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**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’
MOTION FOR SUMMARY JUDGMENT
AND FOR RELIEF UNDER
THE NEVADA ANTI-SLAPP LAW**

Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC (collectively, “Defendants”) move for summary judgment under Fed. R. Civ. P. 56 and for the additional substantive relief provided by Nevada’s Anti-SLAPP law, NRS 41.635 *et seq.*¹

1.0 INTRODUCTION

This case is about a photograph that was up on social media for a few hours.² Defendant Kevin Hodge and his brother Keith are comedians and conservative commentators known as the

¹ Keith Hodge had no role in the Post and did not even know it existed until he was served. Kevin Hodge Dec. ¶ 3; ECF No. 77-2 at 23. Asked for all evidence that any Defendant knew the photograph showed Smothermon, Smothermon identified only Kevin Hodge’s conduct. ECF No. 72-5 at 8–10. There is no evidence that Keith Hodge did anything at all, and summary judgment for him is warranted on that ground alone, but he joins in the entirety of this Motion if the Court believes that this creates a genuine issue of material fact – the claims still fail as a matter of law.

² The exact number of hours is unclear, but it was a matter of hours. ECF No. 77-2 at 30. A Legacy Church executive said it was gone the same day it went up. Legacy Church group chat, attached as **Exhibit 1**, at MORNIM_000031.

Hodgetwins. Together they own Defendant Hodgetwins, LLC. On Aug. 22, 2025, Kevin Hodge published a Facebook post criticizing the Cracker Barrel restaurant chain’s rebrand and the role of a former executive, Steve Smotherman, in the company’s initiatives.

To provide an illustration for the post, Kevin Hodge ran a Google image search for “Steve Smotherman.” Nearly every result showed the same man, so he picked one. Apparently, he chose a picture of Steve Smothermon and not Steve Smotherman.

Steve Smothermon is CEO of the Legacy Church megachurch (“Legacy”). A Legacy employee quickly complained to Defendants’ customer-service department, and someone there took the Post down that day. The Hodges themselves did not learn of the mistake until Smothermon sued. Decl. of Kevin Hodge (“Kevin Hodge Dec.”), attached as **Exhibit 2**, ¶ 9.

Discovery is closed, and Smothermon is no closer to proving a case than he was the day he filed. Smothermon is a public figure with a huge photographic footprint on the Internet. *See* ECF No. 43-22. So huge that his Internet footprint completely obliterates his near-namesake. Since he is a public figure, he must prove actual malice by clear and convincing evidence. He can’t. At best he can show an honest mistake. Defendants had no idea the photographs Google returned for “Steve Smotherman” were of someone else.

Smothermon’s claim fails for reasons aside from lack of actual malice. The post was pure opinion, and the only “statement” Smothermon pins on Defendants is a claimed implication of certain views. But for anyone to have recognized Smothermon’s photo, they would have needed to know who he was. Anyone who didn’t know who he was would not have thought differently of him. And anyone who knew him saw the mistake and did not change their opinion of him.

Smothermon’s only theory of why the Post could defame him asks a federal court to decide a question of religious doctrine. He has argued no other theory of damages.

Because this suit targets a good-faith communication on a national issue made in a public forum, Defendants are entitled to summary judgment under Fed. R. Civ. P. 56 and to fees and sanctions under NRS 41.670.

2.0 FACTUAL BACKGROUND

Under LR 56-1, the following material facts are not genuinely in dispute.

2.1 The Parties

Kevin Hodge and his twin brother Keith are comedians, fitness influencers, and publish political commentary, including on a Facebook page. ECF No. 1 ¶¶ 18–23. Smothermon alleges they are “known for delivering their take in a blunt, satirical style” on “divisive topics.” *Id.* ¶ 24. They own and manage Defendant Hodgetwins, LLC. ECF No. 77-2 at 22.

Smothermon has led Legacy since 2002. ECF No. 73-2 at 10. According to his own purported expert, Robert Fisher,³ Legacy operates nine campuses and online worldwide, it has roughly 10,000 weekly in-person attendees and 20,000 members, has reached more than 28 million people through social media, and has more than 440,000 followers. Smothermon preaches roughly 312 sermons a year, has authored two books, hosts a podcast, has a YouTube channel with 91,000 subscribers, and speaks at conferences in the United States and abroad. *Id.* at 11–12. Public records and press coverage confirm this, and show that his videos draw six-figure view counts, he hosted Charlie Kirk in September 2025, and he has waded into politics, COVID-19 policy, and national conservative advocacy. ECF Nos. 43-1 to 43-20.

Smothermon’s sermons address “marriage, family, gender identity, and sexual ethics” reflecting “beliefs commonly associated with political conservatism.” ECF No. 1 ¶¶ 51–52. Legacy employee Krisha Mason called him “a major CONSERVATIVE voice in New Mexico.” August 22, 2025, email from Krisha Mason, produced as HODGE000136, attached as **Exhibit 3**. He is direct about his politics: one of his more popular YouTube videos is titled “I’m a Right-Wing Extremist and Here’s Why!” ECF No. 43-5.

2.2 The Cracker Barrel Controversy

In August 2025, the Cracker Barrel restaurant chain unveiled a rebrand that removed the iconic figure “Uncle Herschel” from its logo. ECF No. 1 ¶ 26. As Smothermon alleges, it set off a national controversy: media outlets debated “what some deemed a ‘woke’ rebranding,” Donald

³ Defendants have moved to exclude Robert Fisher under Rule 702 (ECF No. 121).

Trump Jr. and President Trump publicly criticized it, a competitor called for the CEO's firing, and the company lost roughly \$143 million in market value overnight. Cracker Barrel changed course the next day. *Id.* ¶¶ 27–32. Smothermon alleges that media outlets credited Cracker Barrel's DEI and LGBTQ+ initiatives to former executive Steve Smotherman, and that DEI is a subject of national debate and state legislation. *Id.* ¶¶ 33–39. The press coverage was extensive. Request for Judicial Notice ("RJN"), ECF Nos. 125-1 to 125-4.

2.3 The Facebook Post

On August 22, 2025, Kevin Hodge published a Facebook post titled "Cracker Barrel's WOKE Past Comes Back to Light" (the "Post"). ECF No. 1 ¶ 41; ECF No. 43-21. The Post concerned "Steve Smotherman – a former Cracker Barrel management and training leader" who joined the Human Rights Campaign's Business Advisory Council "[a]fter leaving the company in 2020," and listed actions he took "[d]uring his time at Cracker Barrel (2005-2020)." ECF No. 1 ¶ 41. Its remaining text was commentary ("many Americans see," "critics say") and hashtags such as #AntiWoke and #FamilyValues. *Id.* The Post does not mention Smothermon, Legacy, or New Mexico. *Id.* Smothermon does not say the text is false; he alleges the same facts about Smotherman himself. *Compare id.* ¶¶ 33–35, *with id.* ¶ 41.

2.4 The Smothermon Photo

Kevin Hodge researched, drafted, and published the Post. ECF No. 53-1 at 5; ECF No. 77-2 at 21–22. He used ChatGPT to help draft the text by summarizing a Fox Business article on Smotherman's role at Cracker Barrel. Kevin did it alone. Defendants' Responses to Plaintiff's Fourth Set of Discovery Requests, attached as Exhibit 4, at Resps. to Interrog. Nos. 23–24; David Spector, "Cracker Barrel exec went on to sit on HRC Business Advisory Council," FOX BUSINESS (Aug. 22, 2025), produced as HODGE000159–163, attached as Exhibit 5.

He searched Google images for "Steve Smotherman" on his phone to find an illustrative photo. ECF No. 53-1 at 6; ECF No. 77-2 at 21. The results "displayed numerous images of the same middle-aged white man"; Kevin Hodge "believed that the person was Cracker Barrel's Steve Smotherman" and used one of the many images that came up in results. ECF No. 53-1 at 7–8.

Defendants did not know what either man looked like, and published without knowing the photograph was Smothermon and not Smotherman. *Id.* at 6–7; Kevin Hodge Dec. ¶¶ 3–8. Kevin Hodge’s practice is to browse in incognito mode, and he was not signed into a Google account at the time. ECF No. 53-1 at 7; ECF No. 77-2 at 20. Accordingly, his results were “clean” and not influenced by his prior search history.

Anyone could have made Kevin Hodge’s mistake. A Google image search for “Steve Smotherman” still returns Smothermon first and foremost. ECF No. 53-1 at 12–13. When Smothermon’s own expert ran a Google search for “Steve Smotherman,” the first result was about Smothermon. ECF No. 73-2 at 31. YouTube itself labeled Smothermon as Steve Smotherman. ECF No. 43-23. So did Albuquerque television station KOAT, which published a report about him spelling his name “Smotherman.” ECF No. 43-15 at 3. Legacy’s own media employee said that local outlets misspelled his name as “Smotherman” more than once, and once made the same mistake in a video the church produced. Deposition transcript excerpts of Krisha Mason (“Mason Trans.”), attached as Exhibit 6, at 55:23–59:11.

2.5 The Photo Comes Down

On August 22, 2025, Legacy employee Krisha Mason learned of the error through a group chat that did not include Smothermon, found a phone number on Defendants’ merchandise site, and called and emailed the contractor who staffs it. Mason Trans. at 18:12–15, 47:18–48:2, 50:2–6, 97:2–3; Exhibit 3 at HODGE000136–138. The contractor removed the Post that day, roughly three to four hours after publication. ECF No. 77-2 at 30. A lawyer at Smothermon’s counsel’s firm also sent a Facebook message (from his personal account with no indicia that it was a legal notice) that day demanding removal. It neither threatened suit nor asked that anything be preserved. Deposition Transcript Excerpts of Thomas Carroll II (“Carroll Trans.”), attached as Exhibit 7, at 32:1–35:23. He never followed up, preserved nothing himself, and knows of no one at his firm who asked Defendants to preserve anything. *Id.* at 36:7–9, 45:17–46:11, 48:2–16.

Defendants themselves did not see either demand, nor learn that the photograph showed the wrong person until after this suit was filed. ECF No. 77-2 at 23; ECF No. 53-1 at 6.

2.6 Smothermon's Complaint and Failure to Obtain Necessary Evidence

Smothermon sued on Oct. 1, 2025. ECF No. 1 ¶¶ 55–67. He alleges, without supporting facts, that Defendants published with actual malice, *id.* ¶¶ 6, 47, 59. He “accepted the pleading burden of actual malice.” ECF No. 45 at 3. However, he never met the pleading burden, as he alleges no facts to support that burden. He has no evidence of damages.⁴ ECF No. 72-5 at 7–8. When asked for both, he declined to provide any in discovery.

3.0 LEGAL STANDARDS

Summary judgment is appropriate where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In a public-figure defamation case, the Court “must view the evidence presented through the prism of the substantive evidentiary burden,” and asks whether a reasonable jury could find actual malice “with convincing clarity.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254–57 (1986); *Planet Aid, Inc. v. Reveal*, 44 F. 4th 918, 928 (9th Cir. 2022) (*Liberty Lobby* standard governs both summary judgment and anti-SLAPP motions). Nevada’s second prong is the same: a public-figure plaintiff must show evidence from which a factfinder could find actual malice by clear and convincing evidence. *Wynn v. AP*, 555 P.3d 272, 279 (2024). *Wealthy, Inc. v. Mulvehill*, 2026 U.S. App. LEXIS 5589, *8 (9th Cir. Feb. 25, 2026), *cert. denied*, 2026 U.S. LEXIS 3353 (Oct. 5, 2026) (clear and convincing evidence of actual malice “is required to survive summary judgment” on a public figure’s defamation claim). This is a federal constitutional requirement. *Bose Corp. v. Consumers Union*, 466 U.S. 485, 511–12 (1984).

Nevada’s Anti-SLAPP law is substantive and works in conjunction with Rule 56 in federal court. In enacting its law, Nevada did what no other State thought to do. Its Legislature declared that a person who makes a good-faith communication on an issue of public concern “is immune from any civil action for claims based upon the communication,” NRS 41.650, and backed that

⁴ Smothermon’s expert witness, Robert Fisher, provided a report purporting to provide calculations for damages Smothermon has suffered. ECF No. 73-2. As discussed in the motion to exclude him as an expert (ECF No. 121), his report is so deficient it is no more than a conduit for Smothermon’s own legal argument, and cannot be considered as evidence of anything except an indicator of what Smothermon could even imagine proving.

immunity with a mandatory award of fees and costs when such an action fails, NRS 41.670(1)(a). Nevada provided a clearly declared substantive right, not mere procedure.⁵

Defendants bring this Motion under Rule 56 and invoke only the Anti-SLAPP law's substantive right to fees. The Anti-SLAPP law has two prongs. Is the claim based on a good-faith communication in connection with an issue of public concern? NRS 41.660(3)(a). If so, can the plaintiff show a probability of prevailing? NRS 41.660(3)(b); *Gerwaski v. Nevada ex rel. Bd. of Regents*, 2025 U.S. Dist. LEXIS 84645, at *24 (D. Nev. May 5, 2025) (Gordon, C.J.); *Banerjee v. Cont'l Inc.*, 2018 U.S. Dist. LEXIS 17387, at *4–5 (D. Nev. Feb. 1, 2018) (Gordon, J.). In this Court, both prongs are properly resolved at summary judgment. This Court has twice concluded that the Ninth Circuit would apply *Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 833–34 (9th Cir. 2018), and *Gunn v. Drage*, 65 F.4th 1109, 1120 (9th Cir. 2023), to Nevada's statute, so that the Anti-SLAPP analysis collapses into one for summary judgment at both prongs. *Crampton v. City of Henderson*, 2026 U.S. Dist. LEXIS 220116, at *7–10 (D. Nev. Sept. 28, 2026) (Gordon, C.J.); *Sternberg v. Warneck*, 2025 U.S. Dist. LEXIS 98503, at *7–12 (D. Nev. May 22, 2025) (Gordon, C.J.). Defendants ask for the same thing: summary judgment under Rule 56, and a determination that the Post was a good-faith communication on an issue of public concern. NRS 41.650 and 41.670 apply.

Prong one asks whether the claims are “based upon a good faith communication in furtherance of ... the right to free speech in direct connection with an issue of public concern,” NRS 41.660(3)(a), which includes a communication “made in direct connection with an issue of public interest in a place open to the public or in a public forum, which is truthful or is made

⁵ Nevada provides immunity from “any civil action,” NRS 41.650, which is why federal courts that decline to apply other States' statutes have singled out Nevada's differences. *La Liberte v. Reid*, 966 F.3d 79, 86 n.3 (2d Cir. 2020) (Nevada's statute is “quite different” because its effects “are substantive”); *Adelson v. Harris*, 774 F.3d 803, 809 (2d Cir. 2014) (applying NRS 41.650 and 41.670). The statute's procedural 60-day filing deadline does not apply. *Sarver v. Chartier*, 813 F.3d 891, 900 (9th Cir. 2016). Nor does its stay on discovery. What applies is its substantive immunity and the substantive right to fees, NRS 41.670(1)(a). *Wealthy*, 2026 U.S. App. LEXIS 5589, at *4 & n.1 (Nevada's fee shifting is “relief beyond what a grant of summary judgment under Fed. R. Civ. P. 56 provides.”) *Id.* No Federal Rule answers who pays the fees if a state-law claim fails, and a Rule that did would “abridge ... [a] substantive right.” 28 U.S.C. § 2072(b).

without knowledge of its falsehood.” NRS 41.637(4). Defendants carry their initial burden with a sworn statement that Defendants believed the photograph showed Steve Smotherman, *Gerwaski*, 2025 U.S. Dist. LEXIS 84645, at 27–28; *Stark v. Lackey*, 458 P.3d 342, 347 (Nev. 2020), and now Smothermon must produce admissible evidence from which a reasonable jury could find that Defendants *knew* otherwise. *Sternberg*, 2025 U.S. Dist. LEXIS 98503, at 12–15; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–25 (1986).

Defendants meet their burden by showing a lack of record evidence on an element that Smothermon must prove. Smothermon must then come forward with admissible evidence showing a true dispute. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–25 (1986). On the good-faith question, Kevin Hodge’s sworn statement that he did not know the photograph showed the wrong man shifts the burden to Smothermon to produce evidence that Kevin *actually knew* otherwise. *Sternberg*, 2025 U.S. Dist. LEXIS 98503, at *12–15 (testing the good-faith question under Rule 56); *Gerwaski*, 2025 U.S. Dist. LEXIS 84645, at *27–28. Discovery closed on Sept. 18, 2026. ECF No. 49. Smothermon provided none.

4.0 ARGUMENT

4.1 Prong One: Smothermon’s Claims are Based on Protected Speech

4.1.1 Defendants Published Their Statements in a Public Forum

Defendants published on a public Facebook page. Such pages are public forums. *See Barrett v. Rosenthal*, 40 Cal. 4th 33, 41 n.4 (2006); *Wong v. Jing*, 189 Cal. App. 4th 1354, 1366 (2010); *Kosor v. Olympia Cos., LLC*, 136 Nev. 705, 713-14 (Nev. 2020).

4.1.2 Defendants’ Statements Were on an Issue of Public Interest

The Nevada Supreme Court says the term “public interest” in the anti-SLAPP statute is “broadly defined.” *Abrams v. Sanson*, 458 P.3d 1062, 1066 (Nev. 2020). To determine whether a statement is in connection with an issue of public interest, the Nevada Supreme Court has adopted the five “guiding principles” laid out in *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, 946 F. Supp. 2d 957 (N.D. Cal. 2013). *Shapiro v. Welt*, 389 P.3d 262, 268 (2017). These are:

- (1) “public interest does not equate with mere curiosity”;

(2) “a matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest”;

(3) “there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient”;

(4) “the focus of the speaker’s conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy”; and

(5) “a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.”

Id.; see *Moreira-Brown v. Las Vegas Review Journal, Inc.*, 648 F. Supp. 3d 1278, 1287–88 (D. Nev. 2023) (applying the “guiding principles”). This inquiry is focused on whether the topic of the defendant’s statements, rather than the plaintiff himself, is connected to an issue of public interest. *Moreira-Brown*, 648 F. Supp. 3d at 1288.

The Post addressed an issue of public interest. By Smothermon’s own account, the Cracker Barrel rebranding drew criticism from the President and his son, widespread media coverage, a \$143 million loss in market value, and a reversal the next day. ECF No. 1 ¶¶ 26–32. He alleges that corporate DEI programs are the subject of national debate and state legislation. *Id.* ¶¶ 36–39. A topic the President addresses, moves markets, and dominates news, is a matter of public interest.

Each *Piping Rock* principle points the same way. The Post was political commentary about a national company, not mere idle curiosity. It concerned customers and shareholders of a 660-location restaurant chain and millions of people following the story. ECF No. 1 ¶¶ 23, 26–31; ECF No. 73-2 at 11. It addressed the controversy directly, explaining the history of the company’s DEI initiatives and the executive behind them. ECF No. 1 ¶¶ 33–35, 41. Defendants had never heard of Smothermon and had no beef with anyone connected to him. Kevin Hodge Dec. ¶¶ 7, 11. The Post added to a public controversy. ECF No. 1 ¶ 33.

The mistaken photograph does not change the public interest analysis. It bears on falsity, which is part of the good-faith inquiry and prong two. See *RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc.*, 56 Cal. App. 5th 413, 426 (2020) (“Any claimed illegitimacy of the defendant’s

acts is an issue that must be raised and supported by the plaintiff in discharging its burden on prong two”); *Wilson v. Cable News Network, Inc.*, 7 Cal. 5th 871, 888 (2019) (same).

4.1.3 Defendants Published the Post in Good Faith

Under the Anti-SLAPP law, “good faith,” means either *true* or *made without actual knowledge of falsity*. NRS 41.637. Even if the statement was *reckless*, and thus could be actual malice, the Anti-SLAPP law’s “good faith” element is easier. A sworn statement that the defendant believed the communication was true or made without knowledge of its falsity is enough. *Gerwaski*, 2025 U.S. Dist. LEXIS 84645, at *27–28; *Sternberg*, 2025 U.S. Dist. LEXIS 98503, at *12–15. In fact, even if the Defendant fails to offer anything to show that they did not know of the falsity, it can be inferred. *Rosen v. Tarkanian*, 135 Nev. 436, 453 P.3d 1220, 1223–24 (2019). Smothermon must then produce evidence from which a reasonable jury could find *actual knowledge of falsity*. The good-faith standard is “essentially the same” as actual malice, “only differing in the party with whom the burden of proof lies,” *Wealthy*, 2026 U.S. App. LEXIS 5589, at *10 (quoting *Rosen*, 453 P.3d at 1224), so a record that cannot support a finding of actual malice cannot defeat a showing of good faith either. *Stark v. Lackey*, 458 P.3d 342, 347 (Nev. 2020); *see Delucchi v. Songer*, 396 P.3d 826, 833 (Nev. 2017); *Taylor v. Colon*, 482 P.3d 1212, 1218 (Nev. 2020). Opinions can *never* be knowingly false. *Sanison*, 458 P.3d at 1068.

Defendants meet this standard. All the information in the Post is true, as Smothermon admits. ECF No. 1 ¶¶ 33–35. The Post’s characterizations (“woke,” “many Americans see,” “critics say”) are opinion that can never be knowingly false. *Sanison*, 458 P.3d at 1068. As to the one thing that was incorrect, the man in the photograph, Kevin Hodge swears that he did not know it was the wrong man; he believed it was Smotherman because a search for that name returned image after image of the same guy. ECF No. 53-1 at 6–8, 10; Kevin Hodge Dec. ¶¶ 5–9. That satisfies. *Lackey*, 458 P.3d at 347; *Songer*, 396 P.3d at 833; *Colon*, 482 P.3d at 1218.

Smothermon has no evidence of actual knowledge of falsity. Asked for every piece of evidence that any Defendant knew at the time of publication that the photograph was Smothermon, he strangely gestured in the direction of Kevin Hodge’s incognito search, claiming

an allegedly insufficient investigation, and notice Legacy gave Defendants’ contractor *after* publication. ECF No. 72-5 at 8–10. None of that shows knowledge of falsity *at the time of publication*. Smothermon’s evidence may show that the photograph was wrong, but it does not show that Defendants knew it was wrong when they published it. *Williams v. Lazer*, 495 P.3d 93, 98 (Nev. 2021). Notice received after publication, which got the Post taken down that day, cannot show what Defendants knew before publishing. And insufficient investigation (which it was not) cannot show actual knowledge of falsity, nor can it show actual malice. *See infra* Section 4.2.4.

4.2 Prong Two: Summary Judgment Should Issue

Smothermon sued for defamation.⁶ To establish defamation, a plaintiff must establish: (1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault; (4) actual or presumed damages. *Wynn v. Smith*, 117 Nev. 6, 10 (Nev. 2001); *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718 (2002).

