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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 Nevada limited liability company;

Defendants.

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

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND FOR RELIEF UNDER THE NEVADA ANTI-SLAPP LAW (ECF NO. 124), AND REQUEST UNDER FED. R. CIV. P. 56(d)

Plaintiff Pastor Steve Smothermon opposes ECF No. 124 (Defendants' Motion for Summary Judgment and for Anti-SLAPP Relief) (the "Motion") and ECF No. 125 (Defendants' Request for Judicial Notice) (the "RJN").

INTRODUCTION

Defendants published a Facebook post (referred to herein at times as the "Post" or as "Defendants' post") about one man and illustrated it with the face of another. The Post told the Hodgetwins page's six million followers to "Meet Steve Smotherman," a former Cracker Barrel management and training leader who joined the Human Rights Campaign's Business Advisory Council. ECF No. 124-2 (Kevin Hodge declaration) ¶ 2; ECF No. 1 (Plaintiff's Complaint) ¶ 41. The photograph beneath it was of Plaintiff, the senior pastor of Legacy Church, Inc. ("Legacy

Church") in Albuquerque. Defendants' own pleading admits that it "was actually a photograph of Plaintiff Smothermon," and says the Facebook post "was not about Steve Smothermon." ECF No. 43 (Defendants' Amended Answer) ¶¶ 27, 35.

That concession decides most of the Motion. Defendants argue that Plaintiff is a public figure because of what he has said about faith and culture. But the public-figure question asks about the particular controversy that gave rise to the defamation. The controversy here was Cracker Barrel's corporate diversity record in August 2025. Plaintiff never said a word about it. He was dragged into it by the very publication that defamed him and "[c]learly, those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure." *Hutchinson v. Proxmire*, 443 U.S. 111, 135 (1979). They hit the wrong man. His standing in other debates has no bearing on what they did to him in this one.

The rest of the Motion depends on Defendants' own sworn account of how the photograph was chosen and when they learned it was wrong. That account cannot be reconciled with itself. Defendants swear that they did not receive Legacy Church's notice, and also that, to the best of their knowledge, the post came down because Legacy Church's employee contacted their customer support team. They swear that Keith Hodge had no involvement, after Keith Hodge verified discovery responses stating that both brothers have final say over content. A jury weighs testimony like that – not the Court on summary judgment.

Finally, the Motion asks for attorney's fees under a statute that awards them only "[i]f the court grants a special motion to dismiss filed pursuant to NRS 41.660." NRS 41.670(1). Defendants filed no special motion, and they say so: "Defendants bring this Motion under Rule 56 and invoke only the Anti-SLAPP law's substantive right to fees." ECF No. 124 at 7. The fee award they seek is preconditioned on the very mechanism they disclaim to file.

The Motion should be denied. In the alternative, the Court should defer it under Rule 56(d) until the discovery Plaintiff has moved to compel is produced and Kevin Hodge, the only person who made the photograph decision, has been deposed.

"Ex." refers to Plaintiff's exhibits, authenticated in the Westbrook Declaration (Ex. 2).

"Mason Dep.," "Morin Dep." and "Carroll Dep." are the depositions of Krisha Mason, Michael Morin and Thomas Carroll II, respectively. "Kevin Hodge Decl. I" is ECF No. 98-1 (signed Sept. 16, filed Sept. 17, 2026); "Kevin Hodge Decl. II" is ECF No. 124-2 (Oct. 19, 2026). "Keith Hodge Decl." is his July 29, 2026, declaration (ECF No. 77-2 (exhibits to Plaintiff's motion to compel) at 53-55).

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT VIOLATES THE LOCAL RULES OF THIS COURT & SHOULD BE DENIED AS PROCEDURALLY DEFICIENT

As a threshold matter, Defendants' Motion (as related to the motion for summary judgment) does not include a statement of facts as required by Local Rule 56-1. Rule 56-1 of the Local Rules of Practice for the United States District Court, District of Nevada states:

> MOTIONS FOR SUMMARY JUDGMENT. Motions for summary judgment and responses thereto ***must*** include a concise statement setting forth each fact material to the disposition of the motion that the party claims is or is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer, admission, or other evidence on which the party relies. The statement of facts will be counted toward the applicable page limit in LR 7-3.

LR 56-1 (emphasis added).

The language of Local Rule 56-1 is clear that compliance with the rule is mandatory. Thus, to properly present a motion for summary judgment, litigants must comply with this District's Local Rule 56–1. Failure to comply with Local Rule 56-1, the only local rule that specifically applies to and addresses motions for summary judgment filed in this Court, is sufficient justification and grounds to deny Defendants' Motion without having to reach the merits of the Motion. *John Bordynuik Inc. v. JBI, Inc.*, No. 2:13–cv–01463, 2015 WL 153439, at *3 (D. Nev. Jan. 13, 2015) ("Courts in this district routinely decline to reach the merits of arguments made in connection with a 'summary judgment' filing which contains no statement of undisputed facts at all."); *see also Joe Hand Promotions, Inc. v. Steak*, No. 2:12-cv-01930, 2014 WL 1304723, at *2 (D. Nev. March 31, 2014).

Here, Defendants have not filed "a concise statement setting forth each fact material to the disposition of the Motion that Defendants' claim is or is not genuinely in issue" with appropriate

citations. Nor did Defendants include the mandatory concise statement in their Motion. Instead, Defendants' Motion includes an "Introduction" section and an alleged "Factual Background" section, then continues with a "Legal Standards" section, followed by the "Argument" section. *See* Motion at pp. 1-8.

In neither the "Introduction" section nor the "Factual Background" section of the Motion do Defendants clarify or state which facts are or may be disputed or undisputed, which is a clear violation of the mandatory requirements of Local Rule 56-1. An examination of the language used by Defendants in the "Introduction" and "Factual Background" sections of Defendants' Motion establishes the argumentative nature of the statements and does not distinguish undisputed fact from disputed contention. *John Bordynuik Inc.*, 2015 WL 153439, at *3.

For example, and as way of illustration, as part of the "Introduction" and "Factual Background" sections, Defendants state:

- "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." (Motion at p. 2, lines 12-13).
- "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." (Motion at p. 2, lines 14-16).
- "The post was pure opinion, and the only 'statement' Smothermon pins on Defendants is a claimed implication of certain views." (Motion at p. 2, lines 17-19).
- "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." (Motion at p. 2, lines 19-21).
- "The press coverage was extensive." (Motion at p. 4, line 5).
- "Accordingly, his results were "clean" and not influenced by his prior search history. Anyone could have made Kevin Hodge's mistake." (Motion at p. 5, lines 4-6).

These statements, as others, are, on their face, argumentative and adversarial. As noted in *Bordynuik*, "such facially argumentative background material may be appropriate as part of a brief but cannot constitute a statement of undisputed facts." *John Bordynuik Inc.*, 2015 WL 153439, at *3. Because it is difficult to discern what specific facts Defendants claim are undisputed and

material to the disposition of their Motion, the Court should deny Defendants' Motion without reaching the merits.

THE FEE REQUEST FAILS AT THE THRESHOLD: NRS 41.670(1) REQUIRES A GRANTED SPECIAL MOTION, AND DEFENDANTS FILED NONE

Defendants' only claim to relief beyond ordinary summary judgment is a fee award under NRS 41.670(1). ECF No. 124 at 7, 27. The statute's text forecloses it. Fees are available "[i]f the court grants a special motion to dismiss filed pursuant to NRS 41.660." NRS 41.670(1). The Nevada Supreme Court reads that language as a condition: "The plain language of NRS 41.670 clearly conditions a defendant's ability to bring a separate action for damages and attorney fees in response to a SLAPP suit on the district court's grant of a special motion to dismiss." *Stubbs v. Strickland*, 129 Nev. 146, 151, 297 P.3d 326, 329 (2013).

Applying *Stubbs* to the fee provision itself, the court reaffirmed that the statute "plainly conditions an award of attorney fees and costs on the district court's grant of a special motion to dismiss," and observed: "Unlike Nevada's, California's statute does not require that an anti-SLAPP motion be granted before the defendant can be awarded attorney fees." *Padda v. Hendrick*, No. 78534, 2020 WL 1903191, at *1, *2 (Nev. Apr. 16, 2020) (unpublished disposition). This District follows the same rule: "In Nevada, an anti-SLAPP special motion must be granted before the defendant is entitled to attorney's fees." *Proton Assocs. LLC v. Avelo, Inc.*, No. 2:25-cv-00856-CDS-BNW, ECF No. 52 (order), at 6 (D. Nev. Aug. 12, 2025). In *Sternberg*, this Court observed that a plaintiff's amendment does not necessarily foreclose fees on a special motion the defendant actually filed. *Sternberg v. Warneck*, No. 2:23-cv-01466-APG-EJY, ECF No. 299 (order granting reconsideration and denying anti-SLAPP motion to dismiss), at 12-13 (D. Nev. May 22, 2025). That observation presupposes a filed special motion.

Defendants did not file a special motion to dismiss under NRS 41.660. They filed a Rule 56 motion and say that is all it is. ECF No. 124 at 7. They also concede that NRS 41.660's procedural provisions, including its filing deadline and its discovery stay, do not govern here. ECF

No. 124 at 7 n.5 (citing *Sarver v. Chartier*, 813 F.3d 891, 900 (9th Cir. 2016)). Plaintiff agrees that federal procedure governs.

But the point remains fees are unavailable to Defendants. NRS 41.670(1) attaches fees to one event: the grant of a special motion filed under NRS 41.660. Success on the merits and a finding of good faith are different events. A defendant who elects not to file the special motion has not satisfied the condition, and there is no separate federal rule that supplies a substitute. Defendants call the fee right "substantive" (ECF No. 124 at 7 & n.5), but a substantive right conditioned on a particular event remains conditioned on that event. *See Padda*, 2020 WL 1903191, at *2.

The choice was deliberate. In January, Defendants' counsel wrote, "Before we file our Anti-SLAPP motion," and later, "We had the option of simply filing an answer and then the Anti-SLAPP motion." Ex. 16; Ex. 17 at 6. In June, they wrote that "we must continue to hold back on filing our Anti-SLAPP motion." Ex. 18. Their Amended Answer asked for anti-SLAPP fees and said: "A brief to support this is forthcoming." ECF No. 43 at 17 n.22. Many months later, Defendants filed this Motion and disclaimed the special motion entirely. Plaintiff cites these letters only to show the procedural election Defendants knowingly made. Fed. R. Evid. 408(b); *see Rhoades v. Avon Prods., Inc.*, 504 F.3d 1151, 1161-62 (9th Cir. 2007) ("When statements made during settlement are introduced for a purpose unrelated to liability, the policy underlying the Rule is not injured."). Whatever the Court decides on the merits, the request for a fee award under NRS 41.670(1) should be denied.

FACTS THAT DEFEAT SUMMARY JUDGMENT

Plaintiff's Response to Defendants' Statement of Facts under LR 56-1 addresses each fact Defendants assert. The facts below control.

A. The post, the photograph, and who saw it

Kevin Hodge published the post, titled "Cracker Barrel's WOKE Past Comes Back to Light," on August 22, 2025. ECF No. 124-2 ¶ 3. It named "Steve Smotherman," described his career at Cracker Barrel, and listed corporate actions credited to him. ECF No. 1 ¶ 41. The post

says that "[d]uring his time at Cracker Barrel (2005-2020)," he was responsible for "[s]ponsoring Nashville Pride in 2024" and "[l]aunching rainbow-colored rocking chairs in 2023." *Id.* Defendants' own source article credits those events to the company, and reports that he "left the company in 2020." ECF No. 124-5 (Fox Business article) at HODGE000161-162.

Kevin Hodge now swears that he "used ChatGPT to help draft the text of the Post" and that "[e]very statement of fact in the Post about Steve Smotherman came from published reporting about him." ECF No. 124-2 ¶ 4. The Motion states that "[a]ll the information in the Post is true, as Smothermon admits," citing Complaint ¶¶ 33-35. ECF No. 124 at 10. Those paragraphs sit under a heading calling him "the Alleged Architect," and the first reports what "[s]ome media outlets" attribute to him. ECF No. 1 ¶¶ 33-35. The Complaint alleges the statements are "materially false." *Id.* ¶ 57. Plaintiff admitted nothing about the post's accuracy.

Directly beneath the text was Plaintiff's photograph. Defendants admit the post "erroneously contained the picture of Steve Smothermon." Ex. 10, Resp. No. 23. In the feed and in shared-link previews, the post displayed its Cracker Barrel headline and Plaintiff's face, with no name for the man pictured. ECF No. 124-3 (Mason email chain) at HODGE000136; ECF No. 124-1 (Morin text messages) at MORNIM_000029. Two hours after publication it showed 4,800 reactions, 1,900 comments and 1,000 shares. ECF No. 124-3 at HODGE000136. Defendants answered an interrogatory by saying they "do not believe the Facebook Post had many views." Ex. 21 (May 22, 2026, verified responses), Resp. No. 6; *but see* Ex. 8 (June 10, 2026, second amended responses), Resp. No. 6 ("do not know how many views").

People who knew Plaintiff's face recognized it. Plaintiff's son, Steve Smothermon Jr., wrote: "Did they just lie about my dad??" ECF No. 124-1 at MORNIM_000029; *see* ECF No. 124 at 15 (calling him "another Legacy Church pastor"). Legacy Church posted on the thread that "[t]he person pictured is actually Steve Smothermon, our Senior Pastor," and that the post was "causing confusion and harm to his reputation and our church." ECF No. 124-8 (Legacy staff messages) at MASONK_000035. A commenter wrote: "You slapped his picture and name on here." *Id.* Asked whether commenters believed the person pictured worked for Cracker Barrel,

Michael Morin, Legacy's Executive Pastor for the Creative Department, answered "Yes." ECF No. 124-9 (Morin deposition) at 5:19, 41:23-42:10. Krisha Mason, a member of Legacy Church's media team (Ex. 3 (Mason Dep.) at 5:13-16), testified that if people believed he was a former Cracker Barrel management and training leader, "[a]bsolutely it would be damaging … [b]ecause that's incorrect about him." ECF No. 124-6 (Mason deposition) at 61:6-13. The Motion cites Morin's testimony at 40:17-41:2 and omits the answer that follows. ECF No. 124 at 15.

B. Plaintiff had no part in the Cracker Barrel controversy, and Defendants had never heard of him

Plaintiff has never worked for Cracker Barrel, has never been affiliated with the Human Rights Campaign, and made no public statement about Cracker Barrel, its logo, or its diversity policies before August 22, 2025. Smothermon Decl. ¶¶ 10-13, 18. Defendants' own reputation expert reported that his searches "yielded no practical connection of Smothermon to Smotherman, Cracker Barrel, or being woke." Shupe Report at 6, Ex. 20. The same expert wrote: "I did not know of Pastor Smothermon." *Id.* at 1.

Kevin Hodge, a commentator with six million followers, had never heard of Plaintiff either: "Before this lawsuit, I had never heard of Pastor Steve Smothermon or Legacy Church." ECF No. 124-2 ¶ 7. That sworn statement is filed with a Motion arguing that Plaintiff is "so famous that his reputation has completely subsumed Steve Smotherman's online presence." ECF No. 124 at 18.

The congregation and reach figures the Motion attributes to Plaintiff describe his church; they come from Legacy Church's own materials, as reported by Plaintiff's expert. ECF No. 73-2 (Fisher report) at 12, 22; *compare id.* at 11 (Plaintiff's personal channels); Smothermon Decl. ¶ 7. The web captures in the RJN were made on October 15 and 16, 2026, fourteen months after the Facebook post. ECF No. 125-11 (Spring declaration) at 1-3. The RJN's one news story about Plaintiff is a 2015 report by an Albuquerque station. ECF No. 125-7 (2015 KRQE article).

C. Defendants' sworn accounts contradict each other

The defense rests on what Defendants knew and when. Their statements on those questions, most of them sworn, are completely contradictory. A chart outlining and detailing Defendants'

contradictory statements is attached to Plaintiff's Appendix as Exhibit A and incorporated herein for all purposes.

The Motion adds a contradiction of its own. It says Plaintiff's congregation "would see a stranger" in the photograph. ECF No. 124 at 24 n.9. Witnesses who know Plaintiff testified that the photograph looks like him. Ex. 3 (Mason Dep.) at 19:5-20:5; ECF No. 124-6 at 29:19-22; Ex. 4 (Morin Dep.) at 50:4-19.

D. LR 56-1 statement

As noted *supra* (pp. 3-5), Defendants failed to comply with Local Rule 56-1. Defendants state their facts as unnumbered narrative contrary to local rules. ECF No. 124 at 3:1-6:6. Plaintiff numbers them in order below, and any fact not listed is undisputed for purposes of this motion only, or immaterial.

1. Response to Defendants' asserted facts

5. Legacy has nine campuses, 10,000 weekly attendees and a large following. ECF No. 124 at 3:8-11. Disputed in part: the figures describe Legacy Church, and every campus of Legacy Church is in New Mexico. ECF No. 73-2 (Fisher expert report) at 12.

6. Plaintiff hosts a podcast and a YouTube channel with 91,000 subscribers. ECF No. 124 at 3:11-13. Disputed in part: Defendants' counsel called that audience "Legacy Church's more than 90,000 YouTube followers." Ex. 17 (undated letter received Jan. 30, 2026) at 1. The sermons, podcast, and YouTube channel are Legacy Church's ministry. ECF No. 73-2 at 11; Smothermon Decl. ¶¶ 6-7.

7. Public records show Plaintiff's videos draw six-figure view counts. ECF No. 124 at 3:14-15. Disputed: the only six-figure video cited is the Legacy Church channel and Defendants' own capture shows "117K views 5 months ago," which places the upload after Defendants' post. ECF No. 43-5 (capture of a Legacy Church YouTube video) at 2.

8. Plaintiff hosted Charlie Kirk in September 2025. ECF No. 124 at 3:15. Disputed as to the date: Defendants' Amended Answer states the visit was on August 10, 2025. ECF No. 43 at 9:13-14. Defendants cite no evidence that the visit concerned Cracker Barrel or Steve Smotherman.

9. Plaintiff "has waded into politics, COVID-19 policy, and national conservative advocacy." ECF No. 124 at 3:15-16. Disputed as material: Defendants give no pin cite and Plaintiff made no public statement about Cracker Barrel or its rebranding before August 22, 2025. Smothermon Decl. ¶¶ 10, 18.

17. Kevin Hodge published the Post on August 22, 2025. ECF No. 124 at 4:8-9. Undisputed that it appeared that day; that he acted alone is disputed. ¶ 24.

18. The Post concerned "Steve Smotherman," a former Cracker Barrel leader. ECF No. 124 at 4:9-13. Disputed in part: the Post's only image was Plaintiff's photograph and Defendants admit the Post "erroneously contained the picture of Steve Smothermon instead of Cracker Barrel's Steve Smotherman." Defs.' Resp. to Pl.'s Third Set of RFAs No. 23, Ex. 10.

20. The Post does not mention Plaintiff, Legacy or New Mexico. ECF No. 124 at 4:14-15. Disputed in part: the text does not name him, but the Post displayed his face and viewers recognized him at once. Section II.A above; AF 1-2.

21. Plaintiff does not say the Post's text is false. ECF No. 124 at 4:15-16. Disputed in part: every factual statement in the text is false as to the man in the photograph. ECF No. 1 ¶¶ 42-44. Defendants admit, subject to a reservation, that Plaintiff "has no affiliation with Cracker Barrel." Defs.' Resp. to Pl.'s First Set of RFAs No. 5, Ex. 11, at 3.

22, 24. Kevin Hodge researched, drafted and published the Post, and "Kevin did it alone." ECF No. 124 at 4:18-20. Disputed: "Hodgetwins wanted to make a Facebook post" (Kevin Hodge Decl. I ¶ 3) cannot be reconciled with "[n]o one else wrote, edited, approved, or scheduled it" (Kevin Hodge Decl. II ¶ 3). Both Hodges verified they have "final say" over page content. ECF No. 77-2 at 22, 25. Neither has been deposed. AF 27.

25. Kevin Hodge searched Google Images for "Steve Smotherman" on his phone. ECF No. 124 at 4:24-25. Disputed in part: no record of the search exists. ECF No. 124-4 (Defendants' Responses to Plaintiff's Fourth Set of Discovery Requests) at 11, Resp. to RFA No. 36. The only sworn image of the results is a desktop Chrome window matching defense counsel's July 11, 2026 capture (Kevin Hodge Decl. I ¶¶ 5-6 & p. 2; ECF No. 53-1 (declaration of defense counsel with

exhibits) ¶ 4 & p. 13). *See* AF 15.

26. The results showed one man, whom Kevin Hodge believed was Smotherman. ECF No. 124 at 4:25-27. Disputed: "the person who appeared most often in the search results" (Kevin Hodge Decl. I ¶ 8) cannot be reconciled with "image after image of one person" (Kevin Hodge Decl. II ¶ 6). His screenshot shows "Stephen Smotherman – Owner" among other men (Kevin Hodge Decl. I at 2). *See* AF 16.

27. Defendants published without knowing the photograph showed Plaintiff. ECF No. 124 at 5:1-2. Disputed: the assertion rests on conflicting sworn accounts (¶¶ 25-26; AF 15-17), untested by deposition (AF 27). Defendants ran no reverse image search, reviewed no metadata and kept no record of the search. ECF No. 124-4 at 11, Resps. to RFA Nos. 36-38.

28. Browsing in incognito mode is Kevin Hodge's practice. ECF No. 124 at 5:2-4. Disputed in part: his first declaration says only that he searched "in incognito mode on my iPhone." Kevin Hodge Decl. I ¶ 5. The "practice" statement first appears in an unsworn letter from defense counsel (ECF No. 53-1 ¶¶ 9-10 & p. 32). *See* AF 17.

29. His results were therefore "clean." ECF No. 124 at 5:4-5. Disputed: Defendants cite nothing, no record of the results exists (ECF No. 124-4 at 11, Resp. to RFA No. 36), and Defendants offer no expert testimony on what the search would have returned.

34. Local outlets and the church itself misspelled Plaintiff's name. ECF No. 124 at 5:11-14. Disputed in part: Ms. Mason testified the church video "never aired that way" and could name no outlet. Mason Dep. 56:23-24, 57:10-12, 58:7-15. Mr. Morin knew of no media misspelling. Morin Dep. 62:21-63:14. Kevin Hodge does not claim he saw any misspelling.

36. Ms. Mason contacted "the contractor who staffs" the merchandise site. ECF No. 124 at 5:17-19. Disputed in part: the reply came from "Hodgetwins Support." ECF No. 124-3 (Mason email chain) at HODGE000137. Defendants call the recipients "Defendants' customer support team" (ECF No. 77-2 at 32), and Kevin Hodge swore Ms. Mason was "informing us" (Kevin Hodge Decl. I ¶ 12).

37. The contractor removed the Post three to four hours after publication. ECF No. 124 at

5:19-20. Disputed in part: Defendants have given at least five sworn or signed accounts of the duration. AF 3. Contemporaneous records show the Post live by 12:55 p.m. and removed at about 6:06 p.m. AF 4-5. Defendants have named four different removers. AF 11.

38. Mr. Carroll's message bore "no indicia that it was a legal notice." ECF No. 124 at 5:20-22. Disputed in part: it identified "Thomas C. Carroll, II of Jones, Davis & Jackson, PC," stated "We represent the gentleman whose picture was wrongfully attached to this post," and said "Time is of the essence." Carroll Dep. Ex. 1; Carroll Dep. 27:2-28:15, 32:1-5.

41. Defendants did not see either demand until after suit. ECF No. 124 at 5:26-27. Disputed: Defendants verified that "Plaintiff's counsel and Plaintiff's employee instructed Defendants to remove the Post." ECF No. 77-2 at 30-31, Resps. to Interrog. Nos. 18, 20. That cannot be reconciled with "did not receive the 'Mason Email' or the 'Carroll Notice.'" ECF No. 124-4 at 13-14, Resps. to RFA Nos. 47, 50; *see* AF 6-13.

43. Plaintiff alleges actual malice "without supporting facts." ECF No. 124 at 6:2-3. Disputed: despite the fact that Plaintiff does not need to show actual malice, the Complaint alleges Defendants "made no attempt to verify the identity of the individual pictured." ECF No. 1 ¶ 47. Defendants admit no reverse image search, no metadata review, no search record, and a content-generation tool (ECF No. 124-4 at 11, Resps. to RFA Nos. 36-39). *See* AF 3-19.

45. Plaintiff never met his pleading burden. ECF No. 124 at 6:4-5. Disputed: this is argument about a pleading and cites no record evidence. *See* ¶ 43.

46. Plaintiff has no evidence of damages. ECF No. 124 at 6:5. Disputed: Plaintiff seeks damages for "severe reputational harm, emotional distress, and defamation per se." ECF No. 72-5 (Plaintiff's responses to Defendants' first discovery requests) at 7:18-21. Witnesses saw thousands of commenters attach the Post's content to his face (Mason Dep. 53:1-7, 69:2-18; Morin Dep. 41:23-42:10; Smothermon Decl. ¶¶ 24-28). *See* AF 21.

47. Plaintiff "declined to provide any" such evidence in discovery. ECF No. 124 at 6:5-6. Disputed: Defendants cite nothing. Plaintiff answered both interrogatories, identifying the incognito search, the absent metadata review and reverse image search, and the same-day notice

(ECF No. 72-5 at 8-10), and describing his damages (*id*. at 7-8).

48. "Keith Hodge had no role in the Post." ECF No. 124 at 1 n.1. Disputed: Keith Hodge shares "final say regarding content posted on the Hodgetwins Facebook page" (ECF No. 77-2 at 22) and held authority to edit and delete content (ECF No. 124-4 at 6-7, Resp. to Interrog. No. 25). *See* ¶ 24 and AF 14.

49. "The exact number of hours is unclear, but it was a matter of hours." ECF No. 124 at 1 n.2. Disputed as to duration, for the reasons in ¶ 37 and AF 3-5.

50. Nearly every result showed one man, and the Hodges learned of the error from the suit. ECF No. 124 at 2:4-10. Disputed for the reasons in ¶¶ 26, 36-37 and 41. The cited paragraph says Nathan Hughes deleted the Post after receiving Legacy Church's employee's email. Kevin Hodge Decl. II ¶ 9.

52. Everyone who could identify Plaintiff saw "the wrong guy" at once. ECF No. 124 at 14:22-23, 15:4-6. Disputed: the quoted church comment is Mr. Morin's paraphrase (Morin Dep. 40:23-41:2), and commenters believed the man pictured worked for Cracker Barrel (*id*. 41:23-42:10). Ms. Mason testified that outsiders "may have confusion over this post." Mason Dep. 53:1-7, 64:2-12; *see* AF 2, AF 19.

2. Additional material facts

AF 1. Others who know Plaintiff recognized him, including Mr. Carroll and former Legacy staff in Oklahoma who commented on the Post. Carroll Dep. 24:19-21; Morin Dep. 35:5-36:18.

AF 2. Commenters who did not know Plaintiff attached the Post's content to his face. Ms. Mason testified that "many thousands of people were commenting and associating our pastor's face with this misinformation." Mason Dep. 53:1-21, 69:2-18.

AF 3. Defendants have described the Post's duration in these terms, in this order:

- "only online for an hour or two" (Defs.' Resp. to Pl.'s First Set of Interrogs. No. 6 (May 22, 2026), Ex. 21, at 4);
- "one or two hours before he removed it" (ECF No. 53-1 at 8:3, Second Am. Resp. to Interrog. No. 6 (June 10, 2026));
- "under an hour, if not in a span of minutes" (ECF No. 77-2 at 38-39, 42, 44, Resps. to RFP Nos. 10-12, 19, 22 (counsel's objections));

- "just a few hours" (Keith Hodge Decl. ¶ 3 (July 29, 2026));
- "removed three to four hours later" (ECF No. 77-2 at 30:5-7, Resp. to Interrog. No. 17 (Aug. 10, 2026)); and
- "[t]he exact number of hours is unclear" (ECF No. 124 at 1 n.2).

Despite repeated requests, Defendants have refused to produce any evidence relating to this.

AF 4. Legacy Church staff messages in Albuquerque show the Post shared at 12:55 p.m. ECF No. 124-1 (Legacy Church executives group chat) at MORNIM_000029. Staff reported "They took down the post" at 6:06 p.m. ECF No. 124-8 (Legacy Church staff group chat) at MASONK_000036.

AF 5. Ms. Mason's screenshot, which she placed at "2:04 p.m. Mountain Standard Time," already shows the Post as "2h" old. Mason Dep. 105:14-106:6. That screenshot cannot be reconciled with Defendants' answer that the Post was "published at approximately 1:00 p.m. PDT." ECF No. 77-2 at 30:5-7.

AF 6. Ms. Mason called the Hodgetwins customer service number and told a representative named Kylie that the Post was "causing a lot of damage" and "needed to be removed." Ms. Mason agreed that she "immediately recognized the severe visual and contextual falsehood of the post." Mason Dep. 47:20-48:2, 49:15-51:20, 98:20-99:12.

AF 7. Ms. Mason then emailed Defendants' support address with screenshots, identifying "PASTOR Steve Smothermon of Legacy Church in New Mexico." ECF No. 124-3 at HODGE000136. Defendants produced this exchange from their own records. ECF No. 77-2 at 44; ECF No. 124-11 (declaration of defense counsel) ¶ 3.

AF 8. Plaintiff's son reported that afternoon that he had "told them I've called our attorneys." ECF No. 124-1 at MORNIM_000031. At 3:27 p.m. Central time, Mr. Carroll messaged the Hodgetwins page identifying his law firm and instructing removal. Carroll Dep. 26:1-17, 27:2-28:15.

AF 9. Defendants verified they were "complying with the demands of Plaintiff's counsel and Plaintiff's employee." ECF No. 77-2 at 30-31, Resps. to Interrog. Nos. 18, 20 (verified Aug. 10, 2026). Keith Hodge's July 29, 2026 declaration states, "[i]t is our understanding that

Smothermon's lawyer demanded that the post be deleted." Keith Hodge Decl. ¶ 12.

AF 10. Defendants have also sworn they "were not aware of issues with the Facebook Post until this lawsuit was filed." ECF No. 53-1 at 8:1-2. They swore they "never saw or read the 'Carroll Notice' until well after this lawsuit was filed." ECF No. 77-2 at 20-21.

AF 11. Defendants have named four removers: Nathan Hughes (Kevin Hodge Decl. II ¶ 9; ECF No. 53-1 at 8:3) and "Bigly, the company Defendants contracted with" (ECF No. 77-2 at 21-22, Resp. to Interrog. No. 12). They have also named "our customer service team" (Kevin Hodge Decl. I ¶ 13) and "[o]ur contractor" (Keith Hodge Decl. ¶ 11).

AF 12. Defendants verified that "[p]eople working for Bigly had authority to edit and delete content without prior approval from Defendants." ECF No. 124-4 at 6-7, Resp. to Interrog. No. 25. The same verified set denies that Bigly, Mr. Hughes or Ms. Howerton had that authority. *Id*. at 12-13, Resp. to RFA No. 46.

AF 13. Defendants verified they "never saw, reviewed, or were informed of any comments on the Post stating or suggesting that the person in the Photograph was not the individual that the Post described." ECF No. 77-2 at 32, Resp. to Interrog. No. 21. Legacy Church's correction was a comment on the Post itself (ECF No. 124-8 at MASONK_000035), and Ms. Mason's email said so (ECF No. 124-3 at HODGE000136).

AF 14. Keith Hodge verified every set of interrogatory responses, including those on the search and the removal. ECF No. 53-1 at 10; ECF No. 77-2 at 25, 33; ECF No. 124-4 at 15. He also gave his own declaration on the Post's revenue and deletion. Keith Hodge Decl. ¶¶ 3-14.

AF 15. Defendants identify the search device as an "iPhone 16 Pro Max." ECF No. 77-2 at 21, Resp. to Interrog. No. 11. The desktop screenshot Kevin Hodge swore to includes a result captioned "Pastor Steve Smothermon v. The Hodge..." that refers to this lawsuit. Kevin Hodge Decl. I at 2; ECF No. 53-1 ¶ 4 & p. 13.

AF 16. Kevin Hodge's accounts of the results moved from "nearly all of the search results" (Defs.' Resp. to Pl.'s First Set of RFAs No. 2, at 2-3) to "most, if not all" (ECF No. 53-1 at 7). They then moved to "the person who appeared most often in the search results" (Kevin Hodge

Decl. I ¶ 8), and finally to "image after image of one person" (Kevin Hodge Decl. II ¶ 6).

AF 17. Kevin Hodge's October declaration adds, "I did not choose incognito mode for this search; it is how my phone's browser is ordinarily set." Kevin Hodge Decl. II ¶ 5. Because the search ran in incognito mode, Defendants admit there is no record of the search terms or results on Kevin Hodge's local device and they will not produce the device or the searches to verify this allegation. ECF No. 124-4 at 11, Resp. to RFA No. 36.

AF 18. Defendants state they "did use Google to perform basic identity verification." ECF No. 77-2 at 32, Resp. to Interrog. No. 22. They denied that no one independently verified the identity of the person pictured, without identifying who did or how. ECF No. 124-4 at 12, Resp. to RFA No. 41.

AF 19. Defendants' Amended Answer says the Post photograph and a still of Plaintiff from August 21, 2025 "do not even remotely look like the same person." ECF No. 43 at 12:23. The motion says Smotherman and Plaintiff are "two middle-aged white men of somewhat similar appearance." ECF No. 124 at 23:3-5. It also says, "Legacy staff and congregants alike saw the mistake at once." *Id*. at 14:22-23.

AF 20. Defendants admit "they obtain revenue from their Facebook page." Defs.' Resp. to Pl.'s First Set of RFAs No. 4, at 3. The page is monetized and promotes merchandise. ECF No. 77-2 at 22, Resp. to Interrog. No. 14; ECF No. 1 ¶ 25. It ran about 40 posts per day, each typically earning $75 to $120. Keith Hodge Decl. ¶¶ 5-7.

AF 21. Defendants could access per-post data "normally," but the Post's data became unrecoverable about September 21, 2025, thirty days after deletion. Keith Hodge Decl. ¶¶ 9-10. Defendants issued no litigation hold. ECF No. 124-4 at 13, Resp. to RFA No. 48.

AF 22. Defense counsel wrote that "[t]he only alleged inclusion of Pastor Smothermon is the use of his image." Ex. 17 at 2 n.1. Counsel called that use "an innocent mistake by communicators whose obvious objective was merely to illustrate reporting on a similarly named individual." Ex. 17 at 3.

AF 23. Defense counsel later wrote, "we can accept, for the purpose of this letter, that you

may be able to demonstrate actual malice, due to recklessness." June 5, 2026 Ltr. at 1, Ex. 18. Plaintiff offers the statement as Defendants' stated assumption for purposes of that letter.

AF 24. Discovery closed September 18, 2026. ECF No. 49 (Scheduling Order). On September 3, 2026, Plaintiff moved to compel documents and ESI and for a neutral forensic examiner. ECF No. 77 (Plaintiff's Motion to Compel). As of ECF No. 126 (Plaintiff's motion to exclude Defendants' expert), no order has been entered on that motion. None has been entered on ECF No. 79 (Plaintiff's motion for protective order) or ECF No. 118 (Plaintiff's emergency motion to stay). None has been entered on ECF No. 91 (Defendants' motion to exclude Plaintiff's testimony or to modify the schedule to depose him) or ECF No. 101 (Defendants' second motion to amend the scheduling order).

AF 25. The native photograph file with its metadata has never been produced. Defendants objected to the request as duplicative (ECF No. 124-4 at 7, Resp. to RFP No. 34), and Kevin Hodge states he "never possessed a native version of the photo" (Kevin Hodge Decl. I ¶ 15).

AF 26. Defendants have not produced the audit log, the remaining Insights data, the publication and removal times, or their communications with Bigly, Nathan Hughes and Kylie Howerton. ECF No. 124-4 at 7-8, 10, Resps. to RFP Nos. 35-37, 45. The pending motion to compel seeks the Meta Business Suite export and the Google activity records for the search. ECF No. 77 (Plaintiff's motion to compel) at 2; ECF No. 77-2 at 114 (proposed consent directive).

AF 27. Plaintiff has not deposed Kevin Hodge or Nathan Hughes. Westbrook Decl. ¶¶ 28-29. He expects that discovery to show who received the notices and what each recipient did, when the Post came down, and what the search returned. Westbrook Decl. ¶¶ 31-34, 39-40.

