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**THIS MOTION REQUIRES YOU TO
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TO RESPONDING PARTY.**

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Sylvia Miera-Fisk*

**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH**

DAVID ROBINSON, an individual,
Plaintiff,

v.

AIMEE WINDER NEWTON, et al.,
Defendants.

AIMEE WINDER NEWTON, an individual,
Counterclaim Plaintiff,

v.

DAVID ROBINSON, an individual; SCOTT
MILLER, an individual; and SYLVIA FISK, an
individual,

Counterclaim and Third-Party Defendants.

**SYLVIA MIERA-FISK'S SPECIAL
MOTION FOR EXPEDITED RELIEF TO
DISMISS AIMEE WINDER NEWTON'S
THIRD-PARTY COMPLAINT**

(Oral Argument Requested)

Civil No. 220900591

Judge Barry Lawrence

COMES NOW Third-Party Defendant Sylvia Miera-Fisk (“*Miera-Fisk*”), by and through her counsel, pursuant to Utah Code Section 78B-25-103 and Rule 12(b)(6) of the Utah Rules of Civil Procedure, and moves for expedited relief to dismiss all causes of action asserted against her by Aimee Winder Newton (“*Winder Newton*”), with prejudice, because Winder Newton’s Third-Party Complaint is improper and fails to state a claim upon which relief can be granted.

RELIEF REQUESTS AND GROUNDS THEREFOR

Miera-Fisk, who is a member of a Citizens Committee organized out of concern over the political activities of Winder Newton, moves for expedited relief for dismissal of Winder Newton’s third-party defamation and false light claims because the claims clearly are an effort by Winder Newton to suppress and stifle Miera-Fisk’s right to freedom of speech and right of association in violation of Utah’s Uniform Public Expression Protection Act, Utah Code Ann. Section 78B-25-101 *et seq.* (the “UPEPA”). Indeed, Winder Newton admits in her Third-Party Complaint that her claims arise from comments and questions asked by Miera-Fisk on behalf of “a ‘Citizens Committee’ [that] was created specifically to inappropriately *scrutinize every aspect of Ms. Winder Newton’s work as an elected official.*” (Third-Party Compl., ¶ 58 (emphasis added).)

Further solidifying her obvious attack on her constituents’ core First Amendment rights, is the fact that Winder Newton’s third-party claims fail as a matter of law. *First*, her Third-Party Complaint is procedurally improper under Rule 14(a) of the Utah Rule of Civil Procedure, which provides that a third-party can be haled into a lawsuit only if they may be liable for the original claims brought by the plaintiff in the case. That is not the case here, as Winder Newton’s third-party claims are wholly independent of the claims brought by Plaintiff Dave Robinson (“*Plaintiff*”). *Second*, the statements by Miera-Fisk which Winder Newton claims are defamatory or painted her in a false light are not actionable, as the statements cannot reasonably be construed

as defamatory or highly offensive, particularly here when aimed at an elected public official. The false light claim also fails because the allegedly false statements were not widely published.

For the foregoing reasons, and as further detailed below, Winder Newton's claims should be dismissed with prejudice pursuant to Section 78B-25-107 of UPEPA and Rule 12(b)(6). Further, since Winder Newton's claims violate UPEPA, Miera-Fisk should be awarded her attorneys' fees, court costs, and expenses in litigating this motion pursuant to Section 78B-25-110 of UPEPA.

SUMMARY OF ALLEGATIONS

In her Third-Party Complaint, Winder Newton brings claims for defamation and false light against Miera-Fisk. According to the allegations, Miera-Fisk, a member of a Citizens Committee, allegedly "made repeated improper requests for information and has also spread false statements about Winder Newton." (Third-Party Compl., ¶ 58.) The only "false statements" allegedly made by Miera-Fisk which are identified by Winder Newton in her Third-Party Complaint are contained in a single November 24, 2023 email sent by Miera-Fisk to Winder Newton and one of her attorneys of record in this lawsuit, Salt Lake County District Attorney Sam Gill. (*Id.*, ¶ 59, Ex. 11.)

The statements in the November 24, 2023 email that Winder Newton specifically takes issue with are that she: (1) "led the effort" against Plaintiff by "convincing several women to take their stories to the Salt Lake Tribune"; and (2) had a "pattern of behavior" involving "multiple instances" of "'going after' conservative gay men." (*Id.*, ¶¶ 59, 62, 86.)

Winder Newton claims these statements "accus[ed her] of lying and targeting people" and were "false" and "defamatory by calling into question [her] honesty, integrity, virtue, or reputation and thereby exposing [her] to public hatred, contempt, or ridicule in the eyes of at least a substantial and respectable minority of the audiences to whom the statements were made." (*Id.*, ¶¶ 64, 65.)

Winder Newton also claims that the “implications and the light in which” the statements placed her were “highly offensive” and “would be highly offensive to any reasonable person.” (*Id.*, ¶ 87.)

