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-297**

HEAT MEDIA, INC. d/b/a
PUCK NEWS,

Defendant.
_____/

ORDER ON DEFENDANT'S MOTION TO DISMISS AND PLAINTIFFS' MOTION FOR LEAVE TO AMEND THE AMENDED COMPLAINT TO ADD CLAIM FOR PUNITIVE DAMAGES

THIS CAUSE came before the Court for hearing on June 24, 2025, on Defendant Heat Media's Motion to Dismiss, filed on May 23, 2025 (the "MTD"), and Plaintiffs' Motion for Leave to Amend the Amended Complaint to Add Claim for Punitive Damages, filed on April 10, 2025 (the "Motion to Amend"). Responses, replies, supplemental evidence and supplemental authority were filed relative to both motions. Upon review of the MTD, the Motion to Amend, 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 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, the plot is insufficiently developed.

[1] 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.

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 Motion to Dismiss is due to be granted and the Motion to Amend denied.

B. Plaintiffs' Claims in this Case:

In the Amended 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 Eriq Gardner ("Gardner") concerning the CNN Case in three articles published by Defendant on September 11, 2024 (the "September Article"), December 11, 2024 (the "December Article"), and January 22, 2025 (the "January Article").

In the September Article, Plaintiffs pick out certain words, phrases or sentences to claim that Young was either defamed per se or by implication, including "panicked locals," "charging hefty fees," or charging "tens of thousands of dollars – to escape the Taliban."

Plaintiffs take a different approach in referring to the December Article, not necessarily focusing on specific words or phrases that they contend were defamatory, but rather accusing Defendant of essentially conspiring with CNN to promote its side of the CNN Case by publishing "information [that] was not yet public knowledge." Plaintiffs allege that this information demonstrated CNN's plan to paint Young in a bad light by casting further doubt as to his reputation.

Finally, Plaintiffs' issue with the January Article is essentially that it did not celebrate Young's "David vs. Goliath" victory in the CNN case, but rather chalked up the "settlement" to the geographical location of the case, while also taking issue with the tone of the Article allegedly expressing doubt on the verdict.

While Plaintiffs did not point to any specific defamatory comment or phraseology in either of the last two Articles, Plaintiffs allege that "[t]he clear implication of both the December and January articles, along with the express meaning of the September article, is that Mr. Young was guilty of what CNN accused him – that he was a bad actor, preying on desparate people and charging them exorbitant fees." (Am. Complaint, ¶50).

C. The Articles:

For purposes of this Order, the Court finds that it would be useful to include the text of the Articles (including any headline or subheading to which Plaintiffs attribute defamatory meaning) for a complete understanding of the ruling and rationale.

1. September Article:

Netflix on Trial & CNN's Financial Colonoscopy

Republican-appointed judges are greenlighting a surge of defamation cases against the likes of CNN, Netflix, ABC News, and Media Matters, revealing everything from private communications to the most sensitive internal documents.

A few days ago, in the midst of an otherwise low-profile defamation case, a Florida judge sent a jolt through CNN's executives offices when he ordered the news network to cough up a mountain of sensitive financial records—balance sheets, credit lines, internal valuations for a potential sale, you name it. At a hearing to discuss the matter, Charles Tobin, CNN's lawyer, visibly bristled at the ruling. "This is pretty expansive," he grimaced, processing an October 11 deadline to comply with Panama City Judge William Scott Henry's sweeping directive. "This upends our plans internally," he lamented.

Why the deep dive into CNN's finances? It goes back to a November 11, 2021, segment on The Lead With Jake Tapper, when reporter Alex Marquardt detailed how, following President Joe Biden's withdrawal from Afghanistan and the collapse of the government, panicked locals turned to private contractors to help them flee the country. One such contractor was Zachary Young, a Navy veteran whose firm was charging people hefty fees—sometimes tens of thousands of dollars—to escape the Taliban. Asked about these prices, Young explained that availability was limited and demand was high. "That's how economics works, unfortunately," he said, reportedly.