LEGAL STANDARD

Summary judgment is appropriate only if there is no genuine dispute of material fact. Fed. R. Civ. P. 56(a). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge," and "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). This Court has held that, if the statute

applies in federal court at all, the federal rules govern: "To the extent the Nevada statute creates a procedure whereby the judge makes a finding by a preponderance of the evidence at step one, that directly collides with Federal Rules of Civil Procedure 12 and 56." *Crampton v. City of Henderson*, No. 2:25-cv-02392-APG-MDC, ECF No. 26 (order), at 6 (D. Nev. Sept. 28, 2026); *see Sternberg*, ECF No. 299 (order denying anti-SLAPP motion), at 5-7. Defendants agree that Rule 56 governs. ECF No. 124 at 7. A genuine dispute at either prong defeats the Motion.

PRONG ONE: DEFENDANTS HAVE NOT SHOWN A GOOD-FAITH COMMUNICATION AS A MATTER OF LAW

A. The communication is evaluated as Plaintiff alleges it and it is false

Prong one requires a communication "which is truthful or is made without knowledge of its falsehood." NRS 41.637. The court "must evaluate the communication as it is alleged in the plaintiff's complaint and in any of the plaintiff's clarifying declarations." *Spirtos v. Yemenidjian*, 137 Nev. 711, 715, 499 P.3d 611, 616 (2021). The communication Plaintiff alleges is the post as readers received it: his face, under a Cracker Barrel headline, presented as the executive the text describes. ECF No. 1 ¶¶ 42, 58. Defendants admit that the photograph was of Plaintiff and was used in error. ECF No. 43 at 12:1-10; Ex. 10, Resp. No. 23. Truth is unavailable to them, and the Motion's truth argument (ECF No. 124 at 10) addresses a different communication from the one sued on. Defendants are left with the second alternative: that the post was made without knowledge of its falsehood.

B. Kevin Hodge's declaration does not carry that burden

A declaration of belief can satisfy prong one "absent contradictory evidence in the record." *Stark v. Lackey*, 136 Nev. 38, 43, 458 P.3d 342, 347 (2020). A declaration that supplies no factual basis for the asserted belief does not. *Spirtos*, 137 Nev. at 718. Defendants' declaration fails on both counts.

First, the record contradicts the declaration. The screenshot it offers matches counsel's July 2026 desktop capture, not a phone search in August 2025. Its statement that nothing suggested a second person conflicts with Kevin Hodge's earlier sworn statement that he "assumed" which

person in the results was the executive. Section II.C. Whether Kevin Hodge recognized that he was assuming, and published anyway, is a question of credibility. *See Anderson*, 477 U.S. at 255.

Second, the knowledge question extends past the moment of posting. Defendants' support desk received Legacy Church's notice that afternoon and said it would forward the notice to its marketing department "right away so they can reach out to the website and Facebook/marketing team for the Twins." ECF No. 124-3 at HODGE000137. The post stayed up until Legacy Church staff noted its removal at 6:06 p.m. ECF No. 124-8 at MASONK_000036; AF 3-4. Defendants now swear both that the removal was caused by that notice and that they never received it. A factfinder could find that Defendants continued to publish Plaintiff's photograph after their own team knew it was the wrong man.

Third, the Motion's reliance on an inference of good faith (ECF No. 124 at 10 (citing *Rosen v. Tarkanian*, 135 Nev. 436, 453 P.3d 1220 (2019))) does not fit the standard Defendants must prove in their Motion. *Crampton* holds that a Nevada anti-SLAPP motion in federal court, if the statute applies at all, is decided under Rule 12 or Rule 56. *Crampton*, ECF No. 26 (order denying anti-SLAPP motion), at 7-8. Under Rule 56, "all justifiable inferences are to be drawn in [the non-movant's] favor." *Anderson*, 477 U.S. at 255.

C. The depiction of Plaintiff has no closeness to the asserted public interest

A qualifying communication requires "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." *Shapiro v. Welt*, 133 Nev. 35, 39, 389 P.3d 262, 268 (2017) (quoting *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, 946 F. Supp. 2d 957, 968 (N.D. Cal. 2013)). The public interest Defendants assert is Cracker Barrel's corporate direction. ECF No. 124 at 8-10. Plaintiff's face has no connection to that subject. Defendants themselves say the post "was not about Steve Smothermon." ECF No. 43 at 13:16. The false statement at issue, that this New Mexico pastor is the Cracker Barrel executive, tells no reader anything about Cracker Barrel. Defendants cannot claim both that the post is too remote from Plaintiff to concern him and that his depiction is closely connected to the public issue.

PRONG TWO: PLAINTIFF HAS SHOWN A PROBABILITY OF PREVAILING

A. The post is of and concerning Plaintiff and carries a defamatory meaning

A photograph identifies its subject. "Many might recognize the plaintiff's face without knowing her name." *Peck v. Tribune Co.*, 214 U.S. 185, 189 (1909). A photograph published with a defamatory statement can defame its subject "even in the absence of any express textual connection" between them. *Stanton v. Metro Corp.*, 438 F.3d 119, 128 (1st Cir. 2006); *accord Wallace v. Media News Grp., Inc.*, 568 F. App'x 121, 124 (3d Cir. 2014) (finding it "self-evident" that a plaintiff's photograph placed in an article about another person "could constitute a 'description or circumstance identifying' the plaintiff"). In this District, a court has applied Restatement (Second) of Torts § 564, under which a defamatory communication "is made concerning the person to whom its recipient correctly, or mistakenly but reasonably, understands that it was intended to refer." *Incorp Servs., Inc. v. Nev. Corp. Servs., Inc.*, No. 2:09-cv-01300-RCJ-GWF, 2010 WL 11579416, at *3-4 (D. Nev. Mar. 15, 2010) (quoting Restatement (Second) of Torts § 564).

Defendants argue that everyone who recognized Plaintiff knew the post was a mistake. ECF No. 124 at 14-15. The record shows otherwise. Commenters who saw the photograph believed the man pictured worked for Cracker Barrel. ECF No. 124-9 at 41:23-42:10. The feed displayed his face under a Cracker Barrel headline, with no name. ECF No. 124-3 at HODGE000136. And liability "is not a question of a majority vote." *Peck*, 214 U.S. at 190 (harm measured "in the estimation of an important and respectable part of the community"); *see Stanton*, 438 F.3d at 127.

The sting is a statement of fact. Whether a statement is fact or opinion turns on whether a reasonable person would understand it as a statement of existing fact. *Wynn v. Smith*, 117 Nev. 6, 17, 16 P.3d 424, 431 (2001). The post presents as facts that the man pictured led corporate diversity initiatives and joined the Human Rights Campaign's advisory council. ECF No. 1 ¶ 41. Those statements are verifiable, and as to Plaintiff each is false. Defendants argue that the label "woke" carries no defamatory sting. ECF No. 124 at 13. Their own counsel's January letter said:

"Personally, I too would find such a statement to be an insult." Ex. 17 at 6. Defendants addressed the post to an audience with "#AntiWoke" and "#FamilyValues" (ECF No. 1 ¶ 41), and they argue on prong one that its subject is a matter of intense public concern. Being named as its villain carries a sting with that audience.

The Court need not decide any question of religious doctrine to find a defamatory meaning. A defamatory communication that imputes a "person's lack of fitness for trade, business, or profession," or tends to injure the plaintiff in his business, "is deemed defamation per se and damages are presumed." *Clark Cnty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009); *see Bongiovi v. Sullivan*, 122 Nev. 556, 577, 138 P.3d 433, 448 (2006). A statement that "attacks the individual's business reputation" "may be one for defamation per se." *Clark Cnty. Sch. Dist.*, 125 Nev. at 385-86. The question is how the post's audience would receive the false fact.

B. Ecclesiastical abstention does not reach secular defendants who published a secular falsehood to a secular audience

The ecclesiastical abstention doctrine "is a qualified limitation." *Puri v. Khalsa*, 844 F.3d 1152, 1164 (9th Cir. 2017). It reaches questions "strictly and purely ecclesiastical" in character. *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976) (quoting *Watson v. Jones*, 80 U.S. 679, 733 (1871)). Nevada now permits courts to apply neutral principles of law to disputes involving religious organizations beyond the property context, so long as the court can resolve the issues "without consideration of ecclesiastical or doctrinal matters." *Singh v. Second Jud. Dist. Ct.*, 142 Nev. Adv. Op. 25, 586 P.3d 858, 864-65 (2026) (dispute there "appears to concern NNSS Management's actions, not its beliefs"), *petition for cert. filed*, No. 26-157 (U.S. July 31, 2026).

This dispute turns on actions. Defendants are commentators who run a monetized social-media business. No church tribunal, discipline, governance decision or internal investigation is involved. The issues for trial are whether Defendants published a false fact (that the man pictured is a Cracker Barrel executive), with what fault, and with what harm. None requires the Court to interpret any religious text.

In August 2026 the Second Circuit held that "where an allegedly defamatory statement emerges from a church's protected investigation into a minister's conduct and implicates questions of internal church governance, the church autonomy doctrine bars the claim regardless of whether the statement is repeated beyond the church community." It did not reach "hypothetical defamatory communications by or about religious authorities addressed primarily to secular audiences." *Belya v. Kapral*, 188 F.4th 169, 182 (2d Cir. 2026). This case falls in the category the court did not reach: a communication about a religious leader, made by secular speakers, to a secular audience of six million, on a secular subject.[1]

C. Plaintiff is not a public figure for the controversy that gave rise to this defamation

Whether a plaintiff is a limited-purpose public figure is a question of law. *Bongiovi*, 122 Nev. at 572. Nevada adopted the *Gertz* test, which looks to the plaintiff's participation in "the particular controversy giving rise to the defamation." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 720, 57 P.3d 82, 91 (2002) (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 352 (1974)). The Ninth Circuit asks whether "a public controversy existed when the statements were made," whether the alleged defamation relates to the plaintiff's participation in that controversy, and whether the plaintiff voluntarily injected himself into it. *Planet Aid, Inc. v. Reveal*, 44 F.4th 918, 925 (9th Cir. 2022). The test looks only to a controversy that existed before the publication, because the controversy "must antedate" the publication. *Franchini v. Bangor Publ'g Co.*, 560 F. Supp. 3d 312, 327 (D. Me. 2021). And defendants "cannot, by their own conduct, create their own defense by making the claimant a public figure." *Hutchinson*, 443 U.S. at 135.

1. They hit the wrong man. The controversy that gave rise to this defamation was Cracker Barrel's rebranding and diversity record in August 2025. Plaintiff did not participate in it. Smothermon Decl. ¶¶ 10-13, 18; Shupe Report at 6. Plaintiff did not post, comment, or speak publicly about the Cracker Barrel controversy before or after Defendants' post. Smothermon Decl.

[1] In *McRaney v. North American Mission Board*, 157 F.4th 627 (5th Cir. 2025) (revised Oct. 28, 2025), *cert. denied*, No. 25-807 (U.S. Feb. 23, 2026), the Fifth Circuit held that church autonomy barred a pastor's claims, including defamation, against a denominational mission board. The defendant there was itself a religious body acting on matters of church relations. Defendants here are secular commentators.

¶ 18. Nor did Plaintiff invite or arrange any connection between himself and it. *See id.* The only connection between Plaintiff and that Cracker Barrel controversy was that Defendants placed Plaintiff's photograph above a story about someone else. *See id.* The second *Planet Aid* element, whether the defamation relates to the plaintiff's participation in the controversy, has nothing to operate on. The only link between Plaintiff and the Cracker Barrel controversy is Defendants' post. *See id.* That is the bootstrapping *Hutchinson* forbids. 443 U.S. at 135; *see Planet Aid*, 44 F.4th at 927 n.3 (distinguishing *Hutchinson*).

The Motion attempts to end round this fact by widening the controversy to the culture-war issues the post touched. ECF No. 124 at 19. It cites no authority for its claim that "[a] man who builds a public reputation on one side of a controversy cannot seriously debate" his status when mistakenly identified with the other side. *Id.* at 19. A California court rejected that framing for a pastor, holding that "[t]he subject of morality is too general and amorphous to qualify as such a controversy." *Grenier v. Taylor*, 234 Cal. App. 4th 471, 485 (2015); *see Gallagher v. Connell*, 123 Cal. App. 4th 1260, 1273-74 (2004) (being a member of the clergy does not by itself make one an all-purpose public figure; a defendant may not "create her own defense by turning the victim into a public figure"). Plaintiff's preaching about faith and culture does not make him a participant in every corporate controversy a commentator later calls "woke." The controversy "need not be narrowly defined," *Planet Aid*, 44 F.4th at 928 n.4, but the plaintiff must still have participated in it. Pastor Smothermon did not.

2. Plaintiff is not a general-purpose public figure. A general-purpose public figure has "such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts." *Gertz*, 418 U.S. at 351. A person "well known in some circles" who "had achieved no general fame or notoriety in the community" is not a general-purpose public figure. *Gertz*, 418 U.S. at 351-52. This Court has said, in ruling on a motion to dismiss, that it was "not convinced that a certain number of social media followers gives someone such pervasive fame or notoriety that they are a general purpose public figure." *Davis v. Wells Fargo Bank, N.A.*, No. 2:25-cv-01607-APG-EJY, 2026 WL 1662640, at *8 n.2 (D. Nev. June 9, 2026); *see id.* at *9 (noting the

ruling could change on a summary-judgment record).

The Motion limits its claim to a "general-purpose public figure in New Mexico." ECF No. 124 at 17. Even on that theory, the relevant community is measured "by the distribution of the allegedly defamatory statements." *Chapman v. Journal Concepts, Inc.*, 528 F. Supp. 2d 1081, 1091 (D. Haw. 2007) (finding a surfer a public figure where the magazine circulated within the surfing community that knew him). Defendants distributed this post nationally, to six million followers. ECF No. 124-2 ¶ 2. In that community Plaintiff was unknown. Kevin Hodge had never heard of him. *Id.* ¶ 7. Defendants' reputation expert had never heard of him. Shupe Report at 1. Krisha Mason of Legacy's media team testified that "only people who know what Pastor Steve looks like would know that they made a mistake." ECF No. 124-6 at 67:8-17. *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988), involved a plaintiff who was "concededly a public figure." *Id.* at 49.

The Motion's search-engine theory proves less than it claims. A July 2026 search for one name returns results for the other, including a result about this lawsuit. ECF No. 124 at 18; ECF No. 53-1 ¶ 4 & p. 13. That shows the lawsuit's effect on search results in 2026. It says nothing about Plaintiff's reputation in August 2025.

Additionally, before August 22, 2025, Plaintiff never spoke, preached, wrote, or posted about Cracker Barrel, its logo or restaurant redesign, its diversity programs, or the Human Rights Campaign. Smothermon Decl. ¶¶ 10, 12-13. Plaintiff took no part in the public debate over Cracker Barrel that began in August 2025. *See id.* Plaintiff never voluntarily or prominently engaged in the public controversy regarding Cracker Barrel's logo redesign and rebranding in 2025. *See id.* Nor did Plaintiff ever voluntarily or prominently engage in any of the social media outrage that resulted or surrounded the Cracker Barrel logo controversy. *See id.* Plaintiff never spoke with the press nor was interviewed about Cracker Barrel's logo redesign and rebranding in 2025. *See id.* More importantly, Plaintiff never tried or attempted to influence on inject himself into the Cracker Barrel's logo redesign and rebranding controversy one way or the other. *See id.* In short, Plaintiff never attempted to thrust himself to the forefront of the Cracker Barrel controversy in order to influence the resolution of the issues involved and, therefore, had no impact on the Cracker Barrel

controversy. *See Wolston v. Reader's Digest Ass'n*, 443 U.S. 157 166-167 (1979) (holding that the plaintiff was not a public figure specifically because he had been drawn unwillingly into the controversy, never discussed it with the press, limited his involvement to defending himself, played only a minor role, and did not seek attention or attempt to influence the issue). Despite this, Plaintiff was dragged unwillingly into the controversy due solely to the actions of the Defendants and Defendants' reckless behavior.

3. The fault standard is negligence and the record supports it. A defamation plaintiff must show "fault, amounting to at least negligence." *Pegasus*, 118 Nev. at 718, 57 P.3d at 90.[2] Defendants' own record proves they have met the standard: one image search, no reverse-image search, no review of the image's source or metadata, and an admitted assumption about which man the results showed. *See supra* Section II.C.

D. In the alternative, a jury could find actual malice

Actual malice may be shown where the defendant had "obvious reasons to doubt the veracity" of its reporting but engaged in "purposeful avoidance of the truth." *Eastwood v. Nat'l Enquirer, Inc.*, 123 F.3d 1249, 1251 (9th Cir. 1997) (first quoting *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968); then quoting *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 692 (1989)). Because defendants rarely admit doubt, courts examine circumstantial evidence of what the defendants did. *Eastwood*, 123 F.3d at 1253. The circumstantial evidence here would permit a reasonable jury to find actual malice by clear and convincing evidence; thus, precluding the granting of Defendants' motion for summary judgment:

- Kevin Hodge "assumed" which person in the results was the executive. ECF No. 98-1 ¶ 8. He "did not know what either Steve Smothermon or Steve Smotherman looked like." ECF No. 124-2 ¶ 7. A speaker who knows the identification is an assumption, and does not know what the subject looks like, has an obvious reason to doubt it.

[2] *Pegasus* also states that "a private figure must prove actual malice when the subject matter of the speech is an issue of public concern." 118 Nev. at 721 n.43, 57 P.3d at 92 n.43. Defendants do not cite the footnote. Plaintiff discloses it and responds that the speech that defamed him, the false statement that a New Mexico pastor is a Cracker Barrel executive, addresses no issue of public concern; Plaintiff sues on the misattribution. If the Court applies the actual-malice standard, Section V.D shows a genuine dispute under that standard too.

- Kevin Hodge's description of what the search showed has changed, and the screenshot he offered is a desktop capture defense counsel made nearly eleven months later. Section II.C. The changed account, together with the affirmative evidence listed here, raises a credibility question for the jury. *See Anderson*, 477 U.S. at 255.
- The RJN's own study reports that location and IP address personalize search results (ECF No. 125-9 (Hannak study) at 3), and Defendants' own explainer says incognito mode does not hide the IP address (ECF No. 125-8 (How-To Geek article) at 7).
- Defendants' support desk had the notice that afternoon, but the post stayed up until Legacy Church staff noted its removal at 6:06 p.m. ECF No. 124-3 at HODGE000137; ECF No. 124-8 at MASONK_000036.
- Defendants deny receiving the notice they say caused the removal and deny the absence of verification steps they admit they did not take. Section II.C.

The Motion asserts that "Smothermon has not produced a scintilla of evidence of actual malice." ECF No. 124 at 24. In June, Defendants' counsel wrote: "we can accept, for the purpose of this letter, that you may be able to demonstrate actual malice, due to recklessness." Ex. 18. Counsel's letter cannot be reconciled with the Motion's claim that no evidence of actual malice exists.

E. Plaintiff has evidence of damages and presumed damages are available

Damages are presumed for defamation per se. *Clark Cnty. Sch. Dist.*, 125 Nev. at 385. Presumed damages must be supported by competent evidence, though "not necessarily of the kind that 'assigns an actual dollar value to the injury.'" *Bongiovi*, 122 Nev. at 577. *Mattes v. Ballys Las Vegas*, 227 F. App'x 567 (9th Cir. 2007), on which Defendants rely (ECF No. 124 at 26), is unpublished. It found no imputation of a crime and so no presumed damages. *Id.* at 570. It held the remaining damages evidence too speculative because it rested on "prospective gambling winnings." *Id.* at 571-72.

The record also contains evidence of actual harm. The post reached thousands within two hours. ECF No. 124-3 at HODGE000136. Plaintiff's church told readers the same afternoon that the post was causing "harm to his reputation and our church." ECF No. 124-8 at MASONK_000035. Witnesses described a "massive public response" (ECF No. 124-9 at 62:2-9; *see id.* at 54:11-25, 64:8-12; Ex. 4 (Morin Dep.) at 55:1-56:18), commenters who believed the man

pictured was the executive (*id.* at 41:23-42:10), and harm "[b]ecause that's incorrect about him" (ECF No. 124-6 at 61:6-13). Plaintiff's declaration describes the effect on him and on his ministry. Smothermon Decl. ¶¶ 24-29. Plaintiff was concerned for his safety and for his name. *See id.* at ¶ 25. In the past, when situations brought extreme attention to Plaintiff, the result, at times, has been having his car shot at and other times having to hire private security to guard his home. *See id.* Defendants' post unwillingly put Plaintiff's face on a position opposed to the one Plaintiff is known for among the Legacy Church congregation, before an audience that share many of Plaintiff's own views. *See id.* Defendants' post was another situation that brought unwanted and unsought extreme attention to Plaintiff. For these reasons, Plaintiff was troubled by Defendants' post and made him feel uneasy and anxious about his safety. *See id.*

Moreover, Plaintiff sought and continues to seek support and counsel in response to the distress this situation has caused due to Defendants' actions and conduct. *See id*. at ¶ 29. For the first several months after Defendants made the post, Plaintiff met with his personal counselor on a weekly basis. *See id.* Plaintiff is still meeting with his personal counsel on a monthly basis in which this topic involving the Post is still discussed. *See id.*

Defendants' point that Plaintiff's interrogatory answers were not verified (ECF No. 124 at 26) omits the reason. Plaintiff's medical restrictions during the discovery period are documented on this Court's docket, and Plaintiff sought relief from the schedule on that basis. ECF No. 79-1 (Westbrook declaration supporting Plaintiff's motion for protective order) ¶¶ 5-7; ECF No. 67 (Plaintiff's motion to extend discovery). Plaintiff now provides his testimony by declaration.

F. The proposed amendment does not support summary judgment

ECF No. 52 (Plaintiff's motion for leave to amend) is under submission before the Court. Defendants briefed futility in ECF No. 53 (Defendants' opposition to leave to amend). The Court should decide futility on that motion. If the Court reaches the issue here, the right-of-publicity and unjust-enrichment claims rest on Defendants' own evidence that the page is monetized and that the post earned revenue. Ex. 12 ¶¶ 5, 8. That evidence conflicts with Defendants' denial of any

commercial benefit from their Cracker Barrel posts. ECF No. 124-4 at 14, RFA Resp. No. 52.[3]

IN THE ALTERNATIVE,
THE COURT SHOULD DEFER THE MOTION UNDER RULE 56(d)

If the Court finds the present record insufficient on any element, it should defer or deny the Motion under Rule 56(d). As the accompanying declaration shows, Plaintiff cannot present facts essential to his opposition because they are held by Defendants and their contractors, not by Plaintiff. Westbrook Decl. ¶¶ 24-40. The facts sought are specific. The Google account activity and the native image file would show what Kevin Hodge's search returned and where the photograph came from. The native support ticket and the Meta Business Suite log would show when and to whom Defendants' support desk forwarded Legacy Church's notice. Kevin Hodge's own testimony has never been taken, and his October declaration says ChatGPT helped draft the post's text, though no prompts or outputs have been produced. ECF No. 124-2 ¶ 4; Westbrook Decl. ¶ 34. Each goes directly to knowledge, good faith and actual malice.

Plaintiff sought this material and moved to compel it, with a request for a neutral forensic examiner. ECF No. 77; ECF No. 77-1 (Westbrook declaration in support of motion to compel) ¶¶ 3-4, 13-15. That motion has not been decided. Defendants told Plaintiff that the iPhone used for the search is one Kevin Hodge "still uses." ECF No. 77-2 at 21, Interrog. Resp. No. 11; ECF No. 77-1 ¶ 7. This Court has granted Rule 56(d) relief in a comparable posture. *Sternberg*, ECF No. 299 (order denying anti-SLAPP motion), at 11-12. Defendants should not obtain summary judgment on knowledge while withholding the evidence of what they knew.

DEFENDANTS ARE NOT ENTITLED TO FEES, AND IF THE COURT TREATS THE MOTION AS A SPECIAL MOTION, PLAINTIFF REQUESTS FEES UNDER NRS 41.670(2)

Section I shows that NRS 41.670(1) does not apply. If the Court instead treats the Motion as a special motion to dismiss under NRS 41.660, it should deny it and find it frivolous or

[3] The proposed amended complaint describes the photograph as one of Plaintiff "preaching from a pulpit, holding a Bible," and says its metadata identified a Legacy Church website. ECF No. 52-1 (proposed first amended complaint) ¶¶ 49, 51, 68, 70. Plaintiff does not rely on those descriptions here. The Post as produced shows a headshot (Ex. 6), and Defendants have produced neither the native file nor its metadata. ECF No. 77-1 ¶ 15.

vexatious. In that event, "the court shall award to the prevailing party reasonable costs and attorney's fees incurred in responding to the motion." NRS 41.670(2). The Court may also award "[a]n amount of up to $10,000" and "[a]ny such additional relief as the court deems proper to punish and deter the filing of frivolous or vexatious motions." NRS 41.670(3)(a)-(b).

The record supports that finding. Defendants' own sworn statements contradict the Motion's central facts and the Motion offers a 2026 desktop capture as evidence of an August 2025 phone search. Section II.C. It also seeks fees under a provision whose condition Defendants chose not to meet. Section I.

On this fee question only, Plaintiff also offers Defendants' counsel's letter of May 13, 2026. Ex. 19. Plaintiff does not offer it on liability, on the validity or amount of any claim, or for any purpose Rule 408(a) prohibits. Fed. R. Evid. 408(b); *see Ingram v. Oroudjian*, 647 F.3d 925, 927 (9th Cir. 2011) (per curiam) (holding "the district court did not err by considering settlement negotiations for the purpose of deciding a reasonable attorney fee award"). The letter stated that defense fees were then "approximately $60,000," and described Defendants' plan for the case: "we will develop the facts to put Smothermon in checkmate and then ruin his day." Ex. 19. Under Rule 408(b) and NRS 41.670(3)(b), the Court may consider that statement in deciding whether the Motion was vexatious and what relief would deter a repetition.

Objection to the Late Filing of Defendants' Anti-SLAPP Motion. Additionally, Defendants' anti-SLAPP motion to dismiss is untimely. Under Nev. Rev. Stat. § 41.660, an anti-SLAPP motion to dismiss "must be filed within 60 days after service of the complaint." Nev. Rev. Stat. § 41.660(2). The 60-day deadline period may be extended by the court for good cause shown. *See id.*

Here, Defendants were served with Plaintiff's Complaint as follows: (i) Hodgetwins, LLC was served on November 25, 2025. *See* ECF No. 23; (ii) Kevin Hodge was served on December 22, 2025. *See* ECF No. 26; and (iii) Keith Hodge was "served" on January 27, 2026, by and through his attorney via acceptance of service of process. *See* ECF No. 32.

Accordingly, pursuant to Nev. Rev. Stat. § 41.660, the latest Defendant could have filed

their anti-SLAPP motion to dismiss was March 28, 2026 (sixty (60) days after January 27, 2026. Defendants did not file their anti-SLAPP motion to dismiss until October 19, 2026. Defendants have not shown or demonstrated to the Court any "good cause" for the deadline to be extended and did not seek leave prior to filing its motion. For these reasons, Plaintiff objects to Defendants' late filing of its motion requesting relief under the Nevada Anti-SLAPP law and requests that the Court strike Defendants' anti-SLAPP motion. As a result, Defendants' request for relief under the Nevada Anti-SLAPP law should be denied.

THE COURT SHOULD DENY THE REQUEST FOR JUDICIAL NOTICE TO THE EXTENT IT SEEKS NOTICE OF TRUTH

The Motion uses the articles attached to Defendants' request for judicial notice for the truth of what they report. ECF No. 124 at 4, 19, 22. Judicial notice of published material can show what was in the public realm at the time; it cannot establish that the contents were true. *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010). Exhibits 1 through 4 were published August 25 through 27, 2025, after the post came down, and none mentions Plaintiff. ECF No. 125 (request for judicial notice) at 1:21-2:5. Plaintiff's opposition to the request, filed with this Opposition, sets out the remaining grounds.

CONCLUSION

Defendants published a false statement about a man they had never heard of, about a controversy he never entered, to six million people. The Court should deny the Motion in full, deny the request for fees under NRS 41.670(1), and deny the RJN to the extent it seeks notice of the truth of any document. If the Court treats the Motion as a special motion under NRS 41.660, it should find the motion frivolous or vexatious and award Plaintiff his fees under NRS 41.670(2). In the alternative, the Court should defer ruling under Rule 56(d) until ECF No. 77 is decided and Kevin Hodge has been deposed.

Respectfully submitted this 9th day of November, 2026.

/s/ Nicole A. Westbrook
Nicole A. Westbrook
G. Michael Jackson Esq.
JONES, DAVIS & JACKSON, P.C.

Attorneys for Pastor Steve Smothermon

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 9, 2026, I caused the foregoing document to be electronically filed with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document was served on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

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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 Nevada limited liability company;

Defendants.

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

APPENDIX TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND FOR RELIEF UNDER THE NEVADA ANTI-SLAPP LAW (ECF No. 124)

Plaintiff Pastor Steve Smothermon opposes ECF No. 124 (Defendants' Motion for Summary Judgment and for Anti-SLAPP Relief) (the "Motion"). The following is Plaintiff's Appendix in support of Plaintiff's opposition response containing Plaintiff's exhibits and an index of Plaintiff's exhibits filed in support of his opposition response.

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Deposition Exhibit 1

Exhibit 6: Facebook post at issue (bates labeled HODGE000001-000002)

Exhibit 7: Email thread Defendants produced at Bates HODGE000136-000138, which begins with an email sent by Krisha Mason of Legacy Church to Defendants' customer-support address at 3:12 p.m. on August 22, 2025.

Exhibit 8: Defendants' Second Amended Responses to Plaintiff's First Set of Interrogatories, served June 10, 2026.

Exhibit 9: Defendants' Responses to Plaintiff's Third Set of Interrogatories, served August 10, 2026.

Exhibit 10: Defendants' Responses to Plaintiff's Third Set of Requests for Admission, served August 10, 2026.

Exhibit 11: Defendants' Responses to Plaintiff's First Set of Requests for Admission, served May 21, 2026.

Exhibit 12: Defendants' Responses to Plaintiff's Second Set of Requests for

Production, served July 30, 2026, including the Declaration of Keith Hodge dated July 29, 2026 that Defendants served with them at Bates HODGE000145-000147.

Exhibit 13: Defendants' Responses to Plaintiff's Second Set of Interrogatories, served July 30, 2026.

Exhibit 14: Letter from Defendants' counsel dated July 31, 2026, responding to my July 28, 2026 deficiency letter.

Exhibit 15: Deficiency letters from Plaintiff's counsel's office to Defendants' counsel on April 21, May 26, June 30, July 9, July 28, and August 25, 2026.

Exhibit 16: Letter Defendants' counsel sent to Plaintiff's counsel by email on January 27, 2026.

Exhibit 17: Letter from Defendants' counsel, undated on its face, to Plaintiff's counsel received by email on or about January 30, 2026.

Exhibit 18: Letter Defendants' counsel sent to Plaintiff's counsel by email on June 5, 2026, following our June 4, 2026 meet-and-confer. In it, Defendants stated that they could bring an anti-SLAPP motion in federal court only "after the development of facts pertaining to prong one."

Exhibit 19: Letter Defendants' counsel sent to Plaintiff's counsel by email on May 13, 2026.

Exhibit 20: Cover and report pages 1 through 6 (PDF pages 1-7) of the expert report of Defendants' expert Shupe, which Defendants served on July 16, 2026 with their First Designation of Expert Witness.

Exhibit 21: Defendants' original Responses to Plaintiff's First Set of Interrogatories, served May 22, 2026.

Respectfully submitted this 9th day of November, 2026.

/s/ Nicole A. Westbrook
Nicole A. Westbrook
G. Michael Jackson Esq.
JONES, DAVIS & JACKSON, P.C.

Attorneys for Pastor Steve Smothermon

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 9, 2026, I caused the foregoing document to be electronically filed with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document was served on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

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/s/ *Nicole A. Westbrook*

EXHIBIT A

EXHIBIT A

DEFENDANTS' CONTRADICTORY STATEMENTS

Subject	One statement by Defendants	A second statement by Defendants
Whether Legacy Church's notice reached Defendants	Defendants "have never seen either of them" and "did not receive" the Mason email or the Carroll notice. ECF No. 124-4 (Defendants' Fourth Set responses, verified by both brothers) at 13-14, RFA Resp. Nos. 47, 50. "Had he or his church contacted me or Keith before suing, we would have corrected the photograph immediately." (ECF No. 124-2 ¶ 11.)	"To the best of their knowledge, the Post was removed from Facebook because Krisha Mason contacted Defendants' customer support team." ECF No. 77-2 (Defendants' discovery responses, filed with Plaintiff's motion to compel) at 32, Interrog. Resp. No. 21. "Defendants complied with those instructions." Ex. 10, Resp. No. 30 (signed by counsel). Kevin Hodge's own declaration: Defendants' merchandise-site operator "deleted the Post … after receiving an email from a Legacy Church employee." ECF No. 124-2 ¶ 9.
What the support desk did with the notice	The Motion: "Defendants themselves did not see either demand." ECF No. 124 at 5.	Defendants' support desk, the same afternoon: "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." ECF No. 124-3 at HODGE000137.
Keith Hodge's role	"Keith had no involvement in the Post and did not know it existed until this lawsuit was served." ECF No. 124-2 ¶ 3; *see* ECF No. 124 at 1 n.1.	Keith verified Defendants' second-set interrogatory responses as "true of our own knowledge" (Ex. 13 at 8; ECF No. 77-2 at 25), which state that both brothers "have final say regarding content posted on the Hodgetwins Facebook page." Ex. 13, Resp. No. 13. Keith's July 29, 2026 declaration: "Our contractor deleted the post immediately upon being told that the post had the wrong photo." Ex. 12 ¶ 11.
Whether the photograph resembles Plaintiff	Comparing the Post photograph with a still of Plaintiff: "These do not even remotely look like the same person." ECF No. 43 at 12:23.	"Throw glasses on Smotherman and it simply looks like Smothermon aged a bit." ECF No. 124 at 23.
The device used for the search	"[I]ncognito mode on my iPhone." ECF No. 98-1 (Kevin Hodge declaration opposing Plaintiff's motion to compel) ¶ 5; *see* ECF No. 77-1 (Westbrook declaration supporting the motion to compel) ¶ 7.	The screenshot the same declaration presents as the search results is a desktop Chrome window. It matches a capture defense counsel made on July 11, 2026. ECF No. 98-1 ¶ 6; ECF No. 53-1 (Green declaration) ¶ 4 & p. 13.

What the search showed	"Nothing in the results I saw suggested that there was a second person with a similar name." ECF No. 124-2 ¶ 6.	"I assumed the person who appeared most often in the search results was the former Cracker Barrel executive Steve Smotherman." ECF No. 98-1 ¶ 8. His October declaration says the results showed "image after image of one person." ECF No. 124-2 ¶ 6.
Whether anyone verified the identity	Denied that no one independently verified the identity, compared the photograph to a known image, or investigated. ECF No. 124-4 at 12, 14, RFA Resp. Nos. 41, 42, 51.	Admitted no reverse-image search and no review of the metadata. *Id.* at 11, RFA Resp. Nos. 37-38. The only step described is one image search. ECF No. 124-2 ¶¶ 5-8.
Commercial benefit	Denied deriving any commercial benefit, including monetization, from the August 21-30, 2025 series of Cracker Barrel posts. ECF No. 124-4 at 14, RFA Resp. No. 52.	In August 2025 the account "was making approximately $3,500 per day," and the post "probably earned around $20 to $40." Ex. 12 ¶¶ 5, 8.

EXHIBIT 1

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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 Nevada limited liability company;

Defendants.

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

DECLARATION OF PASTOR STEVE SMOTHERMON IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND FOR RELIEF UNDER THE NEVADA ANTI-SLAPP LAW (ECF No. 124, Defendants' motion)

I, Pastor Steve Smothermon, declare as follows:

1. My name is Steve Smothermon. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and within my personal knowledge. I am over eighteen years old; I am of sound mind; and I am competent to make this declaration and to testify to the truthfulness of the matters stated herein. I have personal knowledge of the facts stated within this declaration and could testify to them if called as a witness. I make this declaration under 28 U.S.C. § 1746 in support of Plaintiff's opposition to ECF No. 124 (Defendants' motion for summary judgment and for relief under the Nevada anti-SLAPP law).

2. I am the Senior Pastor of Legacy Church, Inc. in Albuquerque, New Mexico ("Legacy Church"), and have held that position since January 2002. Before that, I served as Senior Pastor of Church on the Move in Roswell, New Mexico, from 1994 through 2001, and as a pastoral care pastor at Church on the Move in Tulsa, Oklahoma, from 1992 to 1994.

3. I brought this case solely in my individual capacity. Legacy Church, Inc. is a separate nonprofit religious corporation and is not a party to this lawsuit.

