Exhibit 1

STATE OF MINNESOTA | IN DISTRICT COURT

COUNTY OF KANDIYOHI | EIGHTH JUDICIAL DISTRICT

Steve Quest,

Plaintiff,

v.

Nicholas Rekieta and Rekieta Law, LLC,

Defendants.

Court File No: 34-CV-23-12
Judge Jennifer Fischer
Case Type: Civil Other/Miscellaneous

PLAINTIFF'S MEMORANDUM OPPOSING DEFENDANT'S "SPECIAL MOTION," MOTION TO DISMISS, MOTION FOR SUMMARY JUDGMENT, AND MOTION TO APPLY COLORADO LAW

INTRODUCTION

Plaintiff Steve Quest ("Quest") submits this Memorandum in opposition to Defendant Nicholas Rekieta and Rekieta Law, LLC's ("Rekieta") "special motion" to dismiss Plaintiff's case pursuant to Colorado law, motion to apply Colorado law, and for Summary Judgment pursuant to Rule 56 of the Minnesota Rules of Civil Procedure. This court should deny Rekieta's Motion and requests because it is neither properly before the Court and because there are genuine issues of material fact in this case that must be determined by a finder of fact.

RULE

Minn. R. Civ. P. 56.02 and 56.03 set forth rules to present a motion for summary judgment permitted by Minn. R. Civ. P. 56.01:

56.02 Time to File a Motion

> Service and filing of the motion must comply with the requirements of Rule 115.03 of the General Rules of Practice for the District Courts, provided that in no event shall the

motion be served less than 14 days before the time fixed for the hearing. Unless the court orders otherwise, a party may not file a motion for summary judgment more than 30 days after the close of all discovery.

56.03 Procedures

(a) Supporting Factual Positions. A party asserting that there is no genuine issue as to any material fact must support the assertion by:

(1) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(2) showing that the materials cited do not establish the absence or presence of a genuine issue for trial, or that an adverse party cannot produce admissible evidence to support the fact.

(b) Objection That a Fact is Not Supported by Admissible Evidence. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(c) Materials Not Cited. The court need consider only the cited materials, but it may consider other materials in the record.

(d) Affidavits. An affidavit used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on matters stated.

Minn. R. Civ. P. 56.03

OBJECTION TO EXHIBITS

Rekieta has offered Exhibit 1 through 15 and Exhibit 22 without offering proper foundation for their admissibility. None have been offered into evidence, other than by way of declaration of an attorney named Alex J. Shepard (the "*Shepard Dec.*"), who only declares he saw the individual exhibit. These exhibits should be excluded as hearsay. He cannot, and has not, affirmed who created any exhibit, its import, context, or relevancy. To be sure, he does not declare he created any exhibit other than to transcribe certain conversations. Finally, some exhibits, in particular those erroneously attributed to Quest, one related to Quest's brother (not a

party to this matter) are also unfairly prejudicial. Quest's evidentiary objections are based upon MRE 405 (a) Reputation or Opinion, (b) Specific Instances of Conduct, MRE 602 Lack of Personal Knowledge, MRE 801(c) and 802 Hearsay, and MRE 805 Hearsay Within Hearsay, and MRE 403 Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time.

Finally, these exhibits should be excluded from the record and stricken pursuant to Minn. R. Civ. P. 56.03 (b) as the material cited (these exhibits) to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

Exhibit 17, from the *Shepard Dec.*, are articles of incorporation likely filed with the Minnesota Secretary of State which are admissible under the business records exception to the hearsay rule if properly offered.

Exhibit 19, from the *Shepard Dec.*, is a magazine article, from Minnesota Lawyer, a known reputable source, and may be accepted into evidence under the business records exception to the hearsay rule if properly offered.

Those paragraphs within the *Shepard Dec.* comprising transcription of Rekieta's programs, although hearsay, also appear accurate and reliable and can be accepted under the business records exception to the hearsay rule if properly offered.

DOCUMENTS NOT PROPERLY BEFORE THE COURT

Quest identifies the documents (noting objections) that are attached to the Declaration of Alex J. Shepard, Exhibits 1 through 22, ("*Shepard Dec.*") submitted by Rekieta. Quest does not adopt these, however, references to exhibit numbers and pages will be the same as those set forth in the *Shepard Dec.*

DOCUMENTS COMPRISING THE RECORD

As they are offered by way of affidavit, these documents comprise the record before the Court:

Affidavit of Steve Quest ("*Quest Aff.*") with accompanying exhibit:

Exhibit 23: Two photographs depicting a truck driven by Quest and one of his home;

Affidavit of David W. Schneider ("*Schneider Aff.*") with accompanying exhibits:

Exhibit 24: Correspondence from Defendants dated December 15, 2017;

Exhibit 25: Minnesota Lawyer article, Kevin Featherly, "Filings: Attorney helped build 'online hate factory'" November 19, 2019.