The CNN interview with Young segued into a segment on "black markets," a narrative jump that prompted Young to sue CNN, alleging that this framing portrayed him as exploiting Afghanis during a crisis. That's subjective, of course, but discovery in the case has been less than flattering for CNN. Internal communications reveal that CNN staffers referred to Young as a "shitbag," and that they hoped to "nail this Zachary Young mfucker." Meanwhile, CNN's so-called Triad system, consisting of fact-checkers and legal review, was pumping out feedback that the TV segment was "80 percent emotion, 20 percent obscured fact" and "full of holes like Swiss cheese."

CNN's attempts to dismiss the case, by arguing that the report was filled with non-actionable ambiguity and opinion, have fallen flat. The network is staring down a January trial where, crucially, Young has won a green light to seek punitive damages. Accordingly, Young's attorneys will soon be receiving documents to assess CNN's net worth, so they can argue before a jury just how big a penalty Young should receive. The judge has also ordered a deposition for Jake Tapper, who will likely have to disclose his salary and contract negotiations.

CNN has lost one bid to appeal, meaning the network may appear in court before Judge Henry, a Ron DeSantis appointee. At Thursday's hearing, the judge was unmoved by Tobin's concern about the burden on CNN, saying, "I want to keep us on track for January."

[The remainder of the article discusses a Netflix lawsuit, but ends with:]

It's possible that in the home stretch of the presidential election, Trump brings some of this up. When he was president, Trump didn't make many actual changes to libel law, but his attacks on the media changed the atmosphere, maybe influencing judges—especially those he or his allies appointed—to be more receptive to libel claims. As a result, the gist of what's published is

increasingly measured for its suggestion of falsity rather than for its substantial truth. As these cases show, it can be dangerous to imply exploitation. And so while some are focusing on whether the Supreme Court will change the actual malice standard for public figures, the bigger threat may be what's going on *right now* in lower courts.

The judicial system's new readiness to entertain lengthy and costly defamation suits, based on nuanced interpretations of a media outlet's content, means it might be time for the industry to come up with a new defensive plan. That's just how the law works, unfortunately.

2. December Article:

Netflix's First Jury Trial & CNN's Defamation Danger

A suite of cases involving Netflix, TikTok, and CNN hint at the future of First Amendment litigation under Trump 2.0.

[The beginning of the article discusses the Netflix and TikTok items]

CNN's Dominion Moment?

The next big trial in media and entertainment—assuming no surprises—will be Zachary Young's libel case against CNN. I covered this dispute a few months ago: Young, a military vet, helped evacuate Afghans fleeing the Taliban, only to find himself featured in a CNN segment about "black markets" in Afghanistan that were allegedly exploiting locals after Biden's troop withdrawal. In Florida, Circuit Judge William Henry has ruled that CNN lacked evidence that Young did anything illegal, greenlighting a trial to begin on January 6 and allowing Young to pursue punitive damages.

As trial day approaches, tensions have escalated. Young's legal team, led by Velvel Freedman, deposed CNN anchor Jake Tapper on his salary and his views of Trump. Freedman also raised the $787 million penalty Fox News paid Dominion to settle the voting machine vendor's defamation case. Seemingly intent on drawing parallels between the Dominion case and Young's, Freedman asked Tapper whether such a punishment would be enough to deter CNN from further defamatory conduct.

At a court hearing I observed last week, CNN's attorney Charles Tobin blasted the deposition as a "total freak show," adding, "This was very clearly an ambush deposition … designed to get Mr. Tapper to say something in a nice tight colloquy that they could play to a jury."

CNN has now moved to exclude mentions of Trump, Fox News, or the Dominion settlement at trial, arguing these subjects could inflame sensitivities among jurors in Florida's deep-red Bay County. On Monday, Freedman filed an opposition brief, contending there's no exclusion for political topics, arguing that Tapper's discussion of the Dominion settlement goes to what the network's marquee anchor understood about journalistic standards—and implying that Young will ask the jury for *more* than $787 million in damages. He writes: "If CNN recognized the

significance of the Dominion settlement as a cautionary tale yet still chose to defame Young, that fact demonstrates the insufficiency of prior monetary amounts in deterring CNN's misconduct."

