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PHILIP GODLEWSKI

PLAINTIFF,

V.

BRIENNA L. DUBORGEL

DEFENDANT.

**IN THE COURT OF COMMON PLEAS
OF LACKAWANNA COUNTY**

CIVIL ACTION - LAW

JURY TRIAL DEMANDED

NO.: CV-2023-1354

**DEFENDANT'S BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Defendant, Brienna L. Duborgel ("Defendant" or "Ms. DuBorgel"), by and through her legal counsel, Fellerman & Ciarimboli Law, P.C., hereby respectfully submits this Brief in Opposition to the Motion for Partial Summary Judgment filed by the Plaintiff, Philip Godlewski ("Plaintiff" or "Mr. Godlewski"), and in support thereof avers as follows:

I. FACTUAL BACKGROUND and PROCEDURAL HISTORY

As this Court is well aware, this case involves various claims spawning from a sexual relationship that occurred between the Plaintiff, Mr. Godlewski, and the Defendant, Ms. DuBorgel. By way of brief summary for purposes of this Brief, beginning in or around October of 2008, Mr. Godlewski began engaging in a sexual relationship with Ms. DuBorgel while she was under the age of sixteen (16), and he was approximately twenty-five (25) years of age. At the time, Ms. DuBorgel was a student at Riverside High School and Mr. Godlewski was a coach. Sometime thereafter, Ms. DuBorgel's family learned of the inappropriate and illegal sexual relationship and reported the same to the school. Mr. Godlewski was ultimately arrested and charged with various crimes. Following said arrest and during the criminal proceedings, the Scranton Times published an article summarizing the evidence and Mr. Godlewski's criminal charges and ultimate plea. The article reads "[i]n the normal course of reporting this column, I stumbled upon some legal troubles in Godlewski's recent past. In 2011, the former Riverside High School baseball coach pleaded guilty to corruption of minors and admitted to having a sexual relationship with a 15-year-old girl" and went on to say "I have many character defects, but the last time I had sex with a 15-year-old was never."

Following the publication of this article, Mr. Godlewski filed a Complaint against Chris Kelly and the Scranton Times styled Philip Godlewski v. Chris Kelly and the Scranton Times, L.P. at CV-2195 (the "Godlewski v. Times Case") sounding in

defamation. The Godlewski v. Times Complaint is attached hereto as Exhibit A. In defending said claims, the Times obtained an Affidavit from Ms. DuBorgel wherein she swore, among other things, to the existence of the above sexual relationship. See the Affidavit of Ms. DuBorgel attached as Exhibit B. Mr. Godlewski has steadfastly maintained the statements in Ms. DuBorgel's Affidavit are false and defamatory in nature prompting him to file a Complaint against Ms. DuBorgel asserting claims sounding in defamation and false light invasion of privacy. See Mr. Godlewski's Complaint attached as Exhibit C. Ms. DuBorgel filed an Answer, New Matter and Counterclaim asserting cause of action sounding in defamation, false light invasion of privacy, assault, battery, intentional infliction of emotional distress ("IIED"), and negligent infliction of emotional distress ("NIED"). See Ms. DuBorgel's Answer, New Matter and Counterclaim attached as Exhibit D.

The procedural history -- or more accurately the lack thereof -- that followed, and the related Godlewski v. Times Case rulings are beyond significant and must be acknowledged here. To this end, after months of discovery in the Godlewski v. Times Case, the Times Defendants filed a Motion for Summary Judgment arguing the Times Defendants were entitled to judgment as a matter of law. In the meantime, and while the Scranton Times' Motion for Summary Judgment was pending, Mr. Godlewski did not take a single action to prove his claims against Ms. DuBorgel in the instant case. Indeed, as the Plaintiff, Mr. Godlewski did not take a single deposition. This is especially troubling being that he previously filed a Motion for Judgment on the Pleadings that was denied and then somehow filed the instant Motion for Summary Judgment making the very same arguments here without having developed any

DEFENDANT DID NOT ADMIT TO ANY OF THE RELEVANT ALLEGATIONS MADE IN PLAINTIFF'S COMPLAINT.

SUGGESTED ANSWER: YES.

B. WHETHER THIS COURT MUST ALLOW DEFENDANT'S COUNTERCLAIMS FOR ASSAULT, BATTERY, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS ("IED"), AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS ("NIED") TO PROCEED WHERE THE STATUTE OF LIMITATIONS FOR SUCH CLAIMS HAS BEEN TOLLED BY STATUTE.

SUGGESTED ANSWER: YES.

C. WHETHER THIS COURT MUST ALLOW DEFENDANT'S COUNTERCLAIMS FOR ASSAULT, BATTERY, IED, AND NIED TO PROCEED WHERE DEFENDANT HAS PLED SUFFICIENT FACTS TO ESTABLISH A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

SUGGESTED ANSWER: YES.

III. LEGAL STANDARD AND ARGUMENT

"[S]ummary judgment is appropriate only in those cases where the record clearly demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Summers v. Certaineed Corp., 997 A.2d 1152, 1159 (Pa. 2010)(quoting Atcovitz v. Gulph Mills Tennis Club, Inc., 812 A.2d 1218, 1221 (Pa. 2002)); Pa. R.C.P. No. 1035.2(1). The party who filed the motion has the burden of proving that no genuine issue of fact exists and doubts as to the existence of a genuine issue of a material fact are to be resolved against the granting of summary judgment. Thompson Coal Co. v. Pike Coal Co., 412 A.2d 466 (Pa. 1979).

When making a determination regarding summary judgment, the trial court must construe all facts of record and reasonable inferences therefrom in the light most favorable to the non-moving party. Craig v. Amateur Softball Ass'n of Am., 951 A.2d 372 (Pa. Super. 2008). In so doing, the trial court is required to resolve all doubts as to the

existence of a genuine issue of material fact against the moving party and may only grant summary judgment “where the right to such judgment is clear and free from all doubt.” Id. A factual dispute is genuine if a reasonable jury could find for the non-moving party and is material if it will affect the outcome of the trial under governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Although the record for purposes of deciding a motion for summary judgment includes the pleadings, depositions, answers to interrogatories, admissions, and affidavits, Pa.R.C.P. 1035.1(1), (2), oral testimony alone, of the moving party or his witnesses, *i.e.*, affidavits or depositions, even if uncontradicted, is generally insufficient to establish the absence of a genuine issue of material fact. Karoly v. Mancuso, 65 A. 3d 301, 308–09 (Pa. 2013); see also Pa.R.C.P. 1035.2(2); Penn Center House, Inc. v. Hoffman, 553 A.2d 900 (Pa. 1989); Borough of Nanty-Glo v. Am. Sur. Co. of New York, 163 A. 523 (Pa. 1932)). Indeed, the function of the summary judgment proceedings is to avoid a useless trial but is not, and cannot, be used to provide for trial by affidavits or trial by depositions.” Stimmler v. Chestnut Hill Hospital, 981 A.2d 145 (Pa. 2009). “That trial by testimonial affidavit is prohibited ‘cannot be emphasized too strongly’.” Stimmler v. Chestnut Hill Hospital, 981 A.2d 145 PA. 2009) quoting Curran v. Philadelphia Newspapers, Inc., 439 A.2d 652, 662 (PA. 1981).

Moreover, the Court is precluded from assessing and weighing testimony during its consideration of a Motion for Summary Judgment. Troy v. Kamp Grounds of America, Inc., 581 A.2d 665 (Pa. Super. 1990). Instead, the Court must consider the record actually presented and the record potentially possible at the time of trial. Marroquin v. Mutual Benefit Insurance Co., 591 A.2d 290 (Pa. Super. 1991). These

guidelines ensure that a party is not deprived of an adequate opportunity to fully develop his case by trial. *Id.*

Utilizing this well-established standard, Mr. Godlewski's Motion for Summary Judgment fails as a matter of law. A review of the record clearly demonstrates that Ms. DuBorgel has produced sufficient evidence to support a finding in favor of Ms. DuBorgel on each of her claims. In fact, Ms. Duborgel has provided sufficient evidence to merit summary judgment in her own right, which is discussed in further detail in Ms. DuBorgel's Motion for Summary Judgment which was recently.

A. AS PREVIOUSLY ACKNOWLEDGED BY THIS COURT, DEFENDANT SUFFICIENTLY RESPONDED TO ALL PARAGRAPHS IN PLAINTIFF'S COMPLAINT, PLAINTIFF RAISED SUFFICIENT QUESTIONS OF FACT THROUGH HIS OWN ATTACHMENTS TO HIS COMPLAINT TO ENSURE NO PARAGRAPHS IDENTIFIED BY PLAINTIFF SHOULD BE ADMITTED, AND SUFFICIENT SUPPORT FOR DEFENDANT'S DENIALS EXISTS IN THE RECORD TO ENSURE DEFENDANT DID NOT ADMIT TO ANY OF THE RELEVANT ALLEGATIONS IN PLAINTIFF'S COMPLAINT.

As identified in Ms. DuBorgel's Brief in Opposition to Mr. Godlewski's Motion for Partial Judgment on the Pleadings, and as this Court has previously stated (see this Court's Order denying Godlewski's Motion for Judgment on the Pleadings ("MJOP Order") attached as Exhibit F), the Pennsylvania Rules of Civil Procedure require that ["a"] responsive pleading shall admit or deny each averment of fact in the preceding pleading or any part thereof to which it is responsive. Admissions and denials in a responsive pleading shall refer specifically to the paragraph in which the averment admitted or denied is set forth." Pa.R.C.P. 1029(a). Further, "[a]verments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication.

It is well accepted in Pennsylvania law that the entire record should be considered when contemplating whether to deem paragraphs within a Complaint to be admitted based on an insufficient response in the Answer. Cercone v. Cercone, 254 Pa. Super. 381 "(W)e should examine the pleadings as a whole in determining whether a defendant has admitted the material factual allegations of a complaint." See also Kappe Associates, Inc. v. Aetna Casualty & Surety Co., 234 Pa. Super. 627 and Cramer v. Conn, 204 Pa. Super. 2. In addition to Ms. DuBorgel's Answer, New Matter and Counterclaim and its accompanying Exhibits, this includes any documents included by Godlewski as attachments to his Complaint that serve to conflict with the allegations in his Complaint.

Moreover, Ms. DuBorgel's responses to paragraphs 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 22, 44, and 45 are sufficient to specifically deny the averments in their corresponding paragraphs in Mr. Godlewski's Complaint. Indeed, the phrase "denied as stated" is legally sufficient where additional information is provided in the paragraph, elsewhere in the response, and/or elsewhere in the pleadings that factually supports the denial in the paragraph. See Cercone v. Cercone, 254 Pa. Super. 381.

The above paragraphs in Mr. Godlewski's Complaint made direct reference to the Affidavit attached to his Complaint as Exhibit 1; the Information attached to Plaintiff's Complaint as Exhibit 2; and/or the Guilty Plea Colloquy attached to the Complaint as Exhibit 3. Ms. DuBorgel denied Mr. Godlewski's interpretations of the referenced documents and cited directly to the documents in response. See ¶¶ 6-11, 13-19, 22, 44-45 of Ms. DuBorgel's Answer. Ms. DuBorgel cites directly to the documents in their entirety, as the documents must be read as a whole, in the context of the entire document, to contextualize and properly understand the statements made within. The referenced

documents are two (2), one (1), and four (4) pages in length respectively, and the language within each is only properly contextualized when read in its entirety. See Exhibit 1, Exhibit 2, and Exhibit 3 to Mr. Godlewski's Complaint -- Exhibit C.

Likewise, Ms. DuBorgel's responses to paragraphs 12, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 46, 47, and 48 are sufficient to specifically deny the averments in their corresponding paragraphs. Further, the language in Ms. DuBorgel's Answer New Matter and Counterclaim along with additional information found in the record, denies and offers evidence in opposition to each specific claim made by Plaintiff as follows:

a. See Paragraph 12 of Mr. Godlewski's Complaint and Ms. DuBorgel's Answer – [Godlewski] had a sexual relationship with [DuBorgel] while [DuBorgel] was a minor. See ¶20 of DuBorgel's Answer, ¶¶1-12, 19, 55-73 of DuBorgel's Counterclaim, ¶¶1-13 of DuBorgel's Affidavit attached to Godlewski's Complaint as Exhibit 1, and the Text Messages between Godlewski and DuBorgel attached to DuBorgel's Answer New Matter and Counterclaim as Exhibit A.

b. See Paragraph 20 of Godlewski's Complaint and DuBorgel's Answer – DuBorgel's statements made in her Affidavit are not defamatory, because they are true. See ¶20 of DuBorgel's Answer, ¶¶1-12, 19, 55-73 of DuBorgel's Counterclaim, ¶¶1-13 of DuBorgel's Affidavit attached as Exhibit B, and the Text Messages between Godlewski and DuBorgel attached to DuBorgel's Answer New Matter and Counterclaim as Exhibit A. Further, Ms. DuBorgel did not state or imply in her Affidavit that Mr. Godlewski was convicted of sex offenses. She identified in

her Affidavit that he was charged with a crime related to his sexual relationship with her. See ¶19 of Defendant's Affidavit attached here as Exhibit B.

c. See Paragraph 21 of Godlewski's Complaint and DuBorgel's Answer – DuBorgel did not Publish her Affidavit to Attorney Timmothy J. Hinton with the knowledge and intent that Attorney Hinton would republish the Affidavit in other litigation. DuBorgel cannot identify support from the record to evidence her lack of knowledge and intention due to the difficulty in externally supporting thoughts and intentions of this kind. See ¶¶1-13 of DuBorgel's Affidavit attached here as Exhibit B.

d. See Paragraph 22 of Godlewski's Complaint and DuBorgel's Answer – DuBorgel did not identify Godlewski only as an “alleged perpetrator” of sexual acts with a minor in her Affidavit. DuBorgel identified Godlewski as an individual who did, in fact, have sexual relations with her. See ¶¶ 6 and 8 of the Affidavit attached as Exhibit B.

e. See Paragraph 23 of Godlewski's Complaint and DuBorgel's Answer – DuBorgel clearly identifies in her response to Paragraph 23 that the Affidavit is not defamatory as it speaks the truth. See ¶23 of DuBorgel's Answer. Support for the truthfulness of DuBorgel's statements in her Affidavit is well documented in the record. See ¶20 of DuBorgel's Answer, ¶¶1-12, 19, 55-73 of DuBorgel's Counterclaim, ¶¶1-13 of DuBorgel's Affidavit attached as Exhibit B and the Text Messages between Godlewski and DuBorgel attached to DuBorgel Answer New Matter and Counterclaim as Exhibit A.

f. See Paragraph 24 of Godlewski's Complaint and DuBorgel's Answer - DuBorgel did not identify Godlewski only as an "alleged perpetrator" of sexual acts with a minor in her Affidavit. She identified him as an individual who did, in fact, have sexual relations with her. See ¶¶ 6 and 8 of the Affidavit attached as Exhibit B.

g. See Paragraph 25 of Godlewski's Complaint and DuBorgel's Answer - Godlewski did not suffer special harm by way of damage to his reputation and character. DuBorgel cannot provide support for the lack of existence of a special harm due to the nature of the denial.

h. See Paragraph 26 of Mr. Godlewski's Complaint and Ms. DuBorgel's Answer - DuBorgel did not need conditional privilege to make any statements she made, as the statements were true, and thus not defamatory. Support for the truthfulness of DuBorgel's statements in her Affidavit is well documented in the record. See ¶20 of DuBorgel's Answer, ¶¶1-12, 19, 55-73 of DuBorgel's Counterclaim, ¶¶1-13 of DuBorgel's Affidavit attached as Exhibit 1 and the Text Messages between Godlewski and DuBorgel attached to DuBorgel's Answer New Matter and Counterclaim as Exhibit A. Further, DuBorgel was conditionally privileged to make any and all statements, as Godlewski's position as a social media influencer and political commentator with a massive audience renders his actions a matter of public interest. See ¶¶ 14-17 of DuBorgel's Counterclaim.

i. See Paragraph 27 of Godlewski's Complaint and DuBorgel's Answer - DuBorgel did not need conditional privilege to communicate any statements she made, as the statements were true, and thus not defamatory. Support for the

truthfulness of DuBorgel's statements in her Affidavit is well documented in the record. See ¶20 of DuBorgel's Answer, ¶¶1-12, 19, 55-73 of DuBorgel's Counterclaim, ¶¶1-13 of DuBorgel's Affidavit attached as Exhibit B, and the Text Messages between Godlewski and DuBorgel attached to DuBorgel's Answer New Matter and Counterclaim as Exhibit A. DuBorgel had a proper motive in communicating the statements made in her Affidavit, as her motive was to tell the truth, she did so in a reasonable manner, and she did so for the simple cause of ensuring the truth was heard.

j. See Paragraph 28 of Godlewski's Complaint and DuBorgel's Answer – DuBorgel's statements made in her Affidavit are true. See ¶20 of DuBorgel's Answer, ¶¶1-12, 19, 55-73 of DuBorgel's Counterclaim, ¶¶1-13 of DuBorgel's Affidavit attached as Exhibit B, and the Text Messages between Plaintiff and Defendant attached to DuBorgel's Answer New Matter and Counterclaim as Exhibit A.

k. See Paragraph 29 of Godlewski's Complaint and DuBorgel's Answer – DuBorgel did not make statements in her Affidavit with "reckless disregard for their veracity" because the statements are true. See ¶20 of DuBorgel's Answer, ¶¶1-12, 19, 55-73 of DuBorgel's Counterclaim, ¶¶1-13 of Defendant's Affidavit attached as Exhibit B, and the Text Messages between Godlewski and attached to DuBorgel's Answer New Matter and Counterclaim as Exhibit A.

l. See Paragraph 30 of Godlewski's Complaint and DuBorgel's Answer – DuBorgel did not make statements in her Affidavit with "negligent disregard for their veracity", because the statements are true. See ¶20 of DuBorgel's Answer,

¶¶1-12, 19, 55-73 of DuBorgel's Counterclaim, ¶¶1-13 of DuBorgel's Affidavit attached to Godlewski's Complaint as Exhibit 1, and the Text Messages between Godlewski and DuBorgel attached to DuBorgel's Answer New Matter and Counterclaim as Exhibit A.

m. See Paragraph 31 of Godlewski's Complaint and DuBorgel's Answer - DuBorgel did not make statements in her Affidavit with "actual malice", because the statements are true. See ¶20 of DuBorgel's Answer, ¶¶1-12, 19, 55-73 of DuBorgel's Counterclaim, ¶¶1-13 of DuBorgel's Affidavit attached as Exhibit B, and the Text Messages between Godlewski and DuBorgel attached to DuBorgel's Answer New Matter and Counterclaim as Exhibit A.

n. See Paragraph 32 of Godlewski's Complaint and DuBorgel's Answer - DuBorgel's statements made in her Affidavit are not "defamatory per se", because they are true. See ¶20 of DuBorgel's Answer, ¶¶1-12, 19, 55-73 of DuBorgel's Counterclaim, ¶¶1-13 of DuBorgel's Affidavit attached as Exhibit B and the Text Messages between Godlewski and DuBorgel attached to DuBorgel's Answer New Matter and Counterclaim as Exhibit A.

o. See Paragraph 33 of Godlewski's Complaint and DuBorgel's Answer - Paragraph 33 is an incorporation paragraph to which DuBorgel need not respond, which DuBorgel noted in her answer. DuBorgel then incorporated the responses in her own answer by way of response. See ¶23 of DuBorgel's answer.

p. See Paragraph 34 of Godlewski's Complaint and DuBorgel's Answer - DuBorgel's statements in her Affidavit do not place Godlewski in a "false light",

because the statements are true. See ¶20 of DuBorgel's Answer, ¶¶1-12, 19, 55-73 of DuBorgel's Counterclaim, ¶¶1-13 of DuBorgel's Affidavit attached as Exhibit B, and the Text Messages between Godlewski and DuBorgel attached to DuBorgel's Answer New Matter and Counterclaim as Exhibit A.

q. See Paragraph 35 of Godlewski's Complaint and DuBorgel's Answer - DuBorgel's statements made in her Affidavit are not "highly offensive to a reasonable person", because they are true. See ¶20 of DuBorgel's Answer, ¶¶1-12, 19, 55-73 of DuBorgel's Counterclaim, ¶¶1-13 of DuBorgel's Affidavit attached as Exhibit B, and the Text Messages between Godlewski and DuBorgel attached to DuBorgel's Answer New Matter and Counterclaim as Exhibit A.

r. See Paragraph 36 of Godlewski's Complaint and DuBorgel's Answer - DuBorgel's statements made in her Affidavit do not "contain major misrepresentations of Godlewski's character, history, activities and/or beliefs", because they are true. See ¶20 of DuBorgel's Answer, ¶¶1-12, 19, 55-73 of DuBorgel's Counterclaim, ¶¶1-13 of Defendant's Affidavit attached as Exhibit B, and the Text Messages between Godlewski and DuBorgel attached to DuBorgel's Answer New Matter and Counterclaim as Exhibit A.

s. See Paragraph 37 of Godlewski's Complaint and DuBorgel's Answer - DuBorgel did not make statements in her Affidavit "knowing them to be false and with willful disregard of the truth" because the statements are true. See ¶20 of DuBorgel's Answer, ¶¶1-12, 19, 55-73 of DuBorgel's Counterclaim, ¶¶1-13 of Defendant's Affidavit attached as Exhibit B, and the Text Messages between

Godlewski and DuBorgel attached to DuBorgel's Answer New Matter and Counterclaim as Exhibit A.

t. See Paragraph 38 of Godlewski's Complaint and DuBorgel's Answer – Defendant did not make statements in her Affidavit with "reckless disregard for their veracity" because the statements are true. See ¶20 of Defendant's Answer, ¶¶1-12, 19, 55-73 of Defendant's Counterclaim, ¶¶1-13 of Defendant's Affidavit attached to Plaintiff's Complaint as Exhibit 1, and the Text Messages between Plaintiff and Defendant attached to DuBorgel Responsive Pleading as Exhibit A.

u. See Paragraph 39 of Godlewski's Complaint and DuBorgel's Answer - Defendant did not make statements in her Affidavit with "negligent disregard for their veracity", because the statements are true. See ¶20 of Defendant's Answer, ¶¶1-12, 19, 55-73 of DuBorgel's Counterclaim, ¶¶1-13 of DuBorgel's Affidavit attached as Exhibit B, and the Text Messages between Godlewski and DuBorgel attached to DuBorgel's Answer New Matter and Counterclaim as Exhibit A.

v. See Paragraph 40 of Godlewski's Complaint and DuBorgel's Answer - DuBorgel did not make statements in her Affidavit with "actual malice", because the statements are true. See ¶20 of DuBorgel's Answer, ¶¶1-12, 19, 55-73 of DuBorgel's Counterclaim, ¶¶1-13 of DuBorgel's Affidavit attached as Exhibit B, and the Text Messages between Godlewski and DuBorgel attached to DuBorgel's Answer New Matter and Counterclaim as Exhibit A.

w. See Paragraph 41 of Godlewski's Complaint and DuBorgel's Answer - DuBorgel's statements in her Affidavit do not place Plaintiff in a "false light",

because the statements are true. See ¶20 of DuBorgel's Answer, ¶¶1-12, 19, 55-73 of DuBorgel's Counterclaim, ¶¶1-13 of DuBorgel's Affidavit attached to Plaintiff's Complaint as Exhibit B, and the Text Messages between Godlewski and DuBorgel attached to DuBorgel's Answer New Matter and Counterclaim as Exhibit A.

x. See Paragraph 46 of Godlewski's Complaint and DuBorgel's Answer – Godlewski implies in Paragraph 46 that the sexual relationship between he and DuBorgel was private in nature, however due to his position as a social media influencer and political commentator with a massive following, and the illegal nature of his sexual relationship with DuBorgel, the relationship is of public rather than private interest. See ¶¶ 14-17 of DuBorgel's Counterclaim.

y. See Paragraph 47 of Godlewski's Complaint and DuBorgel's Answer - Due to Godlewski's position as a social media influencer and political commentator with a massive following, and the illegal nature of his sexual relationship with DuBorgel, DuBorgel's statements in her Affidavit are, in fact, matters of legitimate public concern. See ¶¶ 14-17 of DuBorgel's Counterclaim, and ¶¶1-13 of DuBorgel's Affidavit attached as Exhibit B.

z. See Paragraph 48 of Godlewski's Complaint and DuBorgel's Answer – DuBorgel did not “invade Godlewski's privacy by giving publicity to Godlewski's public life,” as Godlewski chose to give publicity to his public life on his own by actively becoming a social media influencer and political commentator. See ¶¶ 14-17 of DuBorgel's Counterclaim. DuBorgel also did not give publicity to Godlewski's private life, as the matters addressed in DuBorgel's Affidavit were of public concern

considering Godlewski's status as a social media influencer and political commentator with a sizeable following. See ¶¶ 14-17 of DuBorgel's Counterclaim.

As outlined above, there is ample support in DuBorgel Answer New Matter and Counterclaim and elsewhere in the record for DuBorgel's denials.

Further, "[i]t is not necessary to accept as true any averments in the complaint that conflict with the exhibits attached to it." Allen v. Com., Dept. of Corrections, 103 A.3d 365, 369 (Pa.Cmwlt. 2014) citing Lawrence v. Dept. of Corrections, 941 A.2d 70 (Pa.Cmwlt. 2003). The statements in DuBorgel's Affidavit attached as Exhibit B directly conflict with the allegations made by Godlewski in Godlewski's Complaint. Generally, Mr. Godlewski claims he never had a sexual relationship with Ms. DuBorgel while she was a minor, and that Ms. DuBorgel lied about the existence of such a sexual relationship. See paragraphs including, but not limited to ¶¶ 12-13, 20, 23, 28-32, 34, 36-41, and 43 of Godlewski's Complaint. DuBorgel's Affidavit clearly states that she and Godlewski did have a sexual relationship while she was a minor. See ¶¶ 6 and 8 of the Affidavit attached as Exhibit B. As these statements are in direct conflict with one and other, it is not necessary for this Court to accept such averments as true. Id.

In addition, Mr. Godlewski is fully aware that this matter was already decided in Ms. DuBorgel's favor after it was brought to the Court's attention in Mr. Godlewski's Motion for Judgment on the Pleadings. As Mr. Godlewski knows, although the standards of review regarding a Motion for Judgment on the Pleadings and a Motion for Summary Judgment differ significantly, such differences are not relevant to the question of whether Ms. DuBorgel's responses in her pleading were legally sufficient. Whether in a motion for judgment on the pleadings, or in a motion for summary judgment, this Court need only

examine Ms. DuBorgel's Answer and New Matter to Plaintiff's Complaint and her Counterclaim and the accompanying documents to discern whether the responses found therein are sufficient.

This Court already determined that Defendant's responses were sufficient. Mr. Godlewski's copy and pasted argument serves only to waste the time and resources of this Court and the parties involved in the present matter.

B. THIS COURT MUST ALLOW DEFENDANT'S COUNTERCLAIMS FOR ASSAULT, BATTERY, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED"), AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS ("NIED") TO PROCEED WHERE THE STATUTE OF LIMITATIONS FOR SUCH CLAIMS HAS BEEN TOLLED BY STATUTE.

As discussed in Ms. DuBorgel's response to Mr. Godlewski's Motion for Judgment on the Pleadings, Ms. DuBorgel does not deny that actions for assault, battery, IIED, and NIED usually must be commenced within two years. See 42 Pa. C.S.C.A. §5524(1) and 42 Pa. C.S.C.A. §5524(7). However, it has been statutorily prescribed that when a person is under 18 years of age at the time that a cause of action related to "sexual abuse" occurs, that person will have a period of 37 years after attaining the age of 18 to bring an action. 42 Pa. C.S.A. §5533 (b)(2)(i).

"Sexual abuse" for purposes of the statute of limitations requires that the "individual bringing the civil action engaged in such activities as a result of forcible compulsion or the threat of forcible compulsion which would prevent resistance by a person of reasonable resolution." 42 Pa. C.S.A. §5533 (b)(2)(ii).

As noted by this Court in its MJOP order, on the Pleadings in the instant matter, "sexual

intercourse' and 'indecent contact' qualify as forcible compulsion." See MJOP order at Exhibit F, p. 8. As such, the Court has already answered the question of whether forcible compulsion was present and is bound by that decision under the Law of the Case Doctrine. Indeed, our Superior Court has identified that "the law of the case doctrine refers to a family of rules which embody the concept that a court involved in the later phases of a litigated matter should not reopen questions decided by another judge of that same court or by a higher court in the earlier phases of the matter.... The various rules which make up the law of the case doctrine serve not only to promote the goal of judicial economy ... but also operate (1) to protect the settled expectations of the parties; (2) to insure uniformity of decisions; (3) to maintain consistency during the course of a single case; (4) to effectuate the proper and streamlined administration of justice; and (5) to bring litigation to an end." Neidert v. Charlie, 143 A.3d 384. Thus, the question of whether forcible compulsion exists has already been answered by this Honorable Court and cannot be revisited.

Moreover, as Mr. Godlewski has admitted to the existence of a sexual relationship between Mr. Godlewski and Ms. DuBorgel, and is collaterally estopped from claiming otherwise (see Judge Nealon Order), and this Court has already answered the question of whether forcible compulsion exists, Mr. Godlewski's second attempt at arguing Ms. DuBorgel's claims were not tolled by 42 Pa. C.S.A. §5533 (b)(2)(i) must once again fail. Even if this Court was compelled to revisit the question of forcible compulsion, Mr. Godlewski's argument must fail for the same reasons outlined in Ms. DuBorgel's Brief in Opposition to Godlewski's Motion for Judgment on the Pleadings.

1. Forcible Compulsion

As defined above, forcible compulsion includes “physical, intellectual, moral, emotional or psychological force, either express or implied.” This definition was adopted by our legislature to mirror the language outlined by our Supreme Court in Commonwealth v. Rhodes, 510 Pa. 537. The Court explained their reasoning initially by stating “‘forcible compulsion’ clearly connotes more than the exercise of sheer physical force... The phrase also connotes the act of using superior force -- physical, moral psychological, or intellectual -- to compel a person to do a thing against that person's volition and/or will.” The Supreme Court went on to outline a list of factors that should be considered when deciding whether forcible compulsion is present, including:

“the respective ages of the victim and the accused, the respective mental and physical conditions of the victim and the accused, the atmosphere and physical setting in which the incident was alleged to have taken place, the extent to which the accused may have been in a position of authority, domination or custodial control over the victim, and whether the victim was under duress.”

