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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

KATHERINE MCLAUGHLIN, ET AL.
Plaintiff

JOHN DOE
Defendant

Case No: CV-22-973016

Judge: ANDREW J. SANTOLI

JOURNAL ENTRY

ORDER ON PLAINTIFF MCLAUGHLIN'S MOTION TO AUTHORIZE DISCOVERY TO JOHN DOE, OBTAIN IDENTIFYING INFORMATION OF DEFENDANT, FILED ON 1/12/23.

OSJ

Judge Signature Date

04/20/2023

IN THE COURT OF COMMON PLEAS
GENERAL DIVISION
CUYAHOGA COUNTY, OHIO

KATHERINE MCLAUGHLIN	)	**CASE NO. CV 22 973016**
	)	
Plaintiff,	)	**JUDGE ANDREW J. SANTOLI**
	)	
V.	)	
	)	
JOHN DOE	)	
	)	
Defendant.	)	

ORDER ON PLAINTIFF MCLAUGHLIN'S MOTION TO AUTHORIZE DISCOVERY TO OBTAIN IDENTIFYING INFORMATION OF DEFENDANT, FILED ON JANUARY 12, 2023.

This matter is before the Court on Plaintiff Katherine McLaughlin's Motion to Authorize Discovery to Obtain Identifying Information of Defendant, which was filed on January 12, 2023. In her Motion, Plaintiff seeks an Order from this Court authorizing her to obtain user data from Meta Platforms, Inc. for the Facebook accounts belonging to fictitious users John Macaroni ("Macaroni,") Amin Yashed ("Yashed,") and Relffom Nevets ("Nevets")[1] and from Proton Technologies, AG for an email account belonging to fictitious user MissMarples21@proton.me. She also seeks to obtain the IP addresses for these accounts. Plaintiff has argued both in her Verified Complaint and in her Motion that a single John Doe operates these four accounts.

Public Citizen, a public interest group that has "helped establish the national consensus standard for deciding whether a plaintiff should be allowed to use the court process to strip speakers of their First Amendment right to speak anonymously," filed an amicus brief regarding

[1] While Plaintiff names Nevets as one of the fictitious Facebook accounts allegedly defaming her, she has not identified a single statement made by this account either in her Verified Complaint or her Motion. The only connection this account appears to have with this case is that she is listed as "married" to Yashed on each of their Facebook profiles. (Ver. Compl. at ¶ 21.) Because there is no speech attributed to this account, Plaintiff's Motion with regard to this John Doe Defendant is denied.

the standard this Court should adopt when ruling on Plaintiff's Motion. (Public Citizen Motion at 1-2.) Thereafter, the First Amendment Clinic at Case Western Reserve University School of Law entered a notice of limited appearance for Yashed. On February 10, 2023, Yashed filed a Brief in Opposition to Plaintiff's Motion. Plaintiff then filed a Reply Brief in support of her original Motion.

After considering the parties' briefs and exhibits, and for the reasons that follow, this Court adopts a modified version of the standard set forth in *Dendrite Intern., Inc. v. Doe No. 3*, 775 A.2d 756 (N.J.App.2001). While this Court agrees with the first three prongs of the *Dendrite* standard, the final balancing test seems to invite unnecessary judicial activism, allowing otherwise defamatory speech to remain protected under the First Amendment. Thus, this Court adopts the first three prongs of *Dendrite*, while rejecting the final balancing test. Then, utilizing the *Dendrite* standard, this Court finds that Plaintiff has not met her burden of both notifying the John Doe Defendant(s) of her Motion and proving a prima facie case of defamation against the John Doe Defendant(s). *Dendrite* at 142. For these reasons, Plaintiff's Motion is denied.

I. COMPLAINT AND RELEVANT FACTS

Plaintiff was appointed the Chief of Police for the City of Beachwood in November 2021, after serving as the City's Deputy Chief of Police. (Ver. Compl. at ¶¶ 7-8.) As Chief, Plaintiff establishes rules and regulations for the management of the police department, is responsible for the enforcement of those rules, and maintains general supervisory duties over the department. (*Id.* at ¶ 10.)