FACTS

Rekieta is a lawyer, licensed in Minnesota, who earns income offering legal opinions on the internet. For years Rekieta operated a law firm in Willmar Minnesota, at 2015 First Street South, called "Rekieta Law." Attached to the *Schneider Aff.* as **Exhibit 24** is a copy of correspondence from Defendants in the context of representing a client in an unrelated case. The document displays a stylized logo. This logo is substantially the same as that which Rekieta uses on published videos to the present day. See the videos, published by Rekieta, uploaded as part of Quest's motion for default judgment, filed January 13, 2023. Rekieta has since closed this office, however, Defendant Nicholas Rekieta continues practicing law in the area. Until this month, up until February 3, 2023, he had registered the name "Rekieta Law, LLC," with the Minnesota Secretary of Commerce. From visiting the Minnesota Secretary of State's website, Rekieta engaged in an "administrative termination" of Rekieta Law, LLC on February 3, 2023. *Schneider Aff.* On the internet, he refers to his shows, what he's doing, and who he is as "Rekieta Law." While speaking on a wide range of legal topics he comes into contact with other individuals, on the internet, who seek to "chat" with Rekieta.

From the videos produced by Rekieta uploaded to the Court on January 13, 2023, which accompanied Quest's motion for default judgment, Defendant Nicholas Rekieta's behavior can be observed. He engages in profanity, vulgarity, and attacks people on the internet, and does so for profit. The magazine, "Minnesota Lawyer," described Rekieta in a November 19, 2019 article, as helping to build an "online hate factory." A printed copy of this article, attached the *Schneider Aff.,* is marked as **Exhibit 25.**

At some time in the past, during the year 2019, Rekieta first spoke and or chatted with Quest. *Quest Aff.* The parties have never met in person and have no direct business dealings with each other or through third-persons. Rekieta has attacked Quest on his Rekieta Law show, defaming Quest. From the beginning of Rekieta's attacks, Quest has asked him to stop and retract. See *Quest Aff.* Evidence of request and Rekieta's refusal to retract are found in a November 4, 2022 program with Megan Fox. At no time has Rekieta sought to apologize or retract defamatory statements. Indeed, as of his February 17, 2023 video, Rekieta continues to so refuse. *Schneider Aff.* Indeed, on February 17, 2023 Rekieta created a video titled "I'm BEING SUED by a Moron. Let's Read It, let's Talk About It: Montagraph vs. Rekietalaw" and is over four hours in length. *Schneider Aff.* Rekieta clearly is not running away from his malicious and defamatory statements, but, as time passes, he is building upon the original defamation as pled in Plaintiff's amended complaint:

> On October 6, 2022, Defendant Nicholas Rekieta was a guest on a livestreamed program called Megan Fox Investigates for an interview about why Defendant was banned from Youtube. During this livestream, Defendant made various cruel, false statements and those of a sexual nature about Plaintiff. Specifically, he stated Plaintiff was a "retarded man," suggested Plaintiff had sex with a watermelon, and that Plaintiff has stated he routinely "fists himself."
>
> On October 13, 2022, Defendant Nickolas Rekieta published a video in which another lawyer named Andrew d'Adesky appeared as a guest. During this published video, Defendant accused Plaintiff of pedophilia. Defendant Nicholas Rekieta stated "Plaintiff has always been into sucking little boy cock which is weird, but that's his thing. Look, I'm not here to stop him,

I'm just saying, he should probably be shot in the fucking head. Montagraph, you're a fucking faggot, everybody knows you're a faggot. Clip this all you want and sue me if you want you fucking child molesting fucking faggot. Do that. How about you try that."

On October 28, 2022, Defendant Nicholas Rekieta published a video in which he talked about Plaintiff "making a snuff film, about a kid...." And further stating, as a matter of fact, Plaintiff made such a film, further suggesting Plaintiff "made a nasty movie about a kid...and that's why Plaintiff does not have a good name...." Further, Plaintiff stated, as a matter of fact, that "nobody goes, huh, who's Steve Quest? Who's this Montagraph? Oh, he's a fine upstanding citizen. Nobody. Nobody does," and, "bro, I'll take my name over yours. Your good name is garbage, and that's no joke. That's the straight talk..."

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

On January 11, 2023, Defendant Nicholas Rekieta published a video on Youtube in which he called Plaintiff a "retard," that "the ADA had assigned Defendant Nicholas Rekieta a retard who has gone rogue (suggesting Plaintiff is a retard assigned by the ADA to oversee Defendants' business)."

See *Schneider Aff.*

From the *Shepherd Dec.*, paragraphs 25-30, such defamatory and malicious comments have actually been transcribed, thus offering even greater detail of Rekieta's defamation and malice. Initiation of litigation did not stop Rekieta, and attacks continue online. The Court may take judicial notice that, after this memorandum is served and filed, Rekieta will likely make additional online malicious and defamatory statements about Quest.

ARGUMENT

A. Summary Judgment is inappropriate.

I. A motion for summary judgment is not properly before the Court.

Rekieta has retained a very well-known law firm with offices in Nevada and Massachusetts. It is apparent from their appearance pro hoc vice this firm has not moved for summary judgment

in Minnesota, until now. The motion presently before the Court was accompanied by no affidavits, no written discovery answers, no admissions, no deposition testimony transcripts, and no transcripts of court testimony. Rekieta made its motion before the parties vetted evidence through discovery. The only support for Rekieta's motion is found in the declaration of Alex Shepard. Minn. R. Civ. P. 56.03 (a) clearly requires the moving party **must** support the assertion by offering either:

(1) citing to particular parts of **materials in the record**, including depositions, documents, electronically stored information, **affidavits,** stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
(2) showing that the materials cited do not establish the absence or presence of a genuine issue for trial, or that an adverse party cannot produce admissible evidence to support the fact.

