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STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF RAMSEY **SECOND JUDICIAL DISTRICT**

Trivedi LLC, Trivedi Master Wellness LLC, Trivedi Foundation, Trivedi Products LLC, Mahendra Trivedi,

Plaintiffs,

vs.

Dennis Lang,

Defendant.

Court File No. 62-CV-14-4330

ORDER GRANTING SUMMARY JUDGMENT

This matter came on for hearing of defendant's motion for summary judgment on March 25, 2016, before the Honorable Robert A. Awsumb, Ramsey County District Court Judge. Nathan Knoernschild, *Esq.*, appeared on behalf of Plaintiffs. Mark Anfinson, *Esq.*, appeared with and on behalf of defendant Dennis Lang.

Upon all of the files, pleadings, records and proceedings herein, and based upon the arguments and submissions of counsel,

ORDER

1. Defendant's motion for summary judgment is GRANTED in its entirety.
2. Plaintiffs' complaint is hereby dismissed with prejudice and on the merits.
3. The attached Memorandum is incorporated herein as part of this Order.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: June 1, 2016

BY THE COURT:

Awsumb, Robert (Judge)
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Robert A. Awsumb
Judge of District Court

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MEMORANDUM

1. **Factual Background.**

a. **Introduction and Procedural Background.**

The factual background of the parties and this case is partially summarized in the court's previous order issued on June 1, 2015. That order and the accompanying memorandum is incorporated into this memorandum to the extent it provides further background leading up to this motion. At that time the court denied defendant Dennis Lang's ("Lang") motion to dismiss based on the anti-SLAPP and statute of limitations arguments. Thereafter, the parties conducted discovery and Lang now moves for summary judgment.

In the complaint, plaintiff Mahendra Trivedi ("Trivedi") and his related entities ("Trivedi Entities") sued Lang for defamation, civil conspiracy, and tortious interference with contract. The three counts in plaintiffs' complaint generally all arise out of the same alleged wrongful acts—Lang's public statements about Trivedi's operations, activities, character and information he had learned from others during his investigation. The factual allegations offered in plaintiffs' complaint are entirely based on communications made by Lang that plaintiffs contend were defamatory. Thus, the focus of plaintiffs' action is their claim for defamation. While plaintiffs also allege tortious interference and conspiracy, those claims derive from Lang's alleged defamatory communications and are simply alleged as a statement of damages allegedly resulting from the defamation.

There are dozens of statements referenced in the complaint which plaintiffs claim are defamatory. While each of the statements described in the complaint may

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constitute a separate defamation claim, many of those statements contain essentially the same allegations about one or more of the plaintiffs. For purposes of this motion, plaintiffs have therefore grouped the statements into categories based on the particular defamatory meaning alleged. These categories are as follows:

A. Claims that Trivedi is a sham, employs fake science.

B. Claims of sexual misconduct by Trivedi.

C. Claims that Trivedi and his entities could be engaged in unlawful activities.

D. General accusations of misbehavior and/or causing harm.

E. Miscellaneous statements not in any other specific category.

F. Statements that Lang did not make.

The court will not repeat all of the statements referenced in the complaint, which are also discussed in the parties' briefs relating to this motion, and the exhibits submitted by the parties.

The issue raised by this motion is whether Trivedi and the Trivedi Entities are considered to be "limited purpose public figures" for purposes of these defamation-based claims. If they are deemed limited purpose public figures, First Amendment considerations require that plaintiffs must prove by clear and convincing evidence that Lang published his statements with actual malice, meaning that at the time of publication he had "a high degree of awareness of their probable falsity." Lang argues that there is no factual support to establish actual malice with regard to any of the alleged defamatory statements and that all claims should be dismissed.

The parties dispute whether Trivedi and his entities are public figures. Plaintiffs argue that Trivedi was not very well known in the world, or the United

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States, at the time Lang's statements were communicated. They further argue that there was no public controversy regarding the defamatory statements and that even if a public controversy existed, plaintiffs are not considered limited purpose public figures, because Lang created the controversy. As a result, plaintiffs argue that they need not prove actual malice.

In general, there are two primary paths that defamation cases follow. In cases involving private plaintiffs who bring suit against private defendants for a defamatory communication that is a matter of private concern, the common law of defamation applies, along with common law privileges. In cases involving the defamation of public officials or figures, or where the defamatory communication is a matter of public concern, the common law rules are modified by decisions of the United States Supreme Court that provide limited First Amendment privileges for the publishers of those communications. Those First Amendment limitations make it more difficult for a plaintiff to recover in a defamation case. The Supreme Court's decisions establish a First Amendment baseline. States may not make it easier to recover in defamation cases, but they may make it more difficult by applying more stringent standards for recovery.

b. Plaintiff Mahendra Trivedi and the Trivedi Entities.

Whether the plaintiff in a defamation action is a public or private figure is a question of law for the court, as discussed in more detail below. In this case, the parties have submitted a number of affidavits, exhibits and discovery responses to assist the court in that analysis. The affidavit of Trivedi includes his own statements about his claimed abilities and activities and those of his related

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companies. The Minnesota Court of Appeals has previously noted that Trivedi "and the Trivedi entities provide nontraditional physical and mental-health services to the public, primarily through personal, group, or remote blessings and energy transmissions." *Trivedi LLC v. Lang*, No. A13-2087, 2014 WL 2807981 (Minn. App. June 23, 2014) (unpublished). "Trivedi conducts his activities in numerous states and anyone 'around the world' may register to receive a long-distance remote energy transmission." *Id.*

According to his testimony, Trivedi is the founder of the Trivedi Foundation and other Trivedi business entities "dedicated to advancing their customers' well-being and spirituality through products and services that reflect my gifts and talents." Mahendra Trivedi Aff. ¶ 2. His stated mission, and the mission of the Trivedi Entities, "is to help people function at a higher level by strengthening their health and well-being." *Id.* According to the Trivedi Entities' executive Alice Branton, "Mr. Trivedi utilize[s] energy transmissions, known as the Trivedi Effect, that have the potential to transform living organisms and non-living materials. Recipients of Mr. Trivedi's energy transmissions have reported a beneficial impact on their health and well-being." Alice Branton Aff. ¶ 4. She further states that "Mr. Trivedi and the Trivedi Entities' goals have been to promote scientific study and reach out to people who are in need of Mr. Trivedi's unique abilities."

