UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Scott Powell,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 3:16-1653 (RMS)
	)	
Jill Jones-Soderman,	)	
	)	
Defendant.	)	

DEFENDANT'S POST-TRIAL BRIEF

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INTRODUCTION

Plaintiff Scott Powell did not prove at trial any of the asserted counts of defamation, invasion of privacy, and intentional or negligent infliction of emotional distress against Defendant Jill Jones-Soderman.

The First Amendment affords strong protection for speech concerning matters of public interest. Defendant's published statements that Plaintiff has sexually and/or physically abused his daughters relate to the important public interest of preventing child abuse. The statements are therefore protected speech *unless* Plaintiff proves that they are false. The evidence of falsity offered by Plaintiff at trial – his own say-so and the order of a judge who, on a limited record, could not conclude that Plaintiff abused his children – is insufficient for this Court to find that Defendant's statements are false in view of the daughters' own reports of abuse. Plaintiff's inability to prove falsity is fatal to each of the asserted counts.

Plaintiff's asserted counts also fail because the evidence at trial demonstrated that Defendant acted reasonably in view of her belief that the statements to be true and did not act with reckless disregard as to their truth or falsity. Specifically, the evidence showed that the children repeatedly and consistently represented to Defendant that they were abused by Plaintiff, and that Defendant's motive in publishing the statements was to protect the children from further harm. Plaintiff thus cannot establish that Defendant acted with malice, and Defendant's statements are therefore protected against the charge of defamation by qualified privilege. Plaintiff cannot prove the counts of invasion of privacy, or intentional or negligent infliction of emotional distress, for essentially the same reason – namely, that Defendant acted reasonably under the circumstances.

Plaintiff also failed to prove any compensable financial damages. He offered no evidence that the Woodway Country Club's decision not to rehire him as camp director was due to

Defendant's statements, or even that the relevant decision maker had any knowledge of the statements. Plaintiff also testified that he might have lost business for his contracting business because he decided not to put his name on his web page, but he admitted that he could not quantify any such lost business. Finally, Plaintiff failed to prove that Defendant acted with actual malice and is thus not entitled to punitive damages under Connecticut law.

STATEMENT OF FACTS

Defendant is a psychoanalyst by training and has extensive experience dealing with "high-conflict" types of cases. (Oct. 21 Tr. at 85:3-86:25.) Since 2002, she has worked with child abuse victims. (Oct. 21 Tr. at 87:1-6.) She is the founder and executive director of the nonprofit organization Foundation for Child Victims of the Family Courts. (Oct. 21 Tr. at 87:7-90:7.)

In July 2015, Jane Powell – Plaintiff's former spouse – called Defendant to evaluate options for potentially regaining custody of her children, CP and EP. (Oct. 21 Tr. at 90:16-11.) CP and EP were then in the sole custody of Plaintiff, their father. (*Id.*) Ms. Powell told Defendant that she was divorced from Plaintiff in 2008 and that "the context of that [divorce] involved serious domestic violence allegations and serious allegations of sexual abuse of the children." (Oct. 21 Tr. at 93:6-12.) Ms. Powell told Defendant, for example, that both before and after the divorce, Plaintiff "punched, kicked, [and] pushed" her, sexually abused her, and "slapped, pushed, [and] grabbed" the children, all of which "were extremely disturbing and alarming, both to [Ms. Powell] and to the children." (Oct. 21 Tr. at 98:2-99:13.) Nevertheless, Ms. Powell and Plaintiff shared joint custody of their children until 2011. (Oct. 21 Tr. at 93:13-19, 94:16-95:6.) In 2011, Ms. Powell and Plaintiff litigated custody before the Department of Social Services. (Oct. 21 Tr. at 93:20-94:12.) According to Ms. Powell, the tribunal relied on the testimony of an expert evaluator – Dr. Frasier – who was retained and paid exclusively by

Plaintiff, and the tribunal granted full custody of the children to Plaintiff. (*Id.*) Several months passed in which Defendant worked with Ms. Powell in the hope of regaining at least partial custody of the children.

Then on March 16, 2016, the children spontaneously sent Defendant two letters, each letter having been written by one of the children. (Oct. 21 Tr. at 109:24-111:5; Ex. B; Ex. C.) The letter written by EP stated that "[Plaintiff] has touched parts of our bodies that make us feel uncomfortable, physically hurt and threatened us, and really frightened me. . . . It's really scary for me to tell people about the abuse because I'm scared that my dad might kill me." (Ex. B.) The letter written by CP similarly stated that the children were making plans for someone to "rescue [them] from the abuse of [their] father" and that they "cannot take it anymore." (Ex. C.) The children also sent Defendant a video, in which the girls stated that "[f]or the last five years, [they had] been abused by [their] father," that "[t]hings ha[d] been getting worse," and that they were "really scared." (Oct. 21 Tr. at 126:23-127:2; Ex. A.) Based on Defendant's extensive prior experience with abused children, Defendant was convinced that the children were telling the truth in these letters and video. (Oct. 21 Tr. at 127:15-128:5.)

