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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON,

Plaintiff,

v.

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

Defendants.

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

DEFENDANTS' MOTION TO EXCLUDE THE TESTIMONY OF PLAINTIFF'S PROPOSED EXPERT ROBERT J. FISHER

Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC ("Defendants") move to exclude the report and testimony of Plaintiff's designated expert, Robert J. Fisher, in their entirety or, in the alternative, to exclude the opinions identified in Section 4.2.

As detailed in the Declaration of Ronald Green ("Green Dec."), attached, defense counsel made numerous attempts to meet and confer prior to the filing of this Motion. Mr. Green called both Nicole Westbrook and Mike Jackson, Plaintiff's counsel of record. He additionally sent each of them several emails and text messages. They declined to speak with him, forcing Defendants to file this Motion without a meet-and-confer conference.

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MEMORANDUM OF POINTS AND AUTHORITIES

1.0 INTRODUCTION

Defendants posted Plaintiff's photograph by mistake on a Facebook post about a different man with a nearly identical name. Plaintiff's staff flagged the error and asked that it be taken down. The post came down within hours. Plaintiff now asks a jury for $2.65 million to $5.589 million, plus an additional $325,000 to $350,000 for "reputation repair."

To support that request, Plaintiff hired expert Robert J. Fisher ("Mr. Fisher" or "Fisher"), a retired public relations practitioner. He did not interview anyone or measure anything, never looked at the photograph at the crux of the Complaint, cannot identify one person who saw Defendants' allegedly defamatory Facebook post, and cannot identify one person whose opinion of Plaintiff changed because of it. Fisher's 45-page report rests on four proverbs: (1) it takes years to build a reputation and seconds to destroy it; (2) you cannot un-ring a bell; (3) you can never wipe the slate clean; and (4) perception is more important than reality. (Expert Report of Robert J. Fisher ("Fisher Rep.") at 27, ECF No. 73-2, attached to the Green Dec. as **Exhibit 1**.) He calls these sayings "the basis of many of my conclusions and opinions in this report." (*Id.*) Defendants' rebuttal expert, Eric Rose, says of them: "They are not evidence, and standing alone they are not a methodology." (Rebuttal Expert Report of Eric Rose ("Rose Rep.") at 6, attached to the Green Dec. as **Exhibit 2**.) Mr. Fisher dismisses peer review as "BS." (Dep. of Robert J. Fisher ("Fisher Dep.") 84:20–22, attached to the Green Dec. as **Exhibit 3**.)

Where the report claims to rest on evidence, the evidence came from Plaintiff's lawyers. Its passages on metadata, reverse image searching, and "incognito mode" repeat, word for word, Plaintiff's own unverified interrogatory answers, and cite a "study" that turned out to be a four-page internal memorandum from one of Plaintiff's lawyers to another, marked "CONFIDENTIAL ATTORNEY-CLIENT WORK PRODUCT." (PASTORSTEVE 000056–59, attached as **Exhibit 4**.) Plaintiff produced it only after Defendants moved to compel. (ECF Nos. 73, 83.) While Fisher relied upon it, he never saw it. Asked whether Fisher had "adopted a study designed by the lawyers who hired [him], whose author [he] can't name, using a method [he] can't describe,"

Fisher answered: "Yeah, that's fair." (Fisher Dep. 141:21–25.) On the metadata passage, Mr. Fisher agreed he was "just writing what they told [him] to write." (*Id.* 267:3–7.) The damages range is "not [his] number" but the number requested by Plaintiff's counsel. (*Id.* 365:5–9.)

Mr. Fisher previously served as an expert witness for President Donald Trump in both *Carroll v. Trump* cases. Judge Kaplan excluded his testimony for the same failings described in this Motion. *Carroll v. Trump*, No. 22-cv-10016, 2023 U.S. Dist. LEXIS 52011, at *9-12 (S.D.N.Y. Mar. 27, 2023) ("*Carroll II*"); *Carroll v. Trump,* No. 20-cv-07311-LAK, 2023 U.S. Dist. LEXIS 179828, at *4 (S.D.N.Y. Oct. 5, 2023) ("*Carroll I*") (report "lack[ed] the kind of foundation in facts, evidence, and/or experience that is demanded of expert witnesses"). His report here does not mention either exclusion. Instead, he boasts that his methodology "has been accepted and validated by both federal and state courts." (Fisher Rep. at 22.)

Plaintiff bears the burden of showing that each of Mr. Fisher's opinions rests on sufficient facts, reliable methods, and a reliable application of those methods to this case. He cannot do so because Mr. Fisher did not do the job an expert is supposed to do. Mr. Fisher should be excluded.

2.0 RELEVANT BACKGROUND

2.1 The Facebook post

On August 22, 2025, Defendants published a Facebook post criticizing Steve Smotherman, a former Cracker Barrel executive. Beneath the text they placed a photograph found through a Google search for Smotherman. It was a photograph of Plaintiff Steve Smothermon. A Google image search for "Steve Smotherman" returns mostly images of Steve Smothermon; even the first result of Mr. Fisher's own search for Steve Smotherman was of Plaintiff. (Fisher Rep. at 30.) Plaintiff's employees spotted the error the same day and informed Defendants' customer service team, who took the post down after being informed of the error. (*Id.* at 12–15; Defs.' Resp. to Pl.'s Third Set of Interrogs. No. 17, ECF No. 77-2 at 29.) YouTube made the same mistake, identifying Plaintiff as Cracker Barrel's Steve Smotherman. (ECF No. 43-23; *see* ECF No. 51 at 5.) Defendants' post was only up for three to four hours. (*Id.*) Fisher's report recites that defense. (Fisher Rep. at 18.)

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Mr. Fisher does not believe Defendants acted deliberately: "I don't believe they did it on purpose at all." (Fisher Dep. 170:21–22.) "I can see how somebody might like to make a mistake and they are common names." (*Id.* 237:21–22.) His report says Defendants "had every right" to post about the Cracker Barrel executive and removed the photograph "[t]o their credit." (Fisher Rep. at 29, 43.) When Mr. Fisher was walked through the post line by line, he agreed that apart from the photograph it is "totally on target." (Fisher Dep. 252:18–253:11.)

2.2 Mr. Fisher's report

Mr. Fisher billed Plaintiff $900 an hour for his report and wishes to charge Defendants $975 an hour (with a four-hour minimum) for his deposition testimony. (Fisher Rep. at 3.) His report has no footnotes, bibliography, cited studies, data, or reference to any published standard. (Fisher Dep. 94:22–95:4.) Mr. Fisher claims he has "background as . . . a journalist" for the New York Times (Fisher Rep. at 3), but has testified that he worked there less than a year and that his reporting "was based on pirating" material and was "basically plagiarism." (Deposition of Fisher from *Carroll I* (Dec. 14, 2022) ("*Carroll I* Dep.") at 16:2–17:21, attached to the Green Dec. as **Exhibit 5**.) Much of the report is "boilerplate" from earlier reports, used because original drafting would have taken 25 percent more billable time.[1] (Fisher Dep. 123:19–22, 126:5–9.) It also contains text copied from Plaintiff's pleadings, letters, and interrogatory answers, as shown below.

2.3 Mr. Fisher's prior exclusions

In *Carroll*, Judge Kaplan held that "Mr. Fisher [did] not explain how his experience informed his [proposed testimony] . . . indeed his entire analysis of [Plaintiff's proposal for reputation repair] contains no citation other than to [Plaintiff's expert's] report," and that his report "contains a mixture of legal opinions . . . as well as arguments about the evidence . . . and sundry other things. . . None of which is a proper subject of expert testimony." *Carroll II*, 2023 U.S. Dist. LEXIS 52011, at *13-14; *see also Carroll I*, 2023 U.S. Dist. LEXIS 179828, at *4.

[1] The report gives inconsistent counts of his prior cases and reuses language from his past reports, *compare* Fisher Rep. at 3, 4, 5, *with id.* at 24, refers to "Plaintiffs" throughout (*id.* at 37–42), and contains the phrase "Facebook 19 Post," a stray from a prior report. (Fisher Dep. 122:8–123:18, 126:10–128:6.)

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In this case, the only judicial comment the report quotes, without naming the case, is that his work "lays out the bare minimum in terms of support." (Fisher Rep. at 37.) The report discloses neither *Carroll* ruling. Nor does it disclose that "a couple of months ago" a Massachusetts judge "ruled that he didn't think a reputation damage expert witness had anything to offer the jury," or that a plaintiff who had retained him for three years let him go after learning of the *Carroll* exclusions. (Fisher Dep. 99:1–4, 100:3–24.)

Mr. Fisher's use of his own proverbs depends on who hired him. In *Carroll I*, retained by the defendant, Mr. Fisher left out his first proverb, "It takes years to build a reputation and seconds to destroy it," because "in this case I'm representing the defendant, so I didn't. . ." (*Carroll I* Dep. at 394:5–6, 399:5–11.) Mr. Rose compared the two reports and concluded that Mr. Fisher's "conclusions track the position of whichever party retained him, rather than a fixed, reliable methodology." (Rose Rep. at 18.) His habits are the same too: in *Carroll I* he did not read significant parts of the report he was rebutting, declined to learn how many people engaged with the statements at issue, and said, "Well, I don't particularly get into data." (*Carroll I* Dep. at 105:2–109:17, 316:4–22, 310:25.) His research in *Carroll I* was about an hour of "simply 'Googl[ing]'" the plaintiff. *Carroll II*, 2023 U.S. Dist. LEXIS 52011, at *10.

2.4 Mr. Fisher's deposition

Mr. Fisher was deposed on August 6, 2026. He claims to have prepared with a one-hour call to counsel and by rereading his report. (Fisher Dep. 7:22–8:10.) He testified:

- He spoke to no one but Plaintiff's counsel. (*Id.* 129:24–130:4, 133:22–134:24.)
- He does not know how many people saw, liked, commented on, or shared the post, and it does not matter "whether it was up two years or two months." (*Id.* 135:6–14, 325:17–18.)
- He does not know if anyone recognized the photograph as Plaintiff, if any Legacy Church congregants left the church, if any media outlet became more critical of Smothermon, and does not even know if any documents show that anyone discussed the post. (*Id.* 135:15–19, 312:14–313:9, 314:1–20.)

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- When asked for "every bit of evidence" behind his word-of-mouth theory: "Well, I don't have any evidence." (*Id.* 259:6–15.)
- His report says he researched academic studies from Harvard, Duke, and Cornell. Asked to name one such study, he said, "there isn't any." (*Id.* 94:11–16.)
- He has never run a reverse image search; does not know what EXIF, metadata, or incognito mode is; had never run a Google image search; learned to take a screenshot a week before the deposition; and has never heard of the Wayback Machine or any media-monitoring platform. (*Id.* 75:3–9, 175:4–6, 181:17, 212:14–214:14, 266:15-16, 299:4–13, 364:9–19.)
- His only original research was a Google search that anyone could have done. It was undated, undocumented, run while logged in, and (by his own testimony) "can't be replicated." (Fisher Rep. at 30; Fisher Dep. 218:17–219:3, 280:11–12.)
- He never measured Plaintiff's reputation before the post and testified there was no way to do so. (Fisher Dep. 298:6–7.)
- When handed a compilation of Plaintiff's earlier press coverage, he declined to read it. (*Id.* 275:3–5.)
- In 133 engagements, whenever he has worked for a plaintiff, he has always found they suffered reputational harm. (*Id.* 101:11–102:17, 301:14–19.)
- His report block-quotes a letter from Plaintiff's counsel to Plaintiff, marked "PRIVILEGED AND CONFIDENTIAL," and describes it as a letter to defense counsel, even though his own materials list identifies it as an email "to Pastor Steve Smothermon." (Fisher Rep. at 16, 22; **Exhibit 4**, PASTORSTEVE 000053–55.) He insisted "[t]here's no attorney-client in it," then conceded "obviously there's an error there of some sort." (Fisher Dep. 145:15–17, 147:6–7.)
- He has faced "about 30 or 40 exclusion motions" and observed that "most people don't go over my report . . . that thoroughly." (*Id.* 98:6–7, 375:2–6.)

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3.0 LEGAL STANDARD

An expert may testify only "if the proponent demonstrates to the court that it is more likely than not that" the expert's specialized knowledge will "help the trier of fact"; the testimony is "based on sufficient facts or data"; the opinion is the "product of reliable principles and methods"; and the opinion reflects a reliable application of those "methods to the facts of the case." Fed. R. Evid. 702. The 2023 amendment was adopted because "many courts have held that the critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology, are questions of weight and not admissibility. These rulings are an incorrect application of Federal Rules 702 and 104(a)." Fed. R. Evid. 702 advisory committee's notes to 2023 amendment. "[T]here is no presumption in favor of admission." *Engilis v. Monsanto Co.*, 151 F.4th 1040, 1049 (9th Cir. 2025).

Reliability turns on whether the method can be tested, if it has been tested, if it has been subjected to peer review, has a known error rate and controlling standards, and is generally accepted. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 593–94 (1993). Also significant is "whether the experts are proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation, or whether they have developed their opinions expressly for purposes of testifying." *Daubert v. Merrell Dow Pharms., Inc.*, 43 F.3d 1311, 1317 (9th Cir. 1995) ("*Daubert II*"). An expert who relies mainly on material selected and sent by retaining counsel uses a method that tilts toward a predetermined conclusion. *Perez v. State Farm Mut. Auto. Ins. Co.*, No. C 06-01962 JW, 2012 U.S. Dist. LEXIS 106908, at *21-22 (N.D. Cal. July 31, 2012) (*citing Daubert II*, 43 F.3d at 1317).

The gatekeeping duty applies to experience-based testimony. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141 (1999). The Ninth Circuit rejected a default rule that objections to experience-based testimony go only to weight, and has explained that reliability matters more, not less, when an opinion rests on experience rather than on testable methods. *United States v. Valencia-Lopez*, 971 F.3d 891, 900 (9th Cir. 2020). The expert must "explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how

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that experience is reliably applied to the facts." Fed. R. Evid. 702 advisory committee's notes to 2000 amendment. The test is whether he "employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *Kumho Tire*, 526 U.S. at 152; *Garity v. APWU-AFL-CIO*, No. 2:11-cv-01109-APG-CWH, 2017 U.S. Dist. LEXIS 131875, at *4 (D. Nev. Aug. 15, 2017) (Gordon, J.).

"[N]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert." *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997). This Court has excluded an expert whose opinions "do not assist the jury and are not the product of reliable principles and methods." *De Blanc v. Aloha Airport Express, LLC*, 416 F. Supp. 3d 1056, 1063 (D. Nev. 2019) (Gordon, J.). An expert who fails to account for obvious alternative explanations is excluded. *Claar v. Burlington N. R.R. Co.*, 29 F.3d 499, 502 (9th Cir. 1994); Fed. R. Evid. 702 advisory committee's notes to 2000 amendment (citing *Claar*); *Engilis*, 151 F.4th at 1054. And an expert must disclose "the facts or data considered" in forming his opinions or lose the use of them. Fed. R. Civ. P. 26(a)(2)(B)(ii), 37(c)(1); *Key v. Qualcomm Inc.*, 129 F.4th 1129, 1143 (9th Cir. 2025).

Opinions on matters within jurors' ordinary understanding do not help them. *De Blanc*, 416 F. Supp. 3d at 1063. An expert may not instruct the jury on the law, offer legal conclusions, or testify to a party's state of mind. *Hangarter v. Provident Life & Accident Ins. Co.*, 373 F.3d 998, 1016 (9th Cir. 2004); *Nationwide Transp. Fin. v. Cass Info. Sys., Inc.*, 523 F.3d 1051, 1058 (9th Cir. 2008).

4.0 ARGUMENT

4.1 Plaintiff cannot carry his burden under Rule 702

4.1.1 Rule 702(a): Fisher has no specialized knowledge that helps the jury

Mr. Fisher's stated methodology has three steps: gather information, analyze it, reach conclusions. (Fisher Rep. at 23–24.) That describes any exercise of judgment by anyone on any subject. He agreed his field is more art than science. (Fisher Dep. 301:25–302:3.) His method has no known error rate, no written standards, and has never been reviewed by anyone. (*Id.* 91:25–

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92:11, 300:14–25.) Pressed on what exactly his method was, he said: "You can't replicate that. . . That's my expertise. No one else would have that expertise. . . Nobody else can do it. She can't do it. She can't do it. And you can't do it." (*Id.* 281:22–282:4.) Rule 702 requires reasoning another professional can test. Mr. Fisher's position is that his conclusions cannot be tested because they come from him. That is, by definition, an un-scientific methodology.

Mr. Fisher has no expertise in how readers perceive a post: "I don't know that I have any expertise in visual, but reading comprehension -- I mean, I have a college education." (*Id.* 217:7–13.) The "extensive research of treatises and academic studies" from Harvard, Duke, and Cornell claimed at page 22 of the report does not exist: "there isn't any." (*Id.* 94:16–95:5.) Fisher's one investigative act was a Google search. "Specialized knowledge has nothing to do with doing a Google search. You're right. The gal out there could have done the same thing as I do." (*Id.* 280:9–14.) The report agrees: "As an average person, I sought to replicate the process used to do a search on the internet." (Fisher Rep. at 30.) Reviewing Mr. Fisher's self-reported independent research, Mr. Rose noted that Fisher's report was "internally inconsistent" in reporting the number of responsive search results. (Rose Rep. at 15.) While Fisher claimed that of the "first 10 listings . . . four of the six listings were about the Plaintiff, two of the listings were about the Cracker Barrel executive . . . and four were about neither." (*Id.*) Mr. Rose double checked Mr. Fisher's math, and concluded: "Four plus two plus four is ten, not six." (*Id.*) Mr. Fisher himself estimates that "probably 80 percent of the report" could be produced by anyone handed the same documents. (Fisher Dep. 290:3–11.) He did not say which 80 percent.

The remainder rests on religious doctrine he is not qualified to interpret. Mr. Fisher's theory of harm is that the post made Plaintiff "look like a charlatan" because support for DEI and LGBTQ causes is "totally opposed to biblical teachings" and "diametrically opposed" to what a pastor preaches. (Fisher Dep. 111:4–16, 112:10–18, 115:2–6, 341:6–25.) Mr. Fisher has no theological training, is not clergy, and has never administered a church. (*Id.* 37:2–15.) Fisher does not "claim to be an expert on the Bible," has never heard Plaintiff preach, is "not familiar specifically with him," and does not know whether there were homosexuals "back in those days."

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(*Id.* 114:2–3, 115:18–20, 250:25–251:1, 342:3–10.) What Plaintiff's congregation believes, and whether a position on DEI contradicts it, is not a subject on which a retired publicist has specialized knowledge.

Fisher's report says it is "not plausible that anyone could have conducted a basic research on Google . . . [and] confused" Smothermon and Smotherman. (Fisher Rep. at 33.) At deposition, he abandoned this position: "I can see how somebody might like to make a mistake and they are common names, you know? I mean, how many Steve Smothermons are there? I mean, I'm human." (Fisher Dep. 237:21–25.) "I believe they thought that that was the . . . executive." (*Id.* 308:20–24.) "[I]t's easy not to see an, A-N, instead of an, O-N. I'll give that." (*Id.* 177:12–14.) Spoken, the two names "can be washed together"; it is "not an easy name to pronounce, whether there's an M-O-N or an M-A-N on the end of it." (*Id.* 261:10–15.) YouTube itself made the error he calls implausible. (ECF No. 43-23.) Whatever remains is within the jury's own competence. Jurors can decide for themselves whether Plaintiff resembles the Cracker Barrel executive and how easily "Smothermon" becomes "Smotherman." *De Blanc*, 416 F. Supp. 3d at 1062-63.

4.1.2 Rule 702(b): Fisher did not rely upon sufficient facts or data

4.1.2.1 He collected no facts and took no measurements

In preparing his report, Mr. Fisher did not interview anyone. He did not review church attendance, membership, or financial records beyond an annual report, medical or income records, correspondence from any congregant, or social media: "I never saw any social posts about anybody, including the defendants."[2] (Fisher Dep. 129:24–130:3, 136:1–137:4, 327:18–21.) He never saw the photograph. (*Id.* 187:4–8.) His report asserts that "the news media . . . have become more suspect and critical" (Fisher Rep. at 35), but his materials list does not contain any news articles. (Fisher Dep. 315:16–18.) He has never heard any of Plaintiff's sermons and is not familiar with his teachings, yet opines that the post destroyed his credibility. (*Id.* 250:25–251:1, 342:3–9.)

[2] This entire case is about a social media post, and Defendants' primary audience is on social media. Mr. Fisher opined on a social media case without ever reviewing any social media.

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Reach, engagement, and persistence can be measured. Fisher measured none of these. He did not measure media monitoring, sentiment analysis, search-visibility review, survey, or focus groups, and Fisher had never even heard of platforms that do such work. (*Id.* 135:6–14, 299:4–13.)[3] He knows how to get data when he wants it. In *Coomer v. Donald J. Trump for President, Inc.*, a subcontractor gathered it: "If something is in my area of expertise, I do it. If not, I hire somebody to do it." (*Id.* 74:3–8, 76:10–17, 82:11–12.) He did not hire anyone here. (*Id.* 76:15.) He even identified the right metric, "How many people saw the post? That would be -- seem to me to be the obvious," and did not obtain it. (*Id.* 78:17–25.)

4.1.2.2 He never established a baseline

Every damages figure in the report assumes a before-and-after comparison, and here there is no "before." Asked how he measured Plaintiff's reputation before the post, Fisher said, "I didn't because I wasn't on the case before then and there's no way of postdating." (*Id.* 298:6–7.) Internet archives exist for that purpose. (Rose Rep. at 14.) He cannot name one. (Fisher Dep. 211:11–212:8.) He had never heard of the Wayback Machine or archive.org. (*Id.* 214:6–14.) He agreed his 2026 search "wouldn't say anything about '25." (*Id.* 214:15–20.) Instead of measuring Plaintiff's reputation, Fisher merely ran a Google search on his own browser, without clearing cookies or disabling personalization, and inferred that "the absence of negativity generally means the person has a fairly clean slate." (*Id.* 201:14–15, 204:10–21, 206:14–20, 209:3–10.) This simple search was done without Fisher, the so-called expert, knowing that Google personalizes results if a user does not clear cookies or disable personalization, and he did not preserve this search at all. (*Id.*) The absence on which his opinion rests is the result of a cursory search, not an attempt to determine Smothermon's reputation.

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[3] Plaintiff may say a communications consultant cannot quantify exposure. In *Coomer*, Fisher was retained by the campaign, and ran a "digital survey" which collected about 38,700 viewer comments and analyzed how many of those comments had mentioned the plaintiff. (Fisher Dep. 71:20–74:19.) Fisher performed actual research when a defendant was paying.

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4.1.2.3 He ignored contrary evidence

The post was live for a few hours. However, this lawsuit continues to generate searchable coverage, and even Plaintiff has acknowledged to the Court that a current search of his name may be shaped by "the litigation's own public footprint." (Rose Rep. at 11–12; ECF No. 56 at 11.) The report never mentions it, though Mr. Fisher knew the lawsuit had been covered and that a case page existed on defense counsel's website. (Fisher Dep. 209:18–210:12.) Plaintiff has also argued that a search run months after the post "cannot establish what Kevin Hodge's August 22, 2025 search returned." (ECF No. 56 at 11.) Mr. Fisher's search was undated, and the lawyers' "study" he adopted ran its searches on June 17, 2026. By Plaintiff's own reasoning, neither says anything about August 2025.

The report states: "I did not see any information of a negative nature about him either personally or professionally." (Fisher Rep. at 29.) Mr. Rose: "That representation is not accurate." (Rose Rep. at 9.) Mr. Fisher knew of Plaintiff's "little controversies here or there . . . a political thing." (Fisher Dep. 198:22–199:2.) He initially denied writing it, then read it aloud. (*Id.* 333:15–17, 334:16–17.) When shown coverage of protests outside Legacy Church, he recognized it from his own research and volunteered that it was "directly related" to this case. (*Id.* 343:5–19.) The fourth result of his own Google search was a thread titled "Legacy Church, the unchristian church"; he never opened it. (*Id.* 327:22–328:12.) He saw the negative material, understood its relevance, yet reported that he found none. His materials list says he reviewed Defendants' Amended Answer. (Fisher Rep. at 20; Fisher Dep. 226:9–15.) When handed its exhibits, which include the YouTube and KOAT misspellings and press coverage of Plaintiff, he said, "I didn't see any of this stuff." (Fisher Dep. 217:15–218:2, 233:13–17.) He did not know YouTube had made the same mistake, and guessed that KOAT, an Albuquerque television station, is "probably . . . an internet station." (*Id.* 232:8–10, 237:5–8.) When shown this Court's May 5, 2026, order, which records Plaintiff's own claim that those exhibits were "curated . . . to smear him" (ECF No. 51 at 6), he first testified he "never saw that document," then, when told it was on his list, "[i]f it's on my list, I looked at it," then "I didn't review it." (Fisher Dep. 149:7–150:10, 330:6–15, 334:19–25.) He also never

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asked whether Plaintiff's own church amplified the exposure, though the report states that Legacy Church's official page responded to the post. (*Id.* 325:24–326:15.)

He never considered that Defendants might be right. The report recites Defendants' points that Plaintiff did not lose any book sales, interviews, or speaking engagements; that he did not receive any negative comments from parishioners; and that church income rose in 2025. (Fisher Rep. at 19–20.) He has no evidence contradicting any of those points. (Fisher Dep. 316:9–318:8.) The report nonetheless asserts that congregants have been "moving on to other churches" and "ceasing to attend church altogether" (Fisher Rep. at 35); asked for his evidence that any congregant stopped attending, he answered, "I have no evidence." (Fisher Dep. 312:14–16.) Asked where his report addresses them, he said, "I don't think I addressed them." (*Id.* 318:19.) His description of his role is "it's my job to factor in what they're saying, but not to -- to investigate that they're saying what they're saying." (*Id.* 324:9–13.) When offered time to read the press coverage he had ignored, he declined, saying "I don't think it would change -- change my opinions on it." (*Id.* 275:3–5.) An expert who dismisses an alternative explanation without a reasoned basis has not grounded the opinion in sufficient facts or data. *Engilis*, 151 F.4th at 1054; *Claar*, 29 F.3d at 502.

4.1.3 Rule 702(c): Fisher applied no reliable principles or methods

Mr. Fisher starts with four adages and material from Plaintiff's counsel and works back to a fixed conclusion. He never explains why a post that was live for only a few hours, was flagged by Plaintiff's staff, and was removed the same day is somehow an "unrecoverable" reputational event. When asked about whether his first adage is a study or merely a saying, Fisher gave three different answers within a minute: "It's not a study"; "Well, it is a study . . . from . . . practical experience"; "No, it's not a formal study." (Fisher Dep. 294:17–295:6.) He agreed that children know these sayings. (*Id.* 295:18–22.) A witness whose principles are known to children is not offering any new insights to a jury.

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The field has tools. Mr. Rose lists them: media and social monitoring, audience analytics, publicity valuation, sentiment assessment, search-visibility review, content analysis, and stakeholder assessment, which are reflected in AMEC's Barcelona Principles and the Institute for Public Relations measurement guidance. (Rose Rep. at 6–7 & nn.11–12.) Mr. Fisher used none of these tools and had not even heard of most of them. His work is "not merely incomplete but irreproducible at every point that matters to his conclusions." (*Id.* at 22.)

Fisher's method cannot be tested. His standards are "[n]ot written standard. . . I don't know if anyone has written them down"; they are "up here from -- from 50 years of doing them." (Fisher Dep. 286:20–287:14.) "The only published protocols I've ever seen are in expert witness reports, like in mine." (*Id.* 287:15–19.) It cannot be falsified: the report says its principles apply "regardless of whether it is true or not." (Fisher Rep. at 27.) A model that finds the same harm whether the statement is true or false measures publicity, not defamation. And it is indifferent to the facts: asked how much more harm two years of exposure would have caused than a few hours, he said, "I don't know that it matters whether it was up two years or two months," which he called "a supposition, obviously." (Fisher Dep. 325:15–18.) A method whose output does not change with the facts cannot reliably be applied to any facts. Asked at the end of the day what the net effect of the post on Plaintiff will be: "I don't think anyone has an actual clue." (*Id.* 368:14–25.)

What methodology he does use, he does not apply consistently. Describing his method, he said the application of his principles "depends on whether I'm representing the plaintiff or the defendant," and "[i]f I'm representing the plaintiff, I apply them to see what . . . is appropriate to them." (Fisher Dep. 270:13–22.) Asked whether he used the same method here as in *Carroll*: "No, not necessarily. . .[M]ethodology evolves." (*Id.* 196:6–15.) In *Carroll I*, he admitted that whether he invoked his first adage depended on who retained him. (*Carroll I* Dep. at 399:2–12.) Shown his own *Carroll* opinion that a polarizing speaker's audience discounts him, he did not recognize it: "I don't understand. What -- what's the context?" (Fisher Dep. 366:13–367:3.) An expert who does not apply his own stated method reliably may be excluded on that ground alone. *Amorgianos v. Nat'l R.R. Passenger Corp.*, 303 F.3d 256, 268-69 (2d Cir. 2002).

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The "Bond of Trust" section illustrates his failure to reliably apply his own method. It lists professions held to a higher standard, including clergy, and concludes that harm to Plaintiff "would be particularly and significantly more damaging." (Fisher Rep. at 26.) No survey, interview, or attendance figure supports it, and in *Carroll* he opined the opposite: that a plaintiff's "long standing positive image would possibly offset most of [the] derogatory remarks." *Carroll I*, 2023 U.S. Dist. LEXIS 179828, at *4; Rose Rep. at 17–18. That is *ipse dixit. Joiner,* 522 U.S. at 146; *De Blanc*, 416 F. Supp. 3d at 1063.

There is no peer review or general acceptance. His "peer-reviewed" publications are expert-referral services that reposted his LinkedIn articles. (Fisher Dep. 83:4–84:16.) He had heard of none of seven leading journals in his field. (*Id.* 88:12–89:15.) Peer review is "a red herring," an "opposing counsel's witch hunt," and "useless" in "expert witnessing." (*Id.* 85:5–8, 91:5–23.) The report claims other experts gave "confirmation and validation" of his method. (Fisher Rep. at 22–23.) The only one he could name was Eric Rose, who discounts Mr. Fisher's opinion and says: "I did not provide him with the methodology he applies in this case . . . That is not peer review. It is a claim about peer review, offered on faith." (Fisher Dep. 91:3–4; Rose Rep. at 5.) Plaintiff's only evidence of acceptance is a witness who disclaims it.

4.1.4 Rule 702(d): Fisher did not reliably apply any method to the facts

4.1.4.1 He adopted counsel's positions as findings

The report's most specific factual claims, that incognito mode "bypasses standard internet browsers," "deliberately leaves no record of the search," and "destroys the verification history," and that "the most basic, industry-standard check of the photograph's System Metadata" would have revealed a Legacy Church source, are Plaintiff's lawyers' words. These phrases appear, nearly verbatim, in Plaintiff's June 12, 2026, response to Defendants' Interrogatory No. 8, an answer which Plaintiff has never verified despite being asked to multiple times. (*Compare* Fisher Rep. at 30, *with* ECF No. 72-5 at 8–9; *see* ECF No. 72-1 ¶ 3; ECF No. 78 at 6.) The report quotes that interrogatory answer as its source. (Fisher Rep. at 30.) The rest it attributes to "a study conducted by Plaintiff's law firm." (*Id.* at 24.) That study is a lawyer's memorandum dated June

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18, 2026, titled "Plaintiff's Image Analysis Brief." (**Exhibit 4** at 000056-59.) The searches in the memorandum were run June 17, 2026, ten months after Defendants' Facebook post. (*Id.* at 000056, 000058.) These searches say nothing about August 2025, nor the search in this case. (*Id.*) The report itself even concedes it "is not absolute proof on its own." (*Id.*) The rest is argument about actual malice.

Mr. Fisher never saw this study, cannot name its author, does not know its methodology, did not verify any of it, and agreed counsel "could have just made it up." (Fisher Dep. 138:23–24, 139:14–22, 140:8, 141:1–25.) He does not know whether incognito mode destroys a verification history. (*Id.* 269:1–6.) Plaintiff's own counsel has since told Defendants it does not: incognito mode "governs only local browser artifacts; it does not suppress server-side logging," and Google records a signed-in user's searches "regardless of incognito mode." (ECF No. 76-1 at 3.) The report asserts, in Plaintiff's counsel's earlier words, the opposite of what Plaintiff's counsel now says. He cannot say which industry's "standard check" the report references, because that sentence came from the law firm. (Fisher Dep. at 264:21–265:18.) He has never seen a professional standard requiring a reverse image search before publishing a photograph. (*Id.* 267:14–17, 268:4–6.) Mr. Rose calls this "functioning as a conduit for someone else's advocacy." (Rose Rep. at 6.)

This copying of counsel's argument runs through the report. When shown a side-by-side of the Complaint and his report, he said, "I'll take your word for it. . . [A]gain, don't reinvent the wheel." (Fisher Dep. 161:8–21.) The description of the post at pages 12 and 13 was lifted from the Complaint, because he never saw the post. (*Id.* 156:18–157:7, 169:16–25.) The "$145 million loss in brand value" at page 13 is Paragraph 44 of the Complaint and appears nowhere in the post. (*Id.* 152:11–157:25, 264:1–2.) The block quotation at page 34 is Paragraphs 50 through 52. (*Id.* 158:8–160:11.) "Rage bait" came from the Complaint; he had never heard the phrase. (*Id.* 58:11–12, 58:18–19, 162:2–12.) The incognito mode passage tracks the proposed First Amended Complaint: "So I attributed it to the plaintiff." (*Id.* 163:10–164:20.) Then he disclaimed what he copied. Asked whether the post says Plaintiff was "opposed to 'old fashioned' values, anti-family and anti-American," as page 34 of his report states, he said "No." (*Id.* 241:16–19.) The "woke, anti-

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American, and anti-family values" label at page 9 is "probably what I picked up from the -- the plaintiff's allegation." (*Id.* 239:11–240:12.) Asked whether he was "basing [his] opinion on inferences given to [him] by the plaintiff," he said, "Well, yeah." (*Id.* 241:1–3.) Plaintiff's counsel "provided comments" on the draft, suggesting what to "bring up"; Mr. Fisher did not keep any drafts, so no one can see what changed. (*Id.* 120:25–122:7.) By the end of the day, he testified that Ms. Westbrook "has never told me anything." (*Id.* 369:2–16.)

The damages figure is borrowed too. The report says, "they have determined" the $2.65 million to $5.589 million range; "they" are Plaintiff and his counsel, he does not know how it was derived, and "it's not my number." (Fisher Rep. at 42; Fisher Dep. 103:25–104:10, 365:5–9.)[4] Yet asked whether $2.65 million to $5.589 million is fair compensation, he called it "a reasonable range" for the jury, before admitting he has not heard Plaintiff's testimony and "neither you or I have walked the walk." (Fisher Dep. 104:17–106:18.) He vouches for a number he disclaims. "The number simply appears." (Rose Rep. at 20.) Rule 703 permits reliance on inadmissible material only where experts in the field reasonably rely on it. No reputation professional is supposed to adopt the retaining party's unattributed advocacy as a finding.

4.1.4.2 He did not know the facts

Asked what the case is about, Mr. Fisher testified:

> Q. What happened in this case? . . . Yeah. What is the --
>
> A. Very -- very simple. The -- you want me to go back to Crate & Barrel (sic)? How far back do you want me to go?
>
> Q. I don't know what Crate & Barrel means. You mean the store?
>
> A. No. This case is about Crate & Barrel. Part -- part of it is.

(Fisher Dep. 108:17–109:1.) Offered the correction, he rejected it: "We sell furniture, Crate & Barrel." (*Id.* 109:22–24.) He used the wrong company twelve times, narrating the rebranding, the

[4] He could not offer the figure as his own in any event: "that's one of the things the Court struck me down on. They said, you're not a financial expert. You can't author the . . . damages claim." (Fisher Dep. 102:23–103:7.)

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logo, and Defendants' motive around a retailer with no connection to this case. (*Id.* at 108, 109, 110, 111, 172, 240, 244, 245, 254, 308.) His report names the right one. (Fisher Rep. at 10.) Either he forgot what it says or he did not write that part.

Fisher also could not account for the rest of the document. He did not know that the block quotation at page 34 and the "$145 million" figure came from the Complaint. (Fisher Dep. 152:11–160:11.) He described a privileged letter from Plaintiff's counsel to Plaintiff as a letter to defense counsel, then conceded "obviously there's an error there." (*Id.* 145:15–147:7.) When shown the screenshot on his materials list captioned "I'm a Right-Wing Extremist and Here's Why," he could not say who "I" is. (*Id.* 346:7–347:9.) He does not know which Defendant ran the search he says was reckless. (*Id.* 174:14–23.) Shown the italicized "conscious avoidance of truth" passage: "if it's in italics, it's not me." (*Id.* 307:6–11.) He never saw the photograph: "I've never seen the picture." (*Id.* 187:2–4.) When asked about himself, Mr. Fisher knew what he was talking about. When asked about the case, he did not. His opinions are "final unless I see something that changes them," and having not read the exhibits, "I could do a 180 flip." (*Id.* 371:17–20, 372:20–22.) An expert who has offered a report and deposition testimony should not be speculating that his view of the case could change completely if and when he reviews the materials the case is about.

4.1.4.3 He filled gaps with conjecture

The report says there is "no facial resemblance" between Plaintiff and the executive. (Fisher Rep. at 33.) Mr. Fisher agreed that if a stranger were shown the photograph, they would not know whom it depicted. (Fisher Dep. 253:12–257:5.) Fisher agreed that only someone who already knew the Plaintiff could recognize it, and that he is not aware of any person who saw the photograph and recognized the subject as the Plaintiff. (Fisher Dep. 253:12–257:5.) He then described a chain of hearsay by "word of mouth," "the buzz," "the gossip going around," and, asked for evidence of any of it: "Well, I don't have any evidence. It was very -- very logical." (*Id.* 257:18–259:15.) He cannot identify one republication. (*Id.* 326:16–327:5.)

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As Mr. Rose noted, Fisher's theory "is asserted, not demonstrated," and Mr. Fisher "never identifies a single third party who received, forwarded, discussed, or acted on the post." (Rose Rep. at 3.) The idea that "a large percentage" of Defendants' followers are "future congregants" or book buyers (Fisher Rep. at 34) does not consider where those followers live nor whether they may be non-Christians who subscribe or buy a megachurch pastor's book for comedy. Fisher's stacking of inference upon inference, supported by no document or witness, is the *ipse dixit* that *Joiner* forbids. 522 U.S. at 146.

4.1.4.4 His method is a filter keyed to his client

The report calls its conclusions "objective and not based on any biases." (Fisher Rep. at 28.) About 70 percent of his roughly 130 engagements are for plaintiffs, and he has never told one that a repair program was unnecessary. (Fisher Dep. 59:3–5, 101:7–20, 102:5–17, 301:14–19.) He "usually [] think[s] they're too low" and has never documented a plaintiff exaggerating. (*Id.* 69:13–19, 103:4–5.) When a plaintiff's claim is unsupportable, he may "just skip it." (*Id.* 70:15–71:4.) An expert who answers unfavorable facts by leaving them out is not applying a method.

4.2 In the alternative, specific opinions should be struck, and his rate should be reduced

If any part of Mr. Fisher's testimony survives, Defendants ask the Court to reduce Mr. Fisher's rate and exclude these specific opinions, each identified by report page:

- That the misidentification "unquestionably resulted in reputation harm" and that Plaintiff suffered "irreparable reputation harm." (Fisher Rep. at 43, 44.)
- That Defendants "exhibited extreme carelessness," "maliciously double-downed," or "engaged in a conscious avoidance of truth and a flagrant disregard," and that it is "not plausible that anyone" could have confused the two men. (*Id.* at 30, 33, 43.)
- The passages at pages 29 through 33 reciting Plaintiff's interrogatory answers and the lawyers' memorandum on incognito mode, metadata, and reverse image searches, and the Google search at pages 30 through 33.

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- The $2.65 million to $5.589 million damages range and the $325,000 to $350,000 repair budget. (*Id.* at 36–42.)
- The opinions on Plaintiff's mental trauma, physical symptoms, family, and church operations. (*Id.* at 35–36.)
- The audience figures at pages 10 and 11, the "Bond of Trust" opinion at page 26, the discussion of defense counsel's website at pages 28 through 29 and 33 through 34, the recitation and application of the elements of defamation at pages 25 through 26, and every passage labeled "Personal Opinion."
- The words "demonic," "malicious," and "rage bait." (*Id.* at 14, 17, 33-34, 43).

4.2.1 Opinions resting on undisclosed sources

The audience figures at pages 10 and 11 came from internet research; Mr. Fisher is "not sure if [he] got that off of Wikipedia," Wikipedia appears nowhere on his materials list, and Mr. Fisher "didn't do anything to verify" the figures. (Fisher Dep. 345:3–20.) Mr. Fisher does not know whether the 28 million figure refers to the Plaintiff or the church. (*Id.* 137:4–8.)

The $325,000 to $350,000 repair budget was withheld. The report says he "projected costs for each of the activities and program elements" but "will not delineate them." (Fisher Rep. at 41.) "I didn't choose to put it in there." (Fisher Dep. 353:7.) He said it had been produced; Plaintiff's counsel, asked on the record, gave no audible answer, then asked, "Did you really not get it?" (*Id.* 354:5–7, 355:12–23.) It arrived the day of the deposition. (*Id.* 358:19.) Even then, nothing rests on a quote: a $5,000 audit at $250 an hour, a $10,500 plan, "about" $25,000 for a website, SEO at "about 2,000 a month" from a general conversation with a vendor he did not retain, and a video component from an unnamed "video guy." (*Id.* 356:9–363:10.) "I've done 35, 40 of them. I know what people charge out in the field." (*Id.* 358:23–359:3.) The report concedes the SEO component is "unlikely" to work. (Fisher Rep. at 40.) He defines search engine optimization as "scrubbing off all the negative." (Fisher Dep. 361:18–362:12.) And the program is not to start until "the trial is over, assuming that the plaintiff prevails," because a verdict "gives him hell of a launching board." (*Id.* 356:17–357:19.) A budget whose premise is winning this case is litigation strategy, not

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damages. "A single blended number with no components behind it is not a budget. It is a guess dressed up as one." (Rose Rep. at 21.) Opinions resting on undisclosed or late-disclosed sources should be struck. Fed. R. Civ. P. 37(c)(1).

4.2.2 Fault, state-of-mind, legal, and personal opinions

Mr. Fisher knows the rule: "as an expert witness, I'm not allowed to get into liability"; "I can't tie that in terms of malice or anything else." (Fisher Dep. 46:22–24, 191:1–2.) His report does it anyway. Defendants "exhibited extreme carelessness," "maliciously double-downed," engaged in a "conscious avoidance of truth and a flagrant disregard"; it is "not plausible that anyone" could have confused the two men; the post "unquestionably resulted in reputation harm"; Plaintiff suffered "irreparable reputation harm." (Fisher Rep. at 30, 33, 43, 44.) Those are negligence, malice, state of mind, causation, and the injunction standard. Confronted with each, he disclaimed it: "I'm not allowed to . . . get into causation"; "It's a personal opinion. It's not expert opinion"; "if it's in italics, it's not me." (Fisher Dep. 303:15–22, 304:11–12, 307:6–11, 310:10–12.) The "maliciously double-downed" finding rests on defense counsel's website, which he saw only when the report was nearly done, and on an assumption: "I think I'm right to make the assumption that your clients are aware that this exists." (*Id.* 53:10–13, 210:7–12, 320:19–22.) He never asked. On the state of mind that matters, his testimony helps Defendants: "I don't think that the defendants were going after the pastor in the post"; "no one is claiming them doing a hatchet job . . . deliberately or wantonly or purposely"; he offers no opinion that either Defendant doubted the photograph; the post itself is "opinion" with which he has "no problem" and is "totally on target." (*Id.* 119:4–20, 170:7–8, 171:1–4, 253:10–11, 308:17–24.)

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The report is not shy about its legal purpose: Mr. Fisher "will opine on" the "Claim of Relief" of "Defamation," recites the Nevada elements he found by searching the internet, and applies them himself. (Fisher Rep. at 3, 25–26; Fisher Dep. 60:22–61:1, 307:16–21.) Fisher believes the definition of defamation is "exactly the same" in every state, and that actual malice means "negligence or reckless disregard." (Fisher Dep. 60:10–13, 304:21–24.) He last studied libel in an undergraduate course in 1966. (*Id.* 33:6–34:9.) *Hangarter* and *Nationwide* foreclose all of it. 373 F.3d at 1016; 523 F.3d at 1058.

He labeled parts of his report "Personal Opinion," including its ultimate conclusion: "This is my personal opinion based on my experience and expertise as a communication expert." (Fisher Rep. at 33–34, 44.) The label was deliberate. Asked whether those passages could be struck: "Well, if you want to, feel free to." (Fisher Dep. 309:10–20.)

4.2.3 Psychological and cost opinions beyond his expertise

Mr. Fisher is not a clinician. (Fisher Dep. 63:20–64:4.) He nonetheless reports that Plaintiff suffered "anguish, fear, depression, anxiety, [and] apprehension." (Fisher Rep. at 36.) He never spoke with Plaintiff, did not review any records, and relied on a sworn account that does not exist: Plaintiff has not been deposed and has not verified a single interrogatory answer. (Fisher Dep. 64:14–65:7, 66:20–23, 131:13–132:13, 137:19–21; ECF No. 72-1 ¶ 3; ECF No. 78 at 6–7.) Plaintiff's own unverified answer states that he "has not sought or received medical treatment as a result of the Facebook Post." (ECF No. 72-5 at 7.) Fisher's reasoning: "Well, duh. . . Is he the weird duck that didn't have any when everyone else has?" (Fisher Dep. 282:8–12.) The report adds an "ongoing back problem" it concedes is "not attributable to the Facebook post," and speculation about "divorce" and children "physically attacked," with no evidence of either. (Fisher Rep. at 36; Fisher Dep. 315:19–316:8.) This fails Rule 702(a) and invites a verdict on an improper basis under Rule 403.

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He is also unqualified to price a reputation repair program. The last one he ran was "[p]robably around 2000," and he cannot identify it. (Fisher Dep. 17:20–18:5.) His last audit assessment was in the 1980s or 1990s, done by staff. (*Id.* 359:13–360:2.) All of his current work is testifying. (*Id.* 13:11.) He "will have nothing to do with this program." (*Id.* 359:5–7.)

4.2.4 Inflammatory language under Rule 403

"Demonic," "malicious," and "rage bait" should be excluded. "Rage bait" is not a term of art; he copied it from the Complaint. (Fisher Dep. 58:9–12, 58:18–19, 162:2–12.) He has never used "demonic" in a report before, and neither word appears in any report he wrote for a defendant. (*Id.* 59:8–21.) He says his background sections are "scrupulously neutral" and faulted the opposing expert in *Carroll* for one-sided language. (*Id.* 47:18–22, 367:4–9.) At deposition, he described whoever ran the search as "a blithering idiot," Defendants as "blathering idiots," and the standard as what "any halfways-intelligent person" would do. (*Id.* 181:7–8, 189:6–13, 224:18–23.) The words add nothing but prejudice.

4.2.5 Mr. Fisher's rate should be reduced

If the Court permits Mr. Fisher to testify as an expert (which it should not), it should reduce his rate. Plaintiff agreed to pay Mr. Fisher $900 per hour, but Defendants did not and should not be subject to Plaintiff's bad bargain. "[W]hile plaintiff may contract with any expert of plaintiff's choice and, by agreement, that expert may charge unusually high rates for services, the discovery process will not automatically tax such unreasonable fees upon the defendant." *Bowen v. Monahan*, 163 F.R.D. 571, 574 (D. Neb. 1995); *see also Reit v. Post Props., Inc.*, No. 09 Civ. 5455, 2010 WL 4537044, at *2 (S.D. N.Y. Nov. 4, 2010); *U.S. Energy Corp. v. NUKEM, Inc.*, 163 F.R.D. 344, 347 (D. Colo. 1995) ("[U]nless the courts patrol the battlefield to ensure fairness, the circumstances invite extortionate fee setting."). If this Court sets a reasonable fee below the rate contracted by Plaintiff, Plaintiff, as the retaining party, may be responsible for the balance. *See Reed v. Binder*, 165 F.R.D. 424, 428 n.3 (D. N.J. 1996) ("Where the expert charges more than what a court determines is a 'reasonable' fee, the party retaining that expert must pay the amount over and above the 'reasonable' rate.").

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When courts consider whether an expert's rate is fair, they examine the witness's expertise, the training required, prevailing rates for comparable experts, the quality of the discovery responses, the fee charged to the retaining party, and the fees the expert traditionally charges. *See Edin v. Paul Revere Life Ins. Co.*, 188 F.R.D. 543, 546 (D. Ariz. 1999); *Joachims v. Isuzu Motors, Ltd.*, 141 F.R.D. 493, 495-97 (S.D. Iowa 1992). "[C]ourts most often reduce expert fee requests when the expert seeks to charge the opposing party a higher rate than the expert charges the retaining party." *EEOC v. Johnson & Higgins, Inc.*, No. 93 Civ. 5481 (LBS) (AJP), 1999 U.S. Dist. LEXIS 478, at *3-4 (S.D.N.Y. Jan. 21, 1999) (collecting cases); *see also Magee v. Paul Revere Life Ins. Co.*, 172 F.R.D. 627, 646 (E.D.N.Y. 1997); *Borel v. Chevron U.S.A. Inc.*, 265 F.R.D. 275, 277 (E.D. La. 2010); *Walker v. Spike's Tactical, LLC*, No. 2:13-cv-01923-RFB-PAL, 2015 U.S. Dist. LEXIS 1125 (D. Nev. Jan. 2, 2015).

Fisher's report cites two rates: $900 per hour for the work he performed for Plaintiff Smothermon, and $975 per hour, with a four-hour minimum for deposition testimony. (Fisher Rep. at 3.) Mr. Fisher is charging Defendants more than he charged Plaintiff, even though Plaintiff was able to negotiate his rate and Defendants were not. His report was sloppy and incomplete by any metric, especially for an expert charging $900 per hour for his services. Fisher already charged Plaintiff too much for his work; Defendants should not have to pay a premium for shoddy product.

Mr. Rose has testified in more than forty reputation matters, has never been excluded from testifying as an expert, and is only compensated at $700 per hour. (Rose Rep. at 2.) Mr. Fisher should not be permitted to charge as much as Mr. Rose. The difference in the quality of their reports is striking.

Fisher testified at deposition that the audit assessment in his proposed repair program would be priced at $250 per hour. (Fisher Dep. at 356:9-10.) This is a reasonable rate for Mr. Fisher. He testified that it was what people "charge out in the field" during his deposition. (*Id.* at 359:2-3.) If he is permitted to testify, his rate should be reduced to what someone that actually does his job is able to charge for that work.

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5.0 CONCLUSION

The witness offered to prove that Defendants failed at internet research has never run an image search, cannot name an archive, and does not know what EXIF means. The witness offered to prove reputational harm never measured Plaintiff's reputation, never found a single person who saw the post at issue, and refused to even read the evidence when it was handed to him. The witness offered to prove the mistake Defendants made was impossible could not himself keep Cracker Barrel and Crate & Barrel straight. He went so far as to concede the mistake is one a reasonable person could make. The witness offered to prove damages disclaimed the number cited in his report, withheld the reputation management budget until the day of his deposition, and testified that the length of publication makes no difference. Defendants respectfully request that the Court exclude the report and testimony of the witness, Robert J. Fisher, or, in the alternative, the opinions identified in Section 4.2.

Dated: October 16, 2026.

Respectfully submitted,

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

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

RANDAZZA | LEGAL GROUP

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 16, 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 is being served via transmission of Notices of Electronic Filing generated by CM/ECF.

Respectfully submitted,

/s/ Ronald D. Green
Ronald D. Green

RANDAZZA | LEGAL GROUP

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Keith Hodge, Kevin Hodge, and Hodgetwins, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON,

Plaintiff,

v.

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

Defendants.

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

RONLAD D. GREEN'S DECLARATION IN SUPPORT OF DEFENDANTS' MOTION TO EXCLUDE THE TESTIMONY OF PLAINTIFF'S PROPOSED EXPERT ROBERT J. FISHER

I, Ronald D. Green, declare:

1. I am counsel for Defendants in the above captioned matter. I make this declaration in support of Defendants' Motion to Exclude the Testimony of Plaintiff's Proposed Expert Robert J. Fisher (the "Motion").

2. **Exhibit 1** is a true and correct copy of the Expert Report of Robert J. Fisher without the accompanying exhibits.

3. **Exhibit 2** is a true and correct copy of the Rebuttal Expert Report of Eric Rose.

4. **Exhibit 3** is a true and correct copy of relevant excerpts from the Deposition of Robert J. Fisher.

5. **Exhibit 4** is a true and correct copy of Plaintiff's document production numbered PASTORSTEVE 000056–59.

6. **Exhibit 5** is a true and correct excerpt of the Deposition of Fisher from *Carroll v. Trump,* No. 20-cv-07311-LAK, 2023 U.S. Dist. LEXIS 179828, at *4 (S.D.N.Y. Oct. 5, 2023). The deposition was taken on Dec. 14 and 20, 2022.

7. On the morning of October 12, 2026, I attempted to schedule a meet and confer call with Plaintiff's counsel, Nicole A. Westbrook and G. Michael Jackson, regarding this Motion to Exclude Robert A. Fisher. At 11:11 a.m., I sent Ms. Westbrook and Mr. Jackson a text message asking when one or both of them were available that day or the next to meet and confer. A true and correct copy of my text messages to Ms. Westbrook and Mr. Jackson is attached as **Exhibit 6**.

8. At 11:13 a.m. on October 12, 2026, I sent Ms. Wesbrook and Mr. Jackson an email making the same request. A true and correct copy of that email exchange is attached as **Exhibit 7**.

