

Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
Randazza Legal Group, PLLC
8991 W. Flamingo Rd., Ste. B
Las Vegas, NV 89147
Telephone: 702-420-2001
ecf@randazza.com

Attorneys for Defendants
Keith Hodge, Kevin Hodge, and Hodgetwins, LLC

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PASTOR STEVE SMOTHERMON,

Plaintiff,

v.

KEITH HODGE, an individual; KEVIN
HODGE, an individual; HODGETWINS, LLC,
a limited liability company,

Defendants.

Case No. 2:25-cv-01858-APG-BNW

**OPPOSITION TO MOTION FOR LEAVE
TO FILE FIRST AMENDED
COMPLAINT AND TO MODIFY
SCHEDULING ORDER**

Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC (“Hodgetwins”) oppose Plaintiff’s Motion for Leave to File First Amended Complaint and to Modify Scheduling Order (ECF No. 52). Given that the deadline to amend pleadings and add parties has passed, Plaintiff is required to show good cause, diligence, and excusable neglect under Fed. R. Civ. P. 16. He cannot show any of these.

Even under the more liberal standard contained in Fed. R. Civ. P. 15, the requested amendment is futile, prejudicial, and requested in bad faith. Amendment is unavailable to him under either standard. The Motion should be denied.

MEMORANDUM OF POINTS AND AUTHORITIES

1.0 INTRODUCTION AND RELEVANT FACTS

On August 22, 2025, Defendants posted on their Facebook page about changes at the Cracker Barrel restaurant chain by former Cracker Barrel executive Steve Smotherman. Defendants performed a Google search for a photograph of Steve Smotherman to illustrate it. While the search was for “Steve Smotherman,” nearly every result contained the photo of an individual that Defendants now understand to be Plaintiff Steve Smothermon. *See* Defendants’ Interrogatory Response No. 2, attached to the Green Decl. as **Exhibit 1**. The Court can take judicial notice of the fact that if it opens a browser in incognito mode (so as to not let prior searches influence the results) and does a Google image search for “Steve Smotherman” it will still find the same results. A Google image search for “Steve Smotherman” performed in incognito mode on July 11, 2026, by Ronald Green, is attached to the Green Decl. as **Exhibit 2**.

Shortly after Defendants made the Facebook post, their customer service team received telephone calls and emails from Plaintiff Smothermon’s employee Krisha Mason, informing them that the post contained a photograph of the wrong person. After receiving Ms. Mason’s communications, Defendants’ customer support team took down the Facebook post. *See* Defendants’ Interrogatory Response No. 3. Even though Defendants’ customer service team immediately complied with Plaintiff’s takedown request, Plaintiff filed suit in this Court on October 1, 2025, asserting claims against Defendants for Defamation and Permanent Injunctive Relief. *See* ECF No. 1.

On April 10, 2026, the Court entered a Joint Discovery Plan and Scheduling Order (ECF No. 49), setting the deadline to amend the pleadings and add parties as June 16, 2026. *See* ECF No. 49 at ¶ 4. From the entry of the Scheduling Order to June 30, 2026, Plaintiff Smothermon engaged in little activity in this case beyond a frivolous Motion to Strike (ECF No. 45) and serving one round of Requests for Admission, Requests for Production, and Interrogatories on April 22, 2026, and requesting meet and confer conferences after Defendants responded. *See* Plaintiff’s Initial Written Discovery, attached to the Green Decl. as **Exhibit 3**; Green Decl. at ¶¶ 5-6. In

contrast, Defendants have been diligent and active in presenting their defense –with six sets of requests for production, five sets of interrogatories, and one set of requests for admission. *See id.* They have noticed three depositions and produced approximately twelve times as many documents as Plaintiff. *See id.*

On June 30, 2026, two weeks after the amendment deadline passed, Plaintiff’s counsel sent correspondence requesting that Defense counsel provide their availability by July 1, 2026 “for a telephonic conference under LR 26-6.” *See* June 30, 2026, letter from Nicole Westbrook, attached to the Green Decl. as **Exhibit 4**. She did not indicate that the conference was for an anticipated, untimely, and futile Motion to Amend. *See* June 30, 2026, letter. At 2:33 p.m. the next day, Plaintiff’s counsel revealed that her issue was “an emergency” that “had to be handled by today” and that she desired to file an untimely motion to amend.¹ *See* July 1, 2026, email from Nicole Westbrook, attached to the Green Decl. as **Exhibit 5**. She asked Defense counsel to let her know whether they opposed. *See id.* Shortly thereafter, Plaintiff filed his Motion to Amend without waiting for a response from Defense counsel. Westbrook has not explained the emergency at this point. But presumably it is moot.

In his Motion, Plaintiff Smothermon seeks to convert his defamation claim to a claim for defamation *per se*. He additionally seeks to add new claims for false light, right of publicity, and unjust enrichment, as well as a prayer for punitive damages. *See generally* Motion to Amend. Plaintiff attempts to mislead the Court by identifying several “new” facts that he claims justify his late and futile request to amend. His Motion misrepresents what happened and when, demonstrating that Plaintiff did not move in good faith and that he is attempting to cover up his lack of diligence, and seeks to amend only to unnecessarily multiply the proceedings.

Plaintiff’s most significant misrepresentation is that he discovered on June 10, 2026, that Defendant Kevin Hodge performed the Google search that erroneously pulled up Plaintiff’s picture while using Google’s incognito mode. *See* Motion at 3. Although this fact changes nothing,

¹ The June 30 letter asked Defense counsel to provide their availability for a call **by** July 1, not for their availability **on** July 1.

1 Plaintiff was well aware of this fact more than a month earlier. On May 4, 2026, Defendants’
2 counsel, Ronald Green, informed Plaintiff’s counsel, Nicole Westbrook, that Mr. Hodge
3 performed the search in incognito mode during a meet and confer conference. *See* Green Decl., ¶
4 9. On May 29, 2026, Mr. Green sent a letter to Plaintiff’s counsel, reminding her of what was
5 discussed during the meet and confer, and that letter includes the statement that Kevin Hodge’s
6 “practice is to browse in incognito mode.” *See* Green Letter, dated May 29, 2026, attached to the
7 Green Decl. as **Exhibit 6**; Green Decl. at ¶¶ 10-11. Plaintiff and his counsel had this information
8 for over a month prior to June 10. Plaintiff is attempting to cover up his lack of diligence by
9 claiming that he did not receive it until over 5 weeks later. This lack of candor should be enough
10 to call the motion into question.

11 Plaintiff Smothermon also complains that Defendants did not disclose Kylie Howerton as
12 a witness until May 29, 2026. *See* Motion at 3. Ms. Howerton works for the independent contractor
13 that Defendants use to handle their customer service issues and handled the takedown of the
14 Facebook post after she was contacted by Legacy Church. Defendants’ disclosure was still nearly
15 three weeks before the amendment deadline.

16 More significantly, the person that Ms. Howerton spoke to from Legacy Church was Krisha
17 Mason, who works for Plaintiff Smothermon. If Plaintiff or his counsel had never spoken with Ms.
18 Mason, presumably one of their star witnesses, about her communications with Defendants’
19 independent contractors, their failure to do so cannot be blamed on Defendants. It shows that
20 Plaintiff lacked diligence. Notably, and despite all this, Plaintiff Smothermon still has not disclosed
21 Ms. Mason as a witness.

22 In his Motion, Plaintiff also misrepresents his rationale for his late request to add a prayer
23 for punitive damages. In his Requests for Production, Plaintiff Smothermon demanded that
24 Defendants produce “the most recent audited financial statements for Hodgetwins, LLC, including
25 balance sheets and income statements in their Native Format with all Metadata intact and
26 unaltered.” *See* Plaintiff’s written discovery, Exhibit 3. The only reason Plaintiff Smothermon
27 provides for adding a punitive damages prayer is that “Defendants have actively objected to

producing their audited financial statements (RFP No. 9) expressly because ‘Plaintiff’s Complaint does not request an award of punitive damages.’” Motion at 7.

Plaintiff only provides this Court with a snippet of Defendants’ actual objection, which continues: “To the extent that Plaintiff wishes to take discovery regarding Defendants’ financials, Plaintiff does not have permission of the Court to do so. This request seeks information that is sensitive and proprietary to Defendant Hodgetwins, LLC, and will not be produced absent a protective order protecting the information responsive to this request from disclosure.” *See* Defendants’ Response to Requests for Production, attached to the Green Decl. as **Exhibit 7**. Plaintiff’s selected quotation is misleading.

During the parties’ meet and confer conference on May 4, 2026, which occurred one and one-half months before the deadline to request amendment or add parties, counsel for Defendants informed Plaintiff that this specific request for production was too broad and that Defendants would be willing to produce financial information if Plaintiff issued a narrower request. *See* Green Decl., ¶ 13. Mr. Green represented that, with a protective order in place, Defendants would likely have no basis to object to some financial discovery. *See id.*, ¶ 14.

Plaintiff’s counsel informed Defendants’ counsel that she would work on a narrower request for production for consideration by Defendants. *See id.*, ¶ 15. She never did. *See id.*

Plaintiff’s Motion to Amend attempts to cover up his lack of diligence in pursuing and requesting amendment. This should be the beginning and end of the Court’s inquiry. His Motion must be denied. However, even if the Court goes beyond that inquiry, it should not permit amendment. Plaintiff’s amendments are futile and in bad faith. They would prejudice Defendants. Regardless of the standard the Court uses, the Motion should be denied.

2.0 AMENDMENT SHOULD NOT BE PERMITTED UNDER RULE 16

2.1 Legal Standard

When the Court entered its Scheduling Order on April 10, 2026 (ECF No. 49), it set June 16, 2026, as the deadline for amending pleadings and adding parties. *See* ECF No. 49 at ¶ 4. Plaintiff did not seek leave to amend until July 1, 2026, over two weeks after the deadline. Once

that deadline has passed, Fed. R. Civ. P. 16 controls. *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir. 1992).

