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**STATE OF WISCONSIN, COURT OF APPEALS, DISTRICT ONE**

MARCOS RAMOS-GARCIA )

\_\_\_\_\_ )

(party designation) Plaintiff-Respondent )

-vs- )

ELIZABETH RESTO )

\_\_\_\_\_ )

(party designation) Defendant Appellant )

**Brief  
Cover**

Case No. 2024AP001177

ON APPEAL FROM THE CIRCUIT COURT FOR MILWAUKEE COUNTY,  
THE HONORABLE (Name of Judge) BRITTANY GRAYSON, PRESIDING

**BRIEF OF DEFENDANT-APPELLANT, ELIZABETH RESTO \***

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\* STATE THE PARTY'S STATUS in the circuit court *and* in the appellate court (e.g., Plaintiff-Appellant, Defendant-Appellant, Plaintiff-Respondent, etc.).

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I hereby certify that this brief conforms to the rules contained in Wis. Stats. § (Rule) 809.19(8)(b), (bm) and (c) for a brief. The length of this brief is 33 pages 9220  
[pages] [words].

Date: 11/26/2024

Electronically Signed By Brinton Resto  
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I hereby certify that filed with this brief is an appendix that complies with Wis. Stat. § (Rule) 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under § 809.23 (3) (a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

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**IN THE WISCONSIN COURT OF APPEALS      MILWAUKEE COUNTY  
DISTRICT ONE**

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MARCOS RAMOS-GARCIA	)	APPEAL No. 2024AP001177
	)	
	)	
Plaintiff-Respondent,	)	Appeal from:
	)	Milwaukee County
v.	)	Circuit Court Case No.
	)	2022CV005322
	)	Hon. Brittany Grayson, Presiding.
ELIZABETH RESTO	)	
	)	
	)	
Defendant-Appellant.	)	

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**DEFENDANT-APPELLANT, ELIZABETH RESTO’S  
APPELLATE BRIEF**

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NOW COMES, Defendant-Appellant, Elizabeth Resto (“Ms. Resto”), respectfully submitting her Appellant Brief pursuant to Wisconsin Statute § 809.19.

Dated: November 26, 2024.

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## TABLE OF CONTENTS

	Page
Cover Page	1
Table of Contents	2
Table of Authorities	3
I. Statement of Issues Presented	4
II. Statement on Oral Argument & Publication	4-5
III. Statement of the Case	5-21
IV. LAW & ARGUMENT	20
1. The Court's Issuance of An Ex-Parte Injunction Placing A Prior Restraint On Ms. Resto's Future Speech Was Erroneous Because It Impermissibly Restrained Ms. Resto's Unadjudicated Speech.	21-27
2. The Trial Court Erred When It Denied Ms. Resto The Award of Bond And Attorneys' Fees On The Injunction Because A Dismissal With Prejudice Is A Final Determination For Purposes Of Awarding Bond and Attorneys' Fees On An Injunction.	27-30
3. The Trial Court Erred By Denying Ms. Resto An Award Of Her Costs After The Case Was Dismissed With Prejudice And Mr. Ramos-Garcia Recovered Nothing.	29-32
CONCLUSION	32-33
CERTIFICATIONS OF COUNSEL	34

**TABLE OF AUTHORITIES**Page(s) CitedCASES

<i>Antigo Electric Co. v. Faust Lumber Co.</i> , 209 Wis. 139	19
<i>Bachowski v. Salamone</i> , 139 Wis. 2d 397	16, 21
<i>Byrnes v. Metz</i> , 53 Wis. 2d 627	19
<i>Community Credit Plan, Inc. v. Johnson</i> , 228 Wis. 2d 30	30
<i>Denny v. Mertz</i> , 106 Wis.2d 636, 318 N.W.2d 141	15
<i>DeWitt Ross &amp; Stevens v. Galaxy Gaming</i> , 2004 WI 92	31
<i>Estate of Radley v. Ives</i> , 2011 WI App 144	30-31
<i>Kramer v. Thompson</i> (3rd Cir. 1991), 947 F.2d 666	16, 21
<i>Kinney v. Barnes</i> (Tex. 2014), 443 S.W.3d 87	16, 22
<i>McCarthy v. Fuller</i> (7 <sup>th</sup> Cir. 2015), 810 F.3d 456	16, 21, 23
<i>Muscoda Bridge v. Worden-Allen</i> , 207 Wis. 22, 239 N.W. 649	5, 19, 27-29
<i>Organization for a Better Austin v. Keefe</i> , 402 U.S. 415, 91 S. Ct. 1575	17, 22
<i>Rosneck v. Wis. Empl. Rels. Comm'n</i> , 2018 Wisc. App. LEXIS 817	23
<i>Spheeris Sporting Goods, Inc. v. Spheeris on Capitol</i> , 157 Wis. 2d 298	10, 23
<i>State v. Pettit</i> , 171 Wis. 2d 627	22
<i>Storms v. Action Wis. Inc.</i> , 2008 WI 56	16, 21
<i>Werner v. A. L. Grootemaat &amp; Sons, Inc.</i> , 80 Wis. 2d 513	10, 23

STATUTES

Wis. Stat § 813.06	5, 19, 26
Wis. Stat. § 814.03	5, 30-31
Wis. Stat. § 814.04	5, 30-31
Wis. Stat. § 885.45	30-31

## I. STATEMENT OF ISSUES PRESENTED

1. The Trial Court's Issuance of An Ex-Parte Injunction Placing A Prior Restraint On Ms. Resto's Future Speech Was Erroneous Because It Impermissibly Restrained Unadjudicated Speech.
2. The Trial Court Erred When It Denied Ms. Resto The Award of Bond And Attorneys' Fees On The Injunction Because A Dismissal With Prejudice Is A Final Determination For Purposes Of Awarding Bond and Attorneys' Fees On An Injunction.
3. The Trial Court Erred By Denying Ms. Resto An Award Of Her Costs After The Case Was Dismissed With Prejudice And Mr. Ramos-Garcia Recovered Nothing.

## II. STATEMENT ON ORAL ARGUMENT & PUBLICATION

Oral argument is necessary because this case involved an unprecedented use of an emergency *ex-parte* injunction to place a long-term prior restraint on unadjudicated future speech with far-reaching implications for free-speech in Wisconsin. The trial court's decision to place a gag-order on a litigant's future speech based on its alleged falsity at the outset of a defamation case, and without any opportunity for the enjoined party to submit written briefing on what was effectively a preliminary injunction, has no precedent in Wisconsin or basis in law. The Court should publish its decision in this case because it involves significant implications for Wisconsin citizens who face meritless defamation actions brought by litigants who misuse injunctions and *ex-parte* proceedings to silence women who speak up about sexual misconduct in their community without the opportunity to be fairly heard and submit paper briefing.

