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**IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

JEFFREY D. GASTON,

Plaintiff,

vs.

JASON HALL, an individual, NATALIE
HALL, an individual, GEORGE
SCHLIESSER, an individual, and
WOODCRAFT MILL & CABINET, INC., a
Utah corporation.

Defendants.

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO THE HALL
PARTIES' SPECIAL MOTION FOR
EXPEDITED RELIEF**

Civil No. 230905528

Judge Chelsea Koch

(HEARING REQUESTED)

Plaintiff Jeffrey D. Gaston ("Gaston"), by and through his counsel of record, Scott L. Sackett II of and for Scalley Reading Bates Hansen & Rasmussen, P.C., hereby responds to the Hall Parties' Special Motion for Expedited Relief (the "Special Motion").

GROUND AND RELIEF REQUESTED

Plaintiff does not dispute the Hall Parties' request for a hearing within 60 days. As grounds for this Memorandum in Opposition (the "Opposition"), Gaston requests that this Court

deny the Motion in its entirety. Gaston states that Plaintiffs' Motion for Expedited Relief is untimely and that no good cause exists for their failure to file the Motion within the timeframe allotted under the Utah Rules of Civil Procedure.

Further, while Plaintiffs allege that the communications that form the basis, at least in part, for the claims in the SAC were matters of public concern and therefore protected, no legitimate dispute exists that the death threats and similar communications contained therein do not constitute speech that would be afforded protection under Utah law.

INTRODUCTION

Gaston's Second Amended Complaint (the "SAC") alleges various causes of action arising from the retaliatory and vindictive conduct occasioned upon him by Defendants. The actionable conduct described in the SAC includes harassment, physical battery, and the sending and delivery of death threats, among other things.

The Special Motion now seeks dismissal of Gaston's Second Cause of Action for assault, Third Cause of Action for false light, and his Fourth Cause of Action for intentional infliction of emotional distress.

ARGUMENT

I. The Special Motion must be denied as the Hall Parties failed to timely file the Special Motion and no good cause exists for the failure.

"Not later than 60 days after the day on which a party is served with a complaint... the party may file a special motion for expedited relief to dismiss the cause of action or part of the cause of action. *Utah Code Ann.* §78B-25-103 (2023) (*emphasis added*).

On December 11, 2023, Gaston filed the SAC, which is the subject of the Special Motion. On January 17, 2024, each of the Hall Parties was served with a copy of the SAC. A copy of the returns of service have been attached hereto as Exhibit “A”. Utah law requires that the Hall Parties file their request for relief under the Act within 60 days of the service of the SAC. *Id.* The Hall Parties were served with the SAC on January 17th, thereby requiring that the Hall Parties file the Special Motion not later than March 17th, 2024. See *Id.*

While Plaintiff recognizes that this case has been stayed on multiple occasions since its inception, none of those stays affected Defendants’ ability and requirement to comply with the filing deadline prescribed by Utah law and no good cause exists that would alleviate the responsibility of Defendants to comply with the 60-day filing window. Nowhere in the Special Motion do the Hall Parties allege any good cause for their failure to timely comply with the requirements of the Act. While the case was stayed on May 13, 2024, the statutory filing period for the Special Motion had long since expired. In fact, nearly four months had passed since Defendants were served with the summons and complaint, and nearly two months had lapsed *after* the filing deadline for the Special Motion, before this action was stayed by this Court.

Simply put, the Hall Parties failed to timely comply with the statutory requirements for filing the Special Motion, and no good cause exists for that failure. *Utah Code Ann.* §78B-25-103. As a result, the Special Motion must be denied.

II. The Act does not apply to the conduct alleged by Gaston in the SAC.

The Special Motion asserts that the Hall Parties’ conduct falls within the scope of two provisions covered by the Act – communications in a governmental proceeding, or exercise of

the right of freedom of speech on a matter of public concern. (Special Motion at p. 5). As described below, the Hall Parties fail to establish that the statutory provisions apply to the conduct described in the SAC. See *Utah Code Ann.* §78B-25-102.

A. Mrs. Hall’s communications made during the City Council meetings were pursued against her as an employee of a governmental unit, purporting to act in her official capacity.