9. At 11:45 a.m., Ms. Westbrook responded to my email, stating that Plaintiff was going to file an emergency Motion to Stay and that she saw "no efficient reason" for Defendants to move to exclude Mr. Fisher. *See id.*

10. I responded that I saw no emergency or reason to stay the case but was willing to discuss both issues – the motion to stay and this Motion – during the same meet and confer call. *See id.* Ms. Westbrook responded, "Ok. We'll let the court know." *Id.*

11. When I asked Ms. Westbrook if she was declining to meet and confer, she did not respond.

12. At 12:34 p.m. on October 12, 2026, I called Ms. Westbrook's cell phone to attempt to meet and confer with her. She did not answer, so I left her a voicemail. She did not call me back and has never called me back.

13. At 12:40 pm. On October 12, 2026, I texted Ms. Westbrook and Mr. Jackson again about a meet and confer. *See* **Exhibit 6**. Neither responded. *See id.*

14. On October 12, 2026, at 2:43 p.m., Ms. Westbrook emailed me regarding this Motion, stating that she did not "believe it makes sense at this time to waste money on a conferral." A true and correct copy of that email exchange is attached as **Exhibit 8**.

15. On October 14, 2026, at 4:55 p.m., I responded to Ms. Westbrook's email, copying Mr. Jackson, again requesting that they meet and confer with me about this Motion. Neither responded. *See id.*

16. On October 14, 2026, at 4:56 p.m., I texted Ms. Westbrook and Mr. Jackson again asking for a meet and confer. *See* **Exhibit 6**. Neither responded. *See id.*

17. On October 14, 2026, at 5:01 p.m., I called Mike Jackson to attempt to meet and confer. He did not answer and did not call me back.

18. On October 15, 2026, at 1:06 p.m., I texted Mr. Jackson and Ms. Westbrook again asking for a meet and confer. *See* **Exhibit 6**. Neither responded. *See id.*

19. On October 15, 2026, at 1:07 p.m., I emailed Mr. Jackson and Ms. Westbrook again asking for a meet and confer. *See* **Exhibit 8**. Neither responded. *See id.*

Dated: October 16, 2026.

Respectfully submitted,

/s/ Ronald D. Green
Ronald D. Green

EXHIBIT 1

Expert Report of Robert J. Fisher

(July 16, 2026)

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON
V
KEITH HODGE, KEVIN HODGE AND HODGETWINS, LLC.

(Case No. 2:25-cv-01858)

EXPERT REPORT OF ROBERT J. FISHER PREPARED FOR PASTOR STEVE SMOTHERMON

July 16, 2026

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ASSIGNMENT

I am a veteran communications professional, executive and counselor with a background as both a journalist (reporter for the New York Times) and a half-century career in the communications fields of public relations, advertising, and marketing, including 42 years operating my own communications firm, Fisher & Associates, Inc., located in the Los Angeles, California area. During my professional career, I have provided counsel and services to clients in a broad range of businesses, professions, and industries as well as to nonprofit organizations and government entities on a local, national, and international basis. The firm's areas of specialization included law (represented over 125 law firms), litigation (handled communications for hundreds of lawsuits and trials), crisis communications and reputation management and damage repair.

In addition to the legal profession, I have been acknowledged nationally by the news media for my background, experience, and expertise in the fields of crisis communications and reputation management and damage repair and have served for more than 40 years as an expert media information source, analyst, and commentator. Additionally, I am an experienced expert witness who has been involved in 133 cases in 32 states, 124 of which were for defamation or reputational harm, during the past 20 years.

I have amassed a significant amount of experience and expertise in aiding and counseling individuals, businesses, and entities that were in trouble, conflict, crisis situations and/or had been harmed by communications that damaged their name, goodwill, image, reputation, brand, etc.

Due to that experience and expertise, I have been retained by the Plaintiff, Pastor Steve Smothermon, to serve as an expert witness in his lawsuit against Keith Hodge, Kevin Hodge and Hodgetwins, LLC. I have been asked to assess, analyze, and offer my insights, comments, conclusions, and opinions relating to the claims of relief, including defamation and cited in the Plaintiff's complaint. I have also been requested to evaluate and assess whatever reputation damage, that the Plaintiff may have suffered from the alleged words and actions of the Defendants as well as to address what measures can be taken to restore the Plaintiff's reputation.

(Note: In this report I may use legal terminology and cite some legal standards, concepts, or principles. These are not to be interpreted as my offering legal conclusions or arguments because I am not an attorney. Any I may offer will be for the purpose of providing insight, context, or perspective to issues I am discussing or conclusions and opinions I am offering.)

COMPENSATION

For consultations, information gathering, research and the preparation of this report, my compensation was $900 per hour. For testimony in a deposition, my rate will be $975 per hour with a four-hour minimum and trial testimony would be $5,000 for a half day and $8,000 for a full day. Travel fees are $250 per hour, and travel expenses would be required to be reimbursed as well.

(Note: My compensation is not contingent on the conclusions and opinions I will generate in this case either in this report or through my testimony nor is payment of my services dependent on the outcome of this litigation or any receipt of funds that would be awarded from it.)

BACKGROUND AND QUALIFICATIONS

General Summary

I am a communications generalist through the breadth of my professional background and experience (e.g., journalism, public relations, marketing, advertising) and I am also a nationally-recognized expert in crisis communications, reputation management and image repair and counseling. My firm was a (and possibly the) national pioneer in creating and developing public relations and marketing/communications programs for the legal profession. My firm provided litigation support in hundreds of civil and criminal cases (including trials) throughout the United States. Additionally, for the past 20 years I have served as an expert witness, working on behalf of both Plaintiffs and Defendants in 133 cases in 32 states and the District of Columbia. For decades I have functioned as an expert information source and analyst for the mass media on issues relating to crisis communications, damaged image, and reputation.

Litigation Experience

I have a 42-year background in representing law firms and being involved in litigation and trials by handling communications and the "Court of Public Opinion." In this capacity, I have assisted in formulating communication strategies in preparation for and during litigation. I have amassed a significant amount of background and experience in the judicial process and all aspects of litigation. This has led to me periodically receiving calls from law firms, individuals, and businesses throughout the U.S. from those who needed aid and counsel. A brief list of some of the major litigation and/or legal actions in which I was called to provide counsel or services, include:

- Iranian Hostages before the U.S. Supreme Court (Washington, D.C.)
- Dennis Wilson (Beach Boys) Estate Dispute (Los Angeles)
- Maxicare Bankruptcy (Los Angeles)
- United Airlines Crash in Iowa Cornfield (Chicago)
- International Organization Branded Cult (Scottsdale, Arizona)
- Legislature Threat to Ban Brothels in Nevada
- High School Students Killed (Paducah, Kentucky)
- Rodney King Beating (Los Angeles)
- IRS Indictment of CPA Firm for Tax Fraud (San Francisco)
- Homeowners Facing Loss of Homes (Los Angeles)
- BKK/BFI Landfill Fraud (Southern California)
- Firestone Tire Class Action Lawsuit re Defective Tires (Los Angeles/Washington, D.C.)

In providing litigation support to law firms in scores of cases, I assisted in the "Court of Public Opinion" by providing information and exposure through various channels of communications during the period from the filing of the civil or criminal action through to its conclusion. I also provided counsel and strategies relating to communications.

Media Expert/Analysis

As a direct result of my involvement in many litigious situations (many high profile), over the past few decades, I have often been sought out by the media as an expert information source and analyst to provide background, information, interpretation and analysis, commentary and opinions on news, issues and matters relating to those people, businesses, institutions, governments, etc. who were controversial, in conflict or in trouble. Generally, this is related to what the public perception

of the situation was, how it could be changed by those involved and what damage has or was it causing to their image, reputation, or brand in the short and/or long term. As an example, with both of the O.J. Simpson civil and criminal trials, and between the two, I was regularly interviewed by local, national, and international print and electronic media as an expert media source/analyst.

Expert Witness

In 2006, on account of my extensive career in journalism, public relations, marketing, and advertising, I began providing services to litigants as an expert witness. Since then I have served as an expert witness in 133 cases on behalf of both Defendants and Plaintiffs in 32 states throughout the United States (California, New York, Florida, West Virginia, Georgia, North Carolina, Mississippi, Virginia, Utah, Tennessee, New Mexico, Nevada, Hawaii, Washington, Colorado, Minnesota, Maryland, Indiana, Delaware, Massachusetts, Michigan, Wisconsin, Ohio, Louisiana, Kentucky, Arizona, Texas and Alabama) plus the District of Columbia. I am a court-qualified expert witness, and I have represented both Plaintiffs and Defendants and provided sworn testimony in depositions, hearings, arbitration hearings and trials, both bench and jury, in state and federal courts. The bulk of the cases have been in the areas of journalism, defamation (libel and slander), and public opinion/perception. I have also been involved in cases relating to professional malpractice, overbilling, inappropriate billing, loss of image and reputation, professional business operation, and damage to a future professional career.

Education

San Jose State College Bachelor of Arts degree Public Relations (1966)
University of California at Los Angeles (UCLA) Periodic courses taken to upgrade knowledge.
Numerous seminars, workshops, and other education forums to enhance knowledge.

Professional Experience

• New York Times	Newspaper	Reporter
• Los Angeles Beautiful, Inc.	Public Relations Director	Non-profit organization
• Harshe, Rotman & Druck	National PR Firm	Asst. Account Executive
• Burson-Marsteller, Inc.	National PR Firm	Account Executive
• Atlantic Richfield Plaza	Shopping Center	Promotion Director
• Doremus & Company	National PR Firm	Account Supervisor
• Fisher & Associates, Inc.	PR Firm (Founded 1978)	President

Related Experience

While in the United States Army (1966-68), I served as a Public Information Officer in West Germany. I provided traditional public relations counsel and services for the Army, and I also interacted with the German media/community.

Awards and Honors

I have received numerous awards from local and national public relations and marketing organizations for my counsel and service to clients during the past four-plus decades.

Professional Memberships

- Public Relations Society of America (former Executive Committee Member of Counselor's Academy)
- Public Communicators of Los Angeles (officer for five years)
- Institute of Management Consultants (board member)
- Public Interest Radio and Television Education Society
- American Heart Association (Vice Chairman, Communications Committee)

Lectures and Publications

Throughout my professional career, I have spoken and written on a wide variety of subjects related to public relations, marketing, and communications for business as well as for specialty areas (e.g., crisis communications, legal marketing/litigation support).

- Lectures/Presentations – I have lectured at universities (e.g., UCLA), to national conventions (e.g., American Bar Association) and at a variety of speaking forums (e.g., weekly/monthly meetings, seminars, symposiums) held by a diverse range of professional and business organizations.

- Publications – I have written a large number of articles for a variety of local, regional, and national general, business, professional (e.g., legal) and trade publications, online and offline, including newspapers, magazines, newsletters, and websites. (I have also been interviewed for, quoted in, and had articles written about me in local, regional, and national legal publications.)

- Defamation/Reputation Harm Articles – The articles I have written specifically addressing reputation damage and defamation include the following:

    - American Bar Association TYL Magazine (Summer 2020): "*Image/Reputation/Brand Damage: Does Litigation Solve the Problem?*"

    - "*Defamation: The Stain That Can Never Be Removed.*"

    - "*Negative Communications: The Process of Absorption and Transmission.*"

    - "*Harmful Media Exposure: Beware of the Hidden Sources of Damage.*"

    - "*Defamation: Guiding Principles of Negative Communications That Result in Image and Reputation Damage.*"

    - "*Defamation Defense: Is there a Third Bite of the Apple.*"

    - "*Image/Reputation Damage From Media News Reports: Is it Legally Actionable.*"

    - "*Reputation Damage Can Emanate From Actions/In-Actions…As well as Words.*"

    - "*Defamation Cases: Why an Expert Witness is Vital.*"

RECORD OF TESTIMONY

Following is a list of cases for which I have provided testimony over the past four years.

During this period, I have had my deposition taken 17 times:

- September 30, 2022 – *Linda Fairstein v Netflix, Inc., Ava DuVernay and Attica Locke*, United States District Court, Southern District of New York.

- October 31, 2022 – *Cumberland Family Medical Centers, Inc., d/b/a Health Kids Clinics v James A. Miller, M.D. and Blue Grass Clinics, PLLC.*, Commonwealth of Kentucky, Casey Circuit Court.

- November 29, 2022 – *San Juan Products, Inc. and American Environmental Corporation v River Pools & Spas, Inc.; River Pools Franchising, Inc.; and Thursday Pools, LLC.*, The United States District Court for the Middle District of Florida, Tampa Division.

- December 14 and 20, 2022 - *E. Jean Carroll v Donald J. Trump,* Supreme Court of the State of New York, County of New York.

- February 6, 2023 - *E. Jean Carroll v Donald J. Trump,* Supreme Court of the State of New York, County of New York.

- February 24, 2033 – *Michael Coleman v City of Delray Beach*. In the Circuit Court of the 15th Judicial District in and for Palm Beach County, Florida.

- April 3, 2023 – *John Cooksey v Roosevelt Benford.* Superior Court of New Jersey, Law Division, Camden County.

- June 19, 2023 - *Rexidence Residential Services, LLC v The Regents of the University of California.* Superior Court of the State of California, County of Orange – Central Justice Center.

- August 24, 2023 - *Pacific Coast Family Entertainment, LLC v Indoor Golf Design, LLC,* Superior Court of the State of California for the County of Monterey.

- October 4, 2023 - *Kaitlyn Kuchar v Western Reserve Academy, Thomas Siegenthaler v Western Reserve Academy and Suzanne Walker Buck,* In the Court of Common Pleas, Summit County, Ohio

- May 30, 2023 – *Karla K. Allsberry v Judge Patrick S. Flynn, Kathy Hall and Circuit Court of Lincoln County, Missouri,* In the Circuit Court of Lincoln County, State of Missouri.

- June 21 and July 16, 2024 - *Theodore Topolewski, DMH v Madison Parish Police Jury, Madison Parish Service District Hospital Board of Commissioners, and Madison Parish Service District Hospital d/b/a Madison Parish Hospital,* United States District Court for the Western District of Louisiana, Monroe Division.

- July 19, 2024 - *Alexander Belya v Hilarion Kapral a/k/a Metropolitan Hilarion; Nicholas Olkhovskiy, Victor Potao, Serge Lukianov, David Straut, Alexandre Antchoutine, Mark Mancuso, George Temidis, Serafim Gan, Pavel Loukianoff, Boris Dmitrieff, Eastern Diocese of the Russian Orthodox Church Outside of Russia and The Synod of Bishops of The Russian Orthodox Church Outside of Russia on August 1, 2020 in the United States District Court, Southern District of New York,* United States District Court, Southern District of New York.

- December 9, 2024 – *Philip Tadros and Doejo, LLC v Crain Communications, Inc.,* In the Circuit Court of Cook County, Illinois, County Department, Law Division.

- March 20, 2025 – *JW Holdings, LLC, The Chicago Center for Plastic and Reconstructive Surgery, LLC, d/b/a JW Plastic Surgery and Ashley Kalus v MJS Design+Build, Inc.*, In the Circuit Court of Cook County, Illinois County Department, Law Division.

- August 14, 2025 – *Michael David Sills and Mary Sills v Southern Baptist Convention, Dr. Ed Litton, Lifeway Christian Resources of The Southern Baptist Convention, Jennifer Lyell, Executive Committee of the Southern Baptist Convention, Bart Barber, Willie McClaurin, Rolland Slade, The Southern Baptist Theological Seminary, Dr. R. Albert Mohler, Guidepost Solutions, and Guidepost Solutions, LLC.,* United States District Court, Middle District, Nashville Division.

- May 7, 2026 - *Eric Coomer, PH.D. v Donald J. Trump for President, Inc., Rudolph Giuliani, Joseph Oltmann, FEC United, Shuffling Madness Media, Inc., dba Conservative Daily, James Hoft, TGP Communications LLC dba The Gateway Pundit, and Michelle Malkin,* Denver District Court, Denver, County, Colorado.

During this period, I have testified in five jury trials:

- May 4, 2023 - *Party Animal, Inc. v Evanger's Dog and Cat Food Co, Inc. and Nutripack, LLC,* United States District Court, Central District of California.

- On September 27, 2023 - *Pacific Family Entertainment Group, LLC d.b.a. Links Club v Interior Golf Design, LLC,* Superior Court of the State of California, County of Monterey.

- On August 13, 2024 - *Jason Moorehead v School District of the City of Allentown; Board of School Directors of the School District of the City of Allentown; Thomas Parker; Nancy Wilt; Nicholas Miller; Lisa A. Conover; Phoebe D. Harris; Audrey Mathison; Charles F. Thiel; Anthony Pidgeon; Marilyn Martinez; Jennifer Ramos; John D. Stanford; Patrick Palmer; LaTarsha Brown; Jennifer Lynn Ortiz,* United States District Court, Eastern District of Pennsylvania.

- March 6, 2025 – *Lance Weinstein v Andrew Dale and Mad Partners, LLC*, Supreme Court of the State of New York, County of Rockland.

- June 12, 2026 – *Tsvika Golan and MG Property One Urban Renewal, LLC v Scott Goldman and Adam Goldman,* Superior Court of New Jersey, Law Division: Essex County.

During this period, I have testified in three bench trials:

- December 11, 2024 – *Karla K. Allsberry v Judge Patrick S. Flynn, Kathy Hall and Circuit Court of Lincoln County, Missouri*, In the Circuit Court of Lincoln County, State of Missouri.

- January 15, 2025 – *Mary Burnette v Laura Anson*, Supreme Court of the State of New York, County of Dutchess.

- December 23, 2025 – *Taharka Aboke Bey aka Toronto Antonio Johnson v Tariq A. Nasheed aka Marcus Vincent Thomas, King Flex Entertainment, Inc. and Medanoid Nation Foundation*, Superior Court of California, County of Los Angeles.

CASE BACKGROUND

(Note: The purpose of this section is to provide full and complete information on the conflict between the Plaintiff and the Defendants which led to this lawsuit as well as information on the litigation to date. This would include the undisputed facts as well as the positions of all litigants. While my conclusions and opinions are based on the information contained in this section, none will be provided in this section.)

Reason For Lawsuit

Plaintiff is a preacher who espouses traditional, biblical Christian values. Defendants published an article falsely labeling him as "woke," "anti-American" and "anti-family values" which purportedly severely damaged the Plaintiff's reputation and life's work by spreading demonstrably false claims that he has abandoned traditional values and now supports progressive social agendas. The Plaintiff contends this has led to individuals questioning the foundation of his ministry, sowing doubts among his followers and undermining his central mission.

Profile of Parties in This Case

Following is a brief profile of the litigants as well as other individuals and entities germane to the issues that resulted in this lawsuit:

Plaintiff

Pastor Steve Smothermon ("Smothermon") – A resident of New Mexico, he is a conservative "Bible-based" pastor and has been the leader of the Legacy Church in New Mexico since 2002.

Defendants

- Keith Hodge ("KeithH") – A resident of Las Vegas, Nevada, he is a stand-up comedian, entertainer and social media influencer.

- Kevin Hodge ("KevinH") – A resident of Las Vegas, Nevada, he is a stand-up comedian, entertainer and social media influencer.

- Hodgetwins, LLC ("Hodgetwins") – A Limited Liability Company headquartered in Las Vegas, Nevada, which is owned by KeithH and KevinH.

Others

- Steve Smotherman ("SSmotherman") – A former management and training leader at Cracker Barrel, he left the company in 2020 and joined the Human Rights Campaign's Business Advisory Council, one of the most powerful LGBT lobbying groups in America.

- Legacy Church ("Legacy") – Headquartered in Albuquerque, New Mexico, it is a non-denomination, evangelical Christian mega church which operates multiple campuses across the state.

- Nathan Hughes ("Hughes") – An independent contractor to the Defendants who operates and manages their website.

- Cracker Barrel – Founded in 1969 and headquartered in Lebanon, Tennessee, it is an American chain of Country-themed restaurant and gift shops which has 660 outlets in 45 states.

- Krisha Mason ("Mason") – An employee of Legacy.

- Kylie Howerton ("Howerton") – An employee of Hodgetwins.

- Nicole A. Westbrook ("Westbrook") – An attorney for the law firm of Jones, Davis & Jackson, PC which represents the Plaintiff.

- Marc J. Randazza ("Randazza") – An attorney with the law firm of Randazza Legal Group, PLLC which represents the Defendants.

Background on Litigants

This report focuses on the allegations of the Plaintiff against the Defendants related to their words, actions and inactions which were key contributors to the issues that led to this litigation. Following is additional information on the primary litigants which will provide pertinent background.

Plaintiff's Background

Smothermon, who has 35 years of experience in Pastoral Care and Spirtual Leadership, has been the Senior Pastor at Legacy for nearly a quarter of a century. In addition to his preaching responsibilities through traditional church services (approximately 312 sermons annually) as well as its online campus and various social media platforms, he is responsible for overseeing the daily operations of the multi-location church to include supervision of a 260-member team (in Albuquerque alone) as well as staff recruitment, training and development in other locations.

An author of two books ("Big Problems, Bigger God" and "Large Large Living in a Small Small World"), Smothermon utilizes numerous communications outlets to preach and advance the church's message, include a You Tube Channel (91,000 subscribers), Instagram (20,000 followers) and a podcast titled "Legacy Church with Pastor Steve." He is also active as a speaker and conference presenter on faith-based subjects both in the United States and internationally.

In his position, Smothermon is an active participant in, member of and has leadership positions in many types of organizations, including religious, community, charitable, youth and cultural. His education and certifications include Bachelor of Theological Studies from Vision International University, Ministerial Training from the Rhema Bible Training Center and certification by The Institute of Motivational Living as a Certified Behavioral Consultant.

Church Background

Founded in 1980 as the Victory Love Fellowship, Legacy was rebranded to its current name in 2002 when Smothermon took over its leadership. It is located on nine campuses in New Mexico and a worldwide online campus. Church locations include: Albuquerque, Rio Rancho, Edgewood, Tucumcari, Clovis, Portales, Carlsbad and Grants. The church reports it is dedicated to advocating a life marked by generosity and service. The church is reported to have 10,000 weekly in-person attendees and a membership of 20,000 members.

Legacy has an active online presence to disseminate its messages and has reached over 28 million people through social media. It has over 440,000 followers across all platforms. Its 2024 Annual Report reports that, among its charitable endeavors, it has spent over $3.7 million on missions and outreach. Additionally, it has provided 270,000 meals to Kids Around the World, provided 2,000 children with bibles, backpacks and shoes, granted 29 wishes to children in New Mexico through the Make-A-Wish Foundation

Defendants' Background

Professionally known as the "Hodgetwins," KeithH and KevinH are twin brothers who gained recognition and popularity online through their YouTube channel and social media presence. Among their programs on YouTube are "The Hodgetwins" and "Conservative Time." They reportedly have nearly 3.5 million subscribers on YouTube. They have a podcast called the "Twins." They also have a Facebook page which has over 6.3 million regular followers.

Initially, they built a following with fitness advice and reaction videos before shifting their focus to stand-up comedy and conservative political commentary. The Hodgetwins frequently post provocative videos and written content offering their conservative perspectives on current events, social issues, and political matters. They don't avoid divisive topics and are known for delivering their message or opinion in a blunt, satirical style that is directed towards their base audience of conservative followers.

Since 2016, the Hodgetwins have performed live comedy shows across the country in addition to maintaining a strong online presence. They brand themselves as the "Conservative Twins" and are known for their outspoken views on politics, culture, and current events.

SSmotherman Background

This case revolves around the misidentification by the Defendants of the Plaintiff Steve Smothermon with a businessman named Steve Smotherman who was the intended subject of their negative comments on their Facebook post. SSmotherman was a queer business executive who began working for Cracker Barrel in 2005 with a goal of making changes in the company relating to Diversity, Equity, and Inclusion. An advocate for LGBTQ+, he is credited during his 15 years with the company for developing Diversity, Equity and Inclusion (DEI) initiatives and providing queer employees with platforms for advocacy and visibility.

Cracker Barrel Rebranding

This litigation traces back to an effort by Cracker Barrel to rebrand itself in August of 2025. In an effort to remove its "old fashioned" image and Americana feel and replace it with a "woke" rebranding, it eliminated its character "Uncle Herschel" from its logo. This new marketing strategy and change in branding received a significant amount of criticism and backlash (including from President Trump) and resulted in an immediate stock drop of 10%. The new logo was subsequently eliminated.

Background to Hodgetwins Attack

KeithH and KevinH are strongly opposed to DEI and woke. They reportedly have been active, intense and vehement vocal critics of both through their various internet forums. When Cracker Barrel launched its rebranding, they labeled it as *"a violation of tradition, family values, and putting America first."*

Facebook Post

On August 22, 2025, the Hodgetwins published the following post on their Facebook page:

"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 – 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-time" logo and faces accusations or erasing its heritage, many Americans see this as part of the same work 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 #Protect Heritage #Tradition Matters
#Family Values # Cracker Barrel #AmericaFirst"

Under the text above, they posted a photograph what they assumed was SSmotherman but instead was a photograph of the Plaintiff Smothermon. In doing so, they conveyed that a Christian Pastor was a "woke" supporter of LGBTQ+ causes and was 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.

The Defendants sought to explain how the misidentification occurred and defend its impact with the following explanations:

- Conducted searches of the name "Steve Smotherman" on YouTube, Google and Gemini, and the Plaintiff kept appearing.
- KevinH, who created the post and conducted the search, had no knowledge of what SSmotherman looked like.
- Defendants were not aware of Reverse Image Search technology.
- The Plaintiff's photograph was only posted for "an hour or two."
- (Note: The error was discovered shortly after the Facebook posting by Mason, an employee of Legacy, who sent an email to and talked by telephone with Howerton who works with the Defendants. Howerton notified Hughes, the website manager who removed the post.)
- Defendants maintain that anyone who knew of the Plaintiff would know he was not an executive of Cracker Barrel and therefore, there would be no harm.

It is important to note that the Defendants, in legal filings, have made the following admissions:

- The photograph in the Facebook post was not the former Cracker Barrel executive.
- The last names of the Plaintiff and former Cracker Barrel executive are spelled differently.
- The Plaintiff has no affiliation with Cracker Barrel and is not responsible for DEI Initiatives.
- Defendants did not contact Plaintiff or Legacy to verify identity.

<u>Ramifications of Facebook Post</u>

The Complaint alleges that the confusion of the Defendants wrongfully labeled the Plaintiff, a clergyman, as "woke," "anti-American," and "anti-family values" and linked him to advocacy and support for LGBTQ+ issues and advocating DEI initiatives – all which violate the philosophy and teachings of his ministry. In the Complaint, the Plaintiff addresses the culpability of the

Defendants and the negative consequences that have and can result in the future from the misidentification and allegations in the Facebook post.

- *The term "woke" is widely understood as pejorative, often used to criticize performative activism and ideological overreach in institutions such as schools, corporations, and media. Associating Pastor Smothermon with such terminology has deeply negative implications for his public image and ministry.*

- *As a direct result of Keith and Kevin Hodge's knowing and malicious misidentification, Pastor Smothermon has been subjected to widespread backlash, criticism, and reputational damage stemming from an incident with which he had no involvement.*

- *Keith, Kevin, and Hodgetwins, LLC had no reasonable basis to believe that Pastor Steve Smothermon was "woke," anti-American, or anti–family values. They had no personal knowledge or credible evidence to support such claims, and, upon information and belief, made no attempt to verify the identity of the individual pictured or the truth of the allegations.*

- *Despite this, they chose to publish Pastor Smothermon's photograph alongside false and defamatory content with actual malice and reckless disregard for the truth.*

- *These statements were disseminated to their Facebook audience of more than 6.3 million viewers, with full awareness of the reputational harm such a misrepresentation would cause—and with the apparent intent to inflict that harm.*

Notification of Error

On August 22, 2025, the day of the posting, the Defendants were notified of the error and misidentification by two sources:

- As previously reported, Mason became aware of the error and notified Howerton. She notified Hughes of the wrong photograph through this email message:

  > *"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."*

- Legal counsel for the Plaintiff sent a demand for retraction to the Defendants through Facebook Messenger. The text was:

  "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."

As a result of these notifications, it was reported that the photo on the Facebook post was taken down that same day.

Plaintiff's Case of Defendants' Wrongdoing and Defendants' Response

The essence of the Plaintiff's allegations of wrongdoing against the Defendants which he alleged caused reputation harm and the Defendants' response is detailed in a series of letters exchanged between the respective attorneys, Westbrook and Randazza.

On February 10, 2026, Westbrook sent a letter to Randazza outlining the justification for the Plaintiff's Cause of Action of Defamation. The issues she raised, included:

- The Facebook post contained a specific, factually verifiable narrative alleging he was the architect of a corporate rebranding, strategy that caused a $145 million loss in brand value for the Cracker Barrel organization.

- Below the text, the Defendants published a photo of a man and reported that he joined the Human Rights Campaign's Business Advisory Council, founding an LGBT employee group, and implementing specific DEI policies.

  (Note: The inference was that these were actions that were attributed to a conservative Pastor whose reputation relies entirely on his adherence to traditional biblical values.)

- This was not an innocent mistake. Hodgetwins are a sophistical media entity who monetize their commentary with over 6.3 million followers.

- They do not lack knowledge and skill in publishing and posting on social media.

- The two men look nothing alike and the failure to identify the person they were publicly shaming is evidence of "reckless disregard" required to establish actual malice.

Randazza responded in a letter to Westbrook with a combination of a denial of harm to the Plaintiff and elements of a legal defense of the Defendants' actions. Following is a digest of some of his explanations and assertions:

- A Google search of "Steve Smotherman" show top results are the pastor.

- Pastor is a public figure (limited purpose public figure)

- Actual malice cannot be proved.

- Defendants are protected by the First Amendment and the Anti-Slapp law.

- But even if the inclusion of the Plaintiff's photograph led readers to somehow presume that he was "woke" or insufficiently "conversative," such statements would not be defamatory. They would be considered opinion.

- No specific allegations even suggest a failure to exercise reasonable care. Defendants would have little difficulty showing that their publishing activities fall well within industry standards.

- Anti-American and Anti-Family values are not clearly defined and are not defamatory.

- There are no discernible damages – the Plaintiff didn't work for Cracker Barrel and those who don't know who he is, there would be no harm to him.

- Even if the inclusion of the Plaintiff's photograph led readers to somehow presume that he was "woke," it does not have a clear meaning or definition and, to some, might have a positive reference.

On February 25, 2026, Westbrook responded to Randazza's assertions and defenses in a letter to him. Following are some excerpts from her letter.

> *"This is Fact-Based Defamation: We argued that the Hodgetwins did not just call you woke as an opinion. They explicitly published your photograph alongside verifiable, factual assertions—claiming you were the architect of a corporate rebranding strategy, founded an LGBT employee group, and caused a $145 million loss in brand value. Attributing these specific corporate actions to a conservative pastor is defamatory per se.*
>
> *They Acted with Actual Malice: The Hodgetwins are not casual internet users; they are a highly sophisticated media entity with 6.3 million followers. The visual difference between you and the corporate executive is obvious, as is the spelling of your last names. A simple verification would have revealed the incongruity of a conservative pastor running a corporate HR department. Their failure to check is the very definition of reckless disregard for the truth."*

LAWSUIT INFORMATION

On October 1, a lawsuit was filed on behalf of Pastor Steve Smothermon in the United States District Court, District of Nevada against Keith Hodge, Kevin Hodge and Hodgetwins, LLC. On July 1, 2026, Plaintiff moved to amend his complaint, adding claims for relief based on Defendants' admissions in discovery.

Claims For Relief

In his First Amended Complaint, the Plaintiff cited the following Claims of Relief:

- Defamation and Defamation Per Se

- Permanent Injunctive Relief

- Statutory Right of Publicity/Likeness Appropriation, NRS 597.770-810

- False Light Invasion of Privacy

- Unjust Enrichment (in the alternative)

Plaintiff Seeking Through Lawsuit

In the lawsuit, the Plaintiff is seeking the following:

- Economic damages, plus additional damages as the Court and Jury may award, as proved at trial in an amount in excess of $75,000.

- Actual damages, but not less than the statutory minimum of $750 under NRS 597.810, for the unauthorized commercial use of Plaintiffs' likeness.

- Disgorgement of all profits from the unauthorized use (in the alternative).

- Non-economic damages at the maximum rate allowed by law.

- Pre-judgment and post-judgment interest on all such amounts at the maximum rate allowed by law.

- An Order mandating that Defendants immediately stop all defamatory statements described above, and if this is violated, a significant monetary sanction by Defendants.

- Costs, expenses, and reasonable attorney fees pursuant to NRS 597.810(1) and other applicable laws that Plaintiff has incurred and will continue to incur bringing and maintaining this action.

- Exemplary and punitive damages pursuant to NRS 42.005 and NRS 597.810, based on Defendants' knowing, oppressive, and malicious conduct.

- Any and all such other and further relief that the Court deems just and equitable under the circumstances.

Affirmative Defenses

In response to the Plaintiff's initial Complaint, the Defendants offered the following Affirmative Defenses:

- The Claims are Barred by New York Times v Sullivan and its Progeny, Which Require Clean and Convincing Evidence of Actual Malice for a Public Figure to Prevail in a Defamation Claim.

    - Plaintiff is a public figure.

    - The Claims are Brought Against Non-Actionable Speech Made in Good Faith Without Actual Malice

        -- Defendants wished to include a photograph of Steve Smotherman in the Facebook 19 Post and performed a Google image search for Mr. Smotherman.

        -- A Google image search for Steve Smotherman primarily returned, and still primarily returns to this day, images of Steve Smothermon.

        -- Defendants did not know that the images Google showed them were not of Cracker Barrel's Steve Smotherman.

-- Defendants did not know the photo they obtained by searching for Steve Smotherman in Google image search was actually a photograph of Plaintiff Smothermon.

-- Defendants used the photograph of Steve Smothermon in good faith, as that term is described in the Nevada Anti-SLAPP statute and without actual malice as that term is defined under New York Times Co. v. Sullivan, 376 U.S. 254 (1964) and its progeny.

- The Facebook Post is Not Defamatory

-- The Facebook Post was about Steve Smotherman, and to the best of Defendants' knowledge, the post is true as to Steve Smotherman.

- Plaintiff's Damages, if Any, Were Caused in Whole or in Part by Third Parties Over Whom Defendants Had No Control.

  - Plaintiff's claims are barred by his failure to mitigate his damages, if any.

  - Those damages could have been mitigated by Smothermon requiring corrections to YouTube or KOAT TV for the misspelling of his name, and the eventuality that others might secondarily make the same error.

  - Plaintiff's damages and injuries, if any, are not attributable to any act, omission, or other conduct on the part of Defendants.

- The Complaint Fails to Allege Special Damages and/or Specific, Quantifiable Economic Loss.

- The Defendants Rely on the Wire Service Defense.

  - Third party, reliable media outlets and search engines spelled the Plaintiffs name as "Steve Smotherman."

  - Given that these sources were reliable, it was reasonable for the Defendants to rely upon them in their publication.

  - The re-publication of the third-party information was not done with actual malice.

  - Defendants were not negligent in making the Facebook post.

  - Defendants had a duty to use reasonable care in finding and posting the correct photo. Defendants used reasonable care, did not breach that duty.

  - Commonly used search engines, such as Google, return Plaintiff's photos when an Internet user searches for "Steve Smotherman."

  - A person of ordinary intelligence and diligence would reasonably conclude that searching for "Steve Smotherman" in a search engine would primarily

result in images of "Steve Smotherman."

- Defendants had no motivation to use an incorrect photo.
- Even if Defendants had taken extra, and unnecessary, care, the photo that was returned, and that they are alleged to have used, looks nothing like what Plaintiff looks like today.
- Even if Defendants failed to use reasonable care, which they did not, this failure was not the cause of any harm to Plaintiff.

With their response to the Complaint, the Defendants filed two counterclaims seeking Declaratory Judgment under 28 U.S.C. § 2201. They sought judicial declarations that Defendants did not defame Pastor Smothermon by using his photo and did not defame him through the text of the Facebook post.

The Defendants further sought the following relief from the Court in their reply to the Complaint:

- That Plaintiff Smothermon takes nothing by way of the Complaint.
- That the Complaint be dismissed with prejudice.
- That the Court approve Keith Hodge, Kevin Hodge, and Hodgetwins, LLC affirmative defenses.
- That the Court specifically finds that Steve Smothermon is a public figure.
- That the Court award Keith Hodge, Kevin Hodge, and Hodgetwins, LLC their attorneys' fees and costs pursuant to its inherent power and the Nevada Anti-SLAPP law.
- That the Court award Keith Hodge, Kevin Hodge, and Hodgetwins, LLC such other relief as the Court deems proper.

(Note: The Defendants subsequently dropped their counterclaims.)

General Defenses

In various legal filings during the litigation, the Defendants offered a variety of legal claims and rebuttals to allegations of harm made by the Plaintiff, including:

- The Plaintiff is a Public Figure or at least, a Limited Public Figure.
- The Defendants are protected by the First Amendment.
- The Defendants are protected by Anti-SLAPP (Strategic Lawsuits Against Public Participation) law.
- The Plaintiff has not required or has not sought mental or physical treatment.
- The Plaintiff did not lose any book sales, media interviews, or speaking engagements.

- The Plaintiff has not received any negative comments from his parishioners.

- The church's income increased from 2024 to 2025.

INFORMATION/INPUT REVIEWED TO FORM OPINIONS

In connection with my preparation of this report, I have received and reviewed from Plaintiff's legal counsel the following documents and information relating to this case:

Complaint

- Pastor Steve Smothermon v Keith Hodge, Kevin Hodge and Hodgetwins, LLC (October 1, 2025)
- First Amended Complaint and Demand for Jury Trial (July 1, 2026)

Legal Documents

- Certificate of Interested Parties (October 1, 2025)
- Civil Coversheet (October 1, 2025)
- Order to Show Cause Why This Case Should Not Be Dismissed For Lack of Subject Matter Jurisdiction (October 3, 2025)
- Plaintiff's Response to Show Cause Regarding Subject Matter Jurisdiction (October 15, 2025)
- Motion to Enter Default with Memorandum of Points and Authorities, Affidavit of G. Michael Jackson (January 15, 2026)
- Offer of Judgment (February 17, 2026)
- Defendants' Answer and Counterclaim (March 3, 2026)
- Plaintiff's Motion to Dismiss Counterclaim and Strike Exhibits (March 3, 2026)
- Order (March 9, 2026)
- Certification of Interested Parties (March 10, 2026)
- Defendants' Amended Answer and Affirmative and Other Answers (March 17, 2026)
- Declaration of Leora Dimanlang (March 17, 2026)
- Plaintiff's Motion to Strike Lengthy, Speaking Affirmation, Defense and Exhibits to Recharacterize Defenses as Counterclaim's and to Dismiss Recharacterized Counterclaim's (March 18, 2026)
- Defendants' Opposition to Motion to Strike (March 19, 2026)
- Plaintiff's Response in Support of the Motion to Strike
- Defendants' Second Set of Requests for Production (March 28, 2026)
- Defendants' Third Set of Requests for Production (March 29, 2026)
- Plaintiff's Reply in Support of the Motion to Strike Lengthy, Speaking Affirmation, Defense and Exhibits to Recharacterize Defenses as Counterclaim's and to Dismiss Recharacterized Counterclaim's (March 23, 2026)
- Defendants' Initial Disclosures (April 9, 2026)
- Joint Discover Plan and Scheduling Order Submitted in Compliance with LR26-1(b) (April 9, 2026)
- Plaintiff's Rule 26(a)(1) Initial Disclosures (April 10, 2026)
- Plaintiff's First Supplemental Disclosures (April 21, 2026)

- Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admission to Defendants (April 22, 2026)
- Defendants' First Set of Requests for Admissions (May 13, 2026)
- Plaintiff's First Set of Requests for Production (May 13, 2026)
- Plaintiff's First Set of Requests for Interrogatories (May 13, 2026)
- Defendants' Responses to Plaintiff's First Set of Requests for Admission (May 21, 2026)
- Defendants' Responses to Plaintiff's First Set of Interrogatories (May 21, 2026)
- Defendants' Amended Responses to Plaintiff's First Set of Interrogatories (May 22, 2026)
- Defendants' Responses to Plaintiff's First Set of Requests for Production of Documents (May 22, 2026)
- Defendants' Second Set of Interrogatories (May 27, 2026)
- Defendants' First Supplemental Disclosures (May 29, 2026)
- Defendants' Second Supplemental Disclosures (June 5, 2026)
- Defendants' Second Amended Responses to Plaintiff's First Set of Interrogatories (June 10, 2026)
- Defendants' Amended Responses to Plaintiff's First Set of Interrogatories (June 11, 2026)
- Plaintiff's Responses to Defendants' First Set of Interrogatories, Requests for Production of Documents and Requests for Admissions (June 12, 2026)
- Defendants' Third Supplemental Disclosures (June 22, 2026)
- Plaintiff's Second Set of Interrogatories, Requests for Production, and Requests for Admission to Defendants (June 30, 2026)
- Defendants' Fourth Supplemental Disclosures (June 30, 2026)
- Plaintiff's Responses to Defendants' Second Set of Interrogatories, Second Requests for Production and Third Requests for Production (July 1, 2026)
- Plaintiff's Motion for Leave to File First Amended Complaint and Modify Scheduling Order (July 1, 2026)

Miscellaneous Documents

- Legacy Church, Who Are We Webpage (No date)
- Legacy Church 2024 Annual Report (No date)
- (Screenshot) Legacy Church YouTube Page (No date)
- (Screenshot) I'm a Right-Wing Extremist and Here's Why! (No date)
- (Screenshot) Pastor Steve Smothermon Instagram Page (No date)
- (Screenshot) Legacy Church Instagram Page (No date)

Letters

- Marc J. Randazza to Nicole Westbrook (No date)
- Marc J. Randazza to G. Michael Jackson and Nicole A. Westbrook (January 27, 2026)
- Nicole A. Westbrook to Marc J. Randazza (February 10, 2026)
- Marc J. Randazza to Nicole A. Westbrook (May 13, 2026)
- Ronald A. Green to Nicole Westbrook (May 29, 2026)
- Ronald D. Green to Nicole A. Westbrook (June 3, 2026)
- Nicole Westbrook to Marc Randazza (June 30, 2026)
- Ronald D. Green to Nicole Westbrook (July 1, 2026)

Emails

- Nicole A. Westbrook to Pastor Steve Smothermon (February 25, 2026)
- Nicole A. Westbrook to Marc J. Randazza (February 26, 2026)
- Nicole A. Westbrook to Marc J. Randazza (February 26, 2026)
- Nicole A. Westbrook to Marc J. Randazza (February 26, 2026)
- Nicole A. Westbrook to Marc J. Randazza (March 18, 2026)
- Nicole A. Westbrook to Marc J. Randazza (April 21, 2026)

Social Media

* Post from Thomas C. Carroll, II (August 22, 2025)
* Facebook post of "The Hodgetwins" (August 22, 2025)

Sources to Obtain Information

The aforementioned documents and informational materials listed along with internet research I conducted and information I received from Plaintiff's legal counsel provided me with the information related to this case which formed the basis for the findings, conclusions and opinions I offer in this report.

METHODOLOGY

As an expert witness, the methodology I utilize to gather and analyze information and form my conclusions and opinions in cases is standard to both public relations professionals in addressing reputation damage on behalf of clients and to expert witnesses in my field of expertise in litigation. Further my methodology has been accepted and validated by both federal and state courts as I have testified in 18 legal proceedings including 15 trials (bench and jury trials and in state and federal courts) and three arbitration hearings.

In respect to the development of the methodology I utilize in cases, I conducted extensive research of treatises and academic studies related to expert witnesses as well as researched and reviewed reports and articles in publications written on behalf of academic (e.g. Harvard, Duke, Cornell) and legal entities (e.g. American Bar Association) to educate myself to accepted practices and procedures for forming conclusions and opinions that I would formulate. I also familiarized myself with the requirements of Rule 702 for expert witness testimony.

Peer Accepted Methodology

The role of expert witnesses is to assist the trier of fact (judge or jury) to understand complex information on technical, scientific, or professional issues by providing information and independent insight, clarity, perspective, context and/or objective and expert opinions on evidence and/or facts. The methodology I utilize in cases is guided by and consistently followed by peer reviewed and accepted methods, standards, processes, procedures, and formulas normally and routinely used by both public relations and communications professionals for clients as well as expert witnesses for litigants who were performing reputation damage determinations, analyses, and investigations.

The methodology I utilize as an expert witness in assessing and offering my conclusions and opinions is peer-accepted. It was formulated during my four decades as a public relations professional and two decades as an expert witness. In both careers, I have diligently taken

numerous actions to educate myself in standard methodology and validate my ongoing use of it. As an expert witness, they include:

- I have attended expert witness conferences, attended sessions, and interacted with other experts and obtained information on and discussed their methodologies as to obtaining, reviewing, and interpreting information in order to formulate their conclusions and opinions – to include reviewing them my methodology.

- Over the years in my profession, I have discussed and reviewed my methodology with other experts in my field by telephone, correspondence and in meetings and received their confirmation and validation of it.

- I have reviewed the methodology in the reports of other experts which I was privy to because they were on opposing sides of cases I have had and found that their methods of analysis and processes to form opinions were the same as mine.

- I have authored numerous articles about defamation and reputation harm (the last of which appeared in the 2020 edition of American Bar Association's national magazine).

This methodology is consistent with that used by public relations practitioners when addressing reputation harm. During my communications career – in addition to my direct experience - as an officer of both national and local public relations associations, I had unique opportunities to interact with other professionals to gain insight into accepted methodology and often spoke and wrote on related subjects.

My methodology as an expert witness in cases is as follows:

- Gathering Information – This involves educating myself to who the litigants are, the nature of the disputes that led to the lawsuit and what has transpired in the litigation to date. In my assignments as an expert witness, I fully endeavor to obtain information reflecting positions taken from both sides of the litigation so that I can understand their respective positions and the scope and consequences of the crisis for which harm was suffered. My input in this report will be based on the information I obtained and reviewed in this case which was detailed in the "Information/Input Received to Form Opinions" section of the report. The information which emanated from both sides in this litigation reflects both of their understandings of the facts as well as their interpretations and views of them. In some instances, they may agree on information and facts and in others they may not. It is not my task or responsibility to determine who is right or wrong; that will be determined in court.

- Analysis – Analyze the information and insight they have obtained and conduct any additional research and investigations as needed.

- Formulate Conclusions and Opinions – These will eventually be presented in various means or forums (e.g., expert report, deposition, trials/arbitration hearings). The conclusions and opinions I offer in cases are within the scope of my expertise, are reasoned, dependable and relevant. They are objective and not biased on behalf of the litigant who retained me. They are based both on the information and evidence I have been provided or obtained which I believe to be accurate, dependable and authentic, merged with the insight and perspective accumulated from my professional background, experience, and expertise in reputation management and

repair.

In doing so, I apply my experience, knowledge and expertise amassed during half a century as a communications professional as well as in 126 cases as an expert witness with the facts and evidence to make the determinations that I offer in this report. In all cases, once I have received all relevant information, I will take the following actions to form my conclusions and opinions:

- When applicable, apply the principles of negative communications to the case as appropriate, germane, and applicable to this litigation.
- Follow peer accepted methods, procedures and forms of analyses in both the public relations and expert witness professions relating to how to analyze and assess situations which negatively impact reputations as well as devise strategies, plans and actions to restore them.
- Apply the facts of the case in consideration of, creation and development of my conclusions and opinions.
- I consider and analyze my many decades of having managed and repaired past situations of reputation harm that I addressed as a public relations professional and expert witness. I analyze both the nature and extent of the reputational harm and determine its source. This information and insight are then factored in when developing my conclusions and opinions in this case.

Therefore, the methodology I utilize as an expert witness in assessing and offering my conclusions and opinions is peer-accepted and reviewed because it represents the universal consensus of how professionals in the field of reputation management operate when addressing reputation damage and repair as well as expert witnesses in formulating their conclusions and opinions in cases.

Methodology Specific to This Case

In addition to the normal actions, I take to formulate my conclusions and opinions as described above, in this case, I undertook the following:

- Researched, reviewed, and analyzed Plaintiff Smothermon's reputation, both personally and professionally prior to August 22, 2025, when the Facebook post was published by the Defendants.
- Following the research method the Defendants purportedly claimed they did, I conducted a Google search of "Steve Smotherman" to ascertain what identification would appear as well as photographs.
- Reviewed and analyzed the words and actions of the Defendants in the case that allegedly caused the Plaintiff reputation harm.
- Reviewed a study conducted by Plaintiff's law firm which demonstrated and concluded that the Defendants did not utilize normal and accepted photograph verification tools to verify the identity of a person in a photograph.

- Reviewed and analyzed all the forms of negative exposure that emanated from the communications directed towards the Plaintiff (e.g., internet, social media).

- Examined the allegations in the Complaint against the Defendants and compared them with the facts and evidence in this litigation.

- Assessed whether the photograph misidentification and words and representations published by the Defendants in the post would have resulted in any reputation harm to the Plaintiff.

PREFACE TO FINDINGS

The comments, conclusions and opinions I offer in this report pertain to the issues I was asked to address as outlined in the "Assignment" section of this report. My input in this report is based on the information I obtained and reviewed in this case which was detailed in the "Information/Input Received to Form Opinions" section of the report.

I have reviewed the legal documents and other types of information listed in this section of the report and have conducted internet research to obtain some general background on the litigants in the lawsuit filed by the Plaintiff. As a result, I am versed in the facts related to this litigation emanating from the information and evidence that is available.

The analysis of the information and evidence related to this case which I have seen is germane and at the core of this litigation for both the Plaintiff and Defendants. Also included is my assessment of what reputation harm, if any, the Plaintiff has incurred resulting from the words and/or actions of the Defendants.

Definitions Applied

The Claim of Relief in this case which I will opine on as cited in the Complaint is Defamation, Although my opinion might be relevant to other claims filed in the First Amended Complaint as well. Following is the definition of Defamation under Nevada law.

Defamation – A false statement that would "tend to lower the subject in the estimation of the community and to excite derogatory opinions against him and to hold him up to contempt." Elements for Defamation are:

- False Statement of Fact: The defendant must have made a statement claiming to be fact that is verifiably false. *Mere opinions cannot be the basis of a defamation lawsuit.*

- Unprivileged Publication: The statement was communicated either verbally or in writing to at least one third party (someone other than the person the statement is about).

- Fault: The defendant must have acted at least negligently, or in some cases with actual malice (knowing the statement was false or acting with reckless disregard for the truth).

- Damages: The false statement must have caused actual harm to the plaintiff's reputation, resulting in financial or personal loss.

Importance of Reputation

One's reputation – regardless of whether it is a person, business, organization, or any other type of entity is critical because that is most often the "prism" through which the subject is view and/or judged. According to an amalgamation of definitions offered by the Cambridge, Oxford and Merriam-Webster dictionaries, reputation is defined as:

> *"The beliefs or opinions that are generally held about someone or something. The overall quality or character as seen or judged by people in general; the opinion that people in general have about someone or something or how much respect; the estimation in which a person or thing is held."*

Additionally, as applies to an individual (as is the Plaintiff in this litigation) who, the vital interest in a person's own good name (and reputation) surpasses its relation to or impact on his or her occupation, finances, business, and personal relationships, etc. It is a fundamental part of his identification, of his or her self-image, standing, and sense of worth.

In the public relations profession, there are two old "tried and true" axioms that are sacrosanct and they are "*It takes years to build a reputation but only seconds to destroy it"* and "*perception is more important than reality*" (in most cases, reputation and perception are basically interchangeable in this context).

"Bond of Trust"

There are people in many types of businesses and professions that can experience, survive and shake off negative information about them that might stain their image, reputation, brand and/or the goodwill with those they service. There are some that cannot because of the nature of what they do and the impact on those they serve. They are held to a higher standard and forgiveness is rare. This includes educators (who mold our children), law enforcement (which safeguards us), the legal profession (which protects our legal rights), and financial professionals such as accountants, financial planners, investment advisors (who protect our finances and ensure we have economic viability). It particularly applies to the clergy who is responsible for our spiritual needs and influences our value systems. Therefore, the reputation harm emanating from the Defendants would be particularly and significantly more damaging to the Plaintiff in this case.

Impact/Effects of Reputational Damage and Harm

Prior to addressing the type and extent of reputational harm, which was incurred by Plaintiff in this case, there is one critical factor that needs to be understood and considered when analyzing the real and potential reputational harm as a result of alleged false statements, misrepresentations and/or actions of the Defendants which the Plaintiff maintains have already had a profound negative impact. When assessing a situation involving reputational harm and damage, it is important to understand how any negative communications emanating from Defendants serve to stain the reputation of the Plaintiff, which in turn translates into negative consequences that have a detrimental impact on him. There are numerous means through which negative communications can be transmitted and spread, including: oral and written messages, internet/social media formats, media exposure, print publications, etc. A particularly damaging means is through "word of mouth" which further perpetuates the reputational harm through widespread distribution of its

disparaging content, often resulting in the original message being altered or enhanced through individual interpretation of the negative comments and alterations in what is passed on to others. Also, it is nearly impossible to counteract or negate the harmful effects of this negative reputational spread either in the short or long term.

There are several principles accepted in various communications professions that are apropos in relation to the dissemination of negative information about some person and/or entity - regardless of whether it is true or not, to wit:

- It takes years to establish a reputation and seconds to destroy it.
- You can't un-ring a bell.
- You can never wipe a slate clean.
- Perception is more important than reality.

Succinctly, this means that once a reputation is damaged, it cannot be fully restored. These principles are the basis of many of my conclusions and opinions in this report.

There are two methods of disseminating negative information (or, in this instance, a negative reputational view of the Plaintiff) – controlled and uncontrolled. "Controlled" means that one can pinpoint everyone who actually was exposed to the negative communications passed on (e.g., person-to-person remark, written communication to only certain people, a speech to a group of people) in a contained environment. The theory here is that only these people have the information, and they have hopefully not yet passed it on in any way to others. When the negative content is limited to only those exposed, there is a chance to be somewhat effective in refuting it by reaching those people and providing an opposing view to the input they received.