The Court should publish its opinion because it involves a matter of statutory interpretation on injunction bonds. Specifically, the Court must decide what constitutes a ‘final decision’ under an injunction statute that mandates an award of an injunction bond and fee-shifting to a restrained party if a “court finally decides that [a] party was not entitled” to the injunction under Wis. Stat § 813.06. The trial court’s characterization of what constitutes a final determination on an injunction did not cite a single authority as the basis for its decision and was at odds with a Wisconsin Supreme Court decision that is directly on point, *Muscoda Bridge Co. v. Worden-Allen Co.*, 207 Wis. 22, 239 N.W. 649.

Lastly, the Court should publish its opinion because the trial court failed to separately address the award of costs under Wis. Stat § 814 and Wisconsin law would benefit from an appellate opinion that directly addresses what effect a party’s decision to stipulate to defeat by dismissing their claim has on the award of costs to prevailing parties.

### **III. STATEMENT OF THE CASE**

On August 17, 2022, Mr. Ramos-Garcia filed a complaint against Ms. Resto, alleging a single cause of action for libel. (Doc. 2) Mr. Ramos-Garcia’s complaint was based on Ms. Resto’s social media posts from the summer of 2022, which cautioned her readers about Mr. Ramos-Garcia’s past allegations of sexual misconduct and expressed her opinion that Mr. Ramos-Garica was an unsafe person for women to be around. (Doc. 2, ¶¶ 22-24) Ms. Resto’s posts made it clear that they were based on her conversations with multiple women who had first-hand

experience with Mr. Ramos-Garcia and accused him of sexual misconduct. (Doc. 2, ¶ 22(i)(iv)(ix)(xi))

One woman that Ms. Resto spoke to who accused Mr. Ramos-Garcia of sexual misconduct was Lysandraliz Santos. Ms. Santos told Ms. Resto about how Mr. Ramos-Garcia had sex with her while she was a minor. (Doc. 36, ¶¶ 1-19) Mr. Ramos-Garcia admitted he met Ms. Santos when she was only 16 years old. (Doc. 46, ¶¶ 2-3) Mr. Ramos-Garcia was in his thirties when he met the teenage Ms. Santos (Doc. 36, ¶ 3) Mr. Ramos-Garcia denied that he had sex with Ms. Santos before she turned 18, but admitted he had a sexual relationship with Ms. Santos while she was a teenager. (Doc. 46, ¶¶ 5-6, Ex. A) Ms. Santos shared a text message with Ms. Resto from October 17, 2021 that Ms. Santos received directly from Mr. Ramos-Garcia, where Mr. Ramos-Garcia acknowledged that others in the community were discussing the “age difference” between Ms. Santos and Mr. Ramos-Garcia and saying Mr. Ramos-Garcia was “raping” Ms. Santos (Doc. 36, ¶ 9, pg. 4 of 4) Mr. Ramos-Garcia admitted he personally sent this October 2021 text message to Ms. Santos before Ms. Resto posted any of her social media posts in 2022. (Doc. 97, pg. 22 of 25, Pl. Resp. to Def. Req. for Admission., No. 5)

Another woman who told Ms. Resto about another allegation of sexual misconduct was Ms. Adalis Rivera, who testified that she believes Mr. Ramos-Garcia drugged her one night in 2015. (Doc. 39, ¶¶ 1-11) In 2016, Mr. Ramos-Garcia texted Ms. Rivera “Remember when we made out ferociously on some drunk shit at my crib?” Ms. Rivera responded “Wtf????? No I do not???...I don’t

remember that at all....that's bad...Now that I think about it that night we went to bamboo and your dj friend came, like I blacked out. I remember waking up the next morning not even knowing how I drove home. You sure you didn't drug me bro?" (Doc. 39, ¶ 7, pgs. 5-7) Ms. Rivera shared that she had no recollection of kissing Mr. Ramos-Garcia and woke up nude in her own vomit. (Doc. 39, ¶¶ 1-11) Ms. Rivera sincerely believed she was drugged that night. (*Id.*, ¶ 5) Mr. Ramos-Garcia admitted he had a conversation with Ms. Rivera in 2018 about this incident; as he characterized the exchange: "I...reiterated that I had not drugged Adalis Rivera or sexually assaulted her." (Doc. 46, ¶ 19) Mr. Ramos-Garcia acknowledged that this 2015 incident was the basis for him being accused of being a predator as early as 2018: "In 2018, I found out that Elizabeth Resto was saying I was a predator. I approached Adalis Rivera about the accusations Elizabeth Resto was making about me because I knew they were good friends who had known each other for several years. Adalis Rivera told me that Ms. Resto was making these comments because of the night in 2015 when we went to Bamboo Lounge." (Doc. 46, ¶ 18)

Still yet another woman that accused Mr. Ramos-Garcia of sexual misconduct was Ms. Kimberly Perez, who worked as an employee at one of Mr. Ramos-Garcia's businesses and told Ms. Resto about how Mr. Ramos-Garcia turned a blind eye to reports of employee sexual misconduct at his business and that Mr. Ramos-Garcia made an unwelcome sexual advance toward her at work. (Doc. 37, ¶ 1-14)

After speaking with Ms. Santos, Ms. Rivera, and Ms. Perez about their experiences with Mr. Ramos-Garcia over a span of years, Ms. Resto made several social media posts in the summer of 2022 publicly criticizing Mr. Ramos-Garcia's promotion of two events: (1) an "All Girls Boat Party," and (2) a beach party called "playa fest."<sup>1</sup> (Doc. 2, ¶¶ 9-12). Given the women-centric theme of the events and Ms. Resto's conversations with several women who shared multiple allegations of sexual misconduct at the hands of Mr. Ramos-Garcia, Ms. Resto posted several statements of caution about Mr. Ramos-Garcia:

- "I would advise against attending this event, personally. I have never heard a positive story about the owner throwing this event being protective of women in any way, in fact, I've personally only heard terrible stories of women being harmed around this man and his establishments... It is my opinion that this man is a predator/enabler and I would stay very far away." (Doc. 2, ¶ 22(i))
- "Marcos is not my cup of tea. Feel free to talk to the women in our community and don't let me be the only one to influence you. My heart just sunk when I saw this advertised because as I said: I find it disgusting and dangerous." (Doc. 2, ¶ 22(ii))
- "Just want people to be aware that Marcos is involved with this event and I've said multiple times that he is not a safe person for women/girls. I will never ever give my money or attendance to predatory men. Marcos is not a good person and y'all need to stop protecting and supporting him." (Doc. 2, ¶ 22(iii))
- "I was a beautician in this city for 4 years. Women talk. The common denominator is women waking up not remembering anything. I know you've wondered 'how does this ugly ass MF get bitches?!' Manipulation, coercion, alcohol, and who knows what else..." (Doc. 2, ¶ 22(iv))
- "Marcos Ramos Garcia: bachatito, lucky 7 promo, makncheese restaurant, blind tiger speakeasy (terrifying), former owner or points view boite, and leader of 'WERK dance team' and former milwaukee Touch instructor (he has his hands in a lot of pots over the years) has multiple accusations from women who had predatory experiences

