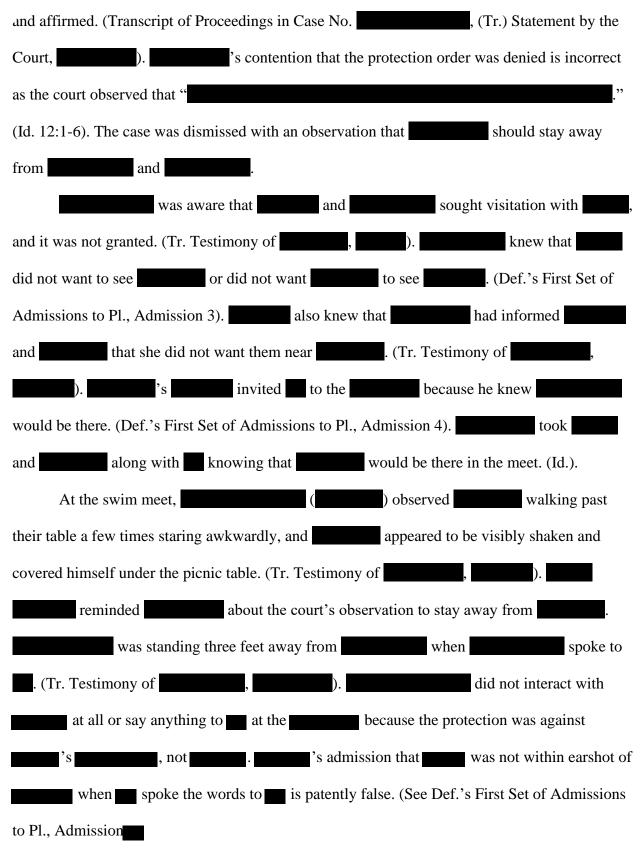
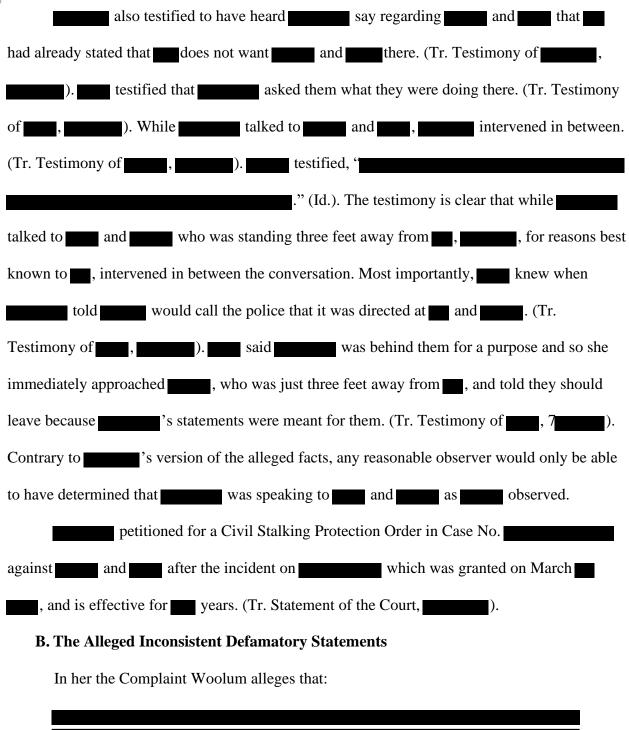
IC		2723 South State Street, Suite 150 Ann Arbor, MI 48104
LawCompany	N THE COURT OF COMMON PLEAS COUNTY, OHIO CIVIL DIVISION	(866) 534-6177 LawCompany.com
	: CASE NO.:	
Plaintiff,	: Judge	
VS.	:	
(), et al. :	
Defendants.		
<u>DEFEI</u> TO PLAINTIFF	NDANT 'S RESPO 'S CROSS-MOTION F JUDGMENT	
Defendant	, now known as,	(),
through counsel,	, responds and requests that t	his Court deny Plaintiff
's ("	") Cross-Motion for Summary J	udgment and states as
follows:		
	STATEMENT OF FACTS	
A. Background of th	e Facts	
The matter relates to	's allegation that made	certain defamatory
statements during a	on on , to o , is the	of s
former ,	(). Due to discord, the	nere were several issues
between the parties, include	ing issues related to the visitation of	's,
(),	of s deceased Earlier,	had
demanded that	and his () stay	away from
in another court proceeding	g. The court denied the svisitation 's visitation's visit	on which was appealed









