IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
IN AND FOR BAY COUNTY, FLORIDA

ZACHARY YOUNG and
NEMEX ENTERPRISES, INC.,

Plaintiffs,

v. **CASE NO.: 25-CA-352**

THE ASSOCIATED PRESS,

Defendant.
_____/

ORDER ON DEFENDANT'S MOTION TO DISMISS OR MOTION FOR SUMMARY JUDGMENT, PLAINTIFFS' AMENDED MOTION FOR LEAVE TO AMEND, AND DEFENDANT'S MOTION TO STRIKE

THIS CAUSE came before the Court for hearing on July 3, 2025, on The Associated Press' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, Pursuant to Florida's Anti-SLAPP Statute, filed on May 19, 2025 (the "MTD/MSJ"); Plaintiffs' Amended Motion for Leave to Amend Complaint to Add Claim for Punitive Damages, filed on May 22, 2025 (the "Amended Motion to Amend"); and The Associated Press' Motion to Strike Plaintiffs' Amended Motion for Leave to Amend Complaint to Add Claim for Punitive Damages, filed May 27, 2025 (the "Motion to Strike"). Responses, replies, supplemental evidence and supplemental authority were filed relative to all motions. Upon review of the MTD/MSJ, the Amended Motion to Amend, the Motion to Strike, the responses, replies, supplemental evidence and authority, and after hearing oral argument and being otherwise fully advised in the premises, the Court finds as follows:

A. Introduction:

It is said that for some movies or television shows, sequels, spinoffs or reboots should not be made.[1] Often times, the story line is forced, new characters are not properly developed, inconsistencies arise between the original plot and the sequel's, or the writers and producers are just lazy trying to cash in on a previously successful idea. These same things can be said of this case.

Previously, these same Plaintiffs sued Cable News Network, Inc. ("CNN") for defamation in this circuit in Case No. 22-CA-608, resulting in a jury trial in January 2025, with the jury finding that

[1] The Court used this same analogy in its order entered in Case No. 25-CA-297. If that case was the sequel, this one would be the third installment in the Young-CNN saga.

As before, the Court will leave it to the Siskels and Eberts, or the modern version - Rotten Tomatoes, to comment on which movies or shows were not well received by the audiences and should not have been made.

Plaintiff, Zachary Young, was defamed by CNN, awarding him compensatory damages, and determining that CNN was liable for punitive damages (the "CNN Case").

This case involves Defendant's reporting on the CNN Case and Plaintiffs' claim that this reporting again defamed them. However, upon parsing what Plaintiffs allege was defamatory, this story line is forced. Relative to their motion to amend, there is no substance to it. And at the end of the day, this lawsuit appears to be an attempt to repackage the CNN lawsuit to cash in again. For the reasons as will be explained below, Defendant's MTD/MSJ is due to be granted, the Motion to Strike denied, and the Amended Motion to Amend denied.

B. Plaintiffs' Claims in this Case:

In the Complaint, Plaintiffs allege causes of action for defamation per se (Young), defamation by implication (Young), and trade libel (Nemex). These claims stem from reporting by David Bauder ("Bauder") concerning the CNN Case in one article published by Defendant on January 17, 2025 (the "Article").

Plaintiffs pick out one word or phrase – "smuggle" or "helped smuggle people out of Afghanistan" – to support their claims in this case. They allege that this accuses Young of committing a felony, which was a false accusation based on the Court's ruling in the CNN Case that Young did not do anything illegal, and therefore this is defamatory.

For the defamation by implication claim, Plaintiffs allege that even if use of the word "smuggle" did not literally call Young a criminal, the gist of the Article implied that he was one. Plaintiffs go on to allege that by choosing this "loaded term" and associating it with Plaintiffs, Defendant "intentionally connected its report to CNN's portrayal of Mr. Young as a villain profiteer and even outdid CNN by explicitly suggesting criminal behavior." (Complaint, ¶52).

C. The Article:

For purposes of this Order, the Court finds that it would be useful to include the text of the Article including the headline for a complete understanding of the ruling and rationale:

Florida jury says CNN defamed Navy veteran in story about endangered Afghans

After a Florida jury found that CNN defamed a U.S. Navy veteran who helped rescue endangered Afghans, the network reached a settlement on Friday to avoid a punishing order that it pay punitive damages.

The unusual ruling against a media outlet following a jury defamation trial was a blow to both struggling CNN and news outlets in general on the eve of a new term as president by Donald Trump, who has whipped up anger against journalists among his supporters.

The jury in Panama City, Florida, ruled in favor of Zachary Young following more than eight hours of deliberation and a trial of less than two weeks. 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.

"I know Zach feels heard in a way that he hasn't felt for over three years," said Kyle Roche, one of his lawyers, after the verdict.

The jury awarded Young $5 million in compensatory damages. A second phase of the trial, to award punitive damages, was underway Friday afternoon before Circuit Court Judge William S. Henry interrupted proceedings to announce a settlement. Terms were not disclosed.

"We remain proud of our journalists and are 100% committed to strong, fearless and fair-minded reporting at CNN, though we will of course take what useful lessons we can from this case," CNN said in a statement.

Young's business helped smuggle people out of Afghanistan, but he said he worked exclusively with deep-pocketed outside sponsors like Bloomberg and Audible. CNN showed his face in a story that primarily raised questions about contractors who were charging Afghans themselves fees as much as $10,000 to get out.

He testified that the term "black market" implied he was involved in something illegal. "It's devastating if you're labeled a criminal all over the world," he testified during the trial.

CNN contended its reporting was fair and accurate, although the network did issue a statement a few months after the story aired apologizing for using the phrase "black market."