On March 17, 2016, the children jointly called Defendant. (Oct. 21 Tr. at 128:6-13.) The call lasted approximately three hours. (Oct. 22 Tr. at 13:21-14:1.) The children told Defendant that "if [Defendant] didn't help them get out of the circumstances that they were living in by [the coming] weekend that they ha[d] a plan to kill themselves together." (Oct. 21 Tr. at 128:14-17.) The girls provided a "very explicit[]" account of Plaintiffs' abusive actions over the previous two days, which the girls also stated was representative of the abuse they had endured for years. (Oct. 21 Tr. at 128:18-129:9.) In one example, the children stated that over the previous two days, Plaintiff had forced his way into the bathroom while EP was taking a bath, and then stared

at the nude EP for minutes, "smiling, laughing, [and] sneering." (Oct. 22 Tr. at 14:3-4.) Also within the previous two days, Plaintiff "walk[ed] around in his . . . boxer shorts with an erection," and then "look[ed] to make contact with [EP] to go in his bedroom . . . ." (Oct. 22 Tr. at 13:12-14:15.) The girls stated that they were both still "very frightened and fearful" by these encounters while they were describing them on the phone. (Oct. 22 Tr. at 15:9-24.)

On that same call, the children also reported to Defendant more severe abuse that had occurred less recently. CP stated that Plaintiff had raped her when she was six years old and again when she was twelve years old. (Oct. 22 Tr. at 9:14-22.) CP also described Plaintiff as committing other "aggressive, hostile" acts of physical and sexual abuse, such as "touch[ing] her breasts in a sexual and aggressive way [and] grab[bing] her vagina." (Oct. 22 Tr. at 10:23-11:7.) E.P. said that Plaintiff "lick[ed] her vagina" when she was "very, very young," and that Plaintiff had engaged in "frottage" with her, "which is where a man puts his penis between the child's legs and essentially masturbates, not engaging in penetration." (Oct. 22 Tr. at 12:6-18.)

Defendant and the children then made plans for the girls to escape and go to the police. (Oct. 22 Tr. at 17:2-25.) The children went to a friend's house for an overnight visit on the following Saturday (March 19, 2016), and then were picked up on Sunday morning (March 20, 2016) by their grandparents – Rick and Cynthia Diehl (Ms. Powell's parents) – and brought to the police station. (Oct. 22 Tr. at 18:1-21:5.) On the way to the police station, the girls recounted certain recent and habitual incidents of abuse to the grandparents, which Rick Diehl promptly recorded in an Application for Emergency Ex Parte Order of Custody dated March 21, 2016 ("Protective Order") (Ex. F), noting the most recent dates that the abuse occurred. (Oct. 22 Tr. at XX.) According to the Protective Order:

> [Plaintiff] routinely walks around [the children's] home wearing either boxers or a towel. While doing so [he] has an erection. (Last incident 3/16/16). When he

> walks around with an erection, he has them sit near him and rub his shoulders and his feet. (same). He watches each of them shower (3/17/16). In front of [EP], he calls [CP] a "fucking Jewish cunt whore" (3/16/16)[.] He regularly pulls [CP's] hair and throws her about by her hair (same). He has kicked her in the stomach and asked her[,] "[W]hy aren't you dead? Why haven't you killed yourself[?] [W]hy don't you cut yourself[?] Why don't you take a bottle of pills[?]" He keeps a handgun in a fingerprint activated safe on his nightstand and has threatened to shoot [CP] (3/16/16). He has often pointed the gun at her head and laughed. Each child has reached puberty, and [Plaintiff] refuses to provide them with necessary hygienic materials, and he laughs at them when they menstruate. [Plaintiff] does not maintain an adequate amount of food in the home so that the girls have been forced to ask friends and their mother to sneak them food. On his computer at home, [Plaintiff] has pornography which he has shown to the children and some of the pornography depicts girls whom the children do not believe are of age.

(Ex. F.)