Meanwhile, CNN's trial strategy is coming into focus. The network plans to call witnesses like Ralf Otto, who works with Civil Fleet, a German N.G.O. that paid Young to evacuate six Afghans. Otto will testify that Young collected money in advance, yet only managed to evacuate three of the six, prompting Civil Fleet to hire a different contractor for a fraction of Young's price. CNN will also present testimony from George McMillan, a geopolitical analyst who met Young and came away feeling "he could be a fraud." The goal is clear: to convince the jury that CNN's description of Young as exploitative wasn't defamatory, but rather an accurate reflection of his reputation.

These witnesses, set to fly in from abroad, caught Young's lawyers off guard. In response, they asked Judge Henry to reopen discovery, but he refused. CNN, for its part, accused Young's team of intimidating the witnesses by raising the specter of liability for false statements and warning of potential bad press from other outlets. As CNN attorney Tobin put it, "There's irony in how they are offensively trying to use the media."

For some reason, this trial continues to fly under the radar, apart from right-wing outlets that are reveling in the possibility of CNN's embarrassment. CNN, no doubt, hopes for a low-profile trial with an outcome as muted as Netflix's victory in the *Our Father* privacy case. But with punitive damages on the table, Ron DeSantis appointees reshaping Florida's appellate courts, Trump allies positioned at the federal level, and a legal climate growing less hospitable to speech deemed harmful to the national interest, this case may go places. Also, thanks to Florida's tolerance of cameras in the courtrooms, there's a good chance it'll be livestreamed.

3. January Article:

Baldoni, Drake & The Legal Revenge of Sensitive Men

News and notes on the most polarizing and perplexing entertainment and media lawsuits of the moment: Drake staring down his archrival's upcoming Super Bowl halftime show, Justin Baldoni gearing up for a protracted fight, and CNN's political settlement calculus.

[The beginning of the article discusses Drake and Baldoni items]

CNN Cuts Its Losses

Late Friday, after a weeklong trial, CNN settled with Zachary Young, the Navy veteran spotlighted in a 2021 exposé on bad actors profiting from aiding Afghans escaping the Taliban. By the time the sides began discussing a deal, a Florida jury had already slapped CNN with a $5 million bill for defamation, teeing up a further round, in which Young's attorneys gunned for $150 million in punitive damages—a number calculated after considering CNN's $4.9 million in daily revenue and $2 billion-plus "net worth" (whatever the plaintiff's economic expert meant by that). Faced with these stakes, CNN cut its losses, promising publicly to mine the ordeal for "useful lessons."

CNN's loss isn't a stunner, although many may find it questionable whether the network's reporters truly branded Young a *criminal* war profiteer, as he alleged. CNN's real problem was geographical: The trial was set in Panama City, one of Florida's deepest-red outposts. Yet what's truly surprising is how Young's legal team managed to transform this low-key defamation trial into a referendum on American journalism. In closing arguments, Vel Freedman, Young's attorney, underlined the presence of reporters in the courtroom and watching the stream remotely, then urged jurors to send a message that would ripple across newsrooms everywhere. "Media companies are waiting by their phones to see what you do," he told them.

As deliberations began, CNN's Ballard Spahr team drew Judge William Henry's attention to the Supreme Court's 2007 decision in *Philip Morris USA v. Williams*, where a $79.5 million punitive damages verdict was overturned as an unconstitutional violation of due process, since it was based on a jury's desire to punish the defendant for health damages suffered by cigarette smokers who weren't involved in the case. Similarly, CNN argued that punitive damages shouldn't be a vehicle for punishing CNN for the sins of the broader media industry, a nuanced point that the judge was urged to consider. If the parties had not settled, Judge Henry's interpretation—that while the jury's punitive damages shouldn't reflect a general punishment for what the media had done historically, the damages could still act as a deterrent against future journalistic slipperiness—might have ripened into a potent appellate issue.

