

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

KATHERINE WILLETT,

Plaintiff/Counter-Defendant,

v.

CHRISTOPHER DAHLBERG,

Defendant/Counter-Plaintiff.

1:24-cv-00024-WAL-EAH

TO: Lee J. Rohn, Esq.
David J. Cattie, Esq.

ORDER

THIS MATTER comes before the Court on the Motion to Amend the First Amended Complaint, filed by Plaintiff Katherine Willett on March 25, 2025. Dkt. No. 31. Defendant Christopher Dahlberg filed an opposition to the motion on March 30, 2025, Dkt. No. 34. Plaintiff did not file a reply. For the reasons that follow, the Court will deny the motion.

BACKGROUND

A. Amended Complaint and Answer with Counterclaims

Plaintiff's Complaint was removed to this Court from the Superior Court of the Virgin Islands in early October 2024 based on diversity jurisdiction. Dkt. No. 1. The Defendant filed a motion to dismiss for failure to state a claim, Dkt. Nos. 5, 6, after which Plaintiff filed an Amended Complaint on October 22, 2024, Dkt. No. 7.

In the Amended Complaint, Willett alleged that, on numerous occasions, Dahlberg "pushed, hit, threatened and held Plaintiff down to the ground, including in or about mid October 2022, when Defendant slammed [her] to the ground, held her down," and despite

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her screams of pain, refused to let her get up, which caused a spinal injury requiring multiple surgeries. *Id.* ¶ 5. Willett told Dahlberg to leave her residence several times in October 2022, and sought a restraining order against him. *Id.* ¶¶ 6, 7. Dahlberg kept returning and entering Willett's residence without permission, ransacking it on several occasions and breaking her phone. *Id.* ¶¶ 8, 9. In November 2022, Dahlberg entered the house without permission, ransacked it, and told the police that Willett had stolen documents he had left there. *Id.* ¶ 10. As a result of his actions, Willett incurred medical expenses, permanent injuries, post-traumatic stress disorder, sleep loss, anxiety, chronic pain, loss of income, economic losses, fear, mental anguish and loss of enjoyment of life. *Id.* ¶ 11. Willett alleged claims for assault (Count I); trespass (Count II); intentional infliction of emotional distress (Count III); false imprisonment (Count IV); trespass to chattels (Count V); conversion (Count VI); and battery (Count VII). *Id.* at 4-5.

In November 2024, Dahlberg filed an answer (including affirmative defenses), and counterclaims. Dkt. No. 9. He alleged that the parties were married from June 13, 2009 until the Superior Court dissolved their marriage on in February 2024. *Id.* ¶ 6. The Superior Court entered a restraining order against Willett—a licensed medical provider—in February 2023 for stalking and harassing Dahlberg. *Id.* ¶¶ 7, 8. Willett has experienced mental and psychological issues for years, including bipolar disorder. *Id.* ¶¶ 9, 10. She admitted to Dahlberg that she was a narcissist, lied to manipulate people, and knew how to fake injuries. *Id.* ¶¶ 11, 12. She further admitted to Dahlberg that she lied on her Virgin Islands medical

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license application and failed to disclose that she was bipolar and was taking potent medication to treat mental disorders—although she often refused to take the medication, claiming that she cured herself of those disorders. *Id.* ¶¶ 15, 18. Willett bragged to Dahlberg that she falsified licensure documents in the Virgin Islands, South Carolina, North Carolina and Florida by denying her mental health issues and denying that she was taking medication for those issues. *Id.* ¶¶ 17-19, 26. She abused prescription stimulants and wrote prescriptions for family and friends who are not under her care. *Id.* ¶¶ 20, 23.