4.2.1 The Statements are Incapable of a Defamatory Meaning

Whether a statement is susceptible of a defamatory meaning, and whether it is an actionable statement of fact rather than opinion, are questions of law. *Pegasus*, 118 Nev. at 714; *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422, 425 (2001). A statement is defamatory only if it “would tend to lower the subject in the estimation of the community, excite derogatory opinions about the subject, and hold the subject up to contempt.” *Id.* The Court reads the publication as a whole and in context. *Id.*; *Partington v. Bugliosi*, 56 F.3d 1147, 1153 (9th Cir. 1995).

A statement must include a false assertion of fact to be defamatory. “[M]inor inaccuracies do not amount to falsity unless the inaccuracies ‘would have a different effect on the mind of the reader from that which the pleaded truth would have produced.’” *Pegasus*, 118 Nev. at 715 n.17.

A statement of opinion cannot be defamatory. *Id.* at 714; *see also Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974). In Nevada, “a statement is not defamatory if it is an exaggeration or generalization that could be interpreted by a reasonable person as ‘mere rhetorical hyperbole.’”

⁶ He also asserts a “claim” for permanent injunctive relief, ECF No. 1 ¶¶ 62–67. An injunction is a remedy, not a claim. The request is moot anyway. The Post was down within hours.

1 *Pegasus*, 118 Nev. at 715 (citing *Wellman v. Fox*, 108 Nev. 83, 88 (Nev. 1992); *Flowers v.*
2 *Carville*, 310 F.3d 1118, 1127 (9th Cir. 2002).

3 An “evaluative opinion” cannot be false or defamatory. *See People for the Ethical*
4 *Treatment of Animals v. Bobby Berosini, Ltd.*, 895 P.2d 1269, 1275-76 (Nev. 1995) (calling
5 depictions of violence toward animals “abuse” was protected opinion). Such an opinion is one
6 that “convey[s] the publisher’s judgment as to the quality of another’s behavior, and as such, it is
7 not a statement of fact.” *Id.* at 1275.

8 Context matters. *See Balzaga v. Fox News Network, LLC*, 173 Cal. App. 4th 1325, 1339
9 (2009); *Lewis v. Time, Inc.*, 710 F.2d 549, 553 (9th Cir. 1983) (stating “even apparent statements
10 of fact may assume the character of statements of opinion, and thus be privileged, when made
11 [under] circumstances in which ‘an audience may anticipate efforts by the parties to persuade
12 others to their position by use of epithets, fiery rhetoric or hyperbole’”). When a statement sits
13 amid “loose, figurative, or hyperbolic language,” the publication’s tenor can negate any
14 defamatory meaning. *See Morningstar, Inc. v. Superior Court*, 23 Cal. App. 4th 676, 689 (1994).

15 Much of Smothermon’s claim is based on statements Defendants didn’t even make.
16 Smothermon alleges the Post labeled him “woke,” “anti-American,” and “anti-family values” and
17 told readers he was “responsible for the controversial DEI-driven rebranding at Cracker Barrel,
18 which allegedly led to a \$145 million loss in brand value in a single day.” ECF No. 1 ¶¶ 3, 44.
19 The Post doesn’t say any of that. The words “anti-American” and “anti-family values” might be
20 how Smothermon feels about Smotherman, but nobody wrote that except *him* in *his Complaint*.
21 The Post does not blame Smotherman (much less Smothermon) for the 2025 rebrand or any loss
22 in stock value. It says he left Cracker Barrel in 2020. *Id.* ¶ 41. Smothermon does not get to rewrite
23 the statement and then claim damages for the version he imagined.

24 What the Post *actually says* is not actionable. It expresses an opinion on Cracker Barrel’s
25 “long march toward woke politics”, that “many Americans see” the rebrand as “part of the same
26 woke transformation,” and “critics say” Cracker Barrel is “chasing trends.” This is all political
27 rhetoric about Cracker Barrel, not about Steve Smotherman or Steve Smothermon.

“Woke” is a mere political epithet that cannot be proven true or false. *See Buckley v. Littell*, 539 F.2d 882, 893–95 (2d Cir. 1976) (“fascist” and “radical right” not factual given “the tremendous imprecision of the meaning and usage of these terms in the realm of political debate”). Courts asked whether “woke” is defamatory have come to the same predictable conclusion. *See MacCudden v. Johnson*, 2025 Wisc. App. LEXIS 964, *7 (Wis. App. Dist. 1, Oct. 28, 2025) (“the terms ‘god complex,’ ‘woke,’ and ‘white savior’ are vague and do not have a clear meaning or definition”; a jury could not “determine whether these terms are true or false”). Accusations that someone is a “fascist,” or “Marxist,” are “hopelessly imprecise” and “obviously unverifiable.” *Mannina v. O’Keefe Media Group*, 2026 U.S. Dist. LEXIS 168580, at *33 (D.D.C. July 29, 2026) (citing *Ollman v. Evans*, 750 F.2d 970, 987 (D.C. Cir. 1984)). The same is true of “anti-American” and “anti-family values.” So even if the defendants had directly accused him of being those things, there would be no valid claim.

This leaves us with the allegation that the Post is defamatory because it claims Smothermon is a “proponent of DEI initiatives or LGBTQ+ advocacy.” ECF No. 1 ¶ 43. That is a critique of political alignment, which is opinion. *Riera v. Cent. Wash. Univ.*, 2026 U.S. Dist. LEXIS 71952, at *13–14 (E.D. Wash. Apr. 1, 2026); *Coomer v. Make Your Life Epic LLC*, 780 F. Supp. 3d 1129, 1148–49 (D. Colo. 2025) (“Antifa member” not defamatory given its imprecise meaning). Even if it were, the imputation is that he is non-discriminatory. Allegations that a plaintiff *is racist* are not actionable. *Stevens v. Tillman*, 855 F.2d 394, 402 (7th Cir. 1988). Conversely, being mistaken as homophobic would not be either, and most certainly being accidentally identified as *not homophobic* could not be either. *Laguerre v. Maurice*, 138 N.Y.S.3d 123, 131 (N.Y. App. Div. 2020) (false imputation of homosexuality not defamation per se).

The hashtags are just slogans. *See Talbot v. Ainuu*, 2024 U.S. Dist. LEXIS 36367, *20–21 (D. Mont. Mar. 1, 2024) (hashtags and emojis signal to readers that a post is not factual); *Pelkowski v. Hovermann*, 2021 U.S. Dist. LEXIS 259784, *12–13 (E.D.N.Y. Sept. 9, 2021) (same). The Post came from self-described “Conservative Twins” whom Smothermon himself describes as delivering “blunt, satirical” takes on “divisive topics.” ECF No. 1 ¶¶ 19, 24. That

audience “may anticipate efforts by the parties to persuade others to their position by use of epithets, fiery rhetoric or hyperbole.” *Lewis*, 710 F.2d at 553; *Art of Living Found. v. Does*, 2011 U.S. Dist. LEXIS 63507, at *19–22 (N.D. Cal. June 15, 2011); *Krinsky v. Doe 6*, 159 Cal. App. 4th 1154, 1173, 1178 (2008) (“cockroach,” “losers,” and “crooks” in a chat room were “crude, satirical hyperbole” and protected opinion).

That leaves us with only the photograph. Smothermon’s theory is that putting his photograph beneath commentary about another man implied he was that man or was responsible for that man’s accomplishments (and his apparent willingness to believe in equality). But a photograph defames only if the publication, read as a whole, would lead a reasonable reader to believe something false and derogatory about the person pictured. The text identifies its subject by name (“Steve Smotherman”), by position (“former Cracker Barrel management and training leader”), and by dates of employment (“2005–2020”). ECF No. 1 ¶ 41. It says nothing about a pastor, a church, or New Mexico. A reader who did not recognize the face had no way to connect the Post to Smothermon and could form no opinion of him at all. A reader who did recognize the face knew the man in it is the long-time leader of Legacy since 2002, could not have been secretly running a training department at Cracker Barrel from 2005 to 2020, and has never had anything to do with the Human Rights Campaign.

Being the victim of an obvious mix-up is not the same as being defamed. No reasonable reader could both recognize the photograph as Smothermon and believe anything but that the wrong photograph had been used. For anyone who did not know Smothermon himself, the photo would not have even registered. For those who knew him, it may as well have said he was actually Wayne Newton. Legacy staff and congregants alike saw the mistake at once and said so in the comments. **Exhibit 3** at HODGE000136; **Exhibit 8** at MASONK_000035–39. Inside the church, the reaction was not belief but amusement: “I’m laughing so hard,” “That’s SO FUNNY,” “Pastor’s evil twin is out making headlines.” *Id.* at MASONK_000036. Legacy’s media employee and its creative director each testified that no one in the twenty-person staff chat believed Smothermon worked for Cracker Barrel, that they have never spoken to or heard of anyone who

1 did, and that the comments from church members ran the gamut of “you have the wrong guy, this
 2 is crazy. He’s on your side actually.” Mason Trans. at 27:21–24, 29:24–30:7, 32:2–10, 67:18–
 3 68:10; Deposition Transcript of Michael Morin (“Morin Trans.”), attached as **Exhibit 9**, at 40:17–
 4 41:2, 53:12–54:10. The Post cannot have “lowere[d] [Smothermon] in the estimation of the
 5 community” where everyone who could identify him saw at once that Defendants had the wrong
 6 guy. *Lubin*, 17 P.3d at 425. The only person who seemed offended at all was his son, another
 7 Legacy Church pastor. **Exhibit 1** at MORNIM_000029–31. (“We need to sue these piece of shit
 8 motherfuckers”). There is no evidence as to how this could affect his standing in the community.

9 **4.2.2 Ecclesiastical Abstention**

10 To entertain Smothermon’s claims, this Court would need to serve as a canon law court.
 11 It can not do that. Smothermon’s theory is that he suffered harm because the photo associated him
 12 with ideologies that are against his religious beliefs. The Court would have to first determine what
 13 is a “true Christian.” The First Amendment precludes that since it would violate the establishment
 14 clause. *Homeschooling v. Morningstar Educ. Network*, 2008 U.S. Dist. LEXIS 131021 (C.D. Cal.
 15 Aug. 6, 2008), was a defamation case based in part on statements that the plaintiffs were “un-
 16 Christian” and acted against the dictates of the Christian bible. *Id.* at *6–7. The statements were
 17 opinion because “[t]here is no way to objectively verify whether the [plaintiffs’ conduct described
 18 in the allegedly defamatory statements] is ‘contrary to the dictates of the Holy Bible.’” *Id.* at *9–
 19 10. Because “testing in court the truth or falsity of religious beliefs is barred by the First
 20 Amendment,” the court held the statements incapable of defamatory meaning. *Id.* at *11 (quoting
 21 *Founding Church of Scientology v. U.S.*, 409 F.2d 1146, 1156 (D.C. Cir. 1969)).

22 Similarly, *United Fed’n of Churches, LLC v. Johnson*, 2022 U.S. Dist. LEXIS 67769
 23 (W.D. Wash. Apr. 12, 2022), involved a Facebook post that, The Satanic Temple alleged, “falsely
 24 ascrib[ed] extremist ideologies and affiliations to” it by accusing it of “ableism, misogyny, racism,
 25 fascism, and transphobia,” ideologies that it claimed were incompatible with its religious beliefs.
 26 *Id.* at *5–6. The court rejected the Satanists’ request to apply purely secular standards, because
 27 doing so “would require the court to violate the First Amendment by ‘delving into doctrinal

1 matters’ in order to ‘define the beliefs held by [plaintiff] and to determine that ableism, misogyny,
2 racism, fascism, and transphobia fall outside those beliefs.’” *Id.*

3 Defendants moved to exclude Robert Fisher under Rule 702 (ECF No. 121), but his
4 testimony on this issue is still relevant. His report and deposition show what Smothermon’s own
5 retained witness identified as the harm after receiving direction from Smothermon’s attorneys.
6 ECF No. 73-2 at 4; ECF No. 123-1 (“Fisher Trans.”) at 241:1–3, 267:3–7. This harm depends on
7 a particular interpretation of scripture, and one that Christians do not universally share. Fisher
8 said that the sting of the Post was associating Smothermon with “the practice of a homosexual
9 lifestyle in today’s culture,” which, he says, “directly clashes with Biblical teachings as well as
10 his consistent and very public stance in opposition to the practice of a homosexual lifestyle given
11 that it is in direct contravention of both the Old and New testaments of the Bible.” ECF No. 73-2
12 at 36. The only remedy Fisher suggested was a plan to “portray him as a virtuous clergyman with
13 good character.” *Id.* at 39. He said the Post made Smothermon “look like a charlatan” because
14 support for DEI and LGBTQ causes is “totally opposed to biblical teachings” and “diametrically
15 opposed” to what a pastor preaches. Fisher Trans. at 111:4–16, 112:10–18, 115:2–6, 341:6–25.
16 Fisher then conceded he has no theological training, is not clergy, has never run a church, does
17 not “claim to be an expert on the Bible,” and has never heard Smothermon preach. *Id.* at 37:2–
18 15, 114:2–3, 115:18–20, 250:25–251:1.

19 Smothermon’s own employee, his admissible witness on harm, said the same thing. Asked
20 why the Post would damage him, Krisha Mason answered that the association “is in direct contrast
21 to our spiritual beliefs and our church beliefs,” which she identified as “Biblical beliefs.” Mason
22 Trans. at 61:14–22. “Woke,” to her, means “adhering to the current social standards of acceptance
23 and equality, and with no regard to traditional values or religious standards,” and “[e]verything
24 that the woke ideology believes is almost always opposite to the values and standards represented
25 in scripture.” *Id.* at 75:9–12, 76:5–7. Would a different pastor take such association as a
26 compliment? “In some circles of thought,” she agreed, but such a church is not “*an actual true*
27 *Christian church following Biblical beliefs*,” because “[i]f you don’t believe the Bible, then you’re

not a Christian.” *Id.* at 77:24–78:20.⁷ In sum: “The reason this post was damaging is because it incorrectly associates our pastor with ideology that’s completely contrary to what he and our church believes.” *Id.* at 78:24–79:1.

To find the Post defamatory, then, a jury would first have to agree that advocating DEI and LGBTQ+ inclusion is incompatible with Christianity. Meanwhile, many Christian denominations consider such views to be virtuous. Smothermon’s theory could only lead to judgment in his favor if we first agree on how to interpret the existence and will of the Almighty. This Court can do no such thing. Not as a matter of theology and most certainly not as an Article III Court. It would first need to agree with Legacy’s position that other denominations are wrong, that “if you don’t believe the Bible, then you’re not a Christian,” and that a minister’s standing is measured by fidelity to that court-approved interpretation of the Bible. The First Amendment forbids courts to resolve “controversies over religious doctrine and practice,” *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 449 (1969), or to decide what a faith truly requires of its adherents. *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708–09 (1976); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746–47 (2020). His claim can never be tried in a civil court.

4.2.3 Even if He Had a Claim, Smothermon is a Public Figure

Even if this Court could wade into this, the claim fails for an independent reason: he is a public figure with no evidence of actual malice. A limited purpose public figure “voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues.” *Gertz*, 418 U.S. at 351; *see also Pegasus*, 118 Nev. at 720. The test asks (1) “whether a public controversy existed when the statements were made”; (2) whether the statements were related to this controversy; and (3) whether the plaintiff voluntarily injected himself into the controversy. *Planet Aid v. Reveal*, 44 F.4th 918, 925 (9th Cir. 2022).

Smothermon is a general-purpose public figure in New Mexico, where his ministry operates, and where we find everyone that he can prove saw the post. **Exhibit 1** at

⁷ This argument is, quite literally, the No True Scotsman fallacy applied to religious belief.

MORNIM_000029–31; **Exhibit 8**. A plaintiff may achieve “such pervasive fame or notoriety” in the relevant community that he becomes a public figure for all purposes. *Gertz*, 418 U.S. at 351. For more than two decades, he has led one of the biggest megachurches in the State, with an international presence and a global social-media following. He has sought and received major press coverage for inserting himself into state politics, national COVID-19 policy, and events with figures like Charlie Kirk. ECF No. 73-2 at 10–12; *supra* Section 2.1. His own employee called him “a major CONSERVATIVE voice in New Mexico.” **Exhibit 3** at HODGE000136. By his own account he has “testified under oath in federal court concerning COVID-related issues.” ECF No. 108-1 ¶ 8. *Cf. Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 47, 57 (1988) (famous minister commenting on social issues is a public figure).

His notoriety is central to the social issues underlying this case. Smothermon is so widely known that a Google search for a different man’s name, “Steve Smotherman,” returns an entire page of results that are for Smothermon. Smothermon appears first and most often in those results. Smothermon is so famous that his reputation has completely subsumed Steve Smotherman’s online presence. Defendants showed this. ECF No. 43-22; ECF No. 53-1 at 12–13, and Smothermon’s own expert reproduced the defendants’ findings: the first result in Fisher’s search for Smotherman was Smothermon. ECF No. 73-2 at 31. A private figure would never be able to crowd out his near-namesake from search results for the near-namesake’s own name.

Smothermon’s public figure status is already in the record. Defendants pled it as their First Affirmative Defense, ECF No. 43 at 7–11 (¶¶ 2–15), with 23 exhibits collecting a sampling of public sources’ recognition of his fame, his publications and social media, his videos, his interviews, and his public statements on politics, “wokeness,” and sexual ethics, each authenticated. ECF Nos. 43-1 to 43-23; ECF No. 43-24. Smothermon moved to strike all of it as “impertinent” and “scandalous,” complaining that it had been “curated . . . to smear him.” ECF No. 45 at 3. He never claimed that any exhibit was not what it purported to be, and the Court held that the exhibits “all concern whether Plaintiff is a public figure such that the actual-malice

standard applies.” ECF No. 51 at 5–6. A man who has produced that much public commentary on the subjects the Post addresses has injected himself into that very debate.

At a minimum, Smothermon is a limited-purpose public figure. *First*, a public controversy existed: the national debate over whether American institutions and corporations, have embraced “woke” politics, DEI, and LGBTQ+ advocacy versus traditional values. Smothermon’s Complaint describes that controversy, including the legislation and policies it has generated. ECF No. 1 ¶¶ 26–40; *see Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 266 (9th Cir. 2013).

Second, the Post related directly to that controversy. Cracker Barrel was the example, but the overall subject was DEI and LGBTQ+ policies and the politics surrounding them.

Third, Smothermon voluntarily injected himself into that controversy. He alleges that his sermons address “marriage, family, gender identity, and sexual ethics,” that his messages “reflect beliefs commonly associated with political conservatism,” and that he and Legacy “have consistently resisted external political pressures.” ECF No. 1 ¶¶ 51–53. His expert described his “consistent and very public stance” on these issues. ECF No. 73-2 at 36. He hosted Charlie Kirk, commented on state politics in the press and on podcasts, and publicly opposed state COVID-19 restrictions on churches. ECF Nos. 43-9 to 43-20. He preached on YouTube about his thoughts about the harm of “wokeness.” ECF Nos. 125-5 and 125-6. He drew national attention for signing a pledge against same-sex marriage while *Obergefell* was pending, saying “legalizing same-sex marriage nationwide would be an attack on the church.” ECF No. 125-7. And his theory of harm is that the Post undermined his reputation as a Bible-based voice on exactly these issues. ECF No. 1 ¶¶ 1–5, 43–46, 51–54. A man who builds a public reputation on one side of a controversy cannot seriously debate that he is not a public figure if he is mistakenly identified as being on the other side of that controversy.

Smothermon also enjoys the “access to the channels of effective communication” that is part of why we have a higher burden for public figures in defamation cases. *Gertz*, 418 U.S. at 344. His ministry has more than 440,000 social-media followers, ECF No. 73-2 at 12. He preaches to roughly 10,000 people a week, publishes more than 300 sermons a year, hosts a podcast, and

runs a YouTube channel with some 91,000 subscribers. *Id.* at 10–12. Legacy’s employee responded to the Post in the comment thread within the hour. **Exhibit 8** at MASONK_000035. Smothermon had every tool a public figure has to correct the record. He sued instead. Smothermon must prove actual malice by clear and convincing evidence. *Bose*, 466 U.S. at 511–12. He could never do so, no matter how much discovery he tried to take.

4.2.4 No Evidence of Actual Malice Exists

Smothermon must prove actual malice by clear and convincing evidence. *Anderson*, 477 U.S. at 255–57; *Bose*, 466 U.S. at 511–12; *Wynn*, 555 P.3d 272. Actual malice requires knowing falsity or reckless disregard for the truth. *New York Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964). Defendants did not know or believe the photograph was of Steve Smothermon rather than Steve Smotherman, ECF No. 53-1 at 6–8; Kevin Hodge Dec. ¶¶ 6–9, and so there was no knowing falsity. No discovery could have ever found it, because it does not exist.

This leaves only reckless disregard, which is similarly nonexistent. A plaintiff must show, *by clear and convincing evidence*, that a publisher “in fact entertained serious doubts as to the truth of his publication.” *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). Reckless disregard exists only when the defendant “acted with a ‘high degree of awareness of ... [the] probable falsity’ of the statement or had serious doubts as to the publication’s truth.” *Pegasus*, 118 Nev. at 719. The question is not whether a reasonably prudent person would have investigated before publishing. *Reader’s Digest Assn. v. Superior Court*, 690 P.2d 610, 617–18 (Cal. 1984); *St. Amant*, 390 U.S. at 731. Moreover, “[a] publisher does not have to investigate personally, but may rely on the investigation and conclusions of reputable sources.” *Reader’s Digest*, 690 P.2d at 619.