Unlike Rule 15(a)'s liberal amendment policy, "Rule 16(b)'s good cause standard primarily considers the ***diligence of the party seeking amendment.***" *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 737 (9th Cir. 2013), *aff'd sub nom Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373 (2015) (emphasis added). A party seeking to amend after the deadline must show good cause. *See id.*; Fed. R. Civ. P. 16(b)(4). Good cause exists when a deadline "cannot reasonably be met despite the diligence of the party seeking the extension." Fed. R. Civ. P. 16, Advisory Comm. Notes (1983 Am.). ***Where a party has not been diligent, the inquiry ends, and the motion is denied.*** *See Zivkoviz v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002).

Whether a party has acted with diligence is generally determined by examining the time between the moving party's discovery of new facts and its asking for leave to amend. *See Coleman v. Quaker Oats Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002). ***There is no good cause for amendment when the moving party knew of the facts and the theory from the beginning of the case but waited until after the deadline to amend had passed to move to amend.*** *See Mammoth Recreations*, 975 F.2d at 609-10.

Pursuant to LR 26-3, the moving party is also required to show excusable neglect if he wishes to amend after the deadline to do so has passed. To determine whether excusable neglect exists, courts examine the analysis specified in *Pioneer Inv. Servs. Co. v. Brunswick Assoc., Ltd.*, 507 U.S. 380, 395 (1993). Those factors are: (1) prejudice to the opposing party; (2) length of delay and its impact upon the proceedings; (3) reason for the delay; and (4) whether the movant acted in good faith. *See Ribar v. Washoe Cnty.*, 2026 U.S. Dist. LEXIS 125910, at *4 (D. Nev. June 5, 2026). Here, Plaintiff has not been diligent, and there is no excusable neglect. The Motion should be denied, and amendment should not be permitted.

2.2 Plaintiff Smothermon Has Not Been Diligent

Since the deadline has passed, if Mr. Smothermon has not been diligent, the Motion must be denied. *See Zivkoviz*, 302 F.3d at 1087.

2.2.1 Defamation *Per Se*

With regard to his desire to convert his defamation claim into a claim for defamation *per se*, Plaintiff does not identify any new facts that justify his proposed late amendment. His Motion does not discuss the new defamation *per se* claim, or mention defamation. A review of the proposed First Amended Complaint reveals that there are no “new” facts Plaintiff seeks to plead. *See* Proposed First Amended Complaint, ¶¶ 67-71. He does not attempt to justify why he could not have asserted this claim before the deadline to amend passed because he does not have a justification. He was not diligent in seeking to add this claim, and this should end the Court’s inquiry. The Motion must be denied.

2.2.2 False Light

Plaintiff’s Smothermon’s proposed false light claim also fails for lack of diligence. In Nevada, the elements of a false light claim are: (1) that the false light in which the plaintiff was placed would be highly offensive to a reasonable person; and (2) that the defendant had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the plaintiff would be placed. *See Franchise Bd. of Cal. v. Hyatt*, 335 P.3d 125, 141 (Nev. 2014), citing Restatement (Second) of Torts § 652E (1977). The Facebook post containing the alleged “false light” was posted and taken down on August 22, 2025, so Plaintiff Smothermon had all necessary facts for the first factor on August 22, 2025.

Plaintiff claims that his discovery that Defendant Kevin Hodge performed his search in Google’s incognito mode is a new fact justifying his late Motion. He is wrong. Even if incognito mode had anything to do with a false light claim (it does not), Plaintiff learned of this evidence at the beginning of May, nearly one and one-half months before the deadline to amend. Attempting to cover up his lack of diligence, he misrepresents when he “discovered” this fact to the Court, falsely claiming that he did not discover it until just before the deadline to amend expired. All Plaintiff Smothermon has done is provide this Court with evidence of his bad faith.

2.2.3 Right of Publicity

Plaintiff requests leave to plead a claim for likeness appropriation pursuant to NRS 597.810, which provides that:

1. Any **commercial use** of the name, voice, signature, photograph, or likeness of another by a person, firm, or corporation without first having obtained written consent for the use is subject to:
 - a. Injunctive relief to prevent or restrain the unauthorized use; and
 - b. An action at law for any injuries sustained by reason of the unauthorized use. In such a suit, the plaintiff may recover:
 - (1) Actual damages, but not less than \$750; and
 - (2) Exemplary or punitive damages, if the trier of fact finds that the defendant knowingly made use of the name, voice, signature, photograph, or likeness of another person without the consent required by NRS 597.790.

Id. (emphasis added).

Here, Plaintiff is required to demonstrate two elements to assert a valid claim. The first is that Defendants used his likeness. They clearly did for a number of hours. Plaintiff already knew that they did on August 22, 2025, when Defendants made the Facebook post, and on October 1, 2025, when Plaintiff filed his Complaint. This is what the entire case is about.

The second requirement is that the Facebook post was a commercial use of Plaintiff's likeness. It was not, as will be discussed below. However, even if it was, Plaintiff's justification for why he could not have asserted this claim in the initial Complaint or during the amendment period is clearly untrue.

First, he claims that he did not know Defendants' post contained a "commercial nexus" until Defendants produced the Krisha Mason email. *See* Motion at 6-7. Again, Ms. Mason is Plaintiff's employee. He likely asked her to send the email to Defendants' customer support staff to get the Facebook post taken down. Even if he did not, he could have, and should have, discovered this information before the Complaint was filed. If he did not, it was because he and his counsel were not diligent and not because Defendants withheld any documents from him. This should be the end of the Court's inquiry, and it should deny Plaintiff's Motion.

However, even if it is not the end of the inquiry, one must ask how *plaintiff's employee* would all of a sudden be the key witness in a right of publicity claim. “Commercial use” would not be something she would know. But the absence of “commercial use” is apparent on the face of the complaint and the exhibits thereto. This is developed further in Section 3.3.2 *infra*.

2.2.4 Unjust Enrichment/Punitive Damages

Finally, Plaintiff combines his desire to add a claim for unjust enrichment and to include a prayer for punitive damages. In Nevada, unjust enrichment has three elements: (1) the plaintiff confers a benefit upon the defendant; (2) the defendant appreciates the benefit; and (3) the defendant accepts and retains the benefit under circumstances making it inequitable for the defendant to retain the benefit without payment of the value thereof. *See Nautilus Ins. Co. v. Access Medical, LLC*, 137 Nev. 96, 103, 482 P.3d 683, 690 (2021). Plaintiff had all of the facts necessary to plead this claim on the day that he filed his Complaint. His proposed First Amended Complaint includes no facts in the proposed unjust enrichment claim that Plaintiff contends are “new,” requiring denial. *See Proposed First Amended Complaint*, ¶¶ 91-95.

Plaintiff admittedly only seeks to plead punitive damages because Defendants objected to his attempt to gain access to Hodgetwins’ finances. *See id.* Seeking them solely because it might open the door to discovery on Defendants’ finances is bad faith. Plaintiff admits that this is his motivation for doing so and does not base this prayer on any allegedly new facts. If he wanted to request punitive damages, he should have done so when he filed the Complaint or before the deadline to amend had passed. His Motion should be denied.

2.3 Plaintiff Cannot Demonstrate Excusable Neglect

2.3.1 Amendment Will Prejudice Defendants and Cause Undue Delay

Amendment should be denied if it prejudices the opposing party or produces undue delay. Allowing Plaintiff to amend now would prejudice Defendants. This is a frivolous lawsuit in the first place. The Facebook post that upset Plaintiff was only visible on the internet for a couple of hours. Nearly all of the comments on the post were made by congregants in Plaintiff’s church and other persons informing Defendants that the photo attached to the post was of “Steve Smothermon”

of Legacy Church and not “Steve Smotherman” of Cracker Barrel. When Defendants’ customer support team was alerted that the post contained an incorrect photo, it was taken down immediately. Plaintiff suffered no damage, reputational or otherwise.

Given how silly this entire litigation is, it should not be prolonged. If the Court grants Plaintiff’s Motion, the Court will have to set new discovery deadlines that will extend discovery by at least a few months. It will increase Defendants’ time and expense and reward Plaintiff for being dilatory. There is no justification for amendment.

Discovery is currently set to conclude in September 2026. Defendants have been proceeding throughout discovery based upon the initial complaint and have tailored their discovery to defeating the initial complaint. They have already used most of their permissible interrogatories² and will not have the ability to take sufficient discovery on the claims that Plaintiff seeks to add if the Motion is granted.

Defendants do not seek to amend because they have discovered new facts. They seek to amend to increase Defendants’ costs of defending a frivolous lawsuit.

2.3.2 Plaintiff Does Not Have Good Reason for His Delay

Plaintiff Smothermon cannot demonstrate good reason for his delay. In his Motion, he attempts to justify his inaction by claiming that: (1) Defendants did not disclose that Plaintiff Smothermon’s own employee contacted Defendants via phone and email to get the post taken down until June 5, 2026; and (2) Defendants did not disclose that Kevin Hodge searched for the photo of Cracker Barrel’s Steve Smotherman in incognito mode until June 10, 2026. Motion at 5.

Plaintiff misrepresents the timing of Defendants’ incognito mode disclosure. He knew that Defendants searched for the photograph in incognito mode well over one month prior to the deadline to move to amend. Similarly, he either knew or should have known that his employee, Krisha Mason, contacted Defendants’ customer service team to get the Facebook post taken down at or before the time the Complaint was filed on October 1, 2025. If neither he nor his counsel

² As of this writing, Defendants have used 17 of their permissible 25 interrogatories.

spoke to Mr. Smothermon's own employees prior to the conclusion of the period to timely amend, this does not provide good reason for delay. It merely shows that Plaintiff was not diligent.

2.3.3 Plaintiff is Acting in Bad Faith

The Court should deny Plaintiff's Motion because it was made in bad faith. When the information supporting a plaintiff's proposed amended complaint was available to him when the initial pleading was filed, the Court should deny a motion to amend as being made in bad faith. *See Kantor v. Kantor*, 116 Nev. 886, 891-93, 8 P.3d 825, 828-29 (2000). Here, Plaintiff has not learned anything new since he filed the Complaint that would justify permitting amendment at all, much less after the deadline.

