
IN THE THIRD JUDICIAL DISTRICT COURT
SUMMIT COUNTY, STATE OF UTAH

MICHAEL TANNER, Plaintiff, vs. MICHELLE DEININGER, Defendant.	RULING REGARDING DEFENDANT’S SPECIAL MOTION FOR EXPEDITED RELIEF UNDER THE UNIFORM PUBLIC EXPRESSION ACT Case Number 250500369 Judge Richard Mrazik
---	--

Before the court is Defendant Michelle Deininger’s Special Motion for Expedited Relief Under the Uniform Public Expression Act. (Dkt 70.) Ms. Deininger requests dismissal with prejudice of Plaintiff’s claims for Defamation and Defamation Per Se, and False Light Invasion of Privacy. For the reasons discussed below, Ms. Deininger’s Motion is granted in part and denied in part.

LEGAL STANDARDS

(1) Mr. Tanner must present some competent evidence on every element of his defamation claim.

As relevant to the circumstances of this matter, the Uniform Public Expression Protection Act (“UPEPA”) “applies to a cause of action asserted in a civil action against a person based on the person's ... exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or Utah Constitution, on a matter of public concern.” Utah Code § 78B-25-102(2)(c). Ms. Deininger asserts, and Mr. Tanner does not dispute, that the statements at issue in this matter regard a matter of public concern. Accordingly, this matter falls within the scope of UPEPA.

“Once a court determines that UPEPA applies, the court assesses whether “the responding party ... establish[ed] a *prima facie* case as to *each essential element* of the cause of action.” *Mackey v. Krause*, 2025 UT 37, ¶ 58, 575 P.3d 1162 (quoting Utah Code § 78B-25-107(c)(i); emphasis in original). “[T]o establish a *prima facie* case, a plaintiff must present some competent evidence on every element needed to make out a cause of action.” *Id.* (cleaned up). And to make out a cause of action for defamation, a plaintiff “must show that defendants published the statements concerning him, that the statements were false, defamatory, and not subject to any privilege, that the statements were published with the requisite degree of fault, and that their publication resulted in damage.” *West v. Thomson Newspapers*, 872 P.2d 999, 1007–08 (Utah 1994).

(2) Ms. Deininger may request dismissal of Mr. Tanner’s defamation claim as a matter of law.

Even if a plaintiff “demonstrate[s] that there is a *prima facie* case for each element of the claims under review,” the defendant may nonetheless secure dismissal of plaintiff’s cause of action, or part of it, by “show[ing] that the plaintiff cannot state a cause of action or that there is no genuine issue of material fact that would prevent entry of judgment for the defendant.”

Mackey, 2025 UT 37, ¶ 38; *see also* Utah Code § 78B-25-107(1)(c)(ii). Under a UPEPA motion:

[W]hen courts determine whether statements are capable of defamatory meaning, we do not indulge the plaintiff the inferences that may be reasonably drawn from the statements in favor of a defamatory meaning. But when engaging in most other defamation-related inquiries, we do extend those inferences.

Mackey, 2025 UT 37, ¶ 57 (cleaned up).

The court has deferred resolution of Ms. Deininger’s privilege defenses¹ until after deciding whether the statements at issue were false—including whether the statements constitute protected opinion—and whether they are susceptible of a defamatory interpretation. Accordingly, Ms. Deininger’s Special Motion for Expedited Relief (dkt 70) focuses on the elements of falsity and defamatory meaning.

a. Whether the gist of a statement is false—including whether a statement qualifies as unverifiable opinion—may be determined as a matter of law.

Among the essential elements of a defamation claim is that “the statements were false.” *West*, 872 P.2d at 1007. In assessing whether a plaintiff has shown a statement is false, the court must acknowledge “the commanding presence of free expression among our liberties.” *Jensen*, 2005 UT 81, ¶ 89. Indeed, “statements which may be infected with inaccuracy, innuendo, and outright falsity” may “still not be actionable so long as their ‘gist’ or ‘sting’ rings true.” *Id.* “Minor inaccuracies do not amount to falsity so long as the substance, the gist, the sting, of the libelous charge be justified.” *Masson v. New Yorker Mag., Inc.*, 501 U.S. 496, 517 (1991) (internal quotation omitted).