There is no evidence, let alone clear and convincing, that Defendants knew or even suspected the photograph was anyone but Steve Smotherman. Kevin Hodge searched for the right name. ECF No. 53-1 at 6. The search engine returned image after image of the same person. *Id.* at 7–8. Kevin had never heard of Smothermon, did not know what either man looked like, and used one of the many photographs Google returned when he searched for Steve Smotherman. *Id.* at 6–8. Defendants had no motive to attack a fellow traveler. Kevin Hodge Dec. ¶ 11. Had

Smothermon reached out before suing, the Hodgetwins would likely have welcomed him as an ally. *Id.* What changed their view of him was not his ideas, but a multi-million-dollar lawsuit against fellow conservatives over an honest mistake they fixed the same day. *Id.*

Kevin Hodge’s results for Smotherman were not unique: months after the lawsuit was filed, the same search showed Smothermon rather than Smotherman. ECF No. 53-1 at 12–13. Smothermon’s own expert’s search for “Steve Smotherman” returned Steve Smothermon at the top of the search. ECF No. 73-2 at 31. YouTube gave Smothermon Smotherman’s name. ECF No. 43-23. A local television station captioned a report about him “PASTOR STEVE SMOTHERMAN.” **Exhibit 10**, YouTube video of KOAT story misspelling Smothermon’s name, produced as HODGE000164; *see also* ECF No. 43-15 at 3. Legacy’s own employee saw local news misspell his name the same way, and once caught the identical misspelling in a church-produced video. Mason Trans. at 55:23–59:11. Nothing in the search results Kevin saw gave any indication that Steve Smotherman existed. Relying on results from the world’s premier search engine for a man’s name is the opposite of a “high degree of awareness of probable falsity.” *Reader’s Digest*, 690 P.2d at 619. Smothermon has argued that a search run months later “cannot establish what Kevin Hodge’s August 22, 2025 search returned.” ECF No. 56 at 11. Fair enough, but Defendants do not offer the later searches to reconstruct his results at the time – that would be impossible. They submit them because the confusion is systemic: the same search produces the same error for everyone who does it. Defense counsel, Smothermon’s expert, YouTube, and a major television station. If later searches prove nothing, his own expert’s search, the only contrary evidence he suggests, proves nothing either. Fisher agreed: his 2026 search “wouldn’t say anything about [20]’25.” Fisher Trans. at 214:15–20.

Throughout the case, Smothermon has thrown theories of actual malice at the wall, but none of them stick enough to create a genuine factual dispute.

Incognito Mode. Smothermon contends that searching in incognito mode reflects a “conscious avoidance of truth.” ECF No. 72-5 at 9. Incognito mode affects whether a browser keeps a record afterward; it hides nothing from the person searching. It is Kevin Hodge’s normal

practice, ECF No. 53-1 at 32, not a choice made for this search. Smothermon’s own counsel has conceded the setting “governs only local browser artifacts.” ECF No. 53-1 at 25. His own expert treated it the same way. Smothermon disclosed Istvan Jonyer as a rebuttal expert on this very subject, then withdrew him rather than let him answer discovery. ECF No. 113. Defendants do not offer the withdrawn report for the truth of anything in it, would have moved to exclude it, and cite it for one purpose only. Jonyer described his own method: “I used private, or incognito, browsing while logged out of my account to remove personalization associated with my own account and browsing history.” Exhibit 11, Declaration of Alex J. Shepard (“Shepard Dec.”) ¶¶ 7-10; Expert report of Istvan Jonyer (“Jonyer Rep.”), attached as Exhibit 12, ¶ 46; *see also id.* ¶¶ 50, 78 (every search run “in incognito mode in logged out state”). Smothermon’s position is that incognito mode is proof of actual malice. But the expert he paid to try to rehabilitate Fisher’s disastrous non-expert testimony used it as a matter of course, as is good practice to find untainted search results.⁸ Purposeful avoidance of the truth is not present when someone uses good internet hygiene, but when a speaker has obvious reasons to doubt his facts, and then he refuses to second guess himself while harboring that doubt. *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 692 (1989). Kevin Hodge believed he had found the right picture.

No reverse-image search or metadata review. Smothermon claims Defendants acted with actual malice because they did not run the photograph through a reverse-image search and did not examine its metadata. ECF No. 72-5 at 9–10. Those are complaints about thoroughness, and they cannot show actual malice: “failure to investigate before publishing, even when a reasonably prudent person would have done so, is not sufficient to establish reckless disregard.” *Harte-Hanks*, 491 U.S. at 688; *St. Amant*, 390 U.S. at 731, 733.

⁸ Jonyer is hardly alone in this opinion. It is well-known that using incognito mode is a useful tool for removing biases in search results. *See* ECF Nos. 125-8 to 125-10.

Spelling/appearance. Plaintiff claims a “phonetic difference” between the names and an “*extreme visual disparity*” between the men. ECF No. 72-5 at 9. But, the names look alike. There is no phonetic difference between the names in normal diction. Visual disparity? These are two middle-aged white men of somewhat similar appearance. Throw glasses on Smotherman and it simply looks like Smothermon aged a bit. If we scrutinize the pictures, they are different men, but not so different that it would be obvious to someone drafting a Facebook post on their phone.



Further, even if the Defendants knew what Smothermon looks like today, they might still not think the photo they used is Steve Smothermon at all. Examine the Post’s photo beside a video still of Smothermon from Aug. 21, 2025. ECF No. 43 ¶¶ 28–30; Shepard Dec. ¶¶ 11-12; side-by-side comparison of Smothermon photos, attached as **Exhibit 13**.



Kevin Hodge did not know either man’s face, but if he knew Steve Smothermon, his glam shot does not look like him today and seems like a photo of a man at least 10-20 years younger.

Actual malice requires that the defendant *actually suspect* there is an error and then consciously avoid the truth. *St. Amant*, 390 U.S. at 731. As the Amended Answer put it, “no reasonable person who knows the man on the left would presume that the man on the right is the same person.” ECF No. 43 ¶ 29.⁹

Expert opinion. Smothermon’s expert, Robert Fisher, opines that Defendants did not use “normal and accepted” verification tools and that the confusion between Smothermon and Smotherman was “not plausible.” ECF No. 73-2 at 25, 34. Opinions about professional standards cannot establish actual malice; the Supreme Court rejected the “extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers” test in favor of a subjective one. *Harte-Hanks*, 491 U.S. at 664–66 (quoting *Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 155 (1967) (plurality)). And Fisher conceded that his verification opinion rests on a “study” by Smothermon’s counsel that he never actually saw, and counsel “could have just made it up.” ECF No. 73-6 at 139:19–141:25; *see* ECF No. 121.

Post-publication events. Smothermon says that Legacy told Defendants’ contractor that the photo was wrong. ECF No. 72-5 at 10. Irrelevant: actual malice is relevant at publication. What he learned later does not travel back in time to inform his decision to publish. *See Sullivan*, 376 U.S. at 286 (even failure to retract upon demand is not actual malice). Here, the Post came down the same day. ECF No. 77-2 at 30. Kevin Hodge himself did not even learn of the mistake until he was sued. *Id.* at 23.

Smothermon has not produced a scintilla of evidence of actual malice, nor could he even divine where it might exist – because it does not exist at all. This is fatal to the defamation claim.

⁹ The comparison does more than help explain the mistake. Anyone who knew Smothermon in 2025 knew the man on the left. Show them the pro headshot and they would see a stranger. This is why his own staff discussed the Post joking about an “evil twin.” **Exhibit 8** at MASONK_000036. A photograph his own congregation would not recognize could not lower him in their eyes. It also explains why the search result was so easy to accept: Steve Smotherman, as he looks today, resembles Steve Smothermon, as he looks today, more than the photograph of Smothermon that was used to illustrate Smotherman.

4.3 Smothermon Has No Damages

Smothermon's discovery responses confirm that he has no proof of damages. He said he was "not presently able to provide a detailed itemization of specific economic losses, including lost income, lost business opportunities, lost endorsement opportunities, reputational repair costs, or medical treatment," and that "he has not sought or received medical treatment as a result of the Facebook Post." ECF No. 72-5 at 7–8 (Resp. to Interrog. No. 5); *see also id.* at 13 (citing "Plaintiff's admission that he has not sought clinical medical or mental health treatment"). He "has not identified any documents in his possession that specifically identify moneymaking opportunities lost as a result of the Facebook Post." *Id.* at 19 (Resp. to RFP No. 17). Asked to identify everyone who has told him they will no longer associate with him: nothing. *Id.* at 8 (Resp. to Interrog. No. 7). Asked to identify each person who contacted him about the Post, he named only his own employee, promised to "amend this response as he discovers which of the many upset individuals actually 'contacted him,'" and never did. *Id.* at 5–6 (Resp. to Interrog. No. 3). The only time anyone on the planet apparently has ever mistaken him for Steve Smotherman is the Post itself. *Id.* at 3–4 (Resp. to Interrog. No. 1). His initial disclosures conceded that his damages are "not subject to strict mathematical calculation" and promised a computation "if specific economic losses to his ministry or personal income are identified during discovery." ECF No. 91-17 at 5. Discovery is over. We have nothing.

His witnesses agree. Legacy's creative director knows of no lost speaking engagements, no lost book sales, no one who left the church, and no one who reduced a donation because of the Post; Smothermon has never mentioned the Post to him. Morin Trans. at 65:21–66:11, 67:11–17. Legacy's media employee has never spoken with Smothermon about the Post and has not spoken with a single person who was confused by it. Mason Trans. at 22:5–7, 64:16–19. The lawyer who sent the takedown demand is not aware of any lost congregants or lost donations. Carroll Trans. at 54:18–55:6. His only evidence of damages is Fisher's report, which talks only about spiritual objections to "wokeness." Fisher quantified nothing and was just a vehicle for hearsay "[t]he Plaintiff reports" about his stress. ECF No. 73-2 at 36; *see* ECF No. 121.

Smothermon himself has never said a word about the Post, its effect on him, or his damages. He refused to verify a single interrogatory answer; every set is signed by counsel “As to Objections” only. ECF No. 72-5 at 26; ECF No. 72-6 at 12; ECF No. 91-13 at 4; ECF No. 103-4 at 6; ECF No. 105-4 at 8; Fed. R. Civ. P. 33(b)(3), (5). The two declarations he filed in this case concern his back. ECF Nos. 99-1, 108-1. Without non-speculative evidence of damages, the claim fails. *See Mattes v. Ballys Las Vegas*, 227 Fed. Appx. 567, 571–72 (9th Cir. 2007) (summary judgment proper where damages evidence was speculative). Nor can Smothermon avoid his burden of proving damages by just calling the Post “defamation per se.” There is nothing incompatible between a pastor’s profession and DEI or LGBTQ+ inclusion unless one first adopts a theological orthodoxy that rejects those ideas. We already discussed that, *supra* Section 4.2.2.

4.4 The Motion to Amend, even if Granted, Can Not Change the Result

Smothermon’s motion for leave to amend (ECF No. 52) was argued on August 3, 2026, and remains pending. ECF No. 67 at 3. It is irrelevant because it was untimely, prejudicial, and futile, as Defendants noted. ECF No. 53. Futility is relevant in this analysis because summary judgment would still be appropriate even if the motion were erroneously granted. Accordingly, to cover all the bases here, the defendants provide “in the alternative” argument as to the propriety of ruling on those claims without further waste.

The proposed Amended Complaint seems based on actual fiction. It claims the photo at issue was obviously the wrong man, because it shows Smothermon “preaching from a pulpit, holding a Bible.” ECF No. 52-1 ¶¶ 68, 87, 89. But, we have already seen the post – it is of a man in a blazer against a blue backdrop. Every new claim in the proposed amended complaint is based on a picture that doesn’t even exist. *See* ECF No. 43-21. Nobody has ever even seen this photo, much less published it. Smothermon, on this fiction, then claims defamation per se and adds right of publicity, false light, and unjust enrichment, and a prayer for punitive damages. ECF No. 52-1 ¶¶ 62–71, 78–98. Each depends on the same harm theory. The defamation per se claim still depends on the same legal premises – that the alleged defamation is incompatible with a profession based on a particular interpretation of the Bible. This is dispensed with in Sections

4.2.1–4.2.2, 4.3, *supra*. False light requires the same actual-malice showing as defamation. *Carville*, 310 F.3d at 1132. That fails too. Sections 4.2.3–4.2.4, *supra*; ECF No. 53 at 12–13.

The right of publicity claim is even weaker. That requires a *commercial* use. But the Post was *political* commentary, it did not propose any commercial transaction. Smothermon’s claim, that an email sent to a customer-service inbox turns it into an advertisement, doesn’t make any sense. *Bolger v. Youngs Drug*, 463 U.S. 60, 66–67 (1983); *Ariix, LLC v. NutriSearch*, 985 F.3d 1107, 1115–16 (9th Cir. 2021) (commercial speech is: (1) speech that is an advertisement, (2) speech that refers to a particular product, and (3) speech in which the speaker has an economic motivation); *Tobinick v. Novella*, 848 F.3d 935, 950–52 (11th Cir. 2017) (blog posts criticizing claims about efficacy of medical procedure were not commercial speech); ECF No. 53 at 13–15.

The unjust enrichment claim requires Smothermon to show he conferred a benefit upon Defendants. He can’t come up with one. ECF No. 53 at 9. The Anti-SLAPP law reaches every claim “based upon” the protected communication, no matter what they call it. NRS 41.660(1)(a).

Defendants made these arguments in depth in their opposition to the motion for leave to amend, ECF No. 53 at 11–16. An amended complaint filed after a special motion does not moot the motion. *Marzen Media LLC v. FL Newsletter LLC*, 2025 U.S. Dist. LEXIS 45635, at *2 (D. Nev. Mar. 12, 2025) (Gordon, C.J.) If leave is granted, the Court can still decide this Motion without making everyone go back and do this all again. The proposed Amended Complaint is improper for procedural reasons, but it is legally futile just the same.

5.0 CONCLUSION

None of the statements is defamatory. The only real claim is that they damage Smothermon’s religious standing – which this Court can not wade into. Even if the statements were capable of a defamatory meaning, Smothermon has no evidence of actual malice or damages. The Court should grant summary judgment on all claims; find that the Post was a good-faith communication made in direct connection with an issue of public concern in a public forum, NRS 41.637(4), 41.660(3)(a); and find that Defendants are the prevailing party entitled to costs and attorneys’ fees under NRS 41.670(1), in an amount to be set by separate motion.

Dated: October 19, 2026.

Respectfully Submitted,

/s/ Marc J. Randazza

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

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Attorneys for Defendants,

Keith Hodge, Kevin Hodge, and

Hodgetwins, LLC

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

CERTIFICATE OF SERVICE

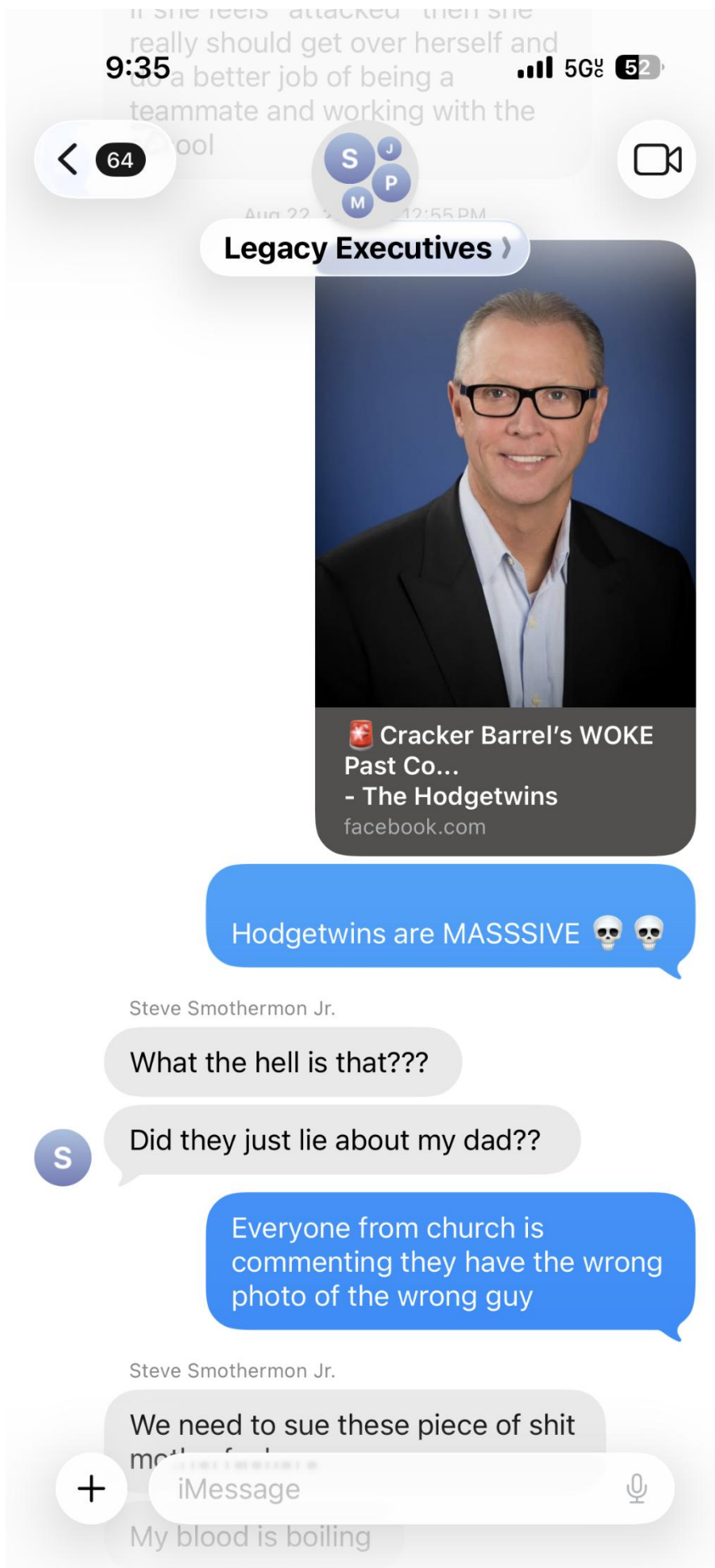
I HEREBY CERTIFY that on October 19, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document being served via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Marc J. Randazza

Marc J. Randazza

Exhibit 1

Legacy Church Group Chat
MORNIM_000029-31



MORNIM_000029



MORNIM_000030



MORNIM_000031

Exhibit 2

Declaration of Kevin Hodge

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Ronald D. Green, NV Bar No. 7360
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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 KEVIN HODGE**

I, Kevin Hodge, declare:

1. I am a Defendant in this action and a member and manager of Defendant Hodgetwins, LLC. I have personal knowledge of the facts stated in this declaration and could testify to them if called as a witness.

2. My brother Keith and I are known as the Hodgetwins. We publish conservative political and cultural commentary to an audience of several million people across social-media platforms, including a Facebook page with more than six million followers.

3. On August 22, 2025, I researched, drafted, and published the Facebook post titled “Cracker Barrel’s WOKE Past Comes Back to Light” (the “Post”). No one else wrote, edited, approved, or scheduled it. Keith had no involvement in the Post and did not know it existed until this lawsuit was served.

1 4. I used ChatGPT to help draft the text of the Post and to summarize a Fox Business
2 article about Steve Smotherman's work at Cracker Barrel. Every statement of fact in the Post about
3 Steve Smotherman came from published reporting about him. I believed each of those statements
4 was true when I published the Post, and I still do.

5 5. I wanted a photograph of Steve Smotherman to accompany the Post. I searched
6 Google Images on my phone for "Steve Smotherman," spelled the way the reporting spelled it. I
7 browse in incognito mode as a matter of routine, and I was not signed into a Google account. I did
8 not choose incognito mode for this search; it is how my phone's browser is ordinarily set.

9 6. The search results displayed numerous images of the same middle-aged white man.
10 Because the results for "Steve Smotherman" returned image after image of one person, I believed
11 that person was Cracker Barrel's Steve Smotherman, and I used one of those images. Nothing in
12 the results I saw suggested that there was a second person with a similar name, and I did not reject
13 any other images in favor of the one I used.

14 7. Before this lawsuit, I had never heard of Pastor Steve Smothermon or Legacy
15 Church. I did not know what either Steve Smothermon or Steve Smotherman looked like. When I
16 published the Post, I believed the photograph showed Steve Smotherman. I did not know, suspect,
17 or have any reason to suspect that it showed anyone else.

18 8. I did not know of a reliable reverse-image search tool at the time and did not run
19 one. I had no record of the search afterward because I was not signed into a Google account and
20 the browser was in incognito mode.

21 9. I did not see the August 22, 2025, email from Legacy Church's employee, and I did
22 not learn that the photograph showed the wrong man, until after this lawsuit was filed. I learned it
23 in a telephone conversation with Nathan Hughes, who runs Defendants' merchandise website,
24 when I told him we had been sued over a post with an incorrect picture and he told me he had
25 deleted the Post months earlier after receiving an email from a Legacy Church employee.

26 10. The Post was removed the day it was published. It has never been republished.

27 11. I share Pastor Smothermon's views on the issues the Post addressed. I had no reason

1 to want to associate a conservative pastor with the corporate policies the Post criticized, and before
2 this lawsuit I had no dispute with him or with anyone connected to him or his church. Had he or
3 his church contacted me or Keith before suing, we would have corrected the photograph
4 immediately and would likely have treated him as an ally. Had I known the photograph showed
5 him, I would never have used it.

6 12. At the time of publishing the Post, I did not believe or have any reason to believe
7 anything about the Post was false or inaccurate.

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

9
10 Dated: October 19, 2026.

KEVIN HODGE

Kevin Hodge

Exhibit 3

Email from Krisha Mason
HODGE000136-138

Here is the email we received from the church.
Case 2:25-cv-01858-APG-BNW Document 124-3 Filed 10/19/26 Page 2 of 4
On Fri, 22 Aug, 2025 at 3:12 PM, Krisha Mason <kmason@legacychurchnm.com> wrote:
Hello Kylie,

The recent post about Steve Smotherman of Cracker Barrel uses an INCORRECT photo. The post features a photo of PASTOR Steve Smothermon of Legacy Church in New Mexico, a major CONSERVATIVE voice in New Mexico. This post needs to be taken down immediately because it's causing much confusion and damage. Many of our church members have commented and the official Legacy Church page has responded, requesting it be taken down.

2:04



The Hodgetwins



Posts

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Photos

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The Hodgetwins



2h · 🌐



🚩 Cracker Barrel's WOKE Past Comes Back to Light 🚩 ... See more



🤔👍😂 4.8K

1.9K comments 1K share

Krisha Mason

Legacy Church NM

kmason@legacychurchnm.com

HODGE000136

Sent: Friday, August 22, 2025 2:31:22 PM

To: Krisha Mason

Subject: Re: URGENT: Major ERROR on Social post of Steve Smotherman

Hi Krisha,

Thank you so much for bringing this to our attention. I'll be forwarding your message to our marketing department right away so they can reach out to the website and Facebook/marketing team for the Twins. Please know this is not being taken lightly, and we'll work to get this resolved as quickly as possible.

YEAAAAAHHH!!!!!!!

Support Specialist

OfficialHodgeTwins.com

🦅 *America's most jacked customer service squad.*

📦 *Shipping freedom one box at a time.*

✉️ info@officialhodgetwins.com

☎️ 877-462-4459

HODGE000137

From: **Hodgetwins Support** <info@officialhodgetwins.com>

Date: Fri, May 29, 2026 at 12:37 PM

Subject: Fwd: URGENT: Major ERROR on Social post of Steve Smotherman

To: <matt@gobigly.com>

Please take a look at ticket [#529834](#) raised by Krisha Mason (kmason@legacychurchnm.com).

