IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

PATRICK NATHANIEL REED,

Plaintiff,

v.

SHANE RYAN, *et al*

Defendants.

Case No: 3:22-cv-01181-TJC-PDB

PATRICK NATHANIEL REED,

Plaintiff

v.

BRANDEL EUGENE CHAMBLEE, et al

Defendants.

Case Number: 3-22-CV-01059-TJC-PDB

ORAL ARGUMENT REQUESTED

PLAINTIFF PATRICK NATHANIEL REED'S MOTIONS FOR RECONSIDERATION, TO ALTER OR AMEND A JUDGMENT, AND FOR RELIEF FROM JUDGMENT OR ORDER PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 59 AND 60

Plaintiff Patrick Nathaniel Reed ("Mr. Reed") hereby moves for reconsideration of the Honorable Timothy J. Corrigan's ("Judge Corrigan") September 27, 2023 Order dismissing each and every one of Mr. Reed's claims (the "Dismissal Order") – involving a total of fifty-five (55) defamatory statements. Mr. Reed respectfully requests that the Dismissal Order be reversed

and vacated, as it contains numerous manifest errors of law and fact that require Mr. Reed's motions to be granted.

I. Legal Standard

a. Federal Rule of Civil Procedure Rule 59

Federal Rule of Civil Procedure 59 ("Rule 59") governs the procedure for seeking and obtaining a new trial and altering or amending a judgment. "Courts recognize three grounds to support a motion under Rule 59(e): (1) an intervening change in controlling law; (2) newly discovered evidence, and (3) **manifest errors of law or fact**."(Emphasis Added). *Scoma Chiropractic, P.A. v. Dental Equities, LLC*, 2022 U.S. Dist. LEXIS 23427, at *6 (M.D. Fla. Feb. 9, 2022)(Emphasis Added). "A manifest error amounts to a wholesale disregard, misapplication, or failure to recognize controlling precedent." *Id.* (internal quotations and citations omitted).

b. Federal Rule of Civil Procedure Rule 60

Federal Rule of Civil Procedure Rule 60 ("Rule 60") provides: "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons… any other reason that justifies relief." Rule 60(b)(6). The broad language of Rule 60(b)(6) was intended "to do substantial justice." "*SEC v. Radius Capital Corp*, 2017 U.S. Dist. LEXIS 127557, at *6 (M.D. Fla. Aug. 11, 2017), and the facts of this case present the truly "extreme hardship," *id.*, that more than justifies this remedy.

II. Legal Argument

Judge Corrigan's Dismissal Order contains numerous highly prejudicial, manifest errors of law and fact that have created extreme, undue hardship for Mr. Reed that mandates reconsideration, reversal and/or vacatur of the Dismissal Order in its entirety. These manifest errors are enumerated and detailed below and in the contemporaneously filed motion titled, *Plaintiff Patrick Nathaniel Reed's Motions to Recuse the Honorable Timothy J. Corrigan Pursuant to 28 U.S.C. § 455 and 28 U.S.C. § 144* and the accompanying affidavit titled, *Affidavit in Support of Motions to Recuse the Hon. Timothy J. Corrigan Pursuant to 28 U.S.C. § 144 and § 455.*

A. Judge Corrigan Ignored Well-Established Legal Precedent To Take This Matter Totally Out Of The Hands Of The Jury, Which Is A Manifest Error

It is extremely telling that Judge Corrigan cavalierly dismissed each and every one of the fifty-five (55) defamatory statements at issue – an impossibility – as being non-actionable statements. In doing so, Judge Corrigan admitted that he was taking this matter totally out of the hands of the trier of fact – the jury – and placing it solely into his own, holding that "[w]hether the defendant's statements constitute defamation . . . is a question of law for the court to determine," giving no role to the jury. ECF No. 91 at 25. Indeed, the word "jury" is not found a single time in Judge Corrigan's entire seventy-eight (78) page Dismissal Order.

This is contrary to well-established, black-letter case law presented to Judge Corrigan that there are many instances where the question of whether a statement is defamatory must go to a jury. For instance, *Perry v. Cosgrove*, 464 So. 2d 664 (Fla. Dist. Ct. App.1985) found that "[a] jury issue is present whenever a phrase is 'ambiguous and reasonably susceptible of a defamatory meaning.'" *Abrams v. Gen. Ins. Co.,* 460 So. 2d 572 (Fla. Dist. Ct. App. 1984) found that "[a] complaint cannot be dismissed if there is any possibility that the common mind could construe the publication as defamatory." Furthermore, both *Barnes v. Horan*, 841 So. 2d 472, 476-77 (Fla. Dist. Ct. App. 1984) and *Hay v. Indep. Newspapers, Inc.*, 450 So. 2d 293, 295 (Fla. Dist. Ct. App. 1984) found that statements of mixed opinion and fact – a question that also must go to a jury – are also actionable defamation.

Judge Corrigan simply ignored all of this controlling precedent in going out of his way to declare that the question of whether the fifty-five (55) defamatory statements at issue was solely within his purview – a manifest error of law based on the facts presented to him.

B. Judge Corrigan Ignored Well-Established Case Law To Find Each And Every One of the Defamatory Statements To Be Non-Defamatory, Which Represents A Manifest Error

In addition to usurping the fact-finding role of the jury and improperly declaring himself as the "judge, jury and executioner" in these cases, as set forth above, Judge Corrigan further compounds this manifest error by misapplying

basic tenets of defamation law to find each and every single one of the fifty-five (55) statements at issue as "non-defamatory."

