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**IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA**

Case No. 1D2025-2442  
L.T. No. 25-CA-352

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ZACHARY YOUNG and NEMEX ENTERPRISES, INC.,  
Appellant,

v.

THE ASSOCIATED PRESS,  
Appellee.

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ON APPEAL FROM THE FOURTEENTH JUDICIAL CIRCUIT  
IN AND FOR BAY COUNTY, FLORIDA

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**ANSWER BRIEF OF THE ASSOCIATED PRESS**

Charles D. Tobin (Fla. Bar No. 816345)  
tobinc@ballardspahr.com  
Paul J. Safier (*pro hac vice* forthcoming)  
safierp@ballardspahr.com  
Saumya Vaishampayan (*pro hac vice*  
forthcoming)  
vaishampayans@ballardspahr.com  
BALLARD SPAHR LLP  
1909 K Street, NW, 12th Floor  
Washington, DC 20006-1157  
Tel: (202) 661-2218

*Attorneys for The Associated Press*

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE CASE AND THE FACTS .....	1
I. NATURE OF THE CASE .....	4
A. Young’s Defamation Lawsuit against CNN .....	4
B. The AP’s Reporting about Young’s Trial Victory.....	8
II. THE COURSE OF PROCEEDINGS.....	10
III. THE DISPOSITION OF THE LOWER TRIBUNAL.....	13
A. The Anti-SLAPP Ruling.....	13
B. The Punitive Damages Ruling.....	17
C. The Motion to Strike Ruling .....	18
SUMMARY OF THE ARGUMENT .....	19
ARGUMENT .....	22
I. THE TRIAL COURT CORRECTLY GRANTED THE AP’S ANTI-SLAPP MOTION .....	22
A. The Trial Court Correctly Held that Young’s Claims Were “Without Merit” Because the Article Is Protected by the Fair Report Privilege .....	25
B. The Trial Court Correctly Held that Young’s Claims Were “Without Merit” on the Additional Ground that the Article Is not Reasonably Capable of the Defamatory Meaning Young Ascribed to it .....	34
C. The Trial Court Correctly Held that the Claim as to Nemex Was “Without Merit” on the Additional	

Ground that the Article Was not “Of and Concerning” Nemex.....	40
D.    None of Young’s Other Criticisms of the Trial Court’s Anti-SLAPP Ruling Has Merit .....	43
II.   THE TRIAL COURT ALSO CORRECTLY DENIED YOUNG’S MOTION FOR LEAVE TO ASSERT PUNITIVE DAMAGES CLAIMS .....	48
A.   Young’s Failure to Assert Viable Compensatory Damages Claims Meant that He Also Failed to Establish any Basis for Asserting Punitive Damages Claims .....	48
B.   Young Failed to Proffer any Facts under which The AP, as an Organization, Could Be Liable for Punitive Damages .....	50
C.   Young Failed to Proffer Evidence that the Article Was Published with Actual and Express Malice .....	53
1.   Actual Malice .....	53
2.   Express Malice.....	57
III.  THERE ARE NO GROUNDS TO REMOVE JUDGE HENRY FROM THE CASE .....	59
IV.   THE AP IS ENTITLED TO ITS APPELLATE ATTORNEY’S FEES .....	63
CONCLUSION .....	64

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Alan v. Palm Beach Newspapers, Inc.</i> , 973 So. 2d 1177 (Fla. 4th DCA 2008) .....	25
<i>Arias-Zeballos v. Tan</i> , 2008 WL 833225 (S.D.N.Y. Mar. 28, 2008) .....	37
<i>Basulto v. Netflix, Inc.</i> , 2023 WL 7129970 (S.D. Fla. Sept. 20, 2023) .....	56
<i>Berisha v. Lawson</i> , 973 F.3d 1304 (11th Cir. 2020) .....	54
<i>Bongino v. Daily Beast Co.</i> , 477 F. Supp. 3d 1310 (S.D. Fla. 2020) .....	43, 44
<i>Byrd v. Hustler Magazine, Inc.</i> , 433 So. 2d 593 (Fla. 4th DCA 1983) .....	20, 34, 39, 40
<i>Cape Publications, Inc. v. Reakes</i> , 840 So. 2d 277 (Fla. 5th DCA 2003) .....	47
<i>Clark v. Clark</i> , 159 So. 3d 1015 (Fla. 1st DCA 2015) .....	60
<i>Cleveland Clinic Florida Health System Nonprofit Corp. v. Oriolo</i> , 357 So. 3d 703 (Fla. 4th DCA 2023) .....	52
<i>CNN, Inc. v. Black</i> , 374 So. 3d 811 .....	53, 58
<i>CNN, Inc. v. Young</i> , 390 So. 3d 1241 (Fla. 1st DCA 2024) .....	5, 53, 57, 61
<i>Crestview Hospital Corp. v. Coastal Anesthesia, P.A.</i> , 203 So. 3d 978 (Fla. 1st DCA 2016) .....	58, 59

<i>Curtis Publishing Co. v. Butts</i> , 388 U.S. 130 (1967) .....	32, 47
<i>Dershowitz v. CNN, Inc.</i> , 541 F. Supp. 3d 1354 (S.D. Fla. 2021) .....	30, 31
<i>Dockery v. Florida Democratic Party</i> , 799 So. 2d 291 (Fla. 2d DCA 2001) .....	36
<i>Erlinger v. Federico</i> , 242 So. 3d 1177 (Fla. 1st DCA 2018) .....	61
<i>Folta v. New York Times Co.</i> , 2019 WL 1486776 (N.D. Fla. Feb. 27, 2019) .....	26, 27, 30
<i>Fortson v. Colangelo</i> , 434 F. Supp. 2d 1369 (S.D. Fla. 2006) .....	37
<i>Gold v. Harrison</i> , 962 P. 2d 353 (Haw. 1998) .....	37
<i>Greenbelt Cooperative Publishing Association v. Bresler</i> , 398 U.S. 6 (1970) .....	37
<i>Horsley v. Rivera</i> , 292 F.3d 695 (11th Cir. 2002) .....	37
<i>Huszar v. Gross</i> , 468 So. 2d 512 (Fla. 1st DCA 1985) .....	25, 26, 32, 33
<i>Jamason v. Palm Beach Newspapers, Inc.</i> , 450 So. 2d 1130 (Fla. 4th DCA 1984) .....	33
<i>Karnell v. Campbell</i> , 501 A.2d 1029 (N.J. App. Div. 1985) .....	37
<i>Klayman v. City Pages</i> , 2015 WL 1546173 (M.D. Fla. Apr. 3, 2015) .....	56, 57
<i>Knieval v. ESPN</i> , 393 F.3d 1068 (9th Cir. 2005) .....	37

<i>Lam v. Univision Communications</i> , 329 So. 3d 190 (Fla. 3d DCA 2021) .....	54
<i>Larreal v. Telemundo of Florida, LLC</i> , 489 F. Supp. 3d 1309 (S.D. Fla. 2020) .....	33
<i>Letterese v. Brody</i> , 985 So. 2d 597 (Fla. 4th DCA 2008) .....	61
<i>Mastandrea v. Snow</i> , 333 So. 3d 326 (Fla. 1st DCA 2022) .....	24
<i>May Investments, Inc. v. Lisa, S.A.</i> , 814 So. 2d 471 (Fla. 3d DCA 2002) .....	60
<i>McIver v. Tallahassee Democrat, Inc.</i> , 489 So. 2d 793 (Fla. 1st DCA 1986) .....	40
<i>Miami Herald Publishing Co. v. Ane</i> , 423 So. 2d 376 (Fla. 3d DCA 1982) .....	42
<i>Mile Marker, Inc. v. Peterson Publishing, LLC</i> , 811 So. 2d 841 (Fla. 4th DCA 2002) .....	53, 54
<i>Miller v. James</i> , 2025 WL 1085815 (2d Cir. Apr. 9, 2025) .....	37
<i>Mishiyev v. Davis</i> , 402 So. 3d 443 (Fla. 2d DCA 2025) .....	24
<i>N.Y. Times Co. v. Sullivan</i> , 376 U.S. 254 (1964) .....	56
<i>Napleton’s North Palm Auto Park v. Agosto</i> , 364 So. 3d 1103 (Fla. 4th DCA 2023) .....	50, 51
<i>Nodar v. Galbreath</i> , 462 So. 2d 803 (Fla. 1984) .....	32, 58
<i>O’Neal v. Tribune Co.</i> , 176 So. 2d 535 (Fla. 2d DCA 1965) .....	42

<i>Old Dominion Branch No. 496 v. Austin</i> , 418 U.S. 264 (1974) .....	37
<i>One Call Property Service v. Security First Insurance Co.</i> , 165 So. 3d 749 (Fla. 4th DCA 2015) .....	45
<i>Orlando Health, Inc. v. Mohan</i> , 387 So. 3d 477 (Fla. 5th DCA 2024) .....	49
<i>Ortega v. Post-Newsweek Stations, Florida, Inc.</i> , 510 So. 2d 972 (Fla. 3d DCA 1987) .....	25
<i>Parekh v. CBS Corp.</i> , 820 F. App'x 827 (11th Cir. 2020) .....	24, 43
<i>Parker v. State</i> , 3 So. 3d 974 (Fla. 2009) .....	59, 60
<i>Progressive Select Insurance Co. v. Lloyd's of Shelton Auto Glass, LLC</i> , 396 So. 3d 916 (Fla. 2d DCA 2024) .....	49
<i>Pullum v. Johnson</i> , 647 So. 2d 254 (Fla. 1st DCA 1994) .....	20, 36, 37
<i>Rasmussen v. Collier County Publishing Co.</i> , 946 So. 2d 567 (Fla. 2d DCA 2006) .....	25, 27
<i>Richard v. Gray</i> , 62 So. 2d 597 (Fla. 1953) .....	47
<i>Russo v. Conde Nast Publications</i> , 806 F. Supp. 603 (E.D. La. 1992) .....	37
<i>Scott, Blane &amp; Darren Recovery, LLC v. Auto-Owners Insurance Co.</i> , 2017 WL 2311762 (M.D. Fla. May 26, 2017) .....	40, 41
<i>Smith v. Cuban American National Foundation</i> , 731 So. 2d 702 (Fla. 3d DCA 1999) .....	34, 36

