

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

REV. XIU HUI "JOSEPH" JIANG,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:15-cv-01008
)	
)	
TONYA LEVETTE PORTER,)	JURY TRIAL DEMANDED
JAIMIE D. PITTLERLE,)	
CITY OF ST. LOUIS, MISSOURI,)	
A.M., N.M., SURVIVORS NETWORK)	
OF THOSE ABUSED BY PRIESTS,)	
DAVID CLOHESSY, and)	
BARBARA DORRIS,)	
)	
Defendants.)	

DEFENDANT SNAP, CLOHESSY AND DORRIS' MOTION TO DISMISS UNDER MISSOURI'S ANTI-SLAPP STATUTE AND RULE 12(b) AND MEMORANDUM OF LAW IN SUPPORT

Introduction

Plaintiff's Complaint is the latest maneuver in a long campaign of intimidation against the only people who have the courage to provide counseling, support, and advocacy to the innocent children who have been abused in the most intimate and horrific ways imaginable by clergy such as the plaintiff. There is no proper purpose for this lawsuit. It is a thinly veiled attempt by plaintiff, and upon information and belief, his employer Archbishop Robert Carlson, to prevent SNAP and its advocates from speaking out for those who have no voice. This lawsuit is tailor-made for dismissal and the award of attorneys' fees under application of Missouri's anti-Strategic Lawsuits Against Public Participation ("SLAPP") statute, 537.528, R.S.Mo.

A previous defamation lawsuit a priest filed against Defendant Survivors Network of Those Abused By Priests ("SNAP"), *Alzugaray v. SNAP*, No. BC311107, (Los Angeles Co. Sup. Ct.

2004), resulted in dismissal under California's anti-SLAPP statute and an award of \$120,000 in attorneys' fees against the plaintiff. The California court ruled: "The statements of defendant SNAP were in connection with a judicial proceeding, and the information was disseminated in a public forum on a public issue pursuant to defendant SNAP's 1st Amendment rights," The same result is in order under Missouri's anti-SLAPP statute. The same is true here.

SNAP, and defendants Clohessy and Dorris (collectively the "SNAP Defendants") – each part of a solely non-profit effort -- have long dedicated themselves to protecting the interests of the most vulnerable members of our society. Clohessy is Director of SNAP and a survivor of priest sexual abuse. Dorris is a long-time advocate for SNAP and a survivor of priest sexual abuse. SNAP has counseled and assisted more than 20,000 victims of clergy sexual abuse since its founding.

This lawsuit is taking them away from their efforts to help those in need. It is an assault on the First Amendment and the societal concerns leading our legislature and numerous other states' legislatures to protect their interests via the enactment of anti-SLAPP statutes, such as this very case.

In 2004, the Missouri legislature enacted 537.528, R.S.Mo. It states, *inter alia*:

Any action against a person for conduct or speech undertaken or made in connection with a public hearing or public meeting, in a quasi-judicial proceeding before a tribunal or decision-making body of the state or any political subdivision of the state is subject to a special motion to dismiss, motion for judgment on the pleadings, or motion for summary judgment that shall be considered by the court on a priority or expedited basis to ensure the early consideration of the issues raised by the motion and to prevent the unnecessary expense of litigation. Upon the filing of any special motion described in this subsection, all discovery shall be suspended pending a decision on the motion by the court and the exhaustion of all appeals regarding the special motion.

This lawsuit is (1) an action against a person; (2) for conduct or speech undertaken or made in connection with a public hearing; and (3) is thus subject to a special motion to dismiss. This motion, under the statute, thus “shall be considered by the court on a priority or expedited basis” and all “discovery shall be suspended pending a decision” on the motion.

Under 537.528(2), R.S.Mo., “the court shall award reasonable attorney fees and costs incurred by the moving party in defending the action” if motions such as this are granted. As shown below, and under plaintiff’s own allegations, the Court must grant the SNAP Defendants’ Motion to Dismiss and award attorneys’ fees and costs in defending this SLAPP case. Additionally, plaintiffs’ counts against the SNAP defendants fail to state a claim and should be dismissed pursuant to FRCP 12(b).