To make matters even worse, Judge Corrigan as early as the first page of his Dismissal Order dismissing each and every single one of the fifty-five (55) false, malicious, and defamatory statements offensively downplays the defamatory statements as simply "negative media coverage" or merely "criticism of LIV generally" that is "over the top." ECF No. 91 at 2, 5. These cavalier and dismissive statements, in particular, evidence Judge Corrigan's predetermined, prejudicial, and biased mindset because the publications set forth in the Amended Complaints are not what "negative media coverage" looks like for a professional golfer, but instead outrageous and malicious defamatory attacks. *See* Motion to Recuse the Honorable Timothy J. Corrigan.

Mere negative media coverage or simple criticism would by way of example be something along the lines of: "player X always chokes under pressure," or "player y really struggles on this course." Routine "negative media coverage" or "criticism" does not contemplate falsely and outrageously branding someone a murderer, thief, cheater, and working directly for a genocidal dictator. These are two very different things. Simple "negative media coverage" or critisicm does not result in a complete and total loss of sponsors, *Chamblee* ¶ 17, 18, Mr. Reed being verbally abused with profanities and threats at nearly every single event that he plays in, to the point when Mr. Reed has had to use security guards to

protect himself and his family, *Chamblee* ¶ 131, and even to endure a bomb threat halting play at Trump National Golf Course in Doral, Florida. *Chamblee* ¶ 132

This highly insulting, if not callous diminution of the defamatory publications at issue speaks for itself and proves that there were no legal or factual bases for Judge Corrigan to have reduced the well pled defamatory statements to simple negative media coverage or critism by critics.

Judge Corrigan knew that his Dismissal Order was fundamentally wrong in this regard, which is why he for the most part did not give individual analysis to the fifty- five (55) defamatory statements at issue, and instead, as suggested by Mr. Minchin as counsel for Defendant TGC, LLC. had done, chose to group statements together in a manner that allowed for him to "gloss over" clearly defamatory statementsIn stark contrast, in another case where the undersigned counsel served as counsel on until trial, *Moore v. Senate Majority PAC et al*, 4:19-cv-01855 (N.D. Al.)(the "*Moore* Case"), the Honorable Corey Maze ("Judge Maze") was also presented with a defamation complaint involving numerous statements. Judge Maze actually took the time to go through all of the statements at issue, and in the end allowed one single statement to go to trial and be put before the jury, *Moore* ECF No. 62, which resulted in an over $8 million dollar judgment for the Plaintiff. *Moore* ECF No. 207. This just goes to show that even just one defamatory statement can compensate the victim of defamation, and the Court therefore has a duty to parse through each and every statement even if it

might be easier to simply "gloss over" statements and lump them into groups. This egregious error must be corrected, if only to give the appellate court a workable record to rule upon.

In any event, Judge Corrigan's Dismissal Order in this regard was clearly and intentionally wrong, particularly where the Amended Complaints contain defamatory statements which clearly and unequivocally make false statements of fact "of and concerning" and associated with Mr. Reed. Such statements by way of just a few examples include, but are not limited to:

A. "Golf won today. **Murderers lost**." *Chamblee* ¶ 89

B. "**So if they're aligning themselves with a tyrannical, murderous leader… look if you if you look at who MBS is… centralizing power, committing all these atrocities, you look at what he's doing to the citizens of his… of his country ask yourself I mean would you have played for Stalin would you have played for Hitler would you have played for Mao would you play for Pol Pot," [Froggy] "would you have played for Putin?" [Chamblee in agreement] "would you have played for Putin… which… and this who this guy is. He settles disputes with bonesaws**." *Chamblee* ¶ 58.

C. Mr. Reed is "**over there purely playing for blood money**." *Chamblee* ¶ 63.

D. "…either way, whether the money is against or in addition to guarantees **its still blood money and you're still complicit in sportswashing**." *Chamblee* ¶ 90.

E. "It **figured that the first time anyone on Reed's team had been honest** and open with the media, it would be a caddie admitting he'd shoved a fan." *Ryan* ¶ 84.

F. "When items including a watch, a putter and $400 went missing from the locker room, **teammates suspected it was Reed who had taken them**, especially as he turned up the following day with a large wad of cash." *Ryan* ¶ 93.

G. "[t]he criticism of LIV defectors is not that they are doing it for the money, that is easily understood, what is not so easily understood is why **they would directly work for a regime that has such a reprehensible record on human rights.**" *Chamblee* ¶ 97.

H. On August 28, 2022, Chamblee tweeted "[t]he IOC decides where the Olympics go…and there is a big difference between doing business in a country and **directly for a murderous regime as LIV golfers are**." *Chamblee* ¶ 94.

These statements are pure questions of fact that are incredibly harmful to Mr. Reed's reputation and economic well-being in his trade and profession as a professional golfer, and are therefore not only defamatory generally, but also defamatory *per se*. *Axelrod v. Califano*, 357 So. 2d 1048 (Fla. Dist. Ct. App. 1978). There was simply no way for Judge Corrigan to have had plausible grounds to find that these were statements of non-actionable opinion, evidencing a clear intent and predetermined mindset, bias, and prejudice to simply deep six the entire cases.

For example, Defendants Newsham, New York Post, and Fox Sports published "[w]hen items including a watch, a putter and $400 went missing from the locker room, **teammates suspected it was Reed who had taken them**, especially as he turned up the following day with a large wad of cash." This is a purely factual question. Either Mr. Reed committed theft or he had not. Of

course, he had not, and Mr. Reed has sworn statements from his college coaches to that effect as well.