Id.

The Supreme Court cites to Rhodes in a 2003 case, acknowledges that:

“There is an element of forcible compulsion, or the threat of forcible compulsion that would prevent resistance by a person of reasonable resolution, inherent in the situation in which an adult who is with a child who is younger, smaller, less psychologically and emotionally mature, and less sophisticated than the adult, instructs the child to submit to the performance

of sexual acts. This is especially so where the child knows and trusts the adult. In such cases, forcible compulsion or the threat of forcible compulsion derives from the respective capacities of the child and the adult sufficient to induce the child to submit to the wishes of the adult ("prevent resistance"), without the use of physical force or violence or the explicit threat of physical force or violence."

Commonwealth v. Fears, 575 Pa. 281.

The Superior Court further elaborated on Rhodes, identifying that forcible compulsion can be found in instances where "the force applied to compel their submission (is) by and large subtle and psychological." Commonwealth v. Poindexter, 372 Pa. Super. 566. Additionally, the Superior Court acknowledges that "psychological manipulation designed to overcome the will of the child" establishes additional support for a finding of forcible compulsion. Commonwealth v. Ruppert, 397 Pa. Super. 132.

In the instant case, nearly every factor outlined by the Rhodes Court as it pertains to a finding of forcible compulsion weighs in favor of a finding of forcible compulsion. The Court first identifies that the ages of the victim and the assailant are relevant in finding forcible compulsion. Mr. Godlewski had sexual intercourse with Ms. DuBorgel when he was between twenty-five and twenty-six (25-26) years old, and she was a fifteen (15) year old minor. See ¶¶3, 5-6, 8 of the Affidavit attached as Exhibit B, ¶¶1-4, 8, 11, 55, 62, 68, 77, and 82 of Ms. DuBorgel's Counterclaim, and ¶20 of Ms. DuBorgel's Answer. As an adult, Godlewski used his "psychological and emotional matur(ity)" to pressure Ms. DuBorgel into engaging in a sexual relationship.

The Court then advises that courts look to “the respective mental and physical conditions of the victim and the accused.” At the time Godlewski initiated a sexual relationship with Ms. DuBorgel, she was mourning the suicide of her boyfriend. See ¶¶4-6 of the Affidavit as Exhibit B, and ¶¶73-74 of DuBorgel’s Counterclaim. Godlewski used DuBorgel’s grief, and his position as DuBorgel’s deceased boyfriend’s former baseball coach, as an opportunity to reach out and get closer to DuBorgel and eventually initiate a sexual relationship with her.

The Court then looks to “the atmosphere and physical setting in which the incident was alleged to have taken place.” Mr. Godlewski would take Ms. DuBorgel to rental properties over which he had ownership to engage in sexual intercourse with her, further solidifying his control over her and the encounter. See ¶4 of DuBorgel’s Counterclaim.

The Court next identifies the relevance of “the extent to which the accused may have been in a position of authority, domination or custodial control over the victim.” When the sexual relationship began, Godlewski was employed by Ms. DuBorgel as a baseball coach and acknowledged in his own words that he took on the role of a grief counselor for DuBorgel. See ¶¶56, 64, 82-84 of DuBorgel’s Counterclaim. As an employee of DuBorgel’s high school, Godlewski had an undeniable status of authority over Ms. DuBorgel, and exploited such authority to initiate a sexual relationship with her. In addition, Mr. Godlewski took on the role of a grief counselor to emotionally manipulate Ms. DuBorgel into engaging in sexual intercourse with him. See ¶84 of DuBorgel’s Counterclaim.

Finally, the Court recommends that all courts look to whether or not the victim is under duress. Although Ms. DuBorgel was not under any physical duress, she was still

in a mental state where she was conscientious of ensuring the happiness of male pursuers following the suicide of her boyfriend. See ¶¶4-6 of the Affidavit attached as Exhibit B, and ¶¶73-74 of DuBorgel's Counterclaim. As clearly indicated above, Plaintiff utilized "physical, intellectual, moral, emotional or psychological force, either express or implied" to engage in a sexual relationship with Defendant. See 18 Pa. C.S.A. §3101.

2. Sexual Abuse

Pennsylvania defines sexual intercourse in the relevant statute and identifies it as indicative of sexual abuse when coupled with other certain factors ("(A) sexual intercourse, which includes penetration, however slight, of any body part or object into the sex organ of another;" 42 Pa. C.S.A. §5533 (b)(ii)(A). As noted above, Mr. Godlewski has admitted to having sexual intercourse with Ms. DuBorgel and is collaterally estopped from claiming otherwise. See Judge Nealon Opinion at 34-37, which includes the excerpt below.

("In his guilty plea colloquy in Godlewski I, Godlewski admitted that his executed colloquy was a "signed statement," that he "kn[e]w exactly what you are charged with and what you are pleading to," that he understood "that by pleading guilty you are admitting that you did the things you are charged with," that he understood "the elements of the crime charged that you are pleading to," and that he "admit[ted] that you did the above stated act" constituting corruption of a minor. Godlewski I, Docket Entry No. 5 at pp. 1-3. The following clause appears directly above his signature on his guilty plea colloquy:

I affirm that I have read the above document in its entirety and have reviewed it

with my attorney. I affirm that I am aware of the full implications of pleading guilty and nevertheless wish to plead to the specified offense(s). I further affirm that my signature on this Guilty Plea Colloquy and initials on each page of this document are true and correct.

Id. at p. 3. Based upon the truthfulness of Godlewski's attestation, Judge Geroulo accepted Godlewski's guilty plea and sentenced him to three months to 23 months house arrest. Id., Docket Entry No. 17.

It is "well settled that a guilty plea constitutes an admission to all of the facts averred in the indictment," and that a trial court may grant summary judgment based upon such an admission. **Com., Department of Transportation v. Mitchell**, 517 Pa. 203,212,535 A.2d 581, 585 (1987). *Accord.* **Kedra v. Schroeter**, 876 F.3d 424,443 n.14 (3d Cir. 2017); **Linnen v. Arrnainis**, 991 F.2d 1102, 1105 (3d Cir. 1993). A guilty plea is equivalent to and has the same force as a conviction at trial under Pennsylvania law. **McGriff v. Vidovich**, 699 A.2d 797, 800 n.6 (Pa. Cmwlth. 1997), *app. denied*, 553 Pa. 693,717 A.2d 1030 (1998); **Lynch v. Ducasse**, 2020 WL 3547375, at *3 (M.D. Pa. 2020); **Basile v. Township of Smith**, 752 F.Supp.2d 643, 662 n.20 (W.D. Pa. 2010); **DiJoseph v. Vuotto**, 968 F.Supp. 244,247 (E.D. Pa. 1997). Because a "guilty plea is an admission of facts averred in the complaint," it "is conclusive proof of the wrongdoing for which [s]he was charged." **Hawkins v. Unemployment Compensation Board of Review**, 695 A.2d 963,966 (Pa. Cmwlth. 1997), *app. denied*, 553 Pa. 701, 718 A.2d 786 (1998). For that reason, "[a] person determined to be guilty of a crime following . . . a plea of guilty cannot be heard to deny in a civil action that which was established in his prior determination of guilt without proof that his guilt was procured by fraud, perjury, or some manner of error

sufficient to set aside his determination of guilt." **Department of Navy v. Unemployment Compensation Board of Review**, 158 Pa. Cmwlth. 605,623 n.13, 632 A.2d 622, 631 n.13 (1993). See also, Lynch, supra, at *4 (facts admitted in a guilty plea are conclusive admissions in subsequent civil litigation, and the individual who pled guilty is collaterally estopped from denying those admitted facts as uncontroverted for purposes of summary judgment); Moyer v. Allstate Insurance Company, 2010 WL 3328035, at *6 (M.D. Pa. 2010) (person who pled guilty was collaterally estopped from denying his criminal acts that he acknowledged committing); Domitrovich v. Monaca, 2010 WL 3489137, at *5 (W.D. Pa. 2010) (same).

Godlewski claims that Kelly falsely reported that he "pleaded guilty to corruption of minors and admitted to having a sexual relationship with a 15-year-old girl." Based upon the content of Godlewski's text messages which served as the factual basis for the corruption of a minor charge set forth in Criminal Information, and Godlewski's sworn plea to that specific crime in a court of law, both of the foregoing statements made by Kelly in his article are true. As a result of Godlewski's guilty plea to "inappropriate text [m]essages" and "contact" with Ms. DuBorgel, as set forth in the Affidavit of Probable Cause quoting the offending text messages admitting and memorializing a sexual relationship with a 15-year-old minor, **Godlewski is collaterally estopped from denying his participation in a sexual relationship with Ms. DuBorgel in 2010. Mitchell**, 517 Pa. at 212,535 A.2d at 585; **Hawkins**, 695 A.2d at 966; **Lynch, supra**, at *3-4.")

See Exhibit E, Judge Nealon Opinion at p. 34-37.

As it is apparent that Godlewski sexually abused Ms. DuBorgel through forcible compulsion, and that Mr. Godlewski is collaterally estopped from claiming he did not, the

statute of limitations regarding Ms. DuBorgel's claims for Assault, Battery, NIED, and IIED must be extended to thirty-seven (37) years after her eighteenth (18th) birthday in accordance with 42 Pa. C.S.A. §5533 (b)(2)(i).

C. THIS COURT MUST ALLOW DEFENDANT'S COUNTERCLAIMS FOR ASSAULT, BATTERY, IIED, AND NIED TO PROCEED WHERE MORE THAN ENOUGH EVIDENCE IS PRESENT IN THE RECORD TO ALLOW A REASONABLE JURY TO FIND IN FAVOR OF DEFENDANT ON ALL COUNTS.

Candidly, there is no question sufficient evidence exists in the record to allow a reasonable jury to find in favor of Ms. DuBorgel.

Assault and Battery

Under Pennsylvania law, "[a] battery is defined as a 'harmful or offensive contact' with the person of another." CCH v. Philadelphia Phillies, Inc., 596 Pa. 23, 29, fn. 4, 940 A.2d 336, 340, fn. 4 (2008) citing Dalrymple v. Brown, 549 Pa. 217, 701 A.2d 164, 170 (1997). A battery "requires 'no physical injury, but only some contact.'" Piazza v. Young, 403 F.Supp.3d 421, 422 (M.D.Pa. 2019) citing Montgomery v. Bazar-Seghal, 568 Pa. 574, 798 A.2d 742, 749 (2002). A lack of consent is required in proving a battery. ("(T)he matter of permission goes to the quality of the contact, and consent to being so touched is a defense." Montgomery, 568 Pa. at 586, 798 A.2d at 749. See also Levenson v. Souser, 384 Pa.Super. 132, 147, 557 A.2d 1081, 1088 (1989). An assault is "an act intended to put another person in reasonable apprehension of an immediate battery." Cucinotti v. Outmann, 399 Pa. 26, 27, 159 A.2d 216, 217 (1960).

Mr. Godlewski claims that Ms. DuBorgel has not produced evidence sufficient to support a finding of assault. To this end, he first claims that Ms. DuBorgel has not

provided sufficient evidence that Godlewski intended to put her in reasonable apprehension of offensive physical contact. Ms. DuBorgel once again points to the fact that Mr. Godlewski is "collaterally estopped" from claiming sexual intercourse did not occur between the two, and therefore cannot argue that he did not make contact with her.

Moreover, Ms. DuBorgel lacked the ability to consent to such contact, as she was below the age of sixteen (16) at the time of the sexual intercourse. In C.C.H. v. Phila. Phillies, Inc., 596 Pa. 23, the Supreme Court found that a victim under the age of thirteen (13) was incapable of consenting to sexual contact with boys aged between fifteen sixteen (15-16), as the law made it clear she was incapable of consenting to such contact. The Court explains that "by criminalizing sexual contact with minors under 13 irrespective of consent, intended to protect young children as a class from being sexually exploited who, due to their youth or inexperience, lack the judgment necessary to protect themselves from sexual aggressors... Accordingly, we find it consistent with our legislature's intent to protect young children from sexual exploitation, to reject with equal force, in both the criminal and civil contexts, the proposition that an 11-year-old has the capacity to consent to sex." Id.

Likewise, Pennsylvania has criminalized sexual contact between those sixteen (16) years of age and younger, and those four (4) or more years older than the minor. See 18 Pa. C.S. §3122.1. It follows that just as the Court in C.C.H. "reject(s) with equal force, in both the criminal and civil contexts" the proposition that an individual under the age of thirteen (13) can consent to sexual intercourse in any context, an individual under the age of sixteen (16) cannot consent to sexual intercourse with an individual

four (4) or more years older than the individual. Any other interpretation of the law would result in absurd results, as an individual four (4) years older than their less than sixteen (16) year old counterpart would be subject to criminal charges for having sexual intercourse with an individual who consented to sexual intercourse.

As the assault and battery here represent the underlying contact relating to the sexual intercourse between Godlewski and DuBorgel and DuBorgel did not have the capacity to consent to such sexual intercourse, she could have consented to the underlying physical contact. Our courts and our common sense indicate that any contact of a sexual nature without the consent of an individual is highly offense. See Commonwealth v. Grayson, 379 Pa. Super. 55. See also Commonwealth v. Joyner, 2022 Pa. Super. Unpub. LEXIS 1803.

As Mr. Godlewski engaged in sexual intercourse with Ms. DuBorgel, who was incapable of consenting, such contact was, by its nature, offensive. Mr. Godlewski knew that such contact was offensive based on DuBorgel's age, and intentionally initiated the contact anyway. As she was clearly aware that such contact was imminent, Ms. DuBorgel clearly experienced reasonable apprehension of offensive physical contact, constituting an assault. As such contact did, in fact, occur, Ms. DuBorgel endured offensive contact to her person, constituting a battery. As such, sufficient evidence exists in the record to allow a jury to find in favor of Ms. DuBorgel regarding her claims for assault and battery.

Intentional Infliction of Emotional Distress

In order to state a cause of action for IIED, a plaintiff must show the following four elements:

1. extreme and outrageous conduct on the part of the inflictor;
2. intentional or reckless conduct by the inflictor;
3. emotional distress endured by the victim; and
4. the victim's distress must be severe.

See Jordan v. Pennsylvania State University, 276 A.3d 751, 775 (Pa.Super. 2022) citing Madreperla v. Williams Co., 606 F.Supp. 874, 879-80 (E.D.Pa. 1985). Further, "[a] plaintiff must also allege physical manifestations of the distress." Reeves v. Middletown Athletic Ass'n., 866 A.2d 1115, 1122 (Pa.Super. 2004) ("[A] plaintiff must suffer some type of resulting physical harm due to the defendant's outrageous conduct.").

In the instant case, Mr. Godlewski's conduct is extreme and outrageous in nature, evidenced by the text messages included as Exhibit A to DuBorgel's Answer New Matter and Counterclaim, and cited to in DuBorgel's Counterclaim along with additional support regarding Godlewski's extreme and outrageous conduct. See ¶¶67-77 of DuBorgel's Counterclaim. Such conduct was intentional and reckless, as Godlewski intentionally abused and manipulated DuBorgel for the purpose of initiating and/or continuing a sexual relationship with her. See ¶¶67-77 of DuBorgel's Counterclaim.

Mr. Godlewski has done nothing to discount Ms. DuBorgel's claims regarding the context surrounding their sexual relationship. Mr. Godlewski has provided no information that would indicate that the context surrounding their relationship is not disputed, including Ms. DuBorgel's recounting of the facts which indicate that Mr.

Godlewski used the suicide of Ms. DuBorgel's boyfriend as a pretext to initiate a sexual relationship, manipulated Ms. DuBorgel into remaining in the sexual relationship, and threatened to commit suicide if Ms. DuBorgel testified against him. These actions are extreme and outrageous in any context. Mr. Godlewski also had sexual intercourse with a child, which is extreme and outrageous in its own right.

In light of the foregoing, at the very least, an issue of material fact clearly remains as to whether Mr. Godlewski engaged in intentional/or reckless extreme and outrageous conduct. Ms. DuBorgel suffered severe emotional distress as a result, which was acknowledged in ¶79 of DuBorgel's Counterclaim. Specifically, Ms. DuBorgel identifies in ¶79(f) that she suffered "all other injuries and damages from those injuries listed above", which includes physical manifestations of distress. As such, Ms. DuBorgel has provided ample support for a jury to find in her favor regarding her IIED claim. As Defendant has done nothing to discount the injuries Ms. DuBorgel suffered as a result of his actions, an issue of material fact exists in this regard as well. As such, Ms. DuBorgel's IIED claim must be allowed to proceed.

Negligent Infliction of Emotional Distress

The Supreme Court of Pennsylvania acknowledges in relevant part that Pennsylvania courts have limited a cause of action based on NIED to four theories of recovery. In order recover, a plaintiff must prove one of these four theories, three of which are relevant here: "(1) that the Defendant had a contractual or fiduciary [relationship with Plaintiff]; (2) that Plaintiff suffered a physical impact; that Plaintiff was in a 'zone of danger' and at risk of an immediate physical injury." Toney v. Chester County Hosp., 614 Pa. 98.

Additionally, the Supreme Court identifies that "it (is) prudent to limit the reach of this NIED claim to preexisting relationships involving duties that obviously and objectively hold the potential of deep emotional harm in the event of breach." Id. The same Court acknowledges that, "the special relationships must encompass an implied duty to care for the plaintiff's emotional well-being." Id. Further, the Supreme Court noted that it is "prudent to leave the legal question of whether a sufficient duty exists to our trial judges to decide on a case-by-case basis" Id.

In the instant case, Mr. Godlewski acknowledged in his own words that he took on the role of a grief counselor for Ms. DuBorgel following the death of her boyfriend in addition to his role as an employee at her high school. See ¶¶82-84 of DuBorgel's Counterclaim.

The Supreme Court chose not to develop an exhaustive list of special relationships that may exist, and chose instead to allow the trial courts to consider on a case-by-case basis whether such a relationship exists. Id. Mr. Godlewski took it upon himself to take on the role of a grief counselor for a fifteen (15) year old girl who was mourning the loss of her boyfriend, who had recently committed suicide. See ¶84 of DuBorgel's Counterclaim. Mr. Godlewski took this role on at a point when Ms. DuBorgel was emotionally and mentally unstable, and developed a relationship with her that would "obviously and objectively hold the potential of deep emotional harm in the event of breach." Id.

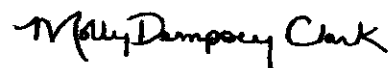
Mr. Godlewski took on the duty of being a grief counselor, (see ¶84 of DuBorgel's Counterclaim), breached that duty by using the relationship to sexually abuse Ms. DuBorgel (see ¶¶67-85 of DuBorgel's Counterclaim), and by using the threat of suicide

as a way to manipulate Ms. DuBorgel (see ¶¶67-85 of DuBorgel's Counterclaim), caused severe emotional damage to Ms DuBorgel by sexually abusing and manipulating her (see ¶79 of DuBorgel's Counterclaim), and Ms. DuBorgel has been permanently damaged both mentally and emotionally as a result (see ¶79 of DuBorgel's Counterclaim). Further, Ms. DuBorgel was physically impacted by Mr. Godlewski's actions, as he made offensive physical contact with the her. In addition, Ms. DuBorgel was the intended victim of the harm caused by Plaintiff, placing her directly in the "zone of danger."

As a result, Mr. Godlewski negligently inflicted emotional distress upon the Ms. DuBorgel by developing and breaching a special relationship with her, causing severe mental and emotional damage manifesting in physical symptoms, and placing her directly within the zone of danger. As Defendant has done nothing to discount Ms. DuBorgel's claims, an issue of material fact exists as to whether Mr. Godlewski acted in a manner consistent with Ms. DuBorgel's statements.

Respectfully submitted,

FELLERMAN & CIARIMBOLI LAW, PC



By: _____

EDWARD J. CIARIMBOLI, ESQUIRE

MOLLY DEMPSEY CLARK, ESQUIRE

Attorneys for the Defendant

Date: November 12, 2024

EXHIBIT "A"

Court of Common Pleas of Lackawanna County

FORMERLY
MADRID
LACKAWANNA COUNTY

2021 MAY 24 P 2:30

CLERK OF JUDICIAL RECORDS CIVIL DIVISION
Docket Number:

21CV
2195

Civil Cover Sheet

Plaintiff's Name PHILIP GODLEWSKI	Defendant's Name CHRIS KELLY
Plaintiff's Address 115 Huckleberry Lane, Duryea, PA 18642	Defendant's Address 149 Penn Avenue, Scranton, PA 18503
Plaintiff's Name	Defendant's Name TIMES-SHAMROCK COMMUNICATIONS
Plaintiff's Address	Defendant's Address 149 Penn Avenue, Scranton, PA 18503
Plaintiff's Name	Defendant's Name THE SCRANTON TIMES-TRIBUNE
Plaintiff's Address	Defendant's Address 149 Penn Avenue, Scranton, PA 18503
Total Number of Plaintiffs 1	Total No. of Defendants 4
Commencement of Action <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer from other Jurisdiction	
Amount of Controversy In Excess of Jurisdictional Amount? Yes ___ No ___	Court Programs <input type="checkbox"/> Arbitration <input type="checkbox"/> Jury <input checked="" type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Statutory <input type="checkbox"/> Appeals <input type="checkbox"/> Other
Case Type and Code (See Instructions) TORT/LS	
Statutory Basis for Cause of Action (See Instructions) 42 Pa.C.S.A. §§ 8341-8345, 42 Pa.C.S.A. §§ 8341-8345, 42 Pa.C.S.A. §§ 8341-8345	
Remarks:	
TO THE CLERK OF JUDICIAL RECORDS: Please enter my appearance on behalf of Plaintiff: Papers may be served at the address set forth below:	
NAME OF PLAINTIFF'S ATTORNEY OR PROSE PLAINTIFF Timothy M. Kolman	ADDRESS 414 Hulmeville Ave, Penndel, PA 19047
PHONE NUMBER (215)-750-3134	FAX NUMBER (215)-750-3138
SUPREME COURT IDENTIFICATION NO. 51982	E-MAIL ADDRESS TKolman@kolmanlaw.com
SIGNATURE /s/ Timothy M. Kolman	DATE May 18, 2021

Civil Cover Sheet Additional Parties

Plaintiff's Name	Defendant's Name LARRY HOLEVA
Plaintiff's Address	Defendant's Address 149 Penn Avenue, Scranton, PA 18503

TO DEFENDANT: YOU ARE HEREBY
NOTICED TO PLEAD TO THE ENCLOSED
COMPLAINT WITHIN TWENTY (20) DAYS
FROM SERVICE HEREOF OR A JUDGMENT
MAY BE ENTERED AGAINST YOU.

MAURICE J. KELLY
LACKAWANNA COUNTY
2021 MAY 20 10 30 AM
CLERK OF JUDICIAL
RECORDS CIVIL DIVISION


Timothy M. Kolman, Esquire

KOLMAN LAW P.C.
Timothy M. Kolman, Esquire
414 Hulmeville Avenue
Penn del, PA 19047
(215) 750-3134

Attorneys for Plaintiff
Philip Godlewski

PHILIP GODLEWSKI
115 Huckleberry Lane
Duryea, PA 18642

Plaintiff

v.

CHRIS KELLY
149 Penn Avenue
Scranton, PA 18503

and

**TIMES-SHAMROCK
COMMUNICATIONS**
149 Penn Avenue
Scranton, PA 18503

and

THE SCRANTON TIMES-TRIBUNE
149 Penn Avenue
Scranton, PA 18503

and

IN THE COURT OF COMMON PLEAS
FOR LACKAWANNA COUNTY

NO.

CIVIL ACTION

LARRY HOLEVA
149 Penn Avenue
Scranton, PA 18503

Defendants

COMPLAINT

Plaintiff, Philip Godlewski (“Plaintiff or Mr. Godlewski”), by and through his undersigned counsel, Kolman Law P.C., hereby avers as follows:

I. PRELIMINARY STATEMENT

1. Mr. Godlewski brings this action for libel and libel per se, by violations of Uniform Single Publication Act, 42 Pa.C.S.A. §§ 8341–8345 and for false light and intentional interference with his contractual relationships, all of which arise out of the Defendants’ false, defamatory, and malicious article, published in the Scranton Times Tribune on February 14, 2021, attached herein as Exhibit A, and demands \$5 million in damages. On that day, the Scranton Times-Tribune wrote, among other defamatory slurs, that Mr. Godlewski had had sex with a 15-year-old in 2011. The article was malicious in both tone and substance, stating that Mr. Godlewski was a “purveyor of a poison that has curdled the hearts and minds of millions who may never recover.” Further, Defendants juxtaposed their defamation by associating the Plaintiff with ‘the secessionist mayhem that resulted in five deaths’ when the Capitol was stormed. Finally, the Defendants slurred the professional reputation of Mr. Godlewski as a Realtor making it clear to any reader that he was unreliable, unethical, and misrepresented, for his own interests, the properties he sold. In fact, the opposite is the case. Mr. Godlewski has always been a top producer of property sales in the Luzerne/Lackawanna area and had, until the Defendants destroyed it, an excellent reputation of ethics, responsibility, and care for his clients

II. PARTIES

2. Mr. Godlewski is a private citizen and adult individual with a residence in the Commonwealth of Pennsylvania located at 115 Huckleberry Lane, Duryea, Pennsylvania 18642. For the purposes of this complaint, by virtue of his large following, Mr. Godlewski is a public figure.

3. Defendant Chris Kelly is an adult individual and a journalist employed by the Scranton Times-Tribune who works at 149 Penn Avenue, Scranton, PA 18503.

4. Defendant Times Shamrock Communications is the owner and publisher of the Scranton Times-Tribune and located at 149 Penn Avenue, Scranton, PA 18503.

5. Defendant, the Scranton Times Chronicle, is the newspaper in which the defamatory article appeared and is located at 149 Penn Avenue, Scranton, PA 18503.

6. Defendant Larry Holeva, is an adult individual and an executive editor employed by the Scranton Times-Tribune and who works at 149 Penn Avenue, Scranton, PA 18503 and who, on information and belief was the editor who decided, along with Defendant Kelly, to run the 'story.'

III. JURISDICTION AND VENUE

7. Jurisdiction over the parties in the Courts of the Commonwealth of Pennsylvania is proper pursuant to the provisions of 42 Pa.C.S. § 5301 et seq. Defendants carry on a continuous and systematic part of their general business within the Commonwealth and transact business in the Commonwealth. Defendants have caused harm and tortious injury to Mr. Godlewski in the Commonwealth by their acts in the Commonwealth, to wit, by making publishing and making public defamatory statements which were published in the greater Scranton area and beyond.

8. Venue is proper in the Court of Common Pleas of Lackawanna County under Pennsylvania Rule of Civil Procedure 1006(a) and Pennsylvania Rule of Civil Procedure 2179, in as much as Lackawanna County is the place where Defendants regularly conduct business, and inasmuch as the occurrences out of which Mr. Godlewski's cause of action arises, to wit, publication of Defendants' false and defamatory statements about him took place in Lackawanna County, Mr. Godlewski felt the brunt of the harm in Lackawanna County and Defendants' defamatory statements had and continue to have the most significant impact in Lackawanna because Mr. Godlewski lives and works in Lackawanna County.

IV. FACTUAL BACKGROUND

A. Mr. Godlewski's Reputation as a Commercial and Residential Realtor

9. Mr. Godlewski is a Certified Realtor and Broker who worked for Era Elite Real Estate Team until he was terminated because of the defamatory article written and published by the Defendants.

10. Mr. Godlewski is married with three children and made his reputation as a Realtor by being trustworthy, reliable, and knowledgeable.

11. Specifically, by virtue of his extensive knowledge, Mr. Godlewski sold real estate in very desirable neighborhoods in Lackawanna and Luzerne Counties.

12. Since 2007, he has been one of the top producing agents in the Greater Scranton Board of Realtors garnering many awards due to his personal and business achievements.

13. Mr. Godlewski has been a multimillion-dollar seller of real estate sales each and every year, the status he has achieved by discharging the highest ethical standards and always putting his client's interests first.

14. In addition to residential real estate, Mr. Godlewski has also sold a significant number of commercial properties each year.

B. Defendants' Libelous References to Mr. Godlewski as a Realtor

15. On February 14, 2021, journalist Chris Kelly who accurately describes himself as "an old-school muckraker," wrote an article about Mr. Godlewski headed "QAnon Realtor sells rabbit holes on YouTube."

16. Defendant Kelly, by virtue of this heading alone, deliberately associated the selling of "rabbit holes," thereby undermining Mr. Godlewski's integrity as a realtor.

17. In stating that Mr. Godlewski was selling rabbit holes on YouTube, coupled with the cartoon of a real estate sign on top of which was written "RABBIT HOLE FOR SALE!" and beneath were the words UNREAL-TOR, clearly referring to Mr. Godlewski.

18. Defendants implied that Mr. Godlewski sold valueless or devalued real estate, misrepresenting his infantry to unsuspecting clients and was therefore, not be trusted as a realtor. This cartoon is hereto attached and incorporated as Exhibit A.

19. Further, the diagram in the center of the sign represents QAnon.

20. Despite being totally irrelevant, the Defendants gratuitously, maliciously, unnecessarily, and inextricably linked Mr. Godlewski's professional integrity to his alleged political views using the latter to impugn his integrity as a Realtor, as set out in more detail *infra*.

C. Mr. Godlewski As a Purveyor of Poison and an Organizer and/or a Participant in the Attack on the Capitol

21. The article also referred to Mr. Godlewski as "a purveyor of poison that has curdled the hearts and minds of millions who may never recover."

22. The term “purveyor of poison” casts Mr. Godlewski as a supplier, seller, or source of poison who, according to the article, has irreparably damaged “the hearts and minds of millions.”

23. Despite not having one wit of evidence that Mr. Godlewski’s views and opinions have irreparably damaged anyone, Defendants nonetheless state this is a fact.

24. Mr. Godlewski, therefore, is cast by the Defendants as a one-man destroyer of men and women children and families.

25. Further, despite stating that Mr. Godlewski was not at the Capitol on January 6, 2021, the date of the insurgency, Defendants tab Mr. Godlewski as, not only a supporter, but an active participant and organizer.

