IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

JOHN WILLIAM LICCIONE,

Plaintiff,

vs. Case No.: 24-003939-CI

CATHY SALUSTRI-LOPER, et. al.,

Defendants.
_____/

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS AND FOR ATTORNEY'S FEES

THIS CAUSE came before the Court for hearing on July 8, 2025 on Defendant Cathy Salustri Loper's Motion to Dismiss First Amended Complaint and For Attorneys' Fees dated October 3, 2024 and Defendants' Motion to Dismiss Second Amended Complaint dated June 20, 2025. The Court has reviewed the following materials:

1. Defendant Cathy Salustri Loper's Motion to Dismiss First Amended Complaint and for Attorneys' Fees ("First Motion to Dismiss") dated October 3, 2024.
2. Plaintiff's Response to Defendant Cathy Salustri Loper's Motion to Dismiss First Amended Complaint and Request for Hearing ("First Response") dated October 22, 2024.
3. Defendants' Motion to Dismiss Second Amended Complaint ("Second Motion to Dismiss") dated June 20, 2025.
4. Plaintiff's Response and Memorandum of Law in Opposition to Defendants' Motion to Dismiss Second Amended Complaint ("Second Response") dated July 2, 2025.

Exhibit A

Having considered these materials, the case file, the applicable law, the argument of counsel at a hearing on July 8, 2025, and being otherwise fully advised in the premises, the Court hereby **FINDS** as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

On September 3, 2024, Plaintiff initiated this action by filing his original Complaint. On September 5, 2024, Plaintiff filed a First Amended Complaint ("FAC") as a matter of right. The FAC relates to Plaintiff's unsuccessful bid to win the Democratic primary election for U.S. House District 13. On October 3, 2024, Loper filed the First Motion to Dismiss, which asserts that the claims against Ms. Loper violate Florida's Anti-SLAPP Statute codified at section 768.295, Florida Statutes (2024).[1] Prior to disposition of this motion, the Court entered an order on November 20, 2024 staying the instant matter due to the existence of related federal litigation which was pending prior to the initiation of this action. The stay remained in place until a hearing on June 10, 2025 in which the Court ruled on the record that it would grant Plaintiff's Motion to Lift Stay dated April 1, 2025 and Plaintiff's Motion for Leave to File Second Amended Complaint dated April 12, 2025 with the caveat that said motions were granted without prejudice to Loper's claim for entitlement to attorney's fees under the Anti-SLAPP Statute as to the FAC.[2]

A. The First Amended Complaint

The introductory section of the FAC states that Plaintiff "brings this action seeking remedies for substantial systemic irregularities and fraudulent actions in voting processes and other events relating to the August 20th election in Pinellas County, that occurred under the supervision and/or the willful participation of Defendants." FAC ¶ 1. The FAC names Defendant, CATHY

[1] "According to the title of section 768.295, SLAPP is an acronym for 'Strategic Lawsuits Against Public Participation.'" *WPB Residents for Integrity in Gov't, Inc. v. Materio*, 284 So. 3d 555, 556 n.1 (Fla. 4th DCA 2019).

[2] On July 17, 2025, the Court rendered the corresponding written order.

SALUSTRI LOPER ("Ms. Loper") as a defendant and alleges eight counts against her. The FAC identifies Ms. Loper as the "owner and editor of the Gabber Newspaper, a local newspaper in Gulfport[.]" FAC ¶ 8. The remaining factual allegations made against Ms. Loper are limited to the following:

> 43. Thirty-nine days before the August 20th primary, on July 12, 2024, the local newspaper in Gulfport, "The Gabber Newspaper", published a fraudulent article about the CD-13 Congressional election in which The Gabber asserted falsely that there were only 4 Democratic candidates competing in the primary. Plaintiff was the 5th candidate. The article included pictures and write ups of each of the four candidates. The owner and editor of the Gabber Newspaper is Cathy Salustri Loper. The reporter who wrote the article is Patrick Henzen[.]
>
> 44. Plaintiff lives 100 yards from The Gabber in Gulfport. Defendants Loper and Heinzen have both spoken to Plaintiff about him being (the only) congressional candidate that lives in Gulfport.
>
> 45. Plaintiff would demand Loper publish a correction to their false article but Loper failed to do so. She instead attempted to rationalize her and Heinzen's decision to conceal the existence of Plaintiff and his Congressional candidacy from voters.

FAC ¶¶ 43-45. Counts I, II, III, IV, V, VI, and VIII of the FAC allege various causes of action against Ms. Loper, including multiple statutory violations, conspiracy to commit election fraud, intentional interference with prospective economic advantage, and injunctive relief. The FAC also includes a section styled "Count X," which provides a general plea for damages and is therefore not an alleged cause of action which requires any further consideration by the Court.