Furthermore, Defendant Chamblee published, "Golf won today. **Murderers lost**." *Chamblee* ¶ 89. This is another purely factual question, particularly because in the context of which it was made, which the Court must consider. *Smith v. Cuban Am. Nat'l Found.*, 731 So.2d 702, 705 (Fla. 3d DCA 1999). This tweet was made in reference to an order from the U.S. District Court for the Northern District of California in *Mickelson v. PGA Tour, Inc. et al*, 5:22-cv-04486) denying the plaintiffs', who are LIV players, motion for preliminary injunctive relief. ECF No. 63. Crucially, LIV was not a party to this lawsuit, as the Plaintiffs were several professional golfers who had signed to LIV. Thus, the only possible plausible interpretation of this tweet is that Defendant Chamblee published that LIV golfers, including especially Mr. Reed, are **murderers**.

Lastly by way of an additional example, Defendants Ryan and Hachette published that, "It **figured that the first time anyone on Reed's team had been honest** and open with the media, it would be a caddie admitting he'd shoved a fan." *Ryan* ¶ 84. This is a purely factual statement accusing Mr. Reed and his team of being habitual liars, which is completely and totally false.

These statements, by way of just a few examples, are clearly defamatory on their face, meaning that Judge Corrigan's Dismissal Order constitutes a clear departure from well-established case law. However, at a bare minimum, even if

Judge Corrigan found that the defamatory nature of the statements were ambiguous, his Court was presented with clear precedent that this question must go to a jury. *Perry v. Cosgrove*, 464 So. 2d 664 (Fla. Dist. Ct. App.1985). Statements that by way of just a few examples, at a minimum, also fall into this category, include but are not limited to:

A. **"I either messaged or talked to 15 to 20 current and past tour players, some of them Hall of Fame members, over the past 24 hours and not a single player is in defense of what Patrick Reed di**d." *Chamblee* ¶ 78.

B. "To me, this looks bad for Patrick Reed, **a guy that has history of doing these things [cheating]**." *Chamblee* ¶ 86.

C. "I can understand [Mohammed bin Salman Al Saud's] regime wanting to become more than a petro[l] country & corporate interest to serve that part of the world. **I can't understand an individual working for him**." *Chamblee* ¶ 95.

D. "Saudi-Backed LIV Golf is Using PGA Suit to Get Data on 9/11 Families Court Told." *Ryan* ¶ 113.

E. **I mean those who have sold their independence to a murderous dictator** and those who have sued their fellow professionals so they can benefit from the tours they are trying to ruin." *Chamblee* ¶ 92.

F. The violation was so egregious that Rickie Fowler, glancing at the replay on television, quickly raised his eyebrows and said: "Whoa! What was THAT!" *Ryan* ¶ 107.

G. **There is no greater punishment in golf than being stuck with a reputation for cheating**." *Ryan* ¶ 107

Indeed, looking at just above statement A alone, it is clear that It is clear that Defendant Chamblee did not talk to "15 to 20" players, but that he simply made this up to lend credence and fabricated weight to his malicious defamation of Mr. Reed. However, at a bare minimum, this is a purely factual question that should have gone to discovery and then a jury. Similarly, statement F is an objectively verifiable fact, and Mr. Reed should have been afforded discovery in this regard.

All of this is also notwithstanding the clearly and patently defamatory nature of the titles of the articles at issue, which make false, malicious, defamatory, and highly damaging statements "of and concerning" and associated with Mr. Reed. These include, but are not limited to: "*Don't know they'd p*** [piss] on him if he was on fire': The scandalous truth of golf's biggest villain*," *Ryan* ¶ 87; "*The scandalous truth about Patrick Reed, the bad boy of golf," id.*; "*Reed's reputation from Bahamas the ultimate penalty*," *Ryan* ¶ 105.

In sum, Judge Corrigan – having already usurped the role of jury – compounded this error because he simply had no viable legal or factual bases to find that these statements were non-actionable. This is particularly true at the motion to dismiss stage, where there has been zero discovery as it was improperly *sua sponte* stayed by Judge Corrigan, *Ryan* ECF No. 41, and the only question is whether the Amended Complaint pled what needed to be pled. *Dershowitz v. Cable News Network, Inc*. 541 F. Supp. 3d 1354 (S.D. Fla. 2021). While it is clear that issues such as "of and concerning" were properly pled, by *sua*

sponte staying discovery, Judge Corrigan prevented Mr. Reed from putting before him evidence that the statements were "of and concerning" and associated with Mr. Reed. Judge Corrigan's intentions in retrospect have become clear and Judge Corrigan's finding that each and every one of the fifty-five (55) defamatory statements at issue were non-defamatory is a manifest error.

C. Judge Corrigan Ignored Well-Established Precedent On What Constitutes "Of And Concerning" A Plaintiff, Which Is A Manifest Error

Judge Corrigan, in particular, cannot and should not have taken away from the jury the question whether the defamatory statements that did not specifically mention Mr. Reed, but could be found to be "of and concerning" and associated with him. In this regard, notwithstanding Judge Corrigan preventing any discovery on this crucial issue, he also seriously erred by intentionally overlooking cases and black letter defamation law that pertains to "of and concerning," which involve a group of victims..

Well-established precedent states that he test for "of and concerning" is "who a part of the audience may reasonably think is named." Sack on Defamation § 2:9.1 (5th Ed.) "If [a defamatory statement] is intended to be about a person and is so understood by at least one recipient of the communication, the person has been defamed to that audience of at least one." *Id*. It is therefore unsurprising that under these extremely low thresholds, "[u]nder modern

practice in most states, it is enough merely to plead that the defamatory publication was made 'of and concerning' the plaintiff." *Id*.