Further complicating matters, Judge Henry was nudged toward the *State Farm v. Campbell* precedent, suggesting punitive damages shouldn't dwarf compensatory ones by more than a single-digit multiplier. For all the saber-rattling from the right, framing this as a billion-dollar showdown, and despite Young's team salivating at the prospect of a $150 million punitive windfall, the initial $5 million compensatory verdict actually offered CNN a lifeline, potentially capping its total exposure at $50 million—a bitter pill, no doubt, but far from a ruinous blow.

I bet the settlement hovered around half that—say, $25 million—to sidestep the hazards of an appeal. Some media advocates might balk at the figure, deeming it steep, yet considering the appellate bench is peppered with appointees from Ron DeSantis and Trump, it's hardly far-fetched. For CNN, it's a Jake Tapper-sized gulp, the price of shaking off a persistent headache. Late to the game, sure, but as the old adage goes: Better late than never, especially when the lesson is this costly.

D. Defendant's Motion to Dismiss:

In the MTD, Defendant argues that the Articles are not reasonably capable of defamatory meaning, they reflect protected opinion, and they are protected by the fair report privilege. In addition, Defendant argues that Plaintiffs did not comply with the statutory pre-suit notice for the December and January Articles. Finally, Defendant argues that Nemex's trade libel claim fails as a matter of law. As a result, Defendant requests that the Amended Complaint be dismissed with prejudice.

E. Plaintiffs' Motion to Amend:

In the Motion to Amend, Plaintiffs seek leave to plead punitive damages in this case, arguing that the Articles themselves, when put in context with the filings in the CNN Case and Defendant's refusal to speak to Young, demonstrate actual malice. The 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 Motion to Amend relies on the Articles published by Defendant to demonstrate the conduct to support a punitive damage claim. The only other evidentiary submission was a declaration from Young. Based on this record, Plaintiffs request leave to assert a claim for punitive damages as pled in the proposed Second Amended Complaint.

F. Discussion:

1. Motion to Dismiss:

a. *Fair Report Privilege*:

For the most part, Defendant is entitled to dismissal of 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, *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))).[2]

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

[2] 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' Amended Complaint, while not explicitly alleging Defendant is a member of the media, has sufficient allegations to support application of the privilege in this case. For instance, the preamble stated that Young "reached out to Puck News – which had a reputation for covering media-related lawsuits – to offer them his side of the story." It goes on to refer to "Puck's so-called 'entertainment law expert,' Eric Gardner, wrote multiple articles about the lawsuit." In ¶29, Plaintiffs allege that "Puck's 'entertainment law expert' Eric Gardner began to cover the case."

There are multiple other examples that at least indirectly demonstrate that Defendant is a member of the media, and Plaintiffs did not contest application of the fair reporting privilege on this basis.

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." And that is exactly what Defendant did in this case; in fact, it is exactly what Plaintiffs are complaining about in alleging that Defendant defamed them.

This is borne out by the allegations in the Amended Complaint where Plaintiffs claim that Defendant did not present their side of the CNN Case. Plaintiffs allege:

- That Young reached out to Defendant after a year into the CNN case to "offer them his side of the story," but Defendant "ignored him." (Preamble, Am. Complaint).
- "Rather than contact Mr. Young and write a fair account of the case, he chose to *repeat* and *spread* the false claims of CNN." (Preamble, Am. Complaint, emphasis in original).
- "Notably, Gardner conveniently omitted from this article what he had included in the September article: that discovery was brutal for CNN and revealed internal emails proving they were targeting Mr. Young because of its personal disdain for him." (¶43, Am. Complaint).
- "Rather than highlighting the extraordinary jury verdict against CNN, Gardner downplays this fact by opening the article with, 'CNN settled with Zachary Young, the Navy veteran spotlighted in a 2021 exposé on bad actors profiting from aiding Afghans escaping the Taliban.'" (¶47, Am. Complaint).
- "It also had an opportunity to talk directly with Mr. Young about the case. It chose not to." (¶53, Am. Complaint).

