

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

SAND PARK CAPITAL, LLC,)
)
Plaintiff,)
)
v.)
)
LYRIX HOLDINGS LLC, and)
CHRISTOPHER DIAMANTIS,)
)
Defendants.)

C.A. No. N25C-10-292 SPL

Submitted: August 4, 2026

Decided: October 5, 2026

Upon Defendant Christopher Diamantis’s Motion for Leave to File Amended Answer and Affirmative Defenses to Plaintiff’s First Amended Complaint, Amended Cross Claims and Third-Party Complaint,
STAYED.

Upon Lyrix Holdings, LLC’s Special Motion for Expedited Relief Under the Uniform Public Protection Act,
GRANTED.

ORDER

This 5th day of October, 2026, upon consideration of Defendant Christopher Diamantis’s “Motion for Leave to File Amended Answer and Affirmative Defenses to Plaintiff’s First Amended Complaint, Amended Cross Claims and Third-Party Complaint,”¹ Lyrix Holdings, LLC’s “Special Motion for Expedited Relief Under

¹ D.I. 52 (“Mot. Amend”)

the Uniform Public Expression Protection Act 10 *Del. C.* § 6003,”² the parties responses,³ replies,⁴ argument,⁵ and the record in this case, it appears to the Court that:

BACKGROUND

1. Christopher Diamantis, Steve Brune, and Jim Romeo formed Lyrix Holdings (“Lyrix”) as a Delaware limited liability company.⁶ In March of 2024, the three members entered into a “Second Amended and Restated Limited Liability Company Agreement” under which Diamantis, Brune, and Romeo held equal interest in Lyrix and comprised the board of managers.⁷ Under the Agreement, “[a]ny act or decision by the Board [required] Majority Approval . . . defined as the

² D.I. 43 (“UPEPA Mot.”).

³ D.I. 53 (UPEPA Response or “UPEPA Resp.”); D.I. 54 (Response to Motion to Amend or “Resp. Mot. Amend).

⁴ D.I. 55 (UPEPA Reply or “UPEPA Repl.”).

⁵ D.I. 56 (Judicial Action Form or “JAF”).

⁶ UPEPA Motion, Ex. 1 (“Second LLC Agreement” or “Agreement”) at 1. The Court, using colloquial, familiar forms of their names, does not presume familiarity with Messrs. Brune and Romeo; rather, the Court uses the naming convention set forth in the documents submitted for the Court’s consideration.

⁷ Second LLC Agreement at 17, 33.

approval of at least two (2) of the three (3) Managers on the Board.”⁸ Each Manager held “one vote on all matters brought before the Board.”⁹

2. On May 23, 2024, by “Unanimous Written Consent of the Board of Managers and of the Members of Lyrix Holdings LLC in Lieu of a Meeting,” Lyrix resolved to enter into an agreement to borrow \$8,000,000 from Sand Park Capital, LLC (“Sand Park”), and delegated to Diamantis the authority to negotiate the terms and, ultimately, execute the loan agreement.¹⁰ The same day, Lyrix, under a Secured Promissory Note, borrowed \$8,000,000 from Sand Park,¹¹ and Diamantis agreed to serve as guarantor of the note.¹² In August of 2024, Diamantis, in his individual capacity as guarantor and as the representative of Lyrix, acknowledged default under the terms of the note “by failing to make timely payment of the Maturity Date Payable on the Maturity Date,” and entered into a forbearance agreement under which Sand Park agreed not to take any action on the note “[u]pon timely receipt of [a] \$2,000,000 payment by September 16, 2024.”¹³ On June 14, 2025, Diamantis

⁸ Second LLC Agreement at 18.

⁹ Second LLC Agreement at 18.

¹⁰ UPEPA Mot., Ex. 5 (“Unanimous Consent”).

¹¹ D.I. 34 (First Amended Complaint or “Am. Compl”), Ex. B (“Secured Promissory Note”).

¹² Am. Compl., Ex. C (“Guaranty”).

¹³ Am. Compl., Ex. E (“Forbearance Agreement”).

resigned as a “Manager of [Lyrix], a member of the Board of Managers of [Lyrix], and an officer of [Lyrix], effective immediately.”¹⁴

3. Upon Lyrix’s continued default of its loan obligations, Sand Park sent a demand letter to Lyrix and Diamantis and asserts that, as of May 11, 2026, “no person has paid Sand Park all amounts called for pursuant to the Note, Guarantee and Forbearance Agreement.”¹⁵ Sand Park filed a complaint against Lyrix and Diamantis alleging Lyrix breached the note and forbearance agreement (Count I) and Diamantis breached the guaranty and forbearance agreement (Count II).¹⁶ Lyrix and Diamantis answered and denied the allegations asserted against them.¹⁷ Lyrix asserted, in its affirmative defenses, that it did not authorize the execution of the Note, Guaranty, or Forbearance Agreement.¹⁸

4. Sand Park, with the Court’s approval, amended its complaint to include a claim of fraud against Diamantis (Count III) and claims of unjust enrichment and quantum meruit against Lyrix (Count IV and V).¹⁹ Diamantis answered Sand Park’s amended complaint by denying all claims asserted against him and asserting a cross

¹⁴ UPEPA Mot., Ex. 2 (“Resignation”).

¹⁵ Am. Compl. ¶¶ 18, 19.

¹⁶ D.I. 1 (“Compl.”),

¹⁷ D.I. 9 (“Lyrix Ans.”), 10 (“Diamantis Ans.”).

¹⁸ Lyrix Ans., Affirmative Defenses.