HODGETWINS

CUSTOMER SUPPORT TEAM

Phone: (877) 462-4459

Email: info@officialhodgetwins.com

Web: officialhodgetwins.com

SHOP HODGETWINS

Real support. Straight answers. We've got you covered.

On Fri, 22 Aug, 2025 at 3:35 PM , Krisha Mason <kmason@legacychurchnm.com> wrote:

Thank you Kylie!

HODGE000138

Exhibit 4

Defendants Responses to Plaintiff's
Fourth Set of Discovery Requests

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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' RESPONSES TO
PLAINTIFF'S FOURTH SET OF
INTERROGATORIES, REQUESTS FOR
PRODUCTION, AND REQUESTS FOR
ADMISSION**

Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC ("Defendants"), hereby submit their responses to Plaintiff's Fourth Set of Interrogatories, Requests for Production, and Requests for Admission served on August 14, 2026.

GENERAL OBJECTIONS

Interrogatories

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 that
2 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 interrogatories 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 it
9 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 **Requests for Production of Documents**

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

23 2. Defendants object to the subject requests to the extent that they are not reasonably
24 calculated to lead to the discovery of admissible evidence. The providing of documents in response
25 to any request is not to be deemed or construed as an admission by Defendants that the information
26 is in fact relevant to this action.

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

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

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

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

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

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

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

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

Requests for Admission

1. Defendants object to any instruction, definition, or request to the extent that it imposes upon them greater duties than those set forth in the Federal Rules of Civil Procedure or this Court's local rules.

2. Defendants object to these requests to the extent that they seek disclosure of information protected from disclosure by the attorney-client privilege or as attorney work product.

3. Defendants object to Plaintiff's definitions to the extent that they impose greater duties than those set forth in the Federal Rules of Civil Procedure or this Court's local rules.

4. Defendants respond to these requests based upon the information and documents currently available to them. Further discovery, investigation, and analysis may supply additional facts and add meaning to known facts, as well as establish entirely new factual conclusions and legal contentions, all of which may lead to additions to, changes to, or variations from the information set forth herein. Defendants reserve the right to supplement, amend, and correct their objections and responses upon the receipt of additional information.

5. Defendants adopt by reference the above objections and incorporate each objection as if set forth in each of the responses. The absence of a reference to a General Objection should not be construed as a waiver of the objection to any specific request.

RESPONSES TO INTERROGATORIES

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

INTERROGATORY NO. 23: State the exact search terms (including any misspellings) that Kevin Hodge entered when performing The Search that resulted in the selection of the Photograph, and state whether any reverse-image search (including Google Lens, TinEye, Bing Visual Search, or any other tool) or any artificial-intelligence tool (including Google Gemini) was used before the Photograph was selected for the Post. If no record of the search terms or results exists, so state and explain why no record exists.

RESPONSE TO INTERROGATORY NO. 23: Objection. This interrogatory is compound, comprising at least three distinct and separate interrogatories. This interrogatory is duplicative of previously propounded interrogatories in this case, including Interrogatories Nos. 2, 7, 8, and 12.

Without waiving these objections, the search terms used were "Steve Smotherman". Reverse image search was not used. ChatGPT was used to assist in the drafting of the Post and to summarize a Fox Business article, which is attached as HODGE000159-HODGE000163. No

record of the search exists because the search was performed in incognito mode while not signed into a Google account.

INTERROGATORY NO. 24: Describe in detail how the content of the Post was created — including both the text and the selection of the Photograph — stating whether it was typed, dictated, copied or adapted from another source, generated in whole or in part by any Content-Generation Tool (including any artificial-intelligence tool such as Google Gemini), or drafted, supplied, or scheduled by any third party (including Bigly), and identify each tool used and each person who participated in creating, editing, reviewing, approving, scheduling, or publishing the Post.

RESPONSE TO INTERROGATORY NO. 24: Objection. This interrogatory is compound, comprising at least two distinct and separate interrogatories. This interrogatory is duplicative of previously propounded interrogatories in this case, including Interrogatories Nos. 1, 2, 5, 7, and 12.

Without waiving these objections, Kevin Hodge typed/dictated the post and selected the photograph through a Google search for “Steve Smotherman.” ChatGPT was used to assist in the drafting of the Post and to summarize a Fox Business article. It was not drafted by any third party.

INTERROGATORY NO. 25: Identify every person and vendor (including Bigly, Nathan Hughes, and Kylie Howerton) who held administrative or login credentials to the Hodgetwins Facebook page, or to any Platform account or Management Tool used to publish, promote, or remove the Post, on August 22, 2025, and for each state the scope of their authority to post, edit, or delete content, including whether each had authority to remove the Post without prior approval from Keith or Kevin Hodge.

RESPONSE TO INTERROGATORY NO. 25: Objection. This interrogatory is compound, comprising at least two distinct and separate interrogatories.

Without waiving these objections, Keith Hodge, Kevin Hodge, and persons working for Bigly held administrative or login credentials for the Hodgetwins Facebook account on August 22,

2025. Keith and Kevin Hodge had the authority to post, edit, and delete content. People working for Bigly had authority to edit and delete content without prior approval from Defendants. No Platform account or Management Tools were used to publish, promote, or remove the Post.

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

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

REQUEST FOR PRODUCTION NO. 34: The original Photograph file in Native Format with all Metadata (EXIF, IPTC, and system metadata, including any Source URL) intact and unaltered.

RESPONSE TO REQUEST FOR PRODUCTION NO. 34: Objection. This Request is wholly duplicative of previous Requests for Production propounded by Plaintiff, including Requests Nos. 1, 13, and 26. Defendants repeat and reallege their objections and responses to those Requests for Production.

REQUEST FOR PRODUCTION NO. 35: The complete Facebook Activity/Audit Log for the Hodgetwins Facebook page reflecting the creation, any edits, and the deletion or removal of the Post, with timestamps and the identity of the acting administrator, for the period August 20–30, 2025.

RESPONSE TO REQUEST FOR PRODUCTION NO. 35: Objection. This Request is wholly duplicative of previous Requests for Production propounded by Plaintiff, including Requests Nos. 14 and 24. Defendants repeat and reallege their objections and responses to those Requests for Production.

REQUEST FOR PRODUCTION NO. 36: All remaining Facebook Insights, monetization, reach, or engagement data for the Post that is still in Defendants' possession, custody, or control (including any screenshots, exports, or emails containing such data), and if none remains, a verified statement explaining the date and manner of its loss.

RESPONSE TO REQUEST FOR PRODUCTION NO. 36: Objection. This Request is wholly duplicative of previous Requests for Production propounded by Plaintiff, including Requests Nos.

8, 19, and 28. Defendants repeat and reallege their objections and responses to those Requests for Production.

REQUEST FOR PRODUCTION NO. 37: All documents sufficient to show the precise time the Post went live and the precise time it was removed, including any Platform notifications, emails, or internal messages.

RESPONSE TO REQUEST FOR PRODUCTION NO. 37: Objection. This Request is wholly duplicative of previous Requests for Production propounded by Plaintiff, including Requests Nos. 3, 14, 20, and 29. Defendants repeat and reallege their responses to those requests for production.

REQUEST FOR PRODUCTION NO. 38: All drafts, versions, and iterations of the text or images of the Post, including any generated, suggested, or produced by a Content-Generation Tool.

RESPONSE TO REQUEST FOR PRODUCTION NO. 38: 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. 39: All Documents and Communications concerning the creation, drafting, generation, editing, review, approval, scheduling, publication, or deletion of the Post, produced in Native Format with all Metadata intact.

RESPONSE TO REQUEST FOR PRODUCTION NO. 39: All documents responsive to this request have already been produced. Please see HODGE000001-000002 and HODGE000136-000138.

REQUEST FOR PRODUCTION NO. 40: All Documents sufficient to identify every Content-Generation Tool, account, and subscription used by You or on Your behalf in connection with the Hodgetwins Facebook page from January 1, 2025 to the present, and all logs, histories, or exports from those tools relating to the Post.

RESPONSE TO REQUEST FOR PRODUCTION NO. 40: Objection. This Request seeks documents that are not relevant to the claims asserted by Plaintiff. The Request is disproportionate to the needs of the case. Without waiving these objections, 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. 41: All Documents and Communications reflecting any search (including any performed on Google Gemini or any other artificial-intelligence tool) relating to “Steve Smotherman,” the Photograph used in the Post, or the identity of its subject.

RESPONSE TO REQUEST FOR PRODUCTION NO. 41: 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. 42: All Documents reflecting Your policies, practices, or instructions — whether written or informal — for verifying, fact-checking, or reviewing the accuracy of content, including the identity of persons depicted in photographs, before publishing to the Hodgetwins Facebook page.

RESPONSE TO REQUEST FOR PRODUCTION NO. 42: 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. 43: All account-administration, audit, and login records for the Hodgetwins Facebook account and any connected scheduling, management, or analytics tool for the period August 20–23, 2025, sufficient to show who accessed the account and what tools were connected when the Post was created, published, and removed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 43: Objection. This Request is duplicative of previous requests issued by Plaintiff, including Requests Nos. 14 and 24. This Request is vague and ambiguous with respect to the meaning of the terms “account-administration records,” “audit records,” and “login records.” It is additionally vague and ambiguous with respect to the term “tools were connected.” This request is disproportionate to the needs of the case and is irrelevant. Plaintiff knows who posted the Facebook Post and who took it down. Without waiving these objections, Defendants are not in possession of any documents responsive to this Request

and will supplement this response if responsive documents are located in the future.

REQUEST FOR PRODUCTION NO. 44: All Documents and Communications concerning the preservation, deletion, attempted recovery, or asserted inability to recover the Post or its data — including the matters described in Defendants’ counsel’s July 31, 2026 correspondence — and identifying any person or vendor engaged to recover or examine that data.

RESPONSE TO REQUEST FOR PRODUCTION NO. 44: Objection. This Request is duplicative of previous requests issued by Plaintiff, including Requests Nos. 17, 30, and 32. This Request seeks documents protected from disclosure by the attorney-client privilege. Without waiving these objections, Defendants are not in possession of any documents responsive to this Request and will supplement this response if responsive documents are located in the future.

REQUEST FOR PRODUCTION NO. 45: All contracts, statements of work, invoices, and Communications between Defendants and Bigly, Nathan Hughes, and/or Kylie Howerton (or any other marketing, content, public-relations, or social-media vendor) concerning the Hodgetwins Facebook page, the Post, the Photograph, the Mason Email, the Carroll Notice, or the removal of the Post.

RESPONSE TO REQUEST FOR PRODUCTION NO. 45: Objection. The provision of these documents regarding the Hodgetwins Facebook page is disproportionate to the needs of the case. They are additionally irrelevant and propounded for the purpose of harassment. Regarding the remaining issues in this Request, without waiving this objection, Defendants are not in possession of any documents responsive to this Request and will supplement this response if responsive documents are located in the future.

REQUEST FOR PRODUCTION NO. 46: All Documents, data, and Communications provided to, reviewed by, considered by, or relied upon by Defendants’ designated expert Matthew Shupe in forming his opinions in this matter, together with all drafts of his report.

RESPONSE TO REQUEST FOR PRODUCTION NO. 46: Objection. This Request seeks documents protected from disclosure as attorney work product and by Fed. R. Civ. P. 26(b)(4). All

Documents, data, and Communications provided to, reviewed by, or relied upon Matthew Shupe are listed in his report and/or are in Plaintiff's possession. If Defendants locate additional documents responsive to this Request, they will provide them.

RESPONSES TO REQUESTS FOR ADMISSION

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

REQUEST FOR ADMISSION NO. 35: Admit that Kevin Hodge performed The Search in Google's Incognito mode.

RESPONSE TO REQUEST FOR ADMISSION NO. 35: Admit.

REQUEST FOR ADMISSION NO. 36: Admit that, because The Search was performed in Incognito mode, Defendants have no record on Kevin Hodge's local device of the search terms used or the results returned.

RESPONSE TO REQUEST FOR ADMISSION NO. 36: Admit.

REQUEST FOR ADMISSION NO. 37: Admit that no reverse-image search (including Google Lens, TinEye, Bing Visual Search, or any other reverse-image tool) was performed on the Photograph before the Post was published.

RESPONSE TO REQUEST FOR ADMISSION NO. 37: Admit.

REQUEST FOR ADMISSION NO. 38: Admit that Defendants did not review the Metadata of the Photograph before the Post was published.

RESPONSE TO REQUEST FOR ADMISSION NO. 38: Admit.

REQUEST FOR ADMISSION NO. 39: Admit that a Content-Generation Tool was used to draft or generate any part of the text of the Post.

RESPONSE TO REQUEST FOR ADMISSION NO. 39: Admit.

REQUEST FOR ADMISSION NO. 40: Admit that Google Gemini (or another artificial-intelligence tool) was used in connection with any search relating to "Steve Smotherman" or the Photograph used in the Post.

RESPONSE TO REQUEST FOR ADMISSION NO. 40: Deny.

REQUEST FOR ADMISSION NO. 41: Admit that, before publishing the Post, no person independently verified the identity of the individual depicted in the Photograph.

RESPONSE TO REQUEST FOR ADMISSION NO. 41: Deny.

REQUEST FOR ADMISSION NO. 42: Admit that, before publishing the Post, no Defendant compared the Photograph to any known image of the Cracker Barrel executive Steve Smotherman.

RESPONSE TO REQUEST FOR ADMISSION NO. 42: Objection. This request is vague and ambiguous with respect to the meaning of the term “known image.” Without waiving that objection, deny.

REQUEST FOR ADMISSION NO. 43: Admit that, before August 22, 2025, You knew that generative-AI or automated content tools can produce false or unverified statements.

RESPONSE TO REQUEST FOR ADMISSION NO. 43: Deny.

REQUEST FOR ADMISSION NO. 44: Admit that Bigly (or another marketing or content vendor) participated in creating, drafting, generating, editing, scheduling, or publishing content for the Hodgetwins Facebook page.

RESPONSE TO REQUEST FOR ADMISSION NO. 44: Deny.

REQUEST FOR ADMISSION NO. 45: Admit that on August 22, 2025, Bigly, Nathan Hughes, and/or Kylie Howerton received the Mason Email stating that the Photograph was incorrect and depicted Pastor Steve Smothermon.

RESPONSE TO REQUEST FOR ADMISSION NO. 45: Objection. This request is properly directed to Bigly, Nathan Hughes, and/or Kylie Howerton and requests information not in Defendants’ custody, possession, or control. The Request asks about three individuals and/or entities, rendering it improperly compound. Without waiving these objections, Defendants deny the request.

REQUEST FOR ADMISSION NO. 46: Admit that Bigly, Nathan Hughes, and/or Kylie Howerton had actual authority on August 22, 2025 to receive the Mason Email and to remove the

Post from the Hodgetwins Facebook page without prior approval from Keith Hodge or Kevin Hodge.

RESPONSE TO REQUEST FOR ADMISSION NO. 46: Objection. This request is improperly compound, asking if three individuals and/or entities had actual authority. Without waiving this objection, Defendants deny the request.

REQUEST FOR ADMISSION NO. 47: Admit that the Post was removed from Facebook on August 22, 2025, the same day the Mason Email and the Carroll Notice were received.

RESPONSE TO REQUEST FOR ADMISSION NO. 47: Objection. Defendants do not know when the “Mason Email” or “Carroll Notice” was received because Defendants have never seen either of them. Without waiving these objections, Defendants deny the request.

REQUEST FOR ADMISSION NO. 48: Admit that no litigation hold or preservation instruction was issued that suspended the automatic deletion of the Facebook Insights, engagement, or monetization data for the Post within the 30-day window after August 22, 2025.

RESPONSE TO REQUEST FOR ADMISSION NO. 48: Objection. This request assumes that Defendants had an obligation to initiate a litigation hold or preservation instruction. Thomas Carroll testified at deposition that his Facebook message did not contain a litigation hold or preservation instruction. Kylie Howerton’s email did not contain a litigation hold or preservation instruction. Without waiving these objections, Defendants admit the request.

REQUEST FOR ADMISSION NO. 49: Admit that at the time Kevin Hodge selected the Photograph for the Post, the images returned by The Search appeared to him to depict the same person now understood to be Plaintiff Pastor Steve Smothermon.

RESPONSE TO REQUEST FOR ADMISSION NO. 49: Objection. This request is vague and ambiguous regarding the phrase “the images returned by the search appeared to him to depict the same person now understood to be Plaintiff Pastor Steve Smothermon,” rendering it incomprehensible. For this reason, Defendants deny the request.

REQUEST FOR ADMISSION NO. 50: Admit that after receipt of the Mason Email and the

Carroll Notice on August 22, 2025, Defendants conducted no further investigation into the identity of the person depicted in the Photograph before the Post was removed.

RESPONSE TO REQUEST FOR ADMISSION NO. 50: Objection. Defendants did not receive the “Mason Email” or the “Carroll Notice.” This request assumes facts that are untrue and unsupported. For this reason, Defendants deny this request.

REQUEST FOR ADMISSION NO. 51: Admit that Defendants conducted no investigation to determine whether the person depicted in the Photograph was the Cracker Barrel executive Steve Smotherman or the New Mexico pastor Steve Smothermon before publishing the Post.

RESPONSE TO REQUEST FOR ADMISSION NO. 51: Deny.

REQUEST FOR ADMISSION NO. 52: Admit that Defendants derived commercial benefit (including increased engagement, reach, monetization, or brand promotion) from the multi-day series of Cracker Barrel-related posts published on the Hodgetwins Facebook page between August 21 and August 30, 2025.

RESPONSE TO REQUEST FOR ADMISSION NO. 52: Deny.

Dated: September 14, 2026.

Respectfully submitted,

RANDAZZA LEGAL GROUP, PLLC

/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*

VERIFICATION

We, Keith and Kevin Hodge, declare as follows:

We are the Defendants in the above-entitled action. We have read the foregoing Responses to Plaintiff's Fourth Set of Interrogatories, Requests for Production, and Requests for Admission 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.

Executed on September 14, 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 September 14, 2026, a copy of the foregoing was served upon counsel for Plaintiff via electronic mail as follows:

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Counsel for Plaintiff, Steve Smothermon

/s/ Danielle Darkenwald
Danielle Darkenwald

Exhibit 5

Fox Business Article
HODGE000159-163

MEDIA Published August 22, 2025 9:30am EDT | Updated August 22, 2025 9:29am EDT

Cracker Barrel exec went on to sit on HRC Business Advisory Council

Restaurant chain says it has not participated in HRC or had any affiliation in 'several years'

By **David Spector** FOX Business



00:00 / 02:22



Cracker Barrel responds to brand refresh critics: 'We're headed in the right direction'

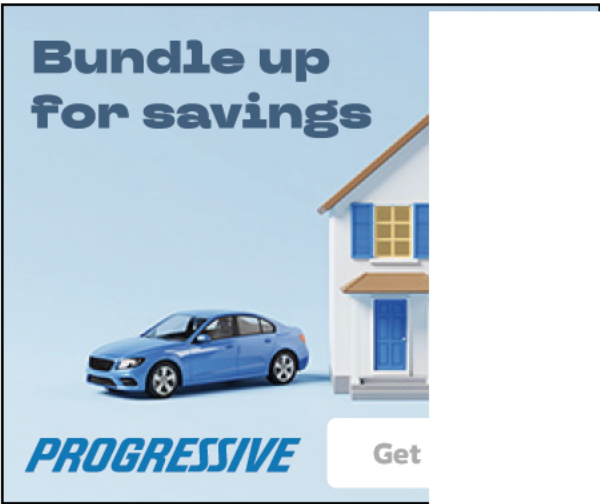
FOX Business' Jeff Flock reports on Cracker Barrel unveiling a new logo as part of a broader brand update.

Cracker Barrel over the past decade has worked closely with the Human Rights Campaign (HRC), changing its company culture to be more inclusive and LGBT-friendly ahead of its controversial store rebrand.

The restaurant chain's former management and training leader, Steve Smotherman, who spearheaded an LGBT employee resource group at Cracker Barrel, went on to sit on the HRC's

Business Advisory Council, Upward News reported.

"For more than ten years of my time at Cracker Barrel, I had an emphasis on Diversity & Inclusion, especially with LGBTQ workplace inclusion. My training background allowed me to understand the steps of adult learning, facilitate difficult conversations and be effective at it [sic] Diversity & Inclusion content," Smotherman, who joined the company in 2005, wrote.



Cracker Barrel has provoked consumer backlash by updating its classic logo(Cracker Barrel / Fox News)

Cracker Barrel told Fox News Digital that it "has not participated in the Human Rights Campaign Index or had any affiliation with HRC in several years."

CRACKER BARREL STOCK PLUNGES AMID LOGO CHANGE BACKLASH

Smotherman said at first he was reluctant to join Cracker Barrel due to it having a bad reputation with the gay community. In 1991, the chain instituted a corporate-wide policy stating that any employee who failed to demonstrate "normal heterosexual values" would be fired. After 11 employees were fired due to their sexual orientation, protests and boycotts were staged throughout the country.



After a few years with the restaurant, Smotherman founded an LGBT resource group that originally had six members. Over time, the group was successful at changing Cracker Barrel's culture and making the "Old Country Store" more welcoming toward LGBT employees, Smotherman said. He left the company in 2020. The former Cracker Barrel employee would go on to sit on the HRC Business Advisory Council.

The HRC has wielded immense power in the corporate world in recent years with its Corporate Equality Index. The index, which, [on its website](#), is defined as a "national benchmarking tool on corporate policies, practices, and benefits pertinent to lesbian, gay, bisexual, transgender, and queer employees," would assign companies a score based on how inclusive the HRC determined they were to gay employees. Companies would then jockey to increase their scores by instituting more DEI-related policies, some of which, critics alleged, went too far.



The founder of Cracker Barrel's LGBT employee resource group went on to work at the Human Rights Campaign. (Getty)

CRACKER BARREL CEO JULIE FELSS MASINO AND THE NEW LOGO CONTROVERSY: WHAT TO KNOW



Cracker Barrel was originally given a score of zero when the CEI debuted in 2002. Later that year, the franchise added "sexual orientation" to its list of characteristics protected by its employment discrimination policy. Over time, Cracker Barrel's score increased. It achieved a score of 80 in 2021 after it had taken some high-profile pro-LGBT stands.

In 2014, it pulled "Duck Dynasty" products from its shelves after star Phil Robertson made remarks that many deemed to be homophobic. In 2019, the restaurant chain barred a pastor from hosting an event at one of its 660 locations after he preached that homosexuals were "freaks" and "animals" who are "worthy of death" in a sermon.

In 2023, the "Old Country Store" celebrated Pride by unveiling rainbow-colored rocking chairs. Cracker Barrel sponsored the Nashville Pride Parade in 2024.