Trivedi further states that the Trivedi Effect "has benefited many people. The Trivedi Companies created a website which compiles the hundreds of video and written testimonials regarding the benefits of the Trivedi Effect." Trivedi Aff. ¶ 19. He refers the court to his website located at www.triveditestimonials.com. He adds

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that "[s]ince 2009, the Trivedi Companies and I have invested hundreds of thousands of dollars to see the impact of the Trivedi Effect." Trivedi Aff. ¶ 18. According to his affidavit, the "Trivedi Entities have conducted more than 4,000 scientific studies at major research institutions throughout the world and, as a result, have received more than a 170 publications in leading international, peer-reviewed scientific journals. The beneficial effects of the Trivedi Companies' services and products, and the methodology behind the creation of those services and products, have been demonstrated in numerous studies and published, scientific journals." Trivedi Aff. ¶ 5.

Trivedi identifies many publications regarding his stated Trivedi Effect and states that "[a]t the time Mr. Lang began publishing his defamatory statements, six important scientific studies verifying the efficacy of the Trivedi Effect had already been published in peer-reviewed, scientific journals." Trivedi Aff. ¶ 30. He notes that "[t]he scientists, all experts in their field, who reviewed the six studies, determined that the scientific protocols and methods involved in the studies were appropriate and followed by the researchers." Trivedi Aff. ¶ 31.

The Trivedi Companies offer to the public a variety of goods and services related to the Trivedi Effect. The Trivedi Foundation is a non-profit organization that works with research institutions to promote scientific progress related to the advancement of humankind. The Trivedi Foundation has done so by promoting the research of the effectiveness of the Trivedi Effect. Among other activities, the Trivedi Foundation supports scientific research intended to test the efficacy of the Trivedi Effect and the broader ability of human consciousness to alter living

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organisms and non-living matter. Mr. Trivedi and the Trivedi Entities' goals have been to promote scientific study and reach out to people who are in need of Mr. Trivedi's unique abilities. Branton Aff. ¶ 6. As the result of all of the research referenced above, Trivedi has developed contacts and supporters throughout the world. Trivedi Aff. ¶ 6.

Lang's affidavit states that Trivedi promotes himself on his websites and on multiple social media platforms, such as YouTube and Facebook, in which Trivedi claims he has performed such feats as "70, 000 medical miracles all over the world." Dennis Lang Aff. ¶ 2. Lang submits that Trivedi has publicly claimed to have as many as 200,000 patrons. He further notes that Trivedi materials included such statements as "There have been over 4,000 controlled scientific experiments trying to disprove these (molecular) changes and each and every time science ultimately gives credibility to him." Lang Aff. ¶ 5. Lang also refers to claims by Debra Poneman, former Trivedi Foundation president and trustee, disseminated online and in webcasts that "[Trivedi] restores happiness to cells," and statements by the Trivedi Entities' marketing director Janice Burney that "he's the Second Coming of Jesus" and "the next Einstein." *Id.* Trivedi himself sates that since 2009, he and the Trivedi Companies have "invested hundreds of thousands of dollars to see the impact of the Trivedi Effect," including on research occurred in 2009, 2010 and 2011. Trivedi Aff. ¶ 18.

Despite the extraordinary nature of the powers and abilities claimed by Trivedi and the Trivedi Entities, Trivedi states that he is "not nationally or regionally

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famous in the United States or elsewhere in the world." Trivedi Aff. ¶ 6. He further states:

> Even within the field of alternative medicine or energy transmissions, I am very much unknown in the United States and the rest of world. When I speak to individuals concerning the Trivedi Effect, I have to introduce myself and explain the nature of the Trivedi Effect. Unless the individual has been introduced to me by another mutual contact, the individual has never heard of me or the Trivedi Entities before. This was especially true in 2011 and 2012 when I had only been in the United States for a few years.

Trivedi Aff. ¶ 6. Nonetheless, in 2014 Trivedi stipulated that he was a limited purpose public figure for purposes of a related defamation lawsuit in Pennsylvania. *Trivedi v. Slawecki*, 4:11-CV-2390, 2014 WL 6851429 (M.D. Pa. Dec. 3, 2014). In fact, the court's decision in *Trivedi v. Slawecki* is very similar factually to this case and involves similar issues.

According to Lang, he was exploring possible topics for a magazine article in 2011 and encountered references to Trivedi. He decided to inquire further about Trivedi and his activities and, in furtherance of this effort, posted requests for information from people familiar with Trivedi on various websites. Lang Aff. ¶ 3-4. His first request was posted on the Deepak Chopra Blog in March 2011. Lang Aff. ¶ 4. Lang asserts that Dr. Chopra introduced Trivedi to the American audience in February 2010 at his Sages and Scientists convention in California. *Id.*

Lang also states that he came into contact with a researcher at Penn State University studying Trivedi's claims who found: "No statistical variation between samples 'blessed' by Trivedi and control samples." Lang Aff. ¶ 8. The Penn State study results were published online in May, 2011. *Id.* Lang notes that Trivedi subsequently sued the Penn State author in Pennsylvania for defamation and other

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claims. *Id.* That is the case where Trivedi conceded that he was a limited purpose public figure for defamation purposes. *Trivedi v. Slawecki*, *supra.* Trivedi discusses at length in his affidavit his claims that the Penn State study was inaccurate, as well as "wild and outlandish." Trivedi Aff. ¶ 10-15.

