

FILED
06-06-2019
CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

LEONARD POZNER,
Plaintiff,

vs.

Case No. 18CV3122

JAMES FETZER;
MIKE PALECEK;
WRONGS WITHOUT WREMEDIES, LLC;
Defendants.

PLAINTIFF'S RESPONSE TO FETZER'S PROPOSED FINDINGS OF FACT

PLAINTIFF'S PRELIMINARY STATEMENT

Defendant Fetzer has failed to comply with the timeline set forth in this Court's letter dated May 2, 2019 (Doc. #111). For this reason, along with the specific reasons set forth below, Defendant Fetzer's motion is not complete.

PLAINTIFF'S RESPONSE

DPFOF 1. Plaintiff Leonard Pozner (hereinafter "Plaintiff") engaged in around 100 hours of phone conversations with Kelley Watt of Tulsa, Oklahoma, over a six-month interval (Watt Aff., ¶9).

PLAINTIFF'S RESPONSE: **Disputed; immaterial.** Ms. Watt's characterization of the time period in which she and Mr. Pozner had discussions is inconsistent with her statements in Chapter 11 of the book, where she states the conversations took place over a period of about 5 weeks. *See* Doc. # 121 at Ex. M (page 184 of Nobody Died At Sandy Hook).

DPFOF 2. Kelley Watt has listened to audio of an interview done by Richard Gutjahr and confirmed that the subject of the interview, identified as Leonard Pozner, is absolutely the same man she had those conversations with, who identified himself to her as "Lenny Pozner" (Watt Aff. ¶ 20).

PLAINTIFF'S RESPONSE: Not disputed.

DPFOF 3. After repeatedly asking Plaintiff for his son Noah's death certificate and other materials, Kelley Watt received the following email:

On Monday, May 12, 2014, Len Pozner <lpozner@ymail.com>

wrote: Take a look on my google page lenpoz.com

The documents posted there may interest

you Lenny

(The actual email is in Defendant's Errata; it was referred to but not quoted in Ch. 11, p. 184, of *Nobody Died At Sandy Hook: It was a FEMA Drill to Promote Gun Control*, on p. 49 of 51 of the Motion, Exhibit 3 to Watt Aff.; Watt Aff. ¶¶17-18.)

PLAINTIFF'S RESPONSE: Not supported by admissible evidence. In her

affidavit, Ms. Watt states that Plaintiff sent her the death certificate directly. (Watt Aff. ¶ 18.)

Defendant Fetzer now attached what he purports to be an email exchange between Ms. Watt and

Plaintiff with the text above, but Defendant Fetzer has no personal knowledge of this email, *see*

Wis. Stat. § 906.02, nor has Ms. Watt authenticated it. (Doc. #136 ¶ 3.) Thus, the document

Defendant Fetzer attaches to his Errata has not been authenticated and is thus inadmissible. Wis.

Stat. § 909.01; *see also* Wis. Stat. § 909.15(1).

DPFOF 4. The web address lenpoz.com directs to a Google Plus page with the address <https://noahpozner.blogspot.com>, which has numerous family photos of "Noah Pozner" on it, all posted by "Lenny" and bearing the label "Lenny Pozner" (admission of a party opponent per Wis. Stat. 908.01(4)(b)(1)).

PLAINTIFF'S RESPONSE: Disputed; immaterial; while a website URL and

photos posted on it are not party admissions, Plaintiff does not dispute that

<http://www.lenpoz.com> currently directs to <https://noahpozner.blogspot.com/?view=flipcard> and

that Plaintiff has photos on this website, but Plaintiff disputes that this page is a Google Plus

page and disputes that this is the URL to which www.lenpoz.com redirected traffic at the time

Mr. Pozner sent the email to Kelley Watt.

DPFOF 5. Kelley Watt found the death certificate for “Noah Samuel Pozner” posted on the above website, which says it is owned by Leonard Pozner. She provided that death certificate to Defendant (Motion, p. 2; Watt Aff.).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Ms. Watt stated, under oath, that Plaintiff sent her the death certificate directly. (Watt Aff. ¶ 18.)

In her affidavit, Ms. Watt said nothing about a website or obtaining the death certificate from a website. (*See generally* Watt Aff.). Ms. Watt does not state that she provided a death certificate to Defendant Fetzer. (*Id.*) Defendant Fetzer has now attached what he purports to be an email exchange between Ms. Watt and Plaintiff where Plaintiff directed Ms. Watt to go to lenpoz.com, but Defendant Fetzer has provided no evidence to authenticate that email. Moreover, the email to Ms. Watt referred to a google page, and the website identified by Mr. Fetzer is a “blogspot” page. *See* Wis. Stat. § 909.01; (Doc. #136 ¶ 3; *see also* Plaintiff’s Response to DPFOF 3.)

DPFOF 6. It is attached to Defendant’s Motion for Summary Judgment as Exhibit B (Motion, p. 2).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

There is no evidence to authenticate the chain of custody for Exhibit B. (*See* Plaintiff’s Response to DPFOF 5.); *see also* Wis. Stat. § 909.01. Plaintiff does not dispute that Exhibit B is a copy of the death certificate Plaintiff released, but Defendant’s claim that Exhibit B is the particular electronic file released by Plaintiff is unsupported. Given the poor quality of Exhibit B, it does not appear to accurately reflect the scan released by Plaintiff in 2014. As such, Exhibit B is neither an original under Wis. Stat. § 910.01(3) nor a duplicate as set forth in 910.03.

DPFOF 7. Exhibit B is the version Defendant wrote about in the book, *Nobody Died At Sandy Hook: It was a FEMA Drill to Promote Gun Control* (2015; 2nd edition, 2016) and concluded to be a fake, a forgery, or a fabrication. (Motion, pp. 1, 9-10.)

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

There is no evidence to authenticate the chain of custody for Exhibit B. (*See* Plaintiff’s

Response to DPFOF 5-6.); *see also* Wis. Stat. § 909.01. Plaintiff does not dispute that Exhibit B is a copy of the death certificate Plaintiff released, but Defendant's claim that Exhibit B is the particular electronic file released by Plaintiff is unsupported.

DPFOF 8. Chapter 11, "Are Sandy Hook Skeptics Delusional with 'Twisted Minds,'" was co-authored by Defendant and Kelley Watt, and is identical in both editions (Watt Aff., ¶10).

PLAINTIFF'S RESPONSE: Not disputed.

DPFOF 9. Defendant and Kelley Watt addressed the death certificate that Plaintiff gave to Kelley Watt (Exhibit B) in that chapter (Exhibit 3 to Watt Aff.).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence; immaterial. Defendant Fetzer has not provided admissible evidence to prove that Plaintiff gave Ms. Watt the death certificate depicted in Exhibit B. (*See* Response to DPFOF's 3, 5, and 6.) There is no evidence to authenticate the chain of custody for Exhibit B. (*See* Plaintiff's Response to DPFOF 5.); *see also* Wis. Stat. § 909.01. Plaintiff does not dispute that Exhibit B is a copy of the death certificate Plaintiff released, but Defendant's claim that Exhibit B is the particular electronic file released by Plaintiff is unsupported. **No dispute** to the extent that Defendant Fetzer and Ms. Watt addressed Noah Pozner's death certificate in Chapter 11 of *NOBODY DIED AT SANDY HOOK*.