Minn. R. Civ. P. 56.03(a)(emphasis added).

Because this motion was made immediately following Rekieta's answer, we have no record upon which to move for summary judgement; a record is required for a court to issue an order and judgment. Counsel for Rekieta, Alex Shepard, offered all of the objected-to exhibits, most of which were likely taken straight from the internet and none created by him, by way of declaration, not affidavit. Quest submits the choice to offer evidence (indeed, the only evidence presented to the Court by Rekieta) by way of declaration is fatal to this motion as to do so does not comply with Minn. R. Civ. P. 56.03(a).

The choice to offer evidence through declaration, as opposed to affidavit, in a case where the parties have developed no other evidence comprising a record is not trivial or meaningless. Rekieta's choice means they have not offered support for the assertion in the motion and memorandum required by the Rule. While it is true that under Minn. Stat. §358.116, **unless specifically required by court rule**, a pleading, motion, affidavit, or other document filed with a court of the Minnesota judicial branch or presented to a judge or judicial officer in support of a

request for a court order, warrant, or other relief, is not required to be notarized, Minn. R. 56.03(a) does not give the moving party that option. (Emphasis added). Indeed, this Rule specifically requires evidence to be offered through **affidavit** to show the factual basis for the claim and the moving party's burden of proof. Defendant must comply with motion practice rules; affidavits are written documents attached to an affirmation, such as a notary public oath, which states that the statements in the document are true. Declarations are written documents the writer believes are true, but the statements contained in the declaration are made without the writer being sworn in. In short, without offering "true statements," or offering "verified evidence" worthy of a lawyer's affirmation, Rekieta could be presenting documents to the Court that are not what Rekieta thinks they are, nor can the Court be assured Rekieta's offer of proof, evidence, is trustworthy.

Attorney Alex Shepard, licensed in California and Nevada, likely chose to disclose exhibits through declaration to avoid the obligation to verify truthfulness and accuracy; after all, much of what is published on the internet is not true, not published by those to whom ascribed, and, especially nowadays, almost always taken out of context. Quest does not blame Alex Shepard for protecting a license to practice law, but this "abundance of caution" means the exhibits Rekieta intended to disclose cannot be used to support the motion.

Rule 56.03(a) is in place for a reason, specifically, because the moving party must show that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01. How can the Court rule in the movant's favor, when the movant himself isn't even certain the proffered evidence is what the person offering it thinks it is? For this procedural reason, Rekieta's motion for summary judgment should be denied.

II. Material facts are before the Court showing Rekieta defamed Quest and did so with actual malice.

Rekieta may cure the above-noted defect, before the hearing, and offer evidence by way of affidavit. If accepted by the Court and the motion is heard, Quest choses to defend on the merits of the case and offers this memorandum of law opposing Rekieta's motion for summary judgment. A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, admissions, and affidavits show there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03; *Gradjelick v. Hance*, 627 N.W.2d 708, 711 (Minn. Ct. App. 2001); and *Potter v. Ernst & Young, LLP*, 622 N.W.2d 141, 144 (Minn. Ct. App. 2001).

A material fact is one that will affect the outcome of the case. *Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. Ct. App. 2001). To survive a summary judgment motion, the non-moving party must therefore establish that there is a genuine issue of material fact through "substantial evidence," meaning legal sufficiency and not quantum of evidence. *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008). The evidence must be viewed in the light most favorable to the non-moving party. *Id.* A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the non-moving party. *Monson v. Suck*, 855 N.W.2d 323, 326 (Minn. Ct. App. 2014), review denied (Dec. 30, 2014) (citing *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008)).

"In a negligence action, the defendant is entitled to summary judgment when the record reflects a complete lack of proof on any of the four essential elements of the claim: (1) the existence of a duty of care; (2) a breach of that duty; (3) an injury; and (4) [that] the breach of the duty [was] the proximate cause of the injury." *Gilmore v. Walgreen Co.*, 759 N.W.2d 433, 435 (Minn. Ct. App. 2009). The plaintiff need not prove all four elements to survive a motion for summary

judgment, but simply must show there are facts in the record that give rise to a genuine issue for trial. See *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (1995). Summary judgment is inappropriate when reasonable persons might draw different conclusions from the evidence presented. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

Rekieta has falsely accused Quest of a crime, pedophilia, sex with minors. No evidence of criminal charge or conviction has been offered by Rekieta to support his claim. Rekieta has no such evidence because it's not true. A false accusation of a crime is defamatory per se. *Longbehn v. Schoenrock*, 727 N.W.2d 153, 158 (Minn. App. 2007). However, a speaker is not liable for defamation if a qualified privilege protects the defamatory statement, and the privilege is not abused. *Larson v. Gannett Co.*, 940 N.W.2d 120, 131 (Minn. 2020). The privilege only applies if the statement is made in good faith, upon a proper occasion, with proper motive, and is based upon reasonable or probable cause. *Bol v. Cole*, 561 N.W.2d 143, 149 (Minn. 1997).

A qualified privilege can exist when an individual makes a good-faith report of suspected criminal activity to law enforcement. *Smits v. Wal-Mart Stores, Inc.,* 525 N.W.2d 554, 557 (Minn. App. 1994), rev. denied (Minn. Feb. 14, 1995). Whether a qualified privilege applies is generally a question of law. *Bol,* 561 N.W.2d at 149. Rekieta has offered no evidence that his online show is, for example, some sort of Public Service Announcement (PSA). He's not alerting neighbors to the registered sex offender next door. Rekieta has offered no evidence of a qualified privilege.