The Hall Parties allege that the Special Motion was filed in the event Gaston pursued claims against Mrs. Hall individually. See generally *Special Motion*. While certain claims were pursued against Mrs. Hall in her personal capacity, those claims are not covered by the Act as described in detail below.

The only remaining claims against Mrs. Hall, which could purportedly be covered by the Act, are claims related to communications by Mrs. Hall in a governmental proceeding (city council meeting). See generally, *SAC*. Yet these claims also fall outside the scope of the act. “This chapter does not apply to a cause of action asserted: (a) against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity...” *Utah Code Ann.* §78B-25-102(3)(a).

Here, the claims against Mrs. Hall related to communications in a city council meeting were made against her as she purported to act in her official capacity as mayor. See *SAC* at ¶¶131-144, 240, 248. The Act provides that such conduct is clearly not within its scope. *Utah Code Ann.* §78B-25-102(3)(a). As a result, the communications made by Mrs. Hall while purporting to act as mayor of Bluffdale City (especially in the context of communications made during city council meeting) are outside the scope of the Act and cannot be dismissed through

the Special Motion.

B. The written communications, including death threats, do not constitute an exercise of the right of freedom of speech on a matter of public concern.

The Special Motion seeks to afford the Hall Parties' communications protection by glossing over the totality of the communications alleged against them. (Special Motion at p. 13). Specifically, the Special Motion fails to adequately address the progressively threatening communications, including actual death threats alleged by Gaston in the SAC such as:

- 1) "you should know that the wheels are in motion to render you irrelevant." (SAC at ¶16);
- 2) "if [Gaston] doesn't get the hint, there is a group of us that are ready to move to the next phase." (SAC at ¶22);
- 3) "This is your final warning. We are moving to the next phase. Do what we ask, or we will do what must be done." (SAC at ¶33);
- 4) "You will no longer have the will to live in Bluffdale. It's time we put you down like the dog you are..." (SAC at ¶44);
- 5) A package with a return address for an axe-throwing society. (SAC at ¶86);
- 6) demanding that Gaston resign or "[i]f you don't you will end up dead" (SAC at ¶91).

Each of these progressively threatening communications are not communications covered by the Act as they do not constitute communications in a governmental proceeding, they are not communications on an issue under consideration in a governmental proceeding, and they do not constitute the exercise of the right of freedom of speech on a matter of public concern.

The United States Supreme Court has recently taken up such a review of threatening communications and the lack of protection afforded them under the First Amendment. See generally, *Counterman v. Colorado*, 600 U.S. 66, 143 S.Ct. 2106. “True threats of violence, everyone agrees, lie outside the bounds of the First Amendment’s protection. And a statement can count as such a threat based solely on its objective content.” *Counterman*, 600 U.S. 66 at ¶2. “‘From 1791 to the present,’ the First Amendment has ‘permitted restrictions upon the content of speech in a few limited areas.’” *Id* at ¶4 (citing *United States v. Stevens*, 559 U.S. 460, 468 (2010)). “‘True threats’ of violence is another historically unprotected category of communications.” *Counterman*, 600 U.S. 66 at ¶5 (citing *Virginia v. Black*, 538 U.S. 343, 359 (2003)). “Whether the speaker is aware of, and intends to convey, the threatening aspect of the message is not part of what makes a statement a threat... The existence of a threat depends not on ‘the mental state of the author,’ but on ‘what the statement conveys’ to the person on the other end.” *Counterman*, 600 U.S. 66 at ¶5.

The true threats of violence have been consistently denied First Amendment protection, and accordingly, protection under any theory that the threats relate to a matter of public concern. (“Prepare your family I will murder you in front of your children”; “Enjoy your final days!”; and “You will not be alive by November the decision has been made. Sorry u gotta go!” – all deemed true threats and not protected speech) See generally, *Virginia v. Black*, 538 U.S. 343, 358-359 (2003). Further Utah law imposes a narrow application of the Act to speech. While the current Act was adopted in May 2023, “[b]y its terms, Utah’s Anti-SLAPP Act (the “Act”) applies to an action that is ‘primarily based on, relates to, or is in response to an act of the defendant while

participating in the process of government.” *Jacob v. Bezzant*, 2009 UT 37, ¶7, 212 P.3d 535 (citing *Utah Code Ann.* §78B-6-1403(1) (2008)). The Act is more narrowly construed than that of other states. *Jacob v. Bezzant*, 2009 UT 37, ¶10, 212 P.3d 535. Specifically, “the Act is fashioned to link its applicability to the context in which it took place...” and is limited to “political speech that is an exercise of a citizen’s First Amendment right ***to influence legislative and executive decision making***” *Id* at ¶35 (emphasis added).

