APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-10400-J

In re: JANE DOE,
a.k.a. Beeism,

Petitioner.

On Petition for Writ of Mandamus from
the United States District Court for
the Middle District of Florida

(Filed Mar. 9, 2022)

Before: WILSON, LUCK, and LAGOA, Circuit Judges.

BY THE COURT:

Before the Court is a petition for a writ of mandamus filed by Petitioner Jane Doe. The petition seeks a writ of mandamus directing the district court to, among other things, quash its order affirming the magistrate judge's denial of Doe's motion to quash third-party subpoenas and to enter an order vacating the magistrate judge's order denying Doe's motion to quash.

Mandamus is available "only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion."

Jackson v. Motel 6 Multipurpose, Inc., 130 F.3d 999, 1004 (11th Cir. 1997) (quotations omitted). The Supreme Court has held that "postjudgment appeals generally suffice to protect the rights of litigants . . . " *Mohawk- Indus., Inc. v. Carpenter*, 558 U.S. 100, 109 (2009). However, "in extraordinary circumstances—i.e., when a disclosure order 'amounts to a judicial usurpation of power or a clear abuse of discretion.' or otherwise works a manifest injustice—a party may petition the court of appeals for a writ of mandamus." *Id.* at 111. "Significantly, a party is not entitled to mandamus merely because it shows evidence that, on appeal, would warrant reversal of the district court." *In re BellSouth Corp.*, 334 F.3d 941, 953 (11th Cir. 2003).

Here, the petitioner has not shown that die district court's order amounts to a judicial usurpation of power or a clear abuse of discretion, or otherwise works a manifest injustice. Accordingly, the petition for a writ of mandamus is DENIED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOMY STERLING,

Plaintiff,

v. **Case No: 6:21-cv-723-PGB-EJK**

JANE DOE,

Defendant. /

ORDER

(Filed Feb. 2, 2022)

This cause comes before the Court on Defendant's Objection (Doc. 17 (the "**Objection**")) to Magistrate Judge Embry J. Kidd's Order Denying (Doc. 16 (the "**Denial**")) Defendant's Motion to Quash Third Party Subpoenas (Doc. 11 (the "**Motion to Quash**")). Upon consideration, the Objection is due to be overruled.

I. BACKGROUND

Plaintiff and Defendant are content creators on the online platform Roblox from which they each derive their principal source of income. (Doc. 17, p. 2). Both also maintain Twitter accounts where they promote their Roblox content and interact with other Roblox users. (*Id.*). Defendant Jane Doe has always chosen to stay anonymous online, using the name "Beeism" on both platforms. (*Id.* at p. 3). Her anonymity is the lynchpin of the current dispute.

Plaintiff brought this action alleging that Defendant twice sent out defamatory Tweets regarding Plaintiff which subsequently damaged her reputation, business, and relationships. (Doc. 1, pp. 3–7). Defendant's first Tweet in question stated as follows:

> & yea, when some]. in her mid 30's invites a 15 [year-old] she met on roblox to her house for overnite visits OF COURSE I'M GONNA SAY SOMETHIN. never called [Plaintiff] a pedo[phile] but I 100% stand by the fact someone in their 30's should not invite minors to their house for overnite disneyworld trips

(Doc. 11, p. 7) (sic). Plaintiff asserts this Tweet is defamatory because it accuses her of engaging in unlawful conduct with minors or that she is a pedophile. (Doc. 1, ¶ 13–15). In addition, Plaintiff asserts it is false that the fifteen-year-old was someone she met only on Roblox. (*Id.* ¶ 15). Defendant's second Tweet in question stated:

> there was a wellness check for [Plaintiff's husband] cuz no one had seen or heard from him since his meltdown, and we're All witnesses to [Plaintiff's] behavior the last few weeks. The chick [that is, Plaintiff] is coming undone. [Plaintiff's husband] didn't get swatted, a cop knocked on his door to make sure he was alive

(Doc. 11, p. 9) (sic). Plaintiff asserts this Tweet is defamatory because it was untrue that "no one had seen or heard from [Plaintiff's husband] since his meltdown" and the phrases "coming undone" and "make

sure he is alive" falsely imply that Plaintiff harms her husband. (Doc. 1, ¶ 19). Plaintiff further contends that Defendant "did not ask any of [the] friends or co-workers" of Plaintiff's husband "about his wellbeing prior to publishing the [ ] Tweet" and so would have no way of knowing if the assertions were true. (*Id.* ¶ 23).

Plaintiff moved for and was granted leave, without opposition, to serve third-party subpoenas on Roblox Corporation and Twitter to obtain information that will enable Plaintiff to name and serve Defendant. (Does. 9, 10). In the Order granting leave for Plaintiff to serve third-party subpoenas, Magistrate Judge Kidd stated that, "[g]ood cause may exist to identify a Doe defendant, so that the plaintiff may serve process and the case can proceed, when the plaintiff can demonstrate that she has pled a prima face case" and that "[h]ere, Plaintiff alleges claims for defamation and trade libel by virtue of [Defendant's publication of] Tweets about Plaintiff that Plaintiff claims are false and have caused her harm." (Doc. 10, pp. 1–2).

Defendant filed the instant Motion to Quash the subpoenas ten days later. (Doc. 11). Magistrate Judge Kidd denied the Motion to Quash, relying in part on his previous finding that Plaintiff stated a prima facie case of defamation. (Doc. 16, pp. 3–4). Magistrate Judge Kidd stated that:

> Defendant moves to quash the subpoenas, or obtain a protective order, on the . . . grounds [that] Plaintiff fails to state a cause of action [and for two other reasons]. The Court previously found that Plaintiff pled a prima facie

> case when it granted leave to issue the third-party subpoenas. Therefore, the Court will restrict its analysis to Defendant's second and third arguments.

(*Id.*) (citations omitted).

Defendant now objects to Magistrate Judge Kidd's Denial of her Motion to Quash under Federal Rule of Civil Procedure 72(a). (Doc. 17). Plaintiff responded in opposition, making the Objection ripe to be ruled upon. (Doc. 20).

II. STANDARD OF REVIEW

Rule 72(a) authorizes a district court reviewing a litigant's objection to a magistrate judge's non-dispositive order to "modify or set aside any part of the order that is clearly erroneous or is contrary to law." FED. R. CIV. P. 72(a); *see also Howard v. Hartford Life & Accident Ins. Co.*, 769 F. Supp. 2d 1366, 1372 (M.D. Fla. 2011). "Clear error is a highly deferential standard of review." *Holton v. City of Thomasville Sch. Dist.*, 425 F.3d 1325, 1350 (11th Cir. 2005). "A finding is clearly erroneous when although there is evidence to support it the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Tempay, Inc. v. Biltres Staffing of Tampa Bay, LLC*, 929 F. Supp. 2d 1255, 1260 (M.D. Fla. 2013) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). "An order is contrary to law when it fails to apply or misapplies relevant statutes, case law or rules of procedure." *Id.* (*quoting S.E.C. v.*

Kramer, 778 F. Supp. 2d 1320, 1326–27 (M.D. Fla. 2011)). All told, "in issuing non-dispositive orders related to discovery" a magistrate judge "is afforded broad discretion." *Gulfside, Inc. v. Lexington Ins. Co.*, No. 2:19-CV-851, 2021 U.S. Dist. LEXIS 90550, at *4 (M.D. Fla. May 12, 2021) (internal citations omitted).

III. DISCUSSION

The Court finds that Magistrate Judge Kidd's Denial of the Motion to Quash is not contrary to law nor clearly erroneous. While Defendant cites to a plethora of *non-binding* authorities to support her argument, Magistrate Judge Kidd did not misapply or fail to apply any relevant *binding* statutes, case law, or rules of procedure—other alternative approaches notwithstanding. After all, "orders from other districts have no precedential value." *Gulfside*, 2021 U.S. Dist. LEXIS 90550, at *7. In addition, while Magistrate Judge Kidd may not have addressed each of Defendant's arguments with the detail Defendant might prefer, the Court cannot say that Magistrate Judge Kidd's decisions were clearly erroneous given the broad discretion which he is afforded when ruling on non-dispositive motions.

A. Prima Fade Case

Defendant argues that Magistrate Judge Kidd did not correctly apply Florida defamation law in finding Plaintiff stated a prima facie case. To state a prima facie case of defamation in Florida requires defamatory

publication of a statement made with either knowledge of its falsity, reckless disregard of its falsity if the matter concerns a public official, or negligence as to its falsity if the matter concerns a private person that causes actual damages. *Turner v. Wells*, 879 F.3d 1254, 1262 (11th Cir. 2018) (applying Florida defamation law). "True statements, statements that are not readily capable of being proven false, and statements of pure opinion" are not actionable as defamation. *Id.* (citing *Blake v. Giustibelli*, 182 So. 3d 881, 884 n.1 (Fla. 4th DCA 2016) ("Statements of pure opinion are not actionable."')). Moreover, "[u]nder Florida law, a defendant publishes a 'pure opinion' when the defendant makes a comment or opinion based on facts which are set forth in the publication or which are otherwise known or available to the reader or listener as a member of the public." *Id.* (citing *From* v. *Tallahassee Democrat*, 400 So. 2d 52, 57 (Fla. 1st DCA 1981)). Whether a statement is an opinion or a factual assertion susceptible to defamatory interpretation is a question of law. *Id.* at 1262–63 (citing *From*, 400 So. 2d at 56–57).

Magistrate Judge Kidd covered these elements in his order granting Plaintiff leave to serve the subpoenas, stating that the "claims for defamation and trade libel by virtue of Doe's publishing Tweets about Plaintiff that Plaintiff claims are false and have caused her harm." (Doc. 10, p. 2). Whether every part of Plaintiff's complaint will ultimately succeed is not at issue here; Plaintiff need only have shown that at least one of her claims was viable on its face just as Magistrate Judge

Kidd ruled—to move forward with the necessary steps to serve process on Defendant.

Granted, Magistrate Judge Kidd did not address Plaintiff's failure to note the allegedly defamatory statement in which she is accusing Defendant of being a pedophile expressly states that she "never called [Plaintiff] a [pedophile]." (Doc. 17, pp. 7–9). Even when the pedophilia allegation is removed from the equation, the remaining accusation that Defendant invited a minor she met on Roblox to her home could meet the standard for a prima facie case of defamation because it is false according to Plaintiff's complaint. (Doc. 1, ¶¶ 13–17). Of course, Defendant's opinion that people should not invite minors to their homes for overnight stays or Disney trips is not actionable as a matter of law, but it was not clearly erroneous for Magistrate Judge Kidd to interpret at least part of the statement as facially defamatory at this stage in the proceedings.

The same is true for the second Tweet. Undoubtedly, at least part of the Tweet is pure opinion, but the factual assertion that no one had seen or heard from Plaintiff's husband in some time is facially false as alleged. (*Id.* ¶ 19). Moreover, the Tweet as a whole is at least susceptible to the defamatory insinuation that Plaintiff was in some way responsible for her husband's state of non-communication. At a minimum, therefore, Magistrate Judge Kidd did not clearly err or rule contrary to law when he found that at least part of the allegations in the complaint pled a prima fade claim of defamation.

B. Standard of Review for Seeking Identifying Information

Second, Defendant argues that because Magistrate Judge Kidd did not consider Defendant's evidentiary showings in determining the viability of the case, the denial of the Motion to Quash was contrary to law or clearly erroneous. (Doc. 17, pp. 4–10). Defendant's argument, however, rests on the mistaken premise that Magistrate Judge Kidd was obligated to view Plaintiff's allegations in light of Defendant's evidentiary showings when weighing the viability of the claims against Defendant's First Amendment interests in remaining anonymous online. In effect, Defendant argues that Magistrate Judge Kidd should have subjected the Motion to Quash to a standard of review akin to summary judgment by considering evidence beyond the four-corners of Plaintiff's complaint. But no Eleventh Circuit caselaw requires such an exacting standard, even in view of the First Amendment interests at stake in the case. The potentially applicable cases which Defendant marshals for support were decided in the Northern District of California, the Northern District of Florida, and the District of Columbia's Court of Appeals (notably, not the United States Court of Appeals for the District of Columbia Circuit).[1] In contrast, Magistrate Judge Kidd's approach is

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[1] *COR Clearing, Ltd. Liab. Co. u. Inuestorshub.com, Inc.*, No. 4:16-mc-13, 2016 U.S. Dist. LEXIS 115810, at *5–7 (N.D. Fla. May 11, 2016); *USA Technologies, Inc. v. Doe*, 713 F. Supp. 2d 901, 906 (N.D. Cal. 2010); *Solers, Inc. v. Doe*, 977 A.2d 941, 951 (D.C. 2009).

consistent with the Court's past rulings on motions to dismiss defamation claims. *See Music with Mar, LLC v. Froggy's Friends*, No. 8:20-cv-1091, 2020 U.S. Dist. LEXIS 244486, at *6–12 (M.D. Fla. Dec. 30, 2020) (limiting the scope of review to the four corners of the complaint to find that a statement was a mixed expression of opinion and fact that was not constitutionally protected). Since Magistrate Judge Kidd was not required to apply a standard of review that took into account Defendant's evidentiary showings, he did enough when he determined that Plaintiff stated a prima facie case.

C. First Amendment Interest in Anonymity

Third, Magistrate Judge Kidd acknowledged and took into account Defendant's First Amendment interests in remaining anonymous. (Doc. 16, pp. 6–7). In so doing, he correctly noted that Defendant's First Amendment interest is not absolute when he weighed it against the viability of Plaintiff's defamation case. (*Id.*). While some courts require a more searching review, this approach is not universal; more importantly, Defendant's preferred approach is not controlling in this jurisdiction as detailed *supra*. As a result, Magistrate Judge Kidd acted appropriately in addressing Defendant's concerns regarding potential abuse of her identity by placing constraints on the order to serve the third-party subpoenas.[2] (Doc. 10, p. 2 ("Any

[2] Defendant may also attempt to seek further relief to temporarily protect her anonymity in filings in this Court after her identifying information is obtained via subpoena by seeking a

information disclosed to Plaintiff in response to the subpoenas may be used by her solely for the purpose of prosecuting this lawsuit.")).

At bottom, the Court is not left with a "definite and firm conviction" that Magistrate Judge Kidd incorrectly balanced the viability of Plaintiff's case when weighing Defendant's First Amendment right to speak anonymously. *Tempay*, 929 F. Supp. 2d at 1260; (Doc. 16, p. 7).

D. Rule 45 & Anti-SLAPP Statutes

Magistrate Judge Kidd also did not commit clear error or misapply controlling law when he found that Florida and California anti-SLAPP provisions were inapplicable to the case.[3] Magistrate Judge Kidd correctly noted that in order for Defendant to have standing to challenge the subpoenas directed to a third-party under Rule 45, Defendant must show the information sought involves matters of personal right and privacy. (Doc. 16, p. 4). Defendant believes that either Florida's or California's anti-SLAPP provision provides such a right. (Doc. 17, p. 10). Magistrate Judge Kidd also correctly pointed out, however, that numerous courts, including the Eleventh Circuit, have "declined to apply anti-SLAPP statutes like California's because they increase a plaintiff's burden to overcome

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protective order or an order to seal under the appropriate Federal Rules or Local Rules.

[3] Many states have statutory prohibitions on strategic lawsuits against public participation ("**SLAPPs**").

pretrial dismissal, and thus conflict with [certain Federal Rules]." (*Id.* (citing *Carbone v. Cable News Network, Inc.*, 910 F.3d 1345, 1349 (11th Cir. 2018) and *Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 274-75 (9th air. 2013)). In other words, numerous courts have found that the *Erie* doctrine forecloses application of similar anti-SLAPP statutes because they increase a plaintiff's burden relative to an on point Federal Rule of Civil Procedure. In objecting, Defendant hopefully cites to *Tobinick v. Novella*, 848 F.3d 935 (11th Cir. 2017) and *Parekh v. CBS Corp.*, 820 F. App'x 827 (nth Cir. 2020)[4] as instances where the Eleventh Circuit upheld application of California or Florida anti-SLAPP laws by a district court sitting in diversity jurisdiction. Defendant omits, however, that both the *Tobinick* and *Parekh* courts only affirmed this application because they determined the plaintiffs there had forfeited their right to challenge the anti-SLAPP law's applications under an *Erie* theory at the district court level. *Tobinick*, 848 F.3d at 944 ("The Tobinick Appellants did not raise the Erie claim" and "therefore waived the issue"); *Parekh*, 820 F. App'x at 836 ("Parekh argues, for the first time on appeal, that Florida's anti-SLAPP statute should not be applied in federal court. He forfeited this argument, however, by not raising it before the district court.") No such forfeiture exists here.

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[4] "Unpublished opinions are not controlling authority and are persuasive only insofar as their legal analysis warrants." *Bonilla v. Baker Concrete Coast., Inc.*, 487 F.3d 1340, 1345 n.7 (11th Cir. 2007).

Defendant also points out that Magistrate Judge Kidd's approach is not universal, and some federal courts have applied state anti-SLAPP provisions when exercising diversity jurisdiction. *See Anderson v. Best Buy Stores L.P.*, No. 5:20-CV-41-Oc-30, 2020 WL 5122781 (M.D. Fla. July 28, 2020) (applying the fee provision of Florida's anti-SLAPP statute), *adopted in full by Anderson v. Coupons in the News*, No. 5:20-cv-41-Oc-30, 2020 WL 5106676 (M.D. Fla. Aug. 31, 2020); *Ener v. Duckenfield*, No. 20-cv-22886, 2020 WL 6373419 (S.D. Fla. Sep. 28, 2020) (applying fees provision of Florida's anti-SLAPP statute); *Bongino v. Daily Beast Co., LLC*, 477 F. Supp. 3d 1310, 1322–24 (S.D. Fla. 2020) (applying fee-shifting provision of Florida's anti-SLAPP laws because it did not conflict with any Federal Rules of Civil Procedure). But Magistrate Judge Kidd need not have followed the lead of these courts because, as the *Bongino* court itself explains, the fee-shifting provision of anti-SLAPP laws is obviously different than the pretrial dismissal anti-SLAPP provisions which conflict with and "'answer the same question'" as the Federal Rules. 477 F. Supp. 3d at 1323 (citing *Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co.*, 559 U.S. 393, (2010)).

Defendant further attempts to navigate away from conflicting precedent that counsels in favor of Magistrate Judge Kidd's approach by pointing out that no Court has yet ruled on whether CAL. CODE CIV. PROC. § 1987.1, the California anti-SLAPP provision which Defendant attempts to invoke, conflicts with the Federal Rules. But this is of no moment. Defendant

brings forth no argument that could meet her burden to show Magistrate Judge Kidd clearly erred or did not apply controlling law when he followed the *Erie* logic which eminent courts have applied in ruling on substantially similar state anti-SLAPP laws. *E.g.*, *Abbas v. Foreign Policy Group, LLC*, 783 F.3d 1328, 1331 (D.C. Cir. 2015) (Kavanaugh, J.) (holding that the District of Columbia's anti-SLAPP Act had no application in diversity cases because the Federal Rules of Civil Procedure already detailed how a court may dismiss a claim pretrial).

