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STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF KANDIYOHI | EIGHTH JUDICIAL DISTRICT

Case Type: Civil Other/ Miscellaneous

Steve Quest,

Plaintiff,

v.

Nicholas Rekieta and Rekieta Law, LLC,

Defendants.

Court File No. 34-CV-23-12
Honorable Stephen J. Wentzell

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR EXPEDITED RELIEF TO DISMISS PURSUANT TO MINNESOTA'S ANTI-SLAPP LAW (MINN. STAT. § 554.07, et seq.)

1.0 INTRODUCTION

Plaintiff Steve Quest a/k/a Montagraphy, Montagraph, and Monty is a Colorado "entertainer, artist, and video producer" (he uses the other three names as "stage names" or "screen names"). Complaint, § II. Among Plaintiff's works is a video entitled "*Little Piggy and the Umbrella Man*," in which Plaintiff both stars and directs. In that movie, he threatens to rape, and seemingly murders, a teenage girl.[1] This movie garnered significant attention because of its shocking content.

Nicholas Rekieta is a Minnesota attorney who hosts an online video program wherein he discusses legal proceedings.[2] In 2019, Quest made a legal threat against YouTuber "Mister Metokur" regarding

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[1] *See* https://archive.org/details/little-piggy-and-the-umbrella-man and https://www.imdb.com/title/tt7285944/

[2] Rekieta Law, LLC, is Mr. Rekieta's law firm. "Rekieta Law" is separately the name of Mr. Rekieta's show, but it is not produced by the firm—rather, it is so named because it is Rekieta discussing law. Defendants do not understand why the law firm was sued, as Plaintiff has never been a client and the firm is separate from the online video program. It is a failure of Defendants' diligence at best or a bad faith effort to wrongly attempt to pursue an insurance payout at worst. Accordingly, the law firm itself is entitled to dismissal on even stronger grounds than Rekieta himself.

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Metokur's commentary[3] about a lawsuit he filed against an individual named Jake Morphonios regarding commentary on the film and related allegations of Quest's pedophilia. Mr. Rekieta appeared on Metokur's program to discuss the legal threat over this rape-murder-fantasy movie.[4]

Mr. Rekieta's commentary is not dry analysis one might find on CNN; it is made to be entertaining. As characterized by Plaintiff, "[i]n addition to offering legal advice and analysis, Defendant Nicholas Rekieta engages in hyperbole and comedy." Complaint, ¶ III. That fact is both true and fatal to Quest's claims, if this case is evaluated with integrity and faith to the rule of law. If it is just about "Rekieta is abrasive" then perhaps there are more hurdles to overcome – but none that should be placed anywhere in a legal proceeding.

Defendants Nicholas Rekieta and Rekieta Law, LLC (collectively, "Defendants") seek dismissal under Minnesota's new Anti-SLAPP law, Minn. Stat. § 554.07 et seq. While this Court denied Defendants' prior motion to dismiss the Amended Complaint pursuant to *Colorado's* Anti-SLAPP law, the Court rejected the application of Colorado law. It did so in part because Quest argued that "Anti-SLAPP laws are unconstitutional." They knew this was not true when they argued it, and it is no more true now. *Minnesota's old Anti-SLAPP law was.* Not all Anti-SLAPP laws are.

The Minnesota Legislature has now passed a new, constitutional Anti-SLAPP law. The choice of law issue that formed the basis for the Court's denial of that earlier motion is no longer in play. Quest's Amended Complaint is premised entirely on Defendants' exercise of First Amendment rights, and the Amended Complaint is meritless. The claims should be dismissed, with prejudice, and Defendants should be awarded their costs and attorneys' fees under Minn. Stat. § 554.16.

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[3] Rekieta discussed this on a livestream with Metokur on June 29, 2019. *See* drumr828, "Mister Metokur and Nick Rekieta stream on Montagraph (June 29, 2019), available at: https://www.youtube.com/watch?v=77vBeWJuX24.

[4] In a filing Quest submitted in this litigation, he stated that third parties have been publishing videos about him and his "Montagraph" name since 2010. (Response to Motion to Dismiss in *Morphonios* case, attached as **Exhibit 1**, at 4).

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2.0 FACTUAL BACKGROUND

2.1. Who is the Plaintiff?

Plaintiff describes himself as "an entertainer, artist, and video producer," who uses the names Montagraphy, Montagraph, Monty, and Octoberreignz. Complaint, ¶ II. His IMDB page identifies him as the writer, director, and "Rapist"[5] in the short film "Little Piggy and the Umbrella Man." Plaintiff identifies himself as "Roy Warren Marshall AKA Steve Quest" in "Keyboard Commandos Must Die." *See* Montagraph IMDB page, attached as **Exhibit 2**.[6] He "[o]ften uses checkerboard imagery and **young children** in his work." *Id.* (emphasis added). The AV Club even has a page dedicated to his "Keyboard Commandos Must Die" film. *See* AV Club page on "Keyboard Commandos Must Die," attached as **Exhibit 3**.[7] Plaintiff has 70.8 thousand subscribers and over 1.2 million views on his YouTube channel. *See* Montagraph YouTube "About" page, attached as **Exhibit 4**.[8] Apparently, there are also pictures of Quest "essentially French kissing a Barbie doll that looks like a little girl." *See* elissa clips, "@Montagraph Introduces Himself to Potentially Criminal," Youtube (Oct. 10, 2022), attached as **Exhibit 5**, at 12:27.[9] Similarly, he seems to "actually eat shit and then French kiss Barbie dolls." *Id*. at 18:32. This may refer to the 2 Girls, 1 Cup[10] video mentioned above. *See* GeekLivin, "2 Girls 1 Cup," Youtube (Apr. 10, 2011), attached as **Exhibit 6**.[11]

2.2. The Reputation the Plaintiff had Before Defendant Said a Word About Him

A defamation case is about damage to the plaintiff's reputation. The Court cannot evaluate a case about the Plaintiff's reputation without knowing the Plaintiff's pre-existing reputation. Just some

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[5] *Rapist.* The guy could have named himself anything, but he chose "Rapist."

[6] Available at: https://www.imdb.com/name/nm9217446/.

[7] Available at: https://www.avclub.com/film/reviews/keyboard-commandos-must-die-2018.

[8] Available at: https://www.youtube.com/@Montagraph/about

[9] This exhibit is an MP4 file, which the Odyssey system does not accept. It is submitted through MNDES. It is also available at: https://youtu.be/mH2f9CVuuFY?t=747

[10] The Court should note that 2 Girls 1 Cup is a famous pornographic video of women eating feces from one another's rectums. This is one of the apparent inspirations for Plaintiff's "artistic works"

[11] This exhibit is an MP4 file, which the Odyssey system does not accept. It is submitted through MNDES. It is also available at: https://www.youtube.com/watch?v=_Ijs0IKxbEM

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of the highlights are provided here – so that the Court can evaluate what kind of reputation this lawsuit seeks to vindicate.

As Montagraph, Steve Quest is known as a "Colorado torture porn and snuff film producer" who makes angry calls to corporate CEOs and celebrities.[12] Timothy Holmseth, "*Child torture film producer threatens to call ABC about Roseanne – for praising Pentagon Pedophile Task Force*," TIMOTHY CHARLES HOLMSETH REPORTS (Oct. 27, 2019), attached as **Exhibit 8**.[13]

Montagraph/Octoberreignz has been *accused* of involvement in the JonBenet Ramsay murder. *See, e.g.*, Chase Kage, "*Montagraph & Jonbenet Ramsey Connection?*" YouTube (Jul. 31, 2022)[14]; "Chapter 14B: Little Piggy and the Umbrella Man," Reddit (Oct. 28, 2021), attached as **Exhibit 9**;[15] "/222/ EXPOSED. WELCOME TO WONDERLAND," THE GIPSTER (July 29, 2015), attached as **Exhibit 10**.[16]

Years before the events of this suit, a January 21, 2022, video accused Quest of grooming a 15-year-old boy. *See* Steve's Quest for Failure, "Montagraph Groomed a 15 YR OLD Boy, Mighty-Buffoon," YouTube (Jan. 21, 2022).[17] In 2018 and 2019, *Quest was accused of having a juvenile record for abusing a 9 year old boy*. *See* Diligent Escape, "Grampa Creepy Touch," YouTube (Jul. 9, 2019);[18] *see also* Feb. 22, 2018, Twitter post by @Mayson1543, attached as **Exhibit 11**.[19]

Another YouTube personality "drumr828" created a multi-part video series on Quest in response to Quest threatening and stalking him. *See, e.g.,* drumr828, "The Dark Side of Montagraph

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[12] Others have characterized The Umbrella Man as a "snuff" film. *See* "WARNING: SATANIC and HORRIFIC: Video kidnapped little girl murdered in cellar," America's Little Girl (Nov. 7, 2016), attached as **Exhibit 7**, available at: https://haleighcummingsdotme.wordpress.com/2016/11/07/warning-satanic-and-horrific-video-of-kidnapped-little-girl-murdered-in-cellar/

[13] Available at: https://timothycharlesholmseth.com/child-torture-film-producer-threatens-to-call-abc-about-roseanne-for-praising-pentagon-pedophile-task-force/.

[14] Available at: https://youtu.be/rGFrKnZGkTU

[15] Available at: https://www.reddit.com/r/JonBenetPatRamsey/comments/qi0kbg/chapter_14b_little_piggy_and_the_umbrella_man/

[16] Available at: http://thegipster.blogspot.com/2015/07/222-exposed.html

[17] Available at: https://www.youtube.com/watch?v=7vHXdHCXy-M

[18] Available at: https://www.youtube.com/watch?v=W58pNfvrYAo.

[19] Available at: https://twitter.com/mayson1543/status/966800562367934464?s=46&t=s6n_yqPcH1CbLiDEdVIYSQ.