"Uncontrolled" means that either the negative communications (which could result in reputation harm) have already been passed on in various ways to others that cannot be identified or contacted – or it was disseminated in such a way (e.g. in the media or on internet) that there is no way of knowing exactly who received it or what they may have done with that information (e.g. disseminate it to others). In this instance, it is impossible to ensure that everyone exposed to the negative communications has access to the opposing viewpoint – and thus, without any counter information, the original (negative) view or opinion formed as a result of it could be considered to be accurate making it extremely damaging.

Negative impressions or perceptions once implanted can often never be completely erased or overcome – for some people completely and for others, to a certain degree. In reputation management and the communications field in general, there are accepted principles that apply to the transmission, absorption, and impact of negative communications on a subject, which include:

- Changing their thinking is never as effective because the person may have already given credence to the initial opinion or they will filter the second outlook through the original information received (not a clean slate).

- Even if people receive a contrary view, there could always be an element of doubt (e.g., where there is smoke, there is fire).

- If someone receives contrary views of a reputation, and doesn't know which is right, it would be human nature to take a conservative approach to steer clear of the subject of the information (e.g., "why take the chance") and go with another choice.

- People will believe in a negative impression or perception of a reputation if it seems plausible and there is no counterbalancing input that refutes or challenges that information.

- As a negative reputation is communicated to others, when there is no way to identify who has received the information, there is no chance to provide them with the correct negative impression or perception.

- When a damaged reputation is communicated and isn't countered, it can be passed on by "word of mouth." This is particularly dangerous and harmful because when passing this view from one person to the other, the original view can be misinterpreted, exaggerated, embellished, and/or distorted which could make it even more negative in nature.

- Finally, and most importantly, if the negative impression or perception cannot be stopped with the original people who heard it, it can go on forever and the spreading of it can be limitless.

In short, reputational damage through negative communications can be devastating and lasting.

ANALYSIS & OPINIONS

Preface

Following is an analysis of the information and evidence emanating from the words and/or actions of Defendants that are germane and at the core of this litigation as well as my assessment of their contributions to what, if any, harm they contributed to damaging the Plaintiff's reputation. These conclusions and opinions will be objective and not based on any biases I have or motivated by serving the interests of the Plaintiff who retained me for this assignment.

My five-decade background in all major professional areas of communications along with my 42 years of experience in litigation support, my specialization in reputation management and repair counseling and programs as well as my 20 years as an expert witness, along with my education and training, provide me the particularized knowledge necessary to form comments, conclusions, and opinions I offer relating to this case. All of my opinions are offered to a reasonable degree of certainty.

General Overview

In the previous section on the Impact/Effects of Reputation Damage and Harm, I outlined the two methods of disseminating negative information. In this case, it is my opinion – in relation to any reputation damage that the Plaintiff has incurred from the words and actions of Defendants - that the "uncontrolled" method of communication would clearly apply because of the means by which the negative exposure was disseminated (e.g. Facebook post on the internet) that would have been widespread in its reach and would have most assuredly resulted in the "word of mouth" factor that would additionally spread this negative information. This type of negative exposure incurred by the Plaintiff will undoubtedly continue over this period of time and into the future.

(Note: As evidence of the fact that the communications are "uncontrolled" and will continue in the future, while the litigation is still ongoing, the Defendants' law firm is continuing to potentially cause reputation damage through a website. Information on this is in the following section.)

ANATOMY OF REPUTATION HARM

My professional background, experience and expertise qualify me to assess the reputational damage and/or negative consequences emanating from the misidentified photograph, the content and assertions in the Facebook post and resulting misrepresentations negatively impacting the Plaintiff which led to this litigation. In this section I will analyze what factors led or contributed to the reputation damage and how it occurred as well as words, actions and inactions of the Defendants that the Plaintiff maintains have led directly to the reputation harm. This assessment and any conclusions and opinions I may offer are based on the information and insight I have received, reviewed and evaluated.

(As a preface to this section, it must be stated that as an expert, I am not allowed to offer judgments and/or opinions on causation or liability as they relate to the issues in this litigation. That is for the trier of fact (jury in this litigation) to determine. However, I can review the evidence of what transpired that led to the dispute in this litigation as well as discuss the factors that led to or impacted the allegations made by the Plaintiff against the Defendants and offer any insight, context and perspective to aid the jury in arriving at a decision.)

Analysis of Plaintiff's Reputation Pre-Public Exposure

Prior to assessing what damage to Plaintiff's reputation may have been caused by the alleged false statements, misrepresentations, and actions of Defendants, it is important to assess what his reputation was prior to the initial dissemination of the negative communications on August 22, 2025. I researched the internet seeking to discover if there were any reports, personally or professionally, that would be negative to him or discover any incidences of reputation harm that occurred prior to the publication of the Facebook post. As detailed in the Case Background section of this report, evidence shows that the Plaintiff Smothermon has had a distinguished and successful career as a clergyman and was accomplished and well respected. I did not see any information of a negative nature about him either personally or professionally.

Intent of the Facebook Post

As reported in the Case Background section of this report, the Defendants are highly critical of DEI and woke and have been vocal about both through their communications on the internet. When Cracker Barrel decided to change its "old fashioned" image, one of the actions it took was to remove its "Uncle Herschel" logo which was symbolic of it. The "Hodgetwins" apparently seized upon this action to make their points against DEI and woke. The target in doing so was SSmotherman, who led the movement within Cracker Barrel towards such diversification. Assumingly, under the First Amendment and other protections, they had every right to do so.

Photo Misidentification

The text was written for the Facebook post and a determination was made to include a photograph of their "target" – SSmotherman" - with it. The Defendants claim they did a standard Google search of "Steve Smotherman" and all the photographs that appeared were of the same person. They extracted one of the photographs and placed it under the text of the Facebook post. The problem was the photograph was of the Plaintiff, a Pastor named "Steve Smothermon" whose

name ended in "on" and not "an." Regarding the error, the Defendants ascribe it to be an "innocent mistake" based on the similar spellings of the two names, as well as the fact they didn't know what SSmotherman looked like and that, in their search, the photograph of the same person (Plaintiff) kept appearing.

Errors, Problems and Disputes of Defendants' Photograph Claims

The Plaintiff maintains that the Defendants' use of the wrong photograph was a result of a faulty search process and lack of verification combined with negligence and recklessness. Following are their assertions and examples of these.

- Failures of search standards and verification

  - KevinH admitted that he performed his Google image search in its "incognito mode." Plaintiff maintains that doing so is considered highly irregular and reckless as it bypasses standard internet browsers which deliberately leaves no record of the search and destroys the verification history.

    (Related to this issue, in a Plaintiff interrogatory response, it was stated: "*For sophisticated commercial media influencers publishing controversial content to over 6.3 million followers, deliberately hiding and erasing their research trail constitutes a conscious avoidance of truth and a flagrant disregard for basic verification practices.*)

  - The Defendants admitted (in response to Request for Admission No. 9) that they did not review the metadata for the photograph prior to publication. According to the Plaintiff, had they performed the most basic, industry-standard check of the photograph's System Metadata, they would have seen that the embedded metadata and the Source URL identified the image's origin as a website affiliated with Legacy Church.

  - The Plaintiff contends there was a complete omission of standard verification as the Defendants admitted they performed no reverse image search, were completely unaware of standard visual search tools, and never contacted the Plaintiff or Legacy, or any representative of theirs, to verify the image before publishing it to a monetized, revenue-generating platform.

My Own Research

As an average person, I sought to replicate the process used to do a search on the internet of "Steve Smotherman." I typed his name in the Google search bar. In their legal filings, the Defendants maintain that their search for that name produced only listings and photographs of the Plaintiff, not the former Cracker Barrel executive, which is what led to the use of the incorrect photograph. That was not my experience.

First the listings. Of the first 10 listings under the name "Steve Smotherman," beginning at the top of the first page, following are the titles of those listings as well as an indication of who the article was about.

- What's at your Core? Steve Smothermon (Plaintiff)
- Steve Smotherman – Director of Advisory Services (CB Executive)

- Former Cracker Barrel employee Steve Smotherman led… (CB Executive)
- Legacy Church, the unchristian church.:r/Albuquerque (Plaintiff)
- Staff Directory * Steve Smotherman (Other person)
- Search Seven Smotherman Obituaries and Funeral Services (Other person)
- The hireling spirit in today's church… (Plaintiff)
- How to Hear God's Voice with Pastor Steve Smothermon (Plaintiff)
- Steve Smothermon (@stevesmotherman) (Unknown)
- Steve Smotherman at Motlow State Community College (Other person)

What this reveals is that four of the six listings were about the Plaintiff, two of the listings were about the Cracker Barrel executive (who was the target of the search) and four were about neither of the two individuals. My personal conclusions from this search are as follows:

- It is clear from just viewing the first page of Google that there were multiple people that exist with the name that begins with "Smother…" whether it ends with "man" or "mon." Even a cursory view of the page would reveal that. Therefore, it would be difficult to assume that there is only one person that would be the one that would be the subject of their search.

- All names were spelled correctly relating to the subjects of each of the listings so there would be no confusion as to who was who.

- While the top listing in the search for "Steve Smotherman" was of the Plaintiff (whose name in the listing was spelled "mon"), the next two listings were of the Cracker Barrel executive (the subject of the search) and one of them even identified him as being with Cracker Barrel. Therefore, the proximity of the top listing and the one immediately below it would immediately indicate that there were two people of the same name with slightly different spellings.

As to the photograph, the Defendants maintain that when Googling "Steve Smotherman," the photographs of the Plaintiff were the ones that came up. That was not my experience. When I did my Google search, at the top of the page were two rows of five photos each, one row under the other. The top row had these photographs (in this order, left to right)

Images



What's at Your Core? by Steve Smothermon

Tony Cooke Ministries

Instagram



Able and Willing | Pastor Steve Smothermon

YouTube



Steve Smotherman - Director of Advisory Services | LinkedIn

LinkedIn



Stephen Smotherman - Owner | LinkedIn

LinkedIn



Patria Church Pomona
Instagram

- Three of the photographs were of the Plaintiff (which clearly linked him to the ministry) and two were of the former Cracker Barrel executive (one taken at an earlier age).

- Four of the five contained the name of the person in the photograph and all had the correct spelling of the names.

- It would be clear all three photographs of the Plaintiff that he was a Pastor or affiliated with a church.

- There is no facial resemblance between the Plaintiff and the former Cracker Barrel executive.

Based on my individual research, it is not plausible that anyone could have conducted a basic research on Google of a businessman named "Steve Smotherman" who was affiliated with Cracker Barrel and was exposed to the information and photographs above, to have confused the two of them – one a Pastor and one a businessman – not through the spelling of their names, the photographic images and/or the identification of their professions.

Continuing Reputation Harm

Despite the fact that the Defendants are now aware of their misidentification of the Plaintiff in their Facebook post and despite the fact that they are aware that this error is believed to caused him reputation damage as a result, and despite the fact that there is litigation in progress because of it; potential additional reputation damage is still being generated through a website that their lawyer Randazza is currently hosting on the case (https://randazza.com/lawsuits/pastor-steve-smothermon-v-the-hodge-twins). At the top of the home page is a large graphic with multiple images on it.



Among the images are (top to bottom)

- An American flag which is being held by the Hodge twins.
- Under them (on left) is a depiction of Randazza, as a conquering hero.
- To the right of that is assumingly a photo of him and his clients in this case.
- Special attention needs to be called to the upper right-hand corner and a depiction of the Plaintiff – who is a pastor – as a scowling, demonized, threatening "force" with his hands extended as if he were either going to attack the flag or the Hodge twins, or both.

Personal Opinion – Given that the Defendants were the ones who made the careless mistake in their Facebook post that allegedly caused an "innocent" individual considerable reputation harm, they (assumingly they were aware of their attorney's website on their case and approved its content) maliciously double-downed on their original error by "throwing more salt into the wound" through this "demonic" graphic depiction of the pastor. Instead of being contrite for their original

error and any harm it might have caused - they compounded it by continuing to sully the Plaintiff's reputation, who is a pastor.

ANALYSIS OF NEGATIVE IMPACT RESULTING FROM REPUTATION HARM

Preface

To provide context and perspective to this section, it is important to understand the Plaintiff's religious philosophy and his approach to his ministry.

> *"As a pastor, Smothermon is dedicated to connecting individuals with God, fostering healthy relationships, and encouraging a life marked by generosity and service. His sermons are firmly rooted in Biblical scripture, addressing a wide range of topics including marriage, family, gender identity, and sexual ethics. The moral teachings, traditional values, and social principles emphasized in his messages reflect beliefs commonly associated with political conservatism."*

Contrast this with the Defendants' mistaken portrayal of him (meant for SSmotherman) through the misidentification in the Facebook post. It charged that he was opposed to "old fashioned" values, anti-family and anti-American, that he was a strong advocate of woke and LGBTQ+ issues and championed DEI initiatives. Also, that he was an active supporter of promoting and fostering opportunities for queers in the workplace. All are highly liberal views.

(Note: The LGBTQ+ support system is for anyone whose sexual orientation, gender identity, or biological sex differs from traditional, cisgender, and heterosexual norms (e.g. homosexuals, transgender, transvestites.)

As the Plaintiff is a respected teacher, speaker and spiritual leader relating to Biblical subjects – including those involving homosexual lifestyle choices and related issues, the description of the Plaintiff's spiritual philosophy and ministerial practices as well as political philosophy could not be more diametrically opposite to how he was mistakenly portrayed in the Facebook post and thus the adverse impact to him would be most likely be potentially very harmful.

It is also important to note that the Hodgetwins are conservative in their lives, philosophical and assumingly political leanings and therefore their core audience would be conservative, which includes many who are religious. Therefore, it is reasonable to project that of their millions of followers, a large percentage would potentially include those who could be future congregants of the Plaintiff, buyers of his books, YouTube subscribers or Instagram followers. Thus, the negative consequences of the misidentification would be particularly impactful and harmful to him.

Reputation Harm to Plaintiff

Based on information and evidence I have reviewed, the Plaintiff has already suffered significant reputation damage from the Defendants' words, misrepresentations, actions and inactions which have translated into a wide array of harmful and negative consequences to him. The damage to the Plaintiff has been significant and consequential by any objective analysis. This section will detail the negative impact on the Plaintiff, both to him personally and professionally and, by extension to the church, based on what has been declared in reports and testimony.

- Impact and Damage to Reputation and Perception of Plaintiff – The Plaintiff reports that the issues brought in the Defendants' Facebook post and the beliefs and actions attributed to him struck directly at the heart of his life's calling and career mission. The post represented a confluence of life and career altering circumstances due to the misappropriation of his name and likeness on a public social media platform that had a large audience. Some of the negative consequences he cited include:

    - His association with a controversial social issue (practice of a homosexual lifestyle in today's culture) directly clashes with Biblical teachings as well as his consistent and very public stance in opposition to the practice of a homosexual lifestyle given that it is in direct contravention of both the Old and New testaments of the Bible.

    - Following the publication of the Facebook post, the misrepresentations became a topic of conversation to many in the faith-based community – from his followers to his peers. It caused significant harm to the perception of him as an individual and his reputation as a Pastor. Further, he believes while some people, especially those who know him, will discount or give no credence to the misrepresentations, others will believe it and a "seed doubt" will be planted in them.

    - There is evidence that the news media (particularly in City of Albuquerque and Bernalillo County) have monitored him more carefully and its coverage and reporting on him have become more suspect and critical in nature.

- Impact on Church Operation – As the Plaintiff is the not only the spiritual but operational leader of Legacy, negative consequences to him, emanating from the Defendants, also adversely impacts the church as well. Following are some examples:

    - The Plaintiff reports that the stress and emotional trauma he has experienced relating to the Defendants has impacted his ability to function fully on behalf of the church.

    - The time, energy and resources required to cope and deal with both responding/defending the false portrayal of the Plaintiff to others as well as to provide information and logistical support to the litigation has caused a significant disruption to Plaintiff's ability to operate the church.

    - Following the Facebook post, the church leaders, staff and congregants became aware of the misrepresentations, and it led to some negative consequences within the church, including some moving on to other churches and others ceasing to attend church altogether.

- Impact on Relationships – The Plaintiff reported that, in the aftermath of the Facebook post and the resulting negative public exposure, he has great concerns about the impact in the short and long term on his family, including his wife, son and grandchildren. His fears were not unfounded as it has taken an emotional toll on his family – and even those in his inner circle of friendships. He further fears that "with a click of a computer key," this situation and ongoing turmoil will continue to have similar long-term negative repercussions well into the future. The Plaintiff is also concerned with the potential

impact and spillover of harm to his brother, who is a pastor at another church in New Mexico.

(Note: Having had over 50 years, representing and interacting with individuals who suffered reputation harm, I can attest to the fact that family members are often "collateral damage" when one member has severe reputation damage. It particularly effects spouses – potentially leading to marriage strain, discord and divorce – and children – often harassed, bullied or even physically attacked.)

- Impact on Mental and Physical Well Being – Mentally, the Plaintiff has reported that the Facebook post and the resulting negative ramifications and consequences have been the source of significant forms of mental trauma, including anguish, fear, depression, anxiety, apprehension as well as concern for the future well-being of himself, his career, his family, the church and its parishioners. With the realization that the issues that have arisen since the Facebook post and the resulting problems they spawned could be prevalent well into the future, it is a constant source of fear and anxiety for him.

  Physically, following the Facebook post and the uproar emanating from it, the Plaintiff has experienced the normal negative side effects which are associated with extreme mental and emotional trauma. Additionally, he has been coping with an ongoing back problem and while not attributable to the Facebook post, it has complicated his recovery.

- Negative Economic Impact – While my assignment in this case does not involve an analysis of any form of economic loss the Plaintiff has suffered attributable to the Defendants' Facebook post, obviously the costs relating to the litigation he was forced to undertake to clear his name and reputation would be a byproduct of the Facebook post and the misidentification which led to the reputation harm.

REPUTATION DAMAGE REPAIR PROGRAM

Preface

In the communications business, there are several axioms pertaining to reputational damage and harm – e.g., when a person or entity has been the recipient of negative input or communications – which I outlined earlier in this report, which include:

- It takes a lifetime to build a reputation and seconds to destroy it.
- Perception is more important than reality.
- You can never un-ring a bell.
- Where there is smoke, there's fire.
- You can never wipe a slate clean.

For more than four decades, as a professional, I counseled clients on issues relating to reputation, image, or brand damage. I have also created, planned, and implemented dozens of reputation damage repair programs to aid in repairing and recovering their reputations and to mitigate the damage that was caused. As an expert witness, I have created, outlined, and budgeted reputation

damage repair programs for Plaintiff(s) in over 80 cases and have testified on some of these programs in depositions, trials, and arbitration hearings.

It is my strong belief that a Reputation Management/Repair Program is vitally needed for the Plaintiffs as their reputations have been stained both within their industry and with entities and audiences which they interact with that have been exposed to the Defendants' alleged false statements and misrepresentations. Regardless of whether the Plaintiff prevails in this lawsuit or not, the fact is his reputation has been harmed and damaged and that won't change unless some proactive action is taken to counter the negative information disseminated about them as well as to restore their goodwill and reputation.

The best-case scenario is that such a program can mitigate the damage to some extent by combatting or minimizing the negative exposure they received from the negative communications as well as offsetting it with positive exposure. This can be accomplished to a degree through a public relations and communications program utilizing both online and offline communications channels. It is my opinion as a public relations and communications professional who has extensive experience and expertise in reputation management and damage repair and has implemented many such programs for clients with tarnished reputations, that there are reasonably prudent and effective actions that can and should be taken to improve their reputations regardless of the outcome of the litigation.

Program Validity

Federal and state courts have ruled in the past that when reputation damage has occurred, the plaintiff(s) has the right to recover damages from the defendant(s) to fund such a program to mitigate the reputation harm and restore the reputation. In one recent case, the judge opined:

> *"In his report, Mr. Fisher opines that, where a Plaintiff's reputation and image have been so damaged, a repair program of certain duration and with itemized components would be needed to make that image and reputation as near whole as possible. Mr. Fisher assigns a value or cost to that remedial program and lists the steps such a program would entail. The Court concludes that addressing and repairing the harm a person's reputation and image could suffer as a result of defamation is specialized knowledge not within the ken of the lay juror, and which would assist jurors in determining issues of fact surrounding that aspect of damages. While the report lays out the bare minimum in terms of support for Mr. Fisher's damages figure and components of the remedial program he opines is necessary, it is sufficient to allow a jury to understand and evaluate the basis for his opinion.*

It is important to add; I have subsequently testified to such a program in federal and state courts as well as arbitration hearings.

Program

The following is an outline for such a program. This is based on my professional background of having created and implemented over 35 reputation damage repair programs as a public relations professional over four decades on behalf of clients who suffered reputation harm and damage. I have also created another 80 such programs in cases as an expert witness.

Program Overview

- Objectives: The primary purposes of this program are as follows:

- Through this program, to eliminate as much as possible and counter the reputational harm to the Plaintiff that has incurred and ensure that the program reaches and impacts the target audiences in the most timely, expeditious and effective way.

- To restore the reputation of the Plaintiff as needed and required by eliminating or minimizing the negative communications emanating from the Defendants while generating positive exposure for the Plaintiff to portray him as a virtuous clergyman with good character.

- Target Audiences: The "publics" that this program is intended to impact, include:

  - The general public in the geographical area in which he resides and works as well as any other areas in which his reputation has been negatively impacted.

  - The community in general, including all entities which the Plaintiff or the church interacts with, rely on for moral, logistical or financial support, and/or offer goods or services to them.

  - The religious community locally and those in his profession.

Program Activities

The following is an outline of a prudent and suitable reputation management/damage repair program which would seek to achieve the objectives for such a program as stated above. I believe that such a program is necessary and a realistic approach to correct reputational damage as much as possible based on my half century of experience in handling crisis communications and reputational damage programs and on what information and insight I have at this point on this situation. As such, this proposed program is subject to adjustments if and when more information is available and obtained.

- Audit/Assessment – In order to fully assess the degree of the reputational harm that the Plaintiff has suffered, some research and analysis would need to be conducted to determine the nature and extent of the damage emanating from the Defendants' actions and negative communications. The result of the litigation will have an influence on the perspective and perception of how key target audiences were impacted and the harm that has occurred and could happen in the future. The program would then be based on and factor in the litigation result as to how best to counter the negativity and restore the Plaintiffs' positive reputation to include determining what the strategy is, the message to be projected and what actions need to be taken and to what extent. The Audit would include a detailed analysis of relevant online keyword search volume post-litigation, which will be the foundation to determine the appropriate plan for creating content for its online presence.

- Program Plan – A strategy for the program would be formulated, a detailed plan would be created for the program which would then be utilized when it is implemented.

- Online Communications - There are two aspects to a person's or entity's online presence: the precise online platforms in existence (e.g., a website, a YouTube channel, a Facebook page, etc.) and the content found on those platforms. The platforms are inextricably linked

to the content they contain. As illustration, a website is merely a container to which content is added; social media platforms such as a Linked-In page or Facebook page are simply blank pages to which copy, images and videos are added. This is where the role of the keyword research from the Audit/Assessment becomes paramount. It is crucial to create content that people are searching for in order to establish a high level of visibility online. In addition, it must be emphasized that for reputation repair or enhancement, all content relating to the Plaintiffs - Press Releases, Blog articles, videos, interviews with news organizations, mentions in the general press - must be distributed through all online channels, including social media. Following are some of the actions relating to online communications and exposure which would be utilized for this program.

- Website - A website is an extremely critical outlet for the dissemination of information and to impact reputations and public perception. The program would evaluate if it was prudent to make what, if any, adjustment to Legacy's website to address any damage to the Plaintiff or church's reputation and take appropriate remedial action.

- Integrated Website Blog – Consideration would be given to creating a blog with new content continually added is a crucial element in creating and enhancing an online presence. Individual blog pages each have their own unique URL, which creates the opportunity for focusing on sub-categories of search terms and increases the ability of the Plaintiff to speak out on various subjects related to his background and expertise and help project a positive image for him.

- Social Media Communications – The program would review what social media platforms the Plaintiff and the church currently have and decide how they can be addressed in respect to this program. It also could require establishing their presence on platforms they are not currently on. Social media platforms provide an ideal way to leverage content originally published in a website blog. Content can be summarized (instead of copied) and edited to reach a particular target audience. Also, links can be added to social media posts which lead people to the original content and enhance the blog page's ranking in the various search engines' results. However, choosing specific social media that allows civil discourse is an increasingly difficult challenge. Determining which platforms to establish is dependent on controls that will be in place at the time chosen to begin reputation repair and ongoing program management. Platforms including LinkedIn, YouTube, Facebook personal and professional pages, Instagram, and X (formerly Twitter) accounts will all be evaluated in regard to their security setting capabilities at the point a reputation repair and management campaign is ready to begin, specifically to eliminate any opportunity for negative or disparaging content. Creating content and monitoring interaction with the content require a full-time professional for reputation repair of this magnitude.

- Miscellaneous – Working with independent contractors, including contracting for IT Support, Website Hosting, content managers, internet monitoring (for counter or alt group trolling, and purchasing technical components (i.e., software, sufficient internet connectivity, adequate devices, etc.) required for the Plaintiff's Online Presence.

- Search Engine Optimization (SEO) - The internet would need to be reviewed for information relating to the Plaintiff and actions taken to mitigate the damage as well as generate more positive links with high domain authority to effectively push down negative search results as much as possible. Positive content will have to be added to the internet as well. Optimizing content to positively affect a search engine's determination of a website page's value in relation to a key word or phrase is the essence of SEO. It consists of creating content of interest and value to someone searching for a particular term, as noted above. Although content is the essence, there are many technical aspects of SEO that also require constant attention. Readability of a page on a mobile device, website accessibility according to the terms of the Americans with Disabilities Act (ADA) and page download speed are three examples of the numerous factors that affect a website page's ranking in a search engine result. An effective SEO campaign must include constant monitoring and attention to all these factors. However, because any negative articles about the Plaintiff on the Internet are hosted by in many cases by large media companies with strong search-engine rankings, it is unlikely that he would be able to replace those articles at the top of the search engines with any content on lower-ranked websites.

- Videos – Videos would be produced for reputation restoration and enhancement purposes and exposure for the Plaintiff which would be generated on many places on the internet (e.g., website(s) and its social media forums, YouTube, Instagram) and could also be used for communications purposes offline as well. The importance of creating videos to enhance a person's reputation cannot be overstated. YouTube is the world's second largest search engine behind Google (See: open.library.okstate.edu/), although many people do not think of it as such. The process for creating videos that rank high in a search on YouTube, consequently, requires a process like SEO for traditional website pages. Videos, therefore, are not only extremely effective at creating and enhancing a reputation because of the powerful impact of visual images, but they are also a key component of a larger integrated SEO campaign. It is important to publish all videos on YouTube, which allows the owner to disallow the public from commenting on videos. This also gives the owner the ability to use links to the original YouTube video post in social media posts, and to use "embed coding" when publishing on a website.

- Public Relations Program – As image, reputation and brand are the purview of the public relations profession, such a program would be a critical element of this effort. There is a myriad of activities that need to be undertaken to reinforce and/or establish the reputation and goodwill of the Plaintiff. They include:

    - Strategic planning/counseling/oversight.

    - Generating positive media exposure to reach key target audiences – especially in targeted industries - through a variety of communications means as appropriate for the purpose (e.g., news releases, general and trade media interviews, various types of authored pieces, etc.)

    - Set up interaction between the Plaintiff with key target audiences as needed through means to include personal contact (e.g., in person or electronic meetings, written outreaches such as letters, emails, newsletters).

    - Counsel on social media outreach.

- Speakers Forums – Seek speaking engagements and participation in various forums (e.g. conferences, symposiums, seminars, miscellaneous types of meetings) for the Plaintiff to speak on subjects that would achieve the goals of this program.

- Outreach To and Through Entities – A critical component of the Public Relations portion of this program would be to reach out to various groups, community, nonprofit, youth and charitable organizations, institutions, and other established entities, which provide opportunities for outreach to disseminate messages and achieve the program's goals that are vital to its interest and well-being. Every appropriate form of communication that exists would be analyzed to reach key target audiences directly or through them.

- Paid Exposure – There will be times when broad public or specialized exposure will be important to deliver the specific messages and if it can't be obtained through free channels of communications, options will be explored that would require payment for the exposure.

- Miscellaneous Communications – Throughout the program, continual efforts would be made to seek out opportunities to generate exposure and deliver information through existing channels whether online or offline.

- Additional Program Activities – To be determined as needed to achieve goals and with the benefit of technical analysis/audit.

The proposed actions outlined for this program have been utilized by myself and other communications professionals to restore reputations in the past and constitute a sound and effective means to do so. As a professional, I have successfully created and implemented dozens of these programs for clients, and they have proven to be successful.

(Note: Should the Plaintiff prevail in this litigation and a reputation damage repair program be implemented, I would not be a participant in the physical operation of the program.)

Program Overview and Budget

This program is based on my extensive background conducting similar campaigns, and my analysis of the nature of the communications program that would be needed to counteract the damage to the Plaintiffs' reputation that is attributed to the Defendants' alleged false statements, misrepresentations, and actions. Having created, planned and implemented such programs on behalf of clients with damaged reputations as a public relations professional I believe a proactive reputation management/damage repair program – implemented with sufficient time, effort, resources and budget – would be effective in restoring the Plaintiff's reputation to whatever degree possible. I would recommend a two-year program with the bulk of the work concentrated in the first year (necessity to restore the reputation as quickly as possible) with the second year devoted to follow-up, maintenance of first year and taking advantage of opportunities that may arise.) The scope of the program and the budget amount is based on my assessment of what I believe would be needed to repair the damage to the Plaintiff's reputation based on the information I have at this point in time. Further, while I have projected costs for each of the activities and program elements, I will not delineate them at this time in this report because of the following factors:

- The result of the litigation. Should the Plaintiff prevail, it would validate that he is a virtuous and reputable clergyman. This would greatly enhance the message and what would be required to seek to overcome the reputational harm. However, if the Plaintiff were to not prevail in this lawsuit, such a program would require a totally different approach and adjustment of strategy and message to achieve its objectives.

- The result of the litigation would also dictate which of the program elements listed would become more essential and need more emphasis, thus it is not possible at this point to determine the emphasis or exact budget for each individually. However, most of them would most likely be used regardless of who prevails in the litigation, it is a matter of to what extent. (Note: The projected budget though is based on an estimate for each element in the program as determined at this time.)

- It's not prudent to plan the specifics of a program before receiving the approval of the Plaintiff as to what specifically will be done and the degree of his participation. I would not expect the Plaintiffs in this case to make these decisions until they know the results of the litigation and can assess the situation at the time the program will be launched.

From past experience conducting similar reputation repair programs for individuals, businesses, and other entities throughout the United States, I believe a very conservative estimate of the cost of such a program for the Plaintiffs would be in the range of $325,000 to $350,000.

(Note: This budget for reputation repair is distinct and separate from any monetary award that may be received in this litigation for compensation for his reputation damages.)

To reiterate, this program and budget is a realistic assessment of the scope and cost of a program that would be required to meet the needs and goals of this reputation management repair program based on my current knowledge.

REPUTATIONAL DAMAGE COMPENSATION

Factoring in this negative impact on the Plaintiff from the Defendants' words, misrepresentations actions and inactions as well as the resulting negative consequences he experienced from them, it would be my recommendation that the Plaintiff should be justly compensated for the "pain and suffering" that he has incurred based on the extent of the reputational damage as reflected in the observations, comments and opinions I have expressed in this report. It is important to consider that even if the Plaintiff prevails in this litigation, the negative exposure he has suffered attributable to the Defendants will always be present to some degree and will continue to cause reputational harm and damage to him in the future. A fair and just damage award to compensate these Plaintiff for the negative consequences he has experienced, and undoubtedly will continue to suffer in the future, and for the costs to restore his damaged reputation, would be proper. Factoring in this negative impact on the Plaintiff, they have determined that a damage award in the range of $2.65 million to $5.589 million would be reasonable, fair and equitable.

CONCLUSIONS AND OPINIONS

As previously stated, as an expert witness, I am not allowed to offer an opinion on whether the Cause of Action of Defamation against the Defendants is legally correct or actionable in this litigation. It is up to the jury to make that determination. It is my task, based on my background, experience and expertise in the field of communications - and particularly in reputation

management, damage and repair – to provide pertinent information and insight, and offer appropriate conclusions and opinions that will provide worthwhile insight, context and perspective on the facts and information the jury has received to help facilitate the decision that they will render in this litigation.

Following is a summary of my conclusions and opinions that have been offered in this report to date based on the information and evidence I have reviewed and insight I have obtained:

- In a concerted effort to express their opposition to the "woke" philosophy and movement for DEI initiatives, the Defendants seized on a rebranding of the image of Cracker Barrel to express their displeasure of both of these and sought to target one of its executives (SSmotherman) for his role of fostering change within that business.

  (For context and perspective relating to their "mission" in this regard, one must factor in that their Facebook page is a revenue generator for them in which they seek to sell merchandise and obtain other income producing opportunities through their "rage bait" posts. Evidence of this is they retained a marketing company, Bigly (https://gobigly.com) which has a motto *"Bigly – We Build Revenue Engines, Not Just Brands."* As an example of this marketing effort, through Bigly, they are giving away trucks and directing people to buy T-Shirts (https://hodgetwins.goingbigly.com/order-form.)

- On August 22, 2025, the Defendants expressed their position of disapproval and condemnation of SSmotherman on a post on their Facebook page – which purportedly has 6.3 million followers. To accompany the text in the Facebook post, the Defendants decided to include a photograph of SSmotherman when they carelessly published one of the Plaintiff.

- To obtain a photograph, the Defendants allegedly initiated an internet search for "Steve Smotherman" which resulted in them incorrectly selecting a photograph of a Pastor named "Steve Smothermon" (whose name ended in "mon" and not "man"). The photograph was published under the text of the Facebook post.

- It is clear that the selection of the photograph of the wrong person could easily have been avoided and was a result of poor and improper search methods, lack of using proper identification tools on the internet, and lack of verification. The Plaintiff maintains that it reeks of recklessness. It is my opinion that, at the very least, the Defendants actions and inactions exhibited extreme carelessness.

- To their credit, when notified of the error, the Defendants removed the photograph from the Facebook post. To their discredit, to this date - nearly a year later - they have never published a retraction nor even offered the Plaintiff an apology, either privately or publicly.

- Regardless of whether the Defendants are found to be liable in this litigation or not, their misidentification of the Plaintiff with the former Cracker Barrel executive unquestionably resulted in reputation harm - the extent and longevity of which is still to be determined.

- The only remedy (albeit partial) to mitigate the reputation damage is to implement a Reputation Damage Repair Program. Such a program is vital to restore the Plaintiff's reputation as much as possible. A sound, effective program can mitigate the damage but once a reputation has been damaged, it cannot never be fully restored.

Context and Perspective

During nearly half century as a public relations professional, I represented dozens of clients who suffered reputation damage (inflicted on themselves or by others). My assignment was to restore their reputations which I attempted to do through repair programs. From that "in the field" experience, I can verify that once a reputation has been damaged, it can never be fully restored or made whole again (e.g., "Humpty Dumpty"). A "successful" program might restore 60-70% of a reputation. The reasons for this are detailed on pages 27-28 of this report and critical to an understanding of the negative impact of reputation damage.

In this report, on a few occasions, I have cited the old adages that are the "bible" of the public relations profession: "Perception is more important than reality" and "It takes years to build a reputation and seconds to destroy it." Thoughts on both.

- Perception/Reality

  Reputation is basically the same in meaning as perception. If one doesn't "perceive" someone or something positively, it impacts and often determines the actions that drive the "reality." In this instance, if one was seeking spiritual guidance from a clergyman who preaches biblical teachings as well as espouses traditional, moral and social values only to learn that he is an advocate of woke, anti-family and anti-American values would be devastating to his credibility and undermine what people look for in a spiritual leader.

- Loss of Reputation

  Both as a public relations professional for 45 years and as an expert witness who has had 133 cases involving reputation harm over a 20-year period, I have been privy to the destruction of reputations that had been highly positive for countless years, only to be destroyed in a moment due to words, actions and/or inactions of others. It's tragic but it happens. In this litigation, the Plaintiff has been a highly respected clergyman who has established multiple churches and has a large congregation based on his teachings, inspiration and leadership. Potentially, the allegations made by the Defendants, which were ascribed to him, could damage his reputation and hinder the growth of Legacy.

Report Summary

In summary then, it is my professional and expert opinion - based on all available evidence and the information I reviewed as well as the insight I have amassed from my experience and expertise in both the communications field and as an expert witness – that the Plaintiff, Pastor Steve Smothermon, suffered irreparable reputation harm from the words, misrepresentations, actions and/or inactions of the Defendants Keith Hodge, Kevin Hodge and Hodgetwins, LLC. Further, based on my direct experience and observations of similar reputation damage situations both as a public relations professional and expert witness, I can reasonably project the reputation harm will undoubtedly be long lasting and will continue well into the future to some degree if not indefinitely. This is my personal opinion based on my experience and expertise as a communication expert and derived from my review, evaluation and analysis of the evidence.

REPORT DISCLAIMER

This report provides my findings, views, conclusions, and opinions based on information and input related to this case that I have received to date. If there are further developments in this case and/or if I receive additional documents or information related to it in the future, I reserve the right to supplement, change and/or expand on the conclusions and opinions which I have offered in this report.

Robert J. Fisher

July 16, 2026
Date

EXHIBIT 2

Rebuttal Expert Report of Eric Rose

(Aug. 14, 2026)

GOVERNMENT ADVOCACY & PUBLIC AFFAIRS

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON,
Plaintiff,
v.
KEITH HODGE, an individual; KEVIN HODGE, an individual; and HODGETWINS, LLC, a Nevada limited liability company,
Defendants.

Case No. 2:25-cv-01858

REBUTTAL EXPERT REPORT OF ERIC ROSE

In Response to the Expert Report of Robert J. Fisher

Assignment and Scope of This Rebuttal

Counsel for Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC retained me to review and respond to the expert report of Robert J. Fisher, dated July 16, 2026, submitted on behalf of Plaintiff Pastor Steve Smothermon. EKA is compensated at $700 per hour for my work on this engagement. I have reviewed Mr. Fisher's report in full, together with Plaintiff's operative First Amended Complaint and Demand for Jury Trial, and Plaintiff's Motion for Leave to File First Amended Complaint and to Modify Scheduling Order, both filed July 1, 2026[1], together with the redline comparing the original Complaint to the First Amended Complaint filed as Exhibit 2 to that Motion and the record materials referenced in his report. This rebuttal addresses the reliability of Mr. Fisher's methodology, the evidentiary support, or lack of it, for his conclusions, the repeated instances in which he strays outside the boundaries he sets for his own report, and the basis, or absence of a basis, for the dollar figures he presents to the jury.

As with my work generally, my opinions here are offered strictly from the standpoint of a communications and reputation management professional. I am not an attorney, and nothing in this report should be read as a legal opinion on liability, causation, or the elements of defamation. Where I use terms like harm, damage, or repair, I use them the way they are used in my profession, not as legal conclusions. Mr. Fisher claims the same limitation applies to him. As detailed below, he does not consistently honor it.

My Qualifications

I am a Partner at Englander Knabe and Allen, a public affairs and strategic communications firm. I have spent more than four decades in communications, with the last twenty-five years focused specifically on crisis communications, media relations, and reputational risk and repair. Since 2013, when I was first retained as an expert witness in the first case in the United States to proceed to trial involving an allegedly defamatory tweet, I have been retained as an expert witness in more than forty matters involving reputation repair, defamation, or reputational damages, on behalf of both plaintiffs and defendants. I have testified in eight trials and three arbitration hearings, and I have never been excluded from testifying as an expert in any proceeding, including proceedings in which my qualifications were challenged.

I co-authored Navigating Reputational Harm: A Deep Dive into Repairing, Measuring, Metrics, and Legal Implications of Reputational Harm in the Internet Age, and Reputation Repair in the Digital Age: Limits, Realities, and the Path to Recovery. I am a member of Reputation Advisors International, a global network of senior communications professionals specializing in reputation management, brand positioning, and crisis preparedness and response. I mention this background

[1]Plaintiff's First Amended Complaint and Demand for Jury Trial, Smothermon v. Hodge, et al., Case No. 2:25-cv-01858, ECF No. 52-1 (D. Nev., filed July 1, 2026); Plaintiff's Motion for Leave to File First Amended Complaint and to Modify Scheduling Order, ECF No. 52 (D. Nev., filed July 1, 2026). The claims and factual allegations added by the First Amended Complaint, the Nevada Right of Publicity claim, the False Light claim, and the Unjust Enrichment claim, and the discovery timeline recited in the accompanying Motion. I have also reviewed the redline comparing the original Complaint to the First Amended Complaint, filed as Exhibit 2 to the Motion for Leave, ECF No. 52-2 (D. Nev., filed July 1, 2026). The redline confirms that the amendment added new paragraphs 49 through 54 (the incognito-search admission, the metadata and reverse-image-search allegations, and the Mason-Howerton notice sequence) and the Third, Fourth, and Fifth Claims for Relief (Right of Publicity, False Light, and Unjust Enrichment). Mr. Fisher's noted these documents in his own recitation of the record.

not to inflate my own credentials, but because it is the same professional grounding against which I evaluated Mr. Fisher's report, and my opinions below reflect the standards routinely applied in this field, including standards Mr. Fisher's own report claims to follow but does not consistently meet.

Summary of Opinions

Based on my review, it is my opinion that Mr. Fisher's report falls well short of the standards ordinarily applied by reputation management professionals when forming and supporting their conclusions, and that, in several places, it is not reputation management analysis at all but advocacy dressed in the language of expertise. Specifically:

- Mr. Fisher does not apply any recognizable, testable methodology to the facts of this case. He describes a general process of gathering information, analyzing it, and forming conclusions. Still, he never shows his work, and his report contains no independent source citations, hyperlinks, studies, or data of any kind to support the general principles he relies on.[2]
- Mr. Fisher builds much of his opinion on generic communications adages rather than on case-specific evidence, and he says so directly, telling the reader that these adages are the basis of many of his conclusions and opinions.[3]
- Mr. Fisher's uncontrolled dissemination theory is asserted, not demonstrated. He never identifies a single third party who received, forwarded, discussed, or acted on the post, and he substitutes the Plaintiff's own stated belief for independent analysis.
- Mr. Fisher represents that his pre-litigation internet research found no negative information about the Plaintiff, personally or professionally. A media-monitoring report shows at least three negative-coded mentions from December 2024, eight months before the Facebook post, reporting a sexual-abuse lawsuit naming Smothermon as senior pastor of the church entity overseeing an affiliated treatment ministry, Steelbridge.
- The record Mr. Fisher reviewed, including facts recited in his own report, shows no lost book sales, no lost media interviews or speaking engagements, no negative comments from parishioners, and an increase in the church's income from 2024 to 2025. Mr. Fisher never reconciles these facts with his damages recommendation.
- Mr. Fisher repeatedly abandons the boundary he sets for himself at the start of his own report, that he will not offer opinions on causation or liability, and instead evaluates the reasonableness of the Defendants' verification process and labels their conduct extreme carelessness, a fault-based conclusion dressed up as reputation commentary.
- Mr. Fisher offers clinical-sounding conclusions about depression, anxiety, and mental trauma that fall outside his stated expertise in communications, and he pads his account of harm with an irrelevant back problem and generic speculation about family collateral damage that he expressly concedes is not tied to any fact in this case.

[2]Expert Report of Robert J. Fisher, Smothermon v. Hodge, et al., Case No. 2:25-cv-01858 (July 16, 2026) (hereafter "Fisher Report") at 22 to 25 (Methodology section).
[3]Fisher Report at 27 to 28.

- In at least one passage, Mr. Fisher labels his own writing a personal opinion. He uses inflammatory, one-sided language, calling the Defendants' conduct malicious and describing a graphic as demonic, language that is very difficult to square with his claim that fairness has been my guiding principle and that his opinions are objective and not biased.
- Mr. Fisher's proposed reputation repair budget of $325,000 to $350,000 is a bare estimate that he expressly declines to itemize or explain, and the only independent validation he offers for his general approach is an unnamed, uncited case that no reader can check.
- Mr. Fisher's recommended compensation figure of $2.65 million to $5.589 million has no calculation behind it of any kind. It is not tied to any specific fact, comparable case, lost opportunity, or cost, and it strays outside the boundaries of a communications expert's role into territory that belongs to the jury.
- Mr. Fisher relies on a study produced by Plaintiff's own law firm to support his claim that Defendants failed to use accepted verification tools, without disclosing who conducted that study or independently testing its conclusions.
- Mr. Fisher's own rebuttal Google search, offered as proof that the Defendants' error was implausible, was conducted nearly a year after the post, is undocumented as to search conditions, and contains an internal counting error and an incomplete review of the very image results he relies on.
- Mr. Fisher's account of his own professional history does not hold up to the same scrutiny he asks the jury to apply to the Defendants. He states his career case count as both 133 and 126 in different sections of the same report. He claims to have served as an expert witness in 32 states while naming only 28, and he describes his tenure operating his own firm as 42 years even though his own report states the firm was founded in 1978, forty-eight years before the report's date.
- The only confirmation Mr. Fisher offers for his methodology is his own account of unrecorded conversations with unnamed colleagues. He identifies no published standard that ties a specific set of case facts to a specific dollar figure.
- Mr. Fisher asserts that his approach reflects the universal consensus of the reputation management field, but, as explained later in this report, one widely accepted approach among reputation management professionals for pricing a repair campaign is a market-based, itemized, checkable one, not a single blended dollar range with no components.
- Mr. Fisher's opinions here were generated for this litigation, and, as discussed below, the positions he takes in this report diverge from the positions he took as a defense expert in Carroll v. Trump on at least three points central to the analysis, which suggests his conclusions track the party who retained him rather than a fixed, litigation-independent methodology.

Mr. Fisher's Report Does Not Apply a Reliable, Verifiable Methodology

Mr. Fisher describes his methodology in broad strokes: gathering information, analyzing it, and formulating conclusions and opinions.[4] That description could apply to almost any exercise of judgment by almost anyone. It does not tell the reader, the parties, or the jury what he actually did, based on the specific facts of this case. There is no media monitoring data, no count of how many people the Facebook post actually reached, no calculation of audience or publicity value, and no attempt to check whether the post, or any commentary about it, persisted online after it was taken down.

This matters because those tools exist and are routinely used in the field of reputation repair. Commercial media monitoring platforms calculate audience and publicity values for individual mentions based on viewership, circulation, and follower counts, which lets a reputation professional turn a subjective impression of how far something spread into a quantifiable, checkable estimate. A market-based cost estimate for any proposed repair campaign is then built from current advertising and media rates for the specific channels needed to reach the relevant audience. Mr. Fisher's report contains none of this. He offers his conclusions as though they were self-evident, without showing the reader how he arrived at them.

Mr. Fisher's claim to a fares no better on inspection. that he has discussed and reviewed his methodology with other experts in his field by telephone, correspondence, and in meetings and received their confirmation and validation of it.[5] No names, no dates, no documents, and no way for anyone to check any of it. An expert cannot establish that a method is generally accepted by simply asserting that unnamed colleagues once agreed with him in conversations no one else was present for. That is not peer review. It is a claim about peer review, offered on faith. Notably, Mr. Fisher and I worked together as retained experts on the same matter, Jose I. Lopez, M.D. v. Healthcare Group and OptumRx, and have discussed methodology. I did not provide him with the methodology he applies in this case.

Mr. Fisher also never addresses a threshold question that any reliable methodology has to confront first: what did the record actually show happened after the post came down? He acknowledges elsewhere in his own report that the post was up for only hours, that Legacy Church itself flagged the error the same day, and that the photograph was removed that day. A methodology that measures reputational harm has to grapple with those facts before it prices a remedy. Mr. Fisher's does not.

Mr. Fisher Also Adopts an Advocate's Work Product Without Independent Verification

Among the items Mr. Fisher lists as forming the basis for his conclusions is a study conducted by Plaintiff's own law firm, which he says demonstrated that the Defendants did not use normal and accepted photograph verification tools.[6] Mr. Fisher does not link to the study, identify who conducted it, what methodology it used, whether it was reviewed by anyone outside the firm that retained him, or what he personally did to verify its conclusions. He adopts an advocate's own work product, produced by Plaintiff's counsel, and repeats its conclusion as though it were his

[4]Fisher Report at 22 to 25 (Methodology section).
[5]Fisher Report at 22 to 23 ("Peer Accepted Methodology").
[6]Fisher Report at 24 (Methodology Specific to This Case).

independent finding. Mr. Fisher incorporated another party's unvetted analysis without independently validating it; he did not demonstrate that he was exercising independent expert judgment; rather, he showed that he was merely functioning as a conduit for someone else's advocacy.

Mr. Fisher Substitutes Adages for Analysis

Mr. Fisher's report leans heavily on a short list of communications sayings: that it takes years to build a reputation and seconds to destroy it, that you cannot unring a bell, that you can never wipe a slate clean, and that perception is more important than reality.[7] Standing alone, none of these sayings is wrong. But Mr. Fisher states plainly that they are the basis of many of his conclusions and opinions in this report.[8] These are old sayings, familiar to anyone who has worked in public relations for any length of time. They are not evidence, and standing alone they are not a methodology.

As an expert witness on reputation matters for Plaintiffs, I know that expert reports are meant to connect the specific facts of a case to a conclusion through a reasoned, checkable process. Here, the reasoning runs the other direction. Mr. Fisher starts from the adage and works backward to the conclusion, rather than starting from the facts of what actually happened to Pastor Smothermon and asking whether those facts support the adage in this instance. Nowhere does he explain why a post that was live for one to three hours, corrected the same day by the very church it concerned, behaves as an uncontrolled, unrecoverable reputational event is supposed to. He assumes it does, because the adage says reputational harm cannot be undone.

The Uncontrolled Dissemination Theory Is Asserted, Not Demonstrated

Mr. Fisher devotes several pages to explaining the difference between controlled and uncontrolled dissemination of negative information, and ultimately opines that the uncontrolled method of communication clearly applies here because the post was made on the internet.[9] It is important to note the language he uses to get there. He writes that the exposure would have been widespread and would most assuredly have resulted in a word-of-mouth effect. Those are predictions about what a Facebook post could do in the abstract, not findings about what this Facebook post actually did. Mr. Fisher does not identify a single specific person, beyond the Plaintiff himself and those at his own church, who saw the post, discussed it, forwarded it, or changed their view of Pastor Smothermon because of it. He does not cite a single comment, share, screenshot, or news account documenting secondary spread. The closest he comes to a case-specific finding is his observation that the Plaintiff, meaning the Plaintiff himself, believes some people will discount the post while others will have a seed of doubt planted in them.[10] That is Mr. Fisher recording the Plaintiff's own subjective expectation and presenting it back to the jury as though it were his own independent expert finding. It is not.

[7]Fisher Report at 27.
[8]Fisher Report at 27 to 28.
[9]Fisher Report at 28 to 29 ("General Overview").
[10]Fisher Report at 34 (Impact and Damage to Reputation and Perception of Plaintiff, describing the "seed doubt" belief as something "he," meaning the Plaintiff, reports).

As AMEC's Barcelona Principles reflect, communication measurement is a multi-method discipline; audience research is one tool available to reputation professionals, among several others, not a mandatory one.[11] Reputation professionals who quantify how an audience has received a piece of content typically draw on a toolkit of objective, checkable data, including media monitoring, social media monitoring, audience analytics, publicity valuation, sentiment assessment, search visibility, content analysis, and stakeholder assessment, with survey research, focus groups, or opinion polling available as additional tools where the objective is to measure audience belief or lingering perception. No single tool in this toolkit is mandatory, but a credible assessment draws on a meaningful combination of them rather than relying on assumption or intuition alone. [12]Mr. Fisher used none of these tools.

Mr. Fisher conducted no media monitoring, no audience or publicity value calculation, no sentiment assessment, no search-visibility review, no content analysis, and no stakeholder assessment, nor did he employ any survey, focus group, or opinion poll of the Plaintiff's audience, the Defendants' audience, or the general public. In short, Mr. Fisher made empirical claims about audience belief and perception without applying any recognized empirical methodology to test them.[13] Mr. Fisher did not record that he reviewed to fill that gap: he does not identify a single social media post, news article, letter, or email documenting that the post, live for several hours, caused any reputational harm to the Plaintiff. His only support for any claim about what portion of the exposed audience believed, doubted, or discounted the post is the Plaintiff's own stated belief that some people will discount it. In contrast, a seed of doubt will be planted in others, an unverified prediction that Mr. Fisher repeats rather than independently tests.

A damages opinion can't rest on what any negative post could theoretically do; it has to rest on what this one actually did. Reputation professionals know the difference between generic risk and documented harm. Mr. Fisher doesn't. He paints a worst-case scenario in the abstract, then slaps a price tag on it- a repair program, a compensation award- as if the abstract scenario were the real one. He never closes that gap with a single fact from this case.

Mr. Fisher Never Separates Defendants' Own Conduct From What Unrelated Third Parties May Have Done

Reputation professionals distinguish between the audience a publisher's own post actually reached and whatever further, independent spread other people may have chosen to give it on their own.

