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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**

JUSTIN STERNBERG,)
)
 Plaintiff,)
 vs.)
)
 MELISA McTAGGERT STERNBERG,)
 a/k/a MELISA MAY McTAGGERT,)
)
 Defendant.)

Case No. **CV28-22-6829**
**MEMORANDUM DECISION
GRANTING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

This matter is before the Court on a Motion to Dismiss/Motion for Summary Judgment brought by Defendant, Melisa McTaggart Sternberg ("McTaggart"), filed on March 17, 2023, against Plaintiff Justin Sternberg ("Sternberg"). Additionally in front of the Court is McTaggart's Motion for Sanctions, filed on April 11, 2023.

McTaggart requests that this Court dismiss Sternberg's "claims in their entirety for failure to state a claim upon which relief may be granted pursuant to I.R.C.P. 12(b)(6), and/or a motion for summary judgment to dismiss Plaintiff's claims in their entirety." McTaggart's Amend. Mem. In Supp. of Mot. to Dismiss/ Mot. for Summ. J. ("Mem. In Supp. of Mot. for Summ. J.") 1. McTaggart claims that Sternberg's "action for alleged breach of privacy has no basis in law or fact, is frivolous and merely serves to harass or annoy" her. *Id.* Therefore, McTaggart additionally "moves this Court for an award of sanctions against Defendant/Defendant's counsel pursuant to I.R.C.P. 11 and/or I.C. § 12-123." Def.'s McTaggart's Mem. In. Supp. of Mot. for Sanctions ("Mem.

In. Supp. of Mot. for Sanctions.”) 1.

A. Relevant Factual Background

This matter involves the alleged improper obtaining and disseminating of Sternberg’s tax documents by McTaggart in 2019 and 2022.

Sternberg and McTaggart were married from September 2004 to May 2010, during which time the parties had two children. Mem. In Supp. of Mot. for Summ. J. 2 - 3, ¶¶ 1, 2. The parties were divorced in Kootenai County Case No. CV-2013-2269, and both parties have asked this Court to take Judicial Notice of this Divorce With Minor Children. At the April 25, 2023, hearing on this matter, there was no objection by either side for the Court to take Judicial Notice of the case in its entirety. Specifically, however, in compliance with I.R.E. 201(c), as interpreted by *Fortin v. State*, 160 Idaho 437, 374 P.3d 600 (2006), the Court takes judicial notice of the following documents pertaining to Kootenai County Case No. CV-2013-2269:

1. March 16, 2020, Stipulation to Modification of Judgment
2. March 26, 2020, Judgment Confirming a Stipulated Modification of Judgment
3. March 25, 2021, Petition to Modify
4. August 03, 2022, Supplemental Declaration of Justin Sternberg
5. June 28, 2022, Judgment Modifying Prior Order
6. October 12, 2022, Second Amended Declaration Regarding Income and Expenses

Kootenai County Case No. CV-2013-2269 is relevant to this matter to the extent that Sternberg claims that McTaggart disclosed his tax information to the public by filing her October 12, 2022, Second Amended Declaration Regarding Income and Expenses, which included his gross and net income in that case, and Sternberg asserts that during the time that McTaggart claims she received Sternberg’s tax information, the status of the case was “closed.”¹

¹ While Kootenai County Case No. CV-2013-2269 was effectively closed from March 27, 2015 to March 16, 2020, it should be noted that a Stipulation was entered on March

Sternberg does not dispute that during the active course of the Child Custody and Child Support determinations in Kootenai County Case No. CV-2013-2269, Sternberg was required to disclose certain financial documentation. However, Sternberg claims that he did not have his 2021 tax information on or about June 28, 2022, when the Judgment Modifying Prior Order was entered in Kootenai County Case No. CV-2013-2269. Pl.'s Opp'n to Def.'s Mot. for Summ. J. 5. (citing Decl. of Justin Sternberg in Opp'n to Def.'s Mot. for Summ. J. & Mot. to Dismiss. 4-5, ¶¶ 27-33.) Sternberg claims that the way that the Court obtained his tax information was through McTaggart. McTaggart claims that “[o]n October 7, 2021, Plaintiff’s counsel in Case No. CV-2013-2269 sent an email to Ms. McTaggart’s counsel, disclosing Plaintiff’s tax returns for multiple years.” McTaggart Decl., ¶ 9, Ex. B.; Mem. in Supp. of Mot. for Summ. J. 4, ¶ 2. Exhibit B, the proposed e-mail and attachments from Sternberg’s family law counsel, is 1079 pages. Without divulging the contents of the sealed exhibit, the Court would note that **no** 2021 tax returns, for either Sternberg or his business, were contained. There was, however, an employee paystub for pay period 07/11/2021 – 07/24/21 for Sternberg, and a “Payroll Summary” for Sternberg from his business for “January through December 2021,” printed on August 16, 2021.