At a trial located in a conservative part of the country, Young's lawyers urged jurors to send a message to the media. Questions submitted by jurors during the trial telegraphed some hostility, with one wondering whether CNN had treated the plaintiff as guilty until proven innocent.

Private messages also became part of the trial, with plaintiffs showing internal messages where CNN's reporter, Alex Marquardt, said some profane and unflattering things about Young. Marquardt testified in the trial that his story, which aired on Nov. 11, 2021, and was followed up with print pieces on CNN's website, "was not a hit piece."

Defamation trials are actually rare in the United States, in part because strong constitutional protections for the press make proving libel difficult. News outlets with qualms about their cases often seek settlements before taking the risk of bringing it before a judge or jury.

The jurors didn't appear upset about the idea of missing the extra step. As he announced the settlement, Henry read an earlier note from jurors that said, "Did you forget about us? It's 5 o'clock somewhere," drawing laughter.

D. Defendant's Motion to Dismiss/Motion for Summary Judgment:

In the MTD/MSJ, Defendant argues that Plaintiffs' lawsuit is barred by Florida's Anti-SLAPP statute, §768.295, Florida Statutes. Further, Defendant asserts that the Article is not reasonably capable of defamatory meaning and is protected by the fair report privilege. Finally, Defendant

argues that Nemex's trade libel claim fails because it was not "of and concerning" Nemex. As a result, Defendant requests that the Amended Complaint be dismissed with prejudice.[2]

E. Plaintiffs' Amended Motion to Amend:

In the Amended Motion to Amend,[3] Plaintiffs seek leave to plead punitive damages in this case, arguing that the Article itself, when put in context with the filings in the CNN Case and Defendant's refusal retract the Article, demonstrate actual malice. The Amended Motion to Amend is not supported by the normal submission of evidence or proffer of evidence as contemplated by §768.72(1), Florida Statutes. In essence, the Amended Motion to Amend relies on the Article published by Defendant and the surrounding circumstances to demonstrate the conduct to support a punitive damage claim. Based on this record, Plaintiffs request leave to assert a claim for punitive damages as pled in the proposed Amended Complaint.

F. Defendant's Motion to Strike:

Defendant moved to strike the Plaintiffs' Amended Motion to Amend, arguing that the original motion to amend filed by Plaintiffs contained non-existent case citations. In addition to striking the motion, Defendant sought relief by requiring Plaintiffs to seek leave of court, which would include an explanation for the fake authorities, before filing another motion to amend, and to require Plaintiffs to include a certification in any other filings as to the citations or quotations used.

G. Discussion:

1. Motion to Dismiss/Motion for Summary Judgment:

    a. *Fair Report Privilege*:

For the most part, Defendant is entitled to dismissal of or summary judgment on Plaintiffs' claims in this case premised on the fair report privilege. "In Florida, the "fair report privilege grants journalists and news media a qualified privilege to report on information received from government officials or to publish the contents of official documents, as long as the account is 'reasonably accurate and fair.' To qualify as 'reasonably accurate and fair,' the publication must be a substantially correct account of information contained in public records or derived from a government source.'" *Deligdish v. Bender*, 2023 WL 5016547, *3 (M.D. Fla. 2023) (quoting,

[2] Defendant couched its motion as either a motion to dismiss or, because of the Florida anti-SLAPP statute which authorizes an early determination, a motion for summary judgment. Both sides submitted documentation outside the four-corners of the complaint in support of and as opposition to the MTD/MSJ. Procedurally, the MTD/MSJ was compliant with Rule 1.510 or any timing issues were otherwise waived by the parties. Therefore, the Court will treat the MTD/MSJ more as a motion for summary judgment since both sides invited, encouraged and supplied the Court will evidence outside the Complaint in this case for consideration.

[3] Plaintiffs originally filed a Motion to Amend on April 14, 2025. After defense counsel contacted Plaintiffs' counsel regarding certain phantom citations to non-existent cases or quotes from cases contained within the motion, Plaintiffs essentially withdrew the original motion to amend, deleted the hallucinatory citations in filing the amended motion, and went forward with hearing on the amended motion.

Grayson v. No Labels, 2021 WL 2869870, at *3 (M.D. Fla. Jan. 26, 2021) (quoting, *Larreal v. Telemundo of Fla., LLC*, 489 F.Supp. 3d 1309 (S.D. Fla. 2020))).[4]

Determination of whether a privilege has been established is a question of law. *See, Huszar v. Gross*, 468 So.2d 512, 516 (Fla. 1st DCA 1985). Reporting on a lawsuit falls within the category of official action to which the fair reporting privilege applies. *Id.* There is a qualified privilege which applies to judicial and quasi-judicial proceedings so long as they are accurate, fair and impartial. *Id.* "The privilege has been applied in situations in which a media defendant has republished a defamatory statement made by another person, where the making of the statement itself was a newsworthy event." *Trump Media & Technology Group Corp. v. WP Company LLC*, 720 F.Supp.3d 1203, 1211-1212 (M.D.Fla. 2024) (citations omitted).