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[11] See Int'l Ass'n for Measurement & Evaluation of Commc'n (AMEC), Barcelona Principles V4.0, at 3–4 (2025),(setting out the industry's seven consensus principles for communication measurement and evaluation, launched at AMEC's 2025 Global Summit in Vienna, and explaining that sound measurement and evaluation should be rooted in a rigorous, multi-method approach rather than any single mandatory tool

[12] *See* Mark Weiner et al., Institute for Public Relations Measurement Commission, The Communicator's Guide to Research, Analysis, and Evaluation 18–20, 25–33 (Mar. 2021), https://instituteforpr.org/wp-content/uploads/IPR-Guide-to-Measurement-v13-1.pdf (identifying the standard toolkit of communication research and evaluation methods, including traditional and social media monitoring and analysis, web analytics and search/SEO tracking, sentiment measurement, content analysis, media demographic and stakeholder audits, and publicity/reputation tracking tools, and separately describing surveys, focus groups, and polls as methods used specifically to gauge stakeholder "awareness, attitudes, and behavior" and audience "perceptions", i.e., audience belief and lingering perception as distinct from and additional to the broader monitoring/analytics toolkit).

[13] See Fisher Report at 34 (Impact and Damage to Reputation and Perception of Plaintiff). Mr. Fisher's report contains no reference anywhere to media monitoring data, audience or publicity value calculations, survey research, polling, or focus groups conducted for this engagement.

Mr. Fisher's uncontrolled dissemination theory blurs that line and he prices a repair program and a compensation figure as though Defendants were responsible for reaching every person who might, hypothetically, have seen, discussed, or passed along some version of the post during the one to three hours it was live, without separating what Defendants themselves published from what unrelated third parties independently may, or may not, have done with it. In this specific case, the damages analysis is not anchored to an audience that was potentially reached by the conduct at issue. Instead, Fisher discusses a hypothetical audience that could theoretically have encountered a secondhand account of it without offering any proof that this occurred.

Defendants' Facebook followers were likely online during the one- to three-hour window the post was live. He does not analyze the post's reach and engagement; extrapolation from follower counts is a standard, well-documented methodology in the social media analytics field: an expert can estimate likely impressions using a platform's average engagement rate for pages of comparable size, industry benchmarks for the relevant time window, or the page's own historical posting data. Mr. Fisher does none of this. He never estimates how many of Defendants' Facebook followers were likely online during the one-to three-hour window the post was live, and he does not analyze the post's own engagement, its views, shares, likes, or comments to gauge its actual or even potential reach.[14] Nor does he attempt any extrapolation from comparable posts or industry-standard engagement rates that might have supplied a defensible proxy in the absence of post-specific data. Having chosen not to undertake even that more modest exercise, he cannot now treat the resulting evidentiary void as license to price a repair program and compensation figure against a hypothetical audience of unlimited size. Without a baseline, estimated or otherwise, there is no way to test whether his proposed repair budget or compensation figure bears any relationship to the scope of exposure the record actually supports.

The record also contains public commentary critical of Pastor Smothermon that is entirely independent of, and unrelated to, the Cracker Barrel misidentification, further illustrating the danger of attributing all negative sentiment associated with Plaintiff's name to Defendants' conduct. For example, a post in the r/Albuquerque subreddit titled "Legacy Church, the unchristian church" criticizes Pastor Smothermon for a sermon the poster found objectionable concerning the Governor of New Mexico, a subject with no connection whatsoever to the Facebook post, the Cracker Barrel executive, or this litigation, and that post alone has drawn 546 upvotes and 212 comments. Whatever reputational association that commentary reflects is attributable to Plaintiff's own public statements from the pulpit, not to anything Defendants did or published. Mr. Fisher's report does not identify, consider, or account for this or any other source of negative sentiment about Plaintiff that exists independently of Defendants' Facebook post.

Notably, Plaintiff's own counsel has effectively conceded that unflattering information about Pastor Smothermon exists in the public record independent of Defendants' post. In moving to strike the exhibits attached to Defendants' Answer, Plaintiff argued that those very exhibits offered solely to establish that Pastor Smothermon is a public figure were "selectively curated to smear" him. *See* Mot. to Strike (ECF No. 45) at 2–3. But if there were nothing negative already in the public record about Plaintiff, there would have been nothing for Defendants to draw on to "smear" him in the first place. This is methodologically inconsistent with Mr. Fisher's own damages

[14] See Fisher Report at 9–10 (reciting that Defendants' Facebook page has more than 6.3 million followers); id. at 30–33 (My Own Research) (containing no engagement or reach data for the post itself).

analysis. The exhibits attached to Defendants' Answer, which Plaintiff's counsel has characterized as material enough to "smear" Plaintiff, demonstrate that unflattering, publicly available information about Plaintiff existed independently of Defendants' Facebook post. Yet Mr. Fisher's report does not account for this pre-existing negative sentiment as a possible contributor to reputational harm. A reliable damages methodology should isolate and control for alternative causes of reputational injury; instead, Mr. Fisher's report attributes the entirety of Plaintiff's claimed reputational harm to Defendants' post without ruling out, or even acknowledging, these other sources.

Mr. Fisher's Claim That He Found No Pre-Existing Negative Information Is Not Accurate

Before assessing any reputational harm, Mr. Fisher states that he searched the internet to determine whether there were any preexisting reports, personal or professional, that would reflect negatively on the Plaintiff, and that his search did not reveal any negative information about him, either personally or professionally.[15] That representation is not accurate. Plaintiff's own counsel has acknowledged the existence of negative, publicly available information about Plaintiff, moving to strike the very exhibits attached to Defendants' Answer because they were "selectively curated to smear" Plaintiff. See Motion to Strike (ECF No. 45) at 2–3. If, as Plaintiff's counsel represented to the Court, those exhibits contained material capable of "smearing" Plaintiff's reputation, then negative information about Plaintiff was both publicly available and known to Plaintiff's own counsel, directly contradicting Mr. Fisher's claim that his research uncovered no negative personal or professional information about him.

There is also a more recent record development bearing on this same question that Mr. Fisher's own report neither mentions nor lists among the materials he reviewed. On May 5, 2026, more than two months before Mr. Fisher signed his report, the Magistrate Judge denied Plaintiff's motion to strike the very exhibits Plaintiff's counsel had characterized as curated to smear the Plaintiff, and ruled directly on their content. The Court found that none of the exhibits appear curated to smear Plaintiff and that they do not unnecessarily reflect on his moral character or state anything repulsive.[16] Those exhibits include articles and podcasts in which the Plaintiff has publicly commented on New Mexico politics and on COVID-19 policies, material the Court held bears directly on the disputed question of whether Plaintiff is a public figure. (I take no position on the public figure dispute) Whichever characterization one accepts, the underlying point is the same. A judicial ruling now reinforces it: Mr. Fisher never cites the record as containing a body of pre-existing, publicly available commentary by the Plaintiff on politically contested subjects that predates the August 22, 2025 Facebook post, and that a properly conducted pre-event reputation baseline would have had to identify and account for. Mr. Fisher's own list of materials reviewed does not include this Order at all, even though it was issued well before his report was signed and speaks directly to the reputational baseline his own stated methodology required him to establish first.

[15]Fisher Report at 29 (Analysis of Plaintiff's Reputation Pre-Public Exposure).

[16]Order Denying Plaintiff's Motion to Strike Defendants' Amended Answer, Smothermon v. Hodge, et al., Case No. 2:25-cv-01858-APG-BNW, ECF No. 51 at 5–6 (D. Nev. May 5, 2026). Compare Fisher Report at 20–22 (Information/Input Reviewed to Form Opinions), which lists numerous filings dated through July 1, 2026, but does not include this Order.

Using the commercial software Critical Mention, which many public relations professionals use, I created a coverage-tracking report for Pastor Steve Smothermon over the last two years. The software only allows searches to go back two years. The report, which can be reviewed here, shows otherwise. On December 4 and 5, 2024, more than eight months before the August 22, 2025, Facebook post at issue in this case, outlets including City Desk and KUNM reported that Legacy Church and its affiliated residential-treatment ministry, Steelbridge, had been named in a lawsuit alleging sexual abuse, and both articles identify Smothermon as the lead pastor of the church entity that oversees Steelbridge; both mentions are coded by Critical Mentions AI system as negative in the monitoring report. A third article, published December 26, 2024, and likewise coded Negative, reports that an alleged victim sued the New Mexico drug rehabilitation program and its supporting church, again describing Smothermon as the senior pastor of the church that controls Steelbridge.[17] Mr. Fisher's search was not limited to any particular time period, and even a cursory search turns up other coverage he does not address, including a 2012 report describing protests outside Legacy Church after Pastor Smothermon publicly opposed a gubernatorial appointment because the appointee was gay.

This omission matters because assessing the reputational harm attributable to Defendants first requires establishing what Plaintiff's reputation looked like before the events at issue in this case. Coverage linking Plaintiff to allegations involving Steelbridge is plainly relevant to establishing that baseline, and a properly conducted reputation audit would ordinarily be expected to identify it.

Either Mr. Fisher's search failed to identify readily available reporting, or the report does not disclose why those articles were excluded from his analysis. This is not an isolated point: Mr. Fisher's uncontrolled dissemination theory and his conclusion that the harm is irreparable both rest on the premise that Plaintiff's reputation was unblemished before the events at issue. The record does not support that premise. This substantially undermines the assumptions underlying his dissemination and damages opinions.

Plaintiff's own counsel has taken the opposite position in this same litigation. Twice, first in a Motion to Dismiss Counterclaims and Strike Exhibits filed March 9, 2026, and again in a Motion to Strike filed March 18, 2026, after Defendants amended their pleading, Plaintiff's counsel asked the Court to strike the exhibits attached to Defendants' Answer and Counterclaim on the ground that they were impertinent and scandalous, and had been selectively curated to smear Pastor Smothermon. Those exhibits consist substantially of the same category of pre-existing, publicly available coverage of political disputes and public controversies involving the Plaintiff that Mr. Fisher's report claims does not exist. Plaintiff's own counsel repeated characterization of that coverage as scandalous and reputation-damaging is itself an acknowledgment that pre-existing negative material about the Plaintiff was available and substantial, further undermining the premise on which Mr. Fisher's damages opinion rests.[18]

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[17]Critical Mention media-monitoring report, "Pastor Steve Smothermon," entries dated Dec. 4, 2024 ("Legacy Church, Steelbridge Ministries named in lawsuit alleging sexual abuse"), Dec. 5, 2024 ("THURS: NM Supreme Court decides lawmakers should settle dispute with executive branch…"), and Dec. 26, 2024 ("Alleged Victim Sues New Mexico Drug Rehab and Supporting Church…"), all coded Negative.

[18]Plaintiff's Motion to Dismiss Counterclaims and Strike Exhibits (ECF No. 40, filed Mar. 9, 2026) at 4–5 (arguing the exhibits attached to Defendants' Answer and Counterclaim were "impertinent" and "scandalous," and were

The Record Mr. Fisher Reviewed Undercuts, Rather Than Supports, His Damages Narrative

Mr. Fisher's own report recites a set of facts, drawn from the litigation record he reviewed, that cut against significant reputational harm, not toward it.[19]

- The photograph was posted for only about one to three hours before it was removed.
- Legacy Church's own staff identified the error and had it taken down the same day it was posted. Defendants' sworn interrogatory responses supply additional, more precise detail: Nathan Hughes, who maintains Defendants' website, removed the post after a Legacy Church employee flagged it by email to Defendants' customer-service account, and Keith and Kevin Hodge did not personally learn of the misidentification until after this lawsuit was filed (Declaration of Ronald D. Green, Ex. 1 (Defendants' Second Amended Responses to Interrogatory Nos. 3 and 6), ECF No. 53-1 (July 15, 2026)).
- The Plaintiff did not lose any book sales, media interviews, or speaking engagements.
- The Plaintiff did not receive any negative comments from his own parishioners.
- The church's income increased from 2024 to 2025.

Mr. Fisher records all of this in his case background summary, and then never returns to it. His damages analysis, his repair budget, and his compensation recommendation do not mention any of these facts again, let alone explain why a reputation that produced rising church income and no lost professional opportunities warrants a repair program in the hundreds of thousands of dollars and a compensation award reaching into the millions. An expert who is genuinely weighing the evidence has to account for the facts that run counter to his own conclusion. Mr. Fisher sets them aside.

Mr. Fisher Does Not Address the Streisand Effect Created by the Litigation Itself

There is a further gap in Mr. Fisher's dissemination analysis, and it cuts against his damages theory rather than for it. The photograph was live on Defendants' Facebook page for only a few hours before Legacy Church's own staff removed it. The filing of this lawsuit, by contrast, generated its own, far more long-lasting media coverage of the underlying mix-up, coverage that remains indexed and publicly accessible today. One example is a Headline USA article published on October 6, 2025, describing the lawsuit under the headline "Hodgetwins Sued for Confusing Conservative Pastor with Woke Cracker Barrel Executive."[20]

"selectively curated to smear" the Plaintiff); Plaintiff's Motion to Strike Lengthy, Speaking Affirmative Defenses and Exhibits, to Recharacterize Defenses as Counterclaims, and to Dismiss Recharacterized Counterclaims (ECF No. 45, filed Mar. 18, 2026) at 3 (renewing the same argument as to the 23 exhibits attached to Defendants' Amended Answer).

[19] Fisher Report at 19 to 20 (Lawsuit Information, General Defenses, summarizing the record, including that the Plaintiff did not lose any book sales, media interviews, or speaking engagements, that he received no negative comments from his parishioners, and that the church's income increased from 2024 to 2025).

[20] Ken Silva, Hodgetwins Sued for Confusing Conservative Pastor with Woke Cracker Barrel Executive, Headline USA (Oct. 6, 2025).

That article, which recounts the misidentification and quotes from the Complaint, has now been publicly available and searchable for the better part of a year, far longer than the original post was ever online. This is a familiar pattern in reputation management, sometimes called the Streisand effect: an effort to correct or contest an unwanted piece of content can itself generate broader and more lasting attention than the original content would have received on its own.

A reliable damages analysis has to ask which source, the several-hour post or the coverage the lawsuit itself generated, is actually responsible for whatever online association currently exists between Pastor Smothermon's name and this controversy, and it has to account for the fact that litigation-driven press coverage is not conduct attributable to the Defendants. Mr. Fisher's report does neither. He does not mention the Headline USA article or any other coverage of the lawsuit anywhere in his dissemination analysis, and he does not consider whether continued publicity about the lawsuit may be adding to, rather than repairing, whatever reputational exposure exists.

Plaintiff's own filings corroborate this point. In his Reply in support of the Motion for Leave, Plaintiff represents to the Court that any present-day online search for his name may be shaped by "the litigation's own public footprint," including case-related material published online since the post came down (Plaintiff's Reply in Support of Motion for Leave, ECF No. 56 at 11 (July 22, 2026)). That is consistent with and supports the Streisand-effect analysis above: continuing publicity generated by this litigation, rather than the one- to two-hour post itself, is a more likely source of any current online association between Pastor Smothermon's name and this controversy. Mr. Fisher's report does not engage with that possibility at all.

Mr. Fisher Repeatedly Crosses Into the Legal and Factual Conclusions He Says He Will Not Offer

Mr. Fisher tells the reader early in his report that he is not allowed to offer judgments or opinions on causation or liability, and that those questions are for the trier of fact to determine.[21] He does not honor that limitation.

Immediately after stating that disclaimer, Mr. Fisher spends several pages evaluating whether the Defendants' internet search process was reasonable. He walks through their use of incognito mode, their failure to check photograph metadata, their failure to perform a reverse image search, and he conducts his own Google search of the same name to compare results.[22] He then concludes that it is not plausible that anyone could have conducted a basic search and confused the two men, and states in his own words that it is my opinion that, at the very least, the Defendants' actions and inactions exhibited extreme carelessness.[23]

That is not reputation management commentary. It is a finding about whether the Defendants exercised reasonable care, which is the fault standard at the heart of a defamation claim. Mr. Fisher cannot tell the jury he takes no position on causation or liability and then, in the same report, tell the jury that the Defendants were extremely careless in the very conduct the jury will be asked to judge. The same problem appears at the close of his report, where he concludes that the Plaintiff suffered irreparable harm to reputation, without ever demonstrating that this event produced the

[21]Fisher Report at 29 (parenthetical preface to the Anatomy of Reputation Harm section).
[22]Fisher Report at 30 to 33 (Errors, Problems and Disputes of Defendants' Photograph Claims; My Own Research).
[23]Fisher Report at 43 (Conclusions and Opinions).

type or magnitude of persistent harm that the reputation-management literature associates with that term.[24] Irreparable harm is not a communications metric. It is the legal standard for injunctive relief. Mr. Fisher is not entitled to hand the jury legal conclusions dressed in the vocabulary of his profession while telling the court he is doing no such thing.

Mr. Fisher's Own Verification Research Suffers From the Same Defects He Attributes to the Defendants

In faulting Defendants for conducting their search in incognito mode, which Mr. Fisher describes as destroying the verification history, Mr. Fisher holds Defendants to a documentation standard he does not apply to himself.[25] His own "My Own Research" section does not disclose the date of his search, whether he was logged into a Google account, his location, or whether personalization or search history affected the results he obtained. All of these factors influence search and image results. Without that information, no one, including the Defendants or the jury, can verify or replicate what Mr. Fisher found.

More probative on the plausibility question is Defendants' contemporaneous, sworn account of the search Kevin Hodge actually ran on August 22, 2025, which represents that nearly every result for that search term returned Plaintiff's photograph rather than the Cracker Barrel executive's (Defendants' Response to Interrogatory No. 2). Unlike Mr. Fisher's own search, run without documentation and, as discussed below, nearly a year after the post, Mr. Hodge's sworn account is a first-hand record of the actual conditions he encountered at the time. It goes directly to the plausibility question Mr. Fisher purports to answer. A reliable methodology accounts for evidence that runs counter to its own conclusion, wherever that evidence originates and however long after the fact it surfaces. Mr. Fisher's report does not address it at all.

Mr. Fisher's underlying premise, that browsing in incognito mode is itself a mark of carelessness or concealment, also does not hold up. Incognito mode is a routine, everyday privacy feature. [26]

Plaintiff's characterization of incognito mode as something that bypasses standard internet browsers and destroys the verification history misdescribes the technology on both counts. Incognito mode is not separate from or evasive of a standard browser; it is a native, built-in setting within standard browsers such as Chrome, Safari, and Firefox, accessible from the same menu used to open a new tab or window.[27] It does not bypass the browser in any sense. Nor does it

[24]Fisher Report at 44 (Report Summary).
[25]Fisher Report at 30 (Errors, Problems and Disputes of Defendants' Photograph Claims, describing Defendants' use of incognito mode as destroying the verification history).
[26] See Hana Habib, Jessica Colnago, Vidya Gopalakrishnan, Sarah Pearman, Jeremy Thomas, Alessandro Acquisti, Nicolas Christin & Lorrie Faith Cranor, *Away From Prying Eyes: Analyzing Usage and Understanding of Private Browsing*, Proceedings of the Fourteenth USENIX Symposium on Usable Privacy and Security (SOUPS 2018) 159, https://www.usenix.org/conference/soups2018/presentation/habib-prying, finding, based on monitored browsing data from over 450 participants, that private browsing is commonly used for practical, everyday, and security-related purposes rather than primarily for concealment.
[27] See Google, Browse in Incognito Mode, https://support.google.com/chrome/answer/95464, explaining that Incognito is a built-in browsing mode and that, while it limits what is retained locally on the device, it does not make browsing activity invisible, as websites visited, including Google itself, and network administrators may still observe activity during an Incognito session

destroy anything, as Fisher says in his report.[28] No verification history is deleted or erased, because none is created in the first place. The feature declines to save new local browsing data, including history, cookies, and cache, for that session. That is a materially different claim than the one Plaintiff makes, which implies the deliberate erasure of evidence that otherwise would have existed. Incognito mode also does not prevent Google's own servers from logging the query, nor does it prevent a screenshot from being taken during the session; it affects only what is retained locally on the device afterward. A characterization of this basic, everyday feature as something irregular, evasive, or destructive of evidence misstates how it works and undermines the premise that Defendants' use of it reflects an intent to operate outside normal browsing conduct.

There are common, non-culpable reasons a person selects it, including eliminating the influence of the user's own prior searches and personalization on the results returned, avoiding cross-contamination on a shared or public computer, and limiting ad tracking. None of those ordinary motivations has anything to do with an intent to deceive or a disregard for accuracy. If anything, removing the influence of one's own search history is a more neutral way to generate results, not a less reliable one. Mr. Fisher's report treats Defendants' choice to browse in incognito mode as inherently suspicious without acknowledging any of these ordinary explanations or explaining why they do not apply here, which is the same one-sided treatment of the evidence that runs through the rest of his report.

That gap matters here in particular because Mr. Fisher ran his search around the time he prepared his report, dated July 16, 2026, nearly eleven months after the August 22, 2025, post. After this lawsuit, its filings, and the underlying controversy had already generated their own online footprint. A methodologically sound comparison would have made some effort to reconstruct what search results looked like at or near the time of the post, rather than running the same query almost a year later and treating the results as equivalent to what Defendants would have seen.

Tools exist to make this kind of comparison rigorous rather than assumed. The Internet Archive's Wayback Machine preserves historical snapshots of individual web pages, and its Crawl Data Index Application Programming Interface can be queried to retrieve the earliest capture date for almost all Uniform Resource Locators (URLs). Applying that tool to the pages Mr. Fisher's search surfaced would show, for each one, whether it existed and was indexable as of August 22, 2025, or whether it entered the public record only afterward. Published and last-modified date metadata embedded in news articles and blog posts provides a second, independent check on the same question. Search-interest tools such as Google Trends can further show whether search volume for the name in question changed materially after the Facebook post and the subsequent litigation, which would itself indicate that the search landscape Mr. Fisher was examining in July 2026 was not the same landscape that existed in August 2025. None of this requires exotic technology; it is standard due diligence for reconstructing a historical online footprint, and it is the kind of

[28] Fisher Report stating that Defendants' use of incognito mode "bypasses standard internet browsers" and "destroys the verification history". Neither characterization is accurate. Incognito mode is a native, built-in setting within standard browsers such as Chrome, Safari, and Firefox, not a tool separate from or evasive of them. It does not destroy any verification history, since none is created in the first place; the feature declines to save new local browsing data such as history, cookies, and cache once the session ends.

verification a reliable methodology would undertake before treating a search run eleven months after the fact as a stand-in for what existed at the time. Mr. Fisher did none of it.[29]

Mr. Fisher's presentation of his own search results is also internally inconsistent. He states that he reviewed "the first 10 listings" returned for the search, but then summarizes his findings by stating that "four of the six listings were about the Plaintiff, two of the listings were about the Cracker Barrel executive...and four were about neither of the two individuals."[30] Four plus two plus four is ten, not six. An expert asking a jury to treat his own manual review as more reliable than Defendants' search should be able to describe his own results accurately.

The same is true of his review of the image search results. Mr. Fisher states that his search returned two rows of five photographs each, ten images in total, but his substantive analysis addresses only the five images in the top row; he offers no discussion of what appeared in the second row.[31] Yet he builds his conclusion that it is "not plausible that anyone could have conducted basic research on Google...and confused the two of them" on a review of only half of the images he says his own search returned.

Mr. Fisher's Own Case Count, Jurisdictional Claims, and Years of Experience Do Not Add Up

Mr. Fisher's description of his own professional history shows the same imprecision found in his review of his own search results. In three places, he states he has served as an expert witness in 133 cases over the past twenty years; in his Methodology section, he instead states 126 cases.[32] Mr. Fisher does not explain the seven-case discrepancy, and the report does not indicate which figure is correct.

The same problem recurs with the states in which Mr. Fisher claims to have testified. He states in different passages that he has served as an expert witness in 32 states, or in 32 states plus the District of Columbia, but the state-by-state list in his Expert Witness section names only 28.[33] Four states he claims cannot be identified anywhere in the report. Because Mr. Fisher's stated experience is the foundation for the opinions he asks the jury to accept, these unexplained discrepancies in facts entirely within his own knowledge bear on the reliability of his analysis of the more contested facts in this case.

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[29] Article structured data (the date published and date modified fields) is the standard mechanism publishers use to tell search engines when content was created or last changed. See Google Search Central, Article Structured Data, https://developers.google.com/search/docs/appearance/structured-data/article. Google Trends' Explore tool measures relative search interest for a given term over a selected time period and can show whether interest in a name or topic changed materially after a given date. See Google Search Central, Get Started with Google Trends, https://developers.google.com/search/docs/monitor-debug/trends-start

[30] Fisher Report at 30-31 (My Own Research).

[31] Fisher Report at 31 (My Own Research).

[32] Compare Fisher Report at 3 (Assignment, "involved in 133 cases in 32 states"), and id. at 4 (General Summary, "133 cases in 32 states and the District of Columbia"), and id. at 5 (Expert Witness, "133 cases…in 32 states…plus the District of Columbia"), with id. at 22 to 24 (Methodology, "126 cases as an expert witness").

[33] Fisher Report at 5 (Expert Witness section). The named list reads: California, New York, Florida, West Virginia, Georgia, North Carolina, Mississippi, Virginia, Utah, Tennessee, New Mexico, Nevada, Hawaii, Washington, Colorado, Minnesota, Maryland, Indiana, Delaware, Massachusetts, Michigan, Wisconsin, Ohio, Louisiana, Kentucky, Arizona, Texas, and Alabama, twenty eight states, plus the District of Columbia.

Mr. Fisher's claimed years of experience suffer from the same defect. His Assignment section states that he spent "42 years operating my own communications firm, Fisher & Associates, Inc.," and, separately, that he has "a 42-year background in representing law firms."[34] But his own Professional Experience listing states the firm was founded in 1978, forty-eight years before his report's July 16, 2026 date, not forty-two. Elsewhere in the same report, he describes his career as a "half-century career," a "five-decade background," and, in his closing summary, "45 years" as a public relations professional.[35] None of these figures reconcile with one another or with the founding date he himself supplies, a fact that requires no judgment call to verify.

Mr. Fisher Offers Clinical Opinions He Is Not Qualified to Give

Mr. Fisher is a communications professional. He is not a psychologist, psychiatrist, or physician, and his report does not claim any such credential. That does not stop him from describing the Plaintiff's reaction to the post in clinical terms, stating that the Plaintiff experienced significant forms of mental trauma, including anguish, fear, depression, anxiety, and apprehension.[36] Naming specific psychological conditions and calling the reaction trauma is a diagnostic-sounding conclusion. It belongs, if anywhere, in the report of a mental health professional who actually evaluated the Plaintiff, not in a reputation management report.

Mr. Fisher then adds that the Plaintiff has been coping with an ongoing back problem and, in the same sentence, states that it is not attributable to the Facebook post.[37] If it is not attributable to the post, it has no place in a report assessing harm caused by the post. Including it anyway suggests an effort to thicken the damages narrative with detail that Mr. Fisher himself admits does not belong there.

Mr. Fisher's discussion of the Plaintiff's family follows the same pattern. He writes generally that family members are often collateral damage when one member has severe reputation damage, and that this can lead to marriage strain, divorce, and children being harassed, bullied, or physically attacked.[38] He offers this as a general observation from his career, not as something the record shows happened to Pastor Smothermon's family in this case. A general observation about what sometimes happens to other people's families in other cases is not evidence of what happened to this family, and Mr. Fisher does not claim otherwise.

[34]Compare Fisher Report at 3 (Assignment, "42 years operating my own communications firm, Fisher & Associates, Inc."), and id. at 4 (Litigation Experience, "a 42-year background in representing law firms"), with id, at 5 (Professional Experience, listing "Fisher & Associates, Inc. PR Firm (Founded 1978) President"). The Report is dated July 16, 2026, forty-eight years after the firm's stated 1978 founding.
[35]See Fisher Report at 3 (Assignment, "half-century career"); id. at 28 (General Overview, "My five-decade background…along with my 42 years of experience in litigation support"); id. at 44 (Context and Perspective, Report Summary, "as a public relations professional for 45 years").
[36]Fisher Report at 36 (Impact on Mental and Physical Well Being).
[37]Fisher Report at 36 (Impact on Mental and Physical Well Being).
[38]Fisher Report at 35 (Impact on Relationships).

Mr. Fisher Abandons Professional Objectivity When It Suits Him

Mr. Fisher's report states that fairness has been my guiding principle, and that his assessments are objective and not biased on behalf of the litigant who retained him.[39] His discussion of a website maintained by defense counsel does not read that way.

Describing a graphic on that website, Mr. Fisher labels his own paragraph Personal Opinion. Then he writes that the Defendants maliciously doubled down on their original error by throwing more salt into the wound through what he calls this demonic graphic depiction of the pastor.[40]

Setting aside whether that graphic is fair comment by defense counsel, which is not a question for a reputation expert to resolve, the language Mr. Fisher chooses. Fisher writes, "Given that the Defendants were the ones who made the careless mistake in their Facebook post that allegedly caused an "innocent" individual considerable reputation harm, they (assumingly they were aware of their attorney's website on their case and approved its content) maliciously double-downed on their original error by "throwing more salt into the wound" through this "demonic" graphic depiction of the pastor. Instead of being contrite for their original error and any harm it might have caused, they compounded it by continuing to sully the Plaintiff's"

Mr. Fisher's own report tells the reader that he flagged this passage as personal opinion because, evidently, he recognized it was different in kind from the rest of his report. That recognition is telling. If an expert has to label part of his own report as personal opinion to distinguish it from his professional analysis, the more important question is why the rest of the report, which is not so labeled, is not held to the same standard.

Mr. Fisher's Own Prior Sworn Opinions Point the Other Way

Mr. Fisher has served as a reputation expert on behalf of both plaintiffs and defendants, including as the defense expert in E. Jean Carroll v. Donald J. Trump, where he addressed many of the same questions of reputational harm at issue here. Comparing that report to the one he has submitted in this case is instructive, because on at least three points, the positions Mr. Fisher took on behalf of a defendant in Carroll cut directly against the opinions he offers on behalf of the Plaintiff here.

An established, positive reputation is more resilient to a single negative statement, not less. In Carroll, Mr. Fisher opined that a person with an established positive brand and a developed reservoir of goodwill can withstand attacks, especially from a controversial source, and that it is the person with no such reservoir, a clean slate with no counterbalance, who is hurt the most.[41]

By Mr. Fisher's own account in this report, Pastor Smothermon has led a single church for nearly a quarter century, built a congregation of roughly 20,000 members across nine campuses, reached an estimated 28 million people through social media, amassed roughly 91,000 YouTube subscribers, and authored two books. Under the very principle Mr. Fisher articulated in Carroll, that kind of long-established, well-documented reputation should be relatively resilient to a single

[39]Fisher Report at 4 (Assignment section, describing Fisher's stated commitment to fairness and objectivity).
[40]Fisher Report at 33 to 34 (Continuing Reputation Harm).
[41] Rebuttal Expert Report of Robert J. Fisher, E. Jean Carroll v. Donald J. Trump, No. 20-cv-7311 (LAK)(JLC) (S.D.N.Y., dated Nov. 14, 2022) (hereafter "Fisher Carroll Report"), at 8 (Reputation and Reputation Damage).

post that was corrected within several hours. Mr. Fisher does not mention, apply, or even acknowledge that principle anywhere in this report.[42]

A polarizing figure with a partisan following generates discounted belief rather than full-value exposure. Mr. Fisher's Carroll report reasoned that, because the defendant there was controversial and often bombastic, people were less likely to believe him. It went on to calculate that even if the opposing expert's own numbers were credited, a majority of the audience would not believe anything he said. Mr. Fisher's own description of the Hodgetwins in this report, provocative, blunt, and satirical in style, and directed at a base audience of conservative followers, fits the same profile of a polarizing communicator whose statements a significant portion of the audience discounts at first glance. Mr. Fisher does not apply that same discount here. Instead, he treats Defendants' full 6.3 million follower count as though it represents at-risk exposure, without the audience-receptivity adjustment his own prior report insisted was necessary.[43]

Mr. Fisher's Carroll report states that, as a reporter trained in the fair and balanced tradition, he believes the Case Background section of any expert report should present both sides equally, and he criticized the opposing expert there for what he read as one-sided language. Measured against that same standard, Mr. Fisher's own choice of words in this report, describing Defendants' conduct as malicious and a graphic on defense counsel's website as demonic, is difficult to reconcile with the standard of balance he himself set out as a mark of a reliable expert report.[44]

An expert's methodology should not change based on the identity of the party signing the retention letter. Mr. Fisher applied one set of principles when a well-known public figure's reputation withstood attacks in Carroll v. Trump, and a different, unstated set of principles when a well-known public figure's reputation is said to have been irreparably harmed here. That inconsistency itself is evidence that Mr. Fisher's conclusions track the position of whichever party retained him, rather than a fixed, reliable methodology.

The Reputation Repair Budget of $325,000 to $350,000 Is Not Tied to Anything.

Mr. Fisher recommends a two-year reputation repair program and estimates its cost, based on his prior experience, in the range of $325,000 to $350,000.[45] He then tells the reader, in his own words, that although he has projected costs for each activity and program element, he will not delineate them in this report at this time.[46]

This is the opposite of how a market-based cost estimate is supposed to work. One commonly accepted approach in this field is to price a proposed program the way a media buyer prices a campaign: channel by channel, using current advertising and media rates, tied to the specific audience the campaign needs to reach. That produces a number the other side, and the jury, can actually test and question. Mr. Fisher instead offers a single blended range with no components,

[42] Fisher Report at 10 to 11 (Church Background; Plaintiff's Background).Robert Fisher - Trump Case.pdf
[43] Fisher Carroll Report at 10 to 11 (Target Audiences); Fisher Report at 9 (Defendants' Background), describing Defendants as delivering their commentary "in a blunt, satirical style that is directed towards their base audience of conservative followers."
[44] Fisher Carroll Report at 3 (General Overview).
[45]Fisher Report at 42.
[46]Fisher Report at 41 to 42.

no rate card, no audience size, and no channel plan, and then tells the reader directly that he is choosing not to break it down.

The only outside validation Mr. Fisher offers for this kind of unitemized figure is a quotation from what he describes as a recent case, in which, in his telling, a judge opined that his report there laid out the bare minimum of support for his damages figure.[47] Mr. Fisher does not name the case, the court, or the date, and offers no citation anyone could use to verify the quotation. An expert asking a jury to trust an unverifiable, uncited quotation as proof that his approach has been judicially blessed is asking the jury to take his word for it twice over, once for the number. Once for the authority he says supports it. And even accepting his account of that ruling at face value, a court describing prior supporting work as the bare minimum is not a description any expert should want to repeat, let alone rely on, in a report that offers even less detail than the one the court was describing.

Independent, data-driven work by another defense-side reputation consultant in this same case illustrates just how far short Mr. Fisher's report falls. Matthew Shupe, a reputation-management consultant separately retained by Defendants, reviewed this matter and issued his own report on July 16, 2026. Using commercial monitoring services, including Meltwater and Grabien, together with direct searches of major search engines and social platforms, Mr. Shupe tracked mentions of Pastor Smothermon's name across social media, news, broadcast, and search results, both before and after the Facebook post. This is precisely the kind of media monitoring, audience tracking, and persistence analysis that I identify as missing from Mr. Fisher's report: a count of actual mentions, a check of what currently surfaces in search results, and an inquiry into whether pre-existing coverage explains any negative association, all done with tools built for that purpose rather than assumed from a communications adage.

Mr. Shupe found no lasting connection between the Plaintiff and the post. The only search results tying Pastor Smothermon to Cracker Barrel are articles and case listings about this lawsuit itself, and the pre-existing negative coverage of Pastor Smothermon that does exist, including reporting on the Steelbridge litigation and his political statements from the pulpit, predates the post and has nothing to do with it. On that record, Mr. Shupe concluded that Pastor Smothermon suffered no reputational or brand harm from the post and recommended no further repair action of any kind (Expert Report of Matthew Shupe, July 16, 2026).

I have reviewed Mr. Shupe's report. I reached my own opinions about Mr. Fisher's report independently. I do not adopt Mr. Shupe's findings as my own. What his report demonstrates is that the analysis Mr. Fisher's report is missing was not somehow unavailable to him. Another expert working from the same set of facts had no difficulty gathering current, checkable data on dissemination, search visibility, and pre-existing coverage, using tools any reputation professional could have used. Mr. Fisher's failure to do the same is not a limitation of the field; it is a gap in his report.

The Compensation Recommendation of $2.65 Million to $5.589 Million Has No Basis Whatsoever

[47]Fisher Report at 37 (Program Validity).

Mr. Fisher's report concludes with a recommendation that Pastor Smothermon be compensated for pain and suffering in a range of $2.65 million to $5.589 million.[48] There is no calculation anywhere in the report that leads to those numbers. There is no comparison to any other case, no formula, no multiplier applied to any quantified loss, no reference to lost income, lost opportunities, or any other measurable economic harm. The paragraph that announces the range is the same one that first raises a dollar figure. The number simply appears.

This matters for two reasons. First, as a matter of reliability, an expert opinion that produces a specific number twice, without showing any arithmetic or comparative analysis behind it, cannot be tested or verified by anyone, including the jury asked to rely on it. Second, as a matter of scope, Mr. Fisher defines his own assignment at the outset of his report as assessing reputation damage and recommending measures to restore reputation.[49] He does not define his assignment as calculating a pain-and-suffering award. A dollar figure for pain and suffering is a determination for the jury to make based on the evidence as a whole, not a number for a communications consultant to hand down as though it were the output of a professional calculation. Having told the reader that questions of liability and causation are not his to answer, Mr. Fisher does not explain why a dollar figure for pain and suffering is any more within his expertise. It is not. In my opinion, this opinion falls outside the expertise of a communications professional and is unsupported by any disclosed methodology.

A Reliable Approach Looks Different

The approach I have described above is not something I invented for this case. It is the approach commonly used by experienced reputation-management professionals, including my own practice and those of colleagues with whom I work, such as Reputation Advisors International. I use it in my work whether we are advising a client directly on repairing a damaged reputation or, as here, serving as an expert witness reviewing someone else's work. The method does not change depending on which side of a case I am on. Nothing goes into a report or a dollar figure that the other side, and the jury, cannot see and check for themselves.

When I take on an assignment, I apply the same three-step process no matter which side has retained me. First, I ask whether the underlying facts are of the kind that would lead an ordinary person to think less of someone, because not every unflattering association constitutes reputational harm. Second, and only after that threshold is met, I determine the actual extent of online dissemination: what was said about the matter on social media, how many publications carried the story, whether the story remains accessible today, how prominently it surfaces in search engine results, and where it spread. I supplement the commercial monitoring tools described below with direct searches of platforms such as X, Facebook, Reddit, and YouTube. Only once that investigation is complete do I develop a reputation repair recommendation grounded in what the record actually shows, rather than in what a communications adage predicts it should show. Mr. Fisher's report skips directly from the first step to a dollar figure without ever completing the second.

That starts with counting what actually happened, instead of guessing at it. A reliable analysis identifies and counts the actual mentions of the event across traditional and social media, using

[48]Fisher Report at 42.
[49]Fisher Report at 3 (Assignment section).

commercial monitoring tools where they are available. Where those tools have gaps, a careful expert notes them and explains how the gaps were filled, rather than skipping the count altogether.

From there, a reliable analysis turns that count into an audience or publicity value using objective figures, things like viewership, circulation, or social media follower counts, the same figures advertisers themselves rely on to price a media buy. That is different from simply telling a jury that something felt widespread. A number built this way can be checked. A feeling cannot.

That three-step process can be summarized as a short checklist: (1) determine whether the underlying facts are of a kind that would lead an ordinary person to think less of someone; (2) determine the actual extent of dissemination, including how many publications carried the story, whether it remains accessible today, and how prominently it surfaces in search results; and (3) develop a repair recommendation grounded in what the record shows, priced using current market rates for the specific channels and audience involved. Measured against that checklist, Mr. Fisher completes only the first step, and even that only partially, since he does not first establish Plaintiff's pre-event reputational baseline. He does not complete the second step: he identifies no publications, no persistent online presence, and no search-result data. He does not complete the third: his proposed repair budget is not itemized, priced to any channel, or tied to any defined audience.

A reliable analysis also checks persistence rather than assuming it. That means looking at whether the content is still visible in a search for the person's name, whether it is still referenced in anything new, and whether it has actually remained in public view over time. Some negative content fades within days. Some does not. The only way to know which one you are dealing with is to look, not to reach for a general saying about reputations and bells that cannot be unrung.

A reliable analysis also respects the boundaries between professions. A communications expert can describe how information spreads and how audiences form impressions. A communications expert should not diagnose depression or anxiety; that is a question for a licensed clinician who has actually evaluated the person. A communications expert should not decide whether someone acted carelessly or with reckless disregard for the truth; that is a question of fault for the jury. And a communications expert should not slip personal opinion into an expert report at all. Keeping those lines in place is not a technicality. It is what allows a jury to trust that the rest of the report was written with the same discipline.

Finally, when a repair program is proposed, a reliable analysis prices it as an actual advertising or public relations campaign would be bought, channel by channel, at current market rates, sized to the audience the record shows was actually reached. That produces a budget built out of line items, digital spend, search and social spend, each one tied to a rate card and an audience number, so that anyone reviewing it can see exactly where every dollar goes and why. A single blended number with no components behind it is not a budget. It is a guess dressed up as one. None of that is present in Mr. Fisher's report.

Conclusion

Taken as a whole, Mr. Fisher's report does not reflect the reliable, checkable application of accepted methodology that the reputation repair field requires and that I know, from experience, courts expect of expert testimony. It relies on generic adages instead of case-specific facts. It

asserts a theory of uncontrolled spread without identifying a single instance of actual spread. It makes empirical claims about audience belief and perception without applying any of the empirical tools- media monitoring, audience analytics, publicity valuation, sentiment assessment, search visibility, content analysis, stakeholder assessment, or survey research- that reputation professionals have available to test such claims. It recites facts, including rising church income and no lost professional opportunities, that undercut its own conclusion, and then never engages with them again. It crosses, more than once, into the very legal and factual territory Mr. Fisher tells the reader he will not enter, labeling the Defendants extremely careless and their conduct malicious. It offers clinical-sounding conclusions no communications professional is qualified to give. Even the one piece of original research Mr. Fisher did perform, his own search of the Plaintiff's name, was undocumented as to date, location, and search conditions, was run nearly a year after the fact without any attempt to reconstruct what the search landscape looked like at the relevant time, and contains an internal counting error that no one, including Mr. Fisher, appears to have caught. And it arrives at two dollar figures, $325,000 to $350,000 for repair and $2.65 million to $5.589 million for compensation, that are supported by nothing more than Mr. Fisher's own say-so.

The central difficulty with Mr. Fisher's opinions is not merely that I disagree with them. It is that the methodology he discloses does not permit another qualified reputation-management professional to reproduce, test, or independently evaluate his conclusions. In my field, reproducibility is a hallmark of reliable professional analysis. Because Mr. Fisher does not disclose the analytical steps connecting the facts of this case to either his repair budget or his damages opinions, those opinions cannot be independently verified.

It is my opinion, to a reasonable degree of professional certainty in the field of reputation management, that Mr. Fisher's report does not meet the standards this field applies to its own conclusions, that it is not merely incomplete but irreproducible at every point that matters to his conclusions, and that the dollar figures in his report are not tied to any specific fact, calculation, or comparable analysis in the record of this case.

Reservation of Rights

This report reflects my opinions based on the materials reviewed to date. If I receive additional documents or information relevant to this case, I reserve the right to supplement, refine, or expand upon the opinions offered here.

Respectfully submitted,

Eric Rose



August 14, 2026

EXHIBIT 3

Excerpt of Deposition of
Robert J. Fisher

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.	Docket No.: 2:25-cv-01858-APG-BNW Los Angeles, California Thursday, August 6, 2026 10:06 a.m.

VIDEOTAPED DEPOSITION OF

ROBERT FISHER

Taken by the Defendants

Breyan Sims, CER-2648

Proceedings recorded by electronic sound recording; Transcript produced by transcription.

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(Defendants' Exhibits 1 through 14 were attached to the original transcript.)

THE VIDEOGRAPHER: This is tape number 1 to the videotaped deposition of Robert Fisher in the matter of Pastor Steve Smothermon versus Hodgetwins, LLC, et al., being heard before the United States District Court, District of Nevada, case number 2:25-CV-01858-APG-BNW. This deposition is being held at 444 South Flower Street, Suite 2140, Los Angeles, California 90071, on August 6, 2026. The time is 10:06 a.m. My name is Ryan Uno, and I am the videographer.

Will counsel and all parties present please state your appearances and whom you represent?

MR. RANDAZZA: Marc John Randazza. I'm here for the defense, and with me is my summer associate, Richard McLaren, who is a student at Georgetown University Law Center. It's his --

Your first depo, right?

MR. MCLAREN: Yes, sir.

MR. RANDAZZA: All right. I probably won't do it right, but, you know, you can learn from my mistakes.

MS. WESTBROOK: Nicole Westbrook on behalf of the plaintiff and Bob Fisher today.

THE VIDEOGRAPHER: Will those appearing on Zoom please introduce yourself?

MR. RANDAZZA: I'm going to bet Ron Green.

MR. GREEN: This -- I'm Ron Green, Marc's

partner at Randazza Legal Group in Las Vegas, Nevada.

MS. NGUYEN: My name is Amy Nguyen. I'm the paralegal with Randazza Legal Group.

THE RECORDER: Mr. Jackson?

THE VIDEOGRAPHER: Jackson is not responding.

THE RECORDER: Mr. Jackson, are you present?

MS. WESTBROOK: The show must go on.

THE RECORDER: My name is Breyan Sims, notary public in the state of California. I will be capturing the verbatim record of today's proceeding using electronic audio equipment, a computer, and specialized recording software, which is not a form of stenography. The witness is located in Los Angeles, California, and has confirmed his identity with a driver's license issued by California Department of Motor Vehicles.

Absent any objections at this time, counsel and the witness agree to my administration of the oath to the witness and the final transcript may be used for all purposes allowed by the California Code of Civil Procedure.

Hearing no objections, this will constitute agreement and stipulation of such, and I will now swear in the witness.

Mr. Fisher, can you please raise your right hand to be sworn?

(Witness sworn.)

THE RECORDER: Counsel, you may begin.

ROBERT FISHER,

Having first been duly sworn, testified as follows:

EXAMINATION

BY MR. RANDAZZA:

Q. Okay. Mr. Fisher, or Bob -- we've -- we've established we'll be familiar.

A. All right.

Q. Okay. Bob, you've said you've done this like 40 times, right?

A. Yeah, 35 to 40.

Q. Okay. So I'm just going to ask you some questions that might seem pedantic, but I --

A. Yeah.

Q. -- I just got to start off with them. Probably everybody does, right?

A. It's your -- your program.

Q. Okay.

A. Yeah.

Q. So you understand your oath?

A. I do.

Q. Okay. You understand it's the same oath you take before a jury?

A. I do.

Q. Okay. And if you don't understand a question, will you tell me that?
A. I will.
Q. Thank you. And if you answer, is it -- can I assume you understood the question?
A. If the answer makes sense, yes.
Q. Okay. And is there any reason today you can't testify fully and accurately?
A. No.
Q. Not on any medication?
A. Got a full night's sleep.
Q. Got a full night's sleep? Okay.
A. Uh-huh.
Q. Didn't party too hard last night?
A. No.
Q. Okay.
A. Well, actually, I had a party for my granddaughter, but she was going back east to Cornell for school, so we had a going-away party for her.
Q. Okay.
A. But I didn't drink, so I'm -- I'm good.
Q. All right. Did you meet with Counsel to prepare for today?
A. By phone. We spent an hour by phone yesterday.
Q. Okay. And who was present?

A. Myself on my end. I'm not sure who was present on her end, but just -- it -- it was just a one-on-one conversation with her.
Q. By her, do you mean Ms. Westbrook?
A. Yes, I do.
Q. Okay. Did you review anything to prepare for today?
A. Yes.
Q. Can you tell me what?
A. My -- I mean, not my deposition, my expert report. It's the only -- only thing I reviewed.
Q. And did anybody tell you how to answer any questions today?
A. No. And I probably wouldn't have listened to them anyway, but.
Q. You said you reviewed your report. Is that complete and accurate as of today?
A. I believe so. I haven't -- now, that report was filed, what, three, four -- three week -- three or four weeks ago. I haven't seen any new discovery since then, so yeah, I would say that it's --
Q. Okay.
A. -- it's accurate.
Q. And are there any corrections you want to make to it before we start in earnest?
A. No. No, not that --

in -- instead of being, you know, a rifle on the line or being a mechanic, I weaseled my way into -- so I was -- during my whole two years in the Army, I worked in the Public Information Office. So I was essentially doing PR for two years. I was in West Germany. I didn't get sent to -- I spent a half a year in the United States and a year and a half in Germany, West Germany at the time.

Q. And so now, what is your -- what percentage of your current work is expert witness work versus PR clients?

A. Oh, 100 percent expert witness. I haven't done -- from 2018 to maybe '22, I'd have law firms -- my firm was the first firm in the country representing the legal profession. Back in '78, when the Bates versus Arizona decision came down, I was the first firm. In fact, I was acknowledged throughout the country with the legal profession as being the pioneer in -- in, you know, PR and marketing for law firms. I mean, I spoke to the ABA's national convention. I wrote the cover story for their national -- but anyway, yeah.

So I -- I did -- I'd have law firms call me, you know, up until about '22 and say, you know, we just won a $50 million case. Will you put out a news release on it, or -- I stopped doing press conferences to announce -- you know, I used -- I've probably done 80, 90 press

And -- and I was watching a tape of Rather interviewing me. They said -- they interviewed me if he was found guilty and if he was found innocent with the thought is they would put whatever -- you know, whatever. And so I was watching a tape of his interview on his show with me when -- when the -- when they cut to Clinton walking down the aisle to give a State of the Union speech. So, you know, it's interesting. It's -- it's interesting.

But yeah, I -- to answer your question, yeah. I've -- I've probably done about 40 reputation damage repair programs around the country --

Q. For law firms?

A. Well, for their client -- or for -- you know, it got to a point where regular people would call me or companies or businesses and -- but yeah. I did some -- I did probably 40 repair -- I did one internationally, actually. I -- I did one program internationally as well, but I did a lot of programs to try to restore people's image.

Q. Could you identify the last one you did?

A. Oh, no. I wouldn't know. Probably around turn of the century. Probably around 2000, in that area.

Q. Who was that for?

A. Pardon?

Q. And can you tell me who that was for?

A. I don't remember. I mean, I did so many of them. The timeframes, I -- especially in the '80s and '90s, they were doing them, you know, almost every month, it seemed like. And I -- I can't remember the sequence off the top of my head. I mean, I -- as I -- as I said, it's -- it's -- it might have been the -- the brothels in Nevada. I saved the brothel industry in Nevada. There wouldn't be one -- there wouldn't be brothels in Nevada if it weren't for me.

Q. What do you mean?

A. Well --

Q. I mean, I hope that doesn't mean what it sounds like.

A. It's simple. When the AIDS -- when the AIDS thing came out, the -- the government never liked brothels and they wouldn't allow them in major cities like Reno and Vegas. So they only allowed them in these old cow town counties. And they said, well, we can't keep them -- legally we can't stop them, but we can keep them out in the farms -- you know, out in the farm areas. So they were looking for any excuse.

Well, when AIDS came along and the thought was that -- that, you know, men went into the brothels, had sex, and went back to the girlfriend and their wife, and spread AIDS all over, they decided to eliminate

regular four- year degree, I had a couple of psychology classes.
Q. Do you remember the title of those courses?
A. No.
Q. They were --
A. Interesting enough, I even had some cases on libel. I -- I had some legal -- legal cases in college on -- on libel and defamation and whatever that I took. I don't know why I took them. I think it was because they interested me and they were interesting.
Oh, I know, journalism. Because of my journalism background, they required -- the PR Department as part of the Department of Journalism and Advertising -- I was required to take a couple of cases on, you know, media libel, that kind of thing.
Q. Do you mean classes?
A. Classes, yeah.
Q. Okay.
A. Courses.
Q. Courses. Okay. So what year was that?
A. Well, I went to San Jose State from the fall of '64 to the spring of '66. I quit two years, and as I said, I went back to school in the -- in the fall of '64, and then I -- I was there a year and a half at San Jose.
Q. Okay. So those were undergraduate legal survey

classes?
A. Oh, yeah. Yeah. And as I said, I've never taken any graduate courses or anything, right? Back in those days, they didn't have graduate -- as I said, there was only five schools in the nation that even had a PR degree, and that was an undergraduate degree. So there was no one that had -- back in those days, there were no advanced, like, master degrees or anything like that. Didn't exist.
Q. So since 1966, have you taken any courses on law of any kind?
A. Well, I didn't have to. I mean, I --
Q. Well, I'm not saying you did.
A. Well, no. I mean, I was in the field. I -- I represented 138 law firms over -- over the years, and I was involved in litigation in cases. I mean, I handled the court of public opinion. While the court was -- while the lawyer was handling the court of law, I was handling the court of -- which was, frankly, more effective in most cases. The -- the court of public opinion is more effective in legal than the laws because defendants don't give a darn about going to a trial. If they lose the case, they lose a little money or they lose -- I used to represent Mattel for -- I handled Mattel's PR.

A. Yeah. I'm -- I'm -- you know, I -- I go to church every Sunday, but I -- I -- no, I'm not a member of the Baptist. Although I have a case against the Southern Baptist Convention right now, which is a --
Q. You're suing them?
A. Yeah. I'm -- I'm representing the plaintiff in the cases that you know -- and they're the largest religious organization in the United States, as you know. They --
Q. What do you mean "representing the plaintiff"?
A. Well, there's a lawsuit. A plaintiff is suing the Southern Baptist Convention. I'm representing the plaintiff in that case.
Q. As a -- not as a lawyer?
A. Yeah. I've done the deposition. The trial's going to be in November. Pardon? No. As an expert witness.
Q. Oh, okay.
A. Yeah.
THE RECORDER: And just to -- to remind you guys, try to speak one at a time. You guys are kind of stepping on each other's questions and answers.
MR. RANDAZZA: I'm sorry. It's -- it's too friendly.
THE WITNESS: It's a conversation.
MR. RANDAZZA: Yeah. I'll do better.
THE WITNESS: We just did it now. Yeah.

go up, that she was persona non grata to the point of physical violence. And she wound up moving to Mexico, changing her name, and working for half of what -- she was getting 300,000 a year or something like that -- wound up getting a job for 80,000 a year in Mexico under an assumed name because that's how much she was -- how scared she was and what was going on.