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<sup>1</sup> Playa = beach (Spanish).

with him as far as sexual/alcohol/coercion/emotional abuse...I used to be on his dance team and he loves guzzling alcohol down peoples throats and fucking with young and even underage girls. He blurs lines and I remember him inviting me over to his house alone to drink... which is an inappropriate power dynamic for an older dance instructor. It gave me uncomfortable vibes and not for no reason... Multiple women have told me they woke up not remembering anything the next day after partying with him. I have personally read his text messages with women and the way he manipulates. It's classic abuser. Every body just turns a blind eye because he's good at gaslighting and being charming/generous..." (Doc. 2, ¶ 22(ix))

- "The only thing I have is a bunch of women in the shadows. Sending me voice notes, asking to speak privately. For some reason, women and SCARED of speaking publicly against Marcos. It says a lot. And it's because of shit like this: NOBODY stands up against him! & That's exactly why they're scared. Y'all aren't about shit. You'll support a predator and abuser and look the other way. You tell women 'your experience doesn't matter' You'll think there's some ulterior motive or bitter feelings behind MULTIPLE women's truthful exclamations that he was slimy, coercive, forceful, etc.?! Wake UP! He'll look them dead in their eyes and tell them they're lying...knowing what he did. I need you all to care more about this. I need you all to hold Marcos accountable. I need you to stop collaborating with him. If the community doesn't take action, I will do it myself and I'll do it better. Like... I know how to use a phone and social media. I'm being nice, I'm hoping for support. But it's no big deal to do it myself. I've got time, a sense of Justice, and I am here to be a Titi and protect the women of this community. By any means." (Doc. 2, ¶ 22(xi))

In addition to sharing her opinion about Marcos being unsafe for women, Ms. Resto criticized Mr. Ramos-Garcia for losing his liquor license: "also worth noting that Marcos was denied his liquor license for his closed down bar. Is that why he isn't putting his name on this event? Cause he's got a bad standing with the city? Or is it because we started talking about him being a predator. either way." Doc. 2, ¶ 22(v); *see also* Doc. 56, Ex. 2 pgs. 24-28 (denying liquor license renewal application at one of Mr. Ramos-Garcia's establishments for lying to police and removing evidence of a shooting incident).

Mr. Ramos-Garcia responded to Ms. Resto's social media posts by filing his lawsuit for libel on August 17, 2022. (Doc. 2) Mr. Ramos-Garcia's complaint was also filed with an *ex-parte* motion for temporary injunction seeking to "prevent" Ms. Resto from "defaming Mr. Ramos-Garcia during the pendency of this action." (Doc. 10, pg. 3) The two cases Mr. Ramos-Garcia cited in his motion for a temporary injunction had nothing to do with defamation or enjoining speech. The first case cited concerned the use of a trade name. *See* Doc. 10, pg. 1 (citing *Spheeris Sporting Goods, Inc. v. Spheeris on Capitol*, 157 Wis. 2d 298). The second case cited concerned a lending dispute and letter of credit. *See* Doc. 10, pg. 1 (citing *Werner v. A. L. Grootemaat & Sons, Inc.*, 80 Wis. 2d 513). Neither of these cases provided any legal basis to support the issuance of an injunction restraining someone's future speech as "defamatory" before it has been proven false. Mr. Ramos-Garcia cited his "playa fest" event that was set to occur on August 20, 2022 as the "emergency" basis for his request for the *ex parte* injunction. (Doc. 2, ¶¶ 11-12; Doc. 10, pg. 3) That event occurred without incident before the trial court even held a hearing on the emergency injunction.

On September 7, 2022, Mr. Resto voluntarily appeared on Mr. Ramos-Garcia's *ex-parte* motion for temporary injunction hearing, but the matter was continued because she had not been served or retained counsel.

On September 21, 2022, the court held a hearing on the temporary injunction and Ms. Resto appeared at the *ex-parte* emergency injunction hearing. (Doc. 108) At the temporary injunction hearing, Ms. Resto stated she was there because she

understood that the *ex parte* nature of the proceedings meant the Court could possibly issue a ruling before Ms. Resto was served or heard, and she wanted to be heard if there was going to be a ruling. (Doc. 108, Tr. 5:19-6:7) Ms. Resto argued that the issuance of an *ex parte* injunction required an “emergency” and that placing a prior-restraint on her speech before there was any finding that her statements were false was a violation of her First Amendment rights. (Doc. 108, Tr. 7:10-17)

Thereafter, the injunction proceedings went forward and Mr. Ramos-Garcia testified about his reputation as it related to any past instances of sexual misconduct:

Q: Mr. Ramos-Garcia, have you ever been called a predator by anybody before?

A No.

Q. Have you ever been accused of having sexually harmed any person?

A. Never

Q. So this is the first time you’ve ever heard of this?

A. Correct

(Doc. 108 Tr. 13:14-13:22)

Mr. Ramos-Garcia’s counsel read Ms. Resto’s social media posts recited in the complaint and questioned Mr. Ramos-Garcia about them, at length, before asking for an injunction, claiming Mr. Ramos-Garcia would be irreparably harmed if Ms. Resto were allowed to continue to speak about Mr. Ramos-Garcia. (Doc. 108, Tr. 12:22-58:21)

For her part, Ms. Resto argued that Mr. Ramos-Garcia’s emphasis on his widespread involvement in the community and close ties to well-known brands and sports teams, such as Bacardi and the Milwaukee Brewers, made Mr. Ramos-Garcia a public figure. (Doc. 108, Tr. 59:3-9) Ms. Resto argued that any injunction restraining her speech based on its alleged falsity before there was any

determination that her statements were false provided no basis in law for placing a prior restraint on her speech. (Doc. 108, Tr. 59:10-60:2) She also pointed out that Mr. Ramos-Garcia's cited basis for the emergency, a "beach party" scheduled for August 20, 2022, had already passed at that point in time and that there was therefore no "emergency" to support the injunction. (Doc. 108, Tr. 59:21-23) Ms. Resto also requested that Mr. Ramos-Garcia post bond as a condition of seeking an injunction, as required by Wisconsin law. (Doc. 108, Tr. 60:3-14)

Lastly, Ms. Resto repeatedly asked if she could submit paper filings in opposition to the injunction given the *ex-parte* nature of the proceedings and scope of the ruling, and the trial court denied that request on two separate occasions:

MS. RESTO: I would like to, for the record, just object to the prior restraint on future speech. I will be submitting a brief responding to each point.

