Case No. 1:21-cv-6854

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

RICK BUTLER, an individual, CHERYL BUTLER, an individual, and GLV, INC., an Illinois Corporation,

Plaintiffs,

vs.

NANCY HOGSHEAD-MAKAR, an individual, CHAMPION WOMEN, a Florida Not-For-Profit Corporation, and DEBORAH DIMATTEO,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND PURSUANT TO THE FLORIDA AND NEVADA ANTI-SLAPP STATUTES

Honorable Charles P. Kocoras

Respectfully submitted,

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NOW COME the defendants, Nancy Hogshead-Makar ("**Hogshead-Makar**"), Champion Women ("**Champion Women**"), and Debra DiMatteo ("**DiMatteo**"), (collectively, "**Defendants**"), by and through their legal counsel, and together, petition this Court for dismissal of the plaintiffs' First Amended Complaint. In support thereof, Defendants jointly submit the following:

SUMMARY OF DISPUTE, DEFENSES & DEMAND FOR RELIEF

Plaintiffs bring their 'sprawling' complaint -- coupled with a demand for *a quarter of a billion dollars* – to harass, intimidate and silence the Defendants. For decades, plaintiff Rick Butler ("**Butler**") has been a party to state and federal litigation, administrative proceedings, professional ridicule and public disciplinary measures. Similarly, Butler was the recurring subject of local and national news coverage, which often centered on the improper sexual relationships he engaged in with his minor, female volleyball players. Butler's wife, Cheryl, and their organization together, GLV, Inc., were equally condemned following Butler's transgressions and Cheryl's unwavering support of him publicly.

Conversely, the Defendants are well-regarded, staunch advocates for gender equality and the empowerment and safety of women in competitive sports. Particular to the Butler scandal, the Defendants' share a common goal: to ensure young women embedded in the volleyball community, and in athletics generally, do not fall prey to future abuses. The Defendants joined the loud and already-public discourse about Butler, and now, there are staring into the barrel of a lawsuit crafted to disrupt social justice efforts and bankrupt them in the process.

Dismissal of Plaintiff's lawsuit *with prejudice* is proper on several, inter-related grounds. First, Plaintiffs mislabel their defamation action as one for tortious interference (Counts I and II), violation of the Uniform Deceptive Trade Practices Act (Count III), violation of Illinois' Consumer Fraud Act (Count IV), and Civil Conspiracy (Count V). However, each of these five counts detrimentally relies on whether certain critical speech made by Defendants -- about Plaintiffs -- is defamatory as a matter of law. Illinois strictly rejects efforts by a plaintiff to evade free speech defenses and the limited, one-

year statute of limitations accorded speech-related claims. As pled, the offending public statements at the heart of each count were voiced *more than one year before Plaintiffs' lawsuit was filed*, and as such, they are categorically time-barred.

Second, Defendants' actions are shielded by the Fair Reporting Privilege. The Plaintiffs conveniently omit material events subject to judicial notice that would give proper context to the matters raised in this litigation. Instead, Plaintiffs dragged Florida and Nevada residents into this forum for echoing what reputable sources and tribunals have been saying for decades. Butler may be thin-skinned about the continued airing of his widely-known dirty laundry; but in Illinois, he is readily considered a "public figure" who faces a heightened burden of proof at the onset. Plaintiffs' fails to (and cannot) demonstrate -- at the pleading stage -- that Defendants voiced their disdain with "actual malice."

Third, Plaintiffs' are shielded by certain statutory defenses enacted to prevent retaliatory litigation designed to silence ones' critics. Lawsuits, like this one, are referred to as, "Strategic Lawsuits Against Public Participation" or "SLAPPs," which come in various forms (i.e. defamation, tortious interference, commercial disparagement). The plaintiff's goal is to apply undue pressure so his targets concede their position, and then relinquish their constitutional right to speak freely on matters of genuine public concern. The Northern District openly recognizes the domicile state of the speaker as the key factor in determining which state statute governs a particular defendant's SLAPP defense. Florida's (Hogshead-Makar and Champion Women) and Nevada's (DiMatteo) anti-SLAPP legislation dictates an immediate dismissal of all claims. The statutes also mandates the reimbursement of costs and attorneys' fees expended by Defendants to combat the SLAPP.

For the many reasons set forth herein, Plaintiffs' lawsuit compromises the free speech rights of two out-of-state residents cherry-picked as Butler's most effective antagonists. To delay dismissal of a case devised to 'quiet the courageous,' will surely open the discovery floodgates aimed at punishing

those who gave a voice to countless young women scared to use their own. Dismissal of this action is proper as a matter of law, if not vital, under First Amendment jurisprudence.

MATERIAL BACKGROUND[1]

A. Overview of the Plaintiffs and their Business

Butler uses his pleading to magnify his reputation and prowess as a 'public figure' in the competitive volleyball world; alleging, for instance, that he is one of the most recognized coaches in the sport. First Am. Compl. ¶ 2 (Doc. #15) ("Compl."). We must nevertheless accept these allegations at this stage of the litigation.[2]

In the early 1980s, Butler formed what is now known as the Sports Performance Volleyball program with former business partner, Kay Rogness ("**Rogness**"). *Id.* at ¶ 4. The club quickly became one of the most successful junior sports programs in the country. *Id.* In 1990, after Butler had a fallout with Rogness, he and his now wife, Cheryl, incorporated GLV (d/b/a "**Sports Performance**"). *Id.* at ¶ 3. Over the years, Sports Performance has amassed over 98 National Championship gold medals and has had nearly 600 players named as Amateur Athletic Union ("**AAU**") All-Americans. *Id.* at ¶ 2. Sports Performance is recognized as one of the nation's top facilities for hosting volleyball tournaments, camps, clinics and other sporting events; GLV is also lauded as a premier event host. *Id.* at ¶ 3. Butler has trained over 20,000 minor female volleyball players, and boast of his impressive record of coaching four Olympic medalists. *Id.* at 24, n.6; **Ex. A**. It is alleged that the Plaintiffs are all citizens of Illinois for diversity jurisdiction purposes. *Id.* at ¶¶ 33-35 & 42.

B. Overview of the Defendants

Hogshead-Makar founded Champion Women in 2014, as a legal advocacy organization for girls and women in sports. *Id.* at ¶¶ 16 & 36. Champion Women is described as "an organization

[1] Defendants direct this Court to Appendix A: Exhibit List, which details the Exhibits submitted with this Memorandum of Law and the legal basis from which this Court may consider each document on a Rule 12(b)(6) motion.
[2] Defendants reserve their right to refute allegations contained in the pleading, if required.

specializing in sports law, governance, and public relations." *Id.* at ¶ 88. DiMatteo was a member of USA Volleyball's Great Lakes Region Board of Directors and assisted in organizing tournaments. *Id.* at ¶ 38. Each of the Defendants have been engaged in the national discussion of sexual abuse in sports, as well as advocacy for improvement in reporting practices and protecting young female athletes. *Id.* at ¶¶ 16, 25 & 36. For purposes of diversity jurisdiction, Hogshead-Makar and Champion Women are citizens of Florida, and DiMatteo is a citizen of Nevada. *Id.* at ¶¶ 36-38 & 42.

C. Plaintiffs' Claims Against Defendants

This lawsuit arises from Plaintiffs' distaste over publicity surrounding (1) Butler's uncontroverted history of engaging in sexual and emotional relationships with his minor volleyball players, (2) Butler's checkered history, and (3) the defendants' collective efforts to educate members of the volleyball community and influence their disassociation with Butler because of the numerous, well-documented accusations and findings against him. *Id.* at ¶¶ 25, 50-52, 56-57, 59-61, 68, 73, 89-90, 93, 121, 136, 143-44, 146, 155, 165, 180-81, 189-90, 198-200 & 211. The Defendants originally named in this lawsuit, including one of Butler's sexual assault victims, represent just a small sample of those in the expansive volleyball industry who spoke out against Butler's pattern of abuse.

1. Hogshead-Makar's and Champion Women's Alleged Defamatory Speech

Hogshead-Makar's and Champion Women's "letter writing campaign" is the primary focus of the First Amended Complaint. *Id.* at ¶¶ 25, 50-52, 56-57, 59-61, 68, 73, 89-90, 93, 121, 136, 143-44 & 146. Knowing their defamation action is time-barred, Plaintiffs attempt to sue these two defendants for Tortious Interference with Contract (Count I), Tortious Interference with Prospective Business Advantage (Count II), Violation of the Illinois Deceptive Trade Practices Act (Count III), Violation of the Illinois Consumer Fraud Act (Count IV), and Civil Conspiracy to Violate Illinois Law (Count V). *Id.* at pp. 41-50.

Plaintiffs contend these defendants wrote letters to the USA Volleyball ("**USAV**"),[3] AAU, volleyball clubs, school athletic departments and officials, parents of Butler's players, as well as Plaintiffs' volleyball partners and sponsors across the country, pleading they dissociate with Butler and his affiliate plaintiffs. *Id.* The offending letters, *which were published between June 2017 and December 2018*, enclosed the "original source materials that confirm [Butler]'s pedophilia." *Id.* at ¶¶ 50-51. Critically, Plaintiffs do not shy away from alleging that Hogshead-Makar and Champion Women knowingly disseminated "false and ***defamatory*** statements" "[i]n the email text, attached letter and numerous articles attached thereto." *Id.* at ¶ 61 (emphasis added); *see also id.* at ¶¶ 57, 72, 155, 198.