The children reported to Defendant that the police officers they met with at the station believed their story – that Plaintiff abused them. (Oct. 22 Tr. at 21:6-22:4.) After the children left the police station, they stayed at a hotel with their grandparents. (Oct. 22 Tr. at 22:5-23:14.) The next morning, the children and the grandparents went to court – the Judicial District of Stamford/Norwalk. (Oct. 22 Tr. at 24:13-16.) The court entered the Protective Order application and granted temporary custody to the grandparents. (Oct. 22 Tr. at 34:1-13.)

Within one or two days following the Protective Order hearing, CP sent Defendant a diary excerpt, in which CP provided further details of Plaintiffs' alleged abuse. (Oct. 22 Tr. at 23:16-21.) The diary excerpt included the following allegations:

> "touches [me] wherever he wants (trips me, grabs chest, bottom, and between legs, pulls hair) – makes it a game"
>
> "hit[s], kick[s] (stomach, back, legs) . . . grabs arms & twists . . . hits/whips with objects (towels) kicking, throwing at us (plates, chairs, garbage) . . . punching/pushing in stomach"
>
> "threatens to shoot, kill, beat us[:] 'You won't see tomorrow,' 'I'll pop ya one,' 'You won't be able to walk' . . . 'Why don't you kill yourself finally?' 'Why aren't you dead yet?' 'Why don't you just go off yourself?' 'Why don't you just take a bottle of pills?'"

"threatens to hospitalize me if I tell people what he does"

"kicks me out of house in snow/rain/cold, sometimes overnight"

"opens door when we're naked and laughs"

"when having flashbacks, laughs and touches me"

"humiliates/makes fun of me around his friends (grabs bottom, just a dirty Jew)"

"also in public (loudly)[,] 'This kid cuts herself, that's why she needs these pills,' 'She's crazy. She even goes to a school for fucked up kids like her.'"

(Defendant's Ex. E.) These statements confirmed to Defendant that the children were being "held in a dangerous, controlling, threatening, intimidating atmosphere" while they were in Plaintiff's custody. (Oct. 22 Tr. at 31:13-20.)

Plaintiff appealed the Protective Order. (Oct. 22 Tr. at 34:19-24.) The children, their attorney (Alex Schwartz), and the grandparents kept Defendant informed of the appeal proceedings. (Oct. 22 Tr. at 35:5-7.) Defendant was told that all evidence of the children's abuse was excluded or was never introduced to the court, and that the girls were not permitted to testify. (Oct. 22 Tr. at 35:17:21.)

The court overturned the Protective Order and returned the children to Plaintiff's custody, explaining that it could not find, based on the evidence before it, that there was "an immediate and present risk of physical danger or psychological harm" to the children. (Plaintiff's Ex. 13 at 3:27-4:5.) The court listed the evidence it considered, identifying (1) email exchanges, (2) reports from Dr. Frasier, (3) testimony from police officers, and (4) the dissolution actions between Ms. Powell and her first husband and between Ms. Powell and Plaintiff. (*Id.* at 4:26-5:26.) The court did not identify the children's testimony, nor the children's letters (Exs. B, C) or video (Ex. A) as considered evidence. (*See Id.*) The court also explicitly stated that it had been provided with CP's diary (Ex. E), but did not read it. (*Id.* at 4:26-5:6 ("The Court has

reviewed all but the book . . . written by the older child, [CP]. . . . I have seen it. I have not read that piece of evidence.").)

Despite finding insufficient evidence to conclude that the children were at immediate risk, the court nonetheless ordered Plaintiff to install surveillance cameras in his house (excluding the bathroom and the children's bedrooms). (*Id.* at 18:21-26.) The court explained that this measure was "to protect the girls" and to "capture anything that's happening in the home." (*Id.* at 18:21-26, 20:22-26.)

Immediately following the court's ruling reversing the Protective Order, the children called Defendant in a state that was "beyond hysterical" and "acutely suicidal." (Oct. 22 Tr. at 42:2-20.) The children's aunt took them to the hospital, where they were admitted. (Oct. 22 Tr. at 42:12-22.) The children remained at the hospital for two days, after which Plaintiff returned them to his home. (Oct. 22 Tr. at 42:23-25.)

Left with no other avenue of protecting the children following the court's reversal of the Protective Order, Defendant published the articles on the website of the Foundation for Child Victims of the Family Courts that are the subject of Plaintiff's Complaint. (Oct. 22 Tr. at 56:20-57:14.) As Defendant explained,

> [O]ne of the things that I address[ed] . . . is a public health issue . . . [W]hen witnesses to . . . serious crimes, particularly against children, don't come forward, . . . it doesn't stop with an isolated incident . . . . [Rather,] those perpetrators are empowered and are able to commit other crimes and continue their bad behavior in various ways.