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(The Montagraph Saga Part 3)," YouTube (June 9, 2019).[20]

People have reported Quest's family members' criminal backgrounds and how this reflects on Quest. *See, e.g.,* Joel X, "Montagraph's Older Sibling, Wayne Eric Marshall," SOCIAL MEDIA'S MOST WANTED (Nov. 29, 2020), attached as **Exhibit 12**.[21]

Others reported on Quest's involvement in a campaign of harassment toward one of the parents of a victim of the tragic 2013 Sandy Hook school shooting. *See, e.g.,* "Who is YouTube's Montagraph & Agent19," Hoaxers & Trolls (July 22, 2016), attached as **Exhibit 13**.[22]

He injected himself into the extremely public debate on COVID-19 vaccines by posting videos of himself calling and threatening public health officials, including Anthony Fauci. *See, e.g.,* August 29, 2021 tweet by @Henrik_Palmgren, attached as **Exhibit 14**;[23] December 28, 2022 tweet by @wyliepanda, attached as **Exhibit 15**.[24]

An online forum contains a lengthy thread, started in 2019, discussing the Plaintiff and theories about his alleged pedophilia, the "Little Piggy and the Umbrella Man" film, having sex with a watermelon, and other troubling or bizarre behavior. *See* "Steve Quest / Montagraph / Roy Warren Marshall / 'Dale Ellis Bennett' / 'Umbrella Man' / 'Elite Rule' / 'OctoberReignz' / 'ImYourGhost' – Elderly schizophrenic troll with decades of history pretending to be a member of intel communities," KIWI FARMS (June 29, 2019), attached as **Exhibit 16**.[25]

Since 2019, various users of the video streaming website BitChute have posted dozens of videos about Quest, discussing topics such as his films, Quest's dubious claims that he is involved in U.S. intelligence agencies, and inquiring as to whether Quest is a pedophile. *See* BitChute search results for #Montagraph, attached as **Exhibit 17**.[26]

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[20] Available at: https://www.youtube.com/watch?v=WiQ2i01I58o.

[21] Available at: https://socialmediasmostwanted.com/family-of-montagraph-aka-steve-quest-aka-roy-warren-marshall-aka-elite-rule-aka-octoberreignz/.

[22] Available at: https://trutherhoaxers.blogspot.com/2016/07/who-is-youtube-montagraph-agent19.html.

[23] Available at: https://twitter.com/Henrik_Palmgren/status/1432226834943467521?s=20.

[24] Available at: https://twitter.com/wyliepanda/status/1608113666972614657?s=20.

[25] Available at: https://kiwifarms.net/threads/steve-quest-montagraph-roy-warren-marshall-dale-ellis-bennett-umbrella-man-elite-rule-octoberreignz-imyourghost.57918/

[26] Available at: https://www.bitchute.com/hashtag/montagraph/.

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A simple search on Twitter for the term "Montagraph" shows numerous third parties writing about Quest, both insulting and praising him over a period of years. *See* Twitter top post search results for "Montagraph," attached as **Exhibit 18**.

The pre-existing state of Quest's reputation was as a "top tier retard"—an opinion made October 10, 2022, without any reference to Rekieta's characterization. **Exhibit 5** at 0:19. He was known as a "weirdo" who would "try and sue everyone just for the lolz of it." *Id*. at 1:17. "He's a laughingstock. Nobody gives a shit. He's never won a lawsuit." *Id*. at 5:21. "This guy gets delusions, delusions of grandeur, possible schizophrenic. He gets infuriated by any slight." *Id*. at 8:59). His reputation as a "retard" is shared by others. *See* October 17, 2022, Twitter post by @Stig787The, attached as **Exhibit 19** (stating "oh no, you've attracted the attention of a retard named Montagraph").[27] Others have known him to be a "loon." *See* October 28, 2022, Twitter post by @decafgeek, attached as **Exhibit 20** (stating "Holy shit the Monty you're talking about is Montagraph??! That loon is still around?).[28] Or as someone who had a "mental breakdown." "Montagraph Threatens Me with LAWSUIT (The Montagraph Saga Part 1)," YouTube, attached as **Exhibit 21**, at 7:51.[29] He is thought of as someone with "mental issues," who is a "psychopath." Sanklif Mora, "Agent19 [Libel Slander/ Exploiting Pozner's Children]," YouTube (Jan. 28, 2017), attached as **Exhibit 22**, at 1:22.[30]

Quest himself has a reputation for unusual sexual proclivities, such as his 2 Girls, 1 Cup video, or when he said to his audience "sniff my feet and lick my sweaty armpits." *See* Jason O'Connell, "Montagraph (Steve Quest) in all his glory. Don't laugh ….he'll get upset," YouTube (Jul. 1, 2019), attached as **Exhibit 23**, at 8:02.[31] He had even been accused of pedophilia before. *See* Morphonios Answer to Complaint in *Quest v. Morphonios*, attached as **Exhibit 24**, at 3. Apparently, at one point,

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[27] Available at: https://twitter.com/Stig78The/status/1582086041263308800?s=20

[28] Available at: https://twitter.com/decafgeek/status/1585942576850411521?s=20

[29] This exhibit is an MP4 file, which the Odyssey system does not accept. It is submitted through MNDES. It was previously available at: https://www.youtube.com/watch?v=vtjUMlrLqB0&t=471s. But has since been delisted "due to a privacy claim by a third party."

[30] This exhibit is an MP4 file, which the Odyssey system does not accept. It is submitted through MNDES. It is also available at: https://youtu.be/g0OlXsHR1GI?t=82

[31] This exhibit is an MP4 file, which the Odyssey system does not accept. It is submitted through MNDES. It is also available at: https://youtu.be/QrQqsGqwo4Q?t=482

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a Google search had 1,330 results for "montagraph pedophile." *Id.* at Ex. 12. Quest is believed by some to be connected to the JonBenet Ramsey murder, through a pedophilic association. *See* "/222/ EXPOSED. WELCOME TO WONDERLAND," the gipster (Jul. 29, 2015), attached as **Exhibit 25**.[32] Some have questioned why Quest was reviewing a teen porn site in 2003, speculating it was for the Montagraphy photography business. *See* **Exhibit 22** at 11:22.

There was even a 2012 video entitled "Confessions of a child pornographer" in which Quest spoke of taking photos of underage models. Master0Puppetz, "Confessions of a child pornographer," YouTube (Oct. 28, 2012), attached as **Exhibit 26**.[33] And, apparently, a Google search for "Montagraph Snuff Film" produced over 300 results. *See* **Exhibit 24**, Morphonios, Ex. 27. This is not the first lawsuit Quest has filed over being called a "pedophile" to over 4,500 people—his reputation precedes him. *See Quest v. Morphonios*, Case No. 19C670 (Jeff. Cty. Col. May 30, 2019), attached as **Exhibit 27**.[34]

He also was known to have had "sex with a melon." **Exhibit 24**, Morphonios at 4. A December 17, 2006, video of him French kissing and fingering a honeydew melon remains online. THR4SH3R, "Montagraph -Not Pretty," YouTube (Dec. 17, 2006), attached as **Exhibit 28**.[35] He felt himself sufficiently popular that he could monetize his views of videos like the melon one. *See* TheDevilsSwitchboard, "Dale Bennett's Melon & His Credit Card Scam," YouTube (Feb. 5, 2012), attached as **Exhibit 29**.[36]

And, importantly, he proudly proclaims himself a "Sandy Hook Investigator," denying the existence of Adam Lanza, being the first to identify the so-called crisis actors, and criticizing people like Attorney Mark Bankston (who represented Sandy Hook families against Infowars) who call such investigators "lunatics." *See* As Seen On YT, "MONTAGRAPH Explains HOW he NOW ((works

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[32] Available at: http://thegipster.blogspot.com/2015/07/222-exposed.html

[33] This exhibit is an MP4 file, which the Odyssey system does not accept. It is submitted through MNDES. It is also available at: https://youtu.be/hU1tyCvil04

[34] Available at: https://kiwifarms.net/attachments/quest-v-morphonios-2019-quest-response-to-morphonios-motion-pdf.820716/

[35] This exhibit is an MP4 file, which the Odyssey system does not accept. It is submitted through MNDES. It is also available at: https://www.youtube.com/watch?v=LR7SfbJj_FQ&t=145s

[36] This exhibit is an MP4 file, which the Odyssey system does not accept. It is submitted through MNDES. It is also available at: https://www.youtube.com/watch?v=tJZHD1jBFC8

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for NORAD)) for $52hour ((and has 2 YOUTUBE channels)) #UNRIG," YouTube (Apr. 6, 2019), attached as **Exhibit 30**, at 4:58.[37] He even apparently accused one of the Sandy Hook parents of being a teen porn site operator. *See* **Exhibit 24**, Morphonios Ex. 10.

Plaintiff may be a saint. He may be misunderstood. But the reputation he had before Rekieta said the first word about him was of a child-obsessed sexually perverted individual who threatens, stalks, and harasses his detractors and who denies the Sandy Hook massacre. This is the reputation that he had before Rekieta spoke about him.

This is the reputation he had before Rekieta spoke about him.

THIS IS THE REPUTATION HE HAD BEFORE REKIETA SPOKE ABOUT HIM.

2.3. Plaintiff Started this Dispute

It is relevant to consider the extent to which the Plaintiff entered the proverbial boxing ring with Defendant. Plaintiff went to great lengths to pick a fight with Rekieta. Rekieta was first exposed to Quest following a June 2019 livestream he participated in with Metokur regarding Montagraph and a prior-adjudicated to be frivolous lawsuit he filed against Jake Morphonios. Declaration of Nicholas Rekieta ("Rekieta Dec."), attached as **Exhibit 31**, at ¶¶ 8-9. Following this livestream, Quest called Rekieta to discuss the livestream, which started a month-long campaign where Quest harassed Rekieta. Quest tried to contact numerous third parties, made multiple "meme" images of Rekieta, sent several chat messages mocking or insulting Rekieta during a livestream, and created several of his own YouTube videos complaining about Rekieta, all to harm Rekieta personally and professionally. *Id*. at ¶¶ 11-14. Quest also made a video mentioning several YouTubers he threatened to visit personally in December 2019, including Rekieta. *Id*. at ¶ 15.

Quest, unhappy that someone he harassed has in any way spoken about his already disgusting reputation, is now bringing this ludicrous lawsuit – seeking *what*?

2.4. Defendants' Programming

Defendant Rekieta is a Minnesota attorney. *Id*. at ¶ 3. He practices law under Rekieta Law, LLC. *See* Rekieta Law, LLC Articles of Organization, attached as **Exhibit 32**. It is a professional

[37] This exhibit is an MP4 file, which the Odyssey system does not accept. It is submitted through MNDES. It is also available at: https://www.youtube.com/watch?v=p6Dl23G8v0o&t=298s

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firm, providing Rekieta's licensed services under Minn. Rev. Stat. § 319B.06, and, per the statute, it provides no other services. *See* Rekieta Dec. at ¶ 4.

In 2011, Rekieta himself created a YouTube channel. Rekieta Dec. at ¶ 5. In 2017, Rekieta became an online video personality, making "lawsplaining" videos, originally addressing the matter of *Ouzounian, et al. v. Herrera, et al.,* Index No. 656779/2017 (New York Cty., N.Y., filed Nov. 6, 2017). *Id*. Although the channel uses the "Rekieta Law" moniker, his separately incorporated firm, the Rekieta Law, LLC, entity does not own or operate it. *Id*. at ¶ 6. Rather, as set forth on the relevant YouTube channel's readily accessible "About" page, the videos and video channel are owned by a separate entity, Rekieta Media, LLC. *See id*.; Rekieta Law YouTube "About" page, attached as **Exhibit 33**.[38] The content also broadcasts on other video services, like Rumble. Rekieta Dec. at ¶ 7; *see* https://rumble.com/c/RekietaLaw.