<i>Soffer v. R.J. Reynolds Tobacco Co.</i> , 187 So. 3d 1219 (Fla. 2016) .....	49
<i>Stewart v. Sun Sentinel Co.</i> , 695 So.2d 360 (Fla. 4th DCA 1997) .....	30
<i>Tallahassee Memorial Healthcare, Inc. v. Dukes</i> , 272 So. 3d 824 (Fla. 1st DCA 2019) .....	51
<i>Terry v. Journal Broadcast Corp.</i> , 840 N.W.2d 255 (Wis. Ct. App. 2013) .....	37
<i>Trump v. ABC, Inc.</i> , 742 F. Supp. 3d 1168 (S.D. Fla. 2024) .....	30
<i>Vericker v. Powell</i> , 406 So.3d 939 (Fla. 2025) .....	23, 44
<i>Woodard v. Sunbeam Television Corp.</i> , 616 So. 2d 501 (Fla. 3d DCA 1993) .....	26, 27

**Statutes**

Fla. Stat. § 59.46 .....	63
Fla. Stat. § 90.202 .....	45
Fla. Stat. § 90.203 .....	45
Fla. Stat. § 768.72 .....	48, 50
Fla. Stat. § 768.295 .....	12, 21, 23, 24, 63
Fla. Stat. § 770.01 .....	10

**Other Authorities**

Fla. R. Civ. P. 1.130 .....	45
Fla. R. Civ. P. 1.510 .....	46
Responsible Use of AI Generated Technologies, Admin. Order No. 2025-00-09 (Fla. 14th Jud. Cir. Sept. 16, 2025) .....	19

## **STATEMENT OF THE CASE AND THE FACTS**

This lawsuit arises from the accurate reporting of Appellee The Associated Press (“The AP”) about the victory Appellant Zachary Young obtained in a high-profile defamation trial against CNN. The day the verdict was delivered, The AP published an article (the “Article”) under the headline: “Florida jury says CNN defamed Navy veteran in story about endangered Afghans.” The Article described Young as “a U.S. Navy veteran who helped rescue endangered Afghans,” and accurately reported that his lawsuit against CNN was based on his contention that the network falsely portrayed his work overseeing evacuations in Afghanistan as criminal. The Article quoted Young’s own attorney saying about the vindication Young received at trial: “I know Zach feels heard in a way that he hasn’t felt for over three years.”

Young responded by filing this lawsuit, which he asserted on behalf of himself and his company, Nemex Enterprises, Inc. (collectively, “Young”). Young sued The AP in the same court in which he previously sued CNN. He contended that The AP’s coverage of his victory against CNN conveyed the same accusation about his work in Afghanistan – that it was criminal in nature –

that the Article reported he had successfully sued CNN for making. He based that fundamentally implausible contention entirely on the Article's one-time use of the word "smuggle" in this sentence in the Article's seventh paragraph: "Young's business helped smuggle people out of Afghanistan, but he said he worked exclusively with deep-pocketed outside sponsors like Bloomberg and Audible."

At Young's request, the case was transferred to the same judge who presided over his lawsuit against CNN: the Honorable William S. Henry. To Young's apparent surprise, Judge Henry concluded that this case, unlike the prior one against CNN, was completely without merit.

After The AP moved for dismissal and/or summary judgment under Florida's Anti-SLAPP statute, Judge Henry correctly granted that relief. Judge Henry held that (1) the Article, including its use of the word "smuggle," was protected by Florida's fair report privilege as a substantially accurate account of Young's lawsuit against CNN, which included extensive testimony from Young about the furtive efforts required to secret Afghans safely out of the country, and (2) in the context of the Article as a whole, the word "smuggle" could not be reasonably interpreted as accusing Young of

criminal conduct. Judge Henry also denied Young's motion for leave to assert punitive damages claims.

Young now seeks not only reversal of those rulings, but also for Judge Henry to be removed from the case because of his purported bias. All of Young's claims for appellate relief should be rejected. Young's insinuation that the trial court's rejection of his legal theories was a product of bias – as opposed to a correct application of fundamental principles of Florida defamation law – is as offensive as it is wrong. Judge Henry's rulings represented a straightforward application of Florida defamation law, which does not permit a plaintiff to manufacture a defamation claim by plucking a word or phrase out of context and then ascribing to it a meaning divorced from the context of the publication as a whole.

This Court should affirm the trial court's rulings, reject Young's unfounded effort to disqualify Judge Henry, and hold, consistent with Florida's Anti-SLAPP law, that The AP is entitled to recover its appellate attorney's fees.

## **I. NATURE OF THE CASE**

### **A. Young's Defamation Lawsuit against CNN**

According to Young's Complaint, following the fall of Afghanistan to the Taliban in August 2021, he went to work providing evacuation services from that "failed state," "helping people escape a life-threatening situation." R.20 (¶ 8).<sup>1</sup> Young alleges that, through his firm, Nemex, he "coordinated extractions for dozens of at-risk individuals." R.20 (¶ 8).

In 2022, Young sued CNN for defamation in the Circuit Court for the Fourteenth Judicial Circuit based on a November 2021 news report that discussed his activities in Afghanistan. R.20-21 (¶¶ 9,11). Young's central allegation was that CNN's use of the phrase "black market" to refer to the market for private evacuations on which his business operated falsely accused him of engaging in criminal activity. R.20-22 (¶¶ 9, 10, 12, 21, 24). In prosecuting his case against CNN, Young relied heavily on internal communications from CNN in which CNN employees used expletives in discussing

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<sup>1</sup> The Record on Appeal is cited to as "R.\_\_\_\_." Young's Initial Brief is cited as "Young Br. \_\_\_\_."

him with each other. *See CNN, Inc. v. Young*, 390 So. 3d 1241, 1245 (Fla. 1st DCA 2024) (describing those internal communications); R.1728 n.7 (same).

The case against CNN was assigned to Judge Henry and tried in January 2025. R.20 (¶ 9), 46. At trial, Young testified in detail about his work in Afghanistan. As relevant here, he testified that, because the Taliban was forcefully preventing people from leaving the country, the evacuations he coordinated required numerous furtive steps to avoid detection by the ruling authorities.

For instance, during the trial, Young had this exchange with counsel for CNN:

Q. . . . Mr. Young[,] fair to say that at this point in 2021[,] really focus on the time period of August, September, October, the Taliban wasn't letting people leave Afghanistan by air or move around the country; is that fair to say?

A. Generally, yeah, that is a fair statement.

. . .

Q. . . . So you had to move [the Afghans being evacuated] covertly from where they were to a safe house is the term you used?

A. Correct.

Q. You had to do that without the Taliban finding out, correct?

A. Yes.

Q. And does the word covertly apply to that, you want to move them covertly?

A. Clandestine.

Q. That's a good Scrabble word. That means need to do it in a hidden manner?

A. True.

R.415-16 (1061:3-1062:4).

Likewise, Young offered this testimony under direct examination regarding the need for his operation to cover all its tracks, including by destroying all planning communications:

Q. Okay. So now it's over, the operation is done and you've got these – how did you communicate with the operatives on the ground when you needed to?

A. Through Iiuri.

Q. Okay.

A. There were many times where he would create a group channel.

Q. On what?

A. On Signal.

Q. What is Signal for those who don't know?

A. It's an encrypted messaging app that is widely considered to be one of the most secure that's available.

Q. What would you do with those communications after the operation ended?

A. They would be destroyed. The communications would be deleted. And this is very standard in this type of movement. You don't maintain the operational records of a clandestine movement from Afghanistan to Pakistan. Nobody would do that. You would be a clown if you did.

Q. Why?

A. Because it's an operational vulnerability. They had family members that are still in Afghanistan.

Q. And so?

A. So they could be killed.

Q. If what happened?

A. If the wrong people get the operational details of who, what, where, when, why, how, the meat of an evacuation, you don't want that falling into the wrong hands. What would happen would be they would put surveillance on those routes. They would know how we're doing it. They would know how it's made.

...

Q. Was there a danger being posed to more than just the folks you took out because you talked about the families of the people there. Are there any other dangers?

A. Yes. It's not just a threat to the family members of the passengers, it's a threat to the operation now. And when we do it next time, the level of risk is significantly higher.

R.409-11 (681:3-683:3).

During opening statements, Young's trial counsel emphasized the dangerous environment that required Young to operate in a manner to avoid detection. He told jurors that Young was required

to run his operations from outside of Afghanistan, rather than being on the ground with his operatives, because:

if Zach tried to enter Afghanistan to help with the evacuations, it would have been a suicide mission. As a white man, Zach would have stuck out like a sore thumb endangering not only himself but those he was trying to evacuate.

Zach had to rely on his network of intelligence professionals who were on the ground in Afghanistan who all look like Afghani men because he needed the evacuations to go undetected by the Taliban.

R.407-8 (468:22-469:7).

Following a two-week trial, the jury returned a verdict in Young's favor and awarded him \$5 million in compensatory damages. R.20 (¶ 9). He and CNN reached a confidential settlement before the punitive damages phase concluded. R.20 (¶ 9).

**B. The AP's Reporting about Young's Trial Victory**

On January 17, 2025, the day the CNN trial concluded, The AP published the article at issue in this case. R.21 (¶ 14).

The Article's headline stated: "Florida jury says CNN defamed Navy veteran in story about endangered Afghans." R.398. Its first sentence informed readers that "a Florida jury found that CNN

defamed a U.S. Navy veteran who helped rescue endangered Afghans.” R.398. The Article further reported that “Young blamed CNN for destroying his business through a 2021 story on Jake Tapper’s broadcast about a ‘black market’ of extracting desperate Afghans following the Taliban takeover.” R.398-99. The Article explained that Young objected to “the term ‘black market’” because he said it falsely “implied he was involved in something illegal.” R. 401. To that effect, the Article quoted Young’s trial testimony that “[i]t’s devastating if you’re labeled a criminal all over the world.” R.401. The Article also noted that “[p]rivate messages . . . became part of the trial, with plaintiffs showing internal messages” in which CNN employers said off color things about Young. R.401. The Article quoted one of Young’s trial attorneys saying that, as a consequence of the verdict in Young’s favor: “I know Zach feels heard in a way that he hasn’t felt for over three years.” R.398-99

The one sentence Young complains about in this case – “Young’s business helped smuggle people out of Afghanistan, but he said he worked exclusively with deep-pocketed outside sponsors like Bloomberg and Audible.” – did not appear until seven paragraphs into the Article. R.401. By that point, The AP had

already informed readers that Young’s work in Afghanistan consisted of “help[ing] rescue endangered Afghans” and “extracting desperate Afghans following the Taliban takeover.” R.398-99, 401.