For the fair reporting privilege to apply, the news report need not contain each and every fact or be presented from a neutral perspective. "The fair reporting privilege applies even if "[s]ome of the published information may have been phrased to catch the ... readership's attention." *Barbuto v. Miami Herald Media Co.*, 2022 WL 123906, *6 (S.D.Fla. 2022) (quoting, *Alan v. Palm Beach Newspapers, Inc.*, 973 So. 2d 1177, 1180 (Fla. 4th DCA 2008)). "What is more, the privilege applies even when reporting omits pertinent information." *Id.* (citing, *Carson v. News Journal Corp.*, 790 So. 2d 1120, 1122 (Fla. 5th DCA 2001) (holding that fair reporting privilege applied even though report did not reveal other exculpatory information)); *see also, Larreal v. Telemundo of Florida, LLC*, 489 F. Supp. 3d 1309, 1323 (S.D. Fla. 2020) (explaining that "the fair report privilege does not dictate that news organizations report on the contents of official files in sterile language" and that "the media is free to select the focus of its reporting without losing the protection of the fair report privilege").

Putting all of these things together, the fair reporting privilege applies where the news media reports on a pending lawsuit or case, and the information contained in the story is a substantially correct and accurate account of the court record and events. The reporting does not need to include all the facts, can omit pertinent or exculpatory information, and can come from a biased point of view, even phrasing some of the commentary "to catch the . . . reader's attention."

Based upon a review of the Article, it is a substantially correct account of what transpired in the CNN Case. Plaintiffs argue that Defendant went beyond fair reporting by injecting the phrase "helped smuggle people out of Afghanistan" which was not part of any official record or courtroom proceedings. However, Plaintiffs miss the point on this.

What was part of the court proceedings was Young's description of how evacuation services for Afghans were performed. Young himself was never located in Afghanistan, but he instead had a contact that he used to arrange, coordinate and plan evacuation services. He used, and in turn his contact used, encrypted communications with operatives on the ground, which communications were not preserved to protect operational safety. Young only knew one person who was his contact and did not even know who the operatives on the ground were – again for operational safety. Once contact was made with the evacuees, the operatives would move them covertly to

[4] Unlike the decisions in *Deligdish* and *Grayson* where the Courts held that there were no allegations that the defendants were members of the media or journalists and therefore the fair report privilege did not apply, Plaintiffs' Complaint alleges that Defendant is a news organization. (¶3, Complaint).

safe houses to avoid detection by the Taliban. At times, the extraction was delayed to maintain safety of the evacuees and operatives. Then, once the evacuation could be completed safely, the operatives would move the evacuee across the border.

In the proceeding paragraph, the Court used 124 words to describe the testimony that Young himself provided in the CNN Case. To the average reasonable reader, those same 124 words can be summarized with the eight-word phrase, "Young's business helped smuggle people out of Afghanistan" when put in the context of the preceding sentences that describe how Young helped endangered and desperate Afghans escape the Taliban.

Even when a publication arguably impugns or accuses a person of criminal wrongdoing, the fair reporting privilege would apply to bar a defamation claim. For instance, in *Rasmussen v. Collier County Publishing Co.*, 946 So.2d 567, 571 (Fla. 2nd DCA 2006), the Court held that the reporting fairly and accurately described matters of public record, including the criminal informations, the Governor's executive orders appointing a special prosecutor, Mr. Rasmussen's plea agreement, and reports by government officials that Mr. Rasmussen pleaded to "related charges," even though Rasmussen alleged that the references to his plea suggested he pled guilty to public corruption charges when the State had dropped those charges. As such his claim was barred.

This case is really no different than *Huszar*, *Marder* and *Barbuto*. The Article was reporting on a lawsuit between Plaintiffs and CNN. While the Article may not have contained each and every detail of the court proceedings, it presented a reasonably accurate account of the basis for and outcome of the CNN Case. And even though Plaintiffs claim that Defendant inserted an accusation of "smuggling" to compound the wrong committed by CNN, the use of such word in the context of the story was not defamatory such that the fair reporting privilege still bars their claims.

Based on the foregoing, the Article was a reasonably accurate account of what transpired in the CNN Case. While some facts and information might have been omitted or summarized, the overall description of the issues and outcome in that case, which painted Young in a positive light, was not misleading or incorrect. And Defendant's use of the word "smuggle" as a description of Young's activities, when viewed in the context of how it was used, did not alter, expound on or inject information that was not otherwise a part of the CNN Case. Thus, the fair reporting privilege applies, and for this reason Defendant would be entitled to dismissal of the Complaint and/or summary judgment on Plaintiffs' claims in this case.

While the fair report privilege would bar Plaintiffs' claims in this case, the Court will additionally address specific items and demonstrate why Plaintiff's Complaint is subject to dismissal and/or summary judgment.

b. *Defamation Per Se*:

"When a statement charges a person with committing a crime, the statement is considered defamatory *per se*." *Shafran v. Parrish*, 787 So.2d 177, 179 (Fla. 2nd DCA 2001) (citing *Richard v. Gray*, 62 So.2d 597, 598 (Fla.1953)). "Publications which impute to another characteristics or

conditions incompatible with the proper exercise of one's business, trade, profession or office are slanderous *per se*." *Glynn v. City of Kissimmee*, 383 So.2d 774, 775-776 (Fla. 5th DCA 1980) (citing *Drennen v. Westinghouse Electric Corp.*, 328 So.2d 52 (Fla. 1st DCA 1976); and Prosser Law of Torts §112 (4th Ed. 1971)).

Plaintiffs point to the phrase "helped smuggle people out of Afghanistan" and specifically the word "smuggle" to allege that Defendant was responsible for defamation per se against Young since it accused him of committing a felony. Additionally, he relies upon the ruling in the CNN Case where the Court found that Young had not committed a crime to demonstrate the falsity of this accusation.[5]

Whether a statement is defamatory or not is a question of law. *See*, *Turner v. Wells*, 879 F.3d 1254, 1262-1263 (11th Cir. 2018) (citations omitted). "When making this assessment, a court should construe statements in their totality, with attention given to any cautionary terms used by the publisher in qualifying the statement." *Id.* at 1263. "Where the facts are not in dispute in defamation cases, however, pretrial dispositions are 'especially appropriate' because of the chilling effect these cases have on freedom of speech." *Stewart v. Sun Sentinel Co.*, 695 So.2d 360, 363 (Fla, 4th DCA 1997). "Thus, courts routinely dismiss defamation claims at the motion to dismiss stage." *Marder*, 2020 WL 3496447 at *3.

