IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

MAIN LINE GROWTH, LLC, a Delaware Limited Liability Company, Plaintiff and Counterclaim Defendant, v. AMERICAN POLYMERS INC. d/b/a AMPO-USA, a Delaware Corporation, Defendant, Counterclaim Plaintiff, and Third-Party Plaintiff, v. MICHAEL STILES, DONALD C. VAVALA, and DONNA STILES, Third-Party Defendants.	)	C.A. No. N25C-12-329 PAW CCLD

Submitted: July 1, 2026
Decided: August 27, 2026

OPINION

Upon Third-Party Defendants' Special Motion to Dismiss Pursuant to 10 Del. C. § 6003 and for Punitive Damages Under 10 Del. C. § 6010(b);
GRANTED, in part and DENIED, in part.

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WINSTON, J.

I. **INTRODUCTION**

This opinion addresses a novel issue under Delaware's recently amended statute concerning "strategic lawsuits against public participation," commonly known as "SLAPPs." The statute applies where a cause of action is based on speech or speech-related conduct that fits into one of three categories. Of the three, only one is at issue here: "Communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding."[1] The Court is asked to determine whether communications are "on an issue under consideration or review" in a judicial proceeding.

In answering that question, the Court agrees with the courts of California—a state with well-developed anti-SLAPP jurisprudence interpreting similar statutory language—that the law does not protect statements "having any connection, however remote, with an official proceeding."[2] The Court also agrees that, to qualify for protection, a statement must at least "relate[] to the substantive issues in the

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[1] 10 *Del. C.* § 6002(b)(2).

[2] *See, e.g.*, *Bassi v. Bassi*, 321 Cal. Rptr. 3d 1, 14 (Cal. Ct. App. 2024) (quoting *Paul v. Friedman*, 117 Cal. Rptr. 2d 82, 92 (Cal. Ct. App. 2002), *abrogated on other grounds by Jacob B. v. Cty. of Shasta*, 154 P.3d 1003 (Cal. 2007)).

litigation."[3] Such a determination does not lend itself to bright lines, and the Court does not purport to draw them. It will depend on the specific facts of each case.

Turning to the facts here: Through his government procurement business, AMPO, Brodie Trout entered into a business relationship with his wife's family. Tensions arose, first in the marriage and then in the business relationship. MLG, Trout's former uncle-in-law's consulting business, commenced this lawsuit against AMPO for breach of contract. AMPO filed counterclaims and third-party claims, including for defamation and tortious interference against Trout's former mother-in-law (Donna), the uncle-in-law (Mike), and an MLG contractor (Vavala). Those third-party defendants now move to dismiss the defamation and tortious interference claims.

As their basis for dismissal, the third-party defendants first invoke the new anti-SLAPP statute. They contend the claims are based on communications "on an issue under consideration or review" in a judicial proceeding, namely, MLG's breach of contract action. But the communications are too far removed from the breach of contract lawsuit to warrant anti-SLAPP protection. The relevant statements are mostly Donna's website posts. On their face, those posts, and Donna's other communications, do not concern any substantive issue in the breach of contract

[3] *See, e.g.*, *id.* (quoting *Neville v. Chudacoff*, 73 Cal. Rptr. 3d 383, 391 (Cal. Ct. App. 2008)).

action. The closest they come is an assertion that Trout "owes our family money!" But there is no indication whether that refers to the money that is the subject of MLG's breach of contract claims. The statements do not reference this lawsuit or the threat of it; the web posts are alleged to have begun over a year before the lawsuit was filed. Overall, the communications appear to reflect personal hostility, not commentary on the substance of a business dispute. Neither the pleadings, nor any evidence in the record, show otherwise. Accordingly, the anti-SLAPP statute does not apply.[4]

In the alternative, the third-party defendants invoke Rules 12(b)(2) and 12(b)(6). Those rules are far from novel. And unlike the anti-SLAPP law, they do not provide an opportunity for a movant to obtain fees, costs, or punitive damages. They do, however, provide bases for dismissal here. Under the well-trod Rule 12(b)(2) and 12(b)(6) standards, the Court lacks personal jurisdiction over Donna and Mike, and AMPO fails to state a claim against Vavala. The claims against the third-party defendants are thus dismissed.

[4] For the avoidance of doubt, this opinion has no bearing on whether a statement qualifies for anti-SLAPP protection under Section 6002(b)(3), which concerns "[e]xercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or Delaware's Constitution, on a matter of public concern." Even if a statement does not fit under Section 6002(b)(2), it may still be protected under Section 6002(b)(3) if it is "on a matter of public concern." No one contends the statements at issue here are on a matter of public concern.

II. FACTUAL AND PROCEDURAL BACKGROUND[5]

A. THE PARTIES' PERSONAL AND BUSINESS RELATIONSHIPS

Non-party Brodie Trout ("Trout") is the founder and CEO of counterclaim plaintiff American Polymers Inc. d/b/a AMPO-USA ("AMPO"),[6] a government procurement business incorporated in Delaware.[7] Trout is the ex-husband of Jaclyn Stiles ("Jaclyn").[8] Jaclyn is the daughter of third-party defendant Donna Stiles ("Donna"), who resides in Florida.[9]

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[5] For purposes of Rule 12(b)(6), the Court draws the facts from the Counterclaims (defined *infra* n.6) and documents incorporated therein, and it accepts as true the well-pled facts in the Counterclaims. In ruling on personal jurisdiction under Rule 12(b)(2) and on a "special motion" under 10 *Del. C.* § 6003, the Court is permitted to consider materials outside of the pleadings. *See* 10 *Del. C.* § 6006 ("In ruling on a motion under § 6003 of this title, the court shall consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment."); *Ryan v. Gifford*, 935 A.2d 258, 265 (Del. Ch. 2007) ("In ruling on a Rule 12(b)(2) motion, the court may consider the pleadings, affidavits, and any discovery of record." (citing *Cornerstone Techs., LLC v. Conrad*, 2003 WL 1787959, at *3 (Del. Ch. Mar. 31, 2003))). The Court does not consider allegations that the parties stipulated to strike from the Counterclaims. *See* D.I. 40.

[6] This opinion references AMPO's Amended Answer, Affirmative Defenses, Counterclaims, and Third-Party Complaint (D.I. 25). The "Answer" portion of that filing (pp. 2-13) is herein cited as "Ans. ¶ [number]." The "Counterclaims and Third-Party Claims" portion (pp. 17-38) is herein called the "Counterclaims" and cited as "Countercl. ¶ [number]."

[7] *See* Countercl. ¶¶ 2, 17, 19.

[8] *See id.* ¶ 11. For clarity, this opinion refers to members of the Stiles family by their first names. No disrespect or familiarity is intended.

[9] *See id.* ¶¶ 6, 16.

During his marriage, Trout became acquainted with Jaclyn's uncle, third-party defendant Michael Stiles ("Mike").[10] Mike, who resides in Maryland, is the principal of plaintiff and counterclaim defendant Main Line Growth, LLC ("MLG"), a Delaware LLC.[11] Trout also became acquainted with third-party defendant Donald Vavala ("Vavala," and with Donna and Mike, "Third-Party Defendants"), MLG's contractor.[12] The Counterclaims allege that Mike represented that he and Vavala had relationships in the government procurement space and offered to help Trout grow his business.[13]

AMPO and MLG entered into two contracts, one in January 2021 and another in February 2023 (together, the "Agreements").[14] As a general matter, the Agreements contemplate that MLG will assist AMPO in obtaining government contracts and that, in return, MLG will receive a portion of the resulting profits.[15]

After the parties entered the January 2021 Agreement, AMPO obtained government contracts which MLG alleges were in connection with that Agreement.[16]

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[10] *Id.* ¶ 19.

[11] *Id.* ¶¶ 3-4.

[12] *Id.* ¶ 19.

[13] Countercl. ¶ 19.

[14] *See id.* ¶¶ 20, 30, 43; *see also* D.I. 1, Exs. A, B (the Agreements).

[15] *See generally* D.I. 1, Exs. A, B.