Rekieta has called Quest a "moron." He has called Quest a "faggot." He has called him a "retard." He has subsequently come up with a short-story, which he tells to friends (including Megan Fox) that under the ADA (presumably the Americans with Disabilities Act) he is assigned and must accept a "retard" to watch over Rekieta to help him not offend, defame, or hurt others. He and others (again, notably Megan Fox), laugh and carry on about how funny this notion is, that

a person who doesn't appreciate being defamed is thus a "retard" and worthy of additional hostility. See *Schneider Aff.* One wonders why the German word "schadenfreude," which means to derive pleasure from another's misfortune, wasn't ascribed to Rekieta by the writer of the Minnesota Lawyer article, "online hate factory." See **Exhibit 25,** *Schneider Aff.* From this writer's perspective, Rekieta enjoys being cruel.

In contrast, Quest has offered evidence and can prove Rekieta made: (a) a false and defamatory statement about the plaintiff; (b) in [an] unprivileged publication to a third party; (c) that harmed the plaintiff's reputation in the community. *Weinberger v. Maplewood Review*, 668 N.W.2d 667, 673 (Minn. 2003). A qualified privilege is overcome if the plaintiff demonstrates that the defendant made the statement with malice. *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 920 (Minn. 2009). Malice under the common law means that the defendant made the statement "**from ill will and improper motives, or causelessly and wantonly for the purpose of injuring the plaintiff.**" *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 257 (Minn. 1980) (Emphasis added). Rekieta, the builder of the proverbial online hate factory, oozes ill-will. Quest has proven Rekieta defamed him with actual malice.

III. Quest is not a limited public figure.

Curiously, Rekieta argues, in pages 24 through 26 of its memorandum, that Quest is also a public figure, however, Defendant Nicholas Rekieta himself appears to suggest that Quest likely is not[1]. From the objected-to evidence attached to the *Shepard Dec.*, of the few legitimate documents offered by Rekieta's lawyers, one can see how Quest attempted to stop defamation, by others, and stop others from using his art without authorization and inappropriately. Does the fact

[1] On December 22, 2022, Defendant Nicholas Rekieta published a video with several guests and stated "you're [Quest] dumb," "Monty [Quest] you don't make any money. You're a weird broke person on the internet. I'd love to see your damages...."

Quest is an artist make him a public figure? Does the fact he has been defending himself and pleading with Rekieta to stop defaming him make him a public figure? What if Quest really has over "one million viewers on youtube" as argued by Rekieta on page 24 of its memorandum?

The determination, to be sure, is a legal one and may be resolved by the Court before the matter is submitted to a jury. *Doe v. Archdiocese of St. Paul & Minneapolis*, 817 N.W.2d 150, 163 (Minn. 2012). Limited-purpose public figures are "those classed as public figures who have thrust themselves to the forefront of particular controversies in order to influence the resolution of the issues involved." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345, 94 S. Ct. 2997, 41 L.Ed. 2d 789 (1974). Three factors must be present for someone to be a limited-purpose public figure: "(1) whether a public controversy existed; (2) whether the plaintiff played a meaningful role in the controversy; and (3) whether the allegedly defamatory statement is related to the controversy." *Chafoulias v. Peterson*, 668 N.W.2d 642, 651 (Minn. 2003) (citing *Gertz*).

From the albeit-limited record before the Court, we must look for "controversies that are already the subject of debate in the public arena at the time of the alleged defamation." *Id.* at 652, however that brings us back to reality: Quest's sexual proclivities, whatever they may be, were never the subject of debate in any public arena. To be sure, Quest was teased, cajoled, mocked, harassed, threatened, and defamed by others, then he was defamed by Rekieta, threatened, harassed, chased, and defamed again, but there is no evidence a "debate" by any character, online or otherwise, occurred at any time. Under the so-called *Gertz* test, as noted by the *Chafoulias* court, the absence of a debate means Quest cannot be adjudicated a public figure.

Who is not considered a public figure, at least in Minnesota, may be surprising. For instance, in *McGuire v. Bowlin*, 932 N.W.2d 819 (Minn. 2019), McGuire, the girls head basketball coach at Woodbury High School, became the victim of defamation by the parents of certain players

who accused McGuire of swearing at practice, touching female (minor) players inappropriately, and flirting with players (minors). His contract was not renewed, and he discontinued coaching the team, however, certain individuals continued defaming him.

In defense to the litigation brought against them by McGuire, the defendants claimed he was a limited purpose public figure. After all, a high school basketball coach determines who plays, who sits, when, what plays are executed, etc. Coaches are active in recruitment, practices, and scheduling games. They are ever-present in the gym and are the "face" of the basketball program, often for many years at a time. The coach will be interviewed, often after every single game, by local newspapers. They will be quoted on school websites. If they are successful, they will be honored and even revered. Thus, a basketball coach certainly "thrusts themselves to the forefront of controversies in order to influence resolution of the issues involved," a standard articulated in *Gertz*.