(Oct. 22 Tr. at 67:8-24.) Defendant thus testified that she published the articles at issue in order to put pressure on Plaintiff to stop his allegedly abusive behavior. (Oct. 22 Tr. at 68:5-8, 107:12-108:2 ("[T]here needed to be some oversight of his behavior. He was unrestrained to that point. . . . [M]y immediate concern was the welfare and protection of those children at that time.").) Defendant also wanted to make sure, by creating "public awareness, [that] if anything happened

to these girls, that was not going to be something that was swept under the carpet." (Oct. 22 Tr. at 108:7-12.)

When CP turned 17 later that year, she emancipated herself. (Oct. 22 Tr. at 49:24-50:10.) Shortly thereafter, EP attempted to escape again, but was returned to Plaintiff's custody by the police. (Oct. 22 Tr. at 53:15-55:22.)

ARGUMENT

I. EACH OF PLAINTIFF'S CLAIMS FAIL BECAUSE DEFENDANT'S STATEMENTS ARE PROTECTED BY THE FIRST AMENDMENT.

A. Legal Standards

1. The First Amendment Protects Speech Concerning Matters of Public Interest, Unless Proven False.

"[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Snyder v. Phelps*, 562 U.S. 443, 452 (2011). "At the heart of the First Amendment is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern." *Hustler Magazine v. Falwell*, 485 U.S. 46, 50 (1988).

"The Free Speech Clause of the First Amendment . . . can serve as a defense in state tort suits . . . ." *Snyder,* 562 U.S. at 451. Specifically, the First Amendment protects statements on (1) matters of public concern (2) where a private plaintiff fails to prove that the statements are false[1] – thereby precluding tort liability based on such statements. *Flamm*, 201 F.3d at 149 ("[I]n a suit by a private plaintiff involving a matter of public concern, . . . allegedly defamatory

[1] Requiring a plaintiff to prove falsity in these cases balances "the First Amendment interest in protecting free expression" with "the state interest in compensating private individuals for wrongful injury to reputation." *Flamm v. Am. Ass'n of Univ. Women*, 201 F.3d 144, 149-50 (2d Cir. 2000). "[W]hen the factfinding process is unable to resolve conclusively whether the speech is true or false," the state has "significantly weaker" interest in compensating defamation plaintiffs. *Id.*

statements must be provably false, and ***the plaintiff must bear the burden of proving falsity***, at least in cases where the statements were directed towards a public audience with an interest in that concern.") (emphasis added). This First Amendment protection applies to each of Plaintiff's causes of action in this case. *See, e.g.*, *Traylor v. Parker*, No. 135015533S, 2016 WL 5003981, at *8 (Conn. Super. Ct. Aug. 4, 2016) ("[T]he first amendment protections . . . apply regardless whether [] the form of the claim is defamation, false light invasion of privacy or some other alleged tortious conduct such as . . . infliction of emotional distress."); *Cowras v. Hard Copy*, 56 F. Supp. 2d 207, 209-10 (D. Conn. 1999) ("[T]he First Amendment bars [the recovery of] damages under the generally applicable laws of intentional and negligent infliction of emotional distress where those claims are based on constitutionally protected conduct.").

In *Gleason*, 319 Conn. at 405-06, 442-46, 452, for example, the Supreme Court of Connecticut overturned findings of defamation, intentional infliction of emotional distress, and negligent infliction of emotion distress based on the defendant's statements that the plaintiff committed murder. This was because the defendant's statements related to a matter of public interest – i.e., "solving a serious crime," *id.* at 405 – and were not proven false at trial, *id.* at 441 ("[R]eversal is required because the plaintiff failed to prove the falsity of the allegedly defamatory statements.").

2. The Truth of Defendant's Statements Are Evaluated According to their "Main Charge."

When evaluating the truth or falsity of Defendant's statements, the Court must consider only whether the main charge of the allegations is true. As courts have explained:

> Contrary to the common law rule that required the defendant to establish the literal truth of the precise statement made, the modern rule is that only substantial truth need be shown to constitute the justification. . . . It is not necessary for the defendant to prove the truth of every word of the libel. If [s]he succeeds in proving that the main charge, or gist, of the libel is true, [s]he need not justify statements or comments which do not add to the sting of the charge . . . . The

> issue is whether the libel, as published, would have a different effect on the reader than the pleaded truth would have produced.

Cohen v. Meyers, 175 Conn. App. 519, 546 (2017) (quoting *Goodrich v. Waterbury Republican–American, Inc.*, 188 Conn. 107, 112-13 (1982)). Here, the main charge of Defendant's published statements is that Plaintiff has sexually and/or physically abused his children. This is the essential gist of the statements, and none of the surrounding words would "add to the sting of the charge" or have a materially greater impact on a reader.