E. Rule 26 Annoyance, Harassment, and Oppression

Magistrate Judge Kidd found Defendant's worry that Plaintiff will utilize the identifying information obtained from the subpoenas to harass and threaten Defendant to be insufficiently supported by factual allegations. (Doc. 16, pp. 7–8). Magistrate Judge Kidd correctly noted that, under Rule 26(c), obtaining a protective order from a subpoena necessitates a showing of good cause, which requires the moving party to put forward particular and specific demonstrations of fact rather than conclusory statements. *See Auto-Owners Ins. Co. v. Se. Floating Docks, Inc.*, 231 F.R.D. 426, 429–30 (M.D. Fla. 2005); FED. R. CIV. P. 26(c); (*id.*). Magistrate Judge Kidd, however, found that Defendant made no such particular and specific showing. (Doc. 16, p. 8). In her objection, Defendant recycles her *ipse dixit* assertions that Defendant will be in danger should she lose her right to anonymity because the underlying

claims will likely fail on the merits. (Doc. 17, p. 17). Yet Magistrate Judge Kidd was not required to resolve this matter in Defendant's favor because Defendant would not be able to regain her anonymity if Defendant succeeds in defending the case; this assumes that Defendant will prevail on the merits, which is not yet clear, particularly when Magistrate Judge Kidd was not obligated to consider Defendant's evidentiary showing. Consequently, it was not clearly erroneous or contrary to law for him to conclude these assertions must give way in the face of the prima facie defamation claim. Most importantly, Defendant put forward nothing new beyond conjecture to substantiate a likelihood that Plaintiff will abuse this identifying information given the conditions Magistrate Judge Kidd already placed upon its use.

IV. CONCLUSION

For the above reasons, it is **ORDERED** and **ADJUDGED** that Defendant's Objection (Doc. 17) to Magistrate Judge Kidd's Order is **OVERRULED**, and the Denial (Doc. 16) of Defendant's Motion to Quash (Doc. 11) is **AFFIRMED**. The parties are **DIRECTED** to timely comply with Magistrate Judge Kidd's Order (Doc. 10).

DONE AND ORDERED in Orlando, Florida on February 2, 2022.

/s/ Paul G. Byron
PAUL G. BYRON
UNITED STATES
DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOMY STERLING,

Plaintiff,

v.

JANE DOE,

Defendant.

Case No: 6:21-cv-723-PGB-EJK

ORDER

(Filed Oct. 4, 2021)

This cause comes before the Court on the Motion to Quash Third Party Subpoenas (the "Motion"), filed on June 18, 2021, by Defendant Jane Doe, a/k/a Beeism. (Doc. 11.) Plaintiff has filed an opposition in response. (Doc. 13.) Upon consideration, the Motion is due to be denied.

I. BACKGROUND

Plaintiff and Defendant are both content creators on the online platform Roblox. (Doc. 11 at 1.) Plaintiff operates under the pseudonym "Pixelated Candy," while Defendant operates under the pseudonym "Beeism" and remains anonymous. (Doc. 1 at 2-3.) Plaintiff filed the present action on April 23, 2021, alleging Defendant posted false and defamatory statements about Plaintiff, damaging her reputation, business, and relationships. (*Id* at 3-7.) Plaintiff moved for

and was granted leave to serve third-party subpoenas on Roblox Corporation and Twitter, Inc., to obtain information that will enable Plaintiff to name and serve Defendant. (Does. 9, 10.) Defendant thereafter filed the present Motion to quash the subpoenas issued by Plaintiff. (Doc. 11.)

II. LEGAL STANDARD

Federal Rule of Civil Procedure 45(d) requires the party issuing a subpoena to ensure that the subpoena does not impose an undue burden or expense on the person subjected to the subpoena. Under Rule 45, a court must quash a subpoena that "requires disclosure of privileged or other protected matter" or "subjects a person to undue burden." Fed. R. Civ. P. 45(d)(3).

However, non-parties do not have standing to quash a subpoena issued pursuant to Rule 45 unless the information sought involves matters of personal right and privacy. *Auto–Owners Ins. Co. v. Se. Floating Docks, Inc.*, No. 6:05-cv-334-Orl-31JGG, 2005 U.S. Dist. LEXIS 21524, at *3 (M.D. Fla. Sept. 28, 2005); *see Auto-Owners Ins. Co. v. Se. Floating Docks*, Inc., 231 F.R.D. 426, 429 (M.D. Fla. 2005) ("Defendants do not have standing to quash the subpoenas on the grounds of oppression and undue burden placed upon the third parties where the non-parties have not objected on those grounds." (citation omitted)); *see also Boy Racer, Inc. v. John Does 1-34*, No. 11-23035, 2012 U.S. Dist. LEXIS 60862, 2012 WL 1535703, at *3 (S.D. Fla. May 1, 2012) (recognizing a party generally lacks standing to

challenge a non-party subpoena, but theoretical exception exists when subpoena compels disclosure of privileged matter); *Maxwell v. Health Ctr. of Lake City, Inc.*, No. 3:05-CV-1056-J-32MCR, 2006 U.S. Dist. LEXIS 36774, 2006 WL 1627020, at *2 (M.D. Fla. June 6, 2006) ("Ordinarily a party does not have standing to quash a subpoena served on a third party unless the party seeks to quash based on a personal right or privilege relating to the documents being sought." (footnote call number and citations omitted)).

Under Rule 26(c)(1), "The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . forbidding the disclosure or discovery." Fed. R. Civ. P. 26(c)(1)(A). "A district court has broad discretion when fashioning protective orders." *In re Alexander Grant & Co. Litig.*, 820 F.2d 352, 357 (11th Cir. 1987). Upon a showing of good cause by the party seeking protection, the Court must "balance the party's interest in obtaining access against the other party's interest in keeping the information confidential." *Chicago Tribune Co. et al. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1313 (11th Cir.2001). Courts have held that when balancing these interests, "the mere fact that the production of records may lead to a litigant's embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records." *Graphic Packaging Int'l, Inc. v. C.W. Zumbiel*, No. 3:10–cv–891–J–JBT, 2010 U.S. Dist. LEXIS 143284, at *3–4,2010 WL 6790538 (M.D.

Fla. Oct. 27, 2010) (internal quotations and citations omitted).

III. DISCUSSION

Defendant moves to quash the subpoenas, or obtain a protective order, on the following grounds: (1) Plaintiff fails to state a cause of action; (2) the lawsuit is prohibited by anti-Strategic Lawsuit Against Public Participation ("SLAPP") laws; and (3) they will subject "Doe to [a]nnoyance, [h]arassment, and [o]pression." (Doc. 11.)

The Court previously found that Plaintiff pled a prima facie case when it granted leave to issue the third-party subpoenas. (*See* Doc. 10.) Therefore, the Court will restrict its analysis to Defendant's second and third arguments.

A. Rule 45

i. Anti-SLAPP Statute

The subpoenas at issue are directed to Roblox Corporation and Twitter, Inc., not to Defendant; therefore, Defendant does not have standing to move to quash the subpoenas pursuant to Rule 45 unless the information sought involves matters of personal right and privacy. To that end, Defendant argues that California's and Florida's anti-SLAPP statutes provide such a right. (Doc. 11 at 15-20.)

Defendant does not explain why California law would apply in this action; regardless, federal courts

have declined to apply anti-SLAPP statutes like California's because they increase a plaintiff's burden to overcome pretrial dismissal, and thus conflict with Federal Rules 12 and 56. *See* Fed. R. Civ. P. 12, 56; *Gov't Emples. Ins. Co. v. Glassco Inc.*, 2021 U.S. Dist. LEXIS 183510, *10 (M.D. Fla. Sept. 2021) (analyzing the differences between anti-SLAPP statutes and their conflicts with the Federal Rules); *see*, *e.g.*, *La Liberte v. Reid*, 966 F.3d 79, 83 (2d Cir. 2020) ("[W]e hold that California's anti-SLAPP statute is inapplicable in federal court because it increases a plaintiff's burden to overcome pretrial dismissal, and thus conflicts with Federal Rules of Civil Procedure 12 and 56."); *see also Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 274-75 (9th Cir. 2013) (Kozinski, J., concurring) (discussing how California's anti-SLAPP statute conflicts with Federal Rules of Civil Procedure 11, 12, and 56, among others); *Carbone v. Cable News Network, Inc.*, 910 F.3d 1345, 1349 (11th Cir. 2018) (holding that Georgia's anti-SLAPP statute's motion-to-strike provision, which contained a "likelihood of success" test, conflicts with Federal Rules of Civil Procedure 8, 12, and 56).

Florida's anti-SLAPP statute prohibits a person from filing a cause of action "against another person or entity [1] *without merit* and [2] primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue[.]" Fla. Stat. § 768.295(3) (emphasis added); *see also* Fla. Stat. § 768.295(2)(a) (defining "[f]ree speech in connection with public issues" as "any written or oral statement that is protected under applicable law and . . . is made

in or in connection with a with a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work.").

Assuming that Florida's anti-SLAPP statute does not conflict with the Federal Rules of Civil Procedure, Defendant nevertheless falls short because the Court previously found that Plaintiff has pled a prima facie case against Defendant. (*See* Doc. 10.) Therefore, this case is not encompassed by Florida's anti-SLAPP statute because it is not without merit. *See*, *e.g.*, *Buckley v. Moore*, 2021 U.S. Dist. LEXIS 138073, at *29 (M.D. Fla. July 2021) (declining to apply Florida's anti-SLAPP statute where plaintiffs had sufficiently stated a claim).

Because neither California's nor Florida's anti-SLAPP statute applies to this case, those statutes do not provide a basis to quash the subpoena pursuant to Federal Rule of Civil Procedure 45.

ii. Doe's Right to Speak Anonymously[1]

Defendant further argues that once Does' identity is revealed, she will never be able to retrieve her constitutional right to anonymity. (Doc. 11 at 23.) There is no dispute that the First Amendment protects the right to speak anonymously. *Buckley v. American*

[1] Defendant raised this issue under the third argument of annoyance, harassment, and oppression. However, the issue of a right or privilege as the basis to quash a subpoena arises under Rule 45 not Rule 26(c)(1). *See* Fed. R. Civ. P. 45(d)(3), 26(c)(1).

Constitutional Law Found., Inc., 525 U.S. 182, 200 (1999); *Talley v. California*, 362 U.S. 60, 65 (1960). And those First Amendment principles have been extended to protect anonymous speech on the Internet. *See*, *e.g.*, *Reno v. ACLU*, 521 U.S. 844, 845 & 870 (1997) (There is "no basis for qualifying the level of First Amendment scrutiny that should be applied to [the Internet]."); *see also Sony Music Entm't v. Does*, 326 F. Supp. 2d 556, 565 (S.D.N.Y. 2004).

Still, the First Amendment does not protect defamatory speech—regardless of whether such speech is posted anonymously over the Internet or uttered in public. *Chaplinsky v. State of New Hampshire*, 315 U.S. 568, 572 (1942) ("It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.") Furthermore, [p]eople are permitted to interact pseudonymously and anonymously with each other so long as those acts are not in violation of the law." *Cor Clearing*, 2016 WL 3774127, at *3 (citing *Columbia Ins. Co. v. Seescandy.Com*, 185 F.R.D. 573, 578 (N.D. Cal. 1999)).

The Court agrees with Defendant that the subpoena strips her of the right to speak anonymously and that her anonymity cannot be reclaimed once revealed. (Doc. 11 at 23-24.) However, Plaintiff has alleged that Doe has used her anonymity as a cloak to make defamatory statement in violation of the law. The Court finds that, on balance, Plaintiff's interest in knowing Doe's

true identity outweighs Defendant's interest in remaining anonymous. Plaintiff has a significant interest in discovering Doe's identity so that she may proceed with this action and protect against the alleged defamatory statements.

B. Rule 26

i. Defendant Has Not Shown Doe Will Be Subjected to Annoyance, Harassment, and Oppression

Defendant also seeks a protective order against the subpoenas, pursuant to Federal Rule 26(c)(1), because they will subject "Doe to [a]nnoyance, [h]arassment, and [o]pression." (Doc. 11 at 21.)

> Rule 26(c) provides that upon a showing of good cause, a court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.' The party seeking a protective order has the burden to demonstrate good cause, and must make 'a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements' supporting the need for a protective order.

Auto-Owners, 231 F.R.D. at 429-30 (citations omitted); Fed. R. Civ. P. 26(c).

In her Motion, Defendant asserts that Plaintiff will utilize the information sought by the subpoena to harass and threaten Defendant. (Doc. 11 at 21-24.)

However, Defendant's assertions are conclusory statements are not supported by any factual allegations that would lead the Court to believe that Plaintiff would annoy, harass, or oppress Defendant. To the contrary, Defendant's allegations point to *Plaintiff's* perceived "victimhood" and harassment based on the alleged actions by Defendant. (Doc. 11 at 22–23.) Therefore, Defendant has not met her burden of establishing by a particular and specific demonstration of fact that she would be annoyed, harassed, or oppressed by the issuance of the subpoena.

IV. CONCLUSION

Accordingly, it is hereby **ORDERED** that the Motion (Doc. 11) is **DENIED**. Roblox Corporation and Twitter, Inc., are **ORDERED** to produce information responsive to the subpoenas upon receipt of this Order.

DONE and **ORDERED** in Orlando, Florida on October 4, 2021.

/s/ Embry J. Kidd
EMBRY J. KIDD
UNITED STATES
MAGISTRATE JUDGE

Copies furnished to:

Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOMY STERLING,

Plaintiff,

v.

JANE DOE,

Defendant. /

Case No: 6:21-cv-723-PGB-EJK

ORDER

(Filed Jun. 8, 2021)

This cause comes before the Court on Plaintiff Jomy Sterling's Motion for Leave to Serve Third-Party Subpoenas Prior to Rule 26(f) Conference (Doc. 9), filed June 3, 2021. Upon consideration, the Motion is due to be granted.

Plaintiff seeks permission from the Court to serve third-party subpoenas on Roblox Corporation and Twitter. Inc., prior to a Rule 26(f) conference to obtain information that will enable her to name and serve Defendant Jane Doe a/k/a Beeism. Discovery in civil cases is prohibited until the parties have conferred as required by Federal Rule of Civil Procedure 26(f), unless expedited discovery is authorized by the court. Fed. R. Civ. P. 26(d)(1). Expedited discovery may be appropriate upon a showing of good cause. *United States v. Gachette*, No. 6:14-cv-1539, 2014 WL 5518669, at *1 (M.D. Fla. Sept. 26, 2014).

Good cause may exist to identify a Doe defendant, so that the plaintiff may serve process and the case can proceed. when the plaintiff can demonstrate that she has pled a prima face case, there is no other way to identify the Doe defendant, there is a need for the information, plaintiff has identified the discovery it is seeking. and the defendant's expectation of privacy does not outweigh the need for the requested information. *See Bicycle Peddler, LLC v. Doe 39*, No. 6:13-cv-594-Orl-37TBS, 2013 WL 1703986, at * 1 (M.D. Fla. Apr. 19, 2013).

Here, Plaintiff alleges claims for defamation and trade libel by virtue of Doe's publishing Tweets about Plaintiff that Plaintiff claims are false and have caused her harm. (*See* Doc. 1, ¶¶ 12–25.) Plaintiff's expedited discovery is limited to two subpoenas directed to Roblox and Twitter to obtain identifying information about Doe, such as her name and address, so that Plaintiff can properly name her and serve her with the Complaint. (Doc. 9-1.) Plaintiff has no other means of identifying Doe because Plaintiff knows Doe solely through the Internet. (Doc. 9 at 7.) Finally, any privacy interest Doe has in the information sought by Plaintiff is outweighed by Plaintiff's need for the information to prosecute her case. *M.C. v. Geiger*, No. 6:18-cv-1486-Orl-41TBS, slip op. at 3 (M.D. Fla. Nov. 21, 2018). Thus, the undersigned finds that Plaintiff has established good cause for proceeding with discovery prior to the Rule 26(f) conference.

Accordingly, it is **ORDERED** that Plaintiff Jomy Sterling's Motion for Leave to Serve Third-Party

Subpoenas Prior to Rule 26(f) Conference (Doc. 9) is **GRANTED** as follows:

1. Plaintiff may immediately serve Rule 45 subpoenas on Roblox Corporation and Twitter, Inc., for the limited purpose of obtaining information to identify Jane Doe a/k/a Beeism by name, address, telephone number, and email address. The subpoenas must attach the Complaint and this Order.

2. Any information disclosed to Plaintiff in response to the subpoenas may be used by her solely for the purpose of prosecuting this lawsuit.

3. Plaintiff is **DIRECTED** to serve a copy of this Order on Doe's attorney, Adam Losey of Losey, PLLC, via email.

DONE and **ORDERED** in Orlando, Florida on June 8, 2021.

/s/ Embry J. Kidd
EMBRY J. KIDD
UNITED STATES
MAGISTRATE JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

USCS Const. Amend. 1

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Fla. Stat. § 768.295

(1) It is the intent of the Legislature to protect the right in Florida to exercise the rights of free speech in connection with public issues, and the rights to peacefully assemble, instruct representatives, and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. It is the public policy of this state that a person or governmental entity not engage in SLAPP suits because such actions are inconsistent with the right of persons to exercise such constitutional rights of free speech in connection with public issues. Therefore, the Legislature funds and declares that prohibiting such lawsuits as herein described will preserve this fundamental state policy, preserve the constitutional rights of persons in Florida, and assure the continuation of representative government in this state. It is the intent of the Legislature

that such lawsuits be expeditiously disposed of by the courts.

(2) As used in this section, the phrase or term:

(a) "Free speech in connection with public issues" means any written **or** oral statement that is protected under applicable law and is made before a governmental entity in connection with an issue under consideration or review by a governmental entity, or is made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work.

(b) "Governmental entity" or "government entity" means the state, including the executive, legislative, and the judicial branches of government and the independent establishments of the state, counties, municipalities, corporations primarily acting as instrumentalities of the state, counties, or municipalities, districts, authorities, boards, commissions, or any agencies thereof.

(3) A person or governmental entity in this state may not file or cause to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue, or right to peacefully assemble, to instruct representatives of government, or to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United

States Constitution and s. 5, Art. I of the State Constitution.

(4) A person or entity sued by a governmental entity or another person in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A person or entity may move the court for an order dismissing the action or granting final judgment in favor of that person or entity. The person or entity may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the claimant's or governmental entity's lawsuit has been brought in violation of this section. The claimant or governmental entity shall thereafter file a response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the motion, which shall be held at the earliest possible time after the filing of the claimant's or governmental entity's response. The court may award, subject to the limitations in s. 768.28, the party sued by a governmental entity actual damages arising from a governmental entity's violation of this section. The court shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section.

(5) In any case filed by a governmental entity which is found by a court to be in violation of this section, the governmental entity shall report such finding and provide a copy of the court's order to the Attorney General no later than 30 days after such order is final. The Attorney General shall report any violation of this

section by a governmental entity to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives. A copy of such report shall be provided to the affected governmental entity.

Cal. Civ. Proc. Code § 425.16

(a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b)

(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability that the plaintiff will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(c)

(1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover that defendant's attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney's fees and costs if that cause of action is brought pursuant to Section 11130, 11130.3, 54960, or 54960.1 of the Government Code, or pursuant to Chapter 2 (commencing with Section 7923.100) of Part 4 of Division 10 of Title 1 of the Government Code.