The COURT: I am not asking for a brief right now. If I need a brief, I will ask for one

...

MS. RESTO: Could I respectfully ask the Court to consider the case for advisement once I submit my paper filings?

THE COURT: No. I mean, you can request, but I am not going to withhold the order at this time.

(Doc. 108, Tr. 66:9-15; 68:8-13)

Although the trial court stated that its order was "temporary" (Doc. 108, Tr. 64:24), its ruling indicated that it would last for as long as the proceedings were pending: "I don't want things going out to the world about this *from this point forward*...I don't want anything on social media about him, about his businesses, about his sponsors or events going forward *until this matter is resolved*. Once it is

resolved, maybe you will be able to, maybe you won't, I can't say today.” (Doc. 108, Tr. 67:22-68:7) (emphasis added)

Interestingly, despite ruling in Mr. Ramos-Garcia’s favor and finding that the posts could support a claim of ‘irreparable harm’ if no court intervention ensued, the trial court did not actually order Ms. Resto to delete any of her existing posts. (Doc. 108, Tr. 65:1-2; 67:16-19) Consequently, all of Ms. Resto’s posts recited in the complaint calling Mr. Ramos-Garcia a “rapist,” “predator,” “groomer,” “abuser,” remained published (Doc. 2, ¶¶ 22-24) and the trial court was apparently fine with that. Nonetheless, the trial court felt it was necessary to restrain Ms. Resto’s *future* speech and place limits on what she *might* say in the future, out of concern that it *might* be ‘defamatory.’

On September 29, 2022, the trial court signed an order on the ‘temporary’ injunction prohibiting Ms. Resto “while this matter is pending before the Court” from making “defamatory statements.” (Doc. 18) That order effectively granted Mr. Ramos-Garcia a preliminary injunction just minutes after Ms. Resto was served outside the courtroom doors, without any opportunity for Ms. Resto to brief any of the issues on written submissions. Ms. Resto’s speech was chilled thereafter for approximately one year through the use of a temporary order that should ordinarily only be issued for a limited time, i.e., the interim between hearing the plaintiff’s claim for an injunction *ex-parte* and when the defendant is finally heard on the injunction with proper notice and motion briefing.

After the injunction hearing, Ms. Resto retained counsel and filed a motion for summary judgment on November 4, 2022. (Doc. 33) Her motion for summary judgment argued that defamation claims require a showing of fault amounting to at least negligence on the part of the defendant. (Doc. 33) Ms. Resto supported her motion for summary judgment with affidavits from the women she spoke with that formed the basis of her statements. (Docs. 33, 36-39) In essence, Ms. Resto argued that Mr. Ramos-Garcia's defamation claim failed as a matter of law because her statements were based on her first-hand conversations with three different women who all accused Mr. Ramos-Garcia of sexual misconduct in some form or another, that she had no reason to doubt what these women told her about Mr. Ramos-Garcia, and that Mr. Ramos-Garcia's complaint did not allege she was negligent in way with respect to her fact-gathering and publication of the multiple sexual misconduct allegations that several women shared with Ms. Resto. (Doc. 33) Ms. Resto also argued that Mr. Ramos-Garcia was a public figure and was required to show malice. (*Id.*)

Mr. Ramos-Garcia filed a response to Ms. Resto's motion for summary judgment, acknowledging the prior accusations of sexual misconduct, but denying any wrongdoing. *See* Doc. 44, pg 3 ("Adalis Rivera responded by accusing Mr. Ramos-Garcia of drugging her because she did not remember that night"); *see also* Doc. 46, ¶¶ 18-19 ("In 2018, I found out that Elizabeth Resto was saying I was a predator. I approached Adalis Rivera about the accusations...I then reiterated that I had not drugged Adalis Rivera or sexually assaulted her"). He also introduced a

text-message with his teenage girlfriend, Ms. Santos, discussing their sex life when she was 19 years old. *See* Doc. 46, Ex. A.

The trial court denied Ms. Resto's motion for summary judgment and largely ignored her argument that defamation claims require a showing of fault amounting to at least negligence. It concluded that "malice is implied from the libelous matter itself." *See* Doc. 58, pg 2 (citing *Denny v. Mertz*, 106 Wis.2d at 650, 636, 318 N.W.2d 141). *Denny* used a negligence standard and does not stand for the proposition that malice is presumed in defamation cases by virtue of the publication itself. In holding that malice is presumed by virtue of the libelous matter itself, the trial court's ruling essentially converted a defamation claim into a strict-liability offense that does not require any showing of the defendant's negligence or malice by holding that the publication itself satisfies the malice requirement, and effectively collapsed any distinction between the burdens for public figures and private figures.<sup>2</sup> The trial court also declined to treat Mr. Ramos-Garcia as a public figure and found there were issues of fact as it related to malice and Ms. Resto's mental state in any event. (Doc. 58)

Ms. Resto subsequently filed a motion for relief from the injunction and sought to have it vacated pursuant to Wis. Stat. § 806.07 on several grounds. (Doc. 78)

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<sup>2</sup> Ms. Resto was unable to appeal that decision because the denial of a motion for summary judgment is a not a final appealable order.

First, she argued that there was no legal basis for the issuance of a prior restraint on *potentially* defamatory statements and that any restraint based on the alleged falsity of the statements was an impermissible prior restraint on speech. (Doc. 78, at. pg. 4-5; *see also* Doc. 55 (compendium of non-Wisconsin authorities). On this point, she argued a defamatory statement is one that is “false.” *See* Doc. 78, pg 4 (citing Wis JI-Civil § 2501; *Storms v. Action Wis. Inc.*, 2008 WI 56, ¶ 37). She emphasized her point raised at the injunction hearing: that injunctions that restrain speech-based behavior must be proven at trial before they can be enforced. *See* Doc. 78, pg 4 (citing *Bachowski v. Salamone*, 139 Wis. 2d 397, 414 (“[o]nly the acts or conduct which are proven at trial and form the basis of the judge's finding of harassment or substantially similar conduct should be enjoined”). She argued courts cannot restrain future speech or impose an injunction on potentially defamatory speech that *might* be false. *See* Doc 78, pg. 4-5 (citing *McCarthy v. Fuller*, 810 F.3d 456, 462 (“[a]n injunction against defamatory statements...must not through careless drafting forbid statements not yet determined to be defamatory, for by doing so it could restrict lawful expression”); *Kramer v. Thompson* (3rd Cir. 1991), 947 F.2d 666, 678-680 (reversing issuance of injunction even after defendant’s speech adjudicated defamatory); *Kinney v. Barnes* (Tex. 2014), 443 S.W.3d 87, 94-99 (same: surveying multiple state decisions on applicability of injunctions to future speech in defamation cases). She argued that any injunction that places a prior restraint on unadjudicated speech is unconstitutional. *See* Doc. 78, pg. 4-5 (citing

*Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419-420, 91 S. Ct. 1575, 1577-78).