B. The Second Amended Complaint

The Second Amended Complaint ("SAC") is now the operative pleading. The SAC names three defendants: Ms. Loper, Barry Loper[3] ("Mr. Loper"), and Thursday Morning Media, Inc.

[3] The SAC mistakenly refers to Mr. Loper as "Thomas Loper."

("TMMI").[4] The SAC alleges that: 1) the Lopers are co-owners of TMMI; 2) TMMI and the Lopers own *The Gabber*; and 3) Ms. Loper is the editor-in-chief of *The Gabber*. SAC ¶¶ 3-5. Ms. Loper "is sued in her capacity as owner and editor" of *The Gabber*. SAC ¶¶ 3, 16. Similarly, Mr. Loper and TMMI are sued for their alleged role in harming Plaintiff's 2024 congressional campaign and 2025 Gulfport mayoral campaign. SAC ¶¶ 4, 18, 19, 21.

The SAC alleges three causes of action, which are asserted against each of the defendants: defamation, tortious interference with a prospective economic advantage, and civil conspiracy. Accordingly, the SAC abandons six of the eight causes of action alleged against Ms. Loper in the FAC. The gist of Plaintiff's allegations in the SAC pertains to the publication of certain articles by *The Gabber*. In addition to these publications, Plaintiff also complains of "[t]he systematic suppression of truthful reporting concerning a politically motivated battery and assault by a Democratic party leader against Plaintiff at a Pride parade" and "[t]he concealment and burial of a Gabber mayoral candidate survey showing Plaintiff's early overwhelming lead in the Gulfport mayoral race." SAC ¶ 50. Lastly, Ms. Loper is also sued for a statement she made while moderating a political debate during the 2025 mayoral campaign. *See* SAC ¶¶ 25-27. On June 20, 2025, Defendants filed their Second Motion to Dismiss.[5] Ms. Loper is now joined by Mr. Loper and TMMI in moving to dismiss the SAC on Anti-SLAPP grounds.

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[4] Collectively these three defendants are hereinafter referred to as "Defendants."

[5] The Second Motion to Dismiss is filed on behalf of Defendants despite noting that Plaintiff has not served Mr. Loper and TMMI. *See* Second Mot. to Dismiss at 1 n.1. However, the Second Motion to Dismiss addresses the merits of the SAC and seeks affirmative relief, namely in the form of an award of attorney's fees and costs. Accordingly, counsel for Defendants has made a general appearance in this matter. *See, e.g., Segalis v. Roof Depot USA, LLC*, 178 So. 3d 83, 85 (Fla. 4th DCA 2015) (holding that a filing seeking "some sort of affirmative relief on the merits of the case" constitutes a general appearance). Any argument that this Court lacks personal jurisdiction over Mr. Loper and TMMI has thus been waived. *Id.* (stating "if a party makes a general appearance in a case without first challenging personal jurisdiction, the party is deemed to have waived any claims as to lack of personal jurisdiction").

II. LEGAL STANDARD

"By statute, Florida prohibits 'Strategic Lawsuits Against Public Participation.'" *Vericker v. Powell*, 406 So. 3d 939, 941 (Fla. 2025) (citing § 768.295, Fla. Stat. (2024)). Per the statute, "[a] person...in this state may not file...any lawsuit, cause of action, [or] claim...against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue[.]" § 768.295(3), Fla. Stat. (2024). The purpose of the Anti-SLAPP statute is "to safeguard the exercise of constitutionally protected free-speech rights by prohibiting lawsuits targeted at suppressing them." *Vericker*, 406 So. 3d at 942 (citing § 768.295(1), Fla. Stat. (2024)). "In addition, the statute operates to deter violations of its prohibition on meritless, speech-targeted lawsuits—accomplishing this through attorney-fee awards[.]" *Id.* at 946 (citing § 768.295(4), Fla. Stat. (2024)). "The express legislative intent of subsection 768.295(4) is to secure a speedy decision at 'the earliest possible time' on a summary judgment or motion to dismiss." *WPB Residents for Integrity in Gov't, Inc. v. Materio*, 284 So. 3d 555, 556 (Fla. 4th DCA 2019). Accordingly, courts routinely assess Anti-SLAPP applicability to speech-based claims at the motion to dismiss stage. *See, e.g., Godwin v. Michelini*, 371 So. 3d 973 (Fla. 2d DCA 2023) (requiring application of Anti-SLAPP standards to a motion to dismiss); *Davis v. Mishiyev*, 339 So. 3d 449 (Fla. 2d DCA 2022) (same).

