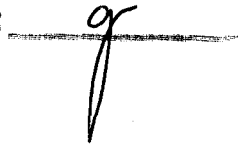


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BY: 

1 Jeffrey A. Cook
2 CUNLIFFE & COOK
3 210 Archbishop Flores St., Ste. 200
4 Hagåtña, GU 96910-5189
5 Telephone: (671) 472-1824

6 Mary McNamara, admitted *pro hac vice*
7 mary@smllp.law
8 Britt Evangelist, admitted *pro hac vice*
9 britt@smllp.law
10 SWANSON & McNAMARA LLP
11 300 Montgomery Street, Suite 1100
12 San Francisco, California 94104
13 Telephone: (415) 477-3800
14 Facsimile: (415) 477-9010

15 Attorneys for Defendant
16 ARCHBISHOP OF AGANA

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IN THE SUPERIOR COURT OF GUAM

ROY T. QUINTANILLA, *et al.*,

Plaintiff,

v.

ARCHBISHOP OF AGANA, a Corporation
Sole, *et al.*,

Defendants.

Case No. CV0552-16

**REPLY IN SUPPORT OF MOTION OF
DEFENDANT ARCHBISHOP OF
AGANA, A CORPORATION SOLE, TO
DISMISS FIRST AMENDED
COMPLAINT**

1 **I. Plaintiffs Have Failed to State a Claim for Libel**

2 **A. None of the Alleged Defamatory Statements are “of or Concerning” Denton and**
3 **Sondia and Neither of these Plaintiffs Can State a Claim**

4 There is no dispute that all of the allegedly defamatory statements in this case were made
5 *before* Apuron (or anyone) had heard of the accusations by Denton and Sondia. None of
6 Apuron’s statements mentioned Denton or Sondia by name, none referred to them in any way,
7 none could possibly have been understood as relating to them. Instead, as Plaintiffs have pled in
8 their First Amended Complaint (“FAC”), portions of the statements were directed towards other
9 accusers. FAC, ¶ 14 (stating that in May 13 statement Apuron denied allegation in May 8
10 advertisement by CCOG); *id.* at ¶ 16 (stating that May 17 statement was “[i]n direct response to
11 Mr. Quintanilla’s press conference and letter”); *id.* at ¶ 17 (stating that May 19 statement was “in
12 response to the above-referenced sex allegations,” *to wit*, Quintanilla’s allegations); *id.* at ¶ 20
13 (stating that May 31 statement was “in response to the Concepcion” statement). Because none of
14 the complained of statements was about them, Denton and Sondia cannot state a claim .

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17 Plaintiffs argue that all the statements are actionable by Denton and Sondia because they
18 “were clearly intended on their face, with little interpretation needed, to apply to anyone – past,
19 present or future – who came forward with a disclosure of sexual abuse[.]” 10/28/16 Opp., 5:15-
20 5:18. Whether a statement can reasonably be interpreted as “of or concerning” a plaintiff is a
21 question of law for the court (SDVI/ACCI, Inc. v. AT&T Corp., 522 F.3d 955, 959 (9th Cir.
22 2008)), and the law simply does not permit the kind of stretch urged by plaintiffs here.
23 Defamation law “limits the right of action for injurious falsehood, granting it to those who are
24 the direct object of criticism and denying it to those who merely complain of nonspecific
25 statements that they believe cause them some hurt.” Blatty v. New York Times Co., 42 Cal.3d
26 1033, 1044 (1986). Thus, “the statement on which the claim is based must specifically refer to,
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1 or be 'of and concerning,' the plaintiff in some way." *Id.* at 1042 (1986); Isuzu Motors Ltd. v.
2 Consumers Union of U.S., Inc., 12 F.Supp.2d 1035, 1044 (C.D.Cal.1998). If the plaintiff is not
3 referred to by name, he must "show the statement refers to him *by clear implication.*" Blatty, 42
4 Cal.3d at 1044 fn. 1 (emphasis added); Golden N. Airways v. Tanana Publ'g Co., 218 F.2d 612,
5 621 (9th Cir. 1954) (every defamation allegation must establish "certainty as to the person
6 defamed").
7