Sternberg claims that “in or about fall of 2022, [McTaggart] illegally and inappropriately obtained [his] personal financial information via another wrongful source and [McTaggart] published it in public court records.” *Id.* ¶ 17. McTaggart has denied this claim. Def.’s Answer to Pl.’s Ver. Compl. (“Answer”) 3, ¶ 17. The document that Sternberg claims that McTaggart disclosed his tax information on states:

16, 2020, requesting modification to both the child support obligation and the on-duty parenting time determination, so it is clear to the Court that at least some negotiations and communication between the parties regarding this case was discussed during that time.

4. I do not know what RESPONDANT makes, but am informed and believe that his net income for 2021 was approximately \$_____; his gross income for 2021 was \$_____.

Compl., Ex. 1. (See also Pl.'s Opp'n to Def.'s Mot. for Sanctions. 5, citing to this exhibit: "this Court has a copy of the filing wherein Defendant discloses Plaintiff's income information.") McTaggart asserts that she filled out the blank spaces of the above information, with "approximate averages from the combined years of 2019 and 2020." Reply Br. 5.

It should be noted, however, that Sternberg does not know, or allege to know, how McTaggart would have succeeded in obtaining his tax information before he did.² Sternberg further claims that "[McTaggart] disclosed the information to [Sternberg's] subcontractors/suppliers and advised said subcontractors/suppliers that they should be charging [Sternberg] more!" Pl.'s Opp'n to Def.'s Mot. for Summ. J. 11. Sternberg does not provide who the alleged subcontractors and suppliers are or when this alleged conversation took place.

In addition, Sternberg claims that in or about 2019, McTaggart's daughter, who at the time was working for Moss Adams, Sternberg's accounting firm, "illegally and inappropriately obtained [Sternberg's] private income and expense information from [Sternberg]'s private tax returns and data" for McTaggart. Ver. Compl. 3, ¶ 12.

McTaggart has denied this claim. Def.'s Answer. 2, ¶ 12. Sternberg further claims that:

18. As result of the wrongful disclosure by Moss Adams to Defendant, I filed lawsuit against, *inter alia*, Moss Adams in the United States District Court for the Western District of Washington as Court Case No. 2:21-CV-01044.

19. That lawsuit concluded in or about November 2021. The only statement that I am allowed to make about the resolution of that case is

² See 2nd Sternberg Decl. 4, ¶ 22: "I do not know how [McTaggart] obtained my tax information . . ."; *Id.* at ¶ 23 "If [McTaggart] simply disclosed to me how she got my tax information, I would have dropped this lawsuit;" *Id.* at 7, ¶ 43 "I need to know how [McTaggart] obtained that information so I can prevent it from happening again.")

that it was “resolved to the mutual satisfaction of the Parties.”

Decl. of Justin Sternberg in Opp’n to Def.’s Mot. for Summ. J. & Mot. to Dismiss. 3, ¶¶ 18, 19. Sternberg goes on to state that “[McTaggart’s daughter] was fired from Moss Adams for disclosing my income and tax information to [McTaggart] (and possibly others).” *Id.* at 5, ¶ 28.

B. Relevant Procedural History

On November 4, 2022, Sternberg filed a Verified Complaint for Invasion of Privacy, Injunctive Relief, Wrongful Inspection of Tax Information and Punitive Damages against McTaggart. On November 28, 2022, McTaggart filed an Answer.

On March 17, 2023, McTaggart filed a Motion for Summary Judgment / Motion to Dismiss with supporting Memorandum and supporting Declaration of McTaggart. On March 28, 2023, McTaggart filed an Amended Memorandum in Support of Motion for Summary Judgment/ Motion to Dismiss. On April 11, 2023, Sternberg filed an Opposition to McTaggart’s Motion for Summary Judgment and a supporting Declaration. On April 18, 2023, McTaggart filed a Reply Brief in Support of her Motion for Summary Judgment/ Motion to Dismiss. On April 19, 2023, Stenberg filed a Motion to Strike Declaration as Untimely.

On April 11, 2023, McTaggart filed a Motion for Sanctions and supporting memorandum. On April 18, 2023, Stenberg filed an Opposition to Motion for Sanctions and supporting Declarations.

On April 19, 2023, Sternberg filed a Motion to Strike Defendant’s Reply as Untimely.

Sternberg has demanded a jury trial in this matter. Verified Complaint 6, ¶46. The Plaintiff has requested a trial by jury.

A hearing on McTaggart’s Motion for Summary Judgment/Motion to Dismiss was

held on April 25, 2023. The Court denied Sternberg's Motion to Strike McTaggart's Reply Brief as Untimely, as the Court found such to be timely filed. The Court stated it would not hear McTaggart's Motions for Sanctions at the present time. Thereafter, the Court took the Motion for Summary Judgment/Motion to Dismiss under advisement.

II. STANDARD OF REVIEW AND BURDEN OF PROOF

A. Motion for Summary Judgment

Idaho Rule of Civil Procedure 56 governs motions for summary judgment. According to that Rule, 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." *Id.*

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.

