STATE OF IDAHO)
County of KOOTENAI)ss
FILED 1/22/19
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CLERK OF DISTRICT COURT
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

MIA KIM VIG and TOMMY VIG,

Plaintiffs,

vs.

SARAH GERDES, ET AL,

Defendant.

Case No. **CV 2018 605**

MEMORANDUM DECISION AND ORDER 1) DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, 2) GRANTING DEFENDANTS' MOTION TO DISMISS (MOTION FOR SUMMARY JUDGMENT) AND DENYING PLAINTIFFS' MOTION TO AMEND

I. INTRODUCTION

There are three separate matters before the Court, each one of which will be addressed in the order it was filed. The first matter comes before the Court on a motion for summary judgment submitted by Plaintiffs' Mia Kim Vig and Tommy Vig (the Vigs), a married couple. The Vigs put forth a cause of action of defamation against Defendant Sarah Gerdes (Gerdes). The Court has considered the Vigs' Motion for Summary Judgment and their ten supplements to the motion for summary judgment, Gerdes's Response to Plaintiffs' Motion for Summary Judgment, and the numerous supporting documents and exhibits filed by the parties.

The second matter before the Court is Gerdes's Motion to Dismiss. Along with that motion, the Court has considered Gerdes's Memorandum in Support of Motion to Dismiss, the Vigs Memoranda in Opposition to Defendants Motion to Dismiss Pursuant to I.R.C.P. 12(b)(6), Gerdes's Reply in Support of Defendants' Motion for Dismissal,

Affidavit of Scott C. Cifrese in Support of Defendants' Reply in Support of Motion to Dismiss, and other supporting documents and exhibits filed by the parties.

The final matter before the Court is the Vigs' Motion to Amend Complaint. Along with that motion, the Court has considered Gerdes's Response to Plaintiffs' Motion to Amend Complaint, and the various supporting attachments and exhibits filed by the parties.

For the reasons discussed below, the Court hereby denies the Vigs' Motion for Summary Judgment, grants Gerdes's Motion for Summary Judgment, and denies the Vigs' Motion to Amend Complaint.

II. FACTUAL BACKGROUND

The basis of this defamation case is Gerdes's mention of the Vigs in her book titled *Sue Kim: The Authorized Biography* (the book), published in 2016. Pls.' Compl., Ex. 11, p. 186; *id.* at ¶ 4.2. Sue Kim was a member of a South Korean singing trio called the Kim Sisters, which were popular around the 1950's and 1960's. *See id.* at ¶¶ 3.3, 3.5; Defs.' Mem. in Supp. of Mot. for Dismissal, 2. The other two members were Ai-ja Kim, sister to Sue Kim, and Plaintiff Mia Kim Vig, cousin of Sue and Ai-ja. Pls.' Compl., 33. The book is 326 pages long and the Vigs take issue with 15 of those pages. *Id.* at ¶ 3.1.

III. PROCEDURAL HISTORY

On January 16, 2018, the Vigs, *pro se*, filed a Complaint against Gerdes. The Complaint alleged three causes of action: defamation, intentional infliction of emotional distress, and intentional interference with prospective economic advantage. Gerdes filed an Answer on January 25, 2018, which expressed only that she believed the Complaint should be dismissed. The Vigs formally withdrew their claims for intentional

infliction of emotional distress and intentional interference with prospective economic advantage on February 23, 2018, proceeding only on the claim of defamation. That same day, the Vigs filed a motion for summary judgment. Between the dates of March 1, 2018, and July 2, 2018, the Vigs filed ten separate supplemental documents in support of their Motion for Summary Judgment.[1]

On May 29, 2018, the Vigs filed a Motion to Amend Complaint, but did not request a hearing on the matter. Gerdes, proceeding *pro se* up until this point in time, began receiving legal representation on June 5, 2018. The Vigs, who were also *pro se* up until this point in time, began receiving legal representation on June 28, 2018. On October 2, 2018, Gerdes filed a Motion for Dismissal and a Memorandum in Support of Motion for Dismissal. That same day, Gerdes filed a second Answer to the Vigs' Complaint. On October 16, 2018, Gerdes filed a Response to Plaintiffs' Motion for Summary Judgment. On October 17, the Vigs submitted Plaintiffs' Memoranda in Opposition to Defendants Motion to Dismiss. In response, Gerdes filed a Reply in Support of Defendants' Motion for Dismissal and the supporting Affidavit of Scott C. Cifrese on October 23, 2018. On November 2, 2018, the Vigs again filed a Motion to Amend Complaint, repeating the same argument contained in the previous Motion to Amend Complaint. This time around, the Vigs requested the Motion to Amend be heard and filed a Notice of Hearing with the Court. Finally, on November 6, 2010, Gerdes filed a Response to Plaintiffs' Motion to Amend Complaint.

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[1] The Vigs' First Supplement to their Motion for Summary Judgment was filed on March 1, 2018. The Second Supplement to their Motion for Summary Judgment was filed on March 19, 2018. The Third Supplement to their Motion for Summary Judgment was filed on March 28, 2018. The Fourth Supplement to their Motion for Summary Judgment was filed on April 11, 2018. The Fifth Supplement to their Motion for Summary Judgment was filed on April 17, 2018. The Sixth Supplement to their Motion for Summary Judgment was filed on April 23, 2018. The Seventh Supplement to their Motion for Summary Judgment was filed on June 11, 2018. The Eighth Supplement to their Motion for Summary Judgment was filed on June 14, 2018. The Ninth Supplement to their Motion for Summary Judgment was filed on June 25, 2018. The tenth supplement, which was also labeled as a ninth supplement, contained much of the same

IV. STANDARD OF REVIEW

Idaho Rule of Civil Procedure 56 governs motions for summary judgment. According to Rule 56, summary judgment must be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a). A party asserting that there is no genuine dispute as to any material fact, or a party asserting that a genuine dispute exists, must support that assertion by "citing to particular parts of materials in the record" or "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." I.R.C.P. 56(c).

> If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:
>
> (1) give an opportunity to properly support or address the fact;
>
> (2) consider the fact undisputed for purposes of the motion;
>
> (3) grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the movant is entitled to it; or
>
> (4) issue any other appropriate order.

I.R.C.P. 56(e).

The burden of proof is on the moving party to demonstrate the absence of a genuine issue of material fact. *Rouse v. Household Fin. Corp.*, 144 Idaho 68, 70, 156 P.3d 569, 571 (2007) (citing *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)). "Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party" to provide specific facts showing there is a genuine issue for trial. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 864

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information as provided in the first ninth supplement, but actually contained 18 less pages.

(2007) (citing *Hei v. Holzer*, 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)). To do so, the non-moving party "must come forward with evidence by way of affidavit or otherwise that contradicts the evidence submitted by the moving party, and that establishes the existence of a material issue of disputed fact." *Chandler v. Hayden*, 147 Idaho 765, 769, 215 P.3d 485, 489 (2009) (citing *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007)). "Circumstantial evidence can create a genuine issue of material fact. . . . However, the non-moving party may not rest on a mere scintilla of evidence." *Shea v. Kevic Corp.*, 156 Idaho 540, 545, 328 P.3d 520, 525 (2014) (quoting *Park West Homes, LLC v. Barnson*, 154 Idaho 678, 682, 302 P.3d 18, 22 (2013)).

> In determining whether material issues of fact exist, all allegations of fact in the record and all reasonable inferences from the record are construed in the light most favorable to the party opposing the motion. *City of Kellogg v. Mission Mountain Interests Ltd., Co.*, 135 Idaho 239, 240, 16 P.3d 915, 919 (2000). When a jury is to be the finder of fact, summary judgment is not proper if conflicting inferences could be drawn from the record and reasonable people might reach different conclusions. *State Dep't of Fin. v. Res. Serv. Co., Inc.*, 130 Idaho 877, 880, 950 P.2d 249, 252 (1997).

Edmondson v. Shearer Lumber Prod., 139 Idaho 172, 176, 75 P.3d 733, 737 (2003).

The moving party may also meet "the 'genuine issue of material fact' burden . . . by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial." *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994). "Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking." *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000) (citing *Dunnick* at 311, 882 P.2d at 478).

> Once such an absence of evidence has been established, the burden then shifts to the party opposing the motion to show, via further depositions, discovery responses or affidavits, that there is indeed a

> genuine issue for trial, or to offer a valid justification for the failure to do so under [I.R.C.P. 56(d)]. *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874, 876 P.2d 154, 156 (Ct.App.1994) (alteration added).

Dunnick at 311, 882 P.2d at 478; *see also Heath* at 712, 8 P.3d at 1255.

"Where a motion to dismiss for failure to state a claim upon which relief can be granted is supported by information outside of the pleadings, the motion is treated as a motion for summary judgment." *McCann v. McCann*, 152 Idaho 809, 814, 275 P.3d 824, 829 (2012); I.R.C.P. 12(d). The language in Rule 12(d) is mandatory rather than discretionary, requiring that "the motion must be treated as one for summary judgment under Rule 56." *See Syringa Networks, LLC v. Idaho Dep't of Admin.*, 159 Idaho 813, 367 P.3d 208, 218 (2016).