Dahlberg further alleged that Willett’s bipolar disorder involved hypersexual activity; she would engage in extramarital affairs with men and women and taunt Dahlberg about them to harm him mentally and emotionally. *Id.* ¶¶ 27-30. She spent so much that the couple almost lost their home and she berated Dahlberg that he did not earn enough money. *Id.* ¶¶ 34-36. Willett’s spending damaged Dahlberg’s credit; in 2024, she stole \$19,000 from his bank account, and also stole \$35,000 from his bank account and refused to return the funds. *Id.* ¶¶ 38-41. She transferred his business telephone number to herself, which caused him to lose approximately \$300,000 in business annually. *Id.* ¶¶ 42, 43. Her abusive treatment of Dahlberg caused severe psychological trauma. *Id.* ¶ 45. The court granted temporary custody of the couple’s minor children to Willett and visitation to Dahlberg, but the children had to flee the Virgin Islands to escape her abuse and now reside exclusively with Dahlberg. *Id.* ¶¶ 45-47. Irrate that the children fled to live with him, Willett sought an attorney to file false claims against him. *Id.* ¶ 48. He alleged counterclaims for abuse of process (Count I);

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conversion (Count II); and intentional infliction of emotional distress (Count III). *Id.* at 8-10.

Willett filed an answer to the counterclaims on January 30, 2025. Dkt. No. 17.

The Court set an initial conference in this case for February 28, 2025. On February 27, Willett filed her first motion to amend the complaint. Dkt. No. 24. The Court demurred from issuing a Scheduling Order until the briefing on the motion to amend was completed and the issue resolved. Dahlberg filed an opposition to the motion to amend on March 12, 2025. Dkt. No. 27. On March 14, 2025, Willett moved to withdraw her first amended complaint because it contained scrivener errors. Dkt. No. 30. She refiled the Motion to Amend the First Amended Complaint on March 25, 2025. Dkt. No. 31.

B. Motion to Amend the First Amended Complaint

Willett explains that she filed the motion to amend to allege facts and causes of action that have manifested since she filed the First Amended Complaint. Dkt. No. 31 at 1. The greater part of her motion summarizes the additional facts she alleges in the proposed Second Amended Complaint. She argues that the assertions in Dahlberg's Counterclaim, in addition to the claims of child abuse against her, were false. *Id.* at 1- 3. She cites Rule 15(a) case law concerning amendment, and notes that a party seeking to disallow a complaint based on futility has a heavy burden. *Id.* at 3-4.

Willett attached a redlined and a final copy of the proposed Second Amended Complaint ("SAC"). Dkt. Nos. 31-1, 31-2. She makes a number of additional, updated allegations. Willett asserts that the Superior Court issued an Amended Permanent Injunction

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in February 2023 finding that Dahlberg had engaged in domestic violence and assault and battery, and barred him from contact with Plaintiff except as to visitation from the children. In November 2024, he was served with Plaintiff's Florida action for child support, after which he filed the instant counterclaim. Dkt. No. 31-1, ¶¶ 11-14. "It is clear" from the counterclaim that the Defendant "intended to make up criminal claims, child abuse and professional claims, against Plaintiff," who has custody of the four children (J.D., CED, CAD, and JD). *Id.* ¶¶ 15, 16.

Plaintiff further alleges that on December 1, 2024, after J.D. flew from St. Croix back to Florida after spending Thanksgiving with Plaintiff, he had no marks on him, but Defendant took photos of him on December 2 showing marks on his body, after which Defendant made false representations to pediatricians, police and Florida DCF that J.D. was beaten while in Plaintiff's custody. *Id.* ¶¶ 18-23. Florida DCF opened an investigation. *Id.* ¶ 25. On December 20, 2024, Dahlberg filed for a temporary injunction against Plaintiff (in the Florida action) falsely claiming domestic violence by Plaintiff against three of the children. *Id.* ¶ 26. On January 3, 2025, Willett was served with the temporary injunction motion. *Id.* ¶¶ 31, 32. On January 4, 2025, Defendant filed a Notice of Issuance of Orders of Protection with the Superior Court of the Virgin Islands asserting, inter alia, that Plaintiff "has been abusing her children and subjecting her minor children to sadistic and habitual torture." *Id.* ¶ 33. Later that month, the V.I. Department of Human Services questioned Plaintiff. *Id.* ¶ 36. The Florida DCF completed its investigation and noted, inter alia, that there was no indication of a

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pattern of violent or abusive behaviors that could negatively impact the child's safety, and physical injury was not substantiated. *Id.* ¶¶ 38, 39.