Yeah. I'll -- I'll send Ms. Westbrook the information on it and you can --

Q. Okay. Thank you.

A. Yeah. I think the case -- I never testified. They -- in fact, I never did a deposition either. I -- I -- the case settled.

Q. Did you do a report?

A. Yeah. I always do a report. So I believe I did a report. Yeah. I'm pretty sure I did a report. I do a report in 95 percent of the cases I do. It went long enough for me to do a report, but they -- the case settled eventually and --

Q. Was your report just on the damages caused by the alleged defamation?

A. Well, I'm not a -- I'm -- obviously, as an expert witness, I'm not allowed to get into liability. I mean, I -- I can't -- I mean, I can -- I can give the facts of what happened and let somebody else draw the

conclusion --
Q. Right.
A. -- mainly the jury. But I can't -- I can't do -- but yeah, I -- I don't know how an expert witness such as myself could -- could talk about damages without talking and tracing back to what caused the litigation in the first place. You know, I present -- my reports, I present both sides equally. The first -- the case background section is the first part of my report. I follow Rule 26. And in that, I'm scrupulously, like a reporter would be. I scrupulously give both sides. I give the facts as -- as I know them to be true. I give both sides' opinions or contentions of what one side is saying, the he said/she said thing. And then at the end of the report, I -- I do my conclusion. Well, you saw that in the thing.
Q. Right.
A. If you read my case background section of your report, you wouldn't be able to tell whether I was representing Pastor Smothermon or -- or the -- the Hodge Twins. You wouldn't -- you wouldn't be able to tell as it's scrupulously neutral.
But then -- you know, then I -- I save my -- I'm just -- you know, it's like Jack Webb. You're not -- are you old enough to know who Jack Webb was and

A. I've seen -- I've seen the -- the copy that was in the post and the picture -- the picture they used of -- of the pastor.
Q. Does that photograph resemble this, as you described it, demonic depiction?
A. No. No. As I -- I made it clear in here that this was a sidebar. I mean, if you -- if you read that -- that -- this section, it was basic. In other words, I didn't attribute it to your clients at all. And -- and -- and I -- I just said, I -- I think I'm right to make the assumption that your clients are aware that this exists on the internet. I mean, I think your office may have been the one that put -- put it up.
Q. Right.
A. It seems the attribution. But I -- I find it ludicrous to think that they're not aware of it. So the point is when the -- the salt in the wound comment is -- the point is -- is that they're -- you know, they did something for whatever reason, that whether they planned to or didn't plan to, without getting it and then realized their mistake. They took the thing down. They're in litigation for it. And as -- and then while the -- you know, while they're -- it's like the old saying, leave sleeping dogs lie. And -- and instead, you know, they -- they're obviously -- they -- I -- I

Q. Is the term "rage bait" yours? Did you write that?
A. No, I didn't make up that term. I must have saw it somewhere. It's not a term I would've made up. I probably saw it somewhere and just adapted -- adopted it.
Q. Oh, so you put that in there?
A. Well, I put it -- I wrote the thing, yes. I wrote the report, so I put it in. No one else did.
Q. Okay. So in public relations, is rage bait a term of art?
A. No, I've never -- to be honest with you, I've never heard that phrase before.
Q. How about demonic?
A. Oh, what? Demonic? I've heard that. I've seen movies, you know, The Omen or whatever, you know? I mean, demonic --
Q. Focus on public relations, not entertainment.
A. Oh. Well, rage bait, definitely. I've never -- anywhere in my life, I've never seen that phrase. So that -- that is that. Demonic, I've heard the expression demonic used throughout my lifetime. In PR, I don't know specifically in PR, but I mean, it's -- it generally means that someone is possessed by a demon or he has attributes or he has behavior that's -- that relates to how a demon would be.

Q. So if I looked at -- you've done reports for defendants?
A. Oh, yeah. I -- I've done a lot of defendants. I would say 70 percent of my cases are plaintiffs and 30 percent are defendants.
Q. So if I looked at in -- in defamation cases?
A. Yeah.
Q. So if I looked at any of your defense reports, would I find the terms rage bait or demonic in them?
A. No, I've never used that. As I said, I -- I did not make up that term because I never heard it before, and I didn't dream it up when I was writing this. But I obviously saw it somewhere in -- in -- related to this case in some way. And I don't -- if you're going to ask me where, I don't know at this point. But demonic, I don't think I've ever used in a report -- if you're asking me, have I ever used the word demonic in a report? No, I don't. But I -- I've never had occasion to. I mean, this -- this -- that was a word that I put in. I didn't pick it up from any -- anybody or whatever. I authored that word in this report. And it was basically from the -- from the -- the picture. I mean, it was -- I mean, that's that was my impression of the depiction in the graphic of the picture, that the -- the guy was some kind of evil demon coming with his

hands outstretched and his look on his face, is that he was a -- had everything but horns on.

Q. Have you ever given an expert opinion on the substantive elements of Nevada defamation law?

A. Well, I'm not allowed to.

Q. You're not qualified to?

A. Well, no. I certainly can qualify to, but --

Q. What qualifies you to?

A. Well, simply the understanding of the law. I mean, you know, there's a -- I mean, I've had cases in 33 states and the -- the -- each -- the definition of defamation in all states is -- is exactly the same, there's four elements of it. And -- and so, yes. I mean, I -- I'm not allowed by law as an expert witness to usurp the providence of the jury to -- to make a -- I -- I did early on. And I got my -- you know, my first ten, 15 cases, I used to make -- say, this is defamation or this isn't defamation. And, you know, I -- I quickly got my hands slapped either in motions or in depositions, you know, saying you can't do that. So I -- you learn from experience, as I say.

But -- but I -- I can look -- as a communicator, I can look at the four elements of the legal defamation -- definition of defamation and -- and give my assessment of whether I think it applies in this based on the

facts.
Q. And your assessment is --
A. Yeah. I just don't -- I just don't put a conclusion to it. In other words, I -- for instance, if -- if -- if the first one is a false statement. Okay, if somebody says that this woman murdered this man, which she didn't because he's living, he's standing there or sitting there, that -- that's obviously a false statement. I can say -- I can obviously say that my -- my -- my judgment is that that's false because he's still living, you know?
Q. So --
A. I mean, I can go that far. I just can't take all four elements and say that -- was it published -- the second one is always published to a third person. Well, I can say it was in the New York Times. So yeah, it was published for the third person. And the third is that is -- does it cause any harm? You know, does it cause any harm? Well, that's a judgment call and that's an expert. I can say whether it -- there are factual basis that it caused harm because the guy has a bullet wound in his shoulder. So I can say, yes, it caused -- caused harm. The last one is, was it done with negligence or --
Q. Wait, can we go back to that?

in the state of Hawaii. I had a case in the state in Hawaii, and I just assumed the definition was the same as everyone else. And in my deposition, the lawyer, you know, just cut me to pieces because Hawaii's definition is a little different. So whenever I get a defamation case, whether I'm representing the plaintiff or the defendant, I look up the state's definition of it.

Q. Did you do that in this case?

A. In fact, I put it in my reports. I -- I put the definition, I -- I cover my rear end so that I don't get blindsided like in that Hawaii deposition. I cover my rear end by stating in my report what the definition of defamation is in that particular state.

Q. All right. This may seem kind of a non -- well, it is a non-sequitur. You're not a psychologist?

A. My wife is a clinical psychologist.

Q. No, no. You sir, focus.

A. Yeah. She's taught me everything she knows.

Q. Okay. So you are a psychologist?

A. No, I'm not a trained psychologist. I -- I said I have a couple courses, but.

Q. You're not a psychiatrist?

A. No. I'm not a psychiatrist or a psychologist.

Q. Or a physician of any kind?

A. No. No. I have a lot of physicians, but I'm not a

-- I'm not a physician myself.
Q. Do you have any qualifications to diagnose any mental health condition?
A. No. And I don't purport to. In my report --
Q. Are you an economist?
A. No. In my reports, I'm very careful not to -- to -- to -- to say that the -- that the -- in -- in the case of a plaintiff, and the defendant's not going to claim mental health, I -- in my reports, I'm -- I'm careful to say that the -- the plaintiff has maintained that he had -- that -- that he, or she, or it -- well, it has to be a he or she, has had emotional trauma, or distress, or whatever.
Q. So you take their word for it?
A. Well, yeah. I mean, I -- I don't -- I don't interview their psychiatrist, no. I -- I take it as -- and -- and mainly because they do it under oath. I mean, very rare I do a report where -- that I don't see a deposition from the plaintiff or from who I'm representing or, you know, retained by. And if they swear under oath, I have to assume that they're -- they're telling the truth, barring contrary information.
Q. So Steve Smothermon swore to -- something to you under oath?
A. No, he didn't. And -- and, you know, I gathered --

and if I remember right, he didn't do a deposition in this case. But -- but I've -- I've seen, I can't remember in interrogatories, which is the same thing, whether he's put -- I've seen it in legal documents anyway, complaints, interrogatories. I know in the complaints, it was in there. I can't remember right offhand whether it was in -- in the interrogatories.

But I mean, you know, you -- you have to, as an expert, contrary to thing, you have to take certain things that -- that they're -- they're being referenced as being true. For one thing, he's the only person that could tell you whether he's had emotional stress or not, no one else. I mean, unless his wife would get up and testify she saw him falling apart one day or something. But, you know, the bottom line, you have to take his -- you have to go under the presumption that he's telling the truth.

Q. Do you harbor any skepticism?

A. Well, no. I mean, anybody would have emotional distress. We're talking about what types or what degree.

Q. Hold on. Anybody would have emotional distress; could you finish that thought?

A. Well, yeah. In -- in other words, I've, you know, for 42 years, I worked with people that were victims of

reputation harm. For 20 years, I worked with people that were victims of reputation harm. And -- and -- and it's -- and there's a commonality in every one of them, they had stress. And, you know, if their -- if their name is bandied about, or they're, you know, they've been cascaded in the press or on the internet or -- or people have said bad things about them, they -- it's going to cause some degree.

Now, we can debate what types of emotional trauma and distress they've had, anxiety, you know, the different fear, anxiety, the different kind of embarrassment, whatever different types they are. We can debate that. We can debate the degree that they've had. Some people, drives them to go to psychiatrists, to pop pills, they can't sleep at night. You know, whatever, they pace the floor all the time.

Q. Focus on this case. Let's not focus on 132 other cases.

A. Okay. All right.

Q. In this case, your sole evidence that you considered of his claims of psychological harm were his statements?

A. Yes. That's as clear as I can indicate.

Q. Okay. You have no training in economics, correct?

A. Professionally?

Q. Did you ever take an economics class?

Q. Have you ever, in those 50 years, seen anybody exaggerate their psychological harm, their claims thereof?
A. Oh, people do it all the time. You know, I -- I have friends that -- that, you know, will say I'm -- you know, that will emphasize, like, they may be a little tipsy and they say, I'm stoned, I'm falling down drunk, when they're not. You know, I mean, people tend to embellish, exaggerate, extrapolate, whatever.
Q. Ever seen a party in a case do that?
A. Pardon?
Q. Have you ever seen a party in a case do that?
A. Well, that I -- that I had documented knowledge that they -- they were exaggerating or wasn't true?
Q. Yeah.
A. Not specifically. I mean, you know, in most cases, I take -- I take them at -- at their word. I mean, I'm sure -- I'm sure it happens. I mean, I can say, I'm sure it happens. Can I cite something right now? No. But it probably happens. I mean, people tend to, you know, maybe in litigation, part of the way that -- that some people may -- may exaggerate or something like that. But the point is that's an individual basis that nine out of ten may not or one may do it. You know, it's -- it -- that again, that's in the jury's province

to decide.
Q. When you've been an expert for the defense, have you ever seen a plaintiff exaggerate their emotional harm? Just think about when you've been on the defense side.
A. Well, I'm sure they have. I'm -- I'm sure they have.
Q. Sure or certain, or how --
A. Well --
Q. What degree of certain?
A. -- I mean, everyone -- everyone tries to make their best case for whatever they're advocating or -- or claiming or whatever. I mean, some of them you could take with a -- a grain of salt or, you know. But I don't know that I can remember challenging anyone.
Let me put it this way: If I was representing a plaintiff in the case and I thought he was off the reservation, you know, in terms of what he was -- he, she, it, whatever, was claiming, I would -- I would not go down that path. In other words, if I didn't believe, as I say, I -- I try to be as objective as I can. You know, I may be retained by someone, but I try to be -- if I saw somebody saying something that I knew wasn't true or that couldn't have happened, you know, that -- that kind of thing, I would not reflect that in my report. I wouldn't agree to it or I wouldn't use that

in my report.
Q. In any of your --
A. I would just skip it or I would -- I would -- I would put my honest assessment of it. Because I'm not going to sell my soul for -- you know, my integrity and my reputation is more important than any isolated case.
Q. In your expert work, have you ever conducted any digital forensics examination?
A. Define that a little bit more, digital forensics. What do you mean? What -- give me an example.
Q. If you don't know what it means, you can just say, I don't know what it means.
A. Well, I have an idea of what it means, but I --
Q. What's it mean to you?
A. Well, it means doing assessments of -- of impressions or that kind of thing. You know, in other words, if something was aired on a -- on a TV show or something like that, or something, you -- you get that -- you get the ratings, you get the how many people saw it. And the -- I did that in a case once for Trump. I represent Trump -- the Trump campaign in a case in Denver, oddly enough. And I represent the Trump campaign. It's a case related to the 2020 election and where they're one of the defendants in the case.
And I did the -- the whole crux of the Trump the --

the case against the defendant, the Trump campaign, is a press conference that was held about two weeks after the election. There was a press conference held that Rudy Giuliani, Sidney Powell, different people were at. And their whole participation in the case, the reason they are there's, like, eight, or ten, 12 defendants. And the only reason they're in it was this one isolated press conference. So any harm that allegedly came from them related to this press conference. So I was able to get -- I did do a digital survey. I did. It's the only one I -- maybe I've ever done. But I -- I -- I looked up a cross section of the, like, CSPAN and, you know, different one, YouTube, but different ones that had run --

Q. Sorry. Different ones what?

A. That had aired the program.

Q. You're using a lot of words. I don't know what they mean, so --

A. Yeah. Had used a --

Q. Let's briefly -- I need to know some of -- some of these words.

A. Okay. Well, a lot of different outlets broadcasted, it was a 90-minute press conference. A lot of different outlets broadcasted it live.

Q. Right.

A. Or you could get it on YouTube later. I took -- there were, like, ten or 12. I took five or six of them. And I did an analysis of them that said, based on the comments that were written in, there were, like, 38,700 and some comments on those stations written in. I did an analysis of how many of them would have reflected negatively on the plaintiff in the case.

Q. So you looked at a cross section of negative and positive press?

A. Oh, I looked at -- I looked at -- you know, we did an analysis. But the easy way to do it was to do -- was to do -- to do a -- a check on the internet of how many times his name was mentioned.

Q. What tool did you use to do that?

THE RECORDER: Sorry to interrupt you, Counsel.

MR. RANDAZZA: Yeah.

THE RECORDER: You're cutting off his question at the end. If you can try to let him finish.

THE WITNESS: Okay. Yeah.

MR. RANDAZZA: Yeah. What -- what --

THE RECORDER: Sorry, Counsel. Continue.

MR. RANDAZZA: Sure.

THE WITNESS: No, it's my fault. It's my fault.

BY MR. RANDAZZA:
Q. What tool did you use for that search?
A. Well, actually, I had someone do it for -- do it initially for me.
Q. So you didn't do it?
A. Well, I did part of it. In other words, he got me the raw data, and then I went over the raw data and -- and --
Q. What does raw data mean?
A. Well, the raw data is the comments.
Q. Okay. So --
A. He gave me the 38,000 comments or whatever. And -- and then we -- we worked together on -- on -- on 38,000 comments. The only ones we cared about were the ones that related to the plaintiff in the case. We didn't care if they were talking about Giuliani or whatever. So we -- we -- we saw that out of 38,000 comments, only three out of 38,000 related to the plaintiff in the case. So there's zero harm. And -- and two of them weren't harmful to him. One was, who is this guy? Another was, somebody should talk to him or something. The third one was negative to him.
So the point is, yeah. So I -- I did -- that was, I would assume, is what you're referring to as a -- a digital analysis. I'm -- I'm assuming you're referring

to.

Q. All right. So tell me what metadata means?

A. Well, metadata, I think, is the way on the internet that it -- it's the -- what's behind the -- what you see on the -- on your computer. It's the -- it's the statistical or it's the identification, as far as I know.

I'm going to cut you off here, just tell you I'm a technological retard. I -- I know how to turn on a computer. I know how to send emails. I know how to do research, and that's it. So if you got questions coming up regarding -- technology is relating to the computer, that's not my thing. I get other --

Q. Your defense of no knowledge is fine. You -- I'm --

A. Yeah, well --

Q. -- just asking what you know, so.

A. Well, that's like what I did with the -- oh, I cut her -- sorry. That's what I did with the --

Q. No, no. Please --

A. I'm going to have to send her some flowers when this is over. But --

Q. Yeah, yeah.

A. And look --

Q. I would love to have a beer with you and talk about old war stories.

A. Yeah. Okay.
Q. Let's focus because I don't want to keep you here until the red eye.
A. No. I believe experts do what experts do.
Q. Right.
A. I am not an expert in computers.
Q. Okay.
A. Or in computer technology or any kind of technology.
Q. Okay.
A. So what I do is I have a head case and something like that's involved, I do -- I have a guy and he is an expert in these things. So I will hire him as a subcontractor.
Q. What's his name?
A. His name? I didn't use him in this case, so I don't know. But his name is Don Phillipson, P-H-I-L-L-I-P-S-O-N.
Q. Okay.
A. But what I do is I go to him and whenever there's something technical --
Q. Sir, he's not relevant if you didn't use him here. It's okay.
A. I didn't use him in this case. I used him in the Trump case, but --
Q. We can skip over him.

problem. In fact, got a case with the Real Housewives of Beverly Hills right now that involves a Facebook post.

But to answer your question specifically, yes. I've had many cases where Facebook posts were part of the problem in the litigation. And as I said, I've seen analytics from other experts on the other side. And have I ever done analytics myself; is that your question?

Q. Yes.

A. I think I used Don in a couple cases. I don't remember which ones they were, but I -- I think --

Q. Could you tell me what information you got from it?

A. Well -- well --

Q. Or better yet, what information would you expect to get from Facebook Analytics?

A. Well, I think that the -- the main thing you would be interested in is the -- is the exposure, the reach. The -- how many -- how many -- well, first of all, generally, you know, how many followers. For instance, in this case, I understand that the Hodgetwins has 6.3 million followers, but that's followers. You -- you'd have to -- what I would try to do is, what was the exposure? How many people saw the post? That would be -- seem to me to be the obvious. I don't need somebody

I -- I -- as I say, I don't do them myself. I get -- I -- I will go outside to somebody that -- I believe in experts doing experts and not some idiot trying to -- to weasel his way through doing something.

Q. I don't know what any of that meant. Can you explain that to me in a --

A. Well, I -- I --

Q. Explain it to me like I'm, you know --

A. Oh, okay.

Q. I didn't grow up super educated.

A. If something is in my area of expertise, I do it. If not, I hire somebody to do it.

Q. Okay.

A. That's --

Q. So let's see. The -- on Page 23, you are talking about your publications. And you do mention the ABA TYL Summer --

A. Yeah, I do --

Q. -- Summer 2020, right?

A. Yeah. I didn't finish my answer to your question.

You asked if any of those articles on my website had been published. And I -- I started with the -- the -- the ABA's national publication, published one of them.

Q. Is that a peer-reviewed journal?

A. Pardon?

Q. Is the ABA TYL Summer of 2020, was that a peer-reviewed journal?
A. I wouldn't think -- I wouldn't think so.
Q. Have you published anything in a peer-reviewed journal?
A. Yes. Some of my articles, I -- I didn't publish them myself, but some of my articles were picked up and they were -- yes. I'll answer that in two -- two questions.
One is that I put -- I have a LinkedIn page, and I put all -- all the articles in the LinkedIn page.
Q. Sir, no, I'm not referring -- what I'm referring to is you know what a peer -- can you tell me what a peer-reviewed journal is?
A. Okay. Let me -- okay. Let me answer your question specifically. Yeah. I didn't get the second part.
I -- I said that different places picked up my articles and ran them. One was the ABA publication. The other is, there are services that provide expert witnesses to lawyers. Are you familiar with them?
Q. Yes.
A. Are you aware of the concept?
Q. But what I'm asking --
A. What I'm answering --
Q. Peer review journals?

A. Yeah.
Q. Have you published in a peer-reviewed journal?
A. Yeah. They -- they, on their websites, two of the services picked up my articles. They happened to see them, picked them up, and asked my permission to publish them. Now, they -- when they publish them, they -- they go to -- since it's a service for expert witnesses and -- and attorneys as well, it does -- it -- it is seen by -- by expert witnesses.
Q. So you're interpreting a republication of a LinkedIn post as a peer-reviewed journal?
A. Not the LinkedIn post. Although people that did response and comments I received back from the articles were from -- from -- from lawyers and from -- from expert witnesses. But I -- you know, that's not definitive. But the point is, we're -- we're in a --
Q. Sir, there's no dishonor in --
A. I don't need --
Q. There's no dishonor in never doing so.
A. I don't -- no. No. This is a false thing in the methodology. This peer review stuff is BS, quite frankly. The -- the bottom line is, if I know for a fact that everyone is doing the same thing I am, and I'm doing the same methodology that they are. I don't need peer review through a magazine article, that's

ridiculous. Which -- which is more effective? But -- to put an article in a publication that somebody could read and not be able to talk to you about it or whatever, or sitting face-to-face with them and talking to them about it? That's a joke. This whole peer review thing by publishing, that might be fine in law, or architecture, or in accounting. But it -- it's -- it's useless in -- in expert witnessing.

I don't need to publish an article that people read to get my thoughts when I can talk to them personally, sit and listen to them, speak to them, and whatever. I mean, it -- it's ridiculous. It's -- it's -- I know you're you guys are obsessed with this. I get this. It's not my case. The bottom line is it is more effective to have personal interaction, either speaking to somebody in a conversation, listening to them, have them listening to you, seeing other people's reports, which is peer review, by the way, because they're writing how they -- their methodology. They follow Rule 26. They -- they show -- I've read a lot of other experts who have been on the other side from me, and their methodology is the same. I know other experts in my field. I talk to them.

I have a -- there's one guy that I've -- I've -- I've opposed in about five or six cases. He's based in

considered peer reviewed. There -- there are a lot of national -- there's the -- PR National's PR Journal is a national publication for the -- the PR profession. There are a lot of local national public relations publications, but none of them are for peer review purposes. I mean, yes. Then the answer to your question is, yes, I've written articles for public relations publications that PR people would have read.

Now, if you consider that peer review, I don't know.

BY MR. RANDAZZA:

Q. So did you ever publish in Public Relations Review?

A. I've never heard of that one.

Q. The Journal of Public Relations Research?

A. No. Those might not have been around when I was, as I said.

Q. What about Public Relations Inquiry?

A. No, I haven't heard of any of those. Those weren't correct.

Q. How about Journal of Communication Management?

A. No.

Q. Corporate Communications? International Journal of Strategic Communication?

A. I should be saying no.

THE RECORDER: Yeah.

THE WITNESS: I was shaking my head.
THE RECORDER: Was your last one a no?
THE WITNESS: No. None of those were ones that I was aware of. They may not have been in existence back when I was doing that.
BY MR. RANDAZZA:
Q. Journal of Public Interest Communications?
A. No. I've never heard of one of those. As I said, there were about four or five PR publications, some regional, some national at the time. I was -- remember, I was doing PR from '70 -- from '69 to '70 to about 2000 -- well, I stopped around 2006. I stopped reading publications, you know, whatever. But none of those were any that were -- were the leading publications at the time.
Q. So you said in your -- on Page 23, when you talk about your peer acceptance, you said you discussed your methodology with other experts by telephone. Was Gerald Rose (sic) one of them?
A. We worked on a case together and yeah, probably. I don't remember if we specifically talked about methodology, but we were hired to do a case. I was hired at the same case. I was hired to do one section. He is the other. It's a case in Miami. And he did one facet. I did another facet.

probably five or six cases, and I have seen his reports. And he, like I, in my report, in his report, outlines his methodology. And his methodology is exactly the same as mine. They all are.

This is -- this is a -- a red herring from opposing a counsels -- defense counsels, to bring up peer review and all this stuff. It -- it's --

Q. Like just dumb academic stuff, right?

A. They're grasping at straw. Let me finish. They're grasping at straws. They're looking for something that doesn't exist because I'm -- I'm just telling you that I know to a hundred degree certainty that -- that all legitimate -- I can't say if there's a hundred expert witnesses.

Two might do something different than I do. But I'm saying that the -- the vast majority of legitimate expert witnesses use the same methodology to form the conclusions, opinions, and cases, and to go about forming the same, to getting the information as I do. And I know that from seeing their reports and talking to them and spelling out. This is an opposing counsel's witch hunt to try to find a reason to exclude someone because a peer accepted to you. It's such a -- and anyway, go ahead.

Q. At your conferences, did anyone ever review your

methodology in writing?
A. No. No. We talked to each other. I mean, I went to a conference in Florida two years ago, '24. May of '24 --
Q. Sir.
A. No. I went to say -- you're asking me how we interacted.
Q. No. I didn't ask you that, sir.
A. Oh, okay.
Q. So let's stay focused.
A. No. Is anyone in writing? No. The answer is no.
Q. Okay. You mentioned Mr. Rose and that you -- so you've reviewed his methodology?
A. I've seen his reports. Yeah.
Q. And anybody else you'd say you --
A. Yeah.
Q. -- respect, that you know their methodology?
A. Yes. I -- there's been numerous cases where -- I had one case where they hired five experts to -- to rebut --
Q. I'm looking for a name of a living human being.
A. Oh, I don't know off the top of my head. I -- I don't remember those. The -- the names of --
Q. So Eric Rose is the only person you respect in this field that you can name?

minutes?

THE VIDEOGRAPHER: We are now off the record. The time is 11:51 a.m.

(A recess was taken.)

THE VIDEOGRAPHER: And we're now on the record. The time is 12:00 p.m.

BY MR. RANDAZZA:

Q. All right. So let's jump to Page 22 of your report, sir.

A. I'm on it.

Q. And there you talk about you did research into treatises and academic studies and publications from Harvard, Duke, and Cornell. You see that?

A. Yes.

Q. Can you name one?

A. Well, there -- there isn't any. The bottom line is -- is that after my last deposition, which was like two months ago --

Q. Sir, take a look at your drawing. Can you name one sitting here today?

A. No. No. They -- they -- what I was --

Q. Are any of them cited anywhere in your report?

A. No.

Q. Is there a bibliography to your report?

A. No.

Q. Single --
A. Bibliography? I'm sorry.
Q. Do you have a single footnote to your report?
A. No, I don't do footnotes, but there is a bibliography.
Q. Does your report -- okay. Thank you. Does your report cite to any scientific studies?
A. I don't know how you define scientific studies.
Q. Do --
A. It does report -- it does indicate a couple studies, but they're not -- I don't know if they consider it scientific or not.
Q. And we've already established you don't really like the whole peer-reviewed thing; is that fair?
A. Well, it's not that I don't like it. I -- I think it's -- it's --
Q. Don't agree with it?
A. It's a misnomer for -- for what's already being -- being done in a more effective way.
Q. Look at Page 7 of your report. Actually, 7 through 9.
A. Yes.
Q. Is the -- the Coomer versus Trump, is that the case you were talking about?
A. Yes.

three, four weeks ago, I have not done any --
Q. Okay.
A. -- trial or deposition since then.
Q. Has any court ever excluded your testimony in whole or in part?
A. Yes. Yes. I -- I've probably had about 30 or 40 exclusion motions at one point or another a day.
Q. That the Court ruled against you?
A. Oh, no -- no. I've only got --
Q. Okay. Let me ask the question again more clearly.
A. Okay.
Q. Has any court ever excluded your testimony in whole or in part?
A. Yes.
Q. Stricken any portion of a report?
A. I don't think they've stricken anything. They -- they haven't -- it -- it wasn't put in the terms of stricking (sic) a portion of my report. It was just -- just saying that on this particular subject area, that -- that -- that I wouldn't be allowed to testify on.
Q. What case was that in?
A. Oh, it's been a lot of cases. I mean, early on --
Q. How about recently, in the past three years? Four years?
A. Last three years, they -- the -- yeah. There was a

case in Massachusetts about a couple of months ago where -- it had nothing to do with me. The judge just ruled that he didn't think a reputation damage expert witness had anything to offer the jury.

Q. Happened in the Trump case, too, didn't it?

A. No, that was -- I -- we -- I was excluded. That was a technicality. I was excluded in that case because of -- yes, I was excluded from -- in the Trump/Carroll case. And it was because I was designated as the expert. They designated me as a rebuttal expert and I -- and I was a full expert.

Q. Sir, you understand when I ask you if you've been excluded and you don't like the reason it happened, the answer is still yes, right?

A. Okay. I'll -- I'll -- let me ask you because, I've been excluded --

Q. No, no. That was my question. The answer -- do you understand?

A. Yes. I -- I understand.

Q. Okay. Thank you. Has any court ever excluded your repair program cost opinion, specifically?

A. No. And I've been challenged probably six, eight times, and every judge has ruled that -- that's something the jury has a right to decide.

Q. Has any court criticized the support for your

damages figures?
A. No.
Q. Have you ever withdrawn or been de-designated by a party who retained you?
A. No. I've quit a couple cases, but for various reasons. But yes, one case just recently. One case I've been working on about three years.
Q. Can you give me the name of that case? Or any party to that case?
A. Yeah. It -- Herman v. -- Herman was the name of a woman's school teacher.
Q. So would it be in your record here?
A. No, because I haven't done a deposition in that case. So, obviously, a case I had worked on for about three years. After three years, they became aware of the Trump decision.
Q. Okay.
A. And they called me and said that they felt that they couldn't have me keep working because they were afraid that the -- the Trump decision happened in 2023. They called and they said that, since you were excluded there, we're afraid they'll exclude you from our trial. And I said, I've testified in eight trials since the Trump one. And I have -- yeah. You get the idea.
Q. Of your 133 cases.

A. Yeah.
Q. Which that was back -- that's the number of working with.
A. At the time.
Q. Yeah. Okay. Yeah. How many were for plaintiffs about --
A. I said earlier, I testified it -- it's about 70 percent, roughly.
Q. Okay.
A. Split of roughly 70 to 30.
Q. Have you ever issued a report when retained by a plaintiff concluding that the plaintiff suffered no harm?
A. No harm at all?
Q. No reputational harm, yes.
A. No. I mean, it's a matter of degrees on how much harm they suffered or didn't suffer, but I've -- I've never said that in no way, shape, or form, mental, physically, financially, or any other way did they not suffer some form of harm. No, I've never --
Q. Did you ever conclude that a reputation repair program was unnecessary?
A. Yes, in the Trump case. The Trump Carroll -- E. Jean Carroll versus Trump. In that case, the -- of course, I was represented defendant, but one wasn't

necessary, because that case was covered in the national media on a day-to-day basis. The bottom line is once she prevailed in the case, what's the need for an exit program? I mean, that --

Q. Have you ever been retained by a plaintiff and concluded that a repair program was unnecessary?

A. No. I think that my answer to that would be it's a matter of degrees. I think it -- well, I'm trying to think if I had another case where I had the -- most of the high profile cases I've had would have been defendants.

Q. So you've never told the plaintiff, you don't need a reputation repair program?

A. No. But then there's -- there's factors being how big of a program it should be. I mean, you know, it's, like, could be a small program or a large program, depending on the circumstances at the time.

Q. Have you ever concluded that a plaintiff who hired you had overstated their damages claim?

A. Well, I don't get involved with the damages claim. I'm not the court. I used to --

Q. Okay.

A. -- come up with the figures, and that's one of the things the Court struck me down on. They said, you're not a financial expert. You can't author the -- you

can't come up with the damages claim. So, I mean, I have my own opinions on -- sometimes on -- on the claims, whether they're too high.

Usually, I think they're too low, but that they're asking for less than they should. But -- but no, that I don't -- I -- I'm not allowed, as an expert witness, to -- to opine on a damage claim.

Q. But you did so in this case?

A. Pardon?

Q. You did so in this case?

A. No. I didn't come up with the figures in this case. I didn't come up with those.

Q. Who came up with them?

A. Well, the -- the lawyer or the client. I -- I always state that they -- the client or lawyer feels the -- you know, has come up with the figure that they feel is a representative. I don't -- I didn't author that number.

Q. So if we turn to Page 42 of your report.

A. Yeah. I -- I state it there. In the last sentence, "Factoring in this negative impact on the plaintiff, they have," meaning the plaintiff, "have determined" -- it should have he had. It probably --

Q. Oh, okay.

A. "They have determined that a damage award." I -- I

asked you --
Q. So that's not your number?
A. No. And I -- I clearly state that. They have determined. Not me. They have determined.
Q. Do you know how they came up with that number?
A. No. I have no idea.
Q. Did you ask them?
A. No. I acknowledged that they -- I was provided with the number not long before I finished the report and was the last thing I think I inserted in the report. And I didn't -- I didn't specifically ask them, no.
Q. What is your professional opinion of that number?
A. Well, my -- my professional opinion off the top of my head is that it's -- it's a wide range. I mean, most ranges I've seen -- I'm a -- I'm a big believer in ranges, rather coming up with a number.
Q. Sir, if I -- how about this? Let's hypothetically say, since you're giving an unbiased opinion and it wouldn't matter which side you're retained by --
A. Yeah.
Q. -- so I call you as a defense witness. Do you think that $2.65 million to $5.589 million is a reasonable, fair, and equitable amount of compensation for the plaintiff in this case?
A. Well, I -- you've got a -- you've got a $3 million

range there.
Q. Well, I'll tell you what.
A. And the jury --
Q. Why don't we go with the bottom number?
A. No. The jury -- the jury -- and that -- I think it's a broad range that the jury is able to determine themselves what -- what -- what they feel within a $3 million range.
Q. Sir, can we play a game?
A. Yeah.
Q. Let's play a game that I ask you a question and you answer the question I asked you.
A. Okay.
Q. All right. Here's the question again.
MR. RANDAZZA: Could you read the question back to the gentleman?
THE RECORDER: Give me one second.
(The requested question was read back.)
THE WITNESS: Yes. I mean, you can debate whether it should be the 2 million or the 5 million, but I -- I think that's a reasonable range for -- for someone to, once they've heard all the facts -- the jury heard the fact. I -- I think it's a -- it's a reasonable range to provide to the -- the trier of fact to -- after they've understood all the -- heard all the

evidence to -- to determine which they think is right within that range. Yes.

BY MR. RANDAZZA:

Q. So if you were on the jury, you'd support an award of $2.65 million, at least here?

A. Well, once I heard all the evidence and, you know -- I mean, I haven't heard -- what I'd be interested in is that Mr. -- or Pastor Smothermon's testimony. I mean, he's the only one that walked the walk.

Q. What you've seen in this -- you've reviewed the entire case file, right?

A. Well, I've -- I don't know if I've seen the whole case file, but I've seen what I was provided. Yeah.

Q. Well, you looked at all of his sworn statements, right?

A. Yeah. I've -- I've seen that requisite. But look, neither you or I have walked the walk. I mean, you know, he -- he's the only one that has experienced --

Q. Sir, look at your drawing.

A. Okay.

Q. So what I'm trying to get from you --

A. By the way, he's interrupting me. I hope you --

Q. Yes. I'm definitely interrupting you because I don't want to keep you here till 12:00 tonight, but I will.

Okay. So you've got to look at, what is the situation at that given point in time because you're launching the program at that time. So what -- what is it then?
Q. What's damaged here?
A. Pardon?
Q. What is damaged here?
A. Well, it's spelled out. It's -- he's got these -- a lot of his -- his -- well, you know, it's -- there's a section on there what the reputation damage or harm to him was. That has to be -- the bottom line is --
Q. Tell me, in your words, how his reputation was harmed.
A. Oh, well, that's his -- his whole -- look --
Q. Wait. Wait. Let me back up. Do you know what happened in this case?
A. Pardon?
Q. What happened in this case?
A. What happened in this case?
Q. Yeah. What is the --
A. Very -- very simple. The -- you want me to go back to Crate & Barrel (sic)? How far back do you want me to go?
Q. I don't know what Crate & Barrel means. You mean the store?
A. No. This case is about Crate & Barrel. Part --

part of it is. The whole -- the whole thing is -- is that this -- this Smotherman, M-A-N, who wasn't the pastor, became an executive at Crate & Barrel. He got rid of their old-fashioned image, their motherhood and apple pie image, which was mainly encased in a logo. And he got rid of it and he changed the whole culture. He re- branded the whole organization or the whole company from being, you know, appealing to the motherhood and the farmers and whatever to --

Q. I'm sorry. What was that word?

A. Pardon?

Q. Parmers (sic)?

A. Well, I -- I mean, to average. In other words, again --

Q. I don't know what that word means. I've never heard it in the English language.

A. Farmer?

Q. Farmer. Okay. I'm sorry.

A. F-A-R-M-E-R.

Q. Yeah. Got it.

A. In other words, they were -- appealed to the Middle America. Let's call it this way. The thing was appealing to Middle America. We sell furniture, Crate & Barrel, and they -- you know, Middle America, whatever. They always -- they -- their whole existence had been

geared to that. He came in, according to them, and rebrand and -- and led a revolt to rebrand it from there into a more progressive type of business where they -- they were advocating for DEI, for LBGTQ (sic), and for this and that.

They were -- they're conservative by basis, the Hodge twins, as I understand it. And they -- they were upset that the -- you know, that what was nice motherhood and apple pie type of business, was now going to a woke -- you know -- you know, going the far left type of thing.

So they -- their intention was to put up a Facebook post in -- in order to decry the fact that -- that this organization, it was -- lived on, you know, a nice conservative of -- a family value type of organization was now being turned into a radical left type of thing.

So they determined to put up a Facebook post to their followers to say that they were upset that this guy was coming in and -- and, you know, transforming Crate & Barrel. And they -- at some point, somebody said, well, we should put a picture of -- a photograph of -- of the man, the post, so they could see. And they went ahead and they did their Google research. They came up mistaken. They identified the pastor. They put it on the -- the -- they put it on the -- attached it to

the Facebook post. And that's why -- why we're here today.

Now, you're asking me if -- you're asking me what's the harm to him, I -- I would say, if the -- if he was a plumber or an architect or electrician or an Indian chief, there wouldn't be too much harm to him. But the bottom line is that the harm to him is that his -- his occupation, his mission in life, is to be a spokesman for God. He's a visionary. He speaks God's word. And -- and the point is, that God's word is preaching biblical values. It's preaching family values, conservative of -- themes of -- of family and -- and religious and God's word and all this. And everything that was ascribed to -- to that post, is -- it diametrically opposed to, so it -- it basically makes him look like a charlatan. Basically, it makes --

Q. How does that post identify him?

A. Well, it doesn't identify him by name. The photo identifies him. The -- in other words, you have a post with a picture attached to it. The picture is -- is clearly not the Crate & Barrel executive. The picture is clearly the pastor. So the point is -- is, you know, there's an old saying about a picture is worth a thousand words. Pictures -- and I -- I won't bore you with it, but there are surveys to prove it. Pictures

are far more impactful in -- in forming opinions than the words are.

Q. If I put a picture of you on that post, would that harm you?

A. No. As I -- I already said, if -- if you were a plumber or electrician or a -- or somebody like that, it wouldn't, because no one cares. If you want me to fix your pipe, you don't give a damn what I think -- I think, you know.

But the point is, it -- it totally discredited this -- this man that's supposed to preach a certain biblical philosophy and -- and human values and all that. It diametrically makes him look like a wolf in sheep's clothing in -- in the sense that -- that he -- that he doesn't believe any of that stuff. So it totally --

Q. How does it do that?

A. It discredits him. As I said, it makes him look like a charlatan, and it -- it totally discredits him.

Q. I'm sorry. But what -- so is it -- I don't want to put words in your mouth, so tell me I'm putting words in your mouth if I am, but I'm going to try to clarify what you're saying, too. You're saying since he's a Christian pastor, this is diametrically opposed to what a Christian pastor would say?

A. Well, preachers, yes. Yes.

A. Well, it's not that I -- I don't know. In -- in biblical -- first of all, I'm not a -- I don't claim to be an expert on the Bible, but -- but I'm sure that the -- that the Lord and Jesus Christ and God and whoever else is up there is all for equality. That's -- that's the point.

Q. So if Pastor Smothermon wasn't for that, wouldn't he already be a charlatan?

MS. WESTBROOK: Object to form.

THE WITNESS: Would you repeat that question?

BY MR. RANDAZZA:

Q. Well, if I were to agree with you, and suffice to say I do, that God and Jesus believe in equality, this post is railing against somebody who is in favor of equality. And then the third person is Pastor Smothermon, that you say making him seem in favor of equality is making him out to be a charlatan. Well, who's at odds with God and Jesus now?

MS. WESTBROOK: Form.

THE WITNESS: Well, you're -- you're picking one thing, the DEI. You're picking one initial out of the DEI and going at, you know, the --

BY MR. RANDAZZA:

Q. Is God against diversity?

A. The post was also about -- about the LBGBQ (sic), if

those are the right initial, I don't remember them in order. But the post was about that, which is -- which is in -- is in favor of -- you know, I mean, they're supportive of -- of transvestites, transgesters (sic), homosexuals. And -- and that is -- that is totally opposed to biblical teachings.

Q. It is?

A. Yeah. Yeah. It's a -- it's, you know --

Q. Didn't Jesus hang out with prostitutes?

A. Well, it -- I don't think he hanged out with prostitutes, but he believed -- Jesus believed that all -- all people deserve respect, regardless of who they are.

Q. Including homosexuals?

A. Prostitute, you know, that -- pardon?

Q. Including homosexuals?

MS. WESTBROOK: Object to form.

THE WITNESS: Well, I -- I can't comment on that because I don't know that there were homosexuals back in those days. I'm sure there were.

BY MR. RANDAZZA:

Q. You don't know if they existed?

A. I'm not that educated enough in the -- in the biblical days of whether there were homosexuals there or not. I assume there may have been, but whatever. But

recklessness of --
Q. No. No. Is that what it says or not?
A. No. No. No. No. It doesn't -- it doesn't -- look, no one is -- I have no problem personally with -- with what they wrote in the post. I believe in the First Amendment. I believe in people having the right to express their views and whatever. I have no problem anything that they wrote in that post. That was their opinion. They -- they have a conservative view. Obviously, the real Smotherman, M-A-N, doesn't share those views. They're diametrically opposed. Every -- both sides have the right to their opinions. They have the right to express their opinions or whatever. We're not talking about the post. We're -- in that sense. We're talking about the identification. The post is opinion.
Q. Okay.
A. I mean, the post is a -- is their opinion. It's opinion. But the -- the photograph is fact. The photograph is fact. The post is opinion, and they choose to link the two together. So we're not debating it. We're not in here debating the -- what was written in the post.
Q. Yes, we are. No. What we're debating -- and we don't really -- I don't know what the --

MR. RANDAZZA: Why don't we get a copy of the post so that we're not working from a difficulty? Do you have another copy for me?

MR. MCLAREN: That's him. That's for him.

MR. RANDAZZA: Yeah. Okay. That's for him. Okay. Here you go, sir.

So why don't you give me one and give our -- our buddy over here one.

BY MR. RANDAZZA:

Q. And sir, just a few questions about your report before we get back to that.

A. Okay.

Q. Did you type the whole report yourself?

A. Yeah. I wrote it. I typed it.

Q. I get it. We'll get to that.

A. I wrote it. I typed it. I printed it out. And I sent it by email to the -- to the law firm, Ms. Westbrook --

Q. So no one else provided any language that appears in the report?

A. I sent -- well, I -- let me see if I can do this better. I send -- I send --

Q. Sir, N equals 1 or N equals 0. Did anyone else provide any of the language that appears --

A. Well, I mean, they -- they provided thoughts. I

wrote my own comment. There was some --
Q. Can you say who they is?
A. Well, they would be Ms. Westbrook.
Q. Okay. So Ms. Westbrook helped you write the report?
MS. WESTBROOK: Objection. Misstates testimony.
THE WITNESS: That -- that's a stretch to say she helped me write the report. No.
BY MR. RANDAZZA:
Q. She provided language for the report?
A. She provided -- she provided comments on -- to me.
Q. Like, this would be better phrased that way?
A. Well, she said, you might bring up this issue or you might not bring up this. I mean, you know, she gave me her input or she --
Q. Sure.
A. -- she might have thought -- she might have said, you know, you forgot to put this in -- or, I mean, not forgot to put this in, but, you know, she just gave me suggestions, but she didn't write the words. I wrote the words.
Q. Do you still have every draft?
A. I don't keep drafts. I -- in other words, I work off a master. Somebody -- if I send something that somebody suggests some changes, I make it. Then I do it

on the master. Then -- then I don't keep drafts.
Q. Then you delete the original or the --
A. Yeah. I mean -- well, no. I type over them. I don't delete them. I just -- I just work over the --
Q. Sure.
A. -- the -- I have one report and I make revisions to it. I don't have drafts. I just work on one report.
Q. In Page 36 of your report, you refer to the plaintiffs, multiple. There's only one plaintiff here, correct?
A. Page 36?
Q. Yes, sir.
A. If -- I don't know where it is, but if I refer to plaintiffs, yes. It -- there's only one plaintiff.
Q. Okay.
A. That I know of.
Q. And on Page 36, you also say --
A. No. No. There are -- there are multiple plaintiffs. What am I talking about?
Q. Oh, there are?
A. Oh, no. No. He said there are multiple defendants, right? There -- there's only a single Hodge. I was looking at a picture. I -- I think there's -- yes. There's one plaintiff and there's three defendants.
Q. Can you explain why you used the plural then on Page

36, 41, and 42?

MS. WESTBROOK: Object to form.

BY MR. RANDAZZA:

Q. So if you look at Page 36 --

A. Some of -- some of that is -- is boilerplate from a previous case.

Q. Okay.

A. And then with other ones, what I do, instead of -- if -- if you're -- you're -- you -- if you have an apple and you want to have another apple, I don't believe in -- in taking my client's time and money to reinvent the wheel. What I do is go through it as carefully as I can and I edit -- I edit out what it is to -- sometimes it's to -- it's to change the names. Sometimes I put names in it. Sometimes I --

Q. Right.

A. -- refer to plaintiffs or plaintiff. So that -- it -- it's -- it was an error in sloppiness.

Q. Okay. So Page 26 to 28, those are boilerplate?

A. About 20 percent of the -- of this report is, for the most part, boilerplate -- 20. Oh, yeah. That part is -- that part is. I mean, that -- that's important to give a perspective and context to --

Q. Sure.

A. -- how negative communications can -- can harm and

bill?
A. Actual. That's one of the reasons I used some boilerplates, to save the client's money.
Let me put it this way: If every word in this report was original, I probably would've had to charge 25 percent more hours than I did for doing -- let's say I did 20 -- it took 20 hours to write the report. I probably would've had -- I probably would've had charged 25, 26 because I would've been writing the whole thing.
Q. Turn to Page 17, please. You say, "Defendants wish to include a photograph of Steve Smothermon in the Facebook 19 post."
A. Wait a minute. I'm not on 17 yet, sir. When I get there, I'll let you know. Okay. I'm there now.
Q. It says, "A photograph of Steve Smothermon in the Facebook 19 post." What is the significance of 19 there?
A. I don't see what you're talking about. I'm on Page 17. Where -- where are you?
Q. Well, do you --
A. Describe what you're -- where it's located on the page.
Q. Do you see the two black squares?
A. Yeah.
Q. Put your finger on the bottom black square.

A. The one that says "if claims are brought"?
Q. Yes.
A. Okay.
Q. Now bring your finger down slowly until you see two dashes. And then where you see those two dashes --
A. I see three --
Q. -- look at the second line under that.
A. Well, I see three dashes, not two. So you must have a different --
Q. Really? Let me see that.
A. It's three. One, two, three. I count.
Q. Okay.
A. I went to school.
Q. I'm going to circle it for you.
MR. RANDAZZA: Let the record reflect that I circled the word Facebook.
THE WITNESS: Oh, I thought you were talking about three different items here. Okay. Okay. One -- dashes, I -- I meant -- all right. I see that, yes, you should --
BY MR. RANDAZZA:
Q. What's the 19 mean?
A. The 19 is a -- the 19 is the number of the document I took it off of.
Q. 19 what?

A. The line. Some -- sometimes I copy and paste in information. Again, there's no reason for me to type a sentence in from a document when I can copy and paste it in. The 19 was obviously one of the lines in the document I did. And in -- and might have been 20 of them and then deleting 19 of them, I missed that one.
Q. If you look at Page 20 to 22 --
A. Uh-huh.
Q. -- and then 23. So I want you to start at Page 20 where it says, "Information input reviewed."
A. Right.
Q. You see that?
A. Yes.
Q. And then if you skip forward to Page 22.
A. Yes.
Q. And we stop at the word "methodology"?
A. Yes.
Q. Is that a complete list of everything you considered writing this report?
A. Yes. I'm meticulous in writing -- in -- I'm meticulous in -- in listing everything that I looked at.
Q. So you reviewed nothing else that is not on that list?
A. Right. There's nothing -- the only thing I would possibly think is I do -- if you look at -- on Page 22,

if you look at the -- I do do some occasionally. I go on the internet and look at stuff to see if there's anything I missed. For instance --

Q. I -- I'm asking you what you did in this report because this is about your report?

A. Oh. Okay.

Q. And not about the blog list.

A. Okay. The answer is that is everything.

Q. Okay.

A. That is everything that I reviewed, all the information -- types of information, materials, and legal documents that I reviewed in order to form my conclusions.

Q. So you've never spoken with Steve Smothermon?

A. No.

Q. Never spoke with anyone at Legacy Church?

A. No.

Q. No congregant?

A. No.

Q. Did you talk about anyone -- did you talk to anyone in what you described as the faith-based community on Page 35?

A. No.

Q. Did you talk to a single person who saw the post?

A. No.

Q. Did you talk to any member of the news media?
A. No.
Q. Did you interview anyone at all in this case?
A. No.
Q. Okay. Let's skip to Page 34.
THE WITNESS: By the way, are we taking a break for lunch here at some point, or are you planning to just go through? We're going on four hours here.
MR. RANDAZZA: I thought you said before that you could just go right through, but --
THE WITNESS: Well, I could, but --
MR. RANDAZZA: -- if we need to modify --
THE WITNESS: -- that's a little -- I mean, I'm thinking of the other people here. You got other people that are -- I know you're trying to save time and money, but I'm -- I'm thinking that -- of the other people here as well. They're -- I mean, if -- if it's all right with them, it's all right with me. Let's put it that way. I brought a -- I got a little bar from --
MR. RANDAZZA: How long do you need to take another change?
THE VIDEOGRAPHER: Probably 45 minutes.
MR. RANDAZZA: Everybody good with breaking in 45?
MS. WESTBROOK: We can go the whole way here.

MR. RANDAZZA: All right.
BY MR. RANDAZZA:
Q. So you say on Page 34 through 36, "The plaintiff reports." So for a number of your -- your conclusions here. But you've never reviewed any declaration by Mr. Smothermon or a transcript of any deposition, correct?
A. Well, I don't believe he did a deposition or I would've seen that. I'll have to look back at my -- no. No. I've -- I've seen -- you know, I've seen the complaints, the interrogatories, all that -- that which provides information that comes from the plaintiff or the defendants, for that matter.
Q. And on 36, you said, "He's reported significant forms of mental trauma"?
A. Yes. That's --
Q. To whom did he report that?
A. Well, that's what I was -- that's what I was informed.
Q. By whom? Who told you that?
A. Well, I don't know if I -- I don't know as I sit here today that the -- that that --
Q. Read your report until you figure it out.
A. Well, I don't know if I -- whether I saw that in writing or someone -- I -- I believe I saw that in writing that -- that he had -- he -- that -- that he

testified to that.
Q. Let's look on the list of materials you considered. It's a -- it's a short list. Can you show me on that list which writing you're referring to?
A. Well, it might have been in its -- I can't. It could have been in his interrogatories. I didn't make it up. I mean, he had -- you know, I read a lot of different types of documents, as you see, two and a half pages --
Q. Yeah.
A. -- of listing of documents. I'm not sure which exactly one I saw. It's not something I -- I made up. I just -- I just reported what I had read.
Q. Oh, I'm not accusing you of making it up.
A. No. No. I understand.
Q. And to any extent you might interpret what I'm saying in saying that --
A. I understand.
Q. -- I apologize.
A. Yeah. No, but what I --
Q. Sincerely.
A. Yeah. No.
Q. So I --
A. Hey, I have thick skin. What I'm trying to --
Q. No, but I am in no way accusing --

A. What I'm trying --
Q. Please, sir, focus. Focus. What I'm trying to get to is the factual foundation you relied upon. And, you know --
A. Yeah.
Q. -- if it's garbage in, garbage out or gems in, gems out. If so --
A. Well, what I'm -- what I'm --
Q. If I look at the materials you considered, I don't see anything about that. But you did testify you never talked to Smothermon. You never talked to anyone at the church. You never talked to anyone except Ms. Westbrook; is that accurate?
A. For the most part, yeah.
Q. No. No. N equals 1 or N equals 0. So is there anyone else other than Ms. Westbrook?
A. Okay. The only person I remember talking to, I believe it was Ms. Westbrook. She has a partner, but I don't think I ever talked to him. I think I -- you know, that might have corresponded with him, but I didn't talk to him.
Q. So the singular person you've interviewed was Ms. Westbrook?
MS. WESTBROOK: Object to form.
THE WITNESS: Well, that I've talked to.