[16] *See* Ans. ¶¶ 13-16; *see also* Countercl. ¶ 26.

The first such contract was awarded to AMPO in November 2022.[17] AMPO made at least some payments to MLG.[18]

B. THE PARTIES' RELATIONSHIPS DETERIORATE, AND THIRD-PARTY DEFENDANTS ALLEGEDLY MAKE DEFAMATORY STATEMENTS

By September 2024, Trout's marriage to Jaclyn, and his relationship with his then-mother-in-law, was on shaky ground. After Trout contacted Donna looking for Jaclyn, the Counterclaims allege, Donna "commenced a[] . . . smear campaign against Trout."[19] This included Donna publishing statements on a web domain she had previously registered, "brodietrout.com."[20]

"In Donna's first publication after Jaclyn's departure in September 2024," AMPO alleges, "the website featured a depiction of the grim reaper as the main image on the . . . homepage."[21] On one page, the website identifies Trout as "founder/CEO of AMPO-USA" and states Trout "owes our family money!"[22] More fully, that page reads:

> Brodie Trout is a veteran of the U.S. Army and the founder/CEO of AMPO-USA, a supply company that specializes in providing products to healthcare facilities

[17] *See* Ans. ¶ 14.

[18] *See id.* ¶ 20.

[19] Countercl. ¶ 16.

[20] *Id.* ¶ 17.

[21] *Id.*; *see also* Countercl. Ex. 1 at pdf p. 6.

[22] *See* Countercl. Ex. 1 at pdf pp. 3, 5.

> and government agencies. He has used his military position to build a career in the private sector, focusing on providing supplies through his California LLC company, AMPO-USA.
>
> **I have known Brodie Trout for over 10 years.**
> **He owes our family money!**
> **Please contact me at [email] or at [phone number]**
> **for more information regarding Brodie D. Trout or**
> **AMPO/USA.**
>
> **Thank you for your attention with this matter.**[23]

Other pages "included old family photos, alongside quotes to the effect that a person is not always who they appear to be."[24] Another page includes, next to an image of what appears to be a holiday gift box, text on the topic of one person taking from another, such as:

> A broken childhood creates scars that run deep and last a lifetime. That emptiness creates a desperate hunger—a need to possess what others have, to take what isn't earned, to copy lives that seem whole, and to claim what was never theirs.
>
> Some fill their hands with what others have worked for, yet feel nothing when they take it. They watch shadows constantly, trusting no one—not even themselves. Eventually, the mirror reveals what everyone else has already seen: in trying to fill that childhood void by blaming and taking from others, they become the very

[23] *See id.* Another page attached to the Counterclaims is similar to the first paragraph of this quoted text, with minor differences. *See id.* at pdf p. 2.

[24] *See* Countercl. ¶ 17; *see also* Countercl. Ex. 1 at pdf pp. 9-14.

> thing that caused their pain—the thief, the taker, the source of someone else's wound.
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> . . . What's taken without permission always finds its way back—but the cost of the return is rarely what the taker expects.[25]

According to the Counterclaims, Donna also wrote a direct message to an AMPO employee, stating:

> Brodie told us that he was broke! AND NOW I FIND OUT THAT HE TOLD YOU HIS BUSINESS IS DOING AMAZING????.... If you are in contact with him, I suggest you let him know that things are going to spiral if he continues to lie and block us as if we don't exist. Jaclyn may go away peacefully, but her father and I won't.[26]

In January 2025, Trout informed Mike that he intended to file for divorce from Jaclyn, after which "Mike, [Vavala], and MLG all effectively stopped consulting for AMPO entirely."[27] Around October 2025, Mike "threaten[ed] that he and Donna would interfere with the divorce proceedings unless Trout gave them equity in AMPO and a share of AMPO's profits and emphasizing that Donna was already 'texting [him] nonstop to destroy the company.'"[28] Mike also "informed Trout that

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[25] *See* Countercl. Ex. 1 at pdf pp. 18-19.

[26] Countercl. ¶ 38.

[27] *Id.* ¶ 33.

[28] *Id.* ¶ 37 (second alteration in original).

he would do everything in his power to undo AMPO's success and take AMPO down."[29]

Trout asked Mike about "the publications and statements about AMPO," and "Mike told Trout he had 'brought this upon [him]self,'" stating further that "you pissed off mama bear and now I'm going to make sure you get what you deserve."[30] When "shown the publications about Trout and AMPO, [Vavala's] position was that it was a 'personal issue' and not a company issue."[31]

The Counterclaims allege, "[o]n information and belief, MLG, through Mike and Vavala, has contacted government representatives and suppliers, causing reputational harm and damages to AMPO's business."[32] They further allege that "multiple industry contacts have mentioned and/or implied that they have heard rumors from [Vavala] or Mike about AMPO's ability to perform on its contracts."[33]

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[29] *Id.*

[30] *Id.* ¶ 39 (alteration in original).

[31] *Id.* ¶ 40.

[32] Countercl. ¶ 41.

[33] *Id.*

C. THIS ACTION

MLG filed this action against AMPO in December 2025.[34] The complaint alleges that AMPO failed to pay MLG amounts owed under the Agreements.[35] According to the complaint, AMPO most recently paid MLG under the first Agreement in May 2025 but continues to owe additional payments.[36] And despite winning a contract under the second Agreement in May or June 2025, the complaint alleges, AMPO has not paid MLG under that Agreement.[37]

In response, AMPO filed the Counterclaims.[38] They assert, among other causes of action, counts for defamation and tortious interference with business relations against Third-Party Defendants.[39] According to the Counterclaims, Donna recently "abandoned the [brodietrout.com] domain," but "[e]ven after MLG filed its

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[34] *See generally* D.I. 1.

[35] *See id.* ¶ 34.

[36] *See id.* ¶¶ 20-21, 25-26, 34.

[37] *See id.* ¶¶ 17, 23, 25-26, 34.

[38] *See generally* Countercl. AMPO filed an initial version of the Counterclaims in January 2026 but amended them after MLG, Third-Party Defendants, and two additional third-party defendants moved for partial dismissal. *See generally* D.I. 9, Counterclaims and Third-Party Claims; D.I. 19; D.I. 25 Ex. Redline.

[39] *See* Countercl. ¶¶ 48-55 (Count Two for Defamation), 77-82 (Count Six for Tortious Interference with Business Relations).

lawsuit against AMPO, Donna continued publishing defamatory articles on her own website."[40]

On May 7, 2026, Third-Party Defendants filed the instant Special Motion to Dismiss Pursuant to 10 *Del. C.* § 6003 and for Punitive Damages Under 10 *Del. C.* § 6010(b) (the "Motion").[41] Invoking Delaware's recently amended anti-SLAPP statute, the Motion seeks expedited dismissal of the defamation and tortious interference counts, as well as costs, attorneys' fees, expenses, and punitive damages.[42] In the alternative, the Motion seeks dismissal under Rules 12(b)(2) and 12(b)(6).[43] AMPO filed an opposition[44] and Third-Party Defendants a reply.[45] The Court heard argument on July 1, 2026.[46]

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[40] *See* Countercl. ¶¶ 17, 38.

[41] *See* D.I. 30, Third-Party Defs.' Special Mot. to Dismiss Pursuant to 10 *Del. C.* § 6003 and for Punitive Damages Under 10 *Del. C.* § 6010(b) (hereinafter "Mot.").

[42] *See id.* ¶¶ 5, 12-21, 43-44.

[43] *See id.* ¶ 45.

[44] *See* D.I. 37, Def. American Polymers Inc. d/b/a AMPO-USA's Resp. in Opp'n to Third-Party Defs.' Special Mot. to Dismiss Pursuant to 10 *Del. C.* § 6010(b) (hereinafter "Opp'n").

[45] *See* D.I. 41, Third Party Defs.' Reply in Further Support of Special Mot. to Dismiss Pursuant to 10 *Del. C.* § 6003 and for Punitive Damages Under 10 *Del. C.* § 6010(b) (hereinafter "Reply").

[46] *See* D.I. 44.