B. Defendant's Statements Relate to a Matter of Public Concern.

Plaintiff bears the burden[2] of proving the falsity of the allegedly defamatory statements in this case because they indisputably involve a matter of public concern, namely reporting child abuse and protecting children from further abuse. "The issue of sexual child abuse is unquestionably a matter of public concern because it addresses the health and safety of society's most vulnerable members: children." *Day v. Dodge*, No. KNLCV186035362S, 2019 WL 994532, at *3 (Conn. Super. Ct. Jan. 25, 2019); *see also Klein v. Victor*, 903 F. Supp. 1327, 1331 (E.D. Mo. 1995) ("There is no doubt that child abuse, ritual or otherwise, is a matter of public concern."); *Bol v. Cole*, 561 N.W.2d 143, 150 (Minn. 1997) (There is "a strong public interest in reporting child abuse and protecting children from further abuse . . . ."). Indeed, as in *Gleason*, Defendant's statements here were intended to draw attention to a "serious crime." *See also Miles v. Ramsey*, 31 F. Supp. 2d 869, 875 (D. Colo. 1998) (child murder investigation matter of public concern for purposes of defamation claims arising from article in tabloid newspaper indicating that neighbor is pedophile); *Shoen v. Shoen*, 292 P.3d 1224, 1229-30 (Colo. App. 2012) (defendant's statement in television interview that plaintiff was "capable" of arranging murder of

[2] Federal courts are split regarding whether a plaintiff must prove falsity by clear and convincing evidence or by a preponderance of evidence. *See Gleason v. Smolinski*, 319 Conn. 394, 447 n.44 (2015). Plaintiff has failed to meet either standard.

his brother's wife implicated matter of public concern, triggering state's higher burden of proof in defamation action).

C. Plaintiff Has Failed to Prove that Defendant's Statements Were False.

Plaintiff failed to meet the burden to prove at trial that Defendant's statements were false. Plaintiff presented only two pieces of evidence on this issue, neither of which is entitled to much, if any, probative value. First is Plaintiff's own uncorroborated testimony, which should be given minimal weight considering the seriousness of the accusations against him. [CITE] Plaintiff did not, for example, call any witnesses to corroborate his testimony or rebut Defendant's statements or otherwise testify as to the state of affairs in Plaintiff's household at the relevant time.

Second is the Judicial District of Stamford/Norwalk's Order stating that the court found insufficient evidence to conclude that the children were in "immediate and present risk of physical danger or psychological harm." (Plaintiff's Ex. 13 at 3:27-4:5.) The court did not conclude that Plaintiff did not abuse the children, however, and thus the Order is not evidence that Defendant's statements were false. Rather, the court concluded merely that the limited evidence it considered, which did not include the children's testimony or written accounts of abuse, did not meet the standard necessary to remove Plaintiff's custody of his children. (*Id.* at 4:26-5:26.) In fact, the Order required Plaintiff to install surveillance in his own home to guard against future abuse. (*Id.* at 18:21-26, 20:22-26.) That measure would not have been necessary had the court been able to conclude that Plaintiff had not abused his children.[3]

Indeed, the evidence that Defendant's statements are true far outweigh Plaintiff's evidence of falsity. The account reported in the Protective Order, which this Court has stated it

[3] Plaintiff introduced the Order, Plaintiff's Ex. 13, into evidence during cross examination, after resting its case, and thus the Court should not consider it in connection with Defendant's pending Rule 52(c) motion. (D.I. 91.)

will consider for truth of the matter (CITE), is particularly damning. (*See* supra at XX.) Moreover, the children's report of abuse that occurred within 48 hours of their March 17, 2016 call with Defendant, which the Court has also stated is admissible for the truth of the matter (CITE), is consistent with the Protective Order account and is further evidence that Defendant's statements are true. (*See* supra at XX.) Plaintiff's only explanation for the children making these serious allegations – namely, that they were "brainwash[ed]" by Defendant, their mother, and/or their grandparents (Oct. 21 Tr. at 52:7-13) – is unsubstantiated.

Accordingly, Plaintiff failed to prove that Defendant's published statements were false, and Defendant's actions are protected by the First Amendment. Plaintiff thus cannot prevail on any of the asserted causes of action.