“A plaintiff is definitionally unable to meet [the falsity requirement] with regard to statements of pure opinion, because such statements ‘are incapable of being verified’ and therefore ‘cannot serve as the basis for defamation liability.’” *Davidson*, 2019 UT App 8, ¶ 31 (quoting *West*, 872 P.2d at 1015). A statement of opinion may be the basis of a defamation claim only “when the opinion states or implies facts that are false or defamatory.” *West*, 872 P.2d at 1015. In “distinguishing fact from opinion,” courts consider “the totality of the circumstances

¹ Ms. Deininger expressly reserves her right to raise, in future proceedings, common law and statutory privileges that may immunize her statements from defamation liability, and her argument that Mr. Tanner must establish the heightened actual malice standard of fault due to his status as a limited-purpose public figure and public official. *See* dkt 70 at 3 n. 2.

surrounding the statement,” including “(i) the common usage or meaning of the words used; (ii) whether the statement is capable of being objectively verified as true or false; (iii) the full context of the statement—for example, the entire article or column—in which the defamatory statement is made; and (iv) the broader setting in which the statement appears.” *West*, 872 P.2d at 1018.

Even if an opinion implies facts, it remains protected if the facts on which the opinion is based are disclosed. “A simple expression of opinion based on disclosed . . . nondefamatory facts is not itself sufficient for an action of defamation, no matter how unjustified and unreasonable the opinion may be or how derogatory it is.” Restatement (Second) of Torts § 566 cmt. c (1977).

“When the underlying facts as to the gist or sting are undisputed, substantial truth may be determined as a matter of law.” *Hogan v. Winder*, 762 F.3d 1096, 1106 (10th Cir. 2014) (internal quotations omitted). “The determination of whether a particular statement qualifies as opinion [] presents a question of law for the court to decide.” *Keisel*, 2023 UT App 163, ¶ 35.

b. Whether a statement is capable of sustaining a defamatory meaning is a question of law.

To qualify as defamation, a statement must be able to convey a defamatory meaning. *West*, 872 P.2d at 1008. “Because the existence of defamatory content is a matter of law, a reviewing court can, and must, conduct a context-driven assessment of the alleged defamatory statement and reach an independent conclusion about the statement's *susceptibility* to a defamatory interpretation.” *O'Connor v. Burningham*, 2007 UT 58, ¶ 26, 165 P.3d 1214 (emphasis added).

Under Utah law, a statement is defamatory if it impeaches an individual's honesty, integrity, virtue, or reputation and thereby exposes the individual to public hatred, contempt, or ridicule. At its core, an action for defamation is intended to protect an individual's interest in maintaining a good reputation. A publication is not defamatory simply because it is nettlesome or embarrassing to a plaintiff, or even because it makes a false statement about the plaintiff. A plaintiff must establish

that the statement at issue is more than sharp criticism, that it instead damaged the plaintiff's reputation in the eyes of at least a substantial and respectable minority of its audience.

Keisel v. Westbrook, 2023 UT App 163, ¶ 33, 542 P.3d 536 (cleaned up).

“If no defamatory meaning can *reasonably* be inferred by reasonable persons from the communication, the action must be dismissed for failure to state a claim.” *Cox v. Hatch*, 761 P.2d 556, 561 (Utah 1988) (emphasis added).

(3) To the extent Mr. Tanner’s defamation claim fails, his related false light claim also fails.

“A false light claim is closely allied with an action for defamation, and the same considerations apply to each.” *Jacob v. Bezzant*, 2009 UT 37, ¶ 21 (internal quotation omitted). “[F]alse light claims that arise from defamatory speech raise the same First Amendment concerns as are implicated by defamation claims.” *SIRQ, Inc. v. The Layton Companies, Inc.*, 2016 UT 30, ¶ 50. When the claims are based on a common set of allegedly false statements, “if it was not potentially defamatory it cannot form the proper basis of a false light claim. *Id.* ¶ 54.

ANALYSIS

Mr. Tanner alleges Ms. Deininger published numerous factual statements—both express and implied—that are false and defamatory. *See* Am. Compl. ¶¶ 23(a)(i)-(vi), 23(b), 23(c), 23(d), 23(e), 34, 35(a)-(b), 39, 41(a)-(c), 42-45, 47, 49, and 50. (Dkt 62.)

(1) The November 2024 Story in the Park Record.

Mr. Tanner alleges that Ms. Deininger authored the November 2024 Story and caused it to be published in the Park Record. Am. Compl. ¶ 21. Mr. Tanner alleges “the November Story includes false statements of fact, manipulated figures, and distorted half-truths, patched together in a malicious attempt to damage Mr. Tanner’s reputation and livelihood.” Am. Compl. ¶ 22.

Ms. Deininger also appeared on KPCW in April 2025 and affirmed the accuracy of the November 2024 article. *See* Am. Compl. ¶ 50.

a. Statements regarding living and working part time in Chicago, Illinois.