III. ANALYSIS

This opinion first addresses whether Delaware's new anti-SLAPP statute applies. That issue determines the framework through which the Court addresses Third-Party Defendants' dismissal arguments, as well as whether Third-Party Defendants may recover fees and additional damages. As previewed above and explained below, the statute does not apply. Accordingly, the Court proceeds to assess the Motion under the ordinary Rule 12(b)(2) and 12(b)(6) standards. Although Third-Party Defendants are not entitled to the anti-SLAPP statute's heightened protections, under those well-worn standards, they are entitled to dismissal; the Court lacks personal jurisdiction over Donna and Mike, and the Counterclaims fail to state a claim against Vavala.

A. THE ANTI-SLAPP STATUTE DOES NOT APPLY BECAUSE THE UNDERLYING STATEMENTS ARE NOT PROTECTED ACTIVITY.

1. DELAWARE'S ANTI-SLAPP STATUTE AND THE QUESTION REGARDING ITS APPLICATION HERE

In September 2025, Delaware replaced its anti-SLAPP statute with a version of the Uniform Public Expression Protection Act ("UPEPA").[47] "The Uniform Law Commission created that model act to enhance protections from [SLAPPs]," which

[47] *See* Del. S.B. 80 as amended by H.A. 2, 153d Gen. Assem., 85 Del. Laws ch. 217 (2025) (codified at 10 *Del. C.* §§ 6001-14). "Sections 6001–14 of [Delaware's version of] UPEPA correspond with [Sections] 1–14 of the model act." *Tesaro, Inc. v. Anaptysbio, Inc.*, 2026 WL 1122338, at *6 n.61 (Del. Ch. Apr. 24, 2026).

are "meritless lawsuits brought to 'ensnare their targets in costly litigation that chills society from engaging in constitutionally protected activity.'"[48]

Under UPEPA, a party may bring a "special motion" to dismiss a SLAPP claim.[49] Such a motion is statutorily expedited and triggers a stay of other proceedings between the moving and responding parties.[50] A moving party who prevails on a special motion is entitled to costs, attorneys' fees, and expenses, as well as, under certain circumstances, punitive damages.[51]

"A special motion proceeds in three parts."[52] In part one, "the moving party must 'establish[ ] under [Section] 6002(b) or (d) of this title that this chapter applies.'"[53] If the movant satisfies part one, then in part two, the burden shifts to the responding party "to demonstrate that the challenged conduct is among the carve-outs listed in Section 6002(c)."[54] If the challenged conduct is not carved out, then

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[48] *Tesaro*, 2026 WL 1122338, at *6 (quoting Unif. Pub. Expression Prot. Act, prefatory n. at 1, 3 (Unif. L. Comm'n 2020)). Like the Court of Chancery in *Tesaro*, this Court "relies on the Uniform Law Commission's official comments to the model act in interpreting UPEPA." *See id.* at *7 n.70 (first citing *Gibson v. Keith*, 492 A.2d 241, 247-48 (Del. 1985); and then citing *Cannon v. Romeo Sys., Inc.*, 2025 WL 2848069, at *20 n.164 (Del. Ch. Oct. 7, 2025)).

[49] *See id.* (citing 10 *Del. C.* § 6003).

[50] *See* 10 *Del. C.* § 6004-05, 6008.

[51] *See id.* § 6010.

[52] *Tesaro*, 2026 WL 1122338, at *7 (referencing 10 *Del. C.* § 6007(a)).

[53] *Id.* (first alteration in original) (quoting 10 *Del. C.* § 6007(a)(1)).

[54] *Id.* (citing 10 *Del. C.* § 6007(a)(2)).

in part three, the Court assesses the merits of the claims; the motion will be granted if "[t]he responding party fails to establish a prima facie case as to each essential element of the cause of action" or the movant establishes that either "[t]he responding party failed to state a cause of action upon which relief can be granted" or "[t]here is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."[55]

This case turns on part one, whether the anti-SLAPP statute applies. Section 6002(b) sets forth three categories to which the statute applies, namely, to a cause of action asserted based on a person's:

> (1) Communication in a legislative, executive, judicial, administrative, or other governmental proceeding;
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> (2) Communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or
>
> (3) Exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or Delaware's Constitution, on a matter of public concern.[56]

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[55] 10 *Del. C.* § 6007(a)(3).

[56] *Id.* § 6002(b). The statute may also apply under Section 6002(d), *see id.* § 6007(a)(1), but that section is not relevant here.

The movant bears the burden to establish that the case fits under one of these three categories.[57] That burden "must be carried with evidence," but the issue is "legal" rather than "factual."[58] "If the moving party fails to prove that [UPEPA] applies, the motion must be denied."[59]

To determine whether the anti-SLAPP statute applies, the Court must ask, first, "[w]hat conduct is the basis for the challenged claim(s)" and, second, "does that conduct constitute protected activity?"[60] Here, the parties agree that Donna's statements are the only conduct that is potentially protected.[61] They likewise agree Section 6002(b)(2) is the only protected category that could apply and that the only

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[57] *See* 10 *Del. C.* § 6007(a)(1) (requiring that "[t]he moving party establish[]" statute applies); Unif. Pub. Expression Prot. Act § 7 cmt. 2 ("In this phase, the party filing the motion has the burden to establish that the Act applies for one of the reasons identified in Section 2(b)."); *see also Nirschl v. Schiller*, 308 Cal. Rptr. 3d 338, 347 (Cal. Ct. App. 2023) ("[T]he moving [party] has the burden of establishing that the lawsuit's claims are based on activity protected by the statute." (citation omitted)).

[58] Unif. Pub. Expression Prot. Act § 7 cmt. 2.

[59] *Id.*

[60] *See Mission Beverage Co. v. Pabst Brewing Co., LLC*, 223 Cal. Rptr. 3d 547, 557 (Cal. Ct. App. 2017).

[61] *See* Mot. ¶¶ 15-19 (arguing that "Donna's statements are subject to the claim" and are protected activity); Opp'n ¶ 12 (explaining that the Motion points only to Donna's statements); Reply ¶ 12 & n.5 (arguing only about Donna's statements and noting that, although defamation is asserted against Mike and Vavala as well, the defamation count "addresses only Donna's statements").

"proceeding" to which Donna's statements might relate is the breach of contract action MLG initiated in this case.[62]

Combining the statutory framework with the parties' positions yields the decisive question: Were Donna's statements "[c]ommunication[s] on an issue under consideration or review" in MLG's breach of contract action against AMPO?[63]

2. DONNA'S STATEMENTS ARE TOO ATTENUATED FROM MLG'S BREACH OF CONTRACT ACTION TO BE PROTECTED.

The answer is no. Donna's statements are too attenuated from MLG's breach of contract action to be "on an issue under consideration or review" therein, meaning the anti-SLAPP statute does not apply. As explained below, this result finds support from both persuasive California anti-SLAPP caselaw and analogous Delaware law on the "litigation privilege."

a. CALIFORNIA ANTI-SLAPP CASELAW

No Delaware case has addressed how closely a communication must connect to an issue in a judicial proceeding to fit within Section 6002(b)(2).[64] However,

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[62] *See* Mot. ¶¶ 15-16, 19 (invoking only Section 6002(b)(2) and suggesting Donna's statements relate to "MLG's lawsuit against AMPO" in this case); Opp'n ¶¶ 11, 13 (asserting that "[t]he Motion is predicated only on [Section] 6002(b)(2)" and that Donna's statements "are unrelated to the subject of MLG's lawsuit against AMPO—i.e., a single claim for breach of contract based on AMPO's alleged non-performance under the [Agreements]").

[63] 10 *Del. C.* § 6002(b)(2).