¹⁹ Am. Compl.

claim of defamation against Lyrix and a counterclaim for subrogation against Sand Park.²⁰ In his cross claim against Lyrix, Diamantis’ asserts that “Lyrix, through its officers Brune and Romeo, and agent Invenio, made false statements of fact to Sand Park and other third parties that Diamanti[s] forged signatures on the Lyrix Written Consent,”²¹ and that “Diamantis suffered damages including loss of employment with Renaissance, injury to business relationships, loss of business opportunities, and harm to his reputation” as a result of Lyrix’s false statements.²²

5. Lyrix filed a special motion for expedited relief under 10 *Del. C.* § 6003 seeking dismissal of Diamantis’ defamation crossclaim under Delaware’s recently enacted anti-SLAPP statute.²³ Lyrix contends its motion stays all proceedings in this matter.²⁴ On June 30, 2026, Diamantis filed a “Motion for Leave to File Amended Answer” which, he asserts, responds to the new allegations made by Sand Park and clarified his defamation claim against Lyrix.²⁵ The Court addresses both motions here.

²⁰ D.I. 38 (“Diamantis Ans. Amend. Compl.).

²¹ Diamantis Ans. Amend. Compl., Cross-claim Count I at ¶ 9.

²² Diamantis Ans. Amend. Compl., Cross-claim I at ¶ 13.

²³ UPEPA Mot. at 1.

²⁴ UPEPA Mot. at 3.

²⁵ Mot. Amend. ¶ 15.

ANALYSIS

I. Delaware’s Uniform Public Expression Protection Act (“UPEPA”)

6. Diamantis’s and Lyrix’s motions invoke provisions of Delaware’s Uniform Public Expression Protection Act (“UPEPA” or “the Act”). In 2025, the Delaware General Assembly enacted UPEPA, adopting the Uniform Law Commission’s Uniform Public Expression Protection Act.²⁶ “[T]he Act combats the problem of strategic lawsuits against public participation, also called ‘SLAPPs.’”²⁷ Recognizing that SLAPPs, “in the form of a defamation . . . or other claim” entangle defendants in “expensive litigation and stifle the ability to engage in constitutionally protected activities,” the Act “protects the public’s right to engage in activities protected by the First Amendment without abusive, expensive legal retaliation.”²⁸ The Act declared Delaware’s prior anti-SLAPP regime ineffective and repealed those provisions of the Delaware Code – 10 *Del. C.* §§ 8136 through 8138 – and replaced those provisions with UPEPA, codified at 10 *Del. C.* Ch. 60.²⁹

²⁶ Del. S.B. 80 syn., 153rd Gen. Assem. (2025) (“UPEPA Syn.”); 10 *Del. C.* Ch. 60; *Main Line Growth, LLC v. American Polymers, Inc.*, 2026 WL 2531434, at *5 (Del. Super. Ct. Aug. 27, 2026); *Tesaro, Inc. v. Anaptysbio, Inc.*, 2026 WL 1122338, at *6 (Del. Ch. Apr. 24, 2026).

²⁷ UPEPA Syn. “SLAPPs are meritless lawsuits brought to ensnare their targets in costly litigation that chills society from engaging in constitutionally protected activity.” *Tesaro*, 2026 WL 1122338, at *6.

²⁸ UPEPA Syn.

²⁹ *Id.* “While Delaware has an ‘anti-SLAPP’ law (see §§ 8136 through 8138 of Title 10 of the Delaware Code), the law received a score of ‘D-’ from the Institute for Free

7. The Delaware General Assembly declared that UPEPA “must be broadly construed,”³⁰ and the Act provides a structured framework for a party to seek relief under its terms. A party may file a special motion for expedited relief within 60 days of the filing of “a complaint, crossclaim, counterclaim, third-party claim, or other pleading that asserts a cause of action” covered by the Act.³¹ And the filing of such motion stays “[a]ll other proceedings between the moving party and the responding party.”³² The Court must hear the motion “not later than 60 days after filing of the motion”³³ and must “rule on [the motion] not later than 60 days after a hearing.”³⁴ The Court is directed to “consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment.”³⁵ Costs, attorneys’ fees, and expenses may be awarded to the prevailing party on a UPEPA motion.³⁶

Speech due to limited types of speech it protects and lack of basic protections provided by the Act.” *Id.*

³⁰ 10 *Del. C.* § 6011.

³¹ 10 *Del. C.* § 6003.

³² 10 *Del. C.* § 6004.

³³ 10 *Del. C.* § 6005.

³⁴ 10 *Del. C.* § 6008.

³⁵ 10 *Del. C.* § 6006.

³⁶ 10 *Del. C.* § 6010.

8. The elements of a UPEPA special motion for expedited relief – a “§ 6003 motion” – are set forth in 10 *Del. C.* § 6007 and require the Court to engage in a tripartite analysis.³⁷ First, the Court must determine whether the movant has established that UPEPA applies.³⁸ Second, the Court must determine whether the responding party’s motion is statutorily excluded from UPEPA’s coverage.³⁹ Third, the Court must determine whether “the responding party fails to establish a prima facie case as to each essential element of the cause of action” or “the moving party fails to state a cause of action upon which relief can be granted” or “there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.”⁴⁰

9. UPEPA applies to communications “in a . . . judicial . . . proceeding,” “on an issue under consideration or review in a . . . judicial . . . proceeding,” or “on a matter of public concern.”⁴¹ UPEPA does not apply to causes of action:

- (1) Against a government unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity;
- (2) By a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law, regulation, or ordinance;

³⁷ 10 *Del. C.* § 6007.

³⁸ 10 *Del. C.* § 6007(a)(1).

³⁹ 10 *Del. C.* § 6007(a)(2).

⁴⁰ 10 *Del. C.* § 6007(a)(3).

⁴¹ 10 *Del. C.* § 6002(b).

