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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

WEALTHY INC., and DALE BUCZKOWSKI,  
  
Plaintiffs,  
  
v.  
  
SPENCER CORNELIA, CORNELIA MEDIA  
LLC, and CORNELIA EDUCATION LLC,  
  
Defendants.

Case No. 2:21-cv-01173-JCM-EJY  
**DEFENDANTS’ REPLY IN SUPPORT  
OF MOTION FOR LEAVE TO  
CONDUCT ADDITIONAL DISCOVERY  
PURSUANT TO FED. R. CIV. P. 56(d)**  
  
[ECF No. 69]

Defendants Spencer Cornelia, Cornelia Media LLC, and Cornelia Education LLC (“Defendants”) file this Reply in support of their Motion for Leave to Conduct Additional Discovery Pursuant to Fed. R. Civ. P. 56(d) (ECF No. 69) (Defendants’ “Motion”).

**1.0 Introduction**

Plaintiffs’ opposition to Defendants’ Motion pursuant to Rule 56(d) does not so much take issue with Defendants’ Motion as much as it takes issue with Rule 56(d) itself. The Opposition argues that “[t]he time has come to present evidence, not gather it,” (Opp. at 2), however, as set forth in Defendants’ Motion, Rule 56(d) exists for precisely this sort of scenario – where, through Plaintiffs’ sandbagging and obfuscation, Defendants are left to oppose a Motion for Summary Judgment with less evidence than it is entitled to possess. Defendants ask that this Court grant their

1 Motion and order additional discovery as outlined in Defendants’ Motion and the accompanying  
2 declaration of counsel.

3 **2.0 Argument**

4 Additional discovery on certain matters has already been granted by this Court while  
5 Summary Judgment is pending, and further discovery should be allowed on the topics set forth in  
6 Defendants’ Motion, specifically: (1) whether Plaintiff Buczkowski is a public figure, and (2)  
7 whether Plaintiffs suffered any actual damages and the extent of those alleged damages.

8 **2.1 Plaintiffs’ obfuscation should not be confused lack of diligence.**

9 Plaintiffs’ opposition brief notes that discovery has already concluded in this case, and that  
10 Defendants should have discovered the necessary information earlier. However, as explained in  
11 Defendants’ Motion, Defendants were consummately diligent in pursuing this discovery but were  
12 hampered, until the last moments of discovery, by Plaintiffs’ obfuscation and perjury. As outlined  
13 in Defendants’ Motion and in their Motion to Compel (ECF No. 45), rather than allowing his  
14 deposition to be taken in good faith, Plaintiff Buczkowski treated his deposition like a game where  
15 the goal was to not remember anything, lie about everything, and truthfully answer nothing. The  
16 deposition had to be suspended early because Buczkowski and his counsel abruptly decided to  
17 assert a new, unsupported claim of privilege for the first time, despite providing the same category  
18 of information earlier in discovery. Were Buczkowski to have answered Defendants’ questions  
19 truthfully (or at all), this Motion would not be necessary. However, this issue is now before the  
20 Court because Defendants still require facts to oppose Plaintiffs’ Motion for Summary Judgment  
21 and the only mechanism for obtaining those facts is through a Rule 56(d) Motion. Defendants ask  
22 this Court to not allow Plaintiffs’ gamesmanship throughout the discovery process to prejudice  
23 them at summary judgment and grant their Motion.

1       **2.2 Defendants’ Rule 56(d) Motion is not inconsistent with their own Motion for**  
2       **Summary Judgment.**

3       Defendants’ Motion is not inconsistent with their Motion for Summary Judgment, and  
4 relief should not be denied on these grounds. On September 30, 2022, Defendants filed their own  
5 Motion for Summary Judgment (ECF No. 62) seeking, *inter alia*, a ruling that Plaintiff  
6 Buczkowski is a public figure and is thus subject to a stricter standard of fault in proving  
7 defamation. Plaintiffs’ Motion for Summary Judgment (ECF No. 60) seeks a ruling in the other  
8 direction, asking the Court to rule that Plaintiff Buczkowski is not, as a matter of law, a public  
9 figure.

10       Defendants provided ample evidence in their Motion for Summary Judgment supporting  
11 their claim that Buczkowski is a public figure, including dozens of news articles focusing on  
12 Buczkowski, and the Court could rule as a matter of law based upon that evidence. However, that  
13 evidence is missing an important piece that should not be overlooked – whether or not Buczkowski  
14 *voluntarily* injected himself into the public eye or whether he was merely reported upon by the  
15 press organically. *See* Motion at 7-8 (discussing limited-purpose public figure status).