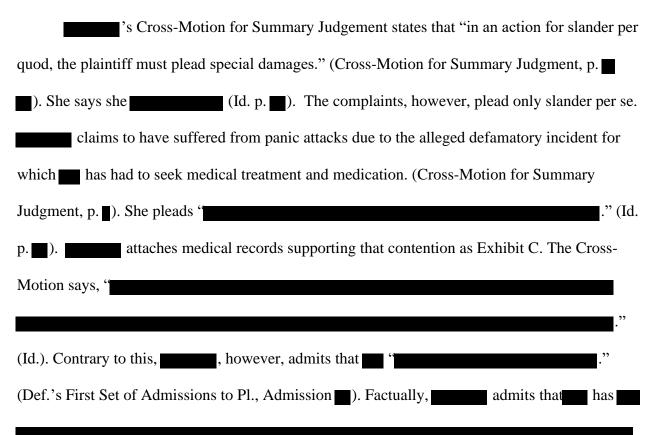
(Am. Compl. \P).



The Complaint or Amended Complaint do not allege any other statements by The Cross-Motion for Summary judgment, however, alleges additional statements than the aforesaid initial pleadings as follows:

The statements quoted as stated by **Example** to **Example** are inconsistent in the Complaint and the Cross-Motion for Summary Judgement.

C. Untenable Allegations of Panic Attacks



." (Id.). Besides, the alleged defamatory incident happened on **second second s**

D. Procedural History

The Complaint filed on **proceedings**, alleged cause of action for slander and slander per se seeking compensatory damages and punitive damages and other reliefs. answer and first set of requests for admissions, interrogatories, and requests for production of Thereafter, **Market** filed unsigned and unnotarized documents on responses to the discovery requests. A hearing was held on the second second in which under oath, stated that remarks means were directed towards and not A transcript was ordered to present objections. The transcript was prepared on filed a Motion for Summary Judgment on **Example 1**. On s Counsel filed for an extension of time to respond to the motion under Civil Rule 56(F) to seek the transcript of testimonial evidence that supports **seek** 's claims. The motion also stated that was an indispensable party. The transcript had been submitted to Judge before the hearing for review. Undoubtedly, the transcript was available to 's Counsel before the filing of the motion for extension of time to file a response to the motion for summary judgment on

filed a motion to amend the original complaint and no attempt was made to make an indispensable party. The amended complaint requests for "special damages" of medical expenses and lost wages. (See Pl.'s Motion to File Amended Complaint Instanter).

filed a Response to the Motion to Amend complaint seeking sanctions for misleading



the court regarding the availability of the transcript on **sector**. If the filed her response

to the Motion along with a Cross-Motion for Summary Judgment.

Thus, this response.

STANDARD OF REVIEW

Civ.R. 56(C) provides, in pertinent part:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. * * * A summary judgment shall not be rendered unless it appears from such evidence or stipulation and only therefrom, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, such party being entitled to have the evidence or stipulation construed most strongly in his favor.

Cairelli v. Brunner, 10th Dist. Franklin No. 18 AP 000164, 2019-Ohio-1511, ¶ 43.

The party moving for summary judgment bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of materia (sic) fact. The moving party may not make a conclusory assertion that the non-moving party has no evidence to prove its case. The moving party must specifically point to some evidence which demonstrates the non-moving party cannot support its claim. If the moving party satisfies this requirement, the burden shifts to the non-moving party to set forth specific facts demonstrating there is a genuine issue of material fact for trial.

Id. at ¶ 44 (citing Vahila v. Hall, 77 Ohio St.3d 421, 429, 1997-Ohio-259, 674 N.E.2d 1164).