Id. 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)). “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). “A material fact is one upon which the outcome of the case may be different.” *Peterson v. Romine*, 131 Idaho 537, 540, 960 P.2d 1266, 1269 (1998). “For a factual issue to be material on a motion for summary judgment, it must be placed in dispute by the pleadings.” *Country Cove Development, Inc. v. May*, 143 Idaho 595, 603, 150 P.3d 288, 296 (2006) (citing *Frazier v. J.R. Simplot Co.*, 136 Idaho 100, 105, 29 P.3d 936, 941 (2001) (citation omitted)).

Once the moving party meets their burden of establishing 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 (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 other words, the nonmoving party is compelled to ‘respond to the summary judgment motion with specific facts showing there is a genuine issue for trial.’ ” *Black v. DJO Glob., Inc.*, 168 Idaho 849, 851–52, 488 P.3d 1283, 1285–86 (2021) (quoting *Samuel v. Hepworth, Nungester & Lezamiz*, 134 Idaho 84, 87, 996 P.2d 303, 306 (2000)). In effect, “[a] party may not rely on his pleadings nor merely assert that there are some facts which might or will support his legal theory, but rather he must establish the existence of those facts by deposition, affidavit, or otherwise.” *Id.*

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 admissibility of evidence contained in affidavits and depositions in support of or in opposition to a motion for summary judgment is a threshold matter to be addressed before applying the liberal construction and reasonable inferences rule to determine whether the evidence creates a genuine issue of material fact for trial.

Neeser, Tr. of Gerald E. Neeser Revocable Living Tr. v. Inland Empire Paper Co., 170 Idaho 692, 696, 516 P.3d 562, 566 (2022) (citing *Gem State Ins. Co. v. Hutchison*, 145 Idaho 10, 13, 175 P.3d 172, 175 (2007)).

An affidavit used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated. Sworn or certified copies of all papers or parts of papers referred to in an affidavit must be attached to or served with the affidavit. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits.

I.R.C.P. 56(c)(4). “The requirements set forth in I.R.C.P. 56(c)(4) ‘are not satisfied by an affidavit that is conclusory, based on hearsay, and not supported by personal knowledge.’ ” *Neeser, Tr. of Gerald E. Neeser Revocable Living Tr.*, 170 Idaho at 698, 516 P.3d at 568. (quoting *Dep’t of Fin., Sec. Bureau v. Zarinigar*, 167 Idaho 611, 626, 474 P.3d 683, 698 (2020)).

B. Motion to Dismiss For Failure to State a Claim

The court must read a motion to dismiss under Idaho Rule of Civil Procedure 12(b)(6) “in conjunction with Rule 8(a), which sets forth the requirements for pleading a claim and calls for ‘a short and plain statement of the claim showing that the pleader is entitled to relief’ and a demand for relief.” *Harper v. Harper*, 122 Idaho 535, 536, 835 P.2d 1346, 1347 (Ct. App. 1992) (citing I.R.C.P. 8(a)). The court looks only at the pleadings to determine whether a claim for relief has been stated when considering a Rule 12(b)(6) motion to dismiss. *Allied Bail Bonds, Inc. v. Cnty. of Kootenai*, 151 Idaho 405, 409, 258 P.3d 340, 344 (2011); *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002). Under Rule 12(b)(6), “[a]fter viewing all facts and inferences from the record in favor of the non-moving party, the Court will ask whether a claim for relief has been stated.” *Paslay v. A&B Irrigation Dist.*, 162 Idaho 866, 868-69, 406 P.3d 878, 880-81 (2017) (quoting *Losser v. Bradstreet*, 145 Idaho 670, 673, 183 P.3d 758, 761 (2008)). “Dismissal ‘for failure to state a claim should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.’ ” *Id.* at 869, 406 P.3d at 881 (quoting *Taylor v. Maile*, 142 Idaho 253, 257, 127 P.3d 156, 160 (2005)) (internal quotations omitted).

The standard for reviewing a dismissal for failure to state a cause of action pursuant to I.R.C.P. 12(b)(6) is the same as the standard for reviewing a grant of

summary judgment. See, e.g., *Idaho Schs. for Equal Educ. v. Evans*, 123 Idaho 573, 578, 850 P.2d 724, 728 (1993); *Rim View Trout Co. v. Dep't. of Water Resources*, 119 Idaho 676, 677, 809 P.2d 1155, 1156 (1991). The appellate court reviews the case *de novo*. *Paslay v. A&B Irrigation Dist.*, 162 Idaho 866, 868, 406 P.3d 878, 880 (2017) (citing *Syringa Networks, LLC v. Idaho Dep't of Admin.*, 159 Idaho 813, 823, 367 P.3d 208, 218 (2016)). Dismissal “for failure to state a claim should not be granted ‘unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.’” *Id.* at 869, 406 P.3d at 881 (citing *Taylor v. Maile*, 142 Idaho 253, 257, 127 P.3d 156, 160 (2005) (internal citations omitted)); *Orthman v. Idaho Power Co.*, 126 Idaho 960, 962, 895 P.2d 561, 563 (1995) (quoting *Greenfield v. Suzuki Motor Co. Ltd.*, 776 F. Supp. 698, 701 (E.D.N.Y.1991)).