This is particularly true with regard to the defamatory publication by Defendants Larson and Bloomberg, *Ryan* ¶¶ 113 – 119, where they prominently featured a large recognizable picture of Mr. Reed in their article titled "*Saudi-Backed LIV Golf is Using PGA Suit to Get Data on 9/11 Families Court Told*." Despite this, Judge Corrigan incredibly ruled that "[a]s a matter of law, no reasonable person would understand the article as implicating Reed." ECF No. 91 at 38. This is egregiously obviously and intentionally wrong, and beyond bizarre. The only reasonable readers who would not understand the article as being "of and concerning" and associated with Mr. Reed are those who are blind and therefore cannot see the picture of Mr. Reed, particularly since Mr. Reed being a part of LIV is widely known, yet the exact parties to the LIV Golf v. PGA lawsuit is not. Therefore, by prominently featuring the photo of Mr. Reed for no reason other than to create the false impression that he was involved in investigating September 11, 2001 families, and publishing, "It's (meaning the issue of 9/11 family victims) has taken a more sinister turn," *Ryan* ¶ 118, Defendants Larson and Bloomberg capitalize on the fact that the public for the most part does not know that Mr. Reed was not a party to the LIV Golf v. PGA lawsuit to maliciously implicate and tie him to the defamation. This is exacerbated by the fact that Mr. Reed was among the few most prominent players to join LIV and

was one of the earliest golfers who made the switch. As such, his likeness and photo have been used profusely in the media since LIV came into being. Thus, in the public's eye, he was certainly among the top "faces" of LIV. Mr. Reed has also been the primary target of the golf media when discussing LIV, *Chamblee* ¶ 40, and in conjunction with the golf media frequently using pictures of Mr. Reed, including Defendants Bloomberg and Larson, means that most reasonable viewers would have believed that the Larson/Bloomberg Article was "of and concerning" and associated with Mr. Reed. In any event, this is a factual question for the jury that simply could not have been disposed of by Judge Corrigan at the motion to dismiss stage, particulary before any discovery has taken place.

This is exacerbated by the fact that Mr. Reed was among the few most prominent players to join LIV and was one of the earliest golfers who made the switch. As such, his likeness and photo have been used profusely in the media since LIV came into being. Thus, in the public's eye, he was certainly among the top "faces" of LIV. Mr. Reed has also been the primary target of the golf media when discussing LIV, *Chamblee* ¶ 40, and in conjunction with the golf media frequently using pictures of Mr. Reed, including Defendants Bloomberg and Larson, means that most reasonable viewers would have believed that the Larson/Bloomberg Article was "of and concerning" and associated with Mr. Reed. In any event, this is a factual question for the jury that simply could not

have been disposed of by Judge Corrigan at the motion to dismiss stage, particulary before any discovery has taken place.

In the same vein, Judge Corrigan intentionally and fundamentally erred by finding that the group libel doctrine was not applicable with regard to statements referring to LIV, despite conceding that Defendant Chamblee admitted that there were only fourteen recognizable players, ECF No. 91 at 32, therefore severely reducing the size of the "group" at issue. Judge Corrigan also gives no consideration to the case law set forth by Mr. Reed in *Fawcett Publ'ns v. Morris*, 377 P2d42 (Okla. 1962) finding the "of and concerning" requirement satisfied with regard to the entire Oklahoma Sooners football team, which was much larger than the LIV roster. *See also Neiman-Marcus v. Lait*, 13 F.R.D. 311 (S.D.N.Y. 1952); *Palmerlee v. Nottage*, 119 Minn. 351 (1912); *Fullerton v. Thompson*, 123 Minn. 136 (1913).

And again, had Judge Corrigan allowed for discovery, this would have settled the issue of "of and concerning" with Mr. Reed.

Accordingly, taken altogether, Judge Corrigan committed manifest error, as each and every one of the defamatory statements at issue was clearly "of and concerning" and associated with Mr. Reed pursuant to well-established case law.

D. Judge Corrigan Ignored Established Case Law On Actual Malice, Which Is A Manifest Error

Almost certainly realizing that he had no plausible basis to find each and every statement at issue as non-defamatory, Judge Corrigan made sure to also attempt to "cover his tracks" and slam every door to a jury consideration by falsely stating in a conclusory fashion that Mr. Reed had failed to allege actual malice. This was clearly because Judge Corrigan must have known that many of the statements in the Amended Complaints were patently defamatory and others that were ambiguous, which questions needed to go to a jury. *Perry v. Cosgrove*, 464 So. 2d 664 (Fla. Dist. Ct. App.1985).

However, the Amended Complaints clearly have both pled actual malice with extreme specificity, including but not limited to numerous "badges" of actual malice set forth in the article by Manual Socias titled *Showing Constitutional Malice in Media Defamation* which were conspicuously not even mentioned by Judge Corrigan once in his seventy-eight (78) page Dismissal Order. The badges which clearly are present here include, but are not limited to:

A. failure to report exculpatory facts, *Ryan* ¶ 73;
B. omitting pertinent information to create a false impression, *Ryan* ¶ 75, *Chamblee* ¶ 82;
C. repetitive media attacks on the plaintiff. *Chamblee* ¶¶ 57-82, 89-98, *Ryan* ¶¶ 37, 67 – 86, ;
D. a reporter's ill will toward the plaintiff, *Ryan* ¶ 46;
E. prior and subsequent defamatory statements; and
F. refusal to publish a retraction upon learning of errors in a story. *Ryan* ¶ 122, *Chamblee* ¶ 133.

In addition to the numerous "badges" of actual malice which were present, which are clearly relevant to showing actual malice, *Herbert v. Lando* , 441 U.S.