26. Specifically, Defendants’ article reads, “The Capitol riot is empirical evidence that we ignore this insidious war on truth at our peril. Despite the demolition of all its so-called prophecies, the Q. movement marches on. Godlewski happily calls out the cadence.”

27. The prior paragraph to this reads: “The new video of the seditionist mayhem that resulted in 5 deaths and the airtight case made by the House managers convinced me we can’t afford to ignore citizens of a separate reality who act, organize and seek to undermine and up and objective reality.”

28. By virtue of this juxtaposition, and specifically “in calling out the cadence” the Defendants place Mr. Godlewski at the heart of what the Defendants described as “seditionist mayhem that resulted in 5 deaths.”

29. In other words, Mr. Godlewski is, according to the clear implication of the article, integrally involved in the unlawful assault on the Capitol and is part of a conspiracy to overthrow the United States government by force and is thus a “seditionist.”

30. Sedition is a serious felony punishable by fines and up to 20 years in prison and it refers to the act of inciting revolt or violence against a lawful authority with the goal of destroying or overthrowing it.

31. As stated, Mr. Godlewski was not at the Capitol on January 6, 2021, as acknowledged by the Defendants in their article.

32. Determined however, in any way to link Mr. Godlewski to the riots Defendants by juxtapose a post on Mr. Godlewski's Facebook page with the false assertion that Mr. Godlewski directly participated in the insurgency.

33. To accomplish this, the article reads in relevant part, "Shortly after the mob stormed into the Peoples house, Godlewski posted on Facebook that Vice President Mike Pence had been arrested."

34. Defendants directly imply that Mr. Godlewski was a willing participant and/organizer in an ongoing felonious criminal conspiracy to bring down the United States government by force.

35. This is not an opinion. Defendants cast themselves as the arbiter of "objective reality on a mission against the insidious war on truth."

36. As stated, Defendants place Mr. Godlewski at the very heart of the insurrection by the false statement that he was counting the cadence on behalf of the insurgents.

D. Mr. Godlewski's Interview with Defendant Kelly

37. Defendants apparent excuse for their libel, as if it can ever be excused, is that Mr. Godlewski did not make himself available for an interview.

38. In this regard, the article states in relevant part “this is the epitome of the self-fulfilling prophecy. Godlewski refuses to engage me as an admitted critic, ensuring that my report will be one-sided.”

39. Defendant Kelly makes two things clear: first that the article is one-sided and two that Mr. Godlewski is responsible because he did not give an interview.

40. However, as if to highlight his own disingenuousness of Defendant Kelly blatantly contradicts himself, writing in a later sentence that the exchange of texts between him and Kelly “soon became a sporadic exchange of messages that amounted to an interview.”

41. Aside from the fact that a refusal to engage in an interview is never a consent to be libeled, in this case Defendants’ admit that they got their interview with Mr. Godlewski interview through text messaging.

E. Mr. Godlewski As a Sexual Predator

42. Defendants also accuse Mr. Godlewski of having a sexual relationship with a 15-year-old pursuant to a criminal matter which occurred in 2011.

43. The reason why the Defendants included this was because Defendant Kelly allegedly just “stumbled upon it” and considered it relevant to “Godlewski’s credibility.”

44. Defendants justify bringing this issue up by stating that it had been previously published in the Times-Tribune and that Lackawanna detectives had said Mr. Godlewski had had sex with a 15-year-old girl in cars and homes.

45. Having now written as fact that Mr. Godlewski did have sex with a 15-year-old girl, the Defendants write, immediately thereafter, in the next phrase, “Godlewski... was sentenced to 3 to 23 months...”

46. Defendants, through juxtaposition of these two phrases make it appear that Mr. Godlewski actually pled guilty to having had sex with the underage girl and was sentenced to 3 to 23 months.

47. Significantly, Defendant Kelly could not have “stumbled upon” the fact that Mr. Godlewski had sex with a fifteen-year-old girl, because that never happened.

48. Mr. Godlewski never pled guilty to having sex with an underage girl because he never had sex an underage girl.

49. Notably, Defendant Kelly “as an old-fashioned muckraker” could have checked the public record, wherein he would have learned (if he did not already know) that Mr. Godlewski is not, and has not been, listed as a sexual predator.

50. Further, Mr. Godlewski never spent any time in jail.

51. If Defendant Kelly had been an honest journalist, and not a muckraker, he would have also ‘stumbled upon’ the article which reported that Mr. Godlewski’s pled to a misdemeanor.

52. Further, if the Defendants were actually interested in the truth, they could have directly asked (or texted) Mr. Godlewski as to what happened in court and what the outcome was.

53. Defendant Kelly, as if out of the goodness of his heart and because he wishes his readers to know he is a decent man, allegedly gave Mr. Godlewski a heads-up that he was going to refer to the July 2011 conviction because, according to him, he did not wish Mr. Godlewski to be “blindsided.”

54. However, Mr. Godlewski was completely blindsided because what Defendant Kelly wrote was false and Mr. Godlewski never got the heads-up opportunity, prior to publication, to correct or point out the article’s blatant falsehoods.

55. Instead, Defendant Kelly deliberately conflated the charges against Mr. Godlewski of having sex with a girl, with his plea to a misdemeanor charge for corruption of minors.

56. In other words, the Defendants, by willful juxtaposition of the two phrases deliberately made it seem as if Mr. Godlewski pled to the charge of "corruption of minors" because he had sex with a 15-year-old girl.

57. The Lackawanna detectives and the Times Tribune who allegedly reported that Mr. Godlewski had sex with a 15-year-old girl, were referring not to convictions but only to the charges which had been filed against him.

58. At the time of that report, charges against Mr. Godlewski were only pending and at that time, as far as the law was concerned, Mr. Godlewski was entirely innocent of all the charges against him.

59. Defendant Kelly, however, references the Lackawanna detectives and the Times Tribune to make it appear that Mr. Godlewski was either guilty of having sex with an underage girl or had been found guilty.

60. Defendant Kelly never makes it clear that the Lackawanna detectives and the Times Tribune were referring only to the charges against Mr. Godlewski and not to the outcome of the case.

61. There is nothing in Mr. Godlewski's criminal record which indicates, relates and/or references to Mr. Godlewski pleading guilty to having had sex with a 15-year-old girl, or any other underage girl.

F. The Actual Malice of the Defendants

62. The reporting as fact, by the Defendants, that Mr. Godlewski did have sex with a 15-year-old girl, is in accordance with the entire article which takes every opportunity to slur Mr.

Godlewski's reputation in every way possible, accusing him of sedition and criminal conspiracy, accusing him of him of child molestation and statutory rape and accusing him of fraudulently selling real estate.

63. The true purpose of Defendants' article is to destroy Mr. Godlewski because of Mr. Godlewski's political views to which Defendant Kelly has a visceral, unhinged, and hysterical reaction.

64. Defendant Kelly therefore sets aside all objectivity and professionalism and uses his journalistic skills in order to smear Mr. Godlewski in every way possible.

65. Indeed, Defendant Kelly begins his article by not even referring to Mr. Godlewski as a private person but references him as a "Clark's Summit-based Realtor" when in fact, his profession as a real estate broker has absolutely nothing to do with his political views and is not and never has been, a part of his YouTube presentation.

66. Kelly again refers to Mr. Godlewski's profession as a realtor in the next paragraph and makes certain all the readers are informed where Mr. Godlewski lives, even though where he lives is irrelevant and given the incendiary nature of the defamatory article, actually puts Mr. Godlewski in danger.

67. Defendant Kelly believes that he, and the other defendants, can avoid the accusation of malice by stating that he wishes Mr. Godlewski "no ill will."

68. However, Defendants' article seethes with of ill will.

69. For example, Defendants described Mr. Godlewski as a "purveyor of poison that has curdled the hearts and minds of millions who may never recover."

70. There is no factual evidence that Mr. Godlewski has ever been a purveyor of any poison let alone curdled the hearts and minds of millions who may never recover.

71. Even if not taken literally, Defendants accuse Mr. Godlewski, without any factual basis whatsoever, of permanently injuring millions of people.

72. The Defendants also impute a leadership/organizer role to Mr. Godlewski in the "seditionist mayhem" that "resulted in 5 deaths" when the Capitol was ransacked because Mr. Godlewski called "out the cadence."

73. According to the article, Mr. Godlewski called out the cadence which kept the rioters attacking, ransacking, and vandalizing the Capitol just as a military cadence keeps soldiers marching or running as one.

74. By making Mr. Godlewski an integral part of the Capitol insurgency, the article labels Mr. Godlewski, not just as a seditionist insurgent and a traitor to his country, but also a murderer, complicit in the deaths of five persons.

75. Defendants justify referencing Mr. Godlewski's case from 10 years ago case by arguing that it was relevant to Mr. Godlewski's credibility but there is neither an allegation nor finding that in the 2011 case, Mr. Godlewski did not tell the truth.

76. The Defendants' justification in bringing up Mr. Godlewski's case is bogus, malicious and in keeping with the Defendant's aim of denigrating Mr. Godlewski's reputation.

77. Defendants also refer to current criminal charges against Mr. Godlewski, as if Mr. Godlewski had already been convicted of them. However, these charges are not convictions and have no bearing on Mr. Godlewski's "credibility."

78. Defendants referred to both cases for the sole purpose of blackening Mr. Godlewski's character, by maliciously conflating the criminal charges against Mr. Godlewski, with actual convictions in order to persuade the average reader into believing that Mr. Godlewski did everything he was charged with.

79. In any event, these charges have no possible relevance to Mr. Godlewski's political views.

80. Defendants openly accuse Mr. Godlewski "inciting a mob overthrow the government," specifically implying he was doing it in front of an army of photojournalists while carrying a location pinging cell phone.

81. Mr. Godlewski, according to Defendants, bears some responsibility for the "millions of Americans who have lost parents, siblings, children and friends to the QAnon cult."

82. This accusation, along with the declaration that Mr. Godlewski is a "purveyor of poison" casts Mr. Godlewski as a quasi-cult figure breaking up families by permanently taking their parents, siblings, children, and friends.

83. Mr. Godlewski, therefore, was according to the Defendants Mr. Godlewski leading them down the "rabbit holes from which they may never return."

84. Once again, there is absolutely no factual basis to the bogus accusation that Mr. Godlewski disrupted and destroyed families or indeed that he led millions down a metaphorical rabbit hole which they will never return.

85. Further, as stated, Defendants have tabbed Mr. Godlewski as the "seller" of these "rabbit holes," in accordance with their systematic intent of ruining his hard-won professional reputation.

86. Defendants managed to convey to the average reader that Mr. Godlewski is an unprofessional, irresponsible, fraudulent, and unreliable realtor when he is just the opposite.

87. As stated, Defendants' entire article slurs, degrades demeans and libels Mr. Godlewski's reputation in every way possible by writing that he is a seditionist, traitor, a felonious murderer, a poisoner, a permanent destroyer of millions of lives and a criminal conspirator who is

also a child molester and statutory rapist and who fraudulently sells real estate to unsuspecting buyers.

88. Defendants published its article either knowing that the specific statements within, as referenced supra were false or with reckless disregard of their falsity.

G. Mr. Godlewski Is a Private Figure of the Standpoint of Defendants' Defamation

89. With respect to his political views, Mr. Godlewski is a public figure, expressing these views to thousands of people on YouTube, but that is not where defamation lies.

90. Mr. Godlewski has been defamed in his profession as a realtor in which he functions as a private individual.

91. Mr. Godlewski also remains a private figure with respect to criminal charges which were brought against him and any plea agreement does not transform him into a public figure in that respect.

92. Mr. Godlewski's reputation, moral character and integrity are also protectable by him as a private individual.

93. Notably, even if Mr. Godlewski was a public figure, he is able to show actual malice on the part of the Defendants.

COUNT 1

**Defamation by Imputation of Crimes Mr. Godlewski Never Committed
Violation of the Uniform Single Publication Act, 42 Pa.C.S.A. §§ 8341-8345**

94. The foregoing paragraphs are incorporated herein as if set forth at length.

95. Although Defendants, as journalists, have a conditional First Amendment privilege with respect to what they publish, they abused that conditional privilege by printing falsehoods about Mr. Godlewski.

96. Defendants wrote that Mr. Godlewski had had sexual intercourse with a 15-year-old girl in 2011.

97. This was untrue.

98. This article was published by the Defendants.

99. The entire article referred to Mr. Godlewski.

100. Any average person reading the article would understand its defamatory meaning.

101. The average person reading the article would also know that the article applied only to Mr. Godlewski.

102. Mr. Godlewski suffered special harm, as set out in more detail below, as a consequence of the publication of the defamatory article.

103. The statements as fact, that Mr. Godlewski had sexual intercourse with and underage 15-year-old girl blackened his reputation, exposed him to public hatred and grievously injured him in the community of respectable society.

104. Defendants are therefore liable against Mr. Godlewski for defamation per se.

WHEREFORE, the Plaintiff requests the relief set forth below.

COUNT 2

Defamation for Blackening Mr. Godlewski's Reputation as a Realtor Violation of the Uniform Single Publication Act, 42 Pa.C.S.A. §§ 8341-8345

105. The foregoing paragraphs are hereto incorporated as if set forth at length.

106. Defendants publication of the article blackens the reputation of Mr. Godlewski in his profession as a Realtor.

107. Defendants willfully impugned Mr. Godlewski's business reputation as a Realtor directly and by innuendo and with reckless regard to the truth, gratuitously, unnecessary, and maliciously referring to his profession as a Realtor.

108. The article can be interpreted defamatory because it likened Mr. Godlewski's sales of his properties to "RABBIT HOLES."

109. The article demeaned Mr. Godlewski by referring to him as an "UN-REALTOR."

110. The article implied that because Mr. Godlewski had been involved in QAnon, he was, among other things, a violent, felonious poisoner of hearts and minds and *ipso facto*, not fit to sell real estate to anyone.

111. The article depicted Mr. Godlewski as a child molester with no credibility.

112. Defendants' depictions of Mr. Godlewski were false and untrue.

113. Mr. Godlewski enjoyed an excellent, trustworthy reputation as a Realtor prior to Defendants' article which completely ruined it and resulted in a loss of his job.

114. Defendants statements and innuendo have blackened Mr. Godlewski's professional and business reputation and exposed him to public hatred and grievously injured him in the community of respectable society and injured his business and professional status.

115. Defendants are therefore liable against Mr. Godlewski for defamation per se.

WHEREFORE, the Plaintiff requests the relief set forth below.

COUNT 3

**Defamation by Innuendo by Directly Associating Mr. Godlewski with the
Insurgency on the Capitol on January 6, 2021
Violation of the Uniform Single Publication Act, 42 Pa.C.S.A. §§ 8341-8345**

116. The foregoing paragraphs are hereto incorporated as if set forth at length.

117. Because Mr. Godlewski was apparently counting the cadence when the insurgents stormed the Capitol, Defendants placed Mr. Godlewski at the heart of the insurgency as an organizer, activist, leader, coordinator, director, and planner.

118. He was never any of those things.

119. Because Mr. Godlewski was, according to the Defendants so involved with the insurgency, Defendant Kelly rhetorically asked in the article why Mr. Godlewski had not actually been at the Capitol building showing himself before a bevy of cameras and using a cell phone which pinged his exact location.

120. Defendants by virtue of the foregoing and, as set forth in more detail *supra*, dubbed Mr. Godlewski a traitor, a murderer, a felonious insurgent, and critical and integral participant in the criminal conspiracy to storm the Capitol building.

121. Mr. Godlewski was never any of those things.

122. Defendants, by virtue of the foregoing, maliciously blackened Mr. Godlewski's reputation directly and by innuendo, grievously fracturing his standing in the community of respectable society and exposing him to public hatred.

123. Defendants are therefore liable against Mr. Godlewski for defamation per se.

WHEREFORE, the Plaintiff requests the relief set forth below.

COUNT 4

False Light Invasion of Privacy

124. The foregoing paragraphs are hereto incorporated as if set forth at length.

125. Defendants, by way of their conduct, as set forth herein above, placed Mr. Godlewski in a false light which would be highly offensive to a reasonable person.

126. Defendants had knowledge or acted in reckless disregard as to the falsity of the publicized matters and the consequent false light in which Mr. Godlewski would be placed.

127. Defendants article contained major misrepresentations of Mr. Godlewski's character, history, activities, and beliefs that serious offense could reasonably be expected to be taken.

128. The actions of the Defendants against Mr. Godlewski were done with actual malice. WHEREFORE, the Plaintiff requests the relief set forth below.

COUNT 5

Intentional Interference with Mr. Godlewski's Contractual Relations

129. Defendants specifically and gratuitously referenced Mr. Godlewski's profession as a Realtor, even though such reference was irrelevant.

130. The Defendants referenced where Mr. Godlewski was employed as a realtor.

131. The Defendants wrote their defamatory article, knowing its content would have a detrimental effect on Mr. Godlewski's business and personal reputation and therefore also, on his ability to make a living as a Realtor.

132. The allegations Defendants made against Mr. Godlewski were false and unjustified.

133. Defendants article was written without justification, to hurt Mr. Godlewski in every way it could including intentionally harming his relationship with his then, current employer.

134. As a direct consequence of the article, Mr. Godlewski was terminated from his position as a Realtor.

WHEREFORE, the Plaintiff requests the relief set forth below.

COUNT 5

Intentional Interference with Mr. Godlewski's Prospective Contractual Relations

135. Defendants specifically and gratuitously referenced Mr. Godlewski's profession as a Realtor, even though that reference was irrelevant.

136. The Defendants pejoratively and gratuitously referred to Mr. Godlewski's as a Realtor.

137. The Defendants wrote their defamatory article, knowing that it would have a detrimental effect on Mr. Godlewski's prospective business and therefore also, on his ability to make a living as a Realtor in the future.

138. The allegations Defendants made against Mr. Godlewski were false and unjustified.

139. Defendants article was written without justification and to hurt Mr. Godlewski in every way it could, including but not limited to, its intention to harm Mr. Godlewski in his prospective contractual relationships with potential real estate clients and other realtors.

140. As a direct consequence of the article, Mr. Godlewski will be affected adversely in in his prospective contractual relationships.

WHEREFORE, the Plaintiff requests the relief set forth below.

AD DAMNUM CLAUSE/PRAAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter judgment in his favor against Defendant and that it enter an Order as follows:

- a. Defendants are to compensate the Plaintiff in the amount of \$5 million for the actual and special damages they have caused to the Plaintiff by virtue of their vicious conduct.
- b. Plaintiff is to be awarded out-of-pocket expenses due to the defamation and for injury done to his reputation and for any other injury of which the libel is the legal cause.
- c. Plaintiff is to be awarded liquidated and/or punitive damages as permitted by applicable law, in an amount set forth by statute and/or believed by the Court or trier of fact to be appropriate to punish Defendants for their defamatory conduct.

- d. Plaintiff is to be afforded any and all other equitable and legal relief as the Court deems just, proper, and appropriate.
- e. Plaintiff is to be awarded the costs and expenses of this action and reasonable legal fees as provided by applicable state law.
- f. The Court is to maintain jurisdiction of this action after verdict to ensure compliance with its Orders therein.

Respectfully Submitted,

KOLMAN LAW, P.C.



Timothy M. Kolman, Esquire

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Penndel, PA 19047

(215) 750-3134

Attorney for Plaintiff

Dated: May 19, 2021

EXHIBIT A

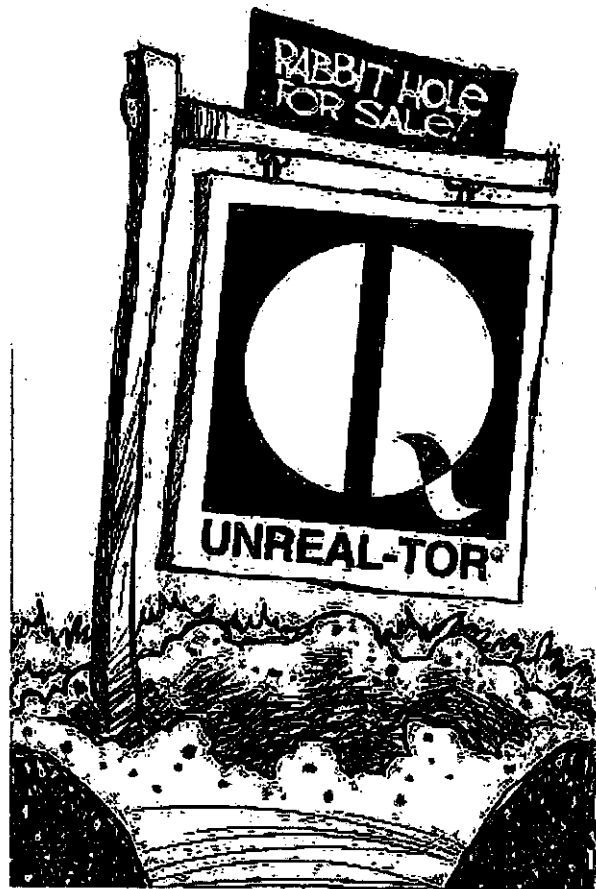
https://www.thetimes-tribune.com/opinion/columnists/chris-kelly/chris-kelly-qanon-realtor-sells-rabbit-holes-on-youtube/article_obff9566-5089-5f5f-aa94-464021807972.html

FEATURED

Chris Kelly: QAnon Realtor sells rabbit holes on YouTube

KELLY'S WORLD

Feb 14, 2021



One of the QAnon movement's most devoted dead-enders is a Clarks Summit-based Realtor who insists Donald Trump is still president and working behind the scenes to depose Joe Biden, impose martial law and bring final justice to elected Democrats and other Satanic child sex traffickers who unwind after a long day of evildoing with a glass of baby blood.

Over the past year or so, many readers have alerted me to the online proselytizing of Phil Godlewski, who lives in Duryea but sells homes under the name of a national real estate franchise. He sells QAnonsense to thousands of followers around the globe on a host of platforms, including a YouTube channel with more than 26,000 subscribers.

Ad removed. [Details](#)

I've reported on a few local manifestations of QAnonsense, but avoided Godlewski because I don't want to give unwarranted attention to a purveyor of a poison that has curdled the hearts and minds of millions who may never recover.

Watching the second impeachment trial of Donald Trump changed my mind. There were many Q followers in the mob of domestic terrorists who ransacked the Capitol on Jan. 6. They came from cities, towns and neighborhoods across the country. They are our neighbors, friends and family. They are Americans.

The new video of the seditionist mayhem that resulted in five deaths and the airtight case made by the House managers convinced me we can't afford to ignore citizens of a separate reality who act, organize and seek to undermine and upend objective reality.

The Capitol riot is empirical evidence that we ignore this insidious war on truth at our peril. Despite the demolition of all its so-called prophecies, the Q movement marches on. Godlewski happily calls out the cadence.

In a text message, Godlewski told me he wasn't at the Capitol on Jan. 6, but he showed up in USA Today's coverage of the riot. Shortly after the mob stormed into the People's House, Godlewski posted on Facebook that Vice President Mike Pence had been arrested.

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It was a lie. Godlewski didn't return the newspaper's request for comment. He has since been banned from Facebook and Twitter, but somehow is still welcome on Instagram and YouTube. A reader sent me a link to one of his latest YouTube offerings.

"I want someone to answer for me one question, logically," Godlewski said to his audience. "I want a really good explanation. Why would (Trump) walk away? Why, why would Donald Trump walk away? He knows there's election fraud. He has the proof. He has them nailed to the wall and there's no doubt about that."

The self-proclaimed "patriot reporter" went on to cite widely debunked claptrap as proof the election was stolen and argued that Trump's failure to use the Insurrection Act and a host of other powers the presidency does not grant to stay in power is actually part of a grand, hidden strategy we mere mortals can't begin to comprehend.

This is the paradox of every crackpot conspiracy theory. When nothing makes sense, it's because you don't know everything — yet. Keep believing and all will be revealed. The "Great Awakening" is always just a little further down the rabbit hole.

There is no room for doubt in the QAnon cult. Adherents believe that "Q" is a mysterious individual (or group of them) with a high-level security clearance. Q is privy to a "plan" by Trump to round up and execute the Satanic vampire pedophiles in a sweeping cataclysm called "The Storm," which will lead to a "Great Awakening."

Ashli Babbitt, the Air Force veteran tragically shot and killed by a Capitol Police officer as she climbed through a smashed window, believed she was participating in The Storm. Her belief killed her just as sure as the bullet that brought her down.

I wanted to answer the question Godlewski posed in his video, so I reached out and proposed an interview. He declined. I suggested he record our discussion, as Andrew Torba — CEO of the **Do This Instead of Cleaning Gutters (It's Genius)** Clarks Summit-based right-wing antisocial media platform Gab — did a few weeks ago. No go.

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"All of the things I say will be dissected into oblivion, and only the 'crazy sounding' things will make the article," Godlewski texted. "It'll ultimately be painted to make me look insane, and my family will ultimately suffer in the future. I can't take that chance."

I texted back in what soon became a sporadic exchange of messages that amounted to an interview:

"I've been watching your videos and I have to ask: Do you really believe the things you say, or are you just in it for the attention? If the former, why not defend your beliefs on the record? If the latter, why pass on an opportunity to showcase yourself?"

Godlewski's response:

"I couldn't care less about attention. The reporting I do is because the average American Citizen can no longer get true information from the Main Stream Media. Between all platforms, I have over 75,000 followers that are depending on me for information that they can no longer get from their regular sources. I'm not the only citizen reporter. There are dozens of people like me, if not hundreds. If I wanted to 'showcase myself', in your words (not mine), I would have jumped at the opportunity to do your interview. It's not about that. It's about the truth.

"Again, Chris, no disrespect to you, but I know you're following an agenda. The theme of your article is already set for you. You can't go against the MSM narrative with your reporting, because you'll either 1.) get fired, or 2.) lose credibility with what the Tribune (or you) think is their "primary audience." Little do you know, your primary focus on subscribers should be people like me, who

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seek the truth and no longer listen to the garbage MSM narrative. The focus shouldn't be on the ones the Tribune wants your article to appeal to. I understand that's not your choice, but that's the reason I cannot do the interview. Your narrative is already set."

This is the epitome of a self-fulfilling prophecy. Godlewski refuses to engage me as an admitted critic, ensuring that my report will be one-sided. He is automatically the martyr. I am a witless tool of the "deep state," or worse — a willing agent of oppression.

Here's "proof." In the normal course of reporting this column, I stumbled upon some legal troubles in Godlewski's recent past. In 2011, the former Riverside High School baseball coach pleaded guilty to corruption of minors and admitted to having a sexual relationship with a 15-year-old girl.

Lackawanna County detectives said Godlewski had sex with the girl in cars and homes he had access to as a real estate agent. Godlewski, 28 at the time, was sentenced to three to 23 months, with the first three months to be served under house arrest and the balance as probation.

Last February, Godlewski was charged with theft by deception, forgery and related charges. Police said Godlewski kited a check to an area building supplier and forged bank statements to cover it up. The case is still pending.

I texted Godlewski and told him I was likely to report both cases in the column. I didn't want him to be blindsided.

His response:

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"That shows your character as a journalist, Chris. You just lost all respect and credibility with me."

In fact, my editor and I discussed whether to include the information, which is public and was previously published in The Times-Tribune. We decided it was relevant in regard to Godlewski's credibility. I have many character defects, but the last time I had sex with a 15-year-old was never.

Throughout the reporting of this column, I texted Godlewski to give him an opportunity to respond. Eventually, he asked me to stop.

"Please stop messaging me. Bringing up my past only serves you, and your company. It will cause turmoil for my young children and my family. I don't want to hear from you again. Go continue your self serving nature. Karma always has a way when it comes to people that do that kind of stuff to me."

Karma is easy to see when it affects others, not so much when it's working on you. I am telling the truth in a local newspaper. Godlewski is spreading lies across the planet. Whether he's a true believer or a cynical opportunist, the damage is the same.

If Godlewski had agreed to speak with me, I would have answered his questions logically:

■ Trump "walked away" because he lost the election and his shameless, treasonous and ultimately lethal attempt to overturn it failed. Democracy defeated Trump. On Nov. 3 and again on Jan. 6 and Jan. 20.

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■ Trump never presented a shred of evidence of mass voter fraud because there is none. If he had any legitimate proof, his lawyers would present it in a court of law. The idea that Trump would holster any "smoking gun" that bolstered his selfish claims is beyond ridiculous.

Trump didn't testify at either impeachment trial for the same reason Godlewski refused to speak with me. Trump and Godlewski don't dare leave their safe spaces — where truth is fluid and lies flow with no resistance — for fear of having to defend the indefensible. Subjecting themselves to even the slightest scrutiny makes them vulnerable to the hard lessons of accountability.



If you lose a presidential election, don't incite a mob to overthrow the government. If you choose to join that mob, don't do it in front of an army of photojournalists while carrying a location-pinging cellphone.

And if you hold yourself up as a "patriot reporter" who tells truths that can't be found anywhere else, don't traffic in lies.

Godlewski's lies have consequences beyond his immediate family. Millions of Americans have lost parents, grandparents, siblings, children and friends to the QAnon cult. They watched in helpless horror as their loved ones were led down rabbit holes from which they may never return.

Godlewski bears some responsibility for that, but I wish him no ill. It's my hope that he'll reflect on his role in curdling the hearts and minds of people who placed their trust in him and stop pushing the poison.

In that spirit, I offer a stitch of wisdom I learned the hard way, from one patriot reporter to another: It's fun to point fingers until some jerk holds up a mirror.

CHRIS KELLY, the Times-Tribune columnist, never met a patriot who had to say so

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2/16/2021

Chris Kelly: QAnon Realtor sells rabbit holes on YouTube | Chris-kelly | thetimes-tribune.com

kellysworld@timeshamrock.com,

@cjink on Twitter.

Read his award-winning blog at times-tribuneblogs.com/kelly.

Chris Kelly

Chris is a columnist, blogger, editor, writing coach and old-school muckraker [Read More...](#)

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EXHIBIT "B"

PHILIP GODLEWSKI,
Plaintiff

v.

CHRIS KELLY, TIMES SHAMROCK
COMMUNICATIONS, THE SCRANTON
TIMES-TRIBUNE, LARRY HOLEVA
Defendants.

IN THE COURT OF COMMON PLEAS
OF LACKAWANNA COUNTY

CIVIL DIVISION

JURY TRIAL DEMANDED

No.: 2021-CV-2195

.....
AFFIDAVIT

STATE OF PENNSYLVANIA

:
: ss.