Based upon a review of the Articles, they are substantially correct accounts of what was transpiring in the CNN Case at the time. Even if Plaintiffs are correct that information may have been omitted in certain circumstances and the reporting may have been biased towards CNN, this is of no moment. The fair reporting privilege still applies, and for this reason Defendant would be entitled to dismissal of the Amended Complaint.

This case is really no different than *Huszar*, *Marder* and *Barbuto*. The Articles were reporting on a lawsuit between Plaintiffs and CNN. The remarks that Plaintiffs primarily take issue with in the September Article were the words used in the CNN publication and, when read in context,

properly attributed to CNN. While the Articles may not have contained each and every detail of the court proceedings, they presented a reasonably accurate account of filings and hearings in the CNN Case. And even if Plaintiffs feel that the Articles were biased against them or left out their side of the story, the fair reporting privilege still bars their claims.

One particular allegation should still be addressed since, on its face, it would indicate that it was not a report of official records in the CNN Case. In the December Article, there is a reference to "CNN's trial strategy" and two witnesses who may testify. Plaintiffs allege, "Namely, they would testify that Mr. Young did not adequately perform his job for CivilFleet and that another analyst who met him thought he was a 'fraud.'" (¶40, Am. Complaint). Plaintiffs continue, "This information was not yet public knowledge, as the trial had not begun. Gardner had no way of knowing these facts unless he gathered them directly from CNN. And while Gardner was talking to CNN, he never once reached out to Mr. Young." (¶41, Am. Complaint).

Plaintiffs are factually incorrect in this statement that the information was not yet public.[3] The two witnesses referenced in the December Article, which was published on December 11, 2024, were Ralf Otto with Civil Fleet (a company that hired Young) and George McMillan (who reportedly had met with Young to discuss evacuations). Both of these witnesses were disclosed in CNN's Fact Witness List filed on January 10, 2024 – over 11 months before the December Article.

In addition, the substance of their anticipated testimony was included in CNN's Statement of Material Facts in Support of Summary Judgment along with the Declaration of Ralf Otto, both of which were filed August 1, 2024 – over 4 months before the December Article. All of the information about Otto and McMillan as contained in these filings render Plaintiffs' allegation entirely incorrect.

Further, Otto and McMillan were subjects of motions filed by Plaintiffs on November 20, 2024, and December 3, 2024, in which Plaintiffs sought to reopen discovery, depose Otto and McMillan, and seek discovery of communications between them and CNN. From those filings, it is apparent that Plaintiffs were concerned about Otto's and McMillan's potential testimony as revealed in CNN's summary judgment motions. Yet Plaintiffs spin the "not yet public" implication to allege that Defendant was essentially CNN's mouthpiece; again, a conclusion that is patently false.[4]

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[3] In the MTD, Defendant requested that the Court take judicial notice of the filings in the CNN Case. Even though outside the four corners of the Amended Complaint, the case is significantly alluded to in the pleading and Plaintiffs' counsel consented to the Court's consideration of the filings in the CNN Case. Therefore, the Court will look to the docket, record and filings in that case in ruling on this motion. Just like where an attached exhibit conflicts with an allegation in a pleading and the exhibit controls, *see*, *Khan v. Bank of America, N.A.*, 58 So.3d 927, 928 (Fla. 5th DCA 2011), the record in the CNN Case will control over Plaintiffs' allegations.

[4] In ¶42 of the Amended Complaint, Plaintiff's allege, "He also wrote 'The goal is clear: to convince the jury that CNN's description of Young as exploitative wasn't defamatory, but rather an accurate reflection of his reputation;' and that these witnesses 'caught Young's lawyers off guard.' In fact, Gardner's goal was clear: amplify CNN's theory of the case and cast further doubt on Mr. Young's reputation through the inclusion of these witness statements." The implication that this was defamatory is incorrect in two respects.

The fair report privilege would cover most, if not all, of the allegedly defamatory statements, whether couched as defamation per se or defamation by implication. However, the Court will additionally address specific items and demonstrate why Plaintiff's Amended Complaint is subject to dismissal.

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)).