ARGUMENT

I. STANDARD OF REVIEW

A. Utah’s Uniform Public Expression Protection Act

Section 78B-25-103 of UPEPA states:

Not later than 60 days after the day on which a party is served with a complaint, crossclaim, counterclaim, third-party claim, or other pleading that asserts a cause of action to which this chapter applies, or at a later time on a showing of good cause, the party may file a special motion for expedited relief to dismiss the cause of action or part of the cause of action.

When a special motion for expedited relief is filed under Section 78B-25-103 of UPEPA, the Court shall hear such a motion within 60 days of its filing unless the Court orders a later hearing to allow discovery under Section 78B-25-104(4) or for good cause. Utah Code Ann. § 78B-25-105 (2023).

Section 78B-25-105 of UPEPA further provides:

In ruling on a motion under Section 78B-25-103, the Court shall dismiss with prejudice a cause of action, or part of a cause of action, if:

- (a) the moving party establishes under Subsection 78B-25-102(2) that this chapter applies;
- (b) the responding party fails to establish under Subsection 78B-25-102(3) that this chapter does not apply; and
- (c) either:
 - (i) the responding party fails to establish a prima facie case as to each essential element of the cause of action; or
 - (ii) the moving party establishes that:
 - (A) the responding party failed to state a cause of action upon which relief can be granted; or

(B) there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

“[T]he court shall consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment under Utah Rules of Civil Procedure, Rule 56.” Utah Code Ann. § 78B-25-106 (2023).

B. Rule 12(b)(6)

A motion under Rule 12(b)(6) of the Utah Rules of Civil Procedure tests the “sufficiency of the pleadings,” that is, “the legal viability of [the] underlying claim presented in the pleading.” *Lewis v. U.S. Bank Trust NA*, 2020 UT App 55, ¶ 9. In ruling on such a motion, the Court typically “assum[es] the truth of the allegations in the complaint and draw[s] all reasonable inferences therefrom in the light most favorable to the plaintiff...” *Hudgens v. Prosper, Inc.*, 2010 UT 68, ¶ 14. However, in a defamation action such as the third-party claims brought by Ms. Winder Newton against Ms. Miera-Fisk, this rule does not apply. *RainFocus Inc. v. Cvent Inc.*, 2023 UT App 32, ¶ 6 (prohibiting district courts from “interpreting inferences that may be reasonably drawn from the [defendant’s] statements in favor of a defamatory meaning”). As explained in *RainFocus*:

[T]o accommodate the respect we accord its protections of speech, the First Amendment’s presence merits altering our customary rules of review by denying a nonmoving party the benefit of a favorable interpretation of factual inferences. Rather, we look to the context of the allegedly defamatory statement and then, in a nondeferential manner, reach an independent conclusion about the statement’s susceptibility to a defamatory interpretation.

Id. (quotation and citation omitted). Applying these principles, the Court must dismiss a claim if it “clearly appears that the plaintiff . . . would not be entitled to relief under the facts alleged or under any state of facts they could prove to support their claims.” *Hudgens*, 2010 UT 68, ¶ 14.

II. UPEPA APPLIES TO WINDER NEWTON’S THIRD-PARTY CLAIMS

Section 78B-25-102(2) of UPEPA provides, in relevant part:

Except as provided in Subsection (3), this chapter applies to a cause of action asserted in a civil action against a person based on the person’s:

...

- (c) exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or Utah Constitution, on a matter of public concern.

Winder Newton’s claims against Miera-Fisk clearly fall under this provision of UPEPA.

To start, Winder Newton’s own allegations make clear that her third-party claims arise from Miera-Fisk’s “exercise of the right of freedom of speech ... or the right of association[] guaranteed by the United States Constitution or Utah Constitution.” Utah Code Ann. § 78B-25-102(2)(c). In her Third-Party Complaint, Winder Newton, who is an elected member of the Salt Lake City Council, alleges that “a ‘Citizens Committee’ was created specifically to inappropriately *scrutinize every aspect of Ms. Winder Newton’s work as an elected official*” and that the committee “is being led by Sylvia Fisk, who has made repeated improper requests for information and has also spread false statements about Ms. Winder Newton.” (Third-Party Compl., ¶ 58 (emphasis added).) The allegedly false statements giving rise to Winder Newton’s claims are contained in a November 24, 2023 email from Miera-Fisk, sent on behalf of the Citizens Committee, and reflect such alleged scrutiny of Winder Newton. (*See id.*, ¶¶ 58, 59, Ex. 11.)