8 This case demonstrates the wisdom of these principles. Each of these plaintiffs made an
9 accusation against Apuron *ad seriatim*. He responded to only two of them (Quintanilla and
10 Concepcion), and he did so separately as to each. But, when Sondia and Denton made their
11 accusations (also *ad seriatim*), Apuron maintained his silence as to each of them. Under these
12 circumstances, there can be no implication that the earlier statements responding to Quintanilla
13 and Concepcion were also about Sondia and Denton. The Court should dismiss their claims.
14

15 **B. The May 13, 17 and 31 Statements Are Not Actionable by the Remaining Plaintiffs¹**

16 Plaintiffs argue that all of the complained-of statements are actionable by all of them.
17 However, as set forth above, because each Plaintiff accused Apuron *ad seriatim*, and he
18 responded to only two of them, each statement must be examined separately.
19

20 **1. *The May 13 Statement is Not Actionable***

21 For the same reason that Denton and Sondia cannot state a claim with respect to any of
22 the complained-of statements, Quintanilla and Concepcion cannot state a claim as to Apuron's
23 May 13 statement. Apuron's May 13 statement does not refer to any of the Plaintiffs by name or
24 other description -- none of the Plaintiffs had yet accused Apuron of abuse, and nothing in the
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28 ¹ Plaintiffs do no dispute that the May 19 statement by Deacon Frank Tenorio consists entirely of non-
actionable opinion. 9/12/16 Mtn. to Dismiss, 11-14.

1 statement indicates, by clear implication or otherwise, that Apuron was directing his statements
2 toward any of them.

3 2. *The May 17 Statement is Not Actionable*

4 Plaintiffs argue that the May 17 statement implies two actionable false statements: (1)
5 that the victims are liars; and (2) that they are maliciously conspiring to destroy the Church.
6 10/28/16 Opp., 3:12-3:15. While Apuron never stated in the May 17 statement that Quintanilla
7 or any Plaintiff was a liar, nor that any of them was conspiring to destroy the Church, the law is
8 clear that neither statement would have been actionable even if he had.
9

10 The core issue is that Apuron's May 17 statement was a response to Quintanilla's
11 accusation that Apuron had committed the grave crime of sex abuse against Quintanilla. Apuron
12 stated as to Quintanilla that the allegation was "false" and that he denied it – a clearly non-
13 defamatory response. Had he gone farther and called Quintanilla a liar in response to
14 Quintanilla's accusation of criminal conduct, that statement would not be actionable either for
15 two reasons. First, it would fall squarely within the self-defense privilege. Restatement
16 (Second) of Torts § 594, Comment K ("[T]he defendant may publish in an appropriate manner
17 anything that he reasonably believes to be necessary to defend his own reputation against the
18 defamation of another, *including the statement that his accuser is an unmitigated liar.*"
19 (Emphasis added)); Foretich v. Capital Cities/ABC, Inc., 37 F.3d 1541, 1562 (4th Cir. 1994)
20 (alleged defamatory statements that labeled attacks "heinous lies," "downright filth," and "filthy
21 dirt . . . like from the bottom of a cesspool" fell within self-defense privilege).
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25 Second, in addition to being privileged, any statement that Quintanilla was a liar would
26 be non-actionable opinion, given its context. Under the "predictable opinion" doctrine, when
27 statements that might otherwise be deemed assertions of fact are made by participants in an
28

1 adversarial setting, they are reasonably understood by the listener to be opinions. Dreamstone
2 Entm't Ltd. v. Maysalward Inc., No. 2:14-CV-02063-CAS, 2014 WL 4181026, *6 (C.D. Cal.
3 Aug. 18, 2014) (finding statement non-actionable where its "broad context . . . suggests that the
4 average reader would expect the press release to relate a predictably one-sided account of the
5 circumstances giving rise to the litigation"); 9/12/16 Mtn. to Dismiss, 13-14 (collecting cases).
6 Any assertion by Apuron that his accuser is a liar would be heard by listeners as the predictable
7 response of one publicly accused of sexual abuse, *i.e.*, an assertion of opinion, and cannot form
8 the basis of a cognizable claim.