Cracker Barrel is now in the crosshairs of consumer backlash after it unveiled a new logo and restaurant redesign. The logo, which drops the imagery of a man leaning over a barrel and instead just has the restaurant's name in black text over a yellow barrel-shaped backdrop, has elicited sharp criticism online.



Cracker Barrel has also angered its fans with new restaurant redesigns. (Paul Weaver/SOPA Images/LightRocket via Getty Images / Getty Images)

STEAK 'N SHAKE SLAMS CRACKER BARREL CEO FOR ELIMINATING 'OLD-TIMER' FROM LOGO: 'WE TAKE PRIDE IN OUR HISTORY'

A redesign of the [restaurant's interiors](#), which dropped the kitschy American aesthetic it was known for in favor of a slick modernist motif, has also roiled longtime fans.



A representative for Cracker Barrel told [Fox News Digital](#) in a statement about the new logo that the company's values had not changed.

"Our values haven't changed, and the heart and soul of Cracker Barrel haven't changed," the company said. "And Uncle Herschel remains front and center in our restaurants and on our menu. He is the face of 'The Herschel Way,' the foundation of how our 70,000-plus employees provide the country hospitality for which we are known.

"Cracker Barrel has been a destination for comfort and community for more than half a century, and this fifth evolution of the brand's logo, which works across digital platforms as well as billboards and roadside signs, is a call-back to the original and rooted even more in the iconic barrel shape and word mark that started it all back in 1969."

Exhibit 6

Krishna Mason Deposition Transcript Excerpts

In the Matter Of:

SMOTHERMON vs HODGE ET AL

2:25-CV-01858-APG-BNW

KRISHA MASON

August 11, 2026



ESQUIRE
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KRISHA MASON
SMOTHERMON vs HODGE ET AL

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1

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON, §
§ CASE NO. :
PLAINTIFF, § 2:25-CV-01858-APG-BNW
§
v. §
§
KEITH HODGE, an individual, §
KEVIN HODGE, an individual, §
HODGETWINS, LLC, a limited §
liability company, §
§
DEFENDANTS. §

ORAL AND VIDEO ZOOM DEPOSITION OF

The Oral Deposition of KRISHA MASON, taken at the
request of the DEFENDANTS KEITH HODGE, KEVIN HODGE, and
HODGETWINS, LLC, on AUGUST 11, 2026, from 10:01 a.m. to
2:02 p.m., at VIA ZOOM.

Reported by: Belen A. Soto, CSR, RMR

KRISHA MASON
SMOTHERMON vs HODGE ET AL

August 11, 2026

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A P P E A R A N C E S

FOR PLAINTIFF PASTOR STEVE SMOTHERMON AND KRISHA MASON:

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ALSO PRESENT:

Danielle Darkenwald, Randazza Office Assistant
Richard McLaron, Clerk Jones Davis & Jackson

KRISHA MASON
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1 COURT REPORTER: The time is 10:01 a.m.

2 My name is Belen Soto, Court Reporter, and
3 this is the deposition of Krisha Mason.

4 Will the attorneys please state your
5 appearance, your location and who you represent, for the
6 record, after which I will swear in the witness.

7 MR. GREEN: Ron Green. I represent
8 Defendants in this case. Also, on this Zoom link with
9 me from my firm are Mark Randazza, my law partner, and
10 Danielle Darkenwald paralegal.

11 MR. BISHOP: My name is Paul Bishop, and I
12 represent Krisha Mason in this deposition, and the
13 Plaintiff, Mr. Steve Smothermon, with an O.

14 KRISHA MASON

15 Having been first duly sworn, testified as follows:

16 EXAMINATION

17 BY MR. GREEN:

18 Q. Good morning, Ms. Mason. Thank you for being
19 here today.

20 My name is Ron Green. I am a lawyer with
21 the firm of Randazza Legal Group in Las Vegas, Nevada,
22 and I represent the defendants in the case of
23 Pastor Steve Smothermon versus the Hodgetwins, LLC,
24 et al.

25 And you are here today to give your

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1 (Exhibit 1 marked for identification.)

2 Q (By Mr. Green) And let me know when you have it
3 open. And go ahead and take a moment, read through it,
4 refresh your recollection, and let me know when you're
5 ready.

6 A. (Witness reviews documents.)

7 Okay, I've reviewed it.

8 Q. Okay. Do you recognize this document?

9 A. Yes.

10 Q. All right. And this is the -- the reason we're
11 here, obviously.

12 Can you tell me how you first became aware
13 of this Facebook post?

14 A. Through the group chats that was provided, the
15 screenshots of that group chat.

16 Q. And that was the group chat we were talking
17 about earlier with people from the media team at the
18 church?

19 A. People from the creative team at the church.

20 Q. Did you ever see it when it was on Facebook?
21 Live on Facebook?

22 A. Yes.

23 Q. Okay. But you saw it in the group chat first?

24 A. Yes.

25 Q. Do you recall if it was a link to the post in

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1 Q. Is that, no, you don't -- no, he never has, or,
2 no, you don't remember?

3 A. I can't recall any time he spoke about this
4 post at a staff meeting.

5 Q. So, you've never spoken with him about the
6 Facebook post?

7 A. No.

8 Q. Okay. So, you found out about the Facebook
9 post through the group chat?

10 A. Yes.

11 Q. Do you recall having any in-person discussions
12 with anyone about the Facebook post?

13 A. Only when asked by Michael Morin, who is also
14 being deposed -- like is that the correct term?

15 Q. Yes. We are speaking with him later today in a
16 deposition.

17 A. He requested --

18 Q. Who's Michael Bard (sic) -- let's -- what? I'm
19 sorry.

20 A. He requested that I share the interaction that
21 I had with Kylie from Hodgetwins.

22 Q. Who did he want you to share it with?

23 A. With him. With my -- the -- my supervisors, my
24 directors, my pastors. The higher-ups basically.

25 Q. Who is Michael Morin?

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1 A. Um, so that is currently in the group chat, not
2 who was in the group chat on August 22nd?

3 Q. Well, let's go with August 22nd first.

4 A. So, definitively I could probably tell you that
5 my team, which included, um, Hailey Miller, Mariah File,
6 uh, Taylor Durling. Definitively I know they are in the
7 group chat. Um, Matthew Lockett.

8 (Court reporter clarification.)

9 THE WITNESS: Matthew Lockett.

10 I remember he was in the group chat
11 because he indicated, like, he -- I just remember him
12 responding. Um, there's a lot of names that I -- but
13 I'm not certain who exactly was in that group chat on
14 that date except for the names that I've said, that I
15 can remember. Michael Morin was in the group chat,
16 obviously, he's our director -- or he's our creative
17 pastor. Mariah and Trenton Barnard. It's hard to
18 remember because the team isn't always the same people,
19 so it may have changed, it may have had different people
20 in it at different times.

21 Q (By Mr. Green) Okay. And you have no estimate
22 as to how many people were in the group chat
23 August 22nd, 2025?

24 A. An estimate would be 20 plus.

25 Q. All right. Would that number be the same

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1 today, or would it be more or less?

2 A. I'm not entirely sure. That number changes all
3 the time because people are added and taken away. It's
4 probably at least that.

5 Q. What was your participation in the group chat?
6 Do you remember what you said in the group chat?

7 A. I asked if anyone had contacted the Hodgetwins.

8 Q. Okay.

9 MR. GREEN: Can we take five minutes,
10 please?

11 COURT REPORTER: We're off the record, and
12 the time is 10:47 a.m.

13 (Off the record 10:47 a.m. to 10:49 a.m.)

14 COURT REPORTER: We're back on the record,
15 and the time is 10:49 a.m.

16 Q. (By Mr. Green) Can you hear me?

17 A. Yes.

18 Q. Okay.

19 MR. GREEN: Ms. Soto, where did I leave
20 off? What was the last question that I asked? Can you
21 read back the last question and answer?

22 (Previous question is read back into the record.)

23 MR. GREEN: Okay. And what was
24 Ms. Mason's answer?

25 (Previous answer is read back into the record.)

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1 Q. (By Mr. Green) Okay. What else did you say in
2 the group chat, Ms. Mason?

3 A. Pertaining to this subject?

4 Q. Pertaining to the Facebook post?

5 A. Nothing.

6 Q. Nothing?

7 A. That was my only response.

8 Q. Okay. Is there anything else you can remember
9 about your participation in the chat?

10 A. I looked at other people's responses.

11 Q. What other responses did people give?

12 A. They were shocked. They were surprised.

13 Q. Why were they shocked?

14 A. I -- I mean, I was shocked. And I can -- I
15 can't speak for others, but I can speak for myself, so
16 my reaction was shocked because it was just a big
17 mistake, a very big mistake.

18 Q. Tell me more about why you were shocked.

19 A. It was a very large obvious photo of my pastor
20 being called an -- I don't know, it -- like it was just
21 a shocking content. We couldn't believe -- I couldn't
22 believe, personally, that they had the wrong picture up,
23 so . . .

24 Q. Did anyone believe that Pastor Smothermon
25 worked for Cracker Barrel when they saw the post in the

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1 group chat?

2 A. I can't speak for other people, so . . .

3 Q. How about you?

4 A. No.

5 Q. Did anyone in the group chat say anything about
6 Pastor Smothermon working at Cracker Barrel?

7 A. No.

8 Q. Tell me about every person in the group chat
9 that believes the post was true.

10 A. I can't speak for anyone's beliefs, really I
11 can only make conjecture.

12 Q. Did it seem to you that anyone in the group
13 chat thought that Pastor Smothermon worked for Cracker
14 Barrel?

15 A. To me, no one indicated that, as far as I
16 perceived.

17 Q. So, you cannot testify that anyone in the group
18 chat believes that Pastor Smothermon worked for Cracker
19 Barrel?

20 A. Can you repeat that question?

21 MR. GREEN: Can you read back the
22 question, Ms. Soto?

23 (Previous question is read back into the record.)

24 THE WITNESS: Could you reword the
25 question?

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1 Q (By Mr. Green) No.

2 Just answer the question.

3 A. I'm just not understanding exactly -- like the
4 verbiage, the grammar of it doesn't make sense, your
5 question.

6 MR. BISHOP: Okay. Objection. Vague.

7 Q. (By Mr. Green) Tell me what doesn't make sense
8 about the question.

9 MR. GREEN: Read it back again, Ms. Soto.

10 (Previous question is read back into the record.)

11 THE WITNESS: So, I -- my answer would be,
12 no, I cannot testify that I believe that anyone in the
13 group chat believed that Pastor Steve worked for Cracker
14 Barrel.

15 Q (By Mr. Green) How about this, can you testify
16 that anyone in the group chat believed that
17 Pastor Smothermon worked for Cracker Barrel?

18 MR. BISHOP: Objection. Calls for
19 speculation.

20 Q. (By Mr. Green) You can answer.

21 A. I can guess that -- I can guess that most
22 people in the group chat, due to their status as an
23 employee, would know that Pastor Steve does not work for
24 Cracker Barrel.

25 MR. GREEN: I disagree with the objection

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1 in that I'm not asking for speculation.

2 Q (By Mr. Green) Did anyone in the group chat
3 express a belief that Pastor Smothermon worked for
4 Cracker Barrel?

5 A. No one in the group chat expressed that belief,
6 that Pastor Steve worked for Cracker Barrel.

7 Q. Have you ever spoken with anyone that believed
8 that Pastor Smothermon worked for Cracker Barrel?

9 A. I have not personally spoken with anyone who
10 had that belief.

11 Q. Why don't you tell me -- at whose -- how many
12 people have you spoken with about the Facebook post
13 inside the church?

14 A. Um, as I stated before, I didn't discuss it in
15 person with anyone except Michael Morin, who is my
16 creative -- creative director and pastor. He's the next
17 level of supervisor over me. Um, like -- and it was not
18 really about the post, it was about this that we're
19 doing right now, the -- just the fact that we're both
20 doing depositions for it, and he was making sure that I
21 was responding.

22 Q. Tell me about the conversation you had with
23 Mr. Morin about your deposition.

24 A. Only that we were both doing the depositions
25 and just that we needed to be on schedule and return

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1 Q. So, the same as a year ago?

2 A. Yes.

3 Q. Okay. Who's the intern that's on the team now?

4 A. Like I said, I believe she is an intern, her
5 name is Davina. I don't recall her last name.

6 Q. Was she there a year ago?

7 A. I can't recall. I don't remember.

8 Q. Are your interns typically college students?

9 A. Um, sometimes they are college students.

10 Sometimes they could be in high school or between high
11 school and college.

12 Q. Is Davina a college student?

13 A. I'm not entirely sure.

14 Q. Okay. So, the official Legacy Church account
15 was the only account affiliated with the church that
16 commented on the post?

17 A. Yes. As far as I know.

18 Q. Was there discussion in the group chat
19 regarding what to do about the Facebook post?

20 A. I asked that question, if anyone had contacted
21 the Hodgetwins company. I don't recall anyone
22 responding to my question, so . . .

23 Q. You contacted the Hodgetwins, correct?

24 A. Yes. I went on their website -- that was my
25 first and only time on their website -- and I found a

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1 customer service phone number for their merchandise
2 where I spoke to Kylie.

3 Q. Okay. Let's look at what's marked as Exhibit 2
4 in the packet I sent you, it's listed as Hodgetwins
5 website.

6 A. Okay.

7 (Exhibit 2 marked for identification.)

8 Q. (By Mr. Green) Go ahead, find it, take a minute
9 to familiarize yourself with it, and let me know when
10 you're ready.

11 A. You said Exhibit 2?

12 Q. Correct.

13 A. (Witness reviews documents.)

14 Okay.

15 Q. Is this document familiar to you?

16 A. I wouldn't say familiar, because I have only
17 visited the website that one single time --

18 Q. Okay.

19 A. -- and it was about a year ago.

20 Q. Turn to the final page of that exhibit.

21 A. I'm there.

22 (Court reporter clarification.)

23 MR. GREEN: Turn to the final page of that
24 exhibit.

25 Q (By Mr. Green) Do you recognize this page?

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1 needed to be removed and taken down immediately.

2 Q. Did someone tell you to go on the Hodgetwins
3 website?

4 A. No.

5 Q. Okay. You did that on your own?

6 A. I did.

7 Q. Okay. And --

8 (Court reporter caution.)

9 THE WITNESS: I apologize. The door is
10 closed, but there is a playground outside of this room
11 and there's day care. If anyone knows a way to -- like
12 a setting I could try. They're not usually in here very
13 long. I could step away and ask them to try to --

14 COURT REPORTER: That's okay. Go ahead.

15 THE WITNESS: Yeah. We are a church, and
16 we have a day care and we have a school here, so
17 there's . . .

18 MR. GREEN: It's absolutely fine.

19 MR. RANDAZZA: Let the record reflect that
20 Ron hates the sound of playing children.

21 MR. GREEN: That is defamation, Mark.

22 (Off-the-record discussion.)

23 Q. (By Mr. Green) So, is Kylie the person that
24 answered the phone when you called?

25 A. Yes.

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1 looked like he was woke?

2 A. I can't recall that specifically.

3 Q. Okay.

4 A. But I do remember people commenting on his
5 appearance and associating that affirmatively with what
6 was claimed in the text of the post.

7 Q. Okay. Well, why don't you read me the next
8 paragraph in the post?

9 A. Starting at -- starting at meet Steve
10 Smotherman?

11 Q. Sure. And let's stop right there for one
12 second.

13 Is that how Pastor Smothermon spells his
14 name?

15 A. No.

16 Q. How does Pastor Smothermon spell his name?

17 A. The -- his last name is spelled with M-O-N at
18 the end instead of M-A-N.

19 Q. Have you ever seen anyone spell
20 Pastor Smothermon's name with an A instead of an O at
21 the end?

22 A. Through the years, yes, incorrectly.

23 Q. Tell me about those times.

24 A. I can't recall specifically, but I do recall
25 people misspelling his name.

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1 Q. How many times do you recall people misspelling
2 his name prior to this Facebook post?

3 A. Um, probably two to three times.

4 Q. What were they?

5 A. I know that one was in a video that I was
6 reviewing, and I made sure that my fellow employee knew
7 that they spelled his name wrong.

8 Q. Oh, it was an employee? A video produced by an
9 employee of Legacy Church?

10 A. It was in review of it, so it was -- I was
11 reviewing the video and spellchecking the video before
12 it was aired anywhere.

13 Q. So, who made the video?

14 A. I can't recall. That was a very long time ago.

15 Q. When was it?

16 A. Probably when I first got employed here.

17 Q. So, about --

18 A. A long, long -- like a long time ago.

19 Q. So, about ten years ago?

20 A. Eight to ten years ago.

21 Q. Was this a video that was produced by the
22 church?

23 A. Most likely, yes. It was -- but it never aired
24 that way, it's always checked before.

25 Q. Who was the person who made the video?

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1 A. I can't recall.

2 Q. And what did you do when you saw that his name
3 was misspelled in that video?

4 A. I just let them know, hey, you misspelled that,
5 and they said, oh, you're right.

6 Q. Okay. Did Pastor Smothermon know that that
7 happened?

8 A. No. Like I said --

9 Q. Do you recall --

10 A. -- it never aired. It was in the editing
11 process before it was finished, before it was even
12 exported.

13 Q. Did it air after they -- after the spelling was
14 corrected?

15 A. I assume so.

16 Q. Okay. What happened to the person that
17 accidentally misspelled his name? Do you recall?

18 A. I mean, nothing. Because no one --

19 Q. All right.

20 A. -- ever knew that they misspelled it because it
21 was fixed before it was a problem.

22 Q. Tell me about the other times that you recall
23 somebody -- or tell me about the other times where
24 someone misspelled Pastor Smothermon's name.

25 A. I recall local news outlets that would write

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1 articles on Pastor Steve throughout -- I don't know --
2 they -- they would frequently misspell his name.

3 Q. And those misspellings were spelling it M-A-N
4 instead of M-O-N?

5 A. From what I recall, yeah.

6 Q. What news outlets have misspelled his name?

7 A. I've -- I -- I can't recall exactly, but I know
8 they were local to Albuquerque. So, they could have
9 been any of the local stations. And I can't list them
10 all, I know there's K -- something K-O-B. There -- I
11 don't watch the news, so I don't know the names of the
12 stations. K-O-B is one station, I can't recall whether
13 they have misspelled his name or not. Like, I just know
14 that I have seen local news stations in articles
15 misspell his name.

16 Q. How many occasions have you seen a news station
17 misspell his name?

18 A. Maybe twice since I've noticed.

19 Q. When was his name misspelled by the news
20 stations?

21 A. I'm -- I assume when they wrote the article.
22 I -- it's been years, I'm not sure.

23 Q. Okay. Tell me about other times that his name
24 was misspelled that you've seen.

25 A. Those are the -- those are the times that I can

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1 recall, those three.

2 Q. All right. So, the video produced by an
3 in-house employee, and then you said two times by a news
4 station?

5 A. That I can recall, that I have seen.

6 Q. What were those stories about, the news -- when
7 the news stations misspelled his name?

8 A. I can't exactly recall. I just know that I saw
9 his name.

10 Q. Misspelled?

11 A. Um-hum.

12 Q. And those misspellings by the news station,
13 were those stories on the news -- or are those video
14 stories on the news, or were they, like, X stories on a
15 website?

16 A. From what I recall seeing, the ones I saw were
17 text, it was a written story.

18 Q. Okay. And those were actually published, then?

19 A. Yeah, I would assume so.

20 Q. Did Pastor Smothermon take any action against
21 the news stations?

22 A. Not that I recall. But I'm not privy to
23 everything that goes on.

24 Q. Do you know if anyone sent a letter to the news
25 stations alerting them of their mistake?

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1 people said that he would -- that people would believe
2 he was a former Cracker Barrel management and training
3 leader?

4 A. You said do I believe that people would believe
5 that he was --

6 Q. Well, do you believe that it would be damaging
7 to Pastor Smothermon if people believed he was a former
8 Cracker Barrel management and training leader?

9 A. If people believed that?

10 Q. Yes.

11 A. Absolutely it would be damaging.

12 Q. Why?

13 A. Because that's incorrect about him.

14 Q. How would it damage him?

15 A. It is -- so the part about being one of the
16 most powerful -- the part about this person being
17 associated with one of the most powerful LGBT lobbying
18 groups in America, that part would be damaging because
19 it is in direct contrast to our spiritual beliefs and
20 our church beliefs.

21 Q. What are your spiritual beliefs?

22 A. Biblical beliefs.

23 Q. Explain.

24 A. The idea of LGBT is in direct contrast to our
25 spiritual beliefs about our identity and what role

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1 of LGBT rights?

2 A. It depends on the people that you're referring
3 to in that question. I don't believe that employees of
4 the church would ever confuse that. In my personal
5 opinion as an employee, I would never confuse that. But
6 anyone that is seeing the post on social media that
7 isn't close with the church or isn't a member or isn't
8 very involved may have confusion over this post and over
9 the picture that was given, associated with the content.

10 Q. You think that parishioners of the church would
11 be confused by it?

12 A. Some, yes.

13 Q. Why?

14 A. Because people are -- can be easily confused,
15 because the Internet can be a confusing place.

16 Q. What parishioners have you spoken with at
17 Legacy Church that were confused by the post?

18 A. I have not personally spoken with anyone about
19 this post. I've already given that testimony --

20 Q. Okay.

21 A. -- of who I spoke with and who I did not.

22 Q. For someone to be confused by the post they
23 would have to know who the picture is of, correct?

24 A. Not necessarily.

25 Q. Why?

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1 And I think that every single person who liked or
2 commented in agreement with the content of the post was
3 looped into that same confusion, and any number of
4 people who may not have commented and just read it and
5 seen it without reacting online.

6 Q. What do you think those people were confused
7 about?

8 A. I think -- I guess you could say they -- many
9 people probably didn't know that it was the wrong
10 picture, but that's only people who know what
11 Pastor Steve looks like would know that they made a
12 mistake.

13 Q. So, you would have to know who Pastor Steve
14 Smothermon is to know that this was the wrong picture;
15 is that correct?

16 A. Without reverse image searching it and finding
17 out who he really was, probably, yes.

18 Q. Have you ever talked to anyone who thought that
19 Legacy Church was affiliated with the most powerful LGBT
20 lobbying group in America?

21 A. No. I have never spoken to anyone who thought
22 that.

23 Q. Have you ever -- have you ever heard of anyone
24 thinking that Legacy Church was affiliated with the most
25 powerful LGBT lobbying group in America?

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1 A. I have not.

2 Q. Have you ever spoken with anyone who thought
3 that Pastor Steve Smothermon -- the plaintiff in this
4 case and your boss -- believed that Steve Smothermon was
5 an executive of Cracker Barrel?