There are a multitude of cases where charged language was found to be non-actionable "rhetorical hyperbole," "vigorous epithet," exaggeration or figurative use of terminology for dramatic effect. *See, e.g.*, *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990); *Greenbelt Cooperative Publishing Association v. Bresler*, 398 U.S. 6 (1970); *McDougal v. Fox News Network, LLC*, 489 F.Supp.3d 174 (S.D.N.Y. 2020); *Horsley v. Rivera*, 292 F.3d 695 (11th Cir. 2002); *Fortson v. Colangelo*, 434 F.Supp.2d 1369 (S.D.Fla. 2006); *Pullum v. Johnson*, 647 So.2d 254 (Fla. 1st DCA 1994); and *Hay v. Independent Newspapers, Inc.*, 450 So.2d 293 (Fla. 2nd DCA 1984). In these cases, the Courts applied the proper analysis of 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, and in some, the Courts determined that the expression was demonstrably true from the facts stated within the publication. Thereafter, the Courts determined as a matter of law that the accusations were non-actionable opinions.

Plaintiffs point to the AP Stylebook, Black's Law Dictionary and other dictionary definitions for the meaning of the word "smuggle" to justify the claim that this was defamatory. While defining a particular word is helpful, one must also look to the context for how it was used.

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[5] To be clear, the ruling on partial summary judgment in the CNN Case was that based on the record, where CNN's corporate representative acknowledged that its reporting did not uncover illegal or criminal activity committed by Young, there was no dispute as to material fact that Young did not act illegally or criminally. (October 22, 2024 Order, Case No. 22-CA-608, pg. 3).

However, this ruling is not binding on Defendant in the instant case. The prerequisites for res judicata are not satisfied, *see*, *Zikkofsky v. Marketing 10, Inc.*, 904 So.2d 520, 523 (Fla. 4th DCA 2005) (requiring a judgment on the merits and identity of thing sued for, cause of action, persons and parties to the actions, and quality or capacity of the persons for or against whom the claim is made), nor does collateral estoppel apply. *Id.* at 525 (stating that collateral estoppel bars relitigation of the same issue between the same parties previously determined by a valid judgment). Clearly, CNN and Defendant are different entities, so neither principle would bar Defendant from trying to contest that Young acted illegally or criminally it if chose to do so.

For instance, in *Pullam v. Johnson*, 647 So.2d 254, 255 (Fla. 1st DCA 1994), the Court addressed the use of the phrase "[Pullum] is pushing drugs. I mean he is a drug pusher you know, trying to push drugs, trying to get liquor you know get people to drink liquor, and sell liquor and all." Even though the trial court in that case found that "the term 'drug pusher' used by Johnson clearly denotes, in everyday meaning, a person who sells or distributes drugs illegally," the Court stated that it had to read and construe the publication in its full context, deriving its meaning and significance from that, instead of simply looking at the offending words. *Id.* at 257 (citing, *Washington Post Co. v. Chaloner*, 250 U.S. 290, 293 (1819); and *Desert Sun Publishing Co. v. Superior Court for Riverside County*, 158 Cal. Rptr. 519, 521 (1979)). When construed in context, the Court found "that the challenged 'drug pusher' statement cannot reasonably be interpreted as stating 'actual facts' about Pullum's illegal association with drugs," and therefore was not defamatory. *Id.* at 258.

In the instant case, the same is true. Out of the 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 this 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.

Turning to the paragraph where "smuggle" is used, the rest of that paragraph explains how Young was hired by companies, but how CNN used "his face" in a story about contractors directly charging Afghans. In essence, this one paragraph summarized the issue in the CNN Case – that Young's image and name were used and juxtaposed in an improper manner, where he did not fit the narrative of the subject of the piece, that being that bad actors were preying on individual Afghans.

When read in context, the use of the word "smuggle" or phrase "helped smuggle people out of Afghanistan" is not and cannot be construed to connote defamation per se. "Smuggle" was used to describe Young's work to "rescue" endangered and desperate Afghans – the antithesis of accusing him of a crime. As such, these words and phrase objectively do not charge Young with commission of a crime or impugn Young in the exercise of his business, trade or profession. Rather, when read in context, it describes the benefit he provided and why he sued CNN.

A simple analogous use of the word "smuggle" can easily demonstrate how context matters. If one simply accused John of smuggling, he could claim that he was defamed. However, if it is explained that John "smuggled" a candy bar into the movie theater by secreting it in his backpack instead of buying candy from the concession stand, no reasonable reader would believe that John committed a crime. The same is true from the context of how "smuggle" is used in the

Article to summarily describe Young's rescue efforts, which is the furthest thing from "human smuggling" as Plaintiffs posit in this case.