Later in January 2025, Defendant "shared photos of J.D. and claimed they showed the existence of Plaintiff's abuse of J.D. and stated he was going to take the children away from Plaintiff" and further made allegations to a third person associated with Plaintiff that Willett put the children in a dog cage and fed them dog food. *Id.* ¶ 41. The Florida court denied Defendant's injunction motion and request for custody, finding the evidence insufficient to issue an injunction and that it lacked jurisdiction over the Plaintiff, and allowed Plaintiff to retain custody of the children and return with them to St. Croix. *Id.* ¶¶ 42, 45. The proposed SAC then enumerates the many alleged "false statements" contained in Defendant's November 2024 counterclaim. *Id.* ¶¶ 46-52.

As to the new "Wrongful Initiation of Civil Proceedings" claim, the proposed SAC alleges:

75. Plaintiff realleges and reincorporates the allegations in all paragraphs and particularly in paragraphs 29-52.
76. Defendant filed is [sic] Counterclaim and false claims of child abuse in the Virgin Islands Superior Family Court to seek revenge on Plaintiff for filing this lawsuit and for child support.
77. Defendant and his counsel are using the civil process to defame Plaintiff under the civil legal process.
78. Defendant and his counsel are using the civil process and have engaged in abuse of process.
79. Defendant and his counsel's factual allegations are knowingly untrue and were knowingly false when filed.
80. As a result, Plaintiff was forced to spend thousands of dollars on legal fees to defend the baseless claims filed in Florida as well as lost income and incurred expenses.

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81. As a result, Plaintiff is now forced to spend thousands of dollars to defend against Defendant and his counsel's baseless claims filed in the Virgin Islands Superior Family Court.
82. As a result of Defendant's baseless allegations, Plaintiff lost custody of her children until Plaintiff could get the Florida action dismissed and suffered pain and suffering, mental anguish, and loss of enjoyment of life that will continue into the foreseeable future.
83. Defendant and his counsel filed such action and made such baseless allegations with malice and with reckless and wanton indifference to the rights of Plaintiff, so as to entitle Plaintiff to punitive damages.

Id. ¶¶ 76-83. The new Defamation claim reads as follows:

84. Plaintiff realleges and incorporates the allegations in all paragraphs and particularly in paragraphs 29-52, 78.
85. Defendant, by providing a third party a copy of the complaint, a counterclaim and inferring the knowingly false allegations are true, defamed Plaintiff.
86. In addition, Defendant did so with the expectation that the third party would repeat those allegations to others.
87. As a result, Plaintiff has suffered damages as alleged herein.

Id. ¶¶ 84-87.

B. Opposition to Motion to Amend

On March 30, 2025, the Defendant filed his "Opposition to Re-Filed Motion to Amend First Amended Complaint." Dkt. No. 34. He asserts that, although case law interpreting Fed. R. Civ. P. 15(a) provides that a court should freely give leave to amend when justice requires, such leave may be denied if it is apparent from the record that, inter alia, the amendment would be futile. *Id.* at 3. Futility is assessed by applying the standard for failure to state a claim under Fed. R. Civ. P. 12(b)(6); both the Wrongful Initiation of Civil Proceedings ("Wrongful Initiation") and Defamation claims are futile and leave to amend should be denied.

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As to the Wrongful Initiation claim, Willett did not allege two of the elements required to state such a claim—that the defendant in the current suit (Dahlberg) must have initiated the prior, underlying civil suit without probable cause, and that the underlying civil proceeding must be terminated in favor of the defendant in that action (i.e., Willett). Willett bears a heavy burden to establish the absence of probable cause, and the allegations show that it was reasonable for Dahlberg to believe there was a sound chance that the abuse claim might be sustained. *Id.* at 6. The proposed SAC contained admissions that J.D. was covered in significant bruising when he returned from visiting Willett, that J.D. stated his mother grabbed him in frustration and kicked him multiple times, and another minor child, CAD, confirmed that Willett had slapped CAD and left purple bruises on him. Dkt. No. 32-2 ¶ 38. These allegations are concessions that sufficient probable cause existed for the initiation of civil proceedings related to Willett’s abuse, and the request for a restraining order in Florida had sufficient probable cause as a matter of law. Dkt. No. 34 at 8. Further, Dahlberg was required to report his suspicions of child abuse and was immune from civil liability for doing so (citing Fl St §§ 39.201 and 39.203(1)(a), mandating a parent report child abuse if he has reason to suspect it occurred and immunizing good faith reports of child abuse to law enforcement). *Id.* at 8-9.