Beachwood's police department operates a Facebook page that is open for both public viewing and commenting. (*Id.* at ¶ 17.) On several days in September 2022, two fictitious Facebook accounts—one bearing the name "John Macaroni" and one named "Amin Yashed"—

made comments on the Beachwood Police's Facebook page, alleging and/or implying that Plaintiff is having an affair with her Deputy Chief of Police and that, generally, she is unfit to hold the position of Chief of Police. (*See* Plaintiff's Motion at Exhibit E.) Then, on September 19, 2022, an email from MissMarples21@proton.me was sent to Plaintiff, the Mayor of Beachwood, all members of the Beachwood City Council, an editor for the Cleveland Jewish News, and a staff representative of the Fraternal Order of Police. (*Id.*) Generally, this email also alleged that Plaintiff is unfit to hold the position of Chief of Police and that, because of her leadership style, morale has decreased throughout the Police Department. (*Id.*)

As a result of the statements made by Macaroni, Yashed, and MissMarples21@proton.me, and on December 23, 2022, Plaintiff filed her Verified Complaint for defamation. Her Verified Complaint accuses a single John Doe of maintaining all of these fictitious accounts and alleges that John Doe is "either a City official or employee in severe dereliction of duty or an individual masquerading as a City official or employee for the purpose of disrupting the safe and efficient operations of the City's departments[.]" (Ver. Compl. at ¶¶ 20-21, 28.)

After filing her Verified Complaint, Plaintiff then filed her Motion to Authorize Discovery to Obtain Identifying Information of Defendant. In her Motion, she seeks to obtain user data from Meta Platforms, Inc. to identify the individual(s) behind the Macaroni, Yashed, and Nevets accounts, as well as from Proton Technologies, AG to identify the user behind the MissMarples21@proton.me email address. The issue raised in her Motion has not yet been considered by an Ohio appellate court; therefore the standard to be used by this Court in ruling on her Motion is not clearly defined. Plaintiff urges this Court to adopt the standard used in *Krinsky v. Doe 6*, 72 Cal. Reptr.3d 231, 159 Cal App. 4th 1154 (Cal.App.2008).

Public Citizen then filed its amicus brief, ultimately arguing that this Court should reject the *Krinsky* standard and instead adopt the standard first articulated in *Dendrite*. 775 A.2d 756. Yashed's Brief in Opposition also urges this Court to adopt the *Dendrite* standard and argues that Plaintiff has not met her burden under *Dendrite*, thus her Motion should be denied. After considering the parties' briefs and arguments, this Court makes the following Order.

II. LAW AND ANALYSIS

There is no Ohio appellate decision adopting a standard for courts to use when ruling on a motion to authorize discovery to unmask an otherwise anonymous speaker on the Internet. Due to the lack of guidance from Ohio courts, this Court must look to authority from other jurisdictions and decide the most cohesive framework from which to analyze the issue of first impression implicated in Plaintiff's Motion.

A. The *Dendrite*, *Cahill*, and *Krinsky* Standards.

The parties have all cited to the New Jersey Superior Court, Appellate Division's decision in *Dendrite* as one of the leading cases for this Court to consider. That decision, issued in 2001, was one of the first to address the issue that is now before this Court: "the appropriate procedures to be followed and the standards to be applied by courts in evaluating applications for discovery of the identity of anonymous users" on the Internet. *Dendrite*, 775 A.2d at 759. There, the Appellate Division crafted a four-part test which sought to strike a balance between "the well-established First Amendment right to speak anonymously, and the right of the plaintiff to protect its proprietary interests and reputation through the assertion of recognizable claims based on the actionable conduct of the anonymous, fictitiously-named defendants." *Id.* at 760. The *Dendrite* standard requires the plaintiff to 1) undertake efforts to notify the anonymous user that he/she is the subject of a subpoena or application for order of disclosure and allow him/her a "reasonable"

time to respond; 2) identify the specific statement(s) that constitute actionable speech; and 3) provide sufficient evidence supporting each element of the cause of action on a prima facie basis. *Id.* If a plaintiff has satisfied these three elements, the court must then balance the defendant's right to free speech against the strength of the plaintiff's case and the necessity of disclosure to allow the plaintiff to proceed. *Id.* at 760-61.

