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
RESPONSE TO MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

In this third lawsuit concerning a 2024 primary election that Plaintiff lost, he seeks a third opportunity to state a viable cause of action against Defendant Cathy Salustri Loper ("Loper").[1] Plaintiff's proposed Second Amended Complaint ("2AC") is as meritless as his other pleadings. The amendment should be denied as abusive, prejudicial and futile. However, before taking up the proposed amendment, Florida's Anti-SLAPP law requires resolution of Loper's Anti-SLAPP defenses to the pending First Amended Complaint. Plaintiff's proposed amendment should be considered *only* if and after those defenses are addressed and Loper's attorneys' fees related to that meritless pleading are paid.

Background

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

[1] The Second Amended Complaint also would add as defendants (1) Thursday Morning Media, Inc., a corporation that is described as the parent company of a newspaper known as *The Gabber*; and (2) a person identified as Loper's husband and co-owner of *The Gabber*, through whom Plaintiff placed a campaign ad in *The Gabber*. 2AC ¶¶ 4-5 & 18. No independent counts are alleged against them, and their addition would not cure any of the pleading's defects.

Argument

I. Before considering Plaintiff's proposed amendment, the Anti-SLAPP defenses to the First Amended Complaint must be resolved.

The Florida Anti-SLAPP statute requires the expeditious resolution of claims within its scope. "It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts." § 768.295(1), Fla. Stat. Accordingly, 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). For that reason, 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 in this case is warranted *now*. Section 768.295(3) provides that a person "may not file … any … claim" that violates the statute. The mere *filing* of the First Amended Complaint violated Section 768.295. Amendment of a violative pleading does not cure that violation, because the harm the statute addresses is committed upon filing.

Plaintiff should not have filed his First Amended Complaint against Loper at all. He had an opportunity to abandon those meritless claims 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, forcing Loper to incur additional unnecessary attorneys' fees. His continuing Anti-SLAPP liability is a result of his own choosing. That liability must be resolved before the proposed amendment is considered.

II. The Rules of Civil Procedure support resolving the Anti-SLAPP defenses to the First Amended Complaint prior to any amendment.

Expeditious resolution of the First Amended Complaint's Anti-SLAPP issues is consistent with the Florida Rules of Civil Procedure. The Motion to Amend cites Rule 1.190(a) but ignores

Rule 1.190(e), which governs amendments generally and permits them "in furtherance of justice" and "upon such terms as may be just." *See* Fla. R. Civ. P. 1.190(e). Permitting Plaintiff to evade the Anti-SLAPP law would not further justice, but rather would undermine the speech protections that law serves. Promptly resolving Loper's Anti-SLAPP defenses to the First Amended Complaint would further justice.

Rule 1.190(e) vests trial courts with authority to set conditions on proposed amendments – namely, "terms that may be just." For example, the court in *Chatmon v. Woodard*, 492 So. 2d 1115 (3d DCA 1986) endorsed permitting an amendment only if the amending party paid the other party's additional costs and expenses incurred as a result of the amendment. *Id.* at 1116 n.2. Such a condition is particularly warranted in this case, given the commands of the Anti-SLAPP law and Plaintiff's gamesmanship in bringing three cases in two courts. Accordingly, the Anti-SLAPP defenses to the First Amendment Complaint must be resolved and any fee award paid before amendment is permitted.

III. The proposed Second Amended Complaint is abusive, prejudicial and futile.

If and when the Court reaches the merits of the Motion to Amend, the amendment should be denied, because the proposed Second Amended Complaint is abusive, prejudicial and futile.

To be sure, motions to amend are routinely granted. Refusal, however, is warranted if the amendment would prejudice the opposing party, the privilege to amend has been abused, and the amendment would be futile. *Readon v. WPLG, LLC*, 317 So. 3d 1229, 1238 (Fla. 3d DCA 2021). All three of these conditions exist in this case.

First, the amendment would prejudice Loper. As shown in her Motion to Dismiss the First Amended Complaint (Dkt. 41) and her Memorandum of Law in Support of Anti-SLAPP Defenses being filed today, Loper has already been subject to unwarranted, meritless litigation by Plaintiff in the First Amended Complaint. SLAPP "lawsuits are an abuse of the judicial process and are

used to censor, intimidate, or punish citizens, businesses, and organizations for involving themselves in public affairs." Ch. 2000-174, § 1, Laws of Fla. The Anti-SLAPP law "operates to deter violations of its prohibition on meritless, speech-targeted lawsuits." *Vericker*, 2025 WL 922413, at *5. The Anti-SLAPP law is designed to prevent this misuse of the judicial system to attack political speech, such as that attributed to Loper.