Further, Utah law creates criminal liability on an individual that engages in the type of conduct complained of in the SAC – “An actor commits a threat of violence if the actor: (a)(i) threatens to commit an offense... (B) involving bodily injury, death, or substantial property damage; and (ii) acts with intent to place an individual in fear: ... (B) of imminent serious bodily injury, substantial bodily injury, or death...” *Utah Code Ann.* §76-5-107. Such communication and conduct does not enjoy the protections of the First Amendment, and clearly falls outside the scope of the Act as evinced by the statutory prohibition on such conduct.

To grant the Special Motion would require this Court to rule that communications related to killing Gaston were a matter of public concern entitled to protection, a ruling that would be contrary to both Utah law and well established case law. See *Utah Code Ann.* §78B-25-102(2). Such an argument – that communicating a plan or intent to remove Gaston from Bluffdale through improper, illegal, and violent means (including murder) is an appropriate expression of freedom of speech on a matter of public concern – is nonsensical and would permit the most egregious of conduct under the guise of protected speech that could be tied, even in the most tenuous fashion, to a matter of public concern. That is simply not the case and has been

consistently denied First Amendment protection for hundreds of years. As a result, the Special Motion must be denied.

III. The purpose of the Special Motion is to delay these proceedings in an effort to complete Mr. Hall's criminal action before he is required to fully participate in the subject litigation, and therefore, Gaston is entitled to an award of his attorneys' fees.

“On a motion under Section 78B-25-103, the court shall award costs, reasonable attorney fees, and reasonable litigation expenses related to the motion: ... to the responding party if the responding party prevails on the motion and the court finds that the motion was... filed solely with intent to delay the proceeding.” *Utah Code Ann.* §78B-25-110(2).

At all times relevant to this litigation, the Hall Parties have sought to delay moving forward until such time as Mr. Hall's criminal proceeding has concluded. This includes the filing of the original Motion to Stay in February 2024 which on May 13, 2024, allowed the Hall Parties a stay until August 2024, a subsequent Motion to Extend the Stay in August 2024, seeking to extend the stay beyond Mr. Hall's scheduled criminal trial date, then a Joint Motion to Dismiss (as opposed to an answer) which requires briefing and a hearing prior to the parties moving forward with the litigation, and now this Special Motion which imposes a mandatory stay on these proceedings.

Specifically, the Act provides that once the Special Motion is filed, “all other proceedings... including discovery and a pending hearing or motion, are stayed...” *Utah Code Ann.* §78B-25-104(1)(a). The Act further allows the Court 60 days to hold a hearing, and then another 60 days to issue a ruling, effectively permitting four months of delay from the date of

filing of the Special Motion (which has been even more problematic in this case due to the already existing stay through January 2nd, 2025). See *Utah Code Ann.* §78B-25-105, 108. The effect of the filing of the Special Motion is further exacerbated as the mandatory stay can be extended for multiple reasons – first, the requisite extension for a 21-day period after entry of an order denying the Special Motion, and then for the entire duration of an appeal, should one be filed. *Utah Code Ann.* §78B-25-104(1)-(3).

At the time the Special Motion was filed, trial was set for October 2024. While the Hall Parties simultaneously sought to extend the previously granted stay in this action, the filing of the Special Motion guaranteed that they would be afforded the benefit of a stay well past the date on which Mr. Hall's criminal trial were to occur, thereby negating any ability of Plaintiff to depose Mr. Hall during the pendency of his criminal proceeding. This has been the Hall Parties' goal throughout this entire litigation, and this Special Motion is no different.