Notwithstanding Plaintiffs' undeniable access to the very materials that form the crux of their entire lawsuit, they conveniently fail to attach copies for the Court's consideration. The trial court is typically charged with reviewing the offending speech, in its complete and proper context, before determining whether the speech is a constitutionally protected expression or actionable as libelous. Attached hereto, as **Group Exhibit C**, is a true and accurate sample of the letter and its attachments (aka "source materials") that Hogshead-Makar and Champion Women sent out as part of their alleged "letter writing campaign." **Group Ex. C**. This Court is permitted to consider these materials in determining whether dismissal is proper where these documents are (a) specifically referenced in the Amended Complaint, (b) central to Plaintiffs' five counts and (c) in some cases, constitute matters of public record and published news reports over which the Court may take judicial notice.[4]

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[3] USAV is a "National Governing Body" recognized by the United States Olympic and Paralympic Committee pursuant to 36 U.S.C. §§ 220551, *et seq.*

[4] A district court can consider documents attached to a motion to dismiss as part of the pleadings "if they are referred to in the plaintiff's complaint and are central to [the] claim." *Mueller v. Apple Leisure Corp.*, 880 F.3d 890, 895 (7th Cir. 2018) (quoting *188 LLC v. Trinity Indus., Inc.*, 300 F.3d 730, 735 (7th Cir. 2002)). The court may also take judicial notice of matters of public record outside the pleadings without converting a Rule 12(b)(6) motion into a motion for summary judgment. *Indep. Trust Corp. v. Stewart Info. Servs. Corp.,* 665 F.3d 930, 942-943 (7th Cir. 2012); *Pugh v. Tribune Co.,* 521 F.3d 686, 691 n.2 (7th Cir. 2008); *Henson v. CSC Credit Servs.*, 29 F.3d 280, 284 (7th Cir. 1994). This includes, with respect to the records of judicial proceedings in other cases, "judicial notice of the indisputable facts that those documents exist, they say what they say, and they have had legal consequences." *Indep. Trust Corp.,* 665 F.3d at 943. Finally, courts may take judicial notice of the fact that news reports have been published and say what they say. *See, e.g., Bardney v. United states,* Nos. 97-1769, 97-1953, 1998 WL 416511, at *4 (7th Cir. June 16, 1998) (unpublished) ("As it is indisputable that the articles were in fact published, the existence of the articles was a proper subject for judicial notice."); *Specht v. Google, Inc.,* 758 F.

Group Exhibit C begins with an e-mail Hogshead-Makar sent to three members of the YMCA of USA on February 13, 2018. **Group Ex. C**, pp.1-3. Hogshead-Makar opens the letter by explaining she is a "**a civil rights lawyer running Champion Women**," which, "**provide[s] legal advocacy for girls and women in sports**." *Id.* at p.1 (emphasis added). She "ask[s] the YMCA to disassociate from Rick Butler," and attaches "original evidence **for you to *independently conclude* that he should not be coaching or around your students**." *Id.* at pp.1-2 (emphasis added). The e-mail then lists the attached documents, which include *inter alia* (a) a letter from Hogshead-Makar, (b) official public statements from volleyball's governing bodies, (c) a transcript from a USAV hearing on sexual assault accusations against Butler, (d) an administrative judge's ruling on Butler's credibility and (e) published news reports on Butler's legal and administrative hearings and discipline. *See id.* at pp. 2-3. These "source materials" are attached at **Group Ex. C, C-1** through **C-14**. The attachments speak for themselves (to this Court any third-party recipient); and, as detailed in the comparison chart provided in Appendix B, they support the unconditional defenses to Plaintiffs' claims as a matter of law. *See infra* at §§ I-II.

Of note, however, is Hogshead-Makar's correspondence to the YMCA of USA, asking it to "cut ties" with Butler and listing the recent disciplinary findings and decisions by the USAV, AAU and the Junior Volleyball Association ("**JVA**"). **Group Ex. C**, at **C-1**, pp.1-3. Hogshead-Makar ends the letter by stating her mission for the Champion Women organization:

> **Our letters, our effort, and our petition are bigger than removing a single coach from contact with athletes. It is about getting youth-serving sports to abide by the principles that they purport to uphold.**

Supp. 2d 570, 586 (N.D. Ill. 2010) ("The Court takes judicial notice of the existence of these newspaper articles, not the facts contained therein"); *Doctor's Data, Inc. v. Barrett,* 170 F. Supp. 3d 1087, 1150 (N.D. Ill. 2016) (taking judicial notice of another court's decision and comparing it against the allegedly offending statement under the fair report privilege defense).

Defendants' Exhibits are not submitted for the truth of the matter contained therein or to refute any allegation, but for the Court to properly take notice that these publications exist and say what they say.

> We are an **advocacy organization**, we believe in the many positive benefits of sports, and that **sexual abuse is incompatible with that mission**. We believe you share this same belief, and hope you will partner with us **to remove sexual abuse from sport**.

Id. at pp.2-3 (emphasis added in second paragraph only).

2. DiMatteo Allegedly Defamatory Speech

Against DiMatteo, Plaintiffs attempt to state claims for Tortious Interference with Contract (Count I), Tortious Interference with Prospective Business Advantage (Count II), and Civil Conspiracy to Violate Illinois Law (Count V). Compl., pp.41-45, 49-50. Similarly to her co-defendants, these claims are based on the concerns DiMatteo voiced in connection with Butler's history of sexual relationships with his minor players. DiMatteo's supposed tortious activities include: (a) publicly urging sponsors and clubs to "quit supporting" Butler and to boycott Plaintiffs' events, (b) a March 2018 Facebook post in which she claims she was holding a meeting to persuade clubs to leave Plaintiffs' events, (c) her general support and encouragement of Hogshead-Makar and Champion Women's advocacy efforts through social media posts, and (d) her signing of a petition to end sponsorship of Butler. *Id.* at ¶¶ 21, 58-59, 71, 80-82, 92, 148, 151 & 180. Each of these alleged activities, and the corresponding claims against DiMatteo, rest on whether speech on a matter of public concern was libelous – with one key distinction: the Complaint is devoid of a single fact tying DiMatteo to the "letter writing campaign."

D. Widely-Publicized Accusations, Official Proceedings & Disciplinary Decisions Linked to Butler's Sexual Relationships with Minor Female Volleyball Players

The Amended Complaint trumpets the fact that Butler had earned celebrity status in the national volleyball circuit. It chronicles (in extraordinary detail) his preeminent professional career as "the most powerful coach in the sport of junior volleyball," according to an ESPN article from 2015, and the success of Sports Performance over the past three-plus decades. *Id.* at ¶¶ 2-4, 11-14 & p.24, n.6; **Ex. A**. The pleading also details the infamy associated with Butler's name as a consequence of his

highly-public admissions to engaging in sexual relationships with young female players he coached. *Id.* at ¶¶ 4-6, 9, 10-11, 17, 19, 101, 128, 132, 137, 144, 153 & p.24, nn.6-7; **Ex. A**; **Ex. B**.

There is no dispute, that over the past three decades, Butler has been the focus of a steady stream of publicity in the form of lawsuits, administrative hearings, congressional hearings and extensive news coverage tied to his objectively intimate relationships with minor volleyball players under his tutelage. *Id.* Notwithstanding this well-documented notoriety -- which was, at times, reignited by his own lawsuits and press releases -- Plaintiffs now 'cry foul' when Defendants chose to remind select members of the volleyball community of Butler-related public reports that may have slipped their minds. To wit, this 'reminder' was in furtherance of the Defendants' aligned efforts to bring awareness to those who continued to affiliate with a coach who admitted having sexual relations with his young female players.

A careful review of these source materials is essential to the Court's analysis at the onset of this litigation. Plaintiffs' careless (or deliberate) decision to reference but not attach these materials should not obscure the Court's role in determining whether the speech central to the entire lawsuit is actionable as a matter of law. Accordingly, this Court may properly take judicial notice over the matters discussed below, which fall within one or more of the following categories: (1) matters of public record; (2) news articles and publications; and (3) documents referenced in the First Amended Complaint that are central to Plaintiffs' five causes of action. *See supra* at n.4; *see also,* Appendix A & B.

In 1994, for instance, Butler was accused of having "inappropriate sexual relationships' with three players he coached in the 1980s." *Id.* at ¶ 5. Sarah Powers-Barnhard ("**Powers-Barnhard**"), Christine Brigman ("**Brigman**" a/k/a "**Tuzi**") and Julie Bremner ("**Bremner**") all stated they had sexual relationships with Butler when he was their coach. *Id.* at ¶ 6. Butler claims Rogness was at least partially responsible for three former players coming forward with their stories of trauma. *Id.* at ¶¶ 4

& 6. Plaintiffs also acknowledge that *since 1994*, Rogness and Powers-Barnhard[5] have attempted to harm Plaintiffs' business by publicizing Butler's sexual relationships with his former players. *Id.* at ¶ 11. (demonstrating, on Plaintiffs' own admission, that these allegation of sexual abuse have been in the public domain for more approximately 28 years).