4. My work is ministry to the congregation of Legacy Church: preaching, teaching, pastoral care, weddings, funerals, baptisms, communion, and outreach in the Albuquerque area, including a homeless ministry.

5. Legacy Church has grown over the years. Today it has several campus locations, a school, a paid staff (of which I am one of them), and an online service that streams Legacy Church's worship services. I preach at those services as part of my duties with Legacy Church.

6. I do not personally operate, nor am I in charge of in any way of, Legacy Church's YouTube channel, Facebook page, Instagram account, website, or podcast feed. Other members of the Legacy Church staff, in Legacy Church's creative and digital departments, run those accounts and decide what is posted on them, including recordings of my and the other Legacy Church pastors' sermons.

7. The audience figures defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC (the "Defendants") attribute to me, including "over 28 million people" reached and "over 440,000 followers" and 91,000 YouTube channel subscribers, are figures for Legacy Church's ministry accounts, drawn from Legacy Church's own website and annual report. They are not a count of people who know me by name or face.

8. Most of the attention Legacy Church's ministry has received from the press has come from local Albuquerque and New Mexico outlets about matters in our community.

9. I acknowledge the matters Defendants cite. In June 2015, a CNN reporter contacted me, and I gave an interview about the Supreme Court's then-pending same-sex marriage decision and a pledge I had signed. KRQE in Albuquerque reported on that interview. I have testified under

oath in federal court concerning COVID-related issues. Legacy Church hosted an event with Charlie Kirk on August 10, 2025. From the pulpit, I have preached on marriage, sexuality, and what I and others call "wokeness," and recordings of some of those sermons appear on Legacy Church's YouTube channel.

10. Before August 22, 2025, I never spoke, preached, wrote, or posted about Cracker Barrel, its logo or restaurant redesign, its diversity programs, or the Human Rights Campaign. I took no part in the public debate over Cracker Barrel that began in August 2025. I never voluntarily or prominently engaged in the public controversy regarding Cracker Barrel's logo redesign and rebranding in 2025. Nor did I ever voluntarily or prominently engage in any of the social media outrage that resulted or surrounded the Cracker Barrel logo controversy. I never spoke with the press nor was interviewed about Cracker Barrel's logo redesign and rebranding in 2025. And I never tried or attempted to influence on inject myself into the Cracker Barrel's logo redesign and rebranding controversy one way or the other. Because of this, I had no impact on the Cracker Barrel controversy. Despite this, I was brought into the controversy due solely to the actions of the Defendants and their reckless behavior.

11. Before this lawsuit, I had never heard of Keith Hodge or Kevin Hodge or of Hodgetwins nor had I ever met Keith Hodge or Kevin Hodge and had no communication with either of them or with Hodgetwins, LLC.

12. I have never worked for Cracker Barrel Old Country Store, Inc. in any capacity. I have never held a management or training position with Cracker Barrel, never had any role in its employee groups or its diversity programs, and have never had any business or other connection with the company. I never participated in nor was I involved in anyway with Cracker Barrel's logo redesign and rebranding in 2025. More importantly, I never played any role and never sought any attention regarding Cracker Barrel's logo redesign and rebranding in 2025.

13. I have never been a member of the Human Rights Campaign's Business Advisory Council. I have never been a member of, worked for, or supported the Human Rights Campaign.

14. I am not the "Steve Smotherman" described in Defendants' Facebook post of August 22, 2025, titled "Cracker Barrel's WOKE Past Comes Back to Light" (the "Post"). My last name is spelled S-M-O-T-H-E-R-M-O-N. The Post describes a former Cracker Barrel management and training leader who left the company in 2020 and joined the Human Rights Campaign's Business Advisory Council. None of that describes me.

15. The photograph in the Post is a photograph of me. A true and correct copy of the Post, as Defendants produced it in this case, bates labeled as HODGE000001-000002, is attached as Exhibit A. I recognize the man in the photograph (document bates labeled HODGE000002) as myself.

16. I still look much as I do in that photograph. I still wear my hair combed back and still wear similar glasses. People who know me as the pastor of Legacy Church recognized me from the photograph at once.

17. As far as I know, the Post is the only time anyone has confused me with the Cracker Barrel executive.

18. I did not post, comment, or speak publicly about the Cracker Barrel controversy before or after the Post, and I did not invite or arrange any connection between myself and it. The only connection between me and that controversy is that Defendants placed my photograph above a story about someone else.

19. I learned of the Post on the afternoon of August 22, 2025, shortly after it appeared, from members of the Legacy Church staff and my family. That afternoon I spoke by telephone with members of the Legacy Church staff, including Valentin Molina, who oversees the digital department at Legacy Church.

20. My son, Steve Smothermon Jr., and members of the Legacy Church staff told me that several Legacy Church members were commenting on the Post that Defendants had used my photograph for the wrong man, and that Legacy Church was asking Defendants to remove the Post.

21. On August 22, 2025, my attorneys at Jones, Davis & Jackson, P.C. were contacted on my behalf about the Post. That afternoon, Thomas C. Carroll of that firm sent Defendants a

Facebook message stating that the firm represented the man whose picture was wrongfully attached to the Post. The message said I had never had any connection with Cracker Barrel and instructed Defendants to remove my picture and post an apology. He sent that message with my authorization.

22. Later that day I was told that the Post had been taken down.

23. On or about August 22, 2025, I met with members of the Legacy Church staff and with Legacy Church's Board of Directors to address the reaction to the Post.

24. I was shocked and deeply distressed when I learned of the Post. Thousands of people saw my face presented as the face of a corporate executive who, according to the Post, had promoted positions contrary to the teachings I have preached for more than thirty years.

25. I was concerned for my safety and for my name. In the past, when situations like this happened that brought extreme attention to me, I had my car shot at and other time had to hire private security to guard my home. The Post put my face on a position opposed to the one I am known for among the Legacy Church congregation, before an audience that shares many of my own views. The Post was another situation that brought unwanted and unsought extreme attention to me. For these reasons, I was troubled by the Post and made uneasy and anxious about my safety.

26. After the Post, comments and posts appeared that tied my photograph to the Cracker Barrel executive. Commenters on the Post wrote that the man pictured "looks like the current ceo, just transitioned." Separately, one Facebook user addressed a post to "PASTOR STEVE SMOTHERMAN" that called him a "FAKE … CHRISTIAN UP IN LEGACY!" and complained that the user's father and his daughter had been denied by Legacy Church. That post appears among Facebook search results for "steve smotherman" and does not mention the photograph or Cracker Barrel.

27. Members of the Legacy Church congregation and others contacted church staff about the Post, and Legacy Church's digital staff spent the day answering comments and inquiries about it.

28. Being shown to thousands of strangers as a man who championed causes I have spent my ministry preaching against has caused me embarrassment, humiliation, and distress, and has damaged my reputation for holding to what I teach.

29. I have not sought medical treatment because of the Post. But, I did seek and continue to seek support and counsel in response to the distress this situation has caused. For the first several months after the Post, I met with my personal counselor on a weekly basis. I am still meeting with my personal counsel. Now, on a monthly basis, in which this topic involving the Post is still discussed.

30. At trial I will testify as to the harm to my reputation and ask the jury to compensate me accordingly.

31. No one from Hodgetwins, LLC, Keith Hodge, or Kevin Hodge ever contacted me, Legacy Church, or anyone I know of to ask whether the man in the photograph was me before the Post was published, or afterward to apologize.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed within the United States, at Albuquerque, New Mexico, on November 9, 2026.

Pastor Steve Smothermon

EXHIBIT A

The Post, as produced by Defendants and bates labeled as HODGE000001-000002.

EXHIBIT 1-A

12:01
◀ Messenger
5Gw 80

EXHIBIT 1-A

The Hodgetwins
1h ·

🚨 Cracker Barrel's WOKE Past Comes Back to Light 🚨

The backlash over Cracker Barrel's recent logo change and rebrand is exposing the chain's long march toward woke politics.

👤 Meet Steve Smotherman — a former Cracker Barrel management and training leader. After leaving the company in 2020, he joined the Human Rights Campaign's (HRC) Business Advisory Council, one of the most powerful LGBT lobbying groups in America.

📌 During his time at Cracker Barrel (2005–2020), Smotherman:
• Founded an LGBT employee group that grew from just 6 members into a powerful force inside the company.
• Helped move Cracker Barrel's HRC Corporate Equality Index score from ZERO in 2002 to 80 by 2021.
• Pushed policy changes like adding "sexual orientation" to nondiscrimination rules.
• Championed corporate activism, including:
– Pulling Duck Dynasty products in 2014.
– Banning a pastor with traditional views in 2019.
– Sponsoring Nashville Pride in 2024.
– Launching rainbow-colored rocking chairs in 2023.

Now, as Cracker Barrel scraps its "old-timer" logo and faces accusations of erasing its heritage, many Americans see this as part of the same woke transformation.

Users on X are connecting the dots — accusing the chain of abandoning tradition, family, and Southern values in exchange for appeasing the woke mob.

Cracker Barrel used to be about heritage and heartland America. Today, critics say it's becoming just another corporation chasing trends instead of honoring tradition.

Comment as Michael Morin

2:14 2:35

Photo Done

Now, as Cracker Barrel scraps its "old-timer" logo and faces accusations of erasing its heritage, many Americans see this as part of the same woke transformation.

Users on X are connecting the dots — accusing the chain of abandoning tradition, family, and Southern values in exchange for appeasing the woke mob.

Cracker Barrel used to be about heritage and heartland America. Today, critics say it's becoming just another corporation chasing trends instead of honoring tradition. 🇺🇸

#AntiWoke #ProtectHeritage #TraditionMatters #FamilyValues #CrackerBarrel #AmericaFirst



EXHIBIT 2

EXHIBIT 2

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Attorneys for Plaintiff Pastor Steve Smothermon

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON,

Plaintiff,

v.

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

Defendants.

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

DECLARATION OF NICOLE A. WESTBROOK IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND FOR RELIEF UNDER THE NEVADA ANTI-SLAPP LAW (ECF No. 124, Defendants' motion), AND UNDER FED. R. CIV. P. 56(d)

I, Nicole A. Westbrook, declare as follows:

1. I am an attorney admitted pro hac vice in this action and counsel of record for Plaintiff Pastor Steve Smothermon. I am an attorney with Jones, Davis & Jackson, P.C. I have personal knowledge of the facts stated in this declaration and, if called as a witness, could and would testify competently to them.

2. I submit this declaration for two purposes. The first is to authenticate the exhibits to Plaintiff's opposition to ECF No. 124 that are not self-authenticating. The second is to set out, under Federal Rule of Civil Procedure 56(d), the facts Plaintiff has been unable to obtain, why he

has not obtained them, and how they would show a genuine dispute of material fact. Exhibit numbers below match Plaintiff's Index of Exhibits.

3. Exhibit 1 is the Declaration of Pastor Steve Smothermon, with its Exhibit A, executed for this opposition.

4. Exhibit 3 is a true and correct copy of excerpts from the certified transcript of the August 11, 2026 deposition of non-party Krisha Mason, taken in this action.

5. Exhibit 4 is a true and correct copy of excerpts from the certified transcript of the August 11, 2026 deposition of non-party Michael Morin, taken in this action.

6. Exhibit 5 is a true and correct copy of excerpts from the certified transcript of the July 21, 2026 deposition of Thomas C. Carroll II, taken in this action, with Deposition Exhibit 1.

7. Exhibit 6 is a true and correct copy of the Facebook post at issue (the "Post"), as Defendants produced it in this action at Bates HODGE000001-000002.

8. Exhibit 7 is a true and correct copy of the email thread Defendants produced at Bates HODGE000136-000138, which begins with an email sent by Krisha Mason of Legacy Church to Defendants' customer-support address at 3:12 p.m. on August 22, 2025. Defendants first produced it on June 11, 2026. The same pages were the only documents non-parties Blake Rynders and Kylie Howerton produced in response to Plaintiff's Rule 45 subpoenas.

9. Exhibit 8 is a true and correct copy of Defendants' Second Amended Responses to Plaintiff's First Set of Interrogatories, served June 10, 2026. Exhibit 21 is a true and correct copy of Defendants' original Responses to Plaintiff's First Set of Interrogatories, served May 22, 2026.

10. Exhibit 9 is a true and correct copy of Defendants' Responses to Plaintiff's Third Set of Interrogatories, served August 10, 2026.

11. Exhibit 10 is a true and correct copy of Defendants' Responses to Plaintiff's Third Set of Requests for Admission, served August 10, 2026.

12. Exhibit 11 is a true and correct copy of Defendants' Responses to Plaintiff's First Set of Requests for Admission, served May 21, 2026.

13. Exhibit 12 is a true and correct copy of Defendants' Responses to Plaintiff's Second Set of Requests for Production, served July 30, 2026, including the Declaration of Keith Hodge dated July 29, 2026 that Defendants served with them at Bates HODGE000145-000147.

14. Exhibit 13 is a true and correct copy of Defendants' Responses to Plaintiff's Second Set of Interrogatories, served July 30, 2026.

15. Exhibit 14 is a true and correct copy of a letter I received from Defendants' counsel dated July 31, 2026, responding to my July 28, 2026 deficiency letter.

16. Exhibit 15 is a true and correct copy of the deficiency letters my office sent to Defendants' counsel on April 21, May 26, June 30, July 9, July 28, and August 25, 2026.

17. Exhibit 16 is a true and correct copy of a letter Defendants' counsel sent to Mr. Jackson and me by email on January 27, 2026.

18. Exhibit 17 is a true and correct copy of a letter from Defendants' counsel, undated on its face, which I received by email on or about January 30, 2026.

19. Exhibit 18 is a true and correct copy of a letter Defendants' counsel sent to me by email on June 5, 2026, following our June 4, 2026 meet-and-confer. In it, Defendants stated that they could bring an anti-SLAPP motion in federal court only "after the development of facts pertaining to prong one."

20. Exhibit 19 is a true and correct copy of a letter Defendants' counsel sent to me by email on May 13, 2026. It is offered only on Defendants' request for attorney's fees under NRS 41.670, and not on the merits of any claim or defense.

21. Exhibit 20 is a true and correct copy of the cover and report pages 1 through 6 (PDF pages 1-7) of the expert report of Defendants' expert Shupe, which Defendants served on July 16, 2026 with their First Designation of Expert Witness.

22. Plaintiff's opposition also cites documents already on this Court's docket. They include ECF No. 43 (Defendants' amended answer), ECF No. 53-1 (declaration of Defendants' counsel filed July 15, 2026), and ECF No. 77-2. They also include ECF No. 98-1 (Kevin Hodge's declaration dated Sept. 16, 2026 and filed Sept. 17, 2026), the exhibits to ECF No. 124, and ECF

No. 125 (Defendants' request for judicial notice). Those are cited by docket number and are not re-attached.

23. Discovery closed on September 18, 2026 under the Scheduling Order. Dispositive motions were due October 19, 2026, the day Defendants filed ECF No. 124.

24. On September 3, 2026, before discovery closed, Plaintiff moved to compel under ECF No. 77 (Plaintiff's motion to compel discovery responses and ESI and for a neutral forensic examiner). That motion asks for:

- (a) the photograph used in the Post in its native format, with its EXIF, IPTC, and system metadata and its source URL;
- (b) the Meta Business Suite export and activity and audit log for the Post;
- (c) Kevin Hodge's Google Web & App Activity or Takeout records for the search he describes, or his signature on a consent directive permitting Google to release them;
- (d) the native export of Freshdesk Ticket #529834, the customer-support ticket generated by the Mason email;
- (e) Defendants' internal communications about the Post and its removal;
- (f) a Rule 26(b)(5) privilege log; and
- (g) appointment of a neutral forensic examiner to image the iPhone 16 Pro Max Kevin Hodge says he used.

The Court has not ruled on ECF No. 77.

25. Defendants' only response on the Facebook data has been that they "attempted to extract data about the post from Facebook but were unable to do so" and were "engaging someone with greater technical facility." Nothing further has been produced on that subject.

26. Plaintiff served Rule 45 subpoenas on three Arkansas non-parties who work on Defendants' merchandise website and customer support: Nathan Hughes, Blake Rynders, and Kylie Howerton. The subpoenas to Mr. Rynders and Ms. Howerton were personally served on July 13, 2026, and required production by July 31, 2026. Counsel for the non-parties accepted service of a deposition subpoena for Mr. Hughes on August 4, 2026 (after defense counsel offered to

accept the subpoena but subsequently refused). The only documents produced were the three pages already produced as HODGE000136-000138, as flattened images without native files or metadata, and counsel for Mr. Hughes asserted that "everything responsive" was attorney work product without a privilege log.

27. On September 18, 2026, Plaintiff moved in the Western District of Arkansas to compel all three non-parties to search the documents and ESI in their possession, custody, or control and to produce native files with metadata. The motion also asks that Mr. Hughes be ordered to log any material withheld as privileged or work product and to appear for deposition. Defendants opposed that motion on October 8, 2026, and it has not been decided. (W.D. Ark. No. 5:26-mc-00158, Docs. 2, 3, 7.)

28. Plaintiff has not deposed Kevin Hodge, the Defendant who says he alone researched, drafted, and published the Post. This deposition is dependent on Defendants complying with their discovery obligations which has, to date, not occurred.

29. Plaintiff has not deposed Nathan Hughes, for similar reasons and those listed in ¶ 37.

30. The other motions bearing on the scope and schedule of discovery are also unresolved. They are ECF No. 52 (Plaintiff's motion for leave to file a first amended complaint, taken under submission Aug. 3, 2026), ECF No. 66 (Defendants' motion to amend the scheduling order), and ECF No. 79 (Plaintiff's motion for protective order). They also include ECF No. 91 (Defendants' motion to exclude Plaintiff's testimony or, alternatively, to modify the scheduling order to depose him), ECF No. 101 (Defendants' second motion to amend the scheduling order), and ECF No. 118 (Plaintiff's emergency motion to stay).

31. Defendants' accounts conflict on who received notice of the false post at issue in this case and when. Kevin Hodge declares that he never saw the Mason email and learned only after suit, from Nathan Hughes, that Hughes had deleted the Post months earlier after a Legacy Church employee emailed. Defendants verified answer to Interrogatory No. 21 (Ex. 9) says, to their best knowledge, that the Post came down "because Krisha Mason contacted Defendants'

customer support team." Keith Hodge declares that "[o]ur contractor deleted the post immediately" on learning of the wrong photo. He adds, "[i]t is our understanding that Smothermon's lawyer demanded that the post be deleted." In a counsel-signed response to RFA 30, Defendants objected that Plaintiff's attorneys and an employee demanded removal and "Defendants complied with those instructions," then denied the request. Defendants also answer that they "did not receive the 'Mason Email' or the 'Carroll Notice'" and have "never seen either of them."

32. Mr. Hughes's testimony and files, the native Freshdesk ticket, and the Meta audit log would establish who at Hodgetwins received the 3:12 p.m. Mason email and the 3:27 p.m. Carroll message, what each recipient did and told whom, and the exact time the Post came down. Defendants' own figures put removal "three to four hours" after a publication time of about 1:00 p.m. PDT, which places it after both notices in any continental U.S. time zone.

33. That evidence goes to whether Defendants continued to publish after they knew the photograph was not of Steve Smotherman, and to whether Kevin Hodge's account of what he knew can be credited. ECF No. 124 rests on that account.

34. Kevin Hodge declares that he found the photograph through a Google Images search on his phone in incognito mode, and that he used ChatGPT to help draft the Post and summarize a Fox Business article. The image Defendants filed as the result of that search with ECF No. 98-1 is the same capture Defendants' counsel made on July 11, 2026 and filed with ECF No. 53-1. No ChatGPT prompts or outputs have been produced. The evidence that would answer these questions is the native photograph with its source URL and metadata, the Google activity records, the ChatGPT prompts and outputs, a forensic image of the phone, and Kevin Hodge's deposition. It would show where the photograph came from, whether Plaintiff's name or his church appeared with it, and what Kevin Hodge saw before he published.

35. Defendants moved to exclude Plaintiff's testimony or, in the alternative, to modify the scheduling order so that they could depose him. Plaintiff's declaration for this opposition is limited to facts within his personal knowledge.

36. Plaintiff pursued discovery throughout the discovery period. My office sent written deficiency letters on April 21, May 26, June 30, July 9, July 28, and August 25, 2026, and conferred with Defendants' counsel on May 4, June 4, July 22, August 27, and August 28, 2026. On August 27 and 28, Defendants' counsel refused to produce the native ESI, the Meta exports, and the search records. Plaintiff filed ECF No. 77 six days later. Plaintiff conferred with the non-parties' counsel on August 7, 14, 17, 19, and 20, 2026 before moving in Arkansas.

37. Counsel for Mr. Hughes offered August 26, 2026, for his deposition, and on August 4, 2026 he accepted service of a subpoena for that date. On August 17, 2026, he wrote that "everything responsive to his request is attorney work product," and he provided no privilege log. On August 19, I told him that Plaintiff could not take the deposition without the documents and would reschedule. On August 20, 2026, Defendants' counsel objected to the deposition going forward on August 26 for insufficient notice. On August 24, I confirmed to Defendants' counsel that the deposition would not proceed because Plaintiff had not received complete responses to its document subpoenas. Plaintiff then moved in Arkansas to compel. ¶ 27.

38. Kevin Hodge was never deposed as he never responded to the discovery requests posed to him, in particular, production of critical documents. Deposing him without discovery would have been a futile waste of resources.

39. Because ECF No. 77, ECF No. 101, and ECF No. 118 remain pending and the Arkansas motion is unresolved, Plaintiff has had no ruling permitting the discovery described above, and the information it seeks is held by Defendants and their contractors, not by Plaintiff.

40. If the Court does not deny ECF No. 124 on the present record, Plaintiff asks that the Court defer ruling or deny it under Rule 56(d). Plaintiff asks for time to obtain the rulings on ECF No. 77 and the Arkansas motion and the production they order, and the depositions of Kevin Hodge and Nathan Hughes. Plaintiff also asks for time to obtain the ChatGPT prompts and outputs referred to in ECF No. 124-2 ¶ 4 and a forensic image of the iPhone 16 Pro Max.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed within the United States, at Denver, Colorado, on November 9, 2026.

Nicole A. Westbrook

Nicole A. Westbrook

EXHIBIT 3

EXHIBIT 3

In the Matter Of:

SMOTHERMON vs HODGE ET AL

2:25-CV-01858-APG-BNW

KRISHA MASON

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.	§	

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

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Richard McLaron, Clerk Jones Davis & Jackson

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COURT REPORTER: The time is 10:01 a.m.

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

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

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

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

KRISHA MASON

Having been first duly sworn, testified as follows:

EXAMINATION

BY MR. GREEN:

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

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

And you are here today to give your

(Exhibit 1 marked for identification.)

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

A. (Witness reviews documents.)

Okay, I've reviewed it.

Q. Okay. Do you recognize this document?

A. Yes.

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

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

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

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

A. People from the creative team at the church.

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

A. Yes.

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

A. Yes.

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

Q. Is that, no, you don't -- no, he never has, or, no, you don't remember?
A. I can't recall any time he spoke about this post at a staff meeting.
Q. So, you've never spoken with him about the Facebook post?
A. No.
Q. Okay. So, you found out about the Facebook post through the group chat?
A. Yes.
Q. Do you recall having any in-person discussions with anyone about the Facebook post?
A. Only when asked by Michael Morin, who is also being deposed -- like is that the correct term?
Q. Yes. We are speaking with him later today in a deposition.
A. He requested --
Q. Who's Michael Bard (sic) -- let's -- what? I'm sorry.
A. He requested that I share the interaction that I had with Kylie from Hodgetwins.
Q. Who did he want you to share it with?
A. With him. With my -- the -- my supervisors, my directors, my pastors. The higher-ups basically.
Q. Who is Michael Morin?

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

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

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

(Court reporter clarification.)

THE WITNESS: Matthew Luckett.

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

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

A. An estimate would be 20 plus.

Q. All right. Would that number be the same

today, or would it be more or less?

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

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

A. I asked if anyone had contacted the Hodgetwins.

Q. Okay.

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

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

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

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

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

A. Yes.

Q. Okay.

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

(Previous question is read back into the record.)

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

(Previous answer is read back into the record.)

Q. (By Mr. Green) Okay. What else did you say in the group chat, Ms. Mason?
A. Pertaining to this subject?
Q. Pertaining to the Facebook post?
A. Nothing.
Q. Nothing?
A. That was my only response.
Q. Okay. Is there anything else you can remember about your participation in the chat?
A. I looked at other people's responses.
Q. What other responses did people give?
A. They were shocked. They were surprised.
Q. Why were they shocked?
A. I -- I mean, I was shocked. And I can -- I can't speak for others, but I can speak for myself, so my reaction was shocked because it was just a big mistake, a very big mistake.
Q. Tell me more about why you were shocked.
A. It was a very large obvious photo of my pastor being called an -- I don't know, it -- like it was just a shocking content. We couldn't believe -- I couldn't believe, personally, that they had the wrong picture up, so . . .
Q. Did anyone believe that Pastor Smothermon worked for Cracker Barrel when they saw the post in the

group chat?

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

Q. How about you?

A. No.

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

A. No.

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

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

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

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

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

A. Can you repeat that question?

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

(Previous question is read back into the record.)

THE WITNESS: Could you reword the question?

Q (By Mr. Green) No.

Just answer the question.

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

MR. BISHOP: Okay. Objection. Vague.

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

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

(Previous question is read back into the record.)

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

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

MR. BISHOP: Objection. Calls for speculation.

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

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

MR. GREEN: I disagree with the objection

in that I'm not asking for speculation.

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

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

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

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

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

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

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

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

Q. So, the same as a year ago?
A. Yes.
Q. Okay. Who's the intern that's on the team now?
A. Like I said, I believe she is an intern, her name is Davina. I don't recall her last name.
Q. Was she there a year ago?
A. I can't recall. I don't remember.
Q. Are your interns typically college students?
A. Um, sometimes they are college students. Sometimes they could be in high school or between high school and college.
Q. Is Davina a college student?
A. I'm not entirely sure.
Q. Okay. So, the official Legacy Church account was the only account affiliated with the church that commented on the post?
A. Yes. As far as I know.
Q. Was there discussion in the group chat regarding what to do about the Facebook post?
A. I asked that question, if anyone had contacted the Hodgetwins company. I don't recall anyone responding to my question, so . . .
Q. You contacted the Hodgetwins, correct?
A. Yes. I went on their website -- that was my first and only time on their website -- and I found a

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

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

A. Okay.

(Exhibit 2 marked for identification.)

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

A. You said Exhibit 2?

Q. Correct.

A. (Witness reviews documents.)

Okay.

Q. Is this document familiar to you?

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

Q. Okay.

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

Q. Turn to the final page of that exhibit.

A. I'm there.

(Court reporter clarification.)

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

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

needed to be removed and taken down immediately.

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

A. No.

Q. Okay. You did that on your own?

A. I did.

Q. Okay. And --

(Court reporter caution.)

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

COURT REPORTER: That's okay. Go ahead.

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

MR. GREEN: It's absolutely fine.

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

MR. GREEN: That is defamation, Mark.

(Off-the-record discussion.)

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

A. Yes.

looked like he was woke?

A. I can't recall that specifically.

Q. Okay.

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

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

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

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

Is that how Pastor Smothermon spells his name?

A. No.

Q. How does Pastor Smothermon spell his name?

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

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

A. Through the years, yes, incorrectly.

Q. Tell me about those times.

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

Q. How many times do you recall people misspelling his name prior to this Facebook post?
A. Um, probably two to three times.
Q. What were they?
A. I know that one was in a video that I was reviewing, and I made sure that my fellow employee knew that they spelled his name wrong.
Q. Oh, it was an employee? A video produced by an employee of Legacy Church?
A. It was in review of it, so it was -- I was reviewing the video and spellchecking the video before it was aired anywhere.
Q. So, who made the video?
A. I can't recall. That was a very long time ago.
Q. When was it?
A. Probably when I first got employed here.
Q. So, about --
A. A long, long -- like a long time ago.
Q. So, about ten years ago?
A. Eight to ten years ago.
Q. Was this a video that was produced by the church?
A. Most likely, yes. It was -- but it never aired that way, it's always checked before.
Q. Who was the person who made the video?

A. I can't recall.
Q. And what did you do when you saw that his name was misspelled in that video?
A. I just let them know, hey, you misspelled that, and they said, oh, you're right.
Q. Okay. Did Pastor Smothermon know that that happened?
A. No. Like I said --
Q. Do you recall --
A. -- it never aired. It was in the editing process before it was finished, before it was even exported.
Q. Did it air after they -- after the spelling was corrected?
A. I assume so.
Q. Okay. What happened to the person that accidentally misspelled his name? Do you recall?
A. I mean, nothing. Because no one --
Q. All right.
A. -- ever knew that they misspelled it because it was fixed before it was a problem.
Q. Tell me about the other times that you recall somebody -- or tell me about the other times where someone misspelled Pastor Smothermon's name.
A. I recall local news outlets that would write

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

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

A. From what I recall, yeah.

Q. What news outlets have misspelled his name?

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

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

A. Maybe twice since I've noticed.

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

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

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

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

recall, those three.

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

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

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

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

Q. Misspelled?

A. Um-hum.

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

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

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

A. Yeah, I would assume so.

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

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

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

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

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

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

A. If people believed that?

Q. Yes.

A. Absolutely it would be damaging.

Q. Why?

A. Because that's incorrect about him.

Q. How would it damage him?

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

Q. What are your spiritual beliefs?

A. Biblical beliefs.

Q. Explain.

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

of LGBT rights?

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

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

A. Some, yes.

Q. Why?

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

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

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

Q. Okay.

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

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

A. Not necessarily.

Q. Why?

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

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

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

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

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

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

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

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

A. I have not.

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

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

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

A. Other than the Hodgetwins post, no.

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

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

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

A. Online.

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

A. Not exactly, no.

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

A. No.

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

Q. With --

A. -- with that ideology.

Q. With woke?

A. Yes.

Q. What does woke mean to you?

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

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

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

Q. What is the right word?

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

Q. And what aspects of being woke concerned you?

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

Q. Why?
A. Because it's in direct contrast to my Christian beliefs.
Q. How?
A. Everything that the woke ideology believes is almost always opposite to the values and standards represented in scripture.
Q. Specifically, what aspects of the woke ideology?
A. For example, believing in affirming a person's belief that they are not the gender that they are born physically with.
Q. Okay.
A. I would, from my Biblical viewpoint, believe that that person does not need to be affirmed in their mind, but rather --
Q. Okay.
A. -- helped in their mind.
Q. And does the Hodgetwins' post here say anything about gender identity?
A. I mean, gender identity is looped in with LGBT. T is trans, that's gender identity, that's the same thing. That's just a symbol -- that's a single example of woke ideology versus Christian standards and --
Q. Well, then give me some more.

A. How many more?
Q. As many you can think of.
A. I mean, that would take hours to explain the difference between woke ideology and Christian Biblical thought. There are many, many examples of the differences between true Christian ideology and woke ideology. I'm not a scholar so -- nor am I a political -- I'm not a political commentator, I'm not a scholar, so I don't have those just off the top of my head.
Q. Do you know whether there are Christian churches that do believe in affirming gender identity?
A. There are churches that claim to be Christian that affirm that, but I would not --
Q. Okay.
A. -- consider them a church I would ever consider --
(Court reporter clarification.)
THE WITNESS: I would never consider attending such a church.
Q. (By Mr. Green) Why?
A. Because they ascribe to ideology that is in direct contrast to scripture.
Q. Are you aware that some churches interpret the word of God differently with regard to these issues?

A. Incorrectly, yes.
Q. So, if he was a pastor of one of those churches, this article may have been a compliment?
A. Not according to my belief, no.
Q. Well, I mean -- I mean, if -- I know not according to your belief, but if -- but you -- do you agree that if he was a pastor at a church that did interpret the word of God differently, that this article may have been perceived as a positive thing?
(Court reporter clarification.)
Q. (By Mr. Green) That interpreted the word of God differently than this may have been a compliment?
A. I guess in some circles of thought, but he's not a pastor of that kind of church. And I would not consider that kind of church to be an actual true Christian church following Biblical beliefs, so I would not consider them a Christian church.
Q. Why?
A. Because they do not follow the Bible. If you don't believe the Bible, then you're not a Christian.
Q. So, the only reason this post was damaging is because Legacy Church believes in what you perceive as true Christianity; is that correct?
A. 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. I don't know why we're speaking in hypotheticals.

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

A. (Reading)

Pushed policy changes like adding sexual orientation to nondiscrimination rules.

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

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

Q. Correct. That's what it says.

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

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

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

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

A. Yes.
Q. Is Pastor Smothermon in the group chat?
A. No.
Q. Do you have the letter that your attorney sent me before this deposition?
A. Um, I don't think so.
Q. Okay.
A. A letter?
Q. Yeah. And it has documents attached to it, some of which appear to be from the group chat you're referencing.
A. Okay.
Q. But who's Matt Luckett?
(Court reporter clarification.)
MR. GREEN: Matt Luckett, L-U-C-K-E-T-T.
THE WITNESS: Matt Luckett is a member of the production team under the creative team. He's an employee here.
Q (By Mr. Green) Okay. Did anyone at Legacy Church ask you to buy anything from the Hodgetwins website?
A. No. No.
(Exhibit 6 marked for identification.)
Q (By Mr. Green) Turn to what we've attached as Exhibit 6, it's entitled Plaintiff's Responses to

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:

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

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

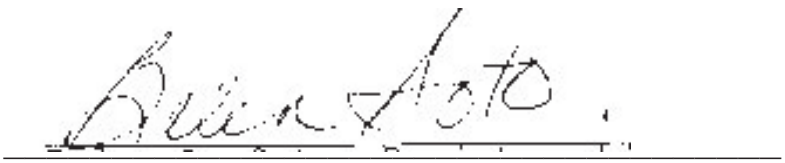
That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

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 4

PLAINTIFF'S EXHIBIT 4

In the Matter Of:

SMOTHERMON vs HODGE ET AL

2:25-CV-01858-APG-BNW

MICHAEL MORIN

August 11, 2026

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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

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

A P P E A R A N C E S

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Danielle Darkenwald, Randazza Office Assistant

Richard McLaron, Clerk Jones Davis & Jackson

I N D E X

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

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

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

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

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

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

That's correct, right, Mr. Bishop?

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

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

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

Yep. Yes, we do. Yeah.

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.

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

Q. Do you recall --

A. Wrong photo, wrong guy.

Q. -- who from the church --

(Court reporter caution.)

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

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

Q. Okay.

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

Q. So many what?

A. People reaching out about the post.

Q. People from the church?

A. Correct.

Q. And what were they saying about the post?

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

Q. They were making these comments on the post?

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

Q. These are comments --
A. -- side actually.
(Court reporter caution.)
Q. (By Mr. Green) Go ahead.
A. The gist of comments I remember, yes.
Q. Those were comments --
A. That's to explain that everyone from church is commenting they have the wrong photo, the wrong guy.
Q. But you don't recall any specific names of people?
A. The screenshot is all I have of specific names.
Q. Okay.
A. I don't have any other screenshots of all the comments.
Q. Do you recall any comments to the Facebook post that were not from church members?
A. I'm sure. There were -- there were many comments, it would -- I couldn't assume that they were all church members.
Q. Do you remember any comments specifically?
A. Um, the one I remember is Craig's, that's the one I just screenshotted before.
Q. Were there any comments that believed the person pictured in the Facebook post worked for Cracker Barrel?

A. Yes.
Q. What did those comments say?
A. There were people criticizing the CEO.
Q. Okay. What were some of the comments that were critical of the CEO?
A. Um, just it -- their audience is anti-woke people, so people saying Cracker Barrel is going to go down, they don't know their audience, along those lines. What a failure it is of the -- the LGBTQ+ policy that they were -- their CEO was known to do.
Q. Can you read the comment from Steve Smothermon, Jr. -- the comments from Steve Smothermon, Jr. right after your everyone from church is commenting they have the wrong photo of the wrong guy?
A. Yeah. He said: (Reading)

> What the hell is that? Did they just lie about my dad?

Q. And he makes comments underneath that as well.
A. Yeah.
Q. Let's -- go ahead.
A. You want me -- you want me to read that?
Q. Yeah. Go ahead and read it.
A. (Reading)

> We need to sue these piece of shit mother fuckers. My blood is boiling. We need

homosexuals?

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

Q. Yes.

A. We view them as creations of God, but we do not condone their sexuality. I mean, we condone -- sorry --

(Court reporter clarification.)