In his attempt to justify his lack of diligence to the Court, he makes misrepresentations regarding when he discovered the "new" facts that allegedly form the basis for the claims and the prayer for relief that he seeks to add. The Court should not excuse his lack of diligence or his demonstrable misrepresentations. It should deny his Motion.

3.0 AMENDMENT SHOULD NOT BE PERMITTED UNDER RULE 15

3.1 Legal Standard

Even if Plaintiff's request to amend had been timely, he still has not shown that he should be permitted to amend. Under Fed. R. Civ. P. 15, leave to amend is not granted automatically. *See In re W. States*, 715 F.3d at 738. Courts should deny a proposed amendment which "(1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in the litigation; or (4) is futile." *Amerisource Bergen Corp. v. Dialysis West, Inc.*, 445 F.3d 1132, 1136 (9th Cir. 2006), quoting Fed. R. Civ. P. 15(a). Here, the Court can deny Plaintiff's Motion pursuant to any of these factors because each and every one applies.

3.2 The Bad Faith Request Will Prejudice Defendants and Cause Undue Delay

In Sections 2.3.1 and 2.3.3, explaining why Rule 16 prohibits Plaintiff's requested amendment, Defendants demonstrated that amendment would prejudice them and produce undue delay in this litigation. They also showed that Plaintiff's Motion to Amend was filed in bad faith. Defendants adopt and incorporate those arguments into their Rule 15 argument.

3.3 The New Claims Plaintiff Seeks to Add are Futile

The claims that Plaintiff seeks to add are futile. An amendment is futile if it would be subject to dismissal pursuant to Fed. R. Civ. P. 12(b)(6). *See Stengel v. First Nat'l Bank of Omaha*, 2026 U.S. Dist. LEXIS 51403, at *10 (W.D. Wa. Mar. 12, 2026), citing *Mendia v. Garcia*, 165 F. Supp. 3d 861, 875 (N.D. Cal. 2016). Here, every single proposed amendment Plaintiff seeks is dismissible under Rule 12(b)(6) or is otherwise an exercise in futility because Plaintiff is already in possession of evidence demonstrating that his claims are not viable.

3.3.1 False Light

Plaintiff may only assert a false light claim against Defendants where Defendants have made a false statement of objective fact *with actual malice*. *See Flowers v. Carville*, 266 F. Supp. 2d 1245, 1252 (D. Nev. 2003). Actual malice is required in a false light claim because falsehoods are “inevitable in free debate, and a rule that would impose strict liability on a publisher for false factual assertions would have an undoubted chilling effect on speech relating to public figures that does have constitutional value. Freedom of expression requires breathing space.” *Hustler Magazine v. Falwell*, 485 U.S. 46, 52 (1988).

False light is a *subjective* standard focused on the publisher’s state of mind. Plaintiff must have “sufficient evidence to permit the conclusion that the defendant, in fact, entertained serious doubts as to the truth of the publication.” *See St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *see also Harte-Hanks Comms. v. Connaughton*, 491 U.S. 657, 667 (1989); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964) (stating that defendant must have made the false publication with a “high degree of awareness of ... probable falsity”).

Here, Plaintiff already has evidence regarding Defendants’ state of mind that demonstrates the opposite. Defendants provided that evidence to Plaintiff in discovery. When Kevin Hodge searched for “Steve Smotherman” for a photo to accompany his Facebook post, the search results provided photos of Plaintiff instead of the Cracker Barrel executive. *See Response to Interrogatory No. 2*. Mr. Hodge did not know what Cracker Barrel’s Steve Smotherman looked like and selected

the photograph without knowledge that the photograph was of the wrong person. *See id.* He did not have “serious doubts” as to the accuracy of the photo. He believed that he had the right person.

Plaintiff claims that his “discovery” that Defendants used Google’s “incognito mode” when searching for the photograph of Cracker Barrel’s Steve Smotherman demonstrates reckless disregard, but Plaintiff is wrong. Under *New York Times v. Sullivan*, 376 U.S. 254 (1964), “reckless disregard” is a subjective standard. *See id.* at 280. Plaintiff must show that Defendants entertained serious doubts about the truth of the publication. *See St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). Even an outright failure to investigate, standing on its own, cannot demonstrate reckless disregard. *See id.* at 730.

Using incognito mode says nothing about whether an internet user doubted the truth about what they published. If anything, it shows that Defendants wished to obtain *more* accurate search results. Incognito mode strips away cookies and personalization and yields search results that are not influenced by the previous search results of an internet user. Incognito mode is a routine privacy tool used daily by millions of internet users. *See* Travis Panneck, *Incognito Mode Is in the Constitution Note*, 104 Minn. L. Rev. 511 (2019), Available at: <https://doi.org/10.24926/265535.4137>. The reasons users choose to browse in incognito mode vary. Some are using shared computers. Some are trying to avoid ad tracking. Some desire search results not tainted by their previous internet searches. It does not provide evidence of the user’s state of mind when performing the search.

3.3.2 Right of Publicity

Plaintiff seeks to add a claim for right of publicity because his employee decided to send the takedown email to Defendants’ customer support team, which he claims that creates a “commercial nexus” which “satisfies the statutory commercial use element.” Motion at 6. This position shows a lack of understanding about how right of publicity claims work.

Commercial speech is “usually defined as speech that does no more than propose a commercial transaction.” *United States v. United Foods, Inc.*, 533 U.S. 405, 409 (2001). When there is a close question as to commercial speech, speech should be characterized as commercial

where: (1) the speech is an advertisement; (2) the speech refers to a particular product; and (3) the speaker has an economic motivation. *Hunt v. City of L.A.*, 638 F.3d 703, 715 (9th Cir. 2011), citing *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66-67 (1983). The presence of only one of these factors is not sufficient to make speech commercial. In *Bolger*, the Court expressly held that the fact that a speaker “has an economic motivation” is “clearly insufficient by itself” to render speech commercial. That principle traces back at least to *New York Times Co. v. Sullivan*, 376 U.S. 254, 266 (1964), which held that paid publication is “immaterial,” just as it is immaterial “that newspapers and books are sold,” and to *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501–02 (1952), which rejected the notion that expression loses protection because it is “published and sold for profit.” Commercial speech is instead narrowly defined as speech that “does no more than propose a commercial transaction,” *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976), or expression “related solely to the economic interests of the speaker and its audience,” *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557, 561 (1980). Applying these principles, courts have held that ad-supported, revenue-generating publications remain fully protected noncommercial speech.

Here, the text of the relevant Facebook post is clearly not an advertisement and does not refer or relate to a particular product. It does not relate to the merchandise that Defendants sell or make any attempt to sell that merchandise. Rather, the Facebook post solely criticized the actions of Cracker Barrel and Steve Smotherman, a former Cracker Barrel executive. The post was Defendants’ opinion on a public issue. There is not a single mention of Defendants’ goods or commercial services.

Given that Defendants’ Facebook account is monetized, Plaintiff Smothermon is sure to argue that the post about Cracker Barrel’s Smotherman was made with an economic motivation. However, the third *Bolger* factor is concerned with whether the speaker acted *primarily* out of economic motivation; the mere presence of *any* motivation is insufficient. *See Procter & Gamble Co. v. Amway*, 242 F.3d 539, 552-53 (5th Cir. 2001), abrogated on other grounds by *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014) (stating that the “question of whether

an economic motive existed is more than a question whether there was an economic incentive for the speaker to make the speech; the *Bolger* test also requires that the speaker acted *substantially* out of economic motivation”). Without this limitation, any publication sold in commerce would constitute commercial speech. *See, e.g., Dex Media West, Inc. v. City of Seattle*, 696 F.3d 952, 960 (9th Cir. 2012). If the rule were otherwise, then the Las Vegas Review-Journal would always be commercial speech, because it sells newspapers and it sells advertisement. Under Plaintiff’s theory, every newspaper, book, film, and television broadcast would be reduced to commercial speech — a result the Supreme Court has repeatedly and emphatically rejected.

The purpose of the Facebook post was to criticize Cracker Barrel and its former executive. It was not to sell Defendants’ merchandise, which it does not even mention. Plaintiff’s attempt to characterize the post as commercial speech fails.

Plaintiff’s argument that, because Legacy Church’s takedown request email went to Defendants’ customer service email, this constitutes a “commercial nexus” that “satisfies the statutory commercial use element” makes no sense. Motion at 6. Plaintiff’s employee *chose* to send her email to Defendants’ customer support team. Defendants had no control over which email that Plaintiff’s employee sent her takedown request to. Plaintiff had more control over where the email went than Defendants did.

Finally, Plaintiff indicates that he is entitled to attorneys’ fees under the claim pursuant to NRS 597.810(1). *See* ECF No. 52 at 6-7; ECF No. 52-2, ¶¶ 84, 75. Plaintiff’s Motion indicates that this makes his claim strong and uses it as justification to encourage the Court to allow amendment. However, the statute does not provide for attorneys’ fees. Plaintiff just made that up. It appears nowhere in the statute. This claim is futile, and amendment should be denied.

3.3.3 Unjust Enrichment and Punitive Damages

In Nevada, punitive damages may be “awarded in addition to compensatory damages as a means of punishing the tortfeasor and deterring the tortfeasor and others from engaging in similar conduct.” *Siggelkow v. Phoenix Ins. Co.*, 109 Nev. 42, 846 P.2d 303-304-05 (1993). Punitive damages are available “in an action for breach of an obligation not arising from contract where it

is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, express or implied.” NRS 42.005. In other words, they are available when the plaintiff can show that defendant’s conduct was “intended to injure” him or was “despicable conduct” involving a “conscious disregard of the rights or safety of others.” NRS 42.001(3). “Conscious disregard” means “knowledge of the probable harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid these consequences.” NRS 42.001(1).

Here, Defendants have already provided evidence in discovery demonstrating that Plaintiff’s claims are futile. When Kevin Hodge searched “Steve Smotherman” for a photo for his Facebook post, the search results provided photos of Plaintiff. *See* Response to Interrogatory No. 2. Mr. Hodge did not know what Cracker Barrel’s Steve Smotherman looked like and selected the photograph without knowledge that it was of the wrong person. *See id.* Plaintiff is already in possession of evidence indicating that punitive damages do not apply here, necessitating denial.

