COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT DEPARTMENT

PLYMOUTH, SS. **PLYMOUTH SUPERIOR COURT**
CIVIL ACTION: 1983CV920

ANTHONY MICHAEL BRANCH,	)
Plaintiff	)
v.	)
TURTLEBOY DIGITAL MARKETING, LLC, et al.	)
	)
Defendants	)

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Defendants seek summary judgment on all of plaintiff's claims for defamation based on an August 23, 2016 article published on the Turtleboy platform that satirically called the plaintiff a "Fake Bishop," as plaintiff has been unable to produce, after *five years*, a single shred of evidence that would demonstrate that 1) the article was written to be taken as literal fact rather than hyperbole, 2) that the statements plaintiff claims are defamation are false, 3) that the defendants themselves authored the article, 4) that if the defendants did in fact author the article, that it was published with "actual malice" or "reckless disregard" for its truth or falsity, and 5) that plaintiff suffered any actual damages.

Turtleboy is an online organization owned by Aidan Kearney which combines investigative journalism, satire, commentary blogs on current events and a YouTube program. Turtleboy was constructed similar to DeadSpin or Barstool

Sports to allow individuals to post blogs anonymously under the nom de plume "Turtleboy".

The crux of the article at issue, written by one of the aforementioned anonymous bloggers, was meant to address the issue of political correctness gone awry, using sarcasm and hyperbole to the present the author's opinion that Brockton High School dropping the term "Headmaster" in favor of "Dean" due to the title's supposed racist roots was unnecessary and, on a broader scale, spoke to the current and heavily debated area of social conversation: political correctness (the author compared a similar situation in Newton and juxtaposed the idea that a "Master's degree" could be considered racist if this train of thought was taken to its extreme. Am. Compl., Ex. A). On the very day that the statute of limitations on plaintiff's purported claims was set to expire, he filed suit against the named defendants.

While the plaintiff survived a 12(b)(6) Motion to Dismiss, discovery has proven that his evidence is bare and that this case has no business in front of a jury. After five years with no real evidence to bring to trial, summary judgment should be awarded for the defendants.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS [Super. Ct. R. 9A(b)(5)]

1. On August 23, 2016, a blog was posted on the Turtleboy Website referencing the plaintiff which forms the totality of plaintiff's claims in this action. (Branch Tr. at 33:7-14; 35:24 and 36:1-14).

2. Plaintiff will rely solely on his personal testimony and a series of text messages between himself and a now-deceased witness, Deborah Calhoun, to prove that he lost income. (Branch Tr. at 133:1-139:5 and 178:7-179:15)
3. The text message that plaintiff intends to rely on in order to support his assertion that defendants caused his reputational damage and the loss of two preaching positions reads as follows: "Bishop called me at the bank. No-go." (Branch Tr. at 136:2-9)
4. Plaintiff has no documents to support his claim that any weddings he was due to perform were cancelled due to the subject article being written about him and cannot remember the names of any of the three couples who he claims did cancel their wedding due to the article's content, save someone named "Dapina." (Branch Tr. at 65:1-66:4)
5. Plaintiff admitted to never sending the Commonwealth of Massachusetts a certificate of good standing necessary to perform weddings, as he never became aware that he was required to until this year. (Branch Tr. at 67:15-24).
6. Plaintiff has no documents to substantiate his claim that he performed 10-12 weddings per year prior to the subject article being posted. (Branch Tr. at 120:5-10).
7. In 2010, plaintiff claims to have been ordained as an "elder," which he claims is synonymous with the term "bishop" based on certain passages in the Bible. (Branch Tr. at 45:6-20).

8. As for his role as "Bishop," plaintiff asserts the following:

    a. People have been calling plaintiff "Bishop" since approximately 1986. (Branch Tr. at 91:14-23).

    b. Plaintiff did not stop people from referring to him as "Bishop" because "if people see that your calling – if people see that's your calling, you don't correct them". (Branch Tr. at 93:2-5). Further, when asked: "so, for roughly or close to 30 years, people have been calling you "bishop." You were not a bishop. You admittedly didn't see yourself as a bishop and never stopped anybody from calling you "bishop," is that correct?" He answered "Yes."

    c. That it was insulting to call Bishop a "title" and that counsel could just call him "Tony," and that the reason for the lawsuit was because "articles were still appearing when people were doing background checks on me." (Branch Tr. at 116:1-23).

    d. That his qualifications for being a "Bishop" was his embodying the traits outlined in 1 Timothy 3:1-7. (Branch Tr. at 45:6-20; 50:11-14.

    e. Plaintiff has no idea how the man who ordained him became a Bishop himself. (Branch Tr. at 56:5-13).

    f. Plaintiff did not deny using the title of Bishop himself prior to actually being ordained. (Branch Tr. at 96:8-15).