In paragraph 23(a) of his Amended Complaint, Mr. Tanner alleges the November Story includes the following falsehoods:

Mr. Tanner lives and works part time in Chicago, Illinois. For instance, the Story states:

- i. Tanner “lives and works part time in Chicago.”
- ii. “Tanner spends his summers mostly in Illinois, and during the school year [Tanner is] regularly out of the office as well.”
- iii. That Tanner was only “physically present two-thirds of the year.”
- iv. “Tanner and his family spent summers in Illinois, and considerably less over summer break.”
- v. An allusion to “routine out-of-state remote work,” suggesting that this was Mr. Tanner’s work routine.
- vi. Mr. Tanner works remotely in Illinois during the summer months.

The actual statements in the November Story are as follows:

Utah’s highest paid public schools COO lives and works part time in Chicago. . . . Since his hiring, Gildea let Tanner work partially remotely from Illinois to continue military work and help care for a parent. Under that arrangement, Tanner spends his summers mostly in Illinois, and during the school year he’s regularly out of the office as well. . . . Former Human Resources Director Shad Sorenson worked with Tanner for nearly three years in the district office. He said Gildea informed him that Tanner had residences in both Utah and Illinois, [and] Tanner and his family spent summers in Illinois Sorenson said he didn’t track Tanner’s remote work, but estimated he was physically present two-thirds of the school year, and considerably less over summer break. . . . Routine out-of-state remote work for an operations role appears uncommon.

Appx. 194–96.

Mr. Tanner has produced some competent evidence regarding the falsity of each of the foregoing factual statements regarding whether he *actually* lived and worked part time in

Chicago; spent his summers mostly in Illinois; and whether he was regularly out of the office during the school year. (Dkt. 106 ¶¶ 2-6.) But the foregoing statements are not reasonably susceptible to a defamatory meaning because *it is undisputed that Mr. Tanner was authorized to work remotely* for a period of five years. (Appx. 000031.) Indeed, the November Story discloses that “[s]ince his hiring, Gildea let Tanner work partially remotely from Illinois to continue military work and help care for a parent.” Accordingly, no reader could reasonably conclude that Mr. Tanner was acting inappropriately by living and working part time in Chicago, or otherwise spending considerable time in Chicago, because he was explicitly authorized to do so.

Accordingly, Ms. Deininger’s Special Motion is granted with respect to the statements referenced in paragraph 23(a) of Mr. Tanner’s Amended Complaint.

b. Statements regarding the bus driver incident.

In paragraph 23(b) of his Amended Complaint, Mr. Tanner alleges the November Story includes the following falsehoods:

Given his alleged part-time residence outside the State, Mr. Tanner was not present in Utah at the time a district bus driver violated district policies, leaving other colleagues to manage the crisis; further, that he “did not communicate about” the incident afterward

The actual statements in the November Story are as follows:

Despite emergency response oversight duties, an employee said Tanner wasn’t present in April 2023 during a close call near the district office, and didn’t communicate about it afterwards. A supervisor confirmed a bus driver left a campus with a bus full of students after broadcasting alarming comments over a two-way radio, then turning the radio off, violating policy. Panicking colleagues devised a response, locating the bus using GPS and creating a truck barricade to intercept it, after which the driver was taken away by emergency workers.

Appx. 199.

Mr. Tanner has produced some competent evidence regarding the falsity of the statement that he “wasn’t present” during the rogue bus driver incident in April 2023. Mr. Tanner states under oath that he “was in Park City at the time of these events.” (Dkt. 106 ¶ 8.) But the

implication that Mr. Tanner was not physically present in Park City is not susceptible to a defamatory meaning with respect to Mr. Tanner.² Given that the November Story discloses that he was authorized to “work partially remotely from Illinois,” it is not unexpected that he would be outside Park City during a sudden, random event, and it does not impugn his honesty, integrity, virtue, or reputation to state as much.

On the other hand, Mr. Tanner has failed to produce some competent evidence regarding the falsity of the statement that he did not communicate about the April 2023 incident “afterwards.” While Mr. Tanner states he “was closely involved in minute-by-minute decision-making about this incident,” Mr. Tanner does not address whether he communicated or otherwise followed up about the April 2023 incident *after* it was over. (Dkt. 106 ¶ 8.) Given that this topic is within his personal knowledge and he failed to address it, the court determines he has failed to carry his burden of producing some competent evidence of falsity on this topic.

Accordingly, Ms. Deininger’s Special Motion is granted with respect to the statements referenced in paragraph 23(b) of Mr. Tanner’s Amended Complaint.

c. Statements regarding construction issues.