A. Slander Per Se and Slander Per Quod.

"Slander consists of oral defamatory statements." McCartney v. Oblates of St. Francis

deSales, 80 Ohio App.3d 345, 353, 609 N.E.2d 216 (6th Dist.1992) (citing Restatement of the

Law 2d, Torts (1977) 177, Section 568). "There are two actionable types of slander: slander per

se and slander per quod." Id. (citing Rainey v. Shaffer, 8 Ohio App.3d 262, 264, 456 N.E.2d

1328, 1331 (11th Dist.1983)). "Slander per quod is defined as slander determined by the

nterpretation of the listener, through innuendo, as between an innocent or harmless meaning and a defamatory one." *Id.* (citing *Rainey*, 8 Ohio App.3d at 264). "Slander per se means that the slander is accomplished by the very words spoken." *Id.* To constitute "an oral defamatory remark to be considered slander per se it must consist of words which import an indictable criminal offense involving moral turpitude or infamous punishment, imputes some loathsome or contagious disease *which excludes one from society or tends to injure one in his trade or occupation. Id.* (citing *Schoedler v. Motometer Gauge & Equip. Corp.*, 134 Ohio St. 78, 84, 15 N.E.2d 958, 960 (1938) (emphasis added). "The determination of whether a statement is slander per se or slander per quod is a question of law for the trial court." *Id.* at 353-354 (citing *Matalka v. Lagemann*, 21 Ohio App.3d 134, 486 N.E.2d 1220 (10th Dist.1985)). "If the statements are deemed to be actionable per quod, the plaintiff must allege and prove damages." *Id.* at 34 (citing *Becker v. Toulmin*, 165 Ohio St. 549, 138 N.E.2d 391 (1956), at paragraphs three and four of the syllabus). "If the statements are found to be actionable per se, both damages, and actual malice, are presumed to exist." *Id.* (internal citations omitted).

In the Cross-Motion for Summary Judgment, argues that had met burden of proving both slander per se and slander per quod. In slander per se, the slander is accomplished by the very words spoken and in slander per quod the slander results from the listener's interpretation of the words through innuendo. The facts established by testimony do not suggest that the alleged statements were directed to **matrix**. Thus, any alleged slander should be interpretation of the words through innuendo, and, therefore, may be slander per quod.

's complaint, however, has not alleged a cause of action for slander per quod. In addition, for slander per quod, there can be no recovery absent proof of special damage.