BY MR. RANDAZZA:
Q. Okay. This is the only person --
A. Yeah. We're talking about verbal talking. The only person I believe I remember talking to at the law firm --
Q. No. No. Not at the law firm. Okay. Let's -- let's --
A. Well, you're splitting -- you're --
Q. Let's methodically say this.
A. Yeah. You -- you're --
Q. To create this report, you spoke with Ms. Westbrook. We've addressed that, right?
A. Right.
Q. Okay. Check. Now I'm going to put a square here and I'm going to put other people. Should I check that box as yes or no?
A. No.
Q. Okay. So you spoke with no one else?
A. No.
Q. No, you didn't speak with anyone else?
A. N-O.
Q. Okay.
A. You want me to write it for you so you can see it? N-O. I answered your question twice. No.
Q. Nobody else?

A. No is no.

THE RECORDER: And gentlemen, I just want to remind you guys to speak one at a time, please.

THE WITNESS: Yeah. Yeah.

BY MR. RANDAZZA:

Q. Let's see. Do you know how many people saw the -- we'll call it the erroneous post?

A. No. I haven't seen any figures of that.

Q. Do you know how many shares it had?

A. No.

Q. Comments?

A. No.

Q. Likes?

A. No.

Q. Are you aware of a single person who recognized the photograph as Steve Smothermon, the plaintiff?

MS. WESTBROOK: Object to form.

THE WITNESS: No. Not personally.

BY MR. RANDAZZA:

Q. Are you aware of any -- have you looked at any Legacy Church attendance records? It's not on your list, so.

A. Well, yes. I -- I have in my report that -- that what -- as I understand it, they have 10,000. Among their nine churches, they have 10,000 regular

parishioners or congregants that attend each Sunday.
Q. Okay. So did you look at actual attendance records?
A. On a specific church?
Q. On Legacy Church?
A. No.
Q. Any membership records?
MS. WESTBROOK: Object to form.
THE WITNESS: No.
BY MR. RANDAZZA:
Q. What about financials other than -- because you do list the 2024 annual report. So did you look at any other financial documents?
A. No.
Q. What about book sales?
A. Yes. Or not book sales. No. I -- I saw a list. No, it wasn't book sales. It was something else. But no, I don't think I saw any statistics on book sales.
Q. How about Pastor Steve Smothermon's YouTube subscriber accounts?
A. Yeah. I think that I saw -- oh, YouTube. No. I saw one figure that related to all of his social media.
Q. What about his Instagram account?
A. No. They weren't broken out. I -- I saw --
Q. What about his podcast downloads?
A. I'm going to finish your last question.

Q. Well, it was just about Instagram.
A. And you're going to allow me to answer or --
Q. Is there more to Instagram than no?
A. No. I was starting to say that I saw a figure of 28 million as it relates to the Facebook, Instagram, YouTube. I mean, all his social media combined that supposedly he has a reach of -- of -- he or the church, I'm not sure which was which, has a reach of 28 million.
Q. Wow.
A. That was a figure I saw. Have I --
Q. No, I --
A. -- I -- no.
Q. I didn't know that until now. Thank you.
A. Well, it's in the report if you read the report.
Q. Right.
A. You might read the report. It would be helpful.
Q. Is -- huh? 28 million? Would you call that a lot?
A. Yeah. I'd call that significant.
Q. Did you look at any medical or mental health records?
A. No.
Q. Tax returns?
A. No.
Q. Income records?
A. No.

Q. Any correspondence from any congregant?
A. No. I didn't see congregant.
Q. Any document created by anyone who saw the post other than Ms. Westbrook?
MS. WESTBROOK: Object to form.
THE WITNESS: I'm sorry. You'll have to repeat that question.
BY MR. RANDAZZA:
Q. Did you look at any document created by anyone that you believe saw the post?
A. Oh, you mean like a declaration, affidavit, something like that?
Q. Anything.
A. Email?
Q. Anything.
A. No.
Q. You said on Page 24 you reviewed a study conducted by Plaintiff's law firm. What study did you review?
A. Well, it's -- it's spelled out in the copy if you read the report. I mean, I didn't just throw that out there without attributing what it was about.
Q. Can you tell me about the study?
A. Well, as I -- as I understand, I didn't need to see the study. They -- they supplied the results of the -- of the study to me. And it was a referencing on -- on

-- and how they went about -- how the defendants went about selecting a picture from Google.

Q. Okay. So their study says "Defendants didn't utilize normal and accepted photo verification tools to verify the identity of a person in a photograph"?

A. Yeah.

Q. That's their words, not yours?

A. Well, that was the -- no, they were my words, but that was the information that was provided.

Q. Right. I'm saying -- okay.

A. Yeah.

Q. That's their conclusion, not your conclusion?

A. Yes, that was. Yeah.

Q. Do you know who conducted that study? The person?

A. I think I did hear at one point. I'm trying to remember at one point if I did, but it was alluded to who at the firm did it, and I can't remember. I wouldn't remember the name, but I --

Q. Do you have it?

A. I -- I don't know. I don't know. As I say, I'm not -- I'm not completely sure whether I saw it or not. I think it was somebody at the firm that did it.

Q. Wait. You're not sure if you saw it or not?

A. I'm not sure I saw what?

Q. Well, we were talking about the study.

A. Yeah.
Q. I asked you if you had seen it. And then you said, I'm not sure I saw it or not. So I'm confused.
A. No. I didn't say that. I said I -- I said I didn't see the study. I said they gave me the results.
Q. So you didn't review the study itself?
A. No. And I said that. I -- I testified that about two minutes ago. Yeah. I didn't see the study itself.
Q. Well, you can see how I'd be confused when your report says you reviewed this study.
A. Well, no. If you were listening to what I said, you would -- you would have heard it.
Q. Well, I'd like to turn your attention to the last bullet point on your report where you say you reviewed a study conducted by Plaintiff's law firm.
A. I reviewed the results of a study, not the study itself.
Q. Okay. So we should insert the word --
A. My bad -- yeah.
Q. -- the results of?
A. Right. Reviewed the results.
Q. Okay.
A. Or they gave me the information of what was determined in the study. I didn't see the formal paper that outlined the study or a report or anything like

that, no.
Q. So theoretically, they could have just made it up?
A. Sure. That's -- I'm -- I have to take representation. I mean, any expert would have to take representation that the law firm provided you with a study. I mean, that's -- that's -- I mean, I -- I don't turn around every law firm and give me information saying, are you lying or did you make that up? That's reasonable. It's not reasonable.
Q. Do you ask, do you have anything to back that up?
A. No. But, I mean, you know, that's -- you know, I've been doing this a long time and you -- certain things you're allowed to take as representation, particularly when they come from the law firm, that they're not making it up.
Q. So you don't know what methodology that study used?
A. No. I don't know the methodology.
Q. You didn't verify any of its conclusions independently?
A. No.
Q. So you adopted a study designed by the lawyers who hired you, whose author you can't name, using a method you can't describe; is that fair?
MS. WESTBROOK: Objet to form.
THE WITNESS: Yeah, that's fair.

A. Yeah. I don't understand how that would do -- would've happened.
Q. Okay. So -- well, it looks like you mislabeled an attorney-client communication as correspondence between counsel and published it to us. Would that be accurate?
A. What do you mean by mislabeled?
Q. So you're telling me that -- that those two block quoted paragraphs --
A. Uh-huh.
Q. -- are not attorney-client privileged communications. You're telling me that those were actually written to me?
A. Well --
Q. The "you" in those is me?
A. There's no attorney-client in it. It's a letter from one attorney to another attorney. There's no client involved in it.
Q. Okay. I would like you to role play that you're Ms. Westbrook and I'm me.
A. Okay.
Q. Read that block quote to me.
MS. WESTBROOK: Object to form.
THE WITNESS: "This is a fact-based" -- that's the one you're talking about?
BY MR. RANDAZZA:

Q. Yes, sir.
A. Yes. "This is a fact-based defamation. We argued that the Hodgetwins did not just call you woke as" --
Q. Point to "you" in that sentence. Point to the person that that pronoun addresses.
MS. WESTBROOK: Object to form.
BY MR. RANDAZZA:
Q. Are they in the room right now?
MS. WESTBROOK: Object to form.
THE WITNESS: No.
BY MR. RANDAZZA:
Q. They are not in the room right now?
A. No. And it -- it was not -- obviously, it's not a reference to you.
Q. Okay. So --
A. And --
Q. To whom was this communication actually written?
A. Are you saying that you don't believe it came from the letter to -- from Westbrook to -- to Randazza?
Q. Well, I'm "you," if that's to Randazza. So I'm not sure that the Hodgetwins called me woke.
A. Yeah.
Q. Or said I was part of a corporate rebranding strategy. So I'm drawing the conclusion here and asking you your opinion. Is this mislabeled?

A. Well, it obviously -- whether it's mislabeled or not, it obviously doesn't make sense that the -- that the Hodgetwins would've called you woke, obviously. There's --
Q. Yeah. They might.
A. Yeah. Well, there's -- whether they did or not, obviously there's an error there of some sort. And --
Q. Okay. That's all I'm getting at.
A. No. No. I mean, it -- it mystifies me as much as anything else. I mean, the bottom line, even if I got the date -- there were six letters that she wrote to you. Even if I had the date wrong, like it wasn't the February 25th letter, which is February 26th letter, it still wouldn't have changed the fact that it was -- that it was her writing and -- and claiming that they called you woke. That doesn't make any sense at all.
Q. Okay.
A. Yeah.
Q. Thank you.
A. Good point. I -- but I -- just I -- I'm going to go look at that one when I get back.
Q. Strike. Strike. Yeah.
A. I got to go back to that letter and see when I -- where I made that error.
THE WITNESS: Are we doing any better?

A. I don't remember. If it's not on the list, I didn't, no. Do you know the date, what the order would've been?
Q. Yes. It would've been May 5th.
A. Okay. Let me look. May 5th of '25 or '26?
Q. '26, sir.
A. May 13th. No, I didn't see it because I go from May -- I go from April 22nd to May 13th. So no, I never -- I never saw that document.
MR. RANDAZZA: All right. I'm going to mark this as Exhibit 2.
(Defendants' Exhibit 2 was marked for identification.)
THE RECORDER: You never marked the other one.
MR. RANDAZZA: Yeah. We're not at that yet.
THE WITNESS: Yeah. He marked it 1 on that one. It's -- yeah. He's got it Number 1 on there.
MR. RANDAZZA: 2. All right. Wish we -- do we have a stapler here?
MR. MCLAREN: I got a clips.
MR. RANDAZZA: Great. Hook me up, would you, brother? Give me two.
BY MR. RANDAZZA:
Q. Let me see. Why don't we clip your report there, sir, so it doesn't fall apart since it's an exhibit?

A. Okay. Oh, you're handing me something?
Q. Yes, sir.
A. I'm sorry. My eyes were --
Q. Quite all right.
A. -- diverted to something else. Okay. Now we've got order.
Q. Does that look familiar?
A. No. If it's not on my list, I never saw it. Believe me, I don't miss anything on my list. And I, obviously, never saw this.
MR. RANDAZZA: You have no idea how many -- oh, let's actually label that exhibit now, the -- the photograph.
THE WITNESS: You have it labeled 2.
MR. RANDAZZA: No, no. Number 3 now.
(Defendants' Exhibit 3 was marked for identification.)
THE WITNESS: On this one? It's already labeled 2.
BY MR. RANDAZZA:
Q. All right. Let me have a -- right there with that, sir.
A. Oh, this one?
Q. Okay. Here it goes. You have no idea how many people saw Exhibit 3, do you?

A. Those two paragraphs -- I mean, there's no purpose of me typing -- taking time to type a large -- a couple large paragraphs when I -- when I can just cut and paste them, and they're generally foolproof, but obviously --
Q. If you look at Page 13 of your -- of your report, you see the first full paragraph that begins with the word under?
A. Yeah. You mean the one that said "under the text"?
Q. Yes, sir.
A. Yeah. Okay.
Q. Can you see at the last full line of that paragraph says, "Which allegedly led to $145 million loss in brand value?"
A. Right.
Q. Where'd you get that figure?
A. I got it from a document. I'm not sure -- sure which -- which one, to be honest with you. But, I mean, obviously, I didn't make up a figure, 145 million. It -- it came from one of the documents I read.
Q. Right above that, you copied the whole post, correct, on Page 12?
A. Yeah. Sometimes things are on documents I can't cut and paste and --
Q. Okay. Well, why don't we take a look at Exhibit 3, which is actually a post then, instead?

A. Oh, yeah.
Q. Probably the best evidence.
A. Yeah. That's fine.
Q. Can you -- is $145 million mentioned there?
A. No. I see no figure like -- of that kind in there.
Q. Where'd you get that?
A. On, specifically, one of the documents I looked at. I mean, obviously, as I said, I didn't -- I did not make that figure up. I mean, it -- it was in one of the -- one of the legal documents I got that I looked at.
Q. Okay. Did you get that figure from Ms. Westbrook?
A. No, no, no. I didn't -- I -- you know, most of the time I talked to Ms. Westbrook, it was -- we were just talking about deadlines or meetings and stuff like that. I -- there -- there was very little -- first of all, I didn't talk that often to Ms. Westbrook. And the second thing is it wasn't that much verbal exchange of information. We didn't exchange information from her. 99 percent of this is from written documents, not from somebody telling me on a telephone call.

MR. RANDAZZA: Can you -- I'm going to hand you Exhibit 4 now.

(Defendants' Exhibit 4 was marked for identification.)

BY MR. RANDAZZA:

Q. And I'm going to ask you to look at -- oops, Lines 31 -- Paragraphs 31 and Paragraphs 44, which I've highlighted for you.
A. Oh, okay. Well, that'll make it easy. What is this document?
Q. Yeah. Read 44 first.
A. Yeah.
Q. Read it aloud, if you wouldn't mind.
A. Well, this one, 31, is "Cracker Barrel shares plummeted approximately 10 percent."
Q. No, no. Look -- look at Paragraph 44. I'm sorry.
A. Oh, okay. Oh, yeah. Yeah. That --
Q. Could you -- could you read that aloud for me?
A. The whole paragraph? Sure.
Q. Yes, sir.
A. "None of -- nonetheless, the Hodgetwins' Facebook post falsely, and with reckless disregard for the truth, told their vast audience that Pastor Steve" --
Q. Sir, let me see the document. I think I've highlighted the wrong thing.
A. Oh.
Q. Let me take a look.
A. It has the 145 figure in it.
Q. Okay.
A. That's obviously where it came from.

Q. Yeah. Yep. I'm sorry. My mistake.
A. Okay.
Q. Beg your pardon.
A. I'll go back to reading it.
Q. Go ahead, sir.
A. "Nonetheless, the Hodgetwins' Facebook posts falsely, and with reckless disregard for the truth, 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."
Q. Now, will you look at Page 13 --
A. That's a --
Q. -- of your report?
A. Yeah. That's a different number.
Q. No, no. It's the same number.
A. No. It has 143 million.
Q. Well, not if you look at Page 13 of your report.
A. Oh, 13 in my report?
Q. Yeah.
A. I thought you meant 13 -- okay. Page 12.
Q. But if you read the last three lines, start with, "was a woke supporter." Can you see that?
A. No, I don't.

Q. Okay.
A. Page 13?
Q. Page 13 of your report.
A. Yeah.
Q. Place your finger on the paragraph that begins with the word under.
A. Oh, okay. I was looking at the bottom. Okay. Under.
Q. Now -- now go down to the word was. "Was a woke." Can you see that?
A. Yeah. "Was a woke supporter."
Q. Keep reading.
A. Okay. "Christian pastor was a woke supporter of LGBTQ+ causes and was responsible for the controversial DEI-driven rebranding at Cracker Barrel, which allegedly led to a 145 million loss -- dollar loss in brand value in a single day."
Q. So you took your description of the post from the complaint, not from the post?
A. Let me read the whole paragraph. Well, that doesn't say it was from the post. Not at all.
Q. Well, I didn't --
A. You're reading --
Q. I didn't say it did.
A. Oh, okay.

Q. I just asked you, did you take --
A. Yeah. Because once you get to "which allegedly led to," that's a --
Q. Right.
A. -- that separates it out from --
Q. So you copied that from the complaint?
A. That must have been where I got it. Yeah.
Q. Okay.
A. I knew it was somewhere.
Q. Sure. So now if you go to Paragraph 44 of the complaint -- I mean, I'm -- yes, of the complaint. So at 31, it says --
A. Okay. Wait a minute. I'm on the complaint. Sure. This is the complaint? We're on number 4?
Q. Yes, sir.
A. Okay. There is no Page 44.
Q. Paragraph.
A. Oh, paragraph?
Q. There's numbers of each paragraph.
A. Paragraph 44. Okay.
Q. What does that say for loss in value?
A. It said it allegedly had led to a 145 million loss in brand -- brand value in a single day.
Q. Okay.
A. They're both 145 million.

Q. Right.
A. Yeah.
Q. I'm aware of that.
A. Yeah.
Q. Yeah. It doesn't matter. Let's go to Page 34 of your report.
A. Of the report? Okay. All right.
Q. Let's go with the -- can you see the indented block quote there?
A. Yeah. "As a pastor"?
Q. Yeah. What are you quoting there?
A. You mean where did I get the source of the quote?
Q. Yes, sir. Or are those your words?
A. No, they're not my word. I wouldn't put them in -- I wouldn't put them in italics and -- and with quotes around them. That means they were -- they came from somewhere. Let me read it.
Q. Do you notice that a couple times in your report you spell Smothermon with two S's, S.Smothermon?
A. Yeah. On purpose.
Q. Oh, how come?
A. Oh, simple. Look at the case background section. In the case background section, what I do is I always identify people. I put S.S. Smotherman as being M-A-N, not the other. So I -- I say, "Steve Smotherman, a

former management training leader at Cracker Barrel. He left the company," blah, blah, blah. And after Steve Smotherman, I put in parentheses, "S. Smotherman." That's to differentiate him from the Pastor Smothermon.

Q. Oh, okay.

A. In other words, you -- you know, it's an abbreviation. You don't need to say -- you don't spell out his name every time.

Q. I didn't pick up on that. Thank you.

A. Okay.

Q. Okay. So this --

A. You must have though I had hiccup -- hiccups or something.

Q. No. I thought it was a typo, you know. The things I've filed with glaring typos in it, I --

A. Yeah. No.

Q. -- I certainly wouldn't have been using that to make you look bad.

A. Well, believe me. I'm the last person trying to be perfect.

Q. Okay. So when I look at that quote, isn't that -- if you look at the complaint again, isn't that Paragraphs 50 to 52?

A. Order? Let me put this out here. So in the Paragraph 52 in the -- in the complaint, Paragraph 52

talks about "moral feature."
Q. 50 to 52.
A. Oh, 50 to 52? Okay. What page was I on my report?
Q. 34, sir.
A. 34. Okay. The page -- the page -- lost the page. 34. Yeah. It -- it appears to be.
Q. Okay. So the passage you offered as background, context, and perspective --
A. Yeah.
Q. -- is a quotation of the complaint?
A. Yeah. In other words, trying to say what his -- what he's -- what he preaches, what his general -- his general message is when he -- when he preaches.

THE RECORDER: Mr. Fisher, try to remember to let him finish the question before you answer.

BY MR. RANDAZZA:
Q. All right. Take a look at -- so look at Page 9 of your report.

MR. RANDAZZA: Actually, do you have a couple copies there? Give me, like, a -- I'd like another exhibit sticker. And we have one for Ms. Westbrook and then one for me.

(Defendants' Exhibit 5 was marked for identification.)

MR. RANDAZZA: There you go.

MS. WESTBROOK: Thank you.

MR. RANDAZZA: Sure.

BY MR. RANDAZZA:

Q. I'd like to give you this.

A. Oh.

Q. There you go.

A. Five? That's my favorite number.

Q. So I've made a -- a little chart here of language that came from your report that appears to be lifted directly from the complaint. Would you like to look through your report and the complaint to confirm that?

A. No. I'll take your word for it.

Q. Okay. So perhaps to save a little time, you adopted their -- their conclusions as part of your report?

MS. WESTBROOK: Object to foundation. Form.

THE WITNESS: Well, I would say no to two things on that. One is that I -- I may have -- have taken their -- I might have used their -- some of their terminology. Obviously, you've seen where I do -- I use some of their terminology in their report. I, you know, again, don't reinvent the wheel. But the other thing is, I -- I wouldn't put it in unless I felt that it was -- I didn't -- it was not contrary to what my own assessment would've been.

In other words, just because I said something,

if I didn't agree with it, I wouldn't have put it in. And as I -- I can see at the bottom on Page 43, that's where the "rage bait" came from. I knew it wasn't -- I knew it wasn't something I made up.

BY MR. RANDAZZA:

Q. So you copied it from that?

A. Yeah.

Q. Okay.

A. I mean, you asked that -- about that earlier, and I said I had never heard that term before, and I didn't make it up myself. Well, obviously, that's where I got it from.

Q. Okay.

A. But in reading it, I obviously thought that was a good --

MR. RANDAZZA: Could I have an exhibit sticker, please?

THE WITNESS: -- I thought that was a good interpretation of what it was conveying.

MR. RANDAZZA: I think we're on 6?

THE RECORDER: Correct.

MR. RANDAZZA: Okay. So I'm going to give you Exhibit 6, which is the first amended complaint, which has not yet been accepted.

(Defendants' Exhibit 6 was marked for

identification.)
BY MR. RANDAZZA:
Q. And I'm going to just open it to Page 8 for you.
A. Which I haven't seen.
Q. Oh, you haven't seen their amended complaint?
A. Well, it's not on my list, I don't believe.
Q. Okay. So --
A. If you said it hasn't been accepted, then I wouldn't have seen it anywhere.
Q. Okay. Can you see where it talks about using incognito mode as highly irregular and reckless?
A. Right.
MS. WESTBROOK: Object to foundation.
BY MR. RANDAZZA:
Q. Read that -- those words, if they're on that page.
A. It says -- well, the sentence -- the complete sentence says, "Doing so was highly irregular and reckless."
Q. Referring to what, sir?
A. The online search. It's referring to their search in Google to find a picture of Pastor Smothermon.
Q. Okay. So --
A. So there's --
Q. On your report, on Page 30, you said --
A. It's the second paragraph down.

Q. Yeah. If you look at --
A. I said "negligence and recklessness." I didn't say --
Q. Okay. I want you to look at failures of search standards and verification.
A. Yes.
Q. Okay. So here you wrote what? Kevin H. You -- read it to me. Kevin H.
A. You want me to read that?
Q. Yes, sir.
A. The whole paragraph?
Q. If you would not mind, sir.
A. Not at all. "Kevin H. admitted that he performed his Google image search in its incognito mode. Plaintiff maintains that doing so is considered highly irregular and reckless as it bypasses standard internet browsers, which deliberately leaves no record of the search and destroys a verification history."
Q. So --
A. So I attributed it to the plaintiff.
Q. Right. But that's in the proposed amended complaint, which you never saw before?
MS. WESTBROOK: Object to form.
BY MR. RANDAZZA:
Q. Did you say you didn't see it before?

Q. Right.
A. -- mode means. No. The answer is no.
Q. Okay. So did your description of the post come from the complaint or the post?
MS. WESTBROOK: Object to form.
THE WITNESS: How do you mean description?
BY MR. RANDAZZA:
Q. Let's turn to Page --
A. Oh.
Q. Let's -- no.
A. In other words --
Q. I don't want to confuse you. Let's get -- let's go to Page 12 of your report, and we're going to look at where you say Facebook post. Do you see that?
A. Yes.
Q. Okay. Did that come -- did you copy that from the complaint?
A. It must be because the post wasn't up on the -- the post was taken down, so I didn't see it on the internet, obviously. And the only place -- the only place I would've seen it is some -- in -- in one of the documents that was presented to me, whether it was the complaint or otherwise. I -- I don't remember exactly where I lifted it from, but it -- the bottom line is I didn't see it online. So it came from one of the -- the

pieces of discovery I was provided.
Q. So your report really is about a photograph, correct?
A. Well, yes. The photograph attached to the post. That -- that's a -- as I said, there was nothing in the post that directly addressed the pastor. And -- and I -- I will represent that I don't think that the defendants were going after the pastor in the post. Obviously, they -- they're very clear they were going after Smotherman, M-A-N, who was a Cracker Barrel -- ex-Cracker Barrel executive. I mean, they're clear about that. There's no -- it's the photo attached to the post that's a problem, not the post, but the photo attached to the post.
Q. Right.
A. If they just -- if they just did his photo -- put his photo online by itself and put his name under it, there'd have been no problem of any kind. You know, it was the -- it was the joining of the post with the picture that -- that -- where the damage emanated from.
Q. Do you think it's likely they did it on purpose?
A. No. I don't believe they did it on purpose at all. No. I -- why should they? They were after -- they were after one guy. Why would they take a picture of another guy? No. I'm sure they didn't -- they didn't know what

they were doing, and they didn't -- you know, no one is claiming them doing a hatchet job on -- on the pastor, I mean, you know, deliberately or wantonly or purposely. That's not -- not the point at all.

Q. Now, on Page 31 of your report, when you did your Google search for "Steve Smotherman" --

A. Yeah.

Q. -- with an A --

A. Yeah.

Q. -- the first picture that came up is the one that shows on Page 31, correct?

A. Yeah. When I did the post, as I explained in -- I mean, when I pulled up the post, I just -- like, I can Google. I Googled, and I put Steve -- just what they did. I put Steve Smother, M-A-N, into the post.

Q. Right.

A. I -- I mean, into the search box.

Q. Yeah.

A. And what came up, as I said, came two -- two blocks of five pictures that went horizontally. There was -- there was one block of five pictures from side to side underneath of it. There was another block of five pictures. Ten pictures in two rows.

Q. Did you provide that ten pictures in two rows to anyone?

A. Provide it to anyone? No. I put it --
Q. Does it exist?
A. I put it in my report. I -- I just took the top five pictures because they -- the -- first of all, anybody looks from top to bottom, not bottom to top, and the -- and the -- the second row was not really relevant. I mean, there was other pictures of -- of both of them and this, that. In other words, I went to where the person would've looked at. He looked at the -- if he went on Google, he looked -- the first thing he would've done was -- was -- well, he might have looked at the text -- I mean, the different listings, but also he would've looked -- they were looking for pictures.

They weren't looking for listings. So he went -- he Googled "Steve Smotherman" or he -- whoever did it, Googled "Steve Smotherman" and he -- specifically to find a photo of Steve Smotherman, and he found ten photos. And obviously, he would've looked at the first five and first -- and -- and three were of the pastor and two were of the -- of the Crate & Barrel executive.
Q. Are you sure about that?
A. Yeah. I've got the pictures in the -- so, you know, something even to -- even to emphasize more. A month after I did that initial search --
Q. Yeah.

five photographs, but you didn't do a screenshot of the whole results?
A. Pardon?
Q. Do you know how to do a --
A. The first five -- the five across the top.
Q. Do you know how to do a screenshot?
A. Five across the top, two rows. Top row, five; bottom row, five.
Q. Yeah.
A. I only did the top five because, obviously, he would've looked at the thing, and he would've looked at -- you look top to bottom. You don't look at bottom to top. You look at the -- but the bottom was --
Q. "Obviously, he"? Who's he in that sentence?
A. Well, whoever looked. It might have been a she. I don't know who did the search.
Q. So you're saying "obviously" --
A. I assumed Kevin. I assumed that Kevin -- I think it was -- Kevin said it was -- said that Kevin did the search, not Keith.
Q. Okay.
A. I can't remember. One of them was -- I read had done the search.
Q. All right. So your testimony is that -- do you know how to do a screen capture?

A. A screen what?
Q. Capture. Do you know how to take a screenshot of your whole screen on a computer?
A. I didn't up until about a week ago and someone showed me how to do it, but I -- I didn't do it for this. I --
Q. You just copied the first five horizontally that came up for you?
A. Yeah. The first five. But I wouldn't have had -- I don't think I would've had room on the page to put five.
Q. Did you do the search in incognito mode?
A. No. No. I just did Google. I took them in -- I mean, I assume he just went on and did it, the -- the Google, which is what I did. No, I didn't do it in any mode. I just went on -- I pulled up Google on my computer. I typed in the name Steve Smotherman, M-A-N, and a page came up and that's it.
Q. And the first result was the plaintiff?
A. The -- the -- yeah. It's a side by side. The plaintiff was first.
Q. Yeah.
A. And the next --
Q. And the plaintiff was second?
A. This was first. The plaintiff was second. And the -- the Cracker Barrel guy was third and fourth, and the

one was an earlier picture of the -- a younger picture of the guy. He didn't have a beard. I mean, you know, he had the beard and his hair, you see. But as far as I can see, they were -- the other -- the other thing you should -- that should be pointed out on -- on this is every one of the pictures -- I mean, I can see whoever did -- did the research, they went on. They see some pictures and whatever. They don't know who's who. Even though the spelling should have told them they was correct. Let's say --

Q. Oops. Sorry.

A. Let's say that the spelling -- the -- I mean, it's easy not to see an, A-N, instead of an, O-N. I'll give that. But every one of the --

Q. Could -- wait.

A. No. No, wait. Let me finish.

Q. No. No. I want you to finish what you just said there.

A. Every -- every one of the pictures, every one of the three pictures here, as you will see, of the -- of the pastor identified him as a minister. I mean, there's no other -- they're looking for a -- a business executor, every one. Under the first one, it says Tony Cooke Ministries, meaning that --

Q. What's Tony Cooke Ministries?

four next to it. But if I saw a picture that showed a man, and under it, he talked about ministries, I would -- I -- a red light would go off. I would say, I need to look further.

Then the very next picture I would've saw would've identified the exact same person as being a -- a pastor. I mean, this isn't rocket. He's either a blithering idiot or -- or whoever it was. Or it's a pastor. The bottom line is, any reasonable person looking at five pictures, of which three of them was of one person and two were the other, and the three had some sort of a religious -- a picture or a -- a reference to them, would say, hey, wait a minute. This guy is tied into religion. He's not a Cracker Barrel executive.

Q. So tell me about the reverse image search you did for the first image.

A. I never did a reverse image search. I didn't --

Q. Why not?

A. I didn't do it, was I --

Q. Don't you think you need to do that to do a complete report for a case?

A. There was no need for -- I was duplicating what that -- what that guy did, or whoever it was. I don't know. Who was it? I mean, tell me who -- who did the search. I thought it was one of the Hodges.

picture that they used in the post.
Q. You wrote this report without seeing the picture they used in the post?
A. Yeah. I've never seen the picture. I -- I saw the text somewhere in -- whether it was the complaint or somewhere else, I saw the text of the post, but not the picture. But that -- that's not the issue -- the issue in this case. It's not what picture they used. The issue is that they misidentified the -- the pastor.
Q. How did they do that?
A. Your guess is as good as mine.
Q. No. No. How did they misidentify him?
A. They put the wrong -- they didn't -- they didn't misidentify him by wording or text. They misidentified him by the picture that they used, that they associated that he was the person that they were referring to in the text.
Q. The picture you just said wasn't relevant?
A. What? No, they -- it -- what picture they used of him is not relevant in terms of the fact they used the picture of the wrong person. That's what's relevant. Doesn't matter if they had him in a cowboy suit on a horse. The bottom line is they misidentified him. The -- what picture was used doesn't -- doesn't matter. It's just that they used the wrong person. The harm

Q. -- for all you know, could be a gay-only church, correct?
A. Who cares?
Q. Okay. It could also be a church devoted to gay orgies, couldn't it?
A. Who cares? The bottom line is -- in the context of this, is that underneath the picture, there was a reference to a religious church or organization or whatever ministries in this case, which should have been a red flag to any halfways-intelligent person, that why is it -- why are they putting the name of a religious person underneath the -- or a religious entity underneath it -- this guy's picture?
Q. The photograph that you say isn't relevant that the case is all about?
A. No. No. It's not -- the actual visual image of the photograph is not relevant.
Q. Okay. Here's my question for you about that not-relevant photograph.
A. Right.
Q. Where did they get it?
A. I don't know. And it's not -- it's not important. The important is they didn't do their due diligence. They were negligent. They were reckless. And they -- when they clearly would've pulled up Google and seen

A. I can't -- I can't tie that in terms of malice or anything else. I'm not allowed to get into that area. I mean, in the sense I --

Q. Sir, you can tell me that you shot John F. Kennedy if it's true. So why don't you tell me the truth? Do you -- is it your opinion that that was reckless?

MS. WESTBROOK: Object to form. Calls for a legal conclusion.

MR. RANDAZZA: Yes, it does. That's my point.

BY MR. RANDAZZA:

Q. You don't know what you're talking about when it comes to law, do you?

MS. WESTBROOK: Object to form.

THE WITNESS: No. And I'm not talking about law. I'm talking about their -- their process to identify -- to find a photograph to identify -- to identify an -- a certain individual, their process to do it. I have no problem with them going on Google, typing in the name. But there were so many red flags, a misspelling of the name. The fact that there was multiple people with the same name. The fact that the -- the one that they choose to use, whichever photograph they choose of them, the one that they choose to use in all identifications, other than his name being spelled differently than the man they were looking for, had --

Q. You were deposed three times in that case?
A. Well, two, but one was split into two.
Q. Okay. And you submitted this written report?
A. Yeah. I'm not sure which case this was for, the first or the second, but we'll -- we'll find out.
Q. Did you -- you applied the same methodology there that you did here, correct?
A. No, not necessarily. I mean, this case was -- you know, your methodology -- I would say the core of it, yes. But I'd say methodology evolves as you -- as you go. I would say it's -- it's somewhat different than it was then. And in other words, I -- I've -- in recent years, I've started doing more, like -- like, little studies. Or not studies, but looking into things, like I mentioned with the --
Q. What's the date on that report?
A. This is January 30, 2023.
Q. Okay.
A. So --
Q. So in that report, did you offer the opinion that a person with an established positive reputation and a developed reservoir of goodwill is more resilient to a single negative statement?
A. It depends on how -- you mean --
Q. In that report, sir?

it -- that's on me.

THE WITNESS: Oh, okay.

BY MR. RANDAZZA:

Q. Okay. So you're saying that that reservoir of goodwill theory was kind of unique to that case?

A. Well, I said it's not a cookie cutter thing. It -- in many cases, yes. It -- it helps if somebody already has a good opinion of you before they hear anything about you. In other words, the -- there's the blank slate thing, where the first thing they hear anything about you is negative. Then there's one where somebody already has a reputation. Then they hear -- theoretically, if they have a -- a good reputation, it'll buttress it somewhat. Yeah.

Q. What was Steve Smothermon's reputation prior to the publication of the -- we'll call it the photo you call irrelevant, the irrelevant photo?

A. I don't recall being irrelevant, but from what I gather as a professional, he had a -- he had a good reputation. I mean, he had nine churches. He's -- he had been a -- a preacher for 35 years, 25 with Legacy. And he had a -- a reasonably positive -- there were -- I did do some research on him as I always do when I first got the case. And -- and, you know, he had been involved in some little controversies here or there, I

think a dispute over some civic thing and that -- there was a political thing.
Q. Why did you say in your report that he had absolutely no negative press at all?
A. Well, I didn't -- I was talking about him professionally, that there's a difference between personally and professionally. I mean, he's -- professionally, as a preacher, he -- you know, he didn't have any blemishes. But -- but, you know, as a community -- person acting in the community, he had a -- you know, a couple things. But it wasn't anything super negative. It was just that he had some disagreements with some -- some people.
So it's a matter of whether he was right or wrong or, you know, I mean, anyone. I just addressed it from the point of -- as a -- as a -- professionally as a preacher. And I didn't see anything. I mean, he'd never been chastised or -- or suspended or anything like that. I mean, he had a -- he had a growing church and he had a good following, so it was generally positive.
Q. So you educated me that he reached 28 million people in his social media audience?
A. Well, I think it's in my report if you find that, but 26, 28. Yeah. I -- I think so. I saw that. Again, I didn't do a count on it and I --

A. Not really any.
Q. How many negative opinions, period, did you find?
MS. WESTBROOK: Object to form.
THE WITNESS: On social media?
BY MR. RANDAZZA:
Q. Anywhere.
A. Well, I didn't really see anything in there. All I did was look at the -- I looked -- I looked for -- generally, I -- you know, I researched online. I researched him and whatever. And generally, you don't see positive things. It's like if a -- if you help an old lady cross the street, it's not news. But if you throw her down, then it's news, you know? I didn't -- in other words, the absence of negativity generally means the person has a fairly clean slate.
Q. And would you say there was an absence of negativity here?
A. Well, I didn't see anything that stuck out in -- in what I looked at or what I was exposed to. And, you know, I usually look at least ten pages of Google, and I go on and see another thing or something like that, look at another one, too. But I -- I didn't see anything glaring that -- where he was accused of anything negative, of anything. I mean, he was involved in one or two controversies, but -- but that was a he said, she

that -- that would -- shows up on your desktop. I pressed on Google. It wasn't a specific account of mine. It was just a Google search icon.

Q. Don't you think that was reckless?

MS. WESTBROOK: Object to form.

THE WITNESS: No, not for the purpose I was looking at. It was to just get general information to see what was out there.

BY MR. RANDAZZA:

Q. Did you clear your cookies or your cache before searching?

A. No.

Q. Disable personalization?

A. No.

Q. And we've already covered you didn't use incognito mode?

A. No.

Q. Did you preserve a timestamped screenshot?

A. No.

Q. Did anyone witness or verify your search?

A. No.

Q. So there's no record of that search that anyone could audit, correct?

A. No. Other than my truth, by saying it was true. I mean, I'll swear under oath if you want.

Q. Tell me the record you left. Describe it in detail.
A. Well, describe what you mean by record.
Q. Well, could we -- is there a dictionary here? Do you need a dictionary?
A. You mean written down?
Q. I'd like you to consult a dictionary if you don't know what the word record means. Would you like to do that?
A. Do you mean a written record?
Q. Any record. Is there anything in existence showing --
A. No. No. No. If I --
Q. I have to take your word for it that you did that?
A. No. Yes. No. If I had -- if I had found something substantial, I would've -- if I had found something that would've resulted in any of my conclusions and opinions in my report, I would've made a record of it, that I did it, and I would've put it in my -- I would've put it in my -- that listing of the information I have on Pages 26, 28.
THE RECORDER: Sorry to interrupt you, Counsel. Just be mindful to let him finish the question before you start answering.
BY MR. RANDAZZA:
Q. Before your search --

looked at my computer, and -- and pulled up Google and did it that way.
Q. Okay. And are you aware that Google personalizes your searches based on prior search behavior? Did you know that?
A. No, I didn't.
Q. So you didn't know that your own search history influences your results?
MS. WESTBROOK: Object to foundation.
THE WITNESS: No. I'm not aware of that.
BY MR. RANDAZZA:
Q. You did your search in 2026, correct?
A. Yes. I -- I got the case in 2026, yes.
Q. And the post was from August 22, 2025?
A. That's correct.
Q. About 11 months earlier?
A. Whatever. Yeah.
Q. Okay. In between, a lawsuit was filed and received some publicity, right?
A. Yes. I believe there -- I saw some articles on the lawsuit.
Q. In fact, I published a page about the case, correct?
A. Yeah. I'll take your word for it.
Q. Do you need to take my word for it, or should we look at your report again?

A. Well, if you're talking about that thing with the demonic thing, yes, you did. You had a web -- you had a website up there about the case.
Q. So all of that generated new indexed content about the plaintiff?
MS. WESTBROOK: Object to foundation.
THE WITNESS: Well, I didn't see that. I didn't -- your -- that website with the graphic and all that, I didn't see that until just at -- towards the end of doing my report, so I didn't see it at the beginning. I didn't -- I wasn't aware of it until almost the -- when the report was complete.
BY MR. RANDAZZA:
Q. Do you believe that you -- Google's rankings of pages stays static?
MS. WESTBROOK: Object to foundation.
THE WITNESS: Well, I imagine they're adjusted. I'm not -- I'm not sure for sure, but I -- I would assume they -- I know they -- that content, you know, on pages, if you Google somebody, the listings change from time to time. They go up and down or in between, whatever. So there are adjustments there.
BY MR. RANDAZZA:
Q. Do you know what Google returned for Steve Smothermon on August 22, 2025?

A. No.

MS. WESTBROOK: Object to foundation.

THE WITNESS: Oh, sorry. No, I did not do the search deal until I was retained in '26.

BY MR. RANDAZZA:

Q. I'm going to say it with the foundation here. I'm going to ask you: In your personal knowledge, do you know what Google returned for Steve Smothermon on August 22, 2025?

A. No.

Q. Did you check any archived result?

A. No.

MS. WESTBROOK: Objection. Foundation.

BY MR. RANDAZZA:

Q. Do you know what that means?

A. Well, I know what archives mean. You know, I mean, things are stored in --

Q. Can you tell me the names of one -- the name of one internet archive?

MS. WESTBROOK: Objection.

THE WITNESS: No.

MS. WESTBROOK: Foundation. Outside the scope.

MR. RANDAZZA: You can keep your speaking objections to a minimum, and you can just say form. And

I'm asking the deponent what he knows, so that's within the scope.
BY MR. RANDAZZA:
Q. Did you -- so you can't name a single internet archive?
MS. WESTBROOK: Objection. Outside the scope. Foundation.
THE WITNESS: No.
BY MR. RANDAZZA:
Q. Okay.
THE RECORDER: Your answer one more time.
THE WITNESS: No.
BY MR. RANDAZZA:
Q. Have you ever seen the Wayback Machine?
MS. WESTBROOK: Objection. Outside the scope.
MR. RANDAZZA: All right. We're going to call the judge if you keep this up.
MS. WESTBROOK: Foundation.
MR. RANDAZZA: So keep quiet.
BY MR. RANDAZZA:
Q. Do you -- have you ever heard --
MS. WESTBROOK: Wait, wait, wait. Wait, Counsel.
THE WITNESS: You know, you're so belligerent.
MS. WESTBROOK: Wait, wait, wait, wait, wait,

wait, wait.

MR. RANDAZZA: No.

MS. WESTBROOK: No, no, no.

MR. RANDAZZA: You say, "Objection. Form."

MS. WESTBROOK: Okay. I don't think that's right.

MR. RANDAZZA: If you don't like it, you can leave.

MS. WESTBROOK: I don't think that in California --

MR. RANDAZZA: You can end it and walk out if you want.

MS. WESTBROOK: I don't think --

THE RECORDER: Counsel, one at a time, please.

MR. RANDAZZA: Okay.

MS. WESTBROOK: I don't think that's the rule in California.

MR. RANDAZZA: I'm going to ask him what he knows, okay? I -- we were expecting this. We do have the judge ready.

MS. WESTBROOK: Okay.

MR. RANDAZZA: Okay. I was expecting you to act like this.

MS. WESTBROOK: Okay.

MR. RANDAZZA: So chill, please.

MS. WESTBROOK: I will continue to make my objections.

MR. RANDAZZA: All right.

MS. WESTBROOK: But let's get through this.

BY MR. RANDAZZA:

Q. Have you ever heard of the Wayback Machine?

A. No.

Q. Have you ever heard of archive.is?

A. No.

Q. Ever heard of archive.org?

A. No.

Q. So in doing reputational research, you've never once looked at an internet archive?

A. No.

Q. So your 2026 search, what could that tell the jury about what the defendant saw in 2025?

MS. WESTBROOK: Objection. Form.

THE WITNESS: Well, it would be a representation of what I saw in '26. It wouldn't say anything about '25.

BY MR. RANDAZZA:

Q. Your top result for "Steve Smotherman", with an A, was the plaintiff, correct?

A. Define top result.

Q. Let's go to Page 31 of your report.

Q. Okay. Let's see. The first caption -- let's see. Did you do any -- well, I mean, I guess I -- I already asked you this earlier, but I'll -- you didn't do any focus groups or test whether -- what an ordinary reader would do in that situation, did you?
A. No.
Q. What is your expertise in reading comprehension or visual attention?
MS. WESTBROOK: Objection. Foundation. Form.
THE WITNESS: Well, I don't know that I have any expertise in visual, but reading comprehension -- I mean, I have a college education. I've spent 50 years writing and reading. I would say it's pretty advanced.
BY MR. RANDAZZA:
Q. Did you review the amended answer in this case?
A. I'll have to look it up. Let's see. The first amended complaint came in on July 1 of 2026, so let me -- no. I did not -- I did not see the response to the amended complaint.
Q. No. The amended answer.
A. Uh-huh. Amended answer.
Q. Document 43, you didn't see that?
A. No, I didn't see it.
Q. Any reason you didn't review that?
A. No. I was supplied -- I was supplied with the

amended complaint, but I wasn't supplied with the amended answer to the amended complaint.

Q. So I'm going to give you this.

MR. RANDAZZA: I think we're at 8?

THE RECORDER: Yes.

(Defendants' Exhibit 8 was marked for identification.)

BY MR. RANDAZZA:

Q. So you've never seen that?

A. Oh, no. I haven't seen none of those pictures, no. I mean, a couple of pictures I recognize from the original search I did, but -- the ones towards the top, but no, I never saw this sheet. I never saw --

Q. You can keep that as Exhibit 8.

A. Oh, yeah. I never saw these -- all these pictures.

Q. All right. So your search has no date, no documentation, and can't be replicated; is that right?

MS. WESTBROOK: Object to compound. Misstates prior testimony.

THE WITNESS: I -- I would say that's true. I did it in the course of my -- my work, and there was no -- there's no formal records of it. No.

BY MR. RANDAZZA:

Q. Well, let's help overcome that objection. Tell me the date of your search.

A. The exact date?
Q. Tell me the date.
A. I don't know it. Fair. Okay.
Q. And you were telling the truth when you said you made no documentation of it, correct?
A. That's correct.
Q. So could we replicate it today?
A. Yeah. I -- I think I mentioned that I did the search -- I did the search early on after I was retained. And then I said -- I think I testified that about a week ago, I redid it. And --
Q. With the exact search terms?
A. Oh, yeah. I mean, there -- it's not rocket science. The search term was "Steve Smotherman," spelled A -- A-N. That was the search. It was not a bunch of words. It was one person's name at the same time, both -- both times.
Q. And you didn't use incognito mode?
A. No.
Q. Were your results different the second search from the first?
A. No. I -- I told you they were -- they -- the photographs were the same.
Q. The exact same?
A. The exact same. They -- the -- the text --

photograph of someone to attach to a -- to attach to a text that was basically castigating the person, would use reasonable caution and certainty to make sure the right picture is with the right -- with the damning text. Yes. I -- I think it's -- it's impossible for anyone --

Q. What would that be? What more would you have suggested they do?

A. They wouldn't have to do more if they did just the basic opened their eyes and saw what was on there. Anybody that went on there would've seen that there were multiple people with the name Steve Smothermon. So it was -- it wasn't just one person. They would've seen pictures of at least two different people that had the same name. They would've identified that the person that they were looking for had a -- a name ending in A-N instead of O-N, which was clearly spelled out.

In other words, they were blathering idiots, or they were -- they were so careless and reckless that -- that they just grabbed a picture that they saw and -- and thought was him and -- and slapped it on a -- a post that was -- was very detrimental to the person they were trying to identify.

MR. RANDAZZA: Can I have an exhibit sticker?

BY MR. RANDAZZA:

22?
A. What is the list? There we go.
Q. Okay. But you list the amended answer of March 17, 2026, on your list of information reviewed to form opinions?
A. Yeah. Of the -- of the first.
Q. Do you see the date on that, March 17, 2026?
A. The original complaint was filed on October 1, 2025.
Q. Sir, put your finger on the word "legal documents" on that page.
A. Yeah.
Q. One, two, three, four, five, six, seven, eight, nine, ten. The 11th bullet point below that, I read "Defendant's Amended Answer and Affirmative and Other Answers, March 17, 2026." Do you see that? I can highlight it for you if you want.
A. No, I can see it. I am -- what I'm -- I'm thinking of is the -- the amended complaint came on July 1, 2026.
Q. Yeah. That's not relevant to my question right now.
A. Oh. Well, I -- I --
Q. My question right now is: Did you tell the truth when you said you reviewed this amended answer or not?
A. Well, I -- I assumed that -- that the amended answer came after the amended complaint. So then when I said that, it wasn't a matter of telling the truth. It was a

putting in there. But I didn't -- it wasn't something that I was opining or concluding. So it was just saying, this is what they're saying, and this is what they're saying.

Q. So it -- you didn't have any curiosity as to what KOA TV meant here?

A. Not in that respect, no, particularly.

Q. Do you know what KOA TV is?

A. It's obviously a -- it's probably a -- an internet station of some sort.

Q. So you didn't investigate that or what we were talking about when we said YouTube?

A. No. No. In -- in that case, all I'm doing is presenting the own word -- the -- the own words of both sides. I'm not interpreting them. I'm not evaluating them. I -- I'm just putting them there to show what each side is claiming.

Q. Okay.

A. I have no investment in it.

Q. So Document 43 is the exhibits to this amended answer that you reviewed, but you didn't find important. Am I mischaracterizing your testimony?

MR. RANDAZZA: This is 10, right?

THE RECORDER: Correct.

(Defendants' Exhibit 10 was marked for

identification.)
BY MR. RANDAZZA:
Q. I'd like to just hand you Exhibits 9 through 20 from that amended answer. Do any of these look familiar to you? You can flip through that whole document as -- for as much time as you like. Any of that look familiar?
A. No, not really. What is this purported to be?
Q. You can read the title, sir. Those are all the exhibits --
A. It says Exhibit 9.
Q. -- to the amended complaint that you said that you reviewed. It's beginning with --
A. No. I didn't say I reviewed the exhibits at all. I don't say reviewed the exhibits. I -- I might have read the amended thing, but I didn't necessarily look up the exhibits. No, I didn't see -- I don't -- I didn't see any of this stuff.
Q. So when you read the amended answer and it referenced all these exhibits, that didn't pique your curiosity? Articles about your client, photos of your client, all that just looked like, I don't know what, superfluous information?
A. I'd have to go back. I can't comment on that. I'd have to go back and see if the exhibits were part of it or not, but I don't remember seeing any of this. That's

report -- but the point is the only thing that's germane to the jury are what my conclusions and opinions are, not what the defense and the plaintiffs are saying about what is right or wrong.

Q. So you weren't aware that YouTube made the same spelling mistake?

MS. WESTBROOK: Object to foundation.

THE WITNESS: No.

BY MR. RANDAZZA:

Q. And you weren't aware that a news station -- news station misspelled his name the same way, correct?

MS. WESTBROOK: Object to foundation.

THE WITNESS: No. But two wrongs don't make a right. You know, I mean, if they made a mistake --

BY MR. RANDAZZA:

Q. Sir, I'm just asking if you were aware.

A. No, I wasn't aware.

Q. Okay. I'm not looking for --

A. Yeah. Okay. Yeah.

Q. -- the story about the --

A. I mean, I can see how somebody might like to make a mistake and they are common names, you know? I mean, how many Steve Smothermons are there? I mean, I'm human. I -- I can see that it's a possibility something might oversee something like that.

BY MR. RANDAZZA:
Q. So Page 9 of your report, I'd like you to sort of compare these two. So you remember what this is, right? What is --
A. Well, this is the post.
Q. -- Exhibit 3? It's the post.
A. That's his issue in this case.
Q. Right. Which was never attached to your report, correct?
A. No. I don't -- no, it wasn't attached.
Q. On Page 9, you say, "Defendants published an article falsely labeling him as woke, anti-American, and anti-family values," right?
A. Yes. I don't see it, but I'm --
Q. Those are your --
A. Yeah. I see it now. Yeah.
Q. Are those your words or are they Ms. Westbrook's words?
MS. WESTBROOK: Object to compound.
THE WITNESS: I guess they're my words. I don't -- I don't frankly know at this point in time whether that was something I -- I saw and -- and decided to pick up on it or whether it was my -- my words or not. But I --
BY MR. RANDAZZA:

Q. All right.
A. Probably it was a -- it might be something that I saw in the complaint or something that I put in there.
Q. So you don't know what you based that on?
A. I think it's just a -- I based it on a -- you know, a conglomeration of -- of the different input that I read. Just the --
Q. But not the post itself?
A. No. I don't see in the post itself anything that says -- I don't see the words "anti-American" or "anti-family values." I -- it's probably what I picked up from the -- the plaintiff's allegation.
Q. On Page 13, you say that the post said he was responsible for the rebranding; is that right?
A. Yes. I mean, the general -- maybe not using his words, but the general -- the general thought of the post was that he was -- he was changing the -- that he was influencing and changing the direction of the -- the image of the -- of the Crate & Barrel.
Q. Okay. But the post doesn't say that, right?
A. Well, the post says it's -- Cracker Barrel scraps its old-time logo and -- and accusation using his heritage, and then it segues into him, you know? So yeah, I mean, is it in a specific one sentence thing? No. But, I mean, that's the general inference.

Q. So you're basing your opinion on inferences given to you by the plaintiff?
A. Well, yeah, in the context of what they're saying. I mean, what they're -- the points they're trying to make. Yeah, that they had a -- they had an old-timer logo and image, and now they're erasing their heritage and turning into a -- a woke formation. And they're obviously making -- whether it was intended to be the pastor or not, they're -- they're obviously attributing it to a man named Steve Smothermon.
Q. So on Page 34 of your report, you say, "The defendants' mistaken portrayal of him, meant for S. Smothermon --
A. Uh-huh.
Q. -- "through the misidentification in the Facebook post. It charged that he was opposed to old-fashioned values, anti-family, and anti-American." Does it say that in the post?
A. No.
Q. So --
A. It doesn't specifically --
Q. -- is your report accurate or is your report wrong?
A. Well, the misidentification obviously is a reference to the -- to the photograph and not to -- to text.
Q. No, no, no. But focus on the question, sir. I'm --

is -- is not the -- the issue is they used the picture of the pastor instead of a picture of the Crate & Barrel. So what I meant was not relevant is which picture of the -- I want to be real clear on this. But I --

Q. Because you're not doing a good job of that, sir.

MS. WESTBROOK: Objection.

THE WITNESS: I don't deny saying what you were saying. I don't deny that.