In paragraph 23(c) of his Amended Complaint, Mr. Tanner alleges the November Story includes the following falsehoods:

Mr. Tanner was away from the State prior to the opening of a PCSD school undergoing significant construction, which caused major delays and other issues, which “nearly derailed the start of classes”

The actual statements in the November Story are as follows:

² If anything, when read in context, the November Story’s discussion of someone with Mr. Tanner’s responsibilities being permitted to work remotely—and the implication that it contributed to the District COO not being present during a sudden emergency—may lead a reader to reasonably question the judgment and competence of Dr. Gildea and other District leadership, but not the job performance of Mr. Tanner under the rules set by the District.

Three months ago, construction snafus nearly derailed the start of classes at Ecker Hill Middle School.

Utah Deputy Fire Marshal Ryan Nelson inspected that campus three times over the final week of summer vacation. Nelson said during the first two, so much was unfinished he didn't even write reports. Then on Aug. 19, Nelson spent seven hours on-site overseeing last-ditch efforts to pass inspection. Crews finished a few hours before the doors opened.

'It was very close to a disaster,' Nelson said. '[The district] was making plans for what to do the next day. The job super, who makes more money than anyone, was riding a floor cleaner at 1 a.m.'

[Interim Superintendent Caleb] Fine said Tanner returning to Park City from Chicago the evening of the 18th shouldn't concern the community.

Ecker Hill parent Sarah Crockett said the school's construction zone atmosphere detracts from teaching and learning, and wondered whether the work might have benefitted from more oversight.

'I'd assume if you have multiple projects going on that an on-site presence would be an asset, especially at such a highly compensated executive level,' Crockett said. 'How many days is he working from here and how many days is he working out of state? The right response would be some transparency.'"

Appx. 198–99.

As alleged by Mr. Tanner, the defamatory focus of this portion of the November Story is the factual implication that Mr. Tanner's absence from Utah *caused* major construction delays and other construction issues that "nearly derailed the start of classes." But the actual text of the November Story does not state or reasonably imply that it was Mr. Tanner's absence from Park City—as opposed to any number of other issues³—that caused or contributed to the reported "construction snafus."

Rather, when read in context and as a whole—especially in light of the undisputed and disclosed fact that Mr. Tanner was authorized to work remotely—the November story questions the judgment of District administration in allowing the District COO to work remotely when

³ The record reflects that during this time, Park City school-related construction projects were delayed by permitting issues and early cold weather. See Appx. 149 and 152.

multiple construction projects are ongoing; questions the transparency of the District administration regarding that arrangement; and implies that the District is over-extended regarding construction management. But those questions do not reasonably impugn Mr. Tanner's honesty, integrity, virtue, or reputation as an individual. This conclusion is supported by the November Story's inclusion of District officials' praise of Mr. Tanner regarding his "professionalism and capability"; his successful handling of six construction projects and implementation of "significant security improvements"; him being "consistently reliable and highly responsible in operational matters"; and him being "always accessible by phone when not in the office." (Appx. 000196-197.)

Because this portion of the November Story is not reasonably susceptible to a defamatory meaning regarding Mr. Tanner—as opposed to the actions of the District administration that fashioned his work arrangement--**the foregoing statements from the November Story, as referenced in paragraph 23(c) of Mr. Tanner's Amended Complaint, cannot serve as the basis for a defamation claim.**

d. Statement regarding Mr. Tanner's compensation.

In paragraph 23(d) of his Amended Complaint, Mr. Tanner alleges the November Story includes the following falsehood: "Mr. Tanner earned compensation of \$394,000." The actual statements in the November Story are as follows:

Mike Tanner is paid \$394,000 a year for a job position overseeing operations. . . . Tanner's compensation including salary and benefits is now \$394,000 a year — the highest in Utah K-12 schools for that role, according to Transparent Utah. . . . [Executive Assistant Lorie] Pearce provided compensation information for Tanner about \$50,000 lower than what the district shared with Transparent Utah. District officials didn't respond to multiple requests to clarify discrepancies.

Appx. 194–95, 201.

Mr. Tanner states the foregoing statement is false because he “never received any compensation within \$40,000 of that amount.” (Dkt 106 ¶ 13.) But the difference between \$394,000 and \$354,000 is not material. The gist of the statement—that Mr. Tanner was highly compensated, earning well over \$300,000 per year—is the same either way. So as a matter of law, the statement in the November Story regarding Mr. Tanner’s compensation is substantially true. Moreover, the statement is not reasonably susceptible to a defamatory meaning regardless of whether the November Story reported his annual income as \$354,000, \$394,000, or some figure in between.

Accordingly, Ms. Deininger’s Special Motion is granted with respect to the statements referenced in paragraph 23(d) of Mr. Tanner’s Amended Complaint.

e. Statements regarding preferential treatment.