3.3.4 Defamation *Per Se* and Unjust Enrichment

Plaintiff does not identify any new facts sufficient to convert his defamation claim to a claim for defamation *per se* or to add a claim for unjust enrichment. Plaintiff makes no attempt to justify his failure to assert these claims in his initial Complaint or in a request to amend prior to the expiration of the deadline. Amendments concerning these claims should be denied due to his lack of diligence.

4.0 CONCLUSION

For each and every reason discussed herein, the Motion should be denied.

Dated: July 15, 2026.

Respectfully submitted,

/s/ Marc J. Randazza

Marc J. Randazza, NV Bar No. 12265

Ronald D. Green, NV Bar No. 7360

RANDAZZA LEGAL GROUP, PLLC

8991 W. Flamingo Rd., Ste. B

Las Vegas, NV 89147

Attorneys for Defendants

Keith Hodge, Kevin Hodge, and Hodgetwins, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case No. 2:25-cv-01858-APG-BNW

PASTOR STEVE SMOTHERMON,

Plaintiff,

v.

KEITH HODGE, an individual; KEVIN
HODGE, an individual; HODGETWINS, LLC,
a limited liability company,

Defendants.

**DECLARATION OF
RONALD D. GREEN**

I, Ronald D. Green, declare:

1. I am over 18 years of age and have never been convicted of a crime involving fraud or dishonesty. I have knowledge of the facts set forth herein, and if called as a witness, could and would testify competently thereto.

2. I am submitting this declaration in support of Defendants' Opposition to Plaintiff's Motion for Leave to File First Amended Complaint and to Modify Scheduling Order (the "Opposition").

3. A true and correct copy of Defendants' Interrogatory Responses is attached as **Exhibit 1**.

4. On July 11, 2026, I performed a Google image search for "Steve Smotherman" in Incognito mode. A true and correct copy of the search results is attached as **Exhibit 2**.

5. From the opening of discovery until June 30, 2026, Plaintiff served one round of Requests for Admission, Requests for Production, and Interrogatories on April 22, 2026, and requested meet and confer conferences after Defendants responded to those requests. In contrast, Defendants have been diligent and active in presenting their defense—with six sets of requests for production, five sets of interrogatories, and one set of requests for admission. They have noticed three depositions and produced approximately twelve times as many documents as Plaintiff.

6. A true and correct copy of Plaintiff's Initial Written Discovery Requests are attached as **Exhibit 3**.

7. A true and correct copy of the June 30, 2026, Letter from Nicole Westbrook is attached as **Exhibit 4**.

8. A true and correct copy of the July 1, 2026, email from Nicole Westbrook is attached as **Exhibit 5**.

9. On May 4, 2026, I informed Plaintiff's counsel, Nicole Westbrook, that Mr. Hodge performed the Google image search for "Steve Smotherman" in incognito mode during a meet and confer conference.

10. On May 29, 2026, I sent a letter to Plaintiff's counsel, reminding her of what was discussed during the meet and confer, and that letter includes the statement that Kevin Hodge's "practice is to browse in incognito mode."

11. A true and correct copy of my May 29, 2026, Letter to Plaintiff's counsel is attached as **Exhibit 6**.

12. A true and correct copy of Defendants' Response to Requests for Production is attached as **Exhibit 7**.

13. During the parties' meet and confer conference on May 4, 2026, I informed counsel for Plaintiff that its demand for Defendants' financials was too broad and that Defendants would likely be willing to produce financial information if Plaintiff issued a narrower request.

14. I represented that, with a protective order in place, Defendants would likely have no basis to object to some financial discovery.

15. Plaintiff's counsel informed me that she would work on a narrower request for production for consideration by Defendants. She never did.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 15, 2026.

/s/ Ronald D. Green

Ronald D. Green

Exhibit 1

Defendants' Interrogatory Responses

Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
RANDAZZA LEGAL GROUP, PLLC
8991 W. Flamingo Rd., Ste. B
Las Vegas, NV 89147
Telephone: 702-420-2001
ecf@randazza.com
Attorneys for Defendants
Keith Hodge, Kevin Hodge, and Hodgetwins, LLC

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PASTOR STEVE SMOTHERMON,

Plaintiff,

v.

KEITH HODGE, an individual; KEVIN
HODGE, an individual; HODGETWINS,
LLC, a limited liability company,

Defendants.

Case No. 2:25-cv-01858-APG-BNW

**DEFENDANTS' SECOND AMENDED
RESPONSES TO PLAINTIFF'S FIRST
SET OF INTERROGATORIES**

Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC ("Defendants"), hereby submit their second amended responses to Plaintiff's First Set of Interrogatories served on April 22, 2026. Defendants have amended their responses to Interrogatories Nos. 3, 4, 5, 6, and 7.

GENERAL OBJECTIONS

1. Defendants object to the subject interrogatories to the extent that they request the disclosure of information protected by the attorney-client privilege, the work-product doctrine, or any other recognized privilege or immunity.

2. Defendants object to the subject interrogatories to the extent that they do not seek relevant information or are not proportional to the needs of the case. The providing of answers in

1 response to any interrogatory is not to be deemed or construed as an admission by Defendants
2 that the information is in fact relevant to this action.

3 3. Defendants object to the subject interrogatories to the extent that they call for
4 information not in the possession, custody, or control of Defendants.

5 4. To the extent words or phrases used in the requests are vague, ambiguous, or
6 otherwise overbroad, Defendants shall respond in a manner in which they believe, in good faith,
7 to be requested thereby.

8 5. Defendants state that discovery in this matter is continuing and ongoing and that
9 it is possible that additional information responsive to the interrogatories will be identified
10 subsequent to the date of this response.

11 6. All responses made herein are based upon the knowledge, information, and belief
12 held by Defendants at the time of the response.

13 7. Defendants object to the Definitions to the extent they conflict with the definitions
14 applicable in the Federal Rules of Civil Procedure and/or the Local Rules of this Court.

15 8. Defendants object to the Instructions to the extent they impose any obligation
16 beyond that required by the Federal Rules of Civil Procedure or the Local Rules of this Court.

17 9. Defendants incorporate these General Objections into each and every specific
18 response as if fully set forth therein.

19 Subject to and without waiving the foregoing General Objections, Defendants specifically
20 respond to each numbered Interrogatory as follows:

21 **RESPONSES TO INTERROGATORIES**

22 **INTERROGATORY NO. 1:** Identify every person who was involved in researching, drafting,
23 reviewing, editing, and publishing the August 22, 2025, Facebook Post.

24 **RESPONSE TO INTERROGATORY NO. 1:** Objection. This interrogatory is compound and
25 comprises five separate questions with conceivably different answers. Without waiving this
26 objection, Kevin Hodge.
27

1 **INTERROGATORY NO. 2:** Describe in detail the exact steps taken to source and verify the
2 photograph used in the Facebook Post. Your response must include the specific search engine
3 used, the exact search terms entered (e.g., “Steve Smotherman”), the date and time of the search,
4 and the name of the person who downloaded the image.

5 **RESPONSE TO INTERROGATORY NO. 2:** Objection. This interrogatory seeks information
6 that is not relevant to the instant lawsuit. Without waiving this objection, Kevin Hodge used
7 Google image search and input the name “Steve Smotherman” into the search engine. The search
8 results returned images that Defendants now understand to be Plaintiff Steve Smothermon.
9 However, at the time the Facebook Post was published, Defendants did not know what Steve
10 Smotherman looked like and published the photograph without knowledge that the person in the
11 photograph was not Steve Smotherman. Defendants do not recall the specific time that the search
12 was performed, but it was performed on August 22, 2025, shortly before the Facebook Post was
13 posted to the internet.

14 **INTERROGATORY NO. 3:** Identify the person or persons that first notified you that the
15 photograph in the Facebook Post depicted Plaintiff Pastor Steve Smothermon rather than the
16 Cracker Barrel executive and state the exact date and time this notification was received.

17 **RESPONSE TO INTERROGATORY NO. 3:** Nathan Hughes, who runs Defendants’ website,
18 was the first third party to notify Defendants about the Facebook Post. While Defendants are not
19 sure of the exact date and time Mr. Hughes notified them, it was after this lawsuit had commenced.
20 While engaged in a telephone conversation with Mr. Hughes, Defendants informed Mr. Hughes
21 that they had been sued over a post that had an incorrect picture, and Mr. Hughes informed them
22 that he had deleted it months earlier. Mr. Hughes learned of the post through an email sent to the
23 customer service account for Defendants’ merchandise website by an employee of Legacy Church.

24 **INTERROGATORY NO. 4:** Describe in detail the editorial standards, verification processes, or
25 fact-checking policies utilized by you prior to publishing content to your 6.3 million Facebook
26 followers.
27

RESPONSE TO INTERROGATORY NO. 4: Objection. The term “editorial standards” is vague and ambiguous and is not a defined term, and Defendants cannot be sure what Plaintiff is seeking under this interrogatory. The term “verification processes” is vague and ambiguous and is not a defined term, and Defendants cannot be sure what Plaintiff is seeking under this interrogatory. Without waiving these objections, Defendants post material to Facebook that they believe their subscribers will find interesting, including news articles, commentary on news and gossip they see online, and other stories and material that appeals to persons that are politically conservative. Prior to publishing content on Facebook, Defendants utilize Google to perform internet searches to verify the accuracy of their content and to ensure that they post items that are factually correct to the extent possible.

INTERROGATORY NO. 5: Identify every other “Steve Smotherman” or “Steve Smothermon” that appeared in the search results described in Interrogatory No. 2 and explain why those individuals were ruled out in favor of the photograph of the Plaintiff.

RESPONSE TO INTERROGATORY NO. 5: To the best of Defendants’ recollection, most, if not all, of the images that appeared in the Google search results, which Defendant Kevin Hodge performed in Google’s incognito mode, appeared to be the same person, a middle-aged white man that Defendants now understand to be Plaintiff Steve Smothermon. At the time the Facebook Post was published, Defendants did not know what Plaintiff Steve Smothermon or Steve Smotherman looked like and published without notice that the individual in the photograph was not Steve Smotherman. Defendants did not “rule out” any individuals in favor of the photograph of Plaintiff. Because the search was performed in incognito mode, Defendants have no record of the search.