153 (1979), the Amended Complaints also set forth in extreme detail exactly how the Defendants either knew that the statements they were making were false, or at a minimum acted with a reckless disregard for the truth. *Dershowitz v. Cable News Network, Inc*. 541 F. Supp. 3d 1354, 1367 (S.D. Fla. 2021). For instance, with regard to the fabricated statement that Mr. Reed had been accused of stealing from his college teammates, Mr. Reed had pled that he possessed sworn statements from his college coaches conclusively refuting any such accusations. Am. Comp. ¶ 94, ECF No. 34-5. Similarly, with regard to fabricated statements that Mr. Reed had intentionally cheated in his college and professional career, Mr. Reed also pled that he possessed sworn statements from his college coaches that they were unaware of any cheating accusations against him, Am. Comp. ¶ 75, and also set forth that Mr. Reed has never once been found to have intentionally cheated by the PGA Tour or any other tour or entity, period.

Taken altogether, Judge Corrigan's finding that Mr. Reed failed to allege actual malice was a clear departure of established case law, and therefore a manifest error.

E. Judge Corrigan Found That Mr. Reed Did Not Specify Which Type Of Defamation Applied To Each Statement, Which Is False And A Manifest Error

In his Dismissal Order, Judge Corrigan falsely writes, "[i]n his Amended Complaints, Reed does not distinguish what statements constitute each type of defamation; instead, he incorporates every alleged statement by a Defendant into

each Count against that Defendant." ECF No. 98, fn. 9. A review of the Amended Complaints shows, however, that this is not true. Each type of defamation – defamation generally, defamation *per se* and defamation by implication – is separated into an individual count against each individual defendant. This is notwithstanding, of course, the fact that Mr. Reed filed detailed Notices of Compliance (*Reed v. Chamblee, et al* Dkt. No. 29 and *Reed v. Ryan, et al* Dkt. No. 28) setting forth exactly how he had complied with Judge Corrigan's *sua sponte* orders, to which no objections were raised.

This is particularly true with regard to defamation by implication, which holds out the victim to ""hatred, distrust, ridicule, contempt or disgrace," *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1114 (Fla. 2008), as a result of statements which are "premised not on direct statements but on false suggestions, impressions and implications arising from otherwise truthful statements." *Id*. at 1107. This clearly, at a bare minimum, indisputably exists in these cases.

By way of just a few examples, statements that clearly meet this threshold include, but are not limited to:

A. Mr. Reed is "**over there purely playing for blood money**. *Chamblee* ¶ 63.

B. "[n]ow he has continued his subterfuge by saying the PGA Tour could end any threat, **presumably from the Saudi blood money funding a proposed Super Golf League**, by just handing back the media rights to the players." *Chamblee* ¶ 65.

C. "…either way, whether the money is against or in addition to guarantees **its still blood money and you're still complicit in sportswashing**." *Chamblee* ¶ 90

D. "[b]y defectors I mean those who have turned their backs on the meritocracy of professional golf**. I mean those who have sold their independence to a murderous dictator and those who have sued their fellow professionals so they can benefit from the tours they are trying to ruin**." *Chamblee* ¶ 92.

These statements are, at a minimum, defamatory by implication because it is true that Mr. Reed and LIV Golf are financed by the Saudi Public Investment Fund ("PIF"), but that in no way equates to taking "blood money," being associated with terrorists, or engaging in sportswashing, as the Defendants falsely and maliciously publish. Defendants are simply taking advantage of the general public's unfamiliarity with the PIF—which as set forth in the Amended Complaints has invested in many of the most prominent businesses in America such as Disney, Uber, Boeing, Facebook, Citigroup, Bank of America, Capcom, Nexon, Electronic Arts, Take-Two Interactive, Activision Blizzard, and Berkshire Hathaway, *Chamblee* ¶ 30, and which also owns Newcastle United F.C. of the English Premier League, *Chamblee* ¶ 31—in order to push their defamatory agendas. Defendants omit from their defamatory statements any reference to the fact that Mr. Reed and LIV are simply financed by the PIF, creating the false implication to the public that they are employed by an alleged murderous regime and dictator as bad as Hitler, Stalin, Putin and Mao all rolled into one,

directly. This is textbook defamation by implication, and it was an egregious, manifest error for Judge Corrigan to have ignored this.

F. Judge Corrigan's Refusal To Summarily Deny Attorneys Fees Under Florida's Anti-SLAPP Statute Is A Departure From Established Case Law, Which Is A Manifest Error

In addition to the egregious manifest errors set forth above, Judge Corrigan has further erred by refusing to deny some of the Defendants' bogus claim for an award of attorneys and costs under Florida's Anti-SLAPP statute, which, again, is only theoretically is possible given Judge Corrigan wrongful dismissal of all fifty-five (55) defamatory statements. In doing so, Judge Corrigan writes at page 74 of his Dismissal Order, that "Federal courts sitting in diversity and applying Florida law routinely award fees under Florida's anti-Slapp statute." This is not true. One rogue court in the U.S. Southern District Court for the Southern District of Florida, which is not binding precedent in any event as it emanates not from an appeals court but a lower court, hardly amounts to a routine granting of attorneys fees and costs. The hard fact is that all other federal courts - *Abbas v. Foreign Policy Group*, 783 F.3d 1328, 1337 (D.C. Cir. 2015); *Carbone v. CNN, Inc*., 910 F.3d 1345 (11th Cir. 2018), *Van Dyke v. Retzlaff*, 781 F. App'x 368 (5th Cir. 2019) – as well as the Chief Judge of the U.S. Court of Appeals for the Eleventh Circuit, the Honorable William Pryor ("Judge Pryor"), who sits above Judge Corrigan, reject this false premise. The supporting view of Chief Judge Pryor,

Judge Corrigan's superior on the Eleventh Circuit, is conveniently relegated, diminished and reduced to a shocking mere footnote, in comparison.