9. When asked what the author should have done differently prior to writing the 2016 article, plaintiff stated "[f]rom not being a journalist, but if I was

going to write a story about somebody when I'm acting as if I'm a journalist, simply pick up the phone and ask the question, do background like most journalists do, respectfully.

10. Plaintiff does not have any records to support his contention that he lost income from performance of weddings. (Branch Tr. at 120:5-24; 121:1-11)
11. Plaintiff does not know whether any records were kept regarding his ordination as bishop between the now-deceased man who purportedly appointed him as a bishop. (Branch Tr. at 59:15-24; 60:1-5)
12. The organization under which plaintiff was purportedly appointed as a bishop is no longer in existence (Branch Tr. at 60:6-8)
13. Plaintiff admitted to using a fake bachelor's degree from Bradford College to obtain a job that did not actually require it but would give him a "leg up." (Branch Tr. at 28:6-13).
14. Plaintiff states that he had inaccurately reported his income to a subsidized housing agency. (Branch Tr. at 167:1-6).
15. Plaintiff states that he lied to his automobile insurance agency after his wife was in an accident and submitted a claim to the insurance carrier. (Branch Tr. at 169:7-23)

III. LEGAL STANDARD

A defendant moving for summary judgment has the burden of demonstrating, by reference to Rule 56(c) materials, that there is no reasonable expectation of the plaintiff proving one or more of the essential elements of his claim. *Kourouvacilis v.*

General Motors Corp., 401 Mass. 706 (1991). The plaintiff must then file affidavits or reference other Rule 56 (c) materials that he can prove all essential elements of his claim. *Benson v. Mass. General Hosp*., 49 Mass. 530 (2000). A complete failure of proof concerning an essential element of the plaintiff's case renders all other facts immaterial and compels summary judgment for the defendant. *Kourouvacilis,* at 711; *see also National Ass'n of Gov't Employees, Inc. v. Cent. Broad. Co.*, 379 Mass. 200, 231 (1979) (there must be some indication that the plaintiff can produce the requisite quantum of evidence to enable her to reach a jury).

The Supreme Judicial Court favors the use of summary judgment in defamation cases, particularly in cases like this one involving public figures and issues of public interest. See *Dulgarian v. Stone*, 420 Mass. 843, 846 (1995): *Mulgrew v. City of Taunton*, 410 Mass. 631, 632 (1991); *King v. Globe Newspaper Co.,* 400 Mass. 705, 708 (1987), *cert. denied* 485 U.S. 962 (1988). "A motion for summary judgment is particularly appropriate in defamation cases because if the allegedly libelous material is not actually defamatory, there is no genuine issue of material fact for trial." *Aldoupolis v. Globe Newspaper Co.,* 398 Mass. 731, 733 (1986). Summary judgment is favored because "even if a defendant in a libel case is ultimately successful at trial, the costs of litigation may induce an unnecessary and undesirable self-censorship." *King,* at 708. "A motion for summary judgment is particularly appropriate in defamation cases because if the allegedly libelous material is not actually defamatory, there is no genuine issue of material fact for trial." *Aldoupolis*, at 733.

"In order to state a claim of defamation, a plaintiff must allege facts indicating that (1) the defendant published a false statement regarding the plaintiff—that is, the defendant communicated the statement concerning the plaintiff to a third party; (2) the statement could damage the plaintiff's reputation in the community; and (3) the statement caused economic loss or is otherwise actionable without proof of economic loss." *Flagg* v. *AliMed, Inc.,* 466 Mass. 23 (2013). In order to recover damages in an action for defamation relating to his role as a "public official," the plaintiff must establish by clear and convincing evidence that the defendant made a false and defamatory statement with knowledge of its falsity or with reckless disregard for whether it was false. *Rotkiewicz, supra*, 431 Mass. at 755 (citations omitted). "The designation of public official applies at least to government employees who have, or publicly appear to have, substantial responsibility for control of public affairs." *Stone v. Essex County Newspapers, Inc.*, 367 Mass. 849, 863-64 (1975), citing *Rosenblatt* v. *Baer*, 383 U.S. 75, 85 (1966).