INTERROGATORY NO. 6: State the total number of “likes,” “shares,” “comments,” and “reaches” the Facebook Post received from the time of publication until its removal.

RESPONSE TO INTERROGATORY NO. 6: Objection. This interrogatory is compound and comprises four separate interrogatories, as “likes,” “shares,” “comments,” and “reaches” are not the same thing on Facebook. Without waiving these objections, Defendants do not possess this information. Defendants do not know how many views, likes, shares, comments, or impressions

1 the Facebook Post received. Defendants were not aware of issues with the Facebook Post until this
2 lawsuit was filed. Mr. Hughes had deleted the Facebook Post and, to the best of his recollection,
3 believes it was only online for one or two hours before he removed it. Defendants likely could
4 have retrieved this information if they had been notified about the post within thirty days of its
5 deletion, but by the time they learned about Plaintiff's issues with the Facebook Post, it was too
6 late.

7 **INTERROGATORY NO. 7:** Describe in detail the decision-making process used to verify the
8 identity of the person in the photograph prior to publication, specifically addressing: whether you
9 aware of the availability of Reverse Image Search technology (e.g., Google Lens, TinEye) on or
10 before August 22, 2025; if so, why a Reverse Image Search was not performed on the photograph
11 of Plaintiff Pastor Steve Smothermon; if no such search was performed, describe any alternative
12 visual verification steps taken to ensure the photograph depicted the Cracker Barrel executive and
13 not a different individual with a similar name; and identify all persons who participated in the
14 decision to rely solely on a text-based search for the photograph.

15 **RESPONSE TO INTERROGATORY NO. 7:** Objection. This interrogatory is compound and
16 comprises four separate interrogatories as it contains several distinct demands for information.
17 Without waiving these objections, Defendants were not aware of reliable Reverse Image Search
18 technology on or before August 22, 2025. Defendant Kevin Hodge searched for "Steve
19 Smotherman" in Google image search. Most or all of the results appeared to be the same middle-
20 aged white man that Defendants now understand to be Plaintiff. As the Google results displayed
21 numerous images of the same middle-aged white man, Kevin Hodge believed that the person was
22 Cracker Barrel's Steve Smotherman and used one of the images of that man for the Facebook Post.
23 Kevin Hodge participated in the decision to post the image to Facebook as accompaniment to the
24 Facebook Post.

1 Dated: June 10, 2026.

Respectfully Submitted,

2 /s/ Ronald D. Green

Marc J. Randazza, NV Bar No. 12265

3 Ronald D. Green, NV Bar No. 7360

4 Alex J. Shepard, NV Bar No. 13582

RANDAZZA LEGAL GROUP, PLLC

5 8991 W. Flamingo Rd., Ste. B

6 Las Vegas, NV 89147

7 Attorneys for Defendants

Keith Hodge, Kevin Hodge, and Hodgetwins,
8 LLC

VERIFICATION

We, Keith and Kevin Hodge, declare as follows:

We are the Defendants in the above-entitled action. We have read the foregoing Defendants' Second Amended Responses to Plaintiff's First Set of Interrogatories and know the contents thereof. The responses are true of our own knowledge, except as to those matters which are therein stated upon information and belief, and as to those matters, we believe them to be true.

We declare under penalty of perjury that the foregoing is true and correct.

Dated: June 8, 2026.

Keith Hodge

Keith Hodge

KEVIN HODGE

Kevin Hodge

KEVIN HODGE

Hodgetwins, LLC

Case No. 2:25-cv-01858-APG-BNW

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 10, 2026, I served this document to counsel for Plaintiff via electronic mail to:

G. Michael Jackson
mjackson@jonesdavis.com

Nicole A. Westbrook
nwestbrook@jonesdavis.com

/s/ Danielle Darkenwald

Danielle Darkenwald

RANDAZZA | LEGAL GROUP

Exhibit 2

Search for “Steve Smotherman”
Incognito Mode

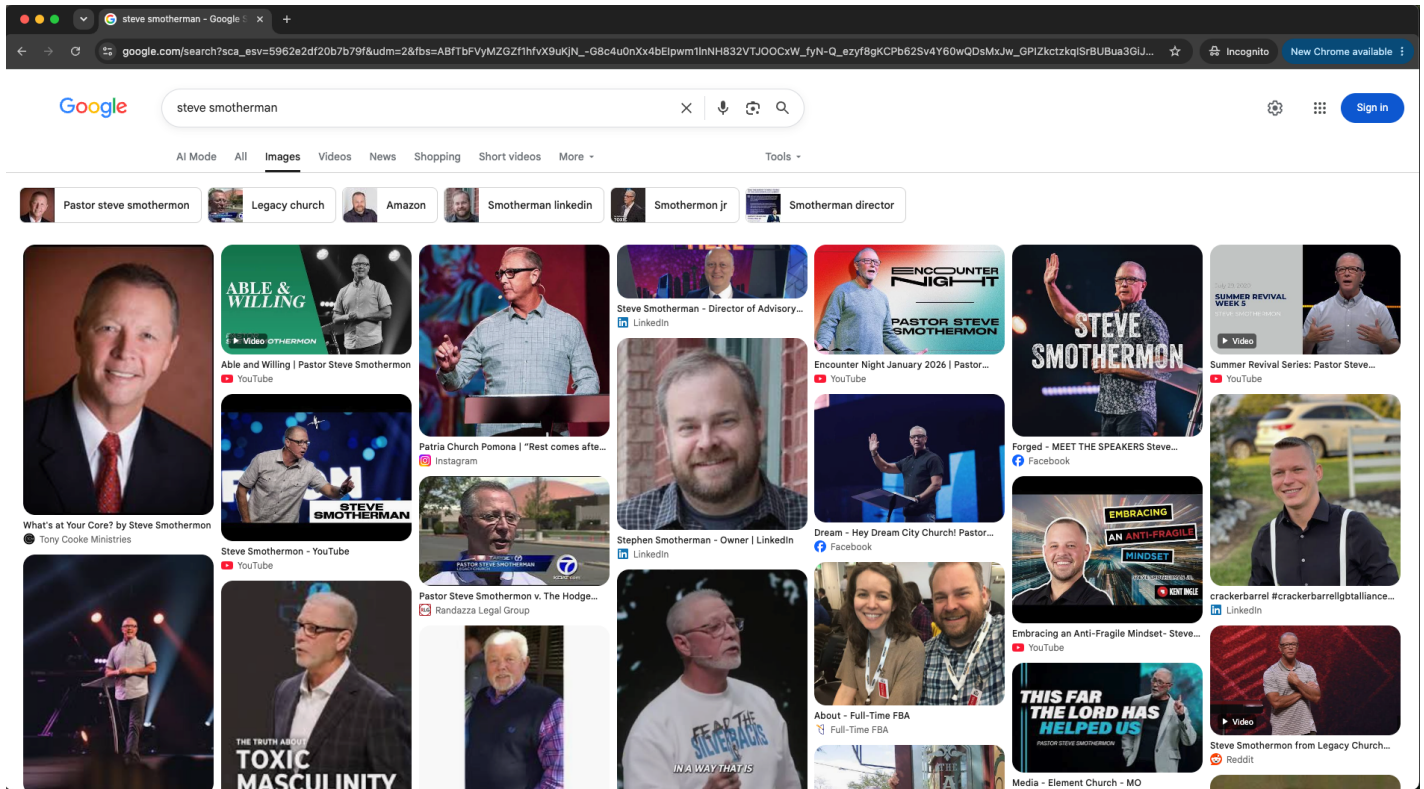


Exhibit 3

Plaintiff's Initial Written Discovery Requests

G. Michael Jackson, State Bar No. 1894
Nicole A. Westbrook, *pro hac vice*
JONES, DAVIS & JACKSON, P.C.
25350 Magic Mountain Parkway, Suite 300
Valencia, CA 91355
Telephone: (661) 481-2220
Facsimile: (661) 836-7711
Email: mjackson@jonesdavis.com
nwestbrook@jonesdavis.com

Attorneys for Plaintiff Pastor Steve Smothermon

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**PASTOR STEVE
SMOTHERMON,**

Plaintiff,

v.

KEITH HODGE, an individual;
KEVIN HODGE, an individual;
HODGETWINS, LLC, a Nevada
limited liability company;

Defendants.

Case No.: 2:25-cv-01858-APG-BNW

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES, REQUESTS
FOR PRODUCTION, AND
REQUESTS FOR ADMISSION TO
DEFENDANTS**

Pursuant to Rules 33, 34, and 36 of the Federal Rules of Civil Procedure, Plaintiff Pastor Steve Smothermon requests that Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC respond to the following discovery requests within thirty (30) days of service.

DEFINITIONS AND INSTRUCTIONS

1. **“Defendants,” “you,” or “your”** refers to Keith Hodge, Kevin Hodge, and Hodgetwins, LLC, individually and collectively, including all agents, employees, or representatives.

2. **“Facebook Post”** refers to the post titled “Cracker Barrel’s WOKE Past Comes Back to Light” published on the Hodgetwins Facebook page on or about

1 August 22, 2025.

2 3. “**And**” and “**or**” shall be construed either disjunctively or conjunctively
3 as necessary to bring within the scope of these discovery requests any information
4 that might otherwise be construed to be outside their scope.

5 4. “**Any**,” “**each**,” and “**all**” shall be construed to include one or all of a
6 group as necessary to bring within the scope of these discovery requests any
7 information that might otherwise be construed to be outside their scope.

8 5. “**Related to**” or “**relating to**” means concerning, constituting,
9 comprising, containing, consisting of, setting forth, proposing, showing, evidencing,
10 disclosing, describing, discussing, explaining, summarizing, reflecting, authorizing,
11 pertaining to, mentioning, or referring to, directly or indirectly.