II. EACH OF PLAINTIFF'S CLAIMS ALSO FAIL FOR OTHER REASONS.

A. Plaintiff's Defamation Claim Fails Because Defendant's Statements Are Protected by Qualified Privilege.

1. Legal Standard

Qualified/conditional privilege is a defense to defamation. *Bleich v. Ortiz*, 196 Conn. 498, 501 (1985). "For the defense of conditional privilege to attach, a defendant must assert an objective interest sufficiently compelling to warrant protection of an otherwise defamatory communication." (*Id.*) In the context of news publications regarding a private plaintiff, for example, Connecticut courts have held that the privilege applies where the published statements are "a matter of public interest." *See, e.g.*, *Zupnik v. Day Pub. Co.*, No. 950549864, 1996 WL 150755, at *2 (Conn. Super. Ct. Mar. 8, 1996); *Red Apple II, Inc. v. Hartford Courant*, No. 95547043, 1996 WL 40952, at *3 (Conn. Super. Ct. Jan. 17, 1996).[4]

[4] The cited Superior Court cases relate to "news media" defendants. Defendant asserts that, as a publisher of online content of public concern intended for public consumption, she is a news

Where qualified/conditional privilege attaches to an allegedly defamatory publication, that privilege can only be overcome where the defendant acted with malice. *Bleich*, 196 Conn. at 504 ("Even when a legitimate interest is at stake, a claim of conditional privilege is defeated if the defendant acts with malice in making the defamatory communication at issue."). [M]alice is not restricted to hatred, spite or ill will against a plaintiff, but includes any improper or unjustifiable motive." *Id.* "[M]alice is shown where the defendant utters a defamatory statement with knowledge that it is false or with a reckless disregard of the truth or falsity of the fact stated." *Zupnik*, 1996 WL 150755, at *2 (citing *Moriarty v. Lippe*, 162 Conn. 371, 387 (1972).) Malice can also be shown where "the scope or manner of publication exceeds what is reasonably necessary to further the interest." *Bleich*, 196 Conn. at 501.

2. Defendant's Statements Are Privileged and Made Without Malice.

As discussed *supra* p. X, Defendant's publications related to a matter of public concern, namely child abuse and the protection of children from such abuse. Thus, absent a showing of malice, they "assert an objective interest sufficiently compelling to warrant protection of an otherwise defamatory communication." *Bleich*, 196 Conn. at 501. The evidence in this case does not demonstrate that Defendant acted with malice.

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media defendant for purposes of this lawsuit. *See Branzburg v. Hayes*, 408 U.S. 665, 704-05 (1972) ("Freedom of the press is a fundamental personal right which is not confined to newspapers and periodicals. . . . The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. . . . Almost any author may quite accurately assert that [s]he is contributing to the flow of information to the public . . . ."). In any event, the cited Superior Court cases are merely exemplary applications of the privilege set forth in *Bleich*, demonstrating that in the context of news publications, reporting on a matter of public interest constitutes an "objective interest sufficiently compelling to warrant protection of an otherwise defamatory communication." *Bleich*, 196 Conn. at 501.

First, the record provides no indication that Defendant believed the statements to be false, or that Defendant acted with reckless disregard as to their truth or falsity. On the contrary, Defendant based her allegations on the children's repeated representations – made in writing, on video, and orally, both to Defendant and the children's grandparents – that Plaintiff was sexually and physically abusing them. (*See supra* at XX.) The children's representations were consistent and often highly detailed, and were accompanied by displays of psychosocial trauma, further confirming their veracity. (*See id.*) Defendant had no motive, other than her sincere desire to protect the children from harm, that could explain her conduct. She thus reasonably believed the truth of her allegations.

Plaintiff's evidence does not demonstrate otherwise. Plaintiff first relies on Plaintiff's Exhibit 13, but as explained *supra* p. X, that opinion does not contradict Defendant's statements. Plaintiff also relies on Plaintiff's Exhibit 15 – Dr. Frasier's psychological evaluation from roughly five years prior to Defendant's publications – which only tangentially related to Defendant's statements, and which Defendant testified was biased in favor of Plaintiff because Dr. Frasier was retained solely by Plaintiff. (Oct. 21 Tr. at 93:20-94:12.) Neither of these pieces of evidence rendered Defendant's belief in her statements unreasonable, or otherwise overcame Defendant's privilege. The most pertinent information available to Defendant was the children's own spoken, written and video-taped representations, which fully support Defendant's statements.

Second, the record does not indicate that "the scope or manner of [Defendant's] publication exceed[ed] what [wa]s reasonably necessary to further the interest." *Bleich*, 196 Conn. at 501. At the time Defendant published her statements about Plaintiff's alleged conduct, the children had already contacted the police and sought relief from the courts. All attempts to

affect change for the children had failed, and the children had been returned to Plaintiff. Defendant reasonably believed that the only remaining option for protecting the children was to put a public spotlight on Plaintiff's alleged conduct. A more limited publication was not a realistic alternative, as only the public's widespread attention could have had the intended chilling effect on Plaintiff's alleged conduct. The scope and manner of Defendant's publication was thus reasonable under the circumstances.