DPFOF 10. Exhibit B to Defendant's Motion for Summary Judgment is the death certificate purporting to be of "Noah Samuel Pozner" that Defendant has repeatedly asserted to be a fake, a forgery and a fabrication in Chapter 11 of the book and many blogs, videos and interviews (Motion, pp. 2, 3; Exhibit B).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence; immaterial. There is no evidence to authenticate the chain of custody for Exhibit B. (*See* Plaintiff's Response to DPFOF 5.); *see also* Wis. Stat. § 909.01. Plaintiff does not dispute that Exhibit B is a copy of the death certificate Plaintiff released, but Defendant's claim that Exhibit B is the particular electronic file released by Plaintiff is unsupported. **No dispute** as to the fact

that Defendant Fetzer has repeatedly asserted Noah Pozner's death certificate to be a fake, a forgery and a fabrication in Chapter 11 of the book and many blogs, videos and interviews.

DPFOF 11. The document Plaintiff attached to his Complaint, which he has represented to the Court as the death certificate of his son "N.P."—Exhibit A to Defendant's Motion for Summary Judgment—contains much of the same information as Exhibit B (Exhibit A; Exhibit B; Motion).

PLAINTIFF'S RESPONSE: Not disputed.

DPFOF 12. Exhibit A has distinct differences from Exhibit B (Motion, pp. 2-5, 8-10).

PLAINTIFF'S RESPONSE: Not disputed; immaterial. To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer.

DPFOF 13. Exhibit A has a state file number, while Exhibit B does not (Exhibit A; Exhibit B).

PLAINTIFF'S RESPONSE: Not disputed; immaterial. To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer.

DPFOF 14. Exhibit A bears the words "boxes 12 & 22 corrected as per Father 6/14/13 Leonard Pozner" and has the address "37 Alpine Circle" lined out in boxes 12 and 22, with a new address "3 Kale Davis Road" typed in.

PLAINTIFF'S RESPONSE: Not disputed; immaterial. To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a

material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer.

DPFOF 15. Exhibit A, to the extent to which it is discernible, has relatively uniform texture and tone while Exhibit B displays obvious differences in tone and texture, where the bottom has a dark cast that is missing from the top (Exhibit A, Exhibit B).

PLAINTIFF'S RESPONSE: **Not disputed; immaterial.** To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer.

DPFOF 16. Defendant has stated that this difference arises because the document is a fabrication using the bottom of an authentic death certificate with the top half of a fake (Motion, p. 3).

PLAINTIFF'S RESPONSE: **Not disputed.** (*See also* Doc. #106, PPUF Nos. 99-100.) Plaintiff does not dispute that Defendant made that statement, but Plaintiff does dispute the truth of the statement itself. *See, e.g.,* Doc. #104, Green Aff. ¶ 13; Doc. #106, PPUF #108.

DPFOF 17. Exhibit A is not the death certificate that Defendant has repeatedly asserted to be a fake, a forgery or a fabrication in the book or in many blogs, videos and interviews (Motion, p. 2).

PLAINTIFF'S RESPONSE: **Disputed.** To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer. Defendant Fetzer is not disputing that both documents are versions of a death certificate purporting to be Noah Pozner's; Defendant Fetzer has now stated that both Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint are fake and inauthentic; and the defamatory statements at issue do not distinguish between

either document and, in context, made these statements to show that Plaintiff is a crisis actor covering up a fake massacre of children and that the entire Sandy Hook tragedy is a hoax. (Doc. #100 at 2-3; *id.* at 7 (“For these reasons, too, not only is Exhibit B a presumptive forgery, but so is Exhibit A.”); Doc. #102 at 20-21.) Moreover, every copy of Noah Pozner’s death certificate—regardless of which copy issued by the State of Connecticut one is reviewing—identifies the Medical Examiner’s case number as 12-17604, includes a certification from the Chief Medical Examiner, and bears an embossed seal. (Doc. #106, PPUF Nos. 42, 44-45.) Newer copies of the certified death certificate reflects amendments made by the Newtown Vital Records Office in 2013 to reflect Noah Pozner’s permanent address. (Doc. #106, PPUF No. 46.) (*See also* Plaintiff’s Response to DPFOF 3 & 12.)

DPFOF 18. Defendant had published no statements whatsoever about Exhibit A prior to this suit, which he had not previously seen (Motion, p. 2).

PLAINTIFF'S RESPONSE: **Disputed; immaterial.** To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant’s Motion for Summary Judgment and Exhibit A to Plaintiff’s Complaint, this alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer. Defendant Fetzer is not disputing that both documents are versions of a death certificate purporting to be Noah Pozner’s; Defendant Fetzer has now stated that both Exhibit B attached to Defendant’s Motion for Summary Judgment and Exhibit A to Plaintiff’s Complaint are fake and inauthentic; and the defamatory statements at issue do not distinguish between either document and, in context, made these statements to show that Plaintiff is a crisis actor covering up a fake massacre of children and that the entire Sandy Hook tragedy is a hoax. (Doc. #100 at 2-3; *id.* at 7 (“For these reasons, too, not only is Exhibit B a presumptive forgery, but so is Exhibit A.”); Doc. #102 at 20-21.) Moreover, every copy of Noah Pozner’s death certificate—

regardless of which copy issued by the State of Connecticut one is reviewing—identifies the Medical Examiner’s case number as 12-17604, includes a certification from the Chief Medical Examiner, and bears an embossed seal. (Doc. #106, PPUF Nos. 42, 44-45.) Newer copies of the certified death certificate reflects amendments made by the Newtown Vital Records Office in 2013 to reflect Noah Pozner’s permanent address. (Doc. #106, PPUF No. 46.) (*See also* Plaintiff’s Response to DPFOF 3, 12, & 17.)

DPFOF 19. Exhibit B is an uncertified copy or version of a death certificate purporting to be of “Noah Samuel Pozner” (Motion, pp. 4-5; Exhibit B).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

There is no evidence to authenticate the chain of custody for Exhibit B. (*See* Plaintiff’s Response to DPFOF 5.) As a result, Defendant Fetzer has no personal knowledge regarding how Exhibit B to Defendant’s Motion for Summary Judgment came to appear the way that it does as required under Wis. Stat. § 906.02. Moreover, every copy of Noah Pozner’s death certificate—regardless of which copy issued by the State of Connecticut one is reviewing—identifies the decedent, Noah Pozner, and includes all material information about the decedent, including Medical Examiner’s case number as 12-17604, and a certification from the Chief Medical Examiner, and bears an embossed seal and the signature of the Newtown Registrar. (Doc. #106, PPUF Nos. 42, 44-45.)

DPFOF 20. The Town Clerk is the Registrar of Vital Statistics within each Connecticut town. (Conn. Gen. Stat. Sec. 7-37(a)).

PLAINTIFF'S RESPONSE: Not disputed.

DPFOF 21. In Newtown, CT, the Registrar of Vital Statistics in 2012 was Debbie Aurelia (Exhibit A; Exhibit B; Motion, p. 4). She has since changed her name to Debbie Aurelia Halstead (judicial notice).

PLAINTIFF'S RESPONSE: Not disputed; immaterial.

DPFOF 22. The town registrar registers the original death certificate and submits a certified copy to the State Department of Public Health and Vital Statistics, which then can also issue certified copies itself. (Conn. Gen. Stat. §7-42).

PLAINTIFF'S RESPONSE: Not disputed.

DPFOF 23. The Registrar of Vital Statistics in each town has an official seal provided by the town, which is required to be used to authenticate certificates and copies of record. (Conn. Gen. Stat. Sec. 7-40).