Lang's affidavit further discusses his efforts to further research the Trivedi claims through a blog called PurQi.com, which was described as a forum for discussion of alternative medicine practitioners, and which was emerging as an online meeting place for people interested in or concerned about Trivedi and his enterprises. Lang Aff. ¶ 10-18. Lang states that in early 2011, many people contacted him or posted comments on the PurQi blog offering accounts of their experiences with Trivedi. Lang says that "[t]hose sharing their experiences were remarkably forthcoming, and their stories were for the most part very consistent and corroborated by many disparate sources." Lang Aff. ¶ 13. Lang relays that he posted summaries on the PurQi blog of what he was learning along with his commentary and perceptions, admitting that "[m]any of my posts were indeed highly critical of Trivedi and his operations, posts that I felt were amply justified by the information that I was collecting about him from many diverse sources." Lang Aff. ¶ 16.

In 2011 Trivedi discovered Lang's writings on PurQi.com and noticed that many others contributing to the blog were what he calls "former disgruntled employees or contractors who worked with Trivedi Entities." Trivedi Aff. ¶ 23-24. Shortly thereafter, plaintiffs commenced litigation against Lang and others in Arizona, resulting in a default judgment against Lang which was overturned on

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jurisdictional grounds by the Minnesota Court of Appeals in *Trivedi LLC v. Lang*, No. A13-2087, 2014 WL 2807981, at *1 (Minn. App. June 23, 2014) (unpublished). Lang notes that the Arizona default judgments entered against Lang by each of the plaintiffs in the action, totaling $59,000,000, were based on claims of lost profits and other damages, further supporting his claim that Trivedi and his entities clearly claim to have enormous public interest.

Plaintiffs commenced this action in early 2014, asserting claims in this matter similar to those found in the prior Arizona litigation. Plaintiffs allege that Lang generally made numerous false statements regarding Trivedi personally and his entities and those false statements have significantly damaged Trivedi and his related entities financially. Specifically, plaintiffs allege that Lang's false statements have caused losses to their profits and reductions in seminar revenues. This court previously denied Lang's motion to dismiss, and he now seeks summary judgment on the issue of whether plaintiffs are limited purpose public figures for purposes of the defamation-based claims.

2. **Discussion.**

a. **The Actual Malice Standard Applies to Limited Purpose Public Figures.**

In *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710, 11 L.Ed.2d 686 (1964), the United States Supreme Court held that public officials who are libeled must prove with convincing clarity that the libelous statements were published with actual malice. Actual malice is established by showing that the publication was made with knowledge of the falsity of the statement or in reckless disregard of the truth or falsity of the statement. *New York Times Co. v. Sullivan*, 376 U.S. at 279–

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80. Reckless disregard means publication with substantial doubts about the truth of the matter. *St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S. Ct. 1323, 1325, 20 L.Ed.2d 262, 267 (1968).

The holding in *New York Times* was extended to public figures in *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 87 S. Ct. 1975, 18 L.Ed.2d 1094 (1967), *rev. denied*, 389 U.S. 889, 88 S. Ct. 11, 19 L.Ed.2d 197 (1967). Later, in *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29, 91 S. Ct. 1811, 29 L.Ed.2d 296 (1971), the Supreme Court held that the *New York Times* actual malice standard applies to public issues as well as to public officials and public figures. The Minnesota Supreme Court has held that "Minnesota affords to nonmedia defendants the same first amendment protection for criticism of public officials that it grants to the mass media." *Britton v. Koep*, 470 N.W.2d 518, 521 (Minn. 1991).

However, in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S. Ct. 2997, 41 L.Ed.2d 789 (1974), the Court rejected the *New York Times* actual malice standard for defamation cases brought by private plaintiffs against nonmedia defendants. In *Gertz*, the Supreme Court held that "so long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual." 418 U.S. at 347, 94 S. Ct. at 3010–11. In response to *Gertz*, the Minnesota Supreme Court adopted a negligence standard for private individuals asserting defamation claims in Minnesota. *Jadwin v. Minneapolis Star and Tribune Co.*, 367 N.W.2d 476, 491 (Minn. 1985). Thus, in Minnesota, "a private individual may recover actual damages for a defamatory publication upon proof that

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the defendant knew or in the exercise of reasonable care should have known that the defamatory statement was false." 367 N.W.2d at 491.

b. Determining Whether a Party is a Limited Purpose Public Figure.

The status of the plaintiff is important in determining whether the actual malice standard applies in a defamation case. Whether the plaintiff in a defamation action is a public or private figure is a question of law for the court. *Chafoulias v. Peterson*, 668 N.W.2d 642, 649 (Minn. 2003), *rev. granted* (Minn. Sept. 17, 2003) (case remanded to court of appeals to determine the issues raised in alternative grounds for summary judgment presented in respondent Peterson's notice of review); *Britton v. Koep*, 470 N.W.2d 518, 520 (Minn. 1991); *Jadwin v. Minneapolis Star and Tribune Co.*, 367 N.W.2d 476, 483 (Minn. 1985). Determining whether a person is a private defamation plaintiff for purposes of a defamation action is a process of elimination. Private persons are those who are neither public officials nor public figures.

In *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S. Ct. 2997, 41 L.Ed.2d 789 (1974), the Supreme Court established three categories of public figures:

> Hypothetically, it may be possible for someone to become a public figure through no purposeful action of his own, but the instances of truly involuntary public figures must be exceedingly rare. For the most part those who attain this status have assumed roles of special prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment.

Gertz v. Robert Welch, Inc., 418 U.S. at 345. The first group includes the rare "involuntary" public figure. The next category essentially contains celebrities and

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prominent social figures who are deemed public figures for "all purposes." The final group consists of limited purpose public figures who attain their position by thrusting themselves into the vortex of a public controversy to influence its outcome. *Jadwin*, *supra*, 367 N.W.2d 476, 484.