(d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

(h) For purposes of this section, "complaint" includes "cross-complaint" and "petition," "plaintiff" includes "cross-complainant" and "petitioner," and "defendant" includes "cross-defendant" and "respondent."

(i) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

> (1) Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by email or facsimile, a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees.
>
> (2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media.

Cal. Civ. Proc. Code § 1987.1

(a) If a subpoena requires the attendance of a witness or the production of books, documents, electronically stored information, or other things before a court, or at the trial of an issue therein, or at the taking of a deposition, the court, upon motion reasonably made by any person described in subdivision (b), or upon the court's own motion after giving counsel notice

and an opportunity to be heard, may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders. In addition, the court may make any other order as may be appropriate to protect the person from unreasonable or oppressive demands, including unreasonable violations of the right of privacy of the person.

(b) The following persons may make a motion pursuant to subdivision (a):

(1) A party.

(2) A witness.

(3) A consumer described in Section 1985.3.

(4) An employee described in Section 1985.6.

(5) A person whose personally identifying information, as defined in subdivision (b) of Section 1798.79.8 of the Civil Code, is sought in connection with an underlying action involving that person's exercise of free speech rights.

(c) Nothing in this section shall require any person to move to quash, modify, or condition any subpoena duces tecum of personal records of any consumer served under paragraph (1) of subdivision (b) of Section 1985.3 or employment records of any employee served under paragraph (1) of subdivision (b) of Section 1985.6.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT FLORIDA
ORLANDO DIVISION

JOMY STERLING, Plaintiff, v. JANE DOE (AKA BEEISM), Defendant.	C.A. No. _____ **JURY DEMAND**

COMPLAINT

(Filed Apr. 23, 2021)

COMES NOW, Plaintiff, JOMY STERLING (hereinafter referred to as "**Ms. Sterling**" and/or "**Plaintiff**"), through counsel, and files this Complaint against JANE DOE aka BEEISM (hereinafter referred to as "**Beeism**" or "**Defendant**"), an individual, and in support thereof, states as follows:

NATURE OF THE ACTION

1. This action arises out of false and defamatory statements made by the Defendant about Ms. Sterling to others. Specifically, statements that Ms. Sterling is someone that engages in pedophilia and/or harms or otherwise abuses her husband (to the point of actually killing him). These statements were made by the Defendant in order to destroy Ms. Sterling's reputation.

THE PARTIES

2. Plaintiff, JOMY STERLING, is an individual residing in Osceola County, Florida and a citizen of the State of Florida.

3. Defendant, JANE DOE aka BEEISM, is an unidentified individual that resides in, and is a citizen of, the State of California.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(b). The parties are citizens of different states and the value of Ms. Sterling's claims against the Defendant exceeds $75,000.

5. This Court may exercise personal jurisdiction over the Defendant because she has: (a) committed intentional and tortious acts within the State of Florida and (b) otherwise availed herself of this forum.

6. Venue is proper within this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims herein occurred in this District.

GENERAL ALLEGATIONS

7. Roblox is a popular online social network and community.

8. Ms. Sterling goes by the persona Pixelated Candy and is well known in the Roblox community largely because of her popular Roblox game *Fashion*

Famous, the creation of other popular Roblox games and game assets, and significant community engagement since at least as early as 2014.

9. Ms. Sterling makes a living as a Roblox video game developer, publisher, and personality.

10. Beeism is a persona used by an unknown individual that is also well known in the Roblox community. She frequently communicates with others in the Roblox community via social media posts, such as Tweets, and through texts, chats, and direct messages through various social media platforms.

11. Starting in or around 2017, for no reason at all, Beeism began to attack Ms. Sterling's reputation and business with false and defamatory accusations. Beeism published these accusations to others in the Roblox community (including Ms. Sterling's fans, family, and business associates) via social media posts and directly via texts, chats, and direct messages.

12. Then again, in or around July, 2020, Beeism publicly accused Ms. Sterling of engaging in pedophilia-related conduct to others through texts and social media posts. For example, Beeism told approximately 80,000 of her Twitter followers during this time that Ms. Sterling, someone in her mid-thirties, invited a fifteen year old she met on Roblox to her house for an overnight Disney World trip, clearly communicating to the reader of the Tweet that Ms. Sterling is someone on Roblox involved with pedophilia or that otherwise stalks minors on the platform. *See* a copy of this Tweet, attached hereto as **Exhibit A** (the "**Pedophile**

Tweet"); *see also* Declaration of Stefan Baronio, attached hereto as **Exhibit B**, at 6.

13. Beeism's accusations that Ms. Sterling engages in unlawful conduct with minors are false. Ms. Sterling is not a pedophile nor does she engage in unlawful conduct with minors.

14. Upon information and belief, Beeism knew the pedophile statement was false when she made it, or at the very least made it with reckless disregard for the statement's truth. Specifically:

15. Prior to the making the statement, Beeism was told that Ms. Sterling does not invite random 15 year olds from Roblox to her house and that Beeism's belief that Ms. Sterling was engaging in inappropriate conduct with minors was predicated on incomplete and/or inaccurate information. *See* **Ex. B**, at ¶¶ 7-8. However, Beeism did not care. *Id.* at ¶ 8.

16. Beeism also told Mr. Baronio before posting the Pedophile Tweet that all she needed to say on Twitter was something "shady" about Ms. Sterling like "if you're a grown ass women [sic] please quit inviting 15 year old boys you meet from roblox to your house for the summer to go to disneyworld," and it would be all over and "it would be that simple." She repeatedly told Mr. Baronio that she could "ruin [Ms. Sterling] with one tweet." *Id.* at ¶ 9.

17. Mr. Baronio told Beeism before she posted the Pedophile Tweet that Ms. Sterling did not hire people under the age of 18. *See id.* at ¶ 10.

18. Upon information and belief, Beeism has since deleted many of the public statements she made relating to the Pedophile Tweet because she knew or had reason to know that such statements were wrong.

19. In or around July 2020, Beeism also told approximately 80,000 of her Twitter followers that the police were sent to Ms. Sterling's home to check on her husband because, according to Beeism, no one had seen or heard from him since Ms. Sterling started to "com[e] undone," clearly communicating to the reader of the Tweet that Ms. Sterling is someone that harms or otherwise abuses her husband (possibly to the point of killing him). *See* copy of this Tweet, attached hereto as **Exhibit C** (the "**Wellness Tweet**"); *see also* Declaration of Taylor Sterling, attached hereto as **Exhibit D**, at ¶ 4; Declaration of Max Gartung, attached hereto as **Exhibit E**, at ¶ 5.

20. Upon information and belief, Beeism was the one who made the call to the police, which resulted in the police visiting Ms. Sterling's home, and who falsely told the police that Ms. Sterling's husband's friends and co-workers had not heard from him in two months. *See* **Ex. C**. As a result of these false statements, the police showed up to Ms. Sterling's home unannounced on the 4th of July to interrogate Ms. Sterling's husband about his wellbeing, which was not only traumatic to him, but to his entire family, including Ms. Sterling, his 7 year old child, and elderly grandmother. *See* **Ex. D,** at ¶ 8.

21. Beeism's accusation that Ms. Sterling is someone that harms or abuses her husband is false. Ms. Sterling has not harmed or abused her husband in any way. Indeed, Ms. Sterling's husband was perfectly fine when the police were called to her house to check on him. *See* **Ex. D** at IT 9-10.

22. Upon information and belief, Beeism knew the Wellness Tweet was false when she made it, or at the very least made it with reckless disregard for the statement's truth. Specifically:

23. Beeism did not ask any of Taylor Sterling's friends or co-workers about his wellbeing prior to publishing the Wellness Tweet. *See* **Ex. D** at ¶ 7; *see also* **Ex. E** at ¶ 9. She, therefore, did not have any information to make the assertion that no one had seen or heard from" him in good faith.

24. Further, Mr. Gartung was in contact with Beeism via Twitter both before and after the Wellness Tweet and at no point did Mr. Gartung ever give Beeism the impression that Taylor was in any danger. In fact, she was aware that Taylor and Mr. Gartung worked together, but she never asked about Taylor's wellbeing knowing she could have. *See* **Ex. E** at ¶ 8.

25. Upon information and belief, Beeism has since deleted many of the public statements she made relating to the Wellness Tweet because she knew or had reason to know that such statements were wrong.

26. Beeism's false and defamatory statements, as alleged herein, targeted Ms. Sterling, an individual

residing in the State of Florida – a fact that Beeism knew.

27. Beeism's false and defamatory statements, as alleged herein, were accessible in the State of Florida.

28. Upon information and belief, individuals located in the State of Florida accessed and read Beeism's false and defamatory accusations about Ms. Sterling.

29. Beeism's false and defamatory statements have damaged Ms. Sterling's reputation in the Roblox community, her business, and her relationships, particularly with her family and others in the Roblox community. The statements have also caused Ms. Sterling mental and emotional pain and suffering.

COUNT I – DEFAMATION

30. Ms. Sterling repeats and re-alleges each of the allegations in the paragraphs above as though they were fully set forth herein.

31. Beeism published false statements about Ms. Sterling, such as the statements referenced and alleged herein, to others by way of social media posts and direct messages (such as texts and chats).

32. Beeism made the statements identified and referenced herein knowing they were false, with reckless disregard as to their probably falsity, or at the very least with negligence.

33. The statements made by Beeism, as alleged herein, have subjected Ms. Sterling to hatred, distrust, ridicule, contempt, and disgrace within the Rob-lox community and have injured her in her trade and profession.

34. Ms. Sterling has been injured as a direct and proximate cause of Beesim's statements.

WHEREFORE, Ms. Sterling respectfully requests that this Court make a finding that Beeism's statements regarding Ms. Sterling are defamatory and render a judgment against Beeism: (a) ordering her to retract all false and defamatory statements made about Ms. Sterling and to issue a public apology to Ms. Sterling for her false and defamatory statements; (b) prohibiting Beeism from making further false and defamatory statements about Ms. Sterling; (c) awarding Ms. Sterling a damages award (compensatory and/or punitive), including but not limited to an amount in excess of $200,000, prejudgment interest, attorney's fees, and costs; and (d) providing any such other further relief as this Court deems just and proper under the circumstances.

COUNT II – TRADE LIBEL

35. Ms. Sterling repeats and re-alleges each of the allegations in the paragraphs above as though they were fully set forth herein.

36. Beeism published false statements about Ms. Sterling, such as the statements referenced and

alleged herein, to others by way of social media posts and direct messages (such as texts and chats).

37. When Beesim made the statements alleged herein she knew or had reason to know that the statements would likely induce others not to deal with Ms. Sterling, her Roblox games, and/or her Roblox business.

38. Beeism's statements indicating that Ms. Sterling engages in unlawfully conduct with minors and someone that abuses her husband have materially and substantially induced others not to deal with Ms. Sterling, her Roblox games, and/or her Roblox business.

39. Beeism's statements have directly and proximately caused and will continue to cause Ms. Sterling to lose profits, in addition to a loss of business relationships and a fan base that are required to publish and maintain a successful game on Roblox.

WHEREFORE, Ms. Sterling respectfully requests that this Court make a finding that Beeism's statements regarding Ms. Sterling constitute trade libel and render a judgment against Beeism: (a) ordering her to retract all false and defamatory statements made about Ms. Sterling and to issue a public apology to Ms. Sterling for her false and defamatory statements; (b) prohibiting Beeism from making further false and defamatory statements about Ms. Sterling or her business; (c) awarding Ms. Sterling a damages award (compensatory and/or punitive), including but not limited to an amount in excess of $200,000,

prejudgment interest, attorney's fees, and costs; and (d) providing any such other further relief as this Court deems just and proper under the circumstances.

JURY DEMAND

Plaintiff demands a Trial by Jury on all issues so triable.

DATED: April 23, 2021

Respectfully submitted,

Jomy Sterling,

By Her Attorney,
/s/ Shaun P. Keough
Shaun P. Keough (Trial Counsel)
Florida Bar # 1000985
PARKER KEOUGH LLP
3505 Lake Lynda Dr. Suite 200
Orlando, FL 32817
Tel.: (321) 262-1146
Fax.: (617) 963-8315
E-mail: skeough@parkerkeough.com


7:34
Tweet
Beeism
@BeeismRblx
& yea, when some1 in her mid 30's invites a 15 yo she met on roblox to her house for overnite visits OF COURSE I'M GONNA SAY SOMETHIN. never called her a pedo but I 100% stand by the fact someone in their 30's should not invite minors to their house for overnite disneyworld trips
7:15 PM · 7/4/20 · Twitter Web App
11 Retweets 259 Likes
Nelson "Frosty" @iiKingFrosty44 · 12m
Replying to @BeeismRblx
Alright hold up, we've been family friends for years now they know and have MET my parents they were completely fine with it, PLUS she has siblings my age that I was hanging out with as well.
2
Tweet your reply

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOMY STERLING, Plaintiff, v. JANE DOE (AKA BEEISM), Defendant.	C.A. No. _____ **JURY DEMAND**

DECLARATION OF STEFAN BARONIO

I, Stefan Baronio, hereby declare under penalty of perjury, 28 U.S.C. § 1746, that the following is true and correct to the best of my information and belief:

1. My name is Stefan Baronio. I am over the age of 18. I am a Roblox developer. I had an online relationship with the person who goes by Beeism on the Roblox platform since 2016 and communicated with her regularly via texts, Tweets, direct messages, and Discord chats.

2. I am making the instant declaration based on personal knowledge, except as to matters stated upon information and belief, and as to those matters I believe them to be true. If called upon to testify, I could and would competently testify to the same. This declaration is being provided voluntarily and with a sound mind.

3. I was not given anything in exchange for my testimony herein, nor do I have a financial interest in the outcome of the above-referenced case (the "Case.").

4. I am not an employee or independent contractor of or for any of the parties in this Case.

5. I do not have a direct or indirect contractual or fiduciary relationship with any of the parties in this Case.

6. On or about July 4, 2020, I read the Tweet Beeism posted on July 4, 2020, attached hereto as Exhibit A, in which she stated "& yeah, when some1 in her mid 30's invites a 15 yo she met on roblox to her house for overnite visits OF COURSE I'M GONNA SAY SOMETHIN. never called her a pedo but 1100% stand by the fact someone in their 30's should not invite minors to their house for overnite Disneyworld trips" (the "Tweet").

7. The fifteen year old Beeism is referring to in the Tweet is a person that goes by the online persona Nelson "Frosty" on Twitter.

8. Before Beeism posted the Tweet, I told Beeism that Ms. Sterling does not invite random 15 year olds from Roblox to her house, that she did not under-stand Nelson's full situation, and that if she did, she would understand the Nel-son situation. Beeism responded that she did not need to understand Nelson's situation.

9. Beeism also told me before posting the Tweet that all she needed to say on Twitter was something "shady" about Ms. Sterling like "if you're a grown ass women [sic] please quit inviting 15 year old boys you meet from roblox to your house for the summer to go to disneyworld," and it would be all over and "it would be

that simple." She repeatedly told me that she could 'ruin [Ms. Sterling] with one tweet."

10. I told Beeism before she posted the Tweet that I was over the age of 18 during the time I worked with Ms. Sterling.

11. The Tweet was published to approximately 80,000 of Beeism's Twitter followers and then circulated to many within the professional Roblox community including myself.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 23rd day of March, 2021.

/s/ Stefan Baronio
Stefan Baronio

Exhibit A


7:34
Tweet
Beeism
@BeeismRblx
& yea, when some1 in her mid 30's invites a 15 yo she met on roblox to her house for overnite visits OF COURSE I'M GONNA SAY SOMETHIN. never called her a pedo but I 100% stand by the fact someone in their 30's should not invite minors to their house for overnite disneyworld trips
7:15 PM · 7/4/20 · Twitter Web App
11 Retweets 259 Likes
Nelson "Frosty" @iiKingFrosty44 · 12m
Replying to @BeeismRblx
Alright hold up, we've been family friends for years now they know and have MET my parents they were completely fine with it, PLUS she has siblings my age that I was hanging out with as well.
2
Tweet your reply


8:31
Beeism
27.9K Tweets
Tweets
Tweets & replies
Media
Likes
15
143
Beeism @BeeismRblx · 9m
Replying to @dollastic and @ExtremelyMondor
you need to quit coming for everyone on this side cuz obviously you only know what tay and pix tell you. you and and I have never conversed so ik for damn sure you don't know my half. now quit comin for me & my friends who did nothing wrong.
1
2
Beeism @BeeismRblx · 10m
Replying to @dollastic and @ExtremelyMondor
there was a wellness check for tay cuz no one had seen or heard from him since his meltdown, and we're allll witnesses to pix's behavior the last few weeks. the chick is coming undone. tay didn't get swatted, a cop knocked on his door to make sure he was alive
4
Who to follow
Roblox and 2 others follow
Barbie
Your Tweet was sent
8


8:52
Tweet
Taylor Sterling @Taymastar · 20m
She clearly knew this was going to happen today, she admits it here. They lied to police about my co-workers and friends not hearing from me for two months so they'd come to my house and they could confirm where my family lives. BEEISM NEEDS TO BE STOPPED!
Beeism @BeeismRblx · 31m
Replying to @dollastic and @ExtremelyMondor
there was a wellness check for tay cuz no one had seen or heard from him since his meltdown, and we're allllll witnesses to pix's behavior the last few weeks. the chick is coming undone. t...
41
13
106
Beeism
@BeeismRblx
like fr I feel like y'all start with me to stay relevant and I'm tired of having to shut you guys down every time you talk about me. kindly leave me alone and live that happy life you wish we
Tweet your reply
6

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOMY STERLING, Plaintiff, v. JANE DOE (AKA BEEISM), Defendant.	C.A. No. _____ **JURY DEMAND**

DECLARATION OF TAYLOR STERLING

I, Taylor Sterling, hereby declare under penalty of perjury, 28 U.S.C. § 1746, that the following is true and correct to the best of my information and belief:

1. My name is Taylor Sterling. I am over the age of 18. I am Jomy Sterling's husband. People occasionally refer to me as "tay" because my Twitter handle is @Taymastar. I reside in Osceola County, Florida.

2. I am making the instant declaration based on personal knowledge, except as to matters stated upon information and belief, and as to those matters I believe them to be true. if called upon to testify, I could and would competently testify to the same. This declaration is being provided voluntarily and with a sound mind.

3. On or about July 4, 2020, I read the Tweet Beeism posted on July 4, 2020, attached hereto as Exhibit A, in which she stated "& yeah, when some1 in her mid 30's invites a 15 yo she met on roblox to her house for

overnite visits OF COURSE I'M GONNA SAY SOMETHIN. never called her a pedo but I 100% stand by the fact someone in their 30's should not invite minors to their house for overnite Disneyworld trips."

4. On or about July 4, 2020, I read the Tweet Beeism posted on July 4, 2020, attached hereto as Exhibit B, in which she stated "there was a wellness check for tay cuz no one had seen or heard from him since his meltdown, and we're allll witnesses to pix's behavior the last few weeks. the chick is coming undone. tay didn't get swatted, a cop knocked on his door to make sure he was alive."