PLAINTIFF'S RESPONSE: Not disputed.

DPFOF 24. Debbie Aurelia's signature at the bottom of the death certificate is not the required certification of authenticity of the copy, but is, instead, her declaration of when the certificate was received by her for recording (Exhibit B; Motion, p. 4).

PLAINTIFF'S RESPONSE: Not Disputed. To the extent Defendant Fetzer is referring to the signature immediately below box 53 on the death certificate, Plaintiff does not dispute this proposed finding of fact.

DPFOF 25. There is no certification of authenticity of the copy on Exhibit B; no attestation of it as authentic; and no official town seal (Exhibit B).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence; immaterial. Defendant Fetzer provides no evidence to authenticate Exhibit B as anything other than a picture from his book. (*See* Plaintiff's Response to DPFOF 5 & 7); *see* Wis. Stat. § 909.01. Defendant Fetzer has no personal knowledge regarding how Exhibit B to Defendant's Motion for Summary Judgment came to appear the way that it does prior to the time he published it in his book as required under Wis. Stat. § 906.02. Thus, for example, he cannot state that Exhibit B does not bear the raised symbol of the "official town seal," as he alleges that he was only ever provided a document that he claims Ms. Watt obtained from a website (although Ms. Watt inconsistently claims that Mr. Pozner emailed that document to her). (*Compare* DPFOF 5, *with* Watt Aff. ¶¶ 18 & 22.) This fact is therefore inadmissible. Moreover, the fact is

disputed because the raised seal of the Newtown clerk is plainly visible in the lower left corner of the death certificate reproduced in Defendant's book. (Doc. 121, Ex. M, page 181)

DPFOF 26. Under Connecticut law, no one but an approved genealogical researcher or state or federal agency can obtain an uncertified copy of a death certificate (Conn. Gen. Stat. 7-51a).

PLAINTIFF'S RESPONSE: Not disputed.

DPFOF 27. The uncertified death certificate, Exhibit B, was created in violation of law and is a forgery (Conn. Gen. Stat. 7-51a; Motion, pp. 5, 6).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Defendant Fetzer provides no evidence to authenticate Exhibit B as anything other than a picture from his book. (*See* Plaintiff's Response to DPFOF 5 & 7); *see* Wis. Stat. § 909.01. As a result, Defendant Fetzer has no personal knowledge regarding how Exhibit B to Defendant's Motion for Summary Judgment came to appear the way that it does as required under Wis. Stat. § 906.02.

(*See also* Plaintiff's Response to DPFOF 25.)

DPFOF 28. Because Exhibit B was posted on lenpoz.com, Plaintiff was in possession of Exhibit B (which necessarily follows from its presence on his website).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Defendant Fetzer provides no evidence that Exhibit B was posted on lenpoz.com. In her affidavit, Ms. Watt stated, under oath, that Plaintiff sent her the death certificate. (Watt Aff. ¶ 22.) Defendant Fetzer has now attached what he purports to be an email exchange between Ms. Watt and Plaintiff where Plaintiff directed Ms. Watt to go to lenpoz.com, but Defendant Fetzer has no personal knowledge of this email as required under Wis. Stat. § 906.02. (Doc. #136 ¶ 3.) Defendant Fetzer has no evidence that Ms. Watt found the death certificate on lenpoz.com, because she has not testified to such a fact. (*Contra* Watt Aff. ¶ 18.) Moreover, Defendant Fetzer's assertion in DPFOF 28 is fundamentally inconsistent with his assertion in DPFOF 4,

because a website that merely forwards to another location cannot also be the location where a document, such as Exhibit B, was posted.

DPFOF 29. Exhibit B, in box 39, has “No” checked to the question, “WAS AN AUTOPSY PERFORMED?” (Exhibit B).

PLAINTIFF'S RESPONSE: **Not disputed; immaterial.** This alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer.

DPFOF 30. Plaintiff has filed with the Court an autopsy report for “Noah Samuel Pozner” attached to Plaintiff’s “Motion for Paternity Testing” (Exhibit C).

PLAINTIFF'S RESPONSE: **Disputed.** Plaintiff filed with the Court a Post Mortem Report, which states, "Internal examination is not performed in keeping with the wished of the family." (Exhibit C). Dr. Carver also testified that he did not conduct an internal examination, rather, he used x-ray imaging and also evaluated Noah Pozner’s lungs via needle and syringe to determine the cause of death. (Carver Dep. 20:1-22:5.)

DPFOF 31. The statement in box 39 of Exhibit B is false (which necessarily follows from Exhibit C).

PLAINTIFF'S RESPONSE: **Disputed; not supported by admissible evidence; immaterial.** Defendant Fetzer has not provided evidence that an autopsy was performed, only that a "Post Mortem Report" exists which states "Internal examination is not performed in keeping with the wishes of the family." (Exhibit C). Dr. Carver also testified that he did not conduct an internal examination, rather, he used x-ray imaging and also evaluated Noah Pozner’s lungs via needle and syringe to determine the cause of death. (Carver Dep. 20:1-22:5.)

DPFOF 32. Exhibit A has the same false indication in box 39 (necessarily follows).

PLAINTIFF'S RESPONSE: **Disputed; not supported by admissible evidence; immaterial.** Defendant Fetzer has not provided evidence that an autopsy was performed, only

that a "Post Mortem Report" exists which states "Internal examination is not performed in keeping with the wished of the family." (Exhibit C). Dr. Carver also testified that he did not conduct an internal examination, rather, he used x-ray imaging and also evaluated Noah Pozner's lungs via needle and syringe to determine the cause of death. (Carver Dep. 20:1-22:5.) (*See also* Plaintiff's Response to DPFOF 30-31.) **No dispute** to the extent that Exhibit A to Plaintiff's Complaint has a "No" checked in box 39.

DPFOF 33. No medical personnel ever entered Sandy Hook Elementary School during the day of 14 December 2012 (Exhibit D; Motion, p. 8).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence; immaterial. Defendant Fetzer failed to authenticate Exhibit D. *See* Wis. Stat. § 909.01. Even if Defendant Fetzer had provided a basis to determine that Exhibit D was admissible, the document does not support the statement that no medical personnel ever entered Sandy Hook Elementary School during the day of December 14, 2012. Rather, the document only provides support that Karin Halstead and her "crew" entered Sandy Hook Elementary School on December 14, 2012. Moreover, the Connecticut Police Report includes police interview notes from three paramedics who stated they entered the school and evaluated victims, who were then pronounced dead. (See Zimmerman Aff. at Ex. D) Those excerpts are from an official police investigation, which is subject to a hearsay exception per Wis. Stat. § 903.08(8), and the underlying statements in the interviews are exceptions under Wis. Stat. 908.045(2) (the witnesses are outside of the subpoena power of the Court).

DPFOF 34. Then-Chief State Medical Examiner H. Wayne Carver II, M.D. said publicly that the bodies were not brought out of the school until sometime during the night after the 14 December 2012 event at Sandy Hook Elementary School, under cover of darkness (Motion, p. 8, n. 4).

PLAINTIFF'S RESPONSE: Not Disputed; not supported by admissible

evidence; immaterial. Defendant Fetzer has not attempted to authenticate the website to which he cites, nor has he stated he has personal knowledge of how this Internet article was created.

Wis. Stat. § 909.01. Moreover, these out of court statements of Dr. Carver are being offered for the truth of the matter asserted and are thus inadmissible hearsay. Wis. Stat. § 908.01.