COUNTY OF LACKAWANNA

:

I, Brienna L. DuBorgel, an adult individual who resides at 1101 Claire Drive, Taylor, PA 18517, being duly sworn according to law hereby swears and affirms as follows:

1. My date of birth is 9/8/1993. A copy of my driver's license is attached to this Affidavit.
2. I was the minor victim in the criminal case brought against Philip Godlewski in July 2010.
3. In September of 2008 I began ninth (9th) grade at Riverside High School at the age of 15 years old.
4. On November 10, 2008, my boyfriend, Joseph Strok, III, committed suicide. I was very upset by his death.
5. Shortly before Joseph Strok's death I met Philip Godlewski. I began communicating with him after Joseph's death. Philip Godlewski was 10 years older than me.
6. Within a couple of months after Joseph Strok's death I began having a sexual relationship with Philip Godlewski. I was fifteen (15) years old when we started our sexual relationship.
7. Philip Godlewski bought me gifts including jewelry, a hat and other items during the first few months of our relationship.

Exhibit 1

8. Philip Godlewski and I had sex multiple times while I was a ninth (9th) grade and tenth (10th) grade student at Riverside High School.
9. Philip Godlewski was charged with crimes relating to our sexual relationship in July of 2010.
10. Philip Godlewski and I continued to communicate with each other while the criminal case was pending against him.
11. After Philip Godlewski was arrested, he pleaded with me not to testify against him and said he would commit suicide if I testified against him.
12. In response to Philip Godlewski's pleas and just wanting the situation to end, I stopped cooperating with the District Attorney's office during the criminal case against him and I refused to testify against Philip Godlewski at the preliminary hearing in the criminal case.
13. Philip Godlewski and I continued our sexual relationship in the 2014-16 time period after his criminal case was over.

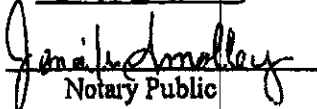
I, Brienna L. DuBorgel, do hereby swear and affirm that the statements made in this affidavit are true and correct to the best of my personal knowledge, information, and/or belief. I am of sound mind and I make this Affidavit of my own free will. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.


Brienna L. DuBorgel

Sworn to and Subscribed

before me this 31st day

of October, 2022.


Notary Public

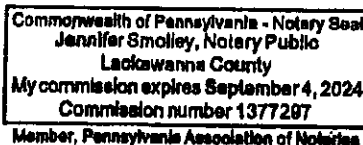


EXHIBIT "C"

PHILIP GODLEWSKI, : IN THE COURT OF COMMON PLEAS
Plaintiff, : of LACKAWANNA COUNTY
v. :
: CV-2023- 1354
: :
BRIENNA L. DUBORGEL, : CIVIL ACTION - LAW
Defendant. : JURY TRIAL DEMANDED

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Northeastern Pennsylvania Legal Services
33 N. Main Street, Suite 200
Pittston, PA 18640
Telephone (570) 299-4100

KOLMAN LAW, P.C.
Timothy M. Kolman, PA51982
414 Hulmeville Avenue
Pennel, PA 19047
(215) 750-3134

PHILIP GODLEWSKI,	:	IN THE COURT OF COMMON PLEAS
Plaintiff,	:	of LACKAWANNA COUNTY
v.	:	CV-2023- <u>1354</u>
BRIENNA L. DUBORGEL,	:	CIVIL ACTION - LAW
Defendant.	:	JURY TRIAL DEMANDED

COMPLAINT

COMES NOW Plaintiff Philip Godlewski, by and through his counsel, Timothy M. Kolman, JD and makes the following Complaint:

1. Plaintiff Philip Godlewski ("Godlewski") is an adult individual residing at 115 Huckberry Lane, Duryea, Lackawanna County, Pennsylvania 18642.
2. Defendant Brienna L. BuBorgel ("DuBorgel") is an adult individual residing at 1101 Claire Drive, Taylor, Lackawanna County Pennsylvania 18517.
3. Jurisdiction over this matter is conferred upon this Court pursuant 42 Pa.C.S.A. § 5301 *et seq.*
4. Venue is proper in Lackawanna County pursuant Pa.R.C.P. 1006(a) and Pa.R.C.P. 2179.

COUNT I - DEFAMATION - IMPUTATION OF CRIMES
VIOLATION OF UNIFORM SINGLE PUBLICATION ACT,
42 Pa.C.S.A. §8341 *et seq*

5. Paragraphs 1 through 4 of this Complaint are restated and reincorporated by reference as though fully set forth.

6. On October 31, 2022 DuBorgel signed an Affidavit prepared by, or at the direction of Attorney J. Timothy Hinton. See true and correct copy of Affidavit attached hereto as Exhibit 1.

7. In the Affidavit, DuBorgel alleges that she commenced a sexual relationship with Godlewski in late 2008 or early 2009 while DuBorgel was 15 years of age. See Exhibit 1, ¶¶ 3, 4 and 6.

8. In the Affidavit, DuBorgel asserts that Godlewski was ten years older than DuBorgel at the time DuBorgel alleges the sexual relationship began between the two. See Exhibit 1, ¶ 5.

9. DuBorgel asserts that Godlewski and DuBorgel "had sex multiple times while [DuBorgel] was ninth [sic] (9th) grade and tenth (10th) grade student at Riverside High School." Exhibit 1, ¶ 8.

10. DuBorgel asserts that "Godlewski was charged with crimes relating to our sexual relationship in July of 2010." See Exhibit 1, ¶ 9.

11. DuBorgel alleges that Godlewski and DuBorgel resumed a sexual relationship in 2014-2016. See Exhibit 1, ¶ 13.

12. Godlewski did not have a sexual relationship with DuBorgel while DuBorgel was a minor.

13. In the Affidavit, DuBorgel falsely accuses Godlewski of having a sexual relationship with DuBorgel while Godlewski was an adult and DuBorgel was a minor.

14. Godlewski has not be convicted of any sex offense with respect to DuBorgel.

15. By Information filed on November 16, 2020 at Lackawanna County Docket No. 10

COUNT I: CORRUPTION OF MINORS

(18 C.P.S.A. Sec. 6301(a-1); Grade: Misdemeanor 1; \$10,000.00; 5 years; unlawfully, being of the age of 18 years and upwards, corrupt or tend to corrupt the morals of any minor less than 18 years of age, or did aid, abet, entice or encourage any such minor in the commission of any crime, or did knowingly assist or encourage such minor in violating his or her parole or any order of court, to wit: the defendant did repeatedly have inappropriate text messages and contact with a minor.

CR 2613, Godlewski was charged with one count of corruption of minors, 18 Pa.C.S.A. § 6301

(a)(1) upon the following factual allegations:

See true and correct copy of Information attached hereto as Exhibit 2.

16. Godlewski has not been charged by Information with any sex offense with respect to DuBorgel.

17. Godlewski entered a plea of guilty, at Lackawanna County Docket No. 10 CR 2613, to the single count of Corruption of Minors set forth in the Information. See true and correct copy of Guilty Plea Colloquy attached hereto as Exhibit 3.

18. The Guilty Plea Colloquy does not set forth any facts contrary to the Information upon which the plea was based. See Exhibit 3, ¶ 17.

19. DuBorgel's Affidavit falsely implies that Godlewski was convicted of sex offenses with respect to DuBorgel.

20. DuBorgel's Affidavit is defamatory in that it accuses Godlewski of having a sexual relationship with a minor and implies that Godlewski was convicted of sex offenses.

21. DuBorgel published the Affidavit to Attorney J. Timothy Hinton ("Hinton") with the knowledge and intent that Hinton would re-publish the Affidavit in other litigation.

22. DuBorgel's Affidavit applies to Godlewski in that it specifically identifies Godlewski as the alleged perpetrator of sexual acts with a minor.

23. Any reasonable recipient of the Affidavit would understand the Affidavit to be defamatory as it accuses Godlewski of extreme moral turpitude and engaging in criminal acts by having sexual relations with a minor.

24. Any reasonable recipient of the Affidavit would understand the Affidavit as being intended to apply to Godlewski in that it specifically identifies Godlewski as the alleged perpetrator of sexual acts with a minor.

25. Godlewski has suffered special harm in the form of damage to Godlewski's reputation and character.

26. DuBorgel was not conditionally privileged to make the defamatory statements regarding Godlewski.

27. In the alternative, DuBorgel has abused any conditional privilege in that DuBorgel made the statements in the Affidavit from improper motive, in an improper manner and not based upon reasonable cause.

28. DuBorgel made the statements in the Affidavit knowing them to be false and with willful disregard of the truth of those statements.

29. DuBorgel made the statements in the Affidavit with reckless disregard for their veracity.

30. DuBorgel made the statements in the Affidavit with negligent disregard for their veracity.

31. DuBorgel made the statements in the Affidavit with actual malice.

32. The statements in DuBorgel's Affidavit are defamatory per se.

COUNT II - INVASION OF PRIVACY - FALSE LIGHT

33. Paragraphs 1 through 32 of this Complaint are restated and reincorporated by reference as though fully set forth.

34. The statements in DuBorgel's Affidavit placed Godlewski in a false light.

35. The statements in DuBorgel's Affidavit are highly offensive to a reasonable person.

36. The statements in DuBorgel's Affidavit contain major misrepresentations of Godlewski's character, history, activities and/or beliefs.

37. DuBorgel made the statements in the Affidavit knowing them to be false and with willful disregard of the truth of those statements.

38. DuBorgel made the statements in the Affidavit with reckless disregard for their veracity

39. DuBorgel made the statements in the Affidavit with negligent disregard for their veracity.

40. DuBorgel made the statements in the Affidavit with actual malice.

41. DuBorgel's conduct has invaded Godlewski's privacy by casting Godlewski in a false light to the public.

COUNT III - INVASION OF PRIVACY - PUBLICITY TO PRIVATE LIFE

42. Paragraphs 1 through 41 of this Complaint are restated and reincorporated by reference as though fully set forth.

43. The statements in DuBorgel's affidavit falsely allege that Godlewski engaged in a sexual relationship with DuBorgel while DuBorgel was a minor.

44. The statements in DuBorgel's affidavit assert that Godlewski and DuBorgel engaged in an consensual sexual relationship in 2014-2016 after DuBorgel attained the age majority.

45. DuBorgel's allegations of a fact relate to the private facts of Godlewski's life.

46. A reasonable person would be highly offended by disclosure of the private facts of one's sexual life.

47. The facts alleged in DuBorgel's Affidavit are not matters of legitimate public concern.

48. DuBorgel's conduct has invaded Godlewski's privacy by giving publicity to Godlewski's public life.

WHEREFORE, Plaintiff Philip Godlewski respectfully requests that the Honorable Court enter judgment in his favor and against Defendant Brienna L. DuBorgel providing the following relief:

- A. Compensatory damages in an amount in excess of the jurisdictional threshold requiring compulsory arbitration.
- B. Nominal damages.
- C. Punitive damages in an amount sufficient to deter similar future conduct by the Defendant.
- D. Equitable relief sufficient to prevent similar future conduct by the Defendant.
- E. Costs and Counsel Fees.

F. Such other relief as the Court may deem just.

Respectfully submitted,

KOLMAN LAW, P.C.

A handwritten signature in black ink, appearing to read 'T. Kolman', is written over a horizontal line.

Timothy M. Kolman, PA51982
414 Hulmeville Avenue
Pennel, PA 19047
(215) 750-3134
Attorney for Plaintiff.

PHILIP GODLEWSKI,
Plaintiff

v.

CHRIS KELLY, TIMES SHAMROCK
COMMUNICATIONS, THE SCRANTON
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Defendants.

IN THE COURT OF COMMON PLEAS
OF LACKAWANNA COUNTY

CIVIL DIVISION

JURY TRIAL DEMANDED

No.: 2021-CV-2195

.....
AFFIDAVIT

STATE OF PENNSYLVANIA

:

: ss.

COUNTY OF LACKAWANA

:

I, Brienna L. DuBorgel, an adult individual who resides at 1101 Claire Drive, Taylor, PA 18517, being duly sworn according to law hereby swears and affirms as follows:

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2. I was the minor victim in the criminal case brought against Philip Godlewski in July 2010.
3. In September of 2008 I began ninth (9th) grade at Riverside High School at the age of 15 years old.
4. On November 10, 2008, my boyfriend, Joseph Strok, III, committed suicide. I was very upset by his death.
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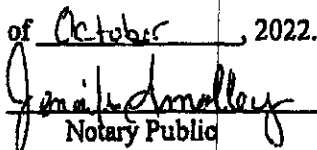
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13. Philip Godlewski and I continued our sexual relationship in the 2014-16 time period after his criminal case was over.

I, Brienna L. DuBorgel, do hereby swear and affirm that the statements made in this affidavit are true and correct to the best of my personal knowledge, information, and/or belief. I am of sound mind and I make this Affidavit of my own free will. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.


Brienna L. DuBorgel

Sworn to and Subscribed

before me this 31st day
of October, 2022.

Notary Public

Commonwealth of Pennsylvania - Notary Seal
Jennifer Smolley, Notary Public
Lackawanna County
My commission expires September 4, 2024
Commission number 1377297
Member, Pennsylvania Association of Notaries

INFORMATION
IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

Criminal Action No. 10 CR 2613

COMMONWEALTH OF PENNSYLVANIA

VS.

PHILIP GODLEWSKI

The District Attorney of Lackawanna County, by this Information charges that Between Tuesday, the 1st day of January, 2008, and Wednesday, the 7th day of July, 2010 in said County of Lackawanna, Philip Godlewski did commit the crime or crimes herein,

COUNT I: CORRUPTION OF MINORS

(18 C.P.S.A. Sec. 6301(a-1); Grade: Misdemeanor 1; \$10,000.00; 5 years;
unlawfully, being of the age of 18 years and upwards, corrupt or tend to corrupt the morals of any minor less than 18 years of age, or did aid, abet, entice or encourage any such minor in the commission of any crime, or did knowingly assist or encourage such minor in violating his or her parole or any order of court, to wit; the defendant did repeatedly have inappropriate text messages and contact with a minor.

MARY F. RIRALDI
LACKAWANNA COUNTY

2010 NOV 16 A 9 06

CLERK OF
JUDICIAL RECORDS
CRIMINAL DIVISION

All of which is against the Acts of Assembly and the peace and dignity of the Commonwealth of Pennsylvania.


District Attorney

Exhibit 2

ST 0588

Name: Phillip D. Houski Case No. D Cr 2613

GUILTY PLEA COLLOQUY

You are present before this Court because you or your lawyer has stated that you wish to plead guilty to some or all of the criminal offenses with which you have been charged. Please answer fully all of the questions on this document. If you do not understand any question, do not answer that question. If you do understand the question, you should answer "yes" or "no", or fill in another appropriate answer.

This is a sworn statement. After you have finished reading this form and filling it out, you should sign it on the last page, on the line that says "Defendant." You should also initial each page at the bottom, but only if you have read and have understood that page. If there is anything that you do not understand, you should tell your lawyer and the judge who hears your case, so that they can explain it to you fully, to make sure you understand all of your rights.

Most of these questions can be answered "yes" or "no." Where general information is requested, please answer fully.

1. What is your full name? Phillip D. Houski
2. Do you wish to plead guilty to the charges of Concealment of Money as laid out in criminal action _____? Yes
3. How old are you? 27
4. How far did you go in school? College grad.
5. Do you read and write the English language: Yes
- 5(a). Have you had an opportunity to read the charges pending against you? Yes
- 5(b). Therefore, do you know exactly what you are charged with and what you are pleading to? Yes
6. Have you ever been in a mental institution or received treatment for a mental disease? No
7. Have you had any alcoholic beverages or drugs within the last 24 hours? No
8. Have you fully discussed your case with your attorney and are you fully satisfied that he knows all the facts of your case and has had sufficient time to look into any questions either he or you may have about your case? Yes



Exhibit 3

8(a). Are you satisfied with your attorney? Yes

9. Do you understand that even though you are guilty or may be guilty, you are presumed innocent and have a right to go to trial either before a judge or before a jury of 12 individuals and the Commonwealth must prove to the satisfaction of each and every one of the 12 jurors or to the satisfaction of the judge that you are guilty beyond a reasonable doubt? Yes

9(a). Do you understand that you and your attorney have a right to participate in the selection of a jury? _____

10. Do you understand that if you want to go to trial your attorney will be permitted to cross-examine the Commonwealth's witnesses and to call witnesses on your behalf, but if you plead guilty, you will lose the right to call witnesses or to cross-examine the Commonwealth witnesses? Yes

11. Do you understand that by pleading guilty you are admitting that you did things you are charged with and that if you plead not guilty, the Commonwealth cannot force you to take the stand and either admit or deny that you did the things you are charged with? Yes

12. Do you understand that by pleading guilty you are giving up your right to appeal any question in this case except for those concerning the right of this court to try you (jurisdiction over the subject matter) or the legality or propriety of the sentence imposed? Yes

13. State specifically in detail any plea agreement with the District Attorney:

Plea to Conspiracy of Minors, Agreed sentence 3 months
Name Confidential to 23 months.

All other counts dismissed

13(a) Has the District Attorney made any other promises to you in exchange for your guilty plea other than what is mentioned above? No

13(b) Have you been threatened or coerced in any manner to enter this guilty plea? No

13(c) Are you entering this guilty plea of your own free will after discussing the merits of your case with your attorney? Yes

14. Do you understand that the Court is not bound by the agreement you made with the District Attorney? Yes



15. Do you understand that the maximum penalty to the charges you are pleading guilty to is

5 YRS / \$7,500.

15(a) If you are pleading guilty to more than one charge, do you understand that the judge may impose consecutive sentences? N/A

If the answer to the preceding question is "yes", state the mandatory sentence that may be imposed on you.

N/A

15(b) Do you understand that certain crimes carry mandatory minimum penalties? N/A

Did your attorney advise you that any mandatory penalties apply to your case? N/A

If you answered "yes", please state the mandatory provisions that apply to your case:

N/A

16. The elements of the crime charged are as follows:

Being of the age of 16 or older, by an act concepts of
lead to commit the homicide of a person

16(a) Do you understand these are the elements of the crimes charged that you are pleading to? Yes

17. The District Attorney indicates this is what you did on the date of the crime charged:

18. Do you admit that you did the above stated act? Yes

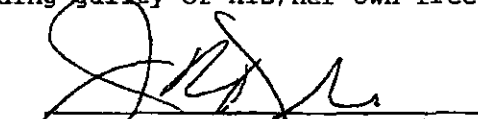
19. Understanding the full meaning of the plea of guilty as stated above, do you still wish to plead guilty? Yes

I affirm that I have read the above document in its entirety and have reviewed it with my attorney. I affirm that I am aware of the full implications of pleading guilty and nevertheless wish to plead to the specified offense(s). I further affirm that my signature on this Guilty Plea Colloquy and initials on each page of this document are true and correct.

Phil Kollinski

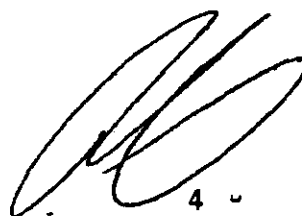
DEFENDANT

I, Joseph R. D'Andrea, Esquire, attorney for
Phil Calluski, state that I have advised my
client of the contents and meanings of the document; it is
my belief that he/she fully comprehends the implication of
pleading guilty and is pleading guilty of his/her own free
will.


Joseph R. D'Andrea, Esquire,
Attorney for the Defendant

11/12/10

7


4

VERIFICATION

I hereby verify that the statements in the foregoing document are true and correct. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A. 4904 relating to unsworn falsification to authorities.

Date: 3/21/2023

Phil Godlewski

Philip Godlewski

EXHIBIT "D"

FELLERMAN & CIARIMBOLI LAW, P.C.
183 Market Street
Suite 200
Kingston, PA 18704
(570) 714-4878
(570) 714-7255 (Fax)
www.fcclawpc.com

Gregory E. Fellerman, Esquire
Attorney I.D. #81568
gef@fcclawpc.com

Edward J. Ciarimboli, Esquire
Attorney I.D. #85904
ejc@fcclawpc.com

Molly Dempsey Clark, Esquire
Attorney ID# 89367
mclark@fcclawpc.com

PHILIP GODLEWSKI

PLAINTIFF,

V.

BRIENNA L. DUBORGEL

DEFENDANT.

IN THE COURT OF COMMON PLEAS
OF LACKAWANNA COUNTY

CIVIL ACTION - LAW

JURY TRIAL DEMANDED

NO.: CV-2023-1354

MAILED
JUN 14 2023
CLERK OF COURT
LACKAWANNA COUNTY

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YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take prompt action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by an attorney and filing a writing with the Court of your defenses objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in this Complaint for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

AVISO

A USTED SE LE HA DEMANDADO EN LA CORTE. Si usted quiere defenderse contra la demanda expuesta en las siguientes páginas, tiene que tomar acción en un plazo de veinte (20) días después que reciba esta demanda y aviso, por presentar una

notificación de comparecencia escrita personalmente o por un abogado y radicar por escrito en la Corte sus defensas u objeciones a las demandas presentadas en su contra. Se le advierte que si falla en hacerlo, el caso podría seguir adelante sin usted y un fallo podría ser dictado en su contra por la Corte sin previo aviso por cualquier dinero reclamado en la demanda o por cualquier otro reclamo o desagravio pedido por el/la demandante. Puede que usted perida dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO, DIRÍJASE O LLAME, POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ABAJO. ESTA OFICINA PUEDE PROVEERLE CON INFORMACIÓN SOBRE COMO CONTRATAR UN ABOGADO. SI NO TIENE LOS FONDOS SUFICIENTES PARA CONTRATAR UN ABOGADO, ESTA OFICINA PODRÍA PROPORCIONARLE INFORMACIÓN ACERCA DE AGENCIAS QUE PUEDAN OFRECERLES SERVICIOS LEGALES A PERSONAS QUE REÚNAN LOS REQUISITOS A UN HONORARIO REDUCIDO O GRATIS.

North Penn Legal Services, Inc.
33 N. Main Street
Suite 200
Pittston, PA 18640
(570) 299-4100
(877) 953-4250 Toll free
(570) 824-0001 Fax

Servicios Legales de North Penn, Inc.
33 la Calle Main del Norte
Oficina 200
Pittston, PA 18640
(570) 299-4100
(877)4250 Llamada gratuita
(570) 824-0001 Fax

FELLERMAN & CIARIMBOLI LAW, PC



By: _____
EDWARD J. CIARIMBOLI, ESQUIRE
MOLLY DEMPSEY CLARK, ESQUIRE
Counsel for Defendant

Date: May 2, 2023

FELLERMAN & CIARIMBOLI LAW, P.C.
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Attorney ID# 89367
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PHILIP GODLEWSKI

PLAINTIFF,

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IN THE COURT OF COMMON PLEAS
OF LACKAWANNA COUNTY

CIVIL ACTION - LAW

JURY TRIAL DEMANDED

NO.: CV-2023-1354

**DEFENDANT'S ANSWER AND NEW MATTER TO PLAINTIFF'S COMPLAINT AND
DEFENDANT'S COUNTER-CLAIM**

Defendant Brienna L. DuBorgel ("Defendant"), by and through her legal counsel, Fellerman and Ciarimboli Law PC, hereby answers the Complaint filed by Plaintiff Phillip Godlewski ("Plaintiff"), asserts its defenses and new matter and counterclaim against the Plaintiff as follows:

ANSWER

1. Admitted, upon information and belief available to Defendant.
2. Admitted.
3. Denied in part, admitted in part. Paragraph three (3) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant admits that this court has jurisdiction over the subject matter of this case.

4. Denied in part, admitted in part. Paragraph four (4) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant admits that venue is proper in this Court.

**COUNT I – DEFAMATION – IMPUTATION OF CRIMES VIOLATION OF UNIFORM
SINGLE PUBLICATION ACT 42 PA.C.S.A. 8341**

5. Paragraph five (5) is an incorporation paragraph to which no response is required. To the extent a response is deemed required, Defendant incorporates the paragraphs of this pleading as though fully set forth.
6. Denied as stated. The Affidavit attached to Plaintiff's Complaint is a writing the terms of which speak for itself.
7. Denied as stated. The Affidavit attached to Plaintiff's Complaint is a writing the terms of which speak for itself.
8. Denied as stated. The Affidavit attached to Plaintiff's Complaint is a writing the terms of which speak for itself.
9. Denied as stated. The Affidavit attached to Plaintiff's Complaint is a writing the terms of which speak for itself.
10. Denied as stated. The Affidavit attached to Plaintiff's Complaint is a writing the terms of which speak for itself.
11. Denied as stated. The Affidavit attached to Plaintiff's Complaint is a writing the terms of which speak for itself.
12. Denied. Strict proof of this allegation is demanded at the time of trial.
13. Denied as stated. The Affidavit attached to Plaintiff's Complaint is a writing the terms of which speak for themselves. It is denied that the Affidavit contains any false statements.
14. Denied as stated. The conviction speaks for itself.

15. Denied as stated. The "Information" attached to Plaintiff's Complaint is a writing the terms of which speak for itself.
16. Denied as stated. The "Information" attached to Plaintiff's Complaint is a writing the terms of which speak for itself.
17. Denied as stated. The Guilty Plea Colloquy attached to Plaintiff's Complaint is a writing the terms of which speak for itself.
18. Denied as stated. The Guilty Plea Colloquy attached to Plaintiff's Complaint is a writing the terms of which speak for itself.
19. Denied as stated. The Affidavit attached to Plaintiff's Complaint is a writing the terms of which speak for itself.
20. Paragraph twenty (20) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant specifically denies the Affidavit is "defamatory." Strict proof of this allegation is demanded at the time of trial. In the meantime, and by way of further response, see the text messages between Plaintiff and Defendant attached hereto as Exhibit A. Most notably, please refer to the March 5, 2010, text from Plaintiff to Defendant pertaining to how Plaintiff believes Defendant's mother would view him, stating "I disagree, I think she'll see me as the 25 year old that fucked her 15 year old daughter and lied to her about it" attached as Exhibit B.
21. Paragraph twenty-one (21) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant specifically denies the same. Strict proof of this allegation is demanded at the time of trial.
22. Denied as stated. The Affidavit attached to Plaintiff's Complaint is a writing the terms of which speak for itself.

23. Paragraph twenty-three (23) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant specifically denies the same. Strict proof of this allegation is demanded at the time of trial. By way of further response, the Affidavit is not "defamatory," but instead speaks the truth. See Exhibit A.
24. Paragraph twenty-four (24) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant specifically denies the same. Strict proof of this allegation is demanded at the time of trial. By way of further response, the Affidavit is not "defamatory," but instead speaks the truth. See Exhibit A.
25. Paragraph twenty-four (24) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant specifically denies the same. Strict proof of this allegation is demanded at the time of trial. See Exhibit A.
26. Paragraph twenty-four (24) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant specifically denies the same. Strict proof of this allegation is demanded at the time of trial. See Exhibit A.
27. Paragraph twenty-seven (27) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant specifically denies the same. Strict proof of this allegation is demanded at the time of trial. See Exhibit A.
28. Paragraph twenty-eight (28) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant specifically denies the same. Strict proof of this allegation is demanded at the time of trial. See Exhibit A.
29. Paragraph twenty-nine (29) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant specifically denies the same. Strict proof of this allegation is demanded at the time of trial. See Exhibit A.

30. Paragraph thirty (30) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant specifically denies the same. Strict proof of this allegation is demanded at the time of trial. See Exhibit A.
31. Paragraph thirty-one (31) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant specifically denies the same. Strict proof of this allegation is demanded at the time of trial. See Exhibit A.
32. Paragraph thirty-two (32) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant specifically denies the same. Strict proof of this allegation is demanded at the time of trial. See Exhibit A.

COUNT II – INVASION OF PRIVACY - FALSE LIGHT

33. Paragraph thirty-three (33) is an incorporation paragraph to which no response is required. To the extent a response is deemed required, Defendant incorporates the paragraphs of this pleading as though fully set forth.
34. Paragraph thirty-four (34) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant specifically denies the same. Strict proof of this allegation is demanded at the time of trial. See Exhibit A.
35. Paragraph thirty-five (35) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant specifically denies the same. Strict proof of this allegation is demanded at the time of trial. See Exhibit A.
36. Paragraph thirty-six (36) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant specifically denies the same. Strict proof of this allegation is demanded at the time of trial. See Exhibit A.

37. Paragraph thirty-seven (37) contains conclusions of law to which no response is required.

To the extent a response is deemed required, Defendant specifically denies the same.

Strict proof of this allegation is demanded at the time of trial. See Exhibit A.

38. Paragraph thirty-eight (38) contains conclusions of law to which no response is required.

To the extent a response is deemed required, Defendant specifically denies the same.

Strict proof of this allegation is demanded at the time of trial. See Exhibit A.

39. Paragraph thirty-nine (39) contains conclusions of law to which no response is required.

To the extent a response is deemed required, Defendant specifically denies the same.

Strict proof of this allegation is demanded at the time of trial. See Exhibit A.

40. Paragraph forty (40) contains conclusions of law to which no response is required. To the

extent a response is deemed required, Defendant specifically denies the same. Strict

proof of this allegation is demanded at the time of trial. See Exhibit A.

41. Paragraph forty-one (41) contains conclusions of law to which no response is required.

To the extent a response is deemed required, Defendant specifically denies the same.

Strict proof of this allegation is demanded at the time of trial. See Exhibit A.

COUNT III – INVASION OF PRIVACY – PUBLICITY TO PRIVATE LIFE

42. Paragraph forty-two (42) is an incorporation paragraph to which no response is required.

To the extent a response is deemed required, Defendant incorporates the paragraphs of this pleading as though fully set forth.

43. Paragraph forty-three (43) contains conclusions of law to which no response is required.

To the extent a response is deemed required, Defendant specifically denies the same.

Strict proof of this allegation is demanded at the time of trial. See Exhibit A.