Accordingly, Defendant's statements are entitled to qualified/conditional privilege and were made without malice. Plaintiff's defamation claim thus fails.

B. Plaintiff Has Failed to Establish Invasion of Privacy.

"In order to establish invasion of privacy by false light,[5] the plaintiff must show (a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." *Gordon v. Eckert Seamans Cherin & Mellott, LLC*, No. 175038333S, 2018 WL 1277425, at *7 (Conn. Super. Ct. Feb. 6, 2018) (quoting *Jonap v. Silver*, 1 Conn. App. 550, 557-58 (1984).) As discussed *supra* at pp. XX, Plaintiff has failed to prove that Defendant's statements were false. And as discussed *supra* at pp. XX, even if Defendant's statements were false (which Defendant maintains they were not), Defendant neither knew they were false nor acted in reckless disregard as to their falsity.

[5] Defendant understands Plaintiff to be asserting "false light" as the basis of its invasion of privacy claim, as none of the other potential bases could even arguably apply. *See Goodrich v. Waterbury Republican-Am., Inc.*, 188 Conn. 107, 128 (1982) ("The four categories of invasion of privacy are . . . as follows: (a) unreasonable intrusion upon the seclusion of another; (b) appropriation of the other's name or likeness; (c) unreasonable publicity given to the other's private life; or (d) publicity that unreasonably places the other in a false light before the public."). To the extent Plaintiff asserts invasion of privacy under "(a) unreasonable intrusion upon the seclusion of another" or "(c) unreasonable publicity given to the other's private life," Defendant responds that her actions were only unreasonable to the extent that her published allegations were demonstrably false, which they were not.

Plaintiff has accordingly failed to prove either element of the invasion of privacy by false light standard.

C. Plaintiff Has Failed to Establish Intentional Infliction of Emotional Distress.

"In order for the plaintiff to prevail . . . under [] intentional infliction of emotional distress . . . , [i]t must be shown: (1) that the actor intended to inflict emotional distress; or that [s]he knew or should have known that emotional distress was a likely result of h[er] conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress and (4) that the emotional distress sustained by the plaintiff was severe." *Petyan v. Ellis*, 200 Conn. 243, 253 (1986). The "extreme and outrageous" standard is a high bar. As the *Petyan* court explained, "[t]he rule which seems to have emerged is that there is liability for conduct exceeding *all bounds* usually tolerated by decent society . . . ." *Id.* at 254 n.5 (emphasis in original).

As set forth *supra* pp. X and X, Plaintiff has demonstrated neither that Defendant's statements are false, nor that Defendant knew or should have known that they were false. On the contrary, the record demonstrates that Defendant reasonably believed that Plaintiff was abusing the children and that publication of this allegation was necessary to protect the children from further abuse. Such a selfless effort to protect innocent children from perceived sexual and physical abuse is hardly extreme and outrageous. Rather, in view of credible evidence of abuse, decent society would commend someone for taking action to help such children. Plaintiff has thus failed to prove intentional infliction of emotional distress.

Plaintiff has also provided insufficient evidence that he suffered severe emotional distress as a result of Defendant's allegedly false statements. He testified that he had been sick to his stomach, suffered headaches, lost sleep, both gained and lost weight, and suffered impaired cognitive function. (Oct. 21 Tr. at 43:22-44:7.) None of these symptoms are necessarily severe

– rather, they can be experienced at various levels of intensity and frequency. Plaintiff did not provide further details regarding the severity of these symptoms, or offer any corroborating evidence (such as evidence of psychological treatment) of the symptoms' existence.

Plaintiff has therefore failed to demonstrate that Defendant's conduct amounted to intentional infliction of emotional distress, and in any event Plaintiff has failed to prove compensable injury under this cause of action.