Pure statements of opinion are not actionable. *Lyons v. Globe Newspaper Co.*, 415 Mass. 258, 266-67 (1993); *Pritsker v. Brudnoy*, 389 Mass. 776, 778 (1983). See generally Nolan and Sartorio, Tort Law § 130 (2d ed.1989). The determination of whether statements are defamatory or simply offensive presents a question of law for the court in circumstances where it can be said that they are unambiguously one or the other. *Eyal v. Helen Broadcasting Corp.*, 411 Mass. 426, 433 (1991).

IV. ARGUMENT

A. Plaintiff's claims are barred by Section 230(c)(1) of the Communications Decency Act.

Plaintiff's claims are barred under federal law. He seeks to bring claims based on content created by an author using the Turtleboy platform. Section 230(c)(1) of the CDA bars plaintiff's claims because he seeks to hold the Turtleboy defendants liable for the content created by a separate user. As a matter of law, CDA immunity is not only a defense to liability, **but immunity from suit.** *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254 (4th Cir. 2009). Artful pleading in an attempt to frame the claims as actions by the defendant do not suffice. *Universal Commun. Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 418 (1st Cir. 2007).

Under Section 230(c)(1) of the CDA, "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). Immunity is construed broadly, recognizing "the 'obvious chilling effect' that such intermediary tort liability could have, given the volume of material communicated through such intermediaries[.]" *Lycos,* at 418-419. "[S]o long as the third party willingly provides the essential published content, the interactive service provider receives full immunity **regardless of the specific editing or selection process**." *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1124 (9th Cir. 2003).

1. Turtleboy is an interactive computer service provider.

The CDA broadly defines "interactive computer service" as "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server[.]" See *Carafano,* supra, and 47 U.S.C. § 230(c)(1). Defendants' blog has previously been identified as a "social media platform" where third-party bloggers are permitted to post their own blogs on the website. See Memorandum of Decision and Order for Summary Judgment in *Waters v. Kearney*, 1879CV344. Turtleboy meets the definition of interactive service provider as "the idea was to create a platform where anyone could publish content." (Kearney Tr. at 75:5-7). These individuals did not have to pay or provide identifying information to become a publisher. (Kearney Tr. at 77:10-13). "It's like Truth Social. It's like Trump's website. You have to apply to get on the platform." (Kearney Tr. at 78:22-24).

2. Neither Kearney nor Turtleboy Defendants provided the content at issue.

Because plaintiff alleged that defendants, specifically Kearney, published the content at issue, he survived plaintiff's 12(b)(6) Motion. (Dkt. 20, at 7). This is based on an affidavit submitted on behalf of defendant Kearney, which states, in part "I am the newspaper's publisher as well as the operator of the social media platform owned by Worcester Digital Marketing, LLC." (Kearney Aff. At 2). However, this was misconstrued as an admission that Kearney published the statements at issue,

rather than his exercising control over the Turtleboy platform[1]. Kearney has not allowed third-party bloggers to post on the platform since 2020. He describes that when a user no longer writes for him, the account gets deleted and defaults to an author name "Turtleboy". (Kearney Tr. at 126:4-12). This name also appears as the author on Exhibit A as provided by the plaintiff in his Amended Complaint. Thus, plaintiff cannot meet his burden of substantiating his initial claim that Kearney actually published the article[2] (he didn't).

3. Defendants were not publishers of the content.

The First Circuit has held, so long as "the cause of action is one that would treat the service provider as the publisher of a particular posting, immunity applies not only for the service provider's decisions with respect to that posting, but also for its inherent decisions about how to treat postings generally." *Lycos,* at 422. Because plaintiff cannot prove that Kearney or his entities were the actual publisher of the content, defendants cannot be held liable for the publication of the third party or by exercising traditional editorial functions of a normal publisher.

[1] In his deposition, Kearney did not recall reviewing the affidavit and suggesting that he gave his attorney permission to sign it on his behalf. He further went on to clarify that "[Worcester Digital Marketing] does not publish the content. The individuals publish the content." (Kearney Tr. at 114:1-24; 115:1-17).