III. ANALYSIS

McTaggart moves for dismissal or summary judgment on the entirety Sternberg’s Complaint, and for sanctions against Sternberg and his counsel, Frantz. Additionally, both sides Move to Strike certain pleadings. The Court addresses each in turn.

A. Preliminary Matters

1. The Motion for Summary Judgment/Motion to Dismiss filed by McTaggart is treated as a Motion for Summary Judgment.

McTaggart moved this Court for a Motion to Dismiss, or alternatively if this Court examines records outside the scope of the pleadings, a Motion for Summary Judgment. Mem. In Supp. of Mot. for Summ. J. 4-5.

The Idaho Rules of Civil Procedure require courts treat a Rule 12(b)(6) motion to dismiss as a Rule 56 motion for summary judgment when it considers matters outside the pleadings. I.R.C.P. 12(d); *Paslay v. A&B Irrigation Dist.*, 162 Idaho 866, 870, 406 P.3d 878, 882 (2017). The extrinsic information need not raise disputed facts to

mandate this shift. *Id.* However, a court can dismiss an action under Rule 12(b)(6) if it considers only the complaint, despite whether a party has submitted additional materials to the record. *Id.* (citing *Stewart v. Arrington Constr. Co.*, 92 Idaho 526, 531, 446 P.2d 895, 900 (1968)).

Because this Court considers information outside of the Verified Complaint in determining the Motion in front of it today, McTaggart's Motion for Summary Judgment / Motion to Dismiss will be treated as a Motion for Summary Judgment.

2. Motions to Strike

a. McTaggart's Reply Brief In Support Of Motion for Summary Judgment / Motion to Dismiss Was Timely Filed, Therefore Sternberg's Motion to Strike as Untimely Is Denied.

Sternberg argues that McTaggart filed her Defendant McTaggart's Reply In Support Of Motion To Dismiss/Motion For Summary Judgment ("Reply Brief") six days before the date of the hearing, not the seven days as required by Idaho Rule of Civil Procedure 56(b), therefore he "respectfully requests that this Court strike Defendant's Reply brief in support of her motion for summary judgment and disregard the same." Pl.'s Opp'n to Def.'s Mot. for Sanctions. 1-2.

Idaho Rule of Civil Procedure 56(b)(2) provides that "[a]ny reply brief of the moving party must be served at least 7 days before the date of the hearing." Idaho Rule of Civil Procedure 2.2, entitled Computing and Extending Time, provides that: "(1) *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." The day that triggers the period, the hearing, was set for April 25, 2023. Seven days prior to that excluded date is April 18, 2023, or the day that McTaggart filed her Reply Brief.

Consequently, the filing McTaggart's Reply Brief on April 18, 2023, was timely. Therefore, Sternberg's Motion to Strike Reply Brief as Untimely is Denied.

b. McTaggart's Motion to Strike Portions of Sternberg's Second Declaration is granted in its entirety.

In her Reply Brief, McTaggart moves to strike the identified paragraphs of the Declaration of Justin Sternberg in Opposition to Defendant's Motion for Summary Judgment and Motion to Dismiss: Paragraph 9, Paragraph 10, Paragraph 14, Paragraph 15, Paragraph 24, and Paragraph 26. The Court will address these in turn.

i. Paragraph 9

Paragraph 9 of the Declaration of Justin Sternberg in Opposition to Defendant's Motion for Summary Judgment and Motion to Dismiss provides: "[a]t about that same time, Defendant told others how much (and my company) make and/ or paid in taxes." Sternberg Decl. in Opp'n to Def.'s Mot. for Summ. J. 2, ¶ 9. McTaggart argues that this paragraph should be stricken because it is asserted "without identifying to whom, on what date, and specific details about any alleged disclosure. To the extent [Sternberg] was not present during such alleged disclosure, this information is hearsay, [] Sternberg lacks personal knowledge of such communications." Reply Br. 6.

Through Sternberg, this is actually hearsay upon hearsay. Additionally, Sternberg's bald claim lacks foundation. Sternberg entirely fails to describe how he came upon this knowledge, which in context is apparently through others (and thus, hearsay), without explaining who those "others" were (thus, lacking foundation), how those unidentified others came to have that knowledge, where and when this occurred, and exactly what was said.

This Court finds this is hearsay, and lacks foundation, thus, Paragraph 9 of Sternberg's Declaration is stricken.

ii. Paragraph 10

Paragraph 10 of the Declaration of Justin Sternberg in Opposition to Defendant's

Motion for Summary Judgment and Motion to Dismiss provides: “I was actually approached by other business contacts of mine who indicated that Defendant had told them that I should pay them more because of how much money I make.” Sternberg Decl. in Opp’n to Def.’s Mot. for Summ. J. 2, ¶ 10. McTaggart claims that this assertion should be stricken because it “does not include the time, date, or person who allegedly made this statement or the details of the statement, which is hearsay.” Reply Br. 7. Just as “others” in Paragraph 9 created hearsay and a lack of foundation, Paragraph 10’s language “other business contacts of mine” is no better. It is still compound hearsay and we have no idea who made those statement, where and when the conversation occurred, and exactly what was said.