10 Apuron's implication that there is a malicious conspiracy afoot to destroy the Church also
11 is not actionable because he imputes the alleged conspiracy to people other than Quintanilla.
12 Apuron's May 17 statement speaks of other "attacks" against him that occurred in the previous
13 three years (FAC, ¶ 16(a)) and characterizes those attacks as a "concerted effort to injure" the
14 Church. Id. at ¶ 16(d). The "attacks" and the "concerted effort" had nothing to do with
15 Quintanilla (Apuron's specific language was: "those behind this concerted effort") and Apuron
16 never accused Quintanilla of having participated in or planned those prior attacks. Only the
17 denial language (¶16(b)-(c)) in Apuron's May 17 statement is "of and concerning" Quintanilla.
18 See Blatty, 42 Cal.3d at 1042, *supra*. And, again, for the reasons set forth above, that language is
19 privileged.

22 But, even assuming *arguendo* that all of the May 17 statement was "of and concerning"
23 Quintanilla, any language attributing a "malicious" and "conspiratorial" intent to him is not
24 actionable, because attacks on Quintanilla's motives would also fall within the self-defense
25 privilege. Foretich, 37 F.3d at 1560 (holding that "statements impugning the motives of the
26 accuser" are privileged). Likewise, and because any statements about Quintanilla's internal and
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1 subjective motivations are not susceptible to being proved true or false, they are non-actionable
2 statements of opinion, not fact. Seelig v. Infinity Broad. Corp., 97 Cal. App. 4th 798, 809 (2002)
3 (plaintiff must plead a statement of fact that is “provably false”); Underwager v. Channel 9
4 Australia, 69 F.3d 361, 367 (9th Cir. 1995) (concluding that statements “are not provable as true
5 or false because their content does not rest on ‘a core of objective evidence’” where statements
6 “reflect opinions of [plaintiff’s] motivations and personality” and thus are expressions of “belief,
7 not a general truth”); Dreamstone Entm’t Ltd., 2014 WL 4181026, at *8 (statements regarding
8 opposing party’s “subjective state of mind” were “less susceptible to being proven true or
9 false”); Terry v. Davis Cmty. Church, 131 Cal. App. 4th 1534, 1554 (2005) (defendant’s
10 statement that plaintiff was “delusional” in denying his romantic feelings for person with whom
11 he was accused of having inappropriate sexual relationship was non-actionable opinion);
12 Standing Comm. on Discipline of U.S. Dist. Court for Cent. Dist. of California v. Yagman, 55
13 F.3d 1430, 1441 (9th Cir. 1995) (“An allegation that a judge is intellectually dishonest . . . cannot
14 be proved true or false by reference to a ‘core of objective evidence.’”). An assertion that
15 Quintanilla accused Apuron because of a subjective intent to destroy the Church may impugn
16 Quintanilla’s motives, but it is not actionable.

20 3. *The May 31 Statement is Not Actionable*

21 Plaintiffs argue that Apuron’s May 31 statement falsely implies that they and an “entire
22 community of victims” are part of “one big [violent] conspiracy[.]” 10/28/16 Opp., 4:8-4:10.
23 This argument fails for a number of reasons.

24 *First*, only the first two sentences of the May 31 statement are directed at any Plaintiff in
25 this lawsuit -- Concepcion: “Another malicious and calumnious accusation against the
26 Archbishop has surfaced; this time from the mother of a man who has been deceased for eleven
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1 years. The Archbishop strongly denies this accusation as he had done so before.” FAC, ¶ 20(a).
2 Because these first two sentences are “of and concerning” Concepcion, they are at least in the
3 zone of being potentially actionable by her. Blatty, 42 Cal.3d at 1042. But as explained in the
4 Archdiocese’s moving papers, Apuron’s denial of Concepcion’s accusation – “[t]he Archbishop
5 strongly denies this accusation” – falls within the self-defense privilege. 9/12/16 Mtn. to
6 Dismiss, 15. And, for the reasons set forth above, his statement characterizing Concepcion’s
7 motives as “malicious and calumnious” does as well. See Foretich, 37 F.3d at 1560 (“statements
8 impugning the motives of the accuser” are privileged)(citations omitted).
9