The allegations by Butler's former players prompted DCFS to open an investigation against him. Compl. ¶ 54; *see also,* **Group Ex. C**, at **C-11**, 81. It was publicized that DCFS investigators classified Butler as "indicated for risk of harm," meaning "authorities believe the evidence supports the allegations, and that the information will be kept on file for five years." **Group Ex. C**, at **C-11**, 81. Butler appealed the classification and was granted a hearing. *Id.* On December 28, 1995, an Administrative Law Judge for DCFS issued a Recommendation and Opinion *In the Matter of Rick Butler*, Docket No. 95-A-152. **Group Ex. C**, at **C-6**. This Court is directed to pages 29 and 30 of the DCFS Opinion regarding findings pertaining to Butler's credibility, as represented in Hogshead-Makar's opening e-mail. *See* **Group Ex. C**, at **C-5**, pp. 29-30; **Group Ex. C**, at p. 2, ¶ 6.

In July of 1995, USAV's Ethics and Eligibility Committee held a *do novo* hearing on the players' sexual abuse allegations against Butler. **Group Ex. C**, at **C-5**; *see Butler v. USA Volleyball*, 285 Ill. App. 3d 578, 580 (1st Dist. 1996). During the public hearing, Butler's lawyer made mention of the publicity surrounding the hearing, and that lawyer referenced articles published in The Daily Herald, The Chicago Sun-Times, The Chicago Tribune, as the bevvy of television reporters camped out in the hallways. **Group Ex. C**, at **C-5**, 16:15-18; *see also id.* at 33:7-16, 35:2-10, 182:16-183:6 (testimony from Butler on the issue of publicity and his resulting reputational harm).

The players each testified, under oath, to having sexual intercourse with Butler when they were under the age of 18, describing the interactions as "sexual abuse," "forced" intercourse, "molestation" and "rape." *Id.* at 66:7-12, 90:5-8 (Powers-Barnhard), at 73:1-15, 75:5-8, 75:19-21, 90:9-11 (Tuzi), at

[5] Plaintiffs also sued Powers-Barnhard in the first iteration of their pleading. *See,* Complaint (Doc. #1).

78:2-11, 79:16-19, 82:20-24, 90:12-16 (Bremner). In response to these allegations, Butler admitted *on record* that he indeed had sexual relations with Powers-Barnhard, Tuzi and Bremner, though *he could not recall when the relationships began*. *Id.* at 88:1-14, 192:5-22 (emphasis added).

USAV's Ethics Committee determined "'there was probable cause to believe' that Butler had sexual intercourse and a subsequent physical and emotional relationship with the three former players that began when he was their coach." Compl. ¶ 8; *see also, Butler*, 285 Ill. App. 3d at 580-81. "Accordingly, the Ethics Committee expelled Butler from USA Volleyball membership for life with the option of applying for conditional membership in five years." *Butler*, 285 Ill. App. 3d at 581. Butler sought and was granted a permanent injunction on the expulsion order by the Circuit Court of Cook County. *Id.* However, on appeal, the decision was overturned and Butler's expulsion was held enforceable upon a finding that USAV's decision was not arbitrary and was made pursuant to the full and fair procedures outlined in USAV's bylaws and operating code. *Id.* at 581-85.[6]

In 2000, Butler was allowed to reapply for conditional membership in the USAV, and was reinstated upon agreeing he would not coach junior girls at USAV events. **Group Ex. C**, at **C-12**, p.5; *see* Compl. ¶ 9. AAU, however, did not place such restrictions on Butler. *Id.* On June 23, 2016, Powers-Barnhard filed an action against the AAU alleging it violated the Florida Deceptive and Unfair Trade Practices Act and sought to prohibit Butler from coaching at AAU events in a publicly- filed judicial proceeding. Compl. ¶ 17 & p.5, n.4 (citing *Powers-Barnhard v. Amateur Athletic Union of the U.S., Inc.*, Case No. 2016-CA-005539-O (Fla. 9th Cir. Ct. June 23, 2016)).

Thereafter, new accusations surfaced from women who reported having sexual relationships with Butler when they were minors. **Group Ex. C**, at **C-14**, p.6. These new accusations, in part, precipitated USAV to file a new complaint against Butler and open an investigation against Butler

[6] *Butler*, 285 Ill. App. 3d at 584 (finding, "USA Volleyball's decision that Butler's behavior was unreasonable was not arbitrary. Further, the association's decision that it would be subject to public embarrassment because one of its best known members had sexual relations with minor players was not fundamentally unfair").

conduct, which Butler sought to enjoin through a public filing in the DuPage County Circuit Court. *Id.*; *Butler v. USA Volleyball*, Case No. 2017 CH 000027 (DuPage Cir. Ct., Jan. 9, 2017). In January of 2018, USAV (once again) banned Butler for life "pursuant to its 'public embarrassment and ridicule' provision . . . referenc[ing] 'interpersonal sexual relationships' with a 'non USAV minor[.]'" Compl. ¶ 63; *see also* **Group Ex. C**, at **C-4**. Butler's membership from AAU and JVA were subsequently (and quite publicly) revoked in February pf 2018. **Group Ex. C**, at **C-2** and **C-3**.

On February 27, 2018, a highly publicized class-action was filed against Plaintiffs for allegedly "deceiving parents and youth volleyball players to become members of the Sports Performance Volleyball Club ("Sports Performance") based upon false information and material omissions of fact regarding Defendant Butler's sexual abuse of underage girls." Complaint, *Mullen v. GLV, Inc.,* Case No. 1:18-cv-1465 (Feb. 27, 2018) (**Ex. D**). The lawsuit contends Butler has sexually, physically and emotionally abused no fewer than six underage girls in his care. *Id.* at ¶ 21; *see also id.* at ¶¶ 26-117 (detailing the abuse of five victims, including Cheryl Butler's threats to "keep quiet"), ¶¶ 119-22 (detailing the 1995 hearing and conclusions by the USAV Ethics Committee), ¶¶ 123-26 (detailing the DCFS investigation and Opinion), ¶¶ 127-29 (detailing the 2018 disciplinary actions taken against Butler by the USAV, AAU and JVA). In support of their motion for summary judgment, Butler, Cheryl Butler and GLV filed a Local Rule 56.1(a)(3) Statement detailing, attaching and effectively republicizing copies of the decades of public coverage of the allegations of sexual abuse lodged against Butler. L.R. 56.1(a)(3) Statement, *Mullen v. GLV, Inc.,* Case No. 1:18-cv-1465 (May 28, 2019) (Doc. #144-1), pp.7-16 (**Ex. E**). They also attached to their affirmative defenses a 115-page "Statement by Cheryl Butler," published online in February, 2018, "to address the ongoing smear campaign against my husband Rick Butler that is taking place on social media and in the press." Ex. A to Ans. & ADs, *Mullen v. GLV, Inc.,* Case No. 1:18-cv-1465 (July 23, 2018) (Doc. #76-1) (**Ex. F**).

Finally, on May 21, 2018, members of the Subcommittee on Oversight and Investigations, as part of the U.S. House of Representative Committee on Energy and Commerce, announced its intent to hold a hearing entitled, "Examining the Olympic Community's Ability to Protect Athletes from Sexual Abuse." U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY AND COMMERCE, *Examining the Olympic community's Ability to Protect Athletes from Sexual Abuse*, May 21, 2018 (**Ex. G**) ("E&C Hr'g"). The Chief Executive Officer of USAV was identified as a witness to the hearing, in its role as the National Governing Organization ("NGO") of the sport of volleyball. The Subcommittee summarized the concerns in the USA Volleyball community to be discussed at the public hearing as follows:

> **In 1995, USA Volleyball banned one of its coaches, Rick Butler, due to claims that the coach has sexual relationships with underage athletes. USA Volleyball partially lifted the ban just five years later in 2000. In January 2018, however, USA Volleyball permanently banned Rick Butler from coaching again. Additionally recent lawsuits have been filed related to claims that Rick Butler Sexually abused and raped minor athletes in the 1980s.**

Id. at p.7 (emphasis added). Additional topics to be covered at the hearing included the Larry Nassar scandal that shocked the USA Gymnastics community (and countless others). *Id.* at pp.4-5; *but cf.* Compl. ¶ 50 (alleging "Defendants coordinated a letter writing campaign that circulated false and misleading information that would place Rick Butler's name alongside Nassar's in the media") (even though the House of Representatives found the two instances worthy of comment at the hearing).

In summary, the Defendants' offending speech and alleged publications that form the basis of Plaintiffs' entire lawsuit bring to light, as a reminder, that Plaintiffs' own admitted misdeeds with young women he coached had "became common knowledge in the volleyball community." Compl. ¶¶ 10, 19, 27, 101, 128, 132, 137, 144 & 153; *see also id.* at ¶¶ 5-6, 11, 119, 141 & 151 (where Plaintiffs discuss how individuals with no alleged affiliation to Defendants were taking similar steps to spread awareness about the accusations and related disturbing admissions by Butler). This background, which must be considered as part of the record, touches upon only some of the material (and very public) allegations

and findings against Butler that have decimated his personal and professional reputation. To suggest Plaintiffs suffered reputational harm (to the tune of $250M) as a result of the Defendants' piecemeal contributions to an almost 30-year-old volleyball scandal, speaks volumes of their true motive in filing this *ad hominem* and patently oppressive litigation.