- (3) Against a person primarily engaged in the business of selling or leasing goods or services if the cause of action arises out of a communication related to the person's sale or lease of the goods or services;
- (4) Based on a common law fraud claim; or
- (5) Alleging a violation of either subchapter II or III of Chapter 24 of Title 5.⁴²

Where a communication is made in a judicial proceeding, comments on an issue under consideration in a judicial proceeding, *or* speaks to a matter of public concern, *and* is not specifically excluded from UPEPA coverage, the Court must proceed to the third step where it assesses the merits of the complaint. Only justiciable claims survive the final screen.

II. UPEPA's Application here.

10. The application of UPEPA “will depend on the specific facts of each case.”⁴³ For this reason, it is important to identify the context of the speech at issue. In the Superior Court, this case began as what may be considered a routine contract dispute; Sand Park sued Lyrix (as borrower) and Diamantis (as guarantor) to recover an unpaid debt.⁴⁴ The simplicity of the dispute ends there. The parties, lodging

⁴² 10 *Del. C.* § 6002(c).

⁴³ *Main Line Growth, LLC*, 2026 WL 2531434, at *1.

⁴⁴ Compl.

claims, cross claims, and counterclaims, are now embroiled in litigation spanning both the Superior Court and the Court of Chancery.⁴⁵

11. Lyrix defends itself in the Superior Court by asserting that Diamantis lacked the authority to negotiate the loan. Lyrix readily acknowledges that its defenses, both here and in the Court of Chancery, are premised upon allegations Diamantis forged company documents.⁴⁶ Diamantis, of course, contends he acted with the approval of Lyrix (or Brune or Romeo).

12. In his defamation cross claim against Lyrix, Diamantis asserts he, Romeo, and Brune, “expressly authorized Lyrix to enter into the [Sand Park] Note.”⁴⁷ Thus, he maintains, “Lyrix, through its officers Brune and Romeo, and agent Invenio, made false statements of fact to Sand Park and other third parties that Diamanti[s] forged the signatures on the Lyrix Written Consent.”⁴⁸ Diamantis contends the statements are false because he “did not forge any signature,” and

⁴⁵ Sand Park sued Lyrix and Diamantis in the Superior Court to recover the unpaid debt. C.A. No. N25C-10-292 SPL. A series of plaintiffs, unrelated to the parties in the Superior Court litigation, sued Diamantis (and Lyrix and related companies) in the Court of Chancery alleging, among other things, the double pledging of collateral. C.A. No. 2025-0569 LWW. And, also in the Court of Chancery, Lyrix has filed a complaint for declaratory judgment against Diamantis. C.A. No. 2025-0573 LWW.

⁴⁶ UPEPA Mot. at 7.

⁴⁷ Diamantis Ans. Amend. Compl., Cross-claim Count I at ¶ 8.

⁴⁸ Diamantis Ans. Amend. Compl., Cross-claim Count I at ¶ 9

because he, Brune, and Romeo authorized the Lyrix-Sand Park transaction.⁴⁹ Diamantis contends he lost employment and suffered harm to his reputation as a result of Lyrix's allegations.⁵⁰ In response to Lyrix's UPEPA motion, Diamantis offers a more fulsome description of what he contends evidence Lyrix's defamation in a Proposed Amended Answer.⁵¹

13. Lyrix contends that "each of the three elements necessary for an order dismissing a cause of action on an expedited basis under UPEPA are satisfied . . . [and] this Court should dismiss Diamantis's crossclaim for defamation with prejudice . . . [and award Lyrix] court costs, reasonable attorneys' fees, and litigation expenses."⁵² Diamantis describes Lyrix's motion as a "misguided UPEPA gambit," and asks the Court to "reject this Motion or at a minimum hold it in abeyance unless and until discovery is complete."⁵³ But UPEPA demands the Court decide the issue

⁴⁹ Diamantis Ans. Amend. Compl., Cross-claim Count I at ¶ 10.

⁵⁰ Diamantis Ans. Amend. Compl., Cross-claim Count I at ¶ 13.

⁵¹ UPEPA Resp. at 7-9; Mot. Amend. Ex. A ("Proposed Amend. Ans."). The Court does not grant Diamantis leave to amend his answer; a properly filed UPEPA motion stays the proceedings as to Lyrix and Diamantis. But, to engage in the analysis demanded of the third step of the UPEPA paradigm, the Court will consider facts Diamantis cross references from his proposed amended complaint. *See* D.I. 56 (at the conclusion of argument on the motions, the Court advised the parties of its intent to consider facts from the proffered amended complaint as cross referenced in Diamantis's UPEPA Response).

⁵² UPEPA Mot. at 10.

⁵³ UPEPA Resp. at 1.

under an established timeline; abeyance is simply not an option. And, in any event, having assessed Diamantis's claim under the UPEPA framework, dismissal is required.

III. A motion filed under UPEPA stays all other proceedings between Lyrix and Diamantis.

14. Nearly a month after Lyrix filed its UPEPA motion, Diamantis sought leave to "File Amended Answer and Affirmative Defenses to Plaintiff's First Amended Complaint, Amended Cross Claims and Third-Party Complaint."⁵⁴ Diamantis contends "Lyrix's tactical decision" to file its UPEPA motion "does not extinguish Diamantis' right to respond to Sand Park's amended pleading or otherwise prevent amendment under Rule 15."⁵⁵ Lyrix responds that the "filing of [its] motion automatically stays all proceedings between Lyrix and Diamantis under 10 *Del. C.* § 6004."⁵⁶

15. Whether the Court may allow Diamantis to amend his answer involves a straightforward application of clear statutory terms. UPEPA provides that "[a]ll other proceedings between the moving party [Lyrix] and the responding party [Diamantis], including discovery and a pending hearing or motion, are stayed."⁵⁷

⁵⁴ Mot. Amend.

⁵⁵ Mot. Amend at 2.

⁵⁶ Resp. Mot. Amend at 4.

⁵⁷ 10 *Del. C.* § 6004(a)(1).

The merits of Lyrix’s UPEPA motion have no bearing on the statutorily imposed stay, and the stay “remains in effect until entry of an order ruling on the motion under § 6003 of [Title 10] and expiration of the time under § 6009 of [Title 10] for the moving party to appeal the order.”⁵⁸ Diamantis’s motion to amend is **STAYED**.⁵⁹

IV. Diamantis’s defamation crossclaim must be dismissed under UPEPA.

16. Under the UPEPA three-part assessment, the Court must determine: (1) whether Lyrix has established UPEPA applies; (2) whether Diamantis demonstrates the application of a UPEPA “carve out;” and (3) whether Diamantis failed to establish a prima facie case, whether Lyrix established Diamantis failed to state a cause of action upon which relief may be granted, or whether Lyrix demonstrated it would be entitled to summary judgment.⁶⁰ Having considered UPEPA and the parties arguments, the Court concludes that Diamantis’s defamation claim is precisely the type of claim UPEPA serves to address. For the reasons explained below, Lyrix’s motion to dismiss Diamantis’s defamation cross claim under UPEPA is **GRANTED**.

⁵⁸ 10 *Del. C.* § 6004(b).

⁵⁹ The Court, applying the UPEPA three-step analysis to the facts of this case concludes below that dismissal is warranted. In the event Diamantis wishes to pursue a motion to amend, he should renote his pleading and the Court will consider the position of all parties involved in this litigation on the viability of that request.

⁶⁰ 10 *Del. C.* § 6007; *Tesaro, Inc. v. Anaptybio, Inc.*, 2026 WL 1122338, at *7 (Del. Ch. Apr. 24, 2026).

A. Lyrix has established UPEPA applies.

17. The first step in the UPEPA analysis is to determine whether Lyrix has established, “under § 6002(b) or (d) of [Title 10]” that UPEPA applies. The Court must determine first, “what conduct is the basis for the challenged claim and, second, does that conduct constitute protected activity.”⁶¹ Lyrix asserts the alleged defamatory “communications and allegations fall [in] each of the three protected categories listed in § 6002(b).”⁶² Diamantis responds that his “claim does not fall under any protected category because forgery is not a matter of public concern.”⁶³

18. Title 10, Section 6002(b) offers three separate and distinct protected categories of speech:

- (1) Communication in a . . . judicial . . . proceeding;
- (2) Communication on an issue under consideration or review . . . in a judicial . . . proceeding; *or*
- (3) Exercise of the right of freedom of speech . . . guaranteed by the United States Constitution or Delaware’s Constitution on a matter of public concern.⁶⁴

The disjunctive “or” compels the Court to consider each category separately. In other words, the alleged speech need not be on a matter of public concern to receive UPEPA coverage.

⁶¹ *Main Line Growth, LLC*, 2026 WL 2531434, at *6 (cleaned up).

⁶² UPEPA Mot. at 11.

⁶³ UPEPA Resp. at 6.

⁶⁴ 10 *Del. C.* § 6002(b).

19. Assessing the scope of UPEPA’s coverage, the Court of Chancery explained in *Tesaro, Inc. v. Anaptysbio, Inc.*:

A cause of action arises from protected activity if the conduct underlying the cause of action was itself an act in furtherance of the right of petition or free speech. Put differently, a claim may be struck only if the speech or petitioning activity itself is the wrong complained of and not just evidence of liability or a step leading to some different act for which liability is asserted. The protected activity must be the injury producing conduct. Defamation claims present the quintessential example. There, the protected activity is the act of speech, which itself is the wrong complained of in the claim of defamation.⁶⁵

That Court distinguished “speech that provides a basis for liability” from “speech that provides evidence of liability,” and explained that “[a] communication that serves merely as evidence of a complained-of wrong is not itself the injury-producing conduct.” The corollary, a communication that *is* the alleged wrong falls within UPEPA’s reach. Such is the case here.

20. The Superior Court recently addressed UPEPA’s coverage in *Main Line Growth, LLC v. American Polymers, Inc.*, and explained that UPEPA “does not protect statements having any connection, however remote, with an official proceeding.”⁶⁶ Rather, the challenged statement must “relate to the substantive issues in the litigation.”⁶⁷ “Determining whether a statement relates to a substantive

⁶⁵ *Tesaro*, 2026 WL 1122338, at *8 (cleaned up).

⁶⁶ *Main Line Growth, LLC*, 2026 WL 2531434, at *1 (cleaned up).

⁶⁷ *Id.*, at *7.

issue does not lend itself to bright lines and depends on the specific facts of each case.”⁶⁸

21. While the scope of UPEPA is not defined by bright lines, the communications at issue here clearly fall within UPEPA’s coverage. Sand Park sued Lyrix and Diamantis to recover an unpaid debt. Lyrix, in its defense, asserted Diamantis lacked the authority to bind it – Lyrix – to the loan. Diamantis vigorously disagrees. Every statement Diamantis alleges harmed him was made in a judicial proceeding or on an issue under consideration or review in a judicial proceeding.⁶⁹ And, Diamantis asserts Lyrix’s speech is the basis of Lyrix’s liability, not evidence of liability. Lyrix has a right to defend itself from litigation.⁷⁰ UPEPA applies here.

B. Diamantis fails to establish a UPEPA “carve out.”

22. Lyrix asserts that “no exclusion under § 6002(c) applies to Diamantis’s claim for defamation.”⁷¹ Diamantis responds that “10 *Del. C.* § 6002(c)(3) and 10

⁶⁸ *Id.*

⁶⁹ *See* 10 *Del. C.* § 6002(b)(1), (2).

⁷⁰ Super. Ct. Civ. R. 8(b); *See Progressive Casualty Insurance Co. v. Bowman Trailer Leasing, LLC*, 2018 WL 3853875, at *5 (Del. Super. Ct. Aug. 13, 2018) (“It is an elementary tenet of law that parties to an action may present a defense against a claim for relief.”).

⁷¹ UPEPA Mot. at 15.

Del. C. § 6002(c)(4) common law fraud exclusion applies to Diamantis’ crossclaim for defamation.”⁷² Neither exception applies.

1. *The UPEPA commercial speech exception does not apply.*

23. Under § 6002(c)(3), UPEPA does not apply to a cause of action “[a]gainst a person primarily engaged in the business of selling or leasing goods or services if the cause of action arises out of a communication related to the person’s sale or lease of the goods or services.”⁷³ Diamantis asserts “Lyrix is primarily engaged in providing services, and the alleged defamatory statements were made in connection with its efforts to obtain financing necessary to provide services, and are therefore integral to its commercial activities.”⁷⁴ Lyrix responds that “[t]he communications alleged here are that a board consent was forged, and Lyrix is not in the business of selling or leasing board consents.”⁷⁵

24. The commercial speech exception invoked by Diamantis is identical to the exception in New Jersey’s UPEPA. There, as here, the exception requires “(1) a person to be primarily engaged in the business of selling or leasing goods or services, and (2) the cause of action arises out of communication related to the person’s sale

⁷² UPEPA Resp. at 10.

⁷³ 10 *Del. C. § 6002(c)(3)*.

⁷⁴ UPEPA Resp at 11.

⁷⁵ UPEPA Repl. at 8-9.

or lease of the goods or services.”⁷⁶ The New Jersey Superior Court recently found the commercial speech exception to not apply where internet “postings were informational in nature regarding a case [a law firm] was handling” and were not “about the sale of its legal services.”⁷⁷ An otherwise “overbroad interpretation of the commercial speech exemption would result in nonsensical consequences.”⁷⁸ So, too, here.

25. No record evidence establishes Lyrix is “primarily engaged in the business of selling or leasing goods or services.” Even so, the alleged communications are wholly unrelated to “the sale or lease of good or services.” The speech is directed to an internal company dispute. The UPEPA commercial speech exception does not apply.

2. *Diamantis does not assert a common law fraud claim.*

26. Diamantis contends his “crossclaim for defamation is based on fraud, which falls within the common law fraud exclusion under 10 *Del. C.* § 6002(c)(4).”⁷⁹ Lyrix responds that Diamantis’s common law fraud argument is untethered from his

⁷⁶ *Holtec International v. Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, PC*, 2026 WL 2014782, at *7 (N.J. Super. Ct. July 13, 2026).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ UPEPA Resp. at 11.

defamation claim and that “[a] defamation claim is not ‘based on’ a fraud claim merely because the pleader asserts a separate fraud count in a proposed pleading.”⁸⁰

27. Under § 6002(c)(3), UPEPA does not apply to a cause of action “[b]ased on a common law fraud claim.” Common law fraud requires:

- (1) the defendant falsely represented or omitted facts that the defendant had a duty to disclose;
- (2) the defendant knew or believed that the representation was false or made the representation with a reckless indifference to the truth;
- (3) the defendant intended to induce the plaintiff to act or refrain from acting;
- (4) the plaintiff acted in justifiable reliance on the representation; and
- (5) the plaintiff was injured by its reliance.⁸¹

28. Diamantis’s defamation claim is just that, a claim for defamation. His claim – as filed or as may be amended – asserts Lyrix communicated falsehoods to third parties. To the extent Diamantis asserts his defamation claim is grounded in common law fraud, it fails. Under any factual recitation offered by Diamantis – his Answer or Proposed Amended Answer – he fails to establish the elements of a common law fraud claim. UPEPA’s common law fraud exclusion does not apply.

C. Diamantis’s defamation claim fails the third UPEPA factor.

29. The third UPEPA factor compels the Court to review Diamantis’s defamation claim through three separate lenses: (1) has Diamantis established a

⁸⁰ UPEPA Repl. at 10.

⁸¹ *Blue Beach Bungalows DE, LLC v. State*, 351 A.3d 1007, 1043 (Del. 2025) (quoting *DCV Holdings v. ConAgra, Inc.*, 889 A.2d 954, 958 (Del. 2005)).

prima facie case; (2) has Lyrix established that Diamantis failed to state a cause of action upon which relief may be granted; and (3) is there a genuine issue as to any material fact.⁸² If Diamantis's claim fails under any of the three bases, dismissal is required.⁸³ Reviewing the pleadings in the light most favorable to Diamantis and considering the factual assertions in both his Answer and Proposed Amended Answer, Diamantis fails to state a justiciable claim with respect to any statements, and the litigation privilege provides absolute immunity to any identified statements offered in litigation.

30. Diamantis contends his Proposed Amended Answer provides factual support for his defamation claim.⁸⁴ He is wrong. In his initial Answer, Diamantis avers:

8. Diamantis, Romeo and Brune executed a Unanimous Written Consent of the Board of Managers and of the Members of Lyrix Holdings LLC in Lieu of a Meeting (the "Lyrix Written Consent") which expressly authorized Lyrix to enter into the Note. A copy of the Lyrix Written Consent is attached hereto as Exhibit 1.

9. Lyrix, through its officers Brune and Romeo, and agent Invenio, made false statements of fact to Sand Park and other third parties that Diamantis forged the signatures on the Lyrix Written Consent.

10. These statements were false because Diamantis did not forge any signature and Diamantis, Brune, and Romeo executed the Written

⁸² 10 *Del. C.* § 6007(a)(3).

⁸³ 10 *Del. C.* § 6007(a) (If a moving party satisfies the UPEPA three-part assessment, the Court "shall dismiss with prejudice a cause of action").

⁸⁴ UPEPA Resp. at 13.

Consent in the ordinary course of business with Lyrix's knowledge and participation.

11. Lyrix, through its officers and agents, published these false statements to third parties outside of Lyrix, including Sand Park and Renaissance, knowing them to be false or acting with reckless disregard for their truth.

12. These statements constitute defamation per se because they falsely accuse Diamantis of criminal conduct and dishonesty.⁸⁵

In his proposed Amended Cross Claim, Diamantis asserts:

78. Lyrix, through its officers Brune and Romeo, made false statements of fact to Sand Park and other third parties that, among other things, Diamantis forged the signatures on the Lyrix Written Consent.

79. These statements were false because Diamantis did not forge any signature and Diamantis, Brune, and Romeo knew he did not. Brune and Romeo executed or authorized execution of the Lyrix Written Consent in the ordinary course of business with Lyrix's knowledge and participation.

91. Upon information and belief, Lyrix, Brune, and Romeo accessed and contacted persons listed in Diamantis' Outlook contacts list and communicated with them, including but not limited to Hildene Capital Management, LLC ("Hildene").

92. Thereafter, RPH contacted Diamantis and told him that he had lied, forged signatures, and was taking out loans without authority. Those statements were false.

97. Diamantis incorporates and restates the foregoing allegations as if fully set forth herein.

⁸⁵ Diamantis Ans. Amend. Compl., Cross-claim Count I.

98. On May 23, 2024, Diamantis, Romeo and Brune executed the Lyrix Written Consent, which expressly authorized Lyrix to enter into the Note. See Ex. 7.

99. Diamantis. Defendants made several defamatory statements of fact concerning Diamantis.

100. Lyrix, through its officers Brune and Romeo, and agent Invenio, made false statements of fact to Sand Park and other third parties that Diamantis forged the signatures on the Lyrix Written Consent.

101. These statements were false because Diamantis did not forge any signature and Diamantis, Brune, and Romeo executed the Written Consent in the ordinary course of business with Lyrix's knowledge and participation.

102. Lyrix, through its officers and agents, published these false statements to third parties outside of Lyrix, including Sand Park, Sage, and Renaissance, knowing them to be false or acting with reckless disregard for their truth.

103. These statements constitute defamation per se because they falsely accuse Diamantis of criminal conduct and dishonesty.

104. Further, on or around March 24, 2026, Brune and Romeo had falsely informed the Plaintiffs in the Growth Settlements Lawsuit that Diamantis "is actively continuing to sell Plaintiffs' Data and/or the Database to additional third parties, including companies within the structured settlement industry, in spite of the cease-and-desist letter and his counsel's statements to the contrary." See Opening Brief ISO TRO - Growth Settlements II et al v. Diamantis and Lyrix Holdings (C.A. No. 2025-0569-LWW) at page 11 (emphasis in the original).

105. This was not true.

106. As a result of this false statement, on or around April 2, 2026, the Plaintiffs in the Growth Settlements Lawsuit filed a motion for temporary restraining order and expedited proceedings, and amended their complaint to expand their allegations, including newly assertions

that Diamantis had misappropriated and was selling Plaintiffs' alleged data through Crescent.

107. On or around April 15, 2026, in the Growth Settlements Lawsuit, Brune submitted a Declaration in support of Lyrrix's Reply Brief in Further Support of Motion for Temporary Restraining Order, falsely accusing Diamantis of entering "into a series of merchant cash advance agreements, loan agreements, and other financing arrangements purportedly on behalf of Lyrrix Holdings and its subsidiaries" ... without receiving "Board approval under either operating agreement. Each was entered into by Diamantis acting entirely alone, without the timely knowledge or consent of Jim Romeo or me." See Ex. 16 at 13-15.

108. On or around April 15, 2026, in the Growth Settlements Lawsuit, Romeo submitted a Declaration in support of Lyrrix's Reply Brief in Further Support of Motion for Temporary Restraining Order, falsely accusing Diamantis of entering "into a series of merchant cash advance agreements, loan agreements, and other financing arrangements purportedly on behalf of Lyrrix Holdings and its subsidiaries" ... without receiving "Board approval under either operating agreement. Each was entered into by Diamantis acting entirely alone, without the timely knowledge or consent of Steve Brune or me." See Ex. 17 at 17-19.

109. These statements are not true. At all relevant times, Diamantis has acted pursuant to his authority as Manager of Lyrrix and after his resignation as a duly authorized representative of Lyrrix.

110. The Court in the Growth Settlements lawsuit set a briefing schedule for the TRO hearing scheduled on April 17, 2026. Lyrrix did not file any papers by the deadline. Instead, the night before the TRO hearing, Lyrrix filed papers that mischaracterized the true facts and "sandbagged" Diamantis. For example, Lyrrix asserted that Diamantis secretly sought to engage Bryant Park in negotiations without Brune and Romeo's consent of approval. These accusations were false – Diamantis was clearly acting with full knowledge and consent of Brune

and Romeo because Diamantis forwarded emails from Bryant Park to Brune and Romeo mere minutes after receiving such emails. See Ex. 18.

111. Likewise, Brune and Romeo have asserted before the Court of Chancery of the State of Delaware that Diamantis kept them in the dark about MCAs and Sand Park – but that is also not true. The text messages attached hereto as Exhibits 5 and 6 show Romeo and Brune each texting on May 7, 2024, in advance of the Sand Park Loan, clearly admitting to the knowledge of the MCAs and discussing them as part of their own strategy to resolve issues with lender Origami. See e.g. Exhibits 5 and 6.

112. Further, in the Lyrix Action, Lyrix, through its officers Brune and Romeo, alleges, among other things, that Diamantis “executed the ‘Sand Park’ transaction, pledging Company assets and transmitting a Board Consent bearing forged signatures of Romeo and Brune.” See *Lyrix Holdings, LLC v. Diamantis* (C.A. No. 2026-0573-LWW), Transaction ID 79407712, Verified Complaint for Declaratory Judgment at 4.

113. In the Lyrix Action, Lyrix, through its officers Brune and Romeo, attached Brune and Romeo Declarations filed in the Growth Settlements Lawsuit, ISO Lyrix Brief ISO Motion for TRO. See *id.* at 21; see also Exhibits 16 and 17.

114. Additionally, Defendants were aware of and encouraged Diamantis to close the RPH Loan because Lyrix needed the money. Brune and Romeo were not going to fund Lyrix.

115. Each of the statements specified above were false.

116. Lyrix, through its officers and agents, published these false statements to third parties outside of Lyrix, including Sand Park, Sage, Renaissance, various MCAs, and RHP principal Steve Austin.

117. Lyrix, Brune, and Romeo knew these statements were false or acted with reckless disregard for their truth in making and publishing them.

118. Diamantis has confirmed Lyrix, Brune, Romeo, and Invenio have published this and other false statements to others including Sage, various MCAs, RHP principal Steve Austin, and others, knowing them to be false or acting with reckless disregard for their truth.

119. These statements constitute defamation per se because they falsely accuse Diamantis of criminal conduct and dishonesty.

120. Further, as a direct result of these false statements, Diamantis suffered damages including, but not limited to, harm to his personal and professional reputation, loss of employment with Renaissance, injury to business relationships, loss of business opportunities, and loss of revenue.

121. In addition, Defendants' false statements were not isolated incidents, but part of a continuing course of conduct designed to falsely portray Diamantis as having acted without authority and engaged in misconduct. Defendants repeated these false statements despite their own knowledge of the MCAs, participation in Lyrix's business affairs, execution and/or authorization of the Lyrix Written Consent, and acceptance of the benefits of the Sand Park Loan. Defendants' statements were made maliciously and with knowledge of their falsity, or with reckless disregard for the truth, causing substantial harm to Diamantis' professional reputation, employment, and business relationships.⁸⁶

Across 34 paragraphs, beyond asserting Lyrix made false statements, Diamantis fails to identify with specificity any statement made.

⁸⁶ UPEPA Resp. at 9 (Proposed Amend. Compl., Ex. A at 78, 79, 91, 92, 97-121).

31. “In Delaware, the elements for a *prima facie* case of defamation are as follows: (1) the defendant made a defamatory statement; (2) concerning the plaintiff; (3) the statement was published; (4) a third party would understand the character of the communication as defamatory; and (5) plaintiff was injured as a result of the statement.”⁸⁷ “A statement is defamatory when it ‘tends so to harm the reputation of another as to lower him in the estimation of the community or deter third persons from associating or dealing with him.’”⁸⁸ At a minimum, a plaintiff in a defamation suit must identify the substance of the defamatory statements and whether they were actually published.”⁸⁹

32. Diamantis does not identify the substance of any defamatory statement and fails to articulate publication. Diamantis does not allege whether the alleged defamatory statements were written or spoken.⁹⁰ Paragraphs 8 through 12 of his

⁸⁷ *Thompson v. Robbins*, 2015 WL 9312124, at *1 (Del. Super. Ct. Dec. 17, 2015) (citing *Doe v. Cahill*, 884 A.2d 451, 463 (Del. 2005)).

⁸⁸ *Cousins v. Goodier*, 283 A.3d 1140, 1148 (Del. 2022) (quoting the Restatement of Torts § 559 (1938)).

⁸⁹ *Brisco v. Delaware State Police*, 2024 WL 1575105, at*3 (Del. Super. Ct. Apr. 11, 2024). See also, *McMahon v. McMahon*, 2025 WL 903788, at *2 (Del. Mar. 24, 2025) (defamation claimant must “identify the persons to whom the allegedly defamatory statements were made and the substance of the statement”); *Abbott v. Gordon*, 2008 WL 821522, at *24 (Del. Super. Ct. Mar. 27, 2008) (general conclusions of defamation fail to establish a *prima facie* case).

⁹⁰ “Defamation consists of the ‘twin torts’ of libel and slander.” *Spence v. Funk*, 396 A.2d 967, 970 (Del. 1978). Libel is written defamation and slander is oral defamation. *Id.* The nature of the communication – written or oral – defines the Court’s assessment of the speech. *Id.*

cross-claim against Lyrix alleges false statements without specificity. Paragraphs 78, 79, 91, 92, and 97-103 of his Proposed Amended Complaint fare no better. Diamantis asserts his belief that Lyrix made defamatory statements without identifying what statements were made. Not only has he failed “to state a prima facie case as to each essential element of the cause of action,”⁹¹ he fails to state a claim.⁹²

33. In paragraphs 104 through 121 of his Proposed Amended Complaint cross-claim against Lyrix, Diamantis alludes to statements and argument made during litigation in this Court and the Court of Chancery. Again, he fails to specifically identify the communication. Nonetheless, statements offered by Lyrix in the context of litigation in this Court and the Court of Chancery fall within the well-established litigation privilege.

34. “Generally, defamation is subject to liability. However, affirmative defenses to a prima facie case exist for statements made in certain contexts where there is a particular public interest in unchilled freedom of expression.”⁹³ Statements made in the context of judicial proceedings are entitled to an “absolute

⁹¹ 10 *Del. C.* § 6007(a)(3).

⁹² *McMahon*, 2025 WL 903788, at *2.