As Rekieta explains within the first minute of his first video, he offered his self-described "pretentious" opinion, while drinking heavily (there, a bottle of 15-year-old Bowmore single malt scotch). *See* Rekieta Law, "Rekieta Law – Breakdown: Maddox v. Dick Masterson #1," YouTube (Nov. 16, 2017).[39] As part of his entertainment, Plaintiff has even commented that he does not know if Rekieta (who he publicly calls "Drunkieta") "can even stay sober long enough to practice law." *See* Montagraph, "Live Testimony from Drunkieta Drunksplaining the Facts," YouTube (Oct. 9, 2022).[40] Rekieta's rhetoric is, not infrequently, "inflammatory," with Rekieta having told a reporter "The language of hyperbole is fun." Kevin Featherly, "Filings: Attorney helped build 'online hate factory,'" MINNESOTA LAWYER (Nov. 19, 2019), attached as **Exhibit 34**.[41]

2.5. The Statements at Issue

[38] Available at: https://www.youtube.com/c/RekietaLaw/about
[39] Available at: https://www.youtube.com/watch?v=DN4JCo4bjnM
[40] Available at: https://www.youtube.com/watch?v=qV3sTV7MhFA
[41] Available at: https://minnlawyer.com/2019/11/19/filings-attorney-helped-build-online-hate-factory/

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Quest identifies six[42] videos containing allegedly actionable statements, though he does not attach them or provide their location. That sloppy pleading makes this case DOA, but Rekieta will indulge the theory for the sake of a complete Anti-SLAPP record.

2.5.1. The October 6, 2022, Video

Quest alleges Rekieta "made various false statements of a sexual nature about Plaintiff" in an October 6, 2022, livestream with Megan Fox,[43] and specifically alleges that Rekieta said "Plaintiff was a 'retarded man,' suggested Plaintiff had sex with a watermelon, and that Plaintiff has stated he routinely 'fists himself.'" Amended Complaint at ¶¶ VI & XXVI.

Rekieta appears at approximately 1:49:00 of the video. At approximately 2:32:40 to 2:33:36, Rekieta says that there is a person commenting in the chat on the livestream who is a "retarded man." Declaration of Alex J. Shepard ("Shepard Dec."), attached as **Exhibit 35**, at ¶ 25. He says "Hi, Monty, you still fucking watermelons, you weirdo? . . . I very explicitly remember Montagraph stating publicly and openly that he routinely fists himself. And I don't know why anybody would do that, but he's like 'I do that, and uh, that's what I love to do. That's actually all I do, and my entire life is just revolving around when the next time I can fist myself is. I can't get enough of it, I'm like reaching in and I try to extend my fingers while they're in there, too.'" *Id*.

Then, at approximately 2:33:50-2:34:09, he says "See, **what I just did was deliver a dry joke about what Montagraph said**, but if you remember my previous statement about having sex with a watermelon, that wasn't a joke. That was actually on video. And, that's, I'm not, like, there's no, like, punchline here, that was real" *Id*. (emphasis added). At 2:39:20-2:39:40 Rekieta says "And then he just vanished for years. I can only presume that he was fisting himself the entire time, the new Goatse[44]. … There are some strange people out there, and Monty would lick all of them." *Id*. To the

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[42] The original Complaint identifies 3 videos, published on October 6, 13, and 18, 2022. Complaint at ¶¶ VI to VIII. The Amended Complaint addresses five videos, including the October 6 and 13 videos. It is unclear whether Quest still premises any of his claims on the October 18 video, but this Motion will address that video all the same.

[43] *See* "The RumbleStream: Troon Squad Silencing Opposition with Big Tech's Help," Rumble (Oct. 6, 2022), available at: https://rumble.com/v1muxaf-the-rumblestream-troon-squad-silencing-opposition-with-big-techs-help.html.

[44] "Goatse" is an internet meme of a sexual nature that involves an image of a man with a stretched anus. Defendants' counsel can supplement the record in the off-chance the Court or Plaintiff

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extent that anything here was false, it does appear that the video shows conduct may have been sexualized activity with a *honeydew* melon and not a *watermelon* – however, this should be of no legal concern, unless there is something reputationally different about misidentifying what kind of produce was used.

2.5.2. The October 13, 2022, Video

Next in the Amended Complaint, Plaintiff alleges Rekieta, on October 13, 2022, "accused Plaintiff of disgusting crimes against children, pedophilia," and "then, stated Plaintiff 'should probably be shot in the fucking head,'" specifically alleging that "Rekieta stated 'Plaintiff has always been into sucking little boy cock which is weird, but that's his thing. Look, I'm not here to stop him, I'm just saying, he should probably be shot in the fucking head. Montagraph, you're a fucking faggot,[45] everybody knows you're a faggot. Clip this all you want and sue me if you want you fucking child molesting fucking faggot. Do that. How about you try that." Amended Complaint at ¶¶ VII & XXVI. Rekieta makes the quoted statements at approximately 5:50:20 into the program,[46] after having been drinking for nearly six hours. Shepard Dec. at ¶ 26. He made the statements after being prompted by a commenter and in discussing emails from Plaintiff. *Id*. He then proceeds to answer a commenter's question about the "etiquette of squeezing the boobs of one's wife." *Id*.

This is what Plaintiff believes to be a false statement of fact that harms his reputation.

2.5.3. The October 18, 2022, Video

Third, in the Complaint, Plaintiff alleges Defendants published a video on October 18, 2022, "where a meme of guns (AK47s) pointed at Plaintiff's head accompanied by [Rekieta] making false statements about Plaintiff," once again with no mention of what statements Rekieta allegedly made. Complaint, ¶ VIII. A discussion of Montagraph, prompted by another guest, began at approximately

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believe such is necessary. However, the Defense sincerely hopes that such is not made necessary.

[45] While the undersigned counsel does not approve of this slur, it is quite cavalierly thrown around on Rekieta's show. In fact, the undersigned first heard of Rekieta when Rekieta used this slur to describe the undersigned's law partner. Rather than bring a baseless lawsuit over it, the undersigned scolded Rekieta for it, and since then, things have been friendly between them.

[46] *See* "The LawTube Drama Grift-oRama with Drex!," Rumble (Oct. 13, 2022), available at: https://rumble.com/v1nqkfm-the-lawtube-drama-grift-o-rama-with-drex.html.

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3:51:50-3:54-25,[47] relaying the story of Plaintiff calling him on his phone, discussing Plaintiff calling Rekieta "a member of the sweaty sausage squad" and stating "the most important thing is that he had sex with a watermelon on camera." Shepard Dec. at ¶ 27.

2.5.4. The October 28, 2022, Video

The next video, new to the Amended Complaint, was published on October 28, 2022.[48] Quest alleges that Rekieta said Quest was '"making a snuff film, about a kid,"' that Quest "made such a film," that Rekieta was "suggesting Plaintiff 'made a nasty movie about a kid . . . and that's why Plaintiff does not have a good name,"' that Rekieta said '"nobody goes, huh, who's Steve Quest? Who's this Montagraph? Oh, he's a fine upstanding citizen. Nobody. Nobody does,"' and '"bro, I'll take my name over yours. Your good name is garbage, and that's no joke. That's the straight talk."' Amended Complaint, ¶ XXVI.

To provide some context, from approximately 0:16:20 to 0:25:00 in the video, Rekieta discusses a frivolous bar complaint Quest filed against him based on many of the statements alleged to be defamatory in the Amended Complaint (including the claims of Quest being a "retard" and having sex with a watermelon) and the Minnesota Bar's written decision not to take any action in response. From approximately 0:25:10 to 0:26:00, Rekieta says that his video programming is "frankly, late night shock radio, to much extent, like Howard Stern before he became a coward . . . It allows me to mix in news, comedy, levity, personal reality, satire, and it's all this mishmash of things." Shepard Dec. at ¶ 28. At approximately 0:32:20, when repeating allegations in one of Quest's bar complaints mentioning statements about sexual acts with a child, Rekieta says "Monty, this is obviously satire, you weirdo." *Id*.

From approximately 0:40:35 to 0:43:45, Rekieta makes the statements mentioned in the Amended Complaint. He notes that Quest is watching the livestream and trying to defend his name in the comments, which prompts Rekieta to say:

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[47] *See* "Darrell Brooks Trial Day 9 (Just the Afternoon, Though)," Rumble (Oct. 18, 2022), available at: https://rumble.com/v1olbzu-darrell-brooks-trial-day-9-just-the-afternoon-though.html

[48] *See* "Thursday Fan Mail Surprise! Also, Twitter Trash Removed," Rumble (Oct. 28, 2022), available at: https://rumble.com/v1q9f4i-thursday-fan-mail-surprise-also-twitter-trash-removed.html.

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> You don't have a good name, Montagraph. You know you don't . . . you have an image and branding problem . . . This is not a criticism . . . Everything I said about you, the real stuff like the watermelon (which is still weird), **and the joke stuff, like the kid stuff** (which is still weird), people can reasonably form those opinions about you because you made that really weird fucking movie. And there are articles written about that really weird fucking movie, the snuff film of the kid that you made, that one, that you bragged about . . . Monty, you've got a real image problem on that issue because of what you made . . . nobody goes, "huh, who's Steve Quest? Who's this Montagraph? Oh, that's a fine upstanding citizen." Nobody does. Because of how you act and what you do and what you say . . . But bro, I'll take mine over yours. Your good name is garbage, and that's no jokes. This is straight talk right to you . . . .

Id. (emphasis added). Rekieta then reiterates that this is a discussion of Plaintiff's pre-existing awful reputation.

2.5.5. The December 22, 2022, Video

Quest alleges that Rekieta, in a December 22, 2022 video,[49] stated '"Monty [Plaintiff] is a fucking retard,' 'you're [Plaintiff] dumb, 'Monty [Plaintiff] you don't make any money. You're a weird broke person on the internet. I'd love to see your damages,' '[Plaintiff] made a couple movies, and one of his movies is so derided as being pedophilic and violent . . . There are videos about it . . . He got removed from every streaming and broadcasting service there was because this is creepy shit with kids."' Amended Complain, ¶ XXVI.