5. Beeism's reference to "tay" is me, Taylor Sterling, which most if not all members of the Roblox community know.

6. Beeism's reference to "pix" is my wife Ms. Sterling as she goes by Pixelated Candy on the Roblox platform, which most if not all members of the Roblox community know.

7. Beeism did not ask any of my friends or coworkers about my wellbeing prior to her publishing the Tweet attached hereto as Exhibit B. Therefore, her assertion that "no one had seen or heard from" me was false and made by her knowing it was false.

8. Beeism's and her friend Monika's false statements to the police resulted in the police coming to my house unannounced on the 4th of July to interrogate me and other members of my family about my wellbeing, which was not only traumatic to me, but to my

entire family, including my 7 year old child and elderly grandmother.

9. I was perfectly fine and in good health when the police showed up to my home on the 4th of July.

10. My wife, Jomy Sterling, does not abuse me in any way.

11. The aforementioned Tweets were published to approximately 80,000 of Beeism's Twitter followers, including me.

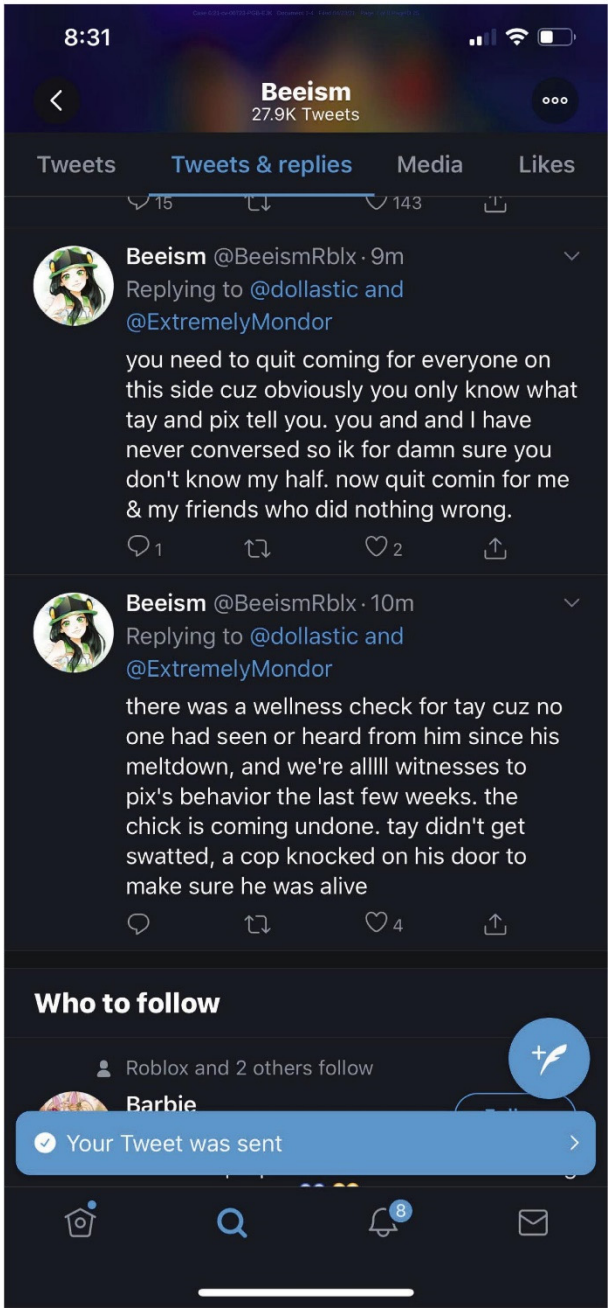
I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of April, 2021.

/s/ Taylor Sterling
Taylor Sterling

Exhibit A


7:34
Tweet
Beeism
@BeeismRblx
& yea, when some1 in her mid 30's invites a 15 yo she met on roblox to her house for overnite visits OF COURSE I'M GONNA SAY SOMETHIN. never called her a pedo but I 100% stand by the fact someone in their 30's should not invite minors to their house for overnite disneyworld trips
7:15 PM · 7/4/20 · Twitter Web App
11 Retweets 259 Likes
Nelson "Frosty" @iiKingFrosty44 · 12m
Replying to @BeeismRblx
Alright hold up, we've been family friends for years now they know and have MET my parents they were completely fine with it, PLUS she has siblings my age that I was hanging out with as well.
2
Tweet your reply

Exhibit B


8:31
Beeism
27.9K Tweets
Tweets
Tweets & replies
Media
Likes
15
143
Beeism @BeeismRblx · 9m
Replying to @dollastic and @ExtremelyMondor
you need to quit coming for everyone on this side cuz obviously you only know what tay and pix tell you. you and and I have never conversed so ik for damn sure you don't know my half. now quit comin for me & my friends who did nothing wrong.
1
2
Beeism @BeeismRblx · 10m
Replying to @dollastic and @ExtremelyMondor
there was a wellness check for tay cuz no one had seen or heard from him since his meltdown, and we're allllll witnesses to pix's behavior the last few weeks. the chick is coming undone. tay didn't get swatted, a cop knocked on his door to make sure he was alive
4
Who to follow
Roblox and 2 others follow
Barbie
Your Tweet was sent
8


8:52
Tweet
Taylor Sterling @Taymastar · 20m
She clearly knew this was going to happen today, she admits it here. They lied to police about my co-workers and friends not hearing from me for two months so they'd come to my house and they could confirm where my family lives. BEEISM NEEDS TO BE STOPPED!
Beeism @BeeismRblx · 31m
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41
13
106
Beeism
@BeeismRblx
like fr I feel like y'all start with me to stay relevant and I'm tired of having to shut you guys down every time you talk about me. kindly leave me alone and live that happy life you wish we
Tweet your reply
6

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOMY STERLING, Plaintiff, v. JANE DOE (AKA BEEISM), Defendant.	C.A. No. _____ **JURY DEMAND**

DECLARATION OF MAX GARTUNG

I, Max Gartung, hereby declare under penalty of perjury, 28 U.S.C. § 1746, that the following is true and correct to the best of my information and belief;

1. My name is Max Gartung. I am over the age of 18. I am a Roblox developer. I have had an online relationship with the person who goes by Beeism on the Roblox platform since 2016 or so and communicate with her regularly via Tweets and direct messages.

2. I am making the instant declaration based on personal knowledge, except as to matters stated upon information and belief, and as to those matters I believe them to be true. If called upon to testify, I could and would competently testify to the same. This declaration is being provided voluntarily and with a sound mind.

3. I was not given anything in exchange for my testimony herein, nor do I have a financial interest in the outcome of the above-referenced case.

4. I joined the development team for Star Status as a scripter in early January, 2020.

5. On or about July 4, 2020, I read the Tweet Beeism posted on July 4, 2020, attached hereto as Exhibit A, in which she stated "there was a wellness check for tay cuz no one had seen or heard from him since his meltdown, and we're alllll witnesses to pix's behavior the last few weeks. the chick is coming undone. tay didn't get swatted, a cop knocked on his door to make sure he was alive."

6. Beeism's reference to "tay" is Taylor Sterling, Ms. Sterling's husband, which most if not all members of the Roblox community know.

7. Beeism's reference to "pix" is Ms. Sterling as she goes by Pixelated Candy on the Roblox platform, which most if not all members of the Roblox community know.

8. Before and after Beeism's aforementioned Tweet I had been in contact with Beeism via Twitter and at no point was she ever given the impression that Taylor was in any danger. She was aware of the fact that Taylor and myself both worked together and did not ask about Taylor's wellbeing at any point knowing she could have.

9. No one on our development team was ever contacted by Beeism to ask about Taylor's wellbeing.

10. The aforementioned Tweet was published to approximately 80,000 of Beeism's Twitter followers, including me.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 23rd day of March, 2021.

/s/ Max Gartung

Max Gartung

Exhibit A


8:31
Beeism
27.9K Tweets
Tweets
Tweets & replies
Media
Likes
15
143
Beeism @BeeismRblx · 9m
Replying to @dollastic and @ExtremelyMondor
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8:52
Tweet
Taylor Sterling @Taymastar · 20m
She clearly knew this was going to happen today, she admits it here. They lied to police about my co-workers and friends not hearing from me for two months so they'd come to my house and they could confirm where my family lives. BEEISM NEEDS TO BE STOPPED!
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Beeism
@BeeismRblx
like fr I feel like y'all start with me to stay relevant and I'm tired of having to shut you guys down every time you talk about me. kindly leave me alone and live that happy life you wish we
Tweet your reply
6

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. **(a) PLAINTIFFS**
Jomy Sterling

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Parker Keough LLP, 3505 Lake Lynda Dr., Suite 200, Orlando, FL 321 262 1146

DEFENDANTS
Jane Doe aka Beeism
A county in California

County of Residence of First Listed Plaintiff

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

☐ 1 U.S. Government Plaintiff

☐ 2 U.S. Government Defendant

☐ 3 Federal Question *(U.S. Government Not a Party)*

☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)	**PTF**	**DEF**
Citizen of This State	☐ 1	☐ 1
Citizen of Another State	☐ 2	☐ 2
Citizen or Subject of a Foreign Country	☐ 3	☐ 3
Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT

Click here for: Nature of Suit Code Descriptions.

CONTRACT		
☐	110	Insurance
☐	120	Marine
☐	130	Miller Act
☐	140	Negotiable Instrument
☐	150	Recovery of Overpayment & Enforcement of Judgment

☐	151	Medicare Act
☐	152	Recovery of Defaulted Student Loans (Excludes Veterans)
☐	153	Recovery of Overpayment of Veteran's Benefits
☐	160	Stockholders' Suits
☐	190	Other Contract
☐	195	Contract Product Liability
☐	196	Franchise
REAL PROPERTY		
☐	210	Land Condemnation
☐	1220	Foreclosure
☐	230	Rent Lease & Ejectment
☐	240	Torts to Land
☐	245	Tort Product Liability
TORTS		
PERSONAL INJURY		
☐	310	Airplane
☐	315	Airplane Product Liability
☐	320	Assault, Libel & Slander
☐	330	Federal Employers' Liability
☐	340	Marine
☐	345	Marine Product Liability
☐	350	Motor Vehicle
☐	355	Motor Vehicle Product Liability
☐	360	Other Personal
☐	365	Personal Injury – Product Liability

☐	367	Health Care/ Pharmaceutical Personal Injury Product Liability
☐	368	Asbestos Personal Injury Product Liability
PERSONAL PROPERTY		
☐	370	Other Fraud
☐	371	Truth in Lending
☐	380	Other Personal Property Damage
☐	385	Property Damage Product Liability
CIVIL RIGHTS		
☐	440	Other Civil Rights
☐	441	Voting
☐	442	Employment
☐	443	Housing/ Accommodations
☐	445	Amer. w/Disabilities – Employment
☐	446	Amer. w/Disabilities – Other
☐	448	Education
PRISONER PETITIONS		
Habeas Corpus:		
☐	463	Alien Detainee
☐	510	Motions to Vacate Sentence
☐	530	General
☐	535	Death Penalty
Other:		
☐	540	Mandamus & Other
☐	550	Civil Rights
☐	555	Prison Condition
☐	560	Civil Detainee – Conditions of Confinement

FORFEITURE/PENALTY		
☐	625	Drug Related Seizure of Property 21 USC 881
☐	690	Other
LABOR		
☐	710	Fair Labor Standards Act
☐	720	Labor/Management Relations
☐	740	Railway Labor Act
☐	751	Family and Medical Leave Act
☐	790	Other Labor Litigation
☐	791	Employee Retirement Income Security Act
IMMIGRATION		
☐	462	Naturalization Application
☐	465	Other Immigration Actions
BANKRUPTCY		
☐	422	Appeal 28 USC 158
☐	423	Withdrawal 28 USC 157
INTELLECTUAL PROPERTY RIGHTS		
☐	820	Copyrights
☐	830	Patent
☐	835	Patent – Abbreviated New Drug Application
☐	840	Trademark
☐	880	Defend Trade Secrets
SOCIAL SECURITY		
☐	861	HIA (1395ff)
☐	862	Black Lung (923)

☐	863	DIWC/DIWW (405(g))
☐	864	SSID Title XVI
☐	865	RSI (405(g))
		FEDERAL TAX SUITS
☐	870	Taxes (U.S. Plaintiff or Defendant)
☐	871	IRS—Third Party 26 USC 7609
		OTHER STATUTES
☐	375	False Claims Act
☐	376	Qui Tam (31 USC 3729(a))
☐	400	State Reapportionment
☐	410	Antitrust
☐	430	Banks and Banking
☐	450	Commerce
☐	460	Deportation
☐	470	Racketeer Influenced and Corrupt Organizations
☐	480	Consumer Credit (15 USC 1681 or 1692)
☐	485	Telephone Consumer Protection Act
☐	490	Cable/Sat TV
☐	850	Securities/Commodities/ Exchange
☐	890	Other Statutory Actions
☐	891	Agricultural Acts
☐	893	Environmental Matters
☐	895	Freedom of Information Act
☐	896	Arbitration
☐	899	Administrative Procedure Act/Review or Appeal of Agency Decision
☐	950	Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☐ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Multidistrict Litigation – Transfer

☐ 6 Multidistrict Litigation – Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:

_____

Brief description of cause:

_____

VII. REQUEST IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*

JUDGE _____

DOCKET NUMBER _____

DATE SIGNATURE OF ATTORNEY OF RECORD

_____ _____

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

JS 44 Reverse (Rev. 04/21)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. **(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed

plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district

court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.

Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.

PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOMY STERLING, Plaintiff, v. JANE DOE, aka Beeism), Defendant.	C.A. No. 6:21-cv-00723-PGB-EJK

DEFENDANT JANE DOE'S MOTION TO QUASH THIRD PARTY SUBPOENAS AND INCORPORATED MEMORANDUM OF LAW

(Filed Jun. 18, 2021)

Defendant JANE DOE, aka Beeism ("Doe"), by and through the undersigned counsel and pursuant to Federal Rules of Civil Procedure 26 and 45(d), hereby moves this Court to quash the subpoenas issued by Plaintiff JOMY STERLING ("Sterling") to Roblox Corporation and Twitter Inc. (collectively, the "Subpoenas"). Defendant's appearance is limited solely to quashing the Subpoenas, and by making this appearance Defendant does not consent or submit to the jurisdiction of this Court.

INTRODUCTION

Sterling and Doe are content creators on the online platform Roblox. This lawsuit is the second litigation filed by Sterling against Doe in a years-long pattern of online harassment of Doe by Sterling.

Previously limited to online quibbling, this is the *second* time Sterling has come to court with specious claims brought purely for the purpose of obtaining Doe's real identity—with the likely end-goal of subjecting Doe to additional and unjustified harassment.

Sterling's lawsuit is legally insufficient to justify revealing Doe's identity and subjecting her to additional harassment by Sterling—in addition to being a prohibited strategic lawsuit against public participation ("SLAPP") under both California and Florida law, Sterling lacks a viable claim to override Doe's constitutional right to speak anonymously. Thus, the Subpoenas must be quashed.

BACKGROUND

Doe and Sterling are both content creators on the online platform Roblox. Sterling goes by the name "Pixelated Candy" on the Roblox platform. Doe goes by the name "Beeism" on the Roblox platform. In connection with their Roblox personas, both Doe and Sterling maintain social media accounts on other websites, including but not limited to Twitter. Sterling's primary source of income comes from content sales through Roblox. D.E. 1 at ¶ 9.

Sterling claims that in or around July 2020, Doe accused Sterling of having a minor who was unrelated to Sterling stay at Sterling's house overnight. D.E. 1 at ¶ 12. Sterling contends that this somehow amounts to a public accusation of pedophilia and seeks relief for defamation and trade libel. *Id.*

Sterling also claims that in or around July 2020, Doe posted on Twitter that police officers were sent to Sterling's home to perform a wellness check on Sterling's husband. D.E. 1 at ¶ 19. While Sterling claims Doe called the police prompting the wellness check, *id.* at ¶ 20, the police informed Sterling that Doe was not the individual who made the call. *See* TwitLonger Post by Taylor Sterling, dated July 4, 2020, a true and correct copy of which is attached hereto as Exhibit E (the "TwitLonger Post") ("it was very clear that Monika @ExtremelyMondor had given [the police] a false statement"). Sterling claims that Doe's tweet constitutes an accusation that Sterling harms or abuses her husband. D.E. 1 at ¶ 21.

Sterling alleges that these statements, including those which were indisputably not made by Doe, have damaged Sterling's relationships with her family and her reputation within the Roblox community and her trade. Sterling does not currently know Doe's identity and moved for leave to serve subpoenas on Roblox and Twitter to obtain Doe's legal identity. D.E. 9. This Court granted leave to do so in an Order dated June lo, 2021. D.E. 10. To Doe's knowledge, the Subpoenas have been served on Roblox, and potentially on Twitter. Doe brings this Motion to protect her identity and constitutional right to speak anonymously.

INCORPORATED MEMORANDUM OF LAW

A court, on timely motion, must quash or modify a subpoena that requires disclosure of privileged or

other protected matter if no exception or waiver applies. *See* Fed. R. Civ. P. 45(d)(3)(A)(iii). In recognition of important First Amendment rights inherent in pseudonymous and anonymous speech and the chilling effect that subpoenas would have on lawful commentary, efforts to enlist the power of the courts to discover the identities of anonymous speakers are subject to a qualified privilege. *GOR Clearing, Ltd. Liab. Co. v. Investorshub.com, Inc.*, No. 4:16mc13-RH/CAS, 2016 U.S. Dist. LEXIS 115810, at *5-7 (N.D. Fla. May 11, 2016) (explaining that there is a First Amendment right to anonymous speech and that this right applies to Internet speech); *USA Technologies, Inc. v. Doe*, 713 F. Supp. 2d 901, 906 (N.D. Cal. 2010) ("In order to protect anonymous speech, efforts to use the power of the courts to discover the identities of anonymous speakers are subject to a qualified privilege."); *see also Rich v. City of Jacksonville*, No. 3:09-cv-454-J-34MCR, 2010 U.S. Dist. LEXIS 143973, at *51, 2010 WL 4403095 (M.D. Fla. Mar. 31, 2010) (denying defendant's motion to dismiss based on qualified immunity because "the law regarding investigatory subpoenas and the constitutional right to speak anonymously was clearly established and sufficiently specific as to give 'fair warning' that the conduct alleged was constitutionally prohibited.") (citing *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995); *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 558 (1963)).

Courts have found that judicially compelled identification of an anonymous speaker requires the moving party to (1) notify the anonymous speaker that he

or she is the subject of a subpoena; (2) identify the specific speech giving rise to the claim; and (3) establish a prima facie cause of action. *See COR Clearing, Ltd. Liab. Co.*, 2016 U.S. Dist. LEXIS 115810, at *7 (citing *Dendrite Int'l v. Doe No. 3*, 775 A.2d 756, 760-61 (N.J. App. Div. 2001)). Courts then balance the anonymous speaker's First Amendment right of anonymous free speech against the strength of the plaintiff's prima facie case and the necessity for the disclosure of the anonymous speaker's identity to allow the plaintiff to properly proceed. *See id.*

In the context of unmasking anonymous speakers, courts must ensure that there is a viable claim that justifies overriding an asserted right to anonymity. *Id.* at *7-10 (citing *Solers, Inc. v. Doe*, 977 A.2d 941, 951 (D.C. 2009)). Prior to compelling identification of an anonymous speaker, courts must require the plaintiff to demonstrate that "there is a real evidentiary basis for believing that the defendant has engaged in wrongful conduct that has caused real harm to the interests of the plaintiff." *See Highfields Capital Mgmt. L.P. v. Doe*, 385 F. Supp. 2d 969, 970-71 (N.D. Cal. 2005).