Background and Facts

A. SNAP

SNAP is a non-profit corporation formed in 1989 to provide counseling, support and advocacy to men and women who have been sexually victimized by members of the clergy. In its counseling, support, and advocacy services, SNAP offers resources to support groups, direct counseling, advice on choosing a licensed therapist, and an opportunity for victims and their family members to speak confidentially to SNAP employees and volunteers who personally have been victims of sexual assault. SNAP also advocates publically for victims of abuse, for bringing the perpetrators of that abuse to justice, as well as those who protect them, preventing future acts of rape and abuse, and for public policies that support these goals. These policies include reforming the statute of limitations for rape and abuse, tougher mandatory reporting laws, and tougher consequences for those who hide abuse. It is through

that work that the SNAP defendants learned of Father Jiang's abuse of two children through news reports that surfaced after he was arrested.

B. Father Jiang

Father Jiang has been a defendant in two criminal actions and the subject of at least one pending civil action involving sexual abuse perpetrated on two different children while a priest within the Archdiocese of St. Louis.

The first charges and lawsuit involves Jiang's abuse of a girl in Lincoln County, Missouri while Jiang was a priest working as an Associate Pastor at the Cathedral Basilica within the Archdiocese of St. Louis. Jiang gained access to the girl during frequent family visits to her home in Lincoln County, Missouri. During the course of these visits, Jiang kissed her and manipulated her into sexual contact. Jiang touched her breasts and her genitals, and used his hand to direct her hands onto his genitals. At least one witness saw Jiang kissing the girl on the mouth and touching her buttocks in the parking lot of the church rectory. He also sent her sexual texts and emails. When the abuse was discovered by the girl's parents, the parents confronted Father Jiang. Jiang admitted his conduct and told the parents he would report his behavior to Archbishop Carlson. Father Jiang later left a \$20,000 check on the parent's car.

The second incident involved a young boy. Jiang twice forced oral sex on the boy in a Catholic school bathroom between July 2011 and August 2012. While the charges against him were dismissed without prejudice, they are expected to be refiled at a later time. The apparent reason for the dismissal was the victim's emotional recovery rather than the alleged falsity of the charges.

In the interim, Jiang has filed this lawsuit in an obvious attempt to intimidate this boy from pushing forward with the charges, and to bully those that have stood up for this young man.

C. Allegations against the SNAP Defendants.

Plaintiff's allegations, while disputed, make clear that the anti-SLAPP statute applies in this case. Plaintiff's Complaint's allegations, including those against the SNAP Defendants, establish each of the required elements implicating Missouri's anti-SLAPP lawsuit, 537.528, R.S.Mo. Plaintiff, a priest, admits in his Complaint that (1) his lawsuit is an action against "a person," namely the SNAP Defendants; and (2) that it is "for conduct or speech undertaken or made in connection with a public hearing," namely for alleged statements made by the SNAP Defendants "in connection with" a public indictment against plaintiff for sexual misconduct with a child.

Specifically, plaintiff alleges regarding the SNAP Defendants that "From on April 18, 2014 through the present, Defendants SNAP, Clohessy, and Dorris engaged in a prolonged smear campaign against Fr. Joseph, making numerous public statements unequivocally asserting that Fr. Joseph had molested Minor." See Complaint at Par. 76. Plaintiff also alleges in his Complaint that "On or about April 15, 2014, A.M. reported to the St. Louis Metropolitan Police Department that his son, Minor, had been sexually abused at St. Louis the King School." *Id.* at Par. 38. Thus, as of April 15, 2014, if these allegations are true, any statements by the SNAP Defendants were made "in connection with" a "public hearing or public meeting" regarding the public reports against Father Jiang.