Judge Corrigan also ignored *Sterling v. Doe*, 2022 U.S. Dist. LEXIS 105673 (M.D. Fla. Feb. 2, 2022), where this same Court found that the Magistrate did not need to follow *Bongino v. Daily Beast Co., LLC*, 477 F. Supp. 3d 1310 (S.D. Fla. 2020) because "as the *Bongino* court itself explains, the fee-shifting provision of anti-SLAPP laws is obviously different than the pretrial dismissal anti-SLAPP provisions which conflict with and 'answer the same question' as the Federal Rules." *Id*. at 12-13. Furthermore, as pointed out by *Sterling* in prior cases where federal courts had applied Florida's Anti-SLAPP statute, the plaintiff had "had forfeited their right to challenge the anti-SLAPP law's applications under an Erie theory at the district court level." *Id*. at 12. This is clearly not the case here, as Mr. Reed more than timely challenged the applicability of the statute.

Of course, of even more relevance to the Court is the transcript of the oral argument in *Corsi v. Newsmax Media Inc et al*, 21-10480 (11th Cir.), Exhibit 1, where the panel including the Chief Judge of the U.S. Court of Appeals for the Eleventh Circuit, Judge Pryor expressed "serious doubt" as to whether Florida's Anti-SLAPP statute could apply in federal court due its requiring a "heightened pleading standard," and also appeared to suggest that Fed. R. Civ. P. 11 answered the "same question" as Florida's Anti-SLAPP statute, rendering it inapplicable in federal court:

> There's a conflict in what the - the Florida courts even say this - in how the statute works, right?...On the one hand, at least one DCA has said it does create a heightened pleading standard, right?... The other says it doesn't….: If it does, it seems to me, then it conflicts with the federal rules and it doesn't apply…..And if it doesn't create a heightened pleading standard, then it seems to me it's procedural and it also doesn't apply…..**But either way, it seems to me the statute just doesn't apply in federal court**. Exhibit 1 at 14 (emphasis added).
>
> The thing I'm most interested, at least – I can only speak for myself - is the attorney's fees issue, and I have serious doubts about whether the anti-SLAPP statute applies in federal court. And it seems to me that if it doesn't, then a suit filed in violation of it can't give rise to an attorney's fee award.
>
> Even so, I mean, obviously, it's just, talking off the top of my head, it seems to me like a court that finds that there is a meritless suit that's been filed and it's been filed solely because the person is trying to get back at someone and inflict costs on someone for exercising their First Amendment rights in a way that they didn't like, that that would be an improper purpose. I mean, I can't imagine - it's hard for me to imagine that a court would find that that was a proper purpose [and thus sanctionable under Rule 11]." Exhibit 1 at 29 – 30.

Judge Corrigan also essentially ignored an avalanche of case law - *Abbas v. Foreign Policy Group*, 783 F.3d 1328, 1337 (D.C. Cir. 2015); *Carbone v. CNN, Inc*., 910 F.3d 1345 (11th Cir. 2018), *Van Dyke v. Retzlaff*, 781 F. App'x 368 (5th Cir. 2019); *Corsi v. Newsmax Media Inc et al*, 21-10480 (11th Cir.); *Sterling v. Doe*, 2022 U.S. Dist. LEXIS 105673 (M.D. Fla. Feb. 2, 2022) – in order to give credence to the holding of a rogue and undistingushable lower court judge in the U.S. District Court for the Southern District of Florida. This is another manifest error that must be reversed.

G. Judge Corrigan Looked Outside The Scope Of The Complaint For Defendants And Then Refused To Do So For Mr. Reed, Which Is A Manifest Error

During the course of these cases, an attorney who Mr. Reed's legal team had learned had previously worked for Judge Corrigan, Minch Minchin ("Mr. Minchin") of Shullman Fugate, PLLC, on be, sent a USB flash drive and along with documents apparently extraneous to what was pled in the amended complaints to the chambers of Judge Corrigan. ECF No. 32. Given prior experience with the lack of candor of this counsel, Mr. Minch Minchin, counsel for Mr. Reed asked Mr. Minchin to send to him what had been sent to chambers, as Mr. Reed had no way of knowing what was put before Judge Corrigan *ex parte*. However, Mr. Minchin, who has also strangely signed his clients' motion to dismiss, and now the prominently displayed lead counsel on the Defendants' recent motion asking for an award of attorneys fees and costs, despite the fact that his senior partner and lead counsel Deanna Shullman of the firm of Shullman Fugate, PLLC having signed all other pleadings in these cases, refused, when requested, to provide copies of what was sent to chambers. As a result, Mr. Klayman reasonably moved Judge Corrigan to order Mr. Minchin to provide the materials and if not to allow Mr. Reed to have Judge Corrigan provide copies to Mr. Reed and his counsel. Mr. Reed and his counsel were concerned, legitimately, given the lack of candor of Mr. Minchin in past communications that what had been provided to chambers could be prejudicial to Mr. Reed as

outside of and not relevant to what had been alleged in the Amended Complaints. This was in the context, as Judge Corrigan was advised on the record, that a relevant video by Mr. Minchin's client, Defendant Golf Channel, had been doctored. Indeed, the statement of a forensic expert had been provided to Judge Corrigan that the video had been altered to falsely show Mr. Reed allegedly cheating at *The Hero World Challenge* on December 6, 2019. That provided more even reason to see what had been provided to Judge Corrigan. However, rather than simply ordering Mr. Minchin to provide copies of what was sent "ex parte" to chambers, or the judge providing copies to Mr. Reed's counsel, Judge Corrigan finally issued this order, belatedly, two (2) months later on March 14, 2023.