12 6. “**Communication**” means any transmittal or exchange of information
13 (in the form of facts, ideas, inquiries, or otherwise), whether made by oral, written,
14 or electronic means between or among two or more persons, including, but not
15 limited to, correspondence, memoranda, emails, notes, conversations, dialogues,
16 discussions, interview, consultations, agreements, other understandings, text
17 messages, and exchanges of information.

18 7. “**Describe**” means to set forth in detail and with particularities all
19 pertinent facts concerning the subject matter of any inquiry in detail and with
20 particularity.

21 8. “**Document**” is used in its broadest sense and means any item that is
22 subject to a request for production of documents pursuant to Fed.R.Civ.P. 34,
23 including, but not limited to, any medium (including but not limited to those related
24 to computers) on which information can be recorded or from which it can be
25 retrieved, book, pamphlet, letter, memorandum, (including memorandum or report
26 of a meeting or conversation), invoice, bill, order form, receipt, financial statement,
27 statement, statement of claim, map, abstract, study, accounting entry, diary,

1 calendar, telex, telegram, e-mail, cable, report, record, contract, agreement, study,
 2 blueprint, map, plan, handwritten note, working paper, laboratory record, drawing,
 3 sketch, grant, index, list, aerial photograph, Excel spreadsheet, tape, photograph,
 4 Adobe PDF, microfilm, data sheet, data processing card, or any other written,
 5 recorded transcribed, punched, taped, filmed, or graphic matter, however produced
 6 or reproduced. Additionally, the terms “document” or “documents” includes,
 7 without limitation, all enclosures, attachments, and related materials attached to or
 8 referenced in any document as defined above.

9 9. **“Identify,” “identity,”** and derivations thereof, when used about a
 10 person, means to state the person’s name, employer, address, phone number, and
 11 email address. “Identify,” “identity,” and derivations thereof, when used to reference
 12 a document, means to provide the date, author, and description of the document
 13 sufficient to definitively recognize and isolate it, with reference to a document
 14 control number if applicable.

15 10. **“Metadata”** means the embedded data and structural information
 16 associated with a Document or Communication that describes the characteristics,
 17 origins, usage, and validity of that electronic file. For photographs and image files,
 18 this includes, but is not limited to:

- 19 • EXIF Data: (Exchangeable Image File Format) containing the date and time
 20 the image was created or modified;
- 21 • IPTC Metadata: (International Press Telecommunications Council)
 22 containing captions, keywords, credits, and copyright notices;
- 23 • System Metadata: including the original file name, file size, file extension
 24 (e.g., .jpg, .png), and the Source URL from which the image was downloaded.

25 11. **“Person”** includes, without limiting the generality of its meaning, any
 26 natural person, firm, association, partnership, joint venture, corporation, estate, trust,
 27 receiver, syndicate, municipal corporation, government department or agency, and

any form of legal entity and any other group in combination acting as a unit.

12. **“Relevant Period”** means August 2025 to the present.

13. **“Reverse Image Search”** means the technical process of using an existing image file (such as a .jpg, .png, or .webp) or a specific Image URL as a search query—rather than using text-based keywords—to locate the original source of the image, identify the subject depicted in the image, or find visually similar images across the internet. This includes, but is not limited to, the use of tools such as Google Lens, TinEye, Bing Visual Search, or Yandex Images.

14. **“Native Format”** means the file format in which the electronic document was originally created and is currently maintained (e.g., .qbw for QuickBooks).

15. Pursuant to Local Rule 26-4, your written responses must set forth the full text of the discovery request immediately preceding your response.

16. Duty to Preserve and Maintain Metadata:

- a. Preservation of Electronic Evidence: Defendants are instructed to take all necessary steps to prevent the destruction, alteration, or deletion of any Documents or Communications (as defined herein) related to the Facebook Post. This includes, but is not limited to, disabling any auto-delete, auto-archiving, or clean-up utilities that may affect email servers, Slack/messaging platforms, or web browser histories.
- b. Integrity of Metadata: When producing electronic files, Defendants must produce them in their Native Format (e.g., .jpg, .docx, .msg) with all Metadata intact.
- c. Prohibited Actions: Defendants and their counsel are specifically instructed not to:
 - Open, save, or “print to PDF” original image files in a manner that overwrites the “Date Last Modified” or “Date Created” metadata;

- Clear browser caches, cookies, or “History” logs for the period of August 20, 2025, through August 30, 2025;
- Rename files in a way that obscures the original file name as it existed at the time of download.

d. Spoliation Warning: Failure to comply with this instruction may result in a motion for Spoliation Sanctions pursuant to Fed. R. Civ. P. 37(e), including but not limited to terminating sanctions or an adverse inference that the destroyed evidence was unfavorable to the Defendants.

INTERROGATORIES

INTERROGATORY NO. 1: Identify every person who was involved in researching, drafting, reviewing, editing, and publishing the August 22, 2025, Facebook Post.

INTERROGATORY NO. 2: Describe in detail the exact steps taken to source and verify the photograph used in the Facebook Post. Your response must include the specific search engine used, the exact search terms entered (*e.g.*, “Steve Smotherman”), the date and time of the search, and the name of the person who downloaded the image.

INTERROGATORY NO. 3: Identify the person or persons that first notified you that the photograph in the Facebook Post depicted Plaintiff Pastor Steve Smothermon rather than the Cracker Barrel executive, and state the exact date and time this notification was received.

INTERROGATORY NO. 4: Describe in detail the editorial standards, verification processes, or fact-checking policies utilized by you prior to publishing content to your 6.3 million Facebook followers.

INTERROGATORY NO. 5: Identify every other “Steve Smotherman” or “Steve Smothermon” that appeared in the search results described in Interrogatory No. 2, and explain why those individuals were ruled out in favor of the photograph

1 of the Plaintiff.

2 INTERROGATORY NO. 6: State the total number of “likes,” “shares,”
3 “comments,” and “reaches” the Facebook Post received from the time of publication
4 until its removal.

5 INTERROGATORY NO. 7: Describe in detail the decision-making process
6 used to verify the identity of the person in the photograph prior to publication,
7 specifically addressing: whether you aware of the availability of Reverse Image
8 Search technology (e.g., Google Lens, TinEye) on or before August 22, 2025; if so,
9 why a Reverse Image Search was not performed on the photograph of Plaintiff Pastor
10 Steve Smothermon; if no such search was performed, describe any alternative visual
11 verification steps taken to ensure the photograph depicted the Cracker Barrel
12 executive and not a different individual with a similar name; and identify all persons
13 who participated in the decision to rely solely on a text-based search for the
14 photograph.

15 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

16 REQUEST FOR PRODUCTION NO. 1: Produce the original image file used
17 in the August 22, 2025, Facebook Post in its Native Format with all Metadata intact
18 and unaltered.

19 REQUEST FOR PRODUCTION NO. 2: Produce all internal communications
20 (including but not limited to emails, text messages, Slack messages, and direct
21 messages) between or among Keith Hodge, Kevin Hodge, and any employees or
22 agents of Hodgetwins, LLC regarding the creation, drafting, and publication of the
23 August 22, 2025, Facebook Post in their Native Format with all Metadata intact and
24 unaltered.

25 REQUEST FOR PRODUCTION NO. 3: Produce all internal communications
26 regarding the discovery of the misidentification in the Facebook Post, the decision
27 to remove the post, and the actual removal of the post from the Hodgetwins

1 Facebook page in their Native Format with all Metadata intact and unaltered.

2 REQUEST FOR PRODUCTION NO. 4: Produce all communications with
3 any third parties—including followers, commenters, or media entities—regarding
4 the Facebook Post in their Native Format with all Metadata intact and unaltered.

5 REQUEST FOR PRODUCTION NO. 5: Produce all written editorial
6 guidelines, manuals, or policies in effect during August 2025 concerning fact-
7 checking, image verification, and publication standards for Hodgetwins, LLC in
8 their Native Format with all Metadata intact and unaltered.

9 REQUEST FOR PRODUCTION NO. 6: Produce all documents and
10 communications regarding the criteria or internal definitions used by YOU to
11 determine if an individual or entity should be labeled as “woke” for purposes of a
12 social media post or other communication in their Native Format with all Metadata
13 intact and unaltered.

14 REQUEST FOR PRODUCTION NO. 7: Produce all documents or
15 communications regarding any “red flags” or doubts expressed by any person prior
16 to publication regarding the accuracy of the photograph or the identity of the person
17 depicted in the Facebook Post in their Native Format with all Metadata intact and
18 unaltered.

19 REQUEST FOR PRODUCTION NO. 8: Produce all analytics reports,
20 revenue statements, or “insights” data from Meta/Facebook for the period of August
21 22, 2025, through August 30, 2025, specifically filtered for the Facebook Post in
22 their Native Format with all Metadata intact and unaltered.

23 REQUEST FOR PRODUCTION NO. 9: Produce the most recent audited
24 financial statements for Hodgetwins, LLC, including balance sheets and income
25 statements in their Native Format with all Metadata intact and unaltered.

26 **REQUESTS FOR ADMISSION**

27 REQUEST FOR ADMISSION NO. 1: Admit that the photograph included in

1 your August 22, 2025, Facebook Post was an image of Plaintiff Pastor Steve
2 Smothermon.

3 REQUEST FOR ADMISSION NO. 2: Admit that you did not contact Pastor
4 Steve Smothermon, Legacy Church, or any representative of the Plaintiff to verify
5 the identity of the person in the photograph prior to publishing the Facebook Post.

6 REQUEST FOR ADMISSION NO. 3: Admit that the spelling of Plaintiff's
7 last name ("Smothermon") differs from the spelling of the Cracker Barrel
8 executive's last name ("Smotherman").

9 REQUEST FOR ADMISSION NO. 4: Admit that the Hodgetwins Facebook
10 page is a monetized platform that generates revenue for Hodgetwins, LLC.

11 REQUEST FOR ADMISSION NO. 5: Admit that Plaintiff Pastor Steve
12 Smothermon has no affiliation with Cracker Barrel Old Country Store, Inc., and was
13 not responsible for the company's Diversity, Equity, and Inclusion (DEI) initiatives.

14 REQUEST FOR ADMISSION NO.6: Admit that a Reverse Image Search of
15 the photograph used in the Facebook Post would have identified the individual as
16 Pastor Steve Smothermon.