LEGAL STANDARD

A complaint is properly dismissed if it "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, the plaintiff must do more in the complaint than simply recite elements of a claim; the complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Zellner v. Herrick,* 639 F.3d 371, 378 (7th Cir. 2011) (internal quotation marks omitted) (quoting *Ashcroft v. Iqbal,* 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009)). The complaint must set forth facts that allow a court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Iqbal,* 129 S. Ct. at 1949. The court "need not accept as true 'legal conclusions, [or] threadbare recitals of the elements of a cause of action, supported by mere conclusory statements.'" *Brooks v. Ross,* 578 F.3d 574, 581 (7th Cir. 2009) (quoting *Iqbal,* 129 S. Ct. at 1949). Rather, the plaintiff must "present a story that holds together" and would, if the facts were proven as alleged, satisfy each element of his claim. *Swanson v. Citibank, N.A.,* 614 F.3d 400, 404 (7th Cir. 2010).

Rule 12 plays an especially important role in cases founded on defamation principles, such as this one. "The Supreme Court has directed courts to expeditiously weed out unmeritorious defamation suits . . . [t]o preserve First Amendment freedoms[.]" *Kahl v. Bureau of Nat'l Affs., Inc.*, 856 F.3d 106, 109 (D.C. Cir. 2017) (*citing Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)). "**Early resolution of defamation cases under Federal Rule of Civil Procedure 12(b)(6) 'not only protects against the costs of meritless litigation, but provides assurance to those exercising their First Amendment rights that doing so will not needlessly**

become prohibitively expensive."' *Fairbanks v. Roller*, 314 F. Supp. 3d 85, 89 (D.C. Cir. 2018) (citing *Palin v. New York Times Co.*, 264 F. Supp. 3d 527, 533 (S.D.N.Y. 2017)) (emphasis added).

LEGAL ANALYSIS

Plaintiffs filed this lawsuit for one purpose only: to intimidate and silence the Defendants. *Every cause asserted* stems from Defendants' allegedly defamatory speech about Butler and his affiliates. Plaintiffs attempt to circumvent the strict, one-year statute of limitations period to bring a defamation claim in Illinois and, in doing so, they try to mislead this Court into believing this case about business competitors at odds for market share. Even if Plaintiffs had timely filed their action, the operative speech is constitutionally-protected and nonactionable under the Fair Report Privilege.

Moreover, Butler is treated as a 'public figure' under Illinois law who must demonstrate in their pleading, and in great detail, how the Defendants published the offending speech with actual malice (i.e., knowing it was false, or with reckless disregard for whether the statements had any veracity). Plaintiffs do not and cannot ever meet this heightened standard given the voluminous public record covering the scandal, and where Defendants merely repeat the many widely-publicized allegations and findings in their statements. In that same vein, Plaintiffs' claims for Tortious Interference (Counts I and II), violation of the Uniform Deceptive Trade Practices Act (Count III) and Illinois' Consumer Fraud Act (Count IV) and Civil Conspiracy (Count V) are also insufficiently pled to pass Rule 12(b)(6) scrutiny. On these bases, the Complaint must be disposed of *with prejudice*.

Most damning to Plaintiffs' claims are the statutory protections afforded the Defendants pursuant to the anti-SLAPP legislation enacted by their respective states of domicile. Plaintiffs knowingly brought a vexatious and meritless lawsuit aimed at stifling Defendants' protected speech on matters of objective public concern – the sexual exploitation of child athletes. These statutes mandate an award of Defendants' reasonable attorneys' fees and costs under Florida law (for Hogshead-Makar and Champion Women) and Nevada law (for DiMatteo).

I. PLAINTIFFS CANNOT CIRCUMVENT PROTECTIONS AFFORDED TO FREE SPEECH USING ARTFUL PLEADING.

It is well-settled that **a plaintiff may not make an end-run around the protections afforded by the First Amendment by relabeling a defamation claim as some other tort**. *See Hustler Magazine, Inc. v. Falwell,* 485 U.S. 46, 56 (1988) (First Amendment barred public figure's claim for intentional infliction of emotional distress absent proof that challenged statement was false and was made with actual malice).[7] **This rule applies equally to all torts involving the publication of allegedly false statements about public figures**. *Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc.,* 227 Ill. 2d. 381, 402-03 (2008) (affirming dismissal of common law and statutory claims where allegedly defamatory language was not actionable under the First Amendment); *Salaita v. Kennedy*, 118 F. Supp. 3d 1068, 1086-87 (N.D. Ill. 2015) (dismissing tortious interference claim where defendants "exercised their First Amendment rights by" relaying offending comments about plaintiff to his employer, and holding, "[c]ourts cannot apply state tort laws if doing so violates the First Amendment"); *Montgomery Ward & Co. v. United Retail, Wholesale & Dep't Store Emps. of Am., C.I.O.*, 400 Ill. 38, 50 (1948) ("the action for disparagement of property has a place of its own in the law; and is not a mere branch, or special variety, of the action for defamation of personal reputation or of the action for deceit"); *Tierney v. Vahle,* 304 F.3d 734, 743 (7th Cir. 2002) (affirming dismissal of conspiracy claim by limited-purpose public figure alleging defendants conspired to draft and publish defamatory statements; it would be "nonsensical" to impose liability for publication under a relabeled tort when each defendant would have a good First Amendment defense if sued for defamation).

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[7] *Cf. Food Lion, Inc. v. Capital Cities ABC, Inc.,* 194 F.3d 505, 522-23 (4th Cir. 1999) (plaintiff cannot recover "defamation-type damages under non-reputation tort claims, without satisfying the stricter (First Amendment) standards of a defamation claim . . . such an end-run around First Amendment strictures is foreclosed by *Hustler*"); Robert D. Sack, *Sack on Defamation* § 12:1.2 (4th ed. 2010) ("Concerned that constitutional principles not be evaded simply by the relabeling of claims, courts have repeatedly held that constitutional standards applicable to defamation apply where the gravamen of a claim is false, harmful speech").

Though mislabeled as "an extraordinary campaign of business interference," Compl. at ¶ 1, the purported interference at issue in each of Plaintiffs' five causes of action is Defendants' allegedly false and defamatory speech and petitioning activity related to:

(1) spreading awareness in the volleyball community through republishing public records and news articles that documented the accusations and findings regarding Butler's sexual relationships with his minor players;

(2) advocating for Butler's victims and for the safety of athletes with whom Butler could foreseeably come into contact with; and

(3) requesting that schools, sponsors and affiliates of Butler disassociate with him based on his publicized history of discretions and deplorable conduct.

Id. at ¶¶ 16-18, 25, 48, 50-52, 56-57, 61, 68-69, 90, 121, 128 & 146; **Group Ex. C**, at **C-1**. Where Plaintiffs directly challenge Defendants' speech, they cannot circumvent the protections as a matter of law. Below, Defendants detail the defenses that this Court must analyze at the outset before determining whether the complained-of speech is actionable. *See Hustler Magazine, Inc.,* 485 U.S. at 56; *Kahl,* 856 F.3d at 109.

A. <u>Plaintiffs' Lawsuit Is Time-Barred</u>.

The operative claims center on Defendants' critical speech and reiteration of source materials originating *between 2017 and 2018*. Compl. ¶¶ 51 & 68 (detailing the 2017 to 2018 "letter writing campaign" by Hogshead-Makar and Champion Women), ¶ 90 (Defendants' shared news reports from 2018), ¶ 92 (DiMatteo's March 2018 Facebook post), ¶ 128 (Champion Women's communication with Texas State University "[b]efore the 2017 camp"), ¶ 134 (Defendants' alleged communications with Michigan contacts in 2017 and 2018), ¶ 151 (Defendants' communications to Disney before May 23, 2018); *see also, id.* at ¶¶ 97-114 (alleging cancellations of events and registrations in 2018, though Plaintiffs do *not* expressly plead these were a result of *Defendants'* specific conduct).

The allegedly "false and defamatory" speech at the heart of each cause was only actionable in the **one year following its *initial* publication**. 735 ILCS 5/13-201 (emphasis added); *Doctor's Data,*

Inc., 170 F. Supp. 3d at 1104 (holding the "statute of limitations begins to run when the communication containing the defamatory statements is first published; it is not restarted by subsequent distributions of the original communication"). Accordingly, where Plaintiffs' original Complaint was filed *well-beyond* the statute of limitations, this entire lawsuit is time-barred and subject to dismissal *with prejudice*. Illinois law strictly and routinely disavows efforts by a plaintiff to tries to circumvent the one-year statute of limitations by masquerading calling their defamation action by another name. *Hustler Magazine, Inc.,* 485 U.S. at 56. Ironically, it seems the Plaintiffs here are relying on deception (and our credulity) to avoid the hurdles that attach to speech-based litigation. This argument, standing alone, is enough for the Court to dismiss the entire lawsuit as time-barred. Similarly, it is a basis to find Plaintiffs' action "meritless" to trigger application anti-SLAPP defenses, discussed *infra* at Section III.

B. Plaintiffs are "Public Figures" Who Must Demonstrate Defendants Acted With "Actual Malice."

First Amendment constitutional defenses have accorded free speech throughout our country's jurisprudence. To prevail on *any* of the causes asserted, Plaintiffs must plead -- and ultimately prove -- that Defendants violated the applicable standard of care in sharing their offending statements, official public records and news media. *Hustler Magazine, Inc.*, 485 U.S. at 56-57 (requiring the same showing of fault for all tort claims, however denominated, arising from published content); *Imperial Apparel, Ltd.,* 227 Ill. 2d. at 394 ("[t]he question of whether the plaintiffs are public or private figures affects the standard of liability"); *cf., Zelaya v. UNICCO Serv. Co.*, 587 F. Supp. 2d 277, 287 (D.C. Dist. 2008) (dismissing cause of action where "[t]he intentional interference required for the plaintiff's claim is premised entirely on a defamation allegation that is fatally deficient under the *Twombly* pleading standard"). As explained below, Plaintiffs have not met their burden under federal pleading standards.