Dahlberg adds that the Court need not reach the issue of probable cause because the three legal matters Willett relied on as improperly initiated civil proceedings did not terminate in her favor. *Id.* at 9. The instant litigation is barely at its inception and has not

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terminated in Willett's favor. Willett does not claim that the parties' pending divorce case terminated in her favor, that Dahlberg's filing prolonged the proceedings, or that the proceedings were initiated by Dahlberg. *Id.* Thus, Willett has failed to state a claim for Wrongful Initiation based on those two cases.

With regard to the Florida action, the SAC alleged that, on January 30, 2025, "the Florida Court denied Defendant's Motion to Injunction against Plaintiff and request for custody, finding that the evidence was insufficient to allow the Court to issue an injunction for protection against domestic abuse and further found the Court lacked jurisdiction over Plaintiff." Dkt. No. 31-2 ¶ 44. However, this statement is untrue because the Florida Court dismissed the case on jurisdictional grounds (for lack of personal jurisdiction) and thus there was no finding on the merits. Dkt. No. 34 at 10. Dahlberg attaches the January 30, 2025 Order of Dismissal and a portion of the transcript from those proceedings in support. Dkt. No 34-1. Willett's assertion that the Court found the evidence to be insufficient and that the Court lacked jurisdiction is an impossibility. Dkt. No. 34 at 11. Moreover, given that the Florida matter dealt with welfare of the children, it does not qualify for Wrongful Initiation. *Id.* (quoting *Arellano v. Rich*, No. ST-07-cv-536, 2019 WL 3219689 at *13 (V.I. Super. Ct. May 29, 2019) ("such proceedings must always be open to file additional pleadings and claims, however unsuccessful, any time concern for the welfare of the child is called into question.")). Willett failed to state a Wrongful Initiation claim based on the Florida case as well, and that claim fails as a matter of law. *Id.*

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The Defamation claim is based on Dahlberg's reporting of his suspicions to law enforcement in the Virgin Islands and Florida, and the statements of the parties' children confirming that Plaintiff physically abused them. *Id.* at 11-12 (citing Dkt. No. 31-2 ¶¶ 43, 87-90). But statements made in the course of investigations (i.e., to police officers, medical providers, and child services agencies in Florida and the Virgin Islands) are absolutely privileged under Virgin Islands law. *Id.* at 13. Similarly, the litigation privilege accords statements made in legal pleadings an absolute privilege from defamation and applies both to attorneys and parties in private litigation. *Id.* at 14. Dahlberg contends that Willett seeks to avoid the application of the litigation privilege by claiming that Dahlberg sent his counterclaim and other court filings to an unnamed third party, thereby destroying the privilege. But case law provides that the privilege applies equally to the client and to the attorney who repeat—outside a courthouse—statements made in a complaint, filed in good faith. *Id.* at 14-15. Case law also provides that, in order to properly plead a claim for defamation, a party must identify, inter alia, the third parties to whom the statements were published, and Willett has neither identified the person nor alleged that Dahlberg's communications with those persons were completely irrelevant to the subject matter of the controversy. *Id.* at 12, 16. Consequently, the defamation claim is also futile.

Because both the Wrongful Initiation and Defamation claims are futile, the Court should deny the motion to amend. Dahlberg adds that the Court should deny Willett's

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inevitable request to correct the myriad shortcomings in the SAC as the issues are ones of law and any further attempt to amend would be futile. *Id.* 16-17.

Willett did not file a reply addressing any of Defendant's futility arguments.

DISCUSSION

A. Rule 15 Standard

Federal Rule of Civil Procedure 15 governs amendments of pleadings. Rule 15(a)(2) states that, apart from amendments as a matter of course, "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). The Third Circuit has construed Rule 15 liberally, instructing that "absent undue or substantial prejudice, an amendment should be allowed under Rule 15(a) unless denial can be grounded in bad faith or dilatory motive, truly undue or unexplained delay, repeated failure to cure deficiency by amendments previously allowed or futility of amendment." *Long v. Wilson*, 393 F.3d 390, 400 (3d Cir. 2004) (citing *Lundy v. Adamar of New Jersey, Inc.*, 34 F.3d 1173, 1196 (3d Cir. 1994)) (emphasis omitted).