[64] *Tesaro* found it unnecessary to address a similar issue. 2026 WL 1122338, at *7 & n.71. Instead, *Tesaro* held that the anti-SLAPP law did not apply because the

California's well-developed anti-SLAPP jurisprudence[65] provides persuasive guidance.[66]

As California courts have explained, anti-SLAPP protection "is not accorded to statements 'having any connection, however remote, with an official proceeding.'"[67] Rather, as the statutory language directs, the statements "must occur

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challenged claim, contractual repudiation, did not "arise[] from" speech. *See id.* at *7-9. Here, there is little question that the challenged claims—for defamation and tortious interference based on allegedly defamatory statements—arise from speech. *See id.* at *8 (explaining that defamation is "the quintessential example" of a claim that arises from speech). In another case, the Court of Chancery found that statements made in a court proceeding were covered under Section 6002(b)(1) but denied the anti-SLAPP motion under part three. *See Zama Cap. Master Fund, LP v. Ader*, 2026 WL 1166092, at *1 (Del. Ch. Apr. 28, 2026) (ORDER).

[65] *See* Thomas R. Burke, *Anti-SLAPP Litigation* § 8.1 (Westlaw Sept. 2025 Update) ("California's anti-SLAPP statute is now over 30 years old and has been analyzed by more trial court orders and appellate court decisions (both published and unpublished) than any other anti-SLAPP statute in the nation.").

[66] Third-Party Defendants argue that the Court should discount California caselaw because California has not adopted UPEPA. *See* Reply ¶¶ 6-8. But California's statute contains a provision similar to Delaware UPEPA Section 6002(b)(2). *See Nirschl*, 308 Cal. Rptr. 3d at 347 (explaining that California's "anti-SLAPP law makes 'any written or oral statement or writing made in connection with an issue under consideration or review by a . . . judicial body' protected activity" (quoting Cal. Civ. Proc. § 425.16(e)(2))). That is unsurprising, because UPEPA "is modeled in part on California's anti-SLAPP statute." Burke, *supra* note 65 § 1.1. The Uniform Law Commission's official comments to UPEPA reference California caselaw repeatedly, as did the Court of Chancery in *Tesaro*. *See, e.g.*, Unif. Pub. Expression Prot. Act § 2 cmts. 1-2, 5; *id.* § 7 cmts. 1-2, 4; *Tesaro*, 2026 WL 1122338, at *7-8 & nn.70-72, 77.

[67] *Bassi*, 321 Cal. Rptr. 3d at 14 (quoting *Paul*, 117 Cal. Rptr. 2d at 92).

in connection with 'an issue under consideration or review' in the proceeding."[68] That requires that the statement at least "relate[] to the substantive issues in the litigation."[69] Communications concerning matters that are "irrelevant to proving or disproving the allegations pled in the . . . proceeding" do not qualify.[70] Determining whether a statement relates to substantive issues does not lend itself to bright lines and depends on the specific facts of each case. Two cases from the California Court of Appeals are instructive.

The first is *McConnell v. Innovative Artists Talent & Literary Agency, Inc.*[71] There, plaintiffs sued the talent agency that employed them seeking declarations that they had the right to terminate their employment agreements and that certain

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[68] *See id.* (quoting *Paul*, 117 Cal. Rptr. 2d at 92); *see also Rand Res., LLC v. City of Carson*, 433 P.3d 899, 906 (Cal. 2019) ("'[I]t is insufficient to assert that the acts alleged were "in connection with" an official proceeding.' Instead, '[t]here must be a connection with an issue under review in that proceeding.'" (quoting *Paul*, 117 Cal. Rptr. 2d at 93)). Delaware's statute contains the same "issue under consideration or review" language. 10 *Del. C.* § 6002(b)(2).

[69] *Bassi*, 321 Cal. Rptr. 3d at 14 (quoting *Neville*, 73 Cal. Rptr. 3d at 391). California courts also require that the statement be "directed to persons having some interest in the litigation." *See id.*; *see also Neville*, 73 Cal. Rptr. 3d at 394-95 (collecting cases illustrating scope of requirement). Because the statements at issue here do not relate to substantive issues in the litigation, the Court need not determine whether this State's anti-SLAPP law imposes an additional "directed to persons having some interest in the litigation" requirement.

[70] *See Neville*, 73 Cal. Rptr. 3d at 389-90 (citing *Paul*, 117 Cal. Rptr. 2d at 93-94).

[71] 96 Cal. Rptr. 3d 1 (Cal. Ct. App. 2009).

provisions of those agreements were void.[72] The next day, the agency sent plaintiffs letters purporting to modify their job duties.[73] Plaintiffs later amended their complaints to assert wrongful termination and retaliation based in part on the purported modification of their duties.[74] The agency moved to strike those causes of action under California's anti-SLAPP statute, contending the letters were protected because they were written in connection with an issue under consideration in the judicial proceeding.[75]

The court affirmed denial of the anti-SLAPP motion.[76] It explained that even though "the lawsuits undoubtedly precipitated" the letters, they were directed at different issues than those raised in plaintiffs' initial lawsuit.[77] As the Court observed: "[T]he . . . letter on its face says nothing at all about [plaintiff's] lawsuit, and nothing at all about any claims [the agency] might make in that lawsuit. Consequently, it is difficult to find any basis to conclude that [the agency's] letter

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72 *See id.* at 3.

73 *See id.* at 4, 7.

74 *See id.* at 4, 6-7.

75 *See id.* at 7.

76 *Id.* at 3.

77 *See McConnell*, 96 Cal. Rptr. 3d at 7.

was written 'in connection with an issue under consideration' in those lawsuits, of which no mention at all was made."[78]

The second is *Bassi v. Bassi*. There, an ex-wife threatened to file a complaint against her ex-husband, alleging Racketeer Influenced and Corrupt Organizations Act (RICO) claims related to the sale of counterfeit "organic" seed.[79] The appellate court considered whether numerous of the ex-wife's emails were sufficiently connected to the RICO proceedings to be protected by the anti-SLAPP statute.[80]

Most of the emails were not protected.[81] Those emails referenced a "racket," appeared to call the ex-husband a "seed counterfeiter," and referenced his seed companies "stealing" and "illegally growing seed."[82] Yet the court held that they were not sufficiently connected to the RICO proceedings.[83] That was because the emails were "largely or wholly composed of assertions and innuendo that bear no clear relation to [the ex-wife's] anticipated RICO action," and none of them suggested a "good faith intention to file a lawsuit."[84] As the court explained, it was

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[78] *Id.*

[79] *See Bassi*, 321 Cal. Rptr. 3d at 9-10.

[80] *See id.* at 13, 15.

[81] *See id.* at 15.

[82] *See id.* at 16.

[83] *See id.* 15.

[84] *See id.* at 16 (quoting *Digerati Hldgs, LLC v. Young Money Entm't, LLC*, 123 Cal. Rptr. 3d 736, 746 (Cal. Ct. App. 2011)).

"insufficient for [the party seeking anti-SLAPP protection] to generally aver a connection between her communications to [the opposing party] and the anticipated exercise of her petitioning rights by filing a federal RICO action."[85]

Certain other emails were protected, because "they pertain[ed] more directly to [the ex-wife's] anticipated RICO lawsuit and include[d] or refer[red] to a draft complaint in that action."[86] The first such email "attached a revised RICO draft complaint" and suggested the ex-wife had evidentiary support for the allegations, the second advised that the ex-wife may file the RICO action but hoped to "settle our issues" without doing so, and a third asserted that the ex-husband should find a lawyer to assist with reviewing the RICO complaint.[87] The court's holding illustrates the distinction between insinuations of wrongdoing on topics vaguely related to a lawsuit, which are not protected, and communications actually referencing a lawsuit or the legal issues therein, which may be protected.

Here, Donna's statements are too vaguely related to MLG's breach of contract action to qualify for anti-SLAPP protection. Like the letter in *McConnell*, Donna's statements do not mention this lawsuit or any of the claims in it.[88] Instead, like the

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[85] *See Bassi*, 321 Cal. Rptr. 3d at 17 (citing *Paul*, 117 Cal. Rptr. 2d at 93-94).

[86] *Id.*

[87] *See id.* at 17-18.