At approximately four hours into the video, with Rekieta having been drinking during the entire stream, Rekieta begins to talk about the instant lawsuit. From approximately 4:18:00 to 4:19:05, in the context of discussing whether the amount in controversy requirement for federal diversity might be present, and thus removal of this case to federal court might be appropriate, Rekieta says:

> I would love for him to prove any damages at all, that would be great. Monty, you don't make any money. You're a weird broke person on the internet . . . Montagraph, on these subjects, may actually be libel-proof . . . Montagraph made a couple movies. And one of his movies is so derided as, like, being pedophilic and violent that, like, there are videos about it, it couldn't be distributed, I think he got removed from every streaming and broadcasting service there was, because

[49] *See* "Friday Funtime with: Camelot, Potentially Criminal, Runkle, Legal Vices, joe Ball, Drex, and Jokes," Rumble (Dec. 24, 2022), available at: https://rumble.com/v224km0-friday-funtime-with-camelot-potentially-criminal-runkle-legal-vices-joe-bal.html.

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> everyone was, you know, this is creepy shit with kids, man. Like, everything I've said about Montagraph, it's all based on a reasonable understanding of his online persona that he has put out.

Shepard Dec. at ¶ 29.

2.5.6. The January 11, 2023, Video

Finally, Quest complains of a video Rekieta published on his YouTube channel on January 11, 2023,[50] "in which he called Plaintiff a 'retard'" and that '"the ADA had assigned Defendant Nicholas Rekieta a retard who has gone rogue (joking that Plaintiff is a retard assigned by the ADA to oversee Defendants' business)."' Amended Complaint, ¶ XXVI.

At approximately 0:55:00 to 0:56:22 in this livestream, Rekieta says that he will be:

> covering my lawsuit against the retard very soon . . . I don't want to just cover me all the time, although I am a narcissist, so I like that. Uh, we'll see. But, yes, the ADA has sent me a letter that says that their retard went rogue. They're gonna send me a new one, a new retard that I have to cater to and pander to, even though I already have one, still, in my Locals chat . . . my channel's gotten big enough that I need two. So, they're gonna send me a new one. I asked for one that just won't drool on the carpet, like, that's my only request. I'll accommodate them, I'll build ramps that they can fall off of or whatever, it doesn't bother me. But, uh, since my one has gone rogue, I will be covering that very soon.

Shepard Dec. at ¶ 30. Rekieta does not mention Quest by any of his names in this video.

In his cause of action for defamation, Plaintiff alleges Rekieta "caused to be published . . . that Plaintiff engaged in criminal conduct, is a pedophile, pervert, and whose life is worthless and should be ended." Complaint at ¶ X. In his Amended Complaint, Quest goes on to allege that Rekieta said that "Plaintiff is a faggot, that Plaintiff 'sucks little boys' cocks,' that Plaintiff has created a 'snuff film' starring a female child actor, that Plaintiff created a 'snuff film' starring a male child actor, and that Plaintiff is a 'retard.'" Amended Complaint at ¶ XXVI. None of these statements are actionable.

3.0 LEGAL STANDARD

Minnesota's Anti-SLAPP law, Minn. Stat. § 554.07-554.20, is a variation of the Uniform Public Expression Protection Act ("UPEPA"). It provides a mechanism for the early dismissal of lawsuits that target the exercise of protected constitutional rights – even if the exercise of those rights

[50] *See* "Guns and Courts: Societal Struggle to Reconcile Freedom; ALSO SCOTUS on 2020 Election Lawsuit," Rumble (Jan. 11, 2023), available at: https://rumble.com/v24u3lo-guns-and-courts-societal-struggle-to-reconcile-freedom-also-scotus-on-2020-.html.

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might be offensive, rude, crude, or socially unacceptable in polite company. It does not authorize a Court to disapprove of the Defendant's speech and deny him the right to engage in it. It creates substantive immunity from suit, permitting an immediate interlocutory appeal if the motion is denied. The statute applies to any cause of action based on, in relevant part, a defendant's "exercise of the right of freedom of speech or of the press . . . guaranteed by the United States Constitution or the Minnesota Constitution on a matter of public concern." Minn. Stat. § 554.08(b)(3).

Deciding an Anti-SLAPP motion is a two-prong process. First, the moving party must demonstrate that the claim arises from an act in furtherance of the right of free speech or of the press in connection with a matter of public concern. Minn. Stat. § 554.13(a)(1).

If and when the moving party meets that burden, the Court should grant the motion if *either*: "(i) the responding party fails to establish a prima facie case[51] as to each essential element of the cause of action; or (ii) the moving party establishes that: (A) the responding party failed to state a cause of action upon which relief can be granted: or (B) there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law on the cause of action or part of the cause of action." Minn. Stat. § 554.13(a)(3). In other words, even if the non-moving party can establish a prima facie case as to each essential element of a cause of action, the moving party can still prevail on the motion if they can establish that dismissal is appropriate under either a motion to dismiss or summary judgment standard.

Minn. Stat. § 554.17 provides that the UPEPA "must be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association, guaranteed by the United States Constitution or Minnesota Constitution." And while Minnesota's UPEPA is new, with apparently no published appellate decisions, Minn. Stat. § 554.18 mandates that "[i]n applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject

[51] "A party presents prima facie evidence if the evidence, when unrebutted, would support a judgment in that party's favor." *Cook v. Cragg*, 2024 Minn. Dist. LEXIS 3411, *6 (Hennepin Cty. Dist. Ct. Sept. 6, 2024) (citing *McKenzie v. N. States Power Co.*, 440 N.W.2d 183, 184 (Minn. Ct. App. 1989)).

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matter among states that enact it." It is thus important to look to other UPEPA states (such as Washington, the first adopter of the UPEPA) in deciding motions under the UPEPA.

The filing of an Anti-SLAPP motion immediately stays all discovery and other proceedings until the motion and any appeals are resolved. Minn. Stat. § 554.10(a)(1), 554.10(b)-(c). In addition to the pleadings and motion briefing, the Court may consider "any evidence that could be considered in ruling on a motion for summary judgment under Minnesota Rules of Civil Procedure 56.03." Minn. Stat. § 554.12.

4.0 ARGUMENT

4.1. Minnesota's New Anti-SLAPP Law Applies to Quest's Claims

Defendants previously filed an Anti-SLAPP motion under Colorado's Anti-SLAPP law, given that Plaintiff Quest is a Colorado resident and suffered all alleged harm in Colorado. The Court denied that motion, finding that Colorado's law did not apply to Quest's claims. Since that order and the related appeal, Minnesota enacted an Anti-SLAPP law of its own, and it clearly does apply.[52] It is worth noting that Quest claimed, once he was afraid the Colorado law might apply, that he lives in Illinois. Where he lives is anyone's guess, but the fact that he lied to this Court in his complaint, or lied after to try and avoid the consequences of his actions is relevant. It is a theme here.

4.2. Defendants' Conduct is Protected Under Minn. Stat. § 554.08

There is no dispute as to the conduct forming the bases of Plaintiff's claims: Quest seeks to hold Defendants liable for the content of statements Rekieta made online about him. The only question is whether Rekieta's statements are on a matter of public concern.

Due to the lack of Minnesota cases on this issue, it is helpful to look to elsewhere, and Washington state courts provide useful guidance. The court in *Jha v. Khan* stated that whether speech is a matter of public concern is a question of law, which courts must determine "'by the content, form,

[52] This motion is also timely. Minn. Stat. § 554.09 provides that a motion under the UPEPA must be filed "[n]ot later than 60 days after a party is served with a complaint . . . that asserts a cause of action to which sections 554.07 to 554.19 apply, or at a later time on a showing of good cause." While there may have previously been an issue as to timeliness, that has been dispensed with in light of the consent motion to extend deadlines in this matter, which the Court granted on June 2, 2025. The parties agreed in that motion that Defendants shall have until July 28, 2025, to file this motion. Consent Motion at ¶ 6.

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and context of a given statement, as revealed by the whole record.'" 520 P.3d 470, 477-78 (Wash. App. 2022) (quoting *Billings v. Town of Steilacoom*, 408 P.3d 1123 (Wash. App. 2017). Washington courts have held that "[s]peech involves 'matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community.'" *Spratt v. Toft*, 324 P.3d 707, 713 (Wash. App. 2014) (internal quotation marks omitted) (quoting *Snyder v. Phelps*, 562 U.S. 443, 453 (2011)). Minnesota is likely to construe the UPEPA similarly.

It is thus apparent that there is no special test for what is a matter of public concern generally, The Minnesota Supreme Court in *Maethner v. Someplace Safe, Inc.*, dealt with this question, holding that "the determination of whether speech involves a matter of public or private concern is based on a totality of the circumstances. Specifically, courts should consider the content, form, and context of the speech. No single factor is 'dispositive;' rather, courts should 'evaluate all the circumstances of the speech, including what was said, where it was said, and how it was said.'" 929 N.W.2d 868, 880-81 (Minn. 2019) (quoting *Phelps*, 562 U.S. at 454). In formulating this standard, the court paid particular attention to the facts and holding of *Phelps*.

> The facts of *Snyder* are particularly helpful in illustrating how to analyze whether statements are ones of public concern. *Snyder* arose out of a protest by members of the Westboro Baptist Church at a funeral for a soldier who was killed in the line of duty. *Id.* at 448. The protestors picketed on public land, carrying signs that contained messages such as "God Hates the USA/Thank God for 9/11," "America is Doomed," "Fag Troops," "Thank God for Dead Soldiers," "Pope in Hell," and "Priests Rape Boys." *Id.* at 448, 454. The father of the soldier brought state tort law claims against Westboro. *Id.* at 449-50. After examining the relevant factors, the Court concluded that the content of the signs "plainly relate[d] to broad issues of interest to society at large, rather than matters of 'purely private concern.'" *Id.* at 454 (quoting *Dun & Bradstreet*, 472 U.S. at 759). The Court observed that the signs highlighted issues such as "the political and moral conduct of the United States and its citizens, the fate of our Nation, homosexuality in the military, and scandals involving the Catholic clergy," which are "matters of public import." *Id.* According to the Court, "even if a few of the signs—such as 'You're Going to Hell' and 'God Hates You'—were viewed as containing messages related to [the soldier or his family] specifically, that would not change the fact that the overall thrust and dominant theme of Westboro's demonstration spoke to broader public issues." *Id.*
>
> The Court's examination was not limited to the subjects of the messages on the placards. The court also considered the context of the speech. The Court found it significant that Westboro had conveyed its views "in a manner designed . . . to reach

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> as broad a public audience as possible," *id.*, noting that the picketing took place "at a public place adjacent to a public street," *id.* at 456. And even though the context of the speech was the funeral of an individual soldier, because there was no prior relationship or conflict between Westboro and the soldier, the Court was "not concerned" that "Westboro's speech on public matters was intended to mask an attack . . . over a private matter." *Id.* at 455.