In this regard, futility means that "the complaint, as amended, would fail to state a claim upon which relief could be granted," and follows the standard that applies to a motion under Rule 12(b)(6). *Great W. Mining & Min. Co. v. Fox Rothschild LLP*, 615 F.3d 159, 175-77 (3d Cir. 2010) (internal quotation marks and citation omitted). The "Court determines

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futility by taking all pleaded allegations as true and viewing them in a light most favorable to the plaintiff.” *Id.* at 175 (citing *Winer Family Trust v. Queen*, 503 F.3d 319, 331 (3d Cir. 2007)).

B. Application

The only arguments Plaintiff made in support of her motion to amend were made in her opening brief and were based generally on the text of Rule 15—that amendment should be freely granted. Dkt. No. 31 at 3. She cited case law providing that leave to amend may be denied if amendment proved futile and showing futility imposed a heavy burden, but did not argue how the case law applied to the circumstances here. Dkt. No. 31 at 3-4. Plaintiff never addressed Defendant’s futility arguments, either in a reply brief or her moving brief (given that she likely knew Defendant would raise the futility argument because he had done so in response to her withdrawn motion to amend, Dkt. Nos. 24, 30). Thus, on the record before the Court, the Defendant’s futility arguments are unopposed. The Court will nevertheless assess whether it should deny the motion to amend the Second Amended Complaint as futile.

1. Wrongful Initiation of Civil Proceedings

Although the Supreme Court of the Virgin Islands has not articulated the elements of the tort of Wrongful Initiation of Civil Proceedings, the Superior Court, in *Arellano v. Rich*, conducted the requisite *Banks* analysis¹ and determined that the Restatement (Second) of Torts § 674 (“Section 674”) represents the soundest rule for the Virgin Islands and should

¹ *Banks v. Int’l Rental & Leasing Corp.*, 2011 WL 6299025, 55 V.I. 967 (V.I. Dec. 15, 2011).

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be adopted as setting out the elements for this tort. *Arellano*, 2019 WL 3219689 at * 5.

Pursuant to Section 674,

five elements necessary to sustain a claim for wrongful use of civil proceedings: 1.) the present defendant in this suit must have initiated the underlying, prior civil suit against the present plaintiff in the current suit, 2.) without probable cause, 3.) with malice or for the primary purpose other than securing the adjudication of the claim, 4.) must have been terminated in favor of the defendant in the underlying, prior civil suit, and 5.) the plaintiff must show damages.

Id. The plaintiff bears the burden of proving all of the elements necessary to recover for such a cause of action. *Id.* The Court will focus, as did the Defendant in his opposition, on whether the underlying proceedings were terminated in favor of the defendant (i.e. Willett) in the underlying prior civil suit(s). Civil proceedings may be terminated in one's favor by:

(1.) the favorable adjudication of the claim by a competent tribunal, or (2.) the withdrawal of the proceedings by the person bringing them, or (3.) the dismissal of the proceedings because of failure to prosecute them. Thus, when considering whether the underlying civil case terminated in favor of the defendant, courts generally look to the circumstances surrounding the termination of the underlying civil suit, more specifically whether the termination successfully indicated innocence or nonliability, or whether the merits of the case were considered rather than merely decided on procedural grounds. Additionally, favorable termination can only be considered after the appeals process has been exhausted. As such, courts have generally accepted that dismissals with prejudice are sufficient to meet the favorable termination requirement for purposes of wrongful use of civil proceedings while terminations due to statute of limitations, failure to prosecute, dismissals without prejudice, voluntary dismissals, and settlements in lieu of litigation are generally not considered favorable terminations.

Id. at *7 (footnotes omitted). “The question is not whether [the initiator of a proceeding] is correct in believing that the court would sustain the claim, but whether his opinion that there was a sound chance that the claim might be sustained was a reasonable one.” *Arader v.*

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Dimitrov, No. 11-cv-3626, 2011 WL 4807924, at *8 (E.D. Pa. Oct. 7, 2011) (quoting Restatement (Second) of Torts § 674, cmt. f).