> Plaintiff's Motion to Return to Defendants' Counsel USB Drive and Documents Submitted by Defendants' Counsel to Court Ex Parte Concerning Defendants' Motion to Dismiss (Doc. 41 in 3:22-cv-1059), Plaintiff's Motion for Leave to File Reply (Doc. 43 in 3:22-cv-1059), Plaintiff's Motion to Strike USB Drives and Other Exhibits and For Sanctions (Doc. 44 in 3:22-cv-1059), and Plaintiff's Motion for Leave to File Reply (Doc. 48 in 3:22-cv-1059) are **DENIED.** Providing courtesy copies is routine and does not constitute unauthorized ex parte communications.
>
> Defendants' Motion for Leave to Conventionally File Hard Copies of Exhibits (Doc. 32 in 3:22-cv-1181) is **GRANTED**. **The Court will consider the materials sent by counsel. (Emphasis Added.)**

Thus, seeing that Judge Corrigan was apparently going to consider materials outside the scope of the complaints, Mr. Reed then through counsel submitted an affidavit - same as Mr. Minchin had - authenticating, documents outside the four

corners of the Amended Complaints. Despite his prior ruling in favor of Mr. Minchin, Judge Corrigan in his Dismissal Order struck this and would not consider it. Even more, in doing so, Judge Corrigan openly and with rank condenscension mocks Mr. Reed and Mr. Klayman while protecting Mr. Minchin, who had worked for the jurist in the past:

> A few days before the July 31, 2023 hearing on the motions to dismiss, Reed filed an Affidavit with 538 pages of attachments containing cases and a Motion for Leave to Supplement the Oppositions to Motions to Dismiss. (Docs. 82, 83 in 3:22-cv-1059; 75, 76 in 3:22-cv-1181). In the motion, Reed disingenuously said the Court indicated it "would review materials outside of the four corners of the Amended Complaints" and attached 215 pages of documents containing information about Reed's purported "financial, reputational and emotional damage," and "condemnation by even PGA Tour players of the defamatory tactics" of certain Defendants, along with other outside sources. (Docs. 83 in 3:22-cv-1059; 76 in 3:22-cv-1181). These voluminous filings made only days before the hearing were both untimely and improper. The Court never indicated it would consider materials outside of the four corners of the Amended Complaints; rather, the Court said it would receive courtesy copies of electronically filed pleadings and exhibits, as is routinely done. (Docs. 54 in 3:22-cv-1059; 41 in 3:22-cv-1181). (**This also means Reed's counsel's attacks on opposing counsel who filed courtesy copies were unwarranted.)** Accordingly, the Court denies the motion for leave to supplement and strikes the affidavit. To the extent Reed cited case law in his briefing elsewhere, the Court considered those cases. (Emphasis added). ECF No. 98, fn. 27.

Judge Corrigan's intentional, conscious decision to treat the parties differently – openly favoring the Defendants at the expense of Mr. Reed – is clearly a manifest error that must be reversed. It is thus no wonder and coincidence that in the Defendants' recently filed motion for an award of attorneys fees that they have

Mr. Minchin, who is not even lead counsel for the Defendant TGC, LLC., leads the pack in signing this frivolous and flawed pleading, as they all believe that Mr. Minchin, who worked for Judge Corrigan, has a special "in " with him as a result of favoritism. *See* Defendants' Motion for Anti-SLAPP Fees. ECF No. 92.

III. Conclusion

Accordingly, Judge Corrigan's Dismissal Order must be vacated and/or reversed in its entirety for the compelling reasons set forth herein and in Plaintiff's contemporaneously filed motions titled, *Plaintiff Patrick Nathaniel Reed's Motions to Recuse the Honorable Timothy J. Corrigan Pursuant to 28 U.S.C. § 455 and 28 U.S.C. § 144* and the accompanying affidavit titled, *Affidavit in Support of Motions to Recuse the Hon. Timothy J. Corrigan Pursuant to 28 U.S.C. § 144 and § 455,* as it is comprised nearly entirely of a multitude of manifest errors which ignore, overlook, or simply gloss over well-established case law and controlling precedent in his zeal to take these entire cases into his own hands, away from the jury and then get rid of them by any means possible. This is the exact type of injustice that Rule 59 and Rule 60 were meant to rectify, and thus, Mr. Reed's motion must be granted.

Dated: October 23, 2023

Respectfully submitted,

By: */s/ Larry Klayman*_____

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CERTIFICATE OF SERVICE

I, Larry Klayman, hereby certify that on this day, October 23, 2023, I electronically filed the foregoing with the Clerk of Court using the Court's ECF procedures. I also certify that the foregoing document is being served this day on all counsel of record through the Court's eservice procedures.

*/s/ Larry Klayman*_____

MEET AND CONFER CERTIFICATION

Defendants, and their counsel, particularly Mr. Minchin, predictably oppose this motion, as they apparently welcome, approve of and profit by the extrajudicial bias, prejudice and extreme favoritism exhibited by the Honorable Timothy J. Corrigan.

/s/ L:arry Klayman
Larry Klayman, Esq.

EXHIBIT 1

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CASE NO.: 21-10480

JEROME CORSI,

Appellant,

v.

NEWSMAX MEDIA, INC., et al.,

Appellees.
_____/

TRANSCRIPTION OF AUDIO RECORDING

OF ORAL ARGUMENT

(Pages 1 to 41)

DATE: Thursday, May 19, 2022

LOCATION: 12th Floor Courtroom
James Lawrence King Federal Justice
99 Northeast Fourth Street
Miami, Florida 33132

Reported By: Gail Hmielewski
Court Stenographer

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INDEX OF PROCEEDINGS

PROCEEDINGS

THE COURT: Oh, Corsi vs. Newsmax Media. Oh, boy.