Second, she argued that Mr. Ramos-Garcia's injunction submissions made a serious misrepresentation of the "status quo" to the trial court by claiming that he had never previously been accused of any sexual misconduct because his subsequent affidavits and own briefing on summary judgment plainly acknowledged that he had in fact been accused of sexual misconduct and was aware of several allegations of sexual misconduct relating to his reputation between 2018 and 2021 that he was now trying to refute. (Doc. 78, pg. 2-6); *compare*, Doc. 4, ¶¶ 7, 9 ("I have never been accused of sexual misconduct prior to Ms. Resto's statements... Neither Ms. Resto nor anyone else has ever contacted me regarding any alleged sexual misconduct prior to Ms. Resto posting these allegations online"); *and* Doc. 108: "Q: Mr. Ramos-Garcia, have you ever been called a predator by anybody before? A No. Q. Have you ever been accused of having sexually harmed any person? A. Never. Q. So this is the first time you've ever heard of this? A. Correct (Doc. 108, Tr. 13:14-13:22), *with* Doc. 46, ¶¶ 18-19 ("In 2018, I found out that Elizabeth Resto was saying I was a predator. I approached Adalis Rivera about the accusations...I then reiterated that I had not drugged Adalis Rivera or sexually assaulted her"); Doc. 44, pg 3 ("Adalis Rivera responded by accusing Mr. Ramos-Garcia of drugging her because she did not remember that night"); *see also* Doc. 36, ¶ 9, pg. 4 of 4; Doc. 97, pg. 22 of 25, Pl. Resp. to Def. Req. for Admission., No. 5 (Mr. Ramos-Garcia admitting texting Ms. Santos on October 17, 2021 about: "people talking shit about

our age difference and spreading rumors, look at Jesse...telling people I was raping you...”). Ms. Resto noted that all of these sexual misconduct allegations predated Mr. Ramos-Garcia’s request for an injunction, which misrepresented that the status quo was that Ms. Ramos-Garcia had never been accused of sexual misconduct. (Doc. 78)

Third, Ms. Resto argued that the injunction should have no further prospective application because (1) Mr. Ramos-Garcia abandoned his position that he had never been accused of sexual misconduct, (2) the injunction was procedurally defective in how it was issued, and (3) Mr. Ramos-Garcia was no longer likely to prevail on the merits given the more fully developed record. (Doc. 78, pgs. 7-8). Ms. Resto argued if the injunction motion was truly temporary and heard *ex parte*, there should have been a follow up hearing for a preliminary injunction with formal notice and motion briefing. (*Id.*, pg. 7) If the hearing was not a temporary *ex parte* order, she should have been afforded a full opportunity for briefing the motion as a preliminary injunction in writing instead of having to orally argue against a written motion within minutes of being served with it outside the courtroom doors. (*Id.*). At a minimum, she argued, a hearing for a preliminary injunction should have been held to allow Ms. Resto to challenge the injunction with paper filings. (Doc. 78, pg. 7) (citing Wis. Stat. 801.15(4))

Lastly, Ms. Resto’s motion challenging the injunction requested that Mr. Ramos-Garcia post an additional bond should the trial court decide that the injunction would remain in effect going forward. (*Id.* pgs., 8-9).

For his part, Mr. Ramos-Garcia did not even bother defending his request for an injunction. Instead, he apparently agreed with Ms. Resto and responded to Ms. Resto's motion for relief from the injunction by filing a one-page motion asking for his own injunction to be vacated "without a hearing." (Doc. 81)

The parties appeared for the hearing on Ms. Resto's motion for relief from the injunction on August 1, 2023 and Mr. Ramos-Garcia stipulated to Ms. Resto motion for relief from the injunction to have it vacated on the record in open court. (Doc. 94; Doc. 186, Tr. 2:22-3:9) There was no discussion of the bond or attorneys' fees or whether a final determination had been made on the injunction. (*Id.*)

After Ms. Resto vacated Mr. Ramos-Garcia's injunction, she moved for her attorneys' fees relating to the injunction pursuant to Wis. Stat. § 813.06. (Doc. 99, pgs. 4-5) In her motion for an award of the bond and her attorneys' fees, she argued that she was entitled to her attorneys' fees expended in opposing the injunction. (*Id.*) (citing *Muscoda Bridge Co. v. Worden-Allen Co.*, 207 Wis. 22, 30 (holding party challenging injunction "entitled to recover the reasonable value of services rendered by attorneys in an effort to dissolve the injunction" under former version of Wisc. Stat. § 813.06 [Sec. 268.06]); *Byrnes v. Metz*, 53 Wis. 2d 627, 633 ("in an action upon an injunction bond the prevailing party is entitled to the reasonable value of the services rendered by attorneys"); *Antigo Electric Co. v. Faust Lumber Co.*, 209 Wis. 139 ("the defendant in the proceedings for an injunction may have allowed as attorney's fees whatever services were directed to the dissolution of the temporary injunction"))).

The court held a hearing on Ms. Resto's motion for award attorneys' fees and injunction bond on December 1, 2023 and denied Ms. Resto's request for attorneys' fees, concluding that such an award would require a prior determination from the trial court that party was not entitled to the injunction. (Doc. 199, Tr. 150:14-151:14) The court reasoned that since Mr. Ramos-Garcia stipulated to Ms. Resto's requested relief, the court did not make any prior determination that Mr. Ramos-Garcia was not entitled to the injunction. (*Id.*) The trial court did not cite a single case when rendering its decision or distinguish the facts of this case from any of the cases cited in the parties' briefs.

At that same hearing, Ms. Resto obtained an order compelling Mr. Ramos-Garcia to produce his text messages with his former teenage girlfriend, Ms. Santos, which he had objected to producing in discovery and claimed were "irrelevant" up until that point. The trial court ordered Mr. Ramos-Garcia to produce his text messages with Ms. Santos. (Doc. 199, Tr. 41:20-22; Doc. 165)

Once Mr. Ramos-Garcia realized that his text messages from his sexual relationship with a teenager would come to light, Mr. Ramos-Garcia decided that the best thing to do would be to dismiss his case with prejudice. In January 2024, he filed a motion to dismiss his own case with prejudice and pre-emptively argued that there should be no award of attorneys' fees. (Doc. 163)

Ms. Resto filed a motion for an award of costs under and renewed her motion for an award of attorneys' fees and the injunction bond, arguing that a dismissal with prejudice constituted a final adjudication on the merits that constituted a "final

determination” of the case and that there could be no doubt that Mr. Ramos-Garcia was not entitled to the injunction at that point. (Doc. 170) The trial court, again, denied the motion for an award of attorneys’ fees, bond, and costs. (Doc. 172) In a footnote, it wrote “the court is not persuaded that a dismissal of the action with prejudice is the equivalent to a determination that the injunction was improvidently issued.” (Doc. 172, pg. 5, n.2)

This appeal followed.