BY MR. RANDAZZA:

Q. Okay.

A. But what -- but the context of it was I wasn't saying that -- that it was not the picture -- the picture used with the post was not relevant. I'm not saying that. I'm saying the particular pose, for lack of a better word. Didn't matter if they used him on a horse or they used him behind a pulpit or they used them sitting listening to a lecture. I'm saying that the -- the -- the picture itself wasn't -- is not relevant. It's the picture -- the fact that the picture was of him is that -- that is relevant. So yeah. So it's -- I don't doubt using those words, but it wasn't in the context of -- of how you interpreted it. It was the -- the whole -- this whole case is not about the text of the post.

Q. It's not?
A. Not -- no, no.
Q. So it's about the picture now?
A. It's about the picture being attached to the text. If they -- as I said earlier and I testified earlier, if they hadn't used the picture of him, we wouldn't be here today. If they had just talked about Steve Smothermon or Crate & Barrel or alluded to him or whatever, we wouldn't be here today. The only -- the only problem that resulted in us being here today is them showing the picture of the wrong person. That's what it -- that's what this whole thing is about. Not the -- not the -- yeah. No. I meant the particular pose that -- that -- of the picture they used is not relevant. I mean, it could have been a picture of him in diapers for all I care.
Q. Okay. So it's not about the text. It's about the picture?
A. It's about the text linked -- it's about the picture linked to the text.
Q. Right.
A. If either one -- if they did a separate post with this picture, just a post on Facebook with this picture --
Q. Yeah. I know what you're saying.

Q. "Also contrast this with defendants' mistaken portrayal of him... That he was an active supporter of promoting and fostering opportunities for queers in the workplace," end quote.
A. Yeah. Well, the active portrayal of him is obviously placing the wrong person's picture with posts. That's -- that's the -- you know, as I've -- I've made clear to you in the past, that --
Q. Have you talked to Pastor Smothermon about whether he has ever given homosexuals opportunities in the workplace?
A. No. As I said, I've never talked to him, so.
Q. So far as you know, he --
A. It's a moot question, but --
Q. It's a moot question?
A. Well, it's moot because I haven't -- you know, I haven't talked to him. So I don't know if you're asking me if I talked to him about this or not.
Q. I'm asking if you have any idea whether he discriminates against gay people or not?
A. No. Specifically, no. I've never heard a speech where he -- where he specifically -- no. I haven't heard any of his speeches where he -- or his sermons or whatever.
Q. Have you heard any of his sermons?

A. No.
Q. So as far as you know, they could actually preach homosexuality as the word of God?
MS. WESTBROOK: Object to foundation.
BY MR. RANDAZZA:
Q. As far as you know?
A. Now, let me put it this way. I've been going to church for 70-some years, and I've never heard a preacher on a pulpit -- and I -- I can honestly say that I'm sure -- I've never heard a preacher on the pulpit address homosexuality. And -- and I go every Sunday, 50 Sundays a year times 70.
Q. You ever --
A. And I've never heard a preacher -- and I've heard maybe 40, 50 different preachers in my life. I've never heard one address they -- the subject of homosexuality in a sermon.
Q. Ever been to Massachusetts?
A. Well, I'm not saying it hasn't been done. I just haven't -- it's not --
Q. Ever been to Vermont?
A. It's not in my frame of reference. Let's put it that way.
Q. Okay. But you've never been to his church?
A. No, that's -- I haven't. I would like to think that

all preachers believe in all God's children being, you know, worthwhile and all that. And, you know, and not that they're consigned to hell if they're -- they're homosexuals or not. I'd like to think that's the case with him or any other preacher.

Q. So the post named Steve Smotherman ending in M-A-N, right? Or you didn't look at the post?

A. Let me pull out the post. Well, yes. The Hodgetwins, that was their -- their target, was the -- the former --

Q. That's -- that's who it names, right?

A. Yeah.

Q. That's not the --

A. With an M-A-N. Yeah. That was the guy that they were upset with.

Q. And that's not the plaintiff's name?

A. Close, but his is -- ends in M-O-N.

Q. And every factual assertion in the post is about the M-A-N guy?

A. Yeah. Although they -- they actually don't use his name in the post.

Q. The post never names him, huh?

A. Oh, wait a minute. I'm sorry. I'm looking at the second page.

Q. No. Never names the plaintiff?

A. No.
Q. Never mentions Legacy Church?
A. No. They -- they don't mention a preacher. They don't mention the -- that their spelling is M-A-N.
Q. New Mexico?
A. No.
Q. Albuquerque?
A. No.
Q. A pastor?
A. No. Not to anything I see. There you go. Their post is totally on target. I mean --
Q. So you say at Page 33 of your report, "There is no facial resemblance between the plaintiff and the former Cracker Barrel executive." Are those your words or are they Ms. Westbrook's?
A. Oh, no. I don't see any resemblance. No. They're my words probably. I -- I mean, I've seen the pictures of the two of them. I don't see any -- any resemblance, except that they're both men. I mean, you know, one wears glasses, the other doesn't. And one is -- looks to be small and more on that heavy side, whereas the other is tall and thin. I -- I don't see any real physical resemblance between the two. I mean, you could see it here in the pictures. I mean, he -- he looks like -- at least when he was younger, the preacher looks

like a generally -- a reasonably thin man. Or, I mean, not thin, but average build. Whereas the -- the Crate & Barrel has a rounded face, and he looks like he's more shorter and probably a little more stockier. So I -- I don't think you could say there were twin -- twin images. Plus one wears glasses and the other doesn't. That's another factor.

Q. So your testimony is they don't look anything alike. So if anyone -- if you knew this guy -- let's pretend you went to his church. Let's pretend you had met him.

A. Yeah.

Q. And we had a picture of this guy and it said my name under it. Would you know they have the wrong guy?

A. Well, I -- assuming yes, although they're twin. I've seen my own twin before. I mean, there are people that look a lot alike, you know?

Q. Do I look like him?

A. No, you don't.

Q. Okay.

A. Yeah.

Q. So --

A. I'm not -- not --

Q. I'm going to ask you, from a reasonable person's perspective, as a -- as a public relations professional, someone who is saying that they would charge 325 to

$350,000 to mitigate the damage --
A. Uh-huh.
Q. -- what person would look at that --
A. By the way, I wouldn't be the one charging it, but go ahead.
Q. What person would look at that and think that that was the guy from Albuquerque?
A. Well, that is the guy from Albuquerque.
Q. Okay. What guy would think that that's the guy from Cracker Barrel?
A. You mean in the context of comparing it to the -- the copy?
Q. Sure.
A. Oh, it could look like anybody.
Q. Wouldn't you have to know that guy to recognize the picture?
A. I'm not -- I'm not sure. You're saying a total stranger --
Q. See that picture?
A. You're --
Q. If I walk up to a total stranger with that picture.
A. Yeah.
Q. Okay. If I hold that up to the court reporter and I say, who is this?
A. Yeah.

Q. She's not going to know, is she?
A. No, probably not.
Q. She would only know if she knew Pastor Smothermon, right?
A. Or knew of him. Similar.
Q. Had met him, had seen him?
A. Yeah. I mean, they could have seen his picture in the paper or something. Yeah. In other words, they -- they were aware of what Pastor Smothermon looked like. Yeah. They would -- would only know.
Q. So you're not aware of anybody who looked at this and thought that guy is secretly moonlighting as a Cracker Barrel executive?
A. No. I haven't talked to anyone. No. I haven't had access to anyone. No.
Q. Can you imagine that person existing?
A. Can I imagine that a person would look at that picture and think that he was a woke --
Q. Well, they'd have to know the guy to recognize the picture, wouldn't they?
A. Well, yeah. Either --
Q. Otherwise, that could be a picture of Cookie Monster, couldn't it?
A. -- either know -- know them or know of them, yeah, to recognize the picture. Yeah.

Q. Okay.
A. That they -- certainly. Yes.
Q. So you'd have to look at that and go, that's Pastor Smothermon, not the guy who works for Cracker Barrel, right?
A. Yeah. Yeah. Unless they were -- but you're talking about -- yeah, that's true. But, I mean, the bottom line is if they had -- if they were aware of Pastor Smothermon, who he was, and then they went -- were made aware that there was a post out there with -- you know, didn't see the picture, was made aware that his picture was tied to a post, then that would -- that would harm him -- his reputation. I mean, they didn't have to see the picture themselves.
Q. You're just making that up, aren't you?
A. No. No. I'm just saying that for --
Q. You're basing -- what are you basing that on?
A. Oh, word of mouth.
Q. Word of mouth with who?
A. Yeah. Word of mouth. I mean, if somebody -- somebody saw that that did know him and talked to someone else and said, I saw Smothermon, not the person that was impacted, but the person that -- another person saw it in -- in word of mouth --
Q. Oh, I see.

A. -- and it got spread around that Pastor Smothermon's picture is on a post on Facebook that the -- that says he's an advocate of woke and LBGTQ or whatever it is, that -- that they wouldn't see the picture, but they would get the -- they would be exposed to the negative transference between the two.
Q. I see. So you're saying someone who recognized him would have to see it, then talk to another person and tell them what they saw, but they would not -- but they would not also --
A. Well, that person wouldn't have to see it himself because --
Q. But they wouldn't also -- but they couldn't also then communicate, hey, I saw his picture on the wrong post. They'd have to say, I saw it.
A. They would -- it -- yeah. Their --
Q. And then transfer the truth of the matter as presented to that person. That's where you're finding $325,000 in repair damage?
A. Well, the damage -- the damage emanated from the picture plus the post. But the bottom line is, once it's out there, it doesn't matter whether they saw the picture or the post. All they're doing is getting information that -- that he's been linked to. You know what I mean? They don't -- at a certain point, you

don't have to have firsthand inspection. You get the -- you get the word of mouth or you get the buzz or you get the -- the gossip going around --

Q. Great. Give me every --

A. -- that he's been connected.

Q. -- give me every bit of evidence that you reviewed that shows that that ever happened.

A. Well, I don't have any evidence. It was very -- very logical. Once the -- once things happen --

Q. You have absolutely nothing. Say that.

A. I have nothing in the terms --

Q. Thank you.

A. -- of talking to one person that actually saw the post in the picture and made their own conclusion from it.

THE RECORDER: And gentlemen, I just want to remind you guys, please try to speak one at a time just to ensure that the record is clear.

BY MR. RANDAZZA:

Q. Okay. So English is your first language, yes?

A. Yeah. I speak a little French, but English, yeah.

Q. Okay. You reviewed the amended complaint, correct?

A. Well, yeah. It's in there. I -- I did. I don't remember --

Q. I did give it to you, right, here as an exhibit?

Q. Okay.
A. I didn't know that he was himself. I thought he was just an advocate for -- I hadn't seen any --
Q. So in ordinary American English.
A. Did you want me to read this?
Q. You're a communications professional, right?
A. Yeah.
Q. So in ordinary American English, do we stress the final vowel in a word or do we reduce it to a schwa?
A. Oh, I -- I think that in -- in general terms, that it can be washed together. Yeah. I don't -- I don't doubt that. That's not an easy name to pronounce, whether there's an M-O-N or an M-A-N on the end of it. Smotherman, Smothermon. You know, it's a -- it's a difficult name to --
Q. How do you refer to your client?
A. Well, I almost never refer to him by name, you know, but say the plaintiff. But, I mean, in talking to Ms. Westbrook here or on phones or when we have a conversation, I don't use his name really.
Q. So you believe there's a phonetic difference between the two?
A. Well, it depends on your diction. Somebody with good diction, yeah, it's clear. Mon or man is -- is different. Mon or man is different. And the only thing

Q. Does the post say $145 million anywhere on it?
A. No. The closest --
Q. Does the post name the plaintiff?
A. No. The closest they said, kind of --
Q. Does the post name the plaintiff?
A. No. The plaintiff's name is not on the 145 million, but go back to your -- your previous question. The closest it comes is this sentence: Users on X are connecting dot accusing the chain of abandoning traditional family and Southern values exchanging the woke model.
Q. So all of the characterizations in your report about this post came from the counsel, not the post, correct?
A. Not from the post. It came from the -- I wouldn't say it came from the counsel. It came -- I mean, I wrote a lot of different documents, a lot of viewpoints, a lot of whatever. And it -- I would say it came from an accumulation of -- of all the written information that I read, not specifically from one firm or one person.
Q. Let's take a look at Page 30. Here, on Page 30, you say -- you called checking metadata the most basic industry standard check of the photograph's system metadata. You see that? Had they performed the most basic industry standard check of the photograph system

metadata, they would've seen that the embedded metadata and the source URL identified the image's origin as a website affiliate of the Legacy Church. You see that?
A. Uh-huh. Uh-huh.
Q. Which industry are you talking about there?
A. Well, this was -- this was information that was supplied to me in context with the -- in -- along with the -- the results of the study that the law firm did.
Q. Okay. So --
A. So I'm --
Q. -- this is the law firm's position, not your position?
A. Yeah. Yeah. They -- they gave me -- they did a study. They gave me their results, conclusions from the study. And I -- I basically, you know, referenced that -- that I -- that they did the study, that I got the information from them. And that's basically giving their conclusions on the study.
Q. So you just rubber-stamped their conclusions?
A. Well, I didn't do the study, so I had to report that -- I had to accept that -- that their conclusions from doing the study, that was -- I mean, obviously that -- that is their conclusions and opinions. And I have to base my -- you know, basically, I was reporting what their study found.

Q. So is this your report or the plaintiff's attorney's report?
A. Well, it's -- it's my report, but I -- as I said, I attributed that one section out of a, what? 53-page report or something, or 48 report, there's a half a page that related to a study, 45-page report. There's a half a page that -- where I provided feedback from a study that was conducted by an outside source. And I just reflected their views. That's -- there's nothing wrong with that. It was attributed. And I didn't say it was my opinion. I'd say this is what the study found. It's perfectly fine.
Q. Do you know what EXIF stands for?
A. I'm sorry? XIF?
Q. Yeah, EXIF. Do you know what it stands for?
A. No. I don't even know what you're talking about. Where -- where do you see --
Q. What software do you use to read image metadata?
A. I told you I don't read image --
Q. So you've never personally examined an image's metadata?
A. No. No, I told you I'm not a technological person, so I don't. It -- it's all Greek to me. I rely on other experts and -- to get into that area, and they provide me with feedback. Much like Don Phillipson,

much like their report. I -- I take professional assessments from other people or other businesses and --
Q. So this statement that says "metadata identified the image's origin as a website affiliated with Legacy Church," you're just writing what they told you to write?
A. You're right.
Q. Not what you found?
A. Yeah. They --
Q. Okay.
A. No.
Q. You ever done a reverse image search in your life?
A. No. No.
Q. Have you ever seen a published professional standard requiring a reverse image search before publishing a photo?
A. No.
Q. When you were a journalist, did you ever hear of a policy doing that?
A. When I was a journalist, they -- they were still using regular typewriters. It was long before metadata and the -- and internets and reverse searches and all that.
Q. You ever heard of a newsroom having a policy requiring that?

A. Well, they may. I don't know.
Q. No. Have you ever heard -- answer the question I asked you.
Have you ever heard of a newsroom with that requirement?
A. No. That doesn't mean that -- that there aren't and that they do have -- I'm just not privy to that. I don't know what newsrooms do these days.
Q. Okay. So again, at Page 30, where it says that "incognito mode bypasses standard internet browsers," that's just you --
A. That -- that's --
Q. -- rubber-stamping what they said?
A. -- that's -- well, I wouldn't say rubber --
Q. I'm sorry. You repeating what they said without --
A. Reporting.
Q. Okay.
A. Reporting is the word. That's me reporting what I --
Q. You quoting them?
A. Yeah. What they were told. I'm not rubber-stamping. I'm just reporting they did a survey. This is what they're saying the survey found. This is their opinions on it and --
Q. So where you say it destroys the verification

history, you don't know that that's true yourself?
A. No, I don't. Nothing. All of that is wrapped in the same bow. It's -- it's that someone did a study, and they reported the results, and I'm reporting what they -- what information or findings that they -- they found.
Q. You have no training in digital forensics, correct?
A. No. No.
Q. So in your own words, what is your methodology in a report like this?
A. What is my methodology?
Q. Yeah.
A. Well, my methodology, it's very simple. I can say -- I can sum it up in -- in one sentence. My methodology is to thoroughly educate myself to all aspects of a -- a case, including the dispute, and the disputes that led to the litigation of whichever kind, whatever the dispute is, educate to where -- what was -- what led the plaintiff to file the lawsuit. Second of all is to look at both sides equally as to what one is claiming, the he said/she said thing. And I -- I need to take in both -- input from both sides as to their positions and stance on -- on what the dispute is to educate myself on where the litigation is to that point. By -- then it is to -- to review all the discovery and

all the information that I'm provided that relates to either one of them.

In other words, a set -- you know, gather all the information and evidence I can possibly gather. Then -- then get the viewpoints of both sides related to that information. Try to ferret out -- you know, then try to separate, you know, what is real and what is claimed by one side or the other. In other words, separate the facts they both agree on to what their -- their -- either -- where their sides differ. And once I have that kind of information, then I -- then my -- is to do some research and to find out.

I -- I look at the facts and apply the facts of the case to the -- to what the -- the claims are. I mean, in terms of -- depends on whether I'm representing the plaintiff or the defendant. But I mean, I look at -- look at that. Then I apply the principles. Defamation is a form of negative communications. And I have 32 points that relate to negative communications. And I apply that to -- to that. If I'm representing the plaintiff, I apply them to see what -- what is appropriate to them. Then I look at -- then I do whatever research to get other information that I -- as much as I can.

For instance, I might have a plaintiff send me three

A. Well, most of them relate to Legacy Church, it looks like. Some are -- relate to Smothermon.
Q. Would you like to take a break and read them all?
A. No, not particularly. I don't think it would change -- change my opinions on it.
Q. Well, I'd like you to pick out the one article in there that isn't about Pastor Smothermon. Find me one. I'm prepared to tell you they're all about him, but I want you to --
A. Yeah. I mean, no, I --
Q. -- I want you to --
A. -- I -- I see -- yeah. I see -- whether he's the focus or not, I see most of the articles do include him in it.
Q. Right. I -- yeah.
A. Yeah.
Q. But I don't want you to take my word for it. I want you to be convinced.
A. Well, no.
Q. Are you convinced --
A. I -- I pared it to -- if they -- if they talk about Legacy Church, they're obviously talking about him. And I see his name in -- in a good -- good part of that.
Q. Do any of these articles look familiar to you?
A. I think one or two of them I might have seen when I

do to -- to find a picture.
Q. Thank you. That's what I'm getting at.
A. Yeah.
Q. How was your methodology different from the receptionist out front? What would they have done differently? Would they have not done a Google search?
A. Well, they may have. They didn't have to do. They weren't retained for this person.
Q. But your specialized knowledge and your 50 years of experience said, do a Google search?
A. No. No. Specialized knowledge has nothing to do with doing a Google search. You're right. The gal out there could have done the same thing as I do. That's part of the process. It's not the whole process.
Q. How would anyone test whether your conclusion is right or wrong? How could you replicate your conclusion? If I -- do you understand -- if we were doing the scientific method here, how would I replicate this report? Could I replicate this report?
A. Which report are you talking about?
Q. Your report. The report that you charged all this money to do.
A. Yeah.
Q. Where you just -- how would I replicate it? Would I get someone to get -- what would I do?

A. You'd get another expert like me to do it. I mean --
Q. And get them to the --
A. -- the bottom line is you're -- what you're trying to advance here is that you could take any idiot off the street and -- and provide them all the information, tell them they should do a Google search, and they could do the same thing I did. That's BS.
Q. Yes. That's basically what I'm saying.
A. No. The point is I'm bringing all -- what is --
Q. Tell me how that's wrong.
A. Expert means you're bringing all your experience and your expertise in a -- in a specific area into -- into the thing. A guy off the street doesn't have that.
In other words, I'm making judgements based on having done, like -- like, my reputation damage repair program. I'm not some student or professor that just thinks, well, these make -- make good things to do. I've done 40 of those programs in the past in person. So the point is that --
Q. Done what? What program?
A. You can't replicate that. That is --
Q. That's what I'm saying. That's what I'm asking you.
A. That's my -- no. No. That's my expertise. No one else would have that expertise. No one else would know

what it takes to do to restore reputation. I have 50 years of doing it. I can do that. Nobody else can do it. She can't do it. She can't do it. And you can't do it. Because I have been out there. I've -- I've seen what works and doesn't work. I've seen how reputations go -- flipping away from that to how it's hurt people. I've seen things that -- that are -- you asked me, how do you know if he had trauma or -- or emotional distress and all that? Well, duh. I mean, everybody else I've ever come across that was in a similar position did. Is he the weird duck that didn't have any when everyone else has?

Q. But you never talked to him? You diagnosed him without talking to him.

A. I didn't have to talk to him. I mean, I -- I'll take him at his word on the surface. But the point is, the kind of things he were saying were common to every other person or every other situation I've ever been in as a PR person or as an expert witness that had the same thing, you know?

Q. So no one that you've ever met in your -- what are you -- I don't want to guess your age, but your 50 years of --

A. Yeah. Yeah.

Q. -- 50 years since you graduated from the last

Q. Do you have a master's degree in public relations?
MS. WESTBROOK: Object to foundation.
THE WITNESS: No, I don't.
BY MR. RANDAZZA:
Q. All right. I do.
A. Okay. Have you ever done a reputation damage repair program?
Q. No.
A. No. So don't --
Q. I hire somebody who has replicable results.
THE RECORDER: Gentlemen -- gentlemen, please speak one at a time.
THE WITNESS: I -- this has -- this has reached a point of --
BY MR. RANDAZZA:
Q. Well, I'm sorry you've reached the end of your creativity, sir.
A. Ask your questions. Ask your questions. You're total -- you're so totally off base --
Q. So are there any written standards governing a reputation harm assessment, in your views?
A. Well, that's what you've done. Talk about the methodology. Yes, there is. Not written standard. Well, there's -- yes. There's -- I don't know if they're written down. I don't know if anyone has

written them down. But there -- there are tried and true principles, procedures, processes, and practices that are used by -- in dealing with people that have suffered reputation harm.

Q. Who's that other guy you said? The -- Rose. Would he have written standards?

A. Who?

Q. The name you gave me earlier.

A. Oh. Oh, the other guy? I don't know. He might. He might. I don't know if he's got them written down or something like that.

Q. Have you ever met --

A. But I've got them up here from -- from 50 years of doing them. I don't know that --

Q. Have you ever met another expert who had a published protocol for doing repetition repair?

A. No. The only -- the only published protocols I've ever seen are in expert witness reports, like in mine. I have, what? Three pages of methodology.

Q. Okay. But not a protocol?

A. I've seen -- I've seen Rose's things. He has -- he talks about -- well, the protocol is your process -- your process you go about forming your -- your conclusions and opinions. And as I'm saying, I -- I don't know you have to put it in writing. I've never --

Q. -- it's obviously bothered my above position here.
Is your method reproducible?
A. I would say -- just as I was starting to answer, I would say that that person you're talking about, probably 80 percent of the report, they could replicate on their own. But the bottom line is -- the key thing is the -- the opinion and conclusion section could not be done by someone that didn't have the frame of reference of spending half a lifetime actually experiencing -- trying things like reputation damage repair program.
Anybody could sit there and say, well, it'd be a good thing if you sent out a news release or you had a speaking engagement or something like that. But actually, if you haven't trial tested it, if you hadn't done those in the field, you don't know what works and doesn't work. You don't know what is -- what is effective and what isn't effective, you know? So I don't think anyone -- just taking that one segment of the report, I don't think anyone could put together a reputation damage repair program that had never done one, because they don't -- they don't have any basis to judge whether it'll be effective or not, let alone the cost factors on them, you know, that kind of thing. But, you know, if they can look at the facts and all the

separate firms that do different things like that. Those people -- so while you may have had a master's degree in PR, and whether this -- that guy may have been in PR, which I think I remember right, was mainly political, that -- that this is a -- a separate subsection. Just because you've done PR by --

Q. What is this subsection called?

A. Reputation harm, damage, or -- you know, handling your crisis communications, dealing with people that have had to have reputation damage.

Q. Well, let's look at your report. Maybe this will help filter this, okay? 26 to 28, 36, and 44 of your report have these things on them that I'd like to dig into. You say it takes years to build a reputation and seconds to destroy it?

A. That's true.

Q. That's a -- that's a study or that's a saying?

A. It's not a study. It's a -- it's a judgment made from years of analysis. And it's -- it's widely considered within -- in the PR profession, we all agree it's true. I mean, people spend years to build up their reputation and one negative thing comes along and it's like a house of cards. It all goes down.

Q. Okay. But that's a saying, not a study.

A. Well, it is a study. Yeah. It's a study from the

-- a study from practical experience of -- of seeing it happen through countless decades, and not only me, but anyone else.

Q. You don't know what I mean by study, do you?

A. Yeah. A study is a formal study. No, it's not a formal study.

Q. Okay. That's what I'm asking you, sir.

A. No, it's not a formal study. It's experience, which is more valuable than a --

Q. You can't un-ring a bell. Is that the result of a study or is that a saying?

A. Yeah. Well, that's -- that means if somebody -- if somebody comes out and implants a thought out there or something like that, you can't --

Q. No, I know what it means, sir.

A. You can't pretend you didn't hear it. You know, you can't pretend that it's --

Q. Yeah. No. We've -- we've heard these sayings since we were children. You don't need to go be a PR professional to know them, right?

THE VIDEOGRAPHER: Counsel?

THE WITNESS: Right.

THE VIDEOGRAPHER: We're going to have to --

THE WITNESS: Yeah. And -- and it's because it's a --

Q. How did you measure it before August 22, 2025, I asked.
A. Oh, I didn't hear that.
Q. How did you do that? How did you measure the basis --
A. I didn't because I wasn't on the case before then and there's no way of postdating. I mean, I looked on -- I looked on the internet and when I look and see an item that could be positive or negative, I can -- if it's negative, I can look at what the -- if it's, like, an article saying so-and-so is in trouble or so-and-so -- I can -- you know, I can look and see what the date of the article was, which would tell me the time frame.
Q. Do you know what survey-based reputation measurement means? Have you ever heard those words before?
A. I've heard the -- I've heard the term survey-based, yeah. It's -- in other words, doing -- doing a formal survey to -- to ascertain the reputation at a given -- of a person at a given point in time.
Q. What about sentiment analysis? Does that sound familiar?
A. No. I've never heard of sentiment analysis.
Q. Media content analysis? Share of voice analysis?
A. Well, media content analysis, yeah, that would be a -- you know, that would be a survey of -- or, you know,

analyzing -- analyzing the reports or articles to --
Q. Did you do any of that?
A. In this case, no.
Q. Do you -- are you familiar with social listening platforms, like Brandwatch, Meltwater, Sprout, Talkwalker? Any of those?
A. No.
Q. Why didn't you use any of them here?
A. Why didn't I use any of them?
Q. You never heard of them?
A. Well, I never heard of them, yes, but --
Q. Okay. Well, that would be why.
A. That would be why. Yeah.
Q. So your methodology has never been tested, correct? It's just unique to you?
A. No. Have you -- where you been the last seven hours? It's not unique to me. It's methodology that's used by everyone. Can't you remember that?
Q. Your methodology?
A. No. Yes. My methodology is the same as -- God, we've gone through this all day.
Q. Is it the same as Matt Shoup's?
A. I don't think you're listening. The -- the point is my methodology is the same as everyone else's methodology.

Q. It's the same as Matt Shoup's?
A. I don't know who Matt Shoup is.
Q. Did you read our expert report?
A. Yes, I did. It -- it was --
Q. Okay. The guy who wrote that, it may come to a surprise to you that his name is Matthew Shoup.
A. Now I see.
Q. Does he use the same methodology as you?
A. I don't remember him spelling his methodology in. I remember him talking about, you know, making assessments based on certain things, but I don't remember him spelling out like I did in the succession in a coherent way everything he did in one thing.
Q. So your methodology has no known error rate, correct?
A. No. I don't know how you -- well, going --
Q. There's no written standards governing your methodology?
A. No. We've talked about that. I've never, ever seen -- in 20 years, I've never seen -- even when I went to the national convention, you think they'd pass out standards, you know, or -- or allude to standards. I've never seen -- ever seen -- either seen standards or even heard anyone allude to standards.
Q. So another expert could not replicate your result?

A. Well, it depends --
Q. We need you for this, right?
A. It depends. If he -- if he -- he could -- he could replicate my result on two bases: If he did the things the same way I did and whether he had the same kind of background I did. You know, it's not enough, as we said, with pulling a college boy off the street. It's not enough having somebody telling somebody what to do and have them do it. If they don't have the frame of reference or the experience or the background to -- to -- to take what they've learned or read and -- and apply it and -- and formulate their conclusions and opinions, then --
Q. In every case you've ever been retained by a plaintiff, your methodology has never produced a finding of no harm, correct?
A. Of zero harm? No.
Q. Never?
A. No. I mean, degrees of harm, but never --
Q. Okay. So you measured nothing in this case, correct?
A. You mean measured, like, through surveys and stuff?
Q. Yeah. Any scientific method at all?
A. No, not through surveys.
Q. I mean, it's -- would you say it's more of an art

than a science to you?
A. Well, I think -- I think, in my type of expert witness, that's true. I mean, if I was an -- an engineering expert witness or a medical expert witness, you could take tests. You can have -- you know, you -- there's -- or even a forensic accountant expert. There's a -- you know, you can do bar charts. You can do tests that -- you can do X-rays and stuff.
Q. Yeah. I know.
A. You know, you --
Q. I -- I know how experts work.
A. Right. But in -- in --
Q. That's why I'm confused.
A. In my field, that's why they have Rule 702 and 703, is -- basically, in my -- there's no measurements and tests that we can do to certify like an engineer can take the tread on a -- on a tire that -- you know, and measure whether it was --
Q. Go to Page 43 of your report.
THE RECORDER: Just want to remind you guys, speak one at a time, please.
BY MR. RANDAZZA:
Q. So you say here that the misidentification unquestionably resulted in reputation harm, right?
A. Yeah. I mean, you can talk about --

Q. Okay. Is that a causation opinion?
A. It's both.
Q. Well, it's -- no, that's -- so that's one term, sir.
A. Well, the --
Q. Sir, wait. Do you know what the word -- the phrase causation --
A. Yeah. I know what causation -- I'm questioning --
Q. Okay. Is that a causation opinion or is it your testimony here right now that that's not a causation opinion? And I don't want to hear about the time you were in Burma.
A. Okay. Which -- which one?
Q. I want to hear this answer.
A. Which one was it? Let me read the whole thing.
Q. "The misidentification unquestionably resulted in reputation harm." Is that causation opinion or not?
A. I wouldn't frame it that way because I -- I --
Q. Well, I know you wouldn't because --
A. Yeah. I'm not allowed to -- to get into causation and make a definitive --
Q. Great. Let's go to the next thing on that page.
A. -- statement. It's an opinion based on --
Q. I want your attorney to make her flight, okay? If you want to talk about drinking gin on the Burma campaign, you can do that.

A. Well, you asked me -- I'm questioning --
Q. We'll go do that after.
A. I'm questioning -- the word I'm questioning --
Q. No. You're filibustering and I'm going to move for extra time at your expense if you don't cut it out. Putting that on the record, okay?
You know I can do that and I'll do it, so cut it out. Now, on Page 43, you also say, "The defendants exhibited extreme carelessness." Is that a legal standard?
A. No. It's a personal opinion. It's not expert opinion.
Q. You said on Page 33, "They maliciously double downed." Is malice a legal concept in a defamation case?
A. Yes. Actual malice is, not malice by itself, but actual malice and --
Q. Do you know what that means, actual malice?
A. Yeah.
Q. Define it, please.
A. Actual malice means this is done with negligence or reckless disregard for truth, or that they know the -- and -- and/or if they knew that the statement was false when they issued it.
Q. So negligence is actual malice, in your opinion?

tell me what paragraph it's in or what the heading is. Come on. Page 30.

MS. WESTBROOK: It's in italics.

THE WITNESS: Can't even find it.

BY MR. RANDAZZA:

Q. Yeah. It's in italics, sir. So --

A. Well, if it's in italics, it's not me.

Q. Okay. So this is again --

A. I don't put anything in italics that is my opinion. Italics is -- is other -- another opinion. I don't put it in italics. It's somebody else.

Q. Okay. On Page 25 and 26, you set out the Nevada definition of defamation and its elements. Is it your intent to give the jury the law?

A. No. No. I got -- I got --

Q. Where did that definition come from?

A. I went on the internet and -- and, you know, pulled up that, in -- in the state -- state of Nevada, what is the definition of defamation and legal definition of defamation in -- in Nevada. I go on. I put that in there. It's just a -- it's a preface of -- I put it in there just to state what the -- what the charge that's being -- the cause of action is under legal standards. That's on -- it's just pointing out what -- what the legal standard is. I'm not making any conclusions on

it.
Q. On Page 18, you lay out the -- that actual malice requires knowledge of falsity or reckless disregard. Yeah?
A. When I get to Page 18, I'll tell you.
Q. Well, you just testified that that's the standard as far as you know, right?
A. On 18?
Q. Tell me what actual malice means again.
A. Well, actual malice means that -- as I understand it, actual malice means it's a combination either/or, of -- of someone that acts with negligence or reckless disregard for truth or -- and/or they knew they -- they knew the falsity of the statement before they issued it. That's my understanding of actual malice. That could be right or wrong, but that's what I gather.
Q. Are you offering an opinion that either defendant subjectively doubted that the photograph was of the wrong man?
A. No, not at all. I mean, I don't see why they would -- they would post a photograph of someone they knew wasn't him. They'd keep looking until they found -- no. I believe they thought that that was the -- the Crate & Barrel executive. Yeah. I believe they thought that.
Q. Page 33 is headed your personal opinion.

A. Page 33; is that right? Do I have it right? I'm on 33. Oh, personal opinion at the bottom?
Q. Yeah.
A. What do you want me to look at?
Q. Well, I -- and then on 44, you say the same thing. Is this your personal opinion or is it your client's or Ms. Westbrook's personal opinion?
A. No, it's my opinion because they -- they were careless. I mean, I -- I --
Q. What's the difference between your personal opinion and your expert opinion?
A. I labeled it personal opinion for a reason. And that -- it was to separate it from being a legal opinion. I'm allowed to do that.
Q. So which opinions in the report are personal and not expert?
A. If I labeled it personal, it's personal.
Q. Okay. So we can just maybe cross those out completely as --
A. Well, if you want to, feel free to.
Q. Are your personal opinions offered as professional certainty?
A. They're what it says, personal opinion. No one says anything about professional certainty. It's personal opinion. It's my personal opinion. Do you understand

what personal opinion mean? That's what a personal opinion -- that's my personal opinion. I labeled it as such.

Q. Now, you say in your report you're not permitted to opine on causation, right?

A. Again, I -- I can't opine on -- yeah. I can't make a declarative judgments on -- I don't opine. Can't make a judgment on -- on causation. That ultimately is a jury to decide once they hear the --

Q. But then you write that the post unquestionably resulted in harm, right?

A. Well, that's a -- a personal opinion.

Q. Okay. So you said you're not a lawyer, but then you give the elements of defamation, right?

A. Yeah. That -- that -- I don't make any -- when I gave -- in that section, when I gave opinion --

Q. I -- just right or wrong.

A. I didn't make any comments on it. I just said, here is the definition of --

Q. Focus. Focus. You offer no opinion that either defendant knew the photo was wrong, right?

A. Right.

Q. And --

A. I don't think they did.

Q. Some of what's in this report is your personal

the plaintiff suffered?
A. Only the plaintiff's representations, plus the fact that some of the things -- things he claimed are -- are consistent with it with --
Q. No, no. What is your evidence?
A. Evidence. Okay.
Q. Your evidence?
A. Oh, my evidence. I don't have any direct evidence other than what -- the representations were made in -- in testimony, sworn and otherwise.
Q. So just what the plaintiff said?
A. Yeah. The plaintiff -- what the plaintiff has represented. Yeah.
Q. What's your evidence that any congregant stopped attending the church?
A. I have no evidence.
Q. What's your evidence the news media became more critical of the plaintiff?
A. I have no evidence.
Q. What's your evidence that his ability to operate the church was disrupted?
A. No direct evidence.
Q. How about -- what's your evidence that his wife, son, or grandchildren were affected?
A. No direct evidence.

Q. What's your evidence his brother was affected?
A. About what?
Q. His brother?
A. No direct evidence.
Q. What's your evidence that he has suffered from depression or anxiety or physical side effects?
A. That one is -- that -- that would be -- I have no direct evidence, but that's consistent with what I -- my -- I have.
Q. You have no direct evidence?
A. No. The history of -- of other people --
Q. Yeah. I'm not interested in other people. I'm interested in this report. So if you want to talk about other stuff, we can go for cocktails after, and we can talk about your whole life. I'm very interested in it. But in this deposition, I'm interested in this guy. So none of that is in either complaint, right, the brother, the physical manifestations, nothing?
A. Is in -- not in what?
Q. In the complaint. You reviewed the complaint?
A. Yeah.
Q. Okay. So who told you about all of that?
A. Well, in the complaint, if I remember right, there was stuff about emotional distress and -- and trauma and whatever in the complaint, I think. I -- obviously,

that -- that was in materials that I read. I mean, I didn't dream that stuff up. So it was obviously in some -- some information, legal documents or information I saw.

Q. Okay. So you say on Page 35, "This was a topic of conversation to many in the faith-based community."

A. That's what I was -- that was -- that is what was represented to me.

Q. Okay. So you can't name a single person who discussed it?

A. No, I can't.

Q. Document, email, text, letter, post, graffiti, anything?

A. No.

Q. Nothing. All right. Name one person in whom a seed of doubt was planted about Pastor Smothermon?

A. I can't name one person.

Q. But you say on Page 35, "There's evidence that the news media became more suspect and critical." What evidence? Name one outlet.

A. No, that was -- that -- that was represented to me that -- that -- that was the case, just to say --

Q. By the plaintiff?

A. Yeah. Just like the brother.

Q. Well, not by the plaintiff because you never talked

to the plaintiff?
A. No.
Q. Not once?
A. No. I -- I didn't get it directly from him. No.
Q. So you got it from Ms. Westbrook?
A. Well, or I've got it -- not from her. I've got it from things I read. I mean, I don't make up anything. I mean, I read -- I read what's presented to me. And if there's -- if it's presented with a reasonable degree of -- of certainty or reality, I -- then I -- you know, I accept it.
Q. Did you compare coverage of him before and after August 22, 2025?
A. No, I didn't compare it. I -- I saw coverage from both cases, but I didn't -- I didn't compare it.
Q. Is there a single news article in any of your materials list?
A. No.
Q. Your note -- your family note here, Page 35, 36, you say that, "Family harm potentially leads to marriage strain, discord, and divorce. Children are harassed, bullied, or even physically attacked."
A. Yeah. That's my experience.
Q. Great. Tell me your evidence that that happened here.

A. Well, I don't have evidence it happened here. I -- I --
Q. Then why is it in your report if you have zero evidence of it ever happening?
A. I didn't say it happened here. I said that -- that was -- that is the type of experiences that -- that have happened to other people in similar situations. I didn't say it happened to him.
Q. Let's see. So Page 19 and 20, there's contrary evidence here you reprint, but don't answer. The plaintiff has not required or sought mental or physical treatment. Any evidence to the contrary?
A. I don't see where you're -- what -- are you referring to on Page 19? I don't see anything.
Q. Did you review your report before your deposition today?
A. Oh, not today, no.
Q. When's the last time you looked at it?
A. Earlier in the week. Maybe Tuesday. What is today? Thursday. Probably Tuesday.
Q. So see where it says 19 at the bottom of the page?
A. Okay. I'm on Page 19.
Q. Do you see the two lines at the bottom of the page? If you don't see them, tell me you don't see them and I'll --

A. I see them.
Q. Okay. Great. Does the first one say, "The plaintiff has not required or has sought mental or physical treatment"?
A. That's not coming from me. This was the --
Q. Do you have any evidence to the contrary of that statement?
A. No.
Q. All right. The next one --
A. I'm not making -- I'm not --
Q. The -- no, that -- that's it. That's all I care about.
A. Okay.
Q. All I care about, pal. "The plaintiff did not lose any book sales, media interviews, or speaking engagements." Do you see that?
A. That's what -- that's what your side is claiming.
Q. Yes. I -- I understand. I'm --
A. Yeah. Yeah.
Q. I'm not attributing this to you.
A. Yeah. No. No. Okay. I see it.
Q. I think we figured out that.
A. Yeah. Yeah.
Q. Okay. Do you have any contrary evidence?
A. No, I don't have --

Q. Next page. "The plaintiff has not received any negative comments from his parishioners." See that?
A. Yeah, I see that.
Q. Any contrary evidence?
A. Not that I know of.
Q. The church's income has increased from 2024 to 2025. Do you dispute that?
A. No. I mean, I don't dispute it. I don't --
Q. Where in your report do you address any of these four points?
A. Well, it's not -- well, I don't -- I don't -- as I said, that's in a section where I just make -- I post the claims of both sides in a --
Q. The question --
A. I didn't --
Q. The question was -- the question was --
A. Yeah, I did -- I did --
Q. Where do you address it?
A. I don't think I addressed them.
Q. Okay. So is it your methodology to consider contentions cutting against your conclusions?
A. Well, that -- that's a -- it's a mixed bag here in the sense that --
Q. No, that's not.
A. I don't get involved with income. I don't have any

brother and -- and all the --
Q. Right.
A. -- I clearly identify that that is what the plaintiff is representing. I don't draw any conclusions myself because I'm not representing it. I'm just reporting that they represent it just as much as I'm reporting on these two pages that those four items are being reported by the -- by the --
Q. Okay. Here's where I'm going to think you're making a mistake, because I'm not going to say that you're lying. Report summary, okay? Based on all available evidence -- but that's not true because you didn't even look at the exhibits to the amended complaint, but --
A. I didn't see them.
Q. So that's -- no, it's okay.
A. Yeah. I didn't -- I wrote -- I did --
Q. It's available, right?
A. Obviously, I looked at the thing, and, I mean --
Q. You looked at my website where it's there, right?
A. No. I just looked at the graphic on your website.
Q. You just looked at the picture? You put the link to the case page and you didn't look at the case documents?
THE RECORDER: Gentlemen, sorry to interrupt. I want to remind you guys, please, please, please try to speak one at a time.

Q. Did you ever read a single comment about him?
A. You asked me that before. No.
Q. Okay.
A. I didn't see any comments. I wasn't exposed to --
Q. So you didn't address any of the defendant's points about the absence of harm, right? You --
A. No, no, no.
Q. You copied and pasted them, but you didn't engage --
A. No, I -- I saw what they were. It's not my job -- it -- it's my job to factor in what they're saying, but not to -- to investigate that they're saying what they're saying. I mean, that's -- that's -- I do that by providing -- providing their claims in the report. I'm showing that they're, in a sense, their own defense.
Q. So on Page 13 of your report and 15 of your report, you state that the photo was online for an hour or two, or taken down that same day?
A. My understanding was -- I don't know how long the time frame, but my understanding was that it was taken down the same day it was put up. I don't know how long the period was in between.
Q. Is that -- should that be relevant to your methodology, how long it was up?
A. Yeah. I made that -- you know, I made my report that the -- that the woman, I can't remember her name,

at the -- at the Legacy Church called this Kylie Howerton and told her. And she turned around and told Nathan somebody, and he took it down. I don't know what the time frame was. I never saw an exact -- but I -- but I did report in there that -- it is in my report that it was taken down the same day. I didn't say it was up there for two years.

Q. How much damage do you think it would cause if it was up for two years? Give me an estimate what you think the damage would be.

A. Well, he has -- I don't know. He has 6.3 million viewers, supposedly, or followers. I don't know how often they go on. I would -- I think they would go on more than -- you know, a two-year period, they would go on multiple times, I would think, to see that. That's a supposition, obviously.

But, you know, I don't know that it matters whether it was up two years or two months. I mean, his followers are going to -- their followers, I'm sorry, are going to go -- go on, if they're followers, and -- and periodically look at his things. So if it's up for a period of time, a certain percentage are going to see them and see it often.

Q. On Page 14, you quote Ms. Mason. It says -- you want to take a look at that or you want to -- where it

says, "Many of our church members have commented, and the official Legacy Church page has responded, requesting it be taken down." You see that?
A. On Page 14?
Q. Yeah.
A. Oh, yeah. Mason became aware of the error and notified Howerton. Yeah, that's what I said.
Q. So according to that, Legacy Church publicized the post to its own audience?
A. Well, I'm reading a thing where she said -- or sent an email, obviously, saying that they -- to Howerton saying it needs to be taken down.
Q. Did you analyze whether the plaintiff's own side amplified the exposure?
A. No. I saw no evidence.
Q. Can you identify a single instance of word-of-mouth transmission in this case? One person who told another?
A. No.
Q. So you can't say how long the photo was up? Or can you estimate?
A. It was within -- I would assume within hours. It was within a day, I mean --
Q. But you can't say how many people saw it?
A. No.
Q. And you have no evidence of any republication ever,

correct?
A. No, not that I know of.
Q. So you say at Page --
A. Not to say there wasn't, but I have no evidence that there was.
Q. So you say at Page 29 that you researched the internet seeking to discover if there were any reports that would be negative to him.
A. Yeah. Well, that's -- we've already discussed that.
Q. You think you did a good job at that?
A. I -- I think reasonably, yeah. I mean, I think that -- I mean, you know, Google is like the Bible of the -- of the internet. I mean, it's by far the -- the most popular and used research/search tool.
Q. Well, let's go to Page 31, then. Let's see. Was it 31? All right. So you never saw Reddit posts about him?
A. No. I never saw any social media posts about -- about him. I never saw any social posts about anybody, including the defendants. There was no information provided to me or evidence.
Q. Well, I want you to look at the second bullet point on Page 31. Do you see that?
A. Yes.
Q. Read it out loud, please.

A. Oh, wait a minute. There's more bullet points.
Q. Page 31. Go put your finger at the top, at the first bullet point. Move your finger down to the second one. That's the one I'm talking about.
A. Legacy Church, the unchristian Church.
Q. The unchristian Church.
A. Uh-huh.
Q. Did you click on that link?
A. No, I didn't.
Q. So you didn't read that thread at all?
A. No. I just --
Q. You got no idea what it says, do you?
A. No. My -- my purpose in that was to -- to get the subject matter of the ten listings that were on the first page of Google, as to who they were about.
Q. And that's the second one, right?
A. No. It's the fourth one.
Q. Oh, that's the fourth result?
A. Yeah. Fourth result.
Q. Oh. You're -- yeah, you're right. I'm sorry.
A. Yeah.
Q. You have two on the other page.
A. Every once in a while, I'm right.
Q. Okay. So the second -- so the fourth Google result was that, and you didn't think it was important to look

THE RECORDER: I'm not sure if it's the one to strike.

THE WITNESS: Wait a minute. Yeah, the order is Number 2.

BY MR. RANDAZZA:

Q. Okay. So do you recall looking at this? It's on your list.

A. If it's on my list, I looked at it.

Q. Do you recall looking at it?

A. Let me see. Not specifically, but I -- I know I did.

Q. You know you did because you listed it or you know you did because you remember it?

A. Because I listed -- because I listed it. I wouldn't have listed it if I didn't look at it.

Q. So look at Page 6. And it's got a handy little number line on the left. Go to Line 6 of Page 6, where the Court says, "Plaintiff claims that Defendants curated the exhibits to smear him." You see that?

A. Uh-huh.

Q. Do you have any reason to believe that the Court lied?

A. I don't know what exhibits they're referring to.

Q. Well --

A. I mean, there are a lot of different types of

document, did you come across that and think maybe that would be some negative material you should look at? Or were you uncurious about that?

A. In other words, they trumped up the -- they cherry-picked all this negative stuff to -- in an effort to smear him, and you're thinking that I should have analyzed all these exhibits to see it were so, but I didn't see the exhibits, so.

Q. Well, you said you couldn't -- you said you couldn't find anything negative about him, either on Google, either on the exhibit you found, nor even on the motion to strike, nor even on the amended answer, nor even was your curiosity peaked when a court order explained that we curated exhibits to smear him.

A. Okay. Well, first of all, I never said I didn't find anything negative about him. I found -- I said when I did that --

Q. That's exactly what your report says.

A. No, no. I said when I got that initial search, I went through and I saw him involved in some disputes, which you could say negative, but it had nothing to do with him as a pastor or related to his profession, which is the issues in this case. I saw him getting in a debate over some -- I think it was a zoning thing. I got a political thing. But it was nothing that related

to the -- to his profession.
Q. Let's go to Page 29, and let's remind you of what you say you did. I -- okay. I want you to go to Page 29. Go to where it says, "Analysis of Plaintiff's reputation pre-public exposure."
A. I see it.
Q. And I want you to go to the sentence that begins with "I researched." And I'd like you to read that out loud.
A. Okay. "I researched the internet seeking to discover if there were any reports personally or professionally that would be negative to him or discover any incidents of reputation harm that occurred prior to the publication of the Facebook post."
Q. How about the last sentence?
A. "I did not see any information of a negative nature about him either personally or professionally." Yes, I didn't --
Q. But you saw a court order that said that we had found a bunch of things to smear him with, right?
A. Well --
Q. I mean, you didn't lie about reviewing it, so you must have --
A. No. I didn't review it. I don't -- I didn't -- I don't -- that particular sentence in that report, you

something. Yes, I'll give you -- it's a negative connotation. I would agree with that.
Q. Okay. Do you think if you were looking for pre-existing negative information, that would have been something you wanted to have?
A. Okay. You're taking your eye off the ball here. This case not is -- is not involved with that. This case is involved with a man's credibility as a preacher, as a pastor, preacher, minister, whatever you want to call him, to be able to function as a preacher in front of his church, because he's been accused that his whole philosophy or his whole sermons or whatever he -- he offers out is bogus because he's affiliated with something that goes against his teachings, his sermons. That's it.
Q. Okay. So --
A. It's not about whether he was a chairman of a board, of a corporation that may or may not have something to do with the -- the allegations against your defendants is -- is they caused reputation harm to him in the area of -- of his ability to function as a preacher in that he was two-faced and he was a hypocrite by espousing something in the God's Word about -- you know, about biblical philosophy, when in -- in turn he was advocating something that was diametrically opposed.

That's what the case is about, not whether he was chairman of a board or some -- yes --

Q. How familiar are you with his teachings at the church?

A. Well, I'm -- I'm not familiar specifically with him, but I'm familiar with --

Q. You don't know anything about him?

A. Well, I'm -- excuse me, I'm familiar with -- with pastors and their teachings and preachings and their -- their whatever. And they -- they generally --

Q. So sex abuse wouldn't generally go against his sermons and teachings?

A. He wasn't accused of sex abuse.

Q. He was accused of --

A. If they read the thing -- if they read the thing, the guy -- the guy said he's chair -- he's on the board of directors of an institute that someone was involved, so therefore I think he knew about it. You know, they -- he wasn't accused of doing anything.

MR. RANDAZZA: That's Exhibit 13.

(Defendants' Exhibit 13 was marked for identification.)

THE WITNESS: And there wasn't even specifically anything that said he was aware of it. He said that --

BY MR. RANDAZZA:
Q. Are you aware of that news report describing protests outside Legacy Church after he publicly opposed --
A. Yeah. This one, I remember.
Q. Oh, you saw that?
A. Well, no. I mean from my original research. I remember seeing something that -- that there was a comment that sparked some -- some protests.
Q. Right. Now, again, we don't judge whether that's okay or not, but that was about public protests at his own church, right?
A. Uh-huh.
Q. Did that appear anywhere in your assessment of his baseline reputation?
A. A gay man to office. One thing, if nothing else, it demonstrates that he's opposed to gay -- the gay men in -- in office, which is -- which is directly related to the leakage of his picture to a --
Q. Sure. But is that a positive press coverage or negative?
A. Well, the fact that --
Q. We can disagree with it, but --
A. Oddly enough, this is one of the pictures that was on that -- on that page on Google. That picture there

knew I had it some --
Q. What did you do to verify?
A. I didn't do anything to verify. It was --
Q. Come on.
A. I -- I think I got --
Q. You did nothing to verify?
A. Well, I think I got -- I'm not sure if I got that off of Wikipedia or that was -- I don't think that was information that was provided to me. I -- I found that from researching him on the internet, so I had no reason to dispute it.
Q. Why isn't Wikipedia in your list of documents you've looked at? It's not there.
A. No, it isn't. Those are mainly documents I -- I reviewed. Yeah, I did some research on him. I don't think that -- I'm not sure if that information was provided, but I think I found that on the internet. Yeah, I'm pretty sure I did.
Q. What did you do to verify it?
A. I didn't do anything to verify. I mean, it was -- it was posted --
Q. Take a look at Page 21 here where it says -- you have a screenshot, at least described, that says, "I'm a right-wing extremist and here's why." What was that?
A. I was provided -- that's not something -- I mean, I

was provided -- in the discovery that I was provided to review, I was provided three screenshots. And --
Q. Was that by him? Did he publish that about himself?
A. I don't remember. I remember it was in the information that -- that was sent to me and I looked at, and so I just --
Q. That's not the question, okay? Here's the question. Focus on the question. The question is this: Who is the "I" in that "I'm a right-wing extremist and here's why"? Do you have any idea?
A. Well, I'm sure it was -- I don't remember right now who -- who it was in reference to. I'm sure it was in the screenshot I saw. I'm sure it was --
Q. Sir, this is your expert report.
A. Yeah. I understand that.
Q. Okay. So should this get to a jury, I'm going to put this in front of them and have the expert who says, I don't know what this thing is I reviewed. Is that really how you're going to bolster your credibility?
You just say, I have no idea what it is, I just put it there. Is that what you want to say?
A. No. I was just listing -- I was just listing all the things I looked at. And obviously, since I didn't pick up on it anywhere in the text of my report, it was something that I didn't -- I just -- I just listed it --

Q. Do you know who "I" is in that sentence?
A. No, I don't, as I sit here now.
Q. Okay. So you have -- you have listed documents that you say you reviewed but you don't remember. You've looked at documents --
A. But I didn't -- I didn't think --
Q. -- that you don't know what they are.
A. I didn't think it was substantive enough to -- to use in the body of -- in the body of my report.
Q. So someone claiming to be a right-wing extremist, you were like, I'm not curious about that. Is that -- was that your methodology?
A. No.
Q. Is your methodology, like, specifically uncurious?
A. No. My methodology is I looked at -- I looked -- I looked at that individual document and I didn't think there was anything in the document that -- that was germane to put in my report, either in terms of the background to the -- to the case or in my conclusions, opinions. I don't put everything. I list everything I read. I don't -- I don't -- if it -- I read documents. You've got a page and a half of documents here or more.
Q. Yes.
A. Some of them I didn't get anything out of. I mean, I read them. There was nothing in it that -- that, to

350,000 in reputation repair costs.
A. Okay. You mean break it down cost-wise?
Q. Yeah. What are the components of that?
A. Otherwise, the budget, break it down. Yes. Okay. I'd be happy to.
Q. How come that's not in your report?
A. I didn't choose to put it in there.
Q. You don't actually have it, do you?
A. Yes, I do.
Q. Where?
A. Get your pen out. I'll break -- I'll break every one of them down.
Q. I'm ready. Go for it.
A. Okay. The audit assessment is $5,000.
Q. I'm sorry. What's an audit assessment?
A. We talked about that earlier. That's where you take a baseline for what the -- the situation is at the given point in time, where the problem areas are, what -- what needs to be addressed. It's basically looking at what the reputation damage is at the time, and what needs to be addressed.
Q. What time? At August 22, 2025?
A. No. God, no. No. You're doing the -- you're not doing the program starting on August 22, 2000 -- it doesn't matter what it is then. You're doing whatever

the date you're starting the program. Assumingly, it would be shortly after the trial.
Q. Do you have this written down anywhere? Are you pulling this out of your head right now?
A. No. I have it written down.
Q. Where?
A. We submitted it to them. Yeah. We broke it down. If you -- you're not competent enough to have your -- she submitted to you a breakdown in writing on it. So look --
Q. Okay. So I'm looking at Page 41 where you say, I've projected the cost, but I will not delineate them at this time.
A. No, that's true. I didn't delineate them at that time, but I have them, and that's what depositions are for. You can ask me where they are.
Q. Well, I'm sorry. I'm too incompetent to find them here, as you said. Where are they?
A. Well, she -- they're not in my report, but we submitted a separate page to you with a complete breakdown.
Q. Did you?
A. Yeah.
Q. You sure about that?
A. Well, ask -- ask Ms. Westbrook.