"[W]hen simultaneous cross-motions for summary judgment on the same claim are before the court, the court must consider the appropriate evidentiary material identified and submitted in support of both motions, and in opposition to both motions, before ruling on each of them." *Tulalip Tribes of Washington v. Washington*, 783 F.3d 1151, 1156 (9th Cir. 2015) (quoting *Fair Hous. Council of Riverside Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1134 (9th Cir.2001)). "When parties submit cross-motions for summary judgment, each motion must be considered on its own merits." *Fair Hous. Council of Riverside Cnty.*, Inc. at 1136. "The filing of cross-motions for summary judgment, with both parties asserting that there are no uncontested issues of material fact, does not vitiate the court's responsibility to determine whether disputed issues of material fact are present, since a summary judgment cannot be granted if a genuine issue as to any material fact exists." *Id.*

"[A] party may amend its pleading only with the opposing party's written consent or the court's leave." I.R.C.P. 15(a)(2). "The court should freely give leave when justice

so requires." *Id.* "A court may consider whether the allegations sought to be added to the complaint state a valid claim in determining whether to grant leave to amend the complaint." *Estate of Becker v. Callahan*, 140 Idaho 522, 527, 96 P.3d 623, 628 (2004) (citing *Thomas v. Medical Center Physicians, P.A.*, 138 Idaho 200, 210, 61 P.3d 557, 567 (2002)). "A court, however, may not consider the sufficiency of evidence supporting the claim sought to be added in determining leave to amend because that is more properly determined at the summary judgment stage." *Id.* at 528, 96 P.3d at 629 (2004) (citing *Thomas* at 210, 61 P.3d at 567). "[L]eave to amend should not be given where the 'amendment would cause prejudice to the opposing party, is sought in bad faith, is futile, or creates undue delay.'" *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992).

V. ANALYSIS

The Court will first address the Vigs' three sets of requests for admissions. Next, the Court will then discuss the Vigs' Motion for Summary Judgment, followed by a discussion of Gerdes's Motion to Dismiss, which will be treated as a motion for summary judgment. Finally, the Court will discuss the Vigs' Motion to Amend.

Regarding the requests for admissions, there are four main issues before the Court. The first issue concerns whether service of the three sets of requests for admissions upon Gerdes was proper. The second issue is whether Gerdes's three responses to the requests were timely. The third issue concerns which, if any, of the requests for admissions should be deemed admitted by Gerdes as a result of her failure to timely respond, amend, or withdraw the requests. The resolution of the third issue depends on whether each individual request was proper under Rule 26 and Rule 36 of the Idaho Rules of Civil Procedure. The fourth issue is whether, after setting aside any

improper requests for admissions, the remaining admissions provide adequate support for an award of summary judgment. If they do not, the case will proceed forward on a determination of whether summary judgment is appropriate on the merits.

A. Defendants' responses to Plaintiffs' first and second sets of requests for admissions were untimely. Defendants' response to Plaintiffs' third set of requests for admissions was timely.

The Court will briefly restate the relevant facts as they relate to the requests for admissions. From January 16, 2018 – the date the complaint in this matter was filed – until June 5, 2018, Gerdes was proceeding as a *pro se* defendant. On June 5, 2018, a Notice of Appearance was filed, informing both the Vigs and the Court that Gerdes was now being represented by an attorney. On June 25, 2018, the Vigs, who were also pro se at the time, filed Notice to the Court of Service of Plaintiffs' First, Second, and Third Sets of Requests for Admission to Defendant. Contained in the notice were the three dates in which the Vigs state Gerdes was served with three separate sets of requests for admissions: the first set of requests was served on April 26, 2018, the second set of requests was served on May 6, 2018, and the third set of requests was served on May 29, 2018.[2] The record shows that the Vigs mailed this notice to both Gerdes and her attorney on June 23, 2018. On June 28, 2018, a Substitution of Counsel was filed, informing both Gerdes and the Court that the Vigs were now being represented by an attorney. Gerdes responded to the Vigs' third set of requests for admissions on June 29, 2018, and responded to the first and second sets of requests for admissions on July 26, 2018.

[2] The Vigs' Notice to the Court of Service of Plaintiffs' First, Second, and Third Sets of Requests for Admission to Defendant states the second set of requests for admissions was served on May 5, 2018. However, the date on the second set of requests for admissions, which can be found in the Vigs' 9th Supplement to Motion for Summary Judgment, reads "May 6, 2018." Therefore, the Court will use May 6, 2018 as the mailing and service date.

The Vigs assert that they properly mailed the three sets of requests for admissions to the home address provided by Gerdes. Tr. p. 6, ll. 12–15. The Vigs allege that because Gerdes failed to respond to each of the three sets of requests for admissions in a timely manner, the requests for admissions should be deemed admitted pursuant to Idaho Rule of Civil Procedure 36(a)(4). Pls.' Mem. in Opp'n to Defs.' Mot. to Dismiss, 3. In support of their argument, the Vigs focus on the dates Gerdes was served with each set of requests. *Id.*

Gerdes argues that her responses to the requests for admissions were timely. On July 5, 2018, Gerdes's attorney first received the Vigs' third set of requests for admissions, dated June 23, 2018. Aff. of Scott Cifrese in Supp. of Defs.' Reply in Supp. of Mot. to Dismiss, 1–2. Gerdes's attorney expressed confusion as to why the Vigs sent him a "third" request for admission, but not a "first" or a "second" request for admission. Tr. p. 7, ll. 18 –22. Also on July 5, 2018, Gerdes's attorney received the notice of service showing that all three sets of requests for admissions had been served on Gerdes on three separate occasions.[3] Aff. of Scott Cifrese in Supp. of Defs.' Reply in Supp. of Mot. to Dismiss, 2. Gerdes's attorney stated that he never received the first or second set of requests for admission, and neither did Gerdes. *Id.* at 2. On July 26, 2018, Gerdes's attorney filed a response to the first and second set of requests, which was within thirty days of the filng of the notice of service addressing the three sets of requests for admissions. *Id.* at Ex. B. In support of her argument that the responses were timely, Gerdes focuses on the date in which the notice of service was filed.

The following Idaho Rules of Civil Procedure govern this issue. Rule 5(a)

[3] The notice was dated June 23, 2018, but was received by Gerdes's attorney on July 5, 2018, presumably due to the distance between Budapest, Hungary, where the Vigs reside, and Spokane, Washington. Aff. of Scott Cifrese in Supp. of Defs.' Reply in Supp. of Mot. to Dismiss, 2.

requires that discovery papers be served on every party. I.R.C.P. 5(a). Rule 5(b) states that "[i]f a party is represented by an attorney, service under this rule must be made on the attorney, unless the court orders service on the party." I.R.C.P. 5(b). Therefore, if a party is not represented by an attorney, service must be made on the pro se party. Rule 5(b)(2)(C) explains that one proper method of service is by "mailing it to the person's last known address, in which event service is complete upon mailing." I.R.C.P. 5(b)(2)(C).

Rule 36(a)(1) states "[a] party may serve on any other party a written request to admit...the truth of any matters within the scope of I.R.C.P. 26(b)(1)" as they relate to the "facts, application of law to fact, or opinions about either" and "the genuineness of any described documents." I.R.C.P. 36(a)(1). Rule 26(b)(1) requires that matters be "relevant to any party's claim or defense." I.R.C.P. 26(b)(1). Rule 36(a)(4) states that "[a] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection to the matter..." I.R.C.P. 36(a)(4). In other words, if the party receiving the request for admission does not respond within thirty days, the relevant requests for admission will be deemed admitted. Additionally, Rule 36(e)(2) states that "[t]he party serving requests and responses to them must file with the court a notice of when and upon whom it was served." I.R.C.P. 36(e)(2). Rule 5(e)(1)(B) states that "[p]roof of service must...be filed within a reasonable time after service of the document." I.R.C.P. 5(e)(1)(B). Lastly, Rule 5(e)(2) states "[f]ailure to make proof of service does not affect the validity of the service." I.R.C.P. 5(e)(2).

The first issue presented is whether service of the three sets of requests for admissions upon Gerdes was proper. Gerdes was served with each of the three sets of requests for admissions between the dates of April 26, 2018, and May 29, 2018, at a

time when she was representing herself. Because Gerdes did not have attorney representation until June 5, 2018, service of the requests for admissions had to be on Gerdes, herself. Therefore, the Court finds that the Vigs properly served the three sets of requests for admissions on Gerdes.

Additionally, Gerdes's attorney claims that neither one of them ever received the requests for admission. However, based on the following, the Court finds that Gerdes did receive them. First, the Vigs mailed the requests for admissions to the address provided by Gerdes, herself, as evidenced by the notice of service contained in the record. *See* Aff. of Scott Cifrese in Supp. of Defs.' Reply in Supp. of Mot. to Dismiss, Ex. A. Therefore, they were mailed to the proper location. Second, Rule 5 explains that service is complete upon mailing. Therefore, the requests for admissions were properly served the moment they were mailed by the Vigs. Lastly, the record is void of any sworn statement by Gerdes stating that she did not receive the requests for admissions. In summary, the Court finds that Gerdes received the three sets of requests for admissions on the dates specified in the Vigs' Notice to the Court of Service of Plaintiffs' First, Second, and Third Sets of Requests for Admission to Defendant.