## **II. THE COURSE OF PROCEEDINGS**

On March 27, 2025, Young sent a pre-suit letter to The AP pursuant to § 770.01, Fla. Stat., in which he demanded retraction of the Article and payment of \$5,000,000. R.514-16. The AP stood by its publication. R.694-96.

On April 11, 2025, Young filed his Complaint. R.16. The lawsuit was based entirely on the sentence quoted above that used the word “smuggle.” R. 21 (¶¶ 13-17). Young alleged that “[t]he clear takeaway from AP’s wording is that Mr. Young smuggled people out of Afghanistan – *i.e.* engaged in the crime of human smuggling.” R.21 (¶ 16). He further alleged that that accusation is false because “[a]t no point did he engage in any illegal trafficking or smuggling of persons.” R.20 (¶ 8). He asserted claims for “defamation per se” and “defamation by implication” on behalf of

himself personally, and a “trade libel” claim on behalf of Nemex. R.24-30 (¶¶ 35-65).

While Young asserts in this Court that the “lawsuit was assigned to the same judge who presided over the CNN case,” Young Br. at 4, in fact, it was initially assigned to the Honorable Elijah Smiley and only transferred to Judge Henry after Young filed a Notice of Related Cases. R.46, 329. In that Notice, Young stated that “for the benefit of judicial economy, . . . the legal issues in this case are substantially similar and/or the same as those handled by the Honorable Judge William S. Henry in: Zachary Young and Nemex Enterprises, Inc. v. Cable News Network, Inc., 2200608CA.” R.46, 329.

On April 14, 2025, just three days after he filed his Complaint, Young filed a motion, pursuant to Section 768.72, for leave to assert punitive damages claims. R.48. At that point, The AP had not even been served. R.12. Young later withdrew his initial punitive damages motion and filed a substantively identical amended motion (“Amended Punitive Damages Motion”). R.455. He

did so after The AP brought to his attention that his original motion contained multiple fake case citations. R.1446-51, 1729-30.

On May 19, 2025, The AP filed a motion to dismiss, or in the alternative, motion for summary judgment pursuant to Florida's Anti-SLAPP statute ("Anti-SLAPP Motion"). R.374. That statute bars lawsuits filed "without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue," and provides defendants subject to such lawsuits with the "right to an expeditious resolution" of such claims and to recovery of attorney's fees and costs if they prevail. § 768.295(3)-(4), Fla. Stat.

On July 3, 2025, the trial court held a hearing on The AP's Anti-SLAPP Motion and Young's Amended Punitive Damages Motion. R.1716, 1764-68. The court also heard argument on The AP's motion to strike Young's Amended Punitive Damages Motion, which addressed the appearance of fake case citations in Young's original motion. R.1350-60, 1716, 1764-68.

On August 29, 2025, the trial court issued an order (1) granting The AP's motion to dismiss and/or for summary judgment, as well for attorney's fees and costs, pursuant to

Florida's Anti-SLAPP statute, (2) denying Young's Amended Punitive Damages Motion, and (3) denying The AP's motion to strike as moot. R.1737-52. Young appealed. R.1735-36. The AP then moved for recovery of its attorney's fees and costs. R.1927. By agreement of the parties, the trial court stayed consideration of the fee motion pending resolution of this appeal. R.2081-82.

### **III. THE DISPOSITION OF THE LOWER TRIBUNAL**

In the order under review, the trial court began its analysis by noting the peculiar circumstances of the case – Young not only sued The AP in the same court in which he previously sued CNN, but did so based on the assertion that, by reporting about his trial victory against CNN, The AP repeated the alleged defamation that had been the basis for the CNN lawsuit. R.1716-17. The court then explained that, this time, Young's claims were without legal basis, likening Young's second lawsuit to one of those “sequels, spinoffs, or reboots” that “should not be made.” R.1716. The court laid out the basis for that conclusion in detail in its lengthy, well-reasoned, order. R.1717-30.

#### **A. The Anti-SLAPP Ruling**

The trial court articulated multiple grounds for its conclusion

that Young's claims were "without merit" under Florida's Anti-SLAPP statute.

First, the trial court held that The AP's reporting about the CNN lawsuit was protected by Florida's fair report privilege, which "grants journalists and news media" a safe harbor to report about legal proceedings "so long as the account is 'reasonably accurate and fair.'" R.1719-20 (quoting *Deligdish v. Bender*, 2023 WL 5016547, at \*3 (M.D. Fla. Aug. 7, 2023)). The court explained that the Article, including its use of the phrase "helped smuggle people out of Afghanistan," provided "a substantially correct account of what transpired in the CNN case" over which the court had presided. R.1720.

In so holding, the court highlighted Young's trial testimony in which, in describing "how evacuation services were performed in Afghanistan," he emphasized that getting people out of the country required covert activity and furtive measures to avoid detection by the Taliban. R.1720-21. The court explained that, "[t]o the average reader," Young's descriptions of what getting Afghans out of the country entailed could be fairly "summarized with the eight-word phrase, 'Young's business helped smuggle people out of

Afghanistan,” especially “when put in the context of the proceeding sentences” from the Article “that describe[d] how Young helped endangered and desperate Afghans escape the Taliban.” R.1721.

Second, the trial court held that, separate and apart from application of the fair report privilege, the Article could not be reasonably construed as defaming Young by accusing him of criminal conduct. In assessing whether the Article’s use of “smuggle” was defamatory, the court noted that the law requires “looking at the use of the inflammatory terminology in the context of the entirety of the publication as opposed to just the specific word, phrase, or sentence.” R.1722 (citing multiple cases). The court then described the context that preceded the allegedly offending word/phrase as follows:

Out of gate, the headline frames Young and his claim against CNN in a positive light – “Florida jury says CNN defamed Navy veteran in story about endangered Afghans.” The body of the Article starts with a laudatory statement of who Young was and what he did – “a U.S. Navy Veteran who helped rescue endangered Afghans.” It then explained that Young got a favorable outcome against “CNN for destroying his business through a 2021 story on Jake Tapper’s broadcast about a ‘black market’ of extracting desperate Afghans following the Taliban takeover.” Construing the last sentence, it would be obvious to an average reader that CNN was found to be wrong for using the term “black market,” essentially

accusing him of criminal or illegal behavior. Similarly, Defendant had already, within the first four sentences of the Article, demonstrated how Young was in the business of helping endangered and desperate Afghans.

R.1723.

Based on that context, the court held that the Article's "use of the word 'smuggle' or phrase 'helped smuggle people out of Afghanistan'" conveyed the same thing about Young's activities in Afghanistan as had the Article's prior descriptions of that work – *i.e.*, that they consisted of "rescu[ing] endangered and desperate Afghans." R.1723. The court described that as "the antithesis of accusing him of a crime," and concluded, on that basis, that the Article's use of the word "smuggle" did not amount to either defamation *per se* or defamation by implication. R.1723-24.

Third, the trial court held that the trade libel claim brought on behalf of Nemex failed for the additional reason that the Article, which did not name Nemex, was not "of and concerning" that company. In so holding, the court noted that Young failed to put forward any evidence that the average reader associated the Article's reference to Young "business" with Nemex, as he was required to do in response to The AP's request for summary

judgment. R.1725.

Based on the foregoing analysis, the trial court held that Young's claims were "without merit" for purposes of Florida's Anti-SLAPP statute. R.1726. The court further held that, because the case arose out of The AP's "news report on the CNN case," the lawsuit implicated "free speech in connection with a public issue" under the statute. R.1726. On those grounds, the court dismissed/granted The AP summary judgment on Young's claims and ruled that The AP was "entitled to recover its reasonable attorney's fees and costs." R.1726.

### **B. The Punitive Damages Ruling**

In its order, the trial court also denied Young's Amended Punitive Damages Motion. The court explained that, because Young's underlying compensatory damages claims were deficient as a matter of law, he was not entitled to assert punitive damages claims. R.1726. The court also held that, regardless, Young's evidentiary proffer fell "woefully short of sufficient evidence to support a claim for punitive damages." R.1726. That was because Young failed to proffer a reasonable evidentiary basis to conclude either that the Article was published with both actual malice and

express malice, or that The AP, as an organization, engaged in conduct for which it could be liable for the alleged wrongdoing of its employees. R.1726-29.

**C. The Motion to Strike Ruling**

Finally, the trial court denied The AP's motion to strike Young's Amended Punitive Damages Motion as moot in light of its other rulings. R.1729-31. The AP's motion asked for Young's Amended Punitive Damages Motion to be stricken until he provided an explanation for how the fake case citations appeared in his original motion and identified the steps undertaken to ensure that no fake case citations would appear in future filings. R.1350-60, 1716, 1764-68.

In its ruling, the court noted that Young's counsel "did not provide a valid explanation for how non-existent citations were inserted into the motion." R.1729. The court also noted the growing problem courts are facing with "briefs containing AI hallucinations and other non-existent citations," observing that such conduct can merit referral to the Florida Bar. R.1729-30 & n.8. Nonetheless, the court held that no further action was necessary because "the Court believes that Plaintiffs' counsel has

been sufficiently embarrassed and had ample attention drawn to the problem, and therefore he will undertake appropriate steps such that similar hallucinations will not be incorporated into a future filing.” R.1729-30 & n.8.<sup>2</sup>

### **SUMMARY OF THE ARGUMENT**

In this case, Young contends that an article about how he successfully sued CNN for falsely accusing him of operating a criminal enterprise in Afghanistan, nonetheless, conveyed that his business activities in Afghanistan were criminal in nature. He claims the Article did so because it used the phrase “Young’s business helped smuggle people out of Afghanistan,” which he asserts automatically branded him a criminal, irrespective of anything else in the Article. *See, e.g.*, Young Br. at 48 (asserting that “smuggle people’ specifically denotes criminality”); *id.* at 1, 4,

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<sup>2</sup> Shortly after the trial court’s ruling in this case, the Circuit Court for the Fourteenth Judicial Circuit issued a new administrative order governing “Use of AI Generated Technologies” that requires litigants that use AI for filings both to disclose the use and to certify that they have reviewed and verified any AI-generated content. *See Responsible Use of AI Generated Technologies*, Admin. Order No. 2025-00-09 (Fla. 14th Jud. Cir. Sept. 16, 2025).