Four years after *Dendrite*'s issuance, the Delaware Supreme Court addressed similar issues in *Doe No 1 v. Cahill*, 884 A.2d 451 (Del.2005). That court decided to adopt a test like the one outlined in *Dendrite*, but it specifically noted that it was not adopting that test in full. Instead, the *Cahill* test uses only the first and third prongs from *Dendrite* and requires a plaintiff to: 1) notify the anonymous poster that he/she is the subject of a subpoena or application for order of disclosure, as reasonably practicable under the circumstances, and allow him/her an opportunity to respond; and 2) meet the "summary judgment standard" (i.e., prove a prima facie case of defamation). *Id.* at 460-61.

The California Court of Appeals further developed this area of law in *Krinsky*, 159 Cal App. 4th 1154. There, the court concluded that the notice requirement outlined in *Dendrite* and *Cahill*, while not burdensome for a plaintiff, could be unrealistic or unnecessary. In doing so, the court stated that it would be impractical for a plaintiff to provide notice if a particular chat board, website, or post was no longer available through which plaintiff could provide notice. *Krinsky* at 1171. It also believed that a notice requirement would be rendered meaningless in cases in which an anonymous defendant made an appearance in the lawsuit or if an Internet Service Provider ("ISP") had already provided notice to the anonymous user of a request for information. *Id.* Based on those concerns, the court in *Krinsky* merely required that a plaintiff make a prima facie showing that a case for defamation exists. *Id.* When making a prima facie showing of defamation, *Krinsky*

requires plaintiffs to produce evidence "of only those material facts that are accessible to her." *Id.* at 1172. "Requiring at least that much ensures that the plaintiff is not seeking to merely harass or embarrass the speaker or stifle legitimate criticism." *Id.*

B. First Amendment Considerations.

Like other courts that have considered this issue, this Court is tasked with drafting a standard that is neither overly burdensome, such that plaintiffs are unable to proceed with legitimate, actionable claims, yet not so easily satisfied so as to chill anonymous speakers from exercising their First Amendment rights. In so doing, this Court recognizes the important role that anonymous speech has played throughout the history of the United States. Beginning with the publication of the Federalist Papers through present-day Twitter and its fictitious user names, anonymous speech has been regularly heralded as a core tenant of this country and at the heart of the First Amendment. *See Seymour v. Elections Enf't Comm'n*, 255 Conn. 78, 99 (2000) (recognizing that "anonymous distribution of one's ideas is not only protected by the first amendment, but lies at the core of its existence.").

> Indeed, there are a variety of reasons why one may choose to speak anonymously.
>
> The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible. Whatever the motivation may be, * * * the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry. Accordingly, an author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment. * * * Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent.

McIntyre v. Ohio Elections Comm., 514 U.S. 334, 342, 357 (1995).

However, the First Amendment does not act as a shield for all speech, particularly when vigorous criticism descends into defamation or other tortious conduct. *Krinsky* at 1164. "It has

been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." *Id.* (quoting *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942)).