[2] Plaintiff made mention of "spoliation" in the PTC Memo, which is not applicable. While Kearney deleted the blog in good faith after receiving notice of the lawsuit because "a lot of people just want the stories about them gone from the internet, and I'll take them down." (Kearney Tr. at 172:3-5). And while Kearney admits to deleting the post from his website, he states that "somewhere in the website I could probably find it, I don't know. I don't know. I can't find it. I can't find it. I didn't delete any- nothing's been erased. It's all in there somewhere. I can't find it." (Kearney Tr. at 152:1-8). The plaintiff failed to request these specific documents, and even if he did, the cost of a digital forensics expert or web design expert to find the data would be unduly burdensome.

B. The statements at issue were clearly hyperbole and/or opinion.

As stated previously, a portion of the Turtleboy content is simply commentary on issues that are in the news. (Kearney Tr. at 48:19-24, 49:1-8). As a matter of law, Statements of rhetorical hyperbole are also excluded from defamation liability. See *Lyons,* supra. When asked during his deposition transcript:

> Q: "Well, you didn't write the post, so how can you –"
>
> A: "Yeah. When I read it, I'm like this is clearly not literal. Anyone with a brain looks at these things like it's obviously not – like no where in this is this like actually we did soe research and we found out he's not a bishop. It was just a passing statement. It's a joke. Like oh, this guy's acting like a salesman. He seems like a con artist. He seems like a fake bishop, right, because I go to church. I see what bishops act like. They don't act like this." (Kearney Tr. at 134:10-21)

And further:

> Q: You don't consider yourself an expert on [the Pentecostal faith]?
>
> A: Nope. But I know my bishop is a little bit more serious than this and doesn't get involved in, you know, marching with high school kids demanding that deans change the name or whatever the hell was going on there. (Kearney Tr. at 135:7-13)

The words conveyed in the article are clearly to be interpreted as hyperbole and opinion. Calling someone a "fake" or a "phony" does not necessarily imply that the person does not exist. Rather, it conveys the opinion of the individual speaking the words that the subject of the statement is not genuine in their motives. Any reasonable reading of the article would lend a reader to believe that the writer was expressing an opinion and that the article was not an investigation into whether the

plaintiff was, in fact, a bishop. As a matter of law, therefore, the unambiguous nature of the statements can be found to be hyperbole, which do not provide the plaintiff with a cause of action. See *Eyal*, supra.

C. The statements at issue were substantially true.

The third hurdle which plaintiff cannot overcome is that the statements in the article were not actually false. He took issue with the statement that the article contained an implication that he received a "fake theology degree," when in fact plaintiff never received a degree at all. Further, and more astonishingly, plaintiff **admits to using a fake bachelor's degree for financial gain**. He admitted to using a fake bachelor's degree from Bradford College to obtain a job that did not actually require it but would give him a "leg up." (Branch Tr. at 28:6-13).

With respect to whether plaintiff is, in fact, a bishop, as stated in the undisputed facts, above, he admitted to allowing people to call him a "bishop" since the 1980s when he was not a bishop. He would not deny the truth of a Judge's finding of fact claiming that he referred to himself as a "bishop" before he became a bishop and that his qualifications for being a bishop were simply his embodiment of the qualities listed in 1 Timothy chapter 3 in the Bible. Plaintiff provided an "ordination certificate" as part of discovery that has the word "Elder" off-center next to

At the same time, plaintiff has admitted the following:

1. A man named Antonio Harris obtained a harassment prevention order against plaintiff in 2013. (Branch Tr. at 147:19).

2. His wife obtained an abuse prevention order against him the same year. (Branch Tr. at 148:1).
3. Another woman, Lashaun Middleton, obtained an abuse prevention order against him in 2015. (Branch Tr. at 148:8)
4. That he faced criminal ammunition charges. (Branch Tr. at 115:4-6).

With respect to the insinuation that plaintiff "bilked taxpayers," plaintiff admitted:

1. That he used a fake degree to get a "leg up". (Branch Tr. at 28:7)
2. That he had inaccurately reported his income to a subsidized housing agency. (Branch Tr. at 167:1-6).
3. That he lied to his automobile insurance agency after his wife was in an accident and submitted a claim to the insurance carrier. (Branch Tr. at 169:7-23)

Oddly, plaintiff's own definition of "bilk" is "[f]or me, it's to take money that I'm not entitle to, to take advantage. (Branch Tr. at 36:12-14).