In considering a motion to dismiss, the trial court generally must confine its review to the four corners of the complaint, draw all inferences in favor of the pleader, and accept all well-pleaded allegations as true. *Precision Orthopedics, Inc. v. Zimmer US, Inc.*, 341 So. 3d 458, 461 (Fla. 2d DCA 2022) (citations omitted). However, "a motion to dismiss based on the Anti-SLAPP statute is distinct from a traditional motion to dismiss brought under the Florida Rules of Civil Procedure." *Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th

Cir. Ct. Apr. 29, 2021). In particular, "the Anti-SLAPP statute requires the trial court to do more than accept as true the factual allegations in the four corners of the complaint and draw all reasonable inferences therefrom in favor of the claimant." *Mishiyev v. Davis*, 402 So. 3d 443, 448 (Fla. 2d DCA 2025) (citations omitted). "Rather, the trial court must apply a burden-shifting test." *Id.*[6] "[T]he initial burden is on the SLAPP defendant to establish that the Anti-SLAPP statute applies, and once the defendant has done so, the burden shifts to the claimant to demonstrate that the claims are not primarily based on First Amendment rights in connection with a public issue and not without merit." *Godwin*, 371 So. 3d at 975 (cleaned up).

III. ANALYSIS

A. Did the SAC Supersede Ms. Loper's Claims that the FAC Violated the Anti-SLAPP Statute?

Because the Court granted Plaintiff's Motion for Leave to File Second Amended Complaint without prejudice to Loper's claim for entitlement to attorney's fees under the Anti-SLAPP Statute as to the FAC, the Court must first consider whether the First Motion to Dismiss is moot. The Anti-SLAPP Statute specifically provides: "The court shall award the prevailing party reasonable attorney fees and costs incurred in connection with ***a claim*** that an ***action*** was filed in violation of this section." § 768.295(4), Fla. Stat. (emphasis added). The plain language of the statute does not limit recoverable fees and costs to those associated only with the operative pleading. Furthermore, the Eleventh Judicial Circuit of Florida recently held the following:

[6] The Second District established the burden-shifting test for Anti-SLAPP motions in *Gundel v. AV Homes, Inc.*, 264 So. 3d 304 (Fla. 2d DCA 2019). In *Vericker v. Powell*, 406 So. 3d 939 (Fla. 2025), the Florida Supreme Court disapproved of the *Gundel* court's determination that certiorari was the proper vehicle for review of trial court orders disposing of Anti-SLAPP motions. However, the *Vericker* decision did not disturb the burden-shifting analysis utilized by the *Gundel* court. In *Lam v. Univision Communications, Inc.*, 329 So. 3d 190 (Fla. 3d DCA 2021), the Third District declined to follow the *Gundel* burden-shifting approach and certified conflict to the Florida Supreme Court. However, it appears that none of the parties in *Lam* invoked the Florida Supreme Court's jurisdiction to consider the certification of conflict. The Second District utilized the *Gundel* burden-shifting analysis as recently as 2025 in *Mishiyev v. Davis*, 402 So. 3d 443 (Fla. 2d DCA 2025). Accordingly, this Court must do the same.

> In this action, the entirety of the litigation -- principally, the preparation of Lazarow's first motion under the Anti-SLAPP Statute, Lazarow's opposition to Marquez's motions to amend, the preparation of Lazarow's second motion under the Anti-SLAPP Statute, oral argument on that motion, and all matters pertaining to Marquez's appeal -- concerned Lazarow's claim that this action was filed in violation of the Anti-SLAPP Statute. Lazarow is thus entitled to all reasonable attorney's fees and costs she incurred in this action.

Marquez v. Lazarow, 29 Fla. L. Weekly Supp. 797a (Fla. 11th Cir. Ct. Jan. 18, 2022).[7]

In *Marquez*, Florida's Eleventh Circuit held that the defendant was entitled to attorney's fees incurred for her defense against both the initial complaint and the amended complaint where her responses "asserted a single, consistent claim that this action was filed in violation of the Anti-SLAPP Statute." *Id.* As in *Marquez*, Ms. Loper has maintained a single, consistent claim that this action was filed in violation of the Anti-SLAPP Statute both as to the FAC And SAC. As such, the Court finds that Ms. Loper's claims for attorney's fees as to the FAC survived amendment of the complaint, and accordingly the Court must consider whether both the FAC and SAC violate the anti-SLAPP statute.