The next issue presented is whether Gerdes's responses to the three sets of requests for admissions were timely served. Rule 36(a)(4) explicitly states that a party who receives a request for admission has thirty days to respond after being *served*. The rule does not state that the party has thirty days to respond after receiving notice of service. In fact, Rule 36(e)(2) separately addresses notice of service. The rule explains that the party serving the request for admission must file a notice of service within a reasonable time after serving the request. Therefore, when calculating the dates of the thirty-day timeframe in which to respond to the requests for admissions, the

relevant dates are the dates the requests were served, not the date the notice of service was filed.

Idaho Rule of Civil Procedure 2.2 provides a general rule to follow when computing or extending any time period specified within the rules.[4] Rule 2.2(a)(1) states:

> **Generally.** When the period is stated in days or a longer unit of time:
> (A) exclude the day of the event that triggers the period;
> (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and
> (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

Additionally, Rule 2.2(c) discusses the addition of time after service by mail is made, which is the situation here. Rule 2.2(c) states "[w]hen a party may or must act within a specified time after service and service is made by mail, 3 days are added to the specified time." The Court finds that Rules 2.2(a)(1) and (c) specifically apply to this case, as a party who receives a request for admission must act within thirty days. Therefore, the Court will add three days to the specified timeframe in which each response was due, making the timeframe span a total of thirty-three days.

The first set of requests for admissions was served on Gerdes on April 26, 2018. The thirty-three-day period began on April 27, 2018, the day after the service occurred. Thirty-three days from that date would have been Tuesday, May 29, 2018. However, Gerdes did not respond to the Vigs' first set of requests for admissions until July 26, 2018. Because Gerdes did not respond within the established timeframe provided by the Rules, the response is considered untimely. Therefore, the first set of requests for

[4] Rule 2.2(b) discusses extensions of time, which are not applicable in this case. Gerdes did not file a motion to extend the time in which to respond to any of the requests for admissions. Therefore, that portion of Rule 2.2 will not be discussed at this time.

admissions that are found to be relevant under Rules 26 and 36 must be deemed admitted.

The second set of requests for admissions was served on Gerdes on May 6, 2018. The thirty-three-day period began on May 7, 2018, the day after the service occurred. Thirty-three days from that date would have been Thursday, June 8, 2018. However, Gerdes did not respond to the Vigs' second set of requests for admissions until July 26, 2018. Because Gerdes did not respond within the established timeframe provided by the Rules, the response is considered untimely. Therefore, the second set of requests for admissions that are found to be relevant under Rules 26 and 36 must be deemed admitted.

The third set of requests for admissions was served on Gerdes on May 29, 2018. The thirty-three-day period began on May 30, 2018, the day after the service occurred. Thirty-three days from that date would have been Sunday, July 1, 2018. However, because the last day of the period cannot end on a Sunday, the period would close on Monday, July 2, 2018. Because Gerdes responded to the third set of requests on June 29, 2018, Gerdes was within the established timeframe. Therefore, Gerdes's response to the third set of requests was timely.

The Court will briefly address the issue of timeliness as it relates to the Vigs' filing of the notice of service. As discussed above, Rule 5 states that a notice of service must be filed within a reasonable amount of time after service of the document – here, the requests for admissions. The rule does not require the notice of service be filed on the same day the requests for admissions are served. The issue would then become whether the notice of service, filed on June 25, 2018, was filed within a reasonable time after service of the requests for admissions. However, the record is devoid of any allegations, declarations, or motions indicating that the Vigs' notice of service was not

filed within a reasonable time. Gerdes's attorney has only argued that because the notice of service was not filed when the requests for admissions were served, the timeframe in which to serve responses begins upon receipt of the notice of service; he has not made the argument that the notice of service was not filed within a reasonable time of serving the requests on Gerdes. Additionally, Rule 5 states that the validity of the service will not be affected by a party's failure to make proof of service. Therefore, even if the notice of service was not filed within a reasonable time, the actual service of each set of requests for admissions upon Gerdes is still valid, and the findings above stand.

In *Deloge v. Cortez*, the defendant served the plaintiff with requests for admissions, and the plaintiff's attorney requested two separate extensions of time within which to respond to the requests. 131 Idaho 201, 202–03, 953 P.2d 641, 642–43 (Ct. App. 1998). Both extensions were approved by the defendant. *Id.* at 203, 953 P.2d at 643. However, the plaintiff failed to serve his responses by the final deadline, filing them over six months after the deadline had passed. *Id.* The defendant "filed a motion for summary judgment...based upon the fact that the requests for admissions should be deemed admitted under Idaho Rule of Civil Procedure 36," which the Court granted. *Id.* On appeal, the Idaho Court of Appeals noted that the plaintiff did not request any additional extensions and did not move for withdrawal or amendment of the admissions. *Id.* Additionally, the Court stated, "nor is there any doubt that [plaintiff's] counsel knew of [the Rule's] provision for admission of the matters requested in the event of a failure to timely respond." *Id.* For these reasons, the Court held that the district court did not err in deeming the default admissions admitted by failing to timely respond. *Id.* Therefore, because the admissions clearly and conclusively established

the elements of the cause of action alleged, the Court affirmed the grant of summary judgment. *Id.* at 205, 953 P.2d at 645.

Here, similar to *Deloge*, counsel for Gerdes did not request any extensions of time to serve responses to the requests for admissions, and did not move to withdrawal or amend the admissions. Additionally, also similar to *Deloge*, during oral arguments on this matter, Gerdes's attorney argued that the deadline to serve responses was thirty days after notice of service had been filed. Tr. p. 8, ll. 12–16. In response, the Vigs' attorney accurately stated that the deadline was thirty days after the requests had been served. *Id.* The Vigs' attorney then read the relevant portion of Rule 36(a)(4) aloud, and identified the specific language that lead him to that conclusion, making Gerdes's attorney fully aware of the provision for admission of matters requested in the event of a failure to respond. *Id.*

In summary, because the Court did not receive a motion to extend the time limit to serve the responses, or a motion to withdraw or amend the responses, Gerdes's first two responses are found to have been submitted well after the deadline imposed by Rule 36, and are deemed untimely. Because Gerdes's first two responses are untimely, the relevant admissions, if any, from the Vigs' first and second set of requests for admissions will be deemed admitted by Gerdes. Gerdes's response to the Vigs' third set of requests for admissions was served in a timely manner.

B. Defendants' responses to Plaintiffs' first and second sets of requests for admissions did not satisfy all the elements required to establish defamation.

1. Requests for admissions that satisfy an element of defamation

As stated above, the requested admissions must be a request to admit the truth of any matters within the scope of Idaho Rule of Civil Procedure 26(b)(1), which

requires that it be relevant to any party's claim or defense. I.C.R.P. 36(a)(1); I.R.C.P. 26(b)(1). The requested admissions must also relate to facts, the application of law to fact, or opinions about either. I.C.R.P. 36(a)(1)(A). Although not limited to a specific amount, the requests must be reasonable and must be unambiguous. *Haley v. Harbin*, 933 So. 2d 261, 262–63 (Miss. 2005). A request is ambiguous if the request is subject to more than one reasonable interpretation. *Id.* Only the admissions that fall within the boundaries of these requirements will be admitted and considered by the Court.

Idaho has very little case law analyzing the admissibility of requests for admissions. Therefore, the Court turns to nearby states that have addressed this issue more in-depth, both on a state and federal level. In *Al-Jundi v. Rockefeller*, the United States District Court for the Western District of New York found that "it would be improper to require admission of matters not pertinent to cause of action against particular defendant." 91 F.R.D. 590 (W.D.N.Y. 1981). In *Anderson v. United Air Lines, Inc.*, the United States District Court for the Southern District of New York stated, "[i]t has been established that responses under Fed.R.Civ.P. 36 must be made based upon evidence within the parties' knowledge or capable of ascertainment by reasonable inquiry from third persons." 49 F.R.D. 144, 149 (S.D.N.Y. 1969) (citing *Jones v. Boyd Truck Lines Inc.*, 11 F.R.D. 67, 70 (W.D.Mo.1951)). Requests for admissions that call for legal conclusions or interpretations, rather than admissions of fact, are improper. *Id.* (citing *Lantz v. New York Central R. R. Co.*, 37 F.R.D. 69 (N.D.Ohio 1963). Further, requests for admissions that "clearly call for speculative opinions...need not be answered as they are not the proper subject of requests to admit." *Id.* Additionally, in *Lantz v. New York Cent. R. Co.*, the United States District Court for the Northern District of Ohio, Eastern Division, stated, "[requests for] admissions should not be sought in an

attempt to harass an opposing party." 37 F.R.D. 69, 69 (N.D. Ohio 1963). Lastly, "[t]he recent trend of cases seems to favor suppression of requests for admissions of fact if they call for answers constituting opinion rather than facts." *Jones v. Boyd Truck Lines Inc.*, 11 F.R.D. 67, 69–70 (W.D. Mo. 1951). "However, in the latest edition of Moore's Federal Practice, it is said: '[a]t least where the borderline between fact and opinion is shadowy, or where an opinion is relevant to an issue in the case, the preferable course would be to hold that the request requires an answer.'" *Id.* (quoting 4 Moore Fed.Prac. (2 ed. 1950) 2713).