Willett's SAC focuses on the prior-filed civil proceeding in Florida state court as the predicate for the Wrongful Initiation charge. Dkt. No. 32-2 ¶¶ 83, 84. Most of the allegations in the SAC refer to allegations Dahlberg made to Florida DCF that led to an investigation and Florida state court proceedings on a temporary injunction matter. *Id.* ¶¶ 23-26, 31, 32, 39-47. But Dahlberg provided documents from the Florida state court proceeding showing that it was dismissed without prejudice for lack of personal jurisdiction. Dkt. No. 34-1 at 1. While the judge initialed a section on the form that the "evidence presented is insufficient under Florida law . . . to allow the Court to issue an injunction for protection," the Judge wrote after that sentence "Court lacks personal jurisdiction." *Id.* The transcript of the January 30, 2025 hearing clearly shows that the judge concluded that Willett did not have sufficient ties to the State of Florida to give the court personal jurisdiction over her and, based on that, dismissed the petitions that had been filed against her. *Id.* at 13.

It is beyond cavil that a dismissal based on lack of jurisdiction is not a termination on the merits. *Jones v. Experian Info. Solutions. Inc.*, No. 21-cv-3314, 2022 WL 4080763, at *4 n.1 (E.D. Pa. Sept. 6, 2022) ("Because we dismiss the case due to lack of personal jurisdiction, we need not reach the merits of either of these arguments."); *Murphy v. Esai, Inc.*, 503 F. Supp. 3d 207, 214 (D.N.J. 2020) ("[I]f personal jurisdiction is absent, the court is powerless to address the merits of the Rule 12(b)(6) motion."); *see also Erbey Holding Corp. v. BlackRock*

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Fin. Mgmt, Inc., No. SX-2018-cv-146, 2024 WL 861806 at *5 (V.I. Super. Ct. Feb. 26, 2024) (noting that motions to dismiss for lack of personal jurisdiction do not go to the merits of the case). Therefore, the dismissal for lack of personal jurisdiction of the Florida state case was not a determination on the merits.² Given that a required element to state a Wrongful Initiation claim is missing, Willett fails to state such a claim based on those proceedings.

With regard to the proceedings in the V.I. Superior Court, the allegations in the SAC are much more sparse. In paragraph 33, Willett alleges that “[o]n January 4, 2025, without Plaintiff’s knowledge, the Defendant, filed a Notice of Issuance of Orders of Protection for the minor children in Florida with the Superior Court of the Virgin Islands, St. Croix, Division, Family Court.” Dkt. No. 31-2 ¶ 33. It is unclear whether the Plaintiff is alleging that this filing was made in the Florida or Virgin Islands court. If the document was filed in the Virgin Islands, there is no allegation that it initiated a proceeding; rather, it appears that the filing was docketed in the ongoing court proceedings concerning the divorce, custody, and support. Similarly, the allegation that the V.I. Department of Human Services contacted Plaintiff, having received complaints from the Defendant that she had abused the children, *id.* ¶¶ 37, 38, appears to have been made in those same ongoing court proceedings—not in new proceedings initiated by the Defendant. In any event, while Plaintiff asserts that Defendant brought “false claims of abuse” in the Virgin Islands Family Court, *id.* ¶ 79, and she

² The transcript made it crystal clear that the judge was not reaching any merits determination—which the court could not have done in any event if the case was dismissed for lack of personal jurisdiction. Dkt. No. 34-1 at 1, 13-14.

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has had to defend against those claims, *id.* ¶ 84, she does not allege that the Virgin Islands court proceedings have terminated, much less terminated in her favor.

In sum, in order to state a claim for Wrongful Initiation, Willett would have to allege, *inter alia*, that the underlying proceedings—here, proceedings in Florida state court and the Virgin Islands Superior Court—terminated on the merits in her favor. She has not so alleged with regard to the Virgin Islands proceedings, and Dahlberg has shown that the Florida proceedings were not dismissed on the merits.³ As a result, Willett has not stated a claim for Wrongful Initiation of Civil Proceedings, and the Court will deny the Motion to Amend to the extent that Willett seeks to amend the First Amended Complaint to add such a claim.