It is without question that a citizen’s ability to speak freely about and question the actions of an elected public official is at the core of the First Amendment’s protections. As one California court explained in determining whether speech fell within California’s Anti-SLAPP statute, which mirrors UPEPA (*compare* Cal. Code Civ. Proc. §§ 425.16(b), 425.16(e) *with* Utah Code Ann. §

78B-25-102(2)(c)): “The right to speak on political matters is the quintessential subject of our constitutional protections of the right of free speech. ‘Public discussion about the qualifications of those who hold or who wish to hold positions of public trust presents the strongest possible case for applications of the safeguards afforded by the First Amendment.’” *Matson v. Dvorak*, 40 Cal. App. 4th 539, 548 (1995) (quoting *Aisenson v. American Broadcasting Co.* 220 Cal.App.3d 146, 154 (1990)). Indeed, as the Supreme Court emphasized in *New York Times v. Sullivan*, our “profound national commitment [is] to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” 376 U.S. 254, 270 (1964).

Further, the allegedly defamatory statements at issue were made in relation to a matter of public concern. “Speech deals with matters of public concern when it can ‘be fairly considered as relating to any matter of political, social, or other concern to the community,’ or when it ‘is the subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.” *Snyder v. Phelps*, 562 U.S. 443, 453 (2011). Here, the statements by Miera-Fisk concern actions that Winder Newton took or reportedly took against political rivals and known gay men within the Salt Lake County GOP, including the accusations of sexual harassment against Plaintiff that are at issue in this lawsuit (which were widely reported and the subject of political

controversy¹) and comments reportedly made to Log Cabin Republicans² about Goud Maragani, former president of the now-dissolved Utah chapter of Log Cabin Republicans.³ (See Third-Party Compl., Ex. 11.) Moreover, the statements were made specifically within the context of Miera-Fisk asking Winder Newton’s attorney, the Salt Lake County District Attorney, whether Winder Newton’s actions were taken within her role as an elected official and whether Salt Lake County has conducted any review of her complaints and actions against Plaintiff and Maragani. (*Id.*) In that regard, the statements clearly pertain to a matter of political and public concern in so much as they are focused on the propriety of Winder Newton’s actions as an elected public official. *Schalk v. Gallemore*, 906 F.2d 491, 495 (10th Cir.1990) (noting that most speech focusing on “disclosing public officials’ malfeasance or wrongdoing” should be considered a matter of public concern).

III. WINDER NEWTON HAS FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

A. Winder Newton’s Third-Party Complaint is Improper Under Rule 14(a).

Winder Newton’s third-party defamation and false light claims against Miera-Fisk should be dismissed because they are improper under Rule 14(a) of the Utah Rules of Civil Procedure. Rule 14(a) governs when a defendant may bring in a third party and specifically states:

¹ See, e.g., Leia Larson, Republican women say they experienced a toxic environment in the Salt Lake County GOP, THE SALT LAKE TRIBUNE, Mar. 27, 2021, <https://www.sltrib.com/news/politics/2021/03/27/republican-women-say-they/>; Jordan Burrows, Sexual harassment allegations come to light within Salt Lake County GOP, chairman resigns, ABC4, Mar. 27, 2021, <https://www.abc4.com/news/local-news/stand-up-to-bullies-republican-women-said-they-faced-sexual-harassment-in-slco-gop/>; Cristina Flores, Salt Lake County GOP Chair resigns after claims he ignored harassment complaints, KUTV, Apr. 10, 2021, <https://kutv.com/news/local/salt-lake-county-gop-chair-resigns-after-claims-he-ignored-harassment-complaints>.

² “Log Cabin Republicans is the nation’s original and largest organization representing LGBT conservatives and straight allies who support fairness, freedom, and equality for all Americans.” Logcabin.org, About Us, <https://logcabin.org/about-us/> (last visited Mar. 2, 2024).

³ It has been widely reported that Ms. Winder Newton and Maragani are political rivals. See, e.g., Bryan Schott, Goud Maragani wants to censure Aimee Winder Newton for associating with Equality Utah. Emails show he also wanted their endorsement, THE SALT LAKE TRIBUNE, Aug. 7, 2023, <https://www.sltrib.com/news/politics/2023/08/07/goud-maragani-wants-censure-aimee/>.

At any time after commencement of the action a defendant, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action **who is or may be liable to him for all or part of the plaintiff's claim against him.**

Rule 14(a) (emphasis added). As the rule plainly states, a defendant may only bring a third-party into a case when the third-party is or may be liable to the defendant for some portion of the damages claimed by the plaintiff. Absent this connection, courts have denied attempts to bring a third-party into an action. *Hughes v. Housley*, 599 P.2d 1250, 1253 (Utah 1979) (“It is pertinent to note that in this state third party practice is permitted only where the original defendant can show that if he is found liable to the plaintiff then the third party will be liable to the defendant.”); *Windsor Mobile Estates, LLC v. Sweazey*, 2019 UT App 44, ¶ 7 (“[a] third-party claim may be asserted under Rule 14(a) [] only when the third party’s liability is in some way dependent on the outcome of the main claim or when the third party is secondarily liable to the defending party.” (quoting 6 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1446, at 413–15 (3d ed. 2018))).