The Vigs have brought a defamation action against Gerdes regarding statements made in her book, *Sue Kim: The Authorized Biography*. "In a defamation action, a plaintiff must prove that the defendant: (1) communicated information concerning the plaintiff to others; (2) that the information was defamatory; and (3) that the plaintiff was damaged because of the communication." *Clark v. The Spokesman-Review*, 144 Idaho 427, 430, 163 P.3d 216, 219 (2007); *see Gough v. Tribune–Journal Co.*, 73 Idaho 173, 177, 249 P.2d 192, 194 (1952). "A defamatory statement is one that 'tend[s] to harm a person's reputation, [usually] by subjecting the person to public contempt, disgrace, or ridicule, or by adversely affecting the person's business.'" *Elliott v. Murdock*, 161 Idaho 281, 287, 385 P.3d 459, 465 (2016) (citing *Defamatory*, Black's Law Dictionary 506 (10th ed. 2014)). "[R]ecovery for loss of reputation will be conditioned upon 'competent' proof of actual injury to his [or her] standing in the community." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 376, 94 S. Ct. 2997, 3025, 41 L. Ed. 2d 789 (1974). "This will be true regardless of the nature of the defamation..." *Id.* The Court will not include in its analysis a discussion of the fourth element of defamation applicable to public figures,

as it is not necessary in this matter.[5]

The Vigs first set of requests for admissions contain a total of 67 requests. The Vigs second set of requests for admissions contain a total of 64 requests. In total, there are 131 requests for admissions that require further analysis. As stated above, out of the 131 requests for admissions, only the ones that fall within the confines of Rule 26(b)(1) and 36(a)(1) will be deemed admitted by Gerdes. The Court finds that the following request falls within those confines:

> **REQUEST NO. 29**: Admit that since it was you who wrote and published your Book, there is no other party except you who is responsible for the contents of your Book.

This request for admission relates to the communication of information about the Vigs, which satisfies the first element of defamation.[6] Therefore, this is an appropriate request for admission, and Gerdes's failure to respond to it constitutes an admission.

Additionally, there are numerous other requests for admissions that also fall within the confines of Rule 26(b)(1) and 36(a)(1), and are thus deemed admitted by Gerdes, but because they relate to the fourth element of defamation, they will not be discussed individually by the Court at this time.[7] In summary, the Court finds that the

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[5] For reference, the fourth element of defamation states: "As a fourth element, when a publication concerns a public official, public figure, or matters of public concern and there is a media defendant, the plaintiff must also show the falsity of the statements at issue in order to prevail in a defamation suit. *Id.* (citing *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 775–76, 106 S.Ct. 1558, 1563–64, 89 L.Ed.2d 783, 791–92 (1986)). Lastly, if the plaintiff is found to be a public figure, "the *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), standard applies, and the plaintiff can recover only if he can prove actual malice, knowledge of falsity or reckless disregard of truth, by clear and convincing evidence." *Id.* (citing *Steele v. Spokesman–Review*, 138 Idaho 249, 252, 61 P.3d 606, 609 (2002).

[6] This request for admission is one of multiple requests that mention the publication of the book, thereby satisfying the first element of defamation.

[7] The following is a non-exhaustive lists of requests for admissions that may fall within the scope of the fourth element of defamation, but require further analysis. Regarding knowledge of falsity, request numbers 8, 15, 16, 19, 53, 54, 58, 73, 74, 77, 82, 104,

first element of defamation has been satisfied by the default admissions.

2. Requests for admissions that do not satisfy an element of defamation

Due to the large amount of requests for admissions served by the Vigs, the Court will separate the remaining requests into groups and discuss why the two remaining elements of defamation are not satisfied by the requests in each group.

First, the vast majority of the requests for admissions only reference the book, generally, and as a whole, but do not clearly establish that the statements qualify as defamatory, or that the Vigs were actually damaged by the statements.[8] Therefore, though the requests are relevant to the defamation claim, and are thus deemed admitted by Gerdes, they do not establish either of the two remaining elements of defamation. Second, many of the requests for admission refer to situations that

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105, 112, and 122. Regarding actual malice, request numbers 18, 78, and 96.

[8] The following requests for admissions have been provided as examples to support the above explanation, but do not represent every request for admission that falls within the explanation.

> **REQUEST NO. 11**: Admit that you lied when you wrote in your letter to Tommy Vig dated 11.25.18 that "A settlement document was provided to me for the settlement between Mia and the Sue Kim Corporation, which I sourced in the book" since you knew that you did not source the same in your Book.
>
> **REQUEST NO. 41**: Admit that you invented a non-existent, completely fictional version of Mia Kim because you needed an antagonist to Sue in your Book.
>
> **REQUEST NO. 46**: Admit that it was obvious to you while writing your Book that Sue was very jealous of and prejudiced against Mia because Mia was still performing on stage, while Sue was only a real estate agent.
>
> **REQUEST NO. 41**: Admit that the characterization of your Book being "A BOOK OF LIES" is correct.
>
> **REQUEST NO. 50**: Admit that you were aware while writing your Book that after Sue ousted Mia from The Kim Sisters act, Sue had to pay Mia weekly pursuant to a negotiated 1973 contract.
>
> **REQUEST NO. 62**: Admit that you wrote your libelous Book as a hit piece against the Vigs to enrich yourself at the expense of the Vigs' [well-being].
>
> **REQUEST NO. 116**: Admit that you were fully aware when you wrote your Book of the Bonifazios' prejudice against and hatred and unfairness towards Mia and Tommy.

occurred before the book was published.[9] Though these requests are also relevant to the defamation claim, and are thus deemed admitted by Gerdes, they, too, do not establish either of the two remaining elements of defamation. Third, many of the Vigs' requests for admissions focus on someone other than the parties to this case.[10]

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[9] The following requests for admissions have been provided as examples to support the above explanation, but do not represent every request for admission that falls within the explanation.

> **REQUEST NO. 1**: Admit that you knew by Plaintiffs' July 19, 2012 email to you to which you replied, that Plaintiffs were ready and willing to be interviewed by you.
>
> **REQUEST NO. 2**: Admit that you violated the Society of Professional Journalists Code of Ethics which instructs journalists "to diligently seek subjects to respond to criticism or allegations of wrongdoing" by your refusal and failure to interview Mia Kim or Tommy Vig before publishing your book.
>
> **REQUEST NO. 4**: Admit that your failure to interview Mia Kim or Tommy Vig before publishing your Book constituted actual malice [...].
>
> **REQUEST NO. 21**: Admit that you cannot name more than 20 people you interviewed for your Book.
>
> **REQUEST NO. 30**: Admit that you got money from the Bonifazios to write your book.
>
> **REQUEST NO. 56**: Admit that you rejected all of Plaintiffs' good faith offers which they made to you to cooperate with you on your Book.
>
> **REQUEST NO. 59**: Admit that you should never have agreed not to interview Mia and Tommy for your Book, no matter how much money the Bonifazios paid you.

[10] The following requests for admissions have been provided as examples to support the above explanation, but do not represent every request for admission that falls within the explanation.

> **REQUEST NO. 58**: Admit that you never believed any of Sue's derogatory stories about her sister Ai-Ja, including the tale about Sue walking her dog early in the morning and then looking out her window [...].
>
> **REQUEST NO. 76**: Admit that the Book is not a biography, but a fantasy which has nothing to do with the real life stories of Tom Ball, Danny Lembark, Ai-Ja Kim, Sue's parents, Mia's parents, John Bonifazio, Frank Pastore, and Sue Kim.
>
> **REQUEST NO. 91**: Admit that you knew right from the start in 2008 when you were hired by the Bonifazios to write your Book that it was not going to be a fair biography, but that you would fill the Book with lies to make Sue Kim look good and make others around her look bad [...].
>
> **REQUEST NO. 111**: Admit that you never believed any of Sue's stories about her sister Ai-Ja that you wrote in your Book, yet you presented these stories as facts in your book.

Though these requests are somewhat relevant to the claim of defamation, and are thus deemed admitted by Gerdes, they do not establish either of the two remaining elements of defamation. Fourth, a number of requests for admissions reference particular procedural rules and processes.[11] Neither of the two remaining elements of defamation has been conclusively established by the requests in this section. Fifth, many of the requests for admissions involve a question of law, which is improper under Rule 36, as whether a statement could be considered defamatory is for the Court to decide.[12] Sixth, many of the requests for admissions are asking Gerdes to admit to matters outside the scope of defamation.[13] Therefore, as the requests for admissions in this group do not

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[11] The following requests for admissions have been provided as examples to support the above explanation, but do not represent every request for admission that falls within the explanation.