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

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

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

Q. Have you spoken with anyone personally?

A. Personally?

Q. Yes.

A. Personally thinking that post was him, no.

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

A. No.

Q. Is that a "no"?

A. Correct, no.
Q. Are you aware of anyone who saw the Facebook post and thought that Steve Smothermon, meaning the pastor, was a former Cracker Barrel executive?
A. No.
Q. Are you aware of anyone who saw the post and thought that Pastor Steve Smothermon, the plaintiff, was on the Human Rights Campaign's business advisory council?
A. No.
Q. Are you personally aware of any confusion, at all, that was created by the post?
A. Firsthand?
Q. Yes.
A. I -- I'm aware of secondhand, as I manage the team that responds and manages the social networks for us. Firsthand, no --
Q. And what's --
A. -- secondhand, yes.
Q. What -- what secondhand confusion are you aware of?
A. Oh, it would be a report from our director saying there's many comments, and they're all --
Q. Who's your director?
A. That's Valentin Molina.

THE WITNESS: So, that's okay?

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

THE WITNESS: Um, my package is 150.

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

A. No idea.

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

A. No idea.

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

A. No.

Q. Why not?

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

Q. Why is that?

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

Q. What do you mean by that?

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

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

by the post?

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

Q. What do you --

A. It's a massive platform.

Q. What do you mean by massive public response?

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

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

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

A. You're saying on the post --

Q. Yes.

A. -- that's what it says?

Q. Yes.

How many other times are you --

(Court reporter caution.)

THE WITNESS: Yes.

MR. GREEN: That was it.

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

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

correct.

Q. You said not often at all --

A. Yeah.

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

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

Q. Okay. Anything else?

A. Uh-uh.

Q. How about in the media?

A. Not that I'm aware of.

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

A. Correct.

Q. How about anyone within the church?

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

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

A. No.

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

A. No.

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

A. Correct.
Q. All right. Are you aware of any financial impact on Pastor Smothermon from the post?
A. I have no idea. I don't know anything about his financial situation.
Q. All right. Are you aware of any reputational impact on Pastor Steve Smothermon due to the post?
A. I don't know, like I said, if you're asking me firsthand. Secondhand I manage the department that oversees the hate comments every week all the time. So, secondhand I would 100 percent say yes. Me, personally for a conversation with him, no.
Q. What would a second -- what secondhand impacts are you referring to?
A. Secondhand is we -- we have five managing social teams that publish his content, our church account. All of the blockers for all of the people that hate him, hate our church, mostly coming from the liberal left, the LGBTQI+, the wokeism.

What that CEO of Cracker Barrel is doing, it's a constant barrage, because his messaging is so clear of what he stands for, and what he's fighting for, specifically in New Mexico.
Q. And how would you define what he's fighting for?

A. Biblical truth, and --
Q. Biblical truth --
A. -- anti-woke politics.
Anti-woke -- which would lead to anti-wokeism politics.
Q. Okay.
A. Anti-abortion, anti-LGBTQ, the non-deconstruction of the nuclear family.
Q. What do you mean by anti-LGBTQ?
A. The Biblical truth that does not support homosexuality.
Q. And what do you mean by does not support?
A. The Bible does not affirm male-male, female-female sexual relationships.
Q. Are you aware of any media inquiries the church received about the post?
A. I'm not aware.
Q. Was the post covered on local Albuquerque news?
A. I do not know, I was in Nepal.
Q. Has anybody ever discussed it with you?
A. No.
Q. And Pastor Smothermon has never mentioned the post to you personally?
A. Correct.
Q. Do you have any information about lost speaking

engagements?
A. I do not.
Q. No?
A. I do not manage that part of his schedule.
Q. Any information about lost book sales due to the post?
A. I do not have any information.
Q. Aware of anyone who left the church after, due to the post?
A. I do not know anyone personally.
Q. You never had any conversations with Krisha Mason about the post?
A. That day?
Q. Oh, since -- I mean, it -- well, let's start with that day.
A. Yeah. That day, no.
Q. Okay.
A. I don't -- I mean, other than what's in the Telegram with the rest of the group, um, that I remember, yeah, the rest of us, just in that group Telegram with the staff team.
Q. How about since that day --
A. We --
Q. -- with Ms. Mason?
A. We talked about how we both got subpoenaed.

Q. Okay.
A. We didn't -- yeah, we didn't understand what that was.
Q. Okay. Based upon your own observations, has attendance at the church decreased since August 22nd, 2025?
A. No.
Q. Has anyone spoken with you about Pastor Smothermon being depressed about the post?
A. No.
Q. How about whether he sought medical treatment because of the post?
A. I do not know, no.
Q. Are you personally aware of anyone who decreased their donations to the church after the post because of the post?
A. No, sir.
Q. How long has Pastor Smothermon been with Legacy Church?
A. Over 20 years.
Q. He's not the founder of the church; is that correct?
A. That's correct.
Q. All right. Do you know when the church was founded?

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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

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:

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 5

PLAINTIFF'S EXHIBIT 5

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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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

REMOTE AND VIDEOTAPED DEPOSITION OF
THOMAS C. CARROLL, II
JULY 21, 2026

REMOTE AND VIDEOTAPED DEPOSITION OF THOMAS C. CARROLL, II, produced as a witness at the instance of the Defendants and duly sworn, was taken in the above styled and numbered cause on Tuesday, July 21, 2026, from 12:01 p.m. to 1:26 p.m., before TAMARA CHAPMAN, CSR, RPR-CRR in and for the State of Texas, reported remotely by computerized stenotype machine in Austin, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record herein.

Job No. J15120019

A P P E A R A N C E S

FOR THE PLAINTIFF AND WITNESS:
Gary Michael Jackson
JONES, DAVIS & JACKSON, P.C.
25350 Magic Mountain Parkway, Suite 300
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mjackson@jonesdavis.com

FOR THE DEFENDANTS:
Ronald D. Green
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ALSO PRESENT:
Brent Jordan, Videographer
Richard McLaren, law student, Randazza Legal Group

I N D E X

PAGE

THOMAS C. CARROLL, II

EXAMINATION
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Note: Exhibits were not provided to reporter.

E X H I B I T S

NO. DESCRIPTION PAGE
Exhibit 1 12
Exhibit 2 12
Exhibit 3 25

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

My name is Brent Jordan. I'm the remote videographer for today. The court reporter is Tamara Chapman. We are representing Esquire Deposition Solutions. 12:02

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

MR. GREEN: Good morning, this is -- good morning or good afternoon, depending on where you're at, I guess. This is Ronald Green of Randazza Legal Group in Las Vegas, Nevada. I am counsel for the defendants in this case. 12:02

MR. JACKSON: Good morning. Mike Jackson, appearing on behalf of the deponent, Mr. Carroll. 12:02

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

EXAMINATION 12:02

Q. The last line of the -- your message is: Time is of the essence.

What did you mean by that?

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

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

A. Yes.

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

A. I do not.

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

A. I know eventually they did. 12:40

Q. Okay. But you do not know when?

A. Correct.

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

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

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

A. I don't think this addresses that.
Q. Okay.
A. It just says take it down.
Q. So if they had seen your message -- so if they had seen your message, would you agree that they complied with it if they took the post down? 12:41
MR. JACKSON: Objection; speculative. Go ahead and answer.
A. Not fully because they didn't -- I don't believe they issued an apology. Or if they did, I'm -- I'm unaware of it. 12:41
Q. Okay. Do -- do you know whether Smothermon is taking the position that your message triggered a preservation requirement by the Hodgetwins? 12:42
MR. JACKSON: Objection; calls -- calls for communication between attorney and client.
In your mind does this message tell the Hodgetwins that they have to preserve all evidence related to the Facebook message that they -- the Facebook post they made about Pastor Smothermon? 12:42
MR. JACKSON: Calls for communications between attorney and client.
In your mind does this message tell the Hodgetwins that they have to preserve all evidence related to 12:42

Facebook message -- the Facebook post that they made about Pastor Smothermon?

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

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

A. I'm not sure.

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

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

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

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

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

to retain documents?

A. It does not.

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

A. This message does not. 12:44

Q. Does it ask the recipient to retain analytics?

A. This message does not.

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

A. This message does not.

Q. Does it ask them to retain anything?

A. It does not.

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

A. Among other things, yes.

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

A. Correct.

Q. Does it tell them to do anything else?

A. No.

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

Hodgetwins?

A. I'm not sure.

Q. Okay. Did you send any other additional communications to the Hodgetwins via any other method? 12:46

A. Not that I can recall.

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

A. I did not.

Q. Let's go back to the message for a second. 12:46

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

A. I think it's -- yeah, I think it is. 12:46

Q. Okay.

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

Q. I completely understand. I'm not either. I have not had a Facebook account in 12 years. So 12:46 we're both flying a little blind here.

But are these other messages that you -- on the left-hand side these are messages -- these are other messages that you've either sent or received. 12:47

2026?

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

Q. Okay.

A. I don't know. 12:57

Q. Okay. So to the best of your knowledge, your message is the only attempt that anyone at your firm made to communicate with the Hodgetwins before the -- between August 22nd, 2025, and February 15th, 2026? 12:57

A. I'm not aware of any others.

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

A. Not -- not right now. 12:57

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

A. I think because soon thereafter it was told to me that the message was down. 12:58

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

A. No.

Q. Okay. Was it -- do you recall if it was someone from Jones Davis & Jackson or if it was 12:58

someone that represented the client, someone with -- that worked with Legacy Church?

A. I don't.

Q. Okay. Did you take any steps on or after August 22nd, 2025, to preserve evidence related to the Hodgetwins' Facebook post? 12:59

A. Can you say that again.

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

(The requested material was read.) 01:00

A. Not that I recall.

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

A. I don't. 01:00

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

A. Statements that place someone in an improper or untrue light. To say things that are untrue about a person and cause damage. 01:00

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

A. I did not.

Q. Okay. Do you know if anyone else at 01:01

Jones Davis & Jackson did?

A. I do not.

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

A. I did not.

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

A. No.

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

A. I don't know.

Q. Okay. 01:02

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

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

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

A. Why don't you tell me.

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

A. Generally, yes.
Q. Okay. Do you know whether if anyone affiliated with Pastor Smothermon asked Meta or Facebook to preserve anything related to the post?
A. I'm not aware of that. 01:03
Q. Are you aware of anyone in your firm asking Meta or Facebook to preserve anything related to the post?
A. No.
Q. Are you aware of anyone associated with 01:03
or affiliated with Pastor Smothermon asking Hodgetwins to preserve anything related to the post?
A. No.
Q. Are you aware of your firm asking the Hodgetwins to preserve anything related to the post? 01:03
A. No.
Q. Are you aware of any attempts by anyone affiliated with Pastor Smothermon to communicate with the Hodgetwins from the day -- strike that.
Are you aware of anyone affiliated with 01:04
Legacy Church attempting to contact the Hodgetwins from August 23rd, 2025, through October 1st, 2025?
A. Not that I can recall.
Q. Are you aware of anyone from your firm attempting to contact the Hodgetwins from 01:04

A. Over what time frame are you talking about?

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

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

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

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

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

A. No, I don't.

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

A. No.

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

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

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

sent, say within -- before October 1st, 2025?
A. No.
Q. Okay. So they did not speak with you -- did you speak with anyone at your firm about the lawsuit that was going to be filed before it was filed? 01:08
A. I can't remember.
Q. Did you have any involvement in the preparation of the complaint against the Hodgetwins?
A. No. 01:09
Q. Did you read the complaint before it was filed?
A. Not that I can recall.
Q. Is there a reason that you can't recall anything? Is it just that this was not something you were to have -- I'll just -- is there -- do you -- 01:09
Is there a reason why you can't recall anything today?
A. Because my involvement in this was mainly a one-day exercise and -- 01:09
Q. Okay.
A. -- I was not intimately involved in this dispute.
Q. Okay. So August 22nd, 2025, the day that 01:09

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

MR. JACKSON: Objection; asked and answered.

Q. You can answer. 01:13

A. I do not.

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

A. I don't recall. 01:13

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

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

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

MR. JACKSON: Objection.

A. I'm not aware of.

MR. JACKSON: Calls for speculation.

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

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

MR. JACKSON: Objection; calls for speculation.

Q. You can answer. 01:14

A. I'm not aware of any.

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

A. I am not. 01:14

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

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

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

A. We're getting an echo.

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

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

(Discussion off the written record.)

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

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.

CIVIL ACTION NO. 2481CV00580

REPORTER'S CERTIFICATION
DEPOSITION OF THOMAS C. CARROLL, II
TAKEN JULY 21, 2026

I, TAMARA CHAPMAN, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, THOMAS C. CARROLL, II, 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 original deposition was delivered to RONALD D. GREEN;

That a copy of this certificate was served on all parties and/or the witness shown herein on _____.

I further certify that pursuant to FRCP No.

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
Firm Registration No. 77
ESQUIRE DEPOSITION SOLUTIONS, LLC
9901 IH 10 West, No. 800
San Antonio, Texas 78230
210.331.2280

EXHIBIT 5
Deposition Exhibit 1

G. Michael Jackson, State Bar No. 1894
Nicole A. Westbrook, *pro hac vice*
JONES, DAVIS & JACKSON, P.C.
25350 Magic Mountain Parkway, Suite 300
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nwestbrook@jonesdavis.com

Attorneys for Plaintiff Pastor Steve Smothermon and Thomas C. Carroll

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON, Plaintiff, v. **KEITH HODGE**, an individual; **KEVIN HODGE**, an individual; **HODGETWINS, LLC**, a Nevada limited liability company; Defendants.	Case No.: 2:25-cv-01858-APG-BNW **THOMAS C. CARROLL'S RESPONSES TO DEFENDANTS' DOCUMENTS TO BE PRODUCED ATTACHED AS EXHIBIT "A" TO THE DEPOSITION SUBPOENA**

Pursuant to Rules 45 (c), (d), (e), and (g) of the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Nevada, Plaintiff Pastor Steve Smothermon ("Plaintiff") and Deponent Thomas C. Carroll ("Carroll") hereby submits Carrolls' responses and objections to Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC's ("Defendants") Subpoena to Testify at a Deposition and to produce documents identified in Exhibit "A" attached thereto.

GENERAL OBJECTIONS

These general objections apply to each and every request for "Documents to be produced identified in Exhibit "A". The assertion of specific objections in

response to a particular request does not waive or limit these general objections, which are incorporated by reference into each specific response:

1. Privilege: Plaintiff and Carroll object to each request to the extent it seeks information, documents, or ESI protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege, protection, or immunity.

2. Confidentiality and Third-Party Privacy: Plaintiff and Carroll object to each request to the extent it seeks confidential, proprietary, or private financial, organizational, or religious counseling information belonging to Legacy Church, its staff, or third-party parishioners.

3. Lack of Possession, Custody, or Control Over Non-Party Documents and Devices: Plaintiff and Carroll object to each request to the extent that it seeks documents, ESI, communications, or tangible things not within the personal possession, custody, or control of Plaintiff or Carroll in their individual capacity.

RESPONSES TO EXHIBIT "A" DOCUMENTS TO BE PRODUCED

1. **Request**-All drafts of the message that you sent to the Hodgetwins' Facebook account on August 22, 2025, at 3:27 p.m. CDT.

Response-Plaintiff and Carroll object to the extent this Request seeks communication protected by the attorney-client privilege or attorney work-product doctrine.

Subject to and without waving these objections, Carroll has no drafts of the message sent.

2. **Request**-Documents sufficient to show that the message that you sent to the Hodgetwins' Facebook account on August 22, 2025, at 3:27 p.m. CDT was successfully delivered to the Hodgetwins' Facebook account.

Response-Please see the message sent attached hereto as Exhibit "1".

3. **Request**-Documents sufficient to show whether the message that you sent to the Hodgetwins' Facebook account on August 22, 2025, at 3:27 p.m. CDT was opened and or read.

Response-Carroll has no such documents.

4. Request- Documents sufficient to show the name of the Facebook account that you used to send the August 22, 2025, 3:27 p.m. CDDT message to the Hodgetwins' Facebook account.

Response-Please see the face page attached hereto as Exhibit "2".

/s/ G. Michael Jackson
Nicole A. Westbrook
G. Michael Jackson Esq.
JONES, DAVIS & JACKSON, P.C.

Attorneys for Pastor Steve Smothermon and Thomas C Carroll

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 20, 2026, I caused the foregoing document to be emailed to the following.

Ronald D. Green, NV Bar No. 7360
ecf@randazza.com
RANDAZZA LEGAL GROUP, PLLC
8991 W. Flamingo Rd., Ste. B
Las Vegas, NV 89147

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

/s/ G. Michael Jackson

EXHIBIT "1"

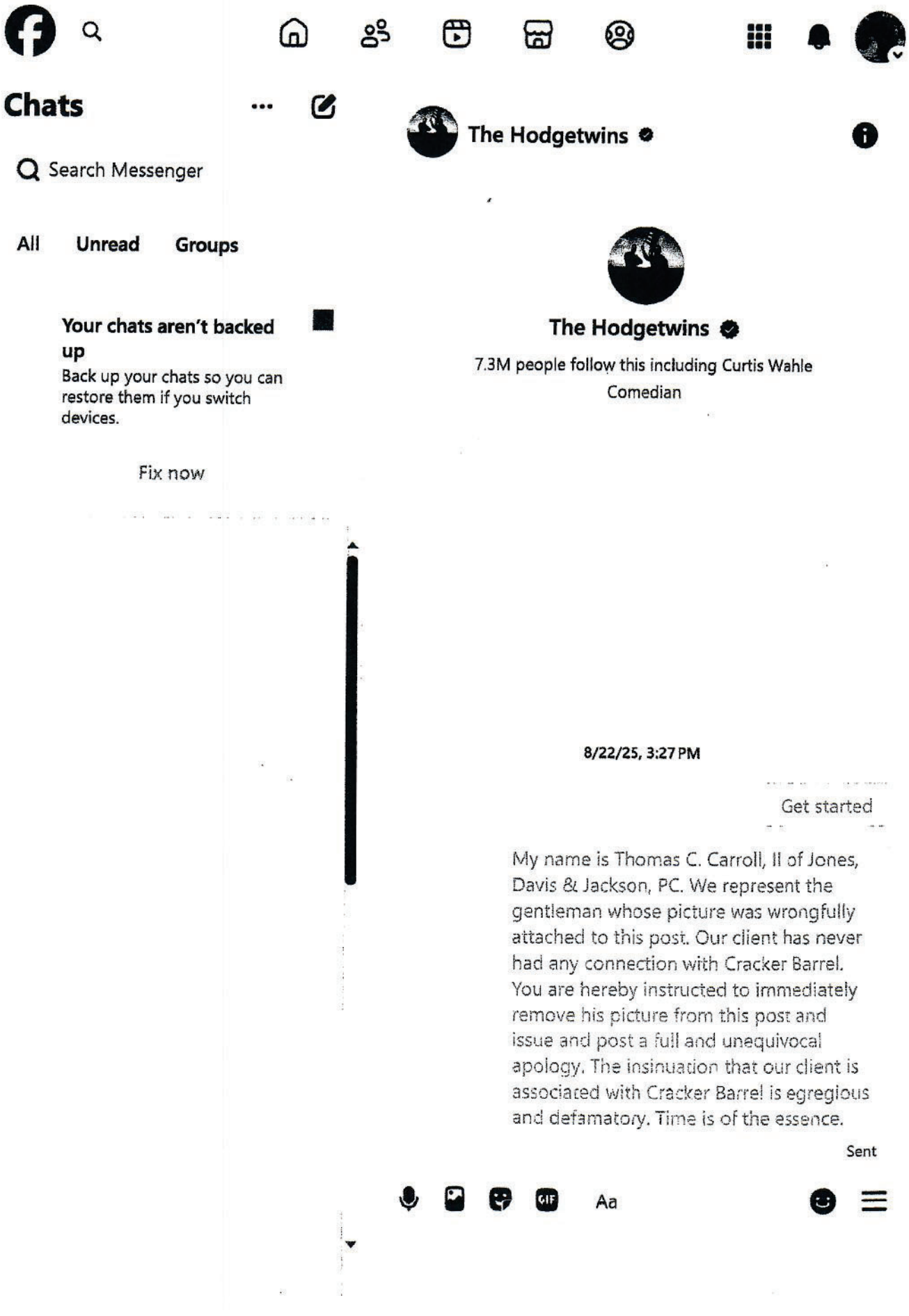
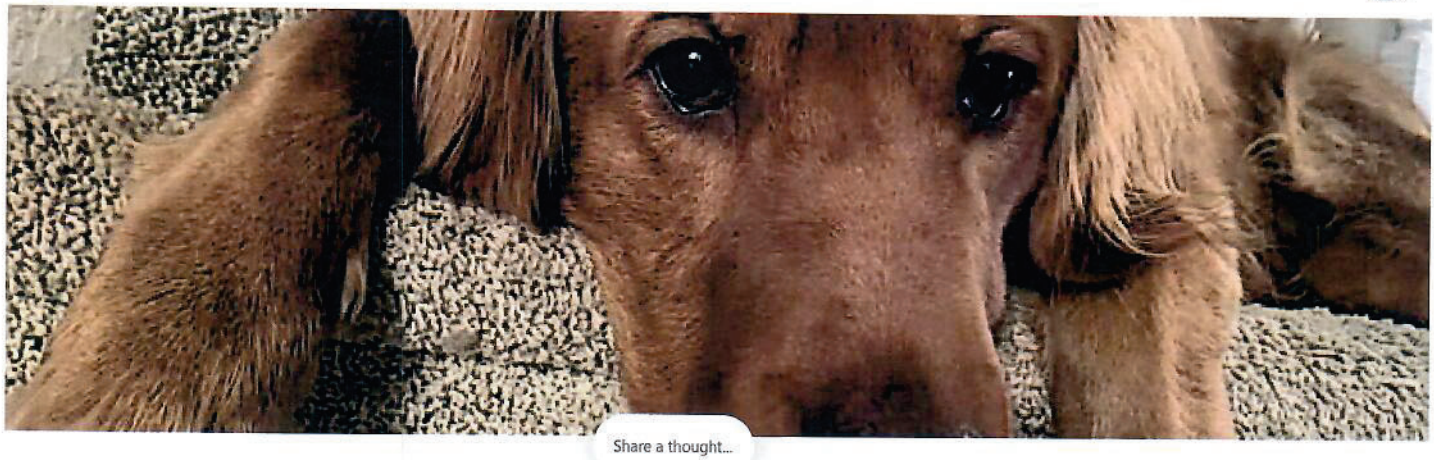

Chats
Search Messenger
All
Unread
Groups
Your chats aren't backed up
Back up your chats so you can restore them if you switch devices.
Fix now
The Hodgetwins
The Hodgetwins
7.3M people follow this including Curtis Wahle
Comedian
8/22/25, 3:27 PM
Get started
My name is Thomas C. Carroll, II of Jones, Davis & Jackson, PC. We represent the gentleman whose picture was wrongfully attached to this post. Our client has never had any connection with Cracker Barrel. You are hereby instructed to immediately remove his picture from this post and issue and post a full and unequivocal apology. The insinuation that our client is associated with Cracker Barrel is egregious and defamatory. Time is of the essence.
Sent
Aa

EXHIBIT "2"



Share a thought...



Thomas Carroll

57 friends

Add to story Edit profile

Plano, TX Jones, Davis & Jackson SMU

People You May Know

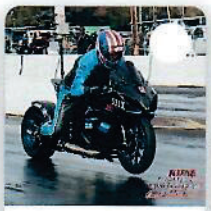
See all



Jessica Mingo
3 mutual friends
Add friend



Melissa Mercer
6 mutual friends
Add friend



Tim Dudley
3 mutual friends
Add friend



Gary Upchurch
Add friend



Matt Somers
1 mutual friend
Add friend



Kenneth Jenks
Add friend



Six Red
1 mu
Ad

All About Friends Photos Reels More

Personal details

Lives in Plano, Texas

From Fairfax, Virginia

August 5, 1963

Family
Sydney Carroll

Male

What's on your mind?

Live video Photo/video Life update

Posts

Filters Manage posts

List view Grid view

EXHIBIT 6

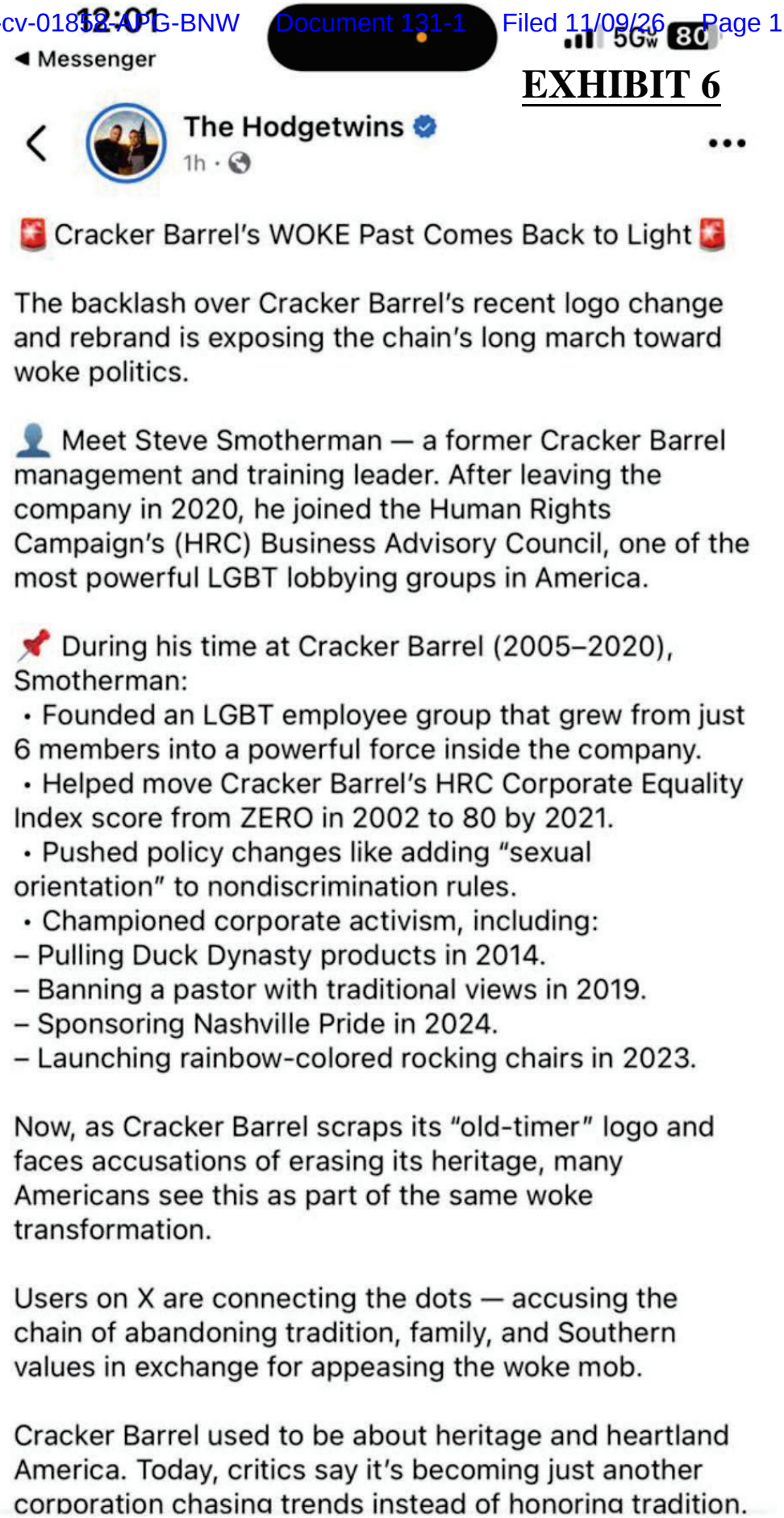

12:01
◀ Messenger
5G 80
The Hodgetwins
1h ·
🚨 Cracker Barrel's WOKE Past Comes Back to Light 🚨
The backlash over Cracker Barrel's recent logo change and rebrand is exposing the chain's long march toward woke politics.
👤 Meet Steve Smotherman — a former Cracker Barrel management and training leader. After leaving the company in 2020, he joined the Human Rights Campaign's (HRC) Business Advisory Council, one of the most powerful LGBT lobbying groups in America.
📌 During his time at Cracker Barrel (2005–2020), Smotherman:
• Founded an LGBT employee group that grew from just 6 members into a powerful force inside the company.
• Helped move Cracker Barrel's HRC Corporate Equality Index score from ZERO in 2002 to 80 by 2021.
• Pushed policy changes like adding "sexual orientation" to nondiscrimination rules.
• Championed corporate activism, including:
– Pulling Duck Dynasty products in 2014.
– Banning a pastor with traditional views in 2019.
– Sponsoring Nashville Pride in 2024.
– Launching rainbow-colored rocking chairs in 2023.
Now, as Cracker Barrel scraps its "old-timer" logo and faces accusations of erasing its heritage, many Americans see this as part of the same woke transformation.
Users on X are connecting the dots — accusing the chain of abandoning tradition, family, and Southern values in exchange for appeasing the woke mob.
Cracker Barrel used to be about heritage and heartland America. Today, critics say it's becoming just another corporation chasing trends instead of honoring tradition.
Comment as Michael Morin
GIF

EXHIBIT 6

2:14 2:35

Photo Done

Now, as Cracker Barrel scraps its "old-timer" logo and faces accusations of erasing its heritage, many Americans see this as part of the same woke transformation.

Users on X are connecting the dots — accusing the chain of abandoning tradition, family, and Southern values in exchange for appeasing the woke mob.

Cracker Barrel used to be about heritage and heartland America. Today, critics say it's becoming just another corporation chasing trends instead of honoring tradition. 🇺🇸

#AntiWoke #ProtectHeritage #TraditionMatters #FamilyValues #CrackerBarrel #AmericaFirst



EXHIBIT 7

Here is the email we received from the church.

Hello Kylie,

EXHIBIT 7

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.



Krisha Mason
Legacy Church NM
kmason@legacychurchnm.com

From: Hodgetwins Support <info@officialhodgetwins.com>
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

Case 2:25-cv-01858-APG-BNW Document 131-1 Filed 11/09/26 Page 117 of 237

---------- Forwarded message ---------

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).



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

> Thank you Kylie!

Case 2:25-cv-01858-APG-BNW Document 131-1 Filed 11/09/26 Page 118 of 237

EXHIBIT 8

EXHIBIT 8

Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
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Attorneys for Defendants
Keith Hodge, Kevin Hodge, and Hodgetwins, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON,

Plaintiff,

v.

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

Defendants.

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

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

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

GENERAL OBJECTIONS

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

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

Doc ID: 2ed175c0c63797753d682b774e7c1a0e8df4db7b

RANDAZZA | LEGAL GROUP

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

3. Defendants object to the subject interrogatories to the extent that they call for information 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 interrogatories will be identified subsequent to the date of this response.

6. All responses made herein are based upon the 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 incorporate these General Objections into each and every specific response as if fully set forth therein.

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

RESPONSES TO INTERROGATORIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RESPONSE TO INTERROGATORY NO. 7: Objection. This interrogatory is compound and comprises four separate interrogatories as it contains several distinct demands for information. Without waiving these objections, Defendants were not aware of reliable Reverse Image Search technology on or before August 22, 2025. Defendant Kevin Hodge searched for "Steve Smotherman" in Google image search. Most or all of the results appeared to be the same middle-aged white man that Defendants now understand to be Plaintiff. As the Google 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 images of that man for the Facebook Post. Kevin Hodge participated in the decision to post the image to Facebook as accompaniment to the Facebook Post.

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Dated: June 10, 2026.

Respectfully Submitted,

/s/ Ronald D. Green

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Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
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Las Vegas, NV 89147

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

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VERIFICATION

We, Keith and Kevin Hodge, declare as follows:

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

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

Dated: June 8, 2026.

Keith Hodge

Keith Hodge

KEVIN HODGE

Kevin Hodge

KEVIN HODGE

Hodgetwins, LLC

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Doc ID: 2ed175c0c63797753d682b774e7c1a0e8df4db7b

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

CERTIFICATE OF SERVICE

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

G. Michael Jackson
mjackson@jonesdavis.com

Nicole A. Westbrook
nwestbrook@jonesdavis.com

/s/ Danielle Darkenwald
Danielle Darkenwald

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EXHIBIT 9

EXHIBIT 9

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

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON,

Plaintiff,

vs.

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 THIRD SET OF REQUESTS FOR INTERROGATORIES

Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC ("Defendants"), hereby submit their responses to Plaintiff's Third Set of Interrogatories served on July 9, 2026.

GENERAL OBJECTIONS

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

2. Defendants object to the subject interrogatories to the extent that they do not seek relevant information or are not proportional to the needs of the case. The providing of answers in response to any interrogatory is not to be deemed or construed as an admission by Defendants that the information is in fact relevant to this action.

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3. Defendants object to the subject interrogatories to the extent that they call for information 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 interrogatories will be identified subsequent to the date of this response.

6. All responses made herein are based upon the 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 incorporate these General Objections into each and every specific response as if fully set forth therein.

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

RESPONSES TO REQUESTS FOR INTERROGATORIES

INTERROGATORY NO. 17:

Identify every Platform and account on which the Post — or any Publication referencing "Smotherman," "Smothermon," the Photograph, Pastor Steve Smothermon, or the Cracker Barrel matter — was published, and for each state the account/handle, the date and time of publication, and (if applicable) the date and time of removal.

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RESPONSE TO INTERROGATORY NO. 17:

Objection. This Interrogatory is compound, containing at least five separate and distinct interrogatories. The Interrogatory is vague and ambiguous with regard to the meaning of the term "the Cracker Barrel matter," which is undefined and renders the interrogatory unintelligible.

Without waiving these objections, the "Post" was published on the Hodgetwins Facebook page. The Post was published at approximately 1:00 p.m. PDT and was removed three to four hours later. Around this same approximate time period, Defendants made additional Facebook posts regarding Cracker Barrel, but the "Post" was the only one focusing on Steve Smotherman. Documents responsive to this Interrogatory are being produced contemporaneously with these interrogatory responses.

INTERROGATORY NO. 18:

For each Publication identified above, state the Engagement Data and identify the source of those figures (e.g., Business Suite, Creator Studio, platform analytics).

RESPONSE TO INTERROGATORY NO. 18:

Objection. Because Plaintiff's counsel and Plaintiff's employee instructed Defendants to remove the Post from their Facebook page and did not demand that Defendants preserve the Facebook Post or its corresponding data, this information was lost as a result of Plaintiff's own actions, the actions of his counsel, and the actions of his employee. Plaintiff has demanded, and continues to demand, information that Plaintiff caused Defendants to lose access to and to wrongly impute wrongdoing onto Defendants for complying with the demands of Plaintiff's counsel and Plaintiff's employee. The engagement data for any post not erroneously containing the photo of Plaintiff, this information is irrelevant to Plaintiff's claims, and this interrogatory has been propounded for the sake of harassment.

Without waiving these objections, documents responsive to this Interrogatory are being produced contemporaneously with these interrogatory responses.

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INTERROGATORY NO. 19:

Identify every Management Tool used to operate, schedule, analyze, or moderate any Platform account during the Relevant Period, and identify each person with administrative access (ability to post, edit, or delete) to each account.

RESPONSE TO INTERROGATORY NO. 19:

Objection. This Interrogatory is compound, comprising at least two separate and distinct interrogatories.

Defendants use Meta Business Suite. Kevin Hodge, Keith Hodge, and the Hodgetwins customer service team have the ability to post, edit, and delete on its accounts.

INTERROGATORY NO. 20:

Describe every step taken to preserve, and every edit, deletion, or loss of, the Post, its comment thread, and the related account activity, stating for each the date, the person who acted, and the reason.

RESPONSE TO INTERROGATORY NO. 20:

Objection. Because Plaintiff's counsel and Plaintiff's employee instructed Defendants to remove the Post from their Facebook page and did not demand that Defendants preserve the Facebook Post or its corresponding data, this information was lost as a result of Plaintiff's own actions, the actions of his counsel, and the actions of his employee. Plaintiff has, and continues, to demand information that Plaintiff caused Defendants to lose access to and to wrongly impute wrongdoing onto Defendants for complying with the demands of Plaintiff's counsel and Plaintiff's employee.

Without waiving these objections, Defendants are not in possession of information allowing them to respond to this interrogatory but will supplement this response in the future if responsive information is located.

INTERROGATORY NO. 21:

Identify each person who saw, reviewed, or was informed of any comment on the Post stating or suggesting that the person in the Photograph was not the individual the Post described,

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and for each such person state the date and approximate time the comment was seen or reported, and describe any resulting action or discussion, including whether and when it factored into the decision to remove the Post.