The only statements which Plaintiffs allege were defamatory per se were contained in the September Article in the following two paragraphs:

> It goes back to a November 11, 2021, segment on The Lead With Jake Tapper, when reporter Alex Marquardt detailed how, following President Joe Biden's withdrawal from Afghanistan and the collapse of the government, panicked locals turned to private contractors to help them flee the country. One such contractor was Zachary Young, a Navy veteran whose firm was charging people hefty fees —sometimes tens of thousands of dollars—to escape the Taliban. Asked about these prices, Young explained that availability was limited and demand was high. "That's how economics works, unfortunately," he said, reportedly.
>
> The CNN interview with Young segued into a segment on "black markets," a narrative jump that prompted Young to sue CNN, alleging that this framing portrayed him as exploiting Afghanis during a crisis. That's subjective, of course, but discovery in the case has been less than flattering for CNN. Internal communications reveal that CNN staffers referred to Young as a "shitbag," and that they hoped to "nail this Zachary Young mfucker." Meanwhile, CNN's so-called Triad system, consisting of fact-checkers and legal review, was pumping out feedback that the TV segment was "80 percent emotion, 20 percent obscured fact" and "full of holes like Swiss cheese."

Out of these two paragraphs, Plaintiffs cherry-pick a few words from the first paragraph ("panicked locals," "hefty fees" and "escape the Taliban") to claim that Young preyed upon Afghans, which they allege was utterly false. (¶58 and 59, Amended Complaint). However, Plaintiffs' selective focus on a few words ignores the entirety of the context in which the statements were made.

First, the article accurately portrayed what CNN had included in its summary judgment filings. Second, eliciting testimony concerning a defamation plaintiff's reputation, which would diminish such reputation prior to the publication, would be an expected course of conduct in defending such a case. In the CNN Case, the primary source of Young's positive reputation came from Young himself. It would not be unusual or unexpected that the defendant would try to rebut such testimony.

The two paragraphs recited above describe what was at the heart of the CNN case – the November 11th segment on CNN, how CNN portrayed Young, and what was transpiring in the CNN case. In fact, the September Article even points out that it was this portrayal by CNN that prompted Young to sue ("alleging that this framing portrayed him as exploiting Afghans during a crisis").

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.

Even if one was to construe the statements here as similarly charged, when put into the context of how the words were used in the framework of the story, such use objectively does 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 what CNN accused him of and why he sued CNN.

Applying the above principles, there is nothing in any of the articles that is defamatory per se. The use of the words charging panicked people hefty fees does not constitute defamation per se. In fact, Young acknowledged the cost of evacuations was pricy. And it was not Defendant that accused Young of these things – the Article reported that CNN did so. Therefore, as a matter of law, the Court determines that Count I for defamation per se should be dismissed.

c. *Defamation by Implication*:

In his defamation by implication claim, Young again relies upon the phrases from the September Article which formed the basis of his defamation per se claim, stating that these "carry the strong defamatory gist and false implication." (¶66, Amended Complaint). Young further alleges that

"[b]y adopting some of its language and making similar statements, [Defendant] was intentionally connecting its own words to CNN's characterization of Young." (¶67, Amended Complaint). He then pairs this with references in the December and January Articles to the court appointees and location of the trial (which are factually correct) which may have played a part in the outcome of the CNN Case (¶68, 69 and 70, Amended Complaint), all of which Young claims implied that his case was frivolous.

While it is clear that the Articles do not trumpet Young's court victories in the CNN Case in the manner Young believes was due, this does not cause the Articles to be defamatory. "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). But this is in essence what Young complains about.

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). In such instances, the defendant "may be held responsible for the defamatory implication unless it qualifies as an opinion, even though the particular facts are correct." *Id.* Importantly, however, even if statements qualify as defamation by implication, "a defendant is still protected from suit if his statements qualify as opinion." *Turner*, 879 F.3d at 1269 (citation omitted).