B. Do Florida's Anti-SLAPP Provisions Apply to the Contested Speech?

Defendants now have the burden of establishing that the Anti-SLAPP Statute applies to the FAC and SAC. In doing so, Defendants "must present a prima facie case that the statements are protected by the First Amendment." *Mishiyev*, 402 So. 3d at 448. "Florida's Anti-SLAPP statute protects the right to exercise 'free speech in connection with public issues ... as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.'" *Id.* (citing § 768.295(1), Fla. Stat.). "This requirement can be effectively split into two parts: (1) the

[7] The trial court's order was subsequently affirmed in *Marquez v. Lazarow*, 347 So. 3d 472 (Fla. 3d DCA 2022).

medium of the speech and (2) its content." *Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th Cir. Ct. Apr. 29, 2021).

As to the medium of the speech, "'[f]ree speech in connection with public issues' means any written or oral statement that is protected under applicable law and...is made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, ***magazine article***, musical work, ***news report***, or other similar work." § 768.295(2)(a), Fla. Stat. (2024) (emphasis added). *See also Bongino v. Daily Beast Co., LLC*, 477 F. Supp. 3d 1310, 1322 (S.D. Fla. 2020) (stating that the phrase "'free speech in connection with a public issue' includes any written statement protected under applicable law and made in connection with a news report" (citing § 768.295(2)(a), Fla. Stat.)).

As to content, the contested speech "must only be made in connection with a 'public issue' in order to fall within the Anti-SLAPP statute's protection." *Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th Cir. Ct. Apr. 29, 2021). "Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (cleaned up).

i. The FAC

The FAC mentions Loper in only four paragraphs. First Resp. ¶ 2. Specific allegations pertaining to Ms. Loper are found exclusively in the general allegations section of the FAC. *See* FAC ¶¶ 8, 43, 44, 45. In sum, these paragraphs allege that Loper is the owner and editor of a newspaper that published an article on July 12, 2024 ("Debate Article") about a primary election

debate between Democratic Party candidates for a congressional seat. First Resp. ¶ 2.[8] The medium of this speech clearly qualifies as a news report, which is an explicitly enumerated category in section 768.295(2)(a), Florida Statutes (2024). Additionally, the content of the Debate Article clearly concerns a public issue as it pertains to a political concern of the community and is subject of legitimate news interest in that it profiles various candidates who were running for a political office. Since the FAC does not allege a cause of action for defamation, the Court need not analyze whether the contested speech is unprotected by virtue of the law of defamation. As such, Ms. Loper has met her burden to demonstrate that her contested speech is protected and governed by the Anti-SLAPP Statute.

ii. The SAC

In the SAC, Plaintiff alleges additional instances of purportedly actionable speech. Defendants argue that the SAC demonstrates "on its face" that the Anti-SLAPP Statute applies because it names Defendants in their capacities as owners and operators of *The Gabber*. Second Mot. to Dismiss at 2. This fact is uncontested. *See* SAC ¶¶ 3-5 (alleging that Defendants are sued due to their ownership, control, and operation of *The Gabber* newspaper). As Defendants point out, the gist of Plaintiff's claim against Defendants relate to "the newspaper's content" and "alleged decisions regarding the content of news articles" in relation to "a 2024 Congressional primary and a 2025 mayoral election." Second Mot. to Dismiss at 2. Specifically, the SAC identifies the following publications by *The Gabber* which Plaintiff claims are actionable: 1) the Debate Article; 2) an article published on February 27, 2025 entitled "Gulfport Mayoral Candidate John Liccione's Time in Courts" ("Contempt Article"); and 3) an op-ed published on March 9,

[8] Plaintiff incorporated the Debate Article into the SAC via the following hyperlink: https://thegabber.com/meet-the-candidates-for-the-district-13-congressional-election/. *See* SAC at 4 n.1.

2025 authored by a non-party named Barbara Banno which likened Plaintiff to "cheap, white sangria" ("Banno Article"). SAC ¶ 50.

Count I of the SAC states: "This claim arises from a pattern of knowingly false, misleading, and defamatory statements and omissions by Defendants[.]" SAC ¶ 50. Plaintiff admits that the Debate Article is "the cornerstone" of the SAC. Second Resp. at 1. Count I also alleges that Defendants used their editorial discretion in various instances to conceal information by refusing to publish material relevant to Plaintiff's political campaigns, and that such behavior is actionable. Count II states: "Defendants' actions, including the publication of false and misleading articles...directly interfered with Plaintiff's prospective economic relationships" and that the Debate Article "was calculated to ensure maximum suppressive impact on Plaintiff's public visibility and support." SAC ¶¶ 75, 80. Lastly, Count III alleges that Defendants "conspired with themselves and others to publish defamatory content, suppress exculpatory information, and undermine Plaintiff's political candidacies in 2024 and 2025." SAC ¶ 90. The SAC therefore claims that contested speech is directly actionable or otherwise serves as evidence of a conspiracy involving Defendants to interfere with and harm Plaintiff's political campaigns. *See, e.g.*, SAC ¶ 47 (alleging that the Banno Article "was the final act in furtherance of [a] conspiracy").