Despite the obvious public persona attributable to McGuire, the Minnesota Supreme Court, overruling the court of appeals and district court on this issue, held:

> [w]e are unable to discern any public controversy here. Although controversy ensued after respondents made the alleged defamatory statements about McGuire, that controversy cannot serve as a basis for concluding that McGuire is a limited-purpose public figure. As *Chafoulias* makes clear, a party cannot stir up controversy by making defamatory statements and then point to the resulting controversy as a basis for assigning the defamed party public-figure status. See *Id* at 651-52; *McGuire* at 21.

If a girls' high school basketball coach accused of sexual misconduct is not a public figure, then it is difficult to imagine how Quest can be a public figure. Each have been accused of sexual misdeeds with children and neither charged or convicted. Sauce that's good for the goose is good for the gander. The Court should rule Quest is not a limited public figure.

B. Plaintiff has not pled a SLAPP case. Anti-SLAPP laws in Minnesota are unconstitutional. This Colorado law cannot apply in this defamation case.

Rekieta seeks to apply Colorado's anti-SLAPP statute, presumably to change the rules and make Quest's case more difficult to present it to a jury. Without comparing Quest's case to those of typical SLAPP lawsuits, Rekieta begins his memorandum with a dive into the "anti-SLAPP" antidote to the SLAPP problem. Quest's claims against Rekieta are not the basis of a "SLAPP" lawsuit, hence, application of so-called "anti-SLAPP" statutes or case holdings is inappropriate.

IV. What is a SLAPP?

Rekieta's brief, and motion, appears premised on facts, not in evidence, that are likely routinely litigated in matters where the general public has an interest. Think cases concerning logging, mining, protecting natural resources, access to clinics, etc., where many people become upset. SLAPP is an acronym for a Strategic Lawsuit Against Public Participation. The term was coined in the 1980's by two University of Denver professors, George Pring and Penelope Canan, who co-authored "SLAPPS: Getting Sued for Speaking Out." At its most basic definition, a SLAPP suit is a civil complaint or counterclaim filed against people or organizations who speak out on issues of public interest or concern. A SLAPP suit initiated with the goal of stopping "citizens from exercising their political rights or to punish them for having done so." George W. Pring, SLAPPs: Strategic Lawsuits Against Public Participation, *7 Pace Envtl. L. Rev.* 3, 4-6 (1989).

According to Pring and Canan, who conducted the first nationwide study of SLAPPs, SLAPP lawsuits have "worked . . . to 'chill' present and future political involvement, both of the targets [of SLAPPs] and of others in the community and have worked to assure that those citizens never again participate freely and confidently in the public issues and governance of their town, state, or country." George W. Pring & Penelope Canan, "Strategic Lawsuits Against Public Participation" ("SLAPPS"): An Introduction for Bench, Bar and Bystanders, *12 Bridgeport L. Rev.* 937, 943

(1992). See *Middle-Snake-Tamarac Rivers Watershed Dist. v. Stengrim*, 784 N.W.2d 834, 838-839 (Minn. 2010).

V. This isn't a SLAPP case. No anti-SLAPP if no SLAPP.

Quest pled in his original complaint and amended complaint that Rekieta is free to engage in protected first amendment speech and Quest does not seek restraint. Further, Rekieta may continue analyzing lawsuits and legal issues, and chatting about them, and, Quest does not seek to stop Rekieta from speaking on matters of "public interest or concern." Quest is a private individual affiliated with no company, cause, or concern. *Quest Aff.* Quest simply requests Rekieta discontinue maliciously defaming him and causing harm.

When is a matter public or private, for purposes of analysis? From *Chafoulias v. Peterson*, 668 N.W.2d 642 (Minn. 2003): A public controversy is a dispute that "has received public attention because its ramifications will be felt by persons who are not direct participants." *Waldbaum v. Fairchild Publications, Inc.*, 627 F.2d 1287, 1296 (D.C. Cir. 1980); *accord* Trotter v. Jack Anderson Enters., Inc., 818 F.2d 431, 433-34 (5th Cir. 1987); *Lundell Mfg. Co. v. Am. Broad. Co.*, 98 F.3d 351, 363 (8th Cir. 1996). Private concerns are not public controversies simply because they attract attention. See *Time, Inc. v. Firestone*, 424 U.S. 448, 454-55, 47 L. Ed. 2d 154, 96 S. Ct. 958 (1976); see also *Wolston*, 443 U.S. at 167-68. In isolating the public controversy, courts look to those controversies that are already the subject of debate in the public arena at the time of the alleged defamation. See, e.g., *Bruno & Stillman, Inc. v. Globe Newspaper Co.*, 633 F.2d 583, 591 (1st Cir. 1980); *Waldbaum*, 627 F.2d at 1297. *Chafoulias* at 651-652.

Rekieta argues that, somehow, the world should care about Quest, specifically, the world should know Quest is a pedophile and guilty of crimes, perhaps even Minn. Stat. §609.344 subds. 1(c) and 2, and/or Colorado's equivalent statute, that he is a "fucking faggot," that he "fists

himself," that he created a "snuff film," etc. without first establishing how he knows these allegations to be true, or, how these alleged crimes and perverse acts somehow relate to matters we, the public, should show interest in or have concern. Rekieta's position is inconsistent with well-settled law, from all over the United States, as recited by the *Chafoulias* Court.

