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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.

Defendants.
_____/

DEFENDANT CATHY SALUSTRI LOPER'S
MEMORANDUM OF LAW IN SUPPORT OF ANTI-SLAPP DEFENSES

Pursuant to this Court's Order entered November 20, 2024, and Section 768.295 of the Florida Statutes, Defendant Cathy Loper ("Loper") submits this memorandum in support of her Anti-SLAPP defenses. Plaintiff's claims against Loper in the First Amended Complaint are without merit and were brought primarily because Loper exercised the constitutional right of free speech in connection with a public issue. Section 768.295, therefore, mandates an award of Loper's attorneys' fees. Grounds for Loper's Anti-SLAPP defenses are as follows:

Background

Loper is filing with this memorandum a response to Plaintiff's Motion to Lift Stay. Loper incorporates herein by reference the "Background" section from her Response to Motion to Lift Stay.

I. The Anti-SLAPP Law prohibits meritless attacks on free speech.

Section 768.295 of the Florida Statutes governs "Strategic Lawsuits Against Public Participation" or "SLAPPs." A SLAPP lawsuit is one filed "without merit and primarily because [the defendant] has exercised the constitutional right of free speech in connection with a public issue." § 768.295(3), Fla. Stat. (2024). Such lawsuits "are typically dismissed as unconstitutional."

Gundel v. AV Homes, Inc., 264 So. 3d 304, 310 (Fla. 2d DCA 2019) (quoting Ch. 2000-174, § 1, Laws of Fla.). In such cases, the Second District Court of Appeal places "the initial burden on the SLAPP defendant to set forth a prima facie case that the Anti-SLAPP statute applies and then shift[s] the burden 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'." *Gundel*, 264 So. 3d at 314. Where these two criteria are satisfied, the "court shall award the prevailing party reasonable attorney fees." § 768.295(4). Plaintiff's claims against Loper in the operative First Amended Complaint ("FAC") (Dkt. No. 14) fall squarely within the statute's prohibition.

First, Plaintiff's claims against Loper were filed "primarily" – indeed, exclusively – as a result of Loper's exercise of "free speech in connection with a public issue." This protection applies to Loper because she "is sued in her capacity as owner and editor" of *The Gabber*, a newspaper that published a news report about an election. *See* First Amended Complaint ("FAC") ¶¶ 8, 43. Specifically, Loper is being sued over news reports that a newspaper Loper owns and edits published in connection with Plaintiff's political campaigns. The First Amendment protects the "exercise of editorial control and judgment." *See Moody v. NetChoice, LLC*, 603 U.S. 707, 728 (2024) (quoting *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 258 (1974)). Plaintiff's claims, therefore, explicitly and clearly were filed as a result of Loper's exercise of free speech in connection with public issues.

Second, the claims against Loper are "without merit." The claims in the First Amended Complaint fail to state a cause of action. As a matter of law, therefore, the claims against Loper violate the Anti-SLAPP law. *See Lee v. Animal Aid, Inc.*, 388 So.3d 25, 29 (Fla. 4th DCA 2024) ("Plaintiff's suit is 'without merit' because Plaintiff failed to state a claim for defamation.") (quoting *Bongino v. Daily Beast Co.*, 2021 WL 4976287, at *4 (S.D. Fla. 2021)); *WPB Residents*

for Integrity in Gov't, Inc. v. Materio, 284 So. 3d 555, 564 (Fla. 4th DCA 2019) ("Based on the summary judgment evidence, Materio did not meet her burden. Her claims are therefore 'without merit' ") (Gross, J., concurring).

In this case, the pleadings demonstrate a prima facie case for application of the Anti-SLAPP law. Plaintiff, therefore, has the burden of showing that his claims were not primarily based on the exercise of First Amendment rights in connection with a public issue and not without merit. *Gundel*, 264 So. 3d at 314. Plaintiff cannot meet that burden.