1. Plaintiffs constitute "public figures" as a matter of law

The First Amendment shields defendants from liability for defamatory statements against public figures unless those statements are made with actual malice. *Madison v. Frazier*, 539 F.3d 646,

657 (7th Cir. 2008). Whether the plaintiff is a public figure is an issue to be decided by the court. *Dilworth v. Sudley*, 75 F.3d 307, 309 (7th Cir. 1996). "[W]here individuals 'thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved,' they become public figures for the limited range of issues associated with those controversies." *Jacobson v. CBS Broad., Inc.*, 2014 IL App (1st) 132480, ¶ 28 (1st Dist. 2014) (quoting *Gertz*, 418 U.S. at 345). Thus, the analysis "turns upon the nature and extent of the individual's participation in the controversy that lead to the defamation." *Id.* (citing *Gertz*, 418 U.S. at 351-52).

Undisputedly, Butler qualifies as a limited purpose public figure in connection with the specific speech at issue in this case. The accusations, findings and disciplinary action taken against him in connection with his sexual relationships with minor players has, by Butler's own admissions, been highly publicized for decades. Compl. ¶¶ 5-6, 8, 10 ("[t]he allegations became common knowledge in the volleyball community"), 17, 54, 77, 78 ("[t]here are three former players who have 'spoken out in the media'"), 86, 90, 91 ("referring to the week-long Chicago Sun-Times report"),[8] 101 ("[t]he email [from MAVA Volleyball Club] referenced 'the recent negative publicity, including USAV and AAU's announced response'"), 166 ("[t]he allegations of abuse from the 1980s against Rick Butler have been considered common knowledge in the volleyball community since the 1990s"), 174 (same); **Ex. A**; **Ex. B**; **Group Ex. C**, at **C-2**–**C-6**, **C-9**–**C-14**; **Ex. E**. Butler has thrust himself into the public controversy through his own public comments, interviews, press statements and lawsuits filed in connection with the scandals (including suing one of his sexual assault victims). *See, e.g.,* **Group Ex. C**, at **C-11**, pp.78-79 & **C-14**, p.7; *see* Complaint (Doc. #1).

The three Plaintiffs are inextricably intertwined for purposes of this analysis, as the actions and scrutiny paid to Butler are imputed both to his organization and his wife. Butler, as the figurehead of his organization, is required to prove actual malice as a matter of law before any recovery can be

[8] The Chicago Sun-Times report was included in the letter writing campaign. *See* **Group Ex. C**, at **C-14**.

had by GLV. Additionally, his wife Cheryl has independently thrust herself into the spotlight by standing behind her husband and publicly defending his actions. *See* **Ex. F**; *see also* **Ex. A**, p.2; **Ex. B**, pp.2-3. There can be no doubt that in order to bring *any* cause of action against Defendants based on their speech about Butler's inappropriate conduct with minor players, Plaintiffs must prove actual malice.

2. Dismissal is proper where Plaintiffs fail to satisfy the heightened actual malice standard.

"Actual malice" is a legal term of art requiring a plaintiff to "show that (1) the utterance was false, and (2) it was made with knowledge of its falsity or in reckless disregard of whether it was false or true." *Madison*, 539 F.3d at 657 (citing *Hustler Magazine, Inc.,* 485 U.S. at 56). "Reckless disregard 'is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing.'" *Id.* (quoting *St. Amant v. Thompson,* 390 U.S. 727, 731 (1968)). "This inquiry is a subjective one—there must be sufficient evidence to permit the conclusion that the defendant published defamatory statements despite a high degree of awareness of probable falsity or entertaining serious doubts as to its truth." *Id.* at 657-58. This high barrier to recovery by public figure plaintiffs comes "against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks[.]" *New York Times*, 376 U.S. at 270.

"[T]he plaintiff bears the burden of pleading *specific facts* to show the existence of actual malice." *Vantassell-Matin v. Nelson*, 741 F. Supp. 698, 706 (N.D. Ill. 1990) (emphasis added). "This burden is not satisfied by the bare allegation that a defendant acted maliciously and with knowledge of the falsity of the statement." *Id.* (quoting *American Pet Motels, Inc. v. Chicago Veterinary Medical Association,* 106 Ill.App.3d 626, 632 (1st Dist.1982)).[9] Plaintiffs "must point to details sufficient to render a claim

[9] *See also, Catalano v. Pechous*, 83 Ill. 2d 146, 170 (1980) (citing *Rosenbloom v. Metromedia, Inc.* 403 U.S. 29, 55 (1971)) ("[w]e are reminded that the proof that [defendant] doubted the truth of [the] defamatory statement must be made with

plausible." *Pippen v. NBCUniversal Media, LLC*, 734 F.3d 610, 614 (7th Cir. 2013) (citing *Twombly,* 550 U.S. at 570; *Iqbal,* 556 U.S. at 678).

The same high standard applies when a defendant merely reiterates or republishes previously circulated defamatory statements about a public figure. *Brennan v. Kadner*, 351 Ill. App. 3d 963, 971 (1st Dist. 2004) (citing *Catalano v. Pechous,* 83 Ill. 2d 146, 168 (1980)). In other words, "[i]t is *not* sufficient that the *originator* of the statement made it with actual malice." *Catalano*, 83 Ill. 2d at 168. A "plaintiff conceivably could establish actual malice if he could show that the alleged originator or source of the statement either did not exist or did not make the statement[.]" *Brennan*, 351 Ill. App. 3d at 971. Importantly, however, the Supreme Court has expressly stated a failure to investigate "is insufficient to establish reckless disregard for the truth." *Pippen*, 734 F.3d at 614 (citing *Harte-Hanks Comm'ns, Inc. v. Connaughton*, 491 U.S. 657, 688 (1989)).

"[E]very circuit that has considered the matter has applied the *Iqbal/Twombly* standard and held that a defamation suit may be dismissed for failure to state a claim where the plaintiff has not pled facts sufficient to give rise to a reasonable inference of actual malice." *Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 702 (11th Cir. 2016) (collecting cases). As the Eleventh Circuit artfully explained:

> [A]pplication of the plausibility pleading standard makes particular sense when examining public figure defamation suits. In these cases, there is a powerful interest in ensuring that free speech is not unduly burdened by the necessity of defending against expensive yet groundless litigation. Indeed, the actual malice standard was designed to allow [the speaker] the "breathing space" needed to ensure robust reporting on public figures and events. * * * Forcing [the speaker] to defend inappropriate suits through expensive discovery proceedings in all cases would constrict that breathing space in exactly the manner the actual malice standard was intended to prevent. The costs and efforts required to defend a lawsuit through that stage of litigation could chill free speech nearly as effectively as the absence of the actual malice standard altogether.

'convincing clarity'")); *Audition Div., Ltd. v. Better Bus. Bureau of Metro. Chi., Inc.*, 458 N.E.2d 115, 120 (1983) ("Plaintiff's conclusory allegations that defendants were carrying out a 'personal vendetta' to destroy plaintiff are insufficient as a matter of law"); *George A. Fuller Co. v. Chi. Coll. of Osteopathic Med.*, 719 F.2d 1326, 1333 (7th Cir. 1983) (bare assertions of "malice" and "conspiratorial interference," unsupported by any facts showing defendants acted without justification or privilege, were insufficient to state a claim); *Lee v. Radulovic*, No. 94 C 930, 1994 WL 384010, at *7 (N.D. Ill. July 20, 1994) ("[m]erely alleging that the speaker's action was willful, wanton, and malicious is insufficient to plead actual malice").

> Thus, a public figure bringing a defamation suit must plausibly plead actual malice in accordance with the requirements set forth in *Iqbal* and *Twombly*.

Id. (internal citation to *Sullivan*, 376 U.S. at 271-72 omitted).

Plaintiffs' allegations of actual malice amount to the formulaic recitation of boilerplate language that courts have repeatedly rejected as insufficient to survive dismissal. Compl. ¶¶ 49 ("Defendants . . . launched a malicious campaign to destroy the Butlers and GLV with claims fabricated to provoke public outrage"), 61 ("Champion Women knowingly and maliciously disseminated false and defamatory statements"), 160 ("Defendants' conduct as alleged above was done in furtherance of their own private interests, and was willful, malicious, wanton, and oppressive, and done with conscious and callous indifference to the consequences and with specific intent to harm") 190 & 199 ("maliciously spread a false narrative that Rick and Cheryl Butler are unfit to coach junior athletes and that players in GLV programs are in danger"). Where Plaintiffs attempt to provide details about the specific falsities Hogshead-Makar and Champion Women purportedly conveyed, they fail to alleged sufficient facts "to permit the conclusion that the defendant published defamatory statements despite a high degree of awareness of probable falsity or entertaining serious doubts as to its truth." *Madison*, 539 F.3d at 657-58; *see* Compl., ¶¶ 57 & 61, and comparison chart at Appendix B. Moreover, Plaintiffs do not claim Defendants republished the various official records, statements and reports on public proceedings as part of their letter writing campaign *with knowledge that such documents were false or with reckless disregard for the truth*. *Brennan*, 351 Ill. App. 3d at 971. Nor did Hogshead-Makar and Champion Women have any legal obligation to independently corroborate the testimony set forth in administrative hearings, civil court filings or the official statements by governing bodies. *Pippen*, 734 F.3d at 614. There can accordingly be no inference that these defendants acted with actual malice in republishing these materials.