These are only plaintiff's own *admissions* (using a fake degree, using the title "bishop" without actually being a bishop, and taking money that he is not entitled to). Additionally, plaintiff has provided only an "ordination certificate[3]" which refers to a different bishop and contains the plaintiff's name on a line in the middle of the document, and off to the left, in darker ink the word "Elder" is written next to his name. Further, his middle name is spelled incorrectly on the document. (Exhibit __).

[3] Which can be purchased from Judson Press for $14 here: https://www.judsonpress.com/Products/CategoryCenter/JPCHS!JPCERT/CertificatesCovenants.aspx

It is plaintiff's burden to prove that the defendant made a false and defamatory statement. *Carmack v. National R.R. Passenger Corp*, 486 F.Supp.2d 58 (D.Mass 2007). Further, substantially true statements cannot be actionable as defamation claims. *Milgroom v. News Group Boston,* 412 Mass. 9, 12-13 (1992). Plaintiff therefore has no claims to bring forth to trial, as the statements he is alleging are defamatory are in fact substantially true.

D. Plaintiff cannot prove "actual malice" or "reckless disregard".

Where the plaintiff is deemed a public figure, the First Amendment "absolutely prohibits punishment of truthful criticism," and "only those false statements made with the high degree of awareness of their probable falsity… may be the subject of either civil or criminal sanctions." *Garrison v. Louisiana*, 379 U.S. 64, 78 (1964). In an effort to avoid redundancy, defendants incorporate all of plaintiff's own admissions from the prior paragraph with respect to the truthfulness of the statements. Even more difficult, as plaintiff cannot prove the statements are actually false, even if they were, he simply cannot show that they were made with actual malice or a reckless disregard for their falsity, especially with plaintiff's being deemed a "public figure" already by this very court[4]. Public officials must show that the defendant acted with "actual malice" in order to prevail on claims of defamation. *New York Times v. Sullivan,* 376 U.S. 254 (1964); *Lane v. MPG Newspapers,* 438 Mass. 476 (2003).

[4] Throughout his deposition testimony, plaintiff spoke about the elected offices that he has held and run for, as well as his positions on various boards and organizations, including the Brockton NAACP.

The plaintiff previously attempted to obtain a Temporary Restraining Order against defendant Kearney in 2022 for stories and YouTube shows that Kearney had made regarding the plaintiff, based solely on information obtained through public record and by speaking to witnesses such as plaintiff's ex-wife. (Dkt. 34). The question was posed to plaintiff whether he believed the 2022 coverage was better or worse than the 2016 article that is the subject of this lawsuit. Plaintiff's response was "[t]he coverage from March [of 2022] is much less positive." (Branch Tr. at 161:16-17). Thus, plaintiff's gripe about the lack of an investigation or interview prior to the author's posting the 2016 article as the basis for malice or reckless disregard fly out the window. Had the author done the deeper dive that Kearney did in 2022 back when the article was published, it would have been even worse for the plaintiff (who still filed a complaint in the form of a TRO in 2022, despite much further investigation into public documents and interviewing his ex-wife). Plaintiff therefore cannot prove that the writer of the 2016 article had any reckless disregard or actual malice. In fact, had the writer dug further into the plaintiff's own publicly available information, he or she would have discovered the following:

a) Plaintiff has had numerous lawsuits filed and judgments entered against him by creditors in the Brockton District Court alone (Exhibit F. Also Exhibit E from defendant's opposition containing photographs of plaintiff's collections documents from before he filed for bankruptcy);

b) Plaintiff filed for bankruptcy in 2016, estimating that he owed between 50-99 creditors, was collecting unemployment and was recently "released from employment" and had debts totaling over $199,000 (Exhibit G);

c) Plaintiff was in arrears in child support and had his license suspended by the Department of Revenue Child Support Enforcement Division as of 2017. He sued them, too. (Exhibit H).

d) Plaintiff used a fake bachelor's degree for financial gain.