[88] *McConnell*, 96 Cal. Rptr. 3d at 7.

unprotected emails in *Bassi*, the statements are largely "assertions and innuendo that bear no clear relation" to MLG's breach of contract action.[89] While the Counterclaims allege that Donna published statements "to implicate AMPO's business dealings" generally,[90] none of the statements reference this lawsuit, the Agreements, or breach of any contract. The closest is the website's assertion that Trout "owes our family money!" coupled with a reference to the fact that Trout is "founder/CEO of AMPO-USA."[91] But there is no indication that this refers to the money MLG would later allege AMPO owes it under the Agreements.[92] Donna's other statements are yet farther afield.[93]

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[89] *Bassi*, 321 Cal. Rptr. 3d at 16.

[90] *See* Countercl. ¶ 50.

[91] *See* Countercl. Ex. 1 at pdf pp. 3, 5.

[92] To the extent that is what Donna was referring to, Third-Party Defendants could have submitted an affidavit averring as much. *See* 10 *Del. C.* § 6006 (permitting the Court to consider "any evidence that could be considered in ruling on a motion for summary judgment"). It is the movant's burden to establish UPEPA applies. Unif. Pub. Expression Prot. Act § 7 cmt. 2. Although pleadings may sometimes suffice, *see id.*, and the Counterclaims allege some of Donna's statements were about AMPO, *see, e.g.*, Countercl. ¶¶ 17, 38-39, 49-50, they do not show that those statements concerned AMPO's obligations under the Agreements.

[93] *See, e.g.*, Countercl. Ex. 1 at pdf pp. 18-19 (generally referencing "tak[ing] what isn't earned" and "a need to possess what others have"); Countercl. ¶ 38 (alleging statement that "Brodie told us he was broke," that "things are going to spiral if he continues to lie and block us as if we don't exist," and that "Jaclyn may go away peacefully, but her father and I won't").

Nor do any statements suggest good faith anticipation of litigation.[94] The Counterclaims allege the website statements were first posted more than a year before MLG filed this lawsuit.[95] Although the Counterclaims also allege that Donna "continued publishing defamatory articles on her own website" after this litigation commenced,[96] they do not identify those articles' contents beyond anything previously posted, and Third-Party Defendants provide no reason to conclude that the articles concern MLG's breach of contract claim.[97] Together, Donna's statements appear to reflect general personal enmity, rather than an attempt to engage regarding any specific legal dispute.

At bottom, there is no basis for the Court to conclude that Donna's statements concern substantive issues in MLG's breach of contract action. On their face, they do not, and Third-Party Defendants have submitted no evidence to suggest

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[94] *See Bassi*, 321 Cal. Rptr. 3d at 14-16; *People ex rel. Allstate Ins. Co. v. Rubin*, 280 Cal. Rptr. 3d 858, 861 (Cal. Ct. App. 2021) (explaining that pre-litigation statements are protected "only where . . . [they] were made in good faith anticipation of litigation under serious consideration at the time the statements were made" (citing *Bailey v. Brewer*, 128 Cal. Rptr. 3d 380, 388 (Cal. Ct. App. 2011))).

[95] *See* Countercl. ¶ 17 (alleging website posts made in September 2024).

[96] *See id.* ¶ 38.

[97] *See McConnell*, 96 Cal. Rptr. 3d at 6-7 (explaining that "the existence of the . . . lawsuits does not mean any writing [defendant] might send thereafter is a 'writing made in connection with an issue under consideration or review' in the lawsuits").

otherwise. Accordingly, under persuasive California caselaw, the anti-SLAPP statute does not apply.[98]

b. DELAWARE LITIGATION PRIVILEGE CASELAW

Delaware cases on the "litigation privilege" provide further support. As California courts have recognized, although the two areas of law are not "coextensive," the litigation privilege can provide "an aid in construing the scope" of anti-SLAPP coverage.[99] That is because both serve similar policy interests, in that they ensure "freedom of access to the courts without [the] fear of being harassed subsequently by derivative tort actions."[100] And in applying both, courts consider

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[98] Third-Party Defendants ask the Court to follow cases from Minnesota and Washington, rather than California, *see* Reply ¶¶ 9-11, but the two cases Third-Party Defendants cite are distinguishable. Unlike here—where the underlying statements were made on a website with no clear tie to any specific legal or governmental proceeding—the statements in those cases were made in a report submitted to a state agency, an attorney letter commencing a dispute resolution process and offering settlement, and arbitration claims. *See Anderson v. Anderson*, 36 N.W.3d 811, 814, 818-19 (Minn. Ct. App. 2026) (addressing "statements set forth in a report to the Minnesota Board of Social Work"); *Valve Corp. v. Bucher Law PLLC*, 571 P.3d 312, 316-18 (Wash. Ct. App. 2025) (addressing defendant attorneys' letter "initiat[ing] the dispute resolution process" and "proposing settlement terms," as well as attorneys "fil[ing] their clients' claims individually in arbitration"), *review denied*, 579 P.3d 792 (Wash. 2025) (TABLE).

[99] *See Neville*, 73 Cal. Rptr. 3d at 388-89 (quoting *Flatley v. Mauro*, 139 P.3d 2, 17-18 (Cal. 2006)).

[100] *See id.* (alteration in original) (quoting *Healy v. Tuscany Hills Landscape & Recreation Corp.*, 39 Cal. Rptr. 3d 547, 550 (Cal. Ct. App. 2006)). To be sure, while there are similarities, the purposes of the two areas of law are not "the same." *See Flatley*, 139 P.3d at 18 (comparing litigation privilege, which "serves broad goals of guaranteeing access to the judicial process, promoting the zealous representation by

whether communications "are actually connected to litigation."[101] As noted, on the new anti-SLAPP statute, Delaware caselaw is sparse. But on the litigation privilege, it is plentiful. Litigation privilege precedent thus provides a useful Delaware law cross-check on the California anti-SLAPP cases discussed above.

Delaware courts have "long recognized" the litigation privilege, which "protects from actions for defamation statements of judges, parties, witnesses[,] and attorneys offered in the course of judicial proceedings so long as the party claiming the privilege shows that the statements issued as part of a judicial proceeding and were relevant to a matter at issue in the case."[102] The privilege "encourage[s] citizens to peaceably resolve their differences in court through litigation (or the threat of litigation) by allowing them to speak to their adversaries freely without fear of facing liability for what they say, and without the prospect of having their good faith legal

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counsel of their clients, and reinforcing the traditional function of the trial as the engine for the determination of truth," with anti-SLAPP statute, which "protect[s] the valid exercise of constitutional rights of free speech and petition from the abuse of the judicial process"). Even so, California courts recognize that "[t]here is, of course, a relationship between the litigation privilege and the anti-SLAPP statute," and they look to the former as an aid in construing the latter. *See id.* at 17.

[101] *See Bel Air Internet, LLC v. Morales*, 230 Cal. Rptr. 3d 71, 84 (Cal. Ct. App. 2018) (citations omitted).

[102] *Seva Hldgs. Inc. v. Octo Platform Equity Hldgs., LLC*, 2024 WL 3982187, at *5 (Del. Ch. Aug. 29, 2024) (quoting *Paige Cap. Mgmt., LLC v. Lerner Master Fund, LLC*, 22 A.3d 710, 715 (Del. Ch. 2011)).

claims prompt the initiation of more claims."[103] In other words, it is "designed to encourage candid and full testimony in court, to have parties resolve their disputes peaceably, to let a result issue, and then move on."[104]

"Traditionally," the privilege "applied only to statements made during judicial proceedings."[105] However, its scope "has expanded over time," particularly to cover "communications made in advance of anticipated litigation."[106] Yet Delaware courts have cautioned against extending the privilege beyond its policy rationale.[107] Pre-litigation communications can fit that rationale, but only where made "in an effort to address the alleged grievance between the parties."[108] Accordingly, where pre-

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[103] *Paige Cap. Mgmt.*, LLC, 22 A.3d at 716.

[104] *Id.* at 720.

[105] *Feenix Payment Sys., LLC v. Blum*, 2022 WL 215026, at *6 (Del. Super. Jan. 25, 2022) (citing *Paige Cap. Mgmt.*, 22 A.3d at 716-17).