This Court agrees that this is hearsay, and lacks foundation, thus Paragraph 10 of Sternberg’s Declaration is stricken.

iii. Paragraph 14

Paragraph 14 of the Declaration of Justin Sternberg in Opposition to Defendant’s Motion for Summary Judgment and Motion to Dismiss provides: “I discovered that Defendant had obtained my tax and financial information from her daughter, Anna Vaughn.” Sternberg Decl. in Opp’n to Def.’s Mot. for Summ. J. 3, ¶ 14. McTaggart argues that “this statement lacks foundation and should be stricken. [] Sternberg does not establish how he has any personal knowledge of [] McTaggart unlawfully obtaining such information.” Reply Br. 6.

This Court agrees that this statement entirely lacks foundation, is conclusory, and therefore Paragraph 14 of Sternberg’s Declaration is stricken.

iv. Paragraph 15

Paragraph 15 of the Declaration of Justin Sternberg in Opposition to Defendant’s Motion for Summary Judgment and Motion to Dismiss provides that, “Ms. Vaughan has

shared my 2018 personal tax and income information as well as my companies' 2018 tax and income information with Defendant.” Sternberg Decl. in Opp’n to Def.’s Mot. for Summ. J. 3, ¶ 14. McTaggart claims that “Sternberg provides no evidentiary support for this claim, it is vague, and should be stricken for lack of foundation and/or to the extent it contains hearsay.” Reply Br. 7.

McTaggart further claims that:

Mr. Sternberg conflates any claims he may have had against Ms. Vaughn with Ms. McTaggart. To the extent Mr. Sternberg had any claims against Anna Vaughn, these were purportedly resolved in federal court. *See Sternberg Decl.*, ¶¶ 18-19. Mr. Sternberg indicates his claims against Ms. Vaughn and Moss Adams concluded in November 2021 and was “resolved to the mutual satisfaction of the Parties.” *Sternberg Decl.*, ¶¶ 18-19. Ms. McTaggart was not a party to that lawsuit.

Id. (footnote omitted).

The Court agrees that Paragraph 15 of Sternberg’s Declaration lacks any foundation, likely is hearsay (the Court cannot tell if it is hearsay because there is absolutely no foundation, no explanation is given by Sternberg as to how Sternberg has this knowledge), and therefore, is stricken on lack of foundation alone, and likely hearsay.

v. Paragraph 24

Paragraph 24 of the Declaration of Justin Sternberg in Opposition to Defendant’s Motion for Summary Judgment and Motion to Dismiss provides: “However, since Defendant had previously disclosed my tax information to others (not including court personnel or her attorney) I required her to stipulate to protective order before I released my income and tax information to her.” Sternberg Decl. in Opp’n to Def.’s Mot. for Summ. J. 4, ¶ 14. McTaggart asserts that the allegation that she “previously disclosed [Sternberg’s] tax information to others” lacks foundation. Reply Br. 7.

The Court agrees that the first portion of Paragraph 24 of Sternberg’s

Declaration lacks foundation. Therefore, it is stricken, and Paragraph 24 now reads: “I required her to stipulate to protective order before I released my income and tax information to her.”

vi. Paragraph 26

Paragraph 26 of the Declaration of Justin Sternberg in Opposition to Defendant’s Motion for Summary Judgment and Motion to Dismiss provides: “It is true, that my 2018 income and tax information was contained within that disclosure; however, that disclosure did not take place until approximately two years after Defendant wrongly obtained my 2018 tax and income information (and that of my companies’).” Sternberg Decl. in Opp’n to Def.’s Mot. for Summ. J. 3, ¶ 14. McTaggart moves to strike this paragraph because it “lacks foundation” and further “contains an improper legal conclusion that she ‘wrongly’ obtained his 2018 tax records in 2019.” Reply Br. 7.

The Court agrees that this statement lacks foundation and contains an impermissible legal conclusion. The portion “however, that disclosure did not take place until approximately two years after Defendant wrongly obtained my 2018 tax and income information (and that of my companies’)” is stricken as it lacks foundation because it lacks any information regarding how Sternberg has this knowledge, and because it provides a legal conclusion with the word “wrongly.” Paragraph 26 will now read: “It is true, that my 2018 income and tax information was contained within that disclosure.”

3. Any And All Claims By Sternberg Pertaining To McTaggart’s Alleged Obtaining Of His Tax Return Information In August 2019 Are Barred By The Statute Of Limitations.

McTaggart alleges that Sternberg’s causes of action for the alleged 2019 actions are time barred. Sternberg has not disputed this assertion related to the 2019 claims, and further, Sternberg agreed with this assertion at oral arguments on this matter.

Idaho Code § 5-219(4) provides that the limitations for actions for an injury to the person must be brought within 2 years. Similarly 26 U.S.C. § 7431(d) provides “an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized inspection or disclosure.”