Specifically, plaintiff alleges that, **before** the alleged “April 18, 2014 initiation” of the claimed “smear campaign” by the SNAP Defendants, that “On April 17, 2014 ... **Defendant Porter arrested Fr. Joseph on charges of statutory sodomy, among others.** This arrest occurred on the second day after the first report of abuse to the St. Louis Metropolitan Police Department.” *Id.* at Par. 50.

Accordingly, plaintiff’s allegations against the SNAP Defendants are for alleged statements all occurring **after** the initiation of, and thus made “in connection with,” a “public hearing or public meeting” regarding plaintiff’s alleged sexual abuse. In fact, plaintiff’s Complaint **admits** that **all** of the alleged defamatory statements of the SNAP Defendants occurred **after** April 18, 2014, “the day Fr. Joseph was first charged with molesting Minor” *Id.* at 81(a).

The alleged defamatory statements occurred on April 18, 2014, *id.*, June 2, 2014, *id.* at 81(c); July 21, 2014, *id.* at 81(d); September 25, 2014, *id.* at 81(e); January 24, 2015, *id.* at 81(f); on June 15, 2015, *id.* at 81(g); on June 17, 2015, *id.* at 81(h); and on June 19, 2015, *id.* at 81(j). All of these alleged defamatory or alleged tortious statements were made **after**, and thus in connection with, the initiation of public hearings or public meetings regarding plaintiff.

In Count VII, plaintiff alleges that the SNAP Defendants “conspired” with the other defendants, in violation of 28 U.S.C. 1985. See Complaint, Count VII. Plaintiff’s Complaint, however, provides no allegation regarding any “agreement” between the SNAP Defendants and any other defendant, and in fact, plaintiff was arrested **before** any of the alleged statements or actions of the SNAP Defendants. The Conspiracy Count (Count VII) against the SNAP defendants thus fails on its face. The only other two counts that include allegations

against the SNAP Defendants are Counts XIII (intentional infliction) and Count XV (defamation), both under state law. Plaintiff's Complaint against the SNAP Defendants does not indicate that injunctive relief is sought, nor is it available for the three counts against them.

Thus, the Court, as explained further below, must dismiss the Complaint against the SNAP Defendants and award attorneys' fees in defending this action.

Argument

I. Missouri's anti-SLAPP Lawsuit Applies in Federal Court.

Initially, after the Supreme Court's decision in *Shady Grove Orthopaedic Assoc. v. Allstate Ins. Co.*, 130 S.Ct. 1431 (2010), it is clear that state anti-SLAPP statutes apply in federal courts because they are substantive in nature and co-exist with the Federal Rules of Civil Procedure. While not specifically addressing anti-SLAPP suits, the precedential rules applicable to the *Shady Grove's* court's opinion show that state substantive statutes may co-exist in federal court alongside the Federal Rules of Civil Procedure.

This position has been recognized by the majority of circuits considering the issue after *Shady Grove* in 2010, although the Eighth Circuit has not addressed the issue. *See, e.g., James River Ins. Co. v. Rapid Funding, LLC*, 658 F.3d 1207, 1217 (10th Cir. 2011) (concluding Justice Stevens's opinion controls Rules Enabling Act questions because it relies on narrower grounds than plurality); *In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, 800 F. Supp. 2d 328, 331 (D. Me. 2011) (finding concurrence controlling because Justice Stevens "cast the tie-breaking vote in *Shady Grove*"); *In re Wellbutrin XL Antitrust Litig.*, 756 F. Supp. 2d 670, 675 (E.D. Pa. 2010) (finding Justice Stevens's approach forms "'narrowest grounds' in *Shady Grove*" because it "called for an analysis of the state's substantive rights and remedies that was

consistent with [the] approach of the four members of the dissent”). See, e.g., *Garman v. Campbell Cnty. Sch. Dist. No. 1*, 630 F.3d 977, 980, 984–85 (10th Cir. 2010) (“This case, like Shady Grove, ‘turns on whether the state law actually is part of a State’s framework of substantive rights or remedies.’ Permitting the federal rules to trump substantive Wyoming law would ‘abridge, enlarge, or modify’ the litigants’ rights in violation of the Rules Enabling Act.” (quoting Shady Grove, 130 S. Ct. at 1449 (Stevens, J., concurring in part and concurring in the judgment))); *In re Wellbutrin*, 756 F. Supp. 2d at 675 (“A majority of the Court . . . rejected Justice Scalia’s Rules Enabling Act analysis that only examines the Federal Rule on its own in favor of an analysis that considers important state interests.”).