Sterling seeks by the Subpoenas to have Roblox and Twitter identify Doe's full legal name, physical address, telephone number, and email address. Doe has continually remained anonymous using the moniker "Beeism" in her Roblox and other online activity. Therefore, Sterling must justify an intrusion into Doe's constitutional right to anonymity by way of the Subpoenas.

Not only has Sterling failed to state a valid cause of action, but the instant suit also constitutes a prohibited SLAPP subject to expeditious dismissal under California and Florida law.[1] Because the underlying lawsuit is deficient, there is no viable claim that justifies overriding Doe's right to anonymity. For these reasons, the Subpoenas must be quashed.

A. The Subpoenas Must Be Quashed Because Plaintiff Fails to State a Cause of Action.

To state a claim for defamation, a plaintiff must show "(1) publication; (2) falsity; (3) the statement was made with knowledge or reckless disregard as to the falsity on a matter concerning a public official, or at

[1] Sterling previously filed an action in Florida state court where she obtained a subpoena to obtain Beeism's identity, which she subsequently domesticated in California and served on Roblox. *See* Deposition Subpoena for Personal Appearance and Production of Documents, Electronically Stored Information, and Things in Action Pending Outside California, Case No. 2020-CA-002278 OC, a true and correct copy of which is attached hereto as Exhibit A. When presented with an anti-SLAPP motion under California law, Sterling dismissed her lawsuit without prejudice to avoid an award of fees and costs against Sterling. *See* Voluntary Dismissal Without Prejudice, Case No. 2020-CA-002278 OC, a true and correct copy of which is attached hereto as Exhibit B. Beeism is a California resident. California's anti-SLAPP law applies. *See Tobinick v. Novella*, 108 F. Supp. 3d 1299, 1304 (S.D. Fla. 2(315), *affirmed Tobinick v. Novella*, 848 F.3d 935 (11th Cir. 2017) (applying California anti-SLAPP statute in a defamation case concerning statements made on the internet where one party was a resident of California). Even assuming *arguendo* Florida's anti-SLAPP law applies, the outcome would be the same.

least negligently on a matter concerning a private person; (4) actual damages; and (5) the statement must be defamatory." *Turner v. Wells*, 879 F.3d 1254, 1262 (11th Cir. 2018) (citing *Jews For Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008)).

Sterling fails to state a claim for defamation because the statements are not defamatory and could not be made with the requisite level of malice.

a. The Asserted Statements are Not Defamatory.

"True statements, statements that are not readily capable of being proven false, and statements of pure opinion" are not actionable as defamation. *Turner*, 879 F.3d, at 1262; *Blake v. Ann-Marie Giustibelli, P.A.*, 182 So. 3d 881, 885 n.1 (Fla. Dist. Ct. App. 2016) ("Statements of pure opinion are not actionable.").

"Under Florida law, a defendant publishes a 'pure opinion' when the defendant makes a comment or opinion based on facts which are set forth in the publication or which are otherwise known or available to the reader or listener as a member of the public." *Turner*, 879 F.3d, at 1262 (citing *From v. Tallahassee Democrat*, 400 So. 2d 52, 57 (Fla. Dist. Ct. App. 1981).

Statements of opinion are not actionable unless the opinion is based on facts not known to the audience of the statement. *Turner*, 879 F.3d, at 1269 n.3; *Zimmerman v. Buttigieg*, No. 8:20-CV-107-CEH-CPT, 2021 U.S. Dist. LEXIS 33278, at *24, 2021 WL 694797 (M.D.

Fla. Feb. 23, 2021) (citing *Turner*, 879 F.3d, at 1269 n.3); *Scott v. Busch*, 907 So. 2d 662, 668 (Fla. Dist. Ct. App. 2005); *From*, 400 So. 2d, at 57.

"Whether the statement is one of fact or opinion and whether a statement of fact is susceptible to defamatory interpretation are questions of law for the court. When making this assessment, a court should construe statements in their totality, *with attention given to any cautionary terms used by the publisher in qualifying the statement*." *Turner*, 879 F.3d, at 1262-63 (citing *Keller v. Miami Herald Pub. Co.*, 778 F.2d 711 (11th Cir. 1985)) (emphasis added).

i. The "Pedophile Tweet"

The first allegedly defamatory statement consists of a tweet made by Doe on July 4, 2020, which Plaintiff gratuitously labels as the "Pedophile Tweet." The tweet is simply not a defamatory statement. The tweet at issue states:

> & yea, when some]. in her mid 30's invites a 15 yo she met on roblox to her house for overnite visits OF COURSE I'M GONNA SAY SOMETHIN. never called her a pedo but I l00% stand by the fact someone in their 30's should not invite minors to their house for overnite disneyworld trips

The so-called "Pedophile Tweet" states in part that "some1 in her mid 305 [Sterling] invites a 15 [year old] she met on roblox to her house for overnite visits." It is undisputed that the minor in question visited Sterling.

The minor documented visits to Sterling's home and a trip to Disney World with Sterling on social media. *See* Tweets by Nelson Wancy Regarding Visits to Sterling, true and correct copies of which are attached hereto as Exhibit C.

Further, the Declaration of Stefan Baronio in support of Plaintiff confirms that the minor did indeed visit Sterling. D.E. 1, Document 1-2, Declaration of Stefan Baronio, at ¶¶ 7-8. Thus, the portion of this tweet referring to the factual occurrence of the visits is a true statement and cannot be defamatory as a matter of law. *Turner*, 879 F.3d, at 1262.

The remainder of this tweet is simply Doe's opinion that older individuals should not invite unrelated minors they meet on Roblox to their homes for overnight visits ("but I 100% stand by the fact that someone in their 30's should not invite minors to their house for overnite disneyworld trips")

Doe is entitled to her beliefs regarding meeting strangers from the internet in the physical world and to voice her opinion on a public social media platform ("OF COURSE I'M GONNA SAY SOMETHIN."). The minor stayed at Sterling's house, and these facts were made public knowledge via social media. Therefore, the remaining portion of this tweet constitutes Doe's pure opinion and cannot be defamatory as a matter of law. *See Turner*, 879 F.3d, at 1262.

Sterling focuses on the use of the word "invite," asserting that if Sterling invited the minor for a visit this "clearly communicat[es] to the reader of the Tweet that

Ms. Sterling is someone on Roblox involved with pedophilia or that otherwise preys on minors on the platform." D.E. 9, p. 4.

Sterling fails to explain what logic she applies to construe a mere invitation as clearly indicative of predatory behavior. As the homeowner, Sterling is logically the party inviting another individual to her home. The only conduct discussed in the tweet is an overnight visit and a trip to Disney World. Neither of these actions drive an inference that inappropriate conduct occurred. Thus, Sterling's preferred interpretation is entirely a product of her own inferences.

Additionally, Doe expressly states in the tweet that she "never called her [Sterling] a pedo[phile]." Sterling provides no reasoning why a reader would reach the conclusion that Doe accused Sterling of pedophilia when Doe explicitly says the opposite. In determining whether the "Pedophile Tweet" is defamatory, this Court must give weight to any cautionary terms used by the publisher in qualifying the statement." *Turner*, 879 F.3d, at 1263. Because the alleged defamatory interpretation is disclaimed by Doe, the "Pedophile Tweet" is not defamatory.

ii. The "Wellness Tweet"

The second allegedly defamatory statement consists of a tweet by Doe on July 4, 2020, at approximately 8:00 pm, which Plaintiff labels as the "Wellness Tweet," reproduced below:

> there was a wellness check for tay [Taylor Sterling, Jomy Sterling's husband] cuz no one had seen or heard from him since his meltdown, and we're allll witnesses to pix's [Sterling's] behavior the last few weeks. the chick is coining undone. tay didn't get swatted, a cop knocked on his door to make sure he was alive

Some context is required to understand the Wellness Tweet. On May 10, 2020, Taylor Sterling (@Taymastar) posted on Twitter regarding an incident where Sterling allegedly took all the money out of his bank account and kicked him out of the house. *See* Tweets by Taylor Sterling Concerning Domestic Incident, dated May 10, 2020, true and correct copies of which are attached hereto as Exhibit D. Thus, based on Taylor Sterling's tweets it was known to the relevant public during the summer of 2020 that some sort of domestic issue had occurred or was ongoing between Sterling and her husband.

On July 4, 2020, at approximately 5:45 pm, Taylor Sterling published a post on the TwitLonger platform detailing a police welfare check performed at the home shared by him and Sterling earlier that day. *See* TwitLonger Post, Exhibit E.

The Wellness Tweet merely restates facts previously placed into the public domain by Taylor Sterling. Taylor Sterling stated that a wellness check occurred. The Wellness Tweet states that the wellness check occurred. Taylor Sterling stated that the wellness check was motivated by a report that "my friends and coworkers have not heard from me in 2 months." The

Wellness Tweet accurately restates this motive ("cuz no one had seen or heard from him since his meltdown").

Taylor Sterling stated that "Many of you are aware of my mental breakdown on Twitter a couple months ago." The Wellness Tweet references this "meltdown." Taylor Sterling previously placed his wife's alleged behavior towards him into public knowledge via Twitter. The Wellness Tweet references this behavior ("we're all witnesses to pix's [Sterling's] behavior the last few weeks").

The portions of the Wellness Tweet constituting restatement of facts placed into public knowledge by Taylor Sterling cannot be defamatory as a matter of law because they are true. *Turner*, 879 F.3d, at 1262.

The remainder of the Wellness Tweet constitutes Doe's opinions on the incident. "The chick is coming undone," constitutes Doe's opinion regarding Sterling's publicized behavior. "Tay didn't get swatted, a cop knocked on his door to make sure he was alive," constitutes Doe's opinion on the nature of the wellness check, which neither party disputes occurred. Doe's opinions are based on facts made publicly available by Taylor Sterling. Therefore, these statements are pure opinion and cannot be defamatory as a matter of law. *Turner*, 879 F.3d, at 1262.

Sterling alleges that by stating that Sterling had started to come undone, Doe clearly communicated that Sterling is someone who harms or abuses her husband. D.E. 9, at p. 5. Doe does not accuse Sterling of

harming her husband anywhere in the Wellness Tweet. At most, Doe references a well-publicized domestic issue between Sterling and her husband. Thus, the Wellness Tweet does not contain the accusations Sterling asserts it does, nor does it support any inference of such accusation. Therefore, the Wellness Tweet is not defamatory.

Because the statements which form the basis of Sterling's claims are not defamatory, Sterling has failed to establish a prima facie case of defamation and accordingly this Court must quash the Subpoenas.

b. The Statements Were Not Made with the Requisite Level of Malice.

To state a claim for defamation, a public figure must demonstrate that the statements were made with actual malice. *New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 349 (1974); *Turner*, 879 F.3d, at 1273; *Nodar v. Galbreath*, 462 So. 2d 803, 806 (Fla. 1984).

For purposes of defamation, a public figure may be a general public figure, meaning one who has a general level of fame and notoriety, or a limited public figure, meaning one who carries the requisite level of notoriety within certain circles or with respect to certain issues. *See*, *e.g.*, *Mile Marker, Inc. v. Petersen Publ'g, LLC*, 811 So. 2d 841, 845 (Fla. Dist. Ct. App. 2002) (recognizing maker of hydraulic winches was a limited public figure within that field).

Actual malice must be plead in in a manner that meets the *Iqbal/Twombly* plausibility standard. *Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 702 (11th Cir. 2016); *Turner*, 879 F.3d, at 1273. Pleading actual malice requires "facts sufficient to give rise to a reasonable inference that the false statement was made 'with knowledge that it was false or with reckless disregard of whether it was false or not.'" *Michel*, 816 F.3d, at 702 (quoting *Sullivan*, 376 U.S., at 280.). The court must ask whether the defendant "actually entertained serious doubts as to the veracity of the published account, or was highly aware that the account was probably false." *Id.* Conclusory allegations of malice are not plausible. *Turner*, 879 F.3d, at 1273.

Sterling admits that she is a well-known figure in the Roblox community with a significant following therein. D.E. 1 at ¶¶ 8-9. Sterling has achieved such notoriety in the Roblox community that she makes a living as a Roblox personality. *Id.* A cursory review of Sterling's social media accounts indicates she has numerous followers on various platforms in connection with her gaming persona. As such Sterling has placed herself in the public eye of the Roblox and online gaining community and is therefore a limited public figure in that arena, if not a general public figure. Accordingly, her claims are subject to the actual malice standard.

i. The "Pedophile Tweet"

Sterling asserts that Doe knew the "Pedophile Tweet" was false when it was made, or it was made with reckless disregard to its truth. D.E. 1 at ¶ 14-18. Sterling alleges Doe told a third party that Doe could "ruin [Sterling] with one tweet." *Id.*; D.E. 9 at p. 4. Sterling wrongly contends this is sufficient to show the "Pedophile Tweet" was made with malice.

The Pedophile Tweet consists of references to events which actually occurred, and Doe's opinion regarding those events. Doe cannot have "actually entertained serious doubts as to the veracity" of the minor's visits and interactions with Sterling when the minor posted about them publicly. *See* Tweets by Nelson Wancy Regarding Visits to Sterling, Exhibit C. Even if Doe believed that statements regarding the visit would be detrimental to Sterling, i.e., would "ruin" her, this does not establish malice because of the truth of the statements. True statements of events and opinions based on them, even those resulting in negative consequences, do not give rise to a defamation claim. Therefore, Sterling cannot establish malice with respect to the "Pedophile Tweet" and it cannot sustain a defamation claim.

ii. The "Wellness Tweet"

Sterling asserts without support that Doe knew the Wellness Tweet was false when it was made, or it was made with reckless disregard to its truth. D.E. 1 at ¶¶ 22-25. The Wellness Tweet consists of restatement

of facts made public by Taylor Sterling, and Doe's opinions regarding the welfare check.

Sterling provides no logical basis whatsoever for concluding that Doe "actually entertained serious doubts as to the veracity" of the facts published by Taylor Sterling about the occurrence and motivation of the welfare check. Doe had no reason to doubt the veracity of an account published by Sterling's own husband. Thus, Sterling's conclusory allegations cannot plausibly establish malice with respect to the Wellness Tweet and Sterling cannot sustain a defamation claim thereon. Because the statements which form the basis of Sterling's claims were not made with actual malice, Sterling has failed to establish a prima facie case of defamation. Further, even assuming *arguendo* that Sterling is not a public figure, Doe's statements are based on true facts made known to the public via social media, and thus Doe cannot have even been negligent in making the statements. Under any standard, Sterling fails to establish a prima facie case of defamation.

c. Plaintiffs Trade Libel Claims Similarly Fail.

"To state a claim for trade libel under Florida law, a plaintiff must allege (1) that one who published or communicated a falsehood about the plaintiff (a) knew, or reasonably should have known, that (b) the falsehood would induce others not to deal with the plaintiff, and (2) that the falsehood did, in fact, play a material and substantial part in inducing others not to deal

with the plaintiff, (3) thereby causing the plaintiff to suffer special damages." *Glob. Tech LED, LLC v. Hi-Lumz Int'l Corp.*, No. 2:15-cv-553-FtM-29CM, 2017 U.S. Dist. LEXIS 20512, at *25-26, 2017 WL 588669 (M.D. Fla. Feb. 14, 2017) (internal quotations and citation omitted).

As discussed above, Doe has not published or communicated a falsehood about Sterling and has not made statements with the intent to cause others to stop dealing with Sterling. Further, Sterling provides nothing more than conclusory allegations that Doe's statements have caused her harm in her trade. Sterling offers no facts supporting the allegation that others have stopped dealing with Sterling.

Indeed, on May 11, 2021, Sterling tweeted that "exciting things [are] happening with Fashion Famous," Sterling's primary Roblox offering. *See* Tweet by Sterling Regarding Fashion Famous, dated May 11, 2021, a true and correct copy of which is attached hereto as Exhibit F. Sterling's continued success hardly supports the allegations that she suffered at all due to Doe's statements, let alone suffered the special damages required to establish a claim of trade libel.

Because the statements which form the basis of Sterling's claims were not false, were not made with the required intent, and have not cause Sterling a cognizable injury, Sterling has failed to establish a prima facie case of trade libel and accordingly this Court must quash the Subpoenas.

B. The Subpoenas are Improper Because the Instant Lawsuit is a Prohibited SLAPP.

a. California Law

Under California's anti-SLAPP laws, a person may quash a subpoena seeking personally identifying information where the underlying action involves such person's exercise of free speech rights. Cal. Code Civ. Proc. § 1987.1(b)(5) (2021). Personally identifying information includes a person's first and last name, physical address, or email address. Cal. Civ. Code § 1798.79.8(b) (2021). An action concerns a person's exercise of free speech rights if, *inter alia*, it involves a written or oral statement made in a public forum in connection with an issue of public interest. Cal. Code Civ. Proc. § 425.16(e) (2021).

A publicly available website constitutes a public forum. *Barrett v. Rosenthal*, 146 P.3d 510, 514 n.4 (Cal. 2006) (citing cases); *Kronemyer v. Internet Movie Database Inc.*, 150 Cal. App. 4th 941, 950 (Cal. App. 2d Dist. 2007) ("We are satisfied that respondent's Web site constitutes a public forum."). Public forums under the California anti-SLAPP law include social media platforms. *See*, *e.g.*, *Jackson v. Mayweather*, 10 Cal. App. 5th 1240, 1252 (Cal. App. 2d Dist. 2017) (holding Facebook and Instagram constitute public forums under SLAPP law).

A public interest includes statements about public figures or those who have placed themselves in the public eye. *See*, *e.g.*, *Jackson*, 10 Cal. App. 5th, at 1254 (famous boxer and former fiancé's romantic life was a

public interest); *McGarry v. Univ. of San Diego*, 64 Cal. Rptr. 3d 467, 477 (Cal. App. 4th Dist. 2007) (statements about college football coach were a public interest); *Sipple v. Found. for Nat. Progress*, 71 Cal. App. 4th 226, 239 (Cal. App. 2d Dist. 1999) (political consultant's domestic violence accusations were a public interest); *Seelig v. Infinity Broad. Corp.*, 97 Cal. App. 4th 798, 808, (2002) (criticism of plaintiff for appearing on reality show was a public interest). A plaintiff seeking an identifying subpoena must demonstrate a prima facie case of defamation to overcome a motion to quash the subpoena under California's anti-SLAPP law. *Krinsky v. Doe 6*, 159 Cal. App. 4th 1154, 1172 (Cal. App. 6th Dist. 2008).

If a party prevails in quashing a subpoena under California's anti-SLAPP law, then the party may recover the costs of making the motion. Cal. Code Civ. Proc. § 1987.2 (2021). This remedy is available regardless of where the underlying action is filed. *See Roe v. Halbig*, 29 Cal. App. 5th 286, 309 (Cal. App. 6th Dist. 2018) (upholding awarding defendant's fees and costs for motion to quash identifying subpoena in connection with a defamation action filed in Florida).