e) Plaintiff admitted that he previously failed to report his income accurately during his divorce trial (Ex. D, ¶10);

f) The trial judge in plaintiff's divorce found, despite plaintiff's claims to the contrary, that between 2007/2008 "was then a Muslim, and had been using the name Anthony Malik Shabazz since approximately 1988." (Ex. D, ¶11. See also, ¶70, plaintiff's use of a Facebook identity "Toney Shabazz" and Section IV "Rationale," p. 19 stating: "[h]usband either has maintained a dual identity for years, or reactivated his former alias after separation[5]");

g) The trial judge found that plaintiff and his wife attempted to hide their marriage from the Department of Children and Families so as to continue receiving wife's cash tuition benefits (Ex. D, ¶16). This would, in fact, be "bilking" taxpayers.;

[5] Plaintiff claims to have forgotten about the profile that he was using under the name "Toney Shabazz," and at his divorce trial a different Toney Shabazz profile was being presented which he denied ownership of. This did not, apparently, trigger his memory enough in 2016 for him to delete his real "Toney Shabazz" profile. (Branch Tr. at 85:5-14).

h) The trial judge found that plaintiff was "ordained" as a minister in a church founded by his Aunt (Ex. D, ¶21);

i) After his Aunt died, plaintiff became a pastor, and then his wife was "ordained" as a minister (Ex. D, ¶22);

j) Plaintiff **"**assumed the title of bishop, a title he admitted that he used even before he was "sanctioned" in public." *Id.* Plaintiff did not deny the truth of this in his deposition.*;*

k) At least three women have obtained Abuse Prevention Orders against plaintiff. (Ex. D, ¶7, 47,69);

l) Antonio Harris, against whom plaintiff has filed yet another defamation suit (Docket: 1983CV1072), obtained a Harassment Prevention Order against plaintiff. (Ex. D, ¶44);

m) In 2015, plaintiff (who was then approximately 59 years old) began dating a 22 year old woman with a young child named Lashaun Middleton. (Ex. D, ¶67);

n) Plaintiff claims that his ex-wife and Ms. Middleton "conspired" against him when he was arrested for violation of Abuse Prevention Order and possession of ammunition without an FID card. (Ex. D, ¶68);

o) That the plaintiff's ex-wife testified that when she was 15 years old, plaintiff "took her virginity" on the kitchen floor of the home of a woman with whom he has two other children. (Ex. D p.6, ¶7). The Trial Judge found that when Evelyn Wiggins-Branch was 18 years old, she moved in with plaintiff, and

that "[w]hether or not Husband and Wife had sexual intercourse in Kennerly's kitchben when Wife was 15 years old, or at Hillbrook when she was 18 years old and lived with him, **Husband's denial of any sexual relationship with Wife before they moved together to Oak Street is not credible."** (*Id, at* 6, ¶7-8. Emphasis Added). Further, Ms. Wiggins-Branch began attending programs at the Boston Rape Center in 2015. (*Id,* at 6, ¶3).

All of the above are publicly available. Had the author of the 2016 article done *more* to investigate plaintiff, the article would have likely gone from a commentary blog to an actual investigative piece which would have proven the hyperbolic and opinion words in the article true. The commentary blog posted by the author in 2016 about the article in the Brockton Enterprise was not posted with actual malice or reckless disregard for its truth. If it were, the author could have and would have written about much worse material than was in the 2016 article. Further, it is plaintiff's burden to prove, and evidence is something that he does not have in this matter.

E. PLAINTIFF HAS NO DAMAGES.

Plaintiff has no written documents to show that he lost out on any weddings, or that he lost the opportunity to preach at two separate churches, much less that it was the 2016 blog that is the cause of it. In fact, with all of the above, save the bankruptcy filing, happening *prior* to the blog being published, and with no actual

evidence that he actually lost any income or opportunities, no jury could conclude that the blog caused him any monetary or reputational damages.

V. CONCLUSION

For the aforementioned reasons, plaintiff simply has no case to bring forward. He cannot simply hope to "disagree" his way to a jury in an effort to avoid summary judgment, as he has no reasonable expectation of proving any of the elements of his claim. See *Kourouvacilis*, supra. His claims are barred under Section 230, the statements were unambiguously hyperbole and/or opinion as a matter of law, they were substantially true, and, even if they weren't, he cannot show that they were made with actual malice. Last, he cannot prove monetary or reputational damages. Summary Judgment should be ALLOWED as to all of plaintiff's claims.

Defendants, by:

/s/ Ryan P. McLane, Esq.

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CERTIFICATE OF SERVICE

I do hereby certify that a true copy of the above document was served upon the parties and/or attorneys of record by electronic mail on August 15, 2022.

/s/ Ryan P. McLane