Other federal district judges have approached Anti-SLAPP Acts as substantive. See 843 F. Supp. 2d 83, 85 (D.D.C. 2012) (“[T]he statute is substantive—or at the very least, has substantive consequences . . .”), *aff’d* on other grounds, 720 F.3d 932 (D.C. Cir. 2013). See *Satkar Hospitality Inc. v. Cook Cnty. Bd. of Review (Satkar IV)*, No. 10 C 6682, 2011 WL 4431029, at *8 (N.D. Ill. Sept. 21, 2011) (granting defendant’s motion under ICPA); *Satkar Hospitality Inc. v. Cook Cnty. Bd. of Review (Satkar III)*, No. 10 C 6682, 2011 WL 2182106, at *5 (N.D. Ill. June 2, 2011) (holding defendants may assert ICPA defense “via an appropriate procedural vehicle”); see also 735 Ill. Comp. Stat. Ann. 110/1–110/99 (West 2011) (“Illinois Citizen Participation Act”). “Citizen Participation Act” (or “Citizen Participation in Government Act”) is the label given to some anti-SLAPP statutes. See, e.g., Ark. Code Ann. § 16-63-501 (2005) (“Citizen Participation in Government Act”); 735 Ill. Comp. Stat. Ann. 110/1 (“Citizen Participation Act”).

Furthermore, in providing for a mandatory award of attorney's fees to the prevailing litigant, the statute has created substantive rights, which are beyond the purview of the Federal Rules of Civil Procedure. In *Chambers v. NASCO, Inc.*, the Supreme Court held that a state law which provides attorney's fees is substantive for Erie purposes when it "embodies a substantive policy." 501 U.S. 32, 52 (1991); see also *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415, 429 (1996) (recognizing that a state procedural law's objective was "manifestly substantive" and holding that the law should be applied under *Erie*).

Accordingly, Missouri's anti-SLAPP statute applies in federal court. If it were otherwise, plaintiffs could do what plaintiff did here –sue the non-diverse SNAP Defendants in federal court for alleged state-law defamation, attach those state-law claims to federal claims made against other defendants, and effectively avoid the anti-SLAPP statute. See *Louisiana Crisis Assistance Center v. Marzano-Lesenevich*, (E.D. La. 2011) ("Declining to apply [anti-SLAPP statute] would inequitably deprive Louisiana defendants targeted by meritless SLAPP lawsuits of an important procedural weapon to which they would otherwise be entitled to use in state court"). Applying SLAPP statutes also curbs forum shopping. *Id.* ("Otherwise, a plaintiff determined to bring a meritless SLAPP suit would inevitably make the calculated choice to proceed in a federal forum without fear of the sting of having to pay the defendant's attorney's fees").

Accordingly, Missouri's anti-SLAPP statute applies.

II. The Elements of Missouri's SLAPP Statute are Satisfied, Requiring Dismissal

When citizens petition their government or engage in public debate, such activity embodies the ideal of participatory self-government at the heart of the First Amendment.

Certain lawsuits -- often called “strategic lawsuits against public participation,” or “SLAPPs” — not only impose burdens on the First Amendment rights of their targets, but also threaten to chill citizen participation in government.¹ SLAPPs have been defined as suits brought primarily in retaliation for activity in opposition to the interests of the plaintiff. *State ex rel. Diehl v. Kintz*, 162 S.W.3d 152, 157 (Mo. App. 2005) (citation omitted).