II. Claims in the First Amended Complaint are Without Merit.

Plaintiff's First Amended Complaint alleges eight meritless counts against Loper. As explained in Loper's original Anti-SLAPP Motion (Dkt. No. 41):

Count One and **Count Three**, based upon election-fraud statutes, rely upon laws that do not provide a private right of action. *See Torres v. Shaw*, 345 So. 3d 970, 974 (Fla. 1st DCA 2022) (no private right of action under election-related statute); *Shiver v. Apalachee Pub. Co.*, 425 So. 2d 1173, 1175 (Fla. 1st DCA 1983) (criminal statute that prohibits corruptly influencing voters does not "confer a right of action on defeated candidates"). "Private citizens … are not empowered to sue under a criminal statute, which involves an executive function." *Hall v. Cooks*, 346 So. 3d 183, 189 (Fla. 1st DCA 2022), *reh'g denied* (Sept. 2, 2022). *See also* 52 U.S.C. § 20511 (providing criminal penalties in narrow circumstances not alleged here); *Hall v. Valeska*, 509 Fed. Appx. 834, 837 (11th Cir. 2012) (statute authorizing fine did "not provide for a private right of action"; dismissal affirmed).

Count Two alleges a conspiracy "to manipulate election results through unlawful means including, but not limited to, the submission of fraudulent absentee ballots and the suppression of lawful votes, in violation of Florida election laws and federal statutes, thereby damaging the

Plaintiff." FAC ¶ 50. The First Amended Complaint contains no allegations connecting Loper to fraudulent ballot submission or vote suppression. Moreover, 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). Because the other claims fail against Loper, the conspiracy claim does as well.

Count Four, a claim under 42 U.S.C. Section 1983, fails against Loper and is without merit because the Amended Complaint does not allege Loper was a "state actor" and does not attribute any "state action" to her. Nor would the facts support such allegations.

Count Five is a claim under the Computer Fraud and Abuse Act ("CFAA"). The CFAA, however, provides a civil cause of action against only "the violator" of that law. *See* 18 U.S.C. § 1030(g). The few facts alleged concerning Loper (FAC ¶¶ 43-45) do not remotely relate to any CFAA violation. Because Count Five does not identify Loper as "the violator" of any CFAA provision, this claim fails to state a cause of action.

Count Six alleges intentional interference with a prospective economic advantage, citing the congressional salary of $175,000. FAC ¶ 54. The interference tort does not apply to "communications to the public at large." *Ozyesilpinar v. Reach PLC*, 365 So. 3d 453, 460-61 (Fla. 3d DCA 2023). Loper is accused of editing a newspaper that communicated articles to the public at large. *See* FAC ¶¶ 8, 43. As a matter of law, this is not interference. In addition, the congressional salary that Plaintiff cites – and any other damages for losing the primary election – are unavailable as a matter of law. "Damages for a lost election are considered 'too speculative and conjectural' and thus cannot be awarded by a court." *See Peer v. Lewis*, 06-60146-CIV, 2008 WL 2047978, at *10 (S.D. Fla. May 13, 2008), *aff'd*, 08-13465, 2009 WL 323104 (11th Cir. Feb. 10, 2009); *Grayson v. No Labels, Inc.*, 601 F. Supp. 3d 1251, 1258 (M.D. Fla. 2022) (rejecting

expert testimony attributing plaintiff's election loss to negative political ads, despite pre-election poll suggesting voters supported plaintiff).

Count Eight, for injunctive relief, fails against Loper and is without merit because this count seeks an injunction relating to management of future elections and a special election in the Democratic Congressional primary. FAC ¶ 63. The Amended Complaint does not attribute to Loper any role or authority to manage elections, and of course she has none. Moreover, if Count Eight is intended to seek injunctive relief restraining the speech of Loper or her newspaper, such relief is unavailable as a matter of law. *Palm Beach Newspapers, LLC v. State*, 183 So. 3d 480, 482 (Fla. 4th DCA 2016) (reversing trial court order requiring newspaper to remove published materials from its website and explaining that injunctions are prior restraints that are "presumptively unconstitutional under the First Amendment.").