In balancing these competing interests, this Court is cognizant of the warning from *Cahill* that "there is reason to believe that many defamation plaintiffs bring suit merely to unmask the identities of anonymous critics. As one commentator has noted, 'the sudden surge in John Doe suits stems from the fact that many defamation actions are not really about money.'" *Cahill* at 457. Certainly, "[a] defamation plaintiff, particularly a public figure, obtains a very important form of relief by unmasking the identity of his anonymous critics. The revelation of identity of an anonymous speaker 'may subject [that speaker] to ostracism for expressing unpopular ideas, invite retaliation from those who oppose her ideas or from those whom she criticizes, or simply give unwanted exposure to her mental processes.'" (Citation omitted.) *Id.* Thus, the appropriate test must be stringent enough to protect anonymous speakers' rights and identities from overzealous plaintiffs, while allowing legitimate civil actions to proceed.

C. Adopting a Modified *Dendrite* Standard.

With these principles in mind, this Court adopts a modified standard of the one articulated in *Dendrite* and requires a defamation plaintiff to 1) notify the defendant of a motion to authorize discovery; 2) identify the specific statement that constitute actionable speech; and 3) provide sufficient evidence in support of each element of her defamation claim on a prima facie basis (i.e., the "summary judgment standard"). *Dendrite* at 760. This Court believes that this standard strikes the appropriate balance between one's First Amendment rights to speak anonymously and the right to pursue legitimate, actionable defamation claims in the court system.

First, requiring a plaintiff to provide notice to an anonymous speaker of a pending motion to authorize discovery ensures that a speaker can respond to the motion and argue for his/her anonymity at every stage of the litigation. Plaintiff, drawing on the analysis in *Krinsky*, argues that this notice requirement can be unnecessary or superfluous because an ISP will notify an anonymous Internet user of a pending *subpoena* to authorize the user's identity. *Krinsky* at 1171. While an ISP will notify an Internet user of a *subpoena* to reveal his/her identity, there is no requirement that a plaintiff serve a copy of a *motion to authorize discovery* on an anonymous Internet user because his/her true identity is not yet known. Thus, this Court believes that providing notice of a pending motion to an anonymous Internet user is necessary to protect his/her First Amendment and other legal rights.

Further, a plaintiff's burden in providing this notice is minimal. If the alleged defamatory statements were transmitted via email, the plaintiff may satisfy this notice requirement by emailing a copy of the motion directly to that email address. If the alleged defamation comes from a fictitious user on a social media site, the plaintiff may satisfy this requirement by sending the motion via a direct message to that fictitious user. If attaching a copy of the motion is not possible on the particular social media site, the plaintiff can satisfy this requirement by informing the speaker of the pending case against him/her (including the court, case number, and judge) and instructing him/her on how he/she may obtain a copy of the motion. This Court believes that the slight burden placed on a plaintiff by requiring notice of a pending motion to authorize discovery is far outweighed by an anonymous speaker's right to be informed of the motion and argue for his/her anonymity before a subpoena is issued to unmask his/her identity.

Second, requiring a plaintiff to identify the specific actionable statements at issue both allows a reviewing court to properly analyze a motion to authorize discovery and puts the

anonymous speaker on notice of what the plaintiff claims is defamatory. Without this requirement, a plaintiff would not otherwise be obligated to identify the defamatory statements that form the basis of her lawsuit, raising concerns that plaintiffs would abuse the legal process to silence critics or other speech they deem unpleasant.

Under Civ.R. 8(A), a plaintiff in Ohio must only aver "a short and plain statement" showing she is entitled to relief. To that end, the Ohio Rules of Civil Procedure further direct plaintiffs to "be simple, concise, and direct." Civ.R. 8(E)(1). *See also Mangelluzzi v. Morley*, 8th Dist. Cuyahoga No. 102272, 2015-Ohio-3143, at ¶ 13. Because Ohio's "notice pleading" standard does not require a defamation plaintiff to plead operative facts with particularity, it is not required that a plaintiff include the exact alleged defamatory statement(s) at issue in a complaint. *Mangelluzzi* at ¶ 13. Indeed, in this case, Plaintiff did not include the defamatory statements at issue in her Verified Complaint (although they were included in her Motion). Thus, given Ohio's notice-pleading standards, *Dendrite*'s requirement that a plaintiff include the actionable statements in a motion to authorize discovery 1) allows a court to properly analyze the motion and 2) helps ensure that a plaintiff is not attempting to abuse the legal system. *See also Krinsky* at 1170-71 (stating that, "if a complaint is filed in a notice-pleading state in which defamation claims are not excepted by statute or case law, the second *Dendrite* requirement (setting forth the statement with particularity) will be essential[.]").