5, 14, 25 (repeatedly asserting that The AP accused him of the crime of “human smuggling”).

That is not how defamation law works. It is a “fundamental principle[] of libel law” that, in assessing whether a publication is actionable, the “publication must be considered in its totality,” which requires “consider[ing] **all** the words used, not merely a particular phrase or sentence.” *Byrd v. Hustler Mag., Inc.*, 433 So. 2d 593, 595 (Fla. 4th DCA 1983) (emphasis added); *see also Pullum v. Johnson*, 647 So. 2d 254, 257 (Fla. 1st DCA 1994) (“[A] publication claimed to be defamatory must be read and construed in the sense in which the readers to whom it is addressed would ordinarily understand it. So the whole item . . . should be read and construed together, and its meaning and significance thus determined.”).

The trial court correctly applied that fundamental principle. Consistent with Florida law, the court held that, read in the context of the Article as a whole, including its prior descriptions of Young’s work as “help[ing] rescue endangered Afghans” and “extracting desperate Afghans following the Taliban takeover,” the phrase “Young helped smuggle people out of Afghanistan” was not

actionable. That is because, in context, the phrase both accurately conveyed how Young's evacuation services were depicted in the CNN trial, thus meriting protection under Florida's fair report privilege, and did not, either directly or by implication, convey anything defamatory about Young. The trial court's rulings should be affirmed in all respects.

**First**, the trial court correctly granted relief under Florida's Anti-SLAPP statute. That law prohibits lawsuit that are "without merit" and target "free speech in connection with a public issue." § 768.295(3), Fla. Stat. Both conditions apply here. Accordingly, the trial court was correct both to dismiss Young's claims and/or grant The AP summary judgment under the Anti-SLAPP statute, and to order Young to pay The AP's reasonable attorney's fees and costs, which are mandatory under the statute.

**Second**, the trial court correctly denied Young Amended Motion for Punitive Damages. A plaintiff cannot establish an entitlement to assert punitive damages claims where, as here, the underlying claims for compensatory damages are not viable. And, even apart from that, Young's evidentiary proffer, which was submitted at the outset of the case, prior to any discovery, was (as

the trial court observed) “woefully short of sufficient evidence to support a claim for punitive damages.”

**Third**, there is absolutely no basis for removing Judge Henry from the case. Young’s request for such relief is both procedurally improper (because he failed to move for disqualification in the court below) and substantively baseless. A party cannot obtain removal of a trial judge just because he takes issue with that judge’s rulings and how they were articulated. Indeed, Young’s accusations of bias are particularly unbecoming here, as Judge Henry previously presided over Young’s successful lawsuit against CNN and it was Young who actively sought to have his follow-up lawsuit assigned to him.

**Fourth**, consistent with the directives of Florida’s Anti-SLAPP statute, the Court should hold that The AP is entitled to its appellate attorney’s fees in an amount to be determined on remand.

## **ARGUMENT**

### **I. THE TRIAL COURT CORRECTLY GRANTED THE AP’S ANTI-SLAPP MOTION.**

Florida’s Anti-SLAPP statute provides that no person may file any lawsuit against another “without merit and primarily because

such person or entity has exercised the constitutional right of free speech in connection with a public issue . . . as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.” § 768.295(3), Fla. Stat. As the Florida Supreme Court recently explained:

By statute, Florida prohibits “Strategic Lawsuits Against Public Participation.” Recognizing the harms caused by these lawsuits, the Legislature created a framework for the expeditious resolution of claims brought in violation of the Anti-SLAPP statute. Litigants invoke this statute when attempting to dispose of a prohibited lawsuit prior to trial.

*Vericker v. Powell*, 406 So.3d 939, 941 (Fla. 2025). Accordingly, the Anti-SLAPP statute grants defendants the “right to an expeditious resolution” of claims targeting protected speech, and allows them to challenge such claims at the outset of the case, through either, or both, a motion to dismiss or a motion for summary judgment. § 768.295(4), Fla. Stat.

To be entitled to Anti-SLAPP relief, the moving party must show that the claims at issue are both based on “free speech in connection with a public issue” and “without merit.” *Id.* § 768.295(3). As relevant here, a claim is based on “free speech in connection with a public issue” for purposes of the statute if it

arises out of speech “made in or in connection with” a “news report, or other similar work.” *Id.* § 768.295(2)(a); *see also Mishiyev v. Davis*, 402 So. 3d 443, 448-49 (Fla. 2d DCA 2025) (same). A claim is “without merit” when it is subject to dismissal under the motion to dismiss standard and/or summary judgment under the summary judgment standard. Fla. Stat., § 768.295(4); *see also Mastandrea v. Snow*, 333 So. 3d 326, 328 (Fla. 1st DCA 2022) (defendant was entitled to relief under Anti-SLAPP statute where “trial court correctly determined that [defendant] was entitled to summary judgment and dismissal”); *Parekh v. CBS Corp.*, 820 F. App’x 827, 836 (11th Cir. 2020) (claim was “without merit” for purposes of Florida’s Anti-SLAPP statute because it was subject to dismissal). Finally, the statute provides that “[t]he 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).

In this case, the trial court correctly held that The AP was entitled to relief under the Anti-SLAPP statute, including recovery of its reasonable attorney’s fees and costs. As the court noted, The AP Article “was a news report” that fell within the statutory definition of

“free speech in connection with a public issue.” R.1726 n.6. And, as explained below and in the trial court’s order, Young’s claims were “without merit” for purposes of the Anti-SLAPP law. That is because those claims were subject to dismissal and/or summary judgment on the grounds that the Article (1) is protected by the fair report privilege, (2) is not reasonably capable of the defamatory meaning Young ascribes to it, and (3) is not “of and concerning” Nemex.

**A. The Trial Court Correctly Held that Young’s Claims Were “Without Merit” Because the Article Is Protected by the Fair Report Privilege.**

Florida law has long afforded the press a “qualified privilege to report on matters brought out in public proceedings,” including civil legal proceedings. *Ortega v. Post-Newsweek Stations, Fla., Inc.*, 510 So. 2d 972, 975 (Fla. 3d DCA 1987); *see also Huszar v. Gross*, 468 So. 2d 512, 515-16 (Fla. 1st DCA 1985) (applying privilege to civil lawsuit). This “fair report privilege” protects such reports “as long as the account is reasonably accurate or fair.” *Rasmussen v. Collier Cnty. Publ’g Co.*, 946 So. 2d 567, 571 (Fla. 2d DCA 2006); *see also Alan v. Palm Beach Newspapers, Inc.*, 973 So. 2d 1177, 1179-80 (Fla. 4th DCA 2008) (same).

For purposes of the privilege, a report on a legal or other official proceeding qualifies as “fair and accurate” so long as it provides a “substantially correct” account of the proceeding.

*Woodard v. Sunbeam Television Corp.*, 616 So. 2d 501, 502 (Fla. 3d DCA 1993). As one court has explained, Florida’s “fair report privilege is broad and its ‘fair and accurate’ bar is a low standard, especially considering the importance placed on news media’s responsibility to report on government action.” *Folta v. New York Times Co.*, 2019 WL 1486776, at \*7 (N.D. Fla. Feb. 27, 2019).

Whether the privilege applies “is a question of law for the court to decide,” including on a motion to dismiss. *Huszar*, 468 So. 2d at 516.

In this case, the trial court correctly held that the Article is protected by the fair report privilege as a substantially accurate account of Young’s prior lawsuit against CNN. R.1719-21. In challenging this holding, Young does not dispute that the Article accurately conveyed both the substance of his defamation claims in that case – *i.e.*, that he objected to CNN’s use of “the term ‘black market’” in reporting about his business activities because he said it “implied he was involved in something illegal” – and the outcome

of the trial – *i.e.*, that the jury found in Young’s favor and against CNN. R.398-99, 401. Instead, he asserts that the AP Article’s one-time use of “smuggle” placed it outside the scope of the privilege because the phrase “‘smuggle people’ does not appear in the record in the CNN case.” Young Br. at 46. That reflects a misunderstanding of how the privilege operates.

Florida law does not require that journalists quote a proceeding verbatim to enjoy the protection of the fair report privilege. Rather, the privilege affords journalists “certain leeway in their choice of language,” and does not require them to “describe legal proceedings in technically precise language.” *Rasmussen*, 946 So. 2d at 570; *see also Folta*, 2019 WL 1486776, at \*7 (journalists “are not required to regurgitate the exact, precise language of their government sources” to benefit from protection of fair report privilege). For a news report about a legal proceeding to be protected by the privilege, the only requirement is that the language chosen “conveys to the persons who read it a substantially correct account of the proceeding.” *Woodard*, 616 So. 2d at 502-03 (quoting RESTATEMENT (SECOND) OF TORTS § 611, cmt. f (1977)).

That requirement was met here, including with respect to the

use of “smuggle.” As the trial court explained, the phrase “Young’s business helped smuggle people out of Afghanistan” is a “substantially correct” summary of how Young’s activities overseeing evacuations out of Taliban-controlled Afghanistan were depicted in the CNN trial. R.1720-21. At that trial, Young and/or his counsel stated that the evacuations Young coordinated “needed . . . to go undetected by the Taliban,” that they involved the “clandestine movement” of Afghans “from Afghanistan to Pakistan” and the use of encrypted communications, and that all of this was necessary to avoid the operatives, or those they were trying to help, getting killed by the Taliban. R.407-8 (468:22-469:7), 409-11 (681:3-683:3). Young also testified that the Taliban was not permitting Afghans to leave, or move about, the country, and that, therefore, the evacuations required “covertly” moving Afghans from “safe house” to “safe house” as everything had to be done in a “clandestine” or “hidden matter.” R.415-16 (1061:3-1062:4).

In other words, Young and his lawyers told the jury that his work required dangerous efforts to sneak Afghans out of the country, involving various furtive measures by Young’s operatives, because the Taliban was not permitting people to leave. As a

matter of basic, colloquial English, that is conduct fairly and accurately captured by the phrase “Young’s business helped smuggle people out of Afghanistan,” especially in the context of the Article’s previous characterizations of that same conduct as “help[ing] rescue endangered Afghans” and “extracting desperate Afghans following the Taliban takeover.” R.1721.

Nor is Young on any firmer ground with his other criticisms of the trial court’s application of the fair report privilege.