Count Ten presents merely a general plea for damages and does not state a cause of action. Count Ten, therefore, is without merit.

For all of these reasons, these counts of the FAC violate Section 768.295, and consequently the statute requires an award of Loper's attorneys' fees.

Plaintiff's proposed Second Amended Complaint (Dkt. No. 126) abandons six of these counts (all of them except tortious interference and conspiracy). The deletion of six counts shows that Plaintiff now realizes those claims against Loper are meritless. That realization, however, does not immunize Plaintiff from Anti-SLAPP liability. Section 768.295(3) provides that a person "may not file … any … claim" that violates the statute. The mere *filing* of the six abandoned claims violated Section 768.295. As the Florida Supreme Court recently recognized, "courts are to resolve Anti-SLAPP claims 'at the earliest possible time' once the necessary filings are submitted by the parties." *Vericker v. Powell*, No. SC2022-1042, 2025 WL 922413, at *5 (Fla. Mar. 27,

2025). The Anti-SLAPP law "operates to deter violations of its prohibition on meritless, speech-targeted lawsuits." *Id.* A denial of an Anti-SLAPP motion is immediately appealable, even if proceedings in the trial court will continue. *See In re Amendments to Florida Rule of Appellate Procedure 9.130*, No. SC2024-1798, 2025 WL 922308, at *1 (Fla. Mar. 27, 2025).

These principles demonstrate that an Anti-SLAPP determination and fee award are warranted *now* and cannot be evaded by Plaintiff's belated attempt to abandon some of his claims. Plaintiff should not have filed these claims at all. He had the opportunity to abandon them on October 3, 2024, when he was served with Loper's Anti-SLAPP motion. He chose not to do so and instead persisted in them. His Anti-SLAPP liability is a result of his own choosing.

Plaintiff's Response to Loper's Motion to Dismiss (Dkt. No. 56) does not change this analysis and in fact supports application of the Anti-SLAPP law. The Response (¶¶ 32 & 36) cites two cases, which the Response refers to as *Gordon v. Marrone*, 77 So. 3d 1210 (Fla. 1st DCA 2011), and *Mastellone v. Lightning Park, Inc.*, 283 So. 3d 876 (Fla. 3d DCA 2019). Neither case exists. Those party names do not appear in any Florida court opinion in Westlaw, and no opinions begin at those citations. One citation leads to the middle of an Alabama opinion, and the other leads to the second page of an opinion about a wholly unrelated issue. There is a New York case called *Gordon v. Marrone*, but that is of no help to Plaintiff, because in that case the New York appellate division upheld a $10,000 sanction against a plaintiff who brought litigation for improper purposes. *See Gordon v. Marrone*, 202 A.D.2d 104, 105-06, 616 N.Y.S.2d 98, 99 (App. Div. 1994). So, if anything, the miscited New York case helps Loper. For these reasons, the Court should give no weight to the Response and its made-up case law. Loper's Anti-SLAPP defenses should be sustained, and Plaintiff should be required to pay her attorneys' fees.

Conclusion

By filing the proposed Second Amended Complaint, Plaintiff has implicitly admitted that the claims in the First Amended Complaint against Loper are without merit. He cannot show otherwise, and the proposed Second Amended Complaint is meritless as well. Accordingly, this Court should find that the First Amended Complaint violates the Anti-SLAPP law, and that Loper is entitled to an award of her attorneys' fees.

Respectfully submitted,

THOMAS & LOCICERO PL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the **3rd** day of **June, 2025**, the foregoing document was electronically filed with the Clerk of the Court via the E-Portal, and was served this same day on all parties and attorneys of record, either via transmission of Notices of Electronic Filing generated by the E-Portal or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

s/ *James B. Lake*
Attorney