> **REQUEST NO. 26**: Admit that you will not oppose Plaintiffs' Summary Judgment Motion because you agree that such Motion should be granted in the interest of justice.
>
> **REQUEST NO. 44**: Admit that your idea that Plaintiffs sued the wrong person in you in this lawsuit is based on absolutely no facts. [...].
>
> **REQUEST NO. 64**: Admit that the sole affirmative defense you listed in item number 6 in your 1.25.18 Answer to Plaintiffs' Verified Complaint is totally unintelligible, meaningless, and false.
>
> **REQUEST NO. 81**: Admit that you are aware of the fact that pursuant to I.R.C.P. Rule 14, you could bring a third party into this lawsuit as another defendant, who would then become a participant known as a third-party defendant.

[12] The following request for admission has been provided as an example to support the above explanation, but do not represent every request for admission that falls within the explanation.

> **REQUEST NO. 63**: Admit that by writing and publishing your libelous Book, you are guilty of the crime of Libel as defined by Idaho Statute 18-4801 and ought to be punished to the full extent of the law [...].

[13] The following requests for admissions have been provided as examples to support the above explanation, but do not represent every request for admission that falls within the explanation.

> **REQUEST NO. 7**: Admit that you wrote on Amazon.com using the fake name "Brandi L." [...].

fall within the confines of Rule 26(b)(1) and 36(a)(1), Gerdes's failure to respond to them do not constitute admissions. In summary, the two remaining elements of defamation have not been satisfied by Gerdes's default admissions to the Vigs' requests for admissions.

There is one request for admission that requires a more in-depth analysis. Request number 54 states, "[a]dmit that you knew that your lies about the Plaintiffs would lower them in the estimation of the community and that your lies would deter third persons from associating with the Plaintiffs and that Plaintiffs would no longer be invited to perform in Korea." This request for admission is not deemed admitted by Gerdes for multiple reasons. First, this request for admission is asking Gerdes to admit three separate issues within one request for admission. This violates Rule 36(a)(2) of the Idaho Rules of Civil Procedure, which requires that each matter be separately stated. Second, this request for admission does not identify or reference any statement from Gerdes's book that is alleged to be defamatory; this request does not mention the book at all. This request is asking Gerdes to admit that her "lies" caused damage to the Vigs, as opposed to asking Gerdes to admit that a particular defamatory statement from the book caused damage to the Vigs. Therefore, this request does not clearly establish

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REQUEST NO. 28: Admit that you never really believed the story Sue Kim told you about herself and The Kim Sisters.

REQUEST NO. 32: Admit that you have never had any sworn statement by any witness regarding Mia Kim having done anything wrong.

REQUEST NO. 33: Admit that if the Vigs were killed by Mafioso Bonifazio or his hitmen, you would make more money from the sales of your book.

REQUEST NO. 109: Admit that sales of the Book dropped because you eliminated the originally used photo and name of The Kim Sisters in the current Revised Cover.

REQUEST NO. 125: Admit that Amazon[.com] never asked you why you refused to interview Mia, the only other Kim Sister alive, for the Book they published about Sue Kim and The Kim Sisters.

that a statement from the book qualifies as defamatory, or that the Vigs were actually harmed by the statement. Overall, this is an improper request for admission, and Gerdes's failure to respond to this request for admission does not constitute an admission.

In conclusion, considering each of the admitted requests for admission, only the first element of defamation has been satisfied. For the reasons stated above, Gerdes's default admissions do not conclusively establish that statements contained in the book qualify as defamatory, or that the alleged defamatory statements caused the Vigs to suffer actual damage. Accordingly, because the elements of defamation have not been fully satisfied by the default admissions, this Court cannot grant the Vigs' summary judgment motion based on the default admissions.

C. Defendants' Motion to Dismiss will be treated as a motion for summary judgment.

Idaho Rule of Civil Procedure 12(d) states:

> If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

See Syringa Networks, LLC v. Idaho Dep't of Admin., 159 Idaho 813, 367 P.3d 208 (2016); *see also Hellickson v. Jenkins*, 118 Idaho 273, 276, 796 P.2d 150, 153 (Ct. App. 1990). Here, Defendants filed a motion to dismiss pursuant to Rule 12(b)(6) after Plaintiffs had filed a motion for summary judgment. Because the Court is considering matters outside the pleadings, including all evidentiary material submitted in support of, and in opposition of, each pending motion, Defendants' motion to dismiss will be treated as a motion for summary judgment.

D. Plaintiffs' Motion for Summary Judgment is denied. Defendants' Motion to Dismiss (Motion for Summary Judgment) is granted.

Next, the Court will analyze whether summary judgment is appropriate based on the merits of the case. The Vigs allege that each of the statements contained within fifteen pages of Gerdes's book, attached as Exhibit 7 to the Complaint, are defamatory because they portray "Mia and Tommy [Vig] in an unbelievably dishonest and abominable way," among other things. Pls.' Compl., ¶ 4.3. The Vigs assert that summary judgment is appropriate because, essentially, it is undisputed that Gerdes defamed them by publishing the biography of Sue Kim. Pls.' Mot. for Summ. J., p. 1–2. The Vigs' motion for summary judgment provided the Court with over sixty pages of attached documentation which detail their own version of the events contained in the book, supposed e-mail exchanges between Gerdes and the Vigs, and what appears to be letters directed at Gerdes that border on harassment. *See* Pls.' Mot. for Summ. J., p. 18 ("You are a dreadful individual, Sarah!" and "Sarah, I hope you really do not know with whom you are in bed!"); *see id.* at p. 24 ("Sarah, you are scum, and you know it!" and "Sarah, you are a dishonest quack!"). Additionally, the Vigs filed ten supplements to their motion for summary judgment, along with a plethora of intermittent sworn statements, all detailing either their personal feelings about Gerdes, their version of events contained in the book, articles about successful defamation cases, additional claims they believe they can assert against Gerdes, and their colorful opinion about their own attorney. *See generally* Pls.' Third Suppl. to Mot. for Summ. J.; *see also* Pls.' 7th Suppl. to Mot. for Summ. J.; *see also* Pls.' 8th Suppl. to Mot. for Summ. J.; *see also* Pls.' 9th Suppl. to Mot. for Summ. J.

In opposition, Gerdes requests that the Court deny the Vigs' motion for summary judgment because the statements contained in the book are clearly not defamatory.

Defs.' Resp. to Pls.' Mot. for Summ. J., p. 7. In addition, Gerdes filed a motion to dismiss, which, as discussed above, will be treated as a motion for summary judgment. In the motion to dismiss, Gerdes puts forth the same arguments from her response to the Vigs' motion for summary judgment. Gerdes emphasizes that even if statements identified in the book are inaccurate, which the Vigs' strongly believe is so, they are neither material nor do they even come close to harming the Vigs reputation. Defs.' Mem. in Supp. of Mot. for Dismissal, 6. In their response to Gerdes's motion to dismiss, the Vigs rely on the three sets of requests for admissions, discussed above, to support the position that they have been defamed by Gerdes. Pls.' Mem. in Opp. To Defs.' Mot. to Dismiss, 3.

Under Idaho law, the test for defamation is a stringent one. In a defamation action, a plaintiff must prove that the defendant: (1) communicated information concerning the plaintiff to others; (2) that the information was defamatory; and (3) that the plaintiff was damaged because of the communication. When addressing cross-motions for summary judgment, as previously mentioned, each motion must be considered on its own merits. In doing so, the Court will consider all relevant evidentiary material in the record that has been submitted by both parties in support of the motions, and in opposition to the motions, before making a ruling.

1. The statements concerning the Vigs were published, and were therefore communicated to others

"In both print and Internet publishing, information is generally considered 'published' when it is made available to the public." *Irish v. Hall*, 163 Idaho 603, 608, 416 P.3d 975, 980 (2018) (quoting *Oja v. U.S. Army Corps of Eng'rs*, 440 F.3d 1122, 1131 (9th Cir. 2006)). "Once information has been published on a website or print media, there is no further act required by the publisher to make the information

available to the public." *Id.* (quoting *Oja* at 1131). Further, "[i]t is not necessary that the defamatory matter be communicated to a large or even a substantial group of persons. It is enough that it is communicated to a single individual other than the one defamed." *Id.* at 608–09, 416 P.3d at 980–81 (quoting Restatement (Second) of Torts § 577 (1977)) (internal quotations omitted).

After reviewing the record, the Court confirms that the statements concerning the Vigs have been published, and therefore have been made available to the public. Gerdes's book about Sue Kim was written, published, and made available for sale on www.Amazon.com. Therefore, the statements concerning the Vigs have been communicated to others, and the first element of defamation has been satisfied. Additionally, as discussed above, this element of defamation was established and admitted by Gerdes.

2. The statements concerning the Vigs are not defamatory

If a "statement is not ambiguous and reasonably can have only one interpretation, the question of defamation is one of law for the court." *StopLoss Specialists, LLC v. VeriClaim, Inc.*, 340 F. Supp. 3d 1334 (N.D. Ga. 2018) (citing *Speedway Grading Corp. v. Gardner*, 206 Ga. App. 439, 441, 425 S.E.2d 676, 678 (1992)). In a defamation case, the threshold question is whether the words used "are reasonably capable of a defamatory meaning." *Dallas Morning News, Inc. v. Tatum*, 554 S.W.3d 614, 624 (Tex. 2018), reh'g denied (Sept. 28, 2018) (quoting *Musser v. Smith Protective Servs., Inc.*, 723 S.W.2d 653, 655 (Tex. 1987)). "In answering this question, the 'inquiry is objective, not subjective.'" *Id.* (quoting *New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 157 (Tex. 2004)). "[I]f the court determines the language is ambiguous, the jury should determine the statement's meaning." *Id.* (citation omitted).