DPFOF 35. No medical professional declared anyone dead inside Sandy Hook Elementary School during the day on 14 December 2012 (necessarily follows from the above).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence;

immaterial. This statement does not follow from the statements of the above DPFOFs.

Moreover, the Connecticut Police Report includes police interview notes from three paramedics who stated they entered the school and evaluated victims, who were then pronounced dead. (See Zimmerman Aff. at Ex. D) Those excerpts are from an official police investigation, which is subject to a hearsay exception per Wis. Stat. § 903.08(8), and the underlying statements in the interviews are exceptions under Wis. Stat. 908.045(2) (the witnesses are outside of the subpoena power of the Court).

DPFOF 36. The Official Report by Danbury State's Attorney Stephen Sedensky III says the shooting took place between 9:30 AM and 9:41 AM ("Errata to Defendant's Motion for Summary Judgment"; <https://portal.ct.gov/-/media/DCJ/SandyHookFinalReportpdf.pdf>, p. 9).

PLAINTIFF'S RESPONSE: Not disputed.

DPFOF 37. The 11:00 AM time of death stated on both Exhibit A and Exhibit B is thus false (follows from the four previous findings).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence,

immaterial. Both Exhibit A and B contain a Box 4 which states "ACTUAL OR PRESUMED TIME OF DEATH" and both were completed with the time "11:00 am." Defendant Fetzer has not provided any evidence to even suggest that the person completing this portion of the

Certificate of Death did not presume an 11:00 am time of death. Moreover, Dr. Carver testified

that the 11:00 am time of death was the time the Office of the Chief Medical Examiner had records of competent medical authority to make the time of death determination. (Carver Dep. 77:8-78:16.) Dr. Carver also testified that this was an administrative function, not an investigative function. (*Id.*)

DPFOF 38. Sandy Hook Elementary School is within the Town of Newtown (judicial notice; Motion, pp. 4, 6).

PLAINTIFF'S RESPONSE: Not Disputed.

DPFOF 39. The death of “Noah Samuel Pozner” was registered in the Town of Newtown on 26 December 2012, as established by the dated signature of Debbie Aurelia on both Exhibit A and Exhibit B (Motion, p. 6).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence;

immaterial. Defendant Fetzer has not provided evidence that he has personal knowledge of when Noah Pozner’s death was registered with the Town of Newtown or when a death is legally registered in the State of Connecticut. This alleged fact also contains a legal conclusion.

DPFOF 40. No burial permit could legally issue for “Noah Samuel Pozner” until after the registration of his death, which occurred on 26 December 2012 (Motion, pp. 6-7).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence;

immaterial. Defendant Fetzer has not provided evidence that he has personal knowledge of when and how the State of Connecticut issues burial permits. This alleged fact also contains a legal conclusion. Mr. Green also testified that he did, in fact, obtain a burial permit for Noah Pozner. (Green Dep. 13:7-14:9; *see also* Doc. # 104 ¶ 15.) A certified copy of that burial permit, which is dated December 17, 2012, has been produced in evidence. (Zimmerman Aff. at Ex. E)

DPFOF 41. There was no permit for the burial of “Noah Samuel Pozner” on 17 December 2012 (Motion, pp. 6-7; follows from foregoing finding).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence;

immaterial. Defendant Fetzer relies on the absence of facts to prove this alleged fact.

Defendant Fetzer has also not provided evidence that he has personal knowledge of when and how the State of Connecticut issues burial permits. This alleged fact contains a legal conclusion.

Mr. Samuel Green, who prepared Noah Pozner's body for burial, obtained a burial permit for Noah Pozner on December 17, 2012, from the town of Fairfield, which is the town in which Mr. Green's funeral home is located. (Doc. #106, PPUF Nos. 51, 61.) Mr. Green testified to this fact at his deposition. (Green Dep. 13:7-14:9; *see also* Plaintiff's Response to DPFOF 40.)

DPFOF 42. "Noah Samuel Pozner" was not buried on 17 December 2012 (follows necessarily from foregoing findings).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence;

immaterial. Defendant Fetzer relies on the absence of facts to prove this alleged fact.

Defendant Fetzer has also not provided evidence that he has personal knowledge of when and how the State of Connecticut issues burial permits. Mr. Green testified that he personally prepared Noah Pozner's body for funeral and witnessed the burial of Noah Pozner at B'nai Israel Cemetery in Monroe, Connecticut on December 17, 2012. (Doc. #104 ¶¶ 16-20; *see also* Green Dep. 24:10-26:9.)

DPFOF 43. Defendant's published statements about different typefaces and pitches used in various boxes; lack of certification; and different shading on Exhibit B are true (Exhibit B; Motion, pp. 2- 3, 8-10).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence;

immaterial. Defendant Fetzer published statements indicating that Lenny Pozner was allegedly responsible for what Defendant Fetzer believes are different typefaces and pitches used in various boxes; lack of certification; and different shading on Exhibit B. Defendant Fetzer has not provided any evidence to prove that Exhibit B lacks certification. Defendant Fetzer has also not

provided any evidence to show that Plaintiff filled out or altered portions of Exhibit B.

Defendant Fetzer admits that Exhibit B contains much of the same information as Exhibit A to the Complaint. (DPFOF ¶ 11.) Further, the two individuals who completed the typed portions of the Certificate of Death explained that they did so separately, using different machines. (Carver Dep. 17:17-23, 31:7-32:11; Green Dep. 34:5-23; *see also* Doc. # 104 ¶ 8.) (*See also* Plaintiff's Response to DPFOF 17.)

DPFOF 44. Exhibit A does not bear the official seal of the town registrar certifying the authenticity of the copy (Motion, p. 8).

PLAINTIFF'S RESPONSE: Partially disputed; not supported by admissible evidence; immaterial. Exhibit A bears the signed certification of the town registrar. However, because Exhibit A was obtained from the State Vital Records office, and not the Newtown Vital Records Office, Exhibit A contains the embossed seal of the State of Connecticut and is signed by Elizabeth Frugale, Registrar of Vital Records, dated November 14, 2018, certifying the authenticity of the copy. (Doc. #106, PPUF No. 45; Doc. #133 ¶ 12 & Ex. J.) (*See also* Plaintiff's Response to DPFOF 25.)

DPFOF 45. Neither Exhibit A nor Exhibit B is on safety paper, meaning the certificates could the more easily have been forged (Exhibit A; Exhibit B; judicial notice).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence; immaterial. Defendant Fetzer has not provided any evidence that he has personal knowledge of how documents are forged or what safety paper is. He provides no expert support for his opinion that documents not on "safety paper" "could the more easily have been forged." *See* Wis. Stat. § 907.01. Indeed, Defendant Fetzer has not even provided evidence that he has ever viewed the actual certified copies of these documents, as opposed to copies of those copies. (*See also* Plaintiff's Response to DPFOF 3, 17, & 45.) Moreover, Defendant Fetzer has alleged that Exhibit B was an electronic copy that was, variously, either "sent" to Kelley Watt or uploaded to

a social media page, so it is non-sensical to claim that Exhibit B is not on “safety paper.” In addition, Dr. Carver testified that Noah Pozner’s original death certificate was typed on “archival paper.” Carver Depo. at 41:25-42:4. Finally, Mr. Fetzer has not established that this fact is susceptible of judicial notice under Wis. Stat. § 902.01.