Here, Winder Newton’s claims against Miera-Fisk are wholly independent of the claims brought by Plaintiff. Plaintiff has sued Winder Newton for defamation, intentional interference with contract, and conspiracy based on statements made and actions taken by Winder Newton against Plaintiff. Winder Newton’s claims against Miera-Fisk, on the other hand, concern comments made by Miera-Fisk about Winder Newton. Winder Newton does not claim (nor can she) that Miera-Fisk made comments about Plaintiff or took actions against him which were the cause of Plaintiff’s damages or that Miera-Fisk is otherwise liable to Winder Newton or to Plaintiff for Plaintiff’s claims. Such allegations are necessary for the connection required by Rule 14 to bring a third party into this case. As such allegations are lacking here, Winder Newton’s third-party claims against Miera-Fisk are improper under Rule 14(a) and thus should be dismissed.

B. Winder Newton's Defamation Claim Fails as the Statements are Not Defamatory and/or are Non-Actionable Opinion or Hyperbole.

To make a prima facie case for defamation, Winder Newton must show: (1) Miera-Fisk published statements about her; (2) the statements were false; (3) the statements were defamatory; (4) the statements were not subject to privilege; (5) the statements were published with the requisite degree of fault; and (6) the statements resulted in damages. *Jacob v. Bezzant*, 2009 UT 37, ¶ 21. Winder Newton cannot meet this burden because the statements at issue are not defamatory and/or are non-actionable opinion or hyperbole. “Whether a statement is capable of sustaining a defamatory meaning is a question of law.” *West v. Thomson Newspapers*, 872 P.2d 999, 1008 (Utah 1994). “Under Utah law, a statement is defamatory if it impeaches an individual’s honesty, integrity, virtue, or reputation and thereby exposes the individual to public hatred, contempt, or ridicule.” *Id.* A statement “is not defamatory simply because it is nettlesome or embarrassing to,” “makes a false statement about,” or is a “sharp criticism” of plaintiff. *Id.* at 1009. In determining whether a statement is defamatory, a court cannot “view[] individual words in isolation; rather, it must carefully examine the context in which the statement was made, giving the words their most common and accepted meaning.” *Id.*

Additionally, an “expression[] of pure opinion . . . cannot serve as the basis for defamation liability.” *Id.* at 1015. A statement is pure opinion if it “does not state or imply [any] facts,” *id.*, and is not “capable of being objectively verified as true or false.” *Id.* at 1019. Like pure opinion, hyperbole and/or “exaggerated commentary” frequently is deemed to be non-actionable as such language is not likely to be considered by its audience as a statement of fact and thus not likely to harm reputation. *Id.* at 1010 (citing, among other authority, *Nat’l Ass’n of Letter Carriers v. Austin*, 418 U.S. 264, 284, 286 (1974) (“traitor” was not defamatory because it was used “in a loose, figurative sense” and was “merely rhetorical hyperbole, a lusty and imaginative expression

of the contempt felt by union members”); *Greenbelt Coop. Publishing Ass'n v. Bresler*, 398 U.S. 6, 14 (1970) (“blackmail” was not defamatory because “even the most careless reader must have perceived that the word was no more than rhetorical hyperbole, a vigorous epithet used by those who considered [plaintiff’s] negotiating position extremely unreasonable”).⁴ That is particularly the case in the context of commentary made within the political arena. *West*, 872 P.2d at 1019 (“Courts are much more likely to construe statements as opinion when they are made by participants in, and people who comment on, political campaigns.”); *see also id.* (citing favorably “the proposition that those who place themselves in a political arena must accept a degree of derogation that others need not”) (citing *Ollman v. Evans*, 750 F.2d 970, 1002 (D.C.Cir.1984)).

The allegedly defamatory statements at issue here are contained in a November 24, 2023 email from Miera-Fisk to Winder Newton and Salt Lake County District Attorney Sam Gill (one of Winder Newton’s attorneys of record in this lawsuit). (Compl., ¶ 59, Ex. 11.) Winder Newton specifically claims that the following statements are defamatory: (1) that she “led the effort” against Robinson by “convincing several women to take their stories to the Salt Lake Tribune”; and (2) had a “pattern of behavior” involving “multiple instances” of “‘going after’ conservative gay men.” (*Id.*, ¶¶ 59, 62, 86.) Under the principles set forth above, neither statement is actionable.