Sterling's lawsuit plainly violates California's anti-SLAPP law. It is well established under California law that social media platforms are public forums for purposes of the anti-SLAPP statute. Therefore, Doe's statements giving rise to this action were made in a public forum.

Sterling is admittedly a popular content creator across multiple public media platforms. Therefore, she has thrust herself into the public eye. More particularly, the minor publicized his visit on social media, and Sterling and her husband publicized their relationship difficulties and the welfare check incident on social media. Thus, Sterling has made herself and her conduct a public interest, at least with respect to the topics underlying this suit.

In this case, as in *Selig*, Sterling has been discussed and criticized for her behavior after holding herself out to public scrutiny as an entertainer. Thus, Doe's statements were made with respect to a public interest in a public forum and are an exercise of her free speech rights, and this action constitutes a SLAPP under California law.

The Subpoenas demand "the full legal name, last known email address, and last known mailing address" for Doe. This list of information satisfies at least three distinct categories of personally identifying information provided under California law. Thus, the Subpoena seeks Doe's personal information in a SLAPP action. As discussed above, Sterling has failed to demonstrate a viable case to overcome Doe's right to anonymity. Therefore, this Court must quash the Subpoenas under California's anti-SLAPP law. Further, this Court should award Doe her attorney's fees and costs associated with bringing this Motion.

b. Florida Law

Florida prohibits filing SLAPPs arising from a defendant's exercise of free speech in connection with a public issue. Fla. Stat. § 768.295(3) (2020). SLAPPs should be expeditiously dismissed by courts. Fla. Stat. § 768.295(4) (2020). "Free speech in connection with public issues" means, *inter alia*, "any written or oral statement that is protected under applicable law and . . . is made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work." Fla. Stat. § 768.295(2)(a) (2020). "The court shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of [the anti-SLAPP law]." Fla. Stat. § 768.295(4) (2020).

Public issues may refer to any matter of public interest and are not limited solely to political issues. *See Parekli v. CBS Corp.*, 820 F. App'x 827, 836 (11th Cir. 2020) (SLAPP arising from plaintiffs alleged involvement in fundraising scam); *Anderson v. Best Buy Stores L.P.*, No. 5:20-CV-41-Oc-30PRL, 2020 U.S. Dist. LEXIS 157642, at *9, 2020 WL 5122781 (M.D. Fla. July 28, 2020), *adopted in full by Anderson v. Coupons in the News*, No. 5:20-CV-41-Oc-30PRL, 2020 U.S. Dist. LEXIS 157199, 2020 WL 5106676 (M.D. Fla. Aug. 31, 20 20) (SLAPP arising from plaintiffs disorderly conduct after store refused her coupon); *Ener v. Duckenfield*, No. 20-CV-22886-UU, 2020 U.S. Dist. LEXIS 181407, at *13, 2020 WL 6373419 (S.D. Fla. Sep. 28, 2020) (SLAPP arising from a high-profile divorce);

Bongino v. Daily Beast Co., LLC, 477 F. Supp. 3d 1310, 1322 (S.D. Fla. 2020) (SLAPP arising from plaintiff's non-renewal of employment contract with radio show).

A post to a website constitutes a written or oral statement made in or in connection with the enumerated or similar works in the Florida anti-SLAPP statute. *See Anderson*, No. 5:20-cv-41-Oc-30PRL, 2020 U.S. Dist. LEXIS 157642, at *9 (recognizing publication of description of plaintiff's arrest on a website fell within scope of speech for purposes of anti-SLAPP statute); *Davis v. McKenzie*, No. 16-62499-CIV, 2018 U.S. Dist. LEXIS 9735, at *2, 2018 WL 1813897 (S.D. Fla. Jan. 18, 2018) (recognizing website postings within scope of anti-SLAPP statute).

The First Amendment protects the right to speak anonymously. *Watchtower Bible & Tract Soc'y v. Village of Stratton*, 536 U.S. 150, 166-167 (2002); *McIntyre v. Ohio Elections Comm.*, 514 U.S. 334 (1995); *Talley v. California*, 362 U.S. 60 (1960); *see also COR Clearing, Ltd. Liab. Co.*, 2016 U.S. Dist. LEXIS 115810, at *10-11 ("People are permitted to interact pseudonymously and anonymously with each other so long as those acts are not in violation of the law.") (internal quotations and citations omitted).

Sterling's lawsuit plainly violates Florida's anti-SLAPP law. Sterling is admittedly a popular content creator who has thrust herself into the public eye. Sterling has made herself and her conduct a public issue, at least with respect to the topics underlying this suit.

Doe's statements are all based upon and arise directly from these issues Sterling has placed in the public eye. Sterling cannot publicize her activities and use the courts to shield herself from commentary on them. Sterling cannot willingly subject herself to public scrutiny and then cry foul when scrutinized. Doe has the First Amendment right to speak, and speak anonymously, on matters Sterling has placed into the public sphere, but Sterling's suit seeks to silence Doe contrary to Florida public policy. Therefore, this action is a prohibited SLAPP.

This is not the first time Sterling has attempted to silence Doe. Sterling previously filed a near identical case against Doe in Florida state court.[2] Sterling withdrew the prior case after her attempts to obtain Doe's identity in that suit were frustrated. This repeat filing demonstrates that Sterling's motives are vexatious. Doe has made significant efforts to protect her right to anonymous online speech. This and Sterling's prior lawsuit are nothing more than attempts to obtain Doe's identity and bully her into silence by threatening to publicly out Doe.

Because this action is a prohibited SLAPP, it is subject to dismissal under California and Florida law. Thus, Sterling has not pled a viable claim justifying the violation of Doe's right to anonymity. Furthermore, there is no central need for the subpoenaed information because this suit should be dismissed by operation of

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[2] *See* Osceola County Court, Case No. 2020-CA-002278 OC, filed September 9, 2020.

statue without disclosure of Doe's identity. Therefore, this Court must quash the Subpoenas. Further, this Court must award Doe her attorney's fees and costs associated with bringing this Motion.

C. The Subpoenas Should be Quashed Because They Will Subject Doe to Annoyance, Harassment, and Oppression.

A court may prohibit disclosure or discovery to protect a party or person from annoyance, embarrassment, or oppression. Fed. R. Civ. P. 26(c)(1). Rule 26(c) gives the court discretionary power to protect a party from such harassment and oppression as justice may require. *See Farnsworth v. Procter & Gamble Co.*, 758 F.2d 1545, 1547 (11th Cir. 1985). When evaluating whether a movant has satisfied his burden of establishing good cause for [relief under Rule 26], a court should balance the non-moving party's interest in obtaining discovery against the moving party's harm that would result from the discovery." *Zurich Am. Ins. Co. v. Hardin*, No. 8:14-cv-775-T-23AAS, 2019 U.S. Dist. LEXIS 117097, at *8, 2019 WL 3082608 (M.D. Fla. July 15, 2019) (citing *Farnsworth*, 758 F.2d, at 1547).

Sterling's claimed interest in obtaining Doe's identity is to serve Doe with process and continue prosecuting this action. D.E. 9 at p. 6. This interest is illusory, because as set out above Sterling's claims in this lawsuit are both legally insufficient and subject to dismissal for violation of California and Florida law. Because this case is without merit, there is nothing to

prosecute, and Sterling lacks a cognizable interest in obtaining Doe's identity.

Doe, on the other hand, has compelling reasons to protect her anonymity. Sterling has pursued a vendetta against Doe personally and in connection with Doe's Roblox business since at least 2017. Sterling brazenly admits this online. *See* Tweet by Sterling Regarding Doe and Roblox, dated July 4, 2020, a true and correct copy of which is attached hereto as Exhibit G ("back in 2017 it was ME [Sterling] trying to get YOU [Doe] deleted from "Roblox" ".). Sterling and her husband perceive that Doe "hates" them, seeing themselves as victims of "completely unfair and unjust" conduct by Doe. *See* TwitLonger Post, Exhibit E, 4. Painting Doe as an aggressor, as Sterling has in this suit, furthers this vendetta, and Sterling seems to feel her perceived victimhood justifies harassing Doe.

Nowhere is Sterling's perceived victimhood more evident than the wellness check incident. Sterling believes that Doe made the call to the police which prompted the welfare check and asserts such in this action. D.E. 1 at ¶ 20. Taylor Sterling's declaration in support of this action states that "Beeism's and her friend Monika's false statements to the police resulted in the police coming to my house. . . ." D.E. 1, Document 1-4, Declaration of Taylor Sterling, at ¶ 8.

Sterling and her husband persist in this belief despite its demonstrative falsehood. Doe did not make any call to the police regarding Taylor Sterling. Taylor Sterling admitted publicly following the wellness

check that an individual named Monika had called the police resulting in the welfare check and that "[t]he police officer willingly gave us her [Monika's] full name and case number so that we can ensure she is charged criminally for making a false police statement." *See* TwitLonger Post, Exhibit E, ¶ 2. Sterling and her husband never mentioned being provided Doe's name in connection with the incident until asserting now, almost a year later, that Doe called the police initiating the wellness check.

Nevertheless, without any good faith factual basis, Sterling claims to believe that Doe sent the police to her home. Given Sterling's undeniable disdain for Doe, Doe is concerned that Sterling seeks Doe's identity to obtain some sort of revenge for this imaginary wrong. Doe has legitimate concerns that if Sterling obtains Doe's identity, Sterling will share it with her online followers with the implicit, if not explicit, command for her followers to harass Doe online and offline.[3] Even more concerning, Sterling has aligned herself with individuals who have made unwanted sexual advances towards Doe, and Doe is concerned that Sterling will

[3] This practice is known as "doxxing," and is recognized by the United States DHS as being performed for "malicious purposes such as public humiliation, stalking, identity theft, or targeting an individual for harassment." *See* HOW TO PREVENT ONLINE HARASSMENT FROM "DOING," United States Department of Homeland Security, available at https://www.dhs.gov/sites/default/files/publications/How%2010%20Prevent%20Online%20Harrassment%20From%20Doxxing.pdf.

release Doe's identity to these individuals, thereby creating a threat to Doe's physical safety.[4]

Moreover, if Doe's identity is disclosed, to Sterling or otherwise, Doe will never be able to retrieve her right to anonymity. Thus, allowing Doe to be identified will forever strip her of her constitutional right to speak anonymously, which alone is a harm sufficient to quash the Subpoenas. Beyond this if Doe's identity is disclosed and Sterling's hunger for revenge against Doe is not placated through this lawsuit, particularly if this lawsuit is dismissed as it properly should be this Court will have handed Sterling a weapon to lord over Doe well beyond the end of any legal action. Failure **to** quash the Subpoenas will subject Doe to the constant specter of being publicly outed at any time.

CONCLUSION

Sterling seeks to abuse the judicial process by bringing a sham claim as an avenue to identify Doe in furtherance of Sterling's well-documented personal vendetta against Doe. Sterling has no legitimate claim against Doe. The asserted messages are not defamatory. They were not made with the requisite level of malice. Moreover, this action is a prohibited SLAPP

[4] Sterling herself seems to believe that having one's address publicly revealed is harmful and leads to threats to one's safety. *See* Tweet by Sterling Regarding Leaked Address, dated May 13, 2021, a true and correct copy of which is attached hereto as Exhibit H.

lawsuit subject to dismissal under California and Florida law.

Sterling simply has not pled a viable claim justifying use of this Court's power to tramp upon Doe's First Amendment rights. Because this lawsuit is without merit and compulsion of Doe's identity is wholly unnecessary, this Court must quash the Subpoenas.

WHEREFORE, Defendant Jane Doe respectfully requests this Court issue an order quashing the subpoenas directed to Roblox Corporation and Twitter Inc., award Doe her attorneys' fees and costs in this action, and award any other such relief as deemed just and proper.

LOCAL RULE 3.01(g) CERTIFICATION

Prior to filing the instant motion, the undersigned has conferred with opposing counsel regarding the subject matter hereof, and the issues herein have not been resolved.

Respectfully submitted this 18th day of June, 2021.

/s/ Adam Losey
Adam C. Losey, Esq.
Florida Bar No. 69658
Ian T. Johnson, Esq.
Florida Bar No. 1026225
LOSEYPLLC
1420 Edgewater Dr.
Orlando, FL 32804
(407) 906-1605
alosey@losey.law
ijohnson@losey.law
docketing@losey.law

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2021, a true and correct copy of this Motion was filed via the ECF system, causing a copy to be served on all counsel of record.

/s/ Adam Losey
Adam C. Losey, Esq.
Florida Bar No. 69658

Exhibit A –
Copy of California Domesticated
Subpoena from Prior Action
(Case No. 2020-CA-002278 OC)

SUBP-045

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* Shaun Keough, Esq. Parker Keough LLP 3505 Lake Lynda Dr., Suite 200, Orlando, FL 32817 Fla. Bar No. 1000985 TELEPHONE NO.: 321-262-1146 FAX NO.: E-MAIL ADDRESS: skeough@parkerkeough.com ATTORNEY FOR *(Name):* Jomy Sterling	***FOR COURT USE ONLY***
Court for county in which discovery is to be conducted: **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO** STREET ADDRESS: 400 County Center MAILING ADDRESS: CITY AND ZIP CODE: Redwood City, 94063 BRANCH NAME:	
Court in which action is pending: **Name of Court:** **FLORIDA'S 9TH JUDICIAL CIRCUIT FOR OSCEOLA COUNTY** STREET ADDRESS: 2 Courthouse Square MAILING ADDRESS: CITY, STATE, AND ZIP CODE: Kissimmee, Florida 32741 COUNTRY:	

PLAINTIFF/PETITIONER: Jomy Sterling DEFENDANT/RESPONDENT: Jane Doe AKA Beeism	CALIFORNIA CASE NUMBER (if any assigned by court):
DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND THINGS IN ACTION PENDING OUTSIDE CALIFORNIA	CASE NUMBER (of action pending outside California): 2020 CA 002278 OC

THE PEOPLE OF THE STATE OF CALIFORNIA, TO *(name, address, and telephone number of deponent, if known):*

1. **YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:**

Date: 14 days after service	Time: N/A
Address:	provide information to subpoena in PDF form to skeough@parkerkeough.com

a. ☐ As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 4. (Code Civ. Proc., § 2025.230.)

b. ☒ You are ordered to produce the documents, electronically stored information, and things described in item 3.

c. This deposition will be recorded stenographically ☐ through the instant visual display of testimony and by ☐ audiotape ☐ videotape.

2. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.

3. The documents, electronically stored information, and things to be produced and any testing or sampling being sought are described as follows (*(if electronically stored information is required, the form or forms in which each type of information is to be produced may be specified):* The full legal name, last known email address, and last known mailing address for the individual who goes by the persona BEEISM on the Roblox platform.

   ☐ Continued on Attachment 3 *(use form MC-025).*

4. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are described as follows:

   ☐ Continued on Attachment 4 *(use form MC-025).*

5. Attorneys for the parties to this action or parties without attorneys are *(name, address, telephone number, and name of party represented)*: Jomy Sterling is represented by Shaun Keough of Parker Keough LLP, 3505 Lake Lynda Dr., Suite 200, Orlando, FL 32817 (321-262-1146); Jane Doe

aka BEEISM Is not yet represented because she is unknown.

☐ Continued on Attachment 5 *(use form MC-025).*

6. ☒ Other terms or provisions from out-of-state subpoena, if any *(specify):* THIS SUBPOENA IS NOT SEEKING AN APPEARANCE AT A DEPOSITION. NO TESTIMONY WILL BE TAKEN.

   ☒ Continued on Attachment 6 *(use form MC-025).*

7. **If you have been served with this subpoena as a custodian of consumer or employee records under Code of Civil Procedures section 1985.3 or 1985.6 *and* a motion to quash or an objection has been served on you, a court order or agreement of the parties, witnesses, *and* consumer or employee affected must be obtained before you are required to produce consumer or employee records.**

8. *At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition. Unless the court orders or you agree otherwise, if you are being deposed as an individual, the deposition must take place within*

75 miles of your residence. The location of the deposition for all deponents is governed by Code of Civil Procedure section 2025.250.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF $500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: OCT–5 2020 /s/ Wai Lee

WAI SHAN LEE	(SIGNATURE OF PERSON ISSUING SUBPOENA)
	Deputy County Clerk
(TYPE OR PRINT NAME)	(TITLE)

PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND THINGS

1. I served this *Deposition Subpoena for Personal Appearance and Production of Documents, Electronically Stored Information, and Things in Action Pending Outside California* by personally delivering a copy to the person served as follows:
   a. Person served *(name)*:
   b. Address where served:
   c. Date of delivery:
   d. Time of delivery:
   e. Witness fees and mileage both ways *(check one)*:

(1) ☐ were paid. Amount: ..... $_____

(2) ☐ were not paid.

(3) ☐ were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was *(specify)*: ..... $_____

f. Fee for service: ..... $_____

2. I received this subpoena for service on *(date)*:

3. ☐ I also served a completed *Proof of Service of Notice to Consumer or Employee and Objection* (form SUBP-025) by personally delivering a copy to the person served as described in 1 above.

4. Person serving:

a. ☐ Not a registered California process server

b. ☐ California sheriff or marshal

c. ☐ Registered California process server

d. ☐ Employee or independent contractor of a registered California process server

e. ☐ Exempt from registration under Business and Professions Code section 22350(b)

f. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

/s/ _____
(SIGNATURE)

(For California sheriff or marshal use only) I certify that the foregoing is true and correct.

Date:

/s/ _____
(SIGNATURE)

MC-025

SHORT TITLE:	CASE NUMBER:
Attachment to SUBP-045	2020 CA 002278 OC

ATTACHMENT *(Number)*: 6

(This Attachment may be used with any Judicial Council form.)

You will not be required to surrender any original files or documents that contain the information sought. You may condition the preparation of the copies of the information sought upon the payment in advance of the reasonable cost of preparation. You have the right to object to the production of the information sought herein pursuant to the Florida Rules of Civil Procedure at any time before production by giving written notice to the attorney whose name appears on this subpoena.

If you fail to produce the information sought by the deadline you may be in contempt of court. Unless

excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed.

**IN THE CIRCUIT COURT OF
THE NINTH JUDICIAL CIRCUIT,
IN AND FOR OSCEOLA COUNTY, FLORIDA**

JOMY STERLING Plaintiff, v. JANE DOE aka BEEISM, Defendant.	Case No. 2020 CA 002278 OC **JURY DEMAND**

SUBPOENA DUCES TECUM

THE STATE OF FLORIDA:

TO: David B. Baszucki, Roblox Coporation,
970 Park Place, San Mateo, CA 94403

YOU ARE COMMANDED to provide Shaun Keough, Esq., the attorney of record for Jomy Sterling in the above-referenced action, the full legal name, last known email address, and last known mailing address for the individual that goes by the persona BEEISM on the Roblox platform by emailing the information sought herein in PDF form to skeough@parkerkeough.com within 14 calendar days of being served with this subpoena. THIS SUBPOENA IS NOT SEEKING AN APPEARANCE AT A DEPOSITION. NO TESTIMONY WILL BE TAKEN.