Additionally, "in determining whether a statement is defamatory, '[a]n assertion that cannot be proved false cannot be held libelous.'" *Irish v. Hall*, 163 Idaho 603, 608, 416 P.3d 975, 980 (2018) (quoting *Wiemer v. Rankin*, 117 Idaho 566, 571, 790 P.2d 347, 352 (1990)). Further, it is commonly known that the truth is an absolute defense in almost all libel and slander cases. *Curtis Pub. Co. v. Butts*, 388 U.S. 130, 151, 87 S. Ct. 1975, 1989, 18 L. Ed. 2d 1094 (1967). But "[i]t is not necessary to establish the literal truth of the precise statement made. Slight inaccuracies of expression are immaterial provided that the defamatory charge is true in substance." *Steele v. Spokesman-Review*, 138 Idaho 249, 253, 61 P.3d 606, 610 (2002) (citing Restatement (Second) of Torts § 581A, comment f (1977)). "In Idaho, the Court has adopted this rule and added that 'so long as the substance, the gist, the sting of the allegedly libelous charge be justified,' minor inaccuracies do not amount to falsity." *Id.* (quoting *Baker v. Burlington Northern, Inc.*, 99 Idaho 688, 690, 587 P.2d 829, 831 (1978)). "Similarly, even when a statement *is* verifiable as false, it does not give rise to liability if the 'entire context in which it was made' discloses that it is merely an opinion masquerading as a fact." *Id.* (citing *Bentley v. Bunton*, 94 S.W.3d 561, 581 (Tex. 2002)) (emphasis in original).

As previously stated, "[a] defamatory statement is one that 'tend[s] to harm a person's reputation, [usually] by subjecting the person to public contempt, disgrace, or ridicule, or by adversely affecting the person's business.'" *Elliott v. Murdock*, 161 Idaho 281, 287, 385 P.3d 459, 465 (2016) (citing *Defamatory*, Black's Law Dictionary 506 (10th ed. 2014)). "In determining whether an assertion is defamatory, it 'must be read and construed as a whole; the words used are to be given their common and usually accepted meaning and are to be read and interpreted as they would be read and

understood by the persons to whom they are published.'" *Irish v. Hall*, 163 Idaho 603, 607, 416 P.3d 975, 979 (2018) (quoting *Gough v. Tribune-Journal Co.*, 75 Idaho 502, 508, 275 P.2d 663, 666 (1954)). In other words, the Court will interpret each statement from the standpoint of the average reader, judging them within the context in which it is made.

In combination with the rules presented above, the following case law assisted the Court in making its determining of what statements are considered defamatory. In *Elliot v. Murdock*, a declaration broadcasted over the radio stated, "[the plaintiff]'s humane society puts .02% of the money they hit everybody up [for] back into the care of animals." 161 Idaho 281, 285, 385 P.3d 459, 463 (2016). The Court found that the statement was not defamatory because it was loosely based on a recent report that appeared in national media outlets. *Id.* at 288, 385 P.3d at 466. In *Bell v. Rogers*, a nurse sued a hospital for defamation based on a written report about the nurse that included the statement, "misappropriate use of property." 29, 757 (La. App. 2 Cir. 8/20/97), 698 So. 2d 749, 756. The Court found that the statement was not objectively capable of having a defamatory meaning when "considering the statement as a whole, the context in which it was made, and the effect it is reasonably intended to produce in the mind of the average [reader]." *Id.* (quoting *Kosmitis v. Bailey*, 28,585 at p. 3, 685 So.2d at 1180). The Court concluded "that the bare assertion 'misappropriate use of property,' considered within the context of having been expressed in an 'Employee Counseling Report' in the routine course of business, cannot be regarded as defamatory in meaning or in its intended effect." *Id.*

Taking the concept of defamation one step further, in *Wiemer v. Rankin*, a journalist published an article in a tabloid newspaper about a husband who had recently

lost his wife to suicide. 117 Idaho 566, 568, 790 P.2d 347, 349 (1990). The journalist wrote that the "husband stated his wife shot herself," "[t]he evidence collected by the Post Falls Police Department and by Det. Bohn [indicating] that the victim did not shoot herself—and which I have personally viewed—is overwhelming," and "[the evidence] contains photographs indicating that it was impossible for the victim to have held the gun in the position needed to shoot herself." *Id.* On appeal, the Supreme Court of Idaho found the statements in the article to not only be defamatory, but to be defamatory per se, interpreting the article as imputing not only that the husband lied to police about his wife committing suicide, but also that he killed his wife. *Id.* at 351. Similarly, in *D Magazine Partners, L.P. v. Rosenthal*, a magazine published an article which included the heading, "The Park Cities Welfare Queen," and identified the plaintiff as essentially being a wealthy "'University Park mom' who 'has figured out how to get food stamps while living in the lap of luxury.'" 529 S.W.3d 429, 431 (Tex. 2017), reh'g denied (Sept. 29, 2017). The article then proceeds to describe how the plaintiff "pulls it off." *Id.* The plaintiff brought a defamation action against the magazine for essentially asserting that she has committed welfare fraud. *Id.* The Court ultimately held that the statement would reasonably be construed as accusing the plaintiff of having committed a crime – not only making it defamatory, but making it defamatory per se. *Id.* at 439.

In determining whether any of the statements concerning the Vigs could be considered defamatory, the Court will analyze each passage from the book that has been submitted as evidence by the Vigs, which can be found in Exhibit 7 of the Complaint. However, the Court will note that seven passages from the book do not need to be discussed in-depth, as they either do not concern the Vigs or clearly do not

qualify as defamatory.[14]

The first passage submitted by the Vigs, labeled as correction number one, discusses Mia Kim a number of times. Pls.' Compl., Ex. 7, p.116. Specifically, the passage mentions Mia's desire to move to Los Angeles, California, Mia's allergies, and Mia's abrupt move to Los Angeles, California.[15] *Id.* When reading and construing the passage as a whole, and giving each word its common meaning, the Court finds that the passage does not contain any defamatory statements about the Vigs. Statements mentioning a person having allergies, moving to a different state, and living apart from

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[14] First, the passage that discusses the five-year Hilton Hotel contract, labeled as correction number 5, does not mention or reference the Vigs. Pls.' Compl., Ex. 7, p. 120. Second, the statement about Sook Ja Kim sitting by her window when she was four years old, labeled as correction number six, also does not mention or reference the Vigs. *Id.* at Ex. 7, p. 121. Third, the passage that discusses the roles of Ball, McMackin, Alcivar, and Sue, labeled as correction number eight, also does not mention the Vigs. *Id.* at Ex. 7, p. 123. The passage may reference the Kim Sisters, generally, when it states "their own salaries had only fractionally increased...," but it is not clear. The passage may be referencing the Kim Sisters, generally, but the once-sentence discussion of the Kim Sisters' salaries does not qualify as defamatory. Fourth, the passage that discusses Sue Kim's work ethic and the "charity show for the USO," labeled correction number nine, also does not mention the Vigs. *Id.* at Ex. 7, p. 124. The passage references the Kim Sisters, generally, but the one sentence mentioning where the Kim Sisters were performing does not qualify as defamatory. Fifth, the passage discussing Sue Kim's attitude and approach toward signing contracts, labeled as correction number ten, also does not mention the Vigs. *Id.* at Ex. 7, p. 125. The passage references the Kim Sisters, generally, stating "the general fund for the Kim Sisters," but does not qualify as defamatory. Sixth, the passage that discusses Ai-Ja's spending habits, labeled as correction number twelve, does not mention or reference the Vigs. *Id.* at Ex. 7, p. 127. Lastly, the passage that discusses Wayne Newton pursuing a career in real estate, and how Sue Kim spent her money "freely on jewels and furs," labeled as correction number 13, does not mention or reference the Vigs. *Id.* at Ex. 7, p. 128. In conclusion, the seven above-mentioned statements and passages either do not concern the Vigs or clearly do not qualify as defamatory statements. Therefore, they will not be discussed any further by the Court in this matter.

[15] This passage includes statements such as, "Mia voiced her desire to move away from the area, hinting about Los Angeles where her husband was linked to a network of musicians," and "pointing out Mia's allergies spiked in the spring when pollen filled the air," and "[Mia] was the one with eyes so swollen she couldn't see, speaking through cracked lips," and "[i]t didn't cross her mind that Mia didn't feel the same way. Ultimately, Sue was the only person shocked when Mia abruptly left for Los Angeles

other family members cannot reasonably be viewed by the average reader as statements that could subject the Vigs to public disgrace or ridicule, or adversely affect their singing business. Additionally, the Vigs themselves state that Mia did, in fact, move to Los Angeles, California, and did, at one point in time, have allergies. Pls.' Compl., Ex. 7, p. 116; *see also* id. at Ex. 7, p. 117. Though the exact timing of when Mia's allergies occurred may be inaccurate, as the Vigs claim, the inaccuracy is slight, and thus immaterial. Therefore, the statements about Mia's move to California and her allergies are true in substance, and thus not defamatory. The Court finds that this passage does not contain any statements that could be considered defamatory.