RESPONSE TO INTERROGATORY NO. 21:

Defendants never saw, reviewed, or were informed of any comments on the Post stating or suggesting that the person in the Photograph was not the individual that the Post described. To the best of their knowledge, the Post was removed from Facebook because Krisha Mason contacted Defendants' customer support team, who are not Defendants' employees, and told the team that the Post contained a Photograph of Plaintiff and not Cracker Barrel's Steve Smothermon.

INTERROGATORY NO. 22:

For each Comparator Post, identify the person(s) who researched, drafted, reviewed, approved, and published it, and state whether any Reverse Image Search or other identity-verification step was performed before publication.

RESPONSE TO INTERROGATORY NO. 22:

Objection. This Interrogatory is compound, comprising at least two separate and distinct interrogatories. This Interrogatory is vague and ambiguous with regard to the term "identity-verification step" and also assumes that Defendants are required to perform an "identity-verification step" prior to making a social media post.

Any "Comparator Posts", as defined by Plaintiff, were researched, drafted, reviewed, approved, and published by Kevin Hodge or Keith Hodge. None of the posts used Reverse Image Search. Defendants did use Google to perform basic identity verification regarding the posts.

Dated: August 10, 2026.

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

RANDAZZA | LEGAL GROUP

VERIFICATION

We, Keith and Kevin Hodge, declare as follows:

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

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

Dated: August 10, 2026

Keith Hodge

Keith Hodge

KEVIN HODGE

Kevin Hodge

Keith Hodge

Hodgetwins, LLC

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

CERTIFICATE OF SERVICE

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

Nicole A. Westbrook
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Counsel for Plaintiff, Steve Smothermon

/s/Ronald D. Green
Ronald D. Green

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EXHIBIT 10

EXHIBIT 10

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

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON,

Plaintiff,

vs.

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 THIRD SET OF REQUESTS FOR ADMISSION

Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC ("Defendants"), hereby submit their responses to Plaintiff's Third Set of Requests for Admission served on July 9, 2026.

GENERAL OBJECTIONS

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.

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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 REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 23:

Admit that the Post, or a substantially similar Publication using the Photograph, was published on Facebook.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Objection. This Request contains two separate and distinct requests, rendering an accurate response an impossibility in a Request for Admission. Considering that the definition of the "Post" in Plaintiff's requests for admission is "the post titled 'Cracker Barrel's WOKE Past Comes Back to Light' published on the Hodgetwins Facebook page on or about August 22, 2025", Plaintiff is asking Defendants to admit that the post published on their Facebook page was published on their Facebook page, which is nonsensical.

Notwithstanding these objections, Defendants admit that they published a post on the Hodgetwins Facebook page on August 22, 2025, that erroneously contained the picture of Steve Smothermon instead of Cracker Barrel's Steve Smotherman.

REQUEST FOR ADMISSION NO. 24:

Admit that the Post, or a substantially similar Publication using the Photograph, was published on Instagram.

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RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Objection. This Request contains two separate and distinct requests, rendering an accurate response an impossibility in a Request for Admission.

Notwithstanding this objection, denied.

REQUEST FOR ADMISSION NO. 25:

Admit that the Post, or a substantially similar Publication using the Photograph, was published on X.

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Objection. This Request contains two separate and distinct requests, rendering an accurate response an impossibility in a Request for Admission.

Notwithstanding this objection, denied.

REQUEST FOR ADMISSION NO. 26:

Admit that the Post, or a substantially similar Publication using the Photograph, was published on Rumble.

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

Objection. This Request contains two separate and distinct requests, rendering an accurate response an impossibility in a Request for Admission.

Notwithstanding this objection, denied.

REQUEST FOR ADMISSION NO. 27:

Admit that the Post, or a substantially similar Publication using the Photograph, was published on YouTube.

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Objection. This Request contains two separate and distinct requests, rendering an accurate response an impossibility in a Request for Admission.

Notwithstanding this objection, denied.

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REQUEST FOR ADMISSION NO. 28:

Admit that the Post, or a substantially similar Publication using the Photograph, was published on TikTok.

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Objection. This Request contains two separate and distinct requests, rendering an accurate response an impossibility in a Request for Admission.

Notwithstanding this objection, denied.

REQUEST FOR ADMISSION NO. 29:

Admit that You possess or can obtain, from the Platforms' own analytics, the Engagement Data for the Post.

RESPONSE TO REQUEST FOR ADMISSION NO. 29:

Denied.

REQUEST FOR ADMISSION NO. 30:

Admit that the comment thread to the Post included one or more comments stating or suggesting that the person in the Photograph was not the individual the Post described.

RESPONSE TO REQUEST FOR ADMISSION NO. 30:

Objection. Plaintiff's attorneys and one of Plaintiff's employees sent correspondence to Defendants demanding that they take the Post (as defined by Plaintiff) down but not that they preserve the Post. Defendants complied with those instructions. Because of this, the comment thread is no longer available to Defendants.

Notwithstanding this objection, denied.

REQUEST FOR ADMISSION NO. 31:

Admit that the Photograph depicts Pastor Steve Smothermon.

RESPONSE TO REQUEST FOR ADMISSION NO. 31:

Objection. This Request is wholly duplicative of Plaintiff's Request for Admission No. 1, which states, "Admit that the photograph included in your August 22, 2025, [sic] Facebook Post was an image of Pastor Steve Smothermon." Asking Defendants the same question again is

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harassing, duplicative, and unnecessary.

Notwithstanding this objection, Defendants repeat and reassert their response to Request for Admission No. 1.

REQUEST FOR ADMISSION NO. 32 (extending RFA Nos. 13, 18, and 19 of Plaintiff's Second Set to all Platforms):

Admit that no litigation hold or preservation step suspended the automatic deletion of any relevant Platform or account activity after August 22, 2025.

RESPONSE TO REQUEST FOR ADMISSION NO. 32:

Objection. This Request contains an undefined and undefinable number of separate and discrete requests for admission, as it ostensibly asks two separate questions about every social media platform, every podcast, and every "membership platform" in existence. This renders the request unintelligible and incapable of being admitted or denied. This Request is irrelevant to the facts at issue in this case and was not designed to lead to the discovery of admissible evidence. Defendants are not sure what Plaintiff is seeking or requesting in this Request.

Notwithstanding these objections, denied.

REQUEST FOR ADMISSION NO. 33:

Admit that You published one or more Publications during August–September 2025 characterizing an identified individual as "woke," "anti-American," or "anti-family."

RESPONSE TO REQUEST FOR ADMISSION NO. 33:

Objection. This Request is vague and ambiguous with regard to the meaning of the term "identified individual," rendering it unintelligible.

Notwithstanding this objection, denied.

REQUEST FOR ADMISSION NO. 34:

Admit that You intended Your audience to understand such characterizations (as recited in Request for Admission No. 33) as criticism of, or as reflecting negatively on, the individual described.

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RESPONSE TO REQUEST FOR ADMISSION NO. 34:

Objection. Given that this Request refers to Request No. 33, this Request is vague and ambiguous with regard to the meaning of the term "identified individual," rendering it unintelligible. This Request is additionally vague and ambiguous with regard to the meaning of the term "individual described," rendering it unintelligible.

Notwithstanding these objections, denied.

Dated: August 10, 2026.

Respectfully submitted,
/s/ Ronald D. Green

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Attorneys for Defendants
Keith Hodge, Kevin Hodge, and
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RANDAZZA | LEGAL GROUP

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

CERTIFICATE OF SERVICE

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

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Counsel for Plaintiff, Steve Smothermon

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Counsel for Plaintiff, Steve Smothermon

/s/Ronald D. Green
Ronald D. Green

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EXHIBIT 11

EXHIBIT 11

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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' RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION

Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC ("Defendants"), hereby submit their responses to Plaintiff's First Set of Requests for Admission served on April 22, 2026.

GENERAL OBJECTIONS

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 that those set forth in the Federal Rules of Civil Procedure or this Court's local rules.

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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 REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that the photograph included in your August 22, 2025, Facebook Post was an image of Plaintiff Pastor Steve Smothermon.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Objection. Defendants admit that the Facebook Post referenced in this request contained a photograph of an individual that Plaintiff contends is Plaintiff Steve Smothermon and not Steve Smotherman. However, Defendants located the image after searching for an image of Steve Smotherman and posted an image that arose as a result of that image search. Defendants do not have first-hand knowledge of what Plaintiff Steve Smothermon looks like. However, for purposes of this request, Defendants admit that the Facebook Post contained a photograph of Plaintiff Steve Smothermon but reserve the right to revoke that admission if Defendants learn contrary information in the future.

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

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Defendants admit that they did not contact any of the individuals or entities referenced in this request prior to publishing the Facebook Post. Rather, they simply performed a Google image search for Steve Smotherman, saw that the

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same individual's photograph appeared for nearly all of the search results, and used a photograph of that individual in the Facebook Post.

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

RESPONSE TO REQUEST FOR ADMISSION NO. 3: Objection. Defendants have no first-hand knowledge of how Plaintiff spells his last name or how the Cracker Barrel executive spells his last name. However, for purposes of this request, Defendants admit that Plaintiff's name is spelled differently from the Cracker Barrel executive's name but reserve the right to revoke that admission if Defendants learn contrary information in the future.

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

RESPONSE TO REQUEST FOR ADMISSION NO. 4: Objection. The term "monetized platform" is not defined, making this request vague and ambiguous. Without waiving this objection, Defendants admit that they obtain revenue from their Facebook page.

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

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Objection. This request is improperly compound and contains two separate requests for admission. Additionally, Defendants do not have first-hand knowledge regarding Plaintiff Steve Smothermon's affiliation, or lack thereof, with Cracker Barrel Old Country Store, Inc. or whether Plaintiff Steve Smothermon has or had any responsibility for the company's DEI initiatives. However, for purposes of this request, Defendants admit that Steve Smohtermon has no affiliation with Cracker Barrel Old Country Store, Inc. and presumably could not have been responsible for the company's DEI initiatives but reserve the right to revoke that admission if Defendants learn contrary information in the future.

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

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Objection. This request asks for Defendants to admit or deny something that is speculative. Defendants cannot recreate what the results of a reverse image search on August 22, 2025 would have been. As such, they cannot admit or deny this request and must therefore deny it.

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

RESPONSE TO REQUEST FOR ADMISSION NO. 7: Objection. This request assumes that Defendants were required to perform a reverse image search of the photograph, which they were not required to do. Without waiving this objection, Defendants admit this request.

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

RESPONSE TO REQUEST FOR ADMISSION NO. 8: Defendants admit that, beyond Plaintiff's photograph arising as the result of a Google image search for Steve Smotherman, they have no evidence that Plaintiff has ever been employed by Cracker Barrel Old Country Store, Inc.

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

RESPONSE TO REQUEST FOR ADMISSION NO. 9: Objection. Defendants have not reviewed the metadata for the photograph in the Facebook Post, leaving them unable to admit or deny this request. Therefore, they must deny it.

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Dated: May 21, 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
8991 W. Flamingo Rd., Ste. B
Las Vegas, NV 89147

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

RANDAZZA | LEGAL GROUP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 21, 2026, I served this document to counsel for Plaintiff via electronic mail to:

G. Michael Jackson
mjackson@jonesdavis.com

Nicole A. Westbrook
nwestbrook@joneskeller.com

/s/Kaylee Arcalas
Kaylee Arcalas

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EXHIBIT 12

EXHIBIT 12

Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
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ecf@randazza.com

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

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON,

Plaintiff,

vs.

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

Defendant(s).

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

DEFENDANTS' RESPONSES TO PLAINTIFF'S THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC ("Defendants"), hereby submit their responses to Plaintiff's Second Set of Requests for Production of Documents served on June 30th, 2026.

GENERAL OBJECTIONS

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

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

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to any request is not to be deemed or construed as an admission by Defendants that the information 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 Objects into each and every specific response as if fully set forth therein.

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

RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 10:

[each individual Defendant] A complete Google Takeout export of the My Activity record — including, separately, the Search, Image Search, Google Lens, and Web & App Activity

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products — for each Google account that was signed in on any device You used to research, select, verify, create, or publish the Post, for the period August 1, 2025 through the date of production. Produce in JSON format where the Takeout tool permits, otherwise in HTML.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Objection. This Request is overly burdensome, unnecessarily harassing, and not likely to lead to the discovery of relevant evidence. The burden of complying with the Request is disproportionate to the utility of responding to it. The Request seeks Defendants' online history for nearly an entire year when the incident at issue in this case occurred in under an hour, if not in a span of minutes. The information requested in this Request is largely irrelevant to Plaintiff's claims, and this Request is not tailored to lead to the discovery of relevant evidence. This Request was propounded for the sole purpose of harassment and increasing Defendants' attorneys' fees and costs. In addition to the other objections made pursuant to this Request, this Request seeks information that is sensitive and proprietary to Defendants and will not be produced, if at all, absent a protective order protecting the information responsive to this Request from disclosure.

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. 11:

[each individual Defendant] All Documents reflecting, for each account responsive to RFP No. 10, whether Web & App Activity was enabled and the Auto-Delete retention setting in effect as of August 22, 2025, and the dated history of any change to either setting — including any Google notification email reflecting a change to those settings.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Objection. This Request is overly burdensome, unnecessarily harassing, and not likely to lead to the discovery of relevant evidence. The burden of complying with the Request is disproportionate to the utility of responding to it. The Request seeks Defendants' online history for nearly an entire year when the incident at issue in this case occurred in under an hour, if not in

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a span of minutes. The information requested in this Request is largely irrelevant to Plaintiff's claims, and this Request is not tailored to lead to the discovery of relevant evidence. This Request was propounded for the sole purpose of harassment and increasing Defendants' attorneys' fees and costs. Defendants are unable to produce documents that show what the settings of their internet browsers were nearly one year ago. In addition to the other objections made pursuant to this Request, this Request seeks information that is sensitive and proprietary to Defendants and will not be produced, if at all, absent a protective order protecting the information responsive to this Request from disclosure.

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. 12:

[each individual Defendant] A forensic image of, or production for inspection under a mutually acceptable protocol and protective order of, each device used to conduct The Search or to create, edit, publish, or remove the Post.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Objection. This Request is overly burdensome, unnecessarily harassing, and not likely to lead to the discovery of relevant evidence. The burden of complying with the Request is disproportionate to the utility of responding to it. The Request seeks Defendants' a forensic image of all of Defendants' electronic devices when the incident at issue in this case occurred in under an hour, if not in a span of minutes. The information requested in this Request is largely irrelevant to Plaintiff's claims, and this Request is not tailored to lead to the discovery of relevant evidence. This Request was propounded for the sole purpose of harassment and increasing Defendants' attorneys' fees and costs. In addition to the other objections made pursuant to this Request, this Request seeks information that is sensitive, confidential, and proprietary to Defendants.

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REQUEST FOR PRODUCTION NO. 13:

[each individual Defendant] The original photograph file used in the Post, in its Native Format with all Metadata (EXIF and system, including Source URL) intact and unaltered.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

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. 14:

[Hodgetwins, LLC] A complete Meta/Facebook "Download Your Information" and/or Business Suite export for the Hodgetwins Facebook page, including the page's activity/audit log reflecting the creation, any edits, and the removal of the Post, with timestamps and the acting administrator.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Objection. This Request is overly burdensome, unnecessarily harassing, and not likely to lead to the discovery of relevant evidence. The burden of complying with the Request is disproportionate to the utility of responding to it. The Request seeks a complete export of Defendants' entire Facebook page when the incident at issue in this case occurred in under an hour, if not in a span of minutes. The information requested in this Request is largely irrelevant to Plaintiff's claims, and this Request is not tailored to lead to the discovery of relevant evidence. This Request was propounded for the sole purpose of harassment and increasing Defendants' attorneys' fees and costs. In addition to the other objections made pursuant to this Request, this Request seeks information that is sensitive, confidential, and proprietary to Defendants and will not be produced, if at all, absent a protective order protecting the information responsive to this Request from disclosure.

REQUEST FOR PRODUCTION NO. 15:

[each individual Defendant] Chrome sync data and any signed-in browser-profile activity associated with the account(s) or device(s) responsive to RFP Nos. 10 and 12.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Objection. This Request is overly burdensome, unnecessarily harassing, and not likely to lead to the discovery of relevant evidence. The burden of complying with the Request is disproportionate to the utility of responding to it. The Request seeks Defendants' online history for an unspecified period of time (presumably in perpetuity) when the incident at issue in this case occurred in under an hour, if not in a span of minutes. The information requested in this Request is largely irrelevant to Plaintiff's claims, and this Request is not tailored to lead to the discovery of relevant evidence. This Request was propounded for the sole purpose of harassment and increasing Defendants' attorneys' fees and costs. In addition to the other objections made pursuant to this Request, this Request seeks information that is sensitive and proprietary to Defendants and will not be produced, if at all, absent a protective order protecting the information responsive to this Request from disclosure.

REQUEST FOR PRODUCTION NO. 16:

[each individual Defendant] Router, modem, or internet-service-provider records reflecting internet activity on August 22, 2025.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Objection. This Request is overly burdensome, unnecessarily harassing, and not likely to lead to the discovery of relevant evidence. The burden of complying with the Request is disproportionate to the utility of responding to it. The information requested in this Request is largely irrelevant to Plaintiff's claims, and this Request is not tailored to lead to the discovery of relevant evidence. This Request was propounded for the sole purpose of harassment and increasing Defendants' attorneys' fees and costs. Defendants are unsure what Plaintiff is seeking through production of their "Router, modem, or internet-service-provider records" or how those records are relevant to this case. In addition to the other objections made pursuant to this Request, this Request seeks information that is sensitive and proprietary to Defendants and will not be produced, if at all, absent a protective order protecting the information responsive to this Request from disclosure.

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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. 17:

[all Defendants] All Documents reflecting any litigation-hold instruction, or any step taken to preserve or to suspend the automatic deletion of, any electronically stored information after the Carroll Notice.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

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. 18:

[Hodgetwins, LLC] Documents sufficient to show the ownership, membership, and management of Hodgetwins, LLC, and who controls content posted to the Hodgetwins Facebook page.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

Please see attached documents Bates numbered HODGE000139-HODGE000142.

REQUEST FOR PRODUCTION NO. 19:

[Hodgetwins, LLC] Documents sufficient to show revenue, sales, and monetization of the Hodgetwins Facebook page and any associated merchandise operation for August 1, 2025 through September 30, 2025.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

Objection. This Request is overly burdensome, unnecessarily harassing, and not likely to lead to the discovery of relevant evidence. The burden of complying with the Request is disproportionate to the utility of responding to it. The Request seeks Defendants' entire financial history for a two-month period when the incident at issue in this case occurred in under an hour, if not in a span of minutes. The information requested in this Request is largely irrelevant to Plaintiff's claims, and this Request is not tailored to lead to the discovery of relevant evidence.

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This Request was propounded for the sole purpose of harassment and increasing Defendants' attorneys' fees and costs. In addition to the other objections made pursuant to this Request, this Request seeks information that is sensitive and proprietary to Defendants and will not be produced, if at all, absent a protective order protecting the information responsive to this Request from disclosure.

Without waiving these objections, please see attached documents Bates numbered HODGE000143-HODGE000147.

REQUEST FOR PRODUCTION NO. 20:

[all Defendants] All communications with Krisha Mason, Kylie Howerton, Nathan Hughes, Blake Rynders, Michael Morin, or any person at Legacy Church regarding the Post, and all internal communications regarding the creation, review, or removal of the Post, in Native Format with Metadata intact.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

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. 21:

Produce a complete and unaltered copy of each and every insurance agreement, policy, declaration page, and rider under which an insurance business may be liable to satisfy all or part of a possible judgment in this Action or to indemnify or reimburse for payments made to satisfy the judgment, including but not limited to commercial general liability (CGL), media liability, errors and omissions (E&O), or umbrella policies in effect during August 2025.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

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. 22:

Produce a complete, native-format mailbox export (including all metadata and headers, e.g., in .PST or .MBOX format) of the customer service email account for Defendants' merchandise

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website for the period of August 20, 2025, through August 27, 2025, including all inbound, outbound, deleted, and forwarded emails concerning the Facebook Post, the photograph of Plaintiff, or Legacy Church.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

Objection. This Request is overly burdensome, unnecessarily harassing, and not likely to lead to the discovery of relevant evidence. The burden of complying with the Request is disproportionate to the utility of responding to it. The Request seeks Defendants' entire customer service mailbox when the incident at issue in this case occurred in under an hour, if not in a span of minutes. Moreover, Plaintiff is already in possession of each and every email relevant to this litigation. The information requested in this Request is largely irrelevant to Plaintiff's claims, and this Request is not tailored to lead to the discovery of relevant evidence. This Request was propounded for the sole purpose of harassment and increasing Defendants' attorneys' fees and costs. In addition to the other objections made pursuant to this Request, this Request seeks information that is sensitive and proprietary to Defendants and will not be produced, if at all, absent a protective order protecting the information responsive to this Request from disclosure.

Without waiving these objections, please see previously produced documents Bates numbered HODGE000136 to HODGE000138.

REQUEST FOR PRODUCTION NO. 23:

For each individual Defendant (Keith Hodge and Kevin Hodge), please execute and return the formal Google Account Disclosure Authorization and Consent Directive attached hereto as Exhibit A, providing your express written consent pursuant to the Stored Communications Act SCA), 18 U.S.C. § 2702(b)(3) and § 2702(c)(2), and authorizing Google LLC to disclose and release to Plaintiff's counsel all server-side Google search history, image search history, and associated Web & App Activity ("My Activity") data for any Google account signed in on any device used by You to research, select, verify, create, or publish the Facebook Post on August 22, 2025, for the period of August 1, 2025, through September 30, 2025.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

Objection. This Request is overly burdensome, unnecessarily harassing, and not likely to lead to the discovery of relevant evidence. The burden of complying with the Request is disproportionate to the utility of responding to it. The Request seeks Defendants' online history for a two month period when the incident at issue in this case occurred in under an hour, if not in a span of minutes. The information requested in this Request is largely irrelevant to Plaintiff's claims, and this Request is not tailored to lead to the discovery of relevant evidence. This Request was propounded for the sole purpose of harassment and increasing Defendants' attorneys' fees and costs. In addition to the other objections made pursuant to this Request, this Request seeks information that is sensitive and proprietary to Defendants and will not be produced, if at all, absent a protective order protecting the information responsive to this Request from disclosure.

Dated: July 30, 2026.

Respectfully submitted,

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

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 30, 2026, I served this document to counsel for Plaintiff via electronic mail to:

G. Michael Jackson
mjackson@jonesdavis.com

Nicole A. Westbrook
nwestbrook@joneskeller.com

Respectfully submitted,

/s/Ronald D. Green
Ronald D. Green

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Case 2:25-cv-01858-APG-BNW Document 131-1 Filed 11/09/26 Page 163 of 237

Entity Information

Entity Information

Entity Name:	HODGETWINS LLC	**Entity Number:**	E45241312024-0
Entity Type:	Non-Filing Domestic Entities	**Entity Status:**	Active
Formation Date:	12/10/2024	**NV Business ID:**	
Compliance Hold:			

Registered AGENT INFORMATION

Name of Individual or Legal Entity:	Keith Hodge	**Status:**	Active
CRA Agent Entity Type:		**Registered Agent Type:**	Non-Commercial Registered Agent

HODGE000139

NV Business ID:

Office or Position:

Jurisdiction:

Street Address: 9708 gilespie , 110A, Las Vegas, NV, 89183, USA

Mailing Address:

OFFICER INFORMATION

☐ **View Historical Data**

Title	Name	Address	Last Updated	Status
No records to view.				

Filing History Name History Mergers/Conversions

Return to Search Return to Results

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Case 2:25-cv-01858-APG-BNW Document 131-1 Filed 11/09/26 Page 165 of 237

Entity Information

Entity Information

Entity Name:	HODGETWINS LLC	**Entity Number:**	E26113492022-5
Entity Type:	Domestic Limited-Liability Company (86)	**Entity Status:**	Default
Formation Date:	09/13/2022	**NV Business ID:**	NV20222566799
Termination Date:		**Annual Report Due Date:**	9/30/2025
Compliance Hold:		**Series LLC:** ☐	**Restricted LLC:** ☐

Registered AGENT INFORMATION

Name of Individual or Legal Entity:	Keith Hodge	**Status:**	Active

CRA Agent Entity Type:		**Registered Agent Type:**	Non-Commercial Registered Agent
NV Business ID:		**Office or Position:**	
Jurisdiction:			
Street Address:	9708 gilespie , 110A, Las Vegas, NV, 89183, USA		
Mailing Address:			

OFFICER INFORMATION

☐ **View Historical Data**

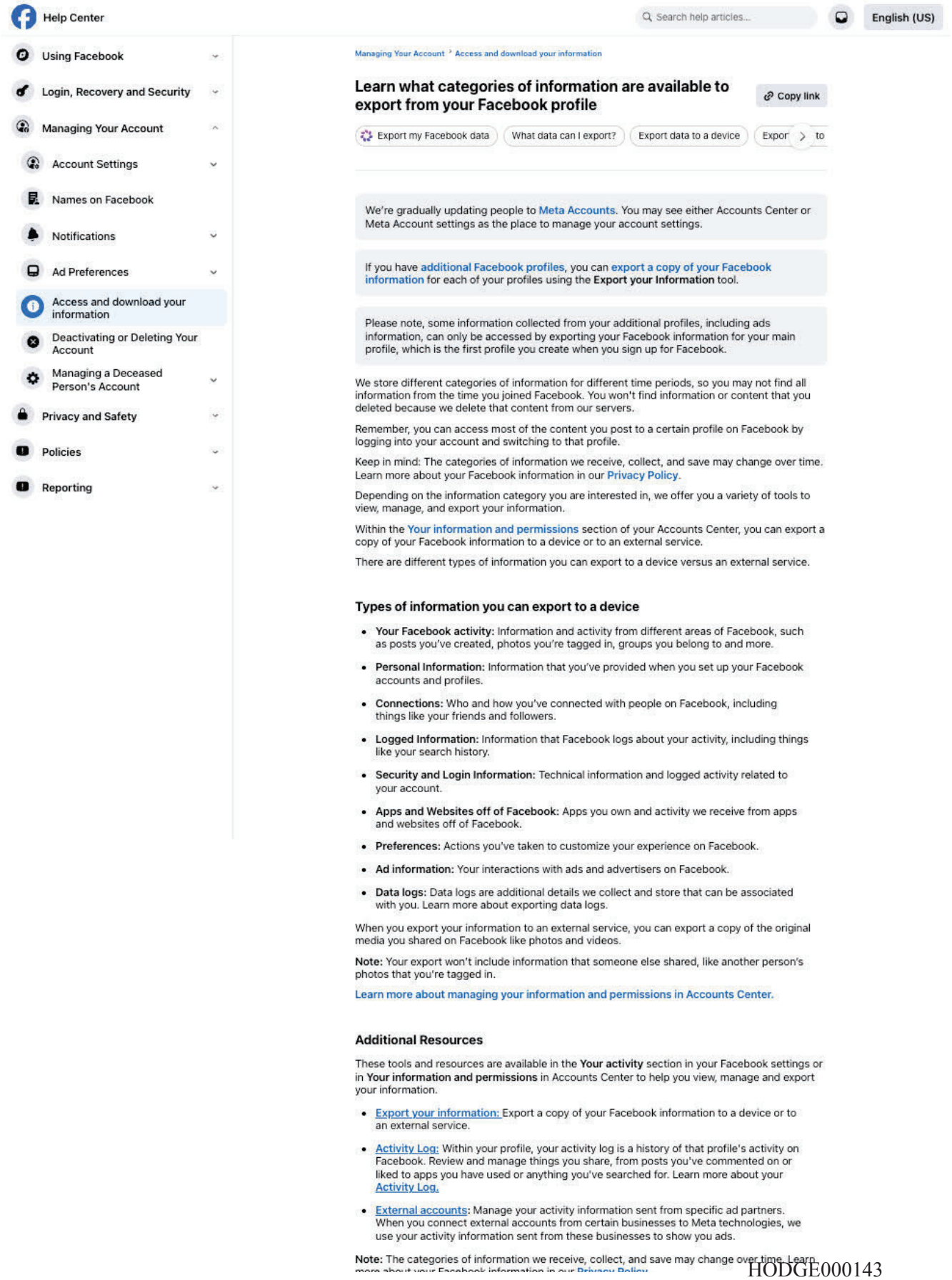
Title	Name	Address	Last Updated	Status
Managing Member	Keith Hodge	9708 Gilespie Street , 110A, Las Vegas, NV, 89183, USA	12/10/2024	Active
Managing Member	Kevin Hodge	9708 Gilespie Street , 110A, Las Vegas, NV, 89183, USA	12/10/2024	Active

Page 1 of 1, records 1 to 2 of 2

Filing History Name History Mergers/Conversions

Return to Search Return to Results

Case 2:25-cv-01858-APG-BNW Document 131-1 Filed 11/09/26 Page 166 of 237



Help Center

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- Privacy and Safety
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- Reporting

Managing Your Account › Access and download your information

Learn what categories of information are available to export from your Facebook profile

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Export my Facebook data | What data can I export? | Export data to a device | Expor › to

We're gradually updating people to Meta Accounts. You may see either Accounts Center or Meta Account settings as the place to manage your account settings.

If you have additional Facebook profiles, you can export a copy of your Facebook information for each of your profiles using the **Export your Information** tool.

Please note, some information collected from your additional profiles, including ads information, can only be accessed by exporting your Facebook information for your main profile, which is the first profile you create when you sign up for Facebook.

We store different categories of information for different time periods, so you may not find all information from the time you joined Facebook. You won't find information or content that you deleted because we delete that content from our servers.

Remember, you can access most of the content you post to a certain profile on Facebook by logging into your account and switching to that profile.

Keep in mind: The categories of information we receive, collect, and save may change over time. Learn more about your Facebook information in our Privacy Policy.

Depending on the information category you are interested in, we offer you a variety of tools to view, manage, and export your information.

Within the Your information and permissions section of your Accounts Center, you can export a copy of your Facebook information to a device or to an external service.

There are different types of information you can export to a device versus an external service.

Types of information you can export to a device

- **Your Facebook activity:** Information and activity from different areas of Facebook, such as posts you've created, photos you're tagged in, groups you belong to and more.
- **Personal Information:** Information that you've provided when you set up your Facebook accounts and profiles.
- **Connections:** Who and how you've connected with people on Facebook, including things like your friends and followers.
- **Logged Information:** Information that Facebook logs about your activity, including things like your search history.
- **Security and Login Information:** Technical information and logged activity related to your account.
- **Apps and Websites off of Facebook:** Apps you own and activity we receive from apps and websites off of Facebook.
- **Preferences:** Actions you've taken to customize your experience on Facebook.
- **Ad information:** Your interactions with ads and advertisers on Facebook.
- **Data logs:** Data logs are additional details we collect and store that can be associated with you. Learn more about exporting data logs.

When you export your information to an external service, you can export a copy of the original media you shared on Facebook like photos and videos.

Note: Your export won't include information that someone else shared, like another person's photos that you're tagged in.

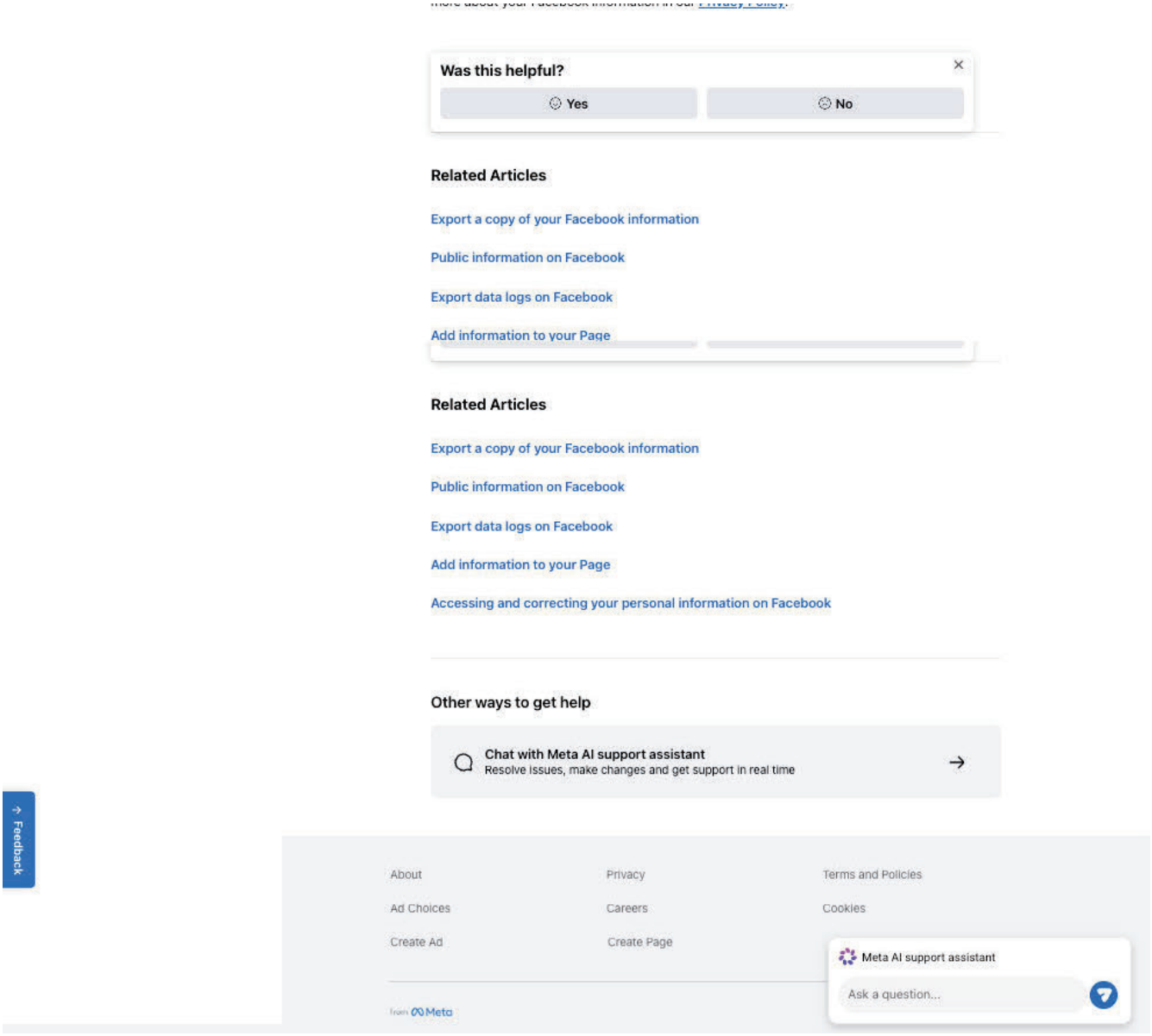
Learn more about managing your information and permissions in Accounts Center.

Additional Resources

These tools and resources are available in the **Your activity** section in your Facebook settings or in **Your information and permissions** in Accounts Center to help you view, manage and export your information.

- Export your information: Export a copy of your Facebook information to a device or to an external service.
- Activity Log: Within your profile, your activity log is a history of that profile's activity on Facebook. Review and manage things you share, from posts you've commented on or liked to apps you have used or anything you've searched for. Learn more about your Activity Log.
- External accounts: Manage your activity information sent from specific ad partners. When you connect external accounts from certain businesses to Meta technologies, we use your activity information sent from these businesses to show you ads.

Note: The categories of information we receive, collect, and save may change over time. Learn more about your Facebook information in our Privacy Policy


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Yes
No
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from Meta

Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
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Las Vegas, NV 89147
Telephone: 702-420-2001
ecf@randazza.com

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

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON,

Plaintiff,

v.

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

Defendants.

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

DECLARATION OF KEITH HODGE

I, Keith Hodge, declare:

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

2. I am submitting this declaration in response to Plaintiff's Request for Production No. 19, which requests "Documents sufficient to show revenue, sales, and monetization of the Hodgetwins Facebook page and any associated merchandise operation for August 1, 2025, through September 30, 2025."

3. It is my understanding that my attorneys are objecting to this request as overbroad and not proportional to the needs of this case. Even I, as a non-lawyer, can tell that it is improper to ask for two months' worth of information for a post that was up for just a few hours.

4. Despite the fact that my lawyers are objecting, I still am willing to provide as much information as I can regarding any money generated by that particular post, over the no more than the few hours that it was online.

5. At the time of the August 22, 2025, Facebook past about Cracker Barrel's Steve Smotherman, the Hodgetwins Facebook account was making approximately $3,500 per day.

6. At the time of the August 22, 2025, Facebook post about Cracker Barrel's Steve Smotherman, the Hodgetwins made approximately 40 Facebook posts per day.