929 N.W.2d at 880-81.

With the caveat that this question relies on an analysis of multiple factors, the *Maethner* court noted that, as a "general proposition," speech "relating to domestic violence involves a matter of public concern." *Id.* at 881. The court in *Johnson v. Freborg* made the same observation as to speech relating to sexual assault. 995 N.W.2d 374, 385 (Minn. 2023). The *Freborg* court found that statements published on Facebook involving "accusations of sexual assault by three dance instructors in the local Twin Cities dance community" were on a matter of public concern, even though the defendant's statements "ha[d] some aspects of airing a personal dispute." *Id*. at 389. Important to this conclusion was the U.S. Supreme Court's holding in *Packingham v. North Carolina*, 582 U.S. 98 (2017), that "social media acts as the 'modern public square' and that sites like Facebook 'allow a person with an Internet connection to 'become a town crier with a voice that resonates farther than it could from any soapbox.'" *Freborg,* 995 N.W.2d at 389 (quoting *Packingham*, 582 U.S. at 104). The *Freborg* court also cited with approval *Fredin v. Middlecamp*, 500 F. Supp. 3d 752 (D. Minn. 2020), *aff'd*, 855 F. App'x 314, 389 (8th Cir.) (per curiam) (unpublished), which "found that a post on a public Twitter account that included pictures of a person and explicitly accused him of repeated sexual harassment and rape qualified as a matter of public concern." 995 N.W.2d at 389.

In keeping with these authorities, Defendants' statements about Quest addressing allegations of pedophilia[53] are on matters of public concern. *Accord People v. Quintero,* B166338, 2004 Cal. App. Unpub. LEXIS 7247, at *44 (Aug. 3, 2004) (noting "widespread news coverage and public concern regarding pedophiles"); *Avalos v. Rodriguez*, 2020 Cal. App. Unpub. LEXIS 6489, *11-12 (Oct. 5,

[53] Although Quest takes issue with being called a "faggot," false claims of homosexuality are not defamatory. *See Stern v. Cosby*, 645 F. Supp. 2d 258, 273-74 (S.D.N.Y. 2009) (summarizing progress in society over time and not recognizing a statement regarding homosexuality to be defamatory).

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2020) (finding that statements during press conference alleging sexual abuse of young children at public school were protected under California Anti-SLAPP law).

This is not a case of Rekieta making an off-handed accusation at a random person on the internet. Quest's extremely concerning videos, sexual aberrance, and likely pedophilia had all been discussed in many communities on the internet for years before Rekieta's statements. *See* Sections 2.1 and 2.2, *supra*. Quest was already *famous* for being a serial harasser and possessed of strange sexual fetishes and perverse proclivities in his movies.

Weighing in on an existing years-long discussion regarding a person's reputation constitutes a contribution to an existing issue of public concern. Similarly, as discussed in Section 4.4.1.2, *infra*, Quest is and was a public figure on these topics at the time of Rekieta's statements. Furthermore, many of the complained-of statements in the Amended Complaint are discussing Quest specifically in the context of Quest's lawsuit or frivolous bar complaints he previously filed against Rekieta. To Rekieta's audience, developments in legal proceedings against him are certainly of public concern. This is especially so when the Plaintiff has entered the proverbial boxing ring with the Defendant, as discussed above in Sections 2.1 and 2.2. Finally, Rekieta's statements about Quest were all published on the social media website Rumble, and Minnesota courts have found that the publication of such statements on social media weighs in favor of those statements being on a matter of public concern.

Defendants have satisfied their burden under prong of the Anti-SLAPP analysis.

4.3. Quest's Claims are Meritless

Having satisfied the first prong of the Anti-SLAPP statute, the question before the Court is whether Quest can make a *prima facie* showing as to each essential element of his claims. In the unlikely event he can, the Court should still grant this Motion because there are no genuine disputes of material fact and Defendants are entitled to judgment as a matter of law.

4.3.1. Quest's Defamation Claims are Meritless

4.3.1.1. Defendants' Statements Are Not Actionable

Freedom to insult under the First Amendment means that Hustler magazine can publish a fake ad that states that Rev. Jerry Falwell's loss of virginity occurred "during a drunken incestuous

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rendezvous with his mother in an outhouse." *Hustler Magazine v. Falwell*, 485 U.S. 46, 48 (1988). What could be more offensive than that? If this is protected speech, what class of nobility does Plaintiff belong to that he is above that kind of insult?

It may upset Quest, but Rekieta calling him names is not actionable in defamation. Defamation is: "(a) a false and defamatory statement about the plaintiff; (b) in [an] unprivileged publication to a third party; (c) that harmed the plaintiff's reputation in the community." *Weinberger v. Maplewood Review*, 6689 N.W.2d 67, 673 (Minn. 2003). Public figure plaintiffs must additionally prove that the defendant published the statements at issue with actual malice," meaning actual knowledge of falsity or reckless disregard. *Maethner*, 929 N.W.2d at 873. The requirement to show actual malice by clear and convincing evidence is created by the U.S. Constitution. *See, e.g., Bose Corp. v. Consumers Union*, 466 U.S. 485, 511 (1984).

The Amended Complaint fails to provide any surrounding context for the statements, as it quotes individual words piecemeal out of several hours-long videos. "Minnesota law has generally required that in defamation suits, the defamatory matter be set out verbatim." *Moreno v. Crokston Times Printing Co.*, 610 N.W.2d 321, 326 (Minn. 2000). When "the complaint contains no specific facts relating to [a party's defamation claim] . . . the proper course is dismissal of these claims." *Pope v. ESA Servs., Inc.*, 406 F.3d 1001, 1011 (8th Cir. 2005), *abrogated on other grounds by Torgerson v. City of Rochester*, 643 F.3d 1031 (8th Cir. 2011) (en banc).

Plaintiff alleges Rekieta "made various false statements of a sexual nature about Plaintiff" on October 6, 2022, with no attempt to identify which statements were actionable. Complaint, ¶ VI. Plaintiff alleges Rekieta "accused Plaintiff of disgusting crimes against children, pedophilia," again without identifying any particular statements, and "then, stated Plaintiff 'should probably be shot in the fucking head'" on October 13, 2022. Complaint, ¶ VII. Plaintiff alleges Defendants published a video "where a meme of guns (AK47s) pointed at Plaintiff's head accompanied by [Rekieta] making false statements about Plaintiff" on October 18, 2022, once again with no mention of what statements Rekieta allegedly made. Complaint, ¶ VIII. In his cause of action for defamation, Plaintiff alleges Rekieta "caused to be published . . . that Plaintiff engaged in criminal conduct, is a pedophile, pervert,

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and whose life is worthless and should be ended. Complaint, ¶ X. In the Amended Complaint, Quest includes quotes from five of the complained-of videos but fails to include any factual allegation that any of the specific statements at issue are even false. Amended Complaint, ¶ XXVI. As pleaded, these allegations are not sufficient. Moreover, none of the allegations are properly addressed to Rekieta Law, LLC, which is a law firm, notwithstanding that Rekieta separately uses that name for his program. The law firm did not make any of the statements nor publish them.

However, assuming the allegations are sufficient, none of the statements at issue are actionable. The statements, while sharp and rude, are clearly rhetorical hyperbole, which does not provide a basis for a claim. *McKee v. Laurion*, 825 N.W.2d 725, 733 (Minn. 2013) (observing "mere vituperation and abuse" and "rhetorical hyperbole" to be non-actionable); *Lewis v. Time, Inc.*, 710 F.2d 549, 553 (9th Cir. 1983) (stating that "even apparent statements of fact may assume the character of statements of opinion, and thus be privileged, when made [under] circumstances in which 'an audience may anticipate efforts by the parties to persuade others to their position by use of epithets, fiery rhetoric or hyperbole"); *Flowers v. Carville*, 310 F.3d 1118, 1127 (9th Cir. 2002) (finding that references to tabloid articles as "trash," "crap," and "garbage" were not actionable); *Phantom Touring v. Affiliated Publ'ns*, 953 F.2d 724, 728, 730-31 (1st Cir. 1992) (finding that theatre review calling a production "a rip-off, a fraud, a scandal, a snake-oil job" was "obviously protected hyperbole" incapable of being proven false).

"The First Amendment requires neither politeness nor fairness." *Pullum v. Johnson*, 647 So. 2d 254, 258 (Fla. 1st DCA 1994). These are shows on which Rekieta and his guests are frequently drunk. Profanity and vulgarity are rampant. While Rekieta discusses legal issues, it is not a sober analysis. These are marathon programs, with Rekieta's statements appearing after many hours and libations. Merely calling someone a nasty word does not make it defamatory per se. *See, e.g.*, Lora Kolodny, "Elon Musk found not liable in 'pedo guy' defamation trial," CNBC (Dec. 6, 2019), attached as **Exhibit 36**.[54] As discussed in footnote 53, , the term "faggot" cannot be defamatory in this context. Nor can the term "retard." *See, e.g., Sternberg v. Spirit Airlines, Inc.*, 2020 U.S. Dist.

[54] Available at https://www.cnbc.com/2019/12/06/unsworth-vs-musk-pedo-guy-defamation-trial-verdict.html.

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LEXIS 39449, *8 (S.D. Fla. Mar. 5, 2020) (holding that "[t]he statement 'retarded jews,' though offensive, is not a defamatory statement but rather a 'rhetorical hyperbole' that 'cannot reasonably be interpreted as stating actual facts about an individual"').

These statements were made in hours-long livestreams with an inebriated speaker casually throwing out insults. A "heated and volatile setting" may make "seemingly 'factual' statements take on an appearance more closely resembling opinion than objective fact." *Steam Press Holdings, Inc. v. Hawaii Teamsters*, 302 F.3d 998, 1006 (9th Cir. 2002). Hence, even being called a "racist pedophile" by a defendant where the plaintiff had made public statements about someone's daughter, would make "it impossible that an informed listener would think that [the] defendant was accusing [the] plaintiff of being a pedophile based on some undisclosed information known only to him." *Torain v. Liu,* 2007 U.S. Dist. LEXIS 60065, at *3 (S.D.N.Y. Aug. 16, 2007).[55] Just as in *Torain*, Rekieta's comments were explicitly based on the disclosed *The Umbrella Man* film and were explicitly disclaimed as a "joke." Even Quest himself published Rekieta's drunken joke about Quest being a pedophile. *See* Montagraph, "100% False Claims From Rekieta Law ! {Evidence}," Rumble, attached as **Exhibit 37**.[56] A public figure like Quest is expected to tolerate insults so that robust discourse under the First Amendment may occur.