6 A. I have not spoken to anyone who believed that.

7 Q. Have you ever heard of anyone thinking that
8 Pastor Steve Smothermon was an executive at Cracker
9 Barrel?

10 A. Other than the Hodgetwins post, no.

11 Q. So, is it your testimony that you believe the
12 Hodgetwins thought that Legacy Church and Pastor Steve
13 Smothermon were involved -- were involved with Cracker
14 Barrel?

15 A. No. But I believe that they chose to post
16 something and post a picture.

17 Q. Do you know how the Hodgetwins got that
18 picture?

19 A. Online.

20 Q. Are you familiar with where they found it
21 online?

22 A. Not exactly, no.

23 Q. So, this confusion only exists in your
24 imagination; is that correct?

25 A. No.

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1 says Cracker Barrel's woke past, indicating that the
2 person they're talking about is woke, and associating
3 our pastor's face --

4 Q. With --

5 A. -- with that ideology.

6 Q. With woke?

7 A. Yes.

8 Q. What does woke mean to you?

9 A. What does woke mean to me? It means adhering
10 to the current social standards of acceptance and
11 equality, and with no regard to traditional values or
12 religious standards.

13 Q. So, you were afraid that people would think
14 that Pastor Smothermon was woke; is that correct?

15 A. I was afraid that -- I don't think afraid is
16 the right word.

17 Q. What is the right word?

18 A. I think concerned is a better word. The
19 concern is that people would associate our pastor's
20 image and his face with the claims in this post and with
21 the idea of being woke, falsely.

22 Q. And what aspects of being woke concerned you?

23 A. All aspects of wokeness would be concerning
24 because it's not something that I as a Christian would
25 want to be associated with.

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1 Q. Why?

2 A. Because it's in direct contrast to my Christian
3 beliefs.

4 Q. How?

5 A. Everything that the woke ideology believes is
6 almost always opposite to the values and standards
7 represented in scripture.

8 Q. Specifically, what aspects of the woke
9 ideology?

10 A. For example, believing in affirming a person's
11 belief that they are not the gender that they are born
12 physically with.

13 Q. Okay.

14 A. I would, from my Biblical viewpoint, believe
15 that that person does not need to be affirmed in their
16 mind, but rather --

17 Q. Okay.

18 A. -- helped in their mind.

19 Q. And does the Hodgetwins' post here say anything
20 about gender identity?

21 A. I mean, gender identity is looped in with LGBT.
22 T is trans, that's gender identity, that's the same
23 thing. That's just a symbol -- that's a single example
24 of woke ideology versus Christian standards and --

25 Q. Well, then give me some more.

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1 A. How many more?

2 Q. As many you can think of.

3 A. I mean, that would take hours to explain the
4 difference between woke ideology and Christian Biblical
5 thought. There are many, many examples of the
6 differences between true Christian ideology and woke
7 ideology. I'm not a scholar so -- nor am I a
8 political -- I'm not a political commentator, I'm not a
9 scholar, so I don't have those just off the top of my
10 head.

11 Q. Do you know whether there are Christian
12 churches that do believe in affirming gender identity?

13 A. There are churches that claim to be Christian
14 that affirm that, but I would not --

15 Q. Okay.

16 A. -- consider them a church I would ever
17 consider --

18 (Court reporter clarification.)

19 THE WITNESS: I would never consider
20 attending such a church.

21 Q. (By Mr. Green) Why?

22 A. Because they ascribe to ideology that is in
23 direct contrast to scripture.

24 Q. Are you aware that some churches interpret the
25 word of God differently with regard to these issues?

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1 A. Incorrectly, yes.

2 Q. So, if he was a pastor of one of those
3 churches, this article may have been a compliment?

4 A. Not according to my belief, no.

5 Q. Well, I mean -- I mean, if -- I know not
6 according to your belief, but if -- but you -- do you
7 agree that if he was a pastor at a church that did
8 interpret the word of God differently, that this article
9 may have been perceived as a positive thing?

10 (Court reporter clarification.)

11 Q. (By Mr. Green) That interpreted the word of God
12 differently than this may have been a compliment?

13 A. I guess in some circles of thought, but he's
14 not a pastor of that kind of church. And I would not
15 consider that kind of church to be an actual true
16 Christian church following Biblical beliefs, so I would
17 not consider them a Christian church.

18 Q. Why?

19 A. Because they do not follow the Bible. If you
20 don't believe the Bible, then you're not a Christian.

21 Q. So, the only reason this post was damaging is
22 because Legacy Church believes in what you perceive as
23 true Christianity; is that correct?

24 A. The reason this post was damaging is because it
25 incorrectly associates our pastor with ideology that's

KRISHA MASON
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1 completely contrary to what he and our church believes.

2 I don't know why we're speaking in hypotheticals.

3 Q. We've -- we've read the first two bullet
4 points. The third one, if you can go ahead and read
5 that for me, that begins with the word pushed.

6 A. (Reading)

7 Pushed policy changes like adding sexual
8 orientation to nondiscrimination rules.

9 Q. Is that contrary to the belief of Legacy
10 Church?

11 A. Having a policy of adding sexual orientation to
12 nondiscrimination rules?

13 Q. Correct. That's what it says.

14 A. Due to our Christian beliefs, that -- in
15 Biblical marriage this would not be in line with what
16 Legacy Church believes.

17 Q. Specifically, what would not be in line with
18 what Legacy Church believes?

19 A. The idea of affirming sin, and that sin being
20 openly and flagrantly living a life of same sex acts.
21 Acting on the sin of sexual interaction with anyone
22 other than your husband or your wife inside of your own
23 marriage, anything outside of that would be considered
24 sin.

25 Q. That's not what that bullet point says, though.

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1 A. Yes.

2 Q. Is Pastor Smothermon in the group chat?

3 A. No.

4 Q. Do you have the letter that your attorney sent
5 me before this deposition?

6 A. Um, I don't think so.

7 Q. Okay.

8 A. A letter?

9 Q. Yeah. And it has documents attached to it,
10 some of which appear to be from the group chat you're
11 referencing.

12 A. Okay.

13 Q. But who's Matt Lockett?

14 (Court reporter clarification.)

15 MR. GREEN: Matt Lockett, L-U-C-K-E-T-T.

16 THE WITNESS: Matt Lockett is a member of
17 the production team under the creative team. He's an
18 employee here.

19 Q (By Mr. Green) Okay. Did anyone at Legacy
20 Church ask you to buy anything from the Hodgetwins
21 website?

22 A. No. No.

23 (Exhibit 6 marked for identification.)

24 Q (By Mr. Green) Turn to what we've attached as
25 Exhibit 6, it's entitled Plaintiff's Responses to

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON, §
§ CASE NO.:
PLAINTIFF, § 2:25-CV-01858-APG-BNW
§
v. §
§
KEITH HODGE, an individual, §
KEVIN HODGE, an individual, §
HODGETWINS, LLC, a limited §
liability company, §
§
DEFENDANTS. §

REPORTER'S CERTIFICATION

KRISHA MASON

AUGUST 11, 2026

I, Belen A. Soto, Certified Shorthand Reporter in
and for the State of Texas, hereby certify to the
following:

That the witness, KRISHA MASON, was duly sworn by
the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the deposition transcript was submitted on
_____ to the witness or to the attorney
for the witness for examination, signature and return
to me by _____;

That the amount of time used by each party at the
deposition is as follows:

KRISHA MASON
SMOTHERMON vs HODGE ET AL

August 11, 2026

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Mr. Paul Bishop - 0 hour(s), 0 minutes

Mr. Ronald D. Green - 2 hour(s), 13 minutes

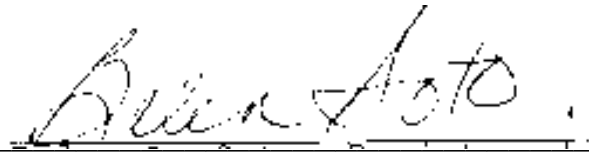
That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

Mr. Paul Bishop, Attorney for Plaintiff;

Mr. Ronald D. Green, Attorney for Defendants;

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to me by this 16th day of August, 2026.



Belen A. Soto, RMR, Texas CSR 2072
Expires: 06/31/2027

Exhibit 7

Thomas Carroll II Deposition
Transcript Excerpts

In the Matter Of:

SMOTHERMON vs HODGE ET AL

2:25-CV-01858-APG-BNW

THOMAS CARROLL II

July 21, 2026



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July 21, 2026

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Richard McLaren, law student, Randazza Legal Group

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I N D E X

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THOMAS C. CARROLL, II

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Note: Exhibits were not provided to reporter.

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Exhibit 2		12
Exhibit 3		25

THOMAS CARROLL II
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4

1 THE VIDEOGRAPHER: We are now on the
2 record. The time is 12:01 p.m. Central Time on
3 July 21st, 2026. This begins the videoconference
4 deposition of Thomas C. Carroll, taken in the
5 matter of Pastor Steve Smothermon v. Keith Hodge,
6 et al. This case is filed in the United States
7 District Court, District of Nevada, Case
8 No. 2:25-CV-01858-APG-BNW.

12:01

9 My name is Brent Jordan. I'm the
10 remote videographer for today. The court reporter
11 is Tamara Chapman. We are representing Esquire
12 Deposition Solutions.

12:02

13 Will counsel present please identify
14 yourself and state whom you represent.

15 MR. GREEN: Good morning, this is --
16 good morning or good afternoon, depending on where
17 you're at, I guess. This is Ronald Green of
18 Randazza Legal Group in Las Vegas, Nevada. I am
19 counsel for the defendants in this case.

12:02

20 MR. JACKSON: Good morning. Mike
21 Jackson, appearing on behalf of the deponent, Mr.
22 Carroll.

12:02

23 THOMAS C. CARROLL, II,
24 having been first duly sworn, testified as follows:

25 EXAMINATION

12:02

THOMAS CARROLL II
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1 Q. The last line of the -- your message is:
2 Time is of the essence.

3 What did you mean by that?

4 A. That the message should be taken down
5 immediately. 12:40

6 Q. That the message, meaning the entire
7 Facebook post?

8 A. Yes.

9 Q. Okay. And you do not know specifically
10 when the Facebook post was taken down. That's 12:40
11 correct?

12 A. I do not.

13 Q. Okay. So you don't know if they complied
14 with that -- with your message?

15 A. I know eventually they did. 12:40

16 Q. Okay. But you do not know when?

17 A. Correct.

18 Q. All right. In your mind, does this
19 message -- does your message to the Hodgetwins
20 threaten litigation? 12:41

21 A. I don't know what you mean by threaten.
22 It does not --

23 Q. Did you intend -- did you intend for the
24 Hodgetwins to read this message and think that you
25 were going to file a lawsuit if they did not comply? 12:41

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1 A. I don't think this addresses that.

2 Q. Okay.

3 A. It just says take it down.

4 Q. So if they had seen your message -- so if
5 they had seen your message, would you agree that
6 they complied with it if they took the post down?

12:41

7 MR. JACKSON: Objection; speculative.
8 Go ahead and answer.

9 A. Not fully because they didn't -- I don't
10 believe they issued an apology. Or if they did,
11 I'm -- I'm unaware of it.

12:41

12 Q. Okay. Do -- do you know whether
13 Smothermon is taking the position that your message
14 triggered a preservation requirement by the
15 Hodgetwins?

12:42

16 MR. JACKSON: Objection; calls --
17 calls for communication between attorney and client.
18 In your mind does this message tell the Hodgetwins
19 that they have to preserve all evidence related to
20 the Facebook message that they -- the Facebook post
21 they made about Pastor Smothermon?

12:42

22 MR. JACKSON: Calls for
23 communications between attorney and client.
24 In your mind does this message tell the Hodgetwins
25 that they have to preserve all evidence related to

12:42

THOMAS CARROLL II
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1 Facebook message -- the Facebook post that they made
2 about Pastor Smothermon?

3 A. I'm not a litigator. I don't know the
4 answer to that question.

5 Q. As a layperson would you read this 12:43
6 message and think I better preserve everything I
7 have regarding this Facebook post?

8 A. I'm not sure.

9 Q. I'm sorry. I misspoke. The message is
10 not about Pastor Smothermon. It's about Cracker 12:43
11 Barrel's Steve Smotherman. I misspoke there. I
12 apologize. So your -- your testimony is just to
13 make sure I understand. You don't -- you do not
14 know whether this message would have triggered a
15 preservation -- would have triggered a thought by 12:43
16 the Hodgetwins that they should preserve everything
17 related to this Facebook post due to future legal
18 action being possible?

19 A. Are you asking me to judge whether the
20 Hodgetwins would have interpreted it that way? 12:43

21 Q. Is that how you intended for them to
22 interpret it?

23 A. I don't -- I don't know how I intended
24 them to interpret this with regard to that issue.

25 Q. Okay. Did your message ask the recipient 12:44

THOMAS CARROLL II
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1 to retain documents?

2 A. It does not.

3 Q. Does it ask the recipient to retain
4 search histories?

5 A. This message does not. 12:44

6 Q. Does it ask the recipient to retain
7 analytics?

8 A. This message does not.

9 Q. Does it ask them to retain any
10 communications? 12:44

11 A. This message does not.

12 Q. Does it ask them to retain anything?

13 A. It does not.

14 Q. Am I correct that the only things it
15 tells them to do are to delete the post? Well,
16 that's -- it does tell them to delete the post.
17 Correct? 12:45

18 A. Among other things, yes.

19 Q. And it tells them to make an apology.
20 Correct? 12:45

21 A. Correct.

22 Q. Does it tell them to do anything else?

23 A. No.

24 Q. Why did you choose Facebook Messenger to
25 send -- as your method of communication with the 12:46

THOMAS CARROLL II
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1 Hodgetwins?

2 A. I'm not sure.

3 Q. Okay. Did you send any other additional
4 communications to the Hodgetwins via any other
5 method?

12:46

6 A. Not that I can recall.

7 Q. Okay. Did you ever follow up with the
8 Hodgetwins after you sent this message?

9 A. I did not.

10 Q. Let's go back to the message for a
11 second.

12:46

12 So to the left of the message it looks
13 like that -- is that a sidebar with your other
14 Facebook messages? Is that --

15 A. I think it's -- yeah, I think it is.

12:46

16 Q. Okay.

17 A. But I'm not Facebook savvy and I won't
18 pretend to be.

19 Q. I completely understand. I'm not either.
20 I have not had a Facebook account in 12 years. So
21 we're both flying a little blind here.

12:46

22 But are these other messages that you --
23 on the left-hand side these are messages -- these
24 are other messages that you've either sent or
25 received.

12:47

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1 2026?

2 A. Other than me and this message, I -- I
3 don't have any --

4 Q. Okay.

5 A. I don't know.

12:57

6 Q. Okay. So to the best of your knowledge,
7 your message is the only attempt that anyone at your
8 firm made to communicate with the Hodgetwins before
9 the -- between August 22nd, 2025, and February 15th,
10 2026?

12:57

11 A. I'm not aware of any others.

12 Q. Okay. Can you think of anything that you
13 might be able to do to refresh -- refresh your
14 recollection?

15 A. Not -- not right now.

12:57

16 Q. Okay. Considering that your message said
17 "time is of the essence," why didn't you attempt to
18 follow up with them?

19 A. I think because soon thereafter it was
20 told to me that the message was down.

12:58

21 Q. Okay. Do you remember who told you the
22 message was down?

23 A. No.

24 Q. Okay. Was it -- do you recall if it was
25 someone from Jones Davis & Jackson or if it was

12:58

THOMAS CARROLL II
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1 someone that represented the client, someone with --
2 that worked with Legacy Church?

3 A. I don't.

4 Q. Okay. Did you take any steps on or after
5 August 22nd, 2025, to preserve evidence related to
6 the Hodgetwins' Facebook post?

12:59

7 A. Can you say that again.

8 MR. GREEN: Can the court reporter
9 read that back?

10 (The requested material was read.)

01:00

11 A. Not that I recall.

12 Q. Do you recall if anyone at Jones Davis &
13 Jackson did or do you know whether anyone at Jones
14 Davis & Jackson did?

15 A. I don't.

01:00

16 Q. Define what definition -- I'm sorry.
17 Define what "defamation" is, in your own words.

18 A. Statements that place someone in an
19 improper or untrue light. To say things that are
20 untrue about a person and cause damage.

01:00

21 Q. Did you do any independent analysis as to
22 whether this fit into the defamation framework
23 before you sent your message?

24 A. I did not.

25 Q. Okay. Do you know if anyone else at

01:01

THOMAS CARROLL II
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1 Jones Davis & Jackson did?

2 A. I do not.

3 Q. When you sent your message on August 22nd
4 to the Hodgetwins, did you know that Pastor
5 Smothermon was contemplating legal action against
6 the Hodgetwins? 01:01

7 A. I did not.

8 Q. Do you recall when you first learned that
9 Pastor Smothermon was contemplating legal action
10 against the Hodgetwins? 01:02

11 A. No.

12 Q. Was it before or after the case was
13 filed?

14 A. I don't know.

15 Q. Okay. 01:02

16 A. I'm not part of the litigation
17 department.

18 Q. Okay. Did you ask Meta or Facebook? Do
19 you know what Meta is? First of all -- we'll go --
20 we'll ask that first. 01:02

21 Are you -- if I say the word "Meta," do
22 you know what that means?

23 A. Why don't you tell me.

24 Q. Are you aware that the -- that Facebook
25 is owned by a company named Meta? 01:02

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1 A. Generally, yes.

2 Q. Okay. Do you know whether if anyone
3 affiliated with Pastor Smothermon asked Meta or
4 Facebook to preserve anything related to the post?

5 A. I'm not aware of that.

01:03

6 Q. Are you aware of anyone in your firm
7 asking Meta or Facebook to preserve anything related
8 to the post?

9 A. No.

10 Q. Are you aware of anyone associated with
11 or affiliated with Pastor Smothermon asking
12 Hodgetwins to preserve anything related to the post?

01:03

13 A. No.

14 Q. Are you aware of your firm asking the
15 Hodgetwins to preserve anything related to the post?

01:03

16 A. No.

17 Q. Are you aware of any attempts by anyone
18 affiliated with Pastor Smothermon to communicate
19 with the Hodgetwins from the day -- strike that.

20 Are you aware of anyone affiliated with
21 Legacy Church attempting to contact the Hodgetwins
22 from August 23rd, 2025, through October 1st, 2025?

01:04

23 A. Not that I can recall.

24 Q. Are you aware of anyone from your firm
25 attempting to contact the Hodgetwins from

01:04

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1 A. Over what time frame are you talking
2 about?

3 Q. In August of 2025, or let's say prior to
4 October 1st of 2025?

5 A. I can't recall if I talked to him about 01:07
6 that during that time period.

7 Q. Okay. Do you know if Ms. Westbrook knew
8 that you sent the Facebook Messenger message on the
9 date that you did it?

10 A. I don't know if she knew on that day. 01:07

11 Q. Okay. So do you know when she would have
12 learned that you sent that Facebook Messenger
13 message?

14 A. No, I don't.

15 Q. Do you know if Mike Jackson knew that you 01:07
16 sent the message on that day?

17 A. No.

18 Q. Okay. Am I correct that Steve Jones is
19 the only person that you remember speaking with in
20 your firm prior to you sending the Facebook 01:08
21 Messenger message?

22 A. The only specific person I can recall,
23 yes.

24 Q. Okay. Do you recall speaking about the
25 message with anyone else at your firm after it was 01:08

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1 sent, say within -- before October 1st, 2025?

2 A. No.

3 Q. Okay. So they did not speak with you --
4 did you speak with anyone at your firm about the
5 lawsuit that was going to be filed before it was
6 filed? 01:08

7 A. I can't remember.

8 Q. Did you have any involvement in the
9 preparation of the complaint against the Hodgetwins?

10 A. No. 01:09

11 Q. Did you read the complaint before it was
12 filed?

13 A. Not that I can recall.

14 Q. Is there a reason that you can't recall
15 anything? Is it just that this was not something
16 you were to have -- I'll just -- is there -- do
17 you -- 01:09

18 Is there a reason why you can't recall
19 anything today?

20 A. Because my involvement in this was mainly
21 a one-day exercise and -- 01:09

22 Q. Okay.

23 A. -- I was not intimately involved in this
24 dispute.

25 Q. Okay. So August 22nd, 2025, the day that 01:09

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1 church you spoke with about the Facebook post the
2 Hodgetwins made?

3 MR. JACKSON: Objection; asked and
4 answered.

5 Q. You can answer. 01:13

6 A. I do not.

7 Q. Okay. Do you recall specifically
8 speaking with someone at the church about the post
9 that the Hodgetwins made?

10 A. I don't recall. 01:13

11 Q. Okay. So Steve Jones is the only
12 person -- is it correct that Steve Jones is the only
13 person that you specifically recall speaking with
14 about the Hodgetwins' Facebook post before you sent
15 your Facebook Messenger message to them? 01:13

16 A. He's the only one that I can remember by
17 name.

18 Q. Okay. Are you aware of whether Legacy
19 Church lost any congregants over the Hodgetwins'
20 Facebook message? 01:13

21 MR. JACKSON: Objection.

22 A. I'm not aware of.

23 MR. JACKSON: Calls for speculation.

24 Q. Are you aware of whether they lost any
25 donations over the -- whether Legacy Church lost any 01:14

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1 donations as a result of the Facebook Messenger
2 message -- or the Facebook post the Hodgetwins made?

3 MR. JACKSON: Objection; calls for
4 speculation.

5 Q. You can answer. 01:14

6 A. I'm not aware of any.

7 Q. And you're not aware as to how long the
8 Facebook post was up that the Hodgetwins made about
9 Cracker Barrel's Steve Smotherman?

10 A. I am not. 01:14

11 Q. Okay. Is there anything that you can
12 think of about the Facebook Messenger message that
13 you sent to the Hodgetwins, its drafting, its
14 sending, or its aftermath that we haven't discussed?

15 A. Not that I can think of. 01:15

16 Q. Okay. And we've discussed -- is it
17 correct that we have discussed --

18 A. We're getting an echo.

19 Q. -- everything that you did on
20 August 22nd, 2025, relating to this matter? 01:15

21 A. Anyone else getting an echo? I'm getting
22 an echo in here.

23 (Discussion off the written record.)

24 Q. Is there anything that we have not
25 discussed regarding your actions on August 22nd, 01:16

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[illegible]

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30(f)(i) that the signature of the deponent:
was requested by the deponent or a party before
the completion of the deposition and that the
signature is to be returned within 30 days from date
of receipt of the transcript. If returned, the
attached Changes and Signature Page contains any
changes and the reasons therefor;

X was not requested by the deponent or a party
before the completion of the deposition.

I further certify that I am neither counsel for,
related to, nor employed by any of the parties in
the action in which this proceeding was taken, and
further that I am not financially or otherwise
interested in the outcome of the action.