The medium of the contested speech once again clearly falls into a category of speech that is specifically enumerated in section 768.295(2)(a). The Debate Article and the Contempt Article constitute news reports. It can be argued that the Banno Article, which is an op-ed in nature, also qualifies as a news report within the meaning of the Anti-SLAPP Statute, but it is perhaps more appropriately categorized as a magazine article or, at the very least, belongs in the catch-all category of "other similar work." In any event, it also qualifies as a medium of speech which is governed by the Anti-SLAPP Statute. Once again, it is clear from the content of the three identified

publications – the Debate Article, the Contempt Article, and the Banno Article – that the contested speech all concerns public issues given that the publications involve reporting and commentary on political campaigns of local interest, and that such matters are of legitimate news interest as the speech shed light and opinion on the qualifications of candidates for political office.

Plaintiff additionally argues that the contested speech is not constitutionally protected because it is defamatory. It is true that defamation is not constitutionally protected speech. *See, e.g., Mishiyev*, 402 So. 3d at 450 (citing *McQueen v. Baskin*, 377 So. 3d 170, 176 (Fla. 2d DCA 2023)). For the reasons provided in more detail below, the Court finds that there is no merit to Plaintiff's defamation claims. Given the foregoing, Defendants have met their burden to demonstrate that the contested speech is governed by the Anti-SLAPP statute. To the extent the SAC is grounded in other actions, e.g. *The Gabber*'s alleged concealment of information favorable to Plaintiff's campaign and a statement made by Ms. Loper to Plaintiff while moderating a mayoral debate, such allegations do not appear to fall within the purview of the Anti-SLAPP statute but are nonetheless meritless for the reasons described further below.

C. Are Plaintiff's Claims Primarily Based on First Amendment Rights in Connection with a Public Issue?

The burden now shifts to Plaintiff to demonstrate that his claims were not filed primarily because Defendants exercised their constitutional right of free speech in connection with a public issue. Plaintiff's claims against Defendants in both the FAC and SAC seek redress primarily for written statements published in a local newspaper concerning his two unsuccessful political campaigns. Plaintiff objects to these written statements for a variety of alleged reasons including voter suppression, disinformation, violation of journalistic ethics and standards, and defamation. Plaintiff expresses discontent with what he views as *The Gabber*'s failure to report on his congressional campaign. For example, Plaintiff regards *The Gabber*'s actions as constituting "a

pattern of willful neglect towards factual reporting contrary to the very ethics and standards Loper espouses in her publication's policies." First Resp. at 12. Such allegations demonstrate that Plaintiff filed this action primarily because Defendants engaged in speech. The publications complained of by Plaintiff clearly involved public issues.

Plaintiff's only discernible argument in response to the inquiry at hand is that the speech at issue is not protected by the First Amendment because the published articles are defamatory in nature. Such an argument is not meant for consideration at this juncture. *See Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th Cir. Ct. Apr. 29, 2021) (stating that the issue of whether a magazine article was defamatory and therefore not an exercise of free speech "is better addressed under the second prong of the analysis: whether Plaintiff's suit is filed without merit"). Accordingly, Plaintiff has failed to carry his burden to demonstrate that his claims in the FAC and SAC are not primarily based upon Defendants' exercise of free speech in connection with a public issue.

D. Are Plaintiff's Claims Without Merit?

Plaintiff now has the burden of demonstrating that his claims are not without merit.

i. FAC Causes of Action

For the reasons provided below, all counts in the FAC asserted against Ms. Loper fail to state a cause of action and are therefore without merit. First, Plaintiff offers no legal authority for the Court to consider in support of the validity of his claims. The First Response contains little more than Plaintiff's own theories about why the FAC states valid causes of action. Plaintiff attempts to counter the First Motion to Dismiss by arguing general concepts of defamation law by citing to "*Dominion Voting Systems v. Fox News Network*" and "*Goldwater v. Ginzburg*," neither of which includes a proper citation to a case law reporter. However, the FAC does not allege a

cause of action for defamation against Loper. Thus, the little authority Plaintiff cites is entirely irrelevant to the validity of his claims in the FAC.[9]