**The Meaning of “Smuggle”**: Young asserts that, in determining whether the fair report privilege applied, the trial court was required to assume that The AP’s use of the word “smuggle” conveyed the meaning Young ascribes to it – *i.e.*, that it accused him of the crime of human smuggling – and perform the analysis on that basis. *See* Young Br. at 23 (asserting that “[w]hen a court determines as matter of law whether a privilege applies, the court must presume the statement to be defamatory”). That is wrong. To determine whether the fair report privilege applies, a court compares the news report at issue – not the plaintiff’s characterization of it – with the relevant proceeding. *See Folta*, 2019 WL 1486776, at \*4 (“Determining whether a report is fair and

accurate requires a close comparison of the report and the documents and information from which it is drawn.”); *Stewart v. Sun Sentinel Co.*, 695 So.2d 360, 362 (Fla. 4th DCA 1997) (comparing allegedly defamatory publication with official sources for “material differences” that would defeat fair report privilege).<sup>3</sup>

Here, the trial court concluded that, as used in the context of the Article as a whole, the phrase “Young’s business helped smuggle people out of Afghanistan” provide a substantially accurate summary of Young’s testimony about the evacuations from the CNN case. That was the proper analysis. *See Dershowitz v. CNN, Inc.*, 541 F. Supp. 3d 1354, 1363 (S.D. Fla. 2021) (cited in Young Br. at 50) (explaining that, “for purposes of applying the fair report

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<sup>3</sup> Young cites *Trump v. ABC, Inc.*, 742 F. Supp. 3d 1168 (S.D. Fla. 2024) in support of his contrary position that applying the fair report privilege requires assuming the correctness of plaintiff’s interpretation of the subject publication. *See* Young Br. at 23. That case says no such thing. Instead, it simply reiterates the basic propositions enumerated *supra* regarding the privilege, namely, that “[f]or the privilege to apply, a report must have been substantially correct,” and that this is a “low bar” that does not require the media “to be technically precise in their descriptions of legal proceedings.” *Trump*, 742 F. Supp. 3d at 1183.

privilege, the Court must consider” the publication “as a whole,” not isolated portions).

**The Trial Court’s Summary of the CNN Trial:** Young is equally off base in criticizing the trial court’s fair-report-privilege analysis for purportedly being based on “a summary of [Judge Henry’s] own recollection from the CNN trial,” rather than the trial transcript. Young Br. at 47-48. That is misleading. The AP submitted excerpts from the transcript of the CNN trial with its Anti-SLAPP Motion. See R.404-17 (copies of those excerpts); see also *supra* at 5-8 (describing testimony/arguments in those excerpts). The trial court’s summary of Young’s testimony about what the evacuations entailed matched those excerpts. Compare R.1720-21 (trial court’s summary of testimony), with R.404-17 (testimony excerpts).

Moreover, this is an odd criticism for Young to make. It was Young who sought to have the case assigned to Judge Henry because his familiarity with the CNN case made him the appropriate judge for this lawsuit. R.46. Having done so, Young is hardly in a position to complain if the trial court’s experience in

that prior case informed its assessment of whether the Article faithfully rendered the CNN trial.

**Actual and Express Malice:** Finally, Young is wrong in asserting that dismissal and/or summary judgment based on the fair report privilege was improper because there was evidence the Article was published with actual and/or express malice. Young Br. at 51. In fact, there was no such evidence, as explained below. *See infra* at 53-59. Regardless, under Florida law, a showing that the statement at issue was published with either actual or express malice does not defeat the fair report privilege.<sup>4</sup> As this Court has explained, the privilege “to make reports of judicial and quasi-

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<sup>4</sup> The two cases Young cites in support of his assertion that the fair report privilege can be defeated by a showing of actual or express malice each involved qualified privileges other than the fair report privilege. *See Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 152 n.18 (1967) (cited in Young Br. at 51) (describing the “fair-comment privilege” as one that “may be vitiated by proof of actual malice,” while describing the fair report privilege as absolute); *Nodar v. Galbreath*, 462 So. 2d 803, 809-11 (Fla. 1984) (cited in Young Br. at 51) (explaining that the qualified privileges for “mutuality of interest of speaker and listener,” “statement[s] . . . made for the protection of the recipient’s interest in receiving information on the performance of its employee,” and “statements of a citizen to a political authority regarding matters of public concern” are defeated by a showing of express malice). Those cases, thus, provide no support for Young’s position.

judicial proceedings” is qualified only by the requirement that the reports be “accurate, fair and impartial.” *Huszar*, 468 So. 2d at 516; *see also Larreal v. Telemundo of Fla., LLC*, 489 F. Supp. 3d 1309, 1319 (S.D. Fla. 2020) (“Once the fair report privilege attaches, it can be defeated **only** where the challenged report is not ‘reasonably accurate and fair’ in describing the contents of government records and information.” (emphasis added)). Thus, “malice” is not “pertinent” to the application of the fair report privilege. *Jamason v. Palm Beach Newspapers, Inc.*, 450 So. 2d 1130, 1133 (Fla. 4th DCA 1984).

The trial court correctly held that The AP was entitled to dismissal and/or summary judgment based on the fair report privilege.

**B. The Trial Court Correctly Held that Young’s Claims Were “Without Merit” on the Additional Ground that the Article Is not Reasonably Capable of the Defamatory Meaning Young Ascribed to it.**

The trial court’s Anti-SLAPP ruling was correct for the additional reason that the Article cannot be reasonably construed to accuse Young of criminal conduct. The threshold legal question in any defamation case is whether the publication is capable of the defamatory meaning the plaintiff ascribes to it. As the Third DCA has explained, “[t]he court has a ‘prominent function’ in determining whether a statement is defamatory, and if a statement is not capable of defamatory meaning, it should not be submitted to a jury.” *Smith v. Cuban Am. Nat’l Found.*, 731 So. 2d 702, 704 (Fla. 3d DCA 1999). Thus, “[w]here the court finds that a communication could not possibly have a defamatory or harmful effect, the court is justified in . . . dismissing the complaint.” *Byrd*, 433 So. 2d at 595.

Here, the trial court correctly held that the Article could not be reasonably construed to accuse Young of participation in a criminal enterprise. Prior to its one-time use of the word “smuggle,” the Article made clear that Young’s business activities were not criminal

in nature by describing them as consisting of “help[ing] rescue endangered Afghans” and “extracting desperate Afghans following the Taliban takeover.” *Supra* at 8-10. In addition, the unmistakable theme of the Article was that Young had prevailed in a defamation lawsuit premised on the accusation that CNN falsely depicted his business activities as criminal in nature. *Supra* at 8-9. Against that backdrop, the phrase “Young’s business helped smuggle people out of Afghanistan” could not be reasonably construed as an accusation of criminality, as opposed to a different way of characterizing Young’s legitimate work helping endangered Afghans escape the clutches of the Taliban. The trial court, thus, properly held that Young’s claims for defamation per se and defamation by implication failed as a matter of law. R.1721-24.

In pushing back against this conclusion, Young erroneously asserts that “context does not invade the initial determination of defamatory meaning. The court erred by concentrating on context.” Young Br. at 27; *see also id.* at 26 (arguing that “[t]o look at the context of the article in step one of determining whether the statement is capable of defamatory meaning is erroneous”). That is exactly wrong. The law could not be more clear: “To determine

whether a statement is defamatory, ***it must be considered in the context of the publication.*** . . . even where only a portion of the publication is alleged to be defamatory.” *Smith*, 731 So. 2d at 705 (emphasis added); *see also supra* at 19-20 (citing *Byrd* and *Pullum* for that proposition). Accordingly, “publications that are in question are not to be dissected and judged word for word or phrase by phrase, the entire publication must be examined.” *Dockery v. Fla. Democratic Party*, 799 So. 2d 291, 295 (Fla. 2d DCA 2001) (internal marks omitted). That is precisely what the trial court did here – examine the meaning reasonably ascribed to the phrase “Young’s business helped smuggle people out of Afghanistan” in the context of the Article as a whole. R.1723.

That was also the import of the many cases the trial court highlighted in which courts have held that words or phrases that, in a vacuum, could be read as conveying an accusation of criminality, did not do so in the specific context they were used. *See* R.1722-23 (analyzing multiple such cases). For instance, in *Pullum*, this Court held that a radio broadcast’s use of the phrase “drug pusher” to refer to plaintiff, which the Court acknowledged “may be defamatory and actionable” when considered in isolation, was not actionable in

the context of the broadcast as a whole. 647 So. 2d at 257-58.

That is because the broadcast’s full context, which involved a debate over whether Santa Rosa County should permit the sale of liquor, made clear that “the challenged ‘drug pusher’ statement” could not “reasonably be interpreted as” conveying an “illegal association with drugs.” *Id.* Other cases are substantially the same.<sup>5</sup>

Young criticizes the trial court’s analysis of *Pullum* and the other similar cases on the ground that they arose in different contexts or are otherwise factually distinguishable. See Young Br.