[106] *Id.* (citing *Paige Cap. Mgmt.*, 22 A.3d at 716-17). The privilege's traditional application is analogous to 10 *Del. C.* § 6002(b)(1), which protects statements "in" a judicial proceeding. Section 6002(b)(2), which protects statements "on an issue under consideration or review in" a judicial proceeding, more readily corresponds to the more recent expansion of the privilege.

[107] *See Paige Cap. Mgmt.*, 22 A.3d at 720 (declining to extend privilege where doing so would not serve policy of "encourag[ing] full-throated advocacy . . . to facilitate a fair adjudication of the underlying claims"); *see also Whittington v. Whittington*, 2024 WL 490807, at *3 (Del. Super. Feb. 8, 2024) (explaining that privilege extends "where the purposes underlying the privilege are satisfied" (quoting *Tatro v. Esham*, 335 A.2d 623, 627 (Del. Super. 1975))).

[108] *See Feenix*, 2022 WL 215026, at *6 (quoting *BRP Hold Ox, LLC v. Chilian*, 2018 WL 5734648, at *5 (Del. Super. Oct. 31, 2018)); *Paige Cap. Mgmt.*, 22 A.3d at 722-23 (explaining that rationale for extending privilege is to "allow[] parties to

litigation communications are covered, they are typically formal letters sent to parties with some relationship to the dispute.[109] Delaware courts have not expanded the privilege to include internet or media statements, except where they merely "profess to be reports of court documents."[110]

Donna's statements are a poor fit for Delaware's litigation privilege. None seek to resolve the parties' disputes peaceably or to gather information for that purpose. They appear to seek the opposite, offering to provide webpage visitors with "more information regarding Brodie D. Trout or AMPO/USA" and conveying that Donna will not "go away peacefully."[111] The website statements were not directed

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peaceably resolve disputes in advance of litigation by previewing claims that will be made in good faith in litigation").

[109] *See, e.g.*, *Whittington*, 2024 WL 490807, at *3 (holding privilege applied to letter sent by law firm to party seeking information as part of "preliminary investigation to determine whether any cause of action could be pursued" against that party); *Feenix*, 2022 WL 215026, at *7 (holding privilege applied to letter sent to lenders who "were not an unrelated third party" but were "the party . . . identified as acting unlawfully with respect to [the sender's] property").

[110] *See Barker v. Huang*, 610 A.2d 1341, 1345-46 (Del 1992) (explaining that "statements . . . made during a newspaper interview concerning judicial proceedings[] are not accorded the protection of the absolute [litigation] privilege" but that allegedly defamatory articles were protected because they "each by their own words profess to be reports of court documents, rather than of direct interviews"); *Sunstar Ventures, LLC v. Tigani*, 2009 WL 1231246, at *6-7 (Del. Super. Apr. 30, 2009) (holding statements "made during a newspaper interview concerning the soon to be filed Contract Action," published in print and online, were not privileged).

[111] *See* Countercl. Ex. 1 at pdf pp. 3, 5; Countercl. ¶ 38 ("Jaclyn may go away peacefully, but her father and I won't.").

to parties with a relationship to the dispute but, rather, were posted on the internet for the public writ large.

Donna's statements are unlike any that Delaware courts have found privileged, and there is no policy rationale for expanding the privilege to cover them. To be sure, the Court does not hold that the protections of 10 *Del. C.* § 6002(b)(2) and the litigation privilege are coextensive. But this State's litigation privilege jurisprudence provides further reason to conclude that the statements here are not sufficiently connected to a pending judicial proceeding to qualify for coverage under the anti-SLAPP statute.

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For the reasons explained above, the anti-SLAPP statute does not apply, meaning Third-Party Defendants' "special motion" fails at step one, and the Court need not address steps two or three. The practical consequence is that Third-Party Defendants may not recover fees, costs, or punitive damages.[112]

That does not mean AMPO's claims may proceed. The Court next addresses Third-Party Defendants' alternative request for dismissal under Rules 12(b)(2) and 12(b)(6).

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[112] *See* 10 *Del. C.* § 6010.

B. RULE 12(B)(2): THE COURT LACKS PERSONAL JURISDICTION OVER DONNA AND MIKE.

Third-Party Defendants assert that the Court lacks personal jurisdiction over Donna and Mike, residents of Florida and Maryland.[113]

When a defendant invokes Rule 12(b)(2) to seek dismissal for lack of personal jurisdiction, "[t]he plaintiff has the burden to show a basis for the Court's jurisdiction over the nonresident defendant."[114] In assessing this burden, the Court engages in a two-pronged inquiry: it must determine, first, "that service of process is authorized by statute" and, second, "that the exercise of jurisdiction over the nonresident defendant comports with traditional due process notions of fair play and substantial justice."[115] Both prongs must be satisfied as to each defendant.[116] "If, as here, no evidentiary hearing has been held, [the] plaintiff[] need only make a *prima facie* showing of personal jurisdiction, and 'the record is construed in the light most favorable to the plaintiff.'"[117]

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[113] *See* Mot. ¶¶ 23-29; Countercl. ¶¶ 4, 6.

[114] *Terramar Retail Ctrs., LLC v. Marion #2-Seaport Trust U/A/D/ June 21, 2002*, 2017 WL 3575712, at *4 (Del. Ch. Aug. 18, 2017) (quoting *Sprint Nextel Corp. v. iPCS, Inc.*, 2008 WL 2737409, at *5 (Del. Ch. July 14, 2008)), *aff'd*, 184 A.3d 1290 (Del. 2018) (TABLE).

[115] *Ryan*, 935 A.2d at 265 (citations omitted).

[116] *See CLP Toxicology, Inc. v. Casla Bio Hldgs. LLC*, 2020 WL 3564622, at *10 (Del. Ch. June 29, 2020) (citation omitted).

[117] *Ryan*, 935 A.2d at 265 (citations omitted).

As explained below, AMPO fails to make a *prima facie* showing of jurisdiction over Donna or Mike.

1. Donna's internet posts and purported revenue from a Delaware LLC do not establish jurisdiction.

For jurisdiction over Donna, AMPO invokes 10 *Del. C.* § 3104(c)(4).[118] That subsection applies where a person

> [c]auses tortious injury in the State or outside of the State by an act or omission outside the State if the person regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from services, or things used or consumed in the State.[119]

Unlike the other Section 3104(c) prongs, which concern specific jurisdiction, (c)(4) "confers general jurisdiction."[120] Accordingly, subsection (c)(4) "requires a higher level of activity in the forum state."[121]

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[118] *See* Opp'n ¶¶ 23-24.

[119] 10 *Del. C.* § 3104(c)(4).

[120] *Lone Pine Res., LP v. Dickey*, 2021 WL 2311954, at *5 & n.25 (Del. Ch. June 7, 2021) (citing *Comput. People, Inc. v. Best Int'l Grp., Inc.*, 1999 WL 288119, at *7 (Del. Ch. Apr. 27, 1999)).

[121] *Id.* (citation omitted); *see also Comput. People*, 1999 WL 288119, at *8 ("Specifically, subsection (c)(4) jurisdiction arises only 'when a defendant has had contacts with this state that are so extensive and continuing that it is fair and consistent with state policy to require that the defendant appear here and defend a claim.'" (quoting *Red Sail Easter Ltd. P'rs, L.P. v. Radio City Music Hall Prods., Inc.*, 1991 WL 129174, at *3 (Del. Ch. July 10, 1991))).

AMPO asserts that "Donna conducted a targeted defamation campaign against a Delaware corporation [AMPO] for years and derives substantial revenue from a Delaware LLC."[122] According to AMPO, this is sufficient for general jurisdiction.[123] It is not.

First, "mere maintenance of a website or webpage over the Internet accessible to anyone, including Delawareans, . . . is insufficient to confer general jurisdiction."[124] Accordingly, assuming Donna's website was accessible in Delaware, that would provide no basis for jurisdiction. To the extent AMPO relies on Donna's non-website statements,[125] the Counterclaims fail to allege they were made to anyone in Delaware, let alone that they constituted a "persistent course of conduct in the State."[126]

Second, AMPO has not shown that Donna "derives substantial revenue from a Delaware LLC."[127] Neither the Counterclaims nor AMPO's opposition specify the

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[122] *See* Opp'n ¶ 24.