In paragraph 23(e) of his Amended Complaint, Mr. Tanner alleges the November Story includes the following falsehood: “The implication that Mr. Tanner was hired as a result of preferential treatment wherein the former superintendent created a new job specifically for him.”

The actual statements in the November Story are as follows:

When Jill Gildea became superintendent of Park City schools in 2018, she reorganized the district office, creating a new COO position and tapping a former colleague from her Chicago days, Mike Tanner, to head it.

Appx. 195.

Mr. Tanner has failed to produce some competent evidence that the foregoing factual statements in the November Story are false. Moreover, the factual implication that Mr. Tanner urges—that he was hired because of preferential treatment—does not reasonably follow from the factual statements that are actually made in the November Story. Further, the factual statements that are actually made in the November Story are not reasonably susceptible to a defamatory meaning.

Accordingly, Ms. Deininger’s Special Motion is granted with respect to the statements referenced in paragraph 23(e) of Mr. Tanner’s Amended Complaint.

(2) Question submitted to moderator at an October 2024 community forum.

In paragraph 34 of his Amended Complaint, Mr. Tanner alleges that Ms. Deininger published a statement that implied false facts as follows:

Prior to the November Story, during a community forum with candidates running for the Board of Education, Ms. Deininger submitted a question to moderators that focused on Mr. Tanner’s supposed remote work, again trying to persuade the public of a reality—that that Mr. Tanner was being paid too much money while living elsewhere and working little—which was untrue.

The actual questions submitted to the moderator by Ms. Deininger are as follows:

Question for PCSD candidates: The district’s COO earns compensation of \$320,000 per year. According to Utah’s government employee website Transparent Utah he’s the highest paid COO in K-12 schools statewide. PCSD pays high salaries so people can afford to live here, but our COO spends more than two-thirds of his time at his primary home in Chicago, where he engages in other paid work – something he discussed on KPCW’s local news hour this year. Do you believe PCSD should allow a COO, who oversees building security as well as construction work, to live in another state, work remotely, and hold other contract work? What changes if any would you like to see in this area?

. . . Oh I stand corrected – COO comp this year is \$357k. . . . Part 2 of this question [-] given the construction project is over budget and has been plagued by violations of law, do you support the COO receiving a \$37k raise this year over last year?”

Appx. 190–91.

As alleged by Mr. Tanner, the defamatory focus of the foregoing statements was “that Mr. Tanner was being paid too much money while living elsewhere and working little.” Whether he was being paid too much is an issue that implicates the judgment of the people that decide how much to pay him—the District leadership—not Mr. Tanner individually. There is no defamatory sting to the factual implication that Mr. Tanner accepted compensation at the level offered by the District. Moreover, the implication that he was being paid “too much”—or that he was not worth

the amount being offered by the District—are implications of pure opinion that are not actionable.

Whether Mr. Tanner was “spend[ing] more than two-thirds of his time at his primary home in Chicago, where he engage[d] in other paid work while serving in an important operations role”—is a factual issue directed at Mr. Tanner individually. Mr. Tanner has produced some competent evidence that the statement that he “spends more than two-thirds of his time at his primary home in Chicago” is false. (Dkt. 106 ¶¶ 2-6.) Mr. Tanner has also produced some competent evidence that the statement that he “engage[d] in other paid work” is false. (Dkt. 106 ¶ 20.)

The question to the moderator discloses—through reasonable implication, rather than explicit statement—that the District approved of Mr. Tanner working remotely and doing other paid work. The question of whether “PCSD should allow a COO, who oversees building security as well as construction work, to live in another state, work remotely, and hold other contract work” implies that the District was already allowing such an arrangement to exist. And that implication is supported by the question of whether the candidates wanted any “changes ... in this area.”

Given that the text of the question submitted to the moderator is premised on the reasonable implication that Mr. Tanner was *authorized* to work remotely and do other paid work, the statement that he “spends more than two-thirds of his time at his primary home in Chicago, where he engages in other paid work while serving in an important operations role” is not reasonably susceptible to a defamatory meaning regarding Mr. Tanner. If anything, the gist or sting of the question is whether the District used good judgment in authorizing Mr. Tanner’s work arrangement.

For these reasons, the foregoing statements from the question submitted to the moderator at an October 2024 community forum, as referenced in paragraph 34 of Mr. Tanner’s Amended Complaint, cannot serve as the basis for a defamation claim.

(3) October 2024 email.

In paragraph 35 of his Amended Complaint, Mr. Tanner alleges Ms. Deininger sent an email to, among others, “Mr. Tanner’s employer, the Interim Superintendent, all of the Board of Education members and future candidates” that made the following false allegations:

- a. An assertion that “Tanner lives in Chicago.”
- b. That the construction project Tanner oversees is “millions over budget” and “years behind schedule,” including a failure surrounding the kind of glass selected for classroom partitions.