C. DiMatteo is Improperly Dragged into this Litigation For Expressing Constitutionally-Protected Opinions.

Plaintiffs' lawsuit against DiMatteo is limited to claims of Tortious Interference (Counts I and II) and Conspiracy (Count V) based on her allegedly defamatory speech in public forums. Compl. pp. 41-45 & 49-50. DiMatteo's alleged interference includes: publicly urging clubs to "quit supporting" and boycott Plaintiffs' events, a Facebook post claiming she was holding a meeting to persuade clubs to leave Plaintiffs' events, her general support and encouragement of Hogshead-Makar and Champion Women's efforts on social media, and her signing of a petition to end sponsorship of Butler. *Id.* at ¶¶ 21, 58-59, 71, 80-82, 92, 148, 151 & 180.

For judicial economy, Defendants have filed a combined motion to dismiss, but it should not be ignored that Plaintiffs claims against DiMatteo were added in haste. DiMatteo's speech at-issue is protected under the First Amendment where it constitutes non-actionable opinion. *Madison v. Frazier*, 539 F.3d 646, 653 (7th Cir. 2008). Specifically, nothing in DiMatteo's offending publications can reasonably be interpretated as stating verifiable facts. *Id.* at 654 (*citing Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990) (finding, opinions "cannot give rise to a cause of action for defamation in the interest of 'provid[ing] assurance that public debate will not suffer for lack of 'imaginative expression' or the 'rhetorical hyperbole' which has traditionally added much to the discourse of our Nation'"). All causes of action against DiMatteo should be dismissed *with prejudice*.

D. The Offending Speech is Not Actionable Pursuant to the Commercial Disparagement Statutes Relied Upon by Plaintiffs.

Under Counts III and IV, Plaintiffs clumsily suggest Hogshead-Makar and Champion Women disparaged the goods, services and business of GLV, Inc. and engaged in disparagement, deceptive practices and consumer fraud through (1) misrepresenting that players are unsafe under Butler and Cheryl Butler's coaching; and (2) perpetuating the fictitious narrative about accusations against Butler, including that he is a threat to players' safety and a pedophile coach. Compl., ¶¶ 189-90 (Count III),

198-200 (Count IV). However, any incremental harm caused by these defendants' contributions to an already caustic debate over Butler's activities with his minor female players is insufficient to support a violation of Illinois Uniform Deceptive Trade Practices Act ("UDTPA"), and Consumer Fraud and Deceptive Trade Practice Act ("CFA"), which were enacted for another purpose.

Hogshead-Makar/Champion Women's speech at-issue goes to the Butlers' *integrity* and does not constitute statements disparaging the *quality* of Plaintiffs' goods -- only the latter of which is actionable under the cited statutes. *Republic Tobacco, L.P. v. N. Atl. Trading Co.*, 254 F. Supp. 2d 985, 998 (N.D. Ill. 2002) ("Illinois courts have construed the UDTPA to apply only to statements disparaging the quality of a business's products; statements that impute a want of integrity are not actionable under the UDTPA"); *Crinkley v. Dow Jones & Co.*, 67 Ill. App. 3d 869, 876 (1st Dist. 1978) (dismissing UDTPA and CFA claims, finding "defamation and commercial disparagement are separate and distinct torts: a defamation action lies when the integrity or credit of a business has been impugned, but if the quality of the goods or services are demeaned, then an action for commercial disparagement may be proper"). A defendant who conveys to the plaintiff's customers that the plaintiff lacks morals, and its business programs and practices violate state and federal law, cannot be held liable for disparagement of goods and services. *See, Am. Med. Ass'n v. 3Lions Publ'g, Inc.*, No. 14 C 5280, 2015 WL 1399038, at *5 (N.D. Ill. Mar. 25, 2015); *Republic Tobacco, L.P.*, 254 F. Supp. 2d at 990-91 & 998; *Crinkley* 67 Ill. App. 3d at 877; *Montgomery Ward & Co.*, 400 Ill. at 50-51.

Nowhere in the Complaint do Plaintiffs allege that Hogshead-Makar or Champion Women made any false, defamatory or disparaging comments about the *quality* of the volleyball training and instruction provided by Plaintiffs. The public records, statements and reports the defendants reiterated actually discuss *how successful* Butler has been as a coach and program coordinator. The focus of the letter writing campaign was to spread awareness of the accusations and findings regarding Butler's history of improper sexual relationships with minor players; these defendants urged schools, clubs and

sponsors to dissociate with Plaintiffs *on that basis alone*. Compl. ¶¶ 51, 57& 61. Accordingly, Plaintiffs cannot maintain an action under the UDTPA or CFA consistent with the rights these statutes were enacted to protect.

E. Plaintiffs' Conspiracy Claim is Founded Upon Protected Speech.

Count V alleges Defendants conspired to engage in tortious interference and commercial fraud and disparagement, as alleged in the preceding Counts of the First Amended Complaint. Compl. ¶¶ 208-11. Conspiracy is not a stand-alone action and "requires an underlying tort," thus, "if a plaintiff fails to state an independent cause of action underlying his conspiracy allegations, the claim for conspiracy also fails." *Doctor's Data, Inc.*, 170 F. Supp. 3d at 1159 (citation omitted). For the reasons set forth above, Plaintiffs are unable to maintain a cause of action against Defendants under any of the theories asserted, thereby requiring dismissal with prejudice of their conspiracy claim. *Id.*; *see supra* at §§ I(A)-(D).

F. Plaintiffs' Demand For A Prior Restraint of Speech is Unconstitutional on its Face.

As a final note, Plaintiffs seek injunctive relief to enjoin Defendants from continuing to engage in what has already been shown to be protected speech. Compl. ¶¶ 197, 204, 212 & p.50 at Prayer for Relief D; *see supra* at §§ I(A)-(D). Prior restraints on speech are abhorrent to the First Amendment and come "with a 'heavy presumption' against its constitutional validity." *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971). Injunctions against expression are strongly disfavored, reflecting a "deep-seated American hostility to prior restraints." *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 589 (1976) (Brennan, J., concurring). "Temporary restraining orders and permanent injunctions--*i.e.*, court orders that actually forbit speech activities--are classic examples of prior restraints." *Alexander v. U.S.*, 509 U.S. 544, 550 (1993). These restraints are exceedingly rare, even in cases that focus on commercial interests. *Org. for a Better Austin*, 402 U.S. at 419 ("[n]o prior decisions support the claim that the interest of an individual

in being free from public criticism of his business practices in pamphlets or leaflets warrants use of the injunctive power of a court").

At a minimum, where Plaintiffs' lawsuit is based entirely on Defendants' allegedly offending speech *specific to Butler's integrity*, Defendants request this Court dismiss *with prejudice* Plaintiffs' UDTPA claim (Count III), for which an injunction is the only form of relief, and strike Plaintiffs' prayer for a prior restraint on Defendants' speech under any other cause of action.

II. THE FAIR REPORT PRIVILEGE SHIELDS DEFENDANTS FROM LIABILITY.

The Fair Report Privilege also serves as an *independent* basis for dismissal at the onset. "Under Illinois law, a defamatory statement is not actionable if it falls within the fair report privilege, which applies to statements that are 'complete and accurate or a fair abridgment of [an] official proceeding.'" *Huon v. Denton*, 841 F.3d 733, 739-40 (7th Cir. 2016) (citing *Solaia Tech., LLC v. Specialty Pub. Co.*, 852 N.E.2d 825, 843-44 (2006)). The privilege covers the "**reprint [of] defamatory information reported by another in the context of public records or proceedings," as well as "news accounts based upon the written and verbal statements of governmental agencies and officials made in their official capacities**." *Edwards v. Paddock Publications, Inc.*, 327 Ill. App. 3d 553, 563 (1st Dist. 2001) (emphasis added), *as modified on denial of reh'g* (Jan. 24, 2002) (citing *Catalano,* 83 Ill.2d at 167; *Tepper v. Copley Press, Inc.*, 308 Ill. App. 3d 713, 717 (1999)). The Fair Report Privilege protects "[b]oth media and nonmedia reporters" . . . and provides "an exception to the general common law rule that the *republisher* of defamatory material bears the same degree of liability for defamation as the original publisher." *Missner v. Clifford*, 393 Ill. App. 3d 751, 760-61 (2009).

"While the privilege is not absolute, it is *broader in scope* than the qualified or conditional privileges that are a part of the law of libel," because "**the privilege exists even [where] the publisher does not believe that the defamatory statements from the proceedings are true and even though the publisher knows that they are false**." *O'Donnell v. Field Enters., Inc.*, 145 Ill. App.