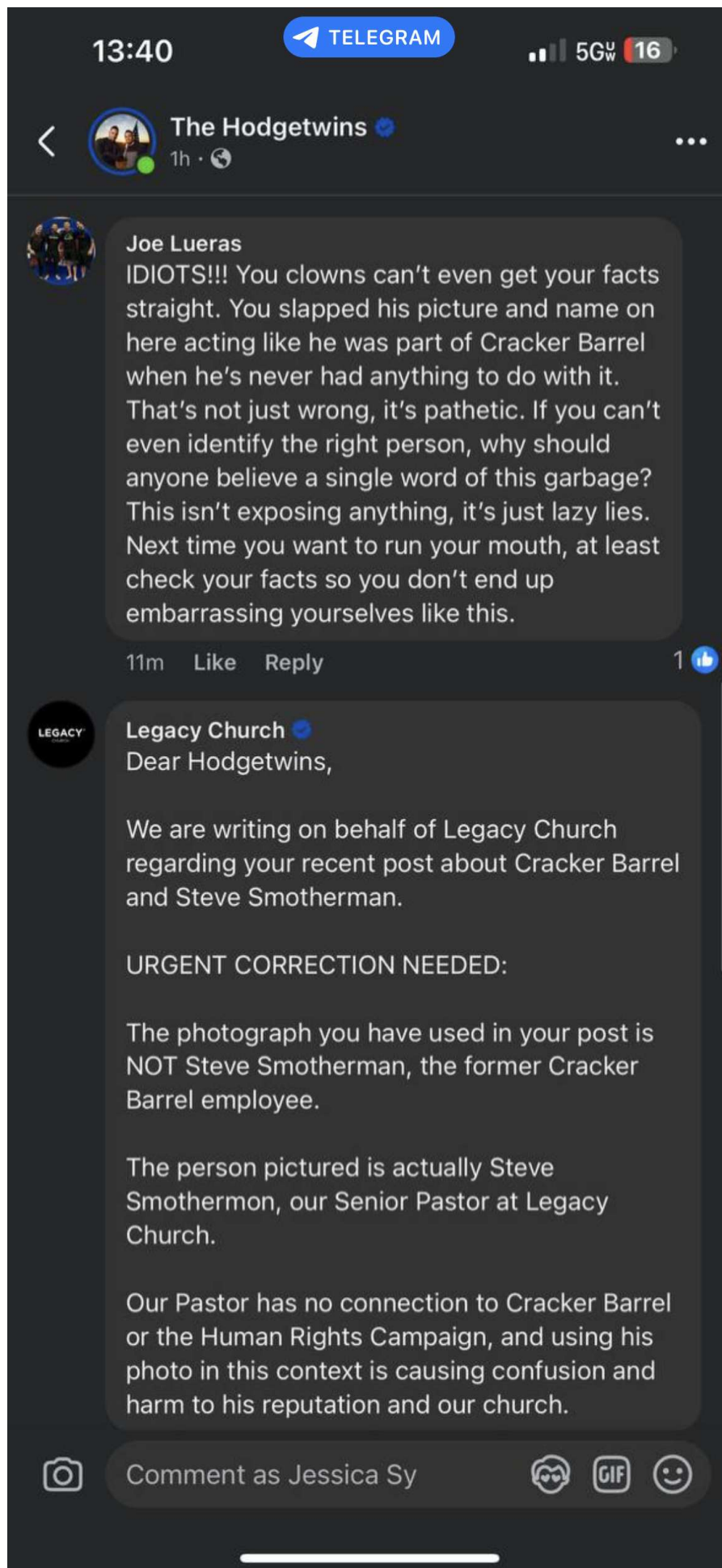
Certified to by me this 24th day of July, 2026.



Tamara Chapman, CSR, RPR-CRR
CSR NO. 7248; Expiration Date: 12-31-26
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Exhibit 8

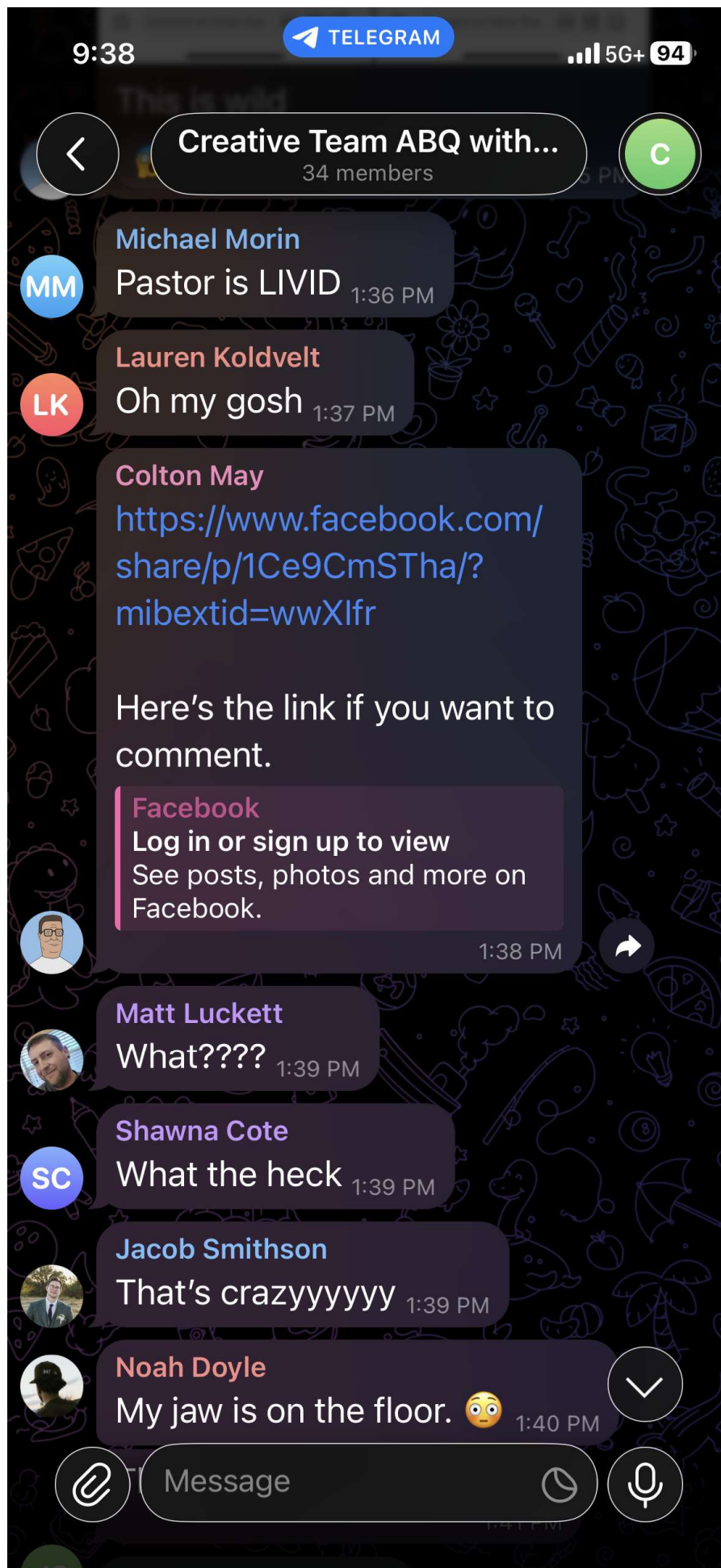
Legacy Staff Group Chat
MASONK_000035-39



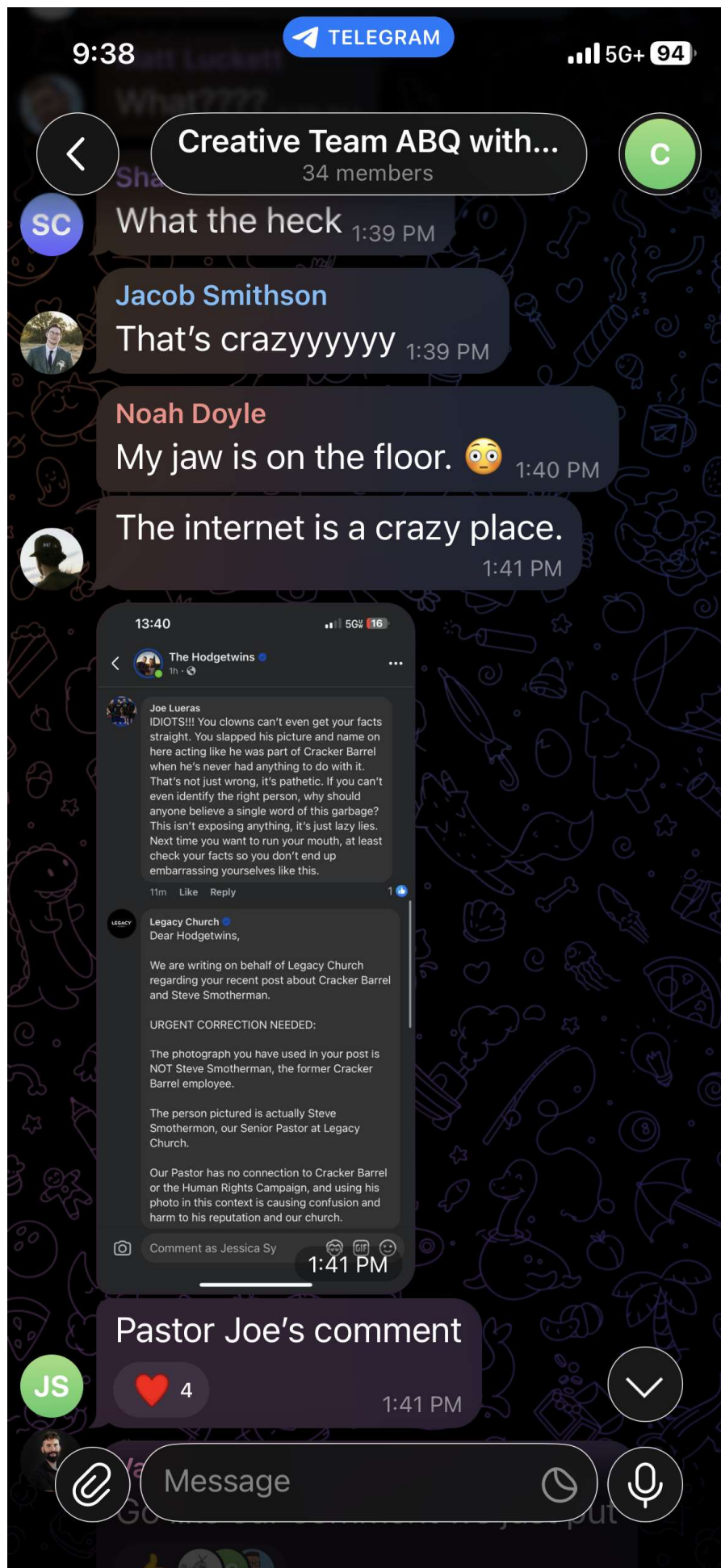
MASONK_000035



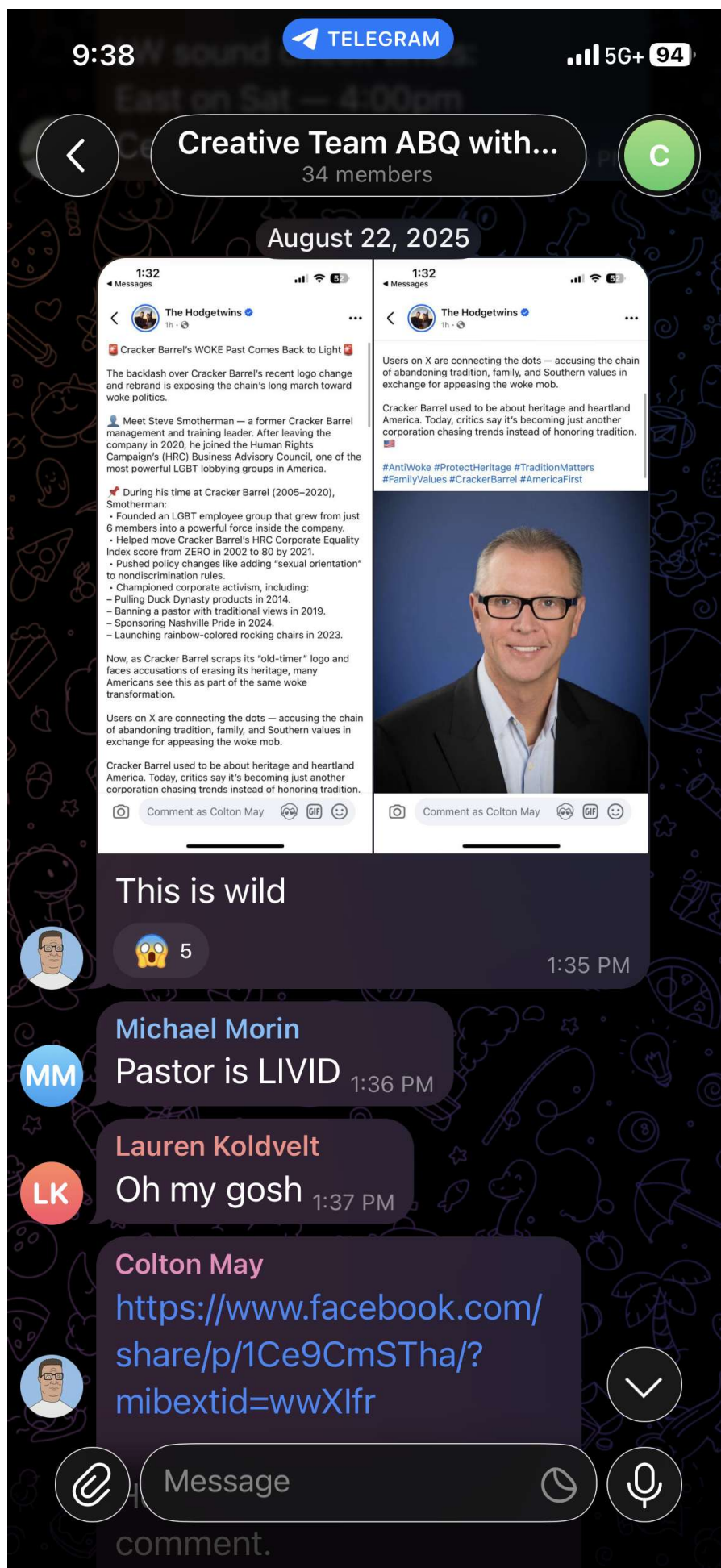
MASONK_000036



MASONK_000037



MASONK_000038



MASONK_000039

Exhibit 9

Michael Morin Deposition Transcript Excerpts

In the Matter Of:
SMOTHERMON vs HODGE ET AL

2:25-CV-01858-APG-BNW

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON, §
§ CASE NO. :
PLAINTIFF, § 2:25-CV-01858-APG-BNW
§
v. §
§
KEITH HODGE, an individual, §
KEVIN HODGE, an individual, §
HODGETWINS, LLC, a limited §
liability company, §
§
DEFENDANTS. §

ORAL AND VIDEO ZOOM DEPOSITION OF

The Oral Deposition of MICHAEL MORIN, taken at the
request of the DEFENDANTS KEITH HODGE, KEVIN HODGE, and
HODGETWINS, LLC, on AUGUST 11, 2026, from 2:14 p.m. to
3:56 p.m., at VIA ZOOM.

Reported by: Belen A. Soto, CSR, RMR

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A P P E A R A N C E S

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Richard McLaron, Clerk Jones Davis & Jackson

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NO.	DESCRIPTION	PAGE
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Exhibit 2	Plaintiff's First Discovery Requests	25

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1 THE COURT REPORTER: The time is 2:14 p.m.

2 My name is Belen Soto, Court Reporter, and
3 this is the deposition of Michael Morin.

4 Will the attorneys please state your
5 appearances, your location and who you represent, for
6 the record, after which I will swear in the witness.

7 MR. GREEN: This is Ron Green. I
8 represent the defendants in this case, that being Keith
9 Hodge, Kevin Hodge and Hodgetwins, LLC. Also on this
10 Zoom with me are Mark Randazza, my law partner, and
11 Danielle Darkenwald who's a paralegal at our firm. We
12 are in Las Vegas, Nevada.

13 MR. BISHOP: I'm Paul Bishop. I represent
14 Mr. Morin, Michael Morin, and I'm in Dallas, Texas.

15 MR. GREEN: And you also represent the
16 Plaintiff, Steve Smothermon.

17 That's correct, right, Mr. Bishop?

18 MR. BISHOP: Yeah. Well, we represent the
19 deponents for sure. I was assigned this, like, Friday,
20 but I'm -- we represent the deponents.

21 MR. GREEN: And your firm represents the
22 Plaintiff in the litigation?

23 MR. BISHOP: I guess so. Let's see.
24 Sorry. Let's see.

25 Yep. Yes, we do. Yeah.

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MICHAEL MORIN

Having been first duly sworn, testified as follows:

EXAMINATION

BY MR. GREEN:

Q. Good afternoon, Mr. Morin.

Can you please state your name for the record?

A. Michael Morin.

Q. Mr. Morin, my name -- like you just heard me say a minute ago, my name is Ron Green. I am an attorney for the Hodgetwins, Keith Hodge and Kevin Hodge, in a case filed by Pastor Steve Smothermon against them in the US District Court for the District of Nevada. You have been called as a witness in the case and are going to be providing testimony.

You work at Legacy Church, correct?

A. Correct.

Q. All right. What is your job title?

A. Executive Pastor for the Creative Department.

Q. How long have you been with Legacy Church?

A. Been a member for 12 years.

Q. How long have you been employed by the church?

A. Ten years.

Q. So, you started in 2016 as an employee?

A. Correct.

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1 the -- they have the photo of our pastor with the wrong
2 person, the Cracker Barrel CEO.

3 Q. Do you recall --

4 A. Wrong photo, wrong guy.

5 Q. -- who from the church --

6 (Court reporter caution.)

7 Q (By Mr. Green) Go ahead. I interrupted you.
8 I'm sorry. Go ahead and repeat.

9 A. I just said that's what wrong photo, wrong guy
10 means.

11 Q. Okay.

12 A. And I don't recall who from the church, like I
13 said, so many.

14 Q. So many what?

15 A. People reaching out about the post.

16 Q. People from the church?

17 A. Correct.

18 Q. And what were they saying about the post?

19 A. Well, how egregious it is. What a problem it
20 is. How is this up? How is this posted? How did they
21 get this wrong?

22 Q. They were making these comments on the post?

23 A. There are -- there were comments like that,
24 people were saying you have the wrong guy, this is
25 crazy. He's on your --

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1 Q. These are comments --

2 A. -- side actually.

3 (Court reporter caution.)

4 Q. (By Mr. Green) Go ahead.

5 A. The gist of comments I remember, yes.

6 Q. Those were comments --

7 A. That's to explain that everyone from church is
8 commenting they have the wrong photo, the wrong guy.

9 Q. But you don't recall any specific names of
10 people?

11 A. The screenshot is all I have of specific names.

12 Q. Okay.

13 A. I don't have any other screenshots of all the
14 comments.

15 Q. Do you recall any comments to the Facebook post
16 that were not from church members?

17 A. I'm sure. There were -- there were many
18 comments, it would -- I couldn't assume that they were
19 all church members.

20 Q. Do you remember any comments specifically?

21 A. Um, the one I remember is Craig's, that's the
22 one I just screenshotted before.

23 Q. Were there any comments that believed the
24 person pictured in the Facebook post worked for Cracker
25 Barrel?

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1 A. Yes.

2 Q. What did those comments say?

3 A. There were people criticizing the CEO.

4 Q. Okay. What were some of the comments that were
5 critical of the CEO?

6 A. Um, just it -- their audience is anti-woke
7 people, so people saying Cracker Barrel is going to go
8 down, they don't know their audience, along those lines.
9 What a failure it is of the -- the LGBTQ+ policy that
10 they were -- their CEO was known to do.

11 Q. Can you read the comment from Steve
12 Smothermon, Jr. -- the comments from Steve
13 Smothermon, Jr. right after your everyone from church is
14 commenting they have the wrong photo of the wrong guy?

15 A. Yeah. He said: (Reading)
16 What the hell is that? Did they just lie
17 about my dad?

18 Q. And he makes comments underneath that as well.

19 A. Yeah.

20 Q. Let's -- go ahead.

21 A. You want me -- you want me to read that?

22 Q. Yeah. Go ahead and read it.

23 A. (Reading)
24 We need to sue these piece of shit mother
25 fuckers. My blood is boiling. We need

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1 homosexuals?

2 A. We follow the Bible, which would say -- we
3 would classify as sin, it would go against God's word.
4 How we view homosexuals as your specific question?

5 Q. Yes.

6 A. We view them as creations of God, but we do not
7 condone their sexuality. I mean, we condone -- sorry --
8 (Court reporter clarification.)

9 THE WITNESS: We don't support
10 homosexuality. Their sexual lifestyle choice, we do not
11 support.

12 Q. (By Mr. Green) Have you spoken with anyone who
13 believed -- who saw this post and believed that
14 Pastor Smothermon was an executive at Cracker Barrel?

15 A. I don't -- I don't know.

16 Q. Have you spoken with anyone personally?

17 A. Personally?

18 Q. Yes.

19 A. Personally thinking that post was him, no.

20 Q. Have you spoken with anyone who saw that post,
21 who saw the Facebook post, and believed that Steve
22 Smothermon was on the Human Rights Campaign's business
23 advisory council?

24 A. No.

25 Q. Is that a "no"?

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1 A. Correct, no.

2 Q. Are you aware of anyone who saw the Facebook
3 post and thought that Steve Smothermon, meaning the
4 pastor, was a former Cracker Barrel executive?

5 A. No.

6 Q. Are you aware of anyone who saw the post and
7 thought that Pastor Steve Smothermon, the plaintiff, was
8 on the Human Rights Campaign's business advisory
9 council?

10 A. No.

11 Q. Are you personally aware of any confusion, at
12 all, that was created by the post?

13 A. Firsthand?

14 Q. Yes.

15 A. I -- I'm aware of secondhand, as I manage the
16 team that responds and manages the social networks for
17 us. Firsthand, no --

18 Q. And what's --

19 A. -- secondhand, yes.

20 Q. What -- what secondhand confusion are you aware
21 of?

22 A. Oh, it would be a report from our director
23 saying there's many comments, and they're all --

24 Q. Who's your director?

25 A. That's Valentin Molina.

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1 THE WITNESS: So, that's okay?