7. At the time of the August 22, 2025, Facebook post about Cracker Barrel's Steve Smotherman, each Facebook post on the Hodgetwins Facebook account typically made between $75 and $120 each.

8. Given the amount of time that the post was live on Facebook, it probably earned around $20 to $40.

9. I do not know for certain how much the post about Cracker Barrel's Steve Smotherman made. While we can access that information about individual posts normally, we cannot do so for deleted posts.

10. When a post is deleted, that information becomes unrecoverable after 30 days. Therefore, the information about how much we made from the Smotherman post was likely unrecoverable on or about September 21, 2025.

11. Our contractor deleted the post immediately upon being told that the post had the wrong photo.

12. It is our understanding that Smothermon's lawyer demanded that the post be deleted, without any information suggesting that we should preserve any information.

13. In fact, there was no indication from anyone that there was going to be a lawsuit or any other reason to preserve that information.

14. Nevertheless, my best estimate is that this post's maximum revenue for the time it existed was $20 and $40.

//

Dated: July 29, 2026.

/s/ Keith Hodge
KEITH HODGE

EXHIBIT 13

EXHIBIT 13

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

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

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON, Plaintiff, vs. KEITH HODGE, an individual, KEVIN HODGE, an individual; HODGETWINS, LLC, a limited liability company Defendant(s).	Case No. 2:25-cv-01858-APG-BNW **DEFENDANTS' RESPONSES TO PLAINTIFF'S SECOND SET OF INTERROGATORIES**

Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC ("Defendants"), hereby submit their responses to Plaintiff's Second Set of Interrogatories served June 30th, 2026.

GENERAL OBJECTIONS

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

2. Defendants object to the subject interrogatories to the extent that they do not seek relevant information or are not proportional to the needs of the case. The providing of answers in response to any interrogatory is not to be deemed or construed as an admission by Defendants that the information is in fact relevant to this action.

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3. Defendants object to the subject interrogatories to the extent that they call for information 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 interrogatories will be identified subsequent to the date of this response.

6. All responses made herein are based upon the 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 incorporate these General Objections into each and every specific response as if fully set forth therein.

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

RESPONSE TO INTERROGATORIES

INTERROGATORY NO. 8:

Identify each Google account (and associated email address) used to research, select, or verify the photograph, or to create the Post; and for each, state (a) whether the user was signed in to that account during The Search and (b) whether Web & App Activity (or equivalent activity logging) was enabled on August 22, 2025.

RESPONSE TO INTERROGATORY NO. 8:

Objection. The information requested in this interrogatory is not relevant to this case or reasonably calculated to the discovery of admissible evidence. It is additionally disproportionate

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to the needs of the case given that this case concerns a Facebook post that was live on the internet for only a few hours, and Defendants have already explained their process for making that post and selecting the photograph that was published along with it.

Without waiving those objections, Defendants respond that Kevin Hodge conducted the Google search for a photograph of "Steve Smotherman" in incognito mode and was not signed in to any Google account when he conducted the search. Therefore, no Google account was used to research, select, or verify the photograph.

INTERROGATORY NO. 9:

For each account identified in the preceding interrogatory, state the Auto-Delete retention setting in effect on August 22, 2025, and describe every change to that setting made since August 22, 2025, stating the date of each change and the person who made it.

RESPONSE TO INTERROGATORY NO. 9:

Objection. The information requested in this interrogatory is not relevant to this case or reasonably calculated to the discovery of admissible evidence. It is additionally disproportionate to the needs of the case given that this case concerns a Facebook post that was live on the internet for only a few hours, and Defendants have already explained their process for making that post and selecting the photograph that was published along with it.

Without waiving those objections, Defendants respond that Kevin Hodge was not signed into a Google account when he performed the search for the photograph.

INTERROGATORY NO. 10:

Describe in detail every step taken — by whom, and on what date — to preserve electronically stored information, or to suspend its automatic deletion, after the Carroll Notice.

RESPONSE TO INTERROGATORY NO. 10:

Objection. The "Carroll Notice" did not include any preservation language or instruction, as admitted by Thomas Carroll during his deposition on July 21, 2026. It did not threaten a lawsuit against Defendants. Defendants never saw or read the "Carroll Notice" until well after this lawsuit was filed. The "Carroll Notice" did not trigger any preservation responsibilities.

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Without waiving these objections, Defendants respond: none

INTERROGATORY NO. 11:

Identify each device (mobile phone, tablet, or computer) used to conduct The Search or to create, edit, publish, or remove the Post, and state its current location, custodian, and status (including whether it has been reset, wiped, replaced, or disposed of).

RESPONSE TO INTERROGATORY NO. 11:

Objection. The information requested in this interrogatory is not relevant to this case or reasonably calculated to the discovery of admissible evidence. It is additionally disproportionate to the needs of the case given that this case concerns a Facebook post that was live on the internet for only a few hours, and Defendants have already explained their process for making that post and selecting the photograph that was published along with it.

Without waiving these objections, Defendants respond: Kevin Hodge conducted the "Search," created the "Post," and published the "Post" using his iPhone 16 Pro Max. Mr. Hodge still uses this iPhone 16 Pro Max. With regard to the removal of the "Post," Defendants are unaware of the device(s) used by their customer support team to remove it from Facebook.

INTERROGATORY NO. 12:

Identify each person who participated in researching, selecting, verifying, creating, approving, publishing, or removing the Post, and state each person's specific role.

RESPONSE TO INTERROGATORY NO. 12:

Objection. Interrogatory No. 1, propounded by Plaintiff, already demanded information regarding "every person who was involved in researching, drafting, reviewing, editing, and publishing the August 22, 2025, Facebook Post," making this interrogatory duplicative and harassing.

Without waiving these objections, Defendants respond that Kevin Hodge researched, selected, verified, created, approved, and published the Post and completed each and every task associated with researching, selecting, verifying, creating, approving, and publishing the Post. With regard to removal of the Post, the Post was removed by Bigly, the company Defendants

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contracted with to perform customer service tasks. Questions regarding removal of the Post should be directed to Bigly.

INTERROGATORY NO. 13:

State the ownership, membership, and management structure of Hodgetwins, LLC, and identify each person with authority over content posted to the Hodgetwins Facebook page.

RESPONSE TO INTERROGATORY NO. 13:

Objection. This interrogatory is compound, comprising two separate and distinct interrogatories.

Without waiving these objections, the members of Hodgetwins, LLC are Keith Hodge and Kevin Hodge. They are additionally the owners and managers of the LLC. Kevin Hodge and Keith Hodge have final say regarding content posted on the Hodgetwins Facebook page.

INTERROGATORY NO. 14:

Describe the monetization of the Hodgetwins Facebook page and any associated merchandise operation during August 1, 2025 through September 30, 2025, including revenue sources, the relationship between the page and the merchandise store, and the role of Nathan Hughes and any personnel operating the merchandise "customer service" account.

RESPONSE TO INTERROGATORY NO. 14

Objection. This interrogatory is compound, comprising at least three separate and distinct interrogatories. The interrogatory is vague and ambiguous regarding the meaning of the term "revenue sources."

Without waiving these objections, the Hodgetwins Facebook page is monetized through Facebook's content monetization program, which pays the Hodgetwins based upon the performance of original content posted to the page, ad revenue shares, and direct audience support.

The Hodgetwins sell merchandise on their website, which is located at <officialhodgetwins.com>. Customers purchase and pay for this merchandise on the website, and the Hodgetwins make a profit when the merchandise is purchased.

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The relationship between the Hodgetwins Facebook page and the Hodgetwins merchandise store is that both are operated by Hodgetwins.

Nathan Hughes and the personnel operating the Hodgetwins' customer service are not involved with the monetization of the Hodgetwins Facebook page, and they do not profit from the sale of Hodgetwins merchandise.

INTERROGATORY NO. 15:

Identify and describe any policy of insurance that does or may provide coverage for the claims in this action, and describe the inquiry undertaken to locate any such policy.

RESPONSE TO INTERROGATORY NO. 15:

Defendants do not possess any insurance policy that does or may provide coverage for the claims in this action. Regarding the "inquiry undertaken to locate any such policy," the Hodgetwins searched their insurance policies and did not locate any that provided coverage for Plaintiff's claims in this action.

INTERROGATORY NO. 16:

Identify the exact date, time, and method by which Kylie Howerton, Nathan Hughes, Kevin Hodge, or Keith Hodge first viewed the screenshot of the Facebook Post that was attached to the email sent by Krisha Mason on August 22, 2025, and describe in detail any discussions or actions taken by You immediately after viewing said screenshot

RESPONSE TO INTERROGATORY NO. 16:

Objection. The interrogatory demands that Defendants provide information regarding the actions of Nathan Hughes and Kylie Howerton who are not employed by Defendants and who are represented by independent counsel. Any information regarding actions taken by Mr. Hughes or Ms. Howerton should be addressed to them.

Without waiving these objections, Defendants Keith Hodge and Kevin Hodge did not see Ms. Mason's email until after this litigation was filed. They did not have any discussions about it or take any action regarding it until after Plaintiff had initiated this lawsuit.

//

RANDAZZA | LEGAL GROUP

Dated: July 30, 2026.

Respectfully submitted,

/s/ Ronald D. Green

Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
RANDAZZA LEGAL GROUP, PLLC
8991 W. Flamingo Rd., Ste. B
Las Vegas, NV 89147
Attorneys for Defendants
Keith Hodge, Kevin Hodge, and
Hodgetwins, LLC

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VERIFICATION

We, Keith and Kevin Hodge, declare as follows:

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

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

Dated: July 30, 2026.

Keith Hodge

Keith Hodge

KEVIN HODGE

Kevin Hodge

Keith Hodge

Hodgetwins, LLC

RANDAZZA | LEGAL GROUP

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 30, 2026, I served this document to counsel for Plaintiff via electronic mail to:

G. Michael Jackson
mjackson@jonesdavis.com

Nicole A. Westbrook
nwestbrook@jonesdavis.com

Respectfully submitted,

/s/ Ron D. Green
Ron D. Green

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EXHIBIT 14

EXHIBIT 14

RANDAZZA
LEGAL GROUP

Ronald D. Green
Partner
Licensed in NV

31 July 2026

Via Email Only
Nicole Westbrook
JONES DAVIS & JACKSON, PC
<nwestbrook@jonesdavis.com>

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

Dear Nicole:

I write in response to your letter dated July 28, 2026.

In your letter, you demand that we provide "the supplementation agreed on May 4." I need to ask you to specify what you are contending we need to supplement because your letter provides no indication. Additionally, while your letter contends that the "overdue supplementation" was the subject of our recent meet and confer, the supplements that you demanded during the meet and confer conference did not fit within the parameters of your discovery requests, which we already addressed during the conference and in our July 24 letter.

Your letter still fails to explain what you hope to obtain through the metadata. No one is claiming that the Ms. Mason's email or Mr. Carroll's Facebook message are inauthentic or that Defendants' customer support team did not receive Ms. Mason's email. We are not trying to be difficult. We truly do not understand what you are looking for.

You do state in your letter that you are willing to consider our request to stipulate on the metadata issues if it will "narrow the native and metadata production," but you do not explain what you would like us to stipulate to. Marc already addressed this in an email sent the same day as your letter. Thus far, you have not been able to articulate what you want and why you want it. But if you tell us what facts you want us to stipulate to or what you want out of the metadata, we will consider your request.

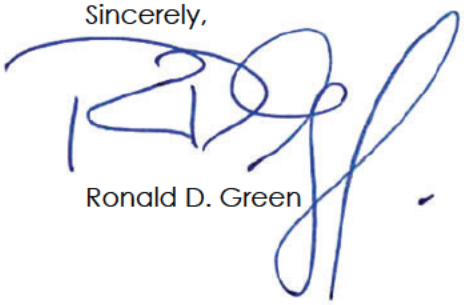
As you note in your letter, we did tell you that we are "engaging someone with greater technical facility" to see if the information you seek exists. Marc additionally addressed this in an email sent right after you sent your letter. We attempted to extract data about the post from Facebook but were unable to do so. The post was deleted, as Mr. Smothermon requested in both Ms. Mason's email and Mr. Carroll's message, and cannot be recovered. Given that neither message demanded preservation, Defendants certainly could not have predicted that they would need to preserve it.

Finally, we have provided you with dates Mr. Shupe is available for deposition. He is not available in September. If you wish to depose him, please let us know as soon as possible. We will not agree to extend discovery if you later decide that you would like to depose him.

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Please let us know if you have any questions.

Sincerely,



Ronald D. Green

cc: Marc Randazza

EXHIBIT 15

EXHIBIT 15

JONES, DAVIS & JACKSON, PC
Attorneys + Counselors

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Nicole A. Westbrook
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Licensed in Colorado

April 21, 2026

VIA EMAIL: mjr@randazza.com

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

Re: ***Meet and Confer Regarding Defendants' Deficient Rule 26 Initial Disclosures Smothermon v. Hodgetwins, LLC, et al., Case No. 2:25-cv-01858-APG-BNW.***

Dear Mr. Randazza,

We write to initiate the meet-and-confer process regarding Defendants' Rule 26(a)(1) Initial Disclosures, which your office served on April 9, 2026. Upon review, the disclosures are facially deficient and fail to comply with the Federal Rules of Civil Procedure. We ask that your clients promptly supplement these disclosures to cure the defects outlined below.

1. Improper and Deficient Document Disclosures (Rule 26(a)(1)(A)(ii)).

In Section 2.0 of your disclosures, you state that "Plaintiff has the following documents, ESI, or tangible things in their possession, custody, or control that they may use to support their defenses...." Federal Rule of Civil Procedure 26(a)(1)(A)(ii) requires the Defendants to disclose documents and ESI in the Defendants' possession, custody, or control that the Defendants may use to support their claims or defenses.

Furthermore, the 16 items listed are almost exclusively a collection of public internet links, Legacy Church's annual report, media articles, and Pastor Smothermon's published books. Conspicuously absent from your disclosure is any mention of internal documents, ESI, or communications actually in the Defendants' possession. For example, your clients' primary defense hinges on a Google image search that allegedly caused an innocent misidentification. Yet, the disclosures fail to identify any native browser histories, search logs, internal emails, text messages, or Slack communications regarding the drafting, publication, and eventual removal of the defamatory Facebook post. Please supplement this section to identify the actual internal ESI and documents your clients possess and intend to use.

2. Failure to Conduct a Reasonable Inquiry Regarding Insurance (Rule 26(a)(1)(A)(iv)).

In Section 4.0, your disclosures state that "Defendants are unaware of any insurance policy relevant to this lawsuit." Hodgetwins, LLC operates a highly monetized media platform with over 6.3 million Facebook followers and nearly 3.5 million YouTube subscribers. It strains credulity that a sophisticated corporate media entity operating at this scale lacks Commercial General Liability (CGL), media liability, or errors and omissions (E&O) insurance coverage. Rule 26 requires a party to make a reasonable inquiry before making its initial disclosures. Please confirm that a diligent search for applicable insurance policies has been conducted and, if any policies exist that may satisfy part or all of a judgment, produce them immediately.

3. Vague Witness Disclosures (Rule 26(a)(1)(A)(i)).

The descriptions of the subjects of information for Keith Hodge, Kevin Hodge, and the Hodgetwins, LLC Person Most Knowledgeable are identical, boilerplate copy-paste paragraphs. Simply stating that these witnesses have knowledge regarding "the allegedly defamatory Facebook post...the affirmative defenses asserted...and the other facts and circumstances surrounding this matter" fails to provide the required specificity. Please supplement these descriptions to provide meaningful detail about the specific subjects each witness will testify to, particularly regarding their respective roles in the editorial, verification, and publication process.

Meet and Confer Request Under Local Rule IA 1-3(f) of the District of Nevada, the meet-and-confer requirement "may only be satisfied through direct dialogue and discussion in a face-to-face meeting, telephone conference, or video conference. The exchange of written, electronic, or voice-mail communications does not satisfy this requirement."

Accordingly, please let me know your availability for a brief telephone or video conference this Thursday, April 23, 2026, to discuss these deficiencies. It is our hope that we can resolve this without burdening the Court with a motion to compel.

We look forward to hearing from you.

Sincerely yours,

JONES, DAVIS & JACKSON, PC

By: _____
Nicole A. Westbrook

CC: Pastor Steve Smothermon

JONES, DAVIS & JACKSON, PC
Attorneys + Counselors

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Nicole A. Westbrook
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Licensed in Colorado

May 26, 2026

VIA EMAIL: mjr@randazza.com

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

Re: ***Meet and Confer Regarding Outstanding Rule 26 Disclosures and Deficient Discovery Responses Smothermon v. Hodgetwins, LLC, et al., Case No. 2:25-cv-01858-APG-BNW.***

Dear Mr. Randazza,

I write to meet and confer regarding several deficiencies in your clients' discovery responses and outstanding disclosure obligations. We ask that your clients cure each of the items below.

1. **Failure to Supplement Initial Disclosures.** We sent you a letter on April 21, 2026, detailing the deficiencies in your Rule 26 disclosures. You refused to engage in a conferral conference until April 28, 2026. On that day, I called your office and was told you were not available. We rescheduled for May 4. On May 4, we held a Zoom conference meet-and-confer regarding the facial deficiencies in Defendants' Rule 26 Initial Disclosures. During that meeting, Mr. Green expressly agreed to supplement the disclosures within one week. More than two weeks have passed since that conferral; more than five weeks since our letter; and more than six weeks have passed since your initial disclosures were due, and we have yet to receive any supplementation.

These documents and any applicable insurance policies are squarely within your clients' disclosure obligations. We ask that you provide the promised supplemental disclosures by no later than Friday, May 29, 2026. If we do not receive them, we will move to compel and seek the fees incurred in doing so.

2. **Inconsistent and Contradictory Discovery Responses.** Several of your clients' responses are internally inconsistent and bear on their duty to preserve evidence.

The Google Search and Metadata (RFAs 1, 2, 9 vs. RFP 1): In response to Requests for Admission Nos. 1 and 2, your clients state that they "located the image after searching for an image of Steve Smotherman" and "simply performed a Google image search." In response to Request for Production No. 1, which seeks the native image file, search logs, and browser history, your clients state that they "are in possession of no documents responsive to this request." A Google image search of the kind your clients describe generates records. We cannot reconcile the admission that the search occurred with the position that no record of it exists. Please confirm what was searched for and produced, and if responsive records no longer exist, please explain what became of them.

In response to Request for Admission No. 9, regarding the photograph's metadata, your clients state that they "have not reviewed the metadata for the photograph." That a party has not reviewed metadata suggests the underlying file remains in its possession. If so, it is responsive to Request for Production No. 1 and should have been produced. Please produce the native file and its metadata or confirm in writing that the file no longer exists.

Concealment of Internal Communications (ROG 3 vs. RFPs 2-4): In their verified Amended Response to Interrogatory No. 3, your clients state that Nathan Hughes "learned of the post through an email sent to the customer service account," and that "Defendants had informed Mr. Hughes that they had been sued over a post that had an incorrect picture." That sworn answer describes at least one email and one or more communications between Defendants and Mr. Hughes. In response to Requests for Production Nos. 2, 3, and 4, however, your clients produced nothing and state that they possess no internal or third-party communications. The sworn interrogatory answer and the production responses cannot both be complete. Please produce the customer-service email and the Hughes communications, or confirm in writing what became of them.

3. **Evasive and Non-Responsive Interrogatory Answers**. Three interrogatory responses are non-responsive and require supplementation:

Interrogatory No. 4 asked your clients to describe the editorial standards, verification processes, and fact-checking policies used before publishing to their audience. The response—that they "post material to Facebook that they believe their subscribers will find interesting"—does not address verification or fact-checking and is non-responsive. Please supplement.

Interrogatory No. 5 asked your clients to identify any other "Steve Smotherman" or "Steve Smothermon" in the search results and to explain why those individuals were ruled out. The response—that "most, if not all" images appeared to be the same person and that Defendants "did not 'rule out' any individuals"—again relies on the results of a search that has not been produced. Please supplement, and produce the search results on which the answer relies.

Interrogatory No. 7 asked your clients to describe the decision-making process used to verify the identity of the person in the photograph, including any alternative visual verification steps taken. The response restates that Kevin Hodge searched Google and decided to post the image, but does not address what verification steps, if any, were taken beyond the text search. Please supplement.

4. **Refusal to Produce Financial Statements**. (RFP 9) Your clients objected to producing financial statements on the grounds that Plaintiff has not pleaded punitive damages and that the information is proprietary. We disagree that the objection forecloses production. Defendants' revenue from the Hodgetwins platform is relevant to motive—the monetization of content—and to Plaintiff's damages. To the extent confidentiality is a genuine concern, the parties can address it through a stipulated protective order, and we are willing to negotiate one. Please confirm whether your clients will produce these documents subject to such an order.

Pursuant to District of Nevada Local Rules IA 1-3(f) and 26-6(c), please let me know your availability for a telephone or video conference next week to discuss these issues. We would prefer to resolve them by agreement.

If we are unable to resolve these matters through conferral, we will move to compel and, where the record warrants, will seek relief under Federal Rule of Civil Procedure 37(e).

I look forward to hearing from you.

Sincerely yours,

JONES, DAVIS & JACKSON, PC

By: _____
Nicole A. Westbrook

CC: Pastor Steve Smothermon

JONES, DAVIS & JACKSON, PC
Attorneys + Counselors

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Nicole A. Westbrook
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Licensed in Colorado

June 30, 2026

VIA EMAIL: mjr@randazza.com

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

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

Dear Counsel,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely yours,

JONES, DAVIS & JACKSON, PC

By: _____
Nicole A. Westbrook

CC: Pastor Steve Smothermon

JONES, DAVIS & JACKSON, PC
Attorneys + Counselors

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Nicole A. Westbrook
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Licensed in Colorado

July 9, 2026

VIA EMAIL: mjr@randazza.com

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

Re: ***Smothermon v. Hodgetwins, LLC, et al., No. 2:25-cv-01858-APG-BNW (D. Nev.) — Response to Your July 1, 2026 Letter; First-Set Discovery Deficiencies and Notice of Intent to Move for a Protective Order***

Dear Mr. Green,

We write in response to your letter of July 1, 2026. The letter mischaracterizes our June 30 correspondence and declines to cure discovery deficiencies that your clients' own sworn responses place squarely at issue. Plaintiff remains willing to confer under Local Rule 26-6 and provides availability below. But if your clients stand on the positions in your letter, Plaintiff will move to compel under Rule 37(a) and will oppose any motion for a protective order.

1. **Our June 30 letter requested a conferral, not a 24-hour response.** Your letter states that we "demand[ed] that we agree to respond to discovery within 24 hours." We did not. The June 30 letter (a) requested a Local Rule 26-6 conferral by July 1, (b) asked your clients to produce voluntarily within seven days to avoid motion practice, and (c) gave notice of a forthcoming Second Set. The 30-day response periods of Rules 33, 34, and 36 are not in dispute, and we have not asked you to shorten them. We ask that you engage with what the letter actually requested.

2. **Your clients' "no documents exist" position cannot be reconciled with their own sworn interrogatory answer or with their own production.** Your clients' verified Amended Response to Interrogatory No. 3 states that Nathan Hughes "learned of the post through an email sent to the customer service account," and that "Defendants had informed Mr. Hughes that they had been sued over a post that had an incorrect picture." That sworn answer describes at least one email and one or more communications with Mr. Hughes. Your clients nonetheless responded to Requests for Production Nos. 1, 2, and 7 that no responsive documents exist — and then produced more than 100 pages after representing they had

none. These positions are irreconcilable. We ask that your clients either (a) supplement their responses to RFP Nos. 1, 2, and 7 and produce the customer-service email and the Hughes communications their interrogatory answer describes, or (b) state under oath what became of those materials. A publisher's editorial and verification process and state of mind are proper subjects of discovery in a public-figure defamation case. *Herbert v. Lando*, 441 U.S. 153, 158, 170 (1979).

3. **Preservation.** Your letter addresses only Mr. Carroll's Facebook message and omits the notice that matters: the August 22, 2025 email from Krisha Mason to your clients' representative, Kylie Howerton — sent to your clients' own merchandise customer-service channel — stating that the post used an "INCORRECT photo" of "Pastor Steve Smothermon" (HODGE000136-000138). Your letter itself acknowledges that your clients "took it down immediately after getting word that they got the wrong 'Smotherman,'" which confirms your clients received that word. The duty to preserve attaches upon the objective reasonable anticipation of litigation; it does not depend on whether a particular message was opened. On this record, that duty attached no later than August 22, 2025. Plaintiff reiterates the preservation demands in the June 30 letter — including the immediate suspension of any auto-deletion setting on the relevant Google account(s) — and expressly reserves all rights and remedies under Rule 37(e).

4. **The account data is within your clients' control, and Plaintiff seeks it from your clients — not by subpoena to the provider.** In the Ninth Circuit, "control" under Rule 34 is the legal right to obtain the documents on demand. *In re Citric Acid Litig.*, 191 F.3d 1090, 1107-08 (9th Cir. 1999); *United States v. Int'l Union of Petroleum & Indus. Workers*, 870 F.2d 1450, 1452 (9th Cir. 1989). Your clients have that right as to their own Google and Meta account data, which they can export or authorize for release. *See Flagg v. City of Detroit*, 252 F.R.D. 346 (E.D. Mich. 2008); *Matthew Enter., Inc. v. Chrysler Grp. LLC*, 2015 WL 8482256 (N.D. Cal. Dec. 10, 2015). Plaintiff therefore seeks this material from your clients under Rule 34, not by subpoena to Google or Meta, which the Stored Communications Act would bar. If your clients contend they cannot produce it, Plaintiff will ask the Court to direct each Defendant to execute a consent directive under 18 U.S.C. § 2702(b)(3); court-ordered consent is "lawful consent." *Negro v. Superior Court*, 230 Cal. App. 4th 879 (2014).

5. **Proportionality — and a good-faith narrowing offer.** Plaintiff does not agree that the requests are disproportionate. The party seeking a protective order bears the burden of showing specific prejudice or harm; broad, generalized assertions do not satisfy Rule 26(c), and boilerplate objections are inadequate. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36-37 (1984); *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992); *Burlington N. & Santa Fe Ry. v. U.S. Dist. Court*, 408 F.3d 1142, 1149 (9th Cir. 2005); *FTC v. AMG Servs., Inc.*, No. 2:12-cv-536-GMN-VCF (D. Nev.). Nonetheless, in the spirit of conferral, Plaintiff offers to narrow:

a. The native photograph file with all metadata, the account-side "My Activity"/Takeout data for the relevant dates, the Meta page activity/audit log, and the internal communications are targeted and low-burden, and should be produced.

b. As to device examination, Plaintiff will agree to a **neutral, court-appointed forensic examiner** operating under a mutually acceptable protocol and a stipulated protective order — the approach this Court approved in *United Factory Furniture Corp. v. Alterwitz*, No. 2:12-cv-00059-KJD-VCF (D. Nev. Apr. 6, 2012). Where a party's discovery responses contain discrepancies or inconsistencies, forensic imaging is warranted. *Ameriwood Indus. v. Liberman*, 2006 WL 3825291 (E.D. Mo. Dec. 27, 2006).

c. Plaintiff will withdraw or defer the router/modem/ISP request and will narrow any browsing-activity request to search-related activity.

Plaintiff also renews its offer to enter a **stipulated protective order** to address any genuine confidentiality concern, including as to the financial records.

6. **"New requests" versus supplementation — both apply.** Your clients' First-Set responses to RFP Nos. 1, 2, and 7 and to Interrogatory Nos. 4, 5, and 7 are deficient and must be supplemented now, independent of the Second Set. That the Second Set separately requests related material does not relieve your clients of their obligation to correct incomplete First-Set responses. Your clients may, of course, respond to the Second Set within the ordinary Rule 34 period.

7. **Conferral and next steps.** Plaintiff is available to confer under Local Rule 26-6 on Monday, June 13 and Wednesday June 15, 2026. If your clients maintain their refusal, Plaintiff will (a) move to compel under Rule 37(a) and seek the fees incurred, and (b) oppose any motion for a protective order and, as appropriate, cross-move to compel so the Court may consider both sets of issues together.

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

Sincerely yours,

JONES, DAVIS & JACKSON, PC

By: _____
Nicole A. Westbrook

CC: Pastor Steve Smothermon

JONES, DAVIS & JACKSON, PC
Attorneys + Counselors

15110 Dallas Parkway, Suite 300
Dallas, TX 75248
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Nicole A. Westbrook
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Licensed in Colorado

July 28, 2026

VIA EMAIL: mjr@randazza.com

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

Re: ***Response re Meet and Confer — Discovery Responses and Metadata; Smothermon v. Hodgetwins, LLC, et al., No. 2:25-cv-01858-APG-BNW***

Dear Mr. Green,

Thank you for your July 24, 2026, letter. I write to correct the record on several points and to keep our conferral on what is actually at issue.

The conferral is not premature. The deficiencies we raised concern Defendants' responses to Plaintiff's First Set of written discovery, served April 22, 2026. Defendants served those responses on May 22, 2026, and amended them on June 10 and 11, 2026. They are served, and they are deficient. They also still omit the supplementation you agreed at our May 4 conference to provide "within one week," which I noted was overdue in my May 26 letter and which remains outstanding. Those served responses and that overdue supplementation are the subject of our conferral, not Defendants' responses to Plaintiff's later sets, which are not yet due. The "premature" characterization does not fit the sequence.

Metadata. Your letter devotes several paragraphs to explaining that email headers record transmission and delivery rather than the moment a message is opened. We have not contended otherwise, and we have not asked for a field showing when a message was "read." Plaintiff seeks the native files and their metadata to establish the source of the photograph, the authenticity of the documents, and the completeness of the notice chain, including the field your own definition calls the image file's "Source URL."

I say "your own definition" deliberately. Defendants' Sixth Set of Requests for Production (June 25, 2026) and Seventh Set (served July 27, 2026) each adopt, verbatim, Plaintiff's definition of "Metadata" from Plaintiff's First Set, including its "IPTC Metadata" and "System Metadata" categories and the image file's "Source URL," and each demands that

Plaintiff produce documents with that metadata. The importance of metadata is therefore common ground: Defendants define it exactly as Plaintiff does and seek it from Plaintiff. That leaves the one question your letter does not reach, which is why Defendants decline to produce, in native form with that metadata, the same category they define and demand. Defendants cannot maintain both that metadata is not probative and that Plaintiff must produce it under Defendants' own definition.

The technical review you describe. I welcome your statement that Defendants are engaging someone with greater technical facility to locate further responsive data. That review should reach the native file and metadata of the August 22, 2025, notice email, produced to date only as a flattened image, and the records of the image search that sourced the photograph. The offer also acknowledges that further data may exist and be recoverable, which is difficult to reconcile with the position that the search left "no record."

Your stipulation proposal. A stipulation that the notice email was delivered does not substitute for the native file and its metadata, which go to source, authenticity, and completeness rather than delivery alone. If Defendants will stipulate to specific facts that would narrow the native and metadata production, I am glad to consider them; a stipulation limited to "delivery" does not.

The July 22 conference. I did not raise my voice during our July 22 conference, and I do not accept your characterization of it. I will not litigate tone by letter, and I would rather keep our attention on the substance above.

Please confirm by Friday, July 31, 2026, whether Defendants will (1) produce the native files and metadata for the August 22, 2025 notice email and the responsive image and search materials, and (2) provide the supplementation agreed on May 4. I remain available to confer.

Sincerely yours,

JONES, DAVIS & JACKSON, PC

By: _____
Nicole A. Westbrook

CC: Pastor Steve Smothermon

JONES, DAVIS & JACKSON, PC
Attorneys + Counselors

15110 Dallas Parkway, Suite 300
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Nicole A. Westbrook
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August 25, 2026

VIA EMAIL: mjr@randazza.com

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

Re: ***Meet and Confer Regarding Defendants' Continuing Discovery Deficiencies and Notice of Intent to Move to Compel Smothermon v. Hodgetwins, LLC, et al., Case No. 2:25-cv-01858-APG-BNW***

Dear Counsel,

I write pursuant to Federal Rule of Civil Procedure 37(a) and District of Nevada Local Rules IA 1-3(f) and 26-6 to confer regarding deficiencies that remain in Defendants' discovery responses and disclosures. This continues the conferral process we began on April 21, 2026 and pursued in my letters of May 26, June 30, July 9, and July 28, and in our May 4 and July 22 conferences. Defendants' responses to Plaintiff's Second and Third Sets, served July 30 and August 10, 2026, repeat the same objections rather than curing the underlying defects. With the September 18, 2026, discovery cut-off approaching, we ask that Defendants supplement as set forth below. If they do not, Plaintiff will move to compel and will seek the fees incurred under Rule 37(a)(5).

At the outset, one pattern frames the rest. Defendants have repeatedly answered "no documents exist," only to produce responsive material later — including more than 100 pages after representing they had none, and including the August 22, 2025, customer-service email from Krisha Mason to Kylie Howerton reporting an "INCORRECT photo" of "Pastor Steve Smothermon" (HODGE000136–000138).) That history undermines the "no documents" and burden objections repeated below and confirms that a diligent search has not been conducted.

1. Rule 26(a)(1) Initial Disclosures Remain Unsupplemented.

At our May 4 conference, Mr. Green agreed to supplement the initial disclosures within one week. That supplementation, noted as overdue in my May 26 and July 28 letters, still has not addressed the core defects:

- Insurance (Rule 26(a)(1)(A)(iv)). Defendants continue to state they possess no responsive insurance documents (Resp. to RFP No. 21). Given the scale of the Hodgetwins operation, please confirm in writing that a reasonable inquiry was conducted for CGL, media-liability, E&O, and umbrella coverage in effect in August 2025, describe that inquiry, and produce any responsive policies.

- Internal ESI (Rule 26(a)(1)(A)(ii)). The disclosures still identify only public links, articles, and Plaintiff's own materials, and omit the internal ESI Defendants' own defense depends on — search records, communications, and account and device data concerning the creation, publication, and removal of the August 22, 2025 post.

- Witness specificity (Rule 26(a)(1)(A)(i)). The witness descriptions remain boilerplate and do not identify each witness's role in the editorial, verification, and publication process.

2. Google Account Activity and the "No Records" / "Incognito" Position.

Defendants have admitted, under oath, that Kevin Hodge performed a Google image search for "Steve Smotherman," copied the resulting photograph, and pasted it into the post, and that no reverse-image search was performed. Defendants nonetheless maintain they possess no record of the search (Resps. to RFP Nos. 1, 10) — first because "no documents" exist, and later because the search was run "in incognito mode."

As explained in my June 30 letter, incognito mode governs only local browser artifacts; it does not suppress server-side logging. When a user is signed in to a Google account, Web & App Activity records searches to that account's "My Activity" regardless of incognito mode, and the account holder can export those records through Google Takeout. That account-side data is within Defendants' possession, custody, or control under Rule 34, because control in the Ninth Circuit means the legal right to obtain documents on demand — a right Defendants plainly have as to their own Google and Meta account data. *See In re Citric Acid Litig.*, 191 F.3d 1090 (9th Cir. 1999); *United States v. Int'l Union of Petroleum & Indus. Workers*, 870 F.2d 1450 (9th Cir. 1989); *Flagg v. City of Detroit*, 252 F.R.D. 346 (E.D. Mich. 2008). Accordingly, please:

- Produce the Google Takeout export (Search, Image Search, Web & App Activity, and YouTube history) for each account signed in on the device used, for August 1 through September 30, 2025; and

- If Defendants contend they cannot themselves produce this data, have each individual Defendant execute the Consent Directive authorizing Google to release the records (RFP No. 23; RFP No. 31 / Attachment A). A subscriber's consent removes any Stored

Communications Act bar under 18 U.S.C. § 2702(b)(3), and court-ordered consent is "lawful consent." *Negro v. Superior Court*, 230 Cal. App. 4th 879 (2014). Plaintiff will, if necessary, move to compel execution of the directive.

3. Native Photograph File and Metadata.

Defendants respond "no documents" to requests for the original photograph in native format with EXIF and system metadata intact, including the source URL (RFP Nos. 13, 26), while also stating they "have not reviewed the metadata" for the photograph. Those positions are inconsistent: a party cannot decline to review metadata for a file it does not possess. The importance of this material is now common ground — Defendants' own Sixth and Seventh Sets of Requests for Production adopt Plaintiff's definition of "Metadata" verbatim, including its IPTC and system-metadata categories and the image file's "Source URL," and demand that Plaintiff produce documents bearing that metadata. Defendants cannot maintain both that metadata is not probative and that Plaintiff must produce it under Defendants' own definition. Please produce the native photograph file, and the native file and metadata of the August 22, 2025, notice email (produced to date only as a flattened image), or confirm in writing — with specifics — when and how the native files ceased to exist.