Applying the above principles, there is nothing in the Article that is defamatory per se. The use of the word "smuggle" does not constitute defamation per se when viewed in the context in which it was used. Therefore, as a matter of law, the Court determines that Count I for defamation per se should be dismissed and/or summary judgment granted in favor of Defendant.

c. *Defamation by Implication*:

In his defamation by implication claim, Young again relies upon the word "smuggle," but couches this as an implication that he was a "villain profiteer" "guilty of wrongdoing despite his claims to the contrary." In addition, Young accuses Defendant of omitting or downplaying crucial facts from the CNN Case that would dispel any notion of illegality. By doing so, Young opines that Defendant created "a sly implication that even if he didn't charge the Afghans, he still engaged in an unlawful smuggling enterprise funded by others," "suggesting Mr. Young orchestrated a criminal venture behind a veneer of philanthropy." In this manner, Defendant allegedly defamed him by implication.

Defamation by implication applies in circumstances where literally true statements are conveyed in such a way as to create a false impression or where "the defendant juxtaposes a series of facts so as to imply a defamatory connection between them, or creates a defamatory implication by omitting facts." *Jews for Jesus*, v. Rapp, 997 So.2d 1098, 1108 (Fla. 2008). (internal quotation marks omitted). However, "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 (Fla,. 3rd DCA 1967).

As discussed above, the Article contains an accurate recitation of the CNN Case. The implication that Young seeks to create in this case does not exist when reading the full Article and examining the words in context. In fact, the Article includes a quote from Young's attorney, demonstrating his relief and appreciation in the outcome in the CNN Case, and a quote from Young's trial testimony about how devastating CNN's black market implication was. If anything, the overall gist of the Article was that the reputation of a Navy veteran who rescued and saved Afghans from the Taliban was vindicated after CNN defamed him.

The Article's use of the word "smuggle" does not create a false impression. And unlike the CNN piece, there was no juxtaposition of facts to create a false narrative. While there is information from the case that may have been omitted, the omissions do not create a defamatory implication. Accordingly, as a matter of law, the Court finds that the Article does not support a claim for defamation by implication, and dismissal or summary judgment in favor of Defendant on Count I is appropriate.

d. *Trade Libel*:

The final count of the Amended Complaint is Nemex's trade libel claim. Under trade libel, a corporation "may recover damages for injuries suffered because of written or oral publication of

false defamatory matter which tends to be prejudicial in the conduct of a trade or business or to deter third persons from dealing in business with him." *Kilgore Ace Hardware, Inc. v. Newsome*, 352 So.2d 918, 920 (Fla. 2nd DCA 1977). However, the plaintiff is required to demonstrate that the publication was "of and concerning" the plaintiff. *See, McIver v. Tallahassee Democrat, Inc.*, 489 So.2d 793, 794 (Fla. 1st DCA 1986).

"The defamed person need not be named in the defamatory words if the communication as a whole contains sufficient facts or references from which the injured person may be determined by the persons receiving the communication." *Wolfson v. Kirk*, 273 So. 2d 774, 779 (Fla. 4th DCA 1973) (citing *O'Neal v. Tribune Co.*, 176 So. 2d 535, 548 (Fla. 2d DCA 1965)). The relevant inquiry is whether "the average person upon reading [the] statements could reasonably have concluded that the plaintiff [ ] was implicated[.]" *Ane*, 423 So. at 389.

Nemex is not specifically named or mentioned in the Article. At best, there is a reference that "Young blamed CNN for destroying his **business**" and that "Young's **business** helped smuggle people out of Afghanistan" (emphasis added) in the Article. On a motion to dismiss, the Court is not in a position to determine if an average reading would have concluded that Nemex was implicated in any way by the Article. But even if the Court accepts Plaintiff's conclusory allegations as true, Nemex's trade libel claim fails. As a matter of law, there was nothing defamatory in the Article that could be imputed to Nemex and the reporting in the Articles is covered by the fair reporting privilege. Therefore, Count III shall be dismissed.

In addition, Defendant moved for summary judgment arguing that the Article was not "of and concerning" Nemex. Plaintiffs have not come forward with any evidence that any reader of the Article believed Nemex was implicated to create an issue of fact. On that basis, summary judgment in favor of Defendant would be appropriate as well as to Count III.

e. *Florida Anti-SLAPP Statute*:

Section 768.295, Florida Statutes, bars a person from filing a lawsuit against another that is without merit and primarily because the defendant exercised the constitutional right of free speech in connection with a public issue (among other things). The statute further authorizes an expeditious review and resolution of the claims, and the award of prevailing party fees and costs incurred in connection with a claim that an action was filed in violation of the statute.

Florida's Anti-SLAPP statute does not change the burden on a plaintiff in a defamation case, *Lam v. Univision Communications, Inc.*, 329 So.3d 190, 197 (Fla. 3rd DCA 2021); nor is it an immunity-granting statute. *Vericker v. Powell*, 406 So.3d 939, 945 (Fla. 2025). Rather, it is "a garden variety fee shifting provision, which the Florida legislature enacted to accomplish a fundamental state policy—deterring SLAPP suits." *Lam*, 329 So.3d at 197 (quoting, *Bongino v. Daily Beast Co., LLC*, 477 F.Supp.3d 1310, 1323 (S.D.Fla. 2020)); *but see, Vericker*, 406 So.3d at 946 (stating that the statute is more than simply a garden variety fee-shifting statute, citing to possible damages recoverable along with the Court amending the appellate rules to allow immediate review of nonfinal orders denying qualifying Anti-SLAPP motions).

As used in §768.295(3), "free speech in connection with public issues" "includes any written statement protected under applicable law and made in connection with a news report." *Bongino*, 477 F.Supp.3d at 1322. A claim is without merit under §768.295(3) if a plaintiff fails to state a cause of action for defamation because the alleged statement is not defamatory, actual malice is not established, or the claim is barred by a privilege. *See*, *Bongino*, 477 F.Supp.3d at 1322; *Parekh v. CBS*, 820 Fed.Appx. 827, 835-836 (11th Cir. 2020); *Mastandrea v. Snow*, 333 So.3d 326, 328 (Fla. 1st DCA 2022); and *Corsi v Newsmax Media, Inc.*, 519 F.Supp.3d 1110, 1128 (S.D.Fla. 2021).