Similarly, Fox News prevailed on a defamation claim where the plaintiff was accused of extortion on the basis that the Tucker Carlson program was non-actionable, rhetorical hyperbole. *McDougal v. Fox News Network, LLC*, 489 F. Supp. 3d 174, 183-84 (S.D.N.Y. 2020). As the court there discussed:

This "general tenor" of the show should then inform a viewer that he is not "stating

[55] Furthermore, the First Amendment protects expression that carries with it moral judgments, even if it may not be recognized as true scientifically or legally. The Supreme Court of Texas, for example, recently found it was not defamatory to call abortion providers murderers, even though the providers were carrying out legal medical procedures. *The Lilith Fund for Reproductive Equity v. Dickson*, No. 21-0978, 2023 Tex. LEXIS 161 (Tex. Feb. 24, 2023). Calling someone a pedophile for creating a film with a masked man in a basement making sexual comments toward a bound apparent minor, and French kissing a baby doll (information which Rekieta disclosed) is protected opinion.

[56] This exhibit is an MP4 file, which the Odyssey system does not accept. It is submitted through MNDES. It is also available at: https://rumble.com/v1ntn6k-100-false-claims-from-rekieta-law-evidence.html

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> actual facts" about the topics he discusses and is instead engaging in "exaggeration" and "non-literal commentary." Fox persuasively argues, … that given Mr. Carlson's reputation, any reasonable viewer "arrive[s] with an appropriate amount of skepticism" about the statements he makes. Whether the Court frames Mr. Carlson's statements as "exaggeration," "non-literal commentary," or simply bloviating for his audience, the conclusion remains the same—the statements are not actionable."

Id. (citations omitted). Tucker Carlson is not alone—he is in the company of Rachel Maddow:

> Although MSNBC produces news, Maddow's show in particular is more than just stating the news—Maddow "is invited and encouraged to share her opinions with her viewers." In turn, Maddow's audience anticipates her effort "to persuade others to [her] position[] by use of epithets, fiery rhetoric or hyperbole." Therefore, the medium through which the contested statement was made supports Maddow's argument that a reasonable viewer would not conclude the statement implies an assertion of fact.

Herring Networks, Inc. v. Maddow, 8 F.4th 1148, 1157 (9th Cir. 2021) (citations omitted; affirming anti-SLAPP dismissal arising from claim Herring was "paid Russian propaganda").

Like Tucker Carlson, Rekieta is engaged in non-literal commentary and bloviation. Like Rachel Maddow, Rekieta uses epithets and fiery rhetoric and hyperbole. His viewers come for the drunken rants. It is abundantly clear from the context of these videos and Rekieta's tenor that he is using these terms as insults and jokes, not factual assertions. For example, Quest claims that Rekieta saying Quest "routinely fists himself" in the October 6 video is defamatory, while ignoring that Rekieta immediately thereafter says "See, what I just did was deliver a dry joke about what Montagraph said." He also ignores that, in the October 28 video, Rekieta explicitly says that he is joking about the "kid stuff," *i.e.*, the statements about Quest being a pedophile or child molester. When the speaker makes such a clear disclaimer of a statement not being factual, a plaintiff cannot selectively insist to the contrary). Even Quest himself has acknowledged this; he has characterized Rekieta's program as "some sort of legal nonsense. He's not giving advice, so to speak, it's giving some sort of correspondent's commentary." *See* **Exhibit 23** at 10:50.

Another important fact to bear in mind is that Plaintiff himself initiated the type of banter of which he now complains. In 2019, he said that Rekieta wanted to be Quest's "little submissive." *Id*. at 18:17. This is a claim Rekieta is homosexual, as a submissive/dom relationship is a type of sexual relationship. *See Marino v. Davis*, 2019 U.S. Dist. LEXIS 248702 (S.D. Tex. Sept. 30, 2019). Similarly, on June 29, 2019, Quest published a series of photoshopped images with Rekieta's face,

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largely implying Rekieta is homosexual. *See, e.g.*, June 29, 2019, Twitter post by @Montaqraph, attached as **Exhibit 38** (placing Rekieta at a store called "Dick Liquor," a play on words for one who performs fellatio);[57] June 29, 2019, Twitter post by @Montaqraph, attached as **Exhibit 39** (having Rekieta state that he uses a firm called "Rent a Daddy for a Day" and would be "spank[ed]");[58] June 29, 2019, Twitter post by @Montaqraph, attached as **Exhibit 40** (Rekieta pantsless and identified as "Head Council [sic] For The Sweaty Sausage Squad," a play on words as "head" is a term for fellatio);[59] June 29, 2019, Twitter post by @Montaqraph, attached as **Exhibit 41** (having Rekieta say "I will bend over forwards, for your business! The back door is always open," implying Rekieta receives anal sex);[60] and June 29, 2019, Twitter post by @Montaqraph, attached as **Exhibit 42** (Rekieta in a stockade sucking toes).[61]

Quest himself uses claims of child abuse as a rhetorical insult device. *See* Oct. 12, 2018, Twitter post by @Montaqraph, attached as **Exhibit 43** ("I think that Mr Fougere, the 33 year old is a pervert and gets off on C/P [child pornography] and C/P related Issues! I also think that he should not be allowed to be around kids, even his own. That is my opinion!").[62] Dec. 16, 2019, Twitter post by @Montaqraph, attached as **Exhibit 44** ("Beware of Timothy Holmseth the Fugitive, Hide your Kids").[63]

Quest tries to plead around Rekieta's statements clearly being non-actionable opinion or hyperbole, alleging that Rekieta "usually defames Plaintiff with a 'straight face,'" and that "[n]othing about most of his defamatory conduct suggests humor, levity, or that he's joking." Amended Complaint at ¶ XXVI. This allegation is sanctionably false, as a cursory inspection of the videos (identified above but not in either of the Complaints) makes clear.[64] The October 6, 2022, video

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[57] https://twitter.com/Montaqraph/status/1144955590952849409?s=20
[58] Available at: https://x.com/Montaqraph/status/1144945675647488000
[59] Available at: https://x.com/Montaqraph/status/1144921406611869697
[60] Available at: https://x.com/Montaqraph/status/1144898874445840384
[61] Available at; https://twitter.com/Montaqraph/status/1144906102271860738?s=20
[62] Available at: https://twitter.com/Montaqraph/status/1050930173481119744?s=20
[63] Available at: https://x.com/Montaqraph/status/1206641471899586562
[64] If Minnesota Courts take the duty of candor seriously, this should be absolutely the stuff of sanctions. One can package legal arguments creatively, but knowingly lying in a pleading should not be something that just gets hand-waved. And if the rules in this Court are that we can *all* just lie, the

Quest complains about even has Rekieta *explicitly* stating that he is joking about Quest.

But even if that were not the case, humor does not require a humorist to disclose the fact that they are joking. As *The Onion* expertly articulated in an amicus brief before the Supreme Court, satire outright requires that a humorist make jokes and absurd statements with a straight face. *See Novak v. City of Parma, Ohio*, No. 22-293, Brief of *The Onion* as *Amicus Curiae* in Support of Petitioner (Oct. 3, 2022).[65] And regardless of delivery, the words of the videos themselves preclude any rational argument that Rekieta is making factual assertions. For example, Quest complains of Rekieta's statement in the January 11 video that Quest is a "retard" sent by the ADA. The Court may take judicial notice that (1) the ADA is a statute, not a regulatory agency; (2) there is no government agency that assigns mentally disabled people to monitor the activities of American citizens (or anyone else, for that matter); and (3) it is *agonizingly* obvious that Rekieta is joking in this video, even though he may not be laughing at his own jokes. Quest simply does not like being the butt of Rekieta's jokes – probably no more than Rekieta likes it when Quest makes jokes about him – Rekieta just doesn't file frivolous claims against Quest for these jokes. *See* Rekieta Dec. at ¶¶ 8-15.

As our neighbors to the north aptly put it in a trademark case, "one must not proceed on the assumption that … members of the public generally are completely devoid of intelligence … or are totally unaware or uninformed as to what goes on around them." *Michelin & Cie v. Astro Tire & Rubber Co. of Canada Ltd*., 69 C.P.R. (2d) 260, 263 (F.C.T.D. 1982). Thus, someone called a "big skank" on a raucous morning radio talk show could not claim defamation due to the tenor of that show. *Seelig v. Infinity Broadcasting Corp*., 97 Cal. App. 4th 798 (2002). Neither could a wine producer prevail in a claim over a Robin Williams joke that the wine "tastes like urine" where his routine was "an obvious joke, told during an obvious comedy performance, [a]s a form of irreverent social commentary, ... not [to be] taken seriously." *Polygram Records, Inc. v. Superior Court*, 170 Cal. App. 3d 543 (1985). As in *Seelig,* although Rekieta's statements are "sophomoric and in bad

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Court should pronounce that so that the Defense can do it, too. However, Defendant seeks no separate sanctions beyond the granting of this motion.

[65] Available at: https://www.supremecourt.gov/DocketPDF/22/22-293/242292/20221003125252896_35295545_1-22.10.03%20-%20Novak-Parma%20-%20Onion%20Amicus%20Brief.pdf.

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taste, the comments are just the type of name-calling of the 'sticks and stones will break my bones' variety" that are non-actionable in defamation. 97 Cal. App. 4th at 810.

Quest cannot otherwise meet the element of falsity. Truth is a complete defense to a defamation action and "true statements, however disparaging, are not actionable." *Stuempges*, 297 N.W.2d at 255. "If the statement is true in substance, minor inaccuracies of expression or detail are immaterial. A statement is substantially true if it would have the same effect on the mind of the reader or listener as that which the pleaded truth would have produced. The plaintiff has the burden of proving falsity in order to establish a successful defamation claim." *McKee v. Laurion*, 825 N.W.2d 725, 730 (Minn. 2013) (citations omitted).

A simple review of the videos produced by "Montagraph" would lead any reasonable person to find Plaintiff has pedophilic tendencies. For example, in the "Little Piggy and the Umbrella Man" video, Quest, as the star and director, *repeatedly threatens a child with rape*. Essentially all of the numerous commenters who have weighed in on this video have noted that it has, at a bare minimum, very troubling undertones of sexualizing minors. *See* Sections 2.1 and 2.2, *supra*. This is in addition to his other bizarre behavior, including "essentially French kissing a Barbie doll that looks like a little girl" and simulating the eating of feces before doing so (*see* **Exhibit 5**), which certainly seems to support the opinion that Quest is a pedophile. One need not actually *practice pedophilia* to be a *pedophile. See, e.g.*, James M. Cantor and Ian V. McPhail, "Non-offending Pedophiles," CURRENT SEXUAL HEALTH REPORTS 121-128 (Sept. 2016), available at: https://www.ipce.info/library/journal-article/non-offending-pedophiles. Plain and simple, Quest has a shocking history of sexualizing children, which is part of his pre-existing reputation. Even if Quest never had a young male's penis in his mouth, had Rekieta provided his audience with all of the precise details,[66] they would come away believing that calling Quest a pedophile is a fair comment.