There is no question that Trivedi is neither an "involuntary" public figure, nor "all purpose" public figure. He is either a "limited purpose" public figure, with respect to his public claims of powers or abilities to alter the energies of the human body and the natural world through the "Trivedi Effect," or he is a private individual. "The line between limited purpose public figure status and private individual status has proved difficult to draw." *Jadwin*, 367 N.W.2d at 484. Since *Gertz*, the United States Supreme Court has examined and developed the distinction. The public figure standards were further illuminated in subsequent cases. *E.g.*, *Wolston v. Reader's Digest Ass'n, Inc.*, 443 U.S. 157, 99 S. Ct. 2701, 61 L.Ed.2d 450 (1979); *Hutchinson v. Proxmire*, 443 U.S. 111, 99 S. Ct. 2675, 61 L.Ed.2d 411 (1979); *Time, Inc. v. Firestone*, 424 U.S. 448, 96 S. Ct. 958, 47 L.Ed.2d 154 (1976). The Minnesota courts have followed those standards. *E.g.*, *Chafoulias v. Peterson*, 668 N.W.2d 642, 652 (Minn. 2003); *Jacobson v. Rochester Communications Corp., Inc.*, 410 N.W.2d 830, 833–36 (Minn. 1987); *Jadwin v. Minneapolis Star and Tribune Co.*, 367 N.W.2d 476, 485–86 (Minn. 1985).

Gertz arose from an article published by an arm of the John Birch Society about an alleged Communist campaign to discredit the police. The 18-page article concerned the trial and conviction of a Chicago police officer for the murder of a 17-year-old boy. The article was intended to persuade readers that the policeman had

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been the victim of a Communist "frame-up," part of a larger conspiracy to lay the groundwork for a national police force and, in turn, a totalitarian state. Elmer Gertz, a Chicago lawyer representing the victim's family, was named only for his role as counsel for the victim's family in the civil action against the policeman and was accused of being an architect of the frame-up, labeled a "Leninist" and "Communist fronter," with a police file that "took a big, Irish cop to lift." These statements, among others, were concededly false and defamatory. The question in the case was whether Gertz was a private or public figure within the new rule.

The Supreme Court held that Gertz was not within any category of public figure. He was not a public official or an "all purpose" public figure, notwithstanding his considerable stature in the community. The court also concluded that for the purposes of the defamation suit, he was not a "limited purpose" public figure with respect to his involvement in the prosecution of the police officer. His role had been confined to personal representation of the victim's family and did not rise to the level of "voluntary injectment into a public controversy necessary to trigger the *New York Times* rule." *Jadwin*, 367 N.W.2d at 484.

In *Time, Inc. v. Firestone*, *supra*, the court concluded that the Firestone divorce proceeding, the subject of a Time magazine article, was not the type of "public controversy" delineated in *Gertz*. Although marital difficulties of extremely wealthy individuals are of interest to some portion of the reading public, Mrs. Firestone had not thrust herself voluntarily into any public controversy. 424 U.S. at 454, 96 S. Ct. at 965. Furthermore, she was not a prominent person outside of her local society.

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424 U.S. at 453–55, 96 S. Ct. at 964–65. Thus, the term "public controversy" cannot be equated with "all controversies of interest to the public." *Id.*

The Supreme Court next decided *Hutchinson v. Proxmire*, *supra*, and *Wolston v. Reader's Digest Association, Inc.*, *supra*. The lower courts determined that the plaintiffs were public figures in both cases. *Hutchinson* involved a defamation action which arose from a "Golden Fleece of the Month Award" given by Senator Proxmire for wasteful government spending. The lower courts found Hutchinson, a professor and research director, a public figure because he successfully applied for federal funds, reported to local newspapers of the grants and had access to "some newspapers" and the "wire services" in responding to the award. *Hutchinson*, 443 U.S. at 134, 99 S. Ct. at 2687.

The Supreme Court found none of these reasons persuasive. His access to the media came after the alleged libel and was thus irrelevant. *Id.* Further, Hutchinson neither "thrust himself or his views into public controversy to influence others" nor "assumed any role of public prominence in the broad question of concern about expenditures." *Id.* Moreover, the alleged "public controversy" had no prior independent existence, but was created by the libelous publication. *Id.* Those charged with defamation cannot by their own conduct create their defense by giving the claimant public figure status.

Wolston involved a Reader's Digest book falsely naming Wolston as having been indicted as a Soviet espionage agent in 1958. Wolston had been the subject of a grand jury investigation at that time and had received attention in the press for his refusal to comply with a subpoena. The lower courts determined that his willful

failure to appear was sufficient public involvement with a public controversy to find him a public figure. The Supreme Court reversed, holding it "more accurate to say that petitioner was dragged unwillingly into the controversy." *Wolston*, 443 U.S. at 166, 99 S. Ct. at 2707.

The plaintiffs in *Gertz*, *Firestone*, *Hutchinson* and *Wolston* were all private individuals enmeshed in personal lives or work which had momentarily caught the attention of the press and public, largely as illustrative of some perceived social ill. They had neither impliedly consented to such exposure by "thrusting themselves" in the public arena, nor sought to resolve a "public controversy" which existed prior to the media's creating one by defaming them. Each was ultimately found not to be a limited purpose public figure.

The Minnesota Supreme Court in *Chafoulias v. Peterson*, 668 N.W.2d 642, 652 (Minn. 2003), reiterated the criteria to be used in determining whether a person is a limited purpose public figure as suggested by *Gertz*:

> (1) whether a public controversy existed; (2) whether the plaintiff played a meaningful role in the controversy; and (3) whether the allegedly defamatory statement related to the controversy.

668 N.W.2d at 651. The court defined a "public controversy" as follows:

> A public controversy is a dispute that "has received public attention because its ramifications will be felt by persons who are not direct participants." ... Private concerns are not public controversies simply because they attract attention .... In isolating the public controversy, courts look to those controversies that are already the subject of debate in the public arena at the time of the alleged defamation ....
>
> But the scope of the public controversy, for this purpose, may be narrower than the breadth of the public's interest. Many stories may be considered "newsworthy" and deserving of the public's attention, but may not be a "public controversy." A public controversy requires two elements: (1) there must be some real dispute that is being publicly debated; and (2) it must be reasonably foreseeable that the dispute could

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> have substantial ramifications for persons beyond the immediate participants ....
>
> Under this definition, the existence of a private civil dispute is not necessarily a public controversy. Although such a dispute may receive publicity by inevitably becoming public when filed in court, or when a party chooses to make his or her allegations public, the courts have recognized that the mere participation in the litigation of such disputes does not create a public controversy that confers public figure status ....