#### IV. LAW & ARGUMENT ON ISSUES PRESENTED

1. *The Court’s Issuance of An Ex-Parte Injunction Placing A Prior Restraint On Ms. Resto’s Future Speech Was Erroneous Because It Impermissibly Restrained Ms. Resto’s Unadjudicated Speech.*

A defamatory statement is one that is “false.” See Wisc JI-Civil § 2501; *see also Storms v. Action Wis. Inc.*, 2008 WI 56, ¶ 37. Injunctions that restrain speech-based behavior must be proven at trial before they can be enforced. *See e.g., Bachowski v. Salamone*, 139 Wis. 2d 397, 414 (“[o]nly the acts or conduct which are proven at trial and form the basis of the judge's finding of harassment or substantially similar conduct should be enjoined”). Courts cannot restrain future speech or impose an injunction on potentially defamatory speech that might be false. *See, e.g., McCarthy v. Fuller*, 810 F.3d 456, 462 (“[a]n injunction against defamatory statements...must not through careless drafting forbid statements not yet determined to be defamatory, for by doing so it could restrict lawful expression”) (emphasis added); *see also Kramer v. Thompson* (3rd Cir. 1991), 947 F.2d 666, 678-680 (reversing issuance of injunction even after defendant’s speech adjudicated

defamatory); accord *Kinney v. Barnes* (Tex. 2014), 443 S.W.3d 87, 94-99 (same: surveying multiple state decisions on applicability of injunctions to future speech in defamation cases). Any injunction that places a prior restraint on unadjudicated speech is unconstitutional. See, e.g., *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419-420, 91 S. Ct. 1575, 1577-78, 29 L. Ed. 2d 1, 7-9 (an injunction that imposes prior restraint on speech and publication constitutes an impermissible restraint on First Amendment rights).

Here, the Court erred the moment it issued a temporary injunction preventing Ms. Resto from publishing “defamatory statements” separate from anything contained in the complaint, which the trial court expressly stated it was not ordering her to remove. (Doc. 18; Doc. 108, Tr. Tr. 65:1-2; 67:16-19) Consequently, Ms. Resto’s *future* speech was the object of the injunction, not any of the statements made in the complaint that formed any basis for irreparable harm, and a vague prohibition of her future speech should have never been restrained under Wisconsin law.

Further, Mr. Ramos-Garcia’s injunction motion did not cite a single case where a court held that it could issue an injunction to restrain someone’s *future* speech at the outset of a defamation case (Doc. 10). Nor could he, as there is no basis in Wisconsin law to support the issuance of a temporary injunction restraining future speech at the outset of a defamation action. In the absence of any citation to legal authority for relief requested, Mr. Ramos-Garcia was not entitled to that relief. See *State v. Pettit*, 171 Wis. 2d 627, 646 (arguments unsupported by references to

legal authority are not considered); *see also Rosneck v. Wis. Empl. Rels. Comm'n*, 2018 Wisc. App. LEXIS 817, n.6 (citation omitted) (it is not the court's duty to develop legal arguments on behalf of a party).

The two cases Mr. Ramos-Garcia cited in his motion for a temporary injunction had nothing to do with defamation or enjoining future speech. The first case cited concerned the use of a trade name. *See* Doc. 10, pg. 1 (citing *Spheeris Sporting Goods, Inc. v. Spheeris on Capitol*, 157 Wis. 2d 298). The second case cited concerned a lending dispute and letter of credit. *See* Doc. 10, pg. 1 (citing *Werner v. A. L. Grootemaat & Sons, Inc.*, 80 Wis. 2d 513). Neither of these cases provided any legal basis to support the issuance of an injunction restraining someone's *future* speech as "defamatory" before it has been proven false, let alone, on the basis of other statements that had also yet to be adjudicated as defamatory.

Additionally, as Ms. Resto noted at the injunction hearing, whether Mr. Ramos-Garcia was being defamed had yet to be determined. (Doc. 108, Tr. 7:10-17) Ms. Resto correctly argued that any injunction restraining her speech based on its alleged falsity before there was any determination that any of her statements were false had no basis in law for placing a prior restraint on her speech. (Doc. 108, Tr. 59:10-60:2) She also pointed out that Mr. Ramos-Garcia's cited basis for the emergency, a "beach party" scheduled for August 20, 2022, had already passed by the time the trial court heard Mr. Ramos-Garcia's injunction motion on September 21, 2022, and that there was therefore no "emergency" to support the issuance of an *ex-parte* order. (Doc. 108, Tr. 59:21-23)

In order to issue an emergency *ex-parte* order under Wis. Stat. § 781.02, the trial court needed to articulate a basis for issuing its ruling as an “emergency” *ex-parte* order. In the absence of such a finding, Ms. Resto should have been allowed to brief the issue of whether Mr. Ramos-Garcia was entitled to an injunction that would place a prior restraint on her future speech for the entire duration of the lawsuit on proper notice and written motion briefing under Wis. Stat. § 801.15(4). The trial court denied Ms. Resto’s request for written motion briefing, twice. (Doc. 108, Tr. 66:9-15; 68:8-13) The trial court made no finding of an emergency to justify the issuance of an *ex-parte* order and its decision to issue a ruling before Ms. Resto could submit a written brief constituted error as a procedural matter.

Further, Ms. Resto submits that Mr. Ramos-Garcia’s “beach party,” even if it were still pending as a future event at the time of the injunction hearing, failed to qualify as an emergency that would warrant the use of an *ex-parte* gag-order at an emergency hearing. So does harm to Mr. Ramos-Garcia’s reputation, which, standing alone, also fails to provide a basis for an injunction, as his situation is no different from any other litigant that brings a defamation action. An inherent part of any defamation claim is harm to one’s reputation, and monetary damages is the appropriate relief. Freedom of speech includes the right to criticize others and say things that are harmful to the reputations of others. If those statements are false, the aggrieved party can sue for defamation, but the party who sues is not entitled to take away someone else’s speech before any determination has been made that what was said is false and constitutes defamation. *See, e.g., McCarthy v. Fuller*, 810 F.3d 456,

462 (“[a]n injunction against defamatory statements...must not through careless drafting forbid statements not yet determined to be defamatory, for by doing so it could restrict lawful expression”). There was no authority cited for the extraordinary remedy of placing a prior restraint on future speech presented in the trial court and Ms. Resto preserved her argument on the record for the purposes of appeal by objecting to it throughout the pendency of the litigation at the injunction hearing (Doc. 108), in her motions seeking relief from the injunction (Doc. 78), and in her motion for an award of fees on the injunction (Doc. 99).