If Quest really were a pedophile, that he sexually abused children, Rekieta could argue evidence of the prosecution and conviction should be made public because Quest, if out of prison, would be a registered sex offender as required by Minnesota law, and we should keep our children away from him. Rekieta hasn't done this, and cannot do this, because Quest has neither been charged nor convicted of any such crimes in any state of the union. In an illustration of how the term "non-sequitur" may be used, Rekieta offers **Exhibit 9**, evidence that Quest's brother is indeed a criminal. However, Rekieta makes no effort to connect Quest to his brother. Quest's brother may be a criminal. Quest is not. No law imposes a requirement that the guilt of Cain must pass to Abel.

Rekieta goes to great lengths to illustrate Quest is a prolific producer of websites and video content (some of which may be perceived as obnoxious) without first describing how such content rises to the level or public interest or concern, without first verifying obnoxious content was actually created by Quest as opposed to other individuals, or without first verifying the allegedly obnoxious content really is what others have purported it to be. Rekieta's exhibits offered through the *Shepard Dec.*, hearsay at best, unfairly prejudicial at worst, display an array of actors and commentators and an array of subjects. Again, no effort is made to show why we, the public, should care. How does Quest's internet activity, whatever it is, create public interest or concern? The answer is patent: it does not.

So, what is a SLAPP lawsuit, at least according to courts in Minnesota? Pursuant to the court in *Leiendecker v. Asian Women United of Minn.*, 848 N.W.2d 224 (Minn. 2014), they are lawsuits that interfere with citizens and organizations exercising their rights of public participation in government. *Leiendecker* at 228. SLAPP suits, which are generally filed in order "to use litigation to intimidate opponents' exercise of rights of petitioning and speech," even when, as is often the case, the party filing the suit does not care whether it actually prevails. *Duracraft Corp. v. Holmes Prods. Corp.*, 427 Mass. 156, 691 N.E.2d 935, 940 (Mass. 1998); *Id.*

To deter vexatious litigation and protect participation rights in government, Minnesota's anti-SLAPP statute (which is unconstitutional as of 2016) include both a grant of immunity and various procedural provisions. The grant of immunity is found in Minn. Stat. §554.03, which provides that "[l]awful conduct or speech that is genuinely aimed in whole or in part at procuring favorable government action is immune from liability, unless the conduct or speech constitutes a tort or a violation of a person's constitutional rights." *Id.*

Typically, anti-SLAPP statutes protect the exercise of two types of public-participation rights: the right to free speech and the right to petition the government. See, e.g., *Equilon Enters., LLC v. Consumer Cause, Inc.*, 29 Cal. 4th 53, 124 Cal. Rptr. 2d 507, 52 P.3d 685, 693 (Cal. 2002); *Denton v. Browns Mill Dev. Co.*, 275 Ga. 2, 561 S.E.2d 431, 433 (Ga. 2002); *Id.*

As correctly noted by Rekieta, in a 2016 Minnesota Court of Appeals decision, Minnesota's anti-SLAPP statute was found to be unconstitutional because it "deprive[s] the non-moving party of the right to a jury trial by requiring a court to make pretrial factual findings to determine whether the moving party is immune from liability. *Mobile Diagnostic Imaging v. Hooten*, 889 N.W.2d 27, 35 (Minn. Ct. App. 2016). Further, in *Leiendecker v. Asian Women United of Minn.*, 895 N.W.2d 623, 637-38 (Minn. 2017) (this case is referred to herein as "*Leindecker 2017*" given the

number of other reported cases bearing the same title) the Minnesota Supreme Court also ruled that the law was "unconstitutional when it requires a district court to make a pretrial finding that speech or conduct is not tortious." *Leiendecker 2017* at 637-38. Needless to say, from these important cases it would appear anything which tends to interfere with the right of an aggrieved victim of defamation's attempt to submit the complaint to a finder of fact is unconstitutional in the State of Minnesota, "anti-SLAPP" or otherwise. Further, Quest's case against Rekieta is not a "SLAPP case in need of application of an anti-SLAPP" law. Rekieta's motion is misguided.

VI. Colorado law applied in this Minnesota defamation case is unconstitutional.

Quest pled, and Rekieta correctly noted, that at least at the beginning of this lawsuit Quest was a resident of the State of Colorado. However, Quest had developed significant connection also to the State of Illinois during the period of time Rekieta has defamed him. In his complaint and amended complaint, Quest stated he had also lived in Illinois. At present, Quest does not reside in Colorado, but resides in Illinois. Quest has resided in Illinois since June, 2020. *Quest Aff.* Rekieta speaks extensively how Quest has no connection to Minnesota (other than being a U.S. citizen), but that statement is incorrect. Quest uses "computer servers," which are based in the State of Minnesota. Quest is required to pay a monthly cost to access those servers. *Quest Aff.* So, in fact, Quest has a business connection to the State of Minnesota. Finally, while Rekieta is sitting in his Spicer Minnesota-based recording studio defaming Quest, and Quest responds during "chats" or "super chats" to Rekieta, that communication certainly involves Minnesota. Quest has substantial connects to three states, Minnesota, Illinois, and Colorado.

In fairness to Rekieta, because no discovery has been conducted, Rekieta did not know Quest had moved to Illinois, or, about Quest's computer servers in Minnesota and the business relationship. The distinction is immaterial, however. The Colorado law Rekieta seeks to apply,

in the case at bar, would most certainly be deemed unconstitutional in the State of Minnesota given the *Mobile Diagnostic Imaging* and *Leindecker 2017* decisions, regardless where Quest resides.