Moreover, Plaintiff cites two fictitious cases in the First Response. First, Plaintiff cites to a case styled as "*Mastellone v. Lightning Park, Inc.*, 283 So. 3d 876 (Fla. 3d DCA 2019)" for the proposition that "courts must carefully evaluate whether the alleged speech is genuinely related to a public issue, and, more importantly, whether it is delivered in good faith and without intent to mislead." First Resp. at 16. Next, Plaintiff cites to a case styled as "*Gordon v. Marrone*, 77 So. 3d 1210 (Fla. 1st DCA 2011)" for the proposition that "courts must evaluate whether the speech is misleading." First Resp. at 14. These cases do not appear in any Florida reporter. Not only has Plaintiff failed to present legal authority to counter Ms. Loper's grounds for dismissal, but Plaintiff has presented false legal authority to this Court, an action which is sanctionable, including as to *pro se* parties. *See e.g., Gutierrez v. Gutierrez*, 399 So. 3d 1185, 1188 (Fla. 3d DCA 2024) (finding that a *pro se* party's "submission of fictitious case law" to the court was "sufficient to warrant the imposition of sanctions" (subsequent history omitted)).

Because Plaintiff has failed to identify any legal authority which demonstrates that his causes of action against Ms. Loper are meritorious, Plaintiff has failed to carry the burden imposed on him to avoid application of the Anti-SLAPP Statute as to the FAC.

ii. SAC Causes of Action

The Court now turns to the SAC. Count I purports to state a defamation claim against all Defendants. "Defamation has the following five elements: (1) publication; (2) falsity; (3) actor must act with knowledge or reckless disregard as to the falsity on a matter concerning a public

[9] *See US Dominion, Inc. v. Fox News Network, LLC*, No. N21C-03-257 EMD, 2023 WL 2730567, at *1 (Del. Super. Ct. Mar. 31, 2023) ("This is a civil action involving a defamation claim"); *Goldwater v. Ginzburg*, 414 F.2d 324, 327 (2d Cir. 1969) ("This is a libel action").

official, or at least negligently on a matter concerning a private person; (4) actual damages; and (5) statement must be defamatory." *Jews.For Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008) (citation omitted). The required element of a false statement is not present if the alleged statements are true. *Cape Publications, Inc. v. Reakes*, 840 So. 2d 277, 280 (Fla. 5th DCA 2003) (citation omitted). "Under the substantial truth doctrine, a statement does not have to be perfectly accurate if the 'gist' or the 'sting' of the statement is true." *Kieffer v. Atheists of Florida, Inc.*, 269 So. 3d 656, 659 (Fla. 2d DCA 2019) (citation omitted). "Under Florida law, words are defamatory when they charge a person with an infamous crime or tend to subject one to hatred, distrust, ridicule, contempt or disgrace or tend to injure one in one's business or profession." *Seropian v. Forman*, 652 So. 2d 490, 495 (Fla. 4th DCA 1995) (citing *Adams v. News–Journal Corp.*, 84 So. 2d 549 (Fla. 1955)). "Where the court finds that a communication could not possibly have a defamatory or harmful effect, the court is justified in either dismissing the complaint for failure to state a cause of action or in granting a directed verdict at the proof stage." *Byrd v. Hustler Magazine, Inc.*, 433 So. 2d 593, 595 (Fla. 4th DCA 1983) (citation omitted).

Count I fails to state a cause of action for defamation. First, the Court must consider the Debate Article, which Plaintiff concedes is "the linchpin of this case." Second Resp. at 3. Having reviewed the hyperlinked article incorporated by Plaintiff into the SAC, the Debate Article never mentions Plaintiff at all, an admission made by Plaintiff. *See* SAC ¶ 17. Accordingly, Plaintiff has not demonstrated that the Debate Article charges Plaintiff with an infamous crime or tends to subject him to hatred, distrust, ridicule, contempt or disgrace or tends to injure him in his business or profession. Moreover, it is clear the gist or main purpose of the Debate Article was to discuss candidates participating in the debate, which did not include Plaintiff. Plaintiff admits that he was not invited to the debate for the congressional campaign. Second Resp. at 6. Although it is

technically true that the Contempt Article described the debate participants as "the four candidates" for the political office in question, the Debate Article was substantially true as the "gist" of the article was to preview a debate that included those four candidates and excluded Plaintiff.

As to the Contempt Article, Plaintiff fails to demonstrate an actionable basis for defamation. Plaintiff does not argue that the statements contained in the Contempt Article are untrue. In other words, Plaintiff fails to show that he in fact was not ordered to attend a hearing where criminal contempt sanctions could have been imposed on him. Plaintiff simply alleges that the proximity of "criminal" to his name in a newspaper created false impressions that he had a criminal history. In failing to demonstrate the Contempt Article was untrue, Plaintiff cannot rely upon it as grounds for a defamation claim.