As to the first statement, it is both opinion and not defamatory. As the Court is aware from prior pleadings in this action, this case arises, in part, from accusations of sexual harassment made against Plaintiff by members of the Salt Lake County GOP (the “SLCGOP”) that were reported by the Salt Lake Tribune (the “Tribune”). It is those accusations and reports that Miera-Fisk

⁴ *See also LaFlash v. Town of Auburn*, 585 F. Supp. 3d 141, 149 (D. Mass. 2022) (“sexual predator,” “fascist,” “bastard” were deemed non-actionable hyperbole); *Edwards v. Schwartz*, 378 F. Supp. 3d 468, 514 (W.D. Va. 2019) (same as to “abuses of professional power” and resulting “harm”); *Turner v. Wells*, 879 F.3d 1254, 1266 (11th Cir. 2018) (same as to “inappropriate,” “poor judgment”); *Hogan v. Winder*, 762 F.3d 1096, 1108 (10th Cir. 2014) (same as to “extortion,” “erratic behavior,” “performance issues”); *Hupp v. Sasser*, 490 S.E.2d 880, 887 (W. Va. 1997) (same as to “bully”).

references in the first allegedly defamatory statement. (*See* Third-Party Compl., Ex. 11 [“Also, we have been told that Winder Newton led the effort, convincing several women to take their stories to the Salt Lake Tribune. This resulted in the lawsuit you currently represent Winder Newton in against Robinson.”].) Preliminarily, the phrase “led the effort” is not capable of being factually verified and thus is non-actionable opinion. *See* Order Granting In Part and Denying In Part Mot. to Dismiss, Feb. 12, 2024, at 15 (Derek Brown’s statement that Plaintiff had “come after [him]” was unactionable opinion and rhetorical hyperbole); Order Granting In Part and Denying In Part Mot. to Dismiss, July 5, 2023, at 25-26 (statement that Laurie Stringham was “responsible for bringing down” Plaintiff was unactionable as it is a “question that cannot be verifiably proven”).

As to the remainder of the statement, regardless of whether it is true or not that Winder Newton convinced other members of the SLCGOP “to take their stories” to the Tribune, the statement is not defamatory. In particular, the statement does not reasonably imply, as Winder Newton claims, that she convinced other women to tell false or fabricated stories to the Tribune. Rather, the statement is neutral about the truth of those stories and at most references a dispute about their veracity (i.e., this lawsuit). Further, there is no reason to conclude that the statement at issue would pose harm to Winder Newton’s reputation. To start, the statement was published only to Winder Newton and one of her attorneys of record in this lawsuit. It would be a stretch to conclude that Winder Newton has suffered harm by communicating to her attorney about a matter in which he is representing her. Even if more broadly published, the statement could be viewed positively. In the age of “Me Too,” women have been applauded for voicing stories of even minor (or questionable) infractions of sexual harassment. In fact, the reporting on the stories underlying Miera-Fisk’s statement have largely been positive toward the women who have spoken.⁵ Thus,

⁵ *See* citations footnote 1.

there is no basis to conclude that Miera-Fisk’s statement would pose harm to Winder Newton’s reputation “in the eyes of at least a substantial and respectable minority...” *West*, 872 P.2d at 1009.

Concerning the second allegedly defamatory statement, Winder Newton takes it out of context. In her November 24, 2023 email, Miera-Fisk writes to District Attorney Gill: “Since your office has confirmed that you represent Council member Aimee Winder Newton in her dispute against Mr. Dave Robinson, I have a few additional questions.” (Compl., Ex. 11.) Miera-Fisk then prefaces those questions by explaining, among other things, that news reports indicate that “Winder Newton has called for Robinson’s resignation since at least 2018 [citing an article]” and that the Citizens Committee has “hear[d] that Winder Newton recently contacted the National Log Cabin Republicans in an effort to silence Goud Maragani...” (*Id.*) Miera-Fisk then asks, among other questions (none of which are challenged), “Do these multiple instances of Winder Newton ‘going after’ conservative gay men constitute a concerning pattern of behavior?” (*Id.*) Read in its context, Miera-Fisk’s supposedly defamatory question cannot be construed as defamatory.

To start, Winder Newton does not allege that the factual statements underlying Miera-Fisk’s question are false (i.e., Winder Newton does not allege that she did not call for Robinson’s resignation or that she did not contact the National Log Cabin Republicans about Maragani, *see* Third-Party Compl., ¶¶ 59, 60, 63, 64, 86, 87). Rather, Winder Newton merely alleges that the question falsely implied that she was “targeting conservative gay men.” (*Id.*) Absent proof that the factual statements underlying Miera-Fisk’s question are themselves false, her statement about Winder Newton “‘going after’ conservative gay men” is merely unactionable opinion or hyperbole. *See Spencer v. Glover*, 2017 UT App 69, ¶ 8 (“If the opinion does not state or imply [false] facts or if the underlying facts are not defamatory, an action for defamation is improper.”) (internal quotation and citation omitted); *see also* Order Granting In Part and Denying In Part Mot. to

Dismiss, Feb. 12, 2024, at 15 (Derek Brown’s statement that Plaintiff had “come after [him]” was unactionable opinion and rhetorical hyperbole); Order Granting In Part and Denying In Part Mot. to Dismiss, July 5, 2023, at 25-26 (statement that Laurie Stringham was “responsible for bringing down” Plaintiff was unactionable as it is a “question that cannot be verifiably proven”).