2 MR. BISHOP: Yeah. We agree that it's
3 going to stay confidential.

4 THE WITNESS: Um, my package is 150.

5 Q. (By Mr. Green) Do you know how much
6 Pastor Smothermon makes?

7 A. No idea.

8 Q. All right. Do you know how much he's
9 requesting in damages for this lawsuit?

10 A. No idea.

11 Q. All right. Would it surprise you to learn that
12 he's requesting between \$2.65 million and
13 \$5.58 millions?

14 A. No.

15 Q. Why not?

16 A. Because I think it's worth a lot of money.

17 Q. Why is that?

18 A. His name, influence and the work that we do is
19 vital to the success of our state, and it's impacting
20 many people across the country. Took him decades to --

21 Q. What do you mean by that?

22 A. Decades to build it. Decades to be able to be
23 known as someone that speaks the truth, that stands for
24 the political values that built the country.

25 Q. But you're not aware of anyone who was confused

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1 by the post?

2 A. Not me personally, directly. But I know that
3 there was a massive public response on the Facebook
4 post.

5 Q. What do you --

6 A. It's a massive platform.

7 Q. What do you mean by massive public response?

8 A. I'm saying because they have a massive platform
9 that was a lot of eyes for false information.

10 Q. Are you aware -- oh, strike that.

11 The Hodgetwins were writing about someone
12 named Steve Smotherman with -- that's M A N, correct?

13 A. You're saying on the post --

14 Q. Yes.

15 A. -- that's what it says?

16 Q. Yes.

17 How many other times are you --

18 (Court reporter caution.)

19 THE WITNESS: Yes.

20 MR. GREEN: That was it.

21 Q (By Mr. Green) How many other times have you
22 seen someone misspell Steve Smothermon's name? Instead
23 of M-O-N they spelled his name M-A-N?

24 A. Not often at all. I mean, I work for the
25 church so we -- every time we use his name it's always

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1 correct.

2 Q. You said not often at all --

3 A. Yeah.

4 Q. -- but you didn't say never?

5 A. I think there might have been like a thank-you
6 note that got sent to me by a parishioner inadvertently
7 that had the name wrong.

8 Q. Okay. Anything else?

9 A. Uh-uh.

10 Q. How about in the media?

11 A. Not that I'm aware of.

12 Q. Does the media ever -- not that you're aware
13 of?

14 A. Correct.

15 Q. How about anyone within the church?

16 A. That one thinking, that's all I can think of,
17 some old lady.

18 Q. Has anyone ever asked you if Steve Smothermon
19 was woke?

20 A. No.

21 Q. Have you ever spoken with anyone that thought
22 Pastor Smothermon was woke?

23 A. No.

24 Q. That's before and after this post was made?
25 The Facebook post?

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1 A. Correct.

2 Q. All right. Are you aware of any financial
3 impact on Pastor Smothermon from the post?

4 A. I have no idea. I don't know anything about
5 his financial situation.

6 Q. All right. Are you aware of any reputational
7 impact on Pastor Steve Smothermon due to the post?

8 A. I don't know, like I said, if you're asking me
9 firsthand. Secondhand I manage the department that
10 oversees the hate comments every week all the time. So,
11 secondhand I would 100 percent say yes. Me, personally
12 for a conversation with him, no.

13 Q. What would a second -- what secondhand impacts
14 are you referring to?

15 A. Secondhand is we -- we have five managing
16 social teams that publish his content, our church
17 account. All of the blockers for all of the people that
18 hate him, hate our church, mostly coming from the
19 liberal left, the LGBTQI+, the wokeism.

20 What that CEO of Cracker Barrel is doing,
21 it's a constant barrage, because his messaging is so
22 clear of what he stands for, and what he's fighting for,
23 specifically in New Mexico.

24 Q. And how would you define what he's fighting
25 for?

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1 A. Biblical truth, and --

2 Q. Biblical truth --

3 A. -- anti-woke politics.

4 Anti-woke -- which would lead to
5 anti-wokeism politics.

6 Q. Okay.

7 A. Anti-abortion, anti-LGBTQ, the
8 non-deconstruction of the nuclear family.

9 Q. What do you mean by anti-LGBTQ?

10 A. The Biblical truth that does not support
11 homosexuality.

12 Q. And what do you mean by does not support?

13 A. The Bible does not affirm male-male,
14 female-female sexual relationships.

15 Q. Are you aware of any media inquiries the church
16 received about the post?

17 A. I'm not aware.

18 Q. Was the post covered on local Albuquerque news?

19 A. I do not know, I was in Nepal.

20 Q. Has anybody ever discussed it with you?

21 A. No.

22 Q. And Pastor Smothermon has never mentioned the
23 post to you personally?

24 A. Correct.

25 Q. Do you have any information about lost speaking

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1 engagements?

2 A. I do not.

3 Q. No?

4 A. I do not manage that part of his schedule.

5 Q. Any information about lost book sales due to
6 the post?

7 A. I do not have any information.

8 Q. Aware of anyone who left the church after, due
9 to the post?

10 A. I do not know anyone personally.

11 Q. You never had any conversations with Krisha
12 Mason about the post?

13 A. That day?

14 Q. Oh, since -- I mean, it -- well, let's start
15 with that day.

16 A. Yeah. That day, no.

17 Q. Okay.

18 A. I don't -- I mean, other than what's in the
19 Telegram with the rest of the group, um, that I
20 remember, yeah, the rest of us, just in that group
21 Telegram with the staff team.

22 Q. How about since that day --

23 A. We --

24 Q. -- with Ms. Mason?

25 A. We talked about how we both got subpoenaed.

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1 Q. Okay.

2 A. We didn't -- yeah, we didn't understand what
3 that was.

4 Q. Okay. Based upon your own observations, has
5 attendance at the church decreased since August 22nd,
6 2025?

7 A. No.

8 Q. Has anyone spoken with you about
9 Pastor Smothermon being depressed about the post?

10 A. No.

11 Q. How about whether he sought medical treatment
12 because of the post?

13 A. I do not know, no.

14 Q. Are you personally aware of anyone who
15 decreased their donations to the church after the post
16 because of the post?

17 A. No, sir.

18 Q. How long has Pastor Smothermon been with Legacy
19 Church?

20 A. Over 20 years.

21 Q. He's not the founder of the church; is that
22 correct?

23 A. That's correct.

24 Q. All right. Do you know when the church was
25 founded?

MICHAEL MORIN
SMOTHERMON vs HODGE ET AL

August 11, 2026

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON, §
§ CASE NO.:
PLAINTIFF, § 2:25-CV-01858-APG-BNW
§
v. §
§
KEITH HODGE, an individual, §
KEVIN HODGE, an individual, §
HODGETWINS, LLC, a limited §
liability company, §
§
DEFENDANTS. §

REPORTER'S CERTIFICATION

MICHAEL MORIN

AUGUST 11, 2026

I, Belen A. Soto, Certified Shorthand Reporter in
and for the State of Texas, hereby certify to the
following:

That the witness, MICHAEL MORIN, was duly sworn by
the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the deposition transcript was submitted on
_____ to the witness or to the attorney
for the witness for examination, signature and return
to me by _____;

That the amount of time used by each party at the
deposition is as follows:

MICHAEL MORIN
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Mr. Paul Bishop - 0 hour(s), 0 minutes

Mr. Ronald D. Green - 1 hour(s), 30 minutes

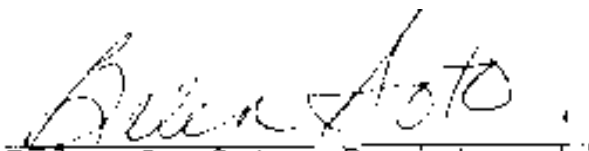
That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

Mr. Paul Bishop, Attorney for Plaintiff;

Mr. Ronald D. Green, Attorney for Defendants;

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to me by this 16th day of August, 2026.



Belen A. Soto, RMR, Texas CSR 2072
Expires: 06/31/2027

Exhibit 10

KOAT YouTube Video Capture
HODGE000164



Bernalillo County Sheriff no longer part of Legacy Church



KOAT ✓

146K subscribers

Subscribe

👍 75



➦ Share

🔖 Save



22K views 12 years ago

Bernalillo County Sheriff Dan Houston says he's no longer welcome at Legacy Church after meeting with church elders. ...more

Exhibit 11

Declaration of Alex J. Shepard

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Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
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**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 ALEX J. SHEPARD**

I, Alex J. Shepard, declare:

1. I have first-hand knowledge of the facts set forth herein, and if called as a witness could and would testify competently thereto.

2. I am counsel for Defendants in the above captioned matter. I make this declaration in support of Defendants' Motion for Summary Judgement and for Relief Under the Nevada Anti-SLAPP Law (the "Anti-SLAPP Motion").

3. As part of discovery, Defendants produced an email exchange dated August 22, 2025, in which a Legacy Church employee, Krisha Mason, notified Hodgetwins, LLC's customer support team that the photo accompanying the Facebook post at issue in the Complaint (the "Post") was of Plaintiff, rather than Steve Smotherman. **Exhibit 3** to the Anti-SLAPP Motion is a true and correct copy of this email exchange, produced as HODGE000136-138.

1 4. As part of discovery in this matter, Defendants served a subpoena on Krisha Mason
2 for her deposition and for production of documents.

3 5. Pursuant to this subpoena, Defendants deposed Krisha Mason on August 11, 2026.
4 **Exhibit 6** to the Anti-SLAPP Motion is a true and correct copy of excerpts of the transcript of her
5 deposition.

6 6. In response to this subpoena, Krisha Mason produced documents on August 11,
7 2026. These documents included screen captures of a group text chat among members of Legacy
8 Church discussing the Post and how the photo in it was of Plaintiff Steve Smothermon, rather than
9 Steve Smotherman. **Exhibit 8** to the Anti-SLAPP Motion is a true and correct copy of this
10 exchange, produced as MASONK_000035-39.

11 7. On or about August 17, 2026, Plaintiff served a rebuttal expert disclosure
12 identifying Istvan Jonyer, Ph.D., and attaching his written Rebuttal Expert Report dated August
13 17, 2026. I received that disclosure and report in the ordinary course as counsel for Defendants,
14 and I reviewed the report when it was served.

15 8. On September 25, 2026, Plaintiff withdrew Mr. Jonyer as an expert witness. ECF
16 No. 113. Plaintiff withdrew him after Defendants served discovery directed to him and before he
17 responded to it. Had he not been withdrawn, Defendants would have moved to exclude his opinions
18 under Rule 702.

19 9. True and correct copies of pages 19 through 20, 22, and 44 of Mr. Jonyer's report,
20 as served on Defendants, are attached as **Exhibit 12** to the Anti-SLAPP Motion. The following
21 passages appear at paragraphs 46, 50, and 78 of that report: "Second, I used private, or incognito,
22 browsing while logged out of my account to remove personalization associated with my own
23 account and browsing history." (§ 46.) "Searches were performed using incognito mode in logged
24 out state in each of the browsers or the services indicated in the screenshots on August 13, 2026."
25 (§ 50.) "I conducted the search while logged out of any Google account and in incognito browsing,
26 from my actual location in the Los Angeles metropolitan area." (§ 78.)

27 10. Defendants do not offer Mr. Jonyer's report for the truth of any opinion stated in it.

1 It is offered solely to show the position Plaintiff's own retained witness took on the use of incognito
2 and private browsing.

3 11. Attached as **Exhibit 13** to the Anti-SLAPP Motion is a true and correct copy of the
4 side-by-side image comparison that appears at paragraph 28 of Defendants' Amended Answer,
5 ECF No. 43, and is reproduced in the Motion. The image on the right is the photograph that
6 appeared in Defendants' August 22, 2025, Facebook post, as produced at HODGE000002. The
7 image on the left is a still frame from a video that Mr. Smothermon posted on August 21, 2025,
8 the day before the Facebook post, at <https://www.youtube.com/watch?v=HKTsnKXlmTo&t=6s>,
9 which was captured on October 17, 2026. I have compared the still frame to the video and it
10 accurately depicts Mr. Smothermon as he appears in that video.

11 12. The text of paragraph 28 of the Amended Answer describes the left image as the
12 photograph from the Facebook post and the right image as the video still. That description
13 transposed the two images; the images themselves appear in the Amended Answer, and in **Exhibit**
14 **13**, exactly as described in paragraph 11 above.

15 13. Attached as **Exhibit 4** to the Anti-SLAPP Motion is a true and correct copy of
16 Defendants' Responses to Plaintiff's Fourth Set of Discovery, served on Plaintiff on September 14,
17 2026.

18 14. Attached as **Exhibit 5** to the Anti-SLAPP Motion are true and correct copies of
19 documents produced by Defendants in this action at HODGE000159–163.

20 15. Attached as **Exhibit 10** to the Anti-SLAPP Motion is a true and correct copy of a
21 document produced by Defendants in this action at HODGE000164, a screen capture of a KOAT
22 television report captioned "PASTOR STEVE SMOTHERMAN."

23 16. Attached as **Exhibit 6** to the Anti-SLAPP Motion are true and correct copies of
24 pages 18, 21–22, 27, 29–30, 32, 47–48, 50, 55–61, 64, 67–68, and 97 of the certified transcript of
25 the August 11, 2026, deposition of Krisha Mason, taken in this action, together with the reporter's
26 certificate.

27 17. Attached as **Exhibit 1** to the Anti-SLAPP Motion are true and correct copies of

1 documents produced by non-party Michael Morin in response to a subpoena served by Defendants
2 in this action at MORINM_000029–31.

3 18. Attached as **Exhibit 9** are true and correct copies of pages 40–42, 53–54, and 61–
4 67 of the certified transcript of the August 11, 2026, deposition of Michael Morin, taken in this
5 action, together with the reporter’s certificate.

6 19. Attached as **Exhibit 7** to the Anti-SLAPP Motion are true and correct copies of
7 pages 23–36, 45–48, 50–51, and 54–55 of the certified transcript of the July 21, 2026 deposition
8 of Thomas C. Carroll II, taken in this action, together with the reporter’s certificate. Pages 32
9 through 35 of that transcript also appear on the docket at ECF No. 70-9.

10 20. The side-by-side image that appears in the Motion beneath the heading “Spelling
11 and appearance” was prepared at my direction. The image on the left is the photograph that
12 appeared in Defendants’ August 22, 2025, Facebook post, as produced at HODGE000002. The
13 image on the right is a cropped photograph of Steve Smotherman taken from his LinkedIn profile
14 at: <https://www.linkedin.com/in/stevesmotherman/>, which I retrieved on October 15, 2026. Neither
15 photograph has been altered other than being placed side by side and cropped to fit a single page.

16 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
17 is true and correct.

18 Dated: October 19, 2026.

/s/ Alex J. Shepard

Alex J. Shepard

Exhibit 12

Rebuttal Expert Report Excerpts
Istvan Jonyer, Ph.D.

**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

**REBUTTAL EXPERT REPORT
OF
ISTVAN JONYER, PH.D.**

Dated: August 17, 2026

existed and was publicly retrievable before the post, independent of this litigation. I express no opinion on reputational harm. This addresses only the availability of identifying information.

43. I was asked to determine what a routine reverse image search of the photograph used in the Facebook post at issue would have returned. Specifically, I was asked whether such a search would identify the person depicted as Pastor Steve Smothermon and associate him with his church, and what level of effort and skill such a search requires.

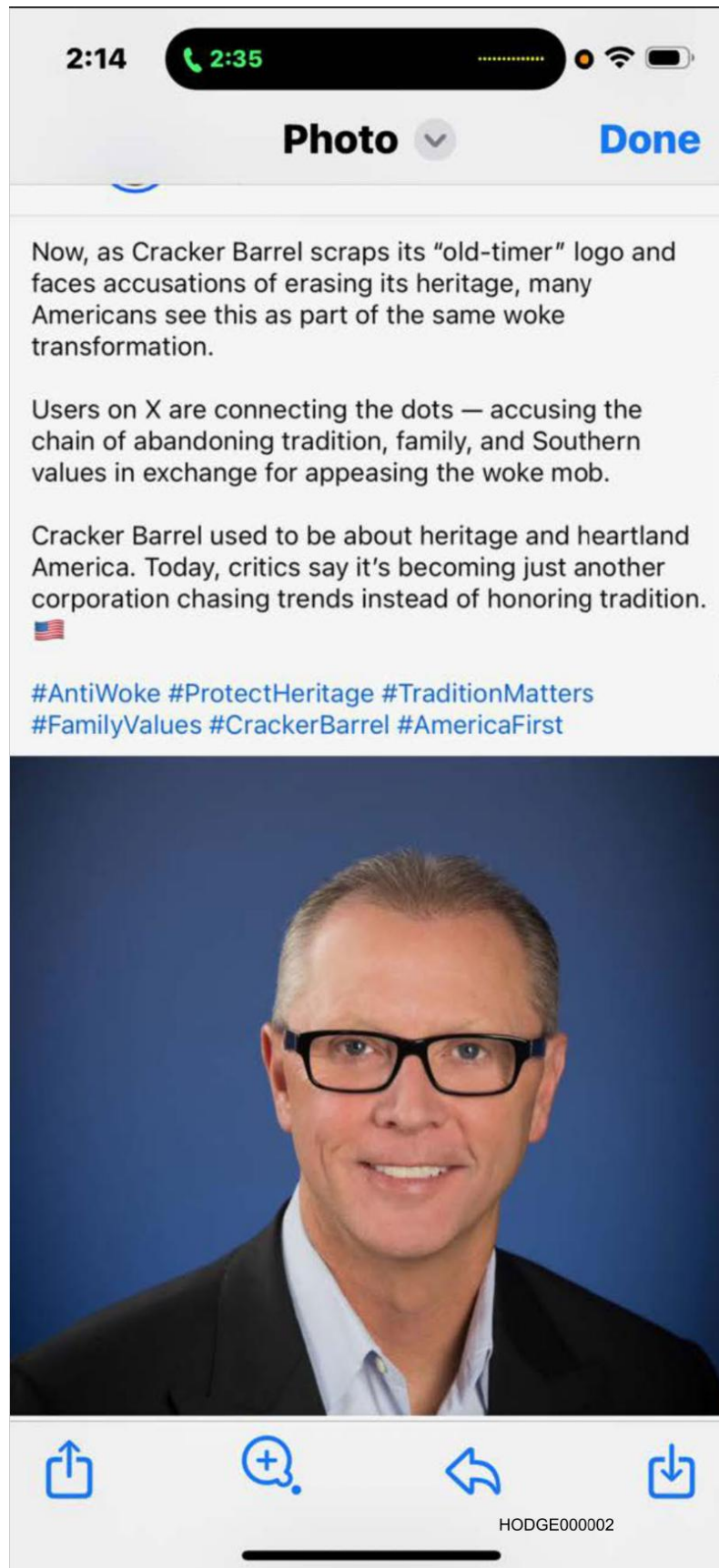
44. A reverse image search uses an image itself as the search query rather than text. The tool analyzes the visual content of the submitted image and returns web pages containing that image or visually similar images, together with associated identifying information. This differs from a text search, in which a user types a name or other words. The distinction is significant here because the defendants have stated that they performed a text-based image search for the name “Steve Smotherman,” not a reverse image search of the photograph.

45. Reverse image search has been publicly available for well over a decade. Google’s Search by Image feature was announced in June 2011 [R2]. Google Lens, the visual search tool used in the searches described below, was announced by Google in May 2017 [R3]. Google added AI-generated summaries to its Lens visual search results on January 17, 2024 [TC1]. Each of these predates the August 22, 2025 Facebook post. The tools are free, require no account, and are accessible from ordinary consumer web browsers.

46. I performed the searches under the following conditions, each chosen to make the results more representative of those an ordinary user searching from the defendants’ metropolitan area would encounter and to make my method transparent and repeatable. First, I routed my connection through a VPN to Las Vegas, Nevada, the defendants’ location, because search results are influenced by the searcher’s geographic location. A VPN approximates the metropolitan area

and does not reproduce the defendants' exact location. Second, I used private, or incognito, browsing while logged out of my account to remove personalization associated with my own account and browsing history. Third, I ran the searches in three separate browsers, Google Chrome, Microsoft Edge, and Brave, to test whether the result depended on the browser. I performed all searches on Windows 11. I captured the initial search in each instance and did not repeat searches for the same input, because search engines adjust results in response to repeated queries. I performed the reverse image search before I had entered the name "Steve Smothermon" (the Plaintiff's name) into any search field, so that no prior text search could have influenced the image results.

47. The photograph at issue is produced in the record at HODGE000001–000002. The production contains only a screenshot of the post and not the native image file. The produced post is reproduced below.



48. I searched the photograph as it appears in the produced document HODGE000002. The cropped image I searched is reproduced below.



49. Because the produced item is a screenshot, the image I searched is a derivative copy, and its resolution may differ from that of the original file used by the defendants.

50. Using Google's reverse image search, I obtained the following results. Searches were performed using incognito mode in logged out state in each of the browsers or the services indicated in the screenshots on August 13, 2026.

78. I performed a Google web search of “Steve Smotherman,” the same spelling used by the defendants and by Fisher. I conducted the search while logged out of any Google account and in incognito browsing, from my actual location in the Los Angeles metropolitan area, which approximates the location of Fisher’s firm. Search results vary by user, by location, and over time, as noted previously.

79. My search returned eight organic listings. Classified by subject, they were:

- Tony Cooke Ministries, “What’s at Your Core? by Steve Smothermon” - the Plaintiff
- LinkedIn, “Steve Smotherman, Director of Advisory Services” - the Cracker Barrel executive
- Facebook and Trinity Church, “Steve Smothermon is senior pastor of Legacy” - the Plaintiff
- Reddit, r/Albuquerque, “Legacy Church” - the Plaintiff
- YouTube and Legacy Church - the Plaintiff
- City of Winston-Salem staff directory - a different individual
- Rate My Professors at Motlow State - a different individual
- Parkway Christian Center, a listing bearing the name without identifying capacity - most likely a different individual

80. Four of the eight listings were the Plaintiff, one was the executive, and three were other individuals of the same name. The names were spelled correctly in each listing. Individuals unrelated to the current lawsuit are denoted “a different individual.”

81. At the top of the same results page, a block of images appeared, presented as two rows of three photographs. The images included the Plaintiff four times (one of which identified him as “Pastor Steve Smothermon”), the Cracker Barrel executive one time, with correct spellings.

XII. Reservation

103. My opinions are based on the information available to me as of the date of this report. I reserve the right to supplement or amend my opinions if additional information becomes available, including any further document productions, disclosures, or expert reports, and to prepare demonstrative exhibits based on the material in this report for use at deposition or trial.

Executed on August 17, 2026

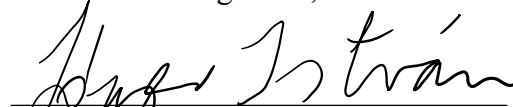

Istvan Jonyer, PhD

Exhibit 13

Side-by-Side Photo Comparison