In fact, nearly every act taken by the Hall Parties in this litigation has been in an effort to delay these proceedings until such time as Mr. Hall has resolved his criminal matter in an effort to avoid being subject to a deposition during concurrent criminal proceedings. Accordingly, and based on the clear inapplicability of the Special Motion to the various communications and conduct described in the SAC, (including the Hall Parties impeding of the criminal investigation, the death threats, the physical battery, the delivery of threats to Gaston's personal residence and to his city council offices), and especially in light of the undisputed untimely filing of the Special Motion without good cause, the only reasonable conclusion is that the Special Motion was filed with an intent to delay these proceedings.

As a result, Gaston should be awarded his attorneys' fees incurred in defending this Special Motion.

SUMMARY

As described above, the Special Motion fails for multiple reasons which are as follows:

1. The Special Motion is untimely and failed to comply with the filing deadlines under the Act;
2. The SAC contains certain allegations of conduct by Mrs. Hall performed in her capacity as mayor of Bluffdale, thereby negating the application of the Act;
3. The remaining communications described in the SAC are not afforded protection under the First Amendment or Utah law, as they constitute true threats, against which civil action is permitted.

The Hall Parties were aware of all of these issues in this litigation, including at the time of the filing of the Special Motion, and were fully aware of the inapplicability of the Act to the communications and conduct alleged by Gaston. As described above, no reasonable basis exists for the filing of the Special Motion other than to further delay these proceedings to avoid requiring Mr. Hall to engage in discovery prior to the conclusion of his criminal proceedings, as the conduct alleged in the SAC clearly falls outside the scope of the Act.

Based on the foregoing, and the clearly untimely nature of the Special Motion with no argument as to any good cause for the untimely filing, the Special Motion should be denied in its entirety, and Gaston should be awarded his attorneys' fees in defending the Special Motion.

Dated this 13th day of January 2025.

SCALLEY, READING, BATES, HANSEN & RASMUSSEN

By /s/ Scott L Sackett II
Scott L. Sackett II
Attorneys for Plaintiff Jeffrey D. Gaston

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing was delivered via e-filing on January 13th, 2025, on the following parties of record.

Trinity Jordan

Aaron B. Clark

Jacob R. Lee

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Attorneys for Defendants Jason Hall; Natalie Hall; and Woodcraft Mill & Cabinet, Inc.

Joel J. Kittrell

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Attorneys for George Schliesser

/s/ Scott L. Sackett II
Scott L. Sackett II

EXHIBIT A

PROOF OF SERVICE

Case: 230905528	Court: DISTRICT COURT OF THE STATE OF UTAH THIRD JUDICIAL DISTRICT, SALT LAKE COUNTY, WEST JORDAN	County: Salt Lake, UT	Job: 10236126
Plaintiff / Petitioner: JEFFREY D. GASTON		Defendant / Respondent: JASON HALL, an individual; NATALIE HALL, an individual; GEORGE SCHLIESSER, an individual; WOODCRAFT MILL & CABINET, INC., a Utah corporation; and BLUFFDALE CITY, a municipality of the State of Utah	
Received by: Dawnette Snyder		For: Young Hoffman, LLC*	
To be served upon: JASON HALL			

I, Dawnette Snyder, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein.

Recipient Name / Address: Nathan Hall, 2549 14200 South, Bluffdale, UT 84065

Manner of Service: Substitute Service - Abode, Jan 17, 2024, 5:30 pm MST

Documents: SUMMONS OF SECOND AMENDED COMPLAINT (Jason Hall); SECOND AMENDED COMPLAINT;

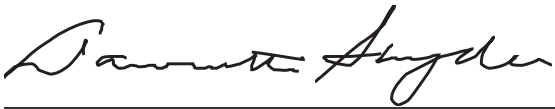
Additional Comments:

1) Unsuccessful Attempt: Jan 13, 2024, 4:45 pm MST at 2549 14200 South, Bluffdale, UT 84065
Tried residence address. There was no answer at the door.

2) Successful Attempt: Jan 17, 2024, 5:30 pm MST at 2549 14200 South, Bluffdale, UT 84065 received by Nathan Hall. Age: 25-30; Ethnicity: Caucasian; Gender: Male; Weight: 180; Height: 6'; Hair: Brown; Relationship: Son;

At the time of service I endorsed the first page of the document(s) served with my name, date and time of service.