Q. She's not being deposed right now.
A. Well, I was -- I gave a complete breakdown of one of your things in with the subpoena. One of your things was related to that. So I -- I did a complete one-page breakdown of all the various items, what the costs were, what they were for, how many hours, whatever, and -- and gave it to Ms. Westbrook. And she told me before the deposition that she had submitted it to you. But I can give it to you verbally if you want it. I mean, but she gave you a page. If not, I'm sure she'll send it to you when this is over.
MR. RANDAZZA: Is that accurate? Is he lying?
MS. WESTBROOK: (No audible response.)
MR. RANDAZZA: He's not lying?
THE WITNESS: No.
MR. RANDAZZA: Okay.
MS. WESTBROOK: Did you really not get it?
MR. RANDAZZA: No.
MS. WESTBROOK: You didn't get the --
THE WITNESS: She sent you a couple things.
MS. WESTBROOK: -- response to the subpoena and everything else?
MR. RANDAZZA: Nope.
THE WITNESS: Well, regardless, I'm willing to give it to you now, so if you want it.

BY MR. RANDAZZA:
Q. Sure. Great. Yeah. Let's hear it.
A. Okay. All right. Let's go down item by item. Okay. Okay. Pardon? The audit -- the audit assessment --
Q. Yep.
A. -- was $5,000.
Q. Okay.
A. That was based on 20 hours by someone charging $250 an hour. Okay. The program plan was $10,500. That was --
Q. What goes into that?
A. Well, the -- well, the audit assessment is when you identify what you -- what -- what your goals are, what your needs are, where the problems are, what you have to address.
Q. Have you not done that yet?
A. I'm not going to do it. I'm not the person to do it. And you don't do it until the -- until the case is over. I mean, you know, the bottom line is that you start the program when the trial is over, assuming that the plaintiff prevails in it. That -- that's the -- that's the -- if he doesn't prevail, then he should still have a program, but the defendants aren't responsible for it.

Q. Why wouldn't you do it now?
A. You'll have to ask him that. The point -- the point is --
Q. Well, in your opinion --
A. Well, in my opinion --
Q. -- if his -- if his -- his reputation has been cratered by this couple hours, right?
A. Okay. All right. All right. I'm not trying to --
Q. When should he fix it?
A. I'm not going to say. I -- I can make a -- I could -- I can make a case that he should have done something on August 22. I mean, you know, back -- back then.
Q. Yeah.
A. But the bottom line is one of the reasons to wait is that a litigation and a trial, if he should prevail, gives him hell of a launching board of validity to say that, you know, I was right all along, and these -- these guys did me wrong, and therefore he has a positive message to sell.
Q. So we want to --
A. If he -- if he doesn't prevail in the case, he should still do one, but the message would be different. The message is, you know, here's my side of the story. But the bottom line is, if he comes off with a -- with a -- a jury decree that -- that he was wronged by -- by

the defendants, then that's something that -- that he can -- a positive message he can go forward with.
Q. So your methodology says, wait until after the trial is over to mitigate the damage?
A. Well, I -- I am always -- I'm always an advocate of doing it sooner, better than later. But the bottom line is, in this context, it is worth -- let me put it this way: If he -- if he went forward now or before the trial or a verdict or whatever, a settlement, of course, changes the whole picture. But if he went forward now, he -- he really doesn't have anything to sell, but that -- but that -- his word for it or his -- you know, it's a he said/she said thing. This is what I'm claiming. But if he waits till trial and he prevails, and the jury hears all the evidence and they come and -- and find in his favor, then he's got a validation that -- that he was correct and that is a hell of a launch for a communications program.
Q. Oh, okay. I'm sorry. We did get this today, so I don't need to ask about it.
A. Okay. So I don't have to go over it. So that's if you have any questions on that.
Q. Do you have any vendor quotes for this?
A. Pardon?
Q. Vendor quotes, or are you just making these numbers

up?
A. No. No. It's based -- as I said, I've done 35, 40 of them. I know what people charge out in the field.
Q. Who's going to do the audit assessment?
A. I don't know. He -- I'm not that -- I -- let me declare very clearly. I will have nothing to do with this program. I will not do --
Q. Who's the last person you hired to do an audit assessment?
A. The last person I hired to do an audit?
Q. Yeah. I mean, there must be vendors to all these, right?
A. Well, I generally -- no. I generally -- in the past, we're talking about the '80s and '90s for the most part. I -- I would do them myself or somebody on my staff would do it. I didn't need to -- you know, I had ten people working for me. I would've assigned a couple people to do some research and go out there.
Q. But you haven't done one since Reagan was president?
A. No. Reagan ended the presidency in '88. I've --
Q. Oh.
A. Yeah.
Q. George Herbert Walker Bush then.
A. Yeah. January '89. No.
Q. Okay.

A. I said I've done them in the '90s, too. No. I mean, I'd have my staff do the assessment.
Q. Who would do the program plan?
A. Oh, that would be pretty much me and --
Q. How about the online --
A. In other words, once -- once the -- we identified who the target --
Q. Okay.
A. -- what the objectives were, the target audiences, whatever, then I would -- then I would --
Q. I'm trying to help her get on a plane here, okay?
A. Pardon?
Q. Trying to help her get on a plane.
A. Yeah. Okay. Well, you asked these questions.
MR. RANDAZZA: 6:45, right?
THE WITNESS: All right. Then the answer is me. I mean, I --
BY MR. RANDAZZA:
Q. Who would do --
A. I would do the program plan for the most part.
Q. All right. So if the answer is me, you can just say me.
A. Okay. Okay.
Q. Online communications, a website, a blog, and a social media. Who would do that?

A. Well, that would -- part of it would be interoffice, you know, and part of it would -- we obviously have to hire people who do -- to put together websites.
Q. To do what?
A. To do what?
Q. Yeah.
A. Well, to put up a website. I don't -- I don't have the skills to put up a website to do the graphics and put up the -- technically, the -- the keywords and all that other stuff. We would hire somebody that does -- a subcontractor that -- that would put up websites. And -- and the other thing is the design or put up a -- a Facebook page or whatever we decide to -- to do, that kind of thing. And so -- so we had that -- the budget there. I think there was 25,000 --
Q. Yep.
A. -- for that.
Q. What about search engine optimization? What do you mean by that?
A. Well, search engine optimization is scrubbing off all the negative. But what -- what that is -- is to do a search of the -- do a search -- a continual ongoing search and monitoring of the internet to identify, find negative stuff on the internet, and try to, if you can, remove it. If not remove it, replace it with positive

content, you know?
Q. That's your definition of search engine optimization?
A. Yeah. It's -- it's seeking out, monitoring, and searching out negative information on the internet and replacing it. That's in this context that -- yes, that's -- I mean, searching engine optimization is a much more broad character -- category, obviously. But in this context of a reputation-damaged program, it's to find the dirt and try to get rid of it. And if you can't get rid of it somehow, then to replace it or put other positive content up there to offset it.
Q. All right. So you have no vendor quotes here, right?
A. Yes. I did talk to -- I did have a vendor quote, the guy I talked to earlier, Don Phillipson --
Q. Is that in here?
A. -- does that kind of thing. He -- I asked him to -- no.
Q. It's not in here.
A. No. I -- I asked him in general what he thought. I told him what the problem was, thought what would -- would be a level for this kind of a thing. And he said that about 2,000 a month would be what should do it over a period of like two years. 2,000 a month would be

fine.

On the videos thing, I talked to a video guy that does videos. I tell him what -- what we would want. We'd want videos that -- that he can, you know, put on his -- put on his website. He can put it on YouTube. He can use it if he has speaking engagements or any -- I mean, you know, Jen and Eric can -- they recommended that he do one long video and then, you know, maybe a -- a ten to 15-minute video or something like that. A ten-minute, I think, video.

MR. RANDAZZA: Can I have an exhibit number?

THE RECORDER: This is 14, too.

MR. RANDAZZA: 14. All right.

(Defendants' Exhibit 14 was marked for identification.)

BY MR. RANDAZZA:

Q. So this was provided to us this morning. I guess it's a -- what is this, Exhibit 14?

A. I have no idea. I mean, it's a -- it's a --

Q. Did you make that?

A. Oh, I know. I know what it was. That was a -- a screenshot that I did. I think the second time I went on -- you know, I told you I went on twice and -- and -- and this was the second time. And I took a -- a screenshot. I -- I hadn't done one the first time. And

so I -- I went on a second time, and I thought that other than putting them in my report, that I should have a -- a picture of what they looked like altogether.
Q. So you didn't do a Google Image search, you just did a Google search?
A. Yeah. Google search. Yeah.
Q. Not a Google -- do you know what --
A. Yeah. And this -- this is --
Q. Do you know how to do a Google Image search?
A. Not particularly.
Q. What does the particularly in that answer mean?
A. I -- I --
Q. Is it yes or no?
A. An image search. I've never done one. I'm not sure what --
Q. In your life as a public relations professional, since Google was invented, you've never done an -- a Google Image search?
A. No. I don't believe so. Remember, I was doing mostly legal PR for the latter part. After computers came in around the mid '90s, I was doing mostly law and there was not -- not law, but for what -- the kind of work I was doing for law firms, there wasn't a need for -- for Google Image searches. I wasn't -- that wasn't what I was tasked to do.

Q. So we established earlier that the 2.65 million to $5.589 million number, that just came from the plaintiff?
A. Yeah.
Q. That's not your number?
A. No, it's not my number. I'm very clear about that. So I'm not testifying to it. I don't have any input into it. I don't know how they came up with it, and it's not my number.
Q. Okay.
A. You'll have to ask them.
Q. Back to the Carroll case. In Carroll, you said a strong reputation makes a person more resilient. Here, you didn't apply that, correct?
A. No. No, not -- not necessarily. As I said, it's not the same in every case.
Q. It's not part of your methodology here, correct?
A. No. No, not -- I mean, I was much more familiar with Carroll and all than -- than in the -- than I was Mr. Smothermon -- Pastor Smothermon. But no, I didn't specifically. As I say, sometimes -- and it's generally can be considered true, but there are cases I've had that it -- like with the Central Park Five case where that gal's whole life was destroyed.
Q. Focus. Focus.

A. Yeah. Okay.
Q. Okay.
A. So I --
Q. In Carroll, okay?
A. Yeah.
Q. We are talking about one of your other cases.
A. Yeah.
Q. I'm not talking about --
A. Yeah.
Q. -- you know, the Spanish Armada or anything. Talking about Carroll.
A. Right.
Q. You said, in that case, a polarizing speaker's audience discounts him. Here, did you apply that to your methodology?
A. I'm sorry. I didn't get -- you said a polarized?
Q. A polarizing speaker's audience discounts him. That's from your report in Carroll. Have you applied that to your methodology here?
A. I'm not sure in the context I said a polarized -- speaking. I'm not sure what I was referring to in that. Polarized -- I don't -- I don't understand. What -- what's the context?
Q. In Carroll -- no, it's okay. You can just say, I don't know what I was talking about.

A. Well, yeah.
Q. It's all right.
A. The term polarized.
Q. In Carroll, you criticized an opposing expert for one-sided language. You remember doing that?
A. Well, her -- her language was -- I mean, their expert was -- was pathetic. I mean, horrible.
Q. Did she use terms like malicious and demonic?
A. No. No. No. No. No. I was going to say something, but I want to hear either one.
Q. Look, the real difference between these case is which side is paying you, right?
A. Which side?
Q. Whether it's a plaintiff or defendant paying, you apply a different methodology?
A. No. I will -- I will attest to the fact that in -- in -- in general, in most cases, if somebody has a very positive reputation for a long time, it will buttress a lot of the negative criticism. But there are times when it won't help. I've seen that, like, if I mentioned that one case --
Q. Sir, the question was not that.
A. Okay.
Q. The question is: Do you apply a different methodology depending on if a plaintiff or a defendant

is paying you?
A. No. No, not necessarily. No.
Q. No or not necessarily?
A. No. Not -- no. I -- I try -- you know, I mean, there are certain core things that apply in other cases, but there are -- as I said, there are -- there are times that things are -- there's exceptions to the rule. Let's put it that way. And it's not a cookie cutter kind of thing where everything is exactly the same. Some people can withstand --
Q. Because it's not -- you can't replicate it.
A. Well, yeah. Some people can -- some people can withstand criticism and some people, it -- it hurts them. I've seen it both ways. In Mr. -- Pastor Smothermon's case, I -- we -- I don't think anyone knows what the total net effect is going to be -- play out. This only happened a year ago. It's August -- what is it? August 4th, 5th, 6th now? And that was August 25th. It's been a year.
Q. You don't have any clue, right?
A. I don't think anyone has an actual clue.
Q. No, but you don't have any clue, correct?
A. No. I think you have to go on what is -- correct? No, I wouldn't say I have any clue, but I -- I would say that -- that this -- this will still play out. Let's

put it --
Q. You based everything on what he or Ms. Westbrook told you?
A. Well, let's get -- you mentioned Ms. Westbrook. Ms. Westbrook has never told me anything.
Q. Nothing?
A. I mean, no. When we --
Q. That's not what you said earlier.
A. No. We talk on the phone, but it's about setting up meetings or doing this or whatever. All the information I've got is not from her or speaking to anybody. It was all from the written word that I -- in documents I saw or things I saw on the internet, whatever. I haven't had any -- I haven't had discussions with any lawyer, her or anyone else, that was basically feeding me opinions and conclusions. No. She just -- when we talk, it's just a general. It's -- it's more procedural or -- or, you know, are you going to have the report done on time or, you know, is there anything else you need that -- you know, that kind of thing. It's just general -- general things.
Q. Have you told me every opinion you hold in this case?
A. I think every opinion I have is in the report. I mean, I always get that asked of me.

BY MR. RANDAZZA:
Q. Did you look at them today?
A. Pardon?
Q. Did you look at them today?
A. Well, I thumbed through them. Yeah. While we were sitting here, yeah, I thumbed through them. And as I said, the one you had me shown, it was one on third page with two lines that -- that some guy -- but, I mean, I'd have to look at the whole context of what each article was about, how it related to him and whatever. But I will look at them before -- between now and -- and -- and I guarantee you that I -- when the -- when the trial comes, if it does, and I get up on the stand, if I see anything that all this -- look, I'm not going to sell my soul over one case. I've had 138 cases. I'm not going to kill my reputation on one case.

The bottom line is, if I see something that -- that demonstrably, it may shade my opinion somewhat. It may say things aren't as bad as I thought they were, or I could do a 180 flip. But, I mean, the bottom line is I will look at those. I'll look at those between now and whenever the -- the trial is held. And if I -- if I see any of that, it might -- might shade my opinion or alter something.

Q. Are you done filibustering?

A. Pardon?
Q. Are you done filibustering?
A. Yeah.
Q. Okay. Have you told me every basis for every opinion that you have in this case?
A. I think so. I try to be as thorough as I can in my reports.
Q. You done filibustering? Any document that you relied on that we haven't discussed?
A. No. I don't believe so.
Q. Any fact that you relied on that we haven't discussed?
A. No. I think you have been thorough. I think we've covered everything.
Q. Do you intend to do further work in this case and review additional materials?
A. I will look at those, yes. I -- I would be disingenuous not to. I mean, the bottom line, if somebody went and gives -- well, filibuster. Yes.
Q. So your opinions today are not final?
A. They're final unless I see something that changes them.
Q. Okay. But connecting those --
A. And that would be the only thing you brought up was this stack here. And I will -- I will look at them.

Q. Anything I should have asked you?
A. No. I think you've been very thorough. I mean, I -- I appreciate you going -- most people don't go over my report -- report that thoroughly. You know, you're very detailed in going over the different pages of the report. I'm getting dizzy going back and forth, but I won't filibuster.

So, no, I think, you know, as I said, after 35, 40 reports, I -- you know, I've had attorneys that were good, bad, or indifferent questioning me. I don't take it personally.

MR. RANDAZZA: You're going to make your flight. No?

MS. WESTBROOK: I don't see it.

THE WITNESS: No. There's no way.

MR. RANDAZZA: Okay.

THE WITNESS: She had a 7:30 flight. She will barely get to the airport by that time.

MR. RANDAZZA: All right. Well, I'm done.

THE WITNESS: Okay. Now, are you going to send --

THE VIDEOGRAPHER: Hold on.

THE WITNESS: I can't -- these are exhibits.

THE VIDEOGRAPHER: Hold on.

THE WITNESS: I can't take them.

CERTIFICATE

I, Breyan Sims, a Notary Public in and for the State of California do hereby certify:

That the foregoing witness was duly sworn; that the proceeding took place before me at the time and place herein set forth; that the testimony and proceedings were accurately captured by me with annotations using electronic recording means not related to stenography.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am not interested in the outcome of this matter, financial or otherwise.

IN WITNESS THEREOF, I have hereunto set my hand this 11th of August 2026.

Breyan Sims

_____

Breyan Sims, CER-2648
Notary Commission CA No. 2476818
Commission Expires: December 19, 2027

CERTIFICATE OF TRANSCRIPTIONIST

I, Alessandra Rote, Certified Verbatim Reporter, do hereby certify:

That the foregoing is a complete and true transcription of the original digital audio recording of the testimony and proceedings captured in the above-entitled matter. As the transcriptionist, I have reviewed and transcribed the entirety of the original digital audio recording of the proceeding to ensure a verbatim record to the best of my ability.

I further certify that I am neither attorney for nor a relative or employee of any of the parties to the action; further, that I am not a relative or employee of any attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this matter.

IN WITNESS THEREOF, I have hereunto set my hand this 11th day of August 2026.

Alessandra Rote

Alessandra Rote, CVR.
Certification No. 8570
Expires: April 1, 2027

EXHIBIT 4

PASTORSTEVE 000053-000059

JONES, DAVIS & JACKSON, PC
Attorneys + Counselors

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

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

PRIVILEGED AND CONFIDENTIAL:
ATTORNEY-CLIENT COMMUNICATION

February 25, 2026

VIA EMAIL: dmccabe@legacychurchnm.com

Pastor Steve Smothermon
Legacy Church

Re: ***Smothermon v. Hodgetwins, LLC, et al.*, United States District Court for the District of Nevada Case No. 2:25-cv-01858)– Offer of Judgment and Anti-SLAPP Risks**

Dear Pastor Smothermon,

I am writing to update you on the recent developments in your case against Keith Hodge, Kevin Hodge, and Hodgetwins, LLC. Opposing counsel, Marc Randazza, has formally served us with an "Offer of Judgment" to settle the case. Additionally, as we have discussed, the defendants intend to file an "Anti-SLAPP" motion to dismiss your lawsuit.

We need to make a strategic decision on how to proceed. This letter explains the settlement offer, the risks associated with the upcoming Anti-SLAPP motion, and the legal arguments both sides are preparing.

1. The Offer of Judgment

On February 17, 2026, the defendants served us with a formal Offer of Judgment under Rule 68 of the Federal Rules of Civil Procedure. They are offering to allow a judgment to be entered against them in the amount of $5,000.00, which would fully resolve and dismiss all of your claims. Under Rule 68, if you decline this $5,000 offer and we proceed to trial, but the final judgment you win is less than $5,000, you will be legally obligated to pay the defendants' court costs incurred after the date this offer was made. We have 14 days from February 17 (until March 3, 2026) to accept this offer before it is automatically withdrawn.

In federal court, the costs that can be shifted to the other party are generally limited to specific types of expenses

- Fees paid to the court clerk and marshal
- Fees for court transcripts used in the case
- Fees for printing and witness attendance
- Copying costs that were necessary for the lawsuit

At this stage in the case, it is impossible to predict the magnitude of such costs.

2. The Threat of an Anti-SLAPP Motion

If we reject the $5,000 offer, the defendants will file a special motion to dismiss under Nevada's Anti-SLAPP (Strategic Lawsuits Against Public Participation) law.

Anti-SLAPP laws are designed to quickly dismiss lawsuits that allegedly threaten free speech on issues of public concern. The primary risk here is financial: if the judge grants their Anti-SLAPP motion and dismisses our case, the law mandates that you pay the defendants' reasonable attorneys' fees and costs. Because Mr. Randazza thinks of himself as a prominent First Amendment attorney, he has argued that these fees could be exceptionally high.

3. The Defendants' Arguments

Mr. Randazza sent a letter outlining the arguments they will use in their Anti-SLAPP motion. They argue your case will fail for the following reasons:

• You are a Public Figure: Because of your 90,000 YouTube followers and leadership at Legacy Church, they argue you are a public figure. Therefore, you must prove actual malice—meaning the Hodgetwins knew their post was false or acted with reckless disregard for the truth.

• The Innocent Mistake Defense: They claim mixing you up with Steve Smotherman (the Cracker Barrel DEI executive) was merely an innocent error. They argue it is a common mistake and point out that search engines like Google and AI tools also conflate your identities.

• Woke is Opinion, Not Fact: They argue that calling someone woke, anti-American, or against family values is subjective political hyperbole and cannot be proven true or false, meaning it cannot be defamatory under the First Amendment.

• Lack of Damages: They assert you suffered no real harm because anyone who knows you would immediately realize the post was false, while strangers would only form a negative opinion about the Cracker Barrel executive, not you.

4. Our Counter-Arguments

We responded to Mr. Randazza with a strong opposition letter, dismantling their claims. If we proceed, our defense against their Anti-SLAPP motion will rely on the following:

• This is Fact-Based Defamation: We argued that the Hodgetwins did not just call you woke as an opinion. They explicitly published your photograph alongside verifiable, factual

assertions—claiming you were the architect of a corporate rebranding strategy, founded an LGBT employee group, and caused a $145 million loss in brand value. Attributing these specific corporate actions to a conservative pastor is defamatory per se.

• They Acted with Actual Malice: The Hodgetwins are not casual internet users; they are a highly sophisticated media entity with 6.3 million followers. The visual difference between you and the corporate executive is obvious, as is the spelling of your last names. A simple verification would have revealed the incongruity of a conservative pastor running a corporate HR department. Their failure to check is the very definition of reckless disregard for the truth.

• Federal Discovery Rules Protect Us: In federal court, if an Anti-SLAPP motion challenges the factual basis of a claim (like whether they acted with actual malice), the court treats it like a summary judgment motion and must allow us to conduct discovery first. We intend to depose the Hodgetwins under oath about their deeply flawed editorial standards before the judge can rule.

• Favorable Precedent: We are heavily relying on a recent Nevada Supreme Court case, *Schuman v. Carter*, which clarifies that you only need to present prima facie evidence (a reasonable probability) of prevailing on the defamation claim to defeat an Anti-SLAPP motion. We believe the sheer negligence of conflating a religious leader with a DEI executive meets this burden.

Next Steps

We must weigh the principle of holding the Hodgetwins accountable against the financial risk of having to pay their attorneys' fees if the judge sides with them on the Anti-SLAPP motion.

Please review this information carefully. I recommend we schedule a call in the next week to discuss whether you would like to accept the $5,000 Offer of Judgment to close this matter, or if you wish to reject it and fight the forthcoming Anti-SLAPP motion.

Sincerely yours,

JONES, DAVIS & JACKSON, PC

By: _____
Nicole A. Westbrook

CC: Steve Jones
Mike Jackson

JONES, DAVIS & JACKSON, PC

Attorneys + Counselors

15110 Dallas Parkway, Suite 300
Dallas, TX 75248
972.733.3117
Fax 972.733.3119

CONFIDENTIAL ATTORNEY-CLIENT WORK PRODUCT

TO: R. Steven Jones, Esq.

FROM: Paul W. Bishop, III

DATE: June 18, 2026

MATTER: *Smothermon v. Hodgetwins, LLC* (No. 2:25-cv-01858)

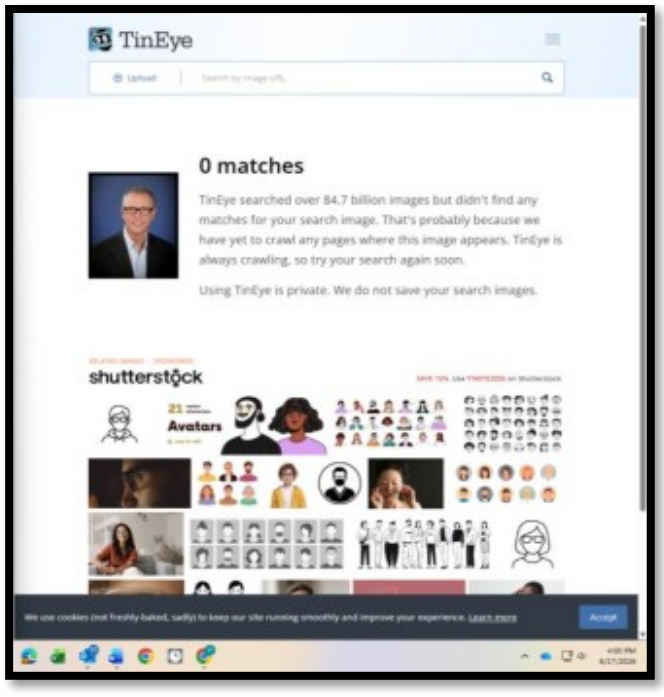
SUBJECT: Plaintiff's Image Analysis Brief Regarding Likelihood of Recklessness

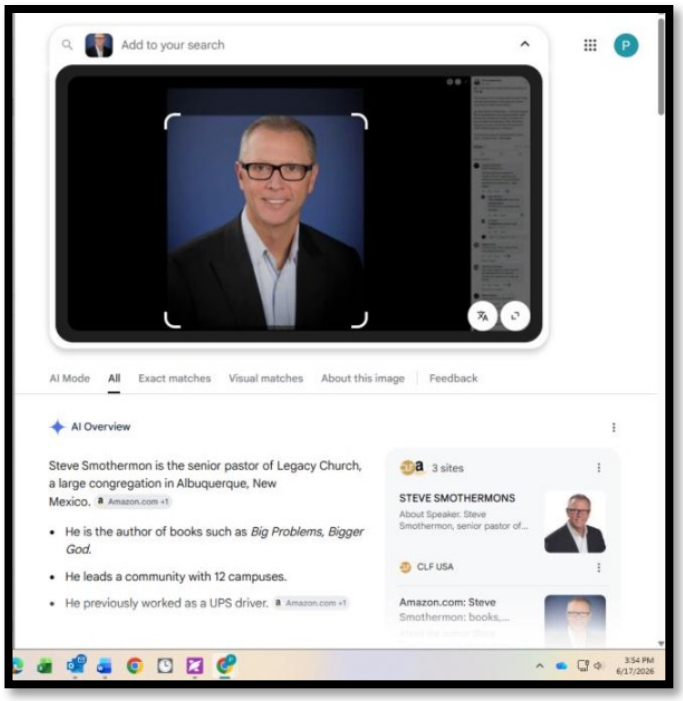
PLAINTIFF'S IMAGE ANALYSIS BRIEF

Combining the TinEye 'zero-match' result with the Google Lens 'AI Overview' proves extreme recklessness: the Defendants had to bypass standard public image feeds and harvest this photo from distinctly labeled religious sources, intentionally ignoring giant, instantaneous AI warnings that explicitly identified the man as a pastor rather than a corporate executive.

TinEye Search Result (No Results) v. Google Lens (Only Church Related Results)

(Comparison as of June 17, 2026)



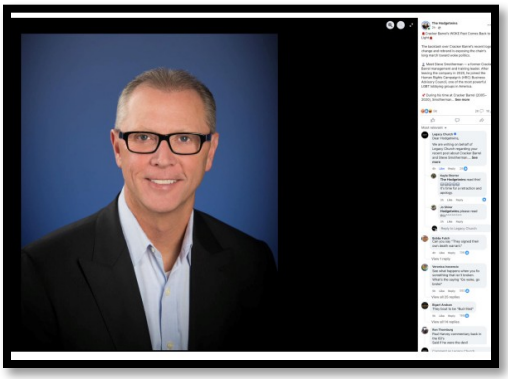


What is TinEye? TinEye is a website that lets you search the internet using a picture instead of words to see where else that picture has been published (TinEye Search Verification, June 17, 2026). It acts like a digital detective, scanning a massive, constantly updated database of over 84 billion photos to look for exact copies, cropped versions, or edited duplicates of a specific image (*id.*). In this case, our search of Pastor Smothermon's portrait on TinEye returned exactly zero matches across the entire open internet, **which proves** that the photo was not a generic public stock asset, but a proprietary file anchored to Legacy Church and Pastor Smothermon's specific leadership platforms, meaning the Defendants had to intentionally strip away the religious context to repurpose the image.

What is Google Lens? Google Lens is another search tool that looks at the faces, clothes, and backgrounds in a photo to identify the subject and instantly show you their real-world identity (Google Reverse Image Search Verification, June 17, 2026). It acts like an instant scanner, connecting the user directly to the exact websites where that specific person's name and job are listed (*id.*). When we

ran the Pastor's picture through this tool, Google Lens immediately displayed a highly visible "AI Overview" text box stating that the man pictured is the senior pastor of Legacy Church in Albuquerque, New Mexico (Facebook Screenshot Capture, *infra*).

Facebook Screenshot Capture



While this search comparison is not absolute proof on its own because we do not have the Defendants' internal team emails or personal notes, it still provides the court with very strong objective evidence of actual malice (*see Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 692 (1989) (holding that while failing to investigate is not enough by itself, deliberately ignoring obvious facts staring you in the face supports a finding of actual malice)).

First, because the TinEye zero-match analysis confirms this portrait is not a widely circulated public asset, the Defendants had to deliberately bypass standard indexing warnings to harvest the photo from distinctly marked religious sources where the Pastor's identity was clearly displayed.

Second, the Google Lens scan shows that if they had done even a basic, one-second check before publishing, a giant warning box would have flashed on their screens identifying him as a pastor.

Third, choosing to bypass these easy, instantaneous checks to run a sensationalized story and sell t-shirts constitutes the purposeful avoidance of the truth, establishing clear actual malice (*see Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 692 (1989);

cf. Long v. Beasley, 2025 WL 1109015, at *15 (distinguishing innocent social media mistakes where defendants lacked the objective verification tools available here)).

In conclusion, the Defendants' deliberate avoidance of obvious verification tools to harvest a proprietary religious asset constitutes clear and extreme recklessness, fully satisfying the standard for actual malice.

Best regards,

s/ Paul W. Bishop, III

Exhibit 5

Deposition Excerpt of Robert J. Fisher
Carroll v. Trump, No. 20-cv-7311 (S.D.N.Y.) (Dec. 2022)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
E. JEAN CARROLL,
Plaintiff,
-vs- 20 CIV. 7311
DONALD J. TRUMP, (LAK)(JLC)
in his personal capacity,
Defendant.
----------x

DEPOSITION OF ROBERT FISHER
December 14, 2022

Reported by:
MARY F. BOWMAN, RPR, CRR
JOB NO. 220615

Q. You were there from 1968 to 1969?

A. Yeah. Yeah. I started in mid -- probably mid '68, went into '69.

Q. Did you reach a full year at The Times?

A. No, I wasn't there a full year.

Q. What was your position?

A. I was a reporter. What they call -- I worked in the Los Angeles bureau, not in New York, and there are like ten people there.

And when you're in a bureau, if you're in New York, usually you have a specialty type of thing. But out there, we were all generalists. So I would do various type assignments. I could cover a Litton stockholder meeting. The next day I could cover a press conference for the Los Angeles Rams. I just did all sorts of articles.

Q. Roughly how many articles did you write while you worked there?

A. Oh, I could not give you a guess. I could not give you an estimate. I did a

R. Fisher

lot of what you call -- I did multiple articles a day. I was -- I covered the international beat for a while. I could explain that to you.

But I might write or three or four international stories a day and it was based on -- well, if you want me to get into it, it was based on pirating something from the LA Times. If you want me to get into it, I will. If not -- let's vague and ambiguous just say I wrote a lot of articles.

Q. Did you name appear on the byline for those articles?

A. No, I can't remember -- no, they couldn't. Those kind of articles, you couldn't put the byline because they were basically plagiarism. I mean -- not plagiarism, but I mean taking information from other sources.

So you couldn't put your name on it because if you put your name -- if anybody put their name on it, it would be more -- it was more -- it looked like a

R. Fisher

Q. If we turn to page 116 in this same exhibit. You will see it says at the top, "Appendix A, Examples of negative comments and posts about Ms. Carroll," and then we see in brackets "Produced in native form"? Do you see that?

A. Yeah, what does that mean, produced in native format?

Q. We don't have to sort through that now, but sort of my previous question, did you review this appendix A that was produced in native form?

A. No, I never saw it.

Q. And if you turn just one more page, to page 117 of Professor Humphreys' report, and you see another appendix listed, it's appendix I, "Examples of direct messages and emails to Ms. Carroll," and under that it says, "Produced in native form," is it fair to say that you didn't review appendix I either?

A. No.

Q. Let's turn back to page 75.

A. Yes.

Q. At the top, do you see where it says "Appendix B, materials considered"?

A. Yes.

Q. And then the first section says "Bates stamped documents."

Did you review any of the documents listed in this section?

A. No.

Q. And then under that on the same page, we see a section entitled, "Legal filings and depositions."

You testified previously that you did review the complaint, is that correct?

A. Yes.

Q. Did you review the deposition of Robbie Myers?

A. No.

Q. Turn to the next page, page 76, header "Academic articles" and then there is a list of academic articles that continues on to page through page 78.

Do you see that?

A. Yes.

Q. And did you review any of the

academic articles listed here?

A. No, I wasn't provided.

Q. By -- I believe you said no, you weren't provided. Are you aware that these academic articles were made available to the defendant's counsel in conjunction with Professor Humphreys' expert report?

A. I don't know what the relevance of these academic -- I don't know what these academic articles are or what they're about or whether they are -- I mean, you're asking me about the things I'm not even aware of and whether they are germane to anything.

Q. Okay, if we turn to page 79, there is a section titled "Books." Did you review any of the books listed in this section?

A. No.

Q. And then lower on that same page, there is a section titled "Websites" and then there is a list of URLs that continues on to page 83.

Did you review any of the

websites at those URLs?

A. No.

Q. Then if we turn to page 83, there is a section entitled "Social media posts" that continues on to page 84.

Did you review any of those social media posts listed there?

A. No.

Q. And then on page 84, there is a section called, "TV rating references," that continues on to page 85.

Did you review any of those TV rating references that Professor Humphreys lists?

A. No.

Q. And then on page 85, we have a section entitled, "Damages model references," that lists as 5 bullets under there.

Did you review any of those damages model references that Professor Humphreys lists?

A. No.

Q. And also on page 85, we have a

section entitled, "Print publication data references."

Did you review any of those print publication data references?

A. No.

Q. And at the end of 85, we have a section entitled, "ProQuest articles," and that continues on to page 86.

Did you review any of those ProQuest articles?

A. No.

Q. And then finally, on page 86, we have a section entitled "Databases."

Did you review or consult any of those databases?

A. No.

Q. So if we look -- just I apologize for maybe doing some flipping back and forth between your rebuttal report and Professor Humphreys' report. If we open to page 9 of your rebuttal report in the paragraph with the header "preface."

Do you see that?

A. Yes.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

E. JEAN CARROLL, Plaintiff, v. DONALD J. TRUMP, in his personal capacity, Defendant.	CASE NO.: 20-Civ-7311 (LAK) (JLC)

DEPOSITION OF ROBERT FISHER

VOLUME II

REMOTELY IN LOS ANGELES, CALIFORNIA

TUESDAY, DECEMBER 20, 2022

REPORTED BY: NATALIE PARVIZI-AZAD, CSR, RPR, RSR
CSR NO. 14125
JOB NO.: 220862

specific, the time to do so. I was given five days to -- from the time I was contacted, to the time I prepared a report. And I did not have the luxury of -- of delving particularly beyond what was reasonable for me to know to be able to offer my conclusions and opinions.

And plus, I may add that having been involved in these kind of things for 50 years, representing people that have been damaged by programs and the extent of the damage, how they were damaged, how it manifested itself, so on and so forth, I don't need to consult pie charts or to -- to have a -- have an educated feel of -- of what the potential damage was.

Q. And you would agree that in designing a reputational repair campaign someone should, sort of, focus on the forms of media that the target audience actually consumes?

A. That would be a reasonable -- a reasonable thing to do.

Q. And is part of your designing reputation with repair campaigns, what sort of data do you rely on to identify the types of media that your target audience consumes?

A. Well, I don't particularly get into data

things I might have been done if I had a couple months to do it, the luxury of time, but in this case I had to meet the need.

Q. Understood. So just again, you did not -- you did not have any idea how many people actually saw or read what Mr. Trump said about Ms. Carroll?

A. Not at the time I did this report, no.

Q. And sitting here today?

A. Well, I -- I glanced at Professor Humphreys' charts. I didn't add them up but I glanced at them.

Q. Okay. And you didn't perform any analysis to calculate the percentage of people who were likely to believe what Ms. Trump said about Ms. Carroll; correct?

A. No, I don't think I had to do a study to -- to -- to get that information. I mean, Mr. Trump is a very well-known person and has a -- is very polarizing. And to answer your question, I don't need to see surveys to have a good feel on how many people would believe what he said or not believe what he said.

Q. And so, any opinion you have about the -- the degree to which people were receptive to what he said is based on your good feel and your

positive reputations can be destroyed almost instantly by a negative statement; correct?

A. Yeah, you must have seen in one of my reports where I said reputations -- there's an old saying. It takes years to build a reputation and seconds to destroy it.

But, again, a lot of these questions that you're asking, I would answer differently if it was anyone but Mr. Trump. But given the nature of his controversial nature, I think everybody would look at those with a -- you know, seed of doubt.

Q. And have you consulted any -- any data about how people filter Mr. Trump's comments when it comes to statements he makes about other individuals?

A. Yes, yes, I've talked to -- all the time, last six years. I talked to people all the time. I mean, people I know, people -- friends, business -- family, business associates. We talk all the time. He's a public figure. He makes thousands of comments. His tweets were famous.

Yes, I've talked -- over the years, I've talked to hundreds, probably, of people about what did you think of this or did you see Mr. Trump said that and this, and did you hear his latest -- yeah,

100 percent but she had a highly positive -- yes.

Q. And you did not include the point that it could take a lifetime to build a reputation but only seconds to destroy in your report here; correct?

A. No. Because as I -- I represent -- first of all, I usually do that in -- in conjunction with the reputation damage repair programs I write. And since I didn't do it, I didn't put it in. I use that as a preface for the program, but in this case I'm representing the defendant, so I didn't put it in.

Q. And you agree that the more broadly negative information is disseminated, the greater the reputational harm; correct?

A. I'm sorry. Please repeat that question.

Q. You would agree that the more broadly negative information is disseminated, the greater the reputational harm?

A. Well, that's logical, yes.

Q. And you would also agree that the President of the Untied States has one of the most prominent platforms in the world?

A. I think that's a fair assumption.

Q. And are you a member of any political party?

Exhibit 6

Defendants' Counsels Texts to
Westbrook and Jackson

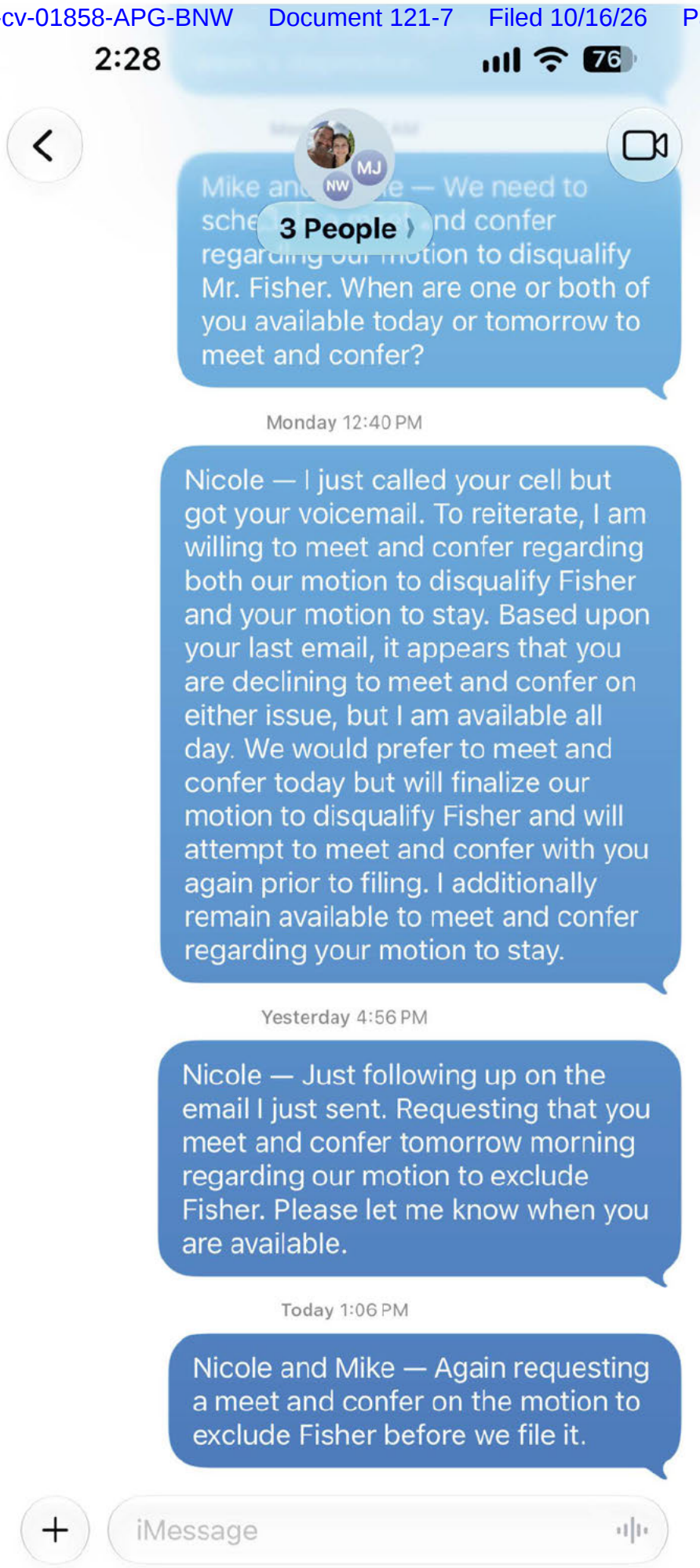

2:28
76
MJ
NW
3 People
Mike and [illegible]e — We need to sche[illegible]nd confer regarding our motion to disqualify Mr. Fisher. When are one or both of you available today or tomorrow to meet and confer?
Monday 12:40 PM
Nicole — I just called your cell but got your voicemail. To reiterate, I am willing to meet and confer regarding both our motion to disqualify Fisher and your motion to stay. Based upon your last email, it appears that you are declining to meet and confer on either issue, but I am available all day. We would prefer to meet and confer today but will finalize our motion to disqualify Fisher and will attempt to meet and confer with you again prior to filing. I additionally remain available to meet and confer regarding your motion to stay.
Yesterday 4:56 PM
Nicole — Just following up on the email I just sent. Requesting that you meet and confer tomorrow morning regarding our motion to exclude Fisher. Please let me know when you are available.
Today 1:06 PM
Nicole and Mike — Again requesting a meet and confer on the motion to exclude Fisher before we file it.
iMessage

Exhibit 7

Emails Between Co-Counsel
Re: Expert Meet and Confer

From: **Ron Green** rdg@randazza.com
Subject: Re: Hodgetwins adv. Smothermon - expert meet and confer
Date: October 12, 2026 at 12:26 PM
To: Nicole Westbrook nwestbrook@jonesdavis.com
Cc: Mike Jackson mjackson@jonesdavis.com, Marc Randazza mjr@randazza.com, Alberto Jimenez ajg@randazza.com, Casey Spring cts@randazza.com, Steve Jones sjones@jonesdavis.com, Dana Reedle dreedle@jonesdavis.com, Aaron McDaniel amcdaniel@joneskeller.com



Are you declining to meet and confer? As I stated, we are available all day to discuss.

Ronald D. Green* | **Randazza Legal Group, PLLC**
8991 W. Flamingo Road | Suite B | Las Vegas, NV 89147
Tel: 702-420-2001 | Email: rdg@randazza.com

---

* Licensed to practice law in Nevada.

On Oct 12, 2026, at 12:24 PM, Nicole Westbrook <nwestbrook@jonesdavis.com> wrote:

Ok. We'll let the court know. Thanks, Nicole

Jones, Davis & Jackson, PC

Attorneys + Counselors

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

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

<image001.png><image002.png><image003.png><image004.png>

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

From: Ron Green <rdg@randazza.com>
Sent: Monday, October 12, 2026 1:15 PM
To: Nicole Westbrook <nwestbrook@jonesdavis.com>
Cc: Mike Jackson <mjackson@jonesdavis.com>; Marc Randazza <mjr@randazza.com>; Alberto Jimenez <ajg@randazza.com>; Casey Spring <cts@randazza.com>; Steve Jones <sjones@jonesdavis.com>; Dana Reedle <dreedle@jonesdavis.com>; Aaron McDaniel <amcdaniel@joneskeller.com>
Subject: Re: Hodgetwins adv. Smothermon - expert meet and confer

We don't see any emergency here. The hearing on your motion to amend was over two months ago, and the parties have known the relevant deadlines since the scheduling order was entered in April. We also do not see any reason to stay the

case, but we are willing to meet and confer regarding the issue on the same call where we discuss excluding Mr. Fisher. Please let me know when you would like to meet and confer. We are available for the remainder of the day.

Ronald D. Green* | **Randazza Legal Group, PLLC**
8991 W. Flamingo Road | Suite B | Las Vegas, NV 89147
Tel: 702-420-2001 | Email: rdg@randazza.com

---

* Licensed to practice law in Nevada.

On Oct 12, 2026, at 11:45 AM, Nicole Westbrook <nwestbrook@jonesdavis.com> wrote:

Ron,

We are going to file an emergency motion to stay the case pending determination on our motion to amend. Honestly, if the motion were granted at least in part, we might withdraw Mr. Fisher as an expert in this case. We see no efficient reason for you to needlessly brief the issue at this time. Will you join us in the emergency motion (which we hope to have on file today)?

Thanks,
Nicole

Jones, Davis & Jackson, PC

Attorneys + Counselors

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

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

<image001.png><image002.png><image003.png><image004.png>

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From: Ron Green <rdg@randazza.com>
Sent: Monday, October 12, 2026 12:14 PM
To: Mike Jackson <mjackson@jonesdavis.com>; Nicole Westbrook <nwestbrook@jonesdavis.com>
Cc: Marc Randazza <mjr@randazza.com>; Alberto Jimenez <ajg@randazza.com>; Casey Spring <cts@randazza.com>
Subject: Hodgetwins adv. Smothermon - expert meet and confer

Mike and Nicole:

Just sent you guys a text message about this as well. We need to meet and confer regarding our intention to move to exclude Mr. Fisher. When are one or both of you available today or tomorrow to meet and confer?

Ronald D. Green* | **Randazza Legal Group, PLLC**
8991 W. Flamingo Road | Suite B | Las Vegas, NV 89147
Tel: 702-420-2001 | Email: rdg@randazza.com

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* Licensed to practice law in Nevada.

Exhibit 8

Emails Between Co-Counsel
Re: Emergency Motion

From: **Ron Green** rdg@randazza.com
Subject: Re: Emergency Motion 2:25-cv-01858-APG-BNW
Date: October 15, 2026 at 1:07 PM
To: Nicole Westbrook nwestbrook@jonesdavis.com
Cc: Mike Jackson mjackson@jonesdavis.com, Aaron McDaniel amcdaniel@joneskeller.com, Dana Reedle dreedle@jonesdavis.com, Marc Randazza mjr@randazza.com, Casey Spring cts@randazza.com, Alberto Jimenez ajg@randazza.com



Hey guys. Trying one more time to meet and confer with you regarding the motion to exclude Fisher.

Ronald D. Green* | **Randazza Legal Group, PLLC**
8991 W. Flamingo Road | Suite B | Las Vegas, NV 89147
Tel: 702-420-2001 | Email: rdg@randazza.com

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* Licensed to practice law in Nevada.

> On Oct 14, 2026, at 4:55 PM, Ron Green <rdg@randazza.com> wrote:
>
> Nicole:
>
> We have removed Ms. Johansen from this email chain. I don't believe it was appropriate for you to include the Court in your last email. We will be filing our Motion to Exclude Mr. Fisher's testimony. I am again asking you to meet and confer on the issue tomorrow morning. When are you available to chat?
>
> ---
>
> **Ronald D. Green*** | **Randazza Legal Group, PLLC**
> 8991 W. Flamingo Road | Suite B | Las Vegas, NV 89147
> Tel: 702-420-2001 | Email: rdg@randazza.com
>
> ---
>
> * Licensed to practice law in Nevada.
>
> > On Oct 12, 2026, at 2:43 PM, Nicole Westbrook <nwestbrook@jonesdavis.com> wrote:
> >
> > Great, thank you. As to the motion regarding Mr. Fisher, we don't believe it makes sense at this time to waste money on a conferral. As we mentioned before, pending a decision on our motion to amend, we may withdraw him entirely alleviating the need for you to file your motion or for us to confer on it. Thank you, Nicole
> >
> > **Jones, Davis & Jackson, PC**
> > Attorneys + Counselors
> >
> > Nicole A. Westbrook, Attorney at Law
> > 15110 Dallas Parkway, Suite 300, Dallas, Texas 75248
> > *mobile*: 615.403.4862 | *fax*: 972.733.3119
> >
> > [www.jonesdavis.com]www.jonesdavis.com
> >
> > <image001.png><image002.png><image003.png><image004.png>
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From: Ron Green <rdg@randazza.com>
Sent: Monday, October 12, 2026 2:39 PM
To: Nicole Westbrook <nwestbrook@jonesdavis.com>
Cc: Melissa_Johansen@nvd.uscourts.gov; Mike Jackson <mjackson@jonesdavis.com>; Aaron McDaniel <amcdaniel@joneskeller.com>; Dana Reedle <dreedle@jonesdavis.com>; Danielle Darkenwald <dbd@randazza.com>; Marc Randazza <mjr@randazza.com>
Subject: Re: Emergency Motion 2:25-cv-01858-APG-BNW

Defendants are preparing an Opposition to Plaintiff's Motion.

Ronald D. Green* | **Randazza Legal Group, PLLC**
8991 W. Flamingo Road | Suite B | Las Vegas, NV 89147
Tel: 702-420-2001 | Email: rdg@randazza.com

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* Licensed to practice law in Nevada.

> On Oct 12, 2026, at 1:19 PM, Nicole Westbrook <nwestbrook@jonesdavis.com> wrote:
>
> Dear Ms. Johansen,
>
> We are counsel for the plaintiff (Pastor Smothermon) in the above-styled case. Today we filed an Emergency Motion to Stay (ECF No. 118) pending decision on our motion for leave to amend our complaint (ECF No. 52). The deadline we seek to stay (for all dispositive motions and Rule 702 motions) falls on Monday, October 19, 2026. We make this advisement per the local rules; all counsel are copied.
>
> Thank you,
> Nicole
>
> **Jones, Davis & Jackson, PC**
> Attorneys + Counselors
>
> Nicole A. Westbrook, Attorney at Law
> 15110 Dallas Parkway, Suite 300, Dallas, Texas 75248
> *mobile*: 615.403.4862 | *fax*: 972.733.3119
>
> [www.jonesdavis.com]www.jonesdavis.com
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RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA U.S. POSTAL SERVICE. THANK YOU.
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