16       Although there is sufficient evidence to support the conclusion as a matter of law that  
17 Buczkowski is a public figure, there is no guarantee that the Court will agree. Defendants argue  
18 that they wish to provide evidence supporting whether he is an involuntary or a voluntary public  
19 figure and to hammer closed the coffin on this issue. Accordingly, this discovery is essential, it is  
20 not currently available to the Defendants, and it is not inconsistent with any other position taken  
21 by Defendants. And, of course, the Court could simply rule on the public figure status and obviate  
22 the need for this discovery.

23       **2.3 This Court can and should order the requested additional discovery.**

24       Plaintiffs’ Opposition further argues that Defendants’ Motion should be precluded by other  
25 orders issued by this Court related to Plaintiff Buczkowski’s deposition and other discovery.  
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1 However, these orders do not preclude this Court from entering an order granting the relief  
2 requested in Defendants' Motion.

3 On August 29, 2022, Defendants filed a Motion asking the Court to extend discovery for  
4 the limited purpose of seeking the deposition of John Mulvehill and determining whether  
5 Buczkowski committed perjury at his deposition. *See* ECF No. 44. Shortly thereafter, on August  
6 30, 2022, Defendants filed a Motion to Compel (ECF No. 45), seeking relief relating to Plaintiff  
7 Buczkowski's refusal to answer questions at his deposition relating to his customers. In neither  
8 motion did Defendants request relief relating to Plaintiff's public figure status or damages, because  
9 the Parties' motions for summary judgment had not yet been filed. On October 4, 2022, Magistrate  
10 Judge Youchah entered an order granting in part Defendants' two motions. *See* ECF No. 63. The  
11 Court's Order required Buczkowski to sit for a continued deposition and answer questions relating  
12 to his customers and allowed Defendants to take the deposition of John Mulvehill. *See id.*

13 Although Plaintiffs claim that this Order should preclude Defendants from receiving relief  
14 under Rule 56(d), there is nothing that would prevent the Court from doing so. First, there is no  
15 overlap between the instant Motion and Defendants' previous motions except to the extent that  
16 they both relate to issues arising from Buczkowski's evasive and perjurious deposition.  
17 Defendants' Rule 56(d) Motion relates solely to issues of fact that arose from Plaintiffs' Motion  
18 for Summary Judgment, which had not been filed at the time the previous motions had been filed.  
19 Defendants' previous motions addressed facts that Defendants wished to include in their own  
20 Motion for Summary Judgment but were precluded from doing so by Plaintiffs' obstinance.

21 Further, even if there were an overlap, the Court's order has no preclusive effect on the  
22 relief requested herein. There is no *res judicata* because these issues were not previously before  
23 the Court. Furthermore, Rule 56(d) is a separate procedural mechanism that is related to summary  
24 judgment, whereas Defendants' previous motions were filed in relation to discovery. Defendants  
25 were not required to seek the relief in the same motion, and were in fact unable to do so considering  
26 the fact that Plaintiffs' Motion for Summary Judgment had not been filed at the time they moved  
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1 for an extension of discovery and to compel the Plaintiffs. Finally, the Court earlier today granted  
2 Defendants' motion to consolidate this case and the nearly identical *Wealthy Inc. v. Mulvehill* case  
3 (ECF No. 94), another recent event that counsels in favor of allowing additional discovery.

4 Accordingly, there is no impediment to the Court granting the relief requested in  
5 Defendants Motion, and it should be granted.

#### 6 **2.4 Defendants' Motion meets the requirements of Rule 56(d).**

7 Finally, Defendants' Motion complies with the requirements of Rule 56(d) and should not  
8 be denied on procedural grounds. In making a motion pursuant to Rule 56(d), the requesting party  
9 must show: "(1) it has set forth in affidavit form the specific facts it hopes to elicit from further  
10 discovery; (2) the facts sought exist; and (3) the sought-after facts are essential to oppose summary  
11 judgment." *Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp.*, 525 F.3d 822, 827  
12 (9th Cir. 2008). Here, Defendants' Motion and their counsel's declaration met the requirements  
13 under Rule 56(d).