Further, it should be noted that Sternberg has offered to this Court that he has already litigated the purported 2019 unlawful obtaining of his 2018 tax documentation in the “United States District Court for the Western District of Washington as Court Case No. 2:21-CV-01044,” (Decl. of Justin Sternberg in Opp’n to Def.’s Mot. for Summ. J. & Mot. to Dismiss. 3, ¶ 18), and that the “lawsuit concluded in or about November 2021” “to the mutual satisfaction of the Parties.” *Id.* at ¶ 19. McTaggart was not a party to the matter.

Because Sternberg’s claims related to any 2019 causes of actions are time barred by the applicable statute of limitations, these claims are dismissed with prejudice, and McTaggart’s Motion for Summary Judgment on these matters are granted.

4. Child Custody proceedings and Child Custody Proceedings are Not Subject to Public Disclosure Pursuant to Idaho Court Administrative Rule 32.

Sternberg claims that McTaggart disclosed his tax information in Kootenai County Case No. CV-2013-2269 by publishing it to the Court, and that Family Law Court records are not exempt from disclosure. Pl.’s Opp’n to Def.’s Mot. for Summ. J. 16. McTaggart argues that Kootenai County Case No. CV-2013-2269 is sealed pursuant to I.C.A.R. 32(g)(20) as it relates to child custody and child support.

Idaho Court Administrative Rule 32 provides in relevant part:

(g) Court records exempt from disclosure. Except as provided in paragraph (h)

of this rule, court records specified below are exempt from disclosure. Any willful or intentional disclosure or accessing of a sealed or exempt court record, not otherwise authorized under this rule, may be treated as a contempt of court.

.....
(20) The records in cases involving child custody, child support, and paternity, except that officers and employees of the Department of Health and Welfare shall be able to examine and copy such records in the exercise of their official duties. Other exceptions to this rule are that the register of actions shall be available to the public, and a redacted copy of any order, decree or judgment issued in the case shall be available to the public. However, no redacted copy of any order, decree or judgment must be prepared until there is a specific request for the document. Provided further that any person may request that the court make other records in the case available for examination and copying. Any individual may make the request by filing a court-provided form. When the court receives such a request, it shall promptly review the records in the case and shall make the records available except for those records or portions of records that allege abuse, abandonment or neglect of a child, or which the court determines would inflict undue embarrassment to or put at risk a person referenced in the record who was a child at the time of the filing of the record, or which are exempt from disclosure under other provisions of Supreme Court rules.

This subsection (g)(20) shall apply only to records in cases filed on or after July 1, 2012, and to records in cases in which a motion to modify an order, decree or judgment was filed on or after July 1, 2012.

Though the parties focus is on the exemptions listed in Idaho Rule 30(g), the Rule additionally provides for an exemption of records or portions of records “which are exempt from disclosure under other provisions of Supreme Court rules.”

Idaho Code § 74-104, entitled Records Exempt From Disclosure — Exemptions In Federal Or State Law — Court Files Of Judicial Proceedings, provides that, “[a]ny public record exempt from disclosure by federal or state law or federal regulations to the extent specifically provided for by such law or regulation” is exempt from disclosure. Sternberg, who claims that McTaggart improperly disclosed his tax information, has cited to the applicable statutes showing that tax return and tax return information shall be confidential – 26 U.S.C. § 6103.

Further, Sternberg does not provide any case law that shows that family law cases are not sealed. Sternberg’s reliance on *Baker v. Burlington Northern, Inc.*, 99

Idaho 829, 587 P.2d 829, 833 (Idaho 1978) is misplaced. Sternberg's summary argument being, "affirming summary judgment on a public disclosure of private, embarrassing facts claim because the facts weren't private, but were instead public on account of the facts having been set forth in a court filing." Pl.'s Opp'n to Def's Mot. for Sanctions. 6. In *Baker*, however, the Court found that the disclosure of "information concerning [Petitioner's] plea of guilty and withheld judgment to the crime of burglary" in a criminal case was not actionable under the second category of invasion of privacy because "the disclosure was of public, not private facts." *Baker*, 99 Idaho at 692, 587 P.2d at 833. The *Baker* Court cited to a since overturned California case, which cited to the following statement of the Restatement of Torts: "criminals 'are the objects of legitimate public interest during a period of time after their conduct * * * has brought them to the public attention." *Id.* (citing to *Briscoe v. Reader's Digest Association*, 93 Cal. Rptr. 866, ___, 483 P.2d 34, 40 (1971)). Further, the Court affirmed Summary Judgment for the respondent, who claimed that there was not a disclosure, and not the petitioner. Sternberg's statement that summary judgment was affirmed because the facts were set forth in a court filing, and not discussing that the *Baker* court did not get to that analysis, because it stated it was "assuming that there was a public disclosure," so that it could discuss the characterization of the facts themselves, is patently misleading to this Court.

This Court will not read into Idaho Rule 30(g) something that is not there, and the Court finds that the information provided in Kootenai County Case No. CV-2013-2269 for the purpose of child support determinations is exempt from public disclosure.