The second passage submitted by the Vigs, labeled as correction number two, states, "[t]he two individuals always welcome were Ai-Ja and Mia, but when accompanied by their husbands for major events like Sue's birthday, the home was filled with tension." Pls.' Compl., Ex. 7, p. 117. The second paragraph discusses how the two husbands, whose names are not mentioned in the excerpt attached to the complaint, "hated each other," "made a point of sitting at opposite ends of the table when family was called together for meals," and were said to be jealous and temperamental. *Id.* The third paragraph discusses Mia's allergies, how, "[d]uring certain times of the year, it was so bad her eyes swelled shut and throat became too hoarse to talk," and how her allergies "gave her a convenient excuse to leave the home when family tensions arose." *Id.* Similar to the previous discussion of Mia's allergies, the statements are true in substance, and thus not defamatory. Regarding the statements about the husbands, when reading and construing them as a whole, the Court finds that the passage does not contain any defamatory statements about the Vigs. The discussion of members of a family disliking each other, and being considered

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with her husband." Pls.' Compl., Ex. 7, p. 116.

jealous and temperamental by other members of the family, cannot reasonably be viewed by the average reader as statements that could subject the Vigs to public disgrace or ridicule, or adversely affect their singing business. The Court finds that this passage does not contain any statements that could be considered defamatory.

The third passage submitted by the Vigs, labeled as correction number three, discusses those people that Sue helped move to, and settle in, the United States. Pls.' Compl., Ex. 7, p. 118. The statement that briefly mentions Mia reads, "[b]y that time, Sue had helped usher in upwards of eighty members of the Kim family and the Lee's (Mia's family), paying for all expenses for travel, housing and other necessities." The discussion of a person helping to move family members into the United States cannot reasonably be viewed by the average reader as statements that could subject the Vigs to public disgrace or ridicule, or adversely affect their singing business. In summary, the Court finds that this statement cannot be considered defamatory.

The fourth passage submitted by the Vigs, labeled as correction number four, discusses Ai-Ja's funeral, what outfit and jewelry Sue put on Ai-Ja, how Sue did not invite the media or issue a single announcement in the newspaper. Pls.' Compl., Ex. 7, p. 119. The statement mentioning Mia states, "[n]either former husband attended, nor did Mia send with a sympathy card." *Id.* When reading and construing the passage as a whole, and giving each word its common meaning, the brief mention of someone not sending a sympathy card after the passing of a relative cannot reasonably be viewed as a statement that could subject the Vigs to public disgrace or ridicule, or adversely affect their singing business. Further, the Vigs assert that "Sue kept Ai-Ja's death a secret from the press and from Mia" and that Mia would have attended the funeral if she had known about it. *Id.* The Vigs' own statements indicate that Mia did not send a sympathy card because she did not know about the passing of her relative. Therefore,

according to the Vigs, the "gist" of the statement is true. In summary, the Court finds that this statement cannot be considered defamatory.

The fifth passage submitted by the Vigs, labeled as correction number seven, discusses a settlement contract that included a lump sum payment to Mia in the amount of $52,500.00, as well as Mia's inability to use the Kim Sister name in future performances.[16] Pls.' Compl., Ex. 7, p. 122. When reading and construing the passage as a whole, and giving each word its common meaning, the Court finds that the passage does not contain any defamatory statements about Mia. The discussion of a settlement negotiation and a lump-sum payment in lieu of weekly payments pursuant to a contractual agreement (see next paragraph) cannot reasonably be viewed by the average reader as statements that could subject the Vigs to public disgrace or ridicule, or adversely affect their singing business. In summary, the Court finds that this passage does not contain any statements that could be considered defamatory.

The sixth passage submitted by the Vigs, labeled as correction number eleven, briefly discusses how the media spoke of the Kim Sister's after Mia's departure, that sue kept her word to Mia by sending her a weekly stipend, and how Sue generally spent her time at home.[17] Pls.' Compl, Ex. 7, p. 126. When reading and construing the passage as a whole, and giving each word its common meaning, the Court finds that

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[16] This passage includes statements such as, "[t]he first came in the form of a demand letter from Mia. The former group member had continued to receive payments every week for years, even though she hadn't performed. Sue's [sic] generosity had long outstripped Mia's participation," "[w]ith the money was the agreement and rights for Sue to continue using the Kim Sisters name, and Mia's inability to reference the Kim Sisters in her own solo pursuits, should she continue on stage," and "[o]nce the final documentation was signed, Sue never heard from Mia again." Pls.' Compl., Ex. 7, p. 122.

[17] The statements that reference Mia read, "[t]he media covered the return of the Kim Sisters [sic] with barely a mention of Mia's departure for Jane. The articles focused on Sue, applauding her as the consummate entertainer and one to be emulated," and "Sue kept her word to Mia, sending her portion of the weekly stipend." Pls.' Compl., Ex. 7, p.

the passage does not contain any defamatory statements about Mia. First, the statement referencing Mia's weekly payment has been deemed true by the Vigs' own words, which states, the "Kim Sisters had [sic] a long standing agreement that if any one of the three left the act, she would forever receive 10% of the income The Kim Sisters received." *Id.* Therefore, because the singing group really did have a contractual agreement as discussed in the passage, the statement cannot be considered defamatory. Second, the statement referencing how the media barely mentioned Mia's departure from the Kim Sisters cannot reasonably be viewed by the average reader as a statement that could subject the Vigs to public disgrace or ridicule, or adversely affect their singing business. In summary, the Court finds that this passage does not contain any statements that could be considered defamatory.

The seventh passage submitted by the Vigs, labeled as correction number fourteen, discusses how Sue perceived Mia's reaction to the death of her adoptive mother – also referred to as her aunt. Pls.' Compl., Ex. 7, p. 132; *id.* at ¶ 3.7. The passage reads, "[f]or Mia, Ran's death was barely an emotional ripple. She knew her adoptive mother loved her, but had retained her emotional bond with her parents in South Korea." *Id.* When reading and construing the passage as a whole, the Court finds that the passage does not contain any defamatory statements about Mia. Statements about how people may outwardly portray themselves to others when coping with the death of a relative, as well as statements addressing emotional bonds with biological parents, cannot reasonably be viewed as statements that could subject the Vigs to public disgrace or ridicule, or adversely affect their singing business. In summary, the Court finds that this passage does not contain any statements that could be considered defamatory.

The eighth passage submitted by the Vigs, labeled as correction number fifteen, discusses how Sue and John felt about Sue's unplanned pregnancy, that Sue ultimately decided to have an abortion, and that "Sue told John of her decision, and he reluctantly supported her choice." Pls.' Compl, Ex. 7, p. 130. The portion of this passage that mentions Mia states, "Ai-Ja told [Sue] to stop performing and put her family first, but Mia counseled Sue to have the abortion. It wasn't just Sue's family she was supporting, but Mia's as well." *Id.* The Court notes that it has not been argued by the Vigs, at any point in time since the inception of this case, that the act of Mia encouraging Sue to have an abortion is what makes this statement defamatory. Rather, the Vigs assert that the events did not unfold the way they are portrayed in this passage. *Id.* The Vigs provide that Mia could not have advised Sue to have an abortion because Sue kept her pregnancy a secret from her. *Id.* However, the statement in the book has not been proven to be false. Additionally, when reading and construing the passage as a whole, the Court finds that the passage does not contain any defamatory statements about Mia, as the passage makes clear that the decision to have an abortion was Sue's. From the standpoint of the average reader, judging the statement within the context in which it is made, the passage cannot reasonably be viewed as a one that could subject the Vigs to public disgrace or ridicule, or adversely affect their singing business. The Court finds that this passage contain no statements that could be considered defamatory.

The last passage submitted by the Vigs, labeled as correction number sixteen, discusses Sue and John Bonafazio's conversation about moving back to New York. Pls.' Compl., Ex. 7, p. 131. The statement that briefly mentions Mia reads, "Sue rebuffed his demand, telling him she wasn't going to desert her family the way Mia had done." *Id.* A statement about how a relative feels about his or her cousin moving away from the rest of their family members cannot reasonably be viewed by the average

reader as one that could subject the Vigs to public disgrace or ridicule, or adversely affect their singing business. In summary, the Court finds that this statement cannot be considered defamatory.

In summary, the passages discussed above do not contain any statements that could be understood to be defamatory. And when each statement is considered in the context in which it is written, the average reader would not interpret the statement to be defamatory. The Vigs would have the Court believe that the statements from Gerdes's book are so clearly defamatory, so as to warrant a grant of summary judgment in their favor. However, the memoranda, supplemental motions, exhibits, and sworn statements submitted by the Vigs do not contain any appropriate supporting evidence that would indicate the statements are reasonably susceptible to a defamatory meaning. In contrast, evidence submitted by Gerdes, by way of memoranda and affidavits, show that the statements from the book do not qualify as defamatory. Because the evidence on record supports the position that the statements from Gerdes's book are not defamatory, the Vigs' motion for summary judgment is denied.