Good morning, Ms. Isaak.

MS. ISAAK: Good morning, Judge.

THE COURT: You can begin.

MS. ISAAK: May it please the Court. My name is Melissa Isaak and I represent Jerome Corsi in this matter.

And we're arguing two main points here today, Your Honors, is that the case was properly dismissed via a 12(b)(6) motion by the District Court; and also the fee provision, the fee distribution, rather, ruling by the District Court was improper because the Florida's anti-SLAPP statute does not apply in federal court; and also, which we don't - we say it does not, but, if it did, the statute was not complied with by the lower court.

THE COURT: It seems to me the actual malice requirement is a tough one for you here.

MS. ISAAK: He is a public figure and I think the actual malice standard is a hurdle for any public figure in a defamation action, however --

THE COURT: Yeah, and I just - it just doesn't

seem to me that you've alleged enough to plausibly allege actual malice.

I mean, you know, the fact that the Newsmax defendants and Fairbanks knew Corsi doesn't know - doesn't mean they know his character for truthfulness was beyond reproach or anything like that. The fact that Newsmax has sold Corsi's books doesn't imply that they entertained serious doubts about the allegation that he plagiarized a reporting.

You know, just - I look at these allegations, I'm looking for where the actual malice is alleged and I'm not seeing it.

MS. ISAAK: I understand, sir. The defendants, they called Mr. Corsi's allegations a conspiracy theory, but Mr. Corsi would offer that those who know Roger Stone would know that that is not a conspiracy theory.

We allege the complaint was properly pled under Rule 8, and also there was an affidavit submitted by Mr. Corsi where he specifies that these people know him, the defendants know him and they know that the allegations made were untrue; and not only are they untrue, they're provably false.

Mr. Corsi is not a liar. Mr. Corsi --

THE COURT: Just the fact that they know him means that they know that what he says was untrue?

MS. ISAAK: The fact that they intimately know Mr. Corsi, that they have worked with Mr. Corsi. I understand that Newsmax sold his books, however, Mr. Corsi did allege and he pled that these are, these things are provably false.

And what they called him - a liar, a plagiarist, having committed fraud - these are all things that can destroy and discredit him in his trade and profession, which would be defamation per se.

THE COURT: Yeah, but I thought -- I mean, maybe I'm wrong about this, I thought that this was on a program where it was a sort of point counterpoint and so there was an opportunity to respond to these allegations real time provided by the station.

MS. ISAAK: Well, Your Honors, Mr. Klayman, Mr. Corsi's attorney, was invited on Newsmax America Talks Live. Well, he was more lured into the program. Now, counsel for defendants say that this was a debate. Mr. Klayman did not know that he was entering into a debate. In fact, the issues

that Mr. Klayman thought were to be discussed were the public issues related to the Mueller investigation and the results involving Roger Stone's alleged crimes of perjury, witness tampering, and obstruction of justice. Mr. Klayman was not even made aware that Ms. Fairbanks was going to be on the show until directly before the show went live.

So I understand the way it was presented, that this was a debate where they had an opportunity to respond, but Mr. Klayman was not given notice that this was going to be the issue of the show.

THE COURT: Yeah, I mean, I understand. I mean, that means sounds like a legitimate gripe against Newsmax if you just want to like write them a letter or something. I guess my point is it just seems - it seems hard to tag Newsmax with the statements of, I guess it's --

MALE VOICE: Fairbanks.

THE COURT: -- Fairbanks, given that Newsmax's role was to host these people and give them an opportunity to respond.

MS. ISAAK: Yes, sir, and Mr. Corsi, again, we do believe that he's properly pled under Rule 8, and also, if they were allowed to proceed to

discovery, Mr. Corsi believes that he would have been able to prove the allegations that he did make in his complaint.

Again, this is not -- Mr. Corsi is intimately familiar with Roger Stone, and the fact that Mr. Stone worked in concert with others, as joint tortfeasors to defame Dr. Corsi, was something that he believes that he could prove had the case advanced to the discovery phase.

THE COURT: I'll tell you, the thing that I was more interested in here was attorney's fee issue, because I have doubts about whether the anti-SLAPP statute applies.

MS. ISAAK: Yes, sir. We contend the anti-SLAPP statute does not apply, well, for two reasons. First, in this case, as it applied the Florida statute, which of course is just a garden variety fee-shifting statute, however, the Florida statute states with specificity that for fees to be assessed, a hearing must be scheduled. It says shall - it doesn't say may, it says shall.

THE COURT: Well, there has to be a violation of the statute, the Florida statute, and here's the concern I have. If the statute doesn't apply in federal court, then --

MS. ISAAK: We don't think the statute applies.

THE COURT: -- then there can't be an attorney's fee based on it, can there?

MS. ISAAK: No. No, sir, you're absolutely correct.

THE COURT: Based on its violation.

MS. ISAAK: Yes, sir, it's a violation. I think that --

THE COURT: No, I'm saying there can't be an attorney's fee award based on its violation if it doesn't apply in federal court.

MS. ISAAK: That's correct. That's correct, yes.

THE COURT: And so in order to figure out whether it applies, I mean, we would compare the language of Rule 11, right --

MS. ISAAK: Correct.

THE COURT: -- with the language, the fee language in the anti-SLAPP statute, which basically says that fees would be awarded, reasonable fees would be awarded if, "A", the suit is without merit and, "B", it's primarily filed because someone exercised the First Amendment right, right?

MS. ISAAK: Yes, that's correct. That's

correct.

THE COURT: Well, if we're looking under - so if we're looking under Rule 11, then, so the question is whether that