Third, requiring a plaintiff to make a prima facie showing of each element of her cause of action acts as a safeguard to the integrity of the legal system. This Court recognizes the potential for defamation plaintiffs to file retaliatory lawsuits simply to obtain the identities of their critics and, with that knowledge, effectively silence any further commentary or criticism from that individual or others. When a public official—or, in this case, the Chief of Police—obtains the

identity of an anonymous critic, she obtains a very powerful form of relief. *Cahill* at 457. Even if Plaintiff does not intend to pursue this case after obtaining the identities of the John Doe Defendant(s), she nonetheless could engage in retaliatory actions designed to chill the free speech rights of not only the John Doe Defendant(s) but also other potential critics. *Id.* at 458. Therefore, requiring a plaintiff to prove a prima facie case of defamation ensures that she is pursuing a legitimate cause of action before she may unmask an anonymous speaker.

Finally, while this Court adopts the first three prongs of the *Dendrite* standard, it declines to adopt the balancing test. Once a plaintiff has presented evidence of a prima facie case of defamation, the speech at issue is no longer afforded First Amendment protections. *See Krinsky* at 1172 ("When there is a factual and legal basis for believing libel may have occurred, the writer's message will not be protected by the First Amendment."). Requiring a court to then balance unprotected, defamatory speech against the strength of a plaintiff's case invites judicial activism by allowing a court to ultimately decide what defamatory speech deserves First Amendment protections. Thus, this Court does not believe a further balancing of the interests is necessary once the plaintiff has established the first three elements of the *Dendrite* standard and declines to adopt this prong.

D. Applying the Modified *Dendrite* Standard to Plaintiff's Motion.

Utilizing this modified *Dendrite* standard, Plaintiff must show that 1) she has provided notice to the John Doe Defendant(s) of her Motion; 2) she has identified the alleged defamatory statements at issue; and 3) she can establish a prima facie case of defamation. *Dendrite* at 760. In this case, Plaintiff has satisfied *Dendrite*'s identification element. However, and as will be discussed below, she has not shown that she has provided notice to the John Doe Defendant(s) or established a prima facie case of defamation.

First, Plaintiff has satisfied *Dendrite*'s identification element by specifically identifying the statements she claims to be defamatory. Attached to her Motion as Exhibit E are screen shots of several Facebook posts from Macaroni and Yashed, as well as the full text of the email from MissMarples21@proton.me. Thus, Plaintiff has satisfied this element of *Dendrite*'s test.

However, Plaintiff has not shown that she has provided notice to the John Doe Defendant(s) of her Motion. Her Reply Brief states that she sent "correspondence" to MissMarples21@proton.me and to "the only Facebook account identified in the Verified Complaint which is still active" on January 18, 2023. (Reply Brief at 5.) However, she does not state to which of the three Facebook accounts she was able to send this communication. Further, notably, she did not include the correspondence sent to these accounts with her Reply Brief, nor did she describe what type of "correspondence" was sent[2]. Elsewhere in her Reply Brief, she clearly states that she served Meta Platforms, Inc. with a copy of her Verified Complaint and Motion. (*Id.* at 4.) By describing her communications with the John Doe Defendant(s) as "correspondence," rather than service of her Verified Complaint and Motion, this Court can infer that she did not attempt to serve MissMarples21@proton.me or any of the Facebook accounts with a copy of her Motion. Thus, she has not satisfied the first element of the *Dendrite* test and her Motion is denied on this basis.