17 REQUEST FOR ADMISSION NO.7: Admit that you never performed a
18 Reverse Image Search of the photograph prior to publishing the Facebook Post.

19 REQUEST FOR ADMISSION NO. 8: Admit that Defendants possess no
20 evidence that Plaintiff Pastor Steve Smothermon has ever been employed by Cracker
21 Barrel Old Country Store, Inc.

22 REQUEST FOR ADMISSION NO. 9: Admit that the Metadata of the
23 photograph used in the Facebook Post identifies the source of the image as a website
24 affiliated with Legacy Church.

25 Respectfully submitted this 22nd day of April, 2026.
26
27

/s/ Nicole A. Westbrook

Nicole A. Westbrook

G. Michael Jackson Esq.

JONES, DAVIS & JACKSON, P.C.

Attorneys for Pastor Steve

Smothermon

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 22, 2026, I caused the foregoing document to be electronically filed with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document was served on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
RANDAZZA LEGAL GROUP, PLLC
8991 W. Flamingo Rd., Ste. B
Las Vegas, NV 89147

Attorneys for Defendants
Keith Hodge, Kevin Hodge, and Hodgetwins, LLC

/s/ Nicole A. Westbrook

Exhibit 4

Letter from Nicole Westbrook
June 30, 2026

JONES, DAVIS & JACKSON, PC

Attorneys + Counselors

15110 Dallas Parkway, Suite 300
Dallas, TX 75248
615.403.4862
Fax 972.733.3119

Nicole A. Westbrook
nwestbrook@jonesdavis.com
Licensed in Colorado

June 30, 2026

VIA EMAIL: mjr@randazza.com

Marc Randazza
Ron Green
Randazza Legal Group
8991 West Flamingo Road, Suite B
Las Vegas, NV 89147

Re: Meet-and-confer regarding deficient responses to Plaintiff's First Set of Requests for Production and Interrogatories, demand for production of Google account activity data and forensic preservation.

Dear Counsel,

I write pursuant to Fed. R. Civ. P. 37(a) and Local Rule IA 1-3(f) / LR 26-6 to confer (again) regarding deficiencies in Defendants' responses to Plaintiff's First Set of Requests for Production (served April 22, 2026) and to demand specific electronically stored information and preservation steps. This letter also gives notice that Plaintiff will serve a Second Set of Requests for Production and Interrogatories directed to the items below.

1. The admitted facts. Defendants have admitted, under oath, that Kevin Hodge performed a Google image search using the text query "Steve Smotherman" that he "copied the photograph from the Google search results and pasted it" into the August 22, 2025 Facebook Post, and that no reverse-image search was performed before publication (Resp. to RFA No. 7; Resps. to Interrogatory Nos. 2 and 5; Resp. to RFP No. 1). In their June 10, 2026, Second Amended Response to Interrogatory No. 5, Defendants asserted for the first time that the search was conducted "in incognito mode" and that, "[b]ecause the search was performed in incognito mode, Defendants have no record of the search."

2. The "incognito" response does not answer the request, because it addresses only local browser history. Private/Incognito mode governs only what the browser writes to the local device; it does not suppress server-side logging by the user's account. When a user is signed in to a Google account, Google's Web & App Activity records the user's searches to the account's "My Activity" regardless of Incognito mode, and that record is exportable by the account holder through Google Takeout. Defendants' representation that they have no record of the search

June 30, 2026

Page 2

speaks only to local browser artifacts; it does not address the account-side activity data, which is within Defendants' possession, custody, and control under Rule 34 because Defendants can retrieve it from their own Google account. Defendants' "no documents" responses to Requests for Production Nos. 1, 2, and 7 are, accordingly, incomplete, and Plaintiff requests that they be supplemented.

3. Demand. To resolve this dispute without motion practice, Plaintiff demands that Defendants, within seven (7) days, produce or provide the following, and supplement their First Set responses accordingly:

a. Google Takeout export for each Google account that was signed in on the device used to conduct the August 22, 2025 search, covering the period August 1, 2025 through September 30, 2025, and including, at minimum, Search history, Image Search activity, Web & App Activity ("My Activity"), and YouTube history.

b. Identification of (i) each Google account and associated email address used to perform or in connection with the search; (ii) the device(s) used; and (iii) whether Web & App Activity (or equivalent activity logging) was enabled on each such account on August 22, 2025. (This supplements Interrogatory No. 2.)

c. The original photograph file depicting Plaintiff as used in the Post, in its Native Format with all EXIF and system Metadata intact (including the Source URL), consistent with RFP No. 1.

d. Preservation of, and an agreed protocol for forensic imaging of, each device (mobile phone and/or computer) used to conduct the search, draft, or publish the Post — including memory/pagefile and hibernation files, browser cache, DNS cache, and file-system artifacts — by a mutually acceptable neutral examiner under an appropriate protective order.

e. Chrome sync data and any signed-in browser-profile activity associated with the device or account used.

f. Meta/Facebook account data for the Hodgetwins page, exported by Defendants from their own account, including the native Post data and the page activity/audit log reflecting the creation, any edits, and the removal of the Post (with timestamps and the acting administrator).

g. Router, modem, or internet-service-provider records reflecting the August 22, 2025 activity.

4. Consent to release if Defendants maintain they cannot produce. If Defendants contend they cannot themselves produce the Google account data described in Paragraph 3(a), Plaintiff demands that each individual Defendant execute a written consent directive authorizing Google LLC to release the records to the parties. A subscriber's consent removes any Stored Communications Act bar to the provider's disclosure, and a party's ability to authorize that release is itself a "legal right to obtain" the records within the meaning of Rule 34. Plaintiff will, if necessary, move for an order compelling Defendants to execute such a directive.

June 30, 2026

Page 3

5. Preservation notice (Fed. R. Civ. P. 37(e)). Defendants remain under a duty to preserve all of the foregoing, which arose no later than August 22, 2025, when Plaintiff's counsel demanded immediate removal of the photograph and a retraction. Defendants are instructed not to delete, disable, or allow the auto-deletion of any Google account activity, device data, browser data, or Meta account data, and to suspend any auto-delete settings on the relevant Google account(s). Plaintiff reserves the right to seek relief under Rule 37(e), including curative measures and an adverse-inference instruction, and to move to compel under Rule 37(a) with an award of fees, should Defendants fail to cure these deficiencies.

6. Conferral. Please advise by July 1, 2026, of your availability for a telephonic conference under LR 26-6, and whether Defendants will produce the items in Paragraph 3 and execute the consents in Paragraph 4.

Nothing in this letter waives, and Plaintiff expressly reserves, all rights and objections.

Sincerely yours,

JONES, DAVIS & JACKSON, PC



By:

Nicole A. Westbrook

CC: Pastor Steve Smothermon

Exhibit 5

Email from Nicole Westbrook
July 1, 2026



Marc Randazza <mjr@randazza.com>

Hodgetwins, LLC, et al. adv. Smothermon | Correspondence from Attorney Green | Discovery Responses and Notice of Intent to Move for Protective Order

Nicole Westbrook <nwestbrook@jonesdavis.com>

Wed, Jul 1, 2026 at 6:19 PM

To: Ron Green <rdg@randazza.com>, Marc Randazza <mjr@randazza.com>

Cc: Steve Jones <sjones@jonesdavis.com>, Mike Jackson <mjackson@jonesdavis.com>, "amcdaniel@joneskeller.com" <amcdaniel@joneskeller.com>, Brittany Hansen <bhansen@joneskeller.com>

Ron,

Your latest letter - sent to not all of my team but only myself (another pattern of your team hiding the ball) - purposefully mischaracterizes facts. My letter of yesterday clearly does not request a response by today; it requests a conferral - the same conferral I have requested at least 3 times now about your consistent discovery failures and the ever-shifting sands on your discovery positions (including swearing under oath that your clients had nothing only later to produce more than 100 pages). If you want to file a motion to protect, you should do that. If you want my availability on a hearing, happy to give you that. What I need from you is to get going - this lawsuit is not going to be tossed on a technicality and you're not going to earn a payout for uselessly running up fees. We care less about the insurance policy than you can imagine - but we are curious that you keep changing your story on every "fact" in this case: its either a consistent failure to research the facts or simply an issue of candor. We do understand why you are fearful of our discovery requests. And you should be.

Let's get going please - you are wasting time with your needlessly bombastic letters.

Thanks,
Nicole

Jones, Davis & Jackson, PC

Attorneys + Counselors

Nicole A. Westbrook, Attorney at Law
15110 Dallas Parkway, Suite 300, Dallas, Texas 75248
mobile: 615.403.4862 | fax: 972.733.3119

[www.jonesdavis.com]www.jonesdavis.com



THE INFORMATION CONTAINED IN THIS E-MAIL MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA U.S. POSTAL SERVICE. THANK YOU.

IRS CIRCULAR 230 DISCLOSURE: This communication has not been prepared as a formal legal opinion within the procedures described in Treasury Department Circular 230. As a result, we are required by Treasury Regulations to advise you that for any significant Federal tax issue addressed herein, the advice in this communication (including any attachments) was not intended or written to be used, and it cannot be used by the taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer.

From: Danielle Darkenwald <dbd@randazza.com>

Sent: Wednesday, July 1, 2026 4:47 PM

To: Nicole Westbrook <nwestbrook@jonesdavis.com>

Cc: Ron Green <rdg@randazza.com>; Marc Randazza <mjr@randazza.com>; Staff <staff@randazza.com>

Subject: Hodgetwins, LLC, et al. adv. Smothermon I Correspondence from Attorney Green I Discovery Responses and Notice of Intent to Move for Protective Order

[Quoted text hidden]



2026.07.01 RDG Ltr to Westbrook re Discovery Responses.pdf

125K

Exhibit 6

Letter from Ron Green
May 29, 2026

RANDAZZA

LEGAL GROUP

Ronald D. Green
Partner
Licensed in NV

29 May 2026

Via Email Only

<nwestbrook@jonesdavis.com>

Nicole Westbrook
JONES, DAVIS & JACKSON, PC
15110 Dallas Parkway, Suite 300
Dallas, TX 75248

Re: Hodgetwins, LLC, et al. adv. Smothermon

Dear Nicole:

This letter is in response to your May 26, 2026, correspondence. Our supplemental disclosures are attached. However, portions of your letter are inaccurate. I did not promise you additional documents because they do not exist. When we had our meet and confer conference, I informed you that I would supplement our descriptions of anticipated witness testimony as well as double check on the insurance information. That information has been updated.