Further, the broader context in which Miera-Fisk’s question was posed is critical here. As the Court has noted in previous rulings, the accusations of sexual harassment against Plaintiff underpinning this action have been the subject of political controversy. *See, e.g.*, Order Granting Dismissal, June 9, 2023, at 11-12. Miera-Fisk’s email was sent on the heels of that controversy and another concerning the dissolution of the Utah chapter of the Log Cabin Republicans. (*See generally* Third-Party Compl., Ex. 11.) As the email makes clear, the Citizens Committee of which Miera-Fisk is a member sought information from Winder Newton’s counsel on whether Winder Newton’s accusations against Plaintiff and her alleged contact with the Log Cabin Republicans were made in her official capacity as an elected councilmember and whether Salt Lake County has conducted any reviews of Winder Newton’s actions. (*Id.*) As an elected official involved in a political controversy, Winder Newton ““must accept a degree of derogation that others need not.”” *West*, 872 P.2d at 1019 (quoting *Ollman*, 750 F.2d at 1002). Indeed, “[s]uppression of speech in [the political] context is always subject to exacting constitutional scrutiny.” *Id.* That should especially be the case where, as here, the speech was made to gather information about a political controversy and the actions of an elected official related thereto. Thus, in context, Miera-Fisk’s question cannot be construed as defamatory because it cannot damage Winder Newton’s reputation “in the eyes of at least a substantial and respectable minority...” *West*, 872 P.2d at 1009. Rather, this kind of questioning and criticism is to be expected of an elected official.

In sum, Winder Newton's defamation claim against Miera-Fisk fails as a matter of law and should be dismissed with prejudice, since the allegedly defamatory statements cannot reasonably be construed as defamatory and/or are non-actionable opinion or hyperbole.

C. False Light Claim Fails as the Statements Were Not Widely Published or Highly Offensive.

To make a prima facie case for false light, Winder Newton must show: (1) Miera-Fisk publicized a matter concerning her that placed her before the public in a false light; (2) the false light in which she was placed would be highly offensive to a reasonable person; and (3) Miera-Fisk knew or recklessly disregarded the falsity of the publicized matter and the false light in which Winder-Newton was placed. *Jacob*, 2009 UT 37, ¶ 21. "A false light claim is closely allied with an action for defamation, and the same considerations apply to each." *Id.* (internal quotation and citation omitted.) Yet, one important distinction between the two claims is that false light requires that "false information be publicized more widely to be actionable ... than is necessary to sustain an action in defamation." *Jensen v. Sawyers*, 2005 UT 81, ¶ 49. As with her defamation claim, Winder Newton has failed to make a prima facie case for false light for several reasons.

First, Winder Newton cannot establish that the statements were widely published. As noted above, Miera-Fisk's email was sent only to Winder Newton and her attorney. (*See* Third-Party Compl., Ex. 11.) Such limited disclosure is insufficient to state a claim for false light. In *Williams v. FedEx Corp. Servs.*, No. 2:13-CV-37 TS, 2013 WL 4500431 (D. Utah Aug. 21, 2013), for example, the court dismissed a false light claim under Federal Rule of Civil Procedure 12(b)(6) (applying Utah substantive law) where "[t]he only publications that FedEx is alleged to have made were to eScreen, Inc. ..., Rocky Mountain Care Clinic, Inc. ..., and to certain FedEx employees." *Id.* at *6. The court found "[t]his limited amount of disclosure is insufficient to state a claim for

false light invasion of privacy[.]” explaining that “the tort is concerned with communication that reaches the public and it is not satisfied when the disclosure is made only to a small group.” *Id.*

Second, for the same reasons discussed with respect to Winder Newton’s defamation claim, Winder Newton cannot establish that the statements at issue were highly offensive. *See Cox v. Hatch*, 761 P.2d 556, 564 (Utah 1988) (finding statements were not “highly offensive” for false light claims based on same analysis applied in determining whether statements were defamatory); *see also Hogan v. Winder*, No. 2:12-CV-123 TS, 2012 WL 4356326, at *10 (D. Utah Sept. 24, 2012), *aff’d*, 762 F.3d 1096 (10th Cir. 2014) (same).

For the foregoing reasons, Winder Newton has failed to state a claim for false light and such claim should also be dismissed with prejudice.

IV. MS. MIERA-FISK’S SECTION 78B-25-103 MOTION IS TIMELY

Section 78B-25-103 of UPEPA requires a special motion for expedited relief thereunder to be brought within 60 days of service of a pleading that asserts a cause of action to which UPEPA applies, unless good cause is otherwise shown. Here, Ms. Miera-Fisk was served the Third-Party Complaint on December 29, 2023, making her motion under Section 78B-25-103 due on February 27, 2024. However, good cause exists to permit the later filing of this motion. Ms. Miera-Fisk’s youngest son passed away on February 21, 2024. (Declaration of Slyvia Miera-Fisk, ¶ 5, attached hereto as Exhibit A.) His funeral was held on March 2, 2024. (*Id.*). Counsel for Ms. Winder Newton was appraised of this unfortunate circumstance on February 22, 2022, and agreed to extend Ms. Miera-Fisk’s time to file a responsive pleading to the Third-Party Complaint to March 7, 2024. (*Id.* ¶ 7; *see also* Email from M. Bowen to M. Eubanks, dated Feb. 22, 2024, attached hereto as Exhibit B.) There thus is no prejudice to Ms. Winder Newton. For the foregoing reasons, Ms. Miera-Fisk’s motion should be deemed timely under Section 78B-25-103 of UPEPA.