Even if Plaintiff has provided sufficient notice to the John Doe Defendant(s), she has not met her burden under the third prong of the *Dendrite* test because she has not established a prima facie case of defamation. In Ohio, "defamation occurs when a publication contains a false statement 'made with some degree of fault, reflecting injuriously on a person's reputation, or exposing a person to public hatred, contempt, ridicule, shame or disgrace, or affecting a person

[2] Although her Reply Brief indicates that she attached her "correspondence" as an exhibit to the brief, there are no exhibits attached to Plaintiff's filing.

adversely in his or her trade, business or profession.'" *Jackson v. City of Columbus*, 117 Ohio St.3d 328, 331 (2008), quoting *A & B-Abell Elevator Co. v. Columbus/Cent. Ohio Bldg. & Constr. Trades Council*, 73 Ohio St. 3d 1, 7 (1995). When the one being defamed is a public figure or public official, they must demonstrate that the publisher used "actual malice" in publishing the statements. *Lansky v. Rizzo*, 8th Dist. Cuyahoga No. 88356, 2007-Ohio-2500, at ¶ 18.

To prove actual malice, a plaintiff must show that the statement was made with knowledge of its falsity, or with reckless disregard for its truth. *Id.* at ¶ 19. To show a "reckless disregard," "the plaintiff must present clear and convincing evidence that the false statements were made with a 'high degree of awareness of their probable falsity,' or that 'the defendant in fact entertained serious doubts as to the truth of his publication.'" (Citations omitted.) *Id.* Whether a statement amounts to "actual malice" is a question of law for a court to decide. *Id.*

Finally, the Ohio Supreme Court established that "opinions," rather than facts, are afforded immunity from liability. *Scott v. News-Herald*, 25 Ohio St.3d 243, 250 (1986). To separate facts from opinions, *Scott* directed courts to look at the specific statement uttered, whether the information is verifiable, the general context of the statement, and the broader context in which the statement appeared. *Id.* The Ohio Supreme Court has further instructed that words that have "a precise meaning" give rise to clearer factual implications and, thus, are more likely to be defamatory. *Wampler v. Higgins*, 93 Ohio St.3d 111, 127-28 (2001). Conversely, "statements that are 'loosely definable' or 'variously interpretable' cannot in most contexts support an action for defamation. Readers are * * * considerably less likely to infer facts from an indefinite or ambiguous statement than one with a commonly understood meaning.'" *Id.* at 128 (quoting *Ollman v. Evans*, 750 F.2d 970, 979-80 (D.C.Cir.1984)).

Before embarking on a defamation analysis in this case, this Court is compelled to address Plaintiff's assertion that all the four fictitious accounts at issue in this case—the Facebook accounts for Macaroni, Yashed, and Nevets, and the MissMarple21@proton.me email address—are all maintained and operated by a single John Doe defendant. Despite her conclusions, Plaintiff has failed to produce any evidence to support this belief. Without *any* evidence that these accounts are maintained by a single individual, this Court cannot lump each of the alleged defamatory statements together. Instead, this Court must view each "user" or "speaker" individually to determine whether Plaintiff has established a prima facie case of defamation against any of the John Doe Defendant(s).

With these principles in mind, this Court finds that the Facebook statements are all protected opinions pursuant to *Scott*. First, the statements made by Macaroni and Yashed are typical of the hyperbolic, provocative, and often-crass style of anonymous speech that, for better or worse, has become characteristic of anonymous speech on social media sites. (Plaintiff's Motion at Exhibit E.) Their statements include:

- "That is unless [Deputy Chief of Police John Resek]'s out for a very long lunch with Chief "Kate"... or a ride to Chagrin Falls together...Hope there are prenuptials in place.....Not like either of them have a history of infidelity or sleeping with co-workers [wide-eyed emoji]" –Macaroni

- "Considering the Chief, the Officers will definitely need the mental health counseling[.]" – Yashed

- "I seriously hope the super honest and totally trustworthy Chief thanked the person responsible for writing the grant proposal and didn't just shaft them by eliminating their position..." –Macaroni