The actual statements made by Ms. Deininger in the October 2024 email are as follows:

Mike Tanner’s remote work from Chicago – and comp of \$357k per year, the highest COO pay in Utah’s K-12 system (and reflecting a \$27k raise over last year) for a guy whose social media says he’s a Chicago-based independent contractor, who is not registered to vote in Utah and whose Utah property taxes are sent to his primary residence in Evanston, IL, all of which you can find easily online - is a taxpayer accountability story you have missed related not just to construction fails but perhaps more fundamentally to building safety and security, which fall under his purview. (God forbid there is ever a security breach of the sort we read about daily across the country, and families want to know, like in Uvalde, how things happened here and PCSD’s answer is the guy in charge was at his home in Chicago.)

The community should know Tanner lives in Chicago and holds down other paid contract work and the construction project he oversees is millions over budget, years behind schedule and beset by endless fails. Consider a text from an employee today: ‘I’m hearing Ecker and likely McPolin & PCHS are going to have to go back and replace all the glass classroom partitions. With bullet proof glass. Can you imagine how much that will run?!’

Appx. 192.

The assertion that “Tanner lives in Chicago” is not reasonably susceptible to a defamatory meaning because it is undisputed that District leadership—*i.e.*, the recipients of the

October 2024 email—had authorized Mr. Tanner to work remotely. Moreover, the defamatory gist or sting of statements regarding the construction project Tanner oversees being “millions over budget,” “years behind schedule,” or using the wrong glass is that Mr. Tanner is bad at being a COO. But that is a statement of pure opinion that is not capable of being verified.

Accordingly, Ms. Deininger’s Special Motion is granted with respect to the statements referenced in paragraph 35 of Mr. Tanner’s Amended Complaint.

(4) Report and Facebook post regarding Mr. Tanner’s threatening comment.

In paragraphs 38 and 39 of his Amended Complaint, Mr. Tanner alleges Ms. Deininger made the following false statements:

Ms. Deininger filed a retaliatory report with the Park City Police Department, alleging that Mr. Tanner had threatened her life two years prior. This report was blatantly false.

Ms. Deininger posted on Facebook alleging that “Tanner told a City Hall employee he wanted to kill me.” She added details to make this appear as a serious threat, alleging that “Park City police got involved, and it escalated to the Attorney General’s office, who confirmed it and directed him to have no contact” with Ms. Deininger. Her post characterized this as a “death threat” from Mr. Tanner.

The full text of Ms. Deininger’s Facebook post is attached as Exhibit C to Mr. Tanner’s revised opposition brief. (Dkt. 116.)

Mr. Tanner has produced some competent evidence regarding the falsity of these statements. Mr. Tanner denies that he has “ever made any threat against Ms. Deininger’s life.” (Dkt. 106 ¶ 15.) Moreover, the Utah Attorney General’s Office report neither confirms that Mr. Tanner told a City Hall employee that he wanted to kill Ms. Deininger nor reflects that the Attorney General’s Office directed Mr. Tanner to have no contact with Ms. Deininger. (Appx. 215-216.) Moreover, the gist or sting of Ms. Deininger’s report and Facebook post—*i.e.*, that

Mr. Tanner had threatened Ms. Deininger’s life—is reasonably susceptible to a defamatory meaning.

Accordingly, Ms. Deininger’s Special Motion is denied with respect to the statements referenced in paragraphs 38 and 39 of Mr. Tanner’s Amended Complaint.

(5) Facebook posts.

a. Post 1.

In paragraph 41 of his Amended Complaint, Mr. Tanner alleges that in January 2025, Ms. Deininger “posted on Facebook about two investigations pending against Mr. Tanner.” He alleges her posts contained multiple falsehoods:

- a. She stated that district officials refused to provide correct figures for Mr. Tanner’s compensation, but her November Story contained an admission (albeit buried deep into the story, well after assertions of a higher figure) that the District had disclosed the accurate figure in response to GRAMA requests;
- b. Asserting that a whistleblower submitted three new allegations against Mr. Tanner to the District, and that the District found that “the letter’s allegations were all true.”
- c. That Mr. Tanner found a way to hush up district employees from sharing these allegations through “fear.”

The actual statements made by Ms. Deininger are as follows:

I for one am dying for transparency on the two investigations now underway related to schools COO Mike Tanner I reported in November Tanner’s total comp is \$394k and district officials said that was wrong, then declined for three months to provide a different figure. . . . [A] whistleblower sent a letter mid-December with three new allegations against Tanner (beyond what I reported), and district officials conducted a one-day inquiry into them, then notified several employees and some media that the letter’s allegations were all true. But later, two employees shared that fear of Tanner led some to ‘downplay’ facts and not divulge everything they knew. . . .