You will not be required to surrender any original files or documents that contain the information sought. You may condition the preparation of the copies of the information sought upon the payment in advance of the reasonable cost of preparation. You have the right to object to the production of the information sought herein pursuant to the Florida Rules of Civil Procedure at any time before production by giving written notice to the attorney whose name appears on this subpoena in addition to any other requirements set forth in the California subpoena served on you contemporaneous with this Florida subpoena.

If you fail to produce the information sought by the deadline you may be in contempt of court. Unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed.

DATED: September 21, 2020

/s/ Shaun Keough
Shaun Keough
Attorney for Jomy Sterling
Florica Bar No. 1000985

Exhibit B –
Copy of Voluntary Dismissal of Prior Action
(Case No. 2020-CA-002278 OC)

**THE CIRCUIT COURT OF
THE NINTH JUDICIAL CIRCUIT,
IN AND FOR OSCEOLA COUNTY, FLORIDA**

JOMY STERLING Plaintiff, v. JANE DOE aka BEEISM, Defendant.	Case No. 2020 CA 002278 OC **JURY DEMAND**

**VOLUNTARY DISMISSAL
WITHOUT PREJUDICE PURSUANT
TO FLA. R. CIV. P. 1.420(a)(1)**

COMES NOW, Plaintiff, JOMY STERLING (hereinafter referred to as "**Ms. Sterling**" and/or "**Plaintiff**"), through counsel, and files this Voluntary Dismissal without prejudice pursuant to Fla. R. Civ. P. 1.420(a)(1), and in support thereof states as follows:

1. This action was commenced by the Plaintiff on September 9, 2020.

2. Without knowing the identity of Defendant. Jane Doe, the Plaintiff caimot properly serve Jane Doe with service of process. As such, the Defendant has not answered or otherwise responded to the Complaint filed in this action.

3. A trial date has not been set in this action.

4. A motion for summary judgment has not been filed in this action.

WHEREFORE, the Plaintiff respectfully requests that this Court dismiss the above-referenced action without prejudice pursuant to Fla. R. Civ. P. 1.420(a)(1).

DATED: November 20, 2020

Respectfully submitted,

Jomy Sterling,

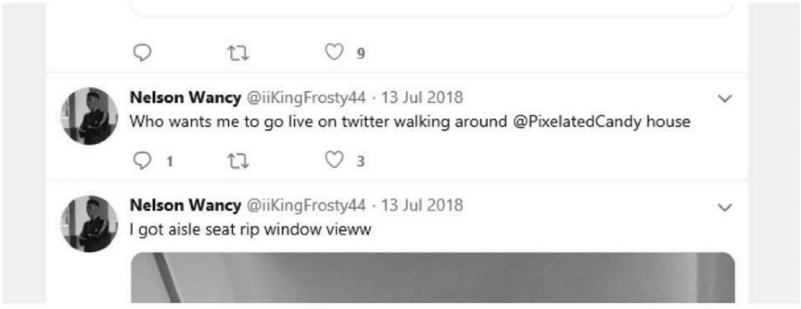
By Her Attorney,
/s/ Shaun P. Keough
Shaun P. Keough (Trial Counsel)
Florida Bar # 1000985
PARKER KEOUGH LLP
3505 Lake Lynda Dr. Suite 200
Orlando, FL 32817
Tel.: (321) 262-1146
Fax.: (617) 963-8315
E-mail: skeough@parkerkeough.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 20, 2020 a true and correct copy of the foregoing was electronically filed with the Clerk of Court by using the Florida Courts eFiling Portal, causing a copy to be served on all counsel of record.

BY: /s/ Shaun P. Keough
Shaun P. Keough, Esquire
Fla. Bar No.: 1000985

Exhibit C – Tweets by Nelson "Frosty" Walley Regarding Visiting Sterling's Home and Disney World in 2018



Frosty
@TacticalFrosty

I can see me doing this to @PixelatedCandy when I come again and later in the future

Comes back home from college

Parents: Clean up my house.

Me: This not my house. I'm a guest.

9:47 AM · Aug 27, 2018 · Twitter for iPhone

Exhibit D – Tweets Concerning
Sterling Domestic Incident in May 2020

Exhibit E – TwitLonger Post
by Taylor Sterling dated July 4, 2020

(https://twitter.com/intent/user?screen_name=Taymastar) Taylor Sterling (https:Mwitter.com/intent/user?screen_name.Taymastar) @Taymastar (https://twitter.com/intent/user?screen_name.Taymastar)

4th Jul 2020 from TwitLonger (http://twitlonger.com)

This needs to stop! @robloxdevrel @ExtremelyMondor @BeeismRblx @DDOG_007

First of all, I made the decision to stay off of Twitter over the past couple months to give my family time to heal after the mistakes and lies that I made.

Recently, my family has been under attack from members in the Roblox Community and it is threatening my family's safety and well-being. This is beyond any sort of drama. This is very real. This morning, a police officer showed up to my home and it was very clear that Monika @ExtremelyMondor (https://twittenconn/ExtrennelyMondor) had given him a false statement so that we would be harassed by the police and that she could confirm that the address she had was ours. The police officer was told that my friends and co-workers have not heard from me in 2 months. To @ExtremelyMondor (https://twittenconn/ExtrennelyMondor) Which one of my co-workers and friends have told you that they couldn't reach me? Who? I want the names of who exactly you're claiming have not talked to me in 2 months. Because I find it hard to believe that any of them have said anything as I talk to them daily. You're not my friend so which of my co-workers and friends have planted this idea in your head? I work every day for hours in calls with all of my co-workers and I see my friends multiple times

a week. Monika has never reached out to me to see if I was ok. She did this to specifically to harass me and threaten the safety of my family and make us feel scared in our own home. She did this on July 4th, a family holiday, knowing that we should all be together. This is disgusting as this means that Monika was okay with putting our family in danger which includes a 7 year old child and an elderly grandmother who have nothing to do with this and shouldn't be exposed to any danger. We have been informed that Monika is associated with people who have issues with the law and also have personally made a threat to have one of our friends who is also her ex-boyfriend beaten up. The police officer willingly gave us her full name and case number so that we can ensure she is charged criminally for making a false police statement. She has used false claims to send the police over to our house to confirm our physical address. Now that she has confirmed our address, god knows what she'll do with it.

There are only 2 people that could have given Monika our address. These people are Beeism @BeeismRblx (https://twittenconn/BeeisnnRblx) and David AKA Ice @DDOG_007 (https://twittencom/DDOG_007) – both who got the address through Tyler @RBXstarwars (https://twittencom/RBXstarwars). We have a video of them in call mentioning that they are going to do something like this. This video was posted publicly on YouTube by Ted @realteddavis (https://twitter.com/realteddavis). I want to make it clear that Ted was used by Tyler and David and I do not feel his

involvement is important. In this video, they mention having my family's physical address and it was given to them by Tyler. They also mention using the address with malicious intentions that included coming to our house. Which they're obviously doing good on considering today's events.

Tyler used to work for Crown Academy and was let go due to breaching his contract. After he was let go, he clearly developed a sort of vendetta against me and my wife. This was confirmed by Ted.

Since 2017, my wife has been the victim of endless harassment and defamation by Beeism @BeeismRblx (https://twitter.conn/BeeismRblx). Beeism hates my wife. The things she has done and tried to do to her and our family is completely unfair and unjust. Us and our lawyers have begun the process to take legal action against her for defamation. Along with what we have, we have also obtained 3 separate statements from reputable members of the community who Beeism reached out to in order to make false statements against my wife's reputation in order to affect the work relationship between my wife and these individuals at the time. All of these interactions include screen-shot's and will be provided to Roblox Dev Relations. My wife has been honest and true to herself since the beginning. Meanwhile, Beeism is not who she says she is online and manipulates people to send hate towards my wife. Beeism portrays her account to be a single person but in fact, there are 3 people behind her account.

To Beeism, why have you been harassing and using words as defamation against her? We have numerous proof of the things that you have done. Why would you do this? You were never friends, you have never even worked together. How can you know so much about her? You publicly and privately accused her of being a pedophile, please show how this is true? I met my wife when I was 19, so I'm confused of how it is you know more about my marriage then I do. You called her a thief because our fired former scripter on Crown Academy told you so correct? These are some pretty strong accusations that should definitely be handled legally if true don't you think? We are more then willing to address these in a court room. The unfortunate part for you is that we have more then plenty of evidence to show your lies, your feelings towards us and your motives for all this.

The reason Beeism is relevant in todays events is Monika and Beeism are friends and only became friends after Monika started to have ill will against us. Monika is the ex-girlfriend of Devin @endlessfunRBLX (https://twitter.conniendlessfunRBLX) who also works for Crown Academy. After Devin broke up with her, she immediately started having connection with Beeism. Prior to this, she was never associated with Roblox. She started working with Beeism, who works with Ice who has our physical address from Tyler.

I should not have to live in fear in my own home. My wife and family has done nothing at all to deserve any of this. We are under constant stress and anxiety over all of this and have been for a very long time. It has

started affect on our marriage, our happiness, and our overall sanity and mental health. We live in an era where online harassments are being normalized. We often hear of streamers, youtubers and other influencers on social media being under attack and some even have their futures rotten because of this harassment. Roblox community is filled with so many young aspiring developers. If we ignore this now, those others will go through this in the future.

This needs to stop. This needs to stop right now.

Many of you are aware of my mental breakdown on Twitter a couple months ago. Things like this are EXACTLY what led me to get to that point. Things like this are exactly why my wife has been suffering from severe depression. Were only human and can only take so much.

In the replies to this, I will be posting screenshots that go along with what I am saying here. I will also be sending Dev Relations @robloxdevrel (https://twitter.conn/robloxdevrel) copies of everything we have as well as the police report. I hope that you take this seriously, @robloxdevrel (https://twitter.com/robloxdevrel). You cannot let this happen on your platform. We should not allow large developers to use their fan base to ruin other people's lives.

Besides some attachments to tie into events here in this letter, we are not here to argue back and forth on twitter. All communication will now go through the courts and Dev Relations. I am so tired of these games. We aren't playing them anymore.

If you have experienced anything like this, we encourage you to come forward. This kind of behavior should not be tolerated and we need to make change for the better. Do not be afraid to speak up just because the person you're dealing with is a known developer with a large following. Its time for the community to come together to stop allowing others in our community to behave this way and get away with it. We can fully support each other by coming together and stopping this once and for all. Please excuse any parts I fall short on grammar, I'm under a lot of anxiety and stress from this happening today, I can't take this anymore and I just want this to stop.

Reply (https://www.twitlonger.com/post/Taymastar/1279531901791985664) Report Post

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Exhibit F – Tweet by Sterling
Regarding Fashion Famous

Exhibit G – Tweet by Sterling
Regarding Vendetta Against Doe

Exhibit H –
Tweet by Sterling Regarding
Dangers of Having Address Exposed

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOMY STERLING, Plaintiff, v. JANE DOE, aka Beeism), Defendant.	C.A. No. 6:21-cv-00723-PGB-EJK

DEFENDANT JANE DOE'S OBJECTION TO MAGISTRATE'S ORDER AND REQUEST FOR STAY AND INCORPORATED MEMORANDUM OF LAW

(Filed Oct. 6, 2021)

Defendant Jane Doe ("Doe"), by and through the undersigned counsel and pursuant to Federal Rule of Civil Procedure 72(a) and 28 U.S.C. § 636(b)(1), respectfully objects to the Magistrate's Order denying Doe's Motion to Quash Third Party Subpoenas (the "Order"). D.E. 16. Doe's appearance is limited solely to quashing the Subpoenas (the subject of the Order now objected to), and by making this appearance Doe, a California resident, does not consent or submit to the jurisdiction of this Court.

Introduction

This lawsuit is the second litigation filed in Florida by Plaintiff Jomy Sterling ("Sterling") against Doe in a years-long pattern of online harassment of Doe.

Previously limited to online quibbling, this is the *second* time Sterling has come to a court with specious claims brought purely to abuse the legal process to obtain Doe's real identity—with the likely end-goal of subjecting Doe to additional and unjustified harassment.

Sterling obtained leave to serve subpoenas on third parties to obtain Doe's identity without opportunity for Doe to object, and Doe promptly moved to quash these subpoenas when Doe became aware of them. The Magistrate Judge did not quash the subpoenas. However, the Magistrate Judge's ruling is contrary to the case law and evidence and did not apply the requisite state anti-SLAPP laws. Therefore, the Magistrate Judge's Order is clearly erroneous and contrary to law, and Doe respectfully seeks that it be set aside. Doe further requests discovery in this action be stayed.

Background

Doe and Sterling are both content creators on the online platform Roblox, and this content creation serves as both parties' principal source of income. D.E. 1. Both Doe and Sterling maintain accounts on other social media platforms including Twitter. *Id.* Doe is a California resident.

In September 2020, Sterling brought a similar action in Osceola County, Florida (the "First Action"). In November 2020, Sterling voluntarily dismissed the First Action after Doe presented her with an anti-SLAPP

motion under California law. *See* Voluntary Dismissal Without Prejudice, Case No. 2020-CA-002278 OC, a true and correct copy of which is attached to D.E. 11 as Exhibit B; *see also* D.E. at p. 5, fn. 1.

On April 23, 2021, Sterling filed this lawsuit, in an apparent effort to seek a more favorable venue where she could argue (erroneously) that Doe is not protected by California's anti-SLAPP laws.[1] Therein, Sterling alleges that Doe made two false and defamatory Tweets about Sterling, damaging Sterling's reputation and business. *Id.*

Doe has always remained anonymous online, using the moniker "Beeism" on both Roblox and Twitter. Because Sterling does not know Doe's identity, Sterling moved for leave to serve subpoenas on Roblox and Twitter to obtain Doe's legal identity. D.E. 9. The Magistrate Judge granted Sterling's motion on June to, 2021. D.E. 10. Sterling then served subpoenas seeking Doe's identifying information on Roblox Inc. and Twitter Inc. (collectively, the "Subpoenas"). Copies of the Subpoenas are attached to D.E. 9 as Exhibit A.

On June 18, 2021, Doe promptly filed her Motion to Quash Third Party Subpoenas (the "Motion to

[1] Given that this action was filed approximately five months after Sterling voluntarily dismissed the First Action, it is apparent that Sterling's purported basis for voluntary dismissal—that Sterling could not properly serve Doe with service of process—was nothing more than a pretext.

Quash").[2] D.E. 11. Doe sought to quash the Subpoenas on multiple grounds. *Id.* First, Doe argued Sterling failed to state a claim for defamation because the allegedly defamatory Tweets were statements of opinion regarding matters placed into the public eye on social media by Sterling or her husband, and thus protected under the First Amendment. *Id.* Second, Doe argued Sterling's lawsuit was prohibited by state anti-SLAPP statutes. *Id.* Third, Doe argued that quashing the Subpoenas or entering a protective order was necessary to prevent Sterling's harassment and oppression of Doe. *Id.*

The Magistrate Judge entered an order denying the Motion to Quash on October 4, 2021. D.E. 16. Doe now brings this objection pursuant to Federal Rule of Civil Procedure 72(a) based on the Order's failure to address arguments and evidence raised by Doe and erroneous conclusions of law regarding the applicability of state anti-SLAPP statutes.

Incorporated Memorandum of Law

The district court, upon timely objection, must modify or set aside any part of a magistrate judge's order that is clearly erroneous or is contrary to law. Fed. R. Civ. P. 72(a); *Muhammad v. Sapp*, 494 F. App'x 953, 958 (11th Cir. 2012) (per curiam). "[A]n order 'is contrary to the law when it fails to apply or misapplies

[2] Therein, Doe expressly stated that her appearance is limited solely to quashing the Subpoenas and that Doe does not consent or submit to the jurisdiction of this Court.

relevant statutes, case law, or rules of procedure." *Gulfside, Inc. v. Lexington Ins. Co.*, No. 2:19-cv-851-SPC-MRM, 2021 U.S. Dist. LEXIS 90550, at *4, 2021 WL 1909646 (M.D. Fla. May 12, 2021) (citing *Malibu Media, LLC v. Doe*, 923 F. Supp. 2d 1339, 1347 (M.D. Ma. 2013)). An order is clearly erroneous when the "reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Id.* (citing *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573 (1985)).

I. The Order Must be Set Aside Because it is Clearly Erroneous and Contrary to Law Regarding Constitutional Standards in Defamation Actions.

The First Amendment of the United States Constitution protects a right to speak anonymously online. *See*, *e.g.*, *Reno v. ACLU*, 521 U.S. 844, 845 & 870 (1997); *see also* D.E. 16 at p. 6 (citing cases). Because of the chilling effect that subpoenas would have on lawful commentary, efforts to enlist the power of the courts to discover the identities of anonymous speakers are subject to a qualified privilege. *COR Clearing, Ltd. Liab. Co. v. Investorshub.com, Inc.*, No. 4:16mc13-RH/CAS, 2016 U.S. Dist. LEXIS 115810, at *5-7 (N.D. Fla. May 11, 2016); *USA Technologies, Inc. v. Doe*, 713 F. Supp. 2d 901, 906 (N.D. Cal. 2010) ("In order to protect anonymous speech, efforts to use the power of the courts to discover the identities of anonymous speakers are subject to a qualified privilege."); *see also Rich v. City of Jacksonville*, No. 3:09-cv-454-J-34MCR, 2010 U.S. Dist.

LEXIS 143973, at *51, 2010 WL 4403095 (M.D. Fla. Mar. 31, 2010) (denying defendant's motion to dismiss based on qualified immunity because "the law regarding investigatory subpoenas and the constitutional right to speak anonymously was clearly established and sufficiently specific as to give 'fair warning' that the conduct alleged was constitutionally prohibited.") (citing *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995); *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 558 (1963)).

In the context of unmasking anonymous speakers, courts must ensure that there is a viable claim that justifies overriding an asserted right to anonymity. *See COR Clearing, Ltd. Liab. Co.*, 2016 U.S. Dist. LEXIS 115810, at *7 (citing *Solers, Inc. v. Doe*, 977 A.2d 941, 951 (D.C. 2009)). This generally requires the plaintiff to demonstrate that "there is a real evidentiary basis for believing that the defendant has engaged in wrongful conduct that has caused real harm to the interests of the plaintiff." *See Highfields Capital Mgmt. L.P. v. Doe*, 385 F. Supp. 2d 969, 970-71 (N.D. Cal. 2005).

Otherwise, any litigant could assert specious claims and abuse the power of the federal courts to unmask the constitutionally protected identity of a person speaking anonymously online, with no check on the plausibility of the underlying claims. Critically, this is *exactly* what Sterling is attempting to do here. After abandoning the First Action, Sterling now seeks to use specious claims to abuse legal process and deprive Doe of her First Amendment right to anonymous speech. Permitting Sterling to do so would open the floodgates

to a litany of specious actions seeking nothing more than to unmask the constitutionally protected identity of anonymous speakers online. Indeed, every person that has ever stated an ostensibly negative opinion anonymously online could potentially be the subject of such a specious action.

Here, there is no real evidentiary basis for believing that Doe has engaged in wrongful conduct. Florida courts have long favored dismissal of legally untenable defamation claims at the earliest possible juncture. *See e.g.*, *Byrd v. Hustler Magazine, Inc.*, 433 So. 2d 593, 595 (Fla. Dist. Ct. App. 1983). Such pretrial disposition is proper, as defamation cases have a "chilling effect" on First Amendment rights. *See Stewart v. Sun Sentinel Co.*, 695 So. 2d 360, 363 (Fla. Dist. Ct. App. 1997).