In support of its argument that Florida's Anti-SLAPP statute applies, Defendant relies on the fair reporting privilege, lack of defamatory meaning and the Article not "of and concerning" Nemex which have been discussed above to demonstrate that Plaintiffs' claims lack merit. In opposition, Plaintiffs rely on the word choice contained in the Article and the record in the CNN Case to argue that their claims have merit.[6]

Based on the above discussion, the Court concluded that dismissal and/or summary judgment in favor of Defendant was warranted because it was protected by the fair reporting privilege, the Article was not defamatory (either per se or by implication), and the Article was not "of and concerning" Nemex. Accordingly, Plaintiffs' claims are without merit. Further, this lawsuit arose out of Defendant's news report on the CNN Case, and therefore this concerns free speech in connection with a public issue. Therefore, Florida's Anti-SLAPP statute applies, and Defendant, as the prevailing party, is entitled to recover its reasonable attorney's fees and costs.

2. Plaintiffs' Amended Motion for Leave to Amend:

Disposition of this motion is primarily governed by the dismissal of Plaintiffs' claims in this case. For this reason, Plaintiff's Amended Motion for Leave to Amend is denied. Even if the Court were to examine the proffer in this case, it falls woefully short of sufficient evidence to support a claim for punitive damages.

"To plead a claim for punitive damages, a party must comply with section 768.72, Florida Statutes." *Wayne Frier Home Center of Pensacola, Inc. v. Cadlerock Joint Venture, L.P.*, 16 So.3d 1006, 1008 (Fla. 1st DCA 2009) (citations omitted). Section 768.72(1) provides that "no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages." A defendant may be held liable for punitive damages if the trier of fact finds that the defendant was personally guilty of intentional misconduct or gross negligence in accordance with §768.72(2).

"'Intentional misconduct' occurs when 'the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.'" *Marder v. Mueller*, 358 So.3d 1242, 1245 (Fla. 4th DCA2023) (citing§ 768.72(2)(a),

[6] Plaintiffs did not dispute application of the Anti-SLAPP statute on the basis that the Article was not "free speech in connection with public issues." Hence, the Court determines that the Article was a news report that falls within this definition as one element of an Anti-SLAPP claim, which is supported by the applicable law cited above.

Fla. Stat. (2018)). "'Gross negligence' indicates conduct by the defendant that 'was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.'" *Id.* (citing § 768.72(2)(b), Fla. Stat. (2018)).

"A corporate employer, like an individual employer, may be held liable for punitive damages based on the legal theories of either direct or vicarious liability." *Estate of Despain v. Avante Group, Inc.*, 900 So.2d 637, 640 (Fla. 5th DCA 2005) In the case of an employer or corporation, §768.72(3) indicates that punitive damages may be imposed for the conduct of an employee only if a) the employee was guilty of intentional misconduct or gross negligence and the employer actively and knowingly participated in such conduct; or b) the officers, directors and managers of the employer knowingly condoned, ratified or consented to such conduct; or c) the employer engaged in conduct that constituted gross negligence. In other words, "to hold a corporate employer vicariously liable for punitive damages for the acts of its employees, the plaintiff must establish: (1) fault on the part of the employee that rises to the level of willful and wanton misconduct and (2) some fault on the part of the corporate employer that rises to the level of at least ordinary negligence." *Id.* at 640-641.

"[T]he finding of a reasonable basis under the statute requires a legal determination by the trial court that the requirements of section 768.72(1) have been met." *Id.* at 644. "[T]he standard that applies to determine whether a reasonable basis has been shown to plead a claim for punitive damages should be similar to the standard that is applied to determine whether a complaint states a cause of action." *Id.* In evaluating the sufficiency of the evidence proffered in support of a punitive damages claim, the evidence is viewed in a light favorable to the moving party. *Wayne Frier Home*, 16 So.3d at 1009.

Despite Plaintiffs' argument to the contrary, there is authority that indicates that the standard for punitive damages requires the need to demonstrate actual malice, express malice and conduct sufficiently egregious and outrageous in the context of a defamation case. *See*, *Cable News Network, Inc. v. Black*, 374 So.3d 811, 816 (Fla. 4th DCA 2023); *Cable News Network, Inc. v. Young*, 390 So.3d 1241, 1245 (Fla. 1st DCA 2024) (stating "Young sufficiently proffered evidence of actual malice, express malice, and a level of conduct outrageous enough to open the door for him to seek punitive damages"); *Lawnwood Medical Center, Inc. v. Sadow*, 43 So.3d 710, 727 (Fla. 4th DCA 2010); *Hunt v. Liberty Lobby*, 720 F.2d 631 (11th Cir. 1983) (holding that under Florida law, common law malice, described as ill will, hostility or an evil intention to defame and injure, is required to plead and prove an entitlement to punitive damages); and *Brown v. Fawcett Publications, Inc.*, 196 So.2d 465, 473 (Fla. 2nd DCA 1967) (holding that express malice ***or*** ill will, hostility, and intention to defame or injure, wantonness or outrageousness of the tort were required).