Appx. 231.

For reasons discussed herein, the foregoing statements related to Mr. Tanner’s compensation are not actionable. Accordingly, Ms. Deininger’s Special Motion is granted with

respect to that portion of the statements referenced in paragraph 41 of Mr. Tanner’s Amended Complaint.

Mr. Tanner’s sworn statement that “no person has ever affirmed to me that the District confirmed three whistleblower allegations against me” (dkt. 106 ¶ 17) as compared to the actual substance of the District report (Appx. 275-277)—and drawing all reasonable inferences regarding falsity in Mr. Tanner’s favor—the court determines Mr. Tanner has carried his burden of establishing a prima facie case that the statement “a whistleblower sent a letter mid-December with three new allegations against Tanner ... and district officials ... notified several employees and some media that the letter’s allegations were all true” is false.

Similarly, based on Mr. Tanner’s sworn statement that he has “never intimidated District employees, or employed any use of fear to ‘hush up’ any detractors” (dkt. 106 ¶ 18)—and drawing all reasonable inferences regarding falsity in Mr. Tanner’s favor—the court determines Mr. Tanner has carried his burden of establishing a prima facie case that the statement “two employees shared that fear of Tanner led some to ‘downplay’ facts and not divulge everything they knew” is false.

Moreover, each of those statements is reasonably susceptible to a defamatory meaning regarding Mr. Tanner.

Accordingly, with the exception indicated above, Ms. Deininger’s Special Motion is denied with respect to the statements referenced in paragraph 41 of Mr. Tanner’s Amended Complaint.

b. Post 2

In paragraphs 42 and 43 of his Amended Complaint, Mr. Tanner alleges Ms. Deininger made additional defamatory Facebook posts:

A subsequent Facebook post reported that Mr. Tanner pressured District employees to lie about Mr. Tanner's HR violations because "they feared retaliation." Am. Compl. ¶ 42.

Later, Ms. Deininger posted on a Facebook asserting that "Tanner's years of public claims of military duties turned out to be false." Am. Compl. ¶ 43.

The actual statements made by Ms. Deininger are as follows:

"Last I checked he wasn't on administrative leave, even though the State Attorney General's office is investigating him, with help from an Air Force investigator, because whistleblowers who read by report came forward in December and proved Tanner's public claims of military duties were false. . . .

Also note several employees told me they're terrified of Tanner, and two confirmed an employee lied to HR during questioning about Tanner's policy violations, downplaying them because they feared retaliation

Appx. 234.

Based on Mr. Tanner's sworn statement that he has "never intimidated District employees, or employed any use of fear to 'hush up' any detractors" and that "[i]t is false that I have taken any action or made any insinuation to any District personnel that would make them 'fear retaliation'" (dkt. 106 ¶ 18), the court determines Mr. Tanner has carried his burden of establishing a prima facie case that the statement that "several employees told me they're terrified of Tanner, and two confirmed an employee lied to HR during questioning about Tanner's policy violations, downplaying them because they feared retaliation" is false. Moreover, that statement is reasonably susceptible to a defamatory meaning regarding Mr. Tanner. **Ms. Deininger's Special Motion is denied with respect to this portion of Post 2 (i.e., Am. Compl. ¶ 42).**

Mr. Tanner has failed to produce some competent evidence to show the falsity of Ms. Deininger's reference to "Tanner's public claims of military duties [being] false." Mr. Tanner's general and unsupported statement that Ms. Deininger is "wrong" does not address the substance of the Independent Review by External Investigators and does not provide a non-speculative

basis for an inference to be drawn in Mr. Tanner's favor. (*Compare* dkt 106 ¶ 19 with Appx. 249-250, 257, and 295.) **Ms. Deininger's Special Motion is granted with respect to this portion of Post 2 (i.e., Am. Compl. ¶ 43).**

c. Post 3

In paragraphs 44 and 45 of his Amended Complaint, Mr. Tanner alleges Ms. Deininger made additional defamatory Facebook posts:

She then reported on Facebook that Mr. Tanner had acted fraudulently, since he secured his cushy deal getting "\$400k per year for part time work" "under false pretenses." She re-circulated the link to the November Story in connection with this post to emphasize all its original false claims. (Am. Compl. ¶ 44.)

Another post showed Ms. Deininger making the claim that Mr. Tanner "spent half the year in Chicago including summers." (Am. Compl. ¶ 45.)