Second, the privilege to amend has been abused. Although the proposed Second Amended Complaint would be only Plaintiff's third attempt to state a cause of action *in this case*, this pleading would be Plaintiff's seventh concerning the 2024 election. Liccione has filed a Complaint and First Amended Complaint in *Liccione v. Pinellas Democratic Executive Committee*, Case. No. 24-002994-CI (Fla. 6th Cir. Ct.) (the "PDEC Case"),[2] has filed two complaints in *Liccione v. Marcus*, Case No. 8:24-cv-02005-SDM-NHA (M.D. Fla.) (the "Federal Case"), and plans a third in the federal action.[3] These overlapping lawsuits have consumed federal and state judicial resources and required the time and attention of public and private attorneys to respond to Plaintiff's pleadings. He also has filed meritless petitions to the Second District Court of Appeal and Florida Supreme Court, including a motion that was stricken as unauthorized[4] and a petition that was denied two days after it was filed.[5] This vexatious litigation is abusive.

Finally, the proposed Second Amended Complaint is an exercise in futility. "Although leave of the court shall be freely given when justice requires, the court need not allow an

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[2] Copies of documents from Plaintiff's other litigation and related materials are included in a Notice of Filing ("NOF") that Loper is submitting contemporaneously with this response. Loper asks that the Court take judicial notice of the records in the PDEC Case and the Federal Case. *See* Fla. R. Civ. P. 90.202(6).

[3] *See* Notice of Withdrawal of Motion for Leave to File Second Amended Complaint (DE 113) in Federal Case (NOF Exhibit 3).

[4] *See Liccione v. Pinellas Democratic Executive Committee*, Case No. SC2025-0242 (Fla. 2025).

[5] *Liccione v. Pinellas Democratic Executive Committee*, Case No. 2D2025-0297 (Fla. 2d DCA 2025).

amendment that would be futile." *Tuten v. Fariborzian*, 84 So. 3d 1063, 1069 (Fla. 1st DCA 2012) (affirming denial of leave to file second amended complaint, because appellants failed to show possible amendments would not be futile). For the reasons explained below, the proposed Second Amended Complaint's counts fail to state a cause of action. Leave to plead them, therefore, should be denied.

A. The repleaded interference and conspiracy counts are meritless.

The Second Amended Complaint would replead counts alleging interference with a prospective economic advantage and a civil conspiracy. *See* 2AC ¶¶ 74-88 & 89-100. These claims are just as meritless as in the First Amended Complaint.

The interference claim is based upon Plaintiff's losses in two elections – first in a Congressional primary and later in a mayoral race. "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).

The interference claim also fails because 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* 2AC ¶¶ 3, 5, 29. As a matter of law, this is not interference.

The conspiracy claim also is meritless. "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). The failure of Plaintiff's other claims against Loper means that the conspiracy count fails as well. Moreover, the attempt to sue Loper, her husband and the "parent company" of

Loper's newspaper is barred by the intra-corporate immunity doctrine. *See McAndrew v. Lockheed Martin Corp.*, 206 F.3d 1031, 1036 (11th Cir. 2000) ("a corporation cannot conspire with its employees, and its employees, when acting in the scope of their employment, cannot conspire amongst themselves"); 2 AC ¶ 91 (accusing Loper, her husband and Thursday Morning Media of "acting in concert through their shared control of The Gabber"). The proposed conspiracy claim, therefore, is without merit.

B. The proposed defamation claim is without merit.

The Second Amended Complaint also would add a defamation claim challenging three articles that appeared in *The Gabber*. These allegations are without merit for numerous reasons.

In defamation cases, courts act as gatekeepers and serve a "prominent function" by determining threshold issues as a matter of law. *Byrd v. Hustler Mag., Inc.*, 433 So. 2d 593, 595 (Fla. 4th DCA 1983); *Wolfson v. Kirk*, 273 So. 2d 774, 778 (Fla. 4th DCA 1973). As the Second District Court of Appeal recently explained, "the First Amendment requires that [a defamation] claim be considered against the background of a profound national commitment to the freedom of speech and especially of political speech, which is essential to the security of the Republic." *Flynn v. Wilson*, 398 So. 3d 1103, 1110 (Fla. 2d DCA 2024) (citation and quotation marks omitted), *review denied*, No. SC2025-0065 (Fla. 2025). "The fact that plaintiffs may not like the way the article was written or what it says about them does not automatically provide the basis for a libel suit." *Kurtell & Co. v. Miami Tribune, Inc.*, 193 So. 2d 471, 471 (Fla. 3d DCA 1967). Considered in this light, Plaintiff's proposed defamation claim is clearly without merit.

Moreover, as noted above, courts refuse to award damages for election losses, because "[d]amages 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). Such is particularly the

case here, because Plaintiff attributes his election losses not only to Loper, but also to the Governor of Florida, the Florida Secretary of State, the Pinellas County Supervisor of Elections, the supervisor's general counsel, the Palm Beach County Supervisor of Elections, an election software company's chief executive, ten John and Jane Doe defendants, the Pinellas Democratic Executive Committee, the committee chair and secretary, the Florida Democratic Party, and other, larger media that did not mention his candidacy. *See* Federal Case Verified First Amended Complaint (NOF Exhibit 1) ¶¶ 6-14, 64-66, 70-72 & 79-81 (accusing various Federal Case defendants of "directly causing his loss" in congressional primary and of actions "directly resulting in Plaintiff's defeat"); PDEC Case Complaint (NOF Exhibit 4) ¶¶ 4-7 & 39-40 (alleging that articles in another newspaper "caused catastrophic damage to his campaign, his reputation, and his ability to raise campaign funds"); PDEC First Amended Complaint (NOF Exhibit 5) ¶¶ 51 & 67 (accusing "four mainstream media outlets" of "outright excluding Plaintiff from even being mentioned as a candidate," and blaming PDEC defendants for "the loss of his Congressional primary race"). Because Plaintiff blames so many other people for his election defeats, his attempt to impose liability on Loper, her husband and her newspaper for his losses – including an election in which he received less than four percent of the vote[6] – is far too speculative to state a defamation claim.

The Debate Article

The first challenged article[7] concerned a Democratic Party-sponsored July 2024 debate that featured four Congressional candidates, but not Plaintiff. FAC ¶¶ 1, 12, 13, 43; 2AC ¶ 16.

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[6] *See* PDEC Case First Amended Complaint (NOF Exhibit 5) ¶ 20 ("Plaintiff lost the primary election, garnering only 3.93 percent of the vote, whereas Whitney Fox won with 57.94 percent of the vote."). *See also* 2AC ¶ 28 (Plaintiff "lost the mayoral election by a wide margin").

[7] Because the FAC includes a hyperlink to this article, the debate article is incorporated in Plaintiff's pleading by reference. *See Skupin v. Hemisphere Media Grp., Inc.*, 314 So. 3d 353, 356 (Fla. 3d DCA 2020) (trial court "did not deviate from the four corners of the complaint when

(footnote continued on next page)

Plaintiff was not mentioned in that article, because he was not a debate participant. FAC ¶ 12. More specifically, Plaintiff was "not invited to participate." *Id.* Shortly before the debate, Plaintiff learned that a PDEC committee "wouldn't be recognizing him as a qualified candidate and would be denying him all access to party resources, promotion, speaking engagements, and participation in candidate forums and debates." *See* PDEC Case Complaint (NOF Exhibit 4) ¶ 17. As a result, Plaintiff was denied "speaking opportunities at Party events and candidate forums." *See* PDEC Case First Amended Complaint (NOF Exhibit 5) ¶ 22. Accordingly, a Pinellas Democratic Party news release that was the basis for the article did not mention Plaintiff.[8]

Despite Plaintiff's exclusion from the debate, Plaintiff contends that he should have been mentioned in the debate coverage. 2AC ¶¶ 16-17. Reviewing an allegedly defamatory publication, however, requires "examining not merely a particular phrase or sentence, but *all of the words used* in the publication." *Flynn*, 398 So. 3d at 1112 (emphasis added). A "publication must be considered in its totality." *Smith v. Cuban Am. Nat'l Found.*, 731 So. 2d 702, 705 (Fla. 3d DCA 1999); *Byrd*, 433 So. 2d at 595. Courts must "consider the circumstances of its publication and the entire language used." *Cooper v. Miami Herald Publ'g Co.*, 31 So. 2d 382, 384 (Fla. 1947).

Plaintiff's objection is to an article that, read as a whole, was clearly about the debate, which Plaintiff admits did not include him. No law required *The Gabber* to mention Plaintiff in its debate article. The newspaper was entitled to focus on candidates who participated in the event. Nevertheless, as Plaintiff concedes, *The Gabber* acknowledged Plaintiff's candidacy in a subsequent publication and in advertising. *See* 2AC ¶¶ 18, 22 & 78. In any event, the Second

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considering defendant's motion to dismiss [defamation case] because all the broadcasts, either via hyperlink or attached transcripts, were attached to the complaint and thus incorporated"). For the Court's convenience, a copy is included with Loper's separate Notice of Filing (NOF Exhibit 9).

[8] *See* "July 13th Congressional District 13 Democratic Candidate Primary Debate" (NOF Exhibit 10).

Amended Complaint does not identify any materially false or defamatory statement about Plaintiff.

A "false statement of fact is the sine qua non for recovery in a defamation action." *Byrd*, 433 So. 2d at 595. The falsity element of a defamation claim is satisfied only "if the publication is *substantially and materially* false, not just if it is technically false." *Smith v. Cuban Am. Nat'l Found.*, 731 So. 2d 702, 707 (Fla. 3d DCA 1999) (emphasis added). "As long as a report is substantially correct, it is not necessary that it be exact in every immaterial detail or that it conform to the precision demanded in technical or scientific reporting." *Readon v. WPLG, LLC*, 317 So. 3d 1229, 1234-35 (Fla. 3d DCA 2021) (internal punctuation omitted). A "statement does not have to be perfectly accurate if the 'gist' or the 'sting' of the statement is true." *Smith v. Cuban Am. Nat. Found.*, 731 So. 2d at 706. In other words, a "statement is not considered false unless it would have a different effect on the mind of the reader from that which the pleaded truth would have produced." *Smith v. Cuban Am. Nat. Found.*, 731 So. 2d at 706.

To evaluate whether a publication is substantially false, courts "eliminate the alleged falsities" and then assess how the "common mind would understand" the publication without them. *Hill v. Lakeland Ledger Publ'g Corp.*, 231 So. 2d 254, 256 (Fla. 2d DCA 1970). A publication is not actionable unless the gist of the publication *with* the allegedly defamatory statement conveys a "significantly greater opprobrium" or sting than the publication *without* the alleged falsehood. *See Davis v. McKenzie*, 16-62499-CIV, 2017 WL 8809359 at *13 (S.D. Fla. Nov. 3, 2017), *report and recommendation adopted*, 16-62499-CIV, 2018 WL 1813897 (S.D. Fla. Jan. 19, 2018).

The July 2024 article referred to the debate participants as "the Democratic Candidates" and "[t]he four candidates." The falsity that Plaintiff alleges would be eliminated – and the article would be entirely truthful by Plaintiff's standards – if the article had referred to the "invited

candidates" or the "recognized candidates," because according to Plaintiff Democratic Party officials "wouldn't be recognizing him as a qualified candidate" and denied him "participation in candidate forums alongside his four opponents."[9] Even with the additional words "invited" or "recognized," the gist of the article would be same – namely, that the debate would consist of the four invited candidates whom the PDEC recognized. The common mind would come away from the article with exactly the same meaning that Plaintiff alleges – namely, that the Democratic Party held a debate to which only four recognized candidates were invited. To be sure, Plaintiff wants more – he would have had the article mention him and his candidacy. But defamation law does not require that. Because adding the word "invited" or "recognized" would remove the falsity that Plaintiff alleges but the sting to Plaintiff would be the same, the article's reference to the four debate candidates is substantially true and does not support a defamation claim.

Plaintiff's reference to libel by implication (2AC ¶ 54) does not change this analysis. The proposed Second Amended Complaint asserts that "omissions may constitute defamation when they convey a misleading impression," citing *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098 (Fla. 2008). That legal proposition is no help to Plaintiff, because in *Rapp* the Florida Supreme Court recognized that "[a]ll of the protections of defamation law … extend[] to the tort of defamation by implication." *Rapp*, 997 So. 2d at 1108. Thus, the requirement of material falsity applies just as much to an alleged implication or omission as to an overtly false statement.

The attempt to sue over the debate article also fails for another reason: The article did not contain a defamatory statement "of and concerning" Plaintiff. "Florida courts have long held that if a defamed person is not named in the defamatory publication, the communication as a whole must contain sufficient facts or references from which the injured person may be determined by

[9] *See* PDEC Case Complaint (NOF Exhibit 4) ¶ 42; PDEC Case First Amended Complaint (NOF Exhibit 5) ¶ 22.

the persons receiving the communication." *Mac Isaac v. Twitter, Inc.*, 557 F. Supp. 3d 1251, 1258 (S.D. Fla. 2021) (internal punctuation omitted). In addition, the alleged defamatory meaning of a libelous statement must be reasonable and not based upon a "stacking of inferences." *Trump v. Cable News Network, Inc.*, 684 F. Supp. 3d 1269, 1275 (S.D. Fla. 2023). The proposed Second Amended Complaint does not meet these standards.

The debate article neither named Plaintiff nor stated any facts about him. Plaintiff was omitted entirely, because the article was about the debate participants, not him. Plaintiff argues that his supporters would infer from the article the implication that he was no longer a candidate (or never had been). 2AC ¶ 55. Similarly strained speculation was rejected in *Trump v. Cable News Network*, 684 F. Supp. 3d at 1275-76. In that case, the court rejected a claim that the phrase "the Big Lie" connected Donald Trump to Nazi propaganda advocating Jewish persecution and genocide. *Id.* The Court declined to "create an inference of defamatory meaning," *Id.* at 1276. The *Trump* court cited *Church of Scientology of California v. Cazares*, 638 F.2d 1272, 1288 (5th Cir. 1981), which rejected speculation that the phrase "helter-skelter" connected the Church of Scientology to Charles Manson. The former Fifth Circuit was "not prepared to build inference upon inference in order to find defamatory meaning in a statement." *Id.* This Court likewise should not "create an inference of defamatory meaning" from the theory that (1) Plaintiff's congressional campaign had supporters who (2) read The Gabber article about the debate (3) noted Plaintiff was not mentioned, (4) inferred from the omission that Plaintiff had dropped out or was never a candidate at all, and (5) never learned otherwise from Plaintiff or The Gabber's other coverage of Plaintiff's candidacy. Because the alleged defamatory meaning of the debate article depends upon this stacking of inferences, Plaintiff has failed to satisfy the law's defamatory meaning and "of and concerning" requirements.

Finally, the debate article is protected by the neutral report privilege. "Under Florida law, it is well settled that disinterested communications of matters of public concern are privileged, even if defamatory." *Barbuto v. Miami Herald Media Co.*, No. 21-CV-20608, 2022 WL 123906, at *6 (S.D. Fla. Jan. 13, 2022) (quoting *Corsi v. Newsmax Media, Inc.*, 519 F. Supp. 3d 1110, 1124 (S.D. Fla. 2021)). So, for example, a statement in a *Washington Post* article repeating another publication's report of a money-laundering investigation was not actionable. *Trump Media & Tech. Grp. Corp. v. WP Co. LLC*, 720 F. Supp. 3d 1203, 1212-13 (M.D. Fla. 2024). Because that statement was "newsworthy" and "touch[ed] on an area of public interest," that statement "fit squarely within the type of reporting to which the neutral reporting privilege has been applied." *Id.* at 1213. Similarly, in this case, Loper is accused of being the editor of a newspaper that published a neutral, disinterested report on a matter of public concern – namely, an upcoming primary debate. The article did not mention Plaintiff, but instead presented neutral profiles of the debate participants, tracking the Democratic Party's news release. The article, therefore, was privileged.

The "Time in Courts" Article

The second challenged article[10] likewise is not actionable. Plaintiff challenges that article's statement that Plaintiff was suing in the PDEC Case "for alleged election fraud." The "central fact that precipitated the filing of that lawsuit," Plaintiff alleges, was an "unprovoked battery and assault," consisting of a hat being knocked off Plaintiff's head and verbal abuse. *See* PDEC Case Complaint (NOF Exhibit 4) ¶¶ 11, 24, 33. But a week after the "Time in Courts" article was published, Plaintiff referred to the PDEC Case and this one as his "Florida election fraud cases." *See* Motion for Leave to File Second Amended Complaint Federal Case DE 83 ¶ 7 (NOF Exhibit

[10] *See* "Gulfport Mayoral Candidate John Liccione's Time in Courts" (NOF Exhibit 11). This article is appropriately considered in connection with the Proposed Amended Complaint, because it is a document upon which this proposed claim is brought and, therefore, "shall be incorporated in or attached to the pleading." *See* Fla. R.Civ. P. 1.130(a).

2). Because Plaintiff has referred to the PDEC case as concerning "election fraud," use of that same description in the February 2025 article was not false or actionable.

Moreover, although the proposed Second Amended Complaint makes much of the assault and battery claims in the PDEC Case, their significance is undermined by Plaintiff's decision to abandon those claims. Judge Ramsberger found those claims lacked specific allegations of damages and required Plaintiff to add them. *See* Order Granting Defendants' Motions to Dismiss PDEC Case 1 (NOF Exhibit 6). Plaintiff did not do so, and consequently those claims were dismissed. *See* Order Dismissing Lawsuit PDEC Case (NOF Exhibit 8).

In light of these facts, the "Time in Courts" article is neither false nor defamatory. Plaintiff's opinion that other information ought to have been included in the article is not a basis for a defamation claim. *See Turner v. Wells*, 879 F.3d 1254, 1270 (11th Cir. 2018) (recognizing "Defendants' editorial discretion in what to publish in their Report."). Plaintiff seems to believe this article was unfair. "The First Amendment requires neither politeness nor fairness." *Pullum v. Johnson*, 647 So 2d 254, 258 (Fla. 1st DCA 1994).

The Second Amended Complaint also alleges that the "Time in Courts" article "was crafted in a way that embedded the word 'criminal' in close proximity to Plaintiff's name." 2AC ¶ 34. The word "criminal" was used because Judge Ramsberger ordered Plaintiff "to explain why the Court should not find the Plaintiff in direct criminal contempt." *See* Amended Order to Show Cause, PDEC Case (NOF Exhibit 7). "That is why [The Gabber] inserted the word 'criminal' into the story about Plaintiff's upcoming contempt hearing." 2AC ¶ 61. The use of the word "criminal," therefore, was not false and in fact was privileged. *See Carson v. News-Journal Corp.*, 790 So. 2d 1120, 1122 (Fla. 5th DCA 2001) (news reports were not actionable because they accurately summarized separable portions of public records), *appeal dismissed*, 805 So. 2d 805

(Fla. 2002). The use of the word "criminal" was an accurate description of a judicial record and, therefore, cannot be the basis for a defamation claim.

The "Cocktails" Article

The defamation claim also points to a humor article[11] that "reimagined" all of the seven 2025 Gulfport mayoral and city council candidates as cocktails. This light-hearted, satirical piece invited readers who might be weary of traditional political activities to look at the candidates in a different way:

> [W]hat if we shook things up – literally – and reimagined the candidates running for Gulfport office as cocktails? From fiery libations to watered-down spritzers, each political persona has a flavor profile all its own. Because really, isn't every campaign just a mix of bold claims, bitter truths, and a splash of something sweet to make it go down easier? I don't know about you, but this election season in Gulfport makes me want to drink. Grab a shaker and swizzle stick – this is one round of politics you'll actually want to toast to.

See NOF Exhibit 12. From this obviously non-literal premise, the article then compares Plaintiff and six other candidates to various beverages, including a martini, Negroni, mojito and a "home brew." *Id.* The single paragraph that Plaintiff challenges referred to him as "a politician whose career is as colorful as their reputation" and asked the question, "Who else would have the audacity to run for City Mayor while concurrently suing local businesses?" The writer answered her own question: "Poor taste… Much like cheap, white sangria." *Id.*

Attempting to construct a cause of action from this work of imagination, Plaintiff complains that this article "derisively likened Plaintiff to a glass of 'cheap, white sangria.' " *See* 2AC ¶ 46. But the proposed Second Amended Complaint does not identify any false statement of fact in this article. Comparing Plaintiff to "cheap, white sangria" was an expression of opinion or rhetorical hyperbole, neither of which is actionable.

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[11] *See* "Cocktails and Campaigns: Gulfport Candidates Recrafted as Cocktails" (NOF Exhibit 12). This article is appropriately considered in connection with the Proposed Amended Complaint, because it is a document upon which this proposed claim is brought and, therefore, "shall be incorporated in or attached to the pleading." *See* Fla. R.Civ. P. 1.130(a).

The First Amendment protects "statements that cannot reasonably be interpreted as stating actual facts." *Pullum v. Johnson*, 647 So 2d 254, 256 (Fla. 1st DCA 1994). Such protection serves "to assure that public debate will not suffer for lack of 'imaginative expression' or the 'rhetorical hyperbole' which has traditionally added much to the discourse of our Nation." *Id.* at 256-57 (quoting *Milkovich v. Lorain Journal Co.,* 497 U.S. 1, 20 (1990)).

For example, In *Flynn v. Wilson*, 398 So. 3d at 1103, the Second District Court of Appeal found that referring to retired General Michael Flynn as a "Putin employee" was not actionable. *See* 398 So. 3d at 1106. That statement in isolation "may indeed appear to be making a factual claim about Flynn's economic relationship with [Russian President Vladimir] Putin," the court acknowledged. *Id.* at 1112. But Wilson's comment appeared in the context of "widely publicized news stories about Flynn's purported connections with Russia" and alongside a letter from General Flynn concerning Putin. *Id.* at 1113. Read in that context, the court concluded, a reasonable reader would *not* see the "Putin employee" comment as making "a literally true, factual claim about Flynn's employment status." *Id.*

The same is true here. No reader of the "Cocktails" article would find the reference to "cheap, white sangria" as "a literally true, factual claim" about Plaintiff. The article uses loose, figurative language to express an opinion. "Because of the frequent use of ill-considered, name-calling attacks in American political debate, we expect people who engage in controversy to accept that kind of statement as their lot. We think the first amendment demands a hide that tough." *Pullum*, 647 So. 2d at 258 (cleaned up). The obviously metaphorical reference to Plaintiff in the Cocktails article is not actionable.

Other editorial criticisms also are without merit.

In addition to the challenges to these three articles mentioned above, the proposed Second Amended Complaint objects to information that Loper's newspaper allegedly did not publish in

the manner Plaintiff would like. For example, the proposed Second Amended Complaint alleges that the newspaper conducted and "prominently displayed" an "informal online mayoral candidate survey" that showed Plaintiff with a 58 percent margin of victory. 2AC ¶ 39. After the survey ended, Plaintiff alleges, "The Gabber quietly moved the results to a rarely accessed archive of past surveys, and never reported on their own survey results, effectively concealing Liccione's early and commanding lead in the poll from the broader public." *Id.* ¶ 40. The "clear newsworthiness of the results," Plaintiff alleges, merited news coverage beyond that accorded other past surveys. *Id.*

This argument displays a remarkable ignorance of the First Amendment. In this country, political candidates do not dictate the content, manner and timing of news coverage. "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," which the First Amendment protects. *See Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (rejecting political candidate's demand that newspaper publish his reply). "For better or worse, editing is what editors are for, and editing is selection and choice of material." *CBS v. Democratic Nat'l Committee*, 412 U.S. 94, 124 (1973). Politicians are not entitled "to interfere with editorial control and judgment as to the content (or layout) of news columns and the slant of editorials." *News & Sun-Sentinel Co. v. Bd. of Cnty. Com'rs*, 693 F. Supp. 1066, 1072 (S.D. Fla. 1987). Thus, basic principles of free speech entitled Loper to determine (if she chose to do so) that "the results of an informal online survey" did not merit continued news coverage. Plaintiff's attempt to sue over that exercise of editorial judgment is absurd.

Conclusion

Loper's Anti-SLAPP defenses to the First Amended Complaint must be resolved before the proposed Second Amended Complaint is considered. Once those defenses are resolved, the Anti-SLAPP law and Rule 1.190(e) require that Plaintiff pay Loper's attorneys' fees. The Motion to Amend is prejudicial, abusive and futile and should be denied.

Respectfully submitted,

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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