44. Denied as stated. The Affidavit attached to Plaintiff's Complaint is a writing the terms of which speak for itself. By way of further response, the Affidavit speaks the truth. See Exhibit A.
45. Denied as stated. The Affidavit attached to Plaintiff's Complaint is a writing the terms of which speak for itself. By way of further response, the Affidavit speaks the truth. See Exhibit A.
46. Paragraph forty-six (46) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant specifically denies the same. Strict proof of this allegation is demanded at the time of trial. See Exhibit A.
47. Paragraph forty-seven (47) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant specifically denies the same. Strict proof of this allegation is demanded at the time of trial. See Exhibit A.
48. Paragraph forty-eight (48) contains conclusions of law to which no response is required. To the extent a response is deemed required, Defendant specifically denies the same. Strict proof of this allegation is demanded at the time of trial. See Exhibit A.

WHEREFORE, Defendant, Brienna DuBorgel, respectfully requests this Honorable Court enter judgement in her favor and against Plaintiff, dismissing Plaintiff's claims and awarding Defendant whatever additional and equitable relief the Court deems appropriate.

NEW MATTER

1. The statements complained of are not defamatory or capable of defamatory meaning as a matter of law.
2. The statements complained of are true, or substantially true.

3. Plaintiff is a public figure or limited purpose public figure, and thus must prove that Defendant acted with actual malice.
4. Plaintiff cannot prove Defendant acted with actual malice.
5. The statements complained of were privileged, reasonable and justified.
6. Plaintiff suffered no damage by reason of the statements complained of.
7. The statements complained of are not the legal cause of any injury to Plaintiff.
8. The implications and innuendos alleged by Plaintiff are unreasonable, unfair, strained, and unwarranted.
9. The statements complained of were made in the exercise of Defendant's right to freedom of speech afforded by the First and Fourteenth Amendments to the United States Constitution, and by the Constitution of the Commonwealth of Pennsylvania.
10. A Plaintiff must show that his standing in the community has been "grievously fractured" to prove language was defamatory, and not only are the statements not defamatory, Plaintiff's standing in the community has not been "grievously fractured."
11. Plaintiff is not entitled to punitive damages.
12. An award of punitive damages for speech concerning matters of public concern is prohibited by the Constitution and the laws of the Commonwealth of Pennsylvania.

WHEREFORE, Defendant, Brienna DuBorgel, respectfully requests this Honorable Court enter judgement in her favor and against Plaintiff, dismissing Plaintiff's claims and awarding Defendant whatever additional and equitable relief the Court deems appropriate.

DEFENDANT'S COUNTERCLAIM

FACTUAL BACKGROUND

1. In and around October 2008, Plaintiff began pursuing a sexual relationship with Defendant – a minor at the time.
2. At or around March 2010, and after Defendant's parents learned said sexual relationship was continuing, Defendant provided a statement to police acknowledging her sexual relationship with Plaintiff.
3. At no point in this statement did Defendant lie, embellish, or otherwise make defamatory statements regarding Plaintiff. Instead, she told the truth.
4. At various times during their sexual relationship, Plaintiff – in his capacity as a realtor – took Defendant to third party homes in order to have sexual relations.
5. On July 11, 2011, Plaintiff pled guilty to corrupting Defendant's morals.
6. On October 31, 2022, Defendant signed an Affidavit (hereinafter "October 2022 Affidavit") attached hereto as Exhibit C outlining her sexual relationship with Plaintiff.
7. At no point in this Affidavit did Defendant lie, embellish, or otherwise make defamatory statements regarding Plaintiff. Instead, the Affidavit is truthful.
8. All factual allegations made in the Affidavit were entirely true, including, but not limited to:
 - a. The existence of a sexual relationship between Plaintiff and Defendant when Defendant was fifteen (15) years of age;
 - b. The time at which this sexual relationship between Plaintiff and Defendant began;
 - c. Plaintiff's purchase of gifts for Defendant;
 - d. Plaintiff and Defendant having had sex while Defendant was in ninth (9th) and tenth (10th) grade at Riverside Highschool;

- e. Plaintiff's threats of suicide if Defendant were to testify against him during Defendant's criminal proceedings related to his relationship with Plaintiff;
 - f. Defendant's decision not to testify against Plaintiff during his criminal case partially in response to Plaintiff's pleas; and
 - g. The resumption of Plaintiff and Defendant's sexual relationship following Defendant's criminal case.
9. On March 28, 2023, Defendant signed an Affidavit (hereinafter "March 2023 Affidavit") attached hereto as Exhibit D accompanied by two attachments -- the first being a record created by Plaintiff of what he did minute-by-minute pertaining to Defendant that day which came with expensive earrings and the second being the collection of text messages between Plaintiff and Defendant (previously attached as Exhibit A).
10. The abovementioned text messages begin on February 24, 2010, but make clear references to an existing sexual relationship prior to the inception of these text messages - - while Defendant was a minor.
11. Plaintiff and Defendant discuss having a relationship "again" numerous times, and Plaintiff indicates that he "is finished having sex with (Defendant) for a long time, if that's okay with (Defendant)" -- all of which evidence the existence of a past relationship. Moreover, and significantly, Plaintiff clearly identifies a past sexual relationship with Defendant while Defendant was underage when he sends the following text message on March 5, 2010, regarding how he believes Defendant's mother would feel about him: "I disagree, I think she'll see me as the 25-year-old that fucked her 15-year-old daughter and lied to her about it." See Exhibit B.

12. As evidenced above, at no point in the March 2023 Affidavit did Defendant lie, embellish, or otherwise make defamatory statements regarding Plaintiff. Instead, she spoke the truth and the Affidavit is truthful.
13. Between November of 2021 and April of 2023, Plaintiff has continuously deliberately and/or recklessly published and spoken defamatory falsehoods concerning Defendant.
14. Plaintiff has channels on at least three streaming platforms -- "Rumble", "DLive", and "Locals" -- where he regularly hosts podcast-like live videos discussing various topics including political ideals, financial opinions, and information about his personal life.
15. Plaintiff simultaneously livestreams to all three platforms to reach a larger audience.
16. According to Plaintiff, his live streams regularly have millions of viewers watching live, reaching 25,000,000 live viewers during one particularly popular video.
17. In addition to the millions of viewers watching live, the videos are posted to Plaintiff's Rumble page, where more viewers can watch recordings of the original livestreams.
18. During multiple livestreams, Plaintiff made implied and/or outright defamatory claims pertaining to Defendant, identifying Plaintiff by name at times in the live streams or otherwise providing sufficient information for Defendant to be identified in the local community.
19. Indeed, in Plaintiff's August 5, 2022, livestream, Plaintiff states that Defendant "filed a false police report" that led to the numerous charges Plaintiff faced in 2010 alleging he had engaged in sexual relations with a minor, and/or corrupted the morals of a minor.
20. In Plaintiff's August 20, 2022, livestream, Plaintiff states that he and Defendant had "no sexual contact or speech," implying that Defendant lied in her 2010 statement to police, and under oath in her October 2022 Affidavit.

21. In Plaintiff's November 26, 2022, livestream, Plaintiff stated that he "never did anything inappropriate" with Defendant, and that Defendant's 2022 Affidavit was "fabricated" implying that Defendant lied under oath in her October 2022 Affidavit.
22. Later in the same livestream, Plaintiff stated that "nothing happened between us" referring to himself and Defendant, again implying that Defendant lied under oath in her October 2022 Affidavit.
23. Again, in the same livestream, Plaintiff states that "the girl lied the first and second time, and this time she perjured herself" referring to Defendant's original statement to police in 2010, and Defendant's October 2022 affidavit.
24. These statements outright state that Defendant lied to the police, and lied again under oath to the Court, ultimately stating that the Defendant committed perjury.
25. Plaintiff proceeds to outright state later in the same live stream that he and Defendant had "never had sexual relations" and that Defendant "lied about it multiple times" then identifies the Defendant as "Brie" shortly thereafter.
26. On November 27, 2022, Plaintiff's attorney, Timothy M. Kolman, Esq. (hereinafter "Attorney Kolman") stated in an email (attached hereto as Exhibit E) on behalf of Plaintiff that Defendant's October 2022 Affidavit was "sudden and improvident". The email then states that "any sexual relationship occurred when the couple were of age, and this has never been denied."
27. The above statement implies that Defendant's October 2022 Affidavit was lies or otherwise fabricated.
28. That same day, Plaintiff posted a screenshot of and reiterated the statement made in the abovementioned email on his page on an app known as Telegram, where Plaintiff had

approximately 285,000 followers at the time the screenshot was posted. The screenshot is attached hereto as Exhibit F.

29. In Plaintiff's February 3, 2023, livestream, Plaintiff stated that "An affidavit doesn't mean an affidavit is true. It just means she swore to a lie."
30. On March 2, 2023, Plaintiff stated in a post on his Telegram page that "they extorted Brie for her affidavit" implying that Defendant lied under oath in her October 2022 Affidavit. The post is attached hereto as Exhibit G.
31. In Plaintiff's April 18, 2023, livestream, Plaintiff identified Defendant as "Brie" then stated that Defendant "swore to an Affidavit that was false... incorrect, and defamatory". He then stated "keep lying. I'm going to get you."
32. In Plaintiff's May 2, 2023, livestream, Plaintiff stated that Defendant "wrote an affidavit that is just completely lies" in reference to the October 2022 affidavit.
33. All above referenced clips from Plaintiff's livestreams on Rumble have been downloaded and are otherwise available online at <https://rumble.com/c/PhilGodlewski>, but could not be attached here.
34. Upon information and belief, Plaintiff also stated that "Brie was not born in 1993" in a video posted on August 11, 2022, that has since been deleted, or is otherwise unavailable to the public.
35. In making the abovementioned written and verbal statements, Plaintiff knowingly and willfully published and spoke false and defamatory matter about Defendant which:
 - a. Imputed to Defendant conduct constituting felonies and other criminal offenses;
 - b. Imputed to Defendant conduct that would give a reasonable person grounds to avoid romantic involvement with Defendant;
 - c. Imputed to Defendant conduct that would impact Defendant's standing in her religious community and her employment; and

- d. Imputed to Defendant conduct that would impact her reputation generally in her community and across the country.

COUNT I
DEFAMATION
BRIENNA DUBORGEL v. PHILLIP GODLEWSKI

36. The preceding paragraphs are incorporated herein as if fully set forth below.
37. The abovementioned statements made by Plaintiff, Phillip Godlewski, were entirely false insofar as they reflect upon Defendant's conduct, character, and reputation.
38. Plaintiff knew that his statements were false when they were made, but intentionally and maliciously chose to make these false statements to his millions of viewers on Rumble, DLive, and Locals, and his hundreds of thousands of followers on Telegram.
39. The false and defamatory statements made by Plaintiff were understood by his viewers and followers to have a negative and damaging impact on their perception of Defendant and were understood or reasonably understood as intended to be applied to Defendant.
40. The written and verbal false and defamatory statements made by Plaintiff in reference to Defendant have reached and continue to reach a massive audience, and Defendant likewise demands presumed, compensatory, economic, and punitive damages for the harm flowing from any and all such continued circulation of the false and defamatory statements in addition to the harm flowing from the initial livestreams and posts.
41. The abovementioned false and defamatory statements were in no manner privileged.
42. The aforementioned statements, collectively and individually, maliciously, intentionally, recklessly, and falsely, by words, innuendo, and inference, created an atmosphere of public scorn and ridicule against Defendant, and attributed improper conduct to Defendant.

43. The statements and implications outlined above were made with actual malice, and constitute defamation which is actionable *per se* for two separate reasons:

- a. The statements claim Defendant committed perjury, which is a felony offense and thus constitute "words imputing a criminal offense"; and
- b. The statements claim Defendant lied when accusing a man of engaging in illegal sexual activities, which unquestionably constitutes "serious sexual misconduct" by today's standards, as the current climate surrounding sexual misconduct allegation claims has attached a stigma to false accusers that is no less severe than that of sexual predators.

44. The abovementioned statements have caused special harm to Defendant, as they have irreparably damaged her reputation, and exposed her to hatred, contempt, ridicule, and humiliation.

45. As a direct and proximate cause of the intentional and malicious statements identified above, and when considering the massive audience Plaintiff reaches, Defendant's reputation and esteem in and well beyond her community have been severely adversely affected.

46. As a result of the aforementioned defamatory statements, Defendant has suffered, and will sustain in the future, a loss of income and earning capacity.

47. As a result of the aforementioned defamatory statements, Defendant has suffered and will continue to suffer grave mental anguish, humiliation, and loss of enjoyment of life.

48. The conduct of Plaintiff in making the above defamatory statements was outrageous and Plaintiff acted in bad faith and/or with reckless indifference towards the truth, for which Defendant claims additional punitive damages.

WHEREFORE, Defendant, Brienna DuBorgel, seeks all damages, including punitive damages, allowed under the Commonwealth of Pennsylvania in an amount in excess of \$50,000,

plus cost of suit, which sum is in excess of the amount requiring compulsory arbitration under the applicable statutes of the Commonwealth of Pennsylvania and Local Rules of Court.

COUNT II
FALSE LIGHT
BRIENNA DUBORGEL v. PHILLIP GODLEWSKI

49. The preceding paragraphs are incorporated herein as if fully set forth below.
50. The aforementioned statements contained distortions, misrepresentations, misstatements of fact, and omissions of fact designed to cast Defendant in a false light.
51. The aforementioned statements, collectively and individually, and without regard to their truth or their falsity, created false impressions by repeatedly, widely, and extensively disseminating information which state or implied falsehoods about Defendant and placed her before the public in a false light that would be considered highly offensive to a reasonable person.
52. As a direct and proximate cause of these intentional, malicious, reckless, and/or negligent statements, Defendant has suffered the aforementioned injuries.

WHEREFORE, Defendant, Brienna DuBorgel, seeks all damages, including punitive damages, allowed under the Commonwealth of Pennsylvania in an amount in excess of \$50,000, plus cost of suit, which sum is in excess of the amount requiring compulsory arbitration under the applicable statutes of the Commonwealth of Pennsylvania and Local Rules of Court.

COUNT III
ASSAULT
BRIENNA DUBORGEL v. PHILLIP GODLEWSKI

53. The preceding paragraphs are incorporated herein as if fully set forth below.
54. Under 42 Pa. C. S. §5533 (2021), "If an individual entitled to bring a civil action arising from sexual abuse is under 18 years of age at the time the cause of action accrues, the

individual shall have a period of 37 years after attaining 18 years of age in which to commence an action for damages regardless of whether the individual files a criminal complaint regarding the sexual abuse.”

55. Beginning at or around the Fall of 2008 through Spring/Summer 2010, Defendant, a fifteen-sixteen-year-old minor during that time period, engaged in sexual intercourse multiple times with Plaintiff, who upon information and belief, was between twenty-five (25) and twenty-six (26) years of age at the time.
56. During the beginning of this relationship between Plaintiff and Defendant, Plaintiff held a position of authority over Defendant, as Plaintiff was a coach at Defendant’s high school.
57. During numerous sexual interactions between Plaintiff and Defendant, Plaintiff intentionally caused offensive and/or harmful bodily contact with Defendant.
58. During numerous sexual interactions between Plaintiff and Defendant, Defendant experienced reasonable apprehension that offensive and/or harmful bodily contact was imminent.
59. As a result of this harmful and/or offensive bodily contact, Defendant suffered injuries including, but not limited to the following:
 - a. Anxiety;
 - b. Depression;
 - c. Stress;
 - d. Embarrassment;
 - e. Humiliation; and
 - f. All other injuries and damages resulting from those injuries listed above.

60. As a result of the aforesaid injuries and natural consequences thereof, Defendant has suffered mental discomfort, inconvenience, anxiety, and limitations on her ability to do normal everyday activities, especially with her ability to engage in healthy sexual relationships, and will continue to suffer into the future.

WHEREFORE, Defendant, Brienna DuBorgel, seeks all damages, including punitive damages, allowed under the Commonwealth of Pennsylvania in an amount in excess of \$50,000, plus cost of suit, which sum is in excess of the amount requiring compulsory arbitration under the applicable statutes of the Commonwealth of Pennsylvania and Local Rules of Court.

COUNT IV
BATTERY
BRIENNA DUBORGEL v. PHILLIP GODLEWSKI

61. The preceding paragraphs are incorporated herein as if fully set forth below.

62. Beginning at or around the Fall of 2008 through Spring/Summer 2010, Defendant, a fifteen-sixteen-year-old minor during that time period, engaged in sexual intercourse multiple times with Plaintiff, who upon information and belief, was between twenty-five (25) and twenty-six (26) years of age at the time.

63. During numerous sexual interactions between Plaintiff and Defendant, Plaintiff intentionally initiated harmful or offensive physical contact with Defendant who was a minor at all relevant times.

64. During none of these sexual interactions did Plaintiff obtain actual consent, as any consent given was given under duress considering Plaintiff held a position of power as a high school baseball coach at Defendant's high school and Plaintiff preyed upon the

minor Defendant who was suffering due to the sudden and untimely death of her boyfriend.

65. As a result of this harmful and/or offensive bodily contact, Defendant suffered injuries including, but not limited to the following:

- a. Anxiety;
- b. Depression;
- c. Stress;
- d. Embarrassment;
- e. Humiliation; and
- f. All other injuries and damages resulting from those injuries listed above.

66. As a result of the aforesaid injuries and natural consequences thereof, Defendant has suffered mental discomfort, inconvenience, anxiety, and limitations on her ability to do normal everyday activities, especially with her ability to engage in healthy sexual relationships, and will continue to suffer into the future.

WHEREFORE, Defendant, Brienna DuBorgel, seeks all damages, including punitive damages, allowed under the Commonwealth of Pennsylvania in an amount in excess of \$50,000, plus cost of suit, which sum is in excess of the amount requiring compulsory arbitration under the applicable statutes of the Commonwealth of Pennsylvania and Local Rules of Court.

COUNT V
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
BRIENNA DUBORGEL v. PHILLIP GODLEWSKI

67. The preceding paragraphs are incorporated herein as if fully set forth below.

68. Beginning at or around the Fall of 2008 through Spring/Summer 2010, Defendant, a fifteen-sixteen-year-old minor during that time period, engaged in sexual intercourse multiple times with Plaintiff, who upon information and belief, was between twenty-five (25) and twenty-six (26) years of age at the time.
69. Throughout their sexual relationship, Defendant and Plaintiff communicated through texts, phone calls, and through a downloaded application designed for discreet messaging.
70. In the conversations, Plaintiff mentally abused, manipulated, and extorted Defendant, acting extraordinarily possessive towards the minor despite being engaged and living with another woman.
71. Plaintiff repeatedly attempted to control aspects of Defendant's life, including her dating life, her choices, and her relationships with friends and family, using offers of money and gifts to influence Defendant, including a puppy and a car.
72. Defendant's abusive, manipulative, and extortionary text messages must be read in their entirety to fully understand the depth of the outrageous conduct, but by way of example, include the following texts evidenced in Exhibit A:
- a. "I'm going out tonight. Right now actually. I haven't been drunk in over a year and I need to be because of you." (February 27, 2010)
 - b. "What kind of puppy (do you want?)... I'll make you sign a paper that says it's mine though, so I can hold it hostage when we're fighting <3" (February 28, 2010)
 - c. (In response to Defendant not answering Plaintiff's texts for about an hour) "I don't like that some days you treat me like a piece of annoying garbage. That's either going to change, realllllll soon, or this is over. Plain and simple. I wanted to talk to you all day and you've done nothing but dismiss me for over an hour now. Like, fuck you. Sorry for loving you and being excited to hear your voice. Fuck you." (March 1, 2010)

- d. "3:00 and no later you bitch. I'll kill you if you're late again." (March 2, 2010)
- e. (After Plaintiff tells Defendant he will buy her a car) "There's going to be rules. The car will be titled to me, not you. If you break the rules I'll pull the car." (March 5, 2010)
- f. "Oh you're with Tom. That's why you aren't talking to me. K... The feeling I have in my stomach when you're with Tom and I'm on the other line trying to talk to you and the pain and awful feeling I'm left with for the rest of the day, is far worse than the thrilling feeling of loving you, being with you, and having sex with you... We need to stop talking Brie... I can't love you knowing you're with someone else who loves you and you shouldn't either. This has to end". (March 6, 2010)
- g. (After an approximately one and a half (1.5) hour conversation where Plaintiff claims he is ending the relationship due to Defendant's choice to have a relationship with another male, claims he will move on from Defendant, and otherwise plays with the emotions of the minor Defendant) "I have no intentions on not talking to you anymore, you retard. I told you I wouldn't. And I meant it. I wanted to see how you reacted to all this... You failed today though. Big time fail. Don't make it seem like you wasn't crying, dumb bitch. I needed to get to the heart of your feelings." (March 6, 2010)
- h. (In response to Defendant telling Plaintiff he makes her life miserable) "By offering to buy you a car, give you money so you don't have to work, keep you clean and off drugs, and fall in love with you? You're right. I'm so terrible." (March 7, 2010)
- i. (Following a fight which started because Plaintiff messaged one of Defendant's friends telling the friend he had a dream about her) "We need a break, period. I can't convey how much I care about because you just do not trust me. Time apart may help (I don't know). Goodbye <3 (I love you)... Fuck you then... Fuck your shopping trip and your car too. I'm not spending a dollar on you until I'm convinced you realize how much I care about you. There's no way I'm buying your love, and right now, I'm the furthest thing from convinced. I temporarily blocked your number from texting me. I need some time to figure this out. I love you Brie <3" (It then appears Plaintiff blocked Defendant's number for approximately ten (10) hours). (March 7, 2010)
- j. "(I don't know) if I can love someone who cares about someone else. I just don't think I can... The difference is, I don't have feelings for (my fiance), but you have feelings for the guy (you're) with... (I don't care anymore). I'm going to limit how much I can care about you from now on." (March 12, 2010)
- k. (Following Defendant saying she wants to tell Plaintiff's fiancé the full extent of their relationship) "And if I got to jail? Your boy comes with me. I've got texts to

EXHIBIT "E"

PHILIP GODLEWSKI,

Plaintiff

v.

CHRIS KELLY, and THE SCRANTON
TIMES, L.P.,

Defendants

: IN THE COURT OF COMMON PLEAS
: OF LACKAWANNA COUNTY

NO. 2021 CV 2195

FILED
JAN 20 2021
CLERK OF COURT
LACKAWANNA COUNTY

MEMORANDUM AND ORDER

NEALON, J.

A self-proclaimed “patriot reporter,” who claims to be “one of the highest Anons” in the QAnon movement and to earn \$5,000,000.00 per month from his QAnon broadcasts on social media, has instituted this litigation advancing claims for defamation and false light invasion of privacy against a newspaper and its op-ed columnist based upon an article that they published on February 14, 2021. The ironic gist of the opinion column at issue was that the QAnon broadcaster, who affirmatively states in his published videos on social media that certain high-ranking elected and public officials are satanic, cannibalistic pedophiles sexually abusing children and drinking their blood to ingest the life-extending chemical adrenochrome, previously pled guilty in this county to corruption of a minor resulting from a sexual relationship with a 15-year-old girl while he was a 27-year-old baseball coach at her school. Upon the completion of discovery, the columnist and newspaper filed the instant motion for summary judgment on the ground that the broadcaster has failed to adduce sufficient evidence to satisfy his burdens of proof governing his defamation and false light claims.

Since the broadcaster is admittedly a public figure, he must establish that the op-ed columnist and newspaper published a false and defamatory statement concerning him, and that they did so with “actual malice” in that they either knew the factual statement was false or they subjectively acted with reckless disregard as to its truth or falsity because they had a high degree of awareness of its probable falsity or entertained serious doubts as to its truth. Even when the summary judgment record is evaluated in a light most favorable to the broadcaster, it lacks sufficient evidence that the columnist and newspaper published a false and defamatory statement about the broadcaster with actual malice. Furthermore, inasmuch as the broadcaster’s claim for false light invasion of privacy similarly requires actual knowledge of, or subjective reckless disregard for, the falsity of the publication, the broadcaster’s submitted evidence likewise is insufficient as a matter of law to sustain his false light invasion of privacy claim. Accordingly, for the reasons discussed in greater detail below, the motion for summary judgment filed by the columnist and the newspaper will be granted.

I. FACTUAL BACKGROUND

Plaintiff, Philip Godlewski (“Godlewski”), has commenced this action against defendants, Chris Kelly (“Kelly”), and The Scranton Times, L.P. (“Scranton Times”), asserting claims for defamation and false light invasion of privacy.¹ (Docket Entry No. 1 at ¶¶ 95-104,

¹ Godlewski originally sued Times-Shamrock Communications, The Scranton Times-Tribune, and the Scranton Times’ executive editor, Larry Holeva, as well. (Docket Entry No. 1 at ¶¶ 4-6). He later stipulated to the dismissal of Times-Shamrock Communications and The Scranton Times-Tribune as named defendants on January 18, 2023, and the substitution of The Scranton Times, L.P. in their stead. (Docket Entry No. 47). On January 2, 2024, Godlewski also stipulated to the voluntary dismissal of Larry Holeva as a party in this case. (Docket Entry No. 95).

106-115, 117-123, 125-128). He avers that Kelly is “a journalist employed by the Scranton Times” who authored a “false, defamatory, and malicious article” about him that was published in the Scranton Times on February 14, 2021. (Id. at ¶¶ 1, 3). The article in question appeared under the heading “QAnon Realtor sells rabbit holes on YouTube,” and in its entirety, read:

One of the QAnon movement’s most devoted dead-enders is a Clark Summit-based Realtor who insists Donald Trump is still president and working behind the scenes to depose Joe Biden, impose martial law and bring final justice to elected Democrats and other Satanic child sex traffickers who unwind after a long day of evildoing with a glass of baby blood.

Over the past year or so, many readers have alerted me to the online proselytizing of Phil Godlewski, who lives in Duryea but sells homes under the name of a national real estate franchise. He sells QAnonsense to thousands of followers around the globe on a host of platforms, including a YouTube channel with more than 26,000 subscribers.

I’ve reported on a few local manifestations of QAnonsense, but avoided Godlewski because I don’t want to give unwarranted attention to a purveyor of a poison that has curdled the hearts and minds of millions who may never recover.

Watching the second impeachment trial of Donald Trump changed my mind. There were many Q followers in the mob of domestic terrorists who ransacked the Capitol on Jan. 6. They came from cities, towns and neighborhoods across the country. They are our neighbors, friends and family. They are Americans.

The new video of the seditionist mayhem that resulted in five deaths and the airtight case made by the House managers convinced me we can’t afford to ignore citizens of a separate reality who act, organize and seek to undermine and upend objective reality.

The Capitol riot is empirical evidence that we ignore this insidious war on truth at our peril. Despite the demolition of all its so-called prophecies, the Q movement marches on. Godlewski happily calls out the cadence.

In a text message, Godlewski told me he wasn’t at the Capitol on Jan. 6, but he showed up in USA Today’s coverage of the riot. Shortly after the mob stormed the People’s House, Godlewski posted on Facebook that Vice President Mike Pence had been arrested.

It was a lie. Godlewski didn't return the newspaper's request for comment. He has since been banned from Facebook and Twitter, but somehow is still welcome on Instagram and YouTube. A reader sent me a link to one of his latest YouTube offerings.

"I want someone to answer for me one question, logically," Godlewski said to his audience. "I want a really good explanation. Why would (Trump) walk away? Why, why would Donald Trump walk away? He knows there's election fraud. He has the proof. He has them nailed to the wall and there's no doubt about that."

The self-proclaimed "patriot reporter" went on to cite widely debunked claptrap as proof the election was stolen and argued that Trump's failure to use the Insurrection Act and a host of other powers the presidency does not grant to stay in power is actually part of the grand, hidden strategy we mere mortals can't begin to comprehend.

This is the paradox of every crackpot conspiracy theory. When nothing makes sense, it's because you don't know everything – yet. Keep believing and all will be revealed. The "Great Awakening" is always just a little further down the rabbit hole.

There is no room for doubt in the QAnon cult. Adherents believe that "Q" is a mysterious individual (or group of them) with a high-level security clearance. Q is privy to a "plan" by Trump to round up and execute the Satanic vampire pedophiles in a sweeping cataclysm called "The Storm," which will lead to a "Great Awakening."

Ashli Babbitt, the Air Force veteran tragically shot and killed by a Capitol Police officer as she climbed through a smashed window, believed she was participating in The Storm. Her belief killed her just as sure as the bullet that brought her down.

I wanted to answer the question Godlewski posed in his video, so I reached out and proposed an interview. He declined. I suggested he record our discussion, as Andrew Torba – CEO of the Clark Summit-based right-wing antisocial media platform Gab – did a few weeks ago. No go.

"All of the things I say will be dissected into oblivion, and only the 'crazy sounding' things will make the article," Godlewski texted. *"It'll ultimately be*

painted to make me look insane, and my family will ultimately suffer in the future. I can't take that chance."

I texted back in what soon became a sporadic exchange of messages that amounted to an interview:

"I've been watching your videos and I have to ask: Do you really believe the things you say, or are you just in it for the attention? If the former, why not defend your beliefs on the record? If the latter, why pass on an opportunity to showcase yourself?"

Godlewski's response:

"I couldn't care less about attention. The reporting I do is because the average American Citizen can no longer get true information from the Main Stream Media. Between all platforms, I have over 75,000 followers that are depending on me for information that they can no longer get from their regular sources. I'm not the only citizen reporter. There are dozens of people like me, if not hundreds. If I wanted to "showcase myself", in your words (not mine), I would have jumped at the opportunity to do your interview. It's not about that. It's about the truth.

"Again, Chris, no disrespect to you, but I know you're following the agenda. The theme of your article is already set for you. You can't go against the MSM narrative with your reporting, because you'll either 1.) get fired, or 2.) lose credibility with what the Tribune (or you) think is their "primary audience." Little do you know, your primary focus on subscribers should be people like me, who seek the truth and no longer listen to the garbage MSM narrative. The focus shouldn't be on the ones the Tribune wants your article to appeal to. I understand that's not your choice, but that's the reason I cannot do the interview. Your narrative is already set."

This is the epitome of a self-fulfilling prophecy. Godlewski refuses to engage me as an admitted critic, ensuring that my report will be one-sided. He is automatically the martyr. I am a witless tool of the "deep state," or worse – a willing agent of oppression.

Here's "proof." In the normal course of reporting this column, I stumbled upon some legal troubles in Godlewski's recent past. In 2011, the former Riverside High School baseball coach pleaded guilty to corruption of minors and admitted to having a sexual relationship with a 15-year-old girl.

Lackawanna County detectives said Godlewski had sex with the girl in cars and homes he had access to as a real estate agent. Godlewski, 28 at the time, was sentenced to three to 23 months, with the first three months to be served under house arrest and the balance as probation.

Last February, Godlewski was charged with theft by deception, forgery and related charges. Police said Godlewski kited a check to an area building supplier and forged bank statements to cover it up. The case is still pending.

I texted Godlewski and told him I was likely to report both cases in the column. I didn't want him to be blindsided.

His response:

"That shows your character as a journalist, Chris. You just lost all respect and credibility with me."

In fact, my editor and I discussed whether to include the information, which is public and was previously published in The Times-Tribune. We decided it was relevant in regard to Godlewski's credibility. I have many character defects, but the last time I had sex with a 15-year-old was never.

Throughout the reporting of this column, I texted Godlewski to give him an opportunity to respond. Eventually, he asked me to stop.

"Please stop messaging me. Bringing up my past only serves you, and your company. It will cause turmoil for my young children and family. I don't want to hear from you again. Go continue your self serving nature. Karma always has a way when it comes to people that do that kind of stuff to me."

Karma is easy to see when it affects others, not so much when it's working on you. I am telling the truth in a local newspaper. Godlewski is spreading lies across the planet. Whether he's a true believer or a cynical opportunist, the damage is the same.

If Godlewski had agreed to speak with me, I would have answered his questions logically:

* Trump "walked away" because he lost the election and his shameless, treasonous and ultimately lethal attempt to overturn it failed. Democracy defeated Trump. On Nov. 3 and again on Jan. 6 and Jan. 20.

* Trump never presented a shred of evidence of mass voter fraud because there is none. If he had any legitimate proof, his lawyers would present it in a court of law. The idea that Trump would holster any “smoking gun” that bolstered his selfish claims is beyond ridiculous.

Trump didn’t testify at either impeachment trial for the same reason Godlewski refused to speak with me. Trump and Godlewski don’t dare leave their safe spaces – where truth is fluid and lies flow with no resistance – for fear of having to defend the indefensible. Subjecting themselves to even the slightest scrutiny makes them vulnerable to the hard lessons of accountability.

If you lose the presidential election, don’t incite a mob to overthrow the government. If you choose to join that mob, don’t do it in front of an army of photojournalists while carrying a location-pinging cellphone.

And if you hold yourself up as a “patriot reporter” who tells truths that can’t be found anywhere else, don’t traffic in lies.

Godlewski’s lies have consequences beyond his immediate family. Millions of Americans have lost parents, grandparents, siblings, children and friends to the QAnon cult. They watched in helpless horror as their loved ones were led down rabbit holes from which they may never return.

Godlewski bears some responsibility for that, but I wish him no ill. It’s my hope that he’ll reflect on his role in curdling the hearts and minds of people who placed their trust in him and stop pushing the poison.

In that spirit, I offer a stitch of wisdom I learned the hard way, from one patriot reporter to another: It’s fun to point fingers until some jerk holds up a mirror.

(Id. at pp. 25-32).

Godlewski contends in his verified Complaint that the above-quoted article contained three defamatory characterizations regarding him. First, he maintains that Kelly and the Scranton Times falsely accused “Godlewski of having a sexual relationship with a 15-year-old pursuant to a criminal matter which occurred in 2011,” even though “he never had sex [with] an underage girl” and “pled to a misdemeanor.” (Docket Entry No. 1 at ¶¶ 42, 45, 48, 51). He

avers that “Kelly deliberately conflated the charges against Mr. Godlewski of having sex with a girl, with his plea to a misdemeanor charge for corruption of minors,” and claims that “[t]here is nothing in Mr. Godlewski’s criminal record which indicates, relates and/or references to Mr. Godlewski pleading guilty to having had sex with a 15-year-old girl, or any other underage girl.” (*Id.* at ¶¶ 55, 61).

Second, Godlewski alleges that by stating that “Godlewski was selling rabbit holes on YouTube, coupled with the cartoon of a real estate sign on top of which was written ‘RABBIT HOLE FOR SALE!’ and beneath the words “UNREAL-TOR” and next to a “diagram in the center of the sign that represents QAnon,” Kelly and the Scranton Times “gratuitously, maliciously, unnecessarily, and inextricably linked Mr. Godlewski’s professional integrity to his alleged political views using the latter to impugn his integrity as a realtor.² (*Id.* at ¶¶ 17-20). He asserts that he “made his reputation as a realtor by being trustworthy, reliable, and knowledgeable” and “discharging the highest ethical standards,” but “was terminated [by ERA

² QAnon has been described in other litigation as “an American conspiracy movement” that “centers around ‘Q,’ who is supposedly ‘a high-ranking government official’ who ‘leaks top secret information’ about the ‘Deep State.’” *Flynn v. Cable News Network, Inc.*, 2024 WL 1765566, at *1 (S.D.N.Y. 2024). It believes that a secret global cabal of Democrats and celebrities worship Satan, sexually abuse children, and drink the children’s blood to ingest a life-extending chemical called adrenochrome. *Id.* at *6; *U.S. v. Gieswein*, 2021 WL 3168148, at *15 (D.D.C. 2021), *aff’d*, 2021 WL 5263635 (D.C. Cir. 2021); Angela S. Boettcher, “QAnon: What the Viral Conspiracy Theory Can Teach Us About The Mainstream Sex Trafficking Debate,” 37 *Berkeley J. Gender L. & Just.* 195, 196 (2022). QAnon is considered to be “the progeny of PizzaGate - - the theory that high-ranking Democratic officials were running a child-sex ring out of a Comet Ping Pong, a pizza parlor in Washington D.C.” Connor B. Flannery, “§ 230 and Tinfoil Hats: What Conspiracy Theories Teach Us About The Marketplace of Ideas And Online Speech,” 31 *Cath. U.J.L. & Tech.* 3, 21 n.103 (Spring 2023). QAnon proponents believe “that then-President Trump was ‘recruited by top military generals to run for President in 2016 to break up’ the cabal, disrupt its control over world affairs, and ‘bring its members to justice.’” Boettcher, *supra*. They similarly “believe, without evidence, that President Trump was elected to defeat a purported cabal of cannibalistic pedophiles in the government.” *Patrick v. Daily Beast Company, LLC*, 674 F.Supp.3d 159, 161 (E.D. Pa. 2023). QAnon supporters also “claim that organizations funded by the Bill and Melinda Gates Foundation engineered, patented, and weaponized the novel coronavirus (COVID-19) to undermine then-President Trump’s chances of re-election in 2020.” Flannery, *supra*.

One Source Realty] because of the defamatory article written and published by” Kelly and the Scranton Times.³ (Id. at ¶¶ 9-10, 13). Godlewski submits that he “has been defamed in his profession as a realtor in which he functions as a private individual,” and that he “remains a private figure with respect to criminal charges which were brought against him and any plea agreement does not transform him into a public figure in that respect.”⁴ (Id. at ¶¶ 90-91).

Third, Godlewski alleges that Kelly and the Scranton Times defamed him by referring to him as “a purveyor of poison” despite “not having one wit of evidence that Mr. Godlewski’s views and opinions have irreparably damaged anyone.” (Id. at ¶¶ 21, 23). He contends that “despite stating that Mr. Godlewski was not at the Capitol on January 6, 2021, the date of the insurgency,” Kelly and the Scranton Times “tab Mr. Godlewski as, not only a supporter, but an active participant and organizer” who was “integrally involved in the unlawful assault on the Capitol and is part of a conspiracy to overthrow the United States government by force and is thus a ‘seditionist.’” (Id. at ¶¶ 25, 29). Godlewski submits that by implying that he was “an integral part of the Capitol insurgency, the article labels Mr. Godlewski, not just as a seditionist insurgent and a traitor to his country, but also a murder, complicit in the depths (*sic*) of five persons.” (Id. at ¶ 74).

³ Godlewski’s now ex-wife, Dorothea (Dori) Gallagher, testified that Godlewski’s employer at ERA One Source Realty, Ms. Sunita Arora, instructed Godlewski to discontinue his QAnon social media videos and informed him that “it wasn’t something that she could have in her business.” (Deposition of Dorothea “Dori” Gallagher dated 7/20/23, attached to Docket Entry No. 102 as Exhibit 20, at p. 45).

⁴ However, by Order dated January 18, 2023, Judge James A. Gibbons approved the parties’ stipulation in which Godlewski specifically agrees “that for purposes of this litigation, plaintiff, Philip Godlewski, shall be deemed a public figure.” (Docket Entry No. 46).

Godlewski has advanced three causes of action for defamation in the Complaint labeled as “Defamation by Imputation of Crimes,” “Defamation for Blackening [Godlewski’s] Reputation as a Realtor,” and “Defamation by Innuendo by Directly Associating [Godlewski] with the Insurgency on the Capitol on January 6, 2021.” (*Id.* at ¶¶ 95-104, 106-115, 117-123). Relying upon the same factual allegations, he has asserted a separate claim for “false light invasion of privacy.” (*Id.* at ¶¶ 125-128). Godlewski’s final two claims seek to recover special damages for intentional interference with contractual relations and prospective contractual relations.⁵ (*Id.* at ¶¶ 130-134, 136-140). His accompanying prayer for relief seeks to recover “actual and special damages,” “out-of-pocket expenses due to the defamation and for injury done to his reputation,” and “liquidated and/or punitive damages as permitted by applicable law.” (*Id.* at pp. 19-20).

By Order dated July 11, 2023, all discovery in this matter was to be completed by December 31, 2023, any motion for summary judgment by Kelly or The Scranton Times was to “be filed no later than January 31, 2024,” together with a supporting brief, and Godlewski’s

⁵ When Godlewski was pressed by defense counsel during his deposition to identify any people “who think less of you because they read [Kelly’s] article” or someone he was “friends with before the article” who no longer associates with him because of the article published on February 14, 2021, the only individuals that Godlewski could identify were Brian Fredrick Gray, Jr. and Emily Elizabeth Gray, who owned “a \$200,000.00 house” and “cancelled their listing with [Godlewski]” after the article appeared. (Deposition of Philip Godlewski dated 7/25/23, attached to Docket Entry No. 101 as Exhibit 2, at pp. 311-313). However, the records of the Lackawanna County Recorder of Deeds, Instrument #202010882, and the Divorce Decree issued by Judge Thomas J. Munley in Emily Elizabeth Gray v. Brian Fredrick Gray, Jr., No. 20 FC 40090 (Lacka. Co.) document that the Grays’ property was actually sold for \$202,127.00 on July 23, 2020, and that the Grays were divorced on August 5, 2020, more than six months prior to the publication of Kelly’s article. (Docket Entry No. 101, Exhibit 1; Docket Entry No. 102, Exhibit 46). On January 18, 2023, Judge Gibbons approved the parties’ stipulation pursuant to which Godlewski voluntarily “dismiss[ed] any and all claims he has for economic damages or special damages against all defendants in this lawsuit.” (Docket Entry No. 47 at p. 3). Furthermore, in his brief in opposition to the pending motion for summary judgment, Godlewski affirmatively represents that “[g]iven the circumstances and state of evidence surrounding the case, Godlewski is not seeking relief under these causes of action” for intentional interference with existing or prospective contractual relations. (Docket Entry No. 108 at p. 29).

opposing brief was required to “be filed no later than February 29, 2024.”⁶ (Docket Entry No. 85). The summary judgment record reflects that on July 9, 2020, Detective Michele Mancuso and Detective Justin Leri filed an Affidavit of Probable Cause seeking the filing of criminal charges against Godlewski based upon his unlawful sexual activity with a minor, Brienna DuBorgel.⁷ Commonwealth v. Godlewski (“Godlewski I”), No. 10 CR 2613, Docket Entry No. 2 at pp. 12-15 (Lacka. Co.). Ms. DuBorgel informed Detective Mancuso that “she had been involved in a sexual relationship with Philip Godlewski . . . while he was the baseball coach at Riverside High School in 2008” when she was 14 years old and a 9th grade student at Riverside

⁶ The pre-trial phase of this case featured frequent discovery disputes necessitating judicial intervention and resolution. While presiding over Discovery Motion Court, Senior Judge Carmen D. Minora issued and filed Orders on August 23, 2022, November 14, 2022, August 22, 2023, October 13, 2023, and December 18, 2023, granting the motions to compel filed by Kelly and the Scranton Times and directing Godlewski to serve answers to interrogatories and responses to requests for production of documents. (Docket Entry Nos. 21, 34, 88, 91, 93). On August 23, 2022, and February 21, 2023, Judge Minora also granted defense motions to compel the Lackawanna County District Attorney to produce subpoenaed materials regarding Godlewski’s criminal prosecutions. (Docket Entry Nos. 22, 53). On December 18, 2023, Judge Minora granted the defense “Motions to Deem Admitted Requests Relative to Requests for Admission (Set V and Set VI)” that were served upon Godlewski. (Docket Entry No. 93). Additionally, by Order dated November 14, 2022, Kelly and the Scranton Times were “awarded \$2,345.00 for counsel fees to be paid by [Godlewski] as a sanction due to [his] failure to properly respond to discovery requests,” and on January 22, 2024, Judge Minora ordered Godlewski to pay \$2,500.00 “made payable to Lackawanna Pro Bono, Inc.” as “a sanction for failing to properly preserve evidence” and a separate sanction of \$5,000.00 “made payable to The Scranton Times, L.P.” for failing “to provide verified and complete answers to discovery as directed in this Court’s November 14, 2022, Order.” (Docket Entry Nos. 34, 99).

⁷ In criminal prosecutions involving the sexual or physical abuse of a minor, the name of the minor victim is not to be disclosed, and any court records revealing the minor’s name “shall not be open to public inspection.” 42 Pa. C.S. § 5988(a). However, Ms. DuBorgel has voluntarily identified herself and provided affidavits in this matter attesting to the sexual offenses that she asserted against Godlewski in No. 10 CR 2613. (Docket Entry No. 101, Exhibits 7, 23). Moreover, Godlewski has identified Ms. DuBorgel by name in the civil action that he has filed against her based upon her affidavits in this case, and Ms. DuBorgel has filed a counterclaim in that action asserting claims against Godlewski for defamation, false light, assault, battery, intentional infliction of emotional distress, and negligent infliction of emotional distress based upon the same charges asserted in No. 10 CR 2613. Godlewski v. DuBorgel, No. 23 CV 1354, Gibbons, J., at pp. 3, 7-13 (Lacka. Co. June 21, 2024). Thus, Ms. DuBorgel’s identity as the minor victim in No. 10 CR 2613 has been disclosed previously in publicly accessible filings.

High School.⁸ Id. at p. 13. She further “stated they were involved in oral and vaginal sexual intercourse” which “started happening in his vehicle” in 2008. Id.

Ms. DuBorgel advised Detective Mancuso on July 7, 2010, that Godlewski “has been contacting her while he was at work” as a realtor, and that “she has been keeping in contact with Godlewski through a throw away phone he keeps with him while at work.” Id. at p. 14. After “the cell phones and computers” of Godlewski were seized and subject to forensic analysis “by Corporal Derek Fozard of the Pennsylvania State Police and Detective Justin Leri of the Lackawanna County [District Attorney’s] Office,” the investigators ascertained that the text messages between Godlewski and Ms. DuBorgel “contained conversations of sexual encounters, exchanges of gifts, and a brand-new vehicle for the victim.” (Id.). Specifically, Corporal Fozard and Detective Leri were able to verify and authenticate the following text messages transmitted from Godlewski to Ms. DuBorgel:

⁸ A court may take judicial notice of the pleadings, orders, and filings in other court proceedings where appropriate, particularly if the other proceedings involve one of the named parties. Lycoming County v. Pennsylvania Labor Relations Board, 943 A.2d 333, 335 n.8 (Pa. Cmwlth. 2007); Krenzel v. Southeastern Pennsylvania Transportation Authority, 840 A.2d 450, 454 n.6 (Pa. Cmwlth. 2003); Scott Township Sewer and Water Authority v. Tellip, 45 Pa. D. & C.5th 197, 201 (Lacka. Co. 2015). As a result, a court “may take judicial notice of information contained in the publicly-available docket” of a prior criminal prosecution involving one of the parties in a subsequent suit. Moss v. SCI-Mahanoy Superintendent Pennsylvania Board of Probation and Parole, 194 A.3d 1130, 1137 n.11 (Pa. Cmwlth. 2018), *app. denied*, 654 Pa. 426, 215 A.3d 562 (2019). Judicial notice is applied more narrowly when considering preliminary objections challenging the legal sufficiency or factual specificity of a complaint, and in that context, judicial notice may be taken of the filings in a prior criminal or civil proceeding only if the complaint specifically references that earlier criminal or civil action involving one of the parties. d’Happart v. First Commonwealth Bank, 282 A.3d 704, 716 (Pa. Super. 2022); Santiago v. Yates, 72 Pa. D. & C.5th 485, 489 n.2 (Lacka. Co. 2019). Since Godlewski’s Complaint expressly references his prior criminal prosecutions, judicial notice could be taken of the filings and Godlewski’s admissions in No. 10 CR 2613 even if preliminary objections, rather than a motion for summary judgment, were being considered. (Docket Entry No. 1 at ¶¶ 42-61, 75-79, 96-104).

2/25/10: *"I just want you to see that I really care about you, and not your body or our sex. Maybe that's the only way I can."*

2/28/10: *"The only way we'd ever be sexually satisfied is if we did it like 4-5 times a day."*

3/6/10: *"I hate my penis, idk [I don't know] why the fuck that happens. You looked so good and were giving incredible head then BOOM, gone. Like wtf."*

Godlewski's 2 Page Day Log:

10:14 a.m.: *"Realized that you're only 15, but quickly stopped caring."*

11:39 a.m.: *"I just pulled [your] hair from my crotch area. hahahaha!!!"*

02:56 p.m.: *"Should we get a Jacuzzi suite? Hmm"*

Id. at p. 15.

On July 9, 2010, the Commonwealth filed a criminal complaint against Godlewski charging him with Statutory Sexual Assault, 18 Pa. C.S. § 3122.1, Involuntary Deviate Sexual Intercourse, 18 Pa. C.S. § 3123(a)(7), Aggravated Indecent Assault, 18 Pa. C.S. § 3125(a)(8), Unlawful Contact with a Minor, 18 Pa. C.S. § 6318(a)(1), Intimidation of a Victim, 18 Pa. C.S. § 4952(a)(2), Criminal Use of a Communication Facility, 18 Pa. C.S. § 7512(a), Corruption of Minors, 18 Pa. C.S. § 6301(a)(1), and Indecent Assault, 18 Pa. C.S. § 3126(a)(8). Id. at pp. 1-6. However, following negotiations between counsel for the Commonwealth and Godlewski, the Commonwealth filed a Criminal Information on November 8, 2010, charging Godlewski with a single count of Corruption of Minors under the 2010 version of 18 Pa. C.S. § 6301(a)(1) on the factual basis that he "did repeatedly have inappropriate text [m]essages and contact with

a minor.”⁹ *Id.*, Docket Entry No. 6. In connection with that filing, Godlewski originally tendered a *nolo contendere* plea to corruption of a minor with the understanding that he would receive a specified sentence, but after Judge Vito Geroulo “informed the parties that he was not accepting the conditional plea,” Godlewski filed a motion to withdraw his *nolo contendere* plea, which Judge Geroulo granted on March 2, 2011. *Id.*, Docket Entry Nos. 7, 10, 13.

Godlewski subsequently pled guilty, not *nolo contendere*, to the charge of corruption of a minor on July 11, 2011, and was sentenced by Judge Geroulo to three months to 23 months home confinement, and was specifically prohibited by Judge Geroulo from having any contact with Ms. DuBorgel during his 23 months of supervision.¹⁰ *Id.*, Docket Entry No. 17. Under the heading “Ex-Baseball Coach Sentenced For Sex With Girl, 15,” The Scranton Times staff writer, Denis J. O’Malley, authored an article on July 12, 2011, concerning Godlewski’s plea and sentence. (Docket Entry No. 101, Exhibit 3). That article notes that Godlewski was arrested for “having sex with the girl in two cars and homes for sale to which he had access as a real estate agent,” and that the “relationship with the teen began in 2008, when she was only

⁹ At the time of Godlewski’s corruption of minor offense, Section 6301(a)(1) of the Crimes Code stated, in relevant part, that “[w]hoever, being of the age of 18 years and upwards, by any act corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices, or encourages any such minor in the commission of any such crime, . . . , commits a misdemeanor of the first degree.” *Commonwealth v. Tiffany*, 926 A.2d 503, 507 n.15 (Pa. Cmwlth. 2007) (quoting 18 Pa. C.S. § 6301(a)), *app. denied*, 597 Pa. 706, 948 A.2d 804 (2008). The current version of Section 6301(a)(1) is further divided into two subsections (i) and (ii) pursuant to which a corruption of minors offense is graded as a felony of the third degree if it involves conduct relating to sexual offenses. *See* 18 Pa. C.S. § 6301(a)(1)(i)-(ii). The latter version of 18 Pa. C.S. § 6301(a)(1), which treats the crime of corruption of a minor involving sexual offenses as a felony under subsection (a)(1)(ii), was not in effect at the time of Godlewski’s offense.

¹⁰ Godlewski did not enter an “Alford plea” pursuant to *North Carolina v. Alford*, 400 U.S. 25, 37 (1970) whereby a defendant “claims innocence, but consents to the imposition of a prison sentence.” *Com. v. Pasture*, 630 Pa. 440, 444 n.1, 107 A.3d 21, 23 n.1 (2014). An Alford plea is based upon the theory that “[w]hen a criminal defendant is unable or unwilling to admit to participating in acts constituting a crime, but the record contains strong evidence of guilt, the defendant may conclude that a guilty plea is in his or her best interests.” *Id.* (citing *Alford, supra*).

14.” (Id.). In identifying the evidence supporting Godlewski’s corruption of a minor conviction, the article referenced “thousands of text messages between Mr. Godlewski and the girl in which he explicitly described their sexual exploits and expressed how much he cared about her.” (Id.). On August 27, 2011, Judge Geroulo released Godlewski from the house arrest program to parole, and upon completing his remaining period of parole, Godlewski was discharged from parole on August 12, 2013. Godlewski I, supra, Docket Entry Nos. 23-25.

Godlewski testified that the QAnon “movement started in 2017” and that he is considered “one of the highest Anons” because he was “one of the original members or posters or one of those that w[as] involved from the very beginning” in QAnon. (Godlewski Depo. at pp. 35-36, attached to Docket Entry No. 101 as Exhibit 2). He describes himself as a “truther,” “investigative journalist,” and “patriot reporter” who broadcasts QAnon videos on social media platforms to an audience that he claims consists of “17 to 18 million subscribers.” (Id. at pp. 153, 164, 188-189, 200-201). He stated under oath that as a result of his QAnon postings and videos, he currently is worth “[b]etween 75 and 100 million” dollars, and receives \$5,000,000.00 per month from Rumble.com alone. (Id. at pp. 188, 190, 203).

The following is a sampling of events that Godlewski genuinely believes either took place or did not occur, and which are the subjects of his social media broadcasts:¹¹

- United Airlines Flight 93 did not crash in Somerset County, Pennsylvania, on September 11, 2001, and instead landed safely “at O’Hare Airport in Chicago”

¹¹ During a discovery sanctions hearing before Judge Minora, Godlewski testified that he originally broadcast solely on Facebook, but that on January 20, 2021, “Facebook suspended and deleted [his] account permanently.” (Transcript of Proceedings on 2/6/23, attached to Docket Entry No. 101 as Exhibit 6, at p. 147). Godlewski “then transitioned to YouTube,” however, “YouTube deleted [his] account” too. (Id. at pp. 147-148). Godlewski maintains that “[a]ll of [his] videos are on Telegram,” and that “[o]n average,” each video is viewed by 14,230,000 people. (Id. at pp. 148-149).

where the passengers “were unloaded on the tarmac and taken to a hangar.” (Id. at pp. 162-163).

- There “was no shooting” at the Route 91 Harvest Music Festival near the Mandalay Bay Hotel in Las Vegas, Nevada, on October 1, 2017. (Id. at p. 170).
- Donald Trump ordered the arrest of various public figures by the military and thereafter presided over their trials and executions by military tribunals at Guantanamo Bay. (Id. at p. 166). Among the individuals whose execution Donald Trump authorized and presided over included former Secretary of State Hillary Clinton on December 31, 2018, President Joseph Biden in 2019, Senator John McCain, and Tom Hanks. (Id. at pp. 163-164, 166-167, 170, 172). The individuals who people believe are President Biden, former Secretary Clinton, and Tom Hanks are actually body doubles or clones. (Id. at pp. 166-167, 172).
- Two women appearing to be Hillary Clinton and her former Chief of Staff, Huma Abedin, are depicted in a “video, which looks like the basement of Comet Pizza in Washington, D.C.,” and shows both of them “laying different children on top of ping pong tables, which are in the basement, molesting those children, frightening those children with weapons and then drinking something which would line up with the theory that it is the blood of those children for purposes of extracting adrenochrome,” which conduct is “the main reason that Hillary Clinton was executed.” (Id. at pp. 173-174). President Biden was likewise executed “for crimes against humanity in 2019” based upon “many reports and investigative data” indicating “that Joe Biden was involved with children.” (Id. at pp. 158, 167). Tom Hanks was also executed by a military tribunal because he “was a pedophile.” (Id. at p. 172).
- Former Presidents George H.W. Bush and George W. Bush and “the Bush family were completely complicit with the child sex-trafficking ring globally,” but only former President George H.W. Bush was executed by a military tribunal as a result. (Id. at pp. 175-176).
- There is audio and video proof that President Bill Clinton’s Chief of Staff, John Podesta, molested children and scalded them with water. (Id. at pp. 174-175).
- President John F. Kennedy was not assassinated on November 22, 1963, and did not die until January 2021 or 2022. (Id. at pp. 176-177).
- California Governor Gavin Newsom “killed himself” and the person who is representing himself as Governor Newsom now is actually “a body double” or “a clone.” (Id. at pp. 168-169).

- Former Secretary of the Defense, Mark Esper, “turned out to be a cabal Deep-State plant” and a traitor, and the former Chief Medical Advisor to the President of the United States, Anthony Fauci, “will be arrested and tried by a military tribunal,” and if found guilty of “crimes against humanity,” likewise will be sentenced to death. (Id. at p. 168).
- The District of Columbia has been under martial law “for several months and the patriots blew up the tunnels underneath the District of Columbia which were used for child-trafficking.” (Id. at pp. 172-173).
- The COVID-19 vaccine was “developed by Big Pharma to control the minds and actions of humans by way of the 5G networks operated by the phone companies.” (Id. at p. 169).
- There is “a second secret Constitution of the United States” and “the Supreme Court of the United States has already rendered a decision overturning the 2020 election.” (Id. at p. 169).
- The foregoing “cabal is trafficking children” and “harvesting adrenochrome for . . . the elites that use it, but also for sex purposes and to play out their sadistic, disgusting fantasies.” (Id. at p. 181). “The Storm” is “a global cleanup of this enterprise that is not only stealing, but torturing, raping and otherwise molesting our children, but also stealing and trafficking adults, getting them hooked on drugs, fentanyl, and heroin and worse.” (Id. at pp. 182-183). The Storm is comprised of “worldwide military patriots that want to set humanity free,” and Godlewski himself has “been summoned and called upon to lead a very complex, very covert operation to restore the Republic of America to its people.” (Id. at pp. 183-184). Godlewski refused to discuss that covert operation during his deposition, claiming that he is subject to a nondisclosure agreement that prohibits him from doing so. (Id. at pp. 186-187).
- The people who “entered the Capitol waving the flags on January 6, 2021, were part of a false flag operation,” and Congress “has the files that prove” that the attack “at the Capitol on January 6 was an FBI set-up.” (Id. at pp. 219-220). In addition, “Ashli Babbitt was not really shot and killed at the Capitol on January 6.” (Id. at pp. 220-221).
- Godlewski reported live on January 6, 2021, that Vice President Mike Pence had been arrested. (Id. at p. 220).

According to the filings in Commonwealth v. Godlewski ("Godlewski II"), No. 20 CR 664 (Lacka. Co.), Godlewski purchased kitchen cabinets, hardware for the cabinets, and granite countertops from Mariotti Building Products, and on the date of the delivery of the kitchen materials to his residence on November 13, 2019, he provided Mariotti with a check in the amount of \$21,789.84 representing the balance due. (Id., Docket Entry No. 2 at pp. 21-22). Two days later, Godlewski sent Mariotti an email stating "that the check he gave Mariotti posted to his account twice" totaling \$43,579.68, and in subsequent emails in late November 2019, he represented to Mariotti that "the second posting was returned since he only had \$35,000.00 in his account." (Id. at pp. 21, 23). On December 10, 2019, "Godlewski advised Eugene Mariotti that Wells Fargo Bank made an error and withdrew the \$21,789.84 from his account twice," and on January 2, 2020, he told "Eugene Mariotti that he filed a lawsuit against the Bank to recover the funds and that his attorney would like to know if Mariotti wanted to cooperate in the lawsuit, if needed." (Id. at p. 25). Additionally, Godlewski provided Mariotti with what he represented as his Wells Fargo bank statements reflecting "that on November 13, 2019, the same day check #2022 in the amount of \$21,789.84 was issued to Mariotti, there was a balance of \$34,922.47 in the account." (Id.). However, Godlewski's actual statements from Wells Fargo Bank confirmed that "the actual balance in the account on November 13, 2019, was \$267.95," and that "check #2022 in the amount of \$21,789.84 was never deducted from the account balance because the balance was only \$267.95 when the check was presented at the Bank." (Id. at p. 27).

On February 20, 2020, Godlewski was charged with forgery of bank records, 18 Pa. C.S. § 4101(a)(2), theft by deception, 18 Pa. C.S. § 3922(a)(1), tampering with records, 18 Pa. C.S. § 4104(a), and bad checks, 18 Pa. C.S. § 4105.¹² (Id., Docket Entry No. 3). Godlewski later pled guilty to tampering with records and bad checks before Judge Michael J. Barrasse on February 23, 2021. (Transcript of Proceedings in Godlewski II dated 2/23/21 at pp. 1-2). During his guilty plea, Godlewski expressly admitted that he “did provide Mariotti Building Products with a copy of the doctored and fraudulent Wells Fargo Bank statement reflecting a significantly higher balance than what was in the actual account,” and that the “[f]raudulent bank statement further reflected the check to be withdrawn from the account twice to make it appear as though the Bank erred.” (Id. at pp. 3-4). He further acknowledged that he “did unlawfully pass a certain check . . . dated November 13, 2019, for payment of money in the amount of \$21,789.84 payable to the order of Mariotti Building Products and drawn on a Wells Fargo bank account knowing well at the time of passing said check that it would not be honored by the drawee.” (Id. at p. 4). After Judge Barrasse ordered a pre-sentence investigation report in aid of sentencing, (Id. at pp. 5-6), he sentenced Godlewski on June 22, 2021, to an intermediate punishment program comprised of one month imprisonment at the Lackawanna County Prison, followed by three months of house arrest and four years of probation.¹³ Godlewski II, supra, Docket Entry No. 21.

¹² Godlewski testified that “right after [his] arrest” in No. 20 CR 664, the State Real Estate Commission “actively suspended” his realtor’s license. (Godlewski Depo. at p. 127).

¹³ By letter dated March 29, 2021, Godlewski’s counsel advised Judge Barrasse that “we believe it would be beneficial to the Court that we get a psychological evaluation” of Godlewski as part of the “pre-sentence investigation.” Godlewski II, supra, Docket Entry No. 18. The public record in No. 20 CR 664 does not reflect whether such a psychological evaluation was performed or the results of any such evaluation.

Near the conclusion of the pre-trial discovery period, Godlewski filed a motion seeking to obtain discovery of the financial wealth of Kelly and The Scranton Times in connection with his claim for punitive damages. (Docket Entry No. 96). The wealth of the defendant is a factor to be considered by the fact-finder in determining an appropriate amount of punitive damages, Kirkbride v. Lisbon Contractors, Inc., 521 Pa. 97, 102, 555 A.2d 800, 803 (1989), and a defendant's net worth is recognized "as a valid measure" of a defendant's wealth for purposes of punitive damages. Carlini v. Glenn O. Hawbaker, Inc., 219 A.3d 629, 640 (Pa. Super. 2019). Rule 4003.7 governs such financial wealth discovery, and states that "[a] party may obtain information concerning the wealth of a defendant in a claim for punitive damages only upon order of court setting forth appropriate restrictions as to the time of the discovery, the scope of the discovery, and the dissemination of the material discovered." Pa.R.Civ.P. 4003.7. For more than 20 years, the Court of Common Pleas of Lackawanna County has required plaintiffs to first articulate facts or produce evidence establishing a *prima facie* basis for the recovery of punitive damages as a condition precedent to securing financial wealth discovery under Rule 4003.7. See Kuehner v. Abdulqader, 73 Pa. D. & C.5th 180, 187 (Lacka. Co. 2019); Charlesworth v. Galacci, 68 Pa. D. & C.5th 79, 84 (Lacka. Co. 2017); Ogozaly v. American Honda Motor Co., Inc., 104 Lacka. Jur. 354, 360 (2003). Our application of that threshold requirement for financial wealth discovery is consistent with appellate precedent. See Cabot Oil and Gas Corporation v. Speer, 241 A.3d 1191, 1199-1200 (Pa. Super. 2020) ("In this case, the trial court properly concluded that Appellees had the right to punitive damages discovery under Rule 4003.7, based on evidence that Appellants intentionally and wantonly filed a second

federal lawsuit despite full knowledge of the prior settlement between Appellees and Kemble.”).

In addressing Godlewski’s request for discovery under Rule 4003.7, Judge Minora observed that Godlewski “must prove Defendants acted with ‘actual malice’ to succeed in his claims,” and that “were [Godlewski] to establish Defendants’ liability, he would necessarily be entitled to the consideration of punitive damages, which are recoverable ‘when an individual’s actions are of such an outrageous nature as to demonstrate intentional, willful, wanton, or reckless conduct.’” (Docket Entry No. 96 at p. 1) (quoting Dubose v. Quinlan, 125 A.3d 1231, 1240 (Pa. Super. 2015)). He concluded that “case law makes clear that a claim for punitive damages alone is insufficient to support a request for wealth discovery unless accompanied with evidence to establish there is a factual basis for the claim,” Id. (citing Cabot Oil and Gas Corporation, supra), and that at a minimum, “‘plaintiff must identify facts that establish a *prima facie* basis for the recovery of punitive damages under Pennsylvania law.’” Id. (emphasis in original) (quoting Charlesworth, supra). Consequently, to secure financial wealth discovery from Kelly and The Scranton Times, Godlewski was required to identify facts or evidence establishing a *prima facie* basis for finding that Kelly or The Scranton Times acted with actual malice by displaying a reckless disregard for the truth or falsity of the factual statements contained in the subject article. However, on January 12, 2024, Judge Minora denied Godlewski’s motion for discovery under Rule 4003.7 based “on the undeniable truth that [Godlewski] has not submitted in support of his motion any evidence, as he must, to establish a *prima facie* basis for the entitlement to punitive damages.” (Id. at p. 3) (emphasis in original).

Even though discovery in this matter was concluded by January 12, 2024, Judge Minora found on that date that Godlewski “has not at present satisfied his burden to convince us he is entitled to conduct wealth discovery.” (Id.).

Kelly and The Scranton Times have filed a motion for summary judgment seeking to dismiss Godlewski’s defamation and false light claims on the grounds that Godlewski cannot establish that any factual statements concerning him in the article are false, and that other content set forth in the article constitute Kelly’s “legally protected opinions” that are “not actionable.” (Docket Entry No. 98 at ¶¶ 32, 42-44). They also assert that they are entitled to judgment as a matter of law since Godlewski cannot “prove by clear and convincing evidence” that any alleged false statements were published with actual malice in that Kelly or The Scranton Times knew that the statements were false or acted with reckless disregard as to whether they were true or false. (Id. at ¶¶ 33-41). Kelly and The Scranton Times further submit that Godlewski “has not produced any evidence of harm to his reputation” or any other recoverable damages that he claims are attributable to defamatory or false light statements.¹⁴ (Id. at ¶¶ 47-50, 52).

¹⁴ Kelly and The Scranton Times state in their motion for summary judgment, and Godlewski admits in “Plaintiff’s Response to Defendants’ Motion for Summary Judgment,” that Godlewski “broadcast to his social media followers” that he has “a degree and a certificate from Harvard University and a certificate from Regent University.” (Docket Entry No. 98 at ¶ 66; Docket Entry No. 105 at ¶ 66). Godlewski also served verified discovery responses stating that he was “pursuing a master in the arts of law” at Regent University and “took a course ‘Mastery of Negotiation’ at the Harvard Business School.” (Docket Entry No. 98 at ¶ 67; Docket Entry No. 105 at ¶ 67). However, in response to records subpoenas and deposition inquiries, “Harvard University, Harvard Business School, and Regent University responded they have no records on Philip Godlewski and affirmed he never attended a program or obtained a certificate or degree from their schools.” (Docket Entry No. 98 at ¶¶ 68-89; Docket Entry No. 105 at ¶¶ 68-69).

In support of their motion for summary judgment, Kelly and The Scranton Times have submitted 1,147 pages of exhibits. (Docket Entry No. 101 at pp. 1-617; Docket Entry No. 102 at pp. 1-530). Included among those exhibits are portions of the depositions of Godlewski, Dorothea Gallagher, Ciara O'Malley, Marie Godlewski, Sherry Strok, Amanda Turoni, Joseph Moceyunas, and Kelly. (Docket Entry No. 101, Exhibit 2; Docket Entry No. 102, Exhibits 20, 21, 22, 27, 31, 39, 43, 44). They have also presented the affidavits completed by Ms. DuBorgel, Thomas Nezlo, former Assistant District Attorney Patricia Lafferty, and Linda DuBorgel. (Docket Entry No. 101, Exhibits 7, 13, 14, 15; Docket Entry No. 102, Exhibit 23).

Kelly and The Scranton Times note that “[n]o liability can attach for true statements,” and emphasize that Godlewski pled guilty to corruption of a minor for his “inappropriate text messages and contact” with DuBorgel as memorialized in his 2010 text messages to her as quoted in the Affidavit of Probable Cause supporting the Criminal Information.¹⁵ (Docket Entry No. 103 at pp. 10-12). Citing Godlewski’s deposition testimony, they assert that Godlewski “concedes his corruption charge was for having sex with a minor child,” and that per his guilty plea colloquy, “he admits to doing the things he was ‘charged with’” in the

¹⁵ In their supporting brief, Kelly and The Scranton Times state that in addition to Godlewski’s “career as a social media broadcaster and leader in the QAnon movement,” he “also became a multi-level marketer of silver commemorative coins through 7-K Metals” and “used his social media platforms to market his followers to become buyers of coins or become sellers in his down-line.” (Docket Entry No. 103 at p. 3 & n.1). They also maintain that Godlewski attempted to convince Ms. DuBorgel to recant her affidavits in this case. To that end, they quote a text message that he reportedly transmitted to her in November 2022 in which he stated “I’m going into the next Trump administration as a political advisor and intelligence figure” and “there will be 300 million that know me five years from now,” and warned that although he “could have . . . called you a lifelong friend in front of millions,” now “[t]his gets worse,” “[n]ot better,” just “[w]ay worse.” (*Id.* at p. 4) (quoting Docket Entry No. 101, Exhibit 8).

Criminal Information. (Id. at pp. 16-17) (citing Godlewski Depo. at pp. 228, 240).

Referencing the deposition testimony and affidavits that they have attached as exhibits, Kelly and The Scranton Times submit that “there is substantial evidence proving Godlewski was in a sexual relationship with Ms. DuBorgel when she was a minor.”¹⁶ (Id. at pp. 17-20, 24-25) (citing Docket Entry No. 101, Exhibit 14; Docket Entry No. 102, Exhibits 20, 21, 22, 31).

Kelly and The Scranton Times argue that due to Godlewski’s status as a public figure, he must also “establish that [they] made a false and defamatory statement with actual malice,” “which is defined as knowledge that the publications were false or a reckless disregard of whether they were true or false - - by clear and convincing evidence.” (Id. at pp. 37-38) (citing New York Times v. Sullivan, 376 U.S. 254, 279-280 (1964)). They state that prior to preparing the article, Kelly reviewed “archived news articles at the The Times-Tribune and court documents from the criminal case,” and “Kelly also talked to people in law enforcement who corroborated statements [Kelly] made in the article.” (Id. at pp. 42-43, citing Docket Entry No. 102, Exhibit 44). Kelly and The Scranton Times posit that negligence or departure from journalistic standards is insufficient as a matter of law to establish the “reckless disregard” element for actual malice.¹⁷ (Id. at pp. 38-40).

¹⁶ Kelly and The Scranton Times devote a considerable portion of their brief to discussing and documenting Godlewski’s “false statements under oath in this case” concerning a sexual relationship with Ms. DuBorgel. (Id. at pp. 25-36) (quoting Docket Entry No. 101, Exhibits 2, 4, 6, 8; Docket Entry No. 102, Exhibits 20, 29, 33, 34, 37, 39, 40, 41, 42, 43).

¹⁷ Kelly states that “[b]efore the article was published, Kelly realized that the QAnon movement was turning into a dangerous thing and that a local guy, Godlewski, was one of the leading voices of the movement” which “challenged objective reality and every institution in this country.” (Id. at p. 41). After “Kelly checked out Godlewski’s videos and postings online,” he “believed Godlewski was broadcasting nonsensical Q movement theories,” which “is why he used the figurative language in the article stating Godlewski sells ‘rabbit holes’” and “used the word ‘poison’ in the article to refer to the lies, nonsense, and disinformation Godlewski was spreading on the internet.” (Id. at pp. 40-42).

Kelly and The Scranton Times additionally argue that “certain statements in the article are protected under the fair reporter privilege” as an account “of official government reports or proceedings,” and that Godlewski has produced “insufficient evidence to prove loss of reputation or actual harm for his defamation claims.” (Id. at pp. 51-52). With respect to the latter defense, they cite various exhibits reflecting that “Sunita Arora let Godlewski go from his real estate job because of his QAnon videos,” Godlewski “likes his career now and he’s never going back to real estate,” Godlewski “is worth \$75,000,000.00 and earns over \$5,000,000.00 per month,” and Dorothea Gallagher “filed for divorce in March 2021 due to Godlewski’s infidelities and his involvement in QAnon which she described as a cult.”¹⁸ (Id. at pp. 55-56). Kelly and The Scranton Times assert that Godlewski’s false light claim and demand for punitive damages should be dismissed for the same reasons warranting summary judgment on Godlewski’s defamation claim. (Id. at pp. 57-58, 60-61).

In his opposition to the motion for summary judgment, Godlewski acknowledges that as a public figure, he bears the burden of proving “the falsehood of the defamatory communication.” (Docket Entry No. 108 at p. 6 n.1). He contends that the article falsely accuses him of “sexual activity with a minor” or “committing a sex crime against a minor.” (Id. at pp. 9, 14). With regard to the affidavits of Ms. DuBorgel, Ciara O’Malley, and Linda DuBorgel attesting that Godlewski was involved in a sexual relationship with Ms. DuBorgel while she was a minor, Godlewski asserts that he “offered his oral testimony that his sexual

¹⁸ Godlewski testified that he “had five sexual partners” during his marriage to Dorothea Gallagher until “she filed for divorce in March 2021.” (Godlewski Depo. at p. 121).

relationship with DuBorgel began after DuBorgel was an adult,” thereby creating “a genuine issue of material fact which must be submitted to a jury.”¹⁹ (Id. at p. 19).

Godlewski asserts that the article “suggested that Godlewski was not an honest realtor,” which constitutes a statement of fact “capable of defamatory meaning.” (Id. at pp. 9-10). He argues that the suggestion of “unreality” in the article stemming from his QAnon activity and broadcasts questioned his fitness as a realtor. (T.P. 8/19/24 at p. 57). Godlewski further alleges that “[d]espite admitting that Godlewski was not present at the Capitol on January 6, the column goes on to link Godlewski with the event by mentioning Godlewski’s posts to Facebook that day,” and falsely implied that he was affiliated with the “insurrection” on January 6, 2021. (Docket Entry No. 108 at pp. 10-11).

Godlewski admits that “as a public figure, [he] must demonstrate actual malice on the part of” Kelly and The Scranton Times. (Id. at p. 7). He also agrees that such “[a]ctual malice’ must be proven with ‘clear and convincing’ evidence.” (Id. at p. 25). Godlewski contends that “[r]eporters have an ethical standard to pursue information to the best of their ability to get a complete story,” including the “ethical responsibility to review all of the documents listed in a criminal case,” and claims that Kelly and The Scranton Times “deviated from acceptable journalistic standards to a degree which constitutes reckless conduct.” (Id. at

¹⁹ The transcript from the sanctions hearing reflects that Godlewski answered discovery requests in this case by stating that he was never involved in any type of a sexual relationship with DuBorgel at any time. (T.P. 2/6/23 at pp. 80-81). He later conceded and testified during the hearing that he began his sexual relationship with DuBorgel in 2013 or 2014. (Id. at pp. 83-84). But upon being questioned by defense counsel regarding the fact that he was “still on probation at that time . . . and was having sex with her at that time” notwithstanding Judge Geroulo’s sentence barring Godlewski from having any contact with DuBorgel during his 23 month period of supervision, Godlewski changed his testimony and stated that their sexual relationship began in 2015. (Id. at pp. 84-85).

pp. 25-26). He submits that “Pennsylvania courts consistently apply the same analysis to defamation and false light claims when the causes of action are based on the same set of underlying facts,” and that based upon his “reasons articulated in the analysis of the defamation claims,” the “motion for summary judgment must be denied with respect to the false light invasion of privacy claims.” (*Id.* at p. 29) (citing Suniga v. Downingtown Area School District, 504 F.Supp.3d 430, 454 (E.D. Pa. 2020)).

Kelly and The Scranton Times filed a reply brief in which they assert that Godlewski has not denied in his opposing brief “Kelly’s opinion that Godlewski spreads lies on the internet.” (Docket Entry No. 109 at pp. 1-2). In support of their argument that Godlewski was not harmed by the article, Kelly and The Scranton Times underscore that “[Godlewski] himself circulated the Kelly article to thousands of people on social media the day it was published along with a message that stated Kelly ‘took the bait.’” (*Id.* at p. 11). Oral argument on the motion for summary judgment was conducted on August 19, 2024, and upon the filing of the transcript of that proceeding on August 29, 2024, the motion for summary judgment became ripe for disposition. (Docket Entry No. 115).

II. DISCUSSION

(A) STANDARD OF REVIEW

Summary judgment is appropriate in cases where the record clearly demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. In re Trust B Under Agreement of Richard H. Wells Dated September 28, 1956,

311 A.3d 1057, 1067 (Pa. 2024). The moving party bears the burden of demonstrating the absence of any issue of material fact, and the trial court must evaluate all the facts and make reasonable inferences in a light most favorable to the nonmoving party. Khalil v. Williams, 278 A.3d 859, 871 (Pa. 2022) (citing Bourgeois v. Snow Time, Inc., 663 Pa. 376, 397, 242 A.3d 637, 650 (2020)). A trial “court may grant summary judgment only when the right to such a judgment is clear and free from doubt.” Gallagher v. GEICO Indemnity Co., 650 Pa. 600, 620, 201 A.3d 131, 136-137 (2019); Sunoco (R & M), LLC v. Pennsylvania National Mut. Cas. Ins. Co., 2024 WL 3688402, at *3 (Pa. Super. 2024).

“Motions for summary judgment necessarily and directly implicate the plaintiff’s proof of the elements of a cause of action.” In re R.H.M., 303 A.3d 146, 155 (Pa. Super. 2023) (quoting True Railroad Realty, Inc. v. McNeese Wallace and Nurick, 275 A.3d 490, 494 (Pa. Super. 2022)); Kline v. Travelers Personal Security Ins. Co., 223 A.3d 677, 685 (Pa. Super. 2019) (quoting Chenot v. A.P. Green Services, Inc., 895 A.2d 55, 61 (Pa. Super. 2006)), *app. denied*, 661 Pa. 521, 237 A.3d 388 (2020). In responding to a motion for summary judgment, the nonmoving party cannot rest upon the nonmovant’s pleadings or answers in order to withstand the entry of summary judgment.” Salsberg v. Mann, 310 A.3d 104, 130 n.21 (Pa. 2024); Kornfeind v. New Werner Holding Co., Inc., 241 A.3d 1212, 1216 (Pa. Super. 2020), *aff’d*, 280 A.3d 918 (Pa. 2022). “To survive a motion for summary judgment, the non-moving party... ‘must set forth specific facts by way of affidavit, or in some other way as provided by the rule, demonstrating that a genuine issue exists.’” Caterpillar Financial Services Corporation v. Get ‘Er Done Drilling, Inc., 286 A.3d 302, 306 (Pa. Super. 2022) (quoting Salerno v.

Philadelphia Newspapers, Inc., 377 Pa. Super. 83, 89, 546 A.2d 1168, 1171 (1988)). “Failure of a nonmoving party to adduce sufficient evidence on an issue essential to his[her] case and on which [s]he bears the burden of proof establishes the entitlement of the moving party to judgment as a matter of law.” Azaravich v. Wilkes Barre Hospital Co., LLC, 2024 WL 22825957, at *3 (Pa. Super. 2024); Shellenberger v. Kreider Farms, 288 A.3d 898, 905 (Pa. Super. 2023); Selective Way Ins. Co. v. MAK Services, Inc., 232 A.3d 762, 767 (Pa. Super. 2020). Thus, it must be determined whether the record “contains insufficient evidence of facts to make out a *prima facie* cause of action, such that there is no issue to be decided by the fact-finder.” Shellenberger, supra; Caterpillar Financial Services Corporation, supra; Patel v. Kandola Real Estate, LP, 271 A.3d 421, 426 (Pa. Super. 2021).

Under the rule announced in Borough of Nanty-Glo v. American Surety Co. of New York, 309 Pa. 236, 163 A.3d 523 (1932), the party moving for summary judgment may not rely upon the deposition testimony or affidavits of its own witnesses to establish the nonexistence of genuine issues of material fact, since the credibility of that oral testimony is a matter for the fact-finder. Woodford v. Insurance Department, 663 Pa. 614, 629-630, 243 A.3d 60, 69-70 (2020); American Southern Ins. Co., Inc. v. Halbert, 203 A.3d 223, 226 n.2 (Pa. Super. 2019). But it “does not preclude the grant of summary judgment when the moving party relies on the testimonial evidence of an adverse party.” Sanchez-Guardiola v. City of Philadelphia, 87 A.3d 934, 938 (Pa. Cmwlth. 2014); KMB Shamrock, Inc. v. LNR Transportation, Inc., 50 Pa. D. & C.5th 259, 281 (Lacka. Co. 2015). Nor does it foreclose the entry of summary judgment based upon the testimony of a witness whose interests are adverse to the movant. Mobley v.

Coleman, 110 A.3d 216, 222 n.9 (Pa. Cmwlth. 2015); Mills v. Gubbio's, LLC, 50 Pa. D. & C.5th 520, 534 n.5 (Lacka. Co. 2015), *aff'd*, 153 A.3d 1120 (Pa. Super. 2016).

(B) DEFAMATION BURDEN OF PROOF

Under Section 8343(a) of the Uniform Single Publication Act, 42 Pa. C.S., Godlewski has the burden of proving: (1) “the defamatory character” of Kelly’s article; (2) its publication by Kelly and The Scranton Times; (3) its application to Godlewski; (4) the recipient’s understanding of its defamatory meaning; (5) the recipient’s understanding “of it as intended to be applied to” Godlewski; (6) special harm resulting to Godlewski from its publication; and (7) the abuse of a conditionally privileged occasion by Kelly and The Scranton Times. Menkowitz v. Peerless Publications, Inc., 653 Pa. 573, 579 n.6, 218 A.3d 797, 800 n.6 (2019); Morrissey v. St. Joseph’s Preparatory School, 2024 WL 3909544, at *4 (Pa. Super. Aug. 23, 2024). Section 8343(b) generally provides that “when the issue is properly raised,” the defendant in a defamation action bears the burden of proving the “truth of the defamatory communication,” the “privileged character of the occasion on which it was published,” and the “character of the subject matter of defamatory comment as of public concern.” 42 Pa. C.S. § 8343(b). But, decisional “[p]recedent has further developed the law of defamation, recognizing the tort’s evolving constitutional infrastructure” and “the contours of the law of libel, which involves the accommodation of federal constitutional interests of free speech and a robust press with state interests in protecting the reputations of its citizens from defamatory falsehoods.” Joseph v. Scranton Times, L.P., 634 Pa. 35, 70-71, 129 A.3d 404, 425 (2015).

As formulated by federal and state appellate authority, “[t]he relevant burdens in a defamation action depend on the status of the plaintiff, the subject matter of the communication, and the nature of the defendant.” Rubin v. CBS Broadcasting, Inc., 170 A.3d 560, 565 (Pa. Super. 2017). “If the statement in question bears on a matter of public concern, or the defendant is a member of the media, First Amendment concerns compel the plaintiff to prove . . . that the alleged defamatory statement is in fact false.” Kuwait & Gulf Link Transport Company v. Doe, 216 A.3d 1074, 1087 (Pa. Super. 2019) (quoting Luis v. Philadelphia Newspapers, Inc., 833 A.2d 185, 191 (Pa. Super. 2003), *app. denied*, 577 Pa. 690, 844 A.2d 553 (2004)), *app. denied*, 657 Pa. 476, 226 A.3d 92 (2020). Similarly, the “First Amendment provides heightened protection for libel defendants when the plaintiff is a public official or public figure,” in which event “the burden is shifted to the plaintiff to show that the statement was false.” Weber v. Lancaster Newspapers, Inc., 878 A.2d 63, 75 (Pa. Super. 2005) (citing New York Times v. Sullivan, 376 U.S. 254 (1964)), *app. denied*, 591 Pa. 666, 916 A.2d 634 (2007). Godlewski has stipulated that he is “a public figure” for “purposes of this litigation,” and as such, he bears the burden of proving that Kelly’s factual statements concerning him are false. (Docket Entry No. 46).

Furthermore, under Gertz v. Robert Welch, Inc., 418 U.S. 323, 343 (1974), “the appropriate standard of fault depends on whether the plaintiff is a public or private figure.” American Future Systems, Inc. v. Better Business Bureau of Eastern Pennsylvania, 592 Pa. 66, 83, 923 A.2d 389, 400 (2007), *cert. denied*, 552 U.S. 1076 (2007); Constantakis v. Bryan Advisory Services, LLC, 275 A.3d 998, 1027 (Pa. Super. 2022). If the plaintiff is a private

figure, [s]he need only prove negligence on the part of the defendant in order to recover damages for actual injuries. Joseph, 624 Pa. at 76-77, 129 A.3d at 428-429; Constantakis, supra. However, if the plaintiff is a public figure, “then to satisfy First Amendment strictures, the plaintiff must establish that the defendant made a false and defamatory statement with actual malice.” Castellani v. The Scranton Times, L.P., 633 Pa. 230, 238 n.4, 124 A.3d 1229, 1234 n.4 (2015) (quoting American Future Systems, Inc., 592 Pa. at 84, 923 A.2d at 400).

Therefore, to survive the motion for summary judgment filed by Kelly and The Scranton Times, Godlewski must adduce sufficient evidence to establish triable issues of fact with respect to his burden of proving that Kelly and The Scranton Times (1) made a false statement of fact, (2) that was capable of defamatory meaning, and (3) was published with “actual malice.” Tucker v. Philadelphia Daily News, 577 Pa. 598, 624-625, 848 A.2d 113, 130 (2004) (citing Hepps v. Philadelphia Newspapers, Inc., 475 U.S. 767, 777 (1986)); Castellani v. The Scranton Times, L.P., 161 A.3d 285, 298 (Pa. Super. 2017), *app. denied*, 643 Pa. 652, 174 A.3d 553 (2017). The elements of Godlewski’s burden of proof will be addressed *seriatim*.

(1) Falsity of Factual Statements

Godlewski must first produce sufficient evidence that Kelly published a factual statement about him that was false. Tucker, 577 Pa. at 625, 848 A.2d at 130; Kuwait & Gulf Link Transport Company, 216 A.3d at 1087. “The law does not require perfect truth, so long as any inaccuracies do not render the substance and ‘gist’ of the statements untrue.” Rubin, 170 A.3d at 565 (quoting ToDay’s Housing v. Times Shamrock Communications, Inc., 21 A.3d 1209, 1215 (Pa. Super. 2011)); Walter v. Herbert, 2024 WL 2159516, at *5 (M.D. Pa. 2024)

(same). Rather, the defense of substantial truth “absolve[s] a defendant even if [s]he cannot justify every word of the alleged defamatory matter; it is sufficient if the substance of the charge be proved true, irrespective of slight inaccuracy in the details.” Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 516-517 (1991); Rubin, supra.

Godlewski contends that the article of February 14, 2021, contains three factual statements that are false and defamatory. First, he alleges that the article falsely stated that he “had a sexual relationship” with Ms. DuBorgel when she was a minor. (T.P. 8/19/24 at pp. 9, 43-45, 48-49). Second, Godlewski asserts that by using the word “Unreal-tor” to describe him, the article falsely made an “imputation that [he] was not fit to be a realtor.” (Id. at pp. 9, 54-55). Third, he avers that Kelly’s article falsely tied “Godlewski to the criminal insurrection at the Capitol on January 6” where there “were criminal acts for which people have been criminally prosecuted and criminally convicted.”²⁰ (Id. at pp. 9, 57-58).

Kelly and The Scranton Times reference the testimony and affidavits of Ms. DuBorgel, Ciara O’Malley, Linda DuBorgel, and others as “an abundance of evidence in this case that stacks up against Mr. Godlewski in his attempt to prove the falsity of factual representations in the article.” (Id. at pp. 18-21). Godlewski counters that the Nanty-Glo rule bars Kelly and The Scranton Times from securing summary judgment based upon the testimonial evidence of its own witnesses. (Id. at pp. 42-43, 53, 61). Godlewski is correct in that regard, and the

²⁰ Godlewski does not allege that Kelly’s representations relating to Godlewski’s active involvement with and support of the QAnon movement are untrue or defamatory. (Id. at pp. 55-57). Compare Flynn v. Cable News Network, Inc., 2021 WL 5964129, at *4, 6 (S.D. N.Y. 2021) (brother of Lieutenant General Michael Flynn and his wife alleged defamation *per se* by a media defendant which implied “that they were QAnon followers” and therefore “members of a dangerous, violent, insurrectionist, domestic terrorist organization”).

credibility and weight of that testimony will not serve as grounds for the grant of summary judgment in this case. *See Ludwig v. McDonald*, 204 A.3d 935, 944 n.8 (Pa. Super. 2019) (under the Nanty-Glo rule, “the party moving for summary judgment may not rely solely upon its own testimonial affidavits or depositions, or those of its witnesses, to establish the non-existence of genuine issues of material facts,” but may rely upon “documentary evidence,” or “the deposition testimony of an adverse witness”).

Godlewski’s guilty plea and sentencing in Godlewski I, his arrest in Godlewski II, and his above-quoted social media QAnon broadcasts predated the publication of Kelly’s article on February 14, 2021. As noted above, the only text messages quoted in the Affidavit of Probable Cause in Godlewski I are those in which Godlewski acknowledged and described oral sex with Ms. DuBorgel, the presence of her hair in his “crotch area,” and his sexual activity with her in 2010 when she was 15 years of age. Godlewski I, *supra*, Docket Entry No. 2 at p. 15. Those text messages served as the factual predicate for the single count of Corruption of Minors, 18 Pa. C.S. § 6301(a)(1), contained in the Criminal Information charging that Godlewski “did repeatedly have inappropriate text [m]essages and contact with a minor” in 2010. *Id.*, Docket Entry No. 6. Indeed, Godlewski’s counsel conceded at the time of oral argument that “[t]he corruption of minors count in the complaint was consistent with the information in the affidavit.” (T.P. 8/19/24 at p. 47).

In his guilty plea colloquy in Godlewski I, Godlewski admitted that his executed colloquy was a “signed statement,” that he “kn[e]w exactly what you are charged with and what you are pleading to,” that he understood “that by pleading guilty you are admitting that

you did the things you are charged with,” that he understood “the elements of the crime charged that you are pleading to,” and that he “admit[ted] that you did the above stated act” constituting corruption of a minor. Godlewski I, Docket Entry No. 5 at pp. 1-3. The following clause appears directly above his signature on his guilty plea colloquy:

I affirm that I have read the above document in its entirety and have reviewed it with my attorney. I affirm that I am aware of the full implications of pleading guilty and nevertheless wish to plead to the specified offense(s). I further affirm that my signature on this Guilty Plea Colloquy and initials on each page of this document are true and correct.

Id. at p. 3. Based upon the truthfulness of Godlewski’s attestation, Judge Geroulo accepted Godlewski’s guilty plea and sentenced him to three months to 23 months house arrest. Id., Docket Entry No. 17.

It is “well settled that a guilty plea constitutes an admission to all of the facts averred in the indictment,” and that a trial court may grant summary judgment based upon such an admission. Com., Department of Transportation v. Mitchell, 517 Pa. 203, 212, 535 A.2d 581, 585 (1987). *Accord.* Kedra v. Schroeter, 876 F.3d 424, 443 n.14 (3d Cir. 2017); Linnen v. Armainis, 991 F.2d 1102, 1105 (3d Cir. 1993). A guilty plea is equivalent to and has the same force as a conviction at trial under Pennsylvania law. McGriff v. Vidovich, 699 A.2d 797, 800 n.6 (Pa. Cmwlth. 1997), *app. denied*, 553 Pa. 693, 717 A.2d 1030 (1998); Lynch v. DuCasse, 2020 WL 3547375, at *3 (M.D. Pa. 2020); Basile v. Township of Smith, 752 F.Supp.2d 643, 662 n.20 (W.D. Pa. 2010); DiJoseph v. Vuotto, 968 F.Supp. 244, 247 (E.D. Pa. 1997). Because a “guilty plea is an admission of facts averred in the complaint,” it “is conclusive proof of the wrongdoing for which [s]he was charged.” Hawkins v. Unemployment Compensation Board

of Review, 695 A.2d 963, 966 (Pa. Cmwlth. 1997), *app. denied*, 553 Pa. 701, 718 A.2d 786 (1998). For that reason, “[a] person determined to be guilty of a crime following . . . a plea of guilty cannot be heard to deny in a civil action that which was established in his prior determination of guilt without proof that his guilt was procured by fraud, perjury, or some manner of error sufficient to set aside his determination of guilt.” Department of Navy v. Unemployment Compensation Board of Review, 158 Pa. Cmwlth. 605, 623 n.13, 632 A.2d 622, 631 n.13 (1993). *See also*, Lynch, *supra*, at *4 (facts admitted in a guilty plea are conclusive admissions in subsequent civil litigation, and the individual who pled guilty is collaterally estopped from denying those admitted facts as uncontroverted for purposes of summary judgment); Moyer v. Allstate Insurance Company, 2010 WL 3328035, at *6 (M.D. Pa. 2010) (person who pled guilty was collaterally estopped from denying his criminal acts that he acknowledged committing); Domitrovich v. Monaca, 2010 WL 3489137, at *5 (W.D. Pa. 2010) (same).

Godlewski claims that Kelly falsely reported that he “pleaded guilty to corruption of minors and admitted to having a sexual relationship with a 15-year-old girl.” Based upon the content of Godlewski’s text messages which served as the factual basis for the corruption of a minor charge set forth in the Criminal Information, and Godlewski’s sworn plea to that specific crime in a court of law, both of the foregoing statements made by Kelly in his article are true. As a result of Godlewski’s guilty plea to “inappropriate text [m]essages” and “contact” with Ms. DuBorgel, as set forth in the Affidavit of Probable Cause quoting the offending text messages admitting and memorializing a sexual relationship with a 15-year-old minor,

Godlewski is collaterally estopped from denying his participation in a sexual relationship with Ms. DuBorgel in 2010.²¹ Mitchell, 517 Pa. at 212, 535 A.2d at 585; Hawkins, 695 A.2d at 966; Lynch, *supra*, at *3-4. Thus, Godlewski has failed to come forward with sufficient evidence creating a genuine issue of material fact concerning the claimed falsity of Kelly's statement that Godlewski "pleaded guilty to corruption of minors and admitted to having a sexual relationship with a 15-year-old girl."

Godlewski alternatively alleges that Kelly made false factual statements by indicating that Godlewski was "selling rabbit holes" and by displaying an image of an "Unreal-tor" sign in the accompanying cartoon, thereby suggesting "unreality" on Godlewski's part and questioning his fitness as a realtor in the process. (Docket Entry No. 108 at pp. 9-10; T.P. 8/19/24 at pp. 9, 54-55, 57). Kelly testified that he viewed Godlewski's QAnon videos before he authored "an opinion column" about Godlewski. (Deposition of Christopher J. Kelly dated 12/20/23, attached to Docket Entry No. 102 as Exhibit 44, at pp. 18, 20-21, 59). Kelly stated that his article did not "raise an inference that Mr. Godlewski is not fit to be a realtor" because of his QAnon activities, but agreed that he utilized a "rabbit hole figuratively" to reference "the QAnon movement and the rabbit holes people go down believing all this nonsensical stuff." (*Id.* at pp. 25, 27-28). Kelly considers the illustration prepared by The Scranton Times' John Cole depicting a rabbit hole and "Unreal-tor" sign to be "a very clever parody on [Godlewski's]

²¹ It is axiomatic that "defendants are bound by statements they make during their guilty plea colloquies and may not successfully assert any claims that contradict those statements." Com. v. Culsoir, 209 A.3d 433, 437 (Pa. Super. 2019). "A defendant who elects to plead guilty has a duty to answer questions truthfully." Com. v. Yeomans, 24 A.3d 1044, 1047 (Pa. Super. 2011) (quoting Com. v. Pollard, 832 A.2d 517, 523 (Pa. Super. 2003)). Godlewski presumably did so when entering his guilty plea before Judge Geroulo.

job as a realtor and what he was doing” in broadcasting baseless QAnon conspiracies.²² (Id. at p. 28).

It is noteworthy that the phrase “rabbit hole” has been used in other court proceedings and legal publications to describe the effect of the QAnon movement on its adherents. *See, e.g., Flynn v. Cable News Network, Inc.*, 2024 WL 1765566, at *9 (S.D. N.Y. 2024) (quoting testimony “that many people simply get ‘sucked into the rabbit hole’ of QAnon and ‘are victims’”); Payton Yahn, “Conspiracy Theory Belief And The Case For Abolishing The Insane Delusion Doctrine,” 16 U. St. Thomas J. L. & Pub. Pol’y 516, 516 (March 2023) (describing “a story that overtook American journalism: a person with warm, loving relationships falls through their phone screen and down a rabbit hole, emerging as a ‘ghost’ of their former self and an ardent believer in QAnon”); Madeline M. Cook, “Bringing Down Big Data: A Call For Federal Data Privacy Legislation,” 74 Okla. L. Rev. 733, 756 (Summer 2022) (stating that QAnon’s “extremist ideology is designed to send people down rabbit holes, radicalizing them according to their own personality type,” and that “[t]he hysteria that compounds as people crawl deeper down those rabbit holes could more than likely eventually lead to their thinking that Hillary Clinton eats children”); Elizabeth Newland, “Extreme Religion, Extreme Beliefs: Comparing The Role Of Children’s Rights In Extremists Religions,” 42 Child. Legal Rts. J. 121, 122 (2022) (reporting that QAnon “membership has increased significantly as a product of

²² Godlewski has attached to his opposing brief a heavily redacted copy of the deposition of The Scranton Times’ Executive Editor, Lawrence Holeva. (Docket Entry No. 108 at pp. 37-50). Although Godlewski has redacted 44 lines of the questioning of and responses by Holeva regarding the title “QAnon Realtor Sells Rabbit Holes” and the “Unreal-tor” sign, Holeva agreed with Kelly that they simply constituted a “parody” of Godlewski’s “pursuit of the profession of realty,” and did “not directly” suggest that his QAnon activities impacted his fitness as a realtor. (Deposition of Lawrence Holeva dated 12/19/23, attached to Docket Entry No. 108, at pp. 45-49, 51).

the pandemic because of added time at home to fall down the QAnon rabbit hole” where “more people are becoming entrapped into the deep, cultic side of this extreme belief”). Other legal journals have similarly noted the detachment from reality of QAnon’s conspiracy theories. *See, e.g.,* Richard K. Sherwin, “Anti-Speech Acts And The First Amendment,” 16 *Harv. L. & Pol’y Rev.* 353, 366 (Summer 2022) (“Adding to the increasing destabilization of a shared, fact-based reality is the growing normalization of QAnon, a cult-like web phenomenon that features intensely paranoid, conspiracy driven discourse”). Hence, Kelly and The Scranton Times are not alone in using the word “unreal” and the phrase “rabbit holes” in describing the QAnon movement and its activities.

Prior to the publication of the article at issue, Godlewski had publicly broadcasted on social media that United Airlines Flight 93 never crashed in Somerset County on September 11, 2001, that Stephen Paddock did not shoot and kill 60 people and wound another 413 individuals in a mass shooting from the Mandalay Bay Hotel in Las Vegas, that former President Donald Trump had authorized and presided over the executions of President Biden, Hillary Clinton, and other public figures by military tribunals, that the late President George H. W. Bush was also executed by a military tribunal due to the Bush family’s involvement with children sex-trafficking, that various Democratic officials were molesting children and drinking their blood to ingest adrenochrome in the basement of a Washington pizzeria, and other equally absurd representations. Such public pronouncements reflect a declarant who is untethered from reality, and Kelly has testified that he viewed those videos prior to preparing his article.

Even when the summary judgment record is viewed in a light most favorable to Godlewski as the nonmoving party, it demonstrates that the “sells rabbits holes” reference in the title and the “UNREAL-TOR” sign and rabbit hole appearing in the cartoon illustration are mere parody rather than actionable statements of fact. See Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 57 (1988) (affirming finding that parody cannot be reasonably understood as describing actual facts or events); O’Donnell v. Knott, 283 F.Supp.3d 286, 304 (E.D. Pa. 2017) (stating that “both Pennsylvania and federal courts recognize that speech which cannot reasonably be taken as stating actual facts is afforded protections as parody/satire under the First Amendment”). “Defamation is, by its nature, mutually exclusive of parody.” Victoria Square, LLC v. Glastonbury Citizen, 49 Conn. Supp. 452, 455, 891 A.2d 142, 145 (2006). “By definition, defamation requires a false statement of fact,” but parody “cannot constitute a false statement of fact.” Hamilton v. Prewett, 860 N.E.2d 1234, 1244 (Ct. App. Ind. 2007) (quoting 50 Am. Jur.2d Libel & Slander § 159, “Parody and Satire” (2006)), *app. denied*, 869 N.E.2d 459 (Ind. 2007). For the reasons set forth above, Godlewski’s second allegation of a false statement of fact is likewise devoid of merit.

Godlewski’s final claimed statements of fact concern Kelly’s representation that Godlewski “happily calls out the cadence” of the QAnon movement and is “a purveyor of a poison,” which Godlewski asserts conveys that he bears some responsibility for the “criminal acts” committed during the Capitol riot. (T.P. 8/19/24 at pp. 56, 58). Kelly testified that the words “happily calls out the cadence” constituted “figurative language” that referenced Godlewski’s broadcasts on January 6, 2021, when he “said that [Vice President Mike] Pence

had been arrested,” which statement “got [Godlewski] in U.S.A. Today,” and Godlewski’s “rallying cry” that the Democratic legislators should be “arrested” and “get executed at top levels.” (Kelly Depo. at pp. 39-40). As for the phrase “purveyor of a poison,” Kelly indicated that he was referring to “the lies and nonsense and disinformation and misinformation that [Godlewski] was spreading on the Internet,” such as representing as true that “the real Joe Biden has been executed and the guy who’s in the White House is a body double . . . in a studio out in Arizona,” and “that [Godlewski] had traveled in time and talked to Nikola Tesla.” (*Id.* at pp. 32-33).

The role of the QAnon movement and its followers in the events at the Capitol on January 6, 2021, has been widely reported in legal literature. *See* Neil Fulton, “What Comes Next?,” 62 *Washburn L.J.* 189, 209 (Winter 2023) (“Many QAnon adherents were active at the Capitol on January 6 under the belief that it represented the long-promised ‘storm’ within American society.”); Courtelyou C. Kenney, “Defamation 2.0,” 56 *Loy. L.A. L.Rev.* 1, 42 (Winter 2023) (“QAnon played a major role in the Capitol insurrection on January 6, 2021.”); Brendan Williams, “Divided We Fall: The Concerted Attack On U.S. Democracy,” 59 *Willamette L.Rev.* 121, 135 (Spring 2023) (“In the U.S. Capitol insurrection, an Air Force veteran killed rioting reportedly ‘avidly followed the QAnon conspiracy theory, convinced that Trump was destined to vanquish a cabal of child abusers and Satan-worshipping Democrats’ and believed January 6, 2021 ‘would be the storm, when QAnon mythology holds that Trump would capture and execute his opponents.’”); Matthew J. Blaney, “Posting In The ‘Metaphysical Public Square’: Defining Social Media User’s Rights On The Online Platforms

Of Government Officials,” 45 N.C. Cent. L.Rev. 135, 159 (2022-2023) (“In fact, if QAnon’s conspiracy theorists have shown the nation anything, it is that online communications have the ability to develop into a national crisis - - for example, by fostering a community where some of the followers removed their voices from social media and ascended on the Capitol Building to riot on January 6th.”); Newland, 42 Child. Legal Rts. J. at 125 (2022) (“Many cults take expansive and violent actions to further their mission. QAnon follows this model, as they expected and helped plan the January 6 insurrection.”); Joshua J. Schroeder, “The Dark Side Of Due Process: How To Use Irreverent Talk To Speak Back To Bad Men,” 53 St. Mary’s L.J. 929, 936 (2022) (“QAnon grew up under [Justice Oliver Wendell] Holmes’ marketplace of ideology until it attempted to end American democracy on January 6, 2021, where QAnon followers equated a violent, Trumpian *coup d’etat* with First Amendment freedoms of speech and assembly.”). However, Kelly “never said [Godlewski] was at the rally” in his article. (Kelly Depo. at p. 40). To the contrary, Kelly’s article expressly states that “Godlewski told me he wasn’t at the Capitol on January 6, but he showed up in USA Today’s coverage of riot” after “Godlewski posted on Facebook that Vice President Mike Pence had been arrested.” (Docket Entry No. 1 at p. 26).

Once again, Godlewski has not identified sufficient evidence indicating that Kelly made false factual statements “tying Mr. Godlewski to the criminal insurrection at the Capitol on January 6.” (T.P. 8/19/24 at p. 57). Kelly’s reference to Godlewski happily “calling out the cadence” of the QAnon movement is supported by the plethora of QAnon conspiracies broadcasted by Godlewski on social media and viewed by Kelly prior to authoring his article.

The other description of Godlewski as a “purveyor of poison” constitutes satirical commentary by Kelly based upon Godlewski’s above-quoted QAnon broadcasts, rather than an actionable false statement of fact.²³ See O’Donnell, 283 F.Supp.3d at 296 n.4 (describing constitutionally protected satire as “a long-established artistic form that uses means such as ridicule, derision, burlesque, irony, parody, or caricature to censure the vices, follies, abuses, or shortcomings of an individual or society”). Therefore, Kelly and The Scranton Times are entitled to summary judgment due to the absence of sufficient evidence in the record that Kelly or The Scranton Times made a false statement of fact regarding Godlewski in the article published on February 14, 2021.

(2) Defamatory Character of Factual Representation

In addition to establishing that Kelly or The Scranton Times made a false factual statement about him, Godlewski also bears the burden of proving the “defamatory character” of that statement. 42 Pa. C.S. § 8343(a)(1). Whether a particular statement is capable of a defamatory meaning is a question of law for the court to decide. Vivian v. Blank Rome, LLP, 318 A.3d 890, 900 (Pa. Super. 2024); Blackwell v. Eskin, 916 A.2d 1123, 1125 (Pa. Super. 2007). A statement is defamatory if it “tends to harm an individual’s reputation so as to lower

²³ With respect to Kelly’s reference to Godlewski “pushing the poison” of QAnon, other publications have chronicled the adverse impact of the QAnon movement upon family relationships. See, e.g., Newland, 42 Child. Legal Rts. J. at 134 (observing that QAnon members “form habits and cognitive dissonance akin to alcoholism and videogame addiction,” and stating that “[t]his QAnon addiction can fracture families by forcing younger members ‘down the rabbit hole’ spreading terrifying misinformation, and threatening to cut off familial contact for breaking extremist rules”). During his deposition in this case, Kelly mentioned an unidentified individual “who initially along with his spouse believed the Q stuff and, in fact, were followers of [Godlewski],” but “when one of the spouses woke up and realized what was happening,” the “other spouse would not and so the marriage broke up over it.” (Kelly Depo. at p. 37).

him or her in the estimation of the community or deter third persons from associating or dealing with him or her.” Meyers v. Certified Guaranty Company, LLC, 221 A.3d 662, 669 (Pa. Super. 2019), *app. denied*, 661 Pa. 514, 237 A.3d 386 (2020). However, “it is not enough that the victim of the statements . . . be embarrassed or annoyed, he must have suffered the kind of harm which has grievously fractured his standing in the community of respectable society.” Joseph, 634 Pa. at 79, 129 A.3d at 430; Kurowski v. Burroughs, 994 A.2d 611, 617-618 (Pa. Super. 2010), *app. denied*, 608 Pa. 655, 12 A.3d 752 (2010).

In determining whether a statement is defamatory, the court must consider whether the challenged statement constitutes an opinion or an assertion of fact. “A statement of fact can be verified as true or false, whereas an expression of opinion only conveys a subjective belief of the speaker.” Vivian, supra (quoting Meyers, supra). “Expressions of opinion are not actionable,” nor are statements constituting “no more than rhetorical hyperbole” or a “vigorous epithet.” Burns v. Cooper, 244 A.3d 1231, 1236 (Pa. Super. 2020), *app. denied*, 666 Pa. 268, 252 A.3d 235 (2021). “A statement in the form of an opinion is actionable only if it may reasonably be understood to imply the existence of undisclosed defamatory facts justifying the opinion.” Vivian, supra; Kurowski, 994 A.2d at 618. However, “[a] simple expression of opinion based on disclosed facts is not itself sufficient for an action of defamation.” Vivian, supra (quoting Kuwait & Gulf Link Transportation Company, 216 A.3d at 1086).

The summary judgment record reflects that Kelly is an “op-ed columnist” who wrote “an opinion column” on Godlewski. (Kelly Depo. at pp. 13, 59). In that capacity, Kelly believed it was his responsibility “to inform and entertain” by gathering facts from

“documents” and “people,” and then “decide what I think those facts mean and share my opinion on them.” (Id. at pp. 12-13). As stated in Section (II)(B)(1) above, the only factual statements that Kelly made about Godlewski are true. The remainder of the article of February 14, 2021, is replete with Kelly’s opinions regarding the QAnon movement, its impact on society, and Godlewski’s acknowledged involvement with it. Godlewski has not alleged, let alone identified evidence, that Kelly based his various opinions in his op-ed article on undisclosed defamatory facts. Besides the truthful factual statements addressed above, Kelly’s article as a whole contains expressions of opinion based upon disclosed facts, and arguably “vigorous epithet” and satirical commentary, as a result of which Godlewski’s proffered evidence is insufficient as a matter of law to establish the “defamatory character” of a communication in compliance with 42 Pa. C.S. § 8343(a)(1).

(3) Actual Malice

Godlewski must not only demonstrate that Kelly and The Scranton Times published a (1) false and (2) defamatory statement about him, but he must further prove that they did so (3) with actual malice. Castellani, 633 Pa. at 238 n.4, 124 A.3d at 1234 n.4; American Future Systems, Inc., 592 Pa. at 84, 923 A.2d at 400 (citing Gertz v. Robert Welch, Inc., 418 U.S. 323, 343 (1974)). “‘Actual malice’ is a fault standard, predicated on the need to protect the public discourse under the First Amendment from the chill that may be fostered by less vigilant limitations on defamation actions brought by public officials” or figures. Kuwait & Gulf Link Transport Company, 216 A.3d at 1087. It requires the plaintiff to prove, by clear and convincing evidence, that the publisher of the false and defamatory statement either knew that

the factual statement was false or recklessly disregarded whether it was true or false.

Castellani, 633 Pa. at 249, 124 A.3d at 1241; Tucker, 577 Pa. at 621, 841 A.2d at 127-128 (citing Milkovich v. Lorain Journal Company, 497 U.S. 1, 15 (1990)).

“The requirement that the plaintiff be able to show actual malice by clear and convincing evidence is initially a matter of law,” Joseph, 634 Pa. at 89, 129 A.3d at 429 (quoting Tucker, 577 Pa. at 626, 848 A.2d at 130), and “[t]he question of whether the evidence in the record in a defamation case is sufficient to support a finding of actual malice is a question of law.” Id. (quoting Milkovich, 497 U.S. at 17). The evidentiary metric of clear and convincing evidence is “the highest standard of proof for civil claims.” Kuwait & Gulf Link Transport Company, 216 A.3d at 1088; Manning v. WPXI, Inc., 886 A.2d 1137, 1144 (Pa. Super. 2005) (quoting Lewis, 833 A.2d at 192), *app. denied*, 589 Pa. 731, 909 A.2d 305 (2006)). In defamation cases, the clear and convincing evidence standard requires evidence that is “so clear, direct, weighty, and convincing” as to enable the fact-finder “to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” Coleman v. Ogden Newspapers, Inc., 142 A.3d 898, 906 (Pa. Super. 2016), *app. denied*, 641 Pa. 12, 165 A.3d 873 (2017); Manning, *supra*.

The rule requiring judges to decide as a matter of law whether the evidence is sufficient to support a finding of actual malice is premised upon “the unique character of the interest protected by the actual malice standard,” Harte-Hanks Communications, Inc. v. Connaughton, 491 U.S. 657, 685-686 (1989), and recognizes that “[j]udges, as expositors of the Constitution, must independently decide whether the evidence in the record is sufficient to cross the

constitutional threshold that bars the entry of any judgment that is not supported by clear and convincing proof of actual malice.” Joseph, 634 Pa. at 89, 129 A.3d at 436 (quoting Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485, 511 (1984)); Coleman, *supra* (quoting Joseph, *supra*). ““Proof of actual malice calls a defendant’s state of mind into question.”” Castellani, 633 Pa. at 249-250, 124 A.3d at 1241 (quoting Hutchinson v. Proxmire, 443 U.S. 111, 120 n.9 (1979)). The actual malice requirement “is not met through a showing of ill will or malice in the ordinary sense of the term” or “the failure to investigate even when a reasonably prudent person would have done so.” Joseph, 634 Pa. at 90, 129 A.3d at 436-437 (citing Harte-Hanks Communications, Inc., 491 U.S. at 666-692). “The difficulty of meeting the burden to establish actual malice is demonstrated in St. Amant [v. Thompson], 390 U.S. 727 (1968)], where the Supreme Court specified that this evidentiary burden requires more than consideration of whether a reasonable person would have published the statement without further investigation; rather, it requires the plaintiff to present evidence sufficient ‘to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.’” Castellani, 633 Pa. at 250, 124 A.3d at 241 (quoting St. Amant, 390 U.S. at 731).

Under the actual malice standard, “[t]he burden of proof imposed is substantial, as ‘the actual malice standard go so far as to forbid imposition of liability even in those instances where the defendant negligently publishes false, defamatory statements about a public figure or public official.’” Blackwell, 916 A.2d at 1125 (quoting Norton v. Glenn, 580 Pa. 212, 860 A.2d 48, 56 (2004), *cert. denied*, 544 U.S. 956 (2005)). “Malice in the context of defamation

requires a showing that 'the defendant must have made the false publication with a high degree of awareness of probable falsity, or must have entertained serious doubts as to the truth of his publication.'" Menkowitz, 653 Pa. at 578 n.5, 211 A.3d at 800 n.5 (quoting Joseph, 634 Pa. at 90, 129 A.3d at 437). "The fact that [defendant] could have employed a higher degree of journalistic responsibility does not constitute actual malice.'" Coleman, 142 A.3d at 906 (quoting Manning, 886 A.2d at 1144). Hence, "[t]he actual malice standard is a rigorous, if not impossible, burden to meet in most circumstances." Manning, 886 A.2d at 1143.

The only evidence submitted by Godlewski in support of his "actual malice" claim consists of the deposition transcripts of Kelly and The Scranton Times' Executive Editor, Holeva. Kelly testified that in preparing the article, he reviewed "The Times-Tribune archives," including earlier articles about Godlewski authored by Jeremy Burton and Denis O'Malley, "legal documents," "court documents," "the criminal affidavit and his guilty plea colloquy." (Kelly Depo. at pp. 43, 45-46, 57-58). He also "spoke to some other people to back up some information I found" in those materials, one of whom was Ciara O'Malley who stated "all the stuff in the column was true" regarding Godlewski's "relationship with his victim" and "how he got her not to testify against him." (Id. at pp. 43-44). Another anonymous source for Kelly in gathering information "to reinforce [Kelly's] belief that [Godlewski's] plea to corruption of minors" was based on his guilt to the sex offenses was "[s]omeone who was in the law enforcement process" involving the criminal charges against Godlewski. (Id. at pp. 62-63).

The substance of Holeva's testimony is somewhat difficult to decipher due to the extensive redactions in his deposition transcript that is attached to Godlewski's brief. For example, Holeva's 14 line response to the question "[c]an you describe to me the process of spot-checking facts" and the 14 lines reflecting his answer to the ensuing question "[w]hat happens next" have been redacted in their entirety. (Holeva Depo. at pp. 21, 23). Similarly, Holeva's admission that he would "have expected Mr. Kelly to review the criminal complaint prior to writing the February 14, 2021 column" is preceded by 67 lines of redactions and followed by an additional 25 lines of redactions. (Id. at pp. 26-33). Moreover, 26 lines of the 34 lines of questions and answers are redacted immediately prior to the inquiry "[h]ave you told me all the sources of other information you would expect a journalist to investigate prior to writing the column about Mr. Godlewski?" (Id. at pp. 37-39).

No reason has been offered in the parties' submissions for the sweeping redactions in Holeva's deposition transcript. Holeva was questioned concerning the sources of information a journalist would have an "ethical obligation to pursue," and identified "investigative files, investigative work, investigative insight, investigative sourcing" and "maybe interviews with people, witness to literature, documentation whether that be video or written word, and information you would derive from interviews." (Id. at pp. 36-37, 43-44). He indicated that a journalist would be expected to conduct the same research on factual matters regardless of whether those facts appear in "an opinion story or a news article," but further noted that a "columnist has latitude in an opinion piece." (Id. at p. 44). To the extent that Holeva's

testimony can be construed as suggesting that Kelly should have exercised greater “journalistic responsibility,” it is insufficient to establish actual malice. Coleman, supra; Manning, supra.

Kelly testified that the article was designed to note “the obvious irony in a guy being a leader in the QAnon movement, which is all about saving children from pedophiles, having been a pedophile himself” as reflected in Godlewski I. (Kelly Depo. at pp. 65-66). Even when the summary judgment record is examined in a light most favorable to Godlewski, it lacks clear and convincing evidence that Kelly or The Scranton Times either knew that the factual statements pertaining to Godlewski in the article were false, or that Kelly or The Scranton Times had a “high degree of awareness of [their] probable falsity” or “entertained serious doubts as to the truth of [the] publication.” See Menkowitz, supra; Joseph, supra. It is incumbent upon Godlewski to produce sufficient evidence that Kelly or The Scranton Times recklessly disregarded the truth or falsity of any factual statements in the article, and as stated in Section (I) above, Judge Minora held earlier this year that Godlewski was not entitled to financial wealth discovery since he had failed to identify facts or evidence establishing a *prima facie* case of recklessness by Kelly or The Scranton Times. (Docket Entry No. 96 at p. 3). We agree with Judge Minora’s conclusion in that regard and find that Kelly and The Scranton Times are also entitled to summary judgment based upon Godlewski’s failure to produce sufficient evidence of “actual malice” on the part of Kelly or The Scranton Times.

(C) FALSE LIGHT INVASION OF PRIVACY

Godlewski has advanced a separate claim for false light invasion of privacy. A person who gives publicity to a matter “concerning another that places the other before the public in a

false light” is liable for false light invasion of privacy if (a) the false light “would be highly offensive to a reasonable person,” and (b) the defendant “had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.” Vivian, 318 A.3d at 903; Rubin, 170 A.3d at 568. The tort of “false light invasion of privacy offers redress not merely for the publication of matters that are provably false, but also for those that, although true, are selectively publicized in a manner creating a false impression.” Meyers, 221 A.3d at 674; Rubin, *supra*.

“As with defamation, the elements of a claim for false light include knowledge of, or reckless disregard for, the falsity of a publication.” Coleman, 142 A.3d at 905. For the same reasons that Godlewski has failed to establish that Kelly or The Scranton Times knew of the falsity of their published statements, or recklessly disregarded their truth or falsity, in support of his defamation claim, he is unable to prove that same scienter element of his false light invasion of privacy claim. Accordingly, Kelly and The Scranton Times are entitled to summary judgment with respect to Godlewski’s cause of action for false light invasion of privacy. An appropriate Order follows.

PHILIP GODLEWSKI,

Plaintiff

v.

CHRIS KELLY, and THE SCRANTON
TIMES, L.P.,

Defendants

: IN THE COURT OF COMMON PLEAS
: OF LACKAWANNA COUNTY

: NO. 2021 CV 2195

ORDER

AND NOW, this 30th day of August, 2024, upon consideration of “Defendants’ Motion for Summary Judgment,” the exhibits and memoranda of law submitted by the parties, and the oral argument of counsel on August 19, 2024, and based upon the reasoning set forth in the foregoing Memorandum, it is hereby ORDERED and DECREED that:

1. “Defendants’ Motion for Summary Judgment” is GRANTED; and
2. The Clerk of Judicial Records is directed to enter judgment in favor of defendants, Chris Kelly and The Scranton Times, L.P., and against plaintiff, Philip Godlewski, in the above-captioned matter.

BY THE COURT:



Terrence R. Nealon

cc: Written notice of the entry of the foregoing Memorandum and Order has been provided to each party pursuant to Pa.R.Civ.P. 236(a)(2) and (d) by transmitting time-stamped copies via electronic mail to:

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