The actual statements made by Ms. Deininger are as follows:

[Tanner] was the district's second highest-paid and second in command overseeing building safety and security and construction – but he spent half the year in Chicago including summers. . . . His removal comes after my November Park Record report exposing his remote work (which former Super[intendent] Gildea allowed). It also comes after PCSD whistleblowers showed district officials Tanner had lied for years that military duties required remote work ... turns out he retired from the Air Force before PCSD hired him. \$400k per year for part time work under false pretenses.

Appx. 239.

For the reasons discussed herein, **Ms. Deininger's Special Motion is granted with respect to the references in Post 3 to Mr. Tanner's income and to him spending "half the year in Chicago including summers."**

Based on an independent consideration of the materials cited by the parties (Appx. 31 and 249-250), the court determines Mr. Tanner has established a prima facie case that Ms. Deininger's statement that Mr. Tanner "lied for years that military duties required remote work" is false. Moreover, as a matter of law, an allegation of lying about military service is reasonably

susceptible to a defamatory meaning. **Ms. Deininger’s Special Motion is denied with respect to this portion of Post 3.**

Ms. Deininger’s statement “\$400k per year for part time work under false pretenses” is a rhetorical flourish summarizing the statements of fact that came before it, not a statement of fact by itself. **Ms. Deininger’s Special Motion is granted with respect to this portion of Post 3.**

d. Post 4

In paragraph 47 of his Amended Complaint, Mr. Tanner alleges Ms. Deininger made an additional defamatory Facebook post:

Ms. Deininger posted on Facebook accusing Mr. Tanner of having illegally stored hazardous levels of arsenic near a playground and near classrooms for six years, possibly poisoning schoolchildren.

The actual statements made by Ms. Deininger are as follows:

The district statement thanked Tanner for his service. Surely they aren’t thanking him for illegally storing hazardous levels of arsenic (an airborne contaminant) near a playground and classrooms for six years in giant soil piles underneath cracked, leaching failed caps of clean soil? My kids both spent two years at that campus. They and countless other students and employees will find out in the future what the long-term effects [o]f that exposure were – and I predict no one will be thanking Tanner for anything at that point.

Appx. 219.

The foregoing statement cannot be reasonably read to indicate that Mr. Tanner—himself—deposited contaminated soils “near a playground and classrooms ... for six years.” At most, when read in context and as a whole, the foregoing statement reasonably conveys Ms. Deininger’s subjective frustration regarding *the District’s* failure to adequately address the contaminated soils issue. The fact that Ms. Deininger expresses her frustration by making sarcastic comments regarding “thanking” Mr. Tanner—the District’s COO—is a non-actionable rhetorical flourish.

Even if the foregoing statement can be reasonably read as impugning Mr. Tanner's job performance as COO based on an implied failure to prevent or adequately mitigate the soils issue, it constitutes a non-actionable expression of opinion. Whether Mr. Tanner did enough to address the soils issue—or did it well enough—during his tenure as COO is a subjective conclusion that cannot be objectively verified as fact.

Accordingly, Post 4, as referenced in paragraph 47 of Mr. Tanner's Amended Complaint, cannot serve as the basis for a defamation claim.

CONCLUSION

Michelle Deininger's Special Motion for Expedited Relief Under the Uniform Public Expression Act is granted in part and denied in part as follows:

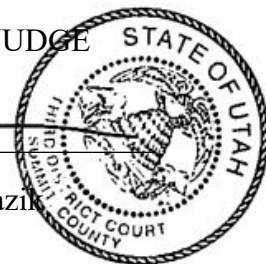
(1) Mr. Tanner's claims for Defamation and Defamation Per Se, and False Light Invasion of Privacy, are dismissed with prejudice to the extent they are based on the statements referenced in paragraphs 23(a), 23(b), 23(c), 23(d), 23(e), 34, 35, 43, 45, and 47 of Mr. Tanner's Amended Complaint.

(2) Ms. Deininger's Special Motion is denied regarding the statements referenced in paragraphs 38, 39, 41, 42, and 44 (as specified herein) of Mr. Tanner's Amended Complaint.

DATED this 12th day of June 2026.

DISTRICT COURT JUDGE


Judge Richard E. Mraz



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 250500369 by the method and on the date specified.

EMAIL: JEFFREY HUNT JHUNT@PARRBROWN.COM

EMAIL: DICK BALDWIN DBALDWIN@PARRBROWN.COM

EMAIL: KADE OLSEN KOLSEN@PARRBROWN.COM

EMAIL: RYAN BELL RBELL@MBLLAW.COM

EMAIL: REBECCA VALLEJOS RVALLEJOS@MBLLAW.COM

EMAIL: ADAM ALBA AALBA@MBLLAW.COM

06/12/2026

/s/ JAMESON DURHAM

Date: _____

Signature