DPFOF 46. Exhibit B, because it is uncertified, violates Connecticut law and is therefore a fake, a forgery and a fabrication (Motion, pp. 4-6).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence, immaterial. Defendant Fetzer has not provided admissible evidence that Exhibit B is an uncertified copy of the Certificate of Death. In her affidavit, Ms. Watt stated that Plaintiff sent her the death certificate. (Watt Aff. ¶ 18.) Defendant Fetzer has now attached what he purports to be an email exchange between Ms. Watt and Plaintiff where Plaintiff directed Ms. Watt to go to lenpoz.com, but Defendant Fetzer has no personal knowledge of this email as required under Wis. Stat. § 906.02. (Doc. #136 ¶ 3.) Nor has Defendant Fetzer provided any evidence to suggest that Ms. Watt (or anyone else) obtained Exhibit B from lenpoz.com. Finally, Mr. Pozner has provided a sworn affidavit stating that the only Certificate of Death he could have posted was a certified copy as he was not in possession of an incomplete or uncertified copy of the Certificate of Death. (Pozner Aff. ¶¶ 13-14.) Based on his personal knowledge, Mr. Pozner stated that the certified Certificates of Death he has have embossed seals but that those "are not well reflected" in scans made of those Certificates of Death. (Pozner Aff. ¶ 13.) (*See also* Plaintiff’s Response to DPFOF 25 & 44.) In any event, this fact is immaterial because even if true, and it is not, the lack of certification would not make the document a fake, a forgery, or a fabrication.

DPFOF 47. Exhibit A, because it contains a false indication of nonperformance of an autopsy, is a fake, a forgery and a fabrication (Exhibit A; Motion, p. 6).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence, immaterial. Defendant Fetzer has not provided evidence that an autopsy was performed, only

that a "Post Mortem Report" exists which states "Internal examination is not performed in keeping with the wished of the family." (Exhibit C). **No dispute** to the extent that Exhibit A to Plaintiff's Complaint has a "No" checked in box 39. (*See also* Plaintiff's Response to DPFOF 30-31.) In any event, this fact is immaterial because even if true, and it is not, an incorrect notation of autopsy would reflect an error but would not be evidence that the document is a fake, a forgery, or a fabrication. Conn. Gen. Stat. § 7-42 gives registrars authority to correct or amend vital records, necessarily implying the potential necessity to make such corrections. No Connecticut law says that a death certificate with an error is void or invalid, much less a fake, fabrication, or forgery.

DPFOF 48. Exhibit B, because it contains a false indication of nonperformance of an autopsy, is a fake, a forgery and a fabrication (Exhibit B; Motion, p. 6).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence, immaterial. Defendant Fetzer has not provided evidence that an autopsy was performed, only that a "Post Mortem Report" exists which states "Internal examination is not performed in keeping with the wished of the family." (Exhibit C). (*See also* Plaintiff's Response to DPFOF 30-31.) In any event, this fact is immaterial because even if true, and it is not, an incorrect notation of autopsy would at most reflect an inaccuracy but would not be evidence that the document is a fake, a forgery, or a fabrication. Conn. Gen. Stat. § 7-42 gives registrars authority to correct or amend vital records, necessarily implying the potential necessity to make such corrections. No Connecticut law says that a death certificate with an error is void or invalid, much less a fake, fabrication, or forgery.

DPFOF 49. Exhibit A, because it contains a false statement about time of death, is a fake, a forgery and a fabrication (Exhibit A; Exhibit D; Motion, pp. 7-8; Sedensky Report; Errata).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Both Exhibit A and B contain a Box 4 which states "ACTUAL OR PRESUMED TIME OF

DEATH" and both were completed with the time "11:00 am." Defendant Fetzer has not provided any evidence to even suggest that the person completing this portion of the Certificate of Death did not presume an 11:00 am time of death. (*See also* Plaintiff's Response to DPFOF 30-31.) In any event, this fact is immaterial because even if true, and it is not, an incorrect statement about time of death would at most reflect an inaccuracy but would not be evidence that the document is a fake, a forgery, or a fabrication. Conn. Gen. Stat. § 7-42 gives registrars authority to correct or amend vital records, necessarily implying the potential necessity to make such corrections. No Connecticut law says that a death certificate with an error is void or invalid, much less a fake, fabrication, or forgery.

DPFOF 50. Exhibit B, because it contains a false statement about time of death, is a fake, a forgery and a fabrication (Exhibit B; Exhibit D; Motion, pp. 7-8; Sedensky Report; Errata).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Both Exhibit A and B contain a Box 4 which states "ACTUAL OR PRESUMED TIME OF DEATH" and both were completed with the time "11:00 am." Defendant Fetzer has not provided any evidence to even suggest that the person completing this portion of the Certificate of Death did not presume an 11:00 am time of death. (*See also* Plaintiff's Response to DPFOF 37.) In any event, this fact is immaterial because even if true, and it is not, an incorrect statement about time of death would at most reflect an inaccuracy but would not be evidence that the document is a fake, a forgery, or a fabrication. Conn. Gen. Stat. § 7-42 gives registrars authority to correct or amend vital records, necessarily implying the potential necessity to make such corrections. No Connecticut law says that a death certificate with an error is void or invalid, much less a fake, fabrication, or forgery.

DPFOF 51. Exhibit A bears a date of receipt of the death certificate by the town registrar more than five days after death, in violation of Connecticut law, and therefore is a fake, a forgery and a fabrication (Exhibit A; Motion, pp. 6-7).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Defendant Fetzer has not provided evidence that he has personal knowledge of when Noah Pozner's death was received by the Town Registrar. Moreover, Defendant Fetzer previously stated that: "The death of 'Noah Samuel Pozner' was *registered* in the Town of Newtown on 26 December 2012, as established by the dated signature of Debbie Aurelia on both Exhibit A and Exhibit B (Motion, p. 6)." (DPFOF 39 (emphasis added).) As a result, Defendant Fetzer has not laid the foundation and provided the necessary support for the statement of ultimate fact. This alleged fact also contains a legal conclusion. (*See also* Plaintiff's Response to DPFOF 37.) Noah Pozner's burial permit evidences receipt of Noah Pozner completed death certificate by the town of Fairfield on December 17, 2012. (Zimmerman Aff. at Ex. E). There is also admissible evidence in the record to show that the town registrar received the death certificate shortly after Mr. Green obtained Noah Pozner's burial permit. (Green Dep. 35:4-36:2.) This alleged fact also contains a legal conclusion. No Connecticut law says that a death certificate received more than five days after death becomes void, much less that the document is considered fake, forged or fabricated.

DPFOF 52. Exhibit B bears a date of receipt of the death certificate by the town registrar more than five days after death, in violation of Connecticut law, and therefore is a fake, a forgery and a fabrication. (Exhibit B; Motion, pp. 6-7).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Defendant Fetzer has not provided evidence that he has personal knowledge of when Noah Pozner's death was received by the Town Registrar. Moreover, Defendant Fetzer previously stated that: "The death of 'Noah Samuel Pozner' was *registered* in the Town of Newtown on 26 December 2012, as established by the dated signature of Debbie Aurelia on both Exhibit A and Exhibit B (Motion, p. 6)." (DPFOF 39 (emphasis added).) As a result, Defendant Fetzer has not laid the foundation and provided the necessary support for the statement of ultimate fact. Noah

Pozner's burial permit evidences receipt of Noah Pozner completed death certificate by the town of Fairfield on December 17, 2012. (Zimmerman Aff. at Ex. E). There is also admissible evidence in the record to show that the town registrar received the death certificate shortly after Mr. Green obtained Noah Pozner's burial permit. (Green Dep. 35:4-36:2.) No Connecticut law says that a death certificate received more than five days after death becomes void, much less that the document is considered fake, forged or fabricated. This alleged fact also contains a legal conclusion. (*See also* Plaintiff's Response to DPFOF 51.)