2. Defamation

The Supreme Court of the Virgin Islands “has adopted the basic elements for a claim of defamation set forth in the Second Restatement of Torts.” *Joseph v. Daily News Publishing Co.*, No. 09-cv-0015, 2012 WL 5419155 at *6 (V.I. Oct. 31, 2012) (citing *Kendall v. Daily News Pub. Co.*, 55 V.I. 781, 787 (V.I. 2011)). To prevail on a claim of defamation under Virgin Islands

³ As an alternate basis for finding the Wrongful Initiation claim futile, the Court agrees with Defendant that Dahlberg had probable cause to initiate the Florida proceeding. The proposed SAC alleges that J.D. had multiple bruises when he returned from visiting Willett and stated in an interview with the investigators that his mother had grabbed him and kicked him. Dkt. No. 31-2 ¶ 40. “One alleging the wrongful initiation of civil proceedings bears a heavier burden to prove the absence of probable cause than for the initiation of criminal proceedings.” *DeMartini v. Town of Gulf Stream*, No. 16-cv-81371, 2017 WL 6366763, at *8 n.11 (S.D. Fla. Aug. 8, 2017). This allegation shows that Dahlberg had sufficient probable cause to request a restraining order under Florida law. *See* Fl. St. § 39.201(2), “Required reports of child abuse” (mandating that any person report child abuse if he has “reasonable cause to suspect” it occurred).

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law, a plaintiff must show: “(1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Chapman v. Cornwall*, No. 12-cv-0032, 2013 WL 2145092, at *6 (V.I. May 15, 2013) (quoting *Kendall*, 55 V.I. at 787). The plaintiff must also specifically identify “what alleged defamatory statements were made, including who made them, and to whom the statements were made.” *Bethea v. Merchants Commercial Bank*, No. 11-cv-0051, 2014 WL 4413045, at *19 (D.V.I. Sept. 8, 2014) (citing *Smith v. V.I. Port Authority*, No. 02-cv-227, 2010 WL 1381222 at *16 (D.V.I. Mar. 31, 2010)).

Certain privileges provide absolute defenses to defamation claims. *See* Restatement (Second) of Torts §§ 583-598. Included in this category of privilege is the “litigation privilege” which is generally limited to legislative, judicial, or quasi-judicial proceedings, and affords a complete defense to claims of defamation. *Asarkasaamsu v. FirstBank Puerto Rico*, No. 16-cv--0057, 2020 WL 7232318, at *11–12 (D.V.I. Dec. 7, 2020) (citing, *inter alia*, *Espersen v. Sugar Bay Club & Resort Corp.*, 2018 WL 6177341, at *4 (V.I. Super. Nov. 21, 2018) (discussing absolute and conditional privileges for claims of defamation)).

There are two categories of absolute “litigation” privilege. One type of privilege applies to attorneys. The Restatement declares that an attorney “is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as a part of, a judicial proceeding in which he participates as counsel, *if it has some relation to the proceeding.*” (emphasis added). Restatement (Second) of Torts § 586 (1977). The second category extends an absolute privilege to parties in private litigation to the

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same extent as the privilege provided for attorneys. Restatement (Second) of Torts § 587 (1977).

The litigation privilege may be applied to “communications (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objectives of the litigation; and (4) that have some connection or logical relation to the action.” *See JNL Management, LLC v. Hackensack Univ. Medical Center*, 2019 WL 1951123, at *9 (D.N.J. May 2, 2019) (statements made during contract negotiations were not made in contemplation of litigation to warrant the litigation privilege).

Id. at *11.

In addition, “[t]he Second Restatement of Torts provides for an absolute privilege that protects statements made to law enforcement in order to initiate a criminal investigation from any claim of defamation.” *Sprauve v. CBI Acquisitions, LLC*, No. 09-cv-0165, 2010 WL 3463308, at *11 (D.V.I. Aug. 31, 2010). The *Sprauve* court notes that the “rule stated in this section applies ‘to information given and informal complaints made to a prosecuting attorney or other proper officer preliminary to a proposed criminal prosecution whether or not the information is followed by a formal complaint or affidavit.’” *Id.* at *12 (quoting Restatement (Second) of Torts § 587 cmt. b); *see also Williams v. Flat Cay Mgmt, LLC*, No. 3:22-CV-0002, 2023 WL 2563193, at *14 (D.V.I. Mar. 17, 2023).

Willett does not set out the allegedly defamatory statements with the required specificity. *Bethea*, 2014 WL 4413045, at *19. Rather, she describes them in general as being statements that Dahlberg gave to law enforcement and social services investigators or unnamed third parties, or statements made in the counterclaim, and characterizes many of them as false. *See* Dkt. No. 31-2 ¶¶ 21, 23, 24, 26, 33, 43, 48, 50-52, 55.