The object of the temporary injunction was therefore impermissibly broad as a substantive matter because it impermissibly enjoined unadjudicated future speech, which included potentially protected speech since Ms. Ramos-Garcia had not proven that he had been defamed by anything Ms. Resto said. The trial court acknowledged this and implicitly stated as much on the day that it issued the injunction when it remarked that it could not ultimately determine whether any of Ms. Resto’s statements were false or defamatory prior to an adjudication of the merits: “[o]nce it is resolved, maybe you will be able to, maybe you won’t, I can’t say today.” (Doc. 108, Tr. 67:22-68:7)

Despite finding that the posts could support a claim of ‘irreparable harm’ if no court intervention ensued, the trial court did not order Ms. Resto to delete any of her existing posts that formed the trial court’s basis for finding that Ms. Resto’s statements posed a threat of any alleged ‘irreparable harm.’ (Doc. 108, Tr. 65:1-2; 67:16-19) In doing so, the trial court left in-tact the very publications that allegedly

supported its finding the publications posed an immediate threat of irreparable harm to Mr. Ramos-Garcia and allowed that irreparable harm to continue by crafting remedy that did not even address the irreparable harm cited as the basis for the relief sought. (Doc. 108, Tr. 65:1-2; 67:16-19)

Once the object of the injunction was no longer anything that Ms. Resto had already published that was recited in the complaint that could be adjudicated with a trial on the merits, the trial court was essentially policing Ms. Resto's free-speech right, in itself, and vaguely prohibiting any *future* speech about Mr. Ramos-Garcia, *carte blanche*, on the basis that such future speech about Mr. Ramos-Garcia *might* be "defamatory" and *might* "irreparably harm" Mr. Ramos-Garcia if Ms. Resto were to open her mouth about him again. There is no support in Wisconsin law for such a rule. Moreover, even if the injunction were construed narrowly as applying to any statements similar to what Ms. Resto had already posted, the injunction would still be unlawful at that point in time because no determination was made as to the falsity of the statements published that would place Ms. Resto on adequate notice of what was "defamatory."

On this first assignment of error, Ms. Resto respectfully requests that this Court find that the trial court's issuance of the injunction prohibiting her future speech was erroneous from the start and that this Court determine that Mr. Ramos-Garcia was not entitled to the injunction as a matter of law on this appeal. Ms. Resto requests an award of the \$5,000.00 bond and all of her attorneys' fees related to the injunction placing a prior restraint on her future speech. (Docs. 99, 170) This is a

determination that can be made on appeal as a matter of law even where the efforts to challenge the injunction in lower courts have failed. *See Muscoda Bridge Co. v. Worden-Allen Co.*, 207 Wis. 22, 25-30, 239 N.W. 649, 650-652. Further, this request for attorneys' fees includes Ms. Resto's fees for her efforts on an appeal and Ms. Resto respectfully requests that this Court remand this matter back to the trial court for a submission of Ms. Resto's total fees after this appeal, oral argument, and any hearing or objection to the same in the trial court.

2. *The Trial Court Erred When It Denied Ms. Resto The Award of Bond And Attorneys' Fees On The Injunction Because A Dismissal With Prejudice Is A Final Determination For Purposes Of Awarding Bond and Attorneys' Fees On An Injunction.*

Ms. Resto submits the trial court's denial of her request for an award of attorneys' fees and bond on the injunction pursuant to Wis. § 813.06 was erroneous because that issue is determined by the final outcome of the matter, not whether the trial court made any prior express findings about whether there was any final determination that Mr. Ramos-Garcia was or was not entitled to the injunction at an earlier point in the proceedings. In fact, a party who successfully appeals this issue may obtain an award of the injunction bond and all attorneys' fees expended opposing the injunction even where the trial court ruled against the enjoined party's request to dissolve the injunction in the lower court and granted the party seeking the injunction a final judgment and permanent injunction.

For example, in *Muscoda Bridge Co. v. Worden-Allen Co.*, the enjoined party sought to have an injunction dissolved. 207 Wis. 22, 25-26, 239 N.W. 649, 650-651

(1932). The trial court denied the request to dissolve the injunction and went as far as to grant a final judgment and permanent injunction in favor of the plaintiff seeking the injunction at the conclusion of the matter. *Id.* The case was reversed on appeal, and thereafter, the appellate court ordered the party who sought the injunction to pay the enjoined party all damages sustained by reason of the injunction, including attorneys' fees. *Id.* 207 Wis. 22, 28-30, 239 N.W. 649, 650-652 The bond that was initially set at \$250 ultimately supported an award of \$6,660.21 to the wrongfully enjoined defendant that prevailed after an appeal.<sup>3</sup> *Id.*

Crucially, the Wisconsin Supreme Court decided that the final outcome of the matter after appeal was dispositive of the issue of whether there was a final determination that the party was not entitled to the injunction under the bond award statute, not any of the trial court's previous determinations on the whether injunction was properly issued: "[w]hile the motion made to dissolve the injunction was not successful, the court was in error in overruling the motion *as now appears by the final determination in the case...where the final determination of the action* shows that the injunction was improvidently issued, the defendants are entitled to recover the reasonable value of services rendered in an unsuccessful effort to dissolve the injunction." *Muscoda*, 207 Wis. 22, 28-29, 239 N.W. 649, 651-652 (emphasis added).

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<sup>3</sup> These dollar amounts for \$250 and \$6,660.21 are from 1928 and would be approximately \$5,000 and \$121,525.35, respectively, in today's dollars after accounting for inflation using a standard online inflation calculator. *See, e.g.*, <https://data.bls.gov/cgi-bin/cpicalc.pl>

Here, the trial court's orders got it backwards and by and large turned the logic of *Muscoda* on its head by ignoring the final determination of the case, which was a dismissal with prejudice and constitutes a final adjudication on the merits even by Plaintiff's own admission. (Doc. 163, pg. 2) ("Plaintiff is asking the Court to dismiss this case with prejudice which is an adjudication on the merits"). The trial court's order denying Ms. Resto an award of the injunction bond and her fees related to the injunction after the final disposition of this matter is directly at odds with the decision in *Muscoda* because the trial court focused solely on whether an earlier judge made the right or wrong decision at an earlier point in the proceedings and ignored the final outcome of the matter. (Doc. 172, n.2; Doc. 199, Tr. 150:14-151:14) As the *Muscoda* case illustrates, the ultimate issue is not whether the trial court made a correct determination about the merits of the injunction based on the evidence submitted at an earlier point in time; the final determination for injunction bond and fee-shifting purposes refers to how the case was ultimately resolved at the end of the day.