14 Defendants' Motion and the accompanying Declaration of Marc J. Randazza showed that  
15 they are seeking discovery on two separate areas of fact. First, Defendants seek discovery on the  
16 public figure status of Plaintiff Buczkowski. In both filings, Defendants listed eight different  
17 inquiries of fact that they wish to explore prior to opposing Plaintiff's Motion for Summary  
18 Judgment. *See* Motion at 8-9; Declaration of Marc J. Randazza ("Randazza Decl."), ECF No. 69-  
19 1, at ¶ 8. These were specific factual questions and not merely broad topics, as Plaintiffs suggest.  
20 Two such specific facts that Defendants listed were: "[w]hether Buczkowski paid for coverage by  
21 the media outlets," and "[w]hich media outlets Buczkowski paid for coverage." Randazza Decl. at  
22 ¶ 8. These are specific questions with specific answers, not open-ended opportunities for a fishing  
23 expedition. Further, Defendants demonstrated that these facts exist. At his deposition, Buczkowski  
24 admitted that at least some of the media coverage was paid for, but would not elaborate as to how  
25 many articles were paid for and if any were actually organic. *See* Motion at 9 (citing ECF No. 62-  
26 1 at Exhibit 2, 96:6-17; 99:2-14). Finally, Defendants sufficiently explained why the discovery is  
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1 essential in opposing Plaintiffs’ Motion for Summary Judgment. Plaintiffs’ Motion asks the Court  
2 to rule as a matter of law that Buczkowski is not a public figure. Discovery into whether  
3 Buczkowski paid for prominent media coverage and the extent to which he did so is important in  
4 showing that Buczkowski is at least a limited-purpose public figure. *See* Motion at 7-8; Randazza  
5 Decl. at ¶ 8.

6 Second, Defendants seek discovery into whether Plaintiffs suffered any actual damages. In  
7 Defendants’ Motion, they listed five specific inquiries of fact that should be resolved through  
8 discovery on this issue. *See* Motion at 11; Randazza Decl. at ¶ 10. Two such examples, which can  
9 be answered with straightforward answers, are: “[w]hether Defendants’ statements affected  
10 [Plaintiffs’ customers’] perception of Plaintiffs,” and “[w]hether Defendants’ statements caused  
11 [Plaintiffs’ customers’] to stop their use of Plaintiffs’ services.” *See* Motion at 11; Randazza Decl.  
12 at ¶ 10. In the alternative, Defendants provided four specific factual inquiries that could be posed  
13 to a corporate representative of Plaintiff Wealthy, Inc. relating to those same issues of fact, such  
14 as “whether any customers cancelled their memberships with Plaintiffs because of Defendants’  
15 statements,” and “[h]ow many customers cancelled their memberships between December 19,  
16 2020 ... and January 1, 2022 ....” *See* Motion at 11-12; Randazza Decl. at ¶ 11. These are facts  
17 that clearly exist. As noted in Defendants’ Motion, Buczkowski averred in his deposition that he  
18 did not know the specific answers to these questions, but that his business was harmed by  
19 Defendants. Defendants’ Motion additionally stated why these facts are essential to opposing  
20 Plaintiff’s Motion for Summary Judgment, namely that Plaintiffs have produced no evidence to  
21 support their claim that Plaintiffs suffered damages as a result of Defendants’ statements and  
22 Buczkowski was evasive and non-responsive when asked questions on this topic at his deposition.  
23 *See* Motion at 10-11; Randazza Decl. at ¶ 10. And while Plaintiffs’ summary judgment motion  
24 does not attach any evidence of damages, their opposition to Defendants’ Anti-SLAPP Motion  
25 (ECF Nos. 78 & 79) attaches such evidence, namely the expert report of Professor Ian McDonough  
26 which purports to establish damages. (ECF Nos. 78-12 & 79-12). The Court will most likely  
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1 consider the entire record in deciding the parties’ cross-motions for summary judgment, and so  
2 further discovery on Plaintiffs’ alleged damages is necessary to oppose their motion.

3 Accordingly, Defendants’ Motion is procedurally proper and the Court should grant the  
4 requested relief.

5 **3.0 Conclusion**

6 In light of the foregoing, Defendants ask that the Court grant Defendants’ Motion and order  
7 additional discovery as requested. In the alternative, Defendants ask this Court to enter an order  
8 ruling as a matter of law that Plaintiff Buczkowski is a public figure.

9  
10 Dated: November 8, 2022.

Respectfully Submitted,

/s/ Marc J. Randazza

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 8, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document being served via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Marc J. Randazza  
Marc J. Randazza

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