Additionally, Plaintiff concedes in his Second Response that the Banno Article "is a protected opinion" but insists it "reinforces the malicious intent established by the [Debate Article][.]" Second Resp. at 8. Thus, by Plaintiff's own admission, the Banno Article does not provide an independent basis for defamation. Having already determined that the Debate Article is not sufficient to support a claim for defamation, Plaintiff's argument that the Banno Article somehow "reinforces" the Debate Article is an invalid and moot point. The Banno Article constitutes pure opinion and is therefore not actionable. *See, e.g. Smith v. Taylor Cty. Pub. Co., Inc.*, 443 So. 2d 1042, 1046 (Fla. 1st DCA 1983) ("It is clear, as the trial court determined, that a writer's opinion about a newsworthy item is a protected privilege" (citation omitted)).

Count I also alleges that Defendants engaged in "[t]he systematic suppression of truthful reporting concerning a politically motivated battery and assault by a Democratic party leader against Plaintiff at a Pride parade" and the "concealment and burial of a Gabber mayoral candidate survey showing Plaintiff's early overwhelming lead in the Gulfport mayoral race." SAC ¶ 50.

Plaintiff alleges that "[t]hese actions and omissions–taken together–were intended to convey a false and defamatory impression of Plaintiff to the public, to damage Plaintiff's candidacies for Congress and mayor, and to sabotage his standing within the Florida Congressional District 13 and Gulfport electorates, and in Democratic and LGBTQ+ communities at large." SAC ¶ 51. Per Plaintiff, Defendants' failure to report on these matters constitutes actionable defamation. Plaintiff has presented no authority to support his contention. On the contrary, "[t]he judgment of what is newsworthy must remain primarily a function of the publisher." *See, e.g. Gawker Media, LLC v. Bollea*, 129 So. 3d 1196, 1202 (Fla. 2d DCA 2014) (citing *Doe v. Sarasota-Bradenton Florida Television Co., Inc.*, 436 So. 2d 328, 331 (Fla. 2d DCA 1983) for the proposition that "it is the primary function of the publisher to determine what is newsworthy and that the court should generally not substitute its judgment for that of the publisher"). *See also Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974) ("The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment"). Thus, Plaintiff's contention that *The Gabber*'s alleged concealment and failure to report on matters relevant to his campaign are therefore meritless.

Count II alleges a cause of action for tortious interference with a prospective economic advantage. Plaintiff identifies two specific instances of publication and editorial decision-making by *The Gabber* which undergird this claim: 1) publication of the Debate Article (*see* SAC ¶¶ 79, 80, 82); and 2) Defendants' alleged concealment and distortion of an alleged assault on Plaintiff at a pride parade (*see* SAC ¶ 87). However, Plaintiff has failed to present legal authority that this claim is meritorious. Moreover, the established authority on the issue defeats Plaintiff's claim. The tort of interference does not apply to "communications to the public at large." *Ozyesilpinar v.*

Reach PLC, 365 So. 3d 453, 460-61 (Fla. 3d DCA 2023). Additionally, news reporting is not conduct that can be the basis for a tortious interference claim. *Id.* at 461 (citation omitted). *See also Seminole Tribe of Florida v. Times Pub. Co., Inc.*, 780 So. 2d 310, 316 (Fla. 4th DCA 2001) (affirming dismissal of an interference claim against a newspaper and questioning "whether this common law cause of action could ever be stretched to cover a case involving news gathering and publication"). Since the SAC alleges that Defendants edit, own, and operate a newspaper that communicated news and opinion articles to the public at large. *See, e.g.*, SAC ¶¶ 3, 5, 29, 76. Therefore, Plaintiff's tortious interference claim fails as a matter of law.

Finally, Count III alleges a cause of action for civil conspiracy. Because the Court has already determined that all other causes of action alleged in the SAC are without merit, Count III also fails because "Florida does not recognize civil conspiracy as a freestanding tort." *Banco de los Trabajadores v. Cortez Moreno*, 237 So. 3d 1127, 1136 (Fla. 3d DCA 2018). Since Count III cannot stand on its own, it is also without merit. Notably, Count III is the only cause of action which specifically mentions Ms. Loper's alleged statement about having Plaintiff removed by police from the 2025 mayoral debate. *See* SAC ¶¶ 92, 94. Because Count III fails as a matter of law, Plaintiff has failed to demonstrate an actionable basis for Ms. Loper's alleged statement at the mayoral debate.