For actual malice, a "plaintiff must establish that the disseminator of the information either knew the alleged defamatory statements were false, or published them with reckless disregard despite awareness of their probable falsity." *Mile Marker, Inc. v. Petersen Publishing, LLC*, 811 So.2d 841, 845 (Fla. 4th DCA 2002) (discussing actual malice in the context of a defamation claim by a public figure). For express malice, "When the motivation to harm the plaintiff is the purpose of the communication, instead of a desire to protect a proper interest, then express malice is proven." *Crestview Hospital Corp. v. Coastal Anesthesia, P.A.*, 203 So.3d 978, 981-982 (Fla. 1st

DCA 2016) (quoting *John Hancock Mutual Life Insurance Co. v. Zalay*, 581 So.2d 178, 180 (Fla. 2nd DCA 1991) (in the context of express malice destroying a conditional privilege)). "In order to award punitive damages in a libel action, ill will, hostility or an evil intention to defame and injure must be present. However, the jury can find these elements either from the evidence produced at trial, or from the character of the publication itself." *Matthews v. Deland State Bank*, 334 So.2d 164, 166 (Fla. 1st DCA 1976) (citations omitted).

In the instant case, Plaintiffs primarily rely on the Article itself as proof of actual malice, express malice, and ill will, hostility or an evil intention to defame and injure. In essence, Plaintiffs' argument here is, "We asserted a cause of action for defamation, and therefore we are entitled to plead a punitive damage claim." The Court is not aware of any authority, nor did Plaintiffs submit such, that says that someone is automatically entitled to claim punitive damages just by alleging a defamation claim. And this Court is not prepared to reach this conclusion. Even if this were the law, the statements contained in the Article are not defamatory per se such that malice could be presumed, and therefore Plaintiffs would not pass this threshold to be entitled to claim punitive damages.

Beyond the statements contained in the Articles, Plaintiffs refer to the amount of information about the CNN Case that was available to the author, Defendant's reaction to the pre-suit notice and the inferences that can be drawn from the words in the Article itself to infer malice on the part of Defendant. As discussed above, these decisions are not defamatory, but rather protected editorial choices.[7] As such, Plaintiffs cannot rely on the choices made by Defendant to substantiate a claim for punitive damages.

Since none of the statements in the Articles were defamatory and Plaintiffs have not proffered evidence of actual malice, express malice, or ill will, hostility or evil intention on the part of Defendant in publishing the Articles, Plaintiffs have not met their threshold burden of proffering sufficient evidence as would support a punitive damage claim in this case.

In addition, to hold Defendant liable for the article written by Bauder, Plaintiffs are required to demonstrate that Bauder was guilty of intentional misconduct or gross negligence and Defendant actively and knowingly participated in such conduct; or the officers, directors and managers of Defendant knowingly condoned, ratified or consented to such conduct; or Defendant engaged in conduct that constituted gross negligence. There is zero evidence proffered to support such requirements.

Finally, Plaintiffs argue that Defendant's failure to retract the Articles is evidence of actual malice to support a claim for punitive damages. The one case cited by Plaintiffs, *Brown*, 196 So.2d at 473, only suggested that the failure to retract could be considered as evidence of malice – not that it alone is sufficient evidence. *See, also, Zerangue v. TSP Newspapers, Inc.*, 814 F.2d 1066, 1071 (5th Cir. 1987). Further, Plaintiffs' argument flips §770.02 on its head. Section 770.02(1) provides a limitation to only actual damages (and hence no punitive damages) if a retraction is made along with other conditions. It in no way states, indicates, implies or suggests

[7] This is a far cry from the evidence of express malice and ill will that were part of the record in the CNN Case, which the First DCA relied upon in affirming the amendment to include punitive damages. *Young*, 390 So.3d at 12444-1245. Even viewing the evidence in the light most favorable to Plaintiffs, it would require speculation or inference stacking to achieve the conclusions advocated by Plaintiffs.

that the failure to retract alone supports a claim for punitive damages. If this was the law, a court would have certainly said so before.

For all of these reasons, and even if Plaintiffs' claims were not being dismissed, the Amended Motion for Leave to Amend would be denied.

3. Defendant's Motion to Strike:

Defendant's Motion to Strike was premised on "hallucinations" that appeared in Plaintiff's original motion for leave to amend. Specifically, Defendant identified two citations contained in the motion – one case that did not exist, and a quotation from another case that did exist, but the language quoted was non-existent within the opinion. Upon review of the original motion, Defendant's counsel indicated that it reached out to Plaintiffs' counsel to find the source for the authorities cited, which prompted the filing of the Amended Motion for Leave to Amend and an email stating, "Thanks for reaching out. It was an oversight. I filed an Amended Motion. We are not proceeding under the original motion."

At hearing, Plaintiffs' counsel did not provide a valid explanation for how non-existent citations were inserted into the motion. However, counsel did assure the Court that measures were taken to confirm citations within legal memoranda, and in fact, that counsel had hyper-linked all citations in the subsequent memoranda to the Westlaw or Lexis search database.

Defendant cited several cases, mostly federal, where the Courts sanctioned counsel for filing briefs containing AI hallucinations or other non-existent citations. In this case, Defendant asks the Court to strike the Amended Motion for Leave to Amend, require Plaintiffs to obtain leave of court before filing another motion to amend, and require Plaintiffs to include a certification in any other filings regarding the citations or quotations used.

The Court is aware of the problems that have been encountered by lawyers' use of AI to generate court documents, and Plaintiffs' counsel did not provide a satisfactory explanation for how non-existent citations appeared in the original motion. Certainly, the Court does not condone errant or fictitious citations. However, under the circumstances of this case, additional sanctions are not warranted.