As discussed above, the Articles contain an accurate recitation of the CNN Case events and do not create a false impression. While there is information from the case that may have been omitted, the omissions do not create a defamatory implication. Rather, what could be viewed as criticism of Young's victory in the CNN Case is protected opinion (see below), not actionable as defamation by implication. Accordingly, as a matter of law, the Court finds that the Articles do not support a claim for defamation by implication.

d. *Pure Opinion*:

To the extent Plaintiffs complain about commentary provided in the Articles, such are not actionable as statements of pure opinion. *See, Morse v. Ripken*, 707 So.2d 921, 922 (Fla. 4th DCA 1998); *see also*, *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-340 (1974). The determination of whether a statement is fact or opinion is a question of law for the court. *See, Morse*, 707 So.2d at 922; and *Turner*, 879 F.3d at 1262-1263. "The distinction between fact and non-actionable opinion is a question of law to be determined by the court and not an issue for the jury." *Florida Medical Center, Inc. v. New York Post Co., Inc.*, 568 So. 2d 454, 457 (Fla. 4th DCA 1990); *see also*, *Demby v. English*, 667 So.2d 350, 355 (Fla. 1st DCA 1995) (citing *From v. Tallahassee Democrat, Inc.*, 400 So.2d 52, 56 (Fla. 1st DCA 1981)). "Pure opinion occurs when the defendant makes a comment or opinion based on facts which are set forth in the article or which are otherwise known or available to the reader or listener as a member of the public." *From*, 400 So.2d at 57.

In the instant case, the Court determines as a matter of law that any commentary provided by Gardner in the Articles that went beyond a recitation of the CNN case events were pure statements of opinion. Such comments were based on information contained in the Articles. To the extent the comments were premised on information outside of the Articles, such were otherwise known or available to the public.

For instance, the statements about "one of Florida's deepest-red outposts" and "Ron DeSantis appointees reshaping Florida's appellate courts, Trump allies positioned at the federal level, and a legal climate growing less hospitable to speech deemed harmful to the national interest, this case may go places" were either statements of fact or otherwise was information commonly know or easily accessible to the public. Further, this information is contained in the Article, and therefore Gardner's conclusory opinion that "CNN's loss isn't a stunner" is premised upon information contained in the Article.

e. *Pre-Suit Notice*:

Section 770.01, Florida Statutes, requires as a condition precedent that a defamation plaintiff serve notice "specifying the article or broadcast and the statements therein which he or she alleges to be false and defamatory." In this case, Plaintiffs sent a letter on March 4, 2025, to Defendant referencing §770.01 and complained that Defendant defamed them. However, the only Article referenced in Plaintiffs' pre-suit notice was the September 10, 2024, Article titled, "Netflix on Trial & CNN's Financial Colonoscopy," despite the fact that the letter was sent after the December and January Articles were published. Thus, Plaintiffs have failed to satisfy the condition precedent to bringing claims premised on the December and January Articles.

Further, the March 4th letter only identified part of one paragraph of the September Article which Plaintiffs claimed was defamatory:

> Why the deep dive into CNN's finances? It goes back to a November 11, 2021, segment on *The Lead With Jake Tapper*, when reporter Alex Marquardt detailed how, following President Joe Biden's withdrawal from Afghanistan and the collapse of the government, *panicked locals turned to private contractors* to help them flee the country. *One such contractor was Zachary Young, a Navy veteran whose firm was charging people hefty fees—sometimes tens of thousands of dollars—to escape the Taliban.* (emphasis added)

Section 770.01 not only requires that the notice specify the article, it also requires the notice to specify "the statements therein which he or she alleges to be false and defamatory."[5] To the extent Plaintiffs premise their claims in this case on statements contained in the September Article not included in this notice, they have failed to comply with the required condition precedent of providing proper notice under §770.01.

[5] As quoted above, the notice requires "specifying the article . . . **and** the statements therein which he or she allege to be false and defamatory." (emphasis added). "And" is a copulative conjunctive word, defined as a "conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first." Black's Law Dictionary, Rev. 4th Ed.