DPFOF 53. Since Dr. Carver checked "No" to the question, "WAS AN AUTOPSY PERFORMED," in box 39, and signed the death certificate which is Exhibit A, even while completing a Post- Mortem Examination Report on the same day, 15 December 2012, he made a material misrepresentation on the death certificate, which is a crime (Exhibit A; Motion, p. 7).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Defendant Fetzer has not provided evidence that an autopsy was performed, only that a "Post Mortem Report" exists which states "Internal examination is not performed in keeping with the wished of the family." (Exhibit C). (*See also* Plaintiff's Response to DPFOF 30-31.) This alleged fact also contains a legal conclusion.

DPFOF 54. Since Dr. Carver checked "No" to the question, "WAS AN AUTOPSY PERFORMED," in box 39, and signed the death certificate which is Exhibit B, even while completing a Post- Mortem Examination Report on the same day, 15 December 2012, he made a material misrepresentation on the death certificate, which is a crime (Exhibit B; Motion, p. 7).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Defendant Fetzer has not provided evidence that an autopsy was performed, only that a "Post Mortem Report" exists which states "Internal examination is not performed in keeping with the wished of the family." (Exhibit C). (*See also* Plaintiff's Response to DPFOF 30-31.) This alleged fact also contains a legal conclusion.

DPFOF 55. Exhibit A is not an authentic death certificate issued by the State of Connecticut (necessarily follows from the foregoing).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Defendant Fetzer has not laid the foundation and provided the necessary support for this statement of ultimate fact and conclusion of law. Additionally, there is admissible evidence in the record that shows the death certificate is certified and issued by the State of Connecticut. (Doc. #106, PPUF Nos. 45, 66, 68-69.)

DPFOF 56. Plaintiff and his lead counsel Jacob S. Zimmerman both knew, or should have known, before filing this suit, that Exhibit A was not an authentic death certificate issued by the State of Connecticut (necessarily follows from the foregoing).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Defendant Fetzer has not laid the foundation and provided the necessary support for this statement of ultimate fact and conclusion of law. Additionally, there is admissible evidence in the record that shows the death certificate is certified and issued by the State of Connecticut. (Doc. #106, PPUF Nos. 45, 66, 68-69.) (*See also* Plaintiff's Response to DPFOF 55.)

DPFOF 57. Death reportedly occurred on Friday, 14 December 2012, and five business days later is 21 December, not 26 December 2012. Thus, the registration of the death on 26 December 2012, violated Connecticut law (Motion, pp. 6-7).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Neither Exhibit A nor Exhibit B provide a date for "the registration of death." Rather, both Exhibit A and Exhibit B contain a box stating, "THIS CERTIFICATE WAS RECEIVED FOR RECORD ON" in which the date "December 26, 2012" was written. This alleged fact also contains a legal conclusion. (*See also* Plaintiff's Response to DPFOF 51-52.)

DPFOF 58. Because both Exhibit A and Exhibit B state the death was not registered until 26 December 2012, funeral director Samuel Green violated the law requiring registration of the death within five business days (necessarily follows from the foregoing).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Neither Exhibit A nor Exhibit B provide a date for "the registration of death." Rather, both Exhibit A and Exhibit B contain a box stating, "THIS CERTIFICATE WAS RECEIVED FOR

RECORD ON" in which the date "December 26, 2012" was written. Defendant Fetzer provides no evidence that Mr. Green was responsible for registering the death or providing the Certificate of Death to the registrar, so he cannot support his allegation that Mr. Green violated the law by not doing so. This alleged fact also contains a legal conclusion. (*See also* Plaintiff's Response to DPFOF 51-52.)

DPFOF 59. The paramedic who declared "N.P." dead at 11:00 AM, as referenced in the autopsy report, is unnamed, because no medical professional entered the school during the day (Exhibit C; Exhibit D; Motion, pp. 7-8; Sedensky Report, p. 9; Errata).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Defendant Fetzer has no personal knowledge of and provides no admissible evidence from anyone else with personal knowledge of the events that took place at Sandy Hook Elementary School on December 14, 2012. He has no admissible evidence that no medical professional entered the school during the day. Exhibit C does not contain an autopsy report, but rather contains a "Post Mortem Report." Perhaps Defendant Fetzer meant to refer to the "Report of Investigation" also contained in Exhibit C, which states, among other things, "[A]ll victims were pronounced at the scene on 12/14/12 at 1100 hours by EMS." Defendant Fetzer has not provided a certified copy the Report of Investigation that is part of Exhibit C or any information to authenticate that document. (*See also* Plaintiff's Response to DPFOF 35 and 37.)

DPFOF 60. The statement of declaration of death at 11:00 AM is false on the autopsy report provided to this Court by Plaintiff (Exhibit C).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Defendant Fetzer has not provided an autopsy report as part of Exhibit C. Defendant Fetzer has made no attempt to provide certified copies of the documents provided in Exhibit C or lay a basis for their admission into evidence. Nor can Defendant Fetzer make this statement upon personal

knowledge as he has no personal knowledge of the events that took place at Sandy Hook Elementary School on December 14, 2012. (*See also* Plaintiff's Response to DPFOF 35, 37.)

DPFOF 61. Both state and town certifications of the copy of the death certificate appear on Exhibit A (Motion, p. 8).

PLAINTIFF'S RESPONSE: Not disputed.

DPFOF 62. There is no raised seal accompanying either certification on the copy of Exhibit A which Plaintiff served on Defendant (Motion, p. 8).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence; immaterial. Exhibit A clearly contains the seal of the State of Connecticut and is signed by Elizabeth Frugale, Registrar of Vital Records, dated November 14, 2018. (Complaint Ex. A; Doc. #133 ¶ 12 & Ex. J; Doc. #106, PPUF No. 45.) As Plaintiff stated, the raised seal does not translate well to a photocopy, but Plaintiff has offered to make the certified copy with the raised seal available for inspection. Defendant Fetzer made no effort to inspect the certified copy with the raised seal. (*See also* Plaintiff's Response to DPFOF 25 & 55.)

DPFOF 63. Exhibit A—putatively certified by the state, but lacking the seal—does not comport with the state's legal requirements for authenticity (necessarily follows from preceding findings).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Defendant Fetzer has not personally examined the original certified copy that is Exhibit A, despite being given ample opportunity to do so. As Plaintiff stated, the raised seal does not translate well to a photocopy. (Doc. #106, PPUF No. 45, 66, 68-69.) This alleged fact also contains a legal conclusion. (*See also* Plaintiff's Response to DPFOF 61-62.)