B. Motion for Summary Judgment

McTaggart moves for Summary Judgment on the entirety of Sternberg's claims

for Invasion of Privacy, Injunctive Relief, Wrongful Inspection of Tax Information and Punitive Damages. McTaggart argues that 26 U.S.C. § 6103 and 26 U.S.C. § 7431 of the I.R.C. are inapplicable and do not apply in this case, because McTaggart is not a governmental officer or an employee of a governmental entity. Mem. in Supp. of Mot. for Summ. J. 7, ¶ B.

1. McTaggart's Motion for Summary Judgment on Sternberg's First Cause of Action for Invasion of Privacy by Intrusion in Seclusion or Solitude is Granted.

Sternberg's first cause of action for Invasion of Privacy claims that McTaggart "has repeatedly snooped, intruded, and pried" into Sternberg's "private seclusion and solitude via illegal means" and "disseminate[d] such information and publishe[d] it in public records for her own pecuniary gains." Ver. Compl. 4, ¶¶ 31, 32. Sternberg brought this claim under 26 U.S.C. § 6103, *et seq. Id.* at ¶ 27.

McTaggart claims that this section is not applicable in this case because, "McTaggart is not a governmental officer or employee." Mem. in Supp. of Mot. for Summ. J. 7. McTaggart additionally claims that, "Sternberg fails to set forth sufficient evidence to establish a *prima facie* case of invasion of privacy" (Reply Br. 6, ¶ 2.), (capitalization altered), and that "Sternberg fails to set forth any admissible evidence that Ms. McTaggart unlawfully obtained and disclosed his tax returns or income information in 2022. He [McTaggart] inaccurately infers that Ms. McTaggart unlawfully obtained such information, without any admissible evidentiary support." *Id.* at 8.

In response, Stenberg alleges that:

Similar to the first time Defendant illegally gained Justin's private tax information, the second time she did so, Defendant got Plaintiff private and personal tax information *after* the case had been closed and no further disclosure was required; but more curiously, she obtained Mr. Sternberg's information before even he had received it from his CPA. As such, Plaintiff, Justin's, 2022 tax information was never disclosed by Justin or his attorneys to Defendant. Yet, Defendant obtained the information and disclosed it in reference to her post-

judgment proceeding seeking attorney's fees, which was all *after the case had been closed*.

Pl.'s Opp'n to Def.'s Mot. for Summ. J. 9. Sternberg then asserts that McTaggart had disclosed his financial information to parties other than her attorney and the court. *Id.* at 11, ¶ B.

Notably not cited by Sternberg, and only provided for by McTaggart, "Liability for a claim of invasion of privacy by intrusion requires: (1) an intentional intrusion by the defendant; (2) into a matter, which the plaintiff has a right to keep private; (3) by the use of a method, which is objectionable to the reasonable person." *Jensen v. State*, 139 Idaho 57, 62, 72 P.3d 897, 702 (2003).

Sternberg has provided no admissible evidence that McTaggart (1) intentionally intruded on his privacy, and (2) by the use of a method which is objectionable to the reasonable person. Sternberg has noted that he does not know how McTaggart would have obtained his tax information.

Because there is not an issue of material fact in dispute in this matter, and Sternberg cannot provide a *prima facie* case for invasion of privacy, McTaggart's Motion for Summary Judgment on this issue is granted.

2. McTaggart's Motion for Summary Judgment Regarding Sternberg's Second Cause of Action, Injunctive Relief, is Granted.

Sternberg claims in his Verified Complaint that he is "entitled to an injunction prohibiting [McTaggart] from seeking out [his] private income/expense and tax information, except for what is available through court process, if any," and "prohibiting [McTaggart] from sharing or disclosing any information about [Sternberg] or his financial affairs which she has obtained illegally to any third party." Ver. Compl. 5, ¶¶ 35, 36.

McTaggart claims that Sternberg's second cause of action for Injunctive Relief

should be dismissed because Sternberg, “ha[s] not, and cannot, establish that [McTaggart] is ‘seeking out [Sternberg’s] private income/expense and tax information...’ or that she is ‘sharing or disclosing’ such tax information that she allegedly ‘obtained illegally’ with any third party.” Mem. in Supp. of Mot. for Summ. J. 8-9.

To McTaggart’s claim, Sternberg asserts that, “summary judgment cannot be granted” because “the Court has essentially two competing sets off actual assertions: [McTaggart] claims that she has not illegally obtained [] Sternberg’s tax information; but [] Sternberg has said (and provided evidence) that she has. That is material fact in dispute, which should be drawn in favor of Plaintiff (the non-moving party).” Pl.’s Opp’n to Def.’s Mot. for Summ. J. 16.