As *Muscoda* illustrated, a "final" determination of whether a party was entitled to the challenged injunction could be reached for the first time on appeal, as indicated by the appellate court's reversal of the denial of the enjoined party's request to dissolve the injunction and subsequent award of the injunction bond and attorneys' fees to the enjoined party after an appeal was taken of a final judgment and a permanent injunction was initially rendered in favor of the party seeking the injunction in the trial court. So, the trial court's deference to earlier determinations,

or lack of determinations made at earlier points in the proceedings on this issue, is irrelevant. Further, there is no distinction that can be made, by law, between a dismissal with prejudice, and an adjudication on the merits. As Plaintiff concedes, they are final and one in the same. (Doc. 163)

The trial court and Mr. Ramos-Garcia's argument that the use of stipulation somehow changes the result is also without merit. *See, e.g., Estate of Radley v. Ives*, 2011 WI App 144, ¶ 17 (rejecting argument that costs cannot be awarded by stipulation rather than trial on the merits) (cited in Doc. 170, pg. 2). Cost shifting statutes are designed to compensate parties for having to vindicate their rights in court regardless of whether the case is tried or resolved upon stipulations. *Id.* ¶ 19. Dismissing one's action voluntarily does not prevent a prevailing party finding. *See* Doc. 99, pg. 7 (citing *Community Credit Plan, Inc. v. Johnson*, 228 Wis. 2d 30, ¶¶ 2, 9). Ms. Resto is entitled to the bond and fees.

3. *The Trial Court Erred By Denying Ms. Resto An Award Of Her Costs After The Case Was Dismissed With Prejudice And Mr. Ramos-Garcia Recovered Nothing.*

Under Wisconsin law, a prevailing defendant "shall" recover costs when the plaintiff fails to obtain a recovery. See Wis. Stat. § 814.03(01). The purpose of allowing costs is to the prevailing party is to "to recompense the prevailing party for some of the cost of the vindication of h[er] rights." *Estate of Radley v. Ives*, 2011 WI App 144, ¶ 19. Costs include disbursements for "depositions including copies." See Wis. Stat. § 814.04(02). Videographer fees are also allowable as costs. See Wis. Stat. § 885.45(2) ("[t]he reasonable expense of recording testimony on videotape

shall be costs in the action”). The prevailing party can also recover videographer and transcript fees for the same proceeding if the transcript is used to support a motion. *See DeWitt Ross & Stevens, S.C. v. Galaxy Gaming & Racing, Ltd. P'ship*, 2004 WI 92, ¶¶ 52-58.

Here, Ms. Resto paid a total \$2,202.55 for the transcript and videographer fees for Mr. Ramos-Garcia’s deposition. See Ex. 1 (02/23/24 Affidavit of Brinton Resto), ¶ 2. The transcript was used to support Ms. Resto’s successful Motion to Compel Discovery to show that Mr. RamosGarcia testified that he still had access to the text messages he relied on for his defense that Ms. Resto requested in discovery. See Doc. 105, ¶ 5, Depo. Ramos-Garcia, at 95:24-96:16. That motion was granted. (Doc. 160) Additionally, Ms. Resto also paid \$300 for the transcript of the injunction hearing that was cited in her successful brief in opposition (Doc. 128, at pg. 9-10) to Mr. RamosGarcia’s motion for sanctions (Doc. 119) that was denied (Doc. 158). Consequently, as the prevailing party after final adjudication on the merits, Ms. Resto should be awarded \$2,502.55 in statutory costs and disbursements made on her successful motions/defenses. See Wis. Stat. §§ 814.03(01), 814.04(02), 885.45(2).

The trial court erred in its decision by confusing the statutory award of costs with Ms. Resto’s separate request for attorneys’ fees premised on a finding of bad faith. *See* Doc. 172, pg. 5 (“[t]he court will not use its equitable powers to award costs and attorney fees based on findings of bad faith or fraud that are not supported by the record”). These were separate requests subject to different standards. Under

Wisconsin law, a prevailing defendant “shall” recover costs when the plaintiff fails to obtain a recovery. See Wis. Stat. § 814.03(01). The Court did not make any finding that Mr. Ramos-Garcia recovered anything from his lawsuit. He obtained nothing. No separate finding of bad faith was required for Ms. Resto to recover her costs. The Court erred by requiring bad faith for costs.

The trial court and Mr. Ramos-Garcia’s argument that Mr. Ramos-Garcia’s voluntary dismissal of the case before a final judgment is litigated at trial changes the result is also without merit as it relates to an award of costs. *See, e.g., Estate of Radley v. Ives*, 2011 WI App 144, ¶ 17 (rejecting argument that costs cannot be awarded when basis for award of costs is obtained by stipulation rather than trial on the merits) (cited in Doc. 170, pg. 2). Cost shifting statutes are designed to compensate parties for having to vindicate their rights in court regardless whether the case is tried or resolved upon stipulations. *Id.* ¶ 19. This rationale applies to dismissals that are expressly objected to on the basis of awarding costs and fees. (Doc. 170) Ms. Resto is entitled to the recovery of her costs.

### **CONCLUSION**

In considering this case, the Court should zoom out and take a practical look at what happened here: a Wisconsin man in his thirties with a history of multiple accusations of sexual misconduct sued a Wisconsin woman over being called out on social media for having sex a teenager and the trial court helped him secure a judicially sanctioned gag-order without giving the woman the opportunity to brief the gag-order. She incurred thousands of dollars in legal fees fighting an injunction

to protect something that should be free in free society: freedom of speech. The Wisconsin woman defended her speech and when the Wisconsin man with a history of multiple accusations of sexual misconduct was given his day in court to prove he was actually defamed, he balked, pulled the plug, and tucked tail once he realized he could not throw money at the problem to make it go away and would have to face his accusers in court.

The Wisconsin legislature specifically enacted a statute for fee-shifting on injunctions to compensate people like Ms. Resto who are wrongfully restrained by injunctions when all is said and done. Ms. Resto's speech was wrongfully restrained and she should be awarded her costs, the injunction bond, and all of her attorneys' fees. Because this case has significant implications for free speech and the use of gag-orders to silence litigants, this Court should publish its opinion in this case addressing the use of injunctions for restraining future speech.

Dated: November 26, 2024.

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*By: Electronically signed by Brinton J.*

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**CERTIFICATIONS OF COUNSEL**

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm), and (c) for a brief. The length of this brief is 33 pages and 9220 words.

Dated November 26, 2024.

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I hereby certify that filed with this brief is an appendix that complies with s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

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