In 2004, Missouri joined the majority of states that have enacted anti-SLAPP legislation with the promulgation of 537.528 R.S.Mo. It provides that “Any action against a person for conduct or speech undertaken or made in connection with a public hearing or public meeting ... is subject to a special motion to dismiss” *Id.* Thus, because it is undisputed that this is “any action against a person,” the only issue is whether it is an action “for conduct or speech undertaken or made in connection with a public hearing or public meeting” for dismissal to apply. The following shows that it is, and the Court must dismiss this case.

a. This is an action “for conduct or speech undertaken or made in connection with a public hearing or public meeting” of a “political subdivision of the state”

It is undisputed here that the basis for plaintiff’s claims is the SNAP Defendants’ “speech” made “in connection with” a “public hearing or public meeting” of a “political subdivision of the state.” Plaintiff’s Complaint expressly implicates conduct of a “political subdivision of the state, stating: “The Police Defendants’ actions have been taken under color of state law” See Complaint at Par. 118.

¹ Professors George W. Pring and Penelope Canan coined the term “SLAPP” while collaborating on the Political Litigation Project at the University of Denver. George W. Pring & Penelope Canan, *SLAPPs: Getting Sued for Speaking Out* 2–3 (1996). See also George W. Pring & Penelope Canan, “Strategic Lawsuits Against Public Participation” (“SLAPPs”): An Introduction for Bench, Bar and Bystanders, 12 U. Bridgeport L. Rev. 937, 939 n.3 (1992).

The Complaint also expressly implicates the SNAP Defendant's "conduct or speech" that was allegedly made "in connection with" a "public hearing" of a "political subdivision of the state," namely the judicial and executive branches regarding prosecuting alleged crimes. To that end, the Complaint charges, regarding one allegedly defamatory statement made on June 15, 2015, that "This document was issued just three days before a critical **hearing** was scheduled in Fr. Joseph's criminal case." *Id.* at Par. 81(g) (emphasis added). This allegation thus concedes that the alleged "speech" was made "in connection with" a "public hearing" -- it even uses the word "hearing" and "connects" the speech temporally to that "public hearing." Plaintiff would be hard-pressed to deny that his own Complaint implicates speech in connection with the very hearing he identified.

Plaintiff's Complaint provides further proof that he is implicating "conduct or speech" made "in connection with a public hearing." The Complaint also states: "On information and belief, the aforesaid statements of SNAP, Clohessy, and Dorris were motivated by malice and the improper purpose of influencing, by adverse publicity, the jury pool in any criminal or civil trial involving Minor's allegations against Fr. Joseph." *Id.* at 83. "Criminal or civil" trials are obviously "public hearings" for which plaintiff accuses the SNAP Defendants of attempting to "influence" by their alleged speech. If a plaintiff could ban free speech based on a speculative concern that a public hearing **might be** influenced by such speech, both the First Amendment and anti-SLAPP statute would be rendered toothless.

These allegations merely underscore the First Amendment speech restraints and concerns that prompted all anti-SLAPP statutes, including 537.528, R.S.Mo. If a plaintiff could chill citizens' First Amendment rights in connection with public hearings by forcing them to

defend expensive lawsuits over such statements, a citizen might think twice about exercising his First Amendment rights. That, however, is what plaintiff is doing and admittedly so, and is exactly why the anti-SLAPP statutes exist.

This is particularly clear here with these allegations, which expressly implicate speech allegedly designed to “influence” jury pools in public trials and expressly alleged to have been made in advance of a “critical hearing,” which is also “public.” Under plaintiff’s Complaint’s express allegations of wrongdoing in the form of speech, any U.S. citizen who voices their opinion in advance of or in connection with a “public hearing,” whether “critical” or not, may face a SLAPP lawsuit such as this from those with money to obtain lawyers, be forced themselves to retain counsel at great expense and prejudice, and effectively have his or her First Amendment rights curtailed.