DPFOF 64. To the extent to which both death certificates are similar, the differences in font types, styles and sizes in both Exhibits A and B support Defendant's additional allegations of fabrication (Motion, pp. 9-10).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Mr. Green and Dr. Carver testified about the reasons for the different font types, styles and sizes

in Exhibit A and B. (Plaintiff's Response to DPFOF 43.) Mr. Green provided an affidavit stating that he received a partially filled out death certificate from the Office of the Chief Medical Examiner, and filled out boxes 3-4, 23-27, and 36-53 himself with a typewriter. (Doc. #104 ¶¶ 8-12.) Dr. Carver testified that he provided the information to be typed in the shaded boxes. Carver Depo. at 32:17-36:21. Defendant Fetzer has no personal knowledge such that he can dispute their testimony or Mr. Green's affidavit. Nor has Defendant Fetzer provided admissible evidence to establish that the differences in font types, styles and sizes support allegations of fabrication. To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer. (*See also* Plaintiff's Response to DPFOF 3 & 43.)

DPFOF 65. The use of typewriters rather than computers makes these variations easy to spot, such as in the downward slope of the name "Noah Samuel Pozner" on both certificates (Motion, pp. 8-9).

PLAINTIFF'S RESPONSE: Not disputed; not supported by admissible evidence; immaterial. Mr. Green provided an affidavit in support of Plaintiff's Motion for Summary Judgment stating, among other things, that he received a partially filled out death certificate from the Office of the Chief Medical Examiner, and filled out boxes 3-4, 23-27, and 36-53 himself with a typewriter. (Doc. #104 ¶¶ 8-12.) To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer. (*See also* Plaintiff's Response to DPFOF 3 & 43.)

DPFOF 66. At the very top in box 3, where the date is posted, the type is clearly smaller than the rest of the page (Exhibit A; Exhibit B; Motion, pp. 8-10).

PLAINTIFF'S RESPONSE: Not disputed; not supported by admissible evidence; immaterial. Mr. Green provided an affidavit in support of Plaintiff's Motion for Summary Judgment stating, among other things, that he received a partially filled out death certificate from the Office of the Chief Medical Examiner, and filled out boxes 3-4, 23-27, and 36-53 himself with a typewriter. (Doc. #104 ¶¶ 8-12.) To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer. (See also Plaintiff's Response to DPFOF 3 & 43.)

DPFOF 67. The capital "A" in Alpine in box 12 for RESIDENCE is identical to the capital "A" in Alpine in box 22 for MAILING ADDRESS and is also identical to the capital "A" in Abraham in box 33 for FUNERAL FACILITY (Exhibit A; Exhibit B; Motion, pp. 8-10).

PLAINTIFF'S RESPONSE: Not disputed; not supported by admissible evidence; immaterial. To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer. (See also Plaintiff's Response to DPFOF 3, 43, and 66.)

DPFOF 68. The capital "A" in question above in three different boxes has a small flag at its pinnacle (Exhibit A; Exhibit B; Motion, pp. 8-10).

PLAINTIFF'S RESPONSE: Not disputed; not supported by admissible evidence; immaterial. To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a material fact that would preclude summary judgment for

Plaintiff or which supports summary judgment for Defendant Fetzer. (*See also* Plaintiff's Response to DPFOF 3, 43, and 66.)

DPFOF 69. Comparing the capital "A" in findings 67 and 68, without the small flag in box 4, ACTUAL OR PRESUMED TIME OF DEATH, box 26, CITY OR TOWN OF DEATH & ZIP CODE, box 27, COUNTY OF DEATH, box 38, TIME PRONOUNCED, and in box 46, TIME OF INJURY, compels the conclusion that they are not the same (Exhibit A; Exhibit B; Motion, pp. 8-10).

PLAINTIFF'S RESPONSE: Not supported by admissible evidence;

immaterial. Defendant Fetzer has not laid the foundation and provided the necessary support for this statement of ultimate fact. To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer. Moreover, Dr Carver and Mr. Green have testified that they each entered information in their respective fields of Noah Pozner's death certificate, so the existence of different typefaces is not evidence of anything other than the use of multiple pieces of equipment to fill out the form. (*See also* Plaintiff's Response to DPFOF 3, 43, and 66.)

DPFOF 70. Comparing "Noah," in box 1, DECEDENT'S LEGAL NAME, with "November," in box 7, Date of Birth (MM/DD/YYYY), compels the conclusion that the spacing between the "N" and the "o" is quite different (Exhibit A; Exhibit B; Motion, pp. 8-10).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence;

immaterial. Defendant Fetzer has not laid the foundation and provided the necessary support for this statement of ultimate fact. To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer. Moreover, Dr Carver and Mr. Green have testified that they each entered information in their respective fields

of Noah Pozner's death certificate, so the existence of different typefaces is not evidence of anything other than the use of multiple pieces of equipment to fill out the form. (*See also* Plaintiff's Response to DPFOF 3, 43, and 66.)

DPFOF 71. Comparing "Samuel," in box 1, DECEDENT'S LEGAL NAME, with "Sandy," in box 11, RESIDENCE, compels the conclusion that the spacing between the "S" and the "a" is not the same (Exhibit A; Exhibit B; Motion, pp. 8-10).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence; immaterial. Defendant Fetzer has not laid the foundation and provided the necessary support for this statement of ultimate fact. To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer. (*See also* Plaintiff's Response to DPFOF 3, 43, and 66.)

DPFOF 72. The entire spacing in box 1 is unlike any other in Exhibit B, as reported on pages 182-183 of Nobody Died At Sandy Hook: It was a FEMA Drill to Promote Gun Control. The spacing between "N" and "o" in box 1 and box 7 is clearly different (Exhibit A; Exhibit B; Motion, pp. 8- 10).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence; immaterial. Defendant Fetzer has not laid the foundation and provided the necessary support for this statement of ultimate fact. To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer. (*See also* Plaintiff's Response to DPFOF 3, 43, and 66.)

DPFOF 73. Comparing "Pozner" in box 1, DECEDENT'S LEGAL NAME, with "Pozner" in box 20, INFORMANT'S NAME, compels the conclusion that they are not the same (Exhibit A; Exhibit B; Motion, pp. 8-10).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence; immaterial. Defendant Fetzer has not laid the foundation and provided the necessary support for this statement of ultimate fact. To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer. (*See also* Plaintiff's Response to DPFOF 3, 43, and 66.)

DPFOF 74. These variations indicate that the document was created at different times using different typewriters or different type-balls with a typewriter (Exhibit A; Exhibit B; Motion, pp. 8-10).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence; immaterial. Defendant Fetzer has not offered evidence to show he has personal knowledge of how these documents were created or the means by which they were created. Defendant Fetzer has not named an expert qualified to provide an opinion as to whether these alleged variations indicate that the document was created at different times using different typewriters or different type-balls with a typewriter. (Plaintiff's Response to DPFOF 43.) Mr. Green provided an affidavit in support of Plaintiff's Motion for Summary Judgment stating, among other things, that he received a partially filled out death certificate from the Office of the Chief Medical Examiner, and filled out boxes 3-4, 23-27, and 36-53 himself with a typewriter. (Doc. #104 ¶¶ 8-12.) Dr. Carver testified that the medical examiner's portion of the death certificate was completed using a printer. (Carver Depo. at 31:7-22.) To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer. (*See also* Plaintiff's Response to DPFOF 3.)

DPFOF 75. Defendant contends that, insofar as Exhibit A is the same as Exhibit B in these respects, the latter is inauthentic, too, and is a fake prepared as such by the State of Connecticut (Exhibit A; Exhibit B; Motion, pp. 8-10; follows from above findings).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence; immaterial. Defendant Fetzer has not laid the foundation and provided the necessary support for this statement of ultimate fact. Defendant Fetzer has not named an expert qualified to provide an opinion as to whether these documents are inauthentic or are "fake." This alleged fact also contains a legal conclusion. To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer. (*See also* Plaintiff's Response to DPFOF 3 & 43.)