668 N.W.2d at 652 (citations omitted).

If there is a public controversy, the next step is to determine the role of the person in that controversy. The court in *Chafoulias* relied in part on *Gertz* in concluding that the issue is whether the person "'voluntarily inject[ed] himself or was 'drawn into' that controversy." 668 N.W.2d at 652. That means considering whether the person has "thrust himself to the forefront of the controversy as we have defined it so as to achieve a 'special prominence' in the debate and become a factor in resolving the controversy." 668 N.W.2d at 653.

The person "must either 'have been purposely trying to influence the outcome' of the controversy or must have realistically 'expected, because of his position in the controversy, to have an impact on its resolution.'" 668 N.W.2d at 653. This analysis requires examination of the extent to which the person's participation in the controversy was voluntary, the extent to which the person had access to effective channels of communication to counteract false statements, and the prominence of the role the person played in the public controversy. 668 N.W.2d at 653. The court must also examine the relationship of the statement to the public controversy to determine whether the statement "relates directly" to the controversy or is "necessarily germane" to the controversy. 668 N.W.2d at 654.

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In *Chafoulias*, a hotel owner brought defamation claims against the lawyer representing former employees in a harassment lawsuit and ABC News. The court confirmed that there was indeed a public controversy in existence at the time of the ABC news report, thereby invoking the public figure privilege as to ABC. The existence of the private civil dispute between the employer and employees was not necessarily a public controversy. The public controversy developed after the publication of the allegations in the lawsuit was "about whether the allegations were being sufficiently investigated by the hotel or the local law-enforcement officials." 668 N.W.2d at 652. Thus, by the time that ABC aired its story, a public controversy existed as to claims against ABC.

The court further determined that Chafoulias was not "dragged unwittingly" into the public eye, but that his actions to hire a media consultant, issue a press release, and write letters to the local television station and ABC producer were sufficient to establish that he "did thrust himself into the public controversy." 668 N.W.2d at 653. Another important element of that determination was the court's finding that Chafoulias assumed a role of "especial prominence in society" that naturally "invites attention and comment" from the public and the press and "assumed a position that invites attention and comment about the manner in which he conducts his business affairs." 668 N.W.2d at 654.

With regard to the lawyer, however, the supreme court held that a defendant "cannot take advantage of the limited purpose public figure privilege with respect to a public controversy that she caused." 668 N.W.2d at 654. In that case, the attorney-defendant filed sexual harassment claims against the plaintiff in federal

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court, which created publicity surrounding the harassment claims. The court held that if the attorney "was the source of the media coverage that she relies upon to establish a public controversy, she would be disqualified from asserting the privilege for speech concerning a limited purpose public figure." 668 N.W.2d at 656. The court remanded the issue to the district court for further findings on that issue.

In *Chafoulias*, the Minnesota Supreme Court provided guidance for the trial courts for resolving the constitutional issue of whether a person is a limited purpose public figure. The district court conducted a pretrial evidentiary hearing to determine whether the plaintiff was a limited public purpose public figure. The supreme court held that it was a permissible alternative and that the process the district court followed was within its discretion. *Chafoulias v. Peterson*, 668 N.W.2d at 650–51. The court concluded that the U.S. Constitution permitted states to resolve fact issues material to the existence of the privilege by using traditional methods that could include submission to a jury with a special interrogatory or a pretrial evidentiary hearing subject to appellate review for clear error. *Chafoulias v. Peterson*, 668 N.W.2d at 650.

Jadwin v. Minneapolis Star and Tribune Co. involved defamation claims against the newspaper by a bond fund owner and two affiliated corporations relating to an article appearing in the newspaper. 367 N.W.2d 476. The article was unflattering to Jadwin and his companies and suggested he was inexperienced and had misrepresented his background. Jadwin wrote letters to the editor demanding a retraction of the alleged false and defamatory statements. The trial court found that Jadwin was not a limited purpose public figure because he had "neither invited

undue attention and comment nor assumed special prominence prior to the article's publication." *Id.* at 483.

The supreme court independently reviewed the question and affirmed the trial court's finding that Jadwin was not a public figure. The court reasoned that Jadwin's accomplishments and activities "are not unlike countless other finance professionals and do not raise him to the level of public figure for purposes of this libel action." *Id.* at 486. While the viability and investment potential of Jadwin's bond fund was certainly a matter of public concern within the newspaper's circulation range, soliciting public investment does not automatically transform any small businessman into a public figure. *Id.* The Minnesota Supreme Court noted "clear parallels" between the plaintiff in *Hutchinson v. Proxmire* and Jadwin. The court concluded that "Jadwin at no time met the rationale of access to rebut the alleged libelous publication that is a distinguishing feature between private individuals and public figures." *Id.*

c. <u>The Standard for Limited Purpose Public Figure Corporate Entity Defamation Claims Also Requires Proof of Actual Malice.</u>

The limited public figure standard from *Gertz* applies in defamation cases brought by individual plaintiffs. The proper application of the *Gertz* categories in cases involving corporate plaintiffs has never been addressed by the United States Supreme Court. It is clear, however, that the court in *Gertz* was deeply responsive to the need for protection of uniquely human interests not possessed by corporations. The *New York Times* rule was obliged to yield only to preserve "'our basic concept of the essential dignity and worth of every human being.'" *See Gertz,*

418 U.S. at 341, 94 S. Ct. at 3008, quoting *Rosenblatt v. Baer,* 383 U.S. 75, 92, 86 S. Ct. 669, 679, 15 L.Ed.2d 597 (1966) (Stewart, J., concurring).