D. Plaintiff Has Failed to Establish Negligent Infliction of Emotional Distress.

"[T]o prevail on [a negligent infliction of emotional distress claim], a plaintiff must prove that the defendant's conduct created an unreasonable risk of causing the plaintiff emotional distress, the plaintiff's distress was foreseeable, the emotional distress was severe enough that it might result in illness or bodily harm, and, finally, that the defendant's conduct was the cause of the plaintiff's distress." *Olson v. Bristol-Burlington Health Dist.*, 87 Conn. App. 1, 5 (2005). "The foreseeability requirement in a negligent infliction of emotional distress claim is more specific than the standard negligence requirement . . . ." *Id.* Plaintiff must prove that Defendant "should have foreseen that her behavior would likely cause harm of a specific nature, i.e., emotional distress likely to lead to illness or bodily harm." *Id.*

Because Defendant reasonably believed that Plaintiff was abusing the children and that publicly accusing Plaintiff was the only available means of mitigating that perceived abuse (see *supra* pp. X), Defendant's conduct was not unreasonable and did not pose an unreasonable risk to Plaintiff's well-being. Any foreseeable emotional distress caused to Plaintiff – whether accompanied by physical symptoms or not – was justifiable in view of Defendant's reasonable belief that her actions could spare innocent children from further abuse. *See Wade v. Kay Jewelers, Inc.*, No. 17-990, 2019 WL 1396179, at *16 (D. Conn. Mar. 27, 2019) (finding no

negligent infliction of emotional distress where defendant's employees "acted reasonably" and "appropriately" under the circumstances); *cf. Silberberg v. Lynberg*, 186 F. Supp. 2d 157, 177 (D. Conn. 2002) (finding no negligent infliction of emotional distress where police "believed the plaintiff had committed serious criminal offenses and took steps to have him arrested and [prosecuted, because] . . . [the risk of emotional distress could not] be characterized as unreasonable in light of the importance to our society of the prosecution of those who violate its criminal laws"); *Boccanfuso v. Zygmant*, No. 17-00162, 2019 WL 1115839, at *15 (D. Conn. Mar. 11, 2019) (finding no negligent infliction of emotional distress caused by criminal prosecution where "Defendants reasonably believed that there was probable cause that Plaintiff recklessly endangered himself and the public.").

Moreover, for the same reasons discussed *supra* at p. X, Plaintiff has failed to prove that his emotional distress has been so severe that it resulted or could have resulted in illness or bodily harm. Plaintiff's sole evidence of illness or bodily harm is headaches and upset stomach, without qualification as to their intensity and without any indication of the extent to which those symptoms preexisted Defendant's statements. Headaches and upset stomach (along with Plaintiff's contradictory reporting of both weight loss and weight gain), often occur in healthy individuals under ordinary stress levels. Accordingly, Plaintiff has failed to demonstrate sufficient injury under the negligent infliction of emotional distress standard.

III. PLAINTIFF HAS FAILED TO PROVE FINANCIAL DAMAGES.

Plaintiff's asserted evidence of financial injury is too speculative to be compensable. *See Hughes v. Lamay*, 89 Conn. App. 378, 386 (2005) (affirming "award of zero damages" where the plaintiff's "alleged injuries were speculative at best"). First, Plaintiff testified that he was "mysteriously" not rehired as camp director of Woodway Country Club, stating that the Club officials told him only that they "want[ed] to go in a different direction." (Oct. 21 Tr. at 44:8-

45:16.) Plaintiff presented no evidence that the Country Club did not rehire him because of Defendant's statements. He thus could have been not rehired for any number of unrelated reasons.

Plaintiff also failed to present sufficient evidence as to what his alleged financial damages would have been. He testified that he was paid $15,000 per year as camp director, but failed to testify as to his income as a home improvement contractor during the camp season. If, for example, he was able to make $15,000 during the camp season as a contractor, his loss of employment at Woodway Country Club caused no financial harm. [Cite.] Plaintiff's actual financial injury – to the extent he has been financially injured at all – is thus not calculable based on the record evidence.

Plaintiff also alleges lost income from his contracting business because he has decided not to put his name on his web page (Oct. 21 Tr. at 45:17-46:8), but any financial injury resulting from this change in advertising strategy is also purely speculative. As Plaintiff admitted, this alleged financial injury is "very difficult to put a finger to." (*Id.*) And Plaintiff failed to provide any figures from which the Court could arrive at a non-speculative damages figure.

Finally, Plaintiff cannot make the necessary showing to obtain punitive damages, which "in Connecticut are limited to attorney's fees less taxable costs . . . ." *DeVito v. Schwartz*, 66 Conn. App. 228, 236, 784 A.2d 376, 382 (2001) (citing cases). "[T]o recover punitive damages, a plaintiff must prove actual malice, regardless of whether the plaintiff is a public figure." *Gleason*, 319 Conn. At 432 (citing cases). As discussed *supra* at pp. XX, Plaintiff has failed to prove that Defendant acted with malice.

CONCLUSION

For the reasons set forth above, the Defendant respectfully request that the Court enter judgment for Defendant on each of the counts of the Complaint.