10 The remaining portions of the May 31 statement are not directed at any of the Plaintiffs
11 or even victims of sexual abuse, but rather at other unnamed individuals and groups. Apuron
12 makes this clear when in the middle of his statement he notes that everything he is saying “was
13 predicted even before the first accusation was revealed.” FAC, ¶ 20(b). His description of the
14 “perpetrators of these calumnies” as having “resorted to insults and violence revealing their true
15 intention to destroy the Catholic Church” and his accusation that those “orchestrating this
16 campaign” have “incit[ed] people into hatred of the Archbishop and the Catholic Church” (FAC,
17 ¶ 20(b)-(c)), is a description of other unnamed individuals and groups, not Concepcion or any
18 other sexual assault victim. As such, nothing outside of the first two sentences of the May 31
19 statement is “of and concerning” Concepcion and is not actionable by her.
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22 *Second*, even assuming *arguendo* that the entirety of the May 31 statement can be read as
23 being “of and concerning” Concepcion, it is non-actionable opinion under the totality of the
24 circumstances test set forth in Lieberman v. Fieger, 338 F.3d 1076, 1079-80 (9th Cir. 2003).
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26 The first Lieberman factor, asks whether the “general tenor” of the entire statement
27 negates any impression of a factual assertion. Here the “general tenor” of the May 31 statement
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1 is that of an impassioned denial of serious accusations, not that of an assertion of objective fact.
2 The statement was Apuron's response to a new and very serious allegation by Concepcion,
3 which came on the heels of Quintanilla's prior accusation of sex abuse. Both Quintanilla and
4 Concepcion came forward in response to a public advertisement soliciting alleged victims of
5 Apuron to publicize their stories. Apuron's statement was made in an extremely adversarial
6 context in which he would have been expected to offer his opinion on the sexual abuse
7 allegations leveled against him. No reasonable listener would understand his statement to imply
8 a provably false assertion of fact. *Id.* at 1080 ("general tenor" supported court's finding that
9 statements were of opinion, not fact, where they related to a dispute that "grew out of a larger
10 legal battle which had already attracted a great deal of public and media attention" and were
11 made during an "interview [that] was designed to get [the speaker's] reactions to issues relating
12 to the trial").

15 The second Lieberman factor looks at whether the use of "figurative or hyperbolic
16 language [] negates the impression" of a factual assertion. Apuron's language is textbook
17 hyperbole -- "perpetrators of [] calumnies," who allegedly resorted "violence" to "destroy the
18 Catholic Church." FAC, ¶ 20(b). Apuron's statements were an attempt "to persuade others to
19 [his] position[] by use of epithets, fiery rhetoric or hyperbole," and in that context "language
20 which generally might be considered as statements of fact may well assume the character of
21 statements of opinion." Gregory v. McDonnell Douglas Corp., 17 Cal.3d 596, 601 (1976).

24 The third and final Lieberman factor -- whether the statement is susceptible of being
25 proved true or false -- also demonstrates the May 31 statement would not be considered a
26 statement of fact by a reasonable listener. Apuron's language attributes nefarious, conspiratorial
27 motives and intentions to his accuser. *E.g.*, FAC, ¶ 20(b) (accuser's "true intention [is] to
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1 destroy the Catholic Church and discredit the Archbishop by whatever means”); id. ¶ 20(b)
2 (accuser has “cruel intent to injure the Archbishop, the Catholic Church in Guam and many other
3 people of good will who have been outraged and harassed”). These statements are not actionable
4 because an accuser’s internal and subjective motivations are not susceptible to being proved true
5 or false. Underwager, supra; Terry, supra; Dreamstone Entm’t Ltd., supra.

7 *Third*, and again assuming that the entirety of the May 31 statement can be read as being
8 “of and concerning” Concepcion, the entirety of the statement falls under the self-defense
9 privilege and contains neither irrelevant or non-responsive statements nor is any of it
10 disproportionate to the allegations of criminal sexual abuse. 10/28/16 Opp., 4:21-5:03.

11 The entirety of Apuron’s May 31 statement was relevant and responsive to the allegations
12 made against him. Throughout that statement, Apuron either denies the allegations against him
13 or impugns the motives of those making the allegations. Regarding the denials, Apuron both
14 expressly denied the sexual abuse accusation -- “strongly denies this accusation” -- and
15 described it as “false testimony.” He also implicitly denied the accusation by characterizing it as
16 “malicious and calumnious,” as “insults and violence,” a “method to confuse and mislead” and
17 “scandal, confusion and grave errors.” Denial language such as this is clearly “relevant” and
18 “responsive” to the attack against him and falls squarely within the self-defense privilege.
19 Foretich, 37 F.3d 1541 (finding response that labeled attacks “heinous lies,” “downright filth,”
20 and “filthy dirt . . . like from the bottom of a cesspool” privileged).