Quest insists it was defamatory to say he had sex with a watermelon, but this is a substantially true statement. Since at least 2019, there has been video of Quest available online showing him poking

[66] While he did not show the Umbrella Man film itself, Rekieta referenced it in both the October 28 and December 22 videos and noted how a reasonable person could view it and come away with the impression that Quest is a pedophile.

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holes into a honeydew melon,[67] placing a wig on the melon, and then enthusiastically digitally stimulating the melon. **Exhibit 16**. Quest may quibble about whether digital penetration of a watermelon in an overtly sexualized manner counts as having sex with one,[68] but Rekieta's statement is at the very least a reasonable characterization of this video (although, as noted, it does appear that it might be a honeydew, and not a watermelon).

Finally, Quest claims it was defamatory for Rekieta to say he made a "snuff film" involving minors. This, too, is a true statement. His "Little Piggy and the Umbrella Man" video shows a child tied up in a basement while a masked man makes threatening and sexual comments about her. Near the end of the video, the masked figure says "it's time for you to have your lights turned out," followed by the child pleading for her life, the screen going dark, and the sound of a gunshot.

4.3.1.2. Defendants Did Not Publish With Actual Malice

Quest is a public figure. A movie producer cannot make movies for public consumption, court an audience on a Youtube channel, and then claim otherwise. Quest has trade names and is an entertainer, artist, and a producer. Complaint, ¶ II. He invites critique and commentary, therefore, as to his public works of "art." In fact, all of the statements at issue referred to "Montagraph"—if Plaintiff suffered any damages, it was through his well-known *nom de plume*, and it would have to be sufficiently well-known to devolve to Quest's real name. But, generally, the damage was allegedly done to his public persona, which has public figure status on account of his film-making career, his thousands of followers and over 1 million views on YouTube, and the years-long online discussion of Quest and his bizarre and troubling behavior. *See* Sections 2.1 and 2.2, *supra*. By Quest's own account, third parties have been publishing videos about him and his "Montagraph" name since 2010. **Exhibit 1** at 4. As is apparent on the face of the Amended Complaint, all of Rekieta's statements are specifically about Quest and the public controversy surrounding him, including the allegations against him of pedophilia that predated Rekieta's statements by years.

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[67] The video appears to show that it is a honeydew melon, rather than a watermelon, that is the object of Quest's affections. Rekieta apologizes for this error, but only a melon-fingering afficionado would consider the difference material.

[68] Digital penetration is considered to be sexual conduct. *See, e.g., State v. Heden*, 719 N.W.2d 689 (Minn. 2006).

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Quest has already provided testimony in this matter conclusively showing he is a public figure. In his affidavit in response to the prior Anti-SLAPP motion, he testified that he is a YouTube personality, generating significant income from it. *See* **Index No. 33**, Quest Feb. 20, 2023, Aff. at ¶ 5. He has four active websites from which the rest of his income is derived. *Id.* at ¶¶ 5-6. He creates art and videos he markets to business and government. *Id.* at ¶ 7. Circulated rumors of his pedophilia predate Rekieta. *Id.* at ¶ 8. For years, random people have been videotaping him. *Id.* at ¶ 16. His activities are discussed on other forums with "a wide reach of audience." *Id.* at ¶ 18. He admits that the websites discussing him, including 222 Crew and IMDB, offered into evidence as informing Rekieta's understanding, exist and that the exhibits are accurate. *Id.* at ¶¶ 22-23. He has been involved in "national collaborations." *Id.* at ¶ 28. Over 25,000 people sought out and viewed his *The Umbrella Man* video (which informed Rekieta's opinion). *Id.* YouTube accounts were created by others to discuss his work. *Id.* at ¶ 29. His work is of such notoriety that it inspired dozens of people take time out of their lives to frame him as a murdering pedophile (an admission that, again, informed Rekieta's opinion). *Id.* at ¶ 30. Police in at least one other state have taken an interest in his work. *Id.* His work has even reached global stature. *Id.* In fact, he admits "[t]here are so many, it is difficult to comprehend, compounding all these users and their subscribers, plus others that are watching their videos and comments (multiplier effect)." *Id.*

Plenty more evidence conclusively shows that he is a public figure and that Rekieta's statements directly relate to the public controversy for which he is known. He is a well-known YouTuber with nearly 71,000 subscribers. *See* https://www.youtube.com/user/montagraph He has been featured on the NBC Today Show discussing a viral "Catcall" video.[69] He, apparently, "made a name for himself on YouTube back when the '2 Girls, 1 Cup' video was … really popular…. He uploaded his own version…in which he dressed up in drag and ate a bowl of chocolate pudding and swished it around in his mount…. It got an insane amount of views and because of that video suddenly Monty had a giant channel on YouTube."[70] *See* **Exhibit 21** at 2:53.

He, himself, has noted his importance, in that he "Actually BUSTED the CIA In 2012 And

[69] *See* Morphonios, Ex. 28.

[70] A copy of that response video is attached **as Exhibit 6**.

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FORCED All News Outlets To Come Clean On Benghazi, Sure Did. So For Me To Give You Any Of My Time – You're Welcome" *See* **Exhibit 5** at 16:24. Presumably, this must relate to his work for NORAD. *See* **Exhibit 30** at 13:27. He's been featured on streams with over half a million viewers. *See* **Exhibit 23** at 17:03. Only someone who is well-known would have "tons of trolls". *See* **Exhibit 21** at 1:06. But Quest, himself, in discussing Rekieta in 2019, refers to **himself** as the "King Troll, the best troll that the Internet has ever seen." *See* **Exhibit 23** at 6:06. He has observed people driving by his mailing address and has "had people for years trying to hunt [him] down," which is not something that happens to private figures. *See* Jason O'Connell, "BitchMade Montagraph (Steve Quest)," YouTube (Jul. 13, 2019), attached as **Exhibit 45**,[71] at 0:14.

Because Quest is a public figure, he must show that Defendants made the statements with "actual malice."[72] Actual malice for these purposes is not about ill will; rather it means that the statement was published "with knowledge that it was false or with reckless disregard of whether it was false or not." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964). In this context, "reckless conduct is not measured by whether a reasonably prudent man would have published." *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). Instead, "the defendant must have made the false publication with a high degree of awareness of . . . probable falsity, or must have entertained serious doubts as to the truth of his publication." *Harte-Hanks v. Connaughton*, 491 U.S. 657, 667 (1989) (internal quotations and citation omitted). A plaintiff can establish actual malice if the defendant entertained serious doubts as to the truth of the statement or acted with a high degree of awareness of its probable falsity. *Metge v. Cent. Neighborhood Improvement Ass'n*, 649 N.W.2d 488, 497 (Minn. Ct. App. 2002); *Harte-Hanks*, 491 U.S. at 667. Ill-will and bad motive toward the plaintiff are not elements of actual malice. *Moreno v. Crookston Times Printing Co.*, 610 N.W.2d 321, 329 (Minn. 2000) (contrasting actual malice–a "knowing or reckless disregard for the truth of a statement"–with common law malice–"ill will or improper motive for the publication of defamatory statements").

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[71] This exhibit is an MP4 file, which the Odyssey system does not accept. It is submitted through MNDES. It is also available at: https://www.youtube.com/watch?v=0N2wckf2Iqk&t=13s

[72] Even if Quest were not a public figure, he would be required to show actual malice because, as explained in Section 4.3.1.1, *supra*, Rekieta's alleged statements were in connection with an issue of public concern. *Ramsey*, 351 F. Supp. 2d at 1147.

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Mere evidence that a media defendant did not investigate properly does not rise to the level of actual malice. *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 153-54 (1967) (plurality opinion); *New York Times*, 376 U.S. at 287. Even an erroneous interpretation of the facts does not meet the standard. *See Time v. Pape*, 401 U.S. 279, 292 (1971) ("it is essential that the First Amendment protect some erroneous publications as well as true ones") (quoting *St. Amant v. Thompson*, 390 U.S. at 732).

A public figure plaintiff must establish that they will be able to produce clear and convincing evidence of actual malice at trial or the case must be dismissed. See *Bose Corp. v. Consumers Union*, 466 U.S. at 511. Actual malice "is not to be presumed or inferred from the fact that a false statement has been made, but must be proved by plaintiff with convincing clarity." *Valento v. Ulrich*, 402 N.W.2d 809, 813 (Minn. App. 1987). Here, there is only a conclusory allegation in Paragraph X of the Complaint that the statements were knowingly false or made with reckless disregard for their truth. Quest does not even allege a single fact regarding Defendants' state of mind or knowledge, and for that alone, he fails. Rekieta sincerely believes "Montagraph" is a pedophile. *See* **Exhibit 31,** Rekieta Dec. at ¶ 19. He also believes, because he viewed direct evidence of it, that "Montagraph" had sex with a melon and created what he considers a snuff film featuring a minor. *Id*. at ¶¶ 17-22. He is aware of no information to the contrary, beyond the unsworn statements in the pleadings, and was not aware of any such information at the time the statements were made. *Id*. at ¶ 28.

Even now, Rekieta is not required to believe Quest's protestations to the contrary. *See Harte-Hanks*, 491 U.S. at 691 n.37 ("[T]he press need not accept denials, however vehement; such denials are so commonplace in the world of polemical charge and countercharge that, in themselves, they hardly alert the conscientious reporter to the likelihood of error." (quotation marks omitted)); *Contemporary Mission, Inc. v. New York Times Co.*, 665 F. Supp. 248, 270 (S.D.N.Y. 1987) ("Publication in the face of a denial by plaintiffs of a statement's truth does not demonstrate actual malice"), aff'd, 842 F.2d 612 (2d Cir. 1988)).[73] Simply put, Quest has neither allegation nor evidence

[73] Quest also claims that Rekieta is liable for his statements because he did not retract or apologize for them. Amended Complaint at ¶ XXVI. But declining to withdraw allegedly defamatory statements has nothing to do with whether those statements are actionable, and in any event Quest does not allege that he sent a request for retraction before filing suit.

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of actual malice, let alone clear and convincing evidence. *See Biro v. Condé Nast*, 807 F.3d 541, 546 (2d Cir. 2015) (finding that, *inter alia*, lack of allegations that *New Yorker* had reason to doubt unnamed sources, meant that plaintiff failed to plausibly allege actual malice).