In *Jadwin*, the Minnesota Supreme Court held that corporate plaintiffs must prove actual malice when the defendants establish that the matter published is of legitimate public concern. The Minnesota Supreme Court noted that the increasing emphasis on the need for disclosure of commercial information proceeds side by side with the emphasis on the protection of personal privacy from defamatory disclosure and intrusion. It held, therefore, "that corporate plaintiffs in defamation actions must prove actual malice by media defendants when the defendants establish that the defamatory material concerns matters of legitimate public interest in the geographic area in which the defamatory material is published, either because of the nature of the business conducted or because the public has an especially strong interest in the investigation or disclosure of the commercial information at issue." *Jadwin*, 367 N.W.2d at 477-78. Such a rule will encourage the media to probe the business world to the depth which is necessary to permit the kind of business reporting vital to an informed public. 367 N.W.2d at 488.

In *Jadwin*, the court reviewed the various approaches around the country to this issue. These cases reflect the increasing importance attached by the United States Supreme Court to disclosure of and access to commercial information. First Amendment protection has been specifically extended to commercial speech on the ground that society has a strong interest in the free flow of commercial information:

> So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a matter of public interest

> that those decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensable.

Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 765, 96 S. Ct. 1817, 1827, 48 L.Ed.2d 346 (1976).

In *Jadwin*, the court held that while Jadwin himself was not a limited purpose public figure, the two related corporate plaintiffs were. Those plaintiffs were therefore required to show actual malice by the Minneapolis Star and Tribune and its reporter. Of the facts relevant to that decision, the court discussed the entities were registered to advise and sell under federal and state law. Seeking customers, the companies were actively seeking the attention of the media and the public in news columns, voluntarily subjecting themselves to and assuming the risk of public scrutiny. The court noted that "[t]his is precisely the sort of activity the public most needs to have adequately investigated and reported and is the sort of economic information afforded heightened First Amendment protection." 367 N.W.2d at 488.

The supreme court further stated that the reputational interests of those corporations were de minimis compared to the reputational interests of Thomas Jadwin in the financial community. The court reversed the trial court's determination that the corporations were private individuals and determined that proof of actual malice was necessary to support their claims. After carefully scrutinizing the record before it, the trial court concluded that no genuine factual issue of actual malice had been raised. The supreme court, after reviewing the entire record, agreed. Since a showing of actual malice is an essential element of the corporate plaintiffs' case, failure to raise a fact issue on that question entitles the defendants to judgment against those parties.

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d. Plaintiff Mahendra Trivedi and his Related Corporate Entities are Limited Purpose Public Figures Required to Show Actual Malice.

As noted in the factual summary above, Trivedi admits that he is the founder of the Trivedi Foundation and the other Trivedi Entities "dedicated to advancing their customers' well-being and spirituality through products and services that reflect my gifts and talents." Trivedi Aff. ¶ 2. Their mission "is to help people function at a higher level by strengthening their health and well-being." *Id.* The Trivedi Entities' executive, Alice Branton, states under oath that "Mr. Trivedi utilize[s] energy transmissions, known as the Trivedi Effect, that have the potential to transform living organisms and non-living materials. Recipients of Mr. Trivedi's energy transmissions have reported a beneficial impact on their health and well-being." Branton Aff. ¶ 4. The entire focus is on Trivedi's "unique abilities."

Trivedi claims that the Trivedi Effect has benefited many people. "The Trivedi Companies created a website which compiles the hundreds of video and written testimonials regarding the benefits of the Trivedi Effect." Trivedi Aff. ¶ 19. The website is located at www.triveditestimonials.com. That site identifies seven other "Trivedi Global Sites" obviously aimed at marketing the Trivedi Effect to a global marketplace. One such site claims to have changed 250,000 lives. www.trivedieffect.com. Trivedi acknowledges that "[s]ince 2009, the Trivedi Companies and l have invested hundreds of thousands of dollars to see the impact of the Trivedi Effect." Trivedi Aff. ¶ 18.

According to Trivedi, the "Trivedi Entities have conducted more than 4,000 scientific studies at major research institutions throughout the world and, as a result, have received more than a 170 publications in leading international, peer-

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reviewed scientific journals. The beneficial effects of the Trivedi Companies' services and products, and the methodology behind the creation of those services and products, have been demonstrated in numerous studies and published, scientific journals." Trivedi Aff. ¶ 5.

Trivedi identifies many publications regarding his stated Trivedi Effect and states that "[a]t the time Mr. Lang began publishing his defamatory statements, six important scientific studies verifying the efficacy of the Trivedi Effect had already been published in peer-reviewed, scientific journals." Trivedi Aff. ¶ 30. He notes that "[t]he scientists, all experts in their field, who reviewed the six studies, determined that the scientific protocols and methods involved in the studies were appropriate and followed by the researchers." Trivedi Aff. ¶ 31. The Trivedi Foundation promotes scientific research of the effectiveness of the Trivedi Effect and the broader ability of human consciousness to alter living organisms and non-living matter. As the result of all of the research, Trivedi has developed contacts and supporters throughout the world. Trivedi Aff. ¶ 6.

In addition to Trivedi's own statements and those of his entities and affiliates, Lang provided undisputed evidence that Trivedi promotes himself worldwide on his websites and on multiple social media platforms, such as YouTube and Facebook, in which Trivedi claims he has performed such feats as "70, 000 medical miracles all over the world." Lang Aff. ¶ 2. Lang submits that Trivedi has publicly claimed to have as many as 200,000 patrons. The court notes that a Trivedi website now claims that number to be 250,000. Lang also refers to claims by Debra Poneman, former Trivedi Foundation president and trustee, disseminated online and in

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webcasts that "[Trivedi] restores happiness to cells," and statements by the Trivedi Entities' marketing director, Janice Burney, that "he's the Second Coming of Jesus" and "the next Einstein." *Id.* Trivedi himself states that since 2009, he and the Trivedi Companies have "invested hundreds of thousands of dollars to see the impact of the Trivedi Effect," including on research occurred in 2009, 2010 and 2011. Trivedi Aff. ¶ 18.