[123] *See id.*

[124] *Owens v. Lead Stories, LLC*, 2021 WL 3076686, at *4 (Del. Super. July 20, 2021) (citing *Rotblut v. Terrapinn, Inc.*, 2016 WL 5539884, at *6 (Del. Super. Sept. 30, 2016)), *aff'd*, 273 A.3d 275 (Del. 2022) (TABLE).

[125] *See* Countercl. ¶¶ 18, 38, 50.

[126] 10 *Del. C.* § 3104(c)(4).

[127] *See* Opp'n ¶ 24. Even if AMPO had made such a showing, it would still need to show that the substantial revenue was "from services, or things used or consumed in the State." 10 *Del. C.* § 3104(c)(4).

relevant Delaware LLC. Rather, the opposition cites four attached exhibits without explanation. These exhibits are: (i) a webpage posted by "Donna Lewis Stiles LLC" advertising real estate services for buying homes in Florida or Maryland;[128] (ii) a Realtor.com listing for Donna, seeming to show that she is affiliated with "Berkshire Hathaway Homeservices Penfed Realty" in Maryland;[129] (iii) a webpage indicating "Berkshire Hathway HomeServices" is "[a]n independently owned and operated franchisee of BHH Affiliates, LLC;"[130] and (iv) a Delaware Secretary of State entity search result showing BHH Affiliates, LLC is a Delaware LLC.[131] Without so much as an explanation, the links at which these exhibits hint are too vague and attenuated to establish general jurisdiction.[132] And, in any event, the Counterclaims do not allege that any revenue Donna receives is "substantial," as required by the statute.[133]

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[128] *See* Opp'n Ex. 1.

[129] *See* Opp'n Ex. 2.

[130] *See* Opp'n Ex. 3.

[131] *See* Opp'n Ex. 4.

[132] *See Toe No.2 v. Blessed Hope Baptist Church, Inc. of Hartford Cty.*, 2012 WL 1413552, at *2 (Del. Super. Jan. 31, 2012) (explaining that evidence in support of personal jurisdiction "cannot be mere vague or general assertions, without factual specificity" (citing *Greenly v. Davis*, 486 A.2d 669, 670 (Del. 1984))); *Comput. People*, 1999 WL 288119, at *7 (holding defendant's "Delaware contacts are too attenuated to support personal jurisdiction grounded upon his 'general presence in this state'" (citations omitted)).

[133] *See Rotblut*, 2016 WL 5539884, at *8.

AMPO asserts no other basis for jurisdiction over Donna. The claims against her are thus dismissed under Rule 12(b)(2).

2. MIKE'S RELATIONSHIP TO AND ALLEGED ACTS TARGETING DELAWARE ENTITIES DO NOT ESTABLISH JURISDICTION.

Turning to Mike, AMPO invokes 10 *Del. C.* § 3104(c)(1) and 6 *Del. C.* § 18-109.[134] Section 3104(c)(1) applies where a person "[t]ransacts any business or performs any character of work or service in the State."[135] Under Section 18-109, a Delaware LLC manager consents to jurisdiction for proceedings "involving or relating to the business of the [LLC] or a violation by the manager . . . of a duty to the [LLC]."[136]

According to AMPO, these statutes are triggered because Mike "participates materially in [Delaware LLC] MLG's business" and "intentionally interfered with a Delaware competitor's business by making false statements to government representatives and suppliers about AMPO's ability to perform on its contracts, and derived financial benefit from that interference."[137] The Court does not have jurisdiction under either statute.

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[134] *See* Opp'n ¶¶ 18-20.

[135] 10 *Del. C.* § 3104(c)(1).

[136] 6 *Del. C.* § 18-109(a). "Manager," for purposes of Section 18-109, includes a "person . . . who . . . participates materially in the management of the [LLC]." *Id.*

[137] *See* Opp'n ¶ 20 (citations omitted).

To the extent it contends formation of MLG satisfies Section 3104(c)(1), AMPO is mistaken. Forming a Delaware entity is a basis for jurisdiction only where that formation is "'done as part of a wrongful scheme' or 'an integral component of [the] total transaction . . . to which the plaintiff's instant cause of action relates.'"[138] Mike's only alleged "wrongful conduct" was his "contact[ing] government representatives and suppliers" regarding AMPO.[139] The formation of MLG was not part of that conduct.

Nor does committing an alleged tort against a Delaware-domiciled business suffice. The Counterclaims do not allege that Mike contacted government representatives and suppliers in Delaware or that AMPO is headquartered or does any business there.[140] It is thus unclear how Mike could be said to have "[t]ransact[ed] any business or perform[ed] any character of work or service" in Delaware.[141]

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[138] *Lone Pine*, 2021 WL 2311954, at *5 (alterations in original) (first quoting *Conn. Gen. Life Ins. Co. v. Pinkas*, 2011 WL 5222796, at *2 (Del. Ch. Oct. 28, 2011); and then quoting *Papendick v. Bosch*, 410 A.2d 148, 152 (Del. 1979)).

[139] *See* Countercl. ¶ 41.

[140] AMPO also suggests that Mike "derived financial benefit" from this contact with government representatives and suppliers. *See* Opp'n ¶ 20. That is not alleged in the Counterclaims, nor would it show that Mike transacted business or performed work in Delaware.

[141] 10 *Del. C.* § 3104(c)(1); *cf. In re Bracket Hldg. Corp. Litig.*, 2017 WL 3283169, at *14 (Del. Super. July 31, 2017) (holding out-of-state activities that allegedly "directly harmed . . . a Delaware corporation" insufficient to confer jurisdiction

The LLC manager consent statute similarly does not apply. Delaware courts have sometimes interpreted Section 18-109 "narrowly to refer to corporate governance and the internal affairs of an LLC."[142] More recently, the Court of Chancery interpreted Section 18-109's "involving or relating to the business of the [LLC]" language more broadly, but even then, extended it only to claims that "relate to running an LLC's day-to-day business."[143]

Even construing Section 18-109 broadly, AMPO has not satisfied it. The Counterclaims do not allege Mike's false statements were made as part of MLG's "day-to-day business." To the contrary, the Counterclaims suggest that Mike

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because "[n]one of the corporations in this case have presences in Delaware, and none of [defendant's] conduct is alleged to have occurred in Delaware," rejecting application of conspiracy theory of jurisdiction (citations omitted)).

[142] *See Endowment Res. Grp., LLC v. Wildcat Venture P'rs, LLC*, 2021 WL 841049, at *5 (Del. Ch. Mar. 5, 2021) (first citing *CLP Toxicology*, 2020 WL 3564622, at *12; and then citing *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at *9 (Del. Ch. June 15, 2011), *aff'd*, 38 A.3d 1254 (Del. 2012) (TABLE)).

[143] *See Next Level Ventures, LLC v. AVID USA Techs. LLC*, 2023 WL 3141054, at *20 (Del. Ch. Mar. 16, 2023) (citations omitted).

engaged in this conduct as a form of personal retaliation for Trout "seeking divorce from Jaclyn."[144] Section 18-109 does not apply.[145]

As with Donna, AMPO has failed to establish personal jurisdiction over Mike. Third-Party Defendants' Rule 12(b)(2) motion is granted.[146]

C. Rule 12(b)(6): AMPO fails to state a claim against Vavala.

Lacking jurisdiction over Donna and Mike, the Court is left to consider the merits of AMPO's claims against Vavala: Count Two, for defamation; and Count Six, for tortious interference with business relations.

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[144] *See* Countercl. ¶¶ 39, 41. The Counterclaims allege "MLG, through Mike and Don" contacted government representatives and suppliers, "causing reputational harm and damages to AMPO's business." *See id.* ¶ 41. That is not a factual allegation that this contact was made as part of Mike's day-to-day role managing the business, and it is in any event made "[o]n information and belief." *See id.*; *infra* n.153.

[145] Even if Section 18-109 applied, AMPO would need to establish that due process is satisfied. As the *Next Level Ventures* court explained while interpreting Section 18-109 broadly, the due process inquiry "is particularly important for claims that do not relate to the LLC's internal affairs." *See Next Level Ventures*, 2023 WL 3141054, at *21.