Additionally, because Quest is a public figure, he must show actual damages, as noted above. Although he generically pleads lost income, wages, and money (Amended Complaint at ¶ XIII), he pleads no specifics and offered nothing previously when he filed his default motion. Neither can Quest actually prove such damages; he suffered no quantifiable harm on account of Rekieta. "[A] plaintiff's reputation with respect to a specific subject may be so badly tarnished that he cannot be further injured by allegedly false statements on that subject." *Guccione v. Hustler Mag., Inc*., 800 F.2d 298, 303 (2d Cir. 1986). Rekieta's statements did not come from out of the blue; Quest's reputation was already in the gutter. *See* Sections 2.1 and 2.2, *supra*.

Thus, the Court should grant this Anti-SLAPP motion, dismiss Quest's defamation claims with prejudice, and award Defendants their costs and attorneys' fees.

4.3.1.3. Quest is Libel-Proof

To bring a defamation claim, a plaintiff must have a reputation capable of being further harmed. Courts have recognized the "libel-proof plaintiff" doctrine, which "prohibits a plaintiff from recovering for libelous statements where the plaintiff's reputation in the community was so tarnished before the publication that no further harm could have occurred." *Schiavone Const. Co. v. Time, Inc.*, 847 F.2d 1069, 1079 (3d Cir. 1988); *see Lamb v. Rizzo*, 391 F.3d 1133 (10th Cir. 2004); *Lavergne v. Dateline NBC*, 597 Fed. Appx. 760, 761 (5th Cir. 2015). While Minnesota does not appear to have explicitly adopted this doctrine, the Eighth Circuit in *Ray v. United States Dep't of Justice*, 658 F.2d 608, 611 (8th Cir. 1981), implicitly admitted that it could apply in defamation cases.

Quest has received a tremendous amount of publicity online, essentially all of it negative. *See* Sections 2.1 and 2.2, *supra*. Nothing Rekieta has said is a fraction as harmful as the accusations dozens of others made against him years prior, as well as his own self-inflicted reputational harm including his own "2 girls one cup" video (**Exhibit 5**) and reviewing a teen porn website (**Exhibit 22**). Rekieta's

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statements are a drop in the ocean of criticism about Quest. Such a plaintiff is legally incapable of suffering reputational harm, and thus cannot succeed on a defamation claim.

4.3.2. Quest's IIED Claim is Meritless

Quest claims Defendants are liable to him for intentional infliction of emotional distress. The elements of an IIED claim under Minnesota law are: "(1) the conduct must be extreme and outrageous; (2) the conduct must be intentional or reckless; (3) it must cause emotional distress; and (4) the distress must be severe." *Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 438-39 (Minn. 1983). This tort is "sharply limited to cases involving particularly egregious facts," and a plaintiff has a "high threshold standard of proof" to bring this claim to a jury. *Id*. at 439. Conduct is "extreme and outrageous" when it is "so atrocious that it passes the boundaries of decency and is utterly intolerable to the civilized community." *Id*. The tort "does not extend to 'insults, indignities, threats, annoyances, petty oppressions, or other trivialities.'" *Langeslag v. KYMN Inc.*, 664 N.W.2d 860, 865 (Minn. 2003) (quoting Restatement (Second) of Torts § 46 cmt. D (1965)). Making false reports to the police is not "extreme and outrageous" behavior. *Id*. at 868.

Mere false accusations (even assuming, *arguendo*, they are false) do not qualify as extreme and outrageous conduct. *See Bodett v. CoxCom, Inc.*, 366 F.3d 736, 747-48 (9th Cir. 2004) ("Arizona courts have typically found false accusations alone not enough to constitute an intentional infliction of emotional distress"); *Peterson v. Eder*, 2001 Mass. Super. LEXIS 649 (Mass. Super. Ct., Dec. 27, 2001) ("Gossiping and spreading stories are petty human commonplaces neither so outrageous in character nor so extreme in degree 'as to go beyond all possible bounds of decency, to be regarded as atrocious and utterly intolerable in a civilized community'") (quoting *Foley v. Polaroid Corp.*, 400 Mass. 82, 508 N.E.2d 72, 82 (1987)), aff'd on other grounds, 68 Mass. App. Ct. 1103, 860 N.E.2d 49 (Mass. App. Ct. 2006). Thus, even accusations of crimes and sexual misconduct are insufficient to qualify as outrageous conduct. *See, e.g., Carraway v. Cracker Barrel Old Country Store, Inc.*, No. 02-2237, 2003 U.S. Dist. LEXIS 12326, at *14 (D. Kan. July 16, 2003) (spreading of false rumors to former coworkers and customers that "plaintiff stole money, used drugs, had a drinking and/or gambling problem and was [a] lesbian" was not "extreme and outrageous"); *Batson v. Shiflett*, 325

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Md. 684, 602 A.2d 1191 (1992) (accusations of conspiracy, perjury, and falsification of records in labor dispute did not meet the standard for extreme and outrageous conduct); and *Hanssen v. Our Redeemer Lutheran Church*, 938 S.W.2d 85 (Tex. App. 1996) (accusation of misappropriating church funds was not extreme and outrageous conduct). Quest does not allege Rekieta engaged in any conduct other than insulting him and providing unflattering opinions. As a matter of law, this is insufficient to support an IIED claim. Indeed, neither YouTube, Rumble, nor the Minnesota Bar found Rekieta's conduct to be extreme or outrageous.

Neither is there any evidence of recklessness or intent to injure Quest. The statements were not "directed at" Quest, as the tort requires. *Dornfeld v. Oberg*, 503 N.W.2d 115, 119 (Minn. 1993). Rekieta was entertaining his audience and there is no suggestion Quest would ever have heard most of the statements. As a result, Quest cannot meet the elements of this claim and the motion must be granted.

An IIED plaintiff must meet a similarly high threshold of proof regarding the severity of claimed mental distress; "'[t]he law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it.'" *Hubbard*, 330 N.W.2d at 439 (quoting Restatement (Second) of Torts § 46 cmt. j (1965)). Such emotional distress must be proven through medical testimony. *Langeslag*, 664 N.W.2d at 870. Quest cannot possibly meet this threshold showing. The Amended Complaint doesn't even *allege* he suffered severe mental distress; he merely alleges that Rekieta's statements have "caus[ed] emotional distress requiring care and counseling." Amended Complaint, ¶ XXVII. In response to the prior Anti-SLAPP motion, Quest deliberately chose not to provide any evidence of this emotional distress, bizarrely claiming he required discovery (from himself?) to prove this element.

Moreover, in *Hustler Magazine v. Falwell*, 485 U.S. 46, 56 (1988), the Supreme Court held that "public figures and public officials may not recover for the tort of intentional infliction of emotional distress" without showing that the false statement of fact was made with actual malice, as

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set forth in *Sullivan*. As a threshold matter, therefore, just as Quest cannot establish actual malice with respect to his defamation claim, so, too, does this claim fail.

4.3.3. Quest's NIED Claim is Meritless

Quest cannot recover for negligent infliction of emotional distress. Under Minnesota law, an NIED plaintiff must prove the four elements of a negligence claim (duty, breach, injury, and proximate cause), as well as three additional elements: the plaintiff (1) '"was within the zone of danger of physical impact [created by the defendant's negligence]; (2) reasonably feared for her own safety; and (3) [consequently] suffered severe emotional distress with attendant physical manifestations."' *Engler v. Ill. Farmers Ins. Co.*, 706 N.W.2d 764, 767 (Minn. 2005) (quoting *K.A.C. v. Benson*, 527 N.W.2d 553, 559 (Minn. 1995)). Quest previously argued that the "zone of danger" requirement is abrogated in defamation claims, citing *Bohdan v. Alltool Mfg. Co.*, 411 N.W.2d 902 (Minn. Ct. App. 1987), rev. denied (Nov. 13, 1987). However, as the court in *Meyer v. Tenvoorde Motor Co.*, 714 F. Supp. 991, 995-96 (D. Minn. 1989), found, this exception in *Bohdan* was an "aberration" that conflicts with the Restatement and other jurisdictions, and the later procedural posture of the case showed its rule to be erroneous; "[h]ad the jury found defamation, they could have awarded damages for the mental anguish *caused by the defamation*, not for a separate tort" (emphasis added). But even if the "zone of danger" requirement does not apply here, Quests' NIED claim fails because its existence depends on his flawed defamation claims, he cannot meet any of its elements, and he cannot show actual malice.

The wrongful conduct Plaintiff identifies for this claim is Defendants' "failure to act, redact, apologize, or attempt to withdraw defamatory statements and suggestions that Plaintiff should be killed," and that such actions "were in direct violation of Plaintiff's rights as a human being." Complaint, ¶ XXI. In his Amended Complaint, he adds the new allegation that Rekieta's statements "caused followers and devotees of Defendants to search for, find, then stalk Plaintiff, come to his home, follow him in vehicles as Plaintiff drove a motor vehicle, then to publish pictures and videos of Plaintiff while driving." Amended Complaint, ¶ XXVII. Quest makes no claim of physical consequences and he was never in any zone of danger.

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Quest makes the conclusory allegation that he was placed in a zone of danger by virtue of the actions of third parties, but this does not support an IIED or NIED claim. It is the *defendant's* alleged conduct that must place a plaintiff in the zone of danger, not the action of unrelated third parties. Quest's theory appears to be similar to that in *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 929 (1982), where the Supreme Court held that a speaker could not be found liable for the speech of third parties unless he authorizes, ratifies, or directly threatens unlawful activity. Quest does not allege that Rekieta instructed or encouraged any of his viewers to engage in this alleged conduct, nor is there any allegation that these unidentified third parties have an agency relationship with Rekieta, or that Rekieta's statements had a tendency to cause such third parties to act. A review of Rekieta's statements lays bare the deficiency in this claim, which cannot be cured through amendment. He does not meet the elements of this claim; summary judgment should be awarded and the Anti-SLAPP motion granted.

5.0 CONCLUSION

For the foregoing reasons, Defendants request that this Court grant the Anti-SLAPP Motion pursuant to Minn. Stat. § 554.07 et seq., dismiss all claims asserted with prejudice, and award Defendants their costs and reasonable attorneys' fees under Minn. Stat. § 554.16.

Dated: June 11, 2025

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ACKNOWLEDGEMENT REQUIRED BY MINN. STAT. § 549.211. SUBD. 1

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat.§ 549.211, if factual contentions and legal arguments contained in this pleading are unwarranted or presented for an improper purpose or are lacking in evidentiary support.

Date:June 11, 2025 */s/* Matt Kezhaya