Since Plaintiff has failed to provide sufficient legal authority to demonstrate merit as to the causes of action asserted in the SAC, Plaintiff has failed to carry the burden imposed on him to avoid application of the Anti-SLAPP Statute.

iii. Shotgun Pleadings

The Court further observes that the FAC and the SAC are both impermissible shotgun pleadings. The U.S. Court of Appeals for the Eleventh Circuit has identified "four rough types or

categories of shotgun pleadings." *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1321 (11th Cir. 2015). The first is "a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint." *Id.* The second is a complaint that is "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." *Id.* at 1322. The third is a complaint that does not separate "each cause of action or claim for relief" into a different count. *Id.* at 1323. The fourth is a complaint that "assert[s] multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against." *Id.*

At a minimum, the FAC and SAC both fall into the first and second categories identified by the Eleventh Circuit. Each count of the FAC and SAC begins by incorporating all foregoing paragraphs. Thus, the complaints clearly fall into the first category of shotgun pleadings. Secondly, both complaints contain lengthy general allegations sections which are fully incorporated into each count. Many of the general allegations asserted in both complaints are conclusory, vague, and immaterial facts not obviously connected to any particular cause of action.[10] Thus, both complaints also fall into the second category of shotgun pleadings. Accordingly, both complaints are subject to dismissal as procedurally defective shotgun pleadings.

[10] For example, the FAC contains numerous paragraphs detailing how an alleged whistleblower named "Tampa Girl" informed Plaintiff that "she and others were paid to mark absentee ballots en masse on behalf of one or more of Plaintiff's opponents." FAC ¶ 18. These allegations are totally irrelevant to Plaintiff's cause of action for Loper's alleged violation of the Computer Fraud and Abuse Act (Count V), yet said allegations are incorporated into Count V. The SAC exhibits the same defect as Count I incorporates each paragraph in the lengthy general allegations section despite many being irrelevant to the cause of action asserted. Count II incorporates all preceding paragraphs, including those asserted in Count I. Count III asserts all preceding paragraphs, including those asserted in Count I and Count II.

IV. Entitlement to Attorney's Fees

Under the Anti-SLAPP Statute, the Court "shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section." § 768.295(4), Fla. Stat. *See also Lee v. Animal Aid, Inc.*, 388 So. 3d 25, 29 (Fla. 4th DCA 2024) ("A party who prevails on an Anti-SLAPP claim is entitled to attorney's fees under section 768.295(4)"). Accordingly, the Court finds the following:

1. Ms. Loper is the prevailing party as to the FAC;
2. Ms. Loper, Mr. Loper, and TMMI are the prevailing parties as to the SAC; and
3. Plaintiff's claims against the aforementioned defendants were filed in violation of section 768.295.

Defendants are entitled to attorney's fees and costs incurred in relation to the SAC. Additionally, Ms. Loper is entitled to attorney's fees incurred since service of the FAC upon her. *See Marquez v. Lazarow*, 29 Fla. L. Weekly Supp. 797a (Fla. 11th Cir. Ct. Jan. 18, 2022) (holding that Defendant was entitled to attorney's fees when forced to respond to both an initial complaint and an amended complaint where her responses "asserted a single, consistent claim that this action was filed in violation of the Anti-SLAPP Statute"). Here, Ms. Loper filed an Anti-SLAPP motion to dismiss the FAC. In granting Plaintiff's Motion to File Second Amended Complaint, the Court specifically granted the motion with the caveat that Ms. Loper's claim to attorney's fees as to the FAC would be preserved post-amendment. Therefore, Ms. Loper is entitled to recover reasonable attorney's fees and costs incurred for defending against both the FAC and the SAC.

V. CONCLUSION

Accordingly, it is

ORDERED and ADJUDGED:

1. This lawsuit is without merit, and Plaintiff brought the suit primarily because Defendants exercised their constitutional right of free speech in connection with a public issue. This is true both as to the FAC and SAC.

2. The First Motion to Dismiss is hereby **GRANTED.**

3. The Second Motion to Dismiss is hereby **GRANTED.**

4. This case is **DISMISSED WITHOUT PREJUDICE.**

5. Plaintiff is granted leave to file a third amended complaint within **TWENTY (20) DAYS** of this Order. **FAILURE TO FILE A THIRD AMENDED COMPLAINT WITHIN THE TIMEFRAME PROVIDED WILL RESULT IN DISMISSAL OF THIS ACTION WITH PREJUDICE WITHOUT FURTHER NOTICE.** *See, e.g., Neu v. Turgel*, 480 So. 2d 216, 217 (Fla. 3d DCA 1985) (subsequent history omitted).

6. Defendants are entitled to an award of their reasonable attorney's fees and costs under section 768.295(4), Florida Statutes (2024). The Court reserves jurisdiction to determine the amount.

DONE and ORDERED in Chambers, in St. Petersburg, Pinellas County, Florida this 14 day of October, 2025.

Honorable Patricia A. Muscarella
Circuit Civil Judge

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