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<sup>5</sup> See, e.g., *Old Dominion Branch No. 496 v. Austin*, 418 U.S. 264, 284-85 (1974) (use of word “traitor,” in context, was not defamatory); *Greenbelt Co-op. Publ’g Ass’n v. Bresler*, 398 U.S. 6, 13-14 (1970) (same as to “blackmail”); *Horsley v. Rivera*, 292 F.3d 695, 700-02 (11th Cir. 2002) (same as to “accomplice to homicide”); *Miller v. James*, 2025 WL 1085815, at \*3 (2d Cir. Apr. 9, 2025) (summary order) (same as to “terrorist”); *Knieval v. ESPN*, 393 F.3d 1068, 1074, 1077-78 (9th Cir. 2005) (same as to “pimp”); *Fortson v. Colangelo*, 434 F. Supp. 2d 1369, 1380-85 (S.D. Fla. 2006) (same as to “thug,” “mugging,” and “attempted murder”); *Arias-Zeballos v. Tan*, 2008 WL 833225, at \*12-14 (S.D.N.Y. Mar. 28, 2008) (same as to “domestic violence”); *Karnell v. Campbell*, 501 A.2d 1029, 1031, 1035 (N.J. App. Div. 1985) (same as to “raped”); *Gold v. Harrison*, 962 P. 2d 353, 355, 361-62 (Haw. 1998) (same as to “raped”); *Russo v. Conde Nast Publ’ns*, 806 F. Supp. 603, 609 (E.D. La. 1992) (same as to “grifter”); *Terry v. J. Broad. Corp.*, 840 N.W.2d 255, 266 (Wis. Ct. App. 2013) (same as to “rob,” “cheat,” and “scam”).

at 27-35. That misses the point. The trial court cited those cases not because each is identical to this one. Rather, the precedent conclusively demonstrates that a plaintiff cannot do what Young tried to do here: point to the fact that a word or phrase indicates criminality according to its dictionary definition and then assert that the publication was necessarily defamatory because it included that word or phrase. The full context of use must always be considered.<sup>6</sup>

Nor is Young on any stronger ground in responding to the context point by asserting that the full Article was negative about his trial victory. See Young Br. at 34-45. Even if that were a fair reading of the Article, that would do nothing to support Young's contention that the Article conveyed the specific accusation of

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<sup>6</sup> That was also the import of trial court's analogy to saying that someone "smuggled" a candy bar into the movie theater by secreting it in his backpack instead of buying candy from the concession stand." R.1723; *see also* Young Br. at 1, 9, 15, 27, 63, 65, 66 (repeatedly objecting to that analogy). The point of the analogy is not that the phrase "smuggled" a candy bar into the movie theater" is identical to the phrase "helped smuggle people out of Afghanistan." Rather, it is that the analogy "demonstrates how context matters" by refuting Young's contention that the word "smuggle" necessarily and in all context conveys a defamatory connotation. R.1723-24.

human smuggling. Regardless, it is not a fair reading of the Article. Young's only basis for characterizing a news report about his trial victory as somehow disparaging is that the Article described as "unusual" a media company's loss in a defamation trial,<sup>7</sup> and also described the result as another setback for a media industry already facing economic and political challenges. *Id.* at 35, 40 (citing R.85-86). It is entirely specious for Young to assert, on that basis, that the Article implied that "Young only won the case because he duped gullible conservative jurors who believe the media is biased and corrupt, and that Young engaged in illegal human smuggling regardless of . . . the jury's verdict." *Id.* at 40. The law requires that a publication be interpreted "not by extremes, but as the common mind would naturally understand it," and read "in its natural sense without a forced or strained construction."

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<sup>7</sup> After its initial characterization of the verdict as "unusual," the Article went on to explain that: "[d]efamation trials actually rare in the United States, . . . because strong constitutional protections of the press make proving libel difficult," and because "[n]ews outlets with qualms about their cases often seek settlements before taking the risk of bringing it before a judge or jury." R.401.

*Byrd*, 433 So. 2d at 595 (internal marks omitted). Young has not followed that directive here.

The trial court was correct to dismiss Young’s claims and/or grant summary judgment on the ground that the Article, read as a whole, could not be reasonably construed to state or imply that he committed the crime of human smuggling.

**C. The Trial Court Correctly Held that the Claim as to Nemex Was “Without Merit” on the Additional Ground that the Article Was not “Of and Concerning” Nemex.**

The trial court also correctly held that Nemex’s trade libel claim was “without merit” on the additional ground that the Article is not “of and concerning” Nemex.<sup>8</sup> Under Florida law, a claim for trade libel requires that the subject publication be “of and concerning” the plaintiff. *McIver v. Tallahassee Democrat, Inc.*, 489 So. 2d 793, 794 (Fla. 1st DCA 1986); *see also Scott, Blane & Darren Recovery, LLC v. Auto-Owners Ins. Co.*, 2017 WL 2311762, at \*3 (M.D. Fla. May 26, 2017) (“under the First Amendment[,] all

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<sup>8</sup> The trial court correctly noted that, even if the Article were “of and concerning” Nemex, the trade libel claim would fail on the same grounds on which Young’s defamation and defamation-by-implication claims fail – the publication is protected by the fair report privilege and is not defamatory. R.1725.

injurious falsehoods must specifically refer to, or be ‘of and concerning,’ the plaintiff”). To satisfy this element, a plaintiff must demonstrate that “the average person upon reading [the] statement could reasonably have concluded that the plaintiff [] was implicated[.]” *Miami Herald Publ’g Co. v. Ane*, 423 So. 2d 376, 389 (Fla. 3d DCA 1982).

Young concedes that “Nemex was not mentioned by name in the article.” Young Br. at 44. He further conceded in his Complaint that Nemex is “a small security consulting company,” R.23 (¶ 31), making clear that the average person would have no idea that the Article reference to “Young’s business” referred to Nemex. R.401.

Young’s only response is to assert that “readers familiar with the litigation or the relevant industry would recognize the statement [in the Article] as referring to Nemex.” Young Br. at 45. But, as the trial court correctly noted, Young submitted no evidence in support of that assertion, even though The AP moved both for dismissal for failure to state a claim and for summary judgment. R.1175; *see also Miami Herald*, 423 So. 2d at 389 (finding basis for liability where “plaintiff . . . **produced sufficient evidence** here from which a jury could have reasonably concluded that the defendant Miami

Herald published false and defamatory statements of and concerning him” (emphases added)); *O’Neal v. Trib. Co.*, 176 So. 2d 535, 548 (Fla. 2d DCA 1965) (finding basis for liability where “**clear and undisputed**” evidence showed that “several witnesses . . . knew from the address and names of the child and her parents that the articles concerned [plaintiff] and her nursery” (emphasis added)). Moreover, even if Young had produced evidence that “readers familiar with the litigation or the relevant industry” would know the Article’s reference to “Young’s business” was a references to Nemex, that would still not amount to a showing that the “average person upon reading [the] statement” would make that connection, which is the applicable legal standard. *Miami Herald*, 423 So. 2d at 389.

The trial court correctly held that dismissal and/or summary judgment on Nemex’s trade libel claim was warranted on the additional ground that the Article was not “of and concerning” Nemex.

**D. None of Young’s Other Criticisms of the Trial Court’s Anti-SLAPP Ruling Has Merit.**

Young makes various additional criticisms of the trial court’s Anti-SLAPP ruling, which are not tied specifically to application of the fair report privilege, the defamatory meaning analysis, or the “of and concerning” issue. None has merit.

**Young’s Motivation for Filing Suit:** Young misstates the law in criticizing the trial court for granting the Anti-SLAPP Motion without making an explicit finding that his “primary’ motivation for filing to lawsuit” was because The AP “exercised the constitutional right of free speech in connection with a public issue.” Young Br. at 13, 23-24 (citing Fla. Stat., § 768.295(3)). Courts applying the Anti-SLAPP statute have uniformly held that any lawsuit arising from protected speech is, by definition, one filed “primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue.” See, e.g., *Parekh*, 820 F. App’x at 836 (affirming grant of Anti-SLAPP motion under Florida law where “suit was ‘without merit’ . . . , and it arose out of the defendants’ protected First Amendment activity”); *Bongino v. Daily Beast Co.*, 477 F. Supp. 3d 1310, 1322 (S.D. Fla. 2020) (granting

Anti-SLAPP under Florida law where defamation claim was “without merit” and “suit ‘arose out of’ Defendant’s news report”); *see also* *Vericker*, 406 So.3d at 946 (Florida Supreme Court decision explaining that the law’s “text conveys the Legislature’s objective that lawsuits **targeting protected speech** be expeditiously resolved” (emphasis added)). Young cites no case supporting his alternate reading of the statute.

**The AP’s Declaration:** Young is equally misguided in criticizing the trial court for relying on a declaration from The AP’s attorney that was purportedly not based on personal knowledge. Contrary to what Young implies, this is not a situation in which a trial court relied on substantive factual averments in an affidavit or declaration. *See* Young Br. at 19-21 (citing exclusively to cases in which affidavit at issue made conclusory factual averments not based on personal knowledge). Rather, The AP’s declaration simply put certain documents in front of the court, specifically: (1) the Article on which Young’s lawsuit was premised, (2) excerpts from the official trial transcript for the CNN case, and (3) prior AP articles in which “smuggle” or “smuggling” was similarly used to positively portray efforts to rescue people from illicit or unjust regimes.

R.395-431. The AP attorney who submitted the declaration did have personal knowledge as to the only fact relevant to the submission – that each document was an authentic copy of what it purported to be, which Young has never disputed. Moreover, none of those documents was submitted for the truth of the matter asserted, making hearsay concerns inapt.

Tellingly, Young does not claim that any of the documents submitted with The AP’s declaration was improper for the trial court to consider. Nor could he.<sup>9</sup> This line of criticism provides no grounds to disturb the ruling below.

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<sup>9</sup> Specifically: the Article was appropriately considered even on a motion to dismiss because it was the basis for Young’s claims. See Fla. R. Civ. P. 1.130(a) (requiring that any “documents on which” an action is predicted “be incorporated in or attached to the pleading”); *One Call Prop. Serv. v. Sec. First Ins. Co.*, 165 So. 3d 749, 752 (Fla. 4th DCA 2015) (where the terms of a document “are impliedly incorporated by reference into the complaint, the trial court may consider the contents of the document in ruling on a motion to dismiss”). The excerpts from the CNN trial transcript were subject to judicial notice. See § 90.202, Fla. Stat. (identifying materials that are judicially noticeable, including “[r]ecords of any court of this state”); § 90.203, Fla. Stat. (identifying procedures that must be followed to ask a court to take judicial notice of materials); R. 378 n.1, 433-34 (request to court to take judicial notice of materials attached to declaration, along with notice letter to Young’s counsel). And, while it is not clear that the trial court actually considered the other articles The AP submitted with its Anti-SLAPP Motion, they could be considered in the summary judgment context as there was

**The “Legal Framework” Applied:** Finally, Young’s derision of the trial court for supposedly “jumbling the three distinct and sequential stages of the defamation analysis” has no basis in law. Young Br. at 22. Young uses this purported three-stage to derive his completely wrong contentions that (1) it is improper to consider context in determining whether a statement is reasonably capable of defamatory meaning, (2) application of the fair report privilege requires assuming that the publication bears the defamatory meaning the plaintiff ascribes to it, and (3) actual or express malice defeats the fair report privilege. See Young Br. at 23, 26 (deriving those legal assertions from his purported framework); *supra* at 29-30, 32-33, 35-36 (explaining incorrectness of each those legal assertions).

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no dispute as to their authenticity and they were not submitted for the truth of the matters asserted. See Fla. R. Civ. P. 1.510(c)(4); see also R.1719 n.2 (stating that “the Court will treat the MTD/MSJ more as a motion for summary judgment since both sides invited, encouraged, and supplied the Court wi[th] evidence outside the Complaint”).