21 The remainder of the language in the May 31 statement impugned the motives of his
22 accusers. As the Foretich court recognized, “statements impugning the motives of the accuser”
23 are relevant and responsive to the initial attack, because “[o]ne in self-defense is not confined to
24 parrying the thrusts of his assailant.” Foretich, 37 F.3d at 1560. The facts in Foretich were that a
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1 former daughter-in-law (Dr. Morgan) accused two grandparents of having molested their
2 granddaughter. In response, the grandparents denied Dr. Morgan's accusations, and "impugned
3 Dr. Morgan's motives by describing the offers of book and movie contracts, the fame, and the
4 high status in the women's movement that had accrued to Dr. Morgan, all as a result of her public
5 campaign against [the child's] father and paternal grandparents." *Id.* at 1561. The grandparents
6 also "implied that [the child] had been mistreated, if not abused, at the hands of her mother." *Id.*
7 The Foretich court concluded that these statements were "highly relevant" to the initial
8 accusation of abuse" because the "suggested that Dr. Morgan may have accused the [the
9 grandparents] in an attempt to camouflage her own misdeeds." *Id.*

11 Similarly, Apuron spoke of his accusers as having had a motive other than the truth in
12 making their claims – a "true intention to destroy the Catholic Church and discredit the
13 Archbishop," "inciting people into hatred of the Archbishop and the Catholic Church," and a
14 "cruel intent to injure the Archbishop, the Catholic Church in Guam." The impugning of
15 motives, however unfair it may feel to Plaintiffs, is not actionable in the context of the
16 adversarial setting of public accusations of sex abuse.

19 Apuron's statements were also proportional to the charge against him. In *Foretich*, the
20 court explained that evaluating proportionality in the context of a charge of sexual misconduct, a
21 court must "remain at all times aware that the allegation initially leveled . . . was as destructive to
22 reputation as virtually any charge imaginable. Thus, a reply would have to be truly outrageous
23 before we would deem it altogether disproportionate to the occasion." *Foretich*, 37 F.3d 1541.
24 There, the court found that language labeling the accuser as "mentally ill" and "sick" and the
25 molestation accusation as "heinous lies," "downright filth," and "filthy dirt . . . like from the
26 bottom of a cesspool" did not represent strong language in comparison to the attacks and "easily
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1 pass[ed] the proportionality test.” *Id.* at 1562 (in the context of a public accusation of sexual
2 misconduct, calling the accuser “an unmitigated liar” or “a scoundrel” or labeling the accusation
3 “a contemptible, cowardly, malicious lie” not disproportionate) (citations omitted). Apuron’s
4 characterization of the accusations against him as “false testimony,” “malicious and
5 calumnious,” and “insults and violence” is less extreme than the language that “easily pass[ed]
6 the proportionality test” in *Foretich*.

8 **II. Plaintiffs Do Not Contest That They Failed to Plead a Slander Cause of Action**


9 Plaintiffs do not contest that they failed to plead special damages in support of their
10 slander pro quod cause of action, nor do they contest that the law required them to do so. The
11 law is clear: to state a claim for slander pro quod, a plaintiff must *plead* special damages and
12 those damages must be pled *with particularity*. 9/12/16 Mtn. to Dismiss, 18-19 (collecting
13 authorities). Failure to do so results in dismissal.

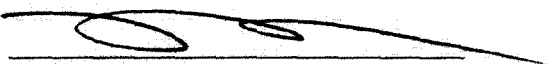
15 Dated: November 11, 2016

Respectfully submitted,

16 CUNLIFFE & COOK

SWANSON & McNAMARA LLP

17 
18 _____
19 Jeffrey A. Cook
20 Attorneys for Defendant Archbishop of
Agana

17 
18 _____
19 Mary McNamara
20 Britt Evangelist
21 Attorneys for Defendant Archbishop of Agana