What is the basis for applying the law from another state apply to cases in Minnesota? Rekieta's "special motion" requires analysis of the laws of other states. An individual's interest in his reputation is a basic concern, but its reflection in the laws of defamation is solely a matter of state law. A state can limit, modify, or perhaps take away a cause of action for defamation through the operation of testimony of privileges, absent any claim of constitutional deprivation. *Mazella v. Philadelphia Newspapers, Inc.,* 479 F. Supp. 523 (E.D. N.Y. 1979). The existence of a judicial remedy for injury to reputation is thus purely a matter of state law; defamation actions involving private plaintiffs and private issues must be analyzed under state common-law principles. *Weissman v. Anderson Newspapers, Inc.* 469 N.W.2d 471 (Minn. App. 1991).

At least according to the law of the State of Colorado, in defamation cases, the state with the most significant relationship is usually the state of the plaintiff's domicile. *Zimmerman v. Board of Publications of Christian Reformed Church*, 598 F. Supp 1002. 598 (D. Colo. 1984). A dictionary definition of the word "domicile" is "where a person lives in and has a substantial connection with." In fairness, Quest's home, after June of 2020 is in Illinois, but he formerly lived in Colorado where Rekieta began defaming him likely in 2019, and, Quest still has connections with Colorado (his mailbox and counselor. See *Quest Aff.).* However, Quest also has, and has always had, business connection to Minnesota. So, which state's law should apply here? Standing alone, at least one state (New York) has determined the plaintiff's residence (whether it be in Colorado or Illinois) is not enough to determine the choice of law in a defamation case. *Arochem International v. Buirkle*, 767 F. Supp. 1243 (S.D. N.Y. 1991).

In defamation cases, strong policy reasons exist for deciding issues whose major impact on the behavior of potential defendants according to the rules of the jurisdiction where the conduct that gives rise to liability takes place, especially when that conduct may be protected speech. *Keeton v. Hustler Magazine*, 828 F2d 64 (1st Cir. 1987). However, a law analogous to the Colorado law, sought to be employed by Rekieta, Minn. Stat. §554.04, a statute where the Minnesota Supreme Court, in *Leindecker 2017*, declared not just the law unconstitutional, but also the effect. To be sure, Minnesota's statute and the Colorado statute are written differently and are not synonymous, but the unconstitutional effect is the same. Future enforcement efforts of an unconstitutional law will invariably lead to an aggrieved person, harmed by that action, to challenge the government's action. In practical terms, when the government or Minnesota court's face laws that are on their face unconstitutional, they will (and should) act as though the law does not exist. Quest encourages the Court to do just that here.

Quest recognizes the choice of law issue is relevant given the fact that there is at least some connection to Colorado, and, the Court should be aware the way Minnesota courts have dealt with these issues has changed over time. An excellent recitation of the history of the evolution of how Minnesota courts handle such situations is found in *State v. Castillo-Alvarez,* 836 N.W.2d527 (Minn. 2013). There, a criminal defendant from Iowa escaped to Mexico. He was arrested, interviewed and recorded, tried, and convicted in Iowa. Later, his convictions were overturned on appeal. Five months after that the defendant was charged by the Jackson County attorney, in the State of Minnesota. The defendant sought to suppress his recorded statement. He was tried and convicted and sentenced to prison. On appeal, the issue of the admissibility of the recorded statement by both federal and Iowa law enforcement officials violated Minnesota's law regarding electronic recording at custodial interrogations was raised. The Court then proceeded to review

the three different choice of law approaches to resolve issues relating to the admission of evidence collected in other states. Citing *State v. Heaney*, 689 N.W.2d 168, 174-76 (Minn. 2004), the Court described the three approaches as: 1. Traditional choice law; 2. Exclusionary rule, and 3. Most significant relationship. *Castillo-Alvarez* at p. 22. Settling upon the "significant relationship" rule, at least for the facts of that case, the Court held:

Under the significant relationship test, the law of the state with the most significant relationship to the evidence controls, even if it conflicts with the law of the forum, **unless applying the law of the state with the most significant relationship would be contrary to a strong public policy in the forum** (citing *Heaney* at p. 175); *Castillo-Alvarez* at 26. (emphasis added). In the case at bar, Minnesota Courts have, very clearly, stated that laws are unconstitutional when they require a district court to make pretrial finding that speech or conduct is not tortious. Query, if we apply any statute which, in operation, does what *Mobile Diagnostic Imaging* and *Leiendecker 2017* prohibit, namely require the Court to make an unconstitutional-pretrial determination, is that not, under the 'significant relationship" test, "contrary to a strong public policy" in Minnesota? Undoubtably, the answer is in the affirmative. The Court should refuse to apply Colorado law in the case at bar under the significant relationship test discussed in *Castillo-Alvarez*.

C. Rekieta's actions caused emotional distress. Done so intentionally, and or negligently, will be proven in discovery.

VII. Quest's claim for negligent infliction of emotional stress is supported by evidence.

A claim for negligent infliction of emotional distress requires a party to prove three additional elements: that the party "(1) was within the zone of danger of physical impact created by the defendant's negligence; (2) reasonably feared for her own safety; and (3) consequently suffered severe emotional distress with attendant physical manifestations." *Id.* (quotation omitted). However, a party who establishes a claim for defamation need not prove the

"zone of danger" element. *Bohdan v. Alltool Mfg. Co.*, 411 N.W.2d 902, 907 (Minn. App. 1987), rev. denied (Minn. Nov. 13, 1987).