None of the cases Young cites in support of this supposed mandatory three-stage framework actually provides that support.<sup>10</sup> Nor is undersigned counsel aware of any case, from Florida or elsewhere, that remotely suggests that the defamation analysis is broken up into Young’s three distinct stages, which then must be rigidly applied in that exact order. Young’s accusation that the trial court disregarded a “legal framework” he appears to have invented just for this case provides no ground for reversal.

\* \* \* \* \*

The trial court correctly held that The AP was entitled to relief under Florida’s Anti-SLAPP statute. Each of Young claims was based on “free speech in connection with public issues” and was “without merit.”

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<sup>10</sup> See *Cape Publ’ns, Inc. v. Reakes*, 840 So. 2d 277, 279-81 (Fla. 5th DCA 2003) (cited in Young Br. at 22) (discussing “substantial truth doctrine” and qualified privilege that applies to “a statement [made] to another” when “the two share a legal interest in the subject matter of the statement,” but saying nothing about Young’s purported three-step framework); *Richard v. Gray*, 62 So. 2d 597, 598 (Fla. 1953) (cited in Young Br. at 22-23) (same, but discussing what constitutes libel per se); *Butts*, 388 U.S. at 152 n.18 (1967) (cited in Young Br. at 22) (same, but discussing “fair-comment privilege”).

## **II. THE TRIAL COURT ALSO CORRECTLY DENIED YOUNG’S MOTION FOR LEAVE TO ASSERT PUNITIVE DAMAGES CLAIMS.**

The trial court also appropriately denied Young leave to assert punitive damages claims. Section 768.72 provides that, to be entitled to assert claims for punitive damages, a plaintiff must make “a reasonable showing by evidence . . . which would provide a reasonable basis for recovery of such damages.” § 768.72(1), Fla. Stat. Here, the trial court correctly held that Young’s Amended Punitive Damages Motion, which was filed at the very outset of the case, without the benefit of any discovery, failed to show a reasonable evidentiary basis to recover punitive damages.

### **A. Young’s Failure to Assert Viable Compensatory Damages Claims Meant that He Also Failed to Establish any Basis for Asserting Punitive Damages Claims.**

The trial court was correct that Young’s failure to assert valid compensatory damages claims necessarily meant that he also failed to establish an entitlement to assert punitive damages claims.

R.1726. Young contends the trial court’s analysis improperly “collapse[d] the punitive damages inquiry into the merits of liability” inquiry, and that, instead, the trial court was required to assume

“the jury ultimately finds liability” and determine whether, under such circumstances, there would be a basis for an award of punitive damages. Young Br. at 61. That is wrong.

A basic premise of Florida law is that “a demand for punitive damages is not a separate and distinct cause of action; rather it is auxiliary to, and dependent upon, the existence of an underlying claim.” *Soffer v. R.J. Reynolds Tobacco Co.*, 187 So. 3d 1219, 1221 (Fla. 2016) (cleaned up). That means that, “if it is clear that the underlying tort has not even been sufficiently alleged, much less supported by a reasonable basis in the record evidence or proffer, a court cannot logically conclude that the punitive damages standard has been satisfied.” *Progressive Select Ins. Co. v. Lloyd’s of Shelton Auto Glass, LLC*, 396 So. 3d 916, 923 (Fla. 2d DCA 2024); *see also Orlando Health, Inc. v. Mohan*, 387 So. 3d 477, 484 (Fla. 5th DCA 2024) (“No claim for punitive damages can exist if the underlying claim cannot exist.”). The trial court, thus, correctly denied Young’s Amended Punitive Damages Motion on that ground that the underlying compensatory damages claims were legally deficient.

**B. Young Failed to Proffer any Facts under which The AP, as an Organization, Could Be Liable for Punitive Damages.**

The trial court was also correct to deny Young's Amended Punitive Damages Motion on the additional ground that he failed to proffer any evidence under which The AP, as an organization, could be found liable for punitive damages.

Under Section 768.72, to recover punitive damages against a corporate entity, a plaintiff must show not only that some employee or agent of the entity engaged in misconduct sufficient to permit an award of punitive damages, but also that the corporation itself either (1) participated in the misconduct, (2) ratified it, or (3) was grossly negligent in permitting it to happen. § 768.72(3), Fla. Stat. Thus, "to amend a complaint to add a claim for punitive damages against a corporate defendant, a plaintiff must show culpable conduct at *both* the employee level and the corporate level." *Napleton's N. Palm Auto Park v. Agosto*, 364 So. 3d 1103, 1106 (Fla. 4th DCA 2023) (emphasis in original).

In addition, "because a corporation cannot act on its own," to show culpable conduct at the corporate level, a plaintiff must identify culpable conduct that that was undertaken specifically by a

“managing agent of the corporation,” *i.e.*, “an individual of such seniority and stature within the corporation or business to have ultimate decision-making authority for the company.” *Id.* at 1106-07 (cleaned up); *see also Tallahassee Mem’l Healthcare, Inc. v. Dukes*, 272 So. 3d 824, 826 (Fla. 1st DCA 2019) (quashing order permitting assertion of punitive damages claims against hospital where plaintiff’s “motion and proffer” did not contain any “allegation or evidence that corporate management knowingly condoned, ratified, or consented to the alleged misconduct”).

Here, as the trial court observed, Young did not come forward any evidence that would permit him to show culpable conduct at the level of The AP as an organization. R.1728. Indeed, because Young chose to seek leave to assert punitive damages claims without first taking discovery, the record on which he moved was devoid of any evidence about who exactly within The AP did what, let alone evidence specifically linking a managing agent of The AP to any of the claimed misconduct.

Young’s only response is to point to The AP’s post-publication decision to stand by the Article in the face of his pre-suit demand for a retraction and \$5,000,000 and his subsequent filing of his

Complaint. Young Br. at 62. Young cannot prove what he needs to prove on that basis. Any conduct undertaken by The AP in response to Young's post-publication complaints about the Article is irrelevant to whether he can recover punitive damages based on the original publication of the Article. As the Fourth DCA has explained: "actions taken after the happening of a tortious act are not admissible on the issue of punitive damages, nor can those subsequent actions form the basis for bringing such a damage claim." *Cleveland Clinic Fla. Health Sys. Nonprofit Corp. v. Oriolo*, 357 So. 3d 703, 707 (Fla. 4th DCA 2023) (in wrongful death case, trial court improperly permitted assertion of punitive damages claim against corporate defendant based on "post-injury events," such as "physician's post-death comments, failure to preserve 'evidence,' failure to report or properly investigate the death, and failure to conduct remedial training").

That applies here. The trial court properly denied Young's Amended Punitive Damages Motion on the ground that he failed to proffer a reasonable evidentiary basis on The AP, as an organization, could be liable for punitive damages.

**C. Young Failed to Proffer Evidence that the Article Was Published with Actual and Express Malice.**

Finally, the trial court correctly held that Young failed to proffer a reasonable evidentiary basis to show that the individuals responsible for drafting and editing the Article engaged in sufficiently culpable conduct to permit an award of punitive damages. To be entitled to assert punitive damages claims in a defamation case, a plaintiff must proffer evidence capable of demonstrating that the publication at issue was published with both “actual malice” and “express malice.” *Young*, 390 So. 3d at 1245; *CNN, Inc. v. Black*, 374 So. 3d 811, 817 & 819 n.4 (Fla. 4th DCA 2023). Here, Young failed to put forth any evidence that those at The AP responsible for drafting or editing the Article did so with both actual and express malice.

**1. Actual Malice**

To demonstrate that a publication was published with actual malice, a plaintiff must show that, at the time of publication, the publisher “either knew the alleged defamatory statements were false,” and published them anyway, or else “published them with reckless disregard despite awareness of their probable falsity.” *Mile*

*Marker, Inc. v. Peterson Publ'g, LLC*, 811 So. 2d 841, 845 (Fla. 4th DCA 2002). This “is a subjective test.” *Berisha v. Lawson*, 973 F.3d 1304, 1312 (11th Cir. 2020). Accordingly, for actual malice to be demonstrated, there must, at a minimum, “be sufficient evidence to permit the conclusion that the defendant ***in fact entertained serious doubts as to the truth of his publication.***” *Lam v. Univision Commc'ns*, 329 So. 3d 190, 197 (Fla. 3d DCA 2021) (emphasis added).

As the trial court noted, Young did not proffer any evidence that those responsible for publishing the Article intentionally published anything false about Young. R.1728. That is because, beyond identifying the Article’s bylined author, Young did not proffer any facts relating to the researching, drafting, or editing of the Article. Accordingly, the record on which he moved contained no evidence bearing on who chose the word “smuggle,” why they did so, what they intended or understood that word to mean, or what they knew at the time about the word’s truth or falsity. Without such evidence, there was no basis to demonstrate that the words “Young helped smuggle people out of Afghanistan” were published with subjective awareness of their actual or probable falsity.

Nor is the indirect evidence Young points to in an attempt to fill this void capable of proving actual malice. For example, the AP Stylebook Young references, *see id.* at 6-7, 58, is not evidence that The AP intended “smuggle” in this context to convey criminal wrongdoing. The Stylebook does not address the definition of the single word “smuggling” in isolation. Instead, the terms referenced in the Stylebook are “human smuggling” and “people smuggling,” which The AP did not use. R.527. Likewise, that The AP has, in other articles, used “smuggle” or “smuggling” with specific reference to criminal offenses, *see Young Br.* at 6-7, 57-58, is not evidence it meant to do so here. In fact, those other articles prove The AP’s overarching point: they conveyed criminality not solely because they used the word “smuggle” or “smuggling,” but because the broader context of the article made plain that the articles were specifically about the crime of smuggling. *See, e.g.,* R.518-19, 849-54 (referencing articles with headlines such as “Man indicted for smuggling deaths near Minnesota-Canada border,” “UK: Interpol seeks gang members behind migrant smuggling,” “Smuggling ring busted in Los Angeles); *see also* R.418-31 (examples of AP articles in which context made clear that “smuggle” was not intended to

convey criminal wrongdoing). Finally, Young’s reference to random online comments, *see* Young Br. at 59 (citing R.575-80), cannot prove anything about the Article author’s knowledge or intent at time of publication, which is the proper focus of the actual malice inquiry.