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Any alleged defamatory comments in Dahlberg's counterclaim are statements obviously contained in his written court filings in response to Willett's Amended Complaint. Dkt. No. 9. Those statements, made in the instant judicial proceeding, pertain directly to Willett's claims and the events underlying this proceeding, as viewed from Dahlberg's perspective. Accordingly, these statements are absolutely privileged under the litigation privilege and cannot serve as a basis for a claim of defamation. *Asarkasaamsu*, 2020 WL 7232318, at *11-12. Similarly, the alleged statements made by Dahlberg to police officers and investigators concerning Willett's alleged child abuse are also absolutely privileged under the law enforcement privilege. *Sprauve*, 2010 WL 3463308, at *11-12.

Finally, Dahlberg's alleged statements made to third parties do not state a defamation claim either. Willett alleges variously that Dahlberg provided a third party a copy of the complaint and counterclaim and, by inferring those false accusations were true, he defamed Willett. Dkt. No. 31-2 ¶ 88; *see also id.* ¶ 43 (alleging Dahlberg provided a copy of the counterclaim to the third person, indicating what was in the counterclaim was true, and further alleged to the person that Plaintiff put the children in a dog cage and fed them dog food). This allegation does not support a defamation claim because one of the requirements to state such a claim is that the party identify the person or persons to whom the statement was published, and this Willett did not do. *Sanchez v. Bumann*, No. 12-cv-0072, 2015 WL 1598097, at *4 (D.V.I. Apr. 9, 2015) (requiring names of the person or persons to whom the statement was published to survive a motion to dismiss a defamation claim).

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In addition, based upon the circumstances surrounding these alleged out-of-court statements Dahlberg made to the unnamed third party, they are covered by the litigation privilege. Clearly the statements made by Dahlberg to the third party that reiterate the statements in his counterclaim are covered as he is a private party engaged in litigation discussing the contents of a court filing—a filing that is on the public record in this case and available for all to read. *Asarkasaamsu*, 2020 WL 7232318, at *11; *PowerDsine, Inc. v. AMI Semiconductor, Inc.*, 591 F. Supp. 2d 673, 684 (S.D.N.Y. 2008) (“In the age of digital communication, it is illogical to protect allegations in a publicly filed complaint but not repetition or explanation of those same allegations outside the courthouse.”). As to the additional comment that Willett put the children in a dog cage and fed them dog food, this statement is arguably related to the allegations of child abuse contained in the counterclaim. To the extent it may be argued that it is not, Willett failed to raise that argument in a reply brief and the Court concludes that she waived the opportunity to do so. *King v. Sage*, No. 24-cv-1628, 2025 WL 297698, at *4 n.4 (M.D. Pa. Jan. 24, 2025) (plaintiff waived any argument that a failure to exhaust should be excused by failing to timely file a reply brief); *Progressive Sterilization, LLC v. Turbett Surgical LLC*, No. 19-cv-627, 2020 WL 3071951, at *2 (D. Del. June 10, 2020) (“failure to reply to an adversary’s point can have serious consequences”) (internal quotation marks omitted); *World Fresh Markets, LLC v. Henry*, No. 18-cv-0058, 2019 WL 5260444, at *7 (V.I. Oct. 9, 2019) (failure to file a reply brief waived opportunity to respond

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to defendant's argument); LRCi 7.1(c)(3) ("A reply shall respond to the arguments presented in the memorandum in response[.]").

Thus, the Court concludes that the alleged defamatory statements cannot serve as a basis for a claim of defamation. Given that the Court concludes that the Wrongful Initiation and Defamation claims fail to state claims, the Court concludes that amendment would be futile and will deny the Plaintiff's Motion to Amend.

Accordingly, it is hereby **ORDERED**:

1. Plaintiff's Motion to Amend the First Amended Complaint, Dkt. No. 31, is **DENIED**.
2. The operative complaint in this case remains the First Amended Complaint, Dkt. No. 7.
3. Plaintiff's initial Motion to Amend First Amended Complaint, filed on February 27, 2025, Dkt. No. 24, and withdrawn on March 14, 2025, Dkt. No. 30, is **DENIED AS MOOT**.

ENTER:

Dated: April 30, 2025

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE