

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Lynchburg Division

JERRY FALWELL, JR., INDIVIDUALLY  
AND IN HIS CAPACITY AS BENEFICIARY  
OF THE DR. JERRY L. FALWELL FAMILY  
TRUST,

Plaintiff,

v.

LIBERTY UNIVERSITY,  
JERRY PREVO,  
AND JONATHAN P. FALWELL,  
Defendants.

Case No. 6:23-CV-00040-NKM

**DEFENDANTS LIBERTY UNIVERSITY AND JERRY PREVO’S MOTION TO  
DISMISS COUNTS I-VII OF PLAINTIFF’S AMENDED COMPLAINT PURSUANT TO  
RULES 12(b)(1) AND 12(b)(6) OR, IN THE ALTERNATIVE, MOTION TO STRIKE  
PURSUANT TO RULE 12(f)**

Defendants Liberty University (“Liberty”) and Jerry Prevo (“Prevo”), by counsel and pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure and W.D. Va. Civ. R. 11, hereby move to dismiss Counts I-VII of the First Amended Complaint, ECF No. 16 (“FAC”) filed by Plaintiff Jerry Falwell, Jr. (“Falwell, Jr.”) on September 13, 2023. In the alternative and should any portion of the FAC survive, Defendants Liberty and Prevo move to strike Paragraphs 4-8, 32-55, and 96-98 of the FAC pursuant to Rule 12(f).

For the reasons detailed in the attached Memorandum of Law in Support of Liberty and Prevo’s Motion to Dismiss Counts I-VII of the FAC, Counts I-VII should be dismissed because (1) the Dr. Jerry L. Falwell Family Trust (“Family Trust”) does not own the intellectual property Falwell, Jr. seeks to assert, and therefore, Falwell, Jr. lacks standing to bring this lawsuit, Fed. R. Civ. P. 12(b)(1); (2) even if the Family Trust owned the intellectual property at issue, Falwell, Jr. cannot unilaterally sue as a minority beneficiary of the Family Trust, and therefore, he lacks

standing to bring this lawsuit, Fed. R. Civ. P. 12(b)(1); (3) Falwell, Jr. has failed to plead any personal ownership of the asserted intellectual property, so Counts I-VII, which are predicated on an ownership of rights, must be dismissed based on Falwell, Jr.'s lack of standing, Fed. R. Civ. P. 12(b)(1); (4) Falwell, Jr. fails to state a claim upon which relief can be granted for each of the Counts I-VII, Fed. R. Civ. P. 12(b)(6); and (5) to the extent any part of the FAC survives, Defendants Liberty and Prevo move to strike Paragraphs 4-8, 32-55, and 96-98 of the FAC pursuant to Rule 12(f).

Defendants Liberty and Prevo respectfully request that all counts against them (Counts I-VII of the FAC) be dismissed with prejudice.

Dated: September 27, 2023

/s/ David J. Ervin

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ATTORNEYS FOR DEFENDANTS  
LIBERTY UNIVERSITY AND JERRY  
PREVO

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of September, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notice to all counsel of record.

*/s/ David J. Ervin*