⁹³ *Barker v. Huang*, 610 A.2d 1341, 1344 (Del. 1992).

privilege.”⁹⁴ The doctrine of privilege is “founded [upon] public policy,”⁹⁵ and “whether the privilege attaches is a question of law.”⁹⁶ The privilege derives from:

a common law rule, long recognized in Delaware, that protects from actions for defamation statements of judges, parties, witnesses and attorneys offered in the course of judicial proceedings so long as the party claiming the privilege shows that the statements [were] issued as part of a judicial proceeding and were relevant to a matter at issue in the case. However, statements made outside of the course of judicial proceedings, such as those made during a newspaper interview concerning judicial proceedings, are not accorded the protection of the absolute privilege.⁹⁷

“Traditionally, [the absolute litigation privilege] applied only to statements made during judicial proceedings. However, many jurisdictions ‘have recognized the utility in extending the privilege to cover communications made in advance of anticipated litigation.’”⁹⁸ If the statement “is reasonably germane to the pending action” or “has some connection to the subject matter of the pending action” then it is relevant to a matter at issue in the case.⁹⁹ “To the extent statements were made prior to, or during judicial proceedings, so long as the statements were made in an

⁹⁴ *Tatro v. Esham*, 335 A.2d 623, 625-26 (Del. Super. Ct. 1975).

⁹⁵ *Tatro*, 335 A.2d at 627.

⁹⁶ *Walker v. Parson*, 2016 WL 3130093, at *3 (Del. Super. Ct. Apr. 21, 2016).

⁹⁷ *Barker*, 610 A.2d at 1345 (cleaned up).

⁹⁸ *Feenix Payment Systems, LLC v. Michael Blum*, 2022 WL 215026, at *6 (Del. Super. Ct. Jan. 25, 2022) (quoting *Paige Cap. Mgmt., LLC v. Lerner Master Fund, LLC*, 22 A.3d 710, 716-17 (Del. Ch. 2011)).

⁹⁹ *Walker*, 2016 WL 3130093 at *4 (cleaned up).

effort to address the alleged grievance between the parties, the absolute privilege doctrine applies.”¹⁰⁰

35. Lyrix is entitled to defend itself. Each statement referenced in paragraphs 104 through 121 of his Proposed Amended Answer cross-claim alludes to communications offered in judicial proceedings germane to the grievance between the parties. The absolute litigation privilege applies, and Diamantis fails to state a cause of action upon which relief can be granted.

36. Having run Diamantis’s defamation claim through the UPEPA framework, the Court concludes Lyrix has established each of the three statutory factors. UPEPA applies, a statutory carve out does not exist, and Diamantis’s claims, on their face, fail. On these findings, the court must “dismiss with prejudice” Diamantis’s defamation claim. Lyrix’s UPEPA motion is **GRANTED**.

V. UPEPA requires an award of costs, reasonable attorneys’ fees, and reasonable litigation expenses.

37. “On a motion under § 6003 [of Title 10], the court shall award court costs, reasonable attorneys’ fees, and reasonable litigation expenses related to the motion to the moving party if the moving party prevails on the motion.”¹⁰¹ And,

¹⁰⁰ *BRP Hold Ox, LLC v. Chilian*, 2018 WL 5734648, at *5 (Del. Super. Ct. Oct. 31, 2018) (applying the absolute litigation privilege to communications “to address the potential violation of contract claims between the parties.”)

¹⁰¹ 10 *Del. C.* § 6010(a)(1) (cleaned up).

where the moving party prevails, punitive damages must be awarded if “[t]he court finds that the moving party has demonstrated that the responding party’s cause of action was commenced or continued for the purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting the moving party’s free exercise of speech, petition, or association rights.”¹⁰²

38. The Court has found Lyrix prevails on its § 6003 motion; thus, it must award Lyrix court costs, reasonable attorneys’ fees, and reasonable litigation expenses.¹⁰³ But the Court does not find, on the record before it, that Diamantis initiated his cross-claim “for the purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting the moving party’s free exercise of speech, petition, or association rights.”¹⁰⁴ Neither party offered, and the Court’s research failed to uncover, decisional guidance of UPEPA’s punitive damages component. The Court finds no evidence of malicious intent. Nor does the record reveal Diamantis brought his defamation claim to harass, intimidate, or punish Lyrix. Rather, Diamantis contends Lyrix’s statements harmed his reputation but failed to identify the specific offending communication and failed to acknowledge the protections afforded by Delaware’s litigation privilege. Punitive damages are not warranted.

¹⁰² 10 Del. C. § 6010(b)(2).

¹⁰³ 10 Del. C. § 6010(a)(1).

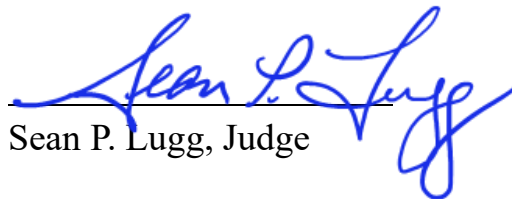
¹⁰⁴ 10 Del. C. § 6010(b)(2).

CONCLUSION

UPEPA is clear; Lyrix's motion stays all other matters between Diamantis and Lyrix pending in this case. Thus, Diamantis's motion to amend is **STAYED**.

Diamantis's defamation claim is precisely the type of litigation UPEPA exists to dissuade. The parties are embroiled in a dispute. Efforts to convert legitimate defenses into actionable defamation stifles the vigorous advocacy each party is owed. Having considered and applied the tripartite UPEPA framework, the Court concludes that Diamantis's crossclaim of defamation against Lyrix must be, and is, dismissed. Lyrix's UPEPA motion for expedited relief is **GRANTED**. Under 10 *Del. C.* § 6010 "court costs, reasonable attorneys' fees, and reasonable litigation expenses related to the motion" are hereby ordered. Lyrix shall submit such expenses within 15 days and Diamantis may respond within 15 days of Lyrix's filing.

SO ORDERED


Sean P. Lugg, Judge