While dismissal without prejudice might be the appropriate remedy for failure to comply with this condition precedent, such that Plaintiffs could provide proper notice and refile their claims assuming the statute of limitations had not expired, such would be futile in this case. As the Court has examined in this Order, there is nothing actionable in either the December or January Articles nor the remainder of the September Article. Therefore, leave to amend or dismissal without prejudice are not appropriate.

f. *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.

Of primary note, Nemex is not specifically named or mentioned in any of the Articles. At best, there is a reference to "Zachary Young, a Navy veteran whose **firm**" (emphasis added) in the September 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 Articles. 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 Articles that could be imputed to Nemex, the Articles contained statements of opinion, and the reporting in the Articles is covered by the fair reporting privilege. Therefore, Count III shall be dismissed.[6]

2. 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 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.

[6] Without deciding or relying upon in this ruling, there may also be an issue with the pre-suit notice as it relates to Nemex's claim. In the March 5th letter, it started by saying Plaintiffs' counsel represented Zachary Young (not naming Nemex). The letter went on to describe how Plaintiffs' counsel felt the September Article was false and defamatory as to Young in light of the rulings and outcome in the CNN Case. It then concluded, "The defamatory statement caused significant damages to Mr. Young and his business" without specifically identifying Nemex. Admittedly, Nemex is named in the subject line of the letter and in the first paragraph where it stated, "Please consider this letter your pre-suit notice . . . of Mr. Young's and Nemex Enterprise, Inc.'s intention to file a civil action . . . for defamation." But the letter does not specify what statements allegedly defamed Nemex.

"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), 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.

In the context of a defamation case, 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. *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); and *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).

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 Articles themselves 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 Articles are not defamatory, and therefore Plaintiffs would not pass this threshold to be entitled to claim punitive damages.

Beyond the statements contained in the Articles, Plaintiffs rely on the amount of information about the CNN Case that was available, along with Young's willingness to give his side of the story, which Defendant allegedly chose not to include in the Articles, 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.

The only additional item proffered by Plaintiffs was the Declaration of Young that essentially parroted the allegations in the Amended Complaint and items contained within the CNN Case court file. He included statements concerning the effect of the Articles on him. The remainder of the Declaration contained hearsay statements and unsupported conclusions. For purposes of the Motion to Amend, the Declaration does nothing to demonstrate actual malice, express malice, or ill will, hostility or evil intention on the part of Defendant.

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

[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.

Defendant in publishing the Articles, Plaintiffs have not met their threshold burden to support a punitive damage claim in this case.

In addition, to hold Defendant liable for the article written by Gardner, Plaintiffs are required to demonstrate that Gardner 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, *Zerangue v. TSP Newspapers, Inc.*, 814 F.2d 1066, 1071 (5th Cir. 1987), is not binding on this Court, and even if it were, it only suggested that the failure to retract could be considered as evidence of malice – not that it alone is sufficient evidence. 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 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 Motion for Leave to Amend would be denied.

G. Conclusion:

This brings us back to the beginning. This case was a 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 installment does not work.

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 Articles say what the Articles say – 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 should be with prejudice.

Based on the foregoing, it is:

ORDERED AND ADJUDGED that

1. Defendant Heat Media's Motion to Dismiss is hereby GRANTED, and Plaintiffs' claims in this case are dismissed with prejudice.

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

3. Any and all other relief requested is denied.

4. By dismissal of this case, Defendant's Motion to Stay Discovery and Extend Discovery Deadlines Pending the Court's Ruling on the Defendant's Motion to Dismiss, previously addressed in the June 27, 2025, Order, is rendered MOOT.

5. The Court reserves jurisdiction to consider any motion to tax fees and/or costs.

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

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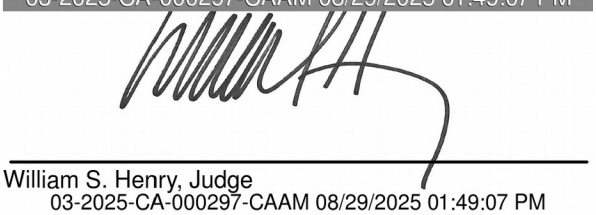

William S. Henry, Judge
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