3d 1032, 1035-36 (1986)) (emphasis added). That is, "**the fair report privilege overcomes allegations of either common law or actual malice**." *Solaia Tech., LLC*, 221 Ill. 2d at 587 (emphasis added). The privilege may only be abused "when the [speaker] does not give a fair and accurate report of the proceeding." *Solaia Tech., LLC*, 221 Ill. 2d at 587 (quoting Restatement (Second) of Torts § 611, Comment *b*, at 298 (1997)). "A report constitutes a fair abridgment if it conveys 'a substantially correct account' to readers." *Huon*, 841 F.3d at 740 (citing *Solaia Tech.*, 852 N.E.2d at 844-45)).

"Because the summary of a legal proceeding 'is bound to convey a somewhat different impression than the . . . proceeding itself,' **an abridgment is typically unfair only if it '*significantly change[s]* the defamation appearing in the governmental or public proceeding**.'" *Id.* (citing *O'Donnell*, 145 Ill. App. 3d 1032, 491 N.E.2d at 1217) (emphasis added). The Court must determine as a matter of law whether the privilege applies by "comparing the gist or sting of the alleged defamation in the official report or proceedings with the gist or sting in the news account." *Id.* (quoting *Harrison v. Chi. Sun-Times, Inc.*, 793 N.E.2d 760, 773 (2003)); *see supra* at n.4 (*citing Doctor's Data, Inc.*).

Here, the record is lacking a single allegation that might or could defeat the Fair Report Privilege's application to the offending speech. The crux of the lawsuit against Hogshead-Makar and Champion Women, in particular, stems from a letter writing campaign wherein these defendants republished publicly-accessible information, including (a) records from official proceedings, (b) press releases from government agencies, as well as (c) published news articles reporting on these public records and proceedings. Compl. ¶¶ 51 & 57; **Group Ex. C**. These republications were all made in connection with Butler's demonstrated (and admitted) sexual relationships with minor female volleyball players. Compl. ¶¶ 25, 50-52, 56-57, 61 & 121. These materials are fully insulated by the privilege. *See supra* at Material Background, § C(2); *Edwards*, 327 Ill. App. 3d at 563.

Attached at Appendix B is a comprehensive chart of each allegedly defamatory statement by Hogshead-Makar and Champion Women as part of their letter writing campaign, as compared against

the "source materials," public records and reports that preceded defendants' publication. *See* Appendix B. By comparison, there can be no finding (or related inference) that Hogshead-Makar and Champion Women "significantly changed the defamation appearing in the governmental or public proceeding." *Huon*, 841 F.3d at 740 (even assuming, of course, that Plaintiffs can demonstrate the original publication was defamatory – a task they fail to – and cannot – undertake). As a matter of law, the operative "defamatory" statements that make up each of Plaintiffs' five counts fall flat in the face of the Fair Report Privilege – just as each of the claims that rely on the speech to be actionable will topple over like dominoes. *Edwards*, 327 Ill. App. 3d at 563; *see also, Voyles v. Sandia Mortgage Corp.,* 196 Ill. 2d 288, 301 (2001) (giving proper and accurate reports "cannot represent an unjustified interference"); *Fedders Corp. v. Elite Classics*, 268 F. Supp. 2d 1051, 1064-65 (S.D. Ill. 2003) (dismissing UDTPA claim where press release merely gave notice of lawsuit, summarized allegations and was substantially true).

Where the Fair Report Privilege shields offending speech reiterated by Hogshead-Makar and Champion Women in their campaign to discredit Butler and his organization, this Court must dismiss the claim outright as a matter of law. Similarly, operation of the privilege renders the lawsuit "meritless" on its face, thereby implicating the protections afforded to Defendants by Florida's and Nevada's anti-SLAPP statutes explained *infra* at Section III.

III. PLAINTIFFS' LAWSUIT CONSTITUTES AN IMPERMISSIBLE SLAPP PREEMPTED BY FLORIDA AND NEVADA LEGISLATION.

"The purpose behind an anti-SLAPP law is to encourage the exercise of free speech." *Chi v. Loyola Univ. Med. Ctr.*, 787 F. Supp. 2d 797, 803 (N.D. Ill. 2011). Here, all causes of action brought against Defendants are pursuant to Illinois state law and based on allegedly false and defamatory speech. Defendants do not dispute that Illinois law should apply in determining whether the movants engaged in the tortious conduct at issue. However, Hogshead-Makar and Champion Women are both citizens of Florida, and DiMatteo is a citizen of Nevada. Defendants' respective states of domicile have a significant interest in establishing the protections afforded to the speech by their citizens. For

the reasons detailed below, Florida and Nevada's anti-SLAPP statutes govern, warrant a dismissal with prejudice of all pending causes of action, and justify an award of Defendants' fees and costs incurred to defend this meritless suit.

A. The Choice of Law Analysis Favors Application of Florida's and Nevada's Anti-SLAPP Statutes.

This District Court has determined that anti-SLAPP provisions are an issue of substantive law and are therefore applicable to state law claims filed in federal court. *Chi*, 787 F. Supp. 2d at 808-09 (decision by Judge Kennelly). "A district court sitting in diversity must apply the choice of law principles of the forum state . . . to determine which state's substantive law governs the proceeding." *West Bend Mut. Ins. Co. v. Arbor Homes LLC,* 703 F.3d 1092, 1095 (7th Cir. 2013). Undisputedly, Illinois' choice of law principles apply here.

"In Illinois, a choice-of-law determination is only necessary when there is a conflict of laws and the difference will affect the outcome of the case." *Doctor's Data, Inc. v. Barrett*, No. 10 C 03795, 2011 WL 5903508, at *2 (N.D. Ill. Nov. 22, 2011) (citing *Townsend v. Sears, Roebuck & Co.,* 879 N.E.2d 893, 898-99 (Ill. 2007)). Additionally, "Illinois follows the doctrine of dépeçage, which 'refers to the process of cutting up a case into individual issues, each subject to a separate choice-of law analysis.'" *Underground Sols., Inc. v. Palermo*, 41 F. Supp. 3d 720, 722 (N.D. Ill. 2014) (citing *Chi*, 787 F.Supp. at 801)). "In the specific case of an anti-SLAPP statute cited as a defense to a defamation [or other state law] claim, the choice-of-law question regarding the anti-SLAPP law is treated separately from 'whether a statement is defamatory.'" *Id.* at 722-23 (citing *Chi,* 787 F. Supp. 2d at 803). "This is because the anti-SLAPP question involves whether a statement is privileged, not whether its content is defamatory." *Id.*[10]

[10] *See, Global Relief Found. v. New York Times Co.,* No. 01 C 8821, 2002 WL 31045394, at *11 (N.D. Ill. Sept. 11, 2002) (Judge Coar applying Illinois law to defamation claim, but California law to anti-SLAPP defense, finding, "California has a great interest in determining how much protection to give California speakers . . . [t]hus California law has the most significant relationship and the law of California will apply to defenses to defamation"); *Underground Sols., Inc.*, 41 F. Supp.

In the context of choice-of-law issues regarding anti-SLAPP statutes, this District Court has placed more weight on two factors: the place where the injury-causing conduct occurred and the domicile of the speaker. *Chi,* 787 F. Supp. 2d at 803. In *Chi,* for example the plaintiff transferred hospitals, and his colleague sent a letter from Illinois to plaintiff's new employer in Arizona that allegedly caused plaintiff injury in that state. *Id.* at 801. The Court found Arizona law would determine whether the speech was defamatory, but Illinois' "anti-SLAPP statute applied to the issue of whether defendants are immune from liability for defamation." *Id.* at 803. The *Chi* Court explained:

> Though the place of injury is a central factor in determining what law governs a tort claim, in the anti-SLAPP context this factor is less important. **The purpose behind an anti-SLAPP law is to encourage the exercise of free speech**—indeed, Illinois's stated policy in enacting the ICPA was to "encourage[ ] and safeguard[ ] with great diligence" the "constitutional rights of citizens and organizations to be involved and participate freely in the process of government." 735 ILCS 110/5. In light of this policy goal, **the place where the allegedly tortious speech took place and the domicile of the speaker are central to the choice-of-law analysis on this issue**. **A state has a strong interest in having its own anti-SLAPP law applied to the speech of its own citizens**, at least when, as in this case, the speech initiated within the state's borders.

Id. (emphasis added).

Based on the case law analyzed above, Florida's anti-SLAPP statute should be applied to all pending actions against Hogshead-Makar/Champion Women and Nevada's statute should apply to all actions against DiMatteo.

B. Florida's and Nevada's Anti-SLAPP Legislation Accomplish The Same Broad Purpose.

There exists a conflict between the laws of Illinois and Florida and Illinois and Nevada that would materially affect the outcome of the case. *Townsend,* 879 N.E.2d at 898-99. Illinois' Citizen

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3d at 724-26 (Judge Kennelly applying the anti-SLAPP law of defendant's domicile state of Tennessee, expressly rejecting plaintiff's objections that defendant published the offending statements from various states and was speaking as an agent of a Texas company); *Doctor's Data, Inc.*, No. 10 C 03795, 2011 WL 5903508, at *4 (Judge Chang declining to apply Illinois' anti-SLAPP statute's immunity to speech by a North Carolina citizen where the defamatory speech originated in North Carolina, and defendant failed to explain "why Illinois would have a significant interest in having its law applied to *non*-Illinois speakers").