"True statements, statements that are not readily capable of being proven false, and statements of pure opinion" are not actionable as defamation. *Turner v. Wells*, 879 F.3d 1254, 1262 (11th Cir. 2018) (applying Florida defamation law); *Blake v. Ann-Marie Giustibelli, P.A.*, 182 So. 3d 881, 885 n.1 (Fla. Dist. Ct. App. 2016) ("Statements of pure opinion are not actionable.").

"Under Florida law, a defendant publishes a 'pure opinion' when the defendant makes a comment or opinion based on facts which are set forth in the publication or which are otherwise known or available to the reader or listener as a member of the public." *Turner*, 879 F.3d, at 1262 (citing *From v. Tallahassee Democrat*, 400 So. 2d 52, 57 (Fla. Dist. Ct. App. 1981)).

Statements of opinion are not actionable unless the opinion is based on facts not known to the audience of the statement. *Turner*, 879 F.3d, at 1269 n.3; *Zimmerman v. Buttigieg*, No. 8:20-cv-1077-CEH-CPT, 2021 U.S. Dist. LEXIS 33278, at *24, 2021 WL 694797 (M.D. Fla. Feb. 23, 2021) (citing *Turner*, 879 F.3d, at 1269 n.3); *Scott v. Busch*, 907 So. 2d 662, 668 (Fla. Dist. Ct. App. 2005); *From*, 400 So. 2d, at 57.

"Whether the statement is one of fact or opinion and whether a statement of fact is susceptible to defamatory interpretation *are questions of law for the court.* When making this assessment, a court should construe statements in their totality, *with attention given to any cautionary terms used by the publisher in qualifying the statement*." *Turner*, 879 F.3d, at 1262-63 (citing *Keller v. Miami Herald Pub. Co.*, 778 F.2d 711 (11th Cir. 1985)) (emphasis added).

The Eleventh Circuit Court of Appeals has granted mandamus relief where a lower court abused its discretion by failing to substantively address concerns about discovery of sensitive information and evidence submitted by petitioner in support of said concerns. *In re Sec'y, Fla. Dep't of Corr.*, No. 20-10650-J, 2020 U.S. App. LEXIS 9894, at *5-6, 2020 WL 1933170 (11th Cir. Mar. 30, 2020) ("When the district court denied the motion for a protective order, it did not even discuss the concerns and information presented]by petitioner].").

In denying the Motion to Quash, the Magistrate Judge simply ignored Doe's arguments on the constitutional sufficiency of Sterling's claim, relying instead

on the earlier determination that Sterling "pled a prima facie case when [the Court] granted leave to issue the third-party subpoenas." D.E. 16 at p. 4.

But Sterling's original motion was not contested on any grounds raised by Doe in the Motion to Quash. In other words, the Magistrate Judge did not consider whether there was a real evidentiary basis for believing that Doe engaged in wrongful conduct that caused real harm to Sterling and, therefore, did not ensure that Sterling has a viable claim that justifies overriding Doe's First Amendment right to anonymity. It is clearly erroneous to avoid addressing a contested issue of fact and constitutional law solely on the basis that the Magistrate Judge had already ruled on a motion for leave to issue third-party subpoenas in an uncontested setting, and without considering Doe's arguments that Sterling's claims have no real evidentiary basis and do not justify overriding Doe's First Amendment right to anonymity.

Moreover, the Order is contrary to law because *it fails to apply* or misapplies relevant statutes [and] case law." *Gulfside*, 2021 U.S. Dist. LEXIS 90550, at *4 (emphasis added). Doe raised substantial questions regarding the constitutional sufficiency of Sterling's defamation claims, to which the Magistrate Judge failed to consider and apply the relevant law. Under *Solers, Inc. v. Doe* and its progeny, the Magistrate Judge was required to "conduct a preliminary screening to ensure that there is a viable claim that justifies overriding an asserted right to anonymity." *Solers, Inc. v. Doe*, 977 A.2d 941, 951 (D.C. 2009); *COR Clearing*,

2016 U.S. Dist. LEXIS 115810, at *9. The Magistrate Judge did not do so and, therefore, the Order is contrary to law.

Further, to the extent that the Magistrate Judge arguably applied the law, the Magistrate Judge misapplied the law. Doe's allegedly defamatory statements were either true or constituted Doe's opinions on matters placed into the public sphere via social media by Sterling and her husband. *See* D.E. ii. Doe provided extensive evidence supporting the nature of Doe's statements alongside the Motion to Quash. *See* D.E. ii and Exhibits thereto. These questions are not a mere dispute over liability. Rather, they raise the fundamental question of whether Sterling can even maintain a suit against Doe as a matter of law given that Doe's statements "are protected from defamation actions by the First Amendment." *Turner*, 879 F.3d, at 1262 (internal citations omitted).

Because Doe's statements are protected under the First Amendment, Sterling fails to state a claim sufficient to invade Doe's right to privacy and privilege to speak anonymously. Under *Turner*, it is proper for a court to determine as a matter of law whether a statement is defamatory, and "a court should construe statements in their totality, with attention given to any cautionary terms used by the publisher in qualifying the statement." *Turner*, 879 F.3d, at 1262-63. By relying on the prior uncontested evaluation of the allegedly defamatory messages, the Magistrate Judge did not construe the statements in totality and did not give any attention to cautionary terms or context, a plain

misapplication of *Turner*. It is contrary to law for the Magistrate Judge to fail to perform any analysis of these critical constitutional questions as to Sterling's claims under relevant case law. *Gulfside*, 2021 U.S. Dist. LEXIS 90550, at *4.

Because the Magistrate Judge clearly erred and acted contrary to law by denying the Motion to Quash without even discussing the concerns and information presented regarding the constitutional sufficiency of Sterling's claim, Doe is entitled to have this Court set aside the Order.

II. The Order Must be Set Aside Because it is Clearly Erroneous and Contrary to Law Regarding Applicability of State Anti-SLAPP Laws in Federal Court.

Many states have statutory prohibitions on strategic lawsuits against public participation ("SLAPPs"). Such laws are intended to protect against baseless lawsuits arising from a defendant's public speech. *See*, *e.g.*, Fla. Stat. § 768.295 (2021); Cal. Code Civ. Proc. § 1987.1(b)(5) (2021). Some questions exist as to the applicability of state anti-SLAPP laws in federal court diversity actions. *See*, *e.g., Gov't Emples. Ins. Co. v. Glassco Inc.*, No. 8:19-cv-1950-KK1VI-JSS, 2021 U.S. Dist. LEXIS 183510, at *6-12, 2021 WL 4391717 (M.D. Fla. Sep. 24, 2021) (comparing treatment of state anti-SLAPP laws).

Nonetheless, district courts in Florida have applied Florida's anti-SLAPP statute in diversity actions.

See Anderson v. Best Buy Stores L.P., No. 5:20-cv-41-Oc-30PRL, 2020 U.S. Dist. LEXIS 157642, at *9, 2020 VVL 5122781 (M.D. Fla. July 28, 2020), *adopted in full by Anderson v. Coupons in the News*, No. 5:20-cv-41-Oc-30PRL, 2020 U.S. Dist. LEXIS 157199, 2020 WL 5106676 (M.D. Fla. Aug. 31, 2020); *Eller v. Duckenfield*, No. 20-CV-22886-UU, 2020 U.S. Dist. LEXIS 181407, at *12-13, 2020 WL 6373419 (S.D. Fla. Sep. 28, 2020); *Bongino v. Daily Beast Co., LLC*, 477 F. Supp. 3d 1310, 1322-24 (S.D. Fla. 2020).

Florida state courts have held that Florida's anti-SLAPP law creates a substantive right not to be subject to meritless SLAPPs. *See Gundel v. AV Homes, Inc.*, 264 So. 3d 304, 310 (Fla. Dist. Ct. App. 2019). Accordingly, federal courts "must read Florida's anti-SLAPP statute as creating a substantive right and apply its burden-shifting procedure per *Gundel* if no conflicts exist with the Federal Rules of Civil Procedure." *Glassco*, 2021 U.S. Dist. LEXIS 183510, at *14. The district court in *Glassco* went on to conclude that no such conflicts exist. *Id.* at *1516. Thus, Florida's anti-SLAPP law is applicable in federal courts.

Doe is a Californian, entitled to the protection of California law. Under California's anti-SLAPP laws, a person may quash a subpoena seeking personally identifying information such as name or address where the underlying action involves such person's exercise of free speech rights. Cal. Code Civ. Proc. § 1987.1(b)(5) (2021). The purpose of this statute is "to protect the person from unreasonable or oppressive demands, including unreasonable violations of the

right of privacy of the person." Cal. Code Civ. Proc. § 1987.1(a).

Some courts have found that portions of state anti-SLAPP laws containing special motion to strike provisions or other dismissal mechanisms conflict with the Federal Rules of Civil Procedure and thus are inapplicable in federal courts. *See Carbone v. Cable News Network, Inc.*, 910 F.3d 1345, 1349 (11th Cir. 2018) (upholding inapplicability of Georgia anti-SLAPP special motion to strike in federal court); *La Liberte v. Reid*, 966 F.3d 79, 87 (2d Cir. 2020) (holding special motion to strike authorized by Cal. Code Civ. Proc. § 425.16 conflicted with Federal Rules of Civil Procedure and was thus inapplicable in federal court). These decisions rest on the idea that such special motions to strike are inappropriate because they increase plaintiff's burden to overcome pretrial dismissal. *La Liberte*, 966 F.3d, at 87.

However, the Eleventh Circuit has upheld application of anti-SLAPP laws in diversity actions in this circuit. *See Parekh v. CBS Corp.*, 820 F. App'x 827, 836 (11th Cir. 2020) (upholding application of Florida anti-SLAPP fee award); *Tobinick v. Novella*, 848 F.3d 935, 943 (11th Cir. 2017) (finding district court acted reasonably in applying California anti-SLAPP law and declining to review applicability of said law when issue was raised for first time on appeal).

Doe provided significant explanation that Sterling's lawsuit is a prohibited SLAPP under both California and Florida law. *See* D.E. 11. Sterling is a public

figure who has publicized her conduct, and Doe's public speech related thereto is the basis of Sterling's suit. *Id.*

The Magistrate Judge was required to apply Florida's anti-SLAPP law in ruling on the Motion to Quash. The Magistrate Judge found that Doe did not demonstrate the lawsuit was without merit and thus was outside the scope of Florida's anti-SLAPP law. D.E. 16 at p. 5. As discussed *supra*, the Magistrate Judge's finding that Sterling's suit has merit is erroneous and contrary to law because the Magistrate Judge failed to address arguments and evidence to the contrary presented by Doe. It follows that the Magistrate Judge "fail[ed] to apply or misapplie[d] relevant statutes [and] case law," in denying Doe her right to be free of meritless SLAPPs under Florida's anti-SLAPP statute. *Gulfside*, 2021 U.S. Dist. LEXIS 90550, at *4. Thus, the Order is erroneous and contrary to law and must be set aside.

The Magistrate Judge ruled that California's anti-SLAPP laws did not apply due to conflicts with the Federal Rules of Civil Procedure. D.E. 16 at pp. 4-5. However, this analysis rests on conflicts identified between the Federal Rules and Cal. Code Civ. Proc. § 425.16, which provides for a special motion to strike the entire subject lawsuit. *See* D.E. 16 at pp. 4-5 and cases cited therein.

To Doe's knowledge, no reported federal court decision in this circuit has considered the applicability of Cal. Code Civ. Proc. § 1987.1 (hereinafter "§ 1987.1"), which provides for the quashing of an identifying subpoena in connection with suits based on public speech.

To Doe's knowledge, no reported federal court decision has addressed the applicability of § 1987.1 in federal court and thus this is an issue of first impression.

The remedy provided by California's § 1987.1 is reasonably construed as a substantive right to privacy for the party whose information is sought. Such construction is in line with the characterization of anti-SLAPP laws in *Gundel*. This construction is further supported by the fact that persons whose identifying information is sought in connection with SLAPPs are specifically empowered to seek the remedy. Cal. Code Civ. P. § 1987.1(b)(5). Therefore, § 1987.1 is best construed as a substantive right to privacy for the party whose information is sought, and as a substantive right must apply in federal court.

The Magistrate Judge stated that Doe did not offer any reason as to why California law applies. Doe is a California citizen, and the Eleventh Circuit has previously upheld the use of California's anti-SLAPP laws by a California-based defamation defendant as reasonable. *Tobinick*, 848 F.3d, at 943. California courts also find that California defendants may avail themselves of § 1987.1 in courts outside California. *See*, *e.g.*, *Roe v. Halbig*, 29 Cal. App. 5th 286, 309 (Cal. App. 6th Dist. 2018) (upholding awarding defendant's fees and costs for motion to quash identifying subpoena in connection with a defamation action filed in Florida). Therefore, it would be appropriate for the Magistrate Judge to either apply § 1987.1 or provide sufficient analysis that a conflict exists prohibiting application of § 1987.1 in this court.

Ultimately, the Magistrate Judge's conclusion that § 1987.1 and its remedy is inapplicable in federal court is premised on cases which evaluated a different statute and identified a conflict therewith. Because the Magistrate Judge's decision did not evaluate the actual statute raised by Doe, but rather another statutory provision entirely, the Order is clearly erroneous and contrary to law. *See Gulfside*, 2021 U.S. Dist. LEXIS 90550, at *4.

Because the Magistrate Judge committed error by conflating applicability of distinct statutory provisions and by failing to properly apply California and Florida anti-SLAPP statutes, Doe is entitled to have the Order set aside.

III. This Action Should be Stayed to Prevent Irreparable Harm to Doe Which Cannot be Remedied by Final Appeal.

First Amendment interests, which courts have a duty to consider when supervising discovery in libel cases, support a stay of discovery in this action. *Herbert v. Lando*, 441 U.S. 153, 179-80 (1979) (Powell, J., concurring). This is because litigation itself, including discovery, may operate to chill protected speech. *Id.* at 180 (Powell, J., concurring); *McBride v. Merrell Dow and Pharm., Inc.*, 717 F.2d 1460, 1466-67 (D.C. Cir. 1983) ("[T]he risks and high costs of [defamation] litigation may lead to undesirable forms of self-censorship.").

Courts have routinely forbidden discovery in defamation cases until the determination of threshold

matters. *See*, *e.g.*, *Bruno & Stillman v. Globe Newspaper Co.*, 633 F.2d 583, 597 (1st Cir. 1980) ("As a threshold matter, the court should be satisfied that a claim is not frivolous, a pretense for using discovery powers in a fishing expedition."); *Moldea v. New York Times Co.*, 137 F.R.D. 1, 2 (D.D.C. 1990) (granting stay of discovery in libel action in light of "significant First Amendment issues" and other considerations); *see also Matthews v. City of Maitland*, 923 So. 2d 591, 595 (Fla. 5th DCA 2006) (quashing orders compelling disclosures of anonymous contributors to web site raising funds to challenge city zoning decision).

The Eleventh Circuit has recognized that a discovery order compelling disclosure of privileged information gives rise to serious injury upon disclosure. *See*, *e.g.*, *In re Fink*, 876 F.2d 84, 84 (11th Cir. 1989). The Eleventh Circuit has further recognized "the difficulty of obtaining effective review once the privileged information has been made public." *Id.* Thus, in the view of this circuit an appeal after final judgment is an inadequate form of relief for Doe should her identity be disclosed.

Courts in other circuits have also recognized that "a remedy after final judgment cannot unsay the confidential information that has been revealed. . . ." *Sims v. Blot*, 534 F.3d 117, 129 (2d Cir. 2008) (*quoting In re von Bulow*, 828 F.2d 94, 99 (2d Cir. 1987)); *see also In re Kellogg Brown & Root, Inc.*, 756 F.3d 754, 761 (D.C. Cir. App. 2014); *In re United States Dep't of Homeland Sec.*, 459 F.3d 565, 568 (5th Cir. 2006).

While Doe has not moved to dismiss the instant case, the Motion to Quash raises multiple grounds which would be sufficient for dismissal and this Court should "be satisfied that [Sterling's] claim is not frivolous, a pretense for using discovery powers in a fishing expedition," prior to allowing discovery to continue. *Bruno*, 633 F.2d, at 597.

The Magistrate Judge correctly "agrees with [Doe] that the subpoena strips her of the right to speak anonymously and that her anonymity cannot be reclaimed once revealed." D.E. 16 at p. 7. It is without doubt that once Doe's identity is handed over to Sterling, Doe will never again be able to be anonymous. Moreover, no matter how the underlying lawsuit resolves, Sterling will forever have Doe's name, address, and other identifying information to use as she pleases in her vendetta against Doe. If disclosure of Doe's identity is compelled, there is nothing an appeal after final judgment could offer Doe to regain what was lost. Therefore, discovery, including the Subpoenas, must be stayed pending resolution of the issues raised in the Motion to Quash concerning the viability of this lawsuit.

Sterling has engaged in continued harassment of Doe since at least 2017. Many of these incidents have involved Sterling having her online followers pile on Doe's online presence with harassing comments, sexual threats, and general vitriol. It is entirely foreseeable that, should Sterling obtain Doe's name and physical address, this ordered harassment would cross over into the physical world.

The Magistrate Judge has ordered third parties to disclose Doe's identity to Sterling despite Doe's First Amendment right to anonymity, and Sterling's counsel has already sent copies of the order to third parties and has directed them to comply—which they may at any time.

Once disclosed, Doe's identity will never again be her own. In addition to presenting a serious constitutional issue, it is a threat to Doe's safety, and Doe is concerned enough regarding her personal safety to pursue this objection and every possible legal avenue for relief that she is entitled to pursue to protect herself and her family from harm.

There is no remedy for Doe on final appeal, no matter how this lawsuit continues. Doe's anonymity is either protected now, or it will be gone forever. Therefore, discovery must be stayed to prevent disclosure of Doe's identity prior to full and complete determination of the issues raised in the Motion to Quash.

Conclusion

The Magistrate Judge's Order is erroneous and contrary to law because it misapplies or fails to apply relevant case law regarding the constitutional sufficiency of defamation actions. The Order is further erroneous and contrary to law because it misapplies or fails to apply relevant state anti-SLAPP statutes. Therefore, the Order must be set aside. Further, discovery must be stayed until the issues raised in Doe's Motion to Quash are fully and finally resolved in order to protect Doe's anonymity from irrevocable loss.

WHEREFORE, Defendant Jane Doe respectfully requests this Court issue an order setting aside the Magistrate Judge's Order denying Defendant Jane Doe's Motion to Quash, staying discovery pending reconsideration of the Motion to Quash, awarding Doe her attorneys' fees and costs in this action, and awarding any other such relief as deemed just and proper.

LOCAL RULE 3.01(g) CERTIFICATION

Prior to filing the instant motion, the undersigned has conferred with opposing counsel regarding the subject matter hereof, and the issues herein have not been resolved.

Respectfully submitted this 6th day of October, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2021, a true and correct copy of this Motion was filed via the ECF system, causing a copy to be served on all counsel of record.

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