As we discussed, Kevin Hodge is the party with knowledge regarding the Facebook post. He has knowledge regarding the internet search that led him to Plaintiff Smothermon's photograph. He has knowledge regarding the language of the post. Keith Hodge does not have that knowledge, so his testimony will necessarily be more general. We have additionally added Nathan Hughes, Kylie Howerton, and Krisha Mason as witnesses, and they will be the ones testifying about the removal of the post from Facebook and the takedown requests from Legacy Church.

I told you during our meet and confer that there were no additional documents. As we discussed, our clients do not have the "native browser histories, search logs, internal emails, or Slack communications regarding the drafting, publication, and eventual removal" of the Facebook post that you demanded in your earlier April 21, 2026, letter. Our clients cannot produce what they do not have.

Their practice is to browse in incognito mode. By the time Defendants were served with your client's lawsuit and were even aware that there was a dispute over a Facebook post that erroneously contained the wrong picture and was only up for a very short time, any search logs, to the extent they ever existed, were gone. There are no internal emails or Slack communications. As stated, the Hodges were not even aware that the Facebook post contained the wrong photo until after your lawsuit was filed. They had no reason to discuss a Facebook post that they had long forgotten about.

With regard to the email that prompted Defendants' customer support team to take down the Facebook post with the erroneous photograph of Plaintiff Smothermon, our clients have provided us with a copy of it, and we will be producing it. For your reference, the

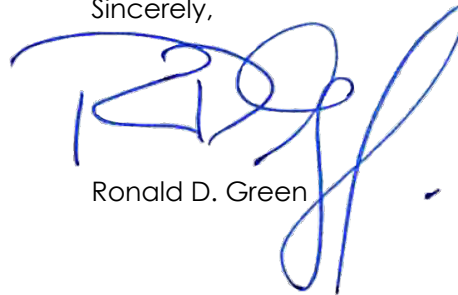
Hodgetwins, LLC, et al. adv. Smothermon
Page 2 of 2

RANDAZZA
LEGAL GROUP

email was from Krisha Mason and was sent from the email address <kmason@legacychurchnm.com>.

If you have any questions about the attached supplemental disclosures, I would be happy to discuss. With regard to the portions of your recent letter regarding our responses to the requests for admission, requests for production, and interrogatories, I am discussing with my clients and will have a response at or before our meet and confer conference on Wednesday, June 3, 2026.

Sincerely,

A handwritten signature in blue ink, appearing to read 'RDG', with a long horizontal flourish extending to the right.

Ronald D. Green

cc: First Supplemental Disclosures

encl: Marc J. Randazza; Clients

Exhibit 7

Defendants' Responses to Requests for Production of Documents

Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
RANDAZZA LEGAL GROUP, PLLC
8991 W. Flamingo Rd., Ste. B
Las Vegas, NV 89147
Telephone: 702-420-2001
ecf@randazza.com
Attorneys for Defendants
Keith Hodge, Kevin Hodge, and Hodgetwins, LLC

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PASTOR STEVE SMOTHERMON,

Plaintiff,

v.

KEITH HODGE, an individual; KEVIN
HODGE, an individual; HODGETWINS,
LLC, a limited liability company,

Defendants.

Case No. 2:25-cv-01858-APG-BNW

**DEFENDANTS' AMENDED
RESPONSES TO PLAINTIFF'S FIRST
SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS**

Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC ("Defendants"), hereby submit their amended responses to Plaintiff's First Set of Requests for Production of Documents served on April 22, 2026. Defendants have amended their response to Request No. 4.

GENERAL OBJECTIONS

1. Defendants object to the subject requests to the extent that they request the disclosure of information protected by the attorney-client privilege, the work-product doctrine, or any other recognized privilege or immunity.

2. Defendants object to the subject requests to the extent that they are not reasonably calculated to lead to the discovery of admissible evidence. The providing of documents in

1 response to any request is not to be deemed or construed as an admission by Defendants that the
2 information is in fact relevant to this action.

3 3. Defendants object to the subject requests to the extent that they call for the
4 production of documents not in the possession, custody, or control of Defendants.

5 4. To the extent words or phrases used in the requests are vague, ambiguous, or
6 otherwise overbroad, Defendants shall respond in a manner in which they believe, in good faith,
7 to be requested thereby.

8 5. Defendants state that discovery in this matter is continuing and ongoing and that
9 it is possible that additional information responsive to the requests will be identified subsequent
10 to the date of this response.

11 6. All responses made herein are based upon the best knowledge, information, and
12 belief held by Defendants at the time of the response.

13 7. Defendants object to the Definitions to the extent they conflict with the definitions
14 applicable in the Federal Rules of Civil Procedure and/or the Local Rules of this Court.

15 8. Defendants object to the Instructions to the extent they impose any obligation
16 beyond that required by the Federal Rules of Civil Procedure or the Local Rules of this Court.

17 9. Defendants object to the requests to the extent they encompass documents subject
18 to attorney-client privilege created subsequent to the initiation of this litigation and will neither
19 produce nor create a privilege log as to same.

20 10. Defendants incorporate these General Objections into each and every specific
21 response as if fully set forth therein.

22 Subject to and without waiving the foregoing General Objections, Defendants specifically
23 respond to each numbered Request as follows:

24 **RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS**

25 **REQUEST FOR PRODUCTION NO. 1:** Produce the original image file used in the August 22,
26 2025, Facebook Post in its Native Format with all Metadata intact and unaltered.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Defendant Kevin Hodge copied the photograph from the Google search results and pasted it into the Facebook Post. Defendants are in possession of no documents responsive to this request and will supplement this response if responsive documents are located in the future.

REQUEST FOR PRODUCTION NO. 2: Produce all internal communications (including but not limited to emails, text messages, Slack messages, and direct messages) between or among Keith Hodge, Kevin Hodge, and any employees or agents of Hodgetwins, LLC regarding the creation, drafting, and publication of the August 22, 2025, Facebook Post in their Native Format with all Metadata intact and unaltered.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Defendants are in possession of no documents responsive to this request and will supplement this response if responsive documents are located in the future.

REQUEST FOR PRODUCTION NO. 3: Produce all internal communications regarding the discovery of the misidentification in the Facebook Post, the decision to remove the post, and the actual removal of the post from the Hodgetwins Facebook page in their Native Format with all Metadata intact and unaltered.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Defendants are in possession of no documents responsive to this request and will supplement this response if responsive documents are located in the future.

REQUEST FOR PRODUCTION NO. 4: Produce all communications with any third parties—including followers, commenters, or media entities—regarding the Facebook Post in their Native Format with all Metadata intact and unaltered.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Please see the email exchange located at HODGE000136-000138. If Defendants find additional documents responsive to this request in the future, they will supplement this response.

REQUEST FOR PRODUCTION NO. 5: Produce all written editorial guidelines, manuals, or policies in effect during August 2025 concerning fact-checking, image verification, and

1 publication standards for Hodgetwins, LLC in their Native Format with all Metadata intact and
2 unaltered.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:** Defendants are in possession of no
4 documents responsive to this request and will supplement this response if responsive documents
5 are located in the future.

6 **REQUEST FOR PRODUCTION NO. 6:** Produce all documents and communications regarding
7 the criteria or internal definitions used by YOU to determine if an individual or entity should be
8 labeled as “woke” for purposes of a social media post or other communication in their Native
9 Format with all Metadata intact and unaltered.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:** Defendants are in possession of no
11 documents responsive to this request and will supplement this response if responsive documents
12 are located in the future.

13 **REQUEST FOR PRODUCTION NO. 7:** Produce all documents or communications regarding
14 any “red flags” or doubts expressed by any person prior to publication regarding the accuracy of
15 the photograph or the identity of the person depicted in the Facebook Post in their Native Format
16 with all Metadata intact and unaltered.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:** Defendants are in possession of no
18 documents responsive to this request and will supplement this response if responsive documents
19 are located in the future.

20 **REQUEST FOR PRODUCTION NO. 8:** Produce all analytics reports, revenue statements, or
21 “insights” data from Meta/Facebook for the period of August 22, 2025, through August 30, 2025,
22 specifically filtered for the Facebook Post in their Native Format with all Metadata intact and
23 unaltered.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:** Defendants are in possession of no
25 documents responsive to this request and will supplement this response if responsive documents
26 are located in the future.

REQUEST FOR PRODUCTION NO. 9: Produce the most recent audited financial statements for Hodgetwins, LLC, including balance sheets and income statements in their Native Format with all Metadata intact and unaltered.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: Objection. Plaintiff's Complaint does not request an award of punitive damages against Defendants. To the extent that Plaintiff wishes to take discovery regarding Defendants' financials, Plaintiff does not have permission of the Court to do so. This request seeks information that is sensitive and proprietary to Defendant Hodgetwins, LLC and will not be produced absent a protective order protecting the information responsive to this request from disclosure.

Dated: June 11, 2026.

Respectfully Submitted,

/s/ Ronald D. Green

Marc J. Randazza, NV Bar No. 12265

Ronald D. Green, NV Bar No. 7360

Alex J. Shepard, NV Bar No. 13582

RANDAZZA LEGAL GROUP, PLLC

8991 W. Flamingo Rd., Ste. B

Las Vegas, NV 89147

Attorneys for Defendants

Keith Hodge, Kevin Hodge, and Hodgetwins, LLC

Case No. 2:25-cv-01858-APG-BNW

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 11, 2026, I served this document to counsel for Plaintiff via electronic mail to:

G. Michael Jackson
mjackson@jonesdavis.com

Nicole A. Westbrook
nwestbrook@jonesdavis.com

/s/ Danielle Darkenwald

Danielle Darkenwald

RANDAZZA | LEGAL GROUP