To survive Summary Judgment, “the nonmoving party is compelled to ‘respond to the summary judgment motion with specific facts showing there is a genuine issue for trial.’” *Black v. DJO Glob., Inc.*, 168 Idaho 849, 851–52, 488 P.3d 1283, 1285–86 (2021). “A party may not rely on his pleadings nor merely assert that there are some facts which might or will support his legal theory, but rather he must establish the existence of those facts by deposition, affidavit, or otherwise.” *Id.*

Here, Sternberg has not provided any evidence, apart from his own Declaration, that shows that McTaggart has attempted to illegally obtain Sternberg’s tax information. In his Declaration, which focuses on the alleged 2019 and 2022 instances, there are no assertions that she is currently attempting to obtain his tax information. While there was an alleged text sent by McTaggart to Sternberg claiming that she had his tax documentation, it has not been provided to the Court. Further, while it was alleged that third-parties had indicated to Sternberg that McTaggart had obtained his income, there was no Declarations from the third-parties alleging the same. In short, there was no specific, admissible facts asserted by Sternberg that would show that there is a genuine

issue of material fact. For that reason, and that Sternberg further cannot make a *prima facie* showing to support his Injunction claim, McTaggart's Motion for Summary Judgment on this issue is granted. Sternberg's claim for Injunctive Relief is dismissed.

3. McTaggart's Motion for Summary Judgment for Sternberg's Third Cause of Action, Wrongful Inspection of Tax Information, is Granted.

McTaggart states that while Sternberg does not identify what particular provision of 26 U.S.C. § 7431 that he relies on in his Third Cause of Action, "this section of the I.R.C. pertains to damages for inspection or disclosure by employee of the United States or by such persons violating 26 U.S.C. § 6103 (which is inapplicable here)." Mem. in Supp. of Mot. for Summ. J. 8. McTaggart further argues that "26 U.S.C. § 7431 requires such an action for damages be filed in federal court." *Id.*

26 U.S.C. § 7431(a)(2) provides that:

If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of section 6103 or in violation of 6104(c) such taxpayer may bring a civil action for damages against such person in a district court of the United States."

(emphasis added).

Sternberg responds that of his four causes of actions raised:

Two of the claims are squarely state law claims (and there's no argument otherwise from Defendant). Moreover, the federal claims asserted all stem from the same nucleus of facts: Defendant has wrongly obtained, used, and disseminated Plaintiff tax information. Not only would it waste judicial resources to have these same facts argued in separate cases, but it could create potentially competing determinations (meaning, the State court could find one way, and the Federal court could find another). Those are both reasons supporting the policy allowing for concurrent jurisdiction for matters based on the same nucleus of facts. Therefore, since this Court clearly has jurisdiction over the state law claims, and has concurrent jurisdiction over the federal based claims, counts three and four of Verified Complaint should not be dismissed.

.....
[B]ecause the Court has jurisdiction over some of the claims, and because the claims are all related to the same nucleus of facts, this Court also has concurrent jurisdiction over the federal law claims.

Pl.'s Opp'n to Def.'s Mot. for Summ. J. 14. The Court grants McTaggert's Motion for Summary Judgment first because the State law causes of action in this matter have been dismissed, therefore there is no related claims to hold these federal causes of action in State court. Additionally, as asserted by McTaggert, 26 U.S.C. § 7437(a)(2) specifically states that an civil actions for damages against a person is to be brought in the district court of the United States.

For those reasons, McTaggert's Motion for Summary Judgment regarding this issue is granted.

4. Fourth Cause of Action (Punitive Damages)

Sternberg claims that he is entitled to statutory punitive damages from McTaggert pursuant to 26 U.S.C. §7431(c)(ii). Ver. Compl. 5, ¶ 44.

As discussed above, a violation of 26 U.S.C. § 7431(a)(2), as alleged by Sternberg, must be brought in a district court of the United States; 26 U.S.C. §7431(c)(ii) provides for damages in actions brought under this section. As the violation of 26 U.S.C. § 7431(a)(2) is not properly in front of this Court, a request for punitive damages regarding the alleged violation is additionally not proper in front of this Court. With such, McTaggert's Motion for Summary Judgment on this issue is granted.

IV. CONCLUSION AND ORDER.

For the foregoing reasons, defendant Melisa McTaggert's Motion for Summary Judgment is granted.

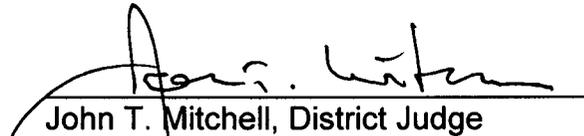
IT IS HEREBY ORDERED that defendant Melisa McTaggert's Motion for Summary Judgment is **GRANTED**.

IT IS FURTHER ORDERED defendant Melisa McTaggert's Motion to Dismiss is considered as a motion for summary judgment.

IT IS FURTHER ORDERED that defendant Melisa McTaggart's Motion to Strike is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff Justin Sternberg's Motion for Strike is **DENIED**.

Entered this 2nd day of May, 2023.


John T. Mitchell, District Judge

Certificate of Service

I certify that on the 2nd day of May, 2023, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer **email**
Jonathon Frantz
Service e post falls law. com

Lawyer **email**
Laura Aschenbrener
laschenbrener@clattorneys.com


Jeanne Clausen, Deputy Clerk