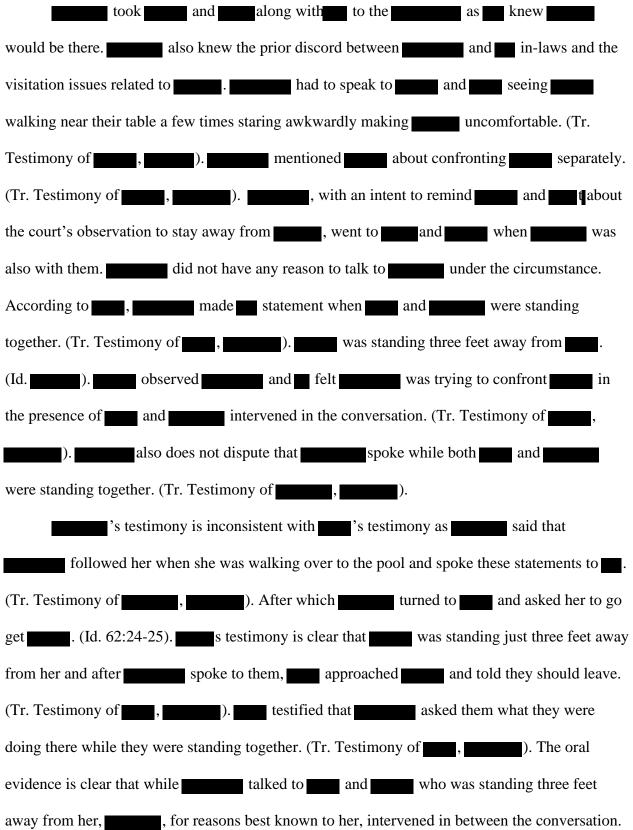
ARGUMENT

I. **In the set of set o**

"To be actionable as defamation per se, the statements must 'import an indictable criminal offense involving moral turpitude[,]' 'impute a loathsome or contagious disease which excludes one from society[,] or 'tend to injure one in his trade or business occupation."" *Pietrangelo v. Lorain Cty. PR & Pub. Co.*, 2017-Ohio-8783, 100 N.E.3d 1028, ¶ 12 (9th Dist.) (citing *Dunnigan v. City of Lorain*, 9th Dist. Lorain No. 02CA008010, 2002-Ohio-5548, ¶ 35). "The crime of moral turpitude must subject the offender to 'infamous punishment[.]"" *Id.* (quoting *Gilbert v. WNIR 100 FM*, 142 Ohio App.3d 725, 742, 756 N.E.2d 1263 (9th Dist.2001)). ""When not ambiguous, whether a statement is defamation per se is a question of law for the trial court to determine."" *Id.* (quoting *Northeast Ohio Elite Gymnastics Training Ctr., Inc. v. Osborne*, 183 Ohio App.3d 104, 2009-Ohio-2612, 916 N.E.2d 484 at ¶ 8 (9th Dist.)).

asserts **a** to have falsely stated to **a** that **b** had a protection order against **a** in the presence of **a** and many other attendees of the swim meet, and that the statement was not privileged, and **b** where that the statement was false because she has never even sought a restraining order against **b** and so **b** has met **b** burden of proving all the four elements of the claims for both slander per se and slander per quod. (Cross-Motion for Summary Judgment, pp. **b**. The alleged defamatory statements in the complaint "_____?, **b** and a

threat to call the police, do not constitute defamation per se against as a matter of law.



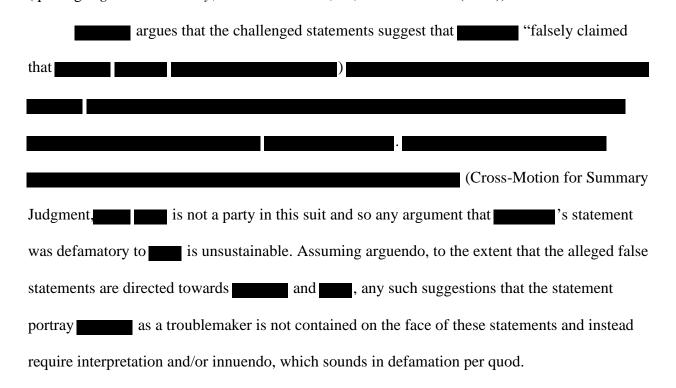
So, there is no evidence or reason whatsoever to show that spoke directly to as was worried about as 's seeing seeing and spoke to them about it. Next, regarding the challenged statements (i.e., "

), these statements do not import an indictable criminal offense involving moral turpitude that subjects to infamous punishment, impute a loathsome or contagious disease, or tend to injure her trade or business occupation. Thus, it is ridiculous to argue that falsely claimed that "for a contract of the second of the against them and this means "**The set of**" already committed an indictable criminal offense involving moral turpitude and was committing another one by violating the restraining order. How can anyone who sees someone speaking to two persons standing together exclude the other person and think about one person to portray her as a troublemaker? The statements do not reflect upon 's character in a manner that would cause her to be ridiculed, hated, or held in contempt. ("[S]poken words accusing a person of committing a crime are slanderous per se[.]" Osborne, supra, at \P 8). Pertinently, **and** i testified that she knew was behind them for a purpose and when made that statement and told would call the police she knew it was directed at her and the . (Tr. Testimony of the .). Also, the 's statement is clear that intervened in the statement is conversation. So, it was who intervened in the conversation and tried to create a confrontation to turn around and allege defamation against her in front of others. **Here are an area and an area and an area and ar** were directed towards her alone and that the statement accused her of committing a crime. admitted that she was standing with the when the spoke to her, and the stated that was three feet away from them. None of the testimony or evidence shows that

spoke the alleged statements directly to **manage**. Thus, the challenged statements do not constitute slander per se for the same reasons.

II. The Complaint does not specifically plead a cause of action for slander per quod and there is no evidence to support that **manual** had to seek medical treatment because of the alleged incident.