- "'Honest and totally trustworthy' [laughing/crying emojis] If they did a blind survey with no repercussions guaranteed there would be a no confidence vote but then again im sure she would find a way to screw them over[.]" – Yashed

(*Id.*)

Second, utilizing the test articulated in *Scott*, it is clear that each of these statements are the opinions of their authors. Each of these four statements contain sarcastic commentary, grammatical errors, and exaggerated and hyperbolic conjecture interlaced with inane emojis. Indeed, opining that the police officers employed in the City of Beachwood will need future mental health treatment, implying that Plaintiff would terminate a hypothetical person who drafted a grant proposal, and supposing about Plaintiff's prenuptial agreement do not contain the type of verifiable facts contemplated by *Scott* to constitute actionable defamation. Additionally, each of these statements appear as comments on the City of Beachwood's public Facebook page, which is open without restrictions for public viewing and commentary. The City invites the public to interact with its Facebook posts and, as a result, will periodically encounter negative commentary and reactions both to the content of its posts and its subjects, particularly the public officials within the City. Because each of these four statements made on the City of Beachwood's public Facebook page are protected opinions, Plaintiff has not shown a prima facie case of defamation with regard to Macaroni and Yashed.

This Court further finds that the Email sent from fictitious user MissMarples21@proton.me constitutes protected opinion. Although the medium of communication is different, the rhetoric used in both the Facebook comments and this email are markedly similar. Like the Facebook comments, this email is riddled with hyperbole and exaggeration. For example, it alleges that police officers "have left, are leaving, and more will follow" because of Plaintiff's negative effect on the City of Beachwood's reputation. (Plaintiff's Motion at Exhibit E.) It concludes, without any evidence or basis in fact, that Plaintiff's actions are "ILLEGAL and violate[] the US CONSTITUTION. Look it up yourselves." (*Id.*) It also urges the recipients to "quit blindly letting

this continue to get worse. Stop giving people easy reasons to sue Beachwood. Stop giving reasons for the city to look idiotic. * * * PLEASE finally do something to give [Beachwood Police Department] hope, some reason to risk their lives for a city that continues to ignore how bad things are and how much worse they keep getting." (*Id.*) Considering these statements, as well as the email's subject—Desperate Times—this email is akin to an opinion article one would submit to a local newspaper concerning a public official, rather than sounding in defamation.

The list of email recipients further necessitates a finding that this email is a protected opinion. MissMarples21@proton.me sent her email to Plaintiff, the Mayor of Beachwood, all members of the Beachwood City Council, an editor for the Cleveland Jewish News, and a staff representative of the Fraternal Order of Police. This shows that the speaker was reaching out to his/her elected officials to make his/her voice heard on a matter of public concern. Given these factors, and utilizing *Scott*'s balancing test, this Court finds that the Email sent from MissMarples21@proton.me is an opinion subject to protection by the First Amendment.

Because this Court finds that the Facebook comments from Macaroni and Yashed, as well as the email from MissMarples21@proton.me, constitute protected opinions, Plaintiff has not proven a prima facie case of defamation and has not satisfied the third *Dendrite* prong. For this reason, her Motion is denied.

III. CONCLUSION

For the foregoing reasons, this Court believes that a modified *Dendrite* standard provides the most appropriate analytical framework through which to evaluate Plaintiff's Motion and similar motions in the future. Under this standard, Plaintiff has not shown that she has provided sufficient notice to the John Doe Defendant(s) of her Motion, nor has she proven a prima facie case of defamation, as the identified statements from Macaroni, Yashed, and

MissMarples21@proton.me constitute protected opinions. Because Plaintiff has not met her burden under this standard, her Motion to Authorize Discovery to Obtain Identifying Information of Defendant is denied.

IT IS SO ORDERED.

JUDGE ANDREW J. SANTOLI

4/19/2023

DATE