Participation Act has a limited immunization of actions taken "in furtherance of the constitutional rights to petition, speech, association, and participation *in government*." 735 Ill. Comp. Stat. Ann. 110/15. Florida's and Nevada's anti-SLAPP statutes, however, more broadly prohibits meritless lawsuits based on a person or entity's exercise of "free speech *in connection with a public issue*," Fla. Stat. Ann. § 768.295(3) (emphasis added), and "*in direct connection with an issue of public concern*," Nev. Rev. Stat. Ann. § 41.660 (emphasis added). As detailed above, the offending publications by Defendants relate to issues of public interest, which would only receive anti-SLAPP protection under Defendants' domicile state's statutes.

Additionally, the factors of the significant relationship test favor application of Florida law (for Hogshead-Makar/Champion Women) and Nevada law (for DiMatteo). Without specific facts plead to the contrary, the reasonable inference drawn from the Complaint is Defendants' complained-of speech originated in their respective states of domicile. Moreover, the offending publications were made to individuals and organizations across the country and not solely directed to Illinois. Compl. ¶¶ 98, 100, 102, 114, 125, 128, 131-36 & 144. Based on the case law of this Court, Florida and Nevada undoubtedly have the most significant interest in determining the protections afforded to the allegedly false and defamatory speech of their respective citizens. *Chi,* 787 F. Supp. 2d at 803.

1. Hogshead-Makar/Champion Women are entitled to dismissal with prejudice and recovery of their fees and costs under Florida law.

Florida Statute § 768.295 expresses the "intent[ion] of the Legislature to protect the right in Florida to exercise the rights of free speech in connection with public issues." Fla. Stat. Ann. § 768.295(1). Florida law prohibits anyone from bringing a lawsuit (a) that is "without merit," and (b) because the defendant "has exercised the constitutional right of free speech in connection with a public issue," which the statute defines as any written or oral statement "made in or in connection with a . . . news report, or other similar work." Fla. Stat. Ann. § 768.295(2)(a), (3).

"Effective anti-SLAPP statutes" exist to "make it easier and cheaper to terminate such lawsuits at early stages." Samuel Morley, *Florida's Expanded Anti-SLAPP Law: More Protection for Targeted Speakers*, 90 Fla. B.J. 17-18 (Nov. 2016). Accordingly, upon the court's resolution of such a motion, a prevailing party is entitled to recover attorneys' fees and costs incurred as a result of a claim filed in violation of the statute if the court makes a substantive determination that the action was without merit and because of an exercise of "free speech in connection with a public issue." Fla. Stat. § 768.295(4); *Parekh v. CBS Corp*, 820 F. App'x 827, 836 (11th Cir. 2020) (upholding award of fees and costs where the lawsuit was "without merit" and "arose out of the defendants' protected First Amendment activity—publishing a news report on a matter of public concern").

The defendant must make an initial showing that the anti-SLAPP statute applies, then the burden shifts to the plaintiff "to demonstrate that the claims are not 'primarily' based on First Amendment rights in connection with a public issue and not 'without merit[.]'" *Gundel v. AV Homes, Inc.*, 264 So. 3d 304, 314 (Fla. Dist. Ct. App. 2019). This burden shifting "serves the purpose of the statute and conforms with the procedures employed in considering other statutorily-based motions to dismiss." *Id.*

As set forth above, not one of the claims asserted by Plaintiffs against Hogshead-Makar and Champion Women can survive dismissal under Rule 12(b)(6). *See supra* at §§ I-II. Moreover, these causes of action lack merit where they are each based on Defendants' protected speech and reiterations of *years* of accusations, lawsuits and press surrounding the topic of Butler's inappropriate sexual relationships with minor volleyball players. *See supra* at Material Facts § D. This information was used to support their request that people and organizations in the volleyball community place value on the safety of girl athletes and disassociate with a coach whose actions, in Defendants' opinion, threatened that safety. *Id.* This lawsuit undoubtedly presents a SLAPP with a direct focus on silencing the founder of a "legal advocacy organization for girls and women in sports." Compl. ¶ 16; *see also,* **Group Ex. C**,

at **C-1**. The fact that Plaintiffs are seeking an exorbitant recovery of *two hundred and fifty million dollars* in addition to a prior restraint on Defendants' protected speech further evidences the abusive and harassing purpose of this litigation. Compl. p.50.

Plaintiffs cannot meet their burden of proof in rebutting Hogshead-Makar and Champion Women's anti-SLAPP defense and, accordingly, pursuant to Florida law, this lawsuit should be dismissed in its entirety with prejudice, and these defendants should be awarded all reasonable attorney's fees and costs expended in their defense. *Parekh*, 820 F. App'x at 836; *see also Gundel*, 264 So. 3d 304, 311 (finding, "[i]n the context of the Anti-SLAPP statute, the harm that results from the court's improper denial of a motion to dismiss or in its failure to rule on pending motions for summary judgment and judgment on the pleadings is precisely the harm that the Anti-SLAPP statute seeks to prevent—unnecessary litigation").

2. DiMatteo is entitled to a dismissal with prejudice in addition to recovery of her fees and costs under Nevada law.

"Nevada's anti-SLAPP statutes aim to protect First Amendment rights by providing defendants with a procedural mechanism to dismiss 'meritless lawsuit[s] that a party initiates primarily to chill a defendant's exercise of his or her First Amendment free speech rights' before incurring the costs of litigation." *Coker v. Sassone,* 135 Nev. 8, 10, 432 P.3d 746, 748 (2019) (quoting *Stubbs v. Strickland,* 129 Nev. 146, 150, 297 P.3d 326, 329 (2013)); Nev. Rev. Stat. Ann. § 41.660.[11] Similar to the burden shifting under Florida's statute, under Nevada law,

> [a] court must grant an anti-SLAPP special motion to dismiss where (1) the defendant shows, by a preponderance of the evidence, that the claim is based on a "good faith communication in furtherance of . . . the right to free speech in direct connection with an issue of public concern" and (2) the plaintiff fails to show, with prima facie evidence, a probability of prevailing on the claim.

[11] There is good cause for extending the 60-day rule under § 41.660(2) where Plaintiffs filed a sprawling Original Complaint, sought leave to amend, purportedly to tighten their pleadings after dismissing a litigant, and filed an amended action with even more pages and allegations than their initial action. *Compare* Complaint (Doc. #1), *with* First Am. Compl. (Doc. #15).

Smith v. Zilverberg, 137 Nev. 65, 67 (2021) (citing Nev. Rev. Stat. Ann. § 41.660(3)(a)-(b)). "[D]efendant must show that (1) 'the comments at issue fall into one of the four categories of protected communications enumerated in NRS 41.637' and (2) 'the communication is truthful or is made without knowledge of its falsehood.'" *Id.* (citing *Stark v. Lackey,* 136 Nev. 38, 40 (2020)); *see also id.* at 69 (*citing Rosen v. Tarkanian,* 135 Nev. 436, 441 (2019)) ("[w]e do not parse the individual words to determine the truthfulness of a statement; rather, we ask 'whether a preponderance of the evidence demonstrates that the gist of the story, or the portion of the story that carries the sting of the [statement], is true.'"). An issue of public concern is defined broadly, *id.* at 67 (*citing Coker v. Sassone*, 135 Nev. 8, 14 (2019)), and includes any "[c]ommunication made in direct connection with an issue of public interest in a place open to the public or in a public forum," Nev. Rev. Stat. Ann. § 41.637(4).

As detailed above, DiMatteo's limited speech at-issue undisputedly constitutes "an issue of public interest," and falls within the protections of Nevada's anti-SLAPP law. *See supra* at Material Facts § C(2), Legal Analysis §§ I-II. Plaintiffs fail to plead any facts to support an inference that DiMatteo knowingly published false statements of fact, which would preclude her from immunity. *See Smith*, 137 Nev. at 67. Moreover, the causes brought against her are meritless where they are untimely, Plaintiffs have not (and cannot) meet their burden of establishing actual malice, and DiMatteo's speech constitutes nonactionable opinion and protected under the Fair Report Privilege. *See supra* at §§ I-II.

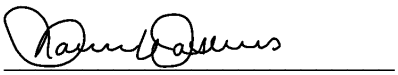
In dragging DiMatteo into this lawsuit, Plaintiffs effectively seek to harass, silence and punish a cheerleader of the Champion Women's movement to advocate for the safety of young female athletes, particularly those the volleyball community. Plaintiffs' lawsuit against DiMatteo must be dismissed as a meritless SLAPP action, and this Court should award DiMatteo her reasonable fees and costs, in addition to the discretionary $10,000 award pursuant to Nevada law. Nev. Rev. Stat. Ann. § 41.670(1)(a)-(b).

CONCLUSION

After weeding through Plaintiffs' repetitive theories spread across a 212-paragraph, 51-page complaint, all that remains is a *single* motive and *three* targets cherry-picked to deter others from standing their ground. The Defendants here refuse to cower in the face of an oppressor. Nor will they allow Plaintiffs to suppress speech that levels the playing field for young, female athletes exploited by their male coaches.

WHEREFORE, for the reasons set forth above, the defendants, Nancy Hogshead-Makar, Champion Women and Debra DiMatteo, respectfully request that this Court (a) enter a dismissal *with prejudice* of Plaintiffs' First Amended Complaint pursuant to Rule 12(b)(6), (b) enter an award of the Defendants' respective attorneys' fees and costs pursuant to the applicable Florida and Nevada anti-SLAPP statutes, and (c) enter any additional relief this Honorable Court deems just and fair under the circumstances and in obeyance of the law.

Respectfully submitted,
SmithAmundsen LLC



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