Fees: \$65.00



03/27/2024

Dawnette Snyder

Date

Dawnette Snyder
2637 N Washington Blvd. #336
North Ogden, UT 84414
808-824-8569

PROOF OF SERVICE

Case: 230905528	Court: DISTRICT COURT OF THE STATE OF UTAH THIRD JUDICIAL DISTRICT, SALT LAKE COUNTY, WEST JORDAN	County: Salt Lake, UT	Job: 10236157
Plaintiff / Petitioner: JEFFREY D. GASTON		Defendant / Respondent: JASON HALL, an individual; NATALIE HALL, an individual; GEORGE SCHLIESSER, an individual; WOODCRAFT MILL & CABINET, INC., a Utah corporation; and BLUFFDALE CITY, a municipality of the State of Utah	
Received by: Dawnette Snyder		For: Young Hoffman, LLC*	
To be served upon: NATALIE HALL			

I, Dawnette Snyder, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein.

Recipient Name / Address: Nathan Hall, 2549 14200 South, Bluffdale, UT 84065

Manner of Service: Substitute Service - Abode, Jan 17, 2024, 5:30 pm MST

Documents: SUMMONS OF SECOND AMENDED COMPLAINT (Natalie Hall); SECOND AMENDED COMPLAINT;

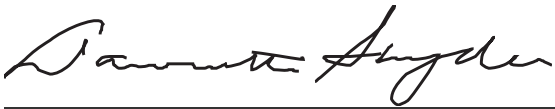
Additional Comments:

1) Unsuccessful Attempt: Jan 13, 2024, 4:45 pm MST at 2549 14200 South, Bluffdale, UT 84065
Tried residence address. There was no answer at the door.

2) Successful Attempt: Jan 17, 2024, 5:30 pm MST at 2549 14200 South, Bluffdale, UT 84065 received by Nathan Hall. Age: 25-30; Ethnicity: Caucasian; Gender: Male; Weight: 180; Height: 6'; Hair: Brown; Relationship: Son;

At the time of service I endorsed the first page of the document(s) served with my name, date and time of service.

Fees: \$65.00



01/17/2024

Dawnette Snyder

Date

Dawnette Snyder
2637 N Washington Blvd. #336
North Ogden, UT 84414
808-824-8569

PROOF OF SERVICE

Case: 230905528	Court: DISTRICT COURT OF THE STATE OF UTAH THIRD JUDICIAL DISTRICT, SALT LAKE COUNTY, WEST JORDAN	County: Salt Lake, UT	Job: 10236187
Plaintiff / Petitioner: JEFFREY D. GASTON		Defendant / Respondent: JASON HALL, an individual; NATALIE HALL, an individual; GEORGE SCHLIESSER, an individual; WOODCRAFT MILL & CABINET, INC., a Utah corporation; and BLUFFDALE CITY, a municipality of the State of Utah	
Received by: Dawnette Snyder		For: Young Hoffman, LLC*	
To be served upon: WOODCRAFT MILL & CABINET INC.			

I, Dawnette Snyder, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein.

Recipient Name / Address: Kyle Hall, c/o Registered Agent David D. Hall: 4158 Nike Drive, West Jordan, UT 84088

Manner of Service: Authorized, Jan 17, 2024, 4:58 pm MST

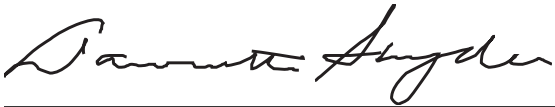
Documents: SUMMONS OF SECOND AMENDED COMPLAINT (Woodcraft Mill & Cabinet Inc.); SECOND AMENDED COMPLAINT;

Additional Comments:

1) Unsuccessful Attempt: Jan 13, 2024, 5:08 pm MST at c/o Registered Agent David D. Hall: 4158 Nike Drive, West Jordan, UT 84088
Closed at this time.

2) Successful Attempt: Jan 17, 2024, 4:58 pm MST at c/o Registered Agent David D. Hall: 4158 Nike Drive, West Jordan, UT 84088 received by Kyle Hall. Age: 20's; Ethnicity: Caucasian; Gender: Male; Weight: 175; Height: 6'1"; Hair: Brown; Eyes: Blue;
At the time of service I endorsed the first page of the document(s) served with my name, date and time of service.

Fees: \$65.00



01/17/2024

Dawnette Snyder

Date

Dawnette Snyder
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