The three-step analysis set forth in *Chafoulias* applies to determine whether Trivedi and his entities are limited purpose public figures. In that analysis, the court must determine (1) whether a public controversy existed; (2) whether the plaintiff played a meaningful role in the controversy; and (3) whether the allegedly defamatory statement related to the controversy.

The court finds that Trivedi's and his related entities' myriad of claims and statements regarding his "unique ability" to open a connection to "Divine power" purposely attracted public attention and controversy. The record is replete with claims, assertions and marketing materials from Trivedi and the Trivedi Entities distributed worldwide at the time of or prior to the alleged defamatory statements by Lang. Trivedi himself says that it was studied thoroughly through the scientific method and that he or his entities have advocated the veracity of those claims in a multitude of publications all over the world. The court does not intend to consider or evaluate the accuracy or validity of Trivedi's claims or abilities. Nonetheless, the claims of being Jesus-like or Einstein-like are, by their nature, controversial claims likely to be challenged or refuted. To be sure, debate was occurring both on the internet through the PurQi.com blog and by research professor Slawecki at Penn

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State, who had publicly posted her summary of Penn State research questioning Trivedi's purported abilities. These claims, along with the self-proclaimed 4,000 scientific studies and publications in "170 publications in leading international, peer-reviewed scientific journals" put Trivedi and his enterprise directly into the global marketplace of ideas, obviously intended to reach a broad audience and attract interest in Trivedi and his enterprise. These vast claims of his personal powers propelled Trivedi and his entities into the public arena to affirm, debate, question and challenge his assertions, and in so doing, his character and credibility.

Upon determining there is a public controversy, the next step is to determine the role of the person in that controversy—whether the person "'voluntarily inject[ed] himself' or was 'drawn into' that controversy." That means considering whether the person has "thrust himself to the forefront of the controversy to achieve a 'special prominence' in the debate and become a factor in resolving the controversy." This analysis examines the extent to which the person's participation in the controversy was voluntary, the extent to which the person had access to effective channels of communication to counteract false statements, and the prominence of the role the person played in the public controversy. Here there is no doubt that Trivedi and his related entities intentionally and deliberately placed themselves into the epicenter of public debate by affirmatively making the claims to a global audience and seeking out thousands of "scientific studies" to support those contentions.

Finally, the court must examine the relationship of the alleged defamatory statements to the public controversy to determine whether the statements relate directly to the controversy or are germane to the controversy. As indicated at the

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outset, there are numerous categories of alleged defamatory statements included in the complaint. Certainly, all of Lang's statements alleging generally that the Trivedi Effect is a "sham" and to the effect that "Trivedi's claims are false" are germane to the controversy.

There are claims of defamation relating to sexual misconduct and illegal conduct on the part of Trivedi and the Trivedi Entities that require separate consideration. For example, the complaint alleges that Lang falsely accuses Trivedi of sexual misconduct and sexual harassment. A review of the alleged defamatory statements, and the evidence in the record, confirms that the statements relating to sexual misconduct are directed specifically about allegations of sexual harassment and misconduct involving Trivedi employees or students and not of parties unrelated to the Trivedi enterprise. They are a part of a theme of challenging Trivedi's legitimacy and his integrity, work environment and professional ethics.

The court has reviewed the alleged defamatory statements in the complaint and the many pages of exhibits submitted by plaintiffs in support of those claims. The context of Lang's statements are that he has received reports from people who were involved with Trivedi or conducted research or investigation into his work and background. One such statement is a good example. Lang is alleged to have said, "Recently I received a copy of the copy (sic) of an email where Trivedi was accused of sexually molesting young women by a prominent person in the health field who was then enrolled in his Master Healing class." *See* Complaint, para. 17, m. Another is in paragraph 17, y, of the complaint in which it is alleged Lang wrote, "I have had reported to me multiple accusations of rape on the part of Mr. Trivedi and spoken

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with two young women who were arranged in marriage only to sponsor his citizenship." There are numerous other statements alleged relating to Trivedi's immigration status in the complaint. Likewise, there are statements by Lang including allegations of financial fraud by Trivedi and the Trivedi Entities.

The record includes a plethora of emails, correspondence, reports and research articles, blog posts and other materials showing the work done by Lang to investigate and publish to the world any and all evidence that Trivedi and his companies were not legitimate. Through that work, he communicated with sources who stated they had actual knowledge of wrongdoings and alleged untruths about Trivedi. Lang used that information to convince others to go public with their own experiences with Trivedi. He also brought the allegations to the attention of law enforcement, including the FBI, hoping that would lend legitimacy to his work and further expose Trivedi as his sources were describing to him.

All of this work was done in Lang's capacity as a blogger, journalist, investigative reporter or simply as someone airing what others believed to be the truth about Trivedi and his companies. The alleged defamation all relates to remarkable claims of the Trivedi Effect, Trivedi's character and credibility, the network of entities created by Trivedi and the products and services which he was marketing around the world. In short, Lang's statements went to the heart of the controversy about whether or not the Trivedi Effect was credible. Because of the nature of the Trivedi assertions, Trivedi placed his credibility and character directly into the controversy. In that regard, all of the alleged defamatory statements directly relate to that controversy and are germane to that controversy.

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In light of the foregoing, Trivedi and the Trivedi Entities are deemed limited purpose public figures for purposes of this defamation lawsuit. While perhaps not the conventional type of journalist, it is apparent that Lang was acting as a journalist in a broad sense in his investigative efforts as it relates to the claims of the corporate entities. The court concludes, therefore, that the constitutional privilege applies to their claims and that they must prove by clear and convincing evidence that Lang's statements were published with actual malice.

e. Plaintiffs Failed to Provide Sufficient Evidence of Actual Malice to Overcome Lang's Motion for Summary Judgment.

Under the standard established in *New York Times Co. v. Sullivan* and *Gertz*, limited purpose public figures who are libeled must prove with convincing clarity that the libelous statements were published with actual malice. Actual malice is established by showing that the publication was made with knowledge of the falsity of the statement or in reckless disregard of the truth or falsity of the statement. *New York Times Co. v. Sullivan*, 376 U.S. at 279–80. Reckless disregard means publication with substantial doubts about the truth of the matter. *St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S. Ct. 1323, 1325, 20 L.Ed.2d 262, 267 (1968).