Without statutory dismissal and the statutory award of fees to the SNAP Defendants, First Amendment rights of other victims and those who speak for them may be chilled, upon fear of facing lawsuits such as this. Accordingly, this case is tailor-made for the application of Missouri’s anti-SLAPP statute, dismissal, and the award of fees to the SNAP Defendants.

b. Analogous Situations Have Seen anti-SLAPP Motions Granted

Given the relative newness of the Missouri anti-SLAPP statute compared to other states’ similar statutes, the breadth of case law interpreting it is slim. The SNAP Defendants have not located analogous Missouri cases. Other courts, however, have addressed similar situations and granted the defendants’ anti-SLAPP motions to dismiss, including a nearly identical case in California against SNAP.

In *Terry v. Davis Community Church*, 131 Cal.App.4th 1534, 33 Cal.Rptr.3d (3rd Dist. 2005), for example, the plaintiffs, employees of Davis Community Church, sued the church and others for defamation and emotional distress, alleging that church officials falsely accused them of having an inappropriate sexual relationship with a minor in the course of their church work. The trial court granted defendants' anti-SLAPP motion. The appellate court affirmed the order, concluding that even private communications concerning issues of public interest are protected by the anti-SLAPP statute and that plaintiffs had not demonstrated a probability of prevailing on their claims, a requirement of the California statute not present in Missouri.

In affirming the dismissal, the court stated:

Here, the communications clearly involved issues of public interest, because they involved the societal interest in protecting a substantial number of children from predators, and the matter was referred to the Davis Police Department for investigation (as reflected in the confidential police report submitted to the trial court for judicial notice, for which we granted a motion to augment the record on appeal). Although George Terry passed a lie detector test, and the Davis Police Department concluded on February 24, 2004, that there was insufficient evidence of a crime, that does not negate the public interest in the meetings on February 19 and 22, which were the subject of the lawsuit.

Id. It found: "The issue as to whether or not an adult who interacts with minors in a church youth program has engaged in an inappropriate relationship with any of the minors is clearly a matter of public interest. The public interest is society's interest in protecting minors from predators, particularly in places such as church programs that are supposed to be safe. It need not be proved that a particular adult is in actuality a sexual predator in order for the matter to be a legitimate subject of discussion." *Id.*

It concluded: “Here, we have seen that plaintiffs’ actions gave rise to an ongoing discussion about protection of children, which warrants protection by a statute that embodies the public policy of encouraging participation in matters of public significance.” *Id.*

Terry is conceptually and procedurally on all fours with this case. The plaintiffs were implicated regarding inappropriate contact with minors. Charges were eventually not brought. Both sets of plaintiffs claim to have passed lie detector tests. Both sets of plaintiffs brought state-law defamation and tort claims arising out of the investigations.

This case, however, is even stronger than *Terry* because the alleged defamatory statements involved police officers, actual charges and statements made in connection with an alleged “critical” public “hearing.” See Complaint at Par. 81(g). Also, plaintiff’s Complaint here expressly implicates speech of the SNAP Defendants that was **admittedly** made in connection with public hearings under their own allegations. The statutory language and prerequisites to dismissal under the statute are thus satisfied, requiring dismissal.

III. Plaintiff fails to state a claim upon which relief can be granted under Rule 12(b).

While the anti-SLAPP claim should be considered first, Jiang also fails to state a claim against the SNAP defendants under Rule 12(b). Plaintiffs have failed to plead the necessary elements for each of the counts against the SNAP defendants.

A. Count VII: Civil Conspiracy

In Count VII, plaintiff alleges that the SNAP Defendants “conspired” with the other defendants, in violation of 28 U.S.C. 1985. See Complaint, Count VII. The elements of civil conspiracy in Missouri are: (1) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds on the object or course of action; (4) one or more unlawful overt acts,

and (5) resulting damages. *Mackey v. Mackey*, 914 S.W.2d 48, 50 (Mo. App. W.D. 1996). The essence of a civil conspiracy is an unlawful act agreed upon by two or more persons. Id.

Plaintiff's Complaint, however, provides no allegation regarding any "agreement" between the SNAP Defendants and any other defendant, and in fact, plaintiff was arrested **before** any of the alleged statements or actions of the SNAP Defendants. The Conspiracy Count (Count VII) against the SNAP defendants thus fails on its face.