Considering Gerdes's cross-motion for summary judgment separately, the Court finds that Gerdes has met her burden by establishing the absence of evidence on an element that the Vigs would be required to prove at trial. Gerdes has clearly established, through submission of supporting evidence, that the statements from the book do not qualify as defamatory. Because the second element of defamation has not been satisfied, the Vigs' cannot succeed on a claim of defamation. In response, the Vigs have failed to show, through further discovery responses, depositions, or affidavits, that there remains a genuine issue for trial. In summary, the Court finds that the passages from Gerdes's book are not reasonably capable of any defamatory meaning, and cannot be reasonably understood in any defamatory sense. Therefore, as a matter

of law, Gerdes's motion for summary judgment must be granted.

The statements at issue in this matter are from a biography about Sue Kim. It is written based on the way she regarded her own life and her own experiences, the way she felt about certain people, and the way she perceived certain events. The Vigs are upset that Gerdes described those particular events and relationships in a way that clash with their own perception of them. The Court understands that Sue likely interpreted certain situations differently than the way the Vigs interpreted them, and that the Vigs' version of events may be more accurate. The Court also understands that Gerdes, as the author of Sue's biography, is responsible for putting Sue's perceptions out into the world. However, these do not make the statements in Gerdes's book – statements about allergies, moving to California, not sending a sympathy card, receiving a weekly stipend, negotiating a settlement agreement – defamatory. To succeed on a claim of defamation, the statements at issue must be reasonably capable of a defamatory meaning. That is not the case here.

In conclusion, after considering all appropriate evidentiary material identified and submitted in support of both motions for summary judgment, and in opposition to both motions for summary judgment, the Court finds that Plaintiffs' Motion for Summary Judgment is denied and Defendants' Motion for Summary Judgment is granted.

E. Plaintiffs' Motion to Amend is denied.

The Vigs filed a motion to amend on May 29, 2018, in which they requested leave to amend their original complaint. However, this matter was not noticed-up for hearing, so arguments were not heard on the motion. The Court provided the parties with its scheduling order and pretrial order on August 9, 2018. On November 2, 2018, the Vigs again filed a motion to amend their complaint, and noticed it up for hearing.

Oral arguments on the motion to dismiss, motion for summary judgment, and motion to amend were all heard on November 13, 2018.

The Vigs request leave to amend their complaint to include a claim of fraud against Gerdes. Pls.' Mot. to Am. Compl., Attach. A, ¶ 2. This cause of action stems from a comment left on www.Amazon.com by "Brandi L" which provides a review of Gerdes as an author, as well as Gerdes's book, *Sue Kim: The Authorized Biography*. *Id.* The Vigs allege that it was actually Gerdes who wrote this comment "for the express purpose of trying to increase sales of her [b]ook at the expense of the good reputation of Plaintiffs." *Id.* The Vigs assert that "[b]y using a fabricated name for her comment, Defendant Gerdes has committed fraud..." *Id.* at ¶ 3. Gerdes argues that the motion to amend has no basis in law or fact, and that the Vigs "cannot even satisfy a majority of the elements of this cause of action," making the amendment futile. Defs.' Resp. to Pls.' Mot. to Am. Compl., 1, 3.

"After a responsive pleading has been filed a party may amend a pleading only by leave of court or by written consent of the other party." *Elliott v. Murdock*, 161 Idaho 281, 286, 385 P.3d 459, 464 (2016) (quoting *Estate of Becker v. Callahan*, 140 Idaho 522, 527, 96 P.3d 623, 628 (2004)). "The court should freely give leave when justice so requires." *Id.* (quoting I.R.C.P. 15(a)(2)). "In determining whether an amended complaint should be allowed, where leave of court is required under Rule 15(a), the court may consider whether the new claims proposed to be inserted into the action by the amended complaint state a valid claim." *Black Canyon Racquetball Club, Inc. v. Idaho First Nat. Bank, N.A.*, 119 Idaho 171, 175, 804 P.2d 900, 904 (1991) (citing *Bissett v. State*, 111 Idaho 865, 869, 727 P.2d 1293, 1296 (Ct.App.1986)). "[L]eave to amend should not be given where the 'amendment would cause prejudice to the

opposing party, is sought in bad faith, is futile, or creates undue delay.'" *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992).

In *Spur Prod. Corp. v. Stoel Rives LLP*, the plaintiff "sought to amend its complaint to include a claim for negligence based on [the defendant]'s alleged breach of confidentiality in disclosing [the plaintiff]'s settlement posture [...] prior to mediation [...]." 142 Idaho 41, 44, 122 P.3d 300, 303 (2005). The plaintiff's motion to amend "adequately alleged each of the elements necessary to assert a claim of attorney malpractice," also called attorney negligence. *Id.* at 44–45, 122 P.3d at 303–04. On appeal, the Idaho Supreme Court stated that because the plaintiff "adequately alleged a viable claim for attorney malpractice...[t]he motion to amend the complaint must be granted by the district court." *Id.* at 45, 122 P.3d at 304.

Here, the Vigs seek to amend their complaint to include a claim for fraud based on a customer review written about Gerdes's book on www.Amazon.com. However, the Vigs are asserting what appear to be two separate fraud claims, though they are a bit convoluted. First, the Vigs allege that the customer review written by "Brandi L" was actually written by Gerdes (alleging Gerdes created a false Amazon account in the name of Brandi L in order to leave a review on her own book). Second, the Vigs allege that the review itself contains statements that are untrue. In fact, the Vigs state in their motion to amend, "[b]y using a fabricated name for her comment, Defendant Gerdes has committed fraud, and the lies she presented in her [...] Brandi L [c]omment constitute libel." Pls.' Mot. to Am., Attach. A, ¶ 3. Throughout the four pages of the motion to amend, the Vigs identify the statements they allege are false, provide their version of the particular scenario identified in each statement, and allege that it constitutes libel and actual malice. The Court notes that although the Vigs are seeking

to amend their complaint to add a claim of fraud, the majority of their motion to amend seems to focus on the claim of libel, which they plead in their original complaint. However, the Court will proceed forward and determine if the Vigs' Motion to Amend adequately alleges the elements necessary to assert a claim of fraud based on the allegation that Gerdes created "Brandi L" and left a customer review commenting on her own book.

> The elements necessary to assert a claim for fraud or misrepresentation are:
>
> (1) a statement or representation of fact; (2) its falsity; (3) its materiality; (4) the speaker's knowledge about its falsity or ignorance of its truth; (5) the speaker's intent that there be reliance; (6) the hearer's ignorance of the falsity of the statement; (7) reliance by the hearer; (8) justifiable reliance; and (9) resultant injury.

Budget Truck Sales, LLC v. Tilley, 163 Idaho 841, 847, 419 P.3d 1139, 1145 (2018) (citing *Frontier Dev. Grp., LLC v. Caravella*, 157 Idaho 589, 594, 338 P.3d 1193, 1198 (2014)). The Vigs have, in a way, alleged the first four elements of fraud. The Vigs have identified a representation of fact by alleging that Gerdes represented herself to be "Brandi L." The Vigs have alleged that the representation of fact is false by indicating that "Brandi L" is actually Gerdes. The Vigs have alleged that Gerdes representing herself to be "Brandi L" is relevant and material because the comment written by "Brandi L" is almost entirely about the Vigs. Lastly, the Vigs have alleged that Gerdes, commenting as "Brandi L," knew that her comment contained falsities. However, the Vigs motion to amend void of the remaining elements of fraud. The Vigs have not alleged that Gerdes, commenting as "Brandi L," intended that there be reliance on the statements made in the comment, or that anyone who read the comment was ignorant of its falsity. Further, the Vigs have not alleged that the statements made in the comment were actually relied upon by another, that the reliance was justifiable, or that an injury resulted from the reliance.

In exercising its broad discretion on whether to allow the Vigs to amend their complaint, the Court finds that the elements of fraud have not been adequately set forth in the motion to amend. Because the Vigs failed to adequately allege a viable claim for fraud, the motion to amend is denied.

F. Miscellaneous.

The file is replete with messages and letters sent by the Vigs. Once counsel for the Vigs entered an appearance, the Court has ignored those letters, as to read them would be improper. Additionally, the Vigs have sent periodic emails directly to the Court, the Court's Clerk and the Court's Court Reporter. Those have been ignored as well, as reading those would be improper.

VI. CONCLUSION AND ORDER

For the reasons set forth above, Plaintiffs' Motion for Summary Judgment is DENIED; Defendants' Motion for Summary Judgment is GRANTED; and Plaintiffs' Motion to Amend is DENIED.

IT IS HEREBY ORDERED Plaintiffs' Motion for Summary Judgment is DENIED.

IT IS FURTHER ORDERED Defendants' Motion to Dismiss (Motion for Summary Judgment) is GRANTED.

IT IS FURTHER ORDERED Plaintiffs' Motion to Amend is DENIED.

Entered this 19th day of January, 2019.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the 22nd day of January, 2019, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

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Jeanne Clausen, Deputy Clerk