4. Meta/Facebook Page Export and Audit Log.

Defendants object to producing the Meta/Business Suite export and the page activity/audit log reflecting the creation, edits, and removal of the post, with timestamps and the acting administrator (RFP Nos. 14, 24). This material goes to the heart of the case — who published the post, when, and when and by whom it was removed — and is not rendered irrelevant by the post's short lifespan. To the extent confidentiality is a genuine concern, we remain willing to negotiate a stipulated protective order. Please confirm whether Defendants will produce this export subject to such an order.

5. Internal and Third-Party Communications.

Defendants' verified Amended Response to Interrogatory No. 3 describes a customer-service email through which Nathan Hughes learned of the post and communications between Defendants and Mr. Hughes; Interrogatory No. 21 identifies that Krisha Mason contacted Defendants' customer-support team, leading to the post's removal; and Defendants have themselves produced the Mason-to-Howerton notice email. Despite these sworn answers and their own production, Defendants respond "no documents" to, and object to producing, the broader communications (RFP Nos. 20, 22, 29). A publisher's editorial and verification process and state of mind are proper subjects of discovery in this defamation case. *Herbert v. Lando*, 441 U.S. 153 (1979). Please produce the customer-service email in native format, the Hughes communications, and communications with Ms. Mason, Ms. Howerton, and Mr. Rynders concerning the post, with metadata intact — or confirm in writing what became of them. A blanket privilege objection does not substitute for production of plainly non-privileged party and third-party communications, and does not excuse the absence of a privilege log (see Item 8).

6. Financial, Monetization, and Engagement Data.

Defendants declined to produce revenue and monetization documents (RFP Nos. 19, 28) and instead offered Keith Hodge's declaration estimating that the page earned roughly $3,500 per day across approximately 40 posts, that each post earned $75–$120, and that the post at issue "probably earned around $20 to $40." An estimate in a declaration is not a substitute for the responsive documents. Revenue and engagement data are relevant to motive — the monetization of Defendants' content — and to Plaintiff's damages. Mr. Hodge's declaration also confirms the data existed and was recoverable for roughly 30 days after deletion, which bears directly on preservation (Item 7). Please produce documents sufficient to show the views, reach, and revenue associated with the post, and supplement Interrogatory No. 18 (engagement data) with a substantive answer rather than an objection premised on Plaintiff's supposed fault.

7. Preservation, Litigation Hold, and Spoliation.

Defendants respond "no documents" or "not in possession" to requests concerning any litigation hold or steps taken to preserve or suspend auto-deletion of account, device, and platform data (RFP Nos. 17, 30; Interrogatory No. 20). Defendants' own declaration states that post-level data becomes "unrecoverable after 30 days," meaning it remained recoverable well after Plaintiff's August 22, 2025, demand for removal and retraction. The duty to preserve attaches upon the reasonable anticipation of litigation and, on this record, arose no later than that date. Please state, in a substantive supplemental response, what preservation steps were taken, when, and by whom. Plaintiff expressly reserves all rights under Rule 37(e), including curative measures and an adverse-inference instruction. We again instruct Defendants to preserve all Google account activity, device data, browser data, and Meta account data, and to suspend any auto-delete settings on the relevant accounts.

8. Improper Blanket Objections and Refusal to Provide a Privilege Log.

Defendants incorporate boilerplate General Objections into every answer, including General Objection No. 9, by which Defendants state they "will neither produce nor create a privilege log" for documents they contend are privileged. A party withholding responsive documents on privilege grounds must describe them sufficiently to assess the claim under Rule 26(b)(5)(A), and the burden of sustaining an objection — including on a motion for a protective order — rests on the objecting party; boilerplate assertions do not suffice. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984); *Burlington N. & Santa Fe Ry. v. U.S. Dist. Court*, 408 F.3d 1142 (9th Cir. 2005). Please withdraw the categorical refusal and produce a privilege log for any responsive document withheld on privilege grounds, or confirm that no responsive documents are being withheld on that basis.

Plaintiff's Narrowing Offers Remain Open.

To move this forward, Plaintiff reiterates the good-faith narrowing proposed in my July 9 letter: Plaintiff will accept a neutral, court-appointed forensic examiner operating under a mutually acceptable protocol and a stipulated protective order for any device examination (see *United Factory Furniture Corp. v. Alterwitz*, No. 2:12-cv-00059-KJD-VCF (D. Nev. 2012);

Ameriwood Indus. v. Liberman, 2006 WL 3825291 (E.D. Mo. 2006)); will withdraw or defer the router/modem/ISP request; and will narrow any browsing-activity request to search-related activity. Plaintiff also renews its offer to enter a stipulated protective order to address any genuine confidentiality concern, including as to the financial records.

Meet-and-Confer Request.

Under Local Rule IA 1-3(f), the meet-and-confer obligation may be satisfied only through direct dialogue. Accordingly, please advise by September 2, 2026, of your availability for a telephonic conference during the week of September 7 to discuss the items above. Given the September 18, 2026, discovery cut-off, time is short, and we would prefer to resolve these matters by agreement rather than burden the Court.

If we are unable to resolve these issues through conferral, Plaintiff will move to compel under Rule 37(a) and will seek the reasonable fees and costs incurred, and will pursue relief under Rule 37(e) where the record warrants. Nothing in this letter waives, and Plaintiff expressly reserves, all rights and objections.

I look forward to hearing from you..

Sincerely yours,

JONES, DAVIS & JACKSON, PC

By: _____
Nicole A. Westbrook

CC: Pastor Steve Smothermon

EXHIBIT 16

EXHIBIT 16

RANDAZZA
LEGAL GROUP

Marc J. Randazza, JD, MAMC, LLM
Licensed in AZ, CA, FL, MA, NV

27 January 2026

Via Email Only
G. Michael Jackson
<Mjackson@jonesdavis.com>
Nicole A. Westbrook
<Nwestbrook@joneskeller.com>

Re: Notice of Representation re: matter of Smothermon. v. Hodgetwins, LLC., et. al, No. 2:25-cv-01858

Dear Attorneys Jackson and Westbrook,

My firm has appeared as counsel for Keith Hodge, Kevin Hodge, and Hodgetwins, LLC.

I see that two of the defendants are under a clerk's default. It is our intention to seek to set that default aside. We also intend to file a responsive pleading for Keith Hodge.

We are writing to request that you consent to setting aside the clerk's default and that we come to an agreement on when all three parties may file their responsive pleadings.

I presume that I am not giving away any unpredictable strategy by letting you know that it is our intention to seek relief under the Nevada Anti-SLAPP law. I presume that you are familiar with that law to at least encourage your client to reconsider this case. Before we file our Anti-SLAPP motion, your client has the opportunity to think clearly about this and to step back from the predictably negative outcome he faces.

Presuming that you already thought that through, and that you do not intend to simply drop the case, I will discuss the default. You certainly have the *right* to insist that we file a motion to set it aside. However, I think it is highly unlikely that the Court will insist that an 11 day old default can not be set aside. But once we do get our Anti-SLAPP award, the fees we have to incur in moving to set it aside will be included in that tally. Accordingly, even if you feel confident that you can fend off our defense of the case on its merits, adding the additional risk of the costs and fees to relieve the default seems like a poor decision Smith v. Zilverberg, 137 Nev. 65, 72–77 (2021).

Further, I presume you are familiar with the judge you drew. We are delighted that he is on the case, as his view of fairness is unobscured. I will not predict his particular views on the case in chief, but I would be quite shocked if you were able to convince him that our clients do not deserve a resolution on the merits.

At this point, we are uncertain whether you have even served Ketih Hodge. Rather than force you to serve him, we will accept service of the complaint. We would like to note that given the uncertainty as to when his response is due, we do not think it would be to your or your client's advantage to try and seek default against him without our further meeting and conferring.

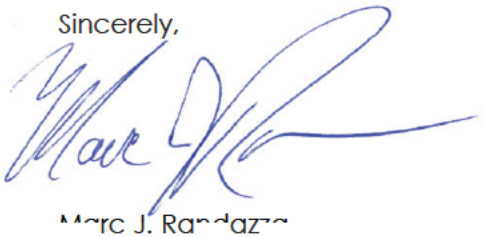
RANDAZZA
LEGAL GROUP

I would like to invite you to call me to discuss whether you are willing to stipulate to setting aside the default and having a unified response date, or whether this is going to be one of *those* kinds of cases. I'll go for whichever tone you wish to set here. But I like to start cases thinking that my opposing counsel is going to be reasonable.

Please confirm my presumption at your earliest convenience.

While we are talking about that, if you're curious about why I am so confident that this case is going nowhere, default or otherwise, I will be happy to share that with you as well.

Sincerely,



Marc J. Randazza

encl: Notice of Appearace

cc: RDG, AJS, Client

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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Las Vegas, NV 89147
Telephone: 702-420-2001
ecf@randazza.com

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

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON,

Plaintiff,

v.

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

Defendants.

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

NOTICE OF APPEARANCE OF COUNSEL

TO: THE COURT

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that Marc J. Randazza, Ronald D. Green, and Alex J. Shepard of Randazza Legal Group, PLLC hereby enter their appearance in this matter on behalf of Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC ("Defendants"). It is requested that any and all papers and pleadings filed in this action be properly delivered to the undersigned counsel of record.

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RANDAZZA | LEGAL GROUP

Upon making their appearance as counsel for Defendants in this case, counsel shall respond to the Complaint on behalf of Defendant Keith Hodge and move to set aside the Default entered by the Court against Defendants Kevin Hodge and Hodgetwins, LLC.

Respectfully Submitted,

/s/ Ronald D. Green

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

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

RANDAZZA | LEGAL GROUP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 27, 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/ Ronald D. Green
RONALD D. GREEN

RANDAZZA | LEGAL GROUP

EXHIBIT 17

EXHIBIT 17

RANDAZZA
LEGAL GROUP

Marc J. Randazza, JD, MAMC, LLM
Licensed in AZ, CA, FL, MA, NV

Via Email Only
Nicole Westbrook
1675 Broadway, 28th Floor
Denver, Colorado 80202
<nwestbrook@joneskeller.com>

Re: Anti-SLAPP Law's Effect on Pastor Smothermon's Case Against My Clients

Dear Attorney Westbrook:

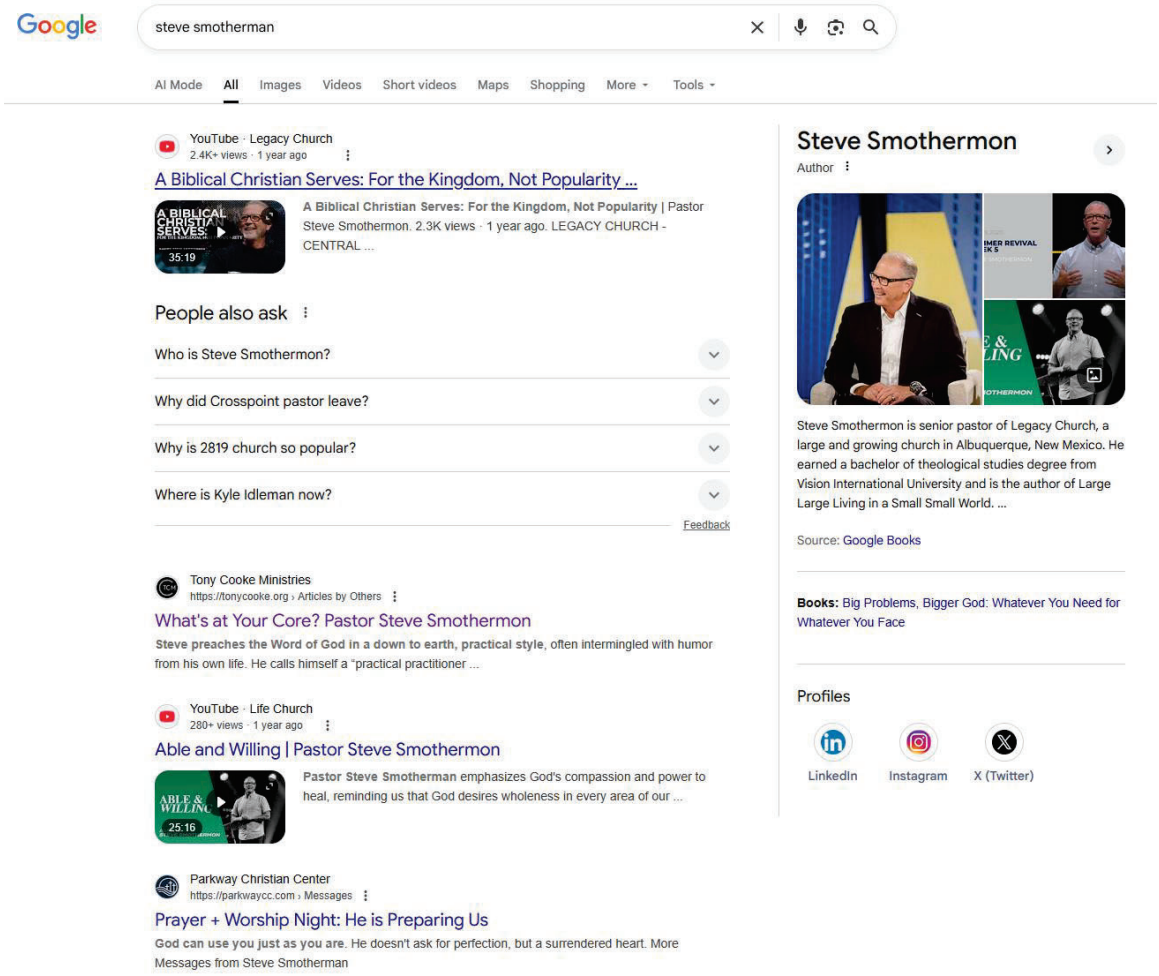
I appreciate your professionalism in setting aside the default. Before we spend a lot more energy, my clients would like to try and end this before they have to incur further fees – fees that we are confident that your client will eventually need to pay.

The Constitution and Nevada's Anti-SLAPP Law

My clients' speech enjoys broad protections under the First Amendment to the United States Constitution and Article I of the Nevada Constitution. Nev. Const. art. 1, § 9. In addition, given that they were writing about hot-button political issues of the day, Nevada's Anti-SLAPP Law, NRS 41.635 *et seq.*, further protects my clients' "right to free speech in direct connection with an issue of public concern." NRS 41.637. A dismissal under Nevada's anti-SLAPP provisions, meanwhile, will entitle my clients to an award of attorneys' fees and costs spent defending themselves. NRS 41.670(1)(a). Such an award would cover all fees my clients end up spending on their defense, too. *Smith v. Zilverberg*, 137 Nev. 65, 73, 481 P.3d 1222, 1230 (2021).

Your client is a public figure, but will never prove 'actual malice'

In your Complaint, you referenced your client's established "public image and ministry," as well as his leadership position with the Legacy Church organization, which comprises a "church, school, and charitable organization." This is in addition to Pastor Smothermon's high profile, publicly available data—that, among other things, reveal Legacy Church's more than 90,000 YouTube followers—which cements your client's status as a public figure. Indeed, despite the rampant media coverage of Cracker Barrel going "woke," as mentioned in the Complaint, when I search for "Steve Smotherman" on Google, the top results are all for your client.



The statements at issue, claiming Smotherman[1] is "woke," fall firmly within the ongoing cultural controversy in which Pastor Smothermon has involved himself, making him at least a limited-purpose public figure.

That, in turn, means your client would need to "provide sufficient evidence for a jury, by clear and convincing evidence, to reasonably infer that the publication was made with actual malice," *Wynn v. AP*, 555 P.3d 272, 275 (Nev. 2024), *i.e.*, that my clients had "knowledge [their statement] was false or [was made] with reckless disregard of whether it was false or not," *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 280 (1964); *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 719, 57 P.3d 82, 90-91 (2002). Reckless disregard requires that a publisher "entertained serious doubts as to the truth of his publication." *St. Amant v.*

[1] It appears you are trying to assert a defamation by implication claim, since my clients' statements accurately refers to Steve Smotherman, the Cracker Barrel CEO, and not Pastor Smothermon. The only alleged inclusion of Pastor Smothermon is the use of his image.

Thompson, 390 U.S. 727, 731 (1968); *see also Bose Corp. v. Consumers Union*, 466 U.S. 485, 511 n.30 (1984). Reckless disregard only exists 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 man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *Reader's Digest Assn. v. Superior Court*, 690 P.2d 610, 617-18 (Cal. 1984); *see also Thompson*, 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 Ass'n v. Superior Court*, 690 P.2d 610, 619 (Cal. 1984).

Your Complaint does not allege facts sufficient to show that my clients acted with malice or that the publication of your client's photograph was anything but an innocent mistake by communicators whose obvious objective was merely to illustrate reporting on a similarly named individual. Though the Complaint accuses my clients of "knowing and malicious misidentification," it is devoid of any factual allegations suggesting either knowledge or malice. Think it over. Why would my clients knowingly or maliciously do anything toward your client, when they clearly have no pre-existing beef with him? I suppose you could *try* amending your Complaint to provide actual allegations of actual malice, but I this could be done in good faith. It's obvious that what happened here was no more than an innocent mistake – and one that every search engine seems to make as well.

Your client's action would fail even if he were not a public figure

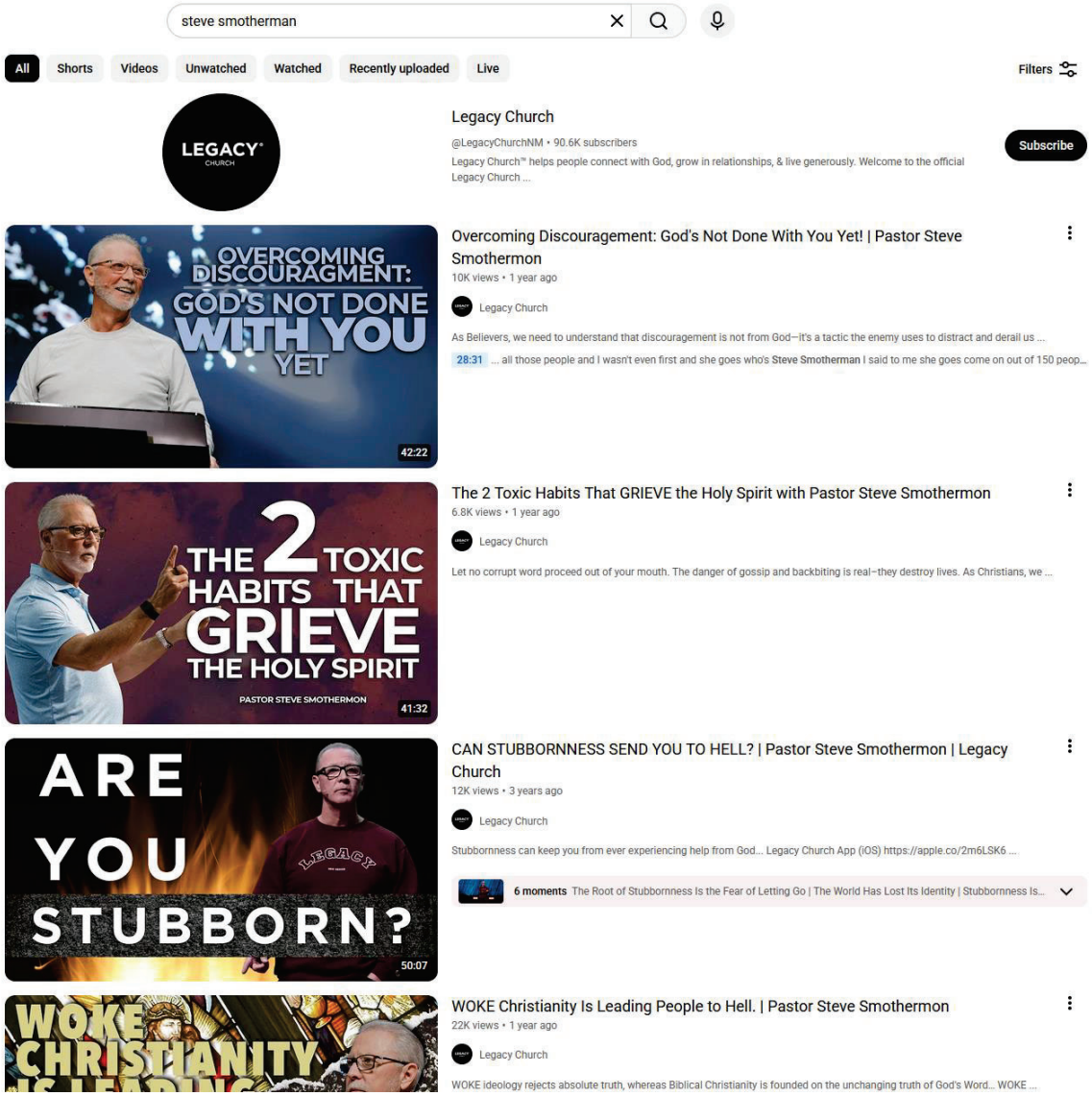
Even if we ignore your client's public figure status and assume, *arguendo*, that he is a private figure, the law still is not on his side. In line with federal precedent, Nevada would require him to '"demonstrate the defendant failed to exercise reasonable care in determining the truth or falsity of the alleged defamatory statement before publishing it.'" *Nigam v. Ahmad*, 561 P.3d 597, 2024 Nev. App. Unpub. LEXIS 653, *18 (Nev. Ct. App. Dec. 19, 2024) (quoting *Bui v. Ngo*, 101 Cal. App. 5th 1061, 1061 (2015)); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

Your Complaint contains no specific allegations even suggesting a failure to exercise reasonable care, and, if this case proceeded to discovery, my clients would have little difficulty showing that their publishing activities fall well within industry standards. In fact, I myself did a Google search for Mr. Smotherman, and your client's picture came up. I asked Gemini for a photo of Smotherman, and your client came up. YouTube even shows your client with the name "Smotherman" -- the other guy.



YouTube
Steve Smothermon - YouTube

In fact, when I search for Steve Smotherman on YouTube, all I get are videos of your client.



It appears the internet collectively believes that your client is Steve Smotherman, so I find it quite unlikely that your client will be able to prove that it was even *negligent* for my clients to use a photo of Smothermon when reporting on Smotherman.

Your client will have difficulty showing *any* defamation at all

In the Complaint, your client alleges that "the Hodgetwins' Facebook post falsely . . . told their vast audience that Pastor Steve Smothermon was a 'woke' supporter of LGBTQ+ causes and responsible for the controversial DEI-driven rebranding at Cracker Barrel, which allegedly led to a $145 million loss in brand value in a single day."

Nobody would believe, from my client's post on Facebook, that your client, who is in no way affiliated with Cracker Barrel, could possibly have been responsible for this rebranding. This is evident from the text of the post, showing my clients were reporting on Steve Smotherman—the *only* individual they named. But even if the inclusion of your clients' photograph led readers to somehow presume that Pastor Smothermon himself was, say, "woke" or insufficiently "conversative," such statements would not be defamatory.

Whether somebody is "woke" or aligns with a speaker's (or reader's) politics is necessarily a matter of opinion, and constitutional law has long recognized that defamation claims based on statements that are not assertions of objective fact are "foreclosed by the First Amendment." *Partington v. Bugliosi*, 56 F.3d 1147, 1153 (9th Cir. 1995). In fact, using the kind of hyperbolic language my clients employed is a key indicator of statements that do *not* assert objective fact. *Id.*

Some courts have even dealt with the specific question of whether calling someone "woke" can be defamatory, and have found it cannot. *See, e.g., MacCudden v. Johnson*, No. 2024AP876, 2025 Wis. App. LEXIS 964, *6-7 (Wis. App. Dist. 1 Oct. 28, 2025) (finding that terms like "woke" are "vague and do not have a clear meaning or definition. For example, some Americans define 'wokeness' as 'being informed, educated on, and aware of social injustices;' other Americans use it to mean 'being overly politically correct and policing others' words.' We are not persuaded that the terms are definitive enough to allow a jury to determine whether these terms are true or false"). Similarly, terms like "anti-American" and "anti-family values" cannot possibly be defamatory because there is no common definition of what American or family values even are, and opinions are typically split along political lines. Conservatives like your client believe that DEI initiatives are anti-American because they give certain groups a leg up, while plenty of others believe such measures are necessary to ensure the founding fathers' promise of equality for everyone. Nothing here could possibly support a defamation claim.

Your client did not suffer any discernible damages

Finally, exactly in what way your client could have been harmed by my clients' actions remains a mystery.

As previously noted, individuals familiar with Pastor Smothermon and his work would have immediately recognized that he was not the Cracker Barrel executive described in my clients' post—and thus would not have attributed any negative implications to your client. It would be as if I put up a picture of *you* as the CEO of Cracker Barrel.

Conversely, anybody unfamiliar with Pastor Smothermon would—based on my clients' post—have had every reason to form an opinion on Steve Smotherman, but no reason whatsoever to form an opinion about Pastor Smothermon, of whose existence they were never aware.

The good news: My clients are *not* your enemy

My clients recognize that your client may take offense at being branded as "woke." Personally, I too would find such a statement to be an insult. But an insult is not enough for a defamation claim to stand.

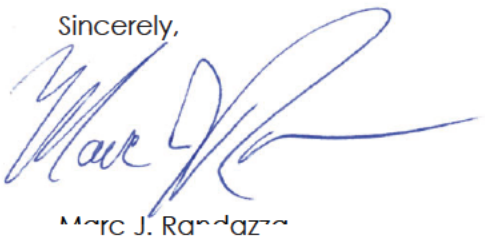
My clients presume that your client is not a bad guy. We had the option of simply filing an answer and then the Anti-SLAPP motion—trapping your client in this litigation and bestowing both the humiliation of a loss and the penalty of paying my fees. My clients decided that at this time, they wish to forgive him for filing this ill-considered lawsuit and to permit him to walk away from it without any negative impact.

We hope that your client recognizes the generosity in their decision to wait on actively litigating this case right now, rather than acting the part of Sonny LoSpecchio in the bar scene in A Bronx Tale. That said, my clients' instructions to address this matter with grace were not given to me with an instruction to exercise eternal patience.

Your client should take some time to think about how this is going to end for him. At this point, my clients' expenses have not been significant. My clients are not angry. They are interested in letting your client go to preach and do his good work.

If he declines this generosity, our consciences will be clear when the consequences of his decision wind up filling him with regret and sadness. Pastor Smothermon should just walk away, and spare himself what comes next.

Sincerely,



Marc J. Randazza

cc: clients

EXHIBIT 18

EXHIBIT 18

RANDAZZA
LEGAL GROUP

Ronald D. Green
Partner
Licensed in NV

5 June 2026

Via Email Only
Nicole A. Westbrook
<nwestbrook@jonesdavis.com>

Re: Hodgetwins, LLC, et al. adv. Smothermon | Meet and Confer Follow-Up

Dear Nicole:

It was a pleasure speaking with you on June 4, 2026, regarding the outstanding discovery issues. I will supplement Defendants' responses that we discussed. Please let me know your proposal to limit the language of your Request for Production No. 9 at your earliest convenience.

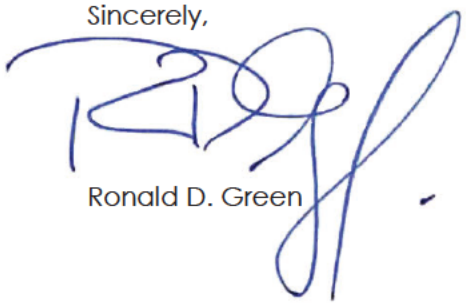
We would like to remind you once again that we intend to file a motion under the Nevada Anti-SLAPP law. If this case had been filed in Nevada state court, we would have made that motion already. Since this case is in federal court, we are generally only able to do so after the development of facts pertaining to prong one – namely that our clients published something true (inapplicable) or without knowledge of its falsity (obviously this is a fact).

Unfortunately, given your client's insistence on drawing out those facts, we must continue to hold back on filing our Anti-SLAPP motion, which is continuing to increase the costs and fees for both parties.

We will not beat our chests that the Anti-SLAPP motion is 100% guaranteed to be granted. After all, we can accept, for the purpose of this letter, that you may be able to demonstrate actual malice, due to recklessness.

However, we must continue to warn you that if your client does not prevail when we do file the Anti-SLAPP motion, his intransigence when it comes to admitting two basic facts (he is a public figure and our clients published without knowledge of the falsity of their publication) is going to multiply the fee award he will be forced to pay.

Sincerely,



Ronald D. Green

cc: Marc J. Randazza

EXHIBIT 19

EXHIBIT 19

RANDAZZA
LEGAL GROUP

Marc J. Randazza, JD, MAMC, LLM
Licensed in AZ, CA, FL, MA, NV

Settlement Privileged Communication

13 May 2026

Via Email Only <nwestbrook@joneskeller.com>
Nicole A. Westbrook
JONES & KELLER
1675 Broadway, 28th Floor
Denver, CO 80202

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

Dear Nicole:

We would like to remind you that we will be moving for fees under the Nevada anti-SLAPP law. However, since we are in federal court, we can only do that under Rule 12(b)(6), 12(c), or Rule 56.

We have previously tried to help you limit Mr. Smothermon's expenses and fee exposure by requesting certain stipulations, but Mr. Smothermon refuses. Accordingly, we will develop the facts to put Smothermon in checkmate and then ruin his day.

If your client continues to be intransigent when it comes to simply admitting that he is a public figure and that, at worst, Defendants were negligent, it's going to run Defendants' legal bills into the realm of six figures. Smothermon will end up paying that bill.

There is no insurance company involved that might be willing to give your client money just to go away and end this dispute. I presume that Smothermon might have believed that there was one. Now that he knows there isn't, and this is not going to be an easy payday, he might want to reconsider how this is going to play out for him.

If your client wishes to realize the error of his ways and drop the lawsuit, that would be his best move at this point. Our fees to date are approximately $60,000. I am sure that you understand that this number does not go down as the case goes forward.

Your Pal,

Marc J. Randazza

cc: Michael Jackson (mjackson@jonesdavis.com); Ronald Green; Client.

EXHIBIT 20

EXHIBIT 20

EXHIBIT 1

Matthew Shupe's Expert Report

Report and Opinion by Matthew Shupe

RE: Pastor Steve Smothermon v. Hodgetwins, LLC, et al. (2:25-cv-01858-APG-BNW)

My name is Matthew Shupe, I have owned Praetorian Public Relations since May 2013. Since then, I have worked in brand, reputation, and crisis management for individuals, businesses, non-profits, politicians, political candidates, and celebrities throughout North America. I graduated from California State University, Fresno with a dual bachelor's degrees in mass communication and journalism with an emphasis in public relations and political science. I am a member of the faculty at the Leadership Institute, a non-profit based in Arlington, VA. With them, I have taught crisis communications and management to members of multiple state legislatures, members of parliament of Canada, Turks and Caicos, Belize, St. Kitts, and St. Vincent, elected and appointed officials, candidates, activists, and professionals throughout North America. I have acted as a spokesperson or public relations consultant for Erika Kirk/Turning Point USA, Harmeet K. Dhillon, the California and Arizona Republican Parties, Baseball legend and US Senate candidate Steve Garvey, and many more.

I have been retained by Randazza Legal Group, PLLC to review case material and render a professional opinion on the online reputational damage and rehabilitation process for Pastor Steve Smothermon as a result of the brief social media post alleged in the Complaint. According to a Google's AI summary tool in its search page[1], Steve Smothermon is senior pastor of Legacy Church, a large and growing church in Albuquerque, New Mexico. He earned a bachelor's degree in theological studies from Vision International University and is the author of *Large Large Living in a Small Small World* and *Big Problems, Bigger God*.

On August 22, 2025, Defendants mistakenly published a picture of Pastor Smothermon in a Facebook post. They claim they intended to post a photo of the Cracker Barrel executive Steve Smotherman, who was the center of criticism after Cracker Barrel's disastrous rebranding. The post was critical of Smotherman, whose name was spelled correctly throughout the post. The post with the incorrect picture was up for a few hours before being taken down. Pastor Smothermon claims this caused him millions of dollars in reputational damage.

Prior to being approached for retention as an expert witness in this matter, I did not know of Pastor Smothermon, nor did I know of Defendants. My professional analysis is rendered based off my review of the docket in this matter, the documents produced in discovery in this matter, third-party data provided by Meltwater Inc, Grabien, and Google. Google's AI summary tool, citing Wikipedia, describes Meltwater as "an online media, social and consumer intelligence company. The company was founded in Oslo, Norway, by Jørn Lyseggen, in 2001 and is headquartered in San Francisco, California, with additional offices across Europe, North America, Asia/Pacific, Australia, and Africa." Praetorian Public Relations has a two-year contract with Meltwater to provide these services. Grabien describes itself as offering a full suite of tools for hosts and producers (TV, radio, podcasts), corporations, PR firms and media personalities, and hard-core news junkies. Praetorian Public Relations has a monthly subscription to Grabien.

[1] When an internet user searches for "Steve Smothermon" on Google, its AI summary is the first, most prominent, and most authoritative result it displays. Therefore, it has the biggest impact on a viewer's impression and the individual's reputation.

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Case filings and discovery documents reviewed:
Complaint and Demand for Jury Trial, Case No. 2:25-cv-01858-APG-BNW

Amended Answer and Defenses

Legacy Church Home Page

Annual Report

Legacy Church App Webpage

Legacy Church YouTube Page

YouTube Video – "I'm a Right Wing Extremist and Here's Why!

Smothermon Instagram Page

Legacy Church Instagram Page

Smothermon Amazon Author Page

"Charlie Kirk Visits Legacy Church in Albuquerque, NM" Article

"New Washington Post Column Exposes Mark Ronchetti for Trying to Hide His Extreme Anti-Abortion Stance" Article

"Ronchetti, McCleskey Size Up Republican Presidential Candidates" Article

Episode 99: Inside New Mexico with Steve Pearce" Podcast

"Forgiving Smothermon; praying for those his words affect" Article

"Legacy pastor fires back on highlighted ballot issue" Article

"Legacy Church stirs the post during election season" Article

"ABQ Fire Marshal Says the City and State Police Will Be Visiting Churches to Make Sure Public Health Orders Are Being Practices" Article

"COVID Shutdown is Destroying New Mexico! Where is the NM GOP? Hello!!??!!" Article

"New Mexico Megachurch sues state police over policy limiting gatherings to 5 or fewer" Article

"UPDATED: Legacy Church in ABQ Files a Request for an Injunction in Federal Court to Stop Gov. Grisham's Order Against Churches" Article

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"These 20 Churches supported political candidates. Experts say they violated federal law" Article

Hodgetwins Facebook post re: Steve Smotherman and Cracker Barrel

Google image search results for "Steve Smotherman"

"Smotherman" YouTube video

Declaration of Leora Dumanlang

Documents labeled PASTORSTEVE 000001-000009

Materials reviewed:

Meltwater searches of X, Forums, News, YouTube, Reddit, Blogs, Bluesky, Pinterest, Facebook, Instagram, Request For Proposal, Comments, Broadcast, Product Reviews, TikTok, RSS, Twitch, LinkedIn, Podcasts, KakaoTalk, LINE Voom, Snapchat, and threads of the following terms and time frames:

Pastor Steve Smothermon, August 20, 2025 to September 2, 2025

Pastor Steve Smothermon, August 22, 2025 to July 15, 2026

Steve Smothermon, August 20, 2025 to September 2, 2025

Steve Smothermon, August 22, 2025 to July 15, 2026

Steve Smotherman, August 20, 2025 to September 2, 2025

Steve Smotherman, August 22, 2025 to July 15, 2026

Keith Hodge, August 20, 2025 to September 2, 2025

Kevin Hodge, August 20, 2025 to September 2, 2025

Hodge Twins, August 20, 2025 to September 2, 2025

Smothermon + Smotherman, August 22, 2025 to July 15, 2026

Smothermon, August 21, 2025 to August 30, 2025

Google Searches:

"STEVE SMOTHERMON" cracker barrel
"STEVE SMOTHERMAN" cracker barrel (per Google suggestion)
"STEVE SMOTHERMAN" cracker barrel – image search
"STEVE SMOTHERMON"
"STEVE SMOTHERMON" – image search

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"STEVE SMOTHERMON" – News search, all and Aug 22, 2025 to Aug 30, 2025
"STEVE SMOTHERMON" hodge twins

Grabien Searches:
"Cracker Barrel" – All broadcast, Aug 22, 2025 to Aug 30, 2025
"STEVE SMOTHERMON" – All broadcast, Aug 22 , 2025 to Aug 30, 2025
"STEVE SMOTHERMAN" - All broadcast, Aug 22 , 2025 to Aug 30, 2025
SMOTHERMAN - All broadcast, Aug 22 , 2025 to Aug 30, 2025

X Searches:

"STEVE SMOTHERMON" woke
"STEVE SMOTHERMON" cracker barrel
"STEVE SMOTHERMON"
"STEVE SMOTHERMAN"

Grok Expert prompts:
Is Steve Smothermon woke?
Is Steve Smothermon a member of the LGBT community and/or involved with cracker barrel

CHAT GPT 5.6 SOL HIGH prompts:
Is Steve Smothermon woke?
Is Steve Smothermon a member of the LGBT community and/or involved with cracker barrel

After extensive research into the online, social, and media presence of both Steve Smothermon and Steve Smotherman, I surprisingly found no historic, contemporaneous, or practical branding or impact on the brief mix-up between Smotherman and Smothermon. Outside of this one brief, and quickly deleted post, the only proof I could find of this mix-up was a Google search of "STEVE SMOTHERMON" cracker barrel, which only yielded results about the existence of this lawsuit via an article written on "Headline USA", a case update on the website Justia, and a listing on the Randazza Law Group website. To that point, the very first result Google shows you with this search term is a recommendation to search "STEVE SMOTHERMAN" cracker barrel instead, further relieving Smothermon of any potential confusion.