V. MS. MIERA-FISK IS ENTITLED TO COURT COSTS, ATTORNEYS' FEES, AND EXPENSES

Section 78B-25-110 provides:

On a motion under Section 78B-25-103, the court shall award court costs, reasonable attorney fees, and reasonable litigation expenses related to the motion:

- (1) to the moving party if the moving party prevails on the motion;
or
- (2) to the responding party if the responding party prevails on the motion and the court finds that the motion was frivolous or filed solely with intent to delay the proceeding.

Utah Code Ann. § 78B-25-110. Here, Miera-Fisk (the moving party) has established that she is entitled to relief under UPEPA and that Winder-Newton's claims should be dismissed with prejudice. Accordingly, Miera-Fisk is entitled to an award of her court costs, reasonable attorney fees, and reasonable litigation expenses related to this motion, which will be submitted to the Court and Winder-Newton following the Court's disposition of this motion.

CONCLUSION

For the foregoing reasons, the Court should dismiss Winder Newton's Third-Party Complaint and all claims against Miera-Fisk with prejudice.

DATED this 7th day of March 2024.

FETZER BOOTH, PC

/s/ Tyler S. Foutz

Tyler S. Foutz

JOHNSON & JOHNSON, LLP

Neville L. Johnson
Melissa N. Eubanks

*Attorneys for Third-Party Defendant
Sylvia Miera-Fisk*

CERTIFICATE OF SERVICE

I certify that on the 7th day of March 2024, I filed a true and correct copy of the foregoing document with the Clerk of the Court using the electronic filing system which sent notice electronically to the following:

Robert T. Spjute ROBERTSON ALGER & SPJUTE tee@robertsonalger.com <i>Attorneys for Plaintiff David Robinson and Third-Party Defendant Scott Miller</i>	Rodney R. Parker SNOW CHRISTENSEN & MARTINEAU rrparker@spencerfane.com <i>Attorneys for Defendant Derek Brown</i>
Will G. Garbina Victoria Turner Office of District Attorney for Salt Lake County wgarbina@slco.org vturner@slco.org <i>Attorneys for Defendants Laurie Stringham and Aimee Winder Newton</i>	Melinda K. Bowen SNOW CHRISTENSEN & MARTINEAU mbowen@spencerfane.com <i>Attorneys for Defendants and Counterclaim Plaintiffs Laurie Stringham, Aimee Winder Newton and Erin Preston</i>

/s/ Shellee Timmreck _____
Paralegal

Notice to responding party

You have a limited amount of time to respond to this motion. In most cases, you must file a written response with the court and provide a copy to the other party:

- within 14 days of this motion being filed, if the motion will be decided by a judge, or
- at least 14 days before the hearing, if the motion will be decided by a commissioner.

In some situations a statute or court order may specify a different deadline.

If you do not respond to this motion or attend the hearing, the person who filed the motion may get what they requested.

See the court's Motions page for more information about the motions process, deadlines and forms:

utcourts.gov/motions



Scan QR code to visit page

Finding help

The court's Finding Legal Help web page

(utcourts.gov/help)

provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help and free legal clinics.



Scan QR code to visit page

Aviso para la parte que responde

Su tiempo para responder a esta moción es limitado. En la mayoría de casos deberá presentar una respuesta escrita con el tribunal y darle una copia de la misma a la otra parte:

- dentro de 14 días del día que se presenta la moción, si la misma será resuelta por un juez, o
- por lo menos 14 días antes de la audiencia, si la misma será resuelta por un comisionado.

En algunos casos debido a un estatuto o a una orden de un juez la fecha límite podrá ser distinta.

Si usted no responde a esta moción ni se presenta a la audiencia, la persona que presentó la moción podría recibir lo que pidió.

Vea la página del tribunal sobre Mociones para encontrar más información sobre el proceso de las

mociones, las fechas límites y los formularios:

utcourts.gov/motions-span



Para acceder esta página escanee el código QR

Cómo encontrar ayuda legal

La página de la internet del tribunal

Cómo encontrar ayuda legal

(utcourts.gov/help-span)

tiene información sobre algunas maneras de encontrar ayuda legal, incluyendo el Centro de Ayuda de los Tribunales de Utah, abogados que ofrecen descuentos u ofrecen ayuda legal limitada, y talleres legales gratuitos.