Lang seeks dismissal of all of plaintiffs' claims on the grounds that plaintiffs have not and cannot establish that Lang's alleged defamatory statements, even if false, were made with actual malice as defined by the Supreme Court. As noted by Lang in his memorandum, plaintiffs bear the burden of proving that each defamatory statement was made with knowledge of falsity or with reckless disregard as to truth or falsity. Not that he carries the burden on this issue, but Lang submitted a sworn affidavit along with exhibits and discovery materials

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demonstrating that he had good reason to believe that his statements were true. To be sure, many of Lang's statements were relaying information from others, and he often attributed his statements to those who provided him the information.

Plaintiffs' argument in opposition to this issue is twofold. First, they argue that Lang has "produced almost no admissible evidence to show that his statements were supported by reliable third-parties" and, second, that Lang did not believe or had obvious reasons to doubt the truth of the statements he made. As to the first argument, plaintiffs attempt to shift the burden of showing good faith onto Lang. To the contrary, however, the constitutional privilege at issue here requires that plaintiffs "prove with convincing clarity that the libelous statements were published with actual malice" as required by *New York Times Co. v. Sullivan* and its progeny.

As to the second basis for opposing summary judgment on the issue of actual malice, plaintiffs argue that Lang relied on the statements of others who were untrustworthy. They argue, for example, that the criminal record of one source should establish actual malice by Lang. They also assert that plaintiffs' discovery response is sufficient to establish clear proof of knowledge of falsity or indifference by Lang. Plaintiffs stated in their interrogatory answers that "Defendant either uttered these statements without proof or trustworthy support for the defamatory nature of the statements or he relied upon information from individuals who were obviously motivated to hurt and injure Plaintiffs and who were known to Defendant to be untrustworthy." Obviously this answer is not factual admissible evidence but rather a repetition of the allegations in their complaint.

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They also argue that Lang admitted on several occasions that other than the statements by sources, he had no independent proof that what he was being told was true. Requiring independent proof of statements by sources is not part of the standard plaintiffs must meet. Rather, plaintiffs must show clear proof of knowledge of falsity or indifference by Lang. Such a standard does not require that Lang independently prove the truth or accuracy of his statements or those provided by others. The record shows that Lang had multiple sources for some of the statements he published, including about sexual improprieties. The number of sources, or scarcity thereof, as to each statement does not establish proof of knowledge of falsity.

Overall, plaintiffs' arguments on this issue are focused on discrediting Lang's sources. While perhaps a good trial strategy for cross-examining those witnesses, the arguments are insufficient to create a genuine issue as to whether there is clear proof that Lang had knowledge of falsity or indifference. "[F]ailure to investigate before publishing, even when a reasonably prudent person would have done so, is not sufficient to establish reckless disregard." *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 688 (1989). Again, the burden is on plaintiffs to meet this high constitutional burden, and they have failed to do so at this critical stage of the proceedings. Plaintiffs have not set forth enough evidence for a reasonably jury to find by clear and convincing evidence that Lang acted recklessly.

f. Summary Judgment is Appropriate.

A public figure may not recover damages for a defamatory falsehood without clear and convincing proof that the false "statement was made with 'actual malice'-

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that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-280, 84 S. Ct. 710, 725-726 (1964). Judges in such cases have a constitutional duty to "exercise independent judgment and determine whether the record establishes actual malice with convincing clarity." *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 514, 104 S. Ct. 1949, 1967 (1984). The sufficiency of the evidence to support a jury's finding of actual malice is a question of law. *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 109 S. Ct. 2678, 2694, 105 L.Ed.2d 562 (1989). "Judges, as expositors of the Constitution," have a duty to "independently decide whether the evidence in the record is sufficient to cross the constitutional threshold that bars the entry of any judgment that is not supported by clear and convincing proof of 'actual malice.'" *Id.* (quoting *Bose Corporation v. Consumers Union*, 466 U.S. at 511, 104 S. Ct. at 1965). A genuine issue of fact as to actual malice exists only if the facts permit the conclusion that the defendants "in fact entertained serious doubts as to the truth of [the] publication." *St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S. Ct. 1323, 1325 (1968).

Plaintiffs have provided scant evidence to establish that Lang acted with actual malice. The affidavits submitted offer conclusory and self-serving statements that his statements were untrue and he knew it or should have known it. As a general proposition, conclusory, self-serving affidavits are insufficient to withstand a motion for summary judgment. *See, e.g., Conlin v. City of Saint Paul*, 594 N.W.2d 396 (Minn. 2000). Moreover, the factual evidence offered by plaintiffs regarding this issue establishes, at most, in the light most favorable to plaintiffs, that Lang may

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have acted negligently. That is insufficient to establish actual malice as a matter of law. Consequently, the court finds that a reasonable jury could not conclude by clear and convincing evidence that Lang acted with actual malice when making the statements at issue in this case.

3. Conclusion.

For the reasons stated above, the court finds that plaintiffs are limited purpose public figures and therefore must establish actual malice on the part of Lang. They have failed as a matter of law to create a genuine issue for trial in that regard. Because all of plaintiffs' claims are premised on the alleged defamation, all claims asserted in the complaint are dismissed. Plaintiffs acknowledge in their memorandum (page 34) that the damages sought through the conspiracy and tortious interference claims "are directly related to the rise of Defendant's defamatory statements."

When the gravamen of the claims are based on defamation principles, a plaintiff cannot call a defamation "interference with prospective advantage" or a civil conspiracy and thereby avoid the application of the constitutional privilege to make the statement. As one commentator reasoned, "plaintiffs would otherwise be able simply to plead another tort and thereby evade the constitutional, statutory, and common-law strictures on the cause of action for defamation." Robert D. Sack, *Sack on Defamation*, §13.4 (4th ed. 2010). Accordingly, the complaint is dismissed.

RAA