If I were professionally charged to protect Smothermon's reputation and brand in this instance, I'd evaluate the outcome of this social media post as the best possible scenario, as there are no lingering artifacts. This lawsuit actually does more to associate Pastor Smothermon with Smotherman than the actual Facebook post.

Independent of this post, Smothermon appears to have more profound negative contributing factors to his reputation and brand. A simple Google News search yields stories from 2024 with such headlines as "Legacy Church, Steelbridge Ministries named in lawsuit alleging sexual abuse" with content of "Steelbridge operates a residential treatment facility near Downtown Albuquerque for those with substance use disorders who have also often experienced homelessness. Legacy Church

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Inc., the parent entity of Steelbridge, and its lead pastor Steve Smothermon, are also named in the lawsuit."

Additionally, a sample article from 2021 generated negative headlines for Smothermon such as "Can churches endorse political candidates? Tax laws say no" with content:

> ALBUQUERQUE, N.M. — On Tuesday, Pastor Steve Smothermon at Legacy Church, told his congregation to vote for Lori Robertson, a candidate in Albuquerque's upcoming city council run-off race.
>
> "Listen, early voting is open now. Go vote till Dec. 4 because we need people like her on the city council," said Smothermon at Tuesday's service.
>
> KOAT legal expert John Day watched the video from the service. He said what Smothermon did is questionable.
>
> "Well, the thing about churches and politics are that most churches are nonprofits under the IRS code 501(c)(3), and that means any nonprofit to keep their nonprofit status, they must stay out of endorsing people. They have to stay out of partisan politics," Day said."

These examples of negative artifacts are a much clearer threat to Smothermon's ongoing reputation than the brief social media post which generated no articles, headlines, or lasting confusion.

A Meltwater search of Steve Smotherman of this year yields only 37 mentions across all of social media, media, and online whereas a similar search of Steve Smothermon yields 4,550 searches. None of those 37 are of the actual Steve Smotherman, but rather podcasts and friendly content creators referring to Smothermon and making an understandable typo. All of that content is friendly towards Smothermon and does not reference the Smotherman incident.

> Examples of these podcasts and content:
>
> **Alex Hormozi - Why Most People Will Never Be Rich (Part 2) | Ep. 159**
> *Something did that to great. And the pastor, if I think was phenomenal, Steve Smotherman, shout out to Albuquerque. He had this, he delivered this great sermon about, he's like, God is not saying you should not judge.*
>
> **Unfiltered with Elias**
> Guest: Steve Smotherman

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Dukta Feelgood

Charlie Kirk: "Wokeism is Marxism"—The Spiritual War for America & Western World
"*The modern church is too focused on being liked and not enough on being holy."Charlie Kirk joins Pastor Steve Smotherman at Legacy Church in Albuquerque for a high-stakes town hall on the survival of the American Republic. From the "wicked" leadership in New Mexico to the existential threat at the southern border, Kirk argues that the U.S. is currently locked in a civilizational war that Christians can no longer afford to ignore.*

Worldview Matters with David Fiorazo
Mark & Amber Archer: Discerning The Times, Exposing The Darkness
So. One of the sponsors of the World View Matters conference is Pastor Steve Smotherman and Legacy Church in Albuquerque, New Mexico. There's a church in New Mexico and there's a church in Maryland sponsoring a Wisconsin Biblical Summit conference. So Steve Smotherman has often said the LGBT cannot reproduce so they have to recruit. Oh, yeah.

Arguably, more reputational harm has been caused by Pastor Steve Smothermon to Cracker Barrel's Smotherman due to his large and persistent media and social media presence. When people seek Smothermon or Smotherman, they are almost always going to find Smothermon. Seeing that Smotherman is a member of the LGBT community and Smothermon is an outspoken critic of it, Smothermon's dramatically larger presence likely causes more pain to Smotherman, than the other way around.

Admittedly, I triple checked and cross-checked all of the results from these various searches because I was persistently surprised that they yielded no practical connection of Smothermon to Smotherman, Cracker Barrel, or being woke.

Beyond traditional media, social media, and Google searches, AI tools are now a primary source of information for people. It is reasonable to evaluate how common AI tools navigate this situation.

To further test this, I prompted Grok Expert, which is arguably the AI tool most in touch with online reputation and the conservative online eco-system, with "Is Steve Smothermon woke?" This is the verbatim response:

> "No, Steve Smothermon is not woke. He is the senior pastor of Legacy Church, a large multi-campus evangelical church in Albuquerque, New Mexico. He preaches practical, Bible-centered messages drawn from his background as a former UPS driver, with

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> an emphasis on grace, "another chance," family, and unapologetic application of Scripture."

I restarted Grok Expert in a new thread and asked it: "Is Steve Smothermon a member of the LGBT community and/or involved with Cracker Barrel?" It responded with: "No, Steve Smothermon (as spelled in your question) is not a member of the LGBT community and has no involvement with Cracker Barrel. He is the senior pastor of Legacy Church (with multiple campuses) in Albuquerque, New Mexico. He is a married heterosexual man who has been married to his wife Cynthia for over 38 years; they have three children and eight grandchildren."

To cross reference this, I asked CHAT GPT 5.6 SOL "HIGH" the same prompts.

When prompted with: "Is Steve Smothermon woke," it replied with:

> "Assuming you mean Pastor Steve Smothermon of Legacy Church in New Mexico: no—he is emphatically anti-woke. He has preached a sermon titled 'WOKE Christianity Is Leading People to Hell' and appeared on a podcast about confronting "woke-ism" in churches.
>
> There has been confusion with Steve Smotherman—different spelling—a former Cracker Barrel executive who led an LGBTQ employee group and worked with the Human Rights Campaign. Smothermon sued after commentators mistakenly used the pastor's photograph while attacking Smotherman as 'woke.'"

Their connection and therefore this response was likely primarily generated/influenced by the existence of this lawsuit.

Then in a new thread, I prompted it with: "Is Steve Smothermon a member of the LGBT community and/or involved with Cracker Barrel?" Its response:

> "No—the names have been confused.
>
> Steve Smothermon—with an "o"—is the senior pastor of Legacy Church in Albuquerque. I found no credible public evidence that he identifies as LGBT, and no documented employment or organizational connection to Cracker Barrel. His public biography says he has been married to his wife, Cynthia, for more than 38 years, although that alone does not conclusively establish anyone's sexual orientation. The person connected to Cracker Barrel is Steve Smotherman—with an 'a.' He worked in management training and development at Cracker Barrel, reportedly from 2005 until 2020, founded an LGBT employee resource group and later served on the Human Rights Campaign's Business Advisory Council."

EXHIBIT 21

EXHIBIT 21

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

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

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON,

Plaintiff,

v.

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

Defendants.

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

DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC ("Defendants"), hereby submit their responses to Plaintiff's First Set of Interrogatories served on April 22, 2026.

GENERAL OBJECTIONS

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

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

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

3. Defendants object to the subject interrogatories to the extent that they call for information 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 interrogatories will be identified subsequent to the date of this response.

6. All responses made herein are based upon the 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 incorporate these General Objections into each and every specific response as if fully set forth therein.

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

RESPONSES TO INTERROGATORIES

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

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

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

RESPONSE TO INTERROGATORY NO. 2: Objection. This interrogatory seeks information that is not relevant to the instant lawsuit. Without waiving this objection, Kevin Hodge used Google image search and input the name "Steve Smotherman" into the search engine. The search results returned images that Defendants now understand to be Plaintiff Steve Smothermon. Defendants do not recall the specific time that the search was performed, but it was performed on August 22, 2025, shortly before the Facebook Post was posted to the internet.

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

RESPONSE TO INTERROGATORY NO. 3: Nathan Hughes, who runs Defendants' website, was the first third party to notify Defendants about the Facebook Post. While Defendants are not sure of the exact date and time Mr. Hughes notified them, it was after this lawsuit had commenced. Defendants had informed Mr. Hughes that they had been sued over a post that had an incorrect picture, and Mr. Hughes informed them that he had deleted it months earlier. Mr. Hughes learned of the post through an email sent to the customer service account for Defendants' merchandise website.

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

RESPONSE TO INTERROGATORY NO. 4: Objection. The term "editorial standards" is vague and ambiguous and is not a defined term, and Defendants cannot be sure what Plaintiff is seeking under this interrogatory. The term "verification processes" is vague and ambiguous and is not a defined term, and Defendants cannot be sure what Plaintiff is seeking under this

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interrogatory. Without waiving these objections, Defendants post material to Facebook that they believe their subscribers will find interesting, including news articles, commentary on news and gossip they see online, and other stories and material that appeals to persons that are politically conservative.

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

RESPONSE TO INTERROGATORY NO. 5: To the best of Defendants' recollection, most, if not all, of the images that appeared in the Google search results appeared to be the same person, a middle-aged white man that Defendants now understand to be Plaintiff Steve Smothermon. Defendants did not "rule out" any individuals in favor of the photograph of Plaintiff.

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

RESPONSE TO INTERROGATORY NO. 6: Objection. This interrogatory is compound and comprises four separate interrogatories, as "likes," "shares," "comments," and "reaches" are not the same thing on Facebook. Without waiving these objections, Defendants do not possess this information. However, Defendants do not believe the Facebook Post had many views, likes, shares, comments, or reaches because it was only online for an hour or two before Mr. Hughes deleted it. Defendants likely could have retrieved this information if they had been notified about the post within thirty days of its deletion, but by the time they learned about Plaintiff's issues with the Facebook Post, it was too late.

INTERROGATORY NO. 7: Describe in detail the decision-making process used to verify the identity of the person in the photograph prior to publication, specifically addressing: whether you aware of the availability of Reverse Image Search technology (e.g., Google Lens, TinEye) on or before August 22, 2025; if so, why a Reverse Image Search was not performed on the photograph of Plaintiff Pastor Steve Smothermon; if no such search was performed, describe any alternative visual verification steps taken to ensure the photograph depicted the Cracker Barrel executive and

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not a different individual with a similar name; and identify all persons who participated in the decision to rely solely on a text-based search for the photograph.

RESPONSE TO INTERROGATORY NO. 7: Objection. This interrogatory is compound and comprises four separate interrogatories as it contains several distinct demands for information. Without waiving these objections, Defendants were not aware of reliable Reverse Image Search technology on or before August 22, 2025. Defendant Kevin Hodge searched for "Steve Smotherman" in Google image search. Most or all of the results appeared to be the same middle-aged white man that Defendants now understand to be Plaintiff. Kevin Hodge participated in the decision to post the image to Facebook as accompaniment to the Facebook Post.

Dated: May 22, 2026.

Respectfully Submitted,

/s/ Ronald D. Green

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VERIFICATION

We, Keith and Kevin Hodge, declare as follows:

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

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

Dated: May 21, 2026.

Keith Hodge

Keith Hodge

KEVIN HODGE

Kevin Hodge

Keith Hodge

Hodgetwins, LLC

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 22, 2026, I served this document to counsel for Plaintiff via electronic mail to:

G. Michael Jackson
mjackson@jonesdavis.com

Nicole A. Westbrook
nwestbrook@joneskeller.com

/s/ Kaylee Arcalas
Kaylee Arcalas

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Attorneys for Plaintiff Pastor Steve Smothermon

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON,

Plaintiff,

v.

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

Defendants.

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

PLAINTIFF'S OBJECTIONS UNDER FED. R. CIV. P. 56(c)(2) TO EVIDENCE OFFERED IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND FOR ANTI-SLAPP RELIEF (ECF NO. 124)

Plaintiff Pastor Steve Smothermon objects under Federal Rule of Civil Procedure 56(c)(2) to the evidence identified below, offered in support of ECF No. 124 (Defendants' Motion for Summary Judgment and for Anti-SLAPP Relief) (the "Motion").

The objections fall into four groups. The first is the October 19, 2026, declaration of Defendant Kevin Hodge, ECF No. 124-2 (the "October Declaration"). It speaks for his brother and for a customer-service operation he says he never saw. It also departs from his own September 2026 declaration and from Defendants' verified interrogatory answers on knowledge and notice, the facts the Motion most needs. The second is the use of defense counsel's unsworn letters as proof of fact. The third is the use of web pages captured in 2026 to prove what was public, or what

Kevin Hodge saw, in August 2025. The fourth is the use of internet articles, and a withdrawn expert report, for the truth of an opinion about "incognito mode."

Plaintiff relies on, and does not object to, Exhibits 1, 3, 4, 6, 7, 8 and 9 to the Motion (the church staff chats, the Mason email chain produced as HODGE000136-138, Defendants' Fourth Set of discovery responses, and the Mason and Morin deposition excerpts). Under Federal Rule of Evidence 106, Plaintiff asks that each be read in full together with the portions of the same documents cited in Plaintiff's opposition.

STANDARD

A party may object that material cited to support a fact "cannot be presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2). A declaration "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(4).

Plaintiff recognizes that the personal-knowledge requirement "imposes only a 'minimal' burden" and that "[a]t summary judgment, the threshold is particularly low." *Strong v. Valdez Fine Foods*, 724 F.3d 1042, 1045 (9th Cir. 2013). The objections below do not rest on that threshold. They rest on statements whose own text shows the declarant is reporting someone else's knowledge, on statements made "on information and belief," and on statements that cannot be reconciled with the declarant's prior sworn testimony. A statement made on information and belief "does not raise a triable issue," because it "would have to be made on personal knowledge, not information and belief." *Taylor v. List*, 880 F.2d 1040, 1045 n.3 (9th Cir. 1989) (citing former Fed. R. Civ. P. 56(e)); *see* Fed. R. Civ. P. 56(c)(4).

Documents must be authenticated to be considered. "We have repeatedly held that unauthenticated documents cannot be considered in a motion for summary judgment." *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 773 (9th Cir. 2002). An attorney's statement that an exhibit is a "true and correct copy" does not authenticate it when the attorney lacks personal knowledge of it. *Id.* at 774.

The Ninth Circuit has since reaffirmed that rule, while holding that a document not offered

through an affiant's personal knowledge may instead be authenticated by its distinctive characteristics under Fed. R. Evid. 901(b)(4). *Las Vegas Sands, LLC v. Nehme*, 632 F.3d 526, 532-33 (9th Cir. 2011). *Orr* was decided under the pre-2010 text of Rule 56. The current rule lets a party object that material "cannot be presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2). Plaintiff acknowledges that the question is whether the material could be presented in admissible form at trial, not whether its present form is admissible. *See Fraser v. Goodale*, 342 F.3d 1032, 1036 (9th Cir. 2003).

Each authentication objection below explains why that showing has not been made and cannot be made. Website printouts "do not bear the indicia of reliability demanded for other self-authenticating documents," and "some statement or affidavit from someone with knowledge is required." *In re Homestore.com, Inc. Sec. Litig.*, 347 F. Supp. 2d 769, 782-83 (C.D. Cal. 2004). Documents produced in discovery are deemed authentic when offered *against* the producing party. *Orr*, 285 F.3d at 777 n.20. That rule does not authenticate a party's own production when the producing party offers it.

On inconsistency with prior sworn statements, Plaintiff recognizes that the sham-affidavit rule "does not automatically dispose of every case in which a contradictory affidavit is introduced," and that "the district court must make a factual determination that the contradiction was actually a 'sham.'" *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266-67 (9th Cir. 1991). The rule "should be applied with caution." *Van Asdale v. Int'l Game Tech.*, 577 F.3d 989, 998 (9th Cir. 2009) (quoting *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993)). The inconsistency "must be clear and unambiguous to justify striking the affidavit," and a declarant may elaborate on, explain or clarify prior testimony. *Van Asdale*, 577 F.3d at 998-99. Plaintiff asks the Court to make that determination for Rows 2 through 5. If the Court declines to strike, the same contradictions are a genuine dispute of material fact on knowledge and notice, and the October Declaration cannot carry Defendants' burden of proof.

OBJECTIONS

Citations to "October Decl." are to ECF No. 124-2 (Kevin Hodge declaration dated October

19, 2026). Citations to "September Decl." are to ECF No. 98-1 (Kevin Hodge declaration signed September 16, 2026). Citations to "53-1" are to ECF No. 53-1 (defense counsel's July 15, 2026 declaration and exhibits, including Defendants' Second Amended Responses to Plaintiff's First Set of Interrogatories, verified by Keith Hodge and Kevin Hodge on June 8, 2026, at 53-1 at 4-10). Citations to "77-2" are to ECF No. 77-2 (exhibits including Defendants' Second and Third Set interrogatory responses, verified by both Hodges at 77-2 at 25 and 33, and the July 29, 2026 declaration of Keith Hodge at 77-2 at 53-55).

Citations to "RJN" are to ECF No. 125 (Defendants' Request for Judicial Notice), its Exhibits 1 through 10 (ECF Nos. 125-1 to 125-10), and the supporting declaration of paralegal Casey T. Spring (ECF No. 125-11). ECF No. 124-11 is defense counsel's declaration authenticating the Motion's exhibits. Page cites are to the ECF page number.

No.	Evidence and pin	Statement objected to	Grounds	Basis
1	October Decl. ¶ 3 (ECF No. 124-2 at 2:24-27), relied on at Motion 1 n.1, 5:1-2	"Keith had no involvement in the Post and did not know it existed until this lawsuit was served."	Fed. R. Civ. P. 56(c)(4); FRE 602	Kevin Hodge states no basis for knowing what his brother knew or when. Keith Hodge filed no declaration with the Motion. Defendants' verified answer states that "Kevin Hodge and Keith Hodge have final say regarding content posted on the Hodgetwins Facebook page" (77-2 at 22:9-11, Second Set ROG 13), and that Kevin, Keith and the customer-service team can each post, edit and delete (77-2 at 31:8-9, Third Set ROG 19). The Motion then converts Kevin Hodge's first-person statements into findings about "Defendants" (Motion at 5:1-2, 9:21-22), which the declaration does not support as to Keith Hodge or the LLC.
2	October Decl. ¶ 6 (ECF No. 124-2 at 3:9-	"returned image after image of one person;"	Inconsistency with prior	Five weeks earlier, the same declarant swore that he "assumed the person who appeared most

	13), relied on at Motion 10:21-23, 20:10-11; see also 4:24-27, 21:12-13 (same content, cited to ECF No. 53-1 or uncited)	"Nothing in the results I saw suggested that there was a second person with a similar name, and I did not reject any other images in favor of the one I used."	sworn statements (*Kennedy*; *Van Asdale*); FRE 602	often in the search results was the former Cracker Barrel executive" (September Decl. ¶ 8, ECF No. 98-1 at 2:15-16), and that the search "returned numerous images of the same person, as shown below" (*id.* ¶ 6, at 1:27), above a screenshot whose tiles include a LinkedIn result captioned "Steve Smotherman - Director of Advisory" and results for other persons (*id.* at 2:1-11). Defendants' verified answers say "most, if not all" of the images appeared to be the same person (53-1 at 7:14-21, ROG 5) and "[m]ost or all" (53-1 at 8:17-24, ROG 7). "The person who appeared most often" describes a field with more than one person in it. "Image after image of one person" and "Nothing ... suggested ... a second person" describe a field with one. The new version cannot be reconciled with the old, and it appears for the first time in the declaration filed with the Motion. The Motion's statement that "[n]othing in the search results Kevin saw gave any indication that Steve Smotherman existed" (Motion at 21:12-13) contradicts the screenshot Kevin Hodge himself swore showed his results.
3	September Decl. ¶ 6 and embedded screenshot (ECF No. 98-1 at 1:27-2:11), relied on through 53-1 at 12-13 at Motion 5:6-7, 18:15, 21:4-5	The screenshot "as shown below," offered as the August 22, 2025 search results or as proof of what the same search showed	FRE 602; FRE 901; FRE 403	Kevin Hodge swore he ran the search "in incognito mode on my iPhone" (September Decl. ¶ 5, at 1:25-26). The screenshot is a desktop Chrome window with "New Chrome available" in its toolbar, and it matches defense counsel's July 11, 2026 capture (53-1 at 13). Defendants have also sworn they have "no record of the search" (53-1 at 7:20-21, ROG 5;

				October Decl. ¶ 8, at 3:18-20). An image Defendants admit they do not have cannot be authenticated as the August 2025 results. Otherwise it is counsel's July 2026 search, device and location unshown, and the danger of misleading the factfinder into taking it for Kevin Hodge's results substantially outweighs its probative value. FRE 403. Its tile captioned "Pastor Steve Smothermon v. The Hodge..." is sourced to defense counsel's website about this lawsuit (98-1 at 2:7-9).
4	October Decl. ¶ 9 (ECF No. 124-2 at 3:21-25), relied on at Motion 2:7-10 (same proposition at 5:26-27 and 24:18-19, citing ECF No. 77-2 at 23 and ECF No. 53-1 at 6)	"I did not see the August 22, 2025, email from Legacy Church's employee, and I did not learn that the photograph showed the wrong man, until after this lawsuit was filed.' The account of what Nathan Hughes "told me"	Inconsistency with prior sworn statements; FRE 802 (Hughes statement); FRE 602	Defendants' verified answers state that "the Post was removed from Facebook because Krisha Mason contacted Defendants' customer support team ... and told the team that the Post contained a Photograph of Plaintiff" (77-2 at 32:5-9, Third Set ROG 21), and that "Plaintiff's counsel and Plaintiff's employee instructed Defendants to remove the Post" (77-2 at 30:15-21, 31:15-21, Third Set ROGs 18 and 20). Third Set RFA 30 states that "Defendants complied with those instructions" (Defs.' Resp. to Pl.'s Third Set of RFAs, Aug. 10, 2026, at 4). Kevin Hodge's September Declaration states that Ms. Mason contacted the customer-service team, "informing us the Facebook post contained an image of the wrong person" (98-1 at 2:21-23). Keith Hodge swore that "[o]ur contractor deleted the post immediately upon being told that the post had the wrong photo" (77-2 at 54:19-20, ¶ 11). Defense counsel now declares that Ms. Mason "notified

				Hodgetwins, LLC's customer support team" (ECF No. 124-11 ¶ 3, at 2:23-26), and HODGE000137 shows the support team's 2:31 p.m. reply that it would forward her message "to our marketing department right away so they can reach out to the website and Facebook/marketing team for the Twins" (ECF No. 124-3 (Mason email chain) at 3). Paragraph 9's account of what Mr. Hughes said, offered to prove when and why the Post was deleted, is hearsay.
5	October Decl. ¶ 10 (ECF No. 124-2 at 3:26)	"The Post was removed the day it was published."	Fed. R. Civ. P. 56(c)(4); FRE 602; inconsistency	By his own account Kevin Hodge did not remove the Post and learned of its removal from Mr. Hughes after suit (October Decl. ¶ 9). Defendants' verified answers name the contractor, Bigly, as the party that removed it (77-2 at 21:24-22:2, Second Set ROG 12). The removal time has been sworn as "one or two hours" (53-1 at 8:2-3, ROG 6) and "approximately 1:00 p.m. PDT and was removed three to four hours later" (77-2 at 30:5-7, Third Set ROG 17). The declarant has no personal knowledge of the fact. The Motion asserts same-day removal at 2:8-10 and 21:2-3, citing ¶¶ 9 and 11, and neither paragraph contains it.
6	October Decl. ¶ 11 (ECF No. 124-2 at 3:27-4:5), relied on at Motion 20:24-21:3	"Had he or his church contacted me or Keith before suing, we would have corrected the photograph immediately and would likely have treated him as an ally."	FRE 602; FRE 701; Fed. R. Civ. P. 56(c)(4)	The sentence is speculation about a hypothetical, and it speaks for Keith Hodge. Its premise is contradicted by Defendants' own record that the church did contact them on August 22, 2025 (Row 4; ECF No. 124-3 at 2-3; 77-2 at 32:5-9). The Motion also cites ¶ 11 for propositions the paragraph does not contain, including that Defendants' view of Plaintiff

				changed because of "a multi-million-dollar lawsuit" (Motion at 20:27-21:3). Argument attributed to a declaration is not evidence.
7	October Decl. ¶ 4 (ECF No. 124-2 at 3:1-4), relied on at Motion 5:1-2 (¶¶ 3-8); see 4:18-23, 10:18-20 (same subject, other citations)	"Every statement of fact in the Post about Steve Smotherman came from published reporting about him."	FRE 602; FRE 1002	The declarant says he used ChatGPT to draft the text and to summarize a Fox Business article (October Decl. ¶ 4). The only reporting Defendants filed is a five-page excerpt of a 35-page printout made September 14, 2026 (ECF No. 124-5 (Fox Business article), HODGE000159-163, page headers dated "9/14/26"). That article reports that the former employee "left the company in 2020" (HODGE000161), and it attributes the 2014, 2019, 2023 and 2024 events to "Cracker Barrel" and "the restaurant chain" (HODGE000162). The content of the reporting is proved by the reporting, and the reporting does not say what ¶ 4 says it says. Plaintiff does not otherwise object to ECF No. 124-5 and asks that it be read in full under FRE 106.
8	October Decl. ¶ 8, second sentence (ECF No. 124-2 at 3:19-20), relied on at Motion 5:1-2, 10:23, 20:11 (ranges including ¶ 8); the same point is argued at 21:25-22:2 without citing ¶ 8	"I had no record of the search afterward because I was not signed into a Google account and the browser was in incognito mode."	FRE 701; FRE 702	Why a record does or does not exist anywhere other than on the phone is a technical opinion, and the declarant is not offered as an expert. Defendants' own RJN exhibits say incognito browsing leaves activity visible to the sites visited and the network (ECF No. 125-8 (How-To Geek article) at 7; ECF No. 125-10 (Veritext web page) at 3-4). Plaintiff does not object to the first-hand statement that he did not run a reverse-image search, which Defendants admit (ECF No. 124-4 (Fourth Set responses), RFA 37).

9	ECF No. 53-1 at 32-33 (defense counsel's May 29, 2026 letter), cited at Motion 22:1	"Their practice is to browse in incognito mode."; and the letter's statements about what "the Hodges" knew	Fed. R. Civ. P. 56(c)(4); FRE 802; FRE 602	The letter is unsworn correspondence from counsel. It is not a declaration, and counsel states no personal knowledge of either client's browsing habits. *Orr*, 285 F.3d at 774. The Motion cites it for "Kevin Hodge's normal practice" (Motion at 21:27-22:1), but the letter speaks of "[t]heir practice," in the plural (53-1 at 32).
10	ECF No. 53-1 at 25 (Plaintiff's counsel's June 30, 2026 letter), cited at Motion 22:2	The quotation "governs only local browser artifacts," offered as a concession	FRE 401; FRE 106	The quoted words do not appear at 53-1 at 25. They appear in Plaintiff's counsel's August 25, 2026 letter (ECF No. 76-1 (meet-and-confer letter) at 3), whose same sentence continues: "it does not suppress server-side logging. When a user is signed in to a Google account, Web & App Activity records searches to that account's 'My Activity' regardless of incognito mode." The page cited, 53-1 at 25, says the same thing: "Private/Incognito mode governs only what the browser writes to the local device; it does not suppress server-side logging by the user's account." Read in full, neither letter concedes that incognito mode hides nothing relevant. Both say the opposite. A counsel letter is in any event not evidence of what Kevin Hodge's search returned.
11	September Decl. ¶¶ 12-13 (ECF No. 98-1 at 2:21-25), to the extent Defendants rely on them through 53-1 or otherwise	"Upon information and belief" statements about the Mason contact and the timing of removal	Fed. R. Civ. P. 56(c)(4); *Taylor v. List*	A statement on information and belief "does not raise a triable issue" on summary judgment. *Taylor*, 880 F.2d at 1045 n.3. Plaintiff does not object to the use of these paragraphs against Defendants as admissions that the Mason contact informed "us" that the Post showed the wrong person.

12	RJN Exhibits 1 through 10, as used at Motion 4:5-6, 19:16-19, 22 n.8	Use of news articles, video pages and web articles for the truth of their contents	FRE 802; FRE 901; FRE 201	Each exhibit is offered for its truth: that "press coverage was extensive" (Motion at 4:5-6), that Plaintiff said same-sex marriage "would be an attack on the church" (Motion at 19:16-19), and that incognito mode removes bias (Motion at 22 n.8). Each is out-of-court assertion offered for its truth. The sponsoring declaration (ECF No. 125-11 (defense paralegal's declaration)) shows only that a paralegal viewed and captured the pages on October 15 and 16, 2026. The capture footers show a browser-extension edit page where a source URL would appear, and the declaration is dated October 15, 2026, though it describes viewing Exhibit 9 at "4:19 PM ET on October 16, 2026" (ECF No. 125-11 at 3:9-12, 3:21). Website printouts require "some statement or affidavit from someone with knowledge." *Homestore*, 347 F. Supp. 2d at 782-83. Plaintiff's opposition to the RJN, filed herewith, addresses these exhibits in full.
13	RJN Exhibits 8 through 10, cited at Motion 22 n.8	"It is well-known that using incognito mode is a useful tool for removing biases in search results."	FRE 702; FRE 802; FRE 403	The footnote states a technical opinion about whether incognito mode removes bias from search results, and the Motion offers it through unsworn internet articles with no expert. The articles do not say what the footnote says. The academic paper (ECF No. 125-9 (Hannak et al., 2013 conference paper)) finds "measurable personalization as a result of searching with a logged in account and the IP address of the searching user" (at 2), identifies "making requests from different geographic areas" as a cause (at 11), states its

				experiments were "conducted in fall of 2012" and "may not hold in the future" (at 5), and does not discuss incognito mode. The How-To Geek article states that in incognito mode sites "can see your IP address, which is your device's location on the network" (ECF No. 125-8 at 7). The Veritext page says only that Chrome "won't save your browsing history" and similar local data (ECF No. 125-10 at 3).
14	ECF No. 124-12 (Jonyer rebuttal report excerpt) and ECF No. 124-11 ¶¶ 9-10, used at Motion 22:3-13	"as is good practice to find untainted search results" (Motion at 22:12-13), attributed to the report	FRE 802; FRE 702; Fed. R. Civ. P. 56(c)(4); FRE 106	The excerpt is unsworn: it closes "Executed on August 17, 2026" with no oath (ECF No. 124-12 at 8), and the witness was withdrawn on September 25, 2026 (ECF No. 116 at 2). Defendants state they "do not offer Mr. Jonyer's report for the truth of any opinion stated in it" (ECF No. 124-11 ¶ 10, at 3:27-4:2), and the Motion then uses it for the truth of an opinion that incognito searching is "good practice" (Motion at 22:12-13). An expert report lacking authentication under FRE 901(a) has been held "inadmissible for purposes of summary judgment." *Homestore*, 347 F. Supp. 2d at 780. If any part is considered, FRE 106 brings in the rest. The searches were run through a VPN set to Las Vegas "because search results are influenced by the searcher's geographic location" (124-12 ¶ 46). "Search results vary by user, by location, and over time" (id. ¶ 78). The quoted phrase does not appear in the report. It also omits the report's reverse-image results and opinion (Jonyer Rpt. ¶¶ 51-71), including that a Google reverse-image search "identified the individual as Steve

				Smothermon, senior pastor of Legacy Church" (*id*. ¶ 54) and that such a search in August 2025 "would more likely than not have returned results identifying the individual as Pastor Steve Smothermon" (*id*. ¶ 71).
15	ECF No. 124-10 (KOAT YouTube capture, HODGE000164), relied on at Motion 21:7-10	Use of the capture to show how the press identified Plaintiff, or what the August 2025 search returned	FRE 901; FRE 401; FRE 403	The only foundation is defense counsel's statement that it is "a document produced by Defendants" (ECF No. 124-11 ¶ 15, at 4:20-22). Documents produced in discovery are deemed authentic when offered by the party-opponent, *Orr*, 285 F.3d at 777 n.20, but here Defendants offer their own production. Production alone does not authenticate a document when no one has identified who produced it and no one has admitted producing it. *Id.* at 777. The capture is undated, shows a VPN indicator in the address bar, and reports "22K views 12 years ago" (ECF No. 124-10 at 2). Nothing in the record shows Kevin Hodge saw it before the Post.
16	ECF No. 43-22 (Google image capture dated 3/12/26, an exhibit to Defendants' Amended Answer), relied on at Motion 18:11-18	Use of a March 2026 capture to show that Plaintiff's reputation "has completely subsumed Steve Smotherman's online presence"	FRE 901; FRE 401; FRE 403	The capture was made almost seven months after the Post and after suit was filed, its footer shows a browser-extension edit page in place of a source URL, and the page displays images of several different people (ECF No. 43-22 at 2). Its sponsoring declaration says a defense paralegal made it "while at Randazza Legal Group in Las Vegas, Nevada and using the Chrome web browser on my work MacBook laptop," and says nothing about incognito mode (ECF No. 43-24 (Dumanlang declaration) ¶ 24). Defendants'

				own exhibit reports that location personalizes results (ECF No. 125-9 at 3). The Motion concedes later searches cannot reconstruct the August 2025 results (Motion at 21:16-18).
17	ECF No. 124-13 (side-by-side photograph comparison) and ECF No. 124-11 ¶¶ 11, 20, relied on at Motion 23:1-26, 24 n.9	The comparison and the argument that the photograph shows a man "his own congregation would not recognize"	FRE 602; FRE 901; FRE 701	Counsel prepared the Motion's side-by-side, which pairs the Post photograph with a LinkedIn photograph of Steve Smotherman that counsel "retrieved on October 15, 2026" (ECF No. 124-11 ¶ 20, at 5:10-15). Exhibit 13 pairs the Post photograph with a video still "captured on October 17, 2026," without saying who captured it (*id.* ¶ 11, at 4:3-10). No witness with personal knowledge of Plaintiff's appearance in 2025 sponsors it, and counsel's characterization of a photograph is argument. The record evidence on recognition is the opposite. Krisha Mason, a member of Legacy Church's media team (Mason Tr. 5:13-16), testified that the photograph is "Pastor Steve Smothermon," that it looks like him today, "[y]es, generally," and that "[i]t was a very large obvious photo of my pastor" (Mason Tr. 19:5-12; ECF No. 124-6 (Mason deposition) at 29:19-22). The church's own comment on the Post states, "The person pictured is actually Steve Smothermon, our Senior Pastor" (ECF No. 124-8 (Legacy staff group chat) at 2, MASONK_000035).

EVIDENCE NOT OBJECTED TO

Plaintiff does not object to Exhibits 1, 3, 4, 6, 7, 8 and 9 to the Motion, or to ECF No. 124-5 except as stated in Row 7. Under FRE 106, each should be read in full, including the portions Plaintiff cites to and relies on. Those include the support team's 2:31 p.m. reply undertaking to forward the Mason email to its marketing department (ECF No. 124-3 at 3) and the Mason and Morin testimony cited in Row 17 and in Plaintiff's opposition. They also include Defendants' Fourth Set of discovery answers in which they claim that they "have never seen" and "did not receive" the Mason email (ECF No. 124-4 at 13:6-10, 13:26-14:5), which cannot be reconciled with Third Set ROG 21 (77-2 at 32:5-9).

CONCLUSION

Plaintiff asks the Court to sustain the objections asserted herein and to disregard the evidence identified in Rows 1 through 17 for the purposes stated. As to Rows 2 through 5, Plaintiff asks the Court to find that the October Declaration's statements cannot be reconciled with Defendants' prior sworn statements and to disregard them as a sham declaration. In the alternative, Plaintiff asks the Court to treat those contradictions as genuine disputes of material fact that preclude summary judgment on knowledge and notice.

Respectfully submitted this 9th day of November, 2026.

/s/ Nicole A. Westbrook
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Attorneys for Pastor Steve Smothermon

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 9, 2026, I caused the foregoing document to be electronically filed with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document was served on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

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