Para acceder esta página escanee el código QR

Exhibit “A”

Tyler S. Foutz (UT Bar #10855)
Fetzer Booth LLC
50 West Broadway, Suite 1200
Salt Lake City, Utah 84101
Telephone: (801) 328-0266
tyler@mountainwestlaw.com

Neville L. Johnson (*Pro Hac Vice App Forthcoming*)
Melissa N. Eubanks (*Pro Hac Vice App Forthcoming*)
Johnson & Johnson, LLP
439 North Canon Drive, Suite 200
Beverly Hills, California 90210
Telephone: (310) 975-1080
njohnson@jjllplaw.com
meubanks@jjllplaw.com

Attorneys for Third Party Defendant
Sylvia Miera-Fisk

**IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY,
SALT LAKE DEPARTMENT, STATE OF UTAH**

DAVID ROBINSON, an individual,
Plaintiff,

v.

AIMEE WINDER NEWTON, et al.,
Defendants.

AIMEE WINDER NEWTON, an individual,
Counterclaim Plaintiff,

v.

DAVID ROBINSON, an individual; SCOTT
MILLER, an individual; and SYLVIA FISK, an
individual,

*Counterclaim and Third-Party
Defendants.*

**DECLARATION OF SYLVIA MIERA-
FISK IN SUPPORT OF SPECIAL
MOTION FOR EXPEDITED RELIEF TO
DISMISS AIMEE WINDER NEWTON'S
THIRD-PARTY COMPLAINT**

Case No: 220900591

Judge: Barry Lawrence

DECLARATION OF SYLVIA MIERA-FISK

Pursuant to Utah Code Ann. § 78B-18a-104, I, Sylvia Miera-Fisk, do hereby state and declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts contained in this declaration and, if called to testify, I could and would competently testify hereto.

2. I am a third-party defendant in the above-caption action. I make this declaration in support of my Special Motion for Expedited Relief to Dismiss Aimee Winder Newton's Third-Party Complaint pursuant to Utah Code Section 78B-125-103 and Rule 12(b)(6) of the Utah Rules of Civil Procedure.

3. I was served the Third-Party Complaint on December 29, 2023.


4. I was not able to retain counsel to defend me in this action until early February 2024.

5. I am a mother of six (6) children. On February 21, 2024, my youngest son passed away. His memorial service was held on March 2, 2024.

6. For the foregoing reasons, I was not able to file my Special Motion for Expedited Relief within 60 days of service of the Third-Party Complaint.

7. It is my understanding that, in light of the foregoing, counsel for Aimee Winder Newton agreed to extend my time to respond to the Third-Party Complaint to March 7, 2024.

I declare under penalty of perjury of the laws of the State of Utah that the contents of this declaration are true and correct. Executed this 6th day of March, 2024 in Bountiful, Utah.



Sylvia Miera-Fisk

Exhibit “B”

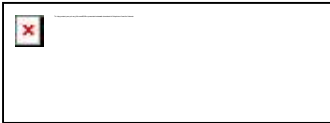
Melissa Eubanks

From: Melinda K. Bowen <mkb@scmlaw.com>
Sent: Thursday, February 22, 2024 12:38 PM
To: Melissa Eubanks; wgarbina@slco.org; vturner@slco.org
Cc: Neville Johnson
Subject: RE: Robinson v. Winder Newton - Slyvia Miera-Fisk

Melissa,

Thank you for reaching out. I look forward to working with you on this case. We agree to the two-week extension you requested and will plan on March 7 as the new deadline for Ms. Fisk's response. Please feel free to reach out if you need anything else.

Take care,
Melinda



Melinda K. Bowen | Lawyer
10 Exchange Place, 11th Floor | Salt Lake City, Utah 84111
Direct: 801-322-9277 | Main: 801.521.9000 | www.scmlaw.com

From: Melissa Eubanks <MEubanks@jillplaw.com>
Sent: Thursday, February 22, 2024 12:50 PM
To: Melinda K. Bowen <mkb@scmlaw.com>; wgarbina@slco.org; vturner@slco.org
Cc: Neville Johnson <njohnson@jillplaw.com>
Subject: Robinson v. Winder Newton - Slyvia Miera-Fisk

Caution: External Email!

Ms. Bowen,

Our office was recently retained to represent Slyvia Miera-Fisk with respect to Aimee Winder Newton's third-party complaint.

We understand that you previously provided Mrs. Miera-Fisk a 30-day extension of time to respond to the third-party complaint. Due to our recent retention, as well as the passing just yesterday of Mrs. Miera-Fisk's youngest son, we would like to request an additional 2-week extension from today.

Please advise whether your client is agreeable to the extension. Feel free to call me to discuss, if necessary.

Best regards,

Melissa Eubanks
Senior Counsel
439 N. Canon Drive, Suite 200 Beverly Hills, CA 90210
MEubanks@jillplaw.com | www.jillplaw.com
tel 310-975-1084 | fax 310-975-1095
[map](#) | [website](#)



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