B. Count XIII: Intentional Infliction of Emotional Distress

Plaintiff also claims intentional infliction of emotional distress. The tort of intentional infliction of emotional distress has four elements: "(1) the defendant must act intentionally or recklessly; (2) the defendant's conduct must be extreme and outrageous; and (3) the conduct must be the cause (4) of severe emotional distress." Polk v. INROADS/St. Louis, Inc., 951 S.W.2d 646, 648 (Mo. Ct. App. 1997). For conduct to be "extreme and outrageous," it must be so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Id., citing Restatement (Second) of Torts section 46 cmt. d (1965). "The defendant's conduct must be more than malicious and intentional; and liability does not extend to mere insults, indignities, threats, annoyances, or petty oppressions." Id., citing *Viehweg v. Vic Tanny Intern. of Missouri, Inc.*, 732 S.W.2d 212, 213 (Mo.App.1987). "It is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery...." Id., citing Restatement (Second) of Torts section 46 cmt. h (1965).

Plaintiff claims the infliction of emotional distress primarily as a result of his arrest and prosecution. SNAP could not and did not arrest or prosecute Plaintiff. Plaintiff fails to specifically identify which of the alleged specific acts alleged in para. 158 were supposedly

committed by the SNAP defendants. The alleged actions taken by SNAP occurred *after* Plaintiff was already accused and arrested, and thus any claim for intentional infliction of emotional distress fails. Additionally, Plaintiff fails to allege any conduct on the part of SNAP that rises to the level of “extreme and outrageous.”

Thus, the Count should be dismissed.

C. Count XV: Defamation Against the SNAP Defendants.

The Court should dismiss the defamation count against the SNAP defendants because it fails to set forth the allegedly defamatory statements with sufficient specificity.

“Federal courts favor specific pleading of defamation claims because ‘knowledge of the exact language used is necessary to form responsive pleadings.’ *Glenn v. Daddy Rocks, Inc.*, 171 F. Supp. 2d 943, 947 (D. Minn. 2001). Missouri law also requires that “[a] petition seeking recovery for libel per se should recite in the petition the specific words or statements alleged to be libelous.” *Missouri Church of Scientology v. Adams*, 543 S.W.2d 776, 777 (Mo. 1976).

Here, plaintiff purports to set forth “examples” of the allegedly defamatory statements, and states that the claim includes these statements “but is not limited to” them. Complaint, Paragraph 81. Additionally, paragraph 79 gives only a general description of the alleged defamatory statements.

SNAP has a right to know each and every specific allegedly defamatory statement it is charged with herein. The allegations as they stand fail to set forth a complete identification of those statements with the required specificity. This makes it difficult or impossible for SNAP to identify any privileges which may apply to each statement. Thus, Count XV should be dismissed.

IV. The Court Must Award Attorneys’ Fees to the SNAP Defendants.

It is not enough to simply grant this motion. Attorneys' fees must be imposed to deter similar attempts to intimidate victims and advocates who speak out about abuse. Under 537.528(2), if the Court grants this motion as it should, the award of fees and costs to the SNAP Defendants is mandatory. The statute states that "the court *shall* award reasonable attorney fees and costs incurred by the moving party in defending the action." This is especially important here where Father Jiang has sued the victim's parents, made public and unsupported allegations about them and their son, and has attacked everyone who came forward to support this young boy. This type of behavior must be punished.

Accordingly, upon dismissal, the SNAP Defendants respectfully request that the Court enter an award of "reasonable attorney fees" and "costs" incurred by them, in an amount to be submitted upon termination.

WHEREFORE, the SNAP Defendants respectfully request that the Court dismiss the claims against the SNAP defendants, for its attorneys' fees in this matter, and for such further relief as is just and appropriate in these circumstances.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July, 2015, a copy of the foregoing was electronically filed with the Court, and will be sent electronically by the Court to counsel of Record:

/s/ Amy Lorenz-Moser