When Quest was being threatened by Rekieta's devotees, and followed around Denver, and being stalked, then seeing published pictures of this activity on the internet (see **Exhibit 23**), Quest was afraid and certainly within the zone of danger of physical impact following Rekieta's defamatory statements. *Quest Aff.* Further, Quest sought care. He is currently treating with care providers and will offer evidence that he suffered "severe emotional distress with attendant physical manifestations," the third required element of a claim for negligent infliction of emotional distress. *Engler v. Ill. Farmers Ins. Co.*, 706 N.W.2d 764, 767 (Minn. 2005) 767. Query, is Rekieta asking the Court to dismiss Quest's case now, before Rule 26 disclosures, before written discovery, and before depositions, because Rekieta knows the harm caused to Quest is recent, and the medical record is only now being created? If so, such a stance would seem to be inconsistent with the anticipated scheduling order (which has yet to developed) and palpably unfair. At the summary-judgment stage of the proceedings, evidence is viewed in the light most favorable to the nonmoving party and resolve all doubts and factual inferences should be resolved against the moving party. *Staub v. Myrtle Lake Resort, LLC,* 964 N.W.2d 613, 620 (Minn. 2021). Quest suggests to the Court this issue is not yet ripe for adjudication.

VIII. Quest's claim against Rekieta for intentionally causing emotional distress should also survive summary judgment.

Minnesota first recognized the independent tort of intentional infliction of emotional distress in *Hubbard v. United Press International, Inc.*, 330 N.W.2d 428 (Minn. 1983). Intentional infliction of emotional distress consists of four distinct elements: (1) the conduct must be extreme and outrageous; (2) the conduct must be intentional or reckless; (3) it must cause emotional distress; and (4) the distress must be severe. *Id.* at 438-39; see also Restatement (Second) of Torts

§ 46(1) (1965). Intentional infliction of emotional distress cases are "sharply limited to cases involving particularly egregious facts" and that a "high threshold standard of proof" is required to submit the claim to a jury. *Hubbard*, 330 N.W.2d at 439. In examining the record and what we know about Rekieta, Rekieta's conduct must be adjudged "extreme and outrageous" when it is "so atrocious that it passes the boundaries of decency and is utterly intolerable to the civilized community." *Hubbard*, 330 N.W.2d at 439 (quoting *Haagenson v. National Farmers Union Property and Casualty Co.*, 277 N.W.2d 648, 652 n.3 (Minn. 1979)). Liability for intentional infliction of emotional distress does not extend to "insults, indignities, threats, annoyances, petty oppressions, or other trivialities." Restatement (Second) of Torts § 46 cmt. d (1965). To qualify as extreme and outrageous, the conduct must lead an average member of the community to exclaim "Outrageous!" *Id. Langeslag v. KYMN Inc.*, 664 N.W.2d 860, 865, (Minn. 2003).

Again, Rekieta has stated (and routinely admits), many obnoxious, cruel, and mean-spirited things, to which the common response is "outrageous!" directed at Quest. See paragraphs 25 through 30, *Shepard Dec.* Perhaps what Rekieta is really telling the Court is that Quest, and his lawyer, your author herein, his lawyer's entire office staff, and his lawyer's wife who has watched Rekieta's shows and have yelled "outrageous!" are all simply prudish-churchgoers who should stop being so sensitive. *Schneider Aff.* Perhaps Rekieta, as part of his newly-minted "online hate factory," wants the world to forget about societal norms and do as does he, namely swear, mock, tease, taunt, slander, libel, complain, then, when the world is sufficiently aggrieved we should stand by, smiling, as Rekieta's devotees descend upon us with threats and stalking.

If Rekieta seriously expects the Court to dismiss Quest's intentional infliction of emotional distress count, surely justice demands it be based upon a fully-developed case, complete with

Defendant Nicholas Rekieta's deposition testimony. Like the motion to dismiss the negligent infliction of emotional distress, this motion is also not yet ripe for adjudication.

CONCLUSION

Moving for summary judgment, at the beginning of a defamation case, while exciting and worthy of video creation if you're in the business of offering legal opinions on the internet, may lead to fatal motion practice error. A party should permit a case to be developed so that a record is prepared upon which a Court may rule. In the case at bar, Rekieta has offered nothing to satisfy Rule 56.03(a) and the Court should deny Rekieta's motion for summary judgment.

Application of Colorado law, given the status of Minnesota defamation law after 2017, is "unconstitutional when it requires a district court to make a pretrial finding that speech or conduct is not tortious." *Leiendecker v. Asian Women united of Minn.*, 895 N.W.2d 623, 637-38 (Minn. 2017). Hence, the Court should also deny Rekieta's "special motion" and request that Colorado law be applied in any respect.

Finally, evidence of negligent infliction of emotional distress and intentional infliction of emotional distress is supported by the Affidavits of Steve Quest and David W. Schneider and properly before the Court. More evidence will be produced through discovery. The Court should deny Rekieta's motion to dismiss.

Dated this 21st day of Feb., 2023.

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