[146] AMPO's request for jurisdictional discovery is denied. *See* Opp'n ¶ 25. AMPO has not shown that jurisdiction in Delaware is "minimally plausible." *See Xactus, LLC v. Sike*, 2024 WL 3947319, at *8 (Del. Ch. Aug. 27, 2024) (ORDER) (quoting *300 W 22 Realty, LLC v. Strathmore Ins. Co.*, 2023 WL 2300628, at *4 (Del. Super. Mar. 1, 2023), *aff'd*, 309 A.3d 1265 (Del. 2023) (TABLE)). The Court will not permit it to "fish for a possible basis" for jurisdiction over Donna and Mike. *In re Am. Int'l Grp., Inc.*, 965 A.2d 763, 816 n.195 (Del. Ch. 2009), *aff'd sub nom. Teachers' Ret. Sys. of La. v. PricewaterhouseCoopers LLP*, 11 A.3d 228 (Del. 2011) (TABLE).

Upon a Rule 12(b)(6) motion, the Court: (i) accepts all well-pled factual allegations as true; (ii) credits vague allegations if they give the opposing party notice of the claim; (iii) draws all reasonable inferences in favor of the non-moving party; and (iv) denies dismissal if recovery on the claim is reasonably conceivable.[147] The Court does not, however, accept conclusory allegations unsupported by facts or draw unreasonable inferences in favor of the nonmovant.[148]

Even under this non-movant-friendly standard, AMPO fails to state a claim for defamation or tortious interference against Vavala.

1. THE COUNTERCLAIMS FAIL TO ALLEGE VAVALA MADE A DEFAMATORY STATEMENT.

AMPO's defamation claim fails for a straightforward reason: the Counterclaims fail to allege that Vavala made a defamatory statement.[149] The specific statements identified in the Counterclaims were made by Donna, not

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[147] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldg., LLC*, 27 A.3d 531, 535 (Del. 2011) (citing *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896 (Del. 2002)).

[148] *Windsor I, LLC v. CWCapital Asset Mgmt. LLC*, 238 A.3d 863, 871 (Del. 2020) (citing *Deuley v. DynCorp Int'l, Inc.*, 8 A.3d 1156, 1160 (Del. 2010)).

[149] *See Page v. Oath Inc.*, 270 A.3d 833, 842 (Del. 2022) (explaining that to state a claim, plaintiff "must plead" that "the defendant made a defamatory statement" (quoting *Doe v. Cahill*, 884 A.2d 451, 463 (Del. 2005))).

Vavala.[150] The only paragraph gesturing toward any alleged defamatory statement by Vavala is:

> On information and belief, MLG, through Mike and [Vavala], has contacted government representatives and suppliers, causing reputational harm and damages to AMPO's business. AMPO is gathering specific information about MLG's efforts, but multiple industry contacts have mentioned and/or implied that they have heard rumors from [Vavala] or Mike about AMPO's ability to perform on its contracts.[151]

This allegation is conclusory and cannot support a claim, for multiple reasons.[152] It is made only "[o]n information and belief."[153] It "fails to identify to whom the allegedly [defamatory] statements were made," alluding only generally to

[150] *See McMahon v. McMahon*, 340 A.3d 543, 2025 WL 903788, at *3 (Del. 2025) (TABLE) (holding statement "cannot support a libel claim because that statement was not published by Defendant" (citing *Page*, 270 A.3d at 842)).

[151] Countercl. ¶ 41.

[152] *See Page*, 270 A.3d at 843 (explaining that a court "is not required to accept as true conclusory allegations without specific supporting factual allegations" (citation modified)).

[153] *See Neurvana Med., LLC v. Balt USA, LLC*, 2020 WL 949917, at *23 (Del. Ch. Feb. 27, 2020) (holding allegation that defendant "repeatedly disparaged [plaintiff company] and its officers to investors, potential investors, members of [the company's] board, and other people and entities in the neuro-medical device industry" need not be accepted as true because it was "made merely '[u]pon information and belief' and was unsupported by well-pleaded facts" (citing *Griffin Corp. Servs., LLC v. Jacobs*, 2005 WL 2000775, at *6 (Del. Ch. Aug. 11, 2005)).

"government representatives and suppliers."[154] It "provides no examples of specific statements,"[155] alleging only "rumors . . . about AMPO's ability to perform on its contracts."[156] And it is far from specific regarding whether Vavala in fact made any statement, or even whether a third-party said that Vavala made any statement, alleging only that "industry contacts have mentioned *and/or implied* that they have heard rumors from [Vavala] *or* Mike."[157]

Accordingly, AMPO's defamation claim against Vavala is dismissed.

2. THE COUNTERCLAIMS FAIL TO ALLEGE A BUSINESS OPPORTUNITY WITH WHICH VAVALA INTERFERED.

AMPO's tortious interference claim likewise fails. As with defamation, the only relevant allegations against Vavala are made "[o]n information and belief."[158] In addition, the Counterclaims fail to allege any specific business opportunity with which Vavala interfered.

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154 *See McMahon*, 2025 WL 903788, at *2 (affirming dismissal where complaint alleged defendant made statement to "multiple individuals, including colleagues where she and Plaintiff McMahon's wife work").

155 *See id.*

156 Countercl. ¶ 41.

157 *Id.* (emphasis added).

158 *See id.*

A tortious interference claim requires a plaintiff to plead "the reasonable probability of a business opportunity."[159] Under this element, the plaintiff must "identify a specific party who was prepared to enter[] into a business relationship but was dissuaded from doing so by the defendant."[160] It is insufficient to "offer 'vague statements about unknown customers'" or allege "a 'nebulous, unascertainable class' of business relationships."[161]

AMPO does not plead any specific party prepared to enter a business relationship. It pleads generally that it had expectations of relations "with government agencies, suppliers, and other parties in the defense procurement industry."[162] AMPO cites *Images Hair Solutions Medical Center v. Fox News Network, LLC* for the proposition that plaintiffs need not "plead the names or identifying information of the parties interfered with."[163] But AMPO's pleading is even more conjectural than the allegations in that case. Whereas plaintiffs in *Images*

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159 *Organovo Hldgs., Inc. v. Dimitrov*, 162 A.3d 102, 122 (Del. Ch. 2017) (quoting *DeBonaventura v. Nationwide Mut. Ins. Co.*, 419 A.2d 942, 947 (Del. Ch. 1980)).

160 *Id.* (quoting *Agilent Techs., Inc. v. Kirkland*, 2009 WL 119865, at *7 (Del. Ch. Jan. 20, 2009)).

161 *Id.* at 122-23 (first quoting *Agilent*, 2009 WL 119865, at *7; and then quoting *Kimbleton v. White*, 2014 WL 4386760, at *8 (D. Del. Sept. 4, 2014)).

162 *See* Countercl. ¶ 78.

163 *See* Opp'n ¶ 36 (citing *Images Hair Sols. Med. Ctr. v. Fox News Network, LLC*, 2013 WL 6917138, at *6 (Del. Super. Dec. 20, 2013)).

Hair pled "a number of customers who cancelled appointments,"[164] AMPO pleads only that Vavala's statements "caus[ed] reputational harm and damages to AMPO's business."[165] AMPO does not plead that it lost any customer or partner, either identified or unidentified.

The tortious interference claim against Vavala is dismissed.

IV. CONCLUSION

For the foregoing reasons, Third-Party Defendants' motion to dismiss under 10 *Del. C.* § 6003 is denied. The motion under Rule 12(b)(2) is granted without prejudice to AMPO's right to file claims against Donna and Mike in a court of competent jurisdiction. The motion under Rule 12(b)(6) is granted as to the claims against Vavala and moot as to the claims against Donna and Mike.

IT IS SO ORDERED.

/s/ *Patricia A. Winston*
Patricia A. Winston, Judge

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[164] *Images Hair*, 2013 WL 6917138, at *6.

[165] *See* Countercl. ¶ 41.