The Court is denying Plaintiffs' Amended Motion for Leave to Amend, so the first two requests for relief are moot. Further, the Court finds it unnecessary for counsel to append a separate certification in any memos or briefs. All members of the Florida Bar are governed by the Rules Regulating the Florida Bar. To the extent that a lawyer's name and Bar number are affixed to the bottom of any document filed in a court file, such signifies that the attorney has 1) read the document; 2) to the best of the attorney's knowledge, information, and belief there is good ground to support the document; 3) the document is not interposed for delay; and 4) the document contains no confidential or sensitive information or such has been properly protected. Rule 2.515(a), Florida Rules of General Practice & Judicial Administration. If a filing by an attorney violates this Rule of Judicial Administration or the Rules Regulating the Florida Bar, it

certainly can subject the lawyer to discipline by the Florida Bar, §57.105 sanctions, or other appropriate sanctions.[8]

In this case, Plaintiffs' claims are being dismissed with prejudice and Defendant is being awarded fees and costs under the Florida Anti-SLAPP statute. There would be no need for the relief Defendant has sought in its motion. For these reasons, the Motion to Strike is due to be denied.

H. Conclusion:

This brings us back to the beginning. This case was a second sequel that should not have been made. Unlike the CNN Case, this case has a forced plot without any character development. Under applicable law, there is no villain. Rather, this is an attempt to repackage the CNN storyline against a different opponent. After screening this production, the Court determines that this sequel should not be released because, under the facts, this third installment does not work.

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[8] The Court was directed to Florida Bar Ethics Opinion 24-1, which addressed use of artificial intelligence in the practice of law and referenced several Bar Rules that could be implicated. Due to the importance of this issue and maintaining legal ethics, it is appropriate to quote several paragraphs from Opinion 24-1 here as applicable to the issue in this case:

> Second, a lawyer must review the work product of a generative AI in situations similar to those requiring review of the work of nonlawyer assistants such as paralegals. Lawyers are ultimately responsible for the work product that they create regardless of whether that work product was originally drafted or researched by a nonlawyer or generative AI.
>
> Functionally, this means a lawyer must verify the accuracy and sufficiency of all research performed by generative AI. The failure to do so can lead to violations of the lawyer's duties of competence (Rule 4-1.1), avoidance of frivolous claims and contentions (Rule 4-3.1), candor to the tribunal (Rule 4-3.3), and truthfulness to others (Rule 4-4.1), in addition to sanctions that may be imposed by a tribunal against the lawyer and the lawyer's client.
>
> **Conclusion**
> In sum, a lawyer may ethically utilize generative AI technologies but only to the extent that the lawyer can reasonably guarantee compliance with the lawyer's ethical obligations. These obligations include the duties of confidentiality, avoidance of frivolous claims and contentions, candor to the tribunal, truthfulness in statements to others, avoidance of clearly excessive fees and costs, and compliance with restrictions on advertising for legal services. Lawyers should be cognizant that generative AI is still in its infancy and that these ethical concerns should not be treated as an exhaustive list. Rather, lawyers should continue to develop competency in their use of new technologies and the risks and benefits inherent in those technologies.

By the Court's reading of this Ethics Opinion, it appears that the Florida Bar will take seriously a lawyer's obligation to ensure the accuracy of any AI-generated or -assisted work product, referencing four potentially implicated Bar Rules. Based on the circumstances in this case, 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. Accordingly, the Court will not refer Plaintiffs' counsel to the Florida Bar over this instance; but warning is given that such could occur in the future should the same or similar transgression occur.

Since the facts of this case will not change and the causes of action will not change, Plaintiffs cannot amend to try to state causes of action. The Article says what the Article says – that will not change. And no attempt to try to re-spin Defendant's words will magically transform them into actionable defamation. Accordingly, the dismissal in this case would be with prejudice. In addition, Defendant would be entitled to summary judgment on Plaintiffs' claims, thereby closing the curtain on this case as well.

Since Plaintiffs' claims are without merit and the lawsuit arose out of Defendant's news report on the CNN Case, and therefore it concerns free speech in connection with a public issue, Florida's Anti-SLAPP statute applies. As the prevailing party, Defendant is entitled to its reasonable attorney's fees and costs incurred in defending this case.

Based on the foregoing, it is:

ORDERED AND ADJUDGED that

1. The Associated Press' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, Pursuant to Florida's Anti-SLAPP Statute is hereby GRANTED. Plaintiffs' claims in this case are dismissed with prejudice and summary judgment is granted in favor of Defendant on Plaintiffs' claims.

2. Plaintiffs' Amended Motion for Leave to Amend Complaint to Add Claim for Punitive Damages is hereby DENIED.

3. The Associated Press' Motion to Strike Plaintiffs' Amended Motion for Leave to Amend Complaint to Add Claim for Punitive Damages is hereby DENIED.

4. Under Florida's Anti-SLAPP statute, §768.295 applies and Defendant, as the prevailing party, is entitled to recover from Plaintiffs its reasonable attorney's fees and costs incurred in defending these claims.

5. Any and all other relief requested is denied.

6. The Court reserves jurisdiction to determine the amount of Defendant's taxable fees and/or costs.

DONE AND ORDERED at Panama City, Bay County, Florida on this Friday, August 29, 2025.

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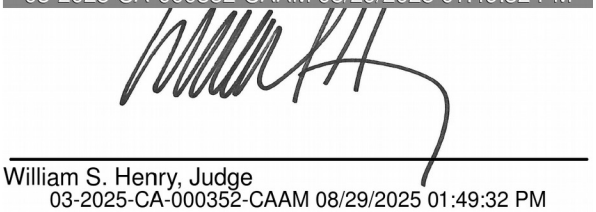

William S. Henry, Judge
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