim and first alternative, he committed an intentional lawful act. Plaintiff pleads an intent to injure Plaintiff, that there was an injury, and Defendant Barrett lacked sufficient justification for his actions. Plaintiff adequately pled her claims of Prima Facie Tort and Defendant Barrett's motion should be denied.

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 exceeded the scope of any protections conferred by Missouri law. 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 conduct 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 Plaintiff. Missouri’s Anti-SLAPP statute does not protect Defendants’ 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

Defendants enjoy every right to engage in hate speech masquerading as "religious freedom" to oppose the LGBTQIA+ community, distasteful as that speech is, and make every sort of wild and unfounded claim generally in hyperbolic expression of opinion and/or exercise of their religious freedom to oppose minorities. What they may not do is use the shield of their faith to defame private individuals. They may not "manufacture" a public figure out of Plaintiff through the artifice of their "religious freedom," limited or otherwise, by thrusting her involuntarily into the middle of a public issue and falsely accuse her of grooming and sexually abusing children. For the foregoing reasons, Defendant Grace Church's motion (and all of Defendants' motions) should be overruled, and Plaintiff should further be entitled to her own award of attorney fees against Defendant Grace Church for having to respond to Defendant's frivolous Anti-SLAPP motion.

Plaintiff has clearly and appropriately pled claims of defamation with alternate claims for false light invasion of privacy and prima facie tort. She has clearly and sufficiently raised enough factual allegations to support her claims for civil conspiracy. 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 Motion to Dismiss, award attorney fees in Plaintiff’s favor against Defendant Grace Church 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
Mary Madeline Johnson, Mo. Bar # 57716
Alexis M. Pearson, Mo. Bar # 73894
103 W 26th Ave. Suite 170
North Kansas City, MO 64116
Tel: (816) 607-1836
madeline@mokanqueerlaw.com
alex@mokanqueerlaw.com
ATTORNEYS FOR PLAINTIFF

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:

John Reeves
reeves@appealsfirm.com
ATTORNEY (LTD. APPEARANCE) FOR DEFENDANT BARRETT

Daniel Rhoads
therhoadsfirmlc@gmail.com
ATTORNEY FOR DEFENDANT BARRETT

Fred Vilbig
fvilbig@lawmatters.llc

Erin Mersino
emersino@thomasmore.org

Richard Thompson
rthompson@thomasmore.org
ATTORNEYS FOR DEFENDANTS HAGEDORN AND PUSZKAR

Merry Tucker
mtucker@guidone.law
ATTORNEY FOR DEFENDANT GRACE CHURCH STL

Kelly Rickert
krickert@faith-freedom.com

Bethany Onishenko
bonishenko@faith-freedom.com

Katherine Graves
kgraves@gravesgarrett.com
ATTORNEYS FOR DEFENDANT HOMOLAK

/s/ Mary Madeline Johnson
Mary Madeline Johnson