Lastly, Young cannot make up for his lack of evidence about the writing, editing, and approval of the Article by shifting focus to The AP’s post-publication decisions to stand by it. *Id.* at 59-60 (citing such post-publication conduct). The actual malice inquiry turns on the publisher’s state of mind “**at the time of the publication.**” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 286 (1964) (emphasis added). Thus, courts consistently hold that a publisher’s after-the-fact decision to stand by its publication in the face of a demand for retraction is not evidence of actual malice. *See id.* ([F]ailure to retract upon respondent’s demand . . . [is] not adequate evidence of malice for constitutional purposes.”); *Basulto v. Netflix, Inc.*, 2023 WL 7129970, at \*49 n.21 (S.D. Fla. Sept. 20, 2023) (“Netflix’s failure to amend the Film after receiving a pre-suit (but post-publication) notice letter from counsel does not establish actual malice.”); *Klayman v. City Pages*, 2015 WL 1546173, at \*15

(M.D. Fla. Apr. 3, 2015) (“[T]he fact that Plaintiff alerted Defendants after publication that he believed the statements were false and that he wanted some kind of correction or retraction does not help Plaintiff to establish actual malice.”). That applies here.

The trial court correctly held that Young failed to proffer a reasonable evidentiary basis to find that The AP published the Article with actual malice.

## **2. Express Malice**

The trial court was also correct in holding that Young failed to proffer a reasonable evidentiary basis to find that The AP published the Article with express malice. Young attacks that holding principally by asserting that he was not required to make any showing regarding express malice in this context. Young Br. at 55-56. That is wrong, which Young knows because this Court unambiguously held there is such an express malice requirement in the appeal in Young’s CNN case. *See Young*, 390 So. 3d at 1245 (“After reviewing the totality of the proffered evidence in the light most favorable to Young, we conclude that . . . Young sufficiently

proffered evidence of actual malice [and] express malice”).<sup>11</sup>

As to whether Young did make the requisite preliminary evidentiary showing of express malice, he failed to do so for essentially the same reason he similarly failed with respect to actual malice – he lacks any evidence speaking to anyone’s intent in connection with the Article. As the Florida Supreme Court has explained that “[e]xpress malice under the common law of Florida . . . is present **where the primary motive for the statement is shown to have been an intention to injure the plaintiff.**” *Nodar v. Galbreath*, 462 So. at 803 (emphasis added); *see also Crestview Hosp. Corp. v. Coastal Anesthesia, P.A.*, 203 So. 3d 978, 981 (Fla. 1st DCA 2016) (“The question of express malice largely turns on whether the speaker intended to harm the plaintiff

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<sup>11</sup> To support his claim that there is no express malice requirement, Young – inexplicably – cites to *CNN v. Black*. *See* Young Br. at 55. There, the court stated in no uncertain terms that “to recover punitive damages a defamation plaintiff must prove ‘express malice’ or ‘common law malice[,]’” and “also show actual malice.” *Black*, 374 So. 3d at 816. The only reason the *Black* court limited its analysis just to actual malice is that the plaintiff’s “fail[ure] to proffer a reasonable evidentiary basis to establish actual malice” made it unnecessary to “determine whether he proffered a reasonable evidentiary basis to establish express malice.” *Id.* at 819 n.4.

personally.”). Here, the record contains no evidence bearing on the motive of anyone involved with the publication of the Article, let alone evidence indicating that the primary intent was specifically to harm Young personally. The trial court, thus, was correct to also hold that Young failed to make the requisite proffer with respect to express malice.

\* \* \* \* \*

The trial court correctly denied Young’s Amended Punitive Damages Motion.

**III. THERE ARE NO GROUNDS TO REMOVE JUDGE HENRY FROM THE CASE.**

This Court should reject completely Young’s audacious request to have Judge Henry removed from the case based on his purported bias. That request is procedurally improper, substantively baseless, and highly offensive, especially given that Judge Henry presided over Young’s successful lawsuit against CNN.

First, a request to disqualify a judge based on purported bias is governed “procedurally by Florida Rule of Judicial Administration 2.330.” *Parker v. State*, 3 So. 3d 974, 981 (Fla. 2009). That rule requires that the moving party file a written motion with the trial

judge seeking disqualification no later than 20 days after discovering the grounds for disqualification and further requires that the motion, *inter alia*, allege specific facts and reasons for the disqualification request, identify the date the party discovered the grounds for disqualification, and contain a sworn statement or affirmation by the party. Fla. R. Gen. Prac. & Jud. Admin. 2.330(c), (e), (g) (h), (l). Young did not do any of that. Instead, he raises the issue of Judge Henry's purported bias for the first time on appeal.

Second, as to substance, Young comes nowhere close to making the requisite showing that he has "a well-founded fear that he . . . will not receive a fair trial at the hands of" Judge Henry. *Parker*, 3 So. 3d at 982 (setting forth disqualification standard). His complaint is that Judge Henry ruled against him and incorporated various analogies into his opinion. Young Br. at 62-68. However, "[i]t is well-settled that adverse rulings are insufficient to show bias." *Clark v. Clark*, 159 So. 3d 1015, 1017 (Fla. 1st DCA 2015); *see also May Invs., Inc. v. Lisa, S.A.*, 814 So. 2d 471, 472 (Fla. 3d DCA 2002) ("[A] litigant's dissatisfaction with a court ruling is not a basis for recusal.").

This is so even where a litigant claims to take offense at the language or tone in which a judge expresses his or her conclusions, as Young does here. As one court has explained:

A judge must not be unduly biased against a party or prejudice a matter but, after hearing the evidence and arguments, a judge must be permitted to “judge.” While the judge’s choice of terminology, “ad nauseum,” and “[a] proctologist couldn’t have been more thorough than what we did,” in describing the amount of argument that was heard on the issues, may have been blunt in this case, this did not establish an objectively reasonable basis for petitioner to fear the judge was prejudiced or biased against him.

*Letterese v. Brody*, 985 So. 2d 597, 599 (Fla. 4th DCA 2008); see also *Erlinger v. Federico*, 242 So. 3d 1177, 11181 (Fla. 1st DCA 2018) (“mere characterizations and gratuitous comments, while offensive to the litigants, do not themselves satisfy the threshold requirement of a well-founded fear of bias or prejudice”). Young has not set forth any legitimate grounds for disqualifying Judge Henry.

Finally, it is worth putting Young’s removal request in its full context. During the CNN case, Judge Henry made multiple significant rulings in Young’s favor, including granting him leave to assert punitive damages claims. See *Young*, 390 So. 3d at 1245 (affirming ruling granting Young leave to assert punitive damages

claims against CNN). Indeed, the decision from that case in which Judge Henry (largely) denied CNN's motion for summary judgment contained a colorful (and apt) analogy to hair-replacement-surgery advertisements very much in line with the analogies Young complains about here. See R.655.

Young did not complain about any of Judge Henry's rulings then. Quite the contrary. It was no doubt because of those prior favorable rulings that Young chose to file his suit against The AP in Bay County, Florida (where he has no personal connection) and to seek to have the case transferred to Judge Henry. That Judge Henry confounded Young's expectations by ruling differently in this case than he did in the previous one is not evidence of bias. Indeed, that pattern demonstrates literally the opposite of bias, as it is indicative of a judge making rulings based on the unique facts of each case, rather than the identity of the parties.<sup>12</sup> Young's request to have the case reassigned should be denied.

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<sup>12</sup> It is worth noting, too, that, in the order that supposedly demonstrates Judge Henry's bias against Young, Judge Henry was particularly lenient regarding the use of fake case citations, notwithstanding the seriousness of that issue and the threat to the

#### **IV. THE AP IS ENTITLED TO ITS APPELLATE ATTORNEY'S FEES.**

Finally, in addition to affirming the ruling below, this Court should hold that The AP is entitled to recover its appellate attorney's fees in an amount to be determined on remand.

The Anti-SLAPP statute provides that “[t]he 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). That means that, if The AP prevails in this appeal, it is entitled not just to the fees and costs it incurred before the trial court, but also to the attorney's fees it incurred in defending this appeal. See § 59.46, Fla. Stat. (“In the absence of an expressed contrary intent, any provision of a statute . . . providing for payment of attorney's fees to the prevailing party shall be construed to include the payment of attorney's fees to the prevailing party on appeal.”).

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integrity of our legal system it poses. R.1729-30 & n.8. That further refutes any accusation of bias.

## CONCLUSION

For the reasons set forth above, The AP respectfully requests that the Court (1) affirm the grant of its Anti-SLAPP Motion and the denial of Young's Amended Punitive Damages Motion, (2) deny Young's request to have the case assigned to a new judge, and (3) hold that The AP is entitled to recover its appellate attorney's fees in an amount to be determined on remand.

Dated: January 29, 2026

Respectfully Submitted,

BALLARD SPAHR LLP

/s/ Charles D. Tobin

Charles D. Tobin (Fla. Bar No.  
816345)

tobinc@ballardspahr.com

Paul J. Safier (*pro hac vice*  
forthcoming)

safierp@ballardspahr.com

Saumya Vaishampayan (*pro hac*  
*vice* forthcoming)

vaishampayans@ballardspahr.com

BALLARD SPAHR LLP

1909 K Street, NW, 12th Floor

Washington, DC 20006-1157

Tel: (202) 661-2218

## **CERTIFICATE OF COMPLIANCE**

Undersigned counsel hereby certifies that this brief complies with the font type and volume limitations established in Florida Rules of Appellate Procedure 9.045 and 9.210. I am relying upon the word-count function of the word-processing system (Microsoft Word) used to prepare the brief, which indicates that approximately 12,678 words appear in the brief, plus the portions excluded from the word count pursuant to Rule 9.045(e). The brief is typed in 14-point, double-spaced, Bookman Old Style.

By: /s/ Charles D. Tobin  
Charles D. Tobin (Fla. Bar No. 816345)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 29, 2026 a true and correct copy of the foregoing Answer Brief was filed using the Florida Courts E-Filing Portal which will send a notice of electronic filing as follows:

Lisa Paige Glass, Esq.  
GLASS LAW OFFICE, P.A.  
1279 West Palmetto Park Rd.  
Suite 273721  
Boca Raton, FL 33486

Daniel Lustig, Esq.  
Pike & Lustig, LLP  
1209 North Olive Avenue  
West Palm Beach, FL 33401

/s/ Charles D. Tobin

Charles D. Tobin