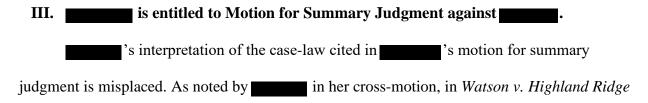
"When a statement is defamation per se, some damages are presumed, and the plaintiff is not required to prove special damages." *Osborne*, supra, at ¶ 9 (citing *Shoemaker v. Community Action Org. of Scioto Cty., Inc.*, 4th Dist. Scioto No. 06CA3121, 2007-Ohio-3708, at ¶ 13). "In contrast, if the statement is defamation per quod, special damages must be pled and proven." *Id*. (citing *Murray v. Knight-Ridder, Inc.*, 7th Dist. Belmont No. 02 BE 45, 2004-Ohio-82, at ¶ 16). "Special damages are damages of such a nature that they do not follow as a necessary consequence of the [complained injury]." *Id*. (citations omitted). "Further, special damages are damages that 'result from conduct of a person other than the defamer or the one defamed."" *Id*. (quoting *Bigelow v. Brumley*, 138 Ohio St. 574, 94, 37 N.E.2d 584 (1941)).



To constitute slander per quod, special damages must be pled and proven. **To** did allege, in conclusory fashion, that she suffered special damages as a result of **to**'s 's conduct. However, there is no indication in the complaint that **to** could have possibly suffered special damages, which have been described as an actual, temporal loss of something having economic or pecuniary value. *See, generally*, 2 Smolla, Law of Defamation (2 Ed.2003), 7-3, Section 7:2.

affirms that **a** knowingly and falsely stated loudly in front of **a** firms "that she had a restraining order against **a** and as a result, she **a** and **a** and as a result, she **a** and **a** and **a** and **a** a result, she **a** and **a** and **a** and **a** and **a** a result, she **a** and **a** a

Further, did not comply with Civ.R. 9(G), which states that "[w]hen items of special damage are claimed, they shall be specifically stated." *See Wheeler v. Yocum*, 10th Dist. Franklin No. 85AP-828, 1986 Ohio App. LEXIS 6075 (Mar. 25, 1986) (applying Civ.R. 9(G) in defamation context).



Water & Sewer Assn., Inc., 2013-Ohio-1640 (Ohio App. 4th Dist. 2013), the Court found that the plaintiff had not proven the elements of slander because "no one at Higland Ridge accused appellant, himself, of theft or tampering with the water meter. . . . The mere report of a possible theft to law enforcement by Highland Ridge, without ever accusing appellant of the theft is not a false or defamatory statement." Id. at ¶40. The same fact can be applied in this case because none of the statements made by "falsely accused "of anything and the mere herself stated to have understood that the statements were meant to **and and**. Regarding the falsity of the restraining order, it is undisputed that and were not granted visitation over That simply means they were not allowed to visit **sector**. So observation that using the pronoun "admittedly is singular and meant towards her is absurd as was standing with her and the statements were related to **see and set is conduct to see and set is conduct to see and set is and set is and set is a statement of the statement o** failed to provide any evidence to show that was talking directly to her apart from her interpretation of the whole incident. On the contrary, the evidence is clear that was concerned about size 's behavior on the day of the incident and wanted to let them know that they are not supposed to do anything that could cause trouble to her son. There is no intention or reason for to speak to under the circumstance and she intervened in the conversation for reasons best known to her.

Given the foregoing, the Court should grant source 's Motion for Summary Judgment against

CONCLUSION

WHEREFORE, Defendant	, now known as,	
respectfully requests that this court den	y Plaintiff	Cross-Motion for Summary



any	udgement in its entirety and grant Defendant	Motion for Summary
	Judgement against Plaintiff	
		Respectfully Submitted,
	I	

, Tria	l Attomey for
Defendant	nka
Ohio Supreme Court Re	2g. #
Cincinnati, Ohio	
FAX	



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon			
	••	, Suite , J	P.O. Box
Cincinnati, Ohio	by regular U.S. Mail, firs	st class, prepaid, on the	day of
2020.			

	, Trial Attorney for	
Defendant	nka	