DPFOF 76. The faint imitation of a circular seal on the bottom left of Exhibit B is not where the seal from the town should be placed, another indication of fakery, since no seal is required for the registrar's statement of receipt of the record.

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence; immaterial. Defendant Fetzer has not offered evidence to show he has personal knowledge of how these documents were created or the means by which they were created. Defendant Fetzer has not named an expert qualified to provide an opinion as to where the seal from the town should be placed or that the placement of the seal indicates a "fakery." Defendant Fetzer has not demonstrated first-hand knowledge or testimony from an expert that the seal evidences the registrar's receipt of the record rather than Mr. Pozner's receipt of the certified copy of the death certificate. Defendant Fetzer has not laid the foundation and provided the necessary support for this statement of ultimate fact. This alleged fact also contains a legal conclusion. To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a

material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer. (*See also* Plaintiff's Response to DPFOF 55.)

DPFOF 77. The differences between Exhibit A and Exhibit B are material (necessarily follows).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence; immaterial. Defendant Fetzer has not laid the foundation and provided the necessary support for this statement of ultimate fact. To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer. (*See also* Plaintiff's Response to DPFOF 55.)

DPFOF 78. Defendant's assertions about Exhibit B are substantially true (necessarily follows).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence. Defendant Fetzer has not laid the foundation and provided the necessary support for this statement of ultimate fact. (*See also* Plaintiff's Response to DPFOF 55.)

DPFOF 79. The false time of death, false indication of no autopsy, late 26 December receipt by Debbie Aurelia, and absence of a raised seal establish that Exhibit A is also a fake, a forgery and a fabrication (necessarily follows).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence. (*See* Plaintiff's Response to DPFOF 3, 25, 37, 43 & 55.)

DPFOF 80. Since Defendant's statements are substantially true, Defendant did not publish statements with reckless disregard of whether they were true or false.

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence. (*See* Plaintiff's Response to DPFOF 3, 25, 37, 43 & 55.) Moreover, none of Defendant Fetzer's DPFOFs evidence the truth of the various assertions that Noah Pozner's death certificate was

photoshopped, digitally manipulated, or the combination of a real bottom half of a death certificate with the fake top half of another.

DPFOF 81. Plaintiff has secured opinion pieces in some of the nation's largest newspapers, and appearances in front of the nation's largest broadcasters (Motion, p. 14).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence, immaterial. Defendant Fetzer has not provided any evidence to support this statement. *See Wis. Stat. § 906.02.* Moreover, the statement is immaterial because it is not focused on Plaintiff's access to media at or before the time that he was defamed by Mr. Fetzer.

DPFOF 82. Plaintiff instigated a campaign to get Professor James Tracy fired from his tenured teaching position at Florida Atlantic University for publicly sharing his private doubts and concerns about the official narrative of the Sandy Hook Elementary School event on his own personal blog (Motion p. 14).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence, immaterial. Defendant Fetzer has not provided any evidence to support this statement. *See Wis. Stat. § 906.02.*

DPFOF 83. Plaintiff's successful venture against Professor Tracy was extensively covered by the print, broadcast and digital media worldwide at the time (Motion, p. 14).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence. Defendant Fetzer has not provided any evidence to support this statement. *See Wis. Stat. § 906.02.*

DPFOF 84. Plaintiff has voluntarily thrust himself to the forefront of, and become a key figure in, the Sandy Hook controversy in order to influence the resolution of the issues involved (Motion, p. 14, reciting statements from Plaintiff's Complaint).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence. Defendant Fetzer has not provided any evidence to support this statement. *See Wis. Stat. § 906.02.* This statement is also contradicted by the admissible evidence in the record. (*See Doc. # 106, PPUF Nos. 120-128.*)

DPFOF 85. Plaintiff is a limited-purpose public figure (Motion, p. 14).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Defendant Fetzer has not provided any evidence to support this statement. Without that evidence, this Court cannot determine if Defendant has laid the foundation and provided the necessary support for this statement of ultimate fact. This alleged fact also contains a conclusion of law. This statement is also contradicted by the admissible evidence in the record. (*See* Doc. #106, PPUF Nos. 120-128; Plaintiff's Responses to DPFOF 81-84.)

DPFOF 86. Malice is not an issue because Defendant's statements are substantially true (Motion, pp. 14-15). Defendant exhibited no malice.

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Defendant Fetzer has not laid the foundation and provided the necessary support for this statement of ultimate fact. By failing to do so, Defendant Fetzer prevents this Court from determining whether Defendant acted with malice in publishing the defamatory statements. (*See* Doc. #106, PPUF Nos. 120-128; Plaintiff's Responses to DPFOF 81-85.)

DPFOF 87. Exhibit B is a forgery due to the violations of Connecticut law revealed on its face (Motion, p. 15 and *passim*).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

(*See* Plaintiff's Response to DPFOF 3, 25, 37, 43 & 55.)

DPFOF 88. Defendant made no publication of any statement relating to Exhibit A prior to being served with this lawsuit (Motion, *passim*).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Defendant Fetzer has not laid the foundation and provided the necessary support for this statement of ultimate fact. This alleged fact also contains a conclusion of law. To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a

material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer. (*See also* Plaintiff's Response to DPFOF 3.)

DPFOF 89. Defendant made no "recklessly defamatory publication" relating to Exhibit A or Exhibit B (Motion, pp. 14-15).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Defendant Fetzer belies this statement in his own PFOF's. In his book, Defendant Fetzer alleges that Plaintiff faked or forged the death certificate, in his PFOF's, he alleges that the State of Connecticut was in on creating a fake document. (*See* Doc. # 106, PPUF Nos. 80, 98-99; Doc. # 133 Ex. L.) Defendant Fetzer has not laid the foundation and provided the necessary support for this statement of ultimate fact. This alleged fact also contains a conclusion of law. To the extent Defendant Fetzer appears to be distinguishing between the Exhibit B attached to Defendant's Motion for Summary Judgment and Exhibit A to Plaintiff's Complaint, this alleged fact is not a material fact that would preclude summary judgment for Plaintiff or which supports summary judgment for Defendant Fetzer. (*See also* Plaintiff's Response to DPFOF 3.)

DPFOF 90. Defendant's description of Exhibit B as a fake, a forgery and a fabrication was true prior to this lawsuit and has received considerable further substantiation in the course thereof, as established in the Motion (Motion, *passim*).

PLAINTIFF'S RESPONSE: Disputed; not supported by admissible evidence.

Mr. Green and Dr. Carver testified that they completed the salient portions of the death certificate, and that information remains unchanged. (Green Dep. 31:16-35:3; Carver Dep. 31:7-39:22.) Plaintiff has provided a certified copy of the death certificate that contains no differences in content, other than the specific documentation of the certification of the copy and the correction in address made by the Newtown clerk. (Doc. # 103 Ex. B.) Defendant cannot dispute these facts because Defendant was not involved in the preparation of the death certificate, has no expert support for his statements, and is himself not an expert in the

preparation of death certificates in Connecticut. (*See also* Plaintiff's Response to DPFOF 3, 25, 37, 43, 45 & 55.)

Dated this 6rd day of June, 2019.

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Electronically signed by Marisa L. Berlinger

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