

**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**

**CATHY SALUSTRI LOPER, et al.,**

**Defendants.**

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**DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT**

Plaintiff's Second Amended Complaint ("2AC") is as meritless as his first two pleadings. All three counts of the Second Amended Complaint fail to state a cause of action and violate Florida's Anti-SLAPP law. Accordingly, pursuant to Florida Rule of Civil Procedure 1.140 and Section 768.295(4) of the Florida Statutes, Defendants Cathy Salustri Loper ("Cathy"), Barry Loper ("Barry") and Thursday Morning Media, Inc. ("TMM"), move this Court to dismiss the Second Amended Complaint with prejudice and to award them their costs and attorneys' fees.<sup>1</sup>

**Background**

This case is the third lawsuit Plaintiff has filed concerning a 2024 primary election, in which Plaintiff unsuccessfully sought the Democratic Party nomination for Florida's 13th Congressional District. The first case, *Liccione v. Pinellas Democratic Executive Committee*, Case No. 24-002994-CI (Fla. 6th Cir. Ct.) (the "PDEC Case"),<sup>2</sup> was filed July 3, 2024. The second case,

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<sup>1</sup> Neither Barry Loper nor TMM have been properly served. They are appearing without waiving service of process.

<sup>2</sup> Copies of documents from Plaintiff's other litigation and related materials are included in a Notice of Filing ("NOF") that Cathy filed June 3, 2025. Defendants ask 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).

originally styled *Liccione v. Marcus*, Case No. 8:24-cv-02005-SDM-NHA (M.D. Fla.) (the “Federal Case”), was filed August 23, 2024. The third case – this one – was filed September 3, 2024. In these three lawsuits, Plaintiff blames his election loss on various people, agencies and business, including 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 CEO, ten John and Jane Doe defendants, the Pinellas Democratic Executive Committee, the committee chair and secretary, the Florida Democratic Party, and various media organizations, including two newspapers. *See* Federal Case Verified First Amended Complaint (the “Federal Complaint”) (NOF Exhibit 1) ¶¶ 6-14, 64-66 & 70-72; PDEC Case Complaint (NOF Exhibit 4) ¶¶ 3-7, 39-42; PDEC Case First Amended Complaint (NOF Exhibit 5) ¶¶ 4-6, 20, 24. Defendant Cathy Salustri Loper is identified as co-owner and editor of one of those newspapers, *The Gabber*, a local publication in Gulfport. 2AC ¶ 3. Defendant Barry Loper, whom the Plaintiff erroneously refers to as “Thomas Loper,” is Cathy’s husband and identified as co-owner of *The Gabber*. 2AC ¶ 4.

## **Argument**

### **I. The Anti-SLAPP law applies to the Second Amended Complaint.**

The Second Amended Complaint demonstrates on its face that Florida’s Anti-SLAPP law is applicable. Plaintiff has explicitly sued Cathy because she co-owns and edits a newspaper that published news reports about elections and moderated a political debate. 2AC ¶¶ 3, 16, 25, 33, 50 & 92. Barry and TMM likewise are sued for their alleged “shared control of *The Gabber*,” the newspaper’s content, and their alleged decisions regarding the content of news articles. 2AC ¶¶ 4, 18, 19 & 91. Specifically, Defendants allegedly published news reports concerning a 2024 Congressional primary and a 2025 mayoral election. 2AC ¶¶ 3, 4, 16, 33, 50 & 92. Thus all three Defendants are sued primarily because they exercised the constitutional right of free speech in

connection with a public issue. § 758.295(3), Fla. Stat. (2024). The Anti-SLAPP law, therefore, applies, and Plaintiff has the burden of demonstrating that his claims in the Second Amended Complaint are not “without merit.” *Gundel v. AV Homes, Inc.*, 264 So. 3d 304, 314 (Fla. 2d DCA 2019) (disapproved of on other grounds by *Vericker v. Powell*, 406 So. 3d 939 (Fla. 2025)). For the reasons explained below, Plaintiff cannot make such a showing.<sup>3</sup>

## **II. The Second Amended Complaint is without merit.**

The Second Amended Complaint’s second and third counts rehash interference and conspiracy claims from the First Amended Complaint. They are as meritless in the new pleading as they were in the prior one. The Second Amended Complaint’s first count – for defamation – also fails to state a cause of action. All three counts, therefore, are without merit. *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.*, No. 19-14472-CIV-MARTINEZ/MAYNARD, 2021 WL 4976287, at \*4 (S.D. Fla. Feb. 9, 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). The Second Amended Complaint should be dismissed with prejudice.

### **A. The repleaded interference and conspiracy counts are meritless.**

The Second Amended Complaint repleads counts alleging interference with a prospective economic advantage and a civil conspiracy. 2AC ¶¶ 74-88 & 89-100. The interference claim is based upon Plaintiff’s losses in two elections. 2AC ¶¶ 24, 75. “Damages for a lost election are considered ‘too speculative and conjectural’ and thus cannot be awarded by a court.” *Peer v.*

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<sup>3</sup> The same standard applies to the First Amended Complaint, even though Plaintiff has amended his pleading. *Cf. Pino v. Bank of New York*, 121 So. 3d 23, 41 (Fla. 2013) (voluntary dismissal does not divest court of jurisdiction to award sanctions under Section 57.105, Fla. Stat.).

*Lewis*, No. 06-60146-CIV, 2008 WL 2047978, at \*10 (S.D. Fla. May 13, 2008), *aff'd*, No. 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). As a matter of law, therefore, the facts alleged do not support the interference claim.

This cause of action 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) (affirming dismissal of tortious interference claims concerning online articles). *See also Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So. 2d 812, 815 (Fla. 1994) ("no cause of action exists for tortious interference with a business's relationship to the community at large"). News reporting is not conduct that can be the basis for a tortious interference claim. *Ozyesilpinar*, 365 So. 3d at 461 (quoting *Seminole Tribe of Florida v. Times Pub. Co., Inc.*, 780 So. 2d 310, 316 (Fla. 4th DCA 2001) (affirming dismissal of interference claim against newspaper, and questioning "whether this common law cause of action could ever be stretched to cover a case involving news gathering and publication")). Defendants are accused of editing, owning and publishing a newspaper that communicated news and opinion articles to the public at large. *See* 2AC ¶¶ 3, 5, 29 & 76. 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 means that the conspiracy count fails as well. Moreover, the attempt to sue Defendants for an alleged conspiracy 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"); 2AC ¶ 91 (accusing

Defendants of “acting in concert through their shared control of The Gabber”). The conspiracy claim, therefore, is without merit.

Finally, because the Second Amended Complaint contains a defamation count (discussed below), these other two counts are barred by the single cause of action rule. “Florida’s single publication/single action rule precludes the recasting of defamation claims as additional, distinct causes of action in tort if all of the claims arise from the same defamatory publication.” *Int’l Sec. Mgmt. Grp., Inc. v. Rolland*, 271 So. 3d 33, 48 (Fla. 3d DCA 2018). This is because “various injuries resulting from [a publication] are merely items of damage arising from the same wrong.” *Callaway Land & Cattle Co., Inc. v. Banyon Lakes C. Corp.*, 831 So. 2d 204, 208 (Fla. 4th DCA 2002). The single cause of action rule prevents “circumventing a valid defense to defamation by recasting essentially the same facts into several causes of action all meant to compensate for the same harm.” *Gannett Co., Inc. v. Anderson*, 947 So. 2d 1, 13 (Fla. 1st DCA 2006). “In reliance on the single-action rule, courts dismiss concurrent counts for related torts based on the same publication and underlying facts as a failed defamation count,” and “it does not matter whether the defamation claim fails, succeeds, or is not brought at all.” *Tymar Distribution LLC v. Mitchell Group USA, LLC*, 558 F. Supp. 3d 1275, 1286 (S.D. Fla. 2021).

The single cause of action applies in this case. The Second Amended Complaint is a shotgun pleading, incorporating the defamation count into the interference and conspiracy counts. 2AC ¶¶ 74, 89. Thus all the facts alleged in the defamation count are the basis for the other counts. The allegedly defamatory publications are the same statements that allegedly constituted interference and a conspiracy. Plaintiff has simply recast his defamation claim as additional causes of action, which is precisely what the single cause of action rule prohibits. *Rolland*, 271 So. 3d at 48. The second and third counts, therefore, are barred by the single cause of action rule.

**B. The defamation claim is without merit.**

The Second Amended Complaint's new cause of action – for defamation – challenges three articles 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 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.” *Peer v. Lewis*, 2008 WL 2047978, at \*10. Such is particularly the case here, because Plaintiff attributes his election losses not only to the Defendants, 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 Defendants for his losses – including an election in which he received less than four percent of the vote<sup>4</sup> – is far too speculative to state a defamation claim.

#### *The Debate Article*

The first challenged article<sup>5</sup> concerned a Democratic Party-sponsored July 2024 debate that featured four Congressional candidates, but not Plaintiff. FAC ¶¶ 1, 12, 13, 43; 2AC ¶ 16. Plaintiff was not mentioned in that article, because he was not a debate participant. FAC ¶ 12. This article is not actionable, for three reasons.

#### **First, 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

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<sup>4</sup> 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.”); 2AC ¶ 28 (Plaintiff “lost the mayoral election by a wide margin”); Gulfport Mayoral Election Results, Pinellas County Supervisor of Elections, <https://enr.votepinellas.gov/FL/Pinellas/123235/web.345435/#/summary> (Plaintiff finished third with 5.51 percent of vote). Defendants ask that the Court take judicial notice of the election results. See Fla. R. Civ. P. 90.202(11) & (12).

<sup>5</sup> Because the Second Amended Complaint 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 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 Cathy’s separate Notice of Filing (NOF Exhibit 9).

publication, the communication as a whole must contain sufficient facts or references from which the injured person may be determined by 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 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.



**Second, 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, Defendants are accused of being the editor and owners 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.

**Third, the Debate Article was not materially false.** As Plaintiff admits, he was “not invited to participate” in the debate. FAC ¶ 12. Shortly before the event, 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.<sup>6</sup>

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<sup>6</sup> *See* “July 13th Congressional District 13 Democratic Candidate Primary Debate” (NOF Exhibit 10).

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 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*, No. 16-62499-CIV, 2017 WL 8809359, at \*13 (S.D. Fla. Nov. 3, 2017), *report and recommendation adopted*, No. 16-62499-CIV, 2018 WL 1813897 (S.D. Fla. Jan. 19, 2018). If the alleged falsehoods are eliminated and an article “would not have produced a different effect,” the article is not actionable. *McCormick v. Miami Herald Pub. Co.*, 139 So. 2d 197, 201 (Fla. 2d DCA 1962).

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.”<sup>7</sup> 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, recognized candidates. 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

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<sup>7</sup> See PDEC Case Complaint (NOF Exhibit 4) ¶ 42; PDEC Case First Amended Complaint (NOF Exhibit 5) ¶ 22.

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 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 “of and concerning” requirements, neutral report privilege, and requirements of defamatory meaning and material falsity apply just as much to an alleged implication or omission as to a traditional defamation claim. The Debate Article, therefore, is not actionable.

#### *The “Time in Courts” Article*

The second challenged article<sup>8</sup> 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

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<sup>8</sup> *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 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 humorous article<sup>9</sup> 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 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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<sup>9</sup> 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. *Id.* 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. He is a human being, not an alcoholic beverage. 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 Second Amended Complaint objects to information that *The Gabber* allegedly did not publish in the manner Plaintiff

would like. For example, the 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 County Comm’rs*, 693 F. Supp. 1066, 1072 (S.D. Fla. 1987). Thus, basic principles of free speech entitled Defendants to determine (if they 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 itself meritless.

### **III. Dismissal with prejudice is warranted.**

The Second Amended Complaint is Plaintiff’s *seventh* attempt to state a cause of action regarding his election losses. Plaintiff has peddled his conspiracy theories against these



Defendants long enough. Allowing this litigation to continue would inflict “precisely the harm that the Anti-SLAPP statute seeks to prevent – unnecessary litigation.” *Gundel*, 264 So. 3d at 311. “It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts.” § 768.295(1), Fla. Stat. (2024). This case, therefore, should be dismissed with prejudice. To the extent that this motion is not granted, or to the extent the Court takes this matter under advisement, Defendants request a stay of this matter pending a ruling by this Court or on appeal. *See In re Amendments to Florida Rule of Appellate Procedure 9.130*, 406 So. 3d 937, 938 (Fla. 2025) (providing for interlocutory review by appeal of nonfinal orders that deny Anti-SLAPP motion); *Bank of America, N.A. v. De Morales*, 314 So. 3d 528, 530-31 (Fla. 3d DCA 2020) (“postponing discovery for a short period of time pending determination of material, outstanding motions is within the discretion of the trial court,” but “[g]iven the purpose of the immunity asserted, the potentially dispositive nature of the motion, and the circumstances, the trial court abused its discretion in failing to stay discovery until it ruled on the bank’s motion to dismiss”).

### **Conclusion**

The Second Amended Complaint’s three counts each fail to state a cause of action and are without merit. The Anti-SLAPP law requires that Plaintiff pay Defendants’ attorneys’ fees.

Respectfully submitted,

THOMAS & LOCICERO PL

/s/ James B. Lake

James B. Lake (FBN 23477)

601 South Boulevard

Tampa, FL 33606

Telephone: (813) 984-3060

Facsimile: (813) 984-3070

[jlake@tlolawfirm.com](mailto:jlake@tlolawfirm.com)

Secondary email: [jkendricks@tlolawfirm.com](mailto:jkendricks@tlolawfirm.com)

*Counsel for Defendants Cathy Salustri Loper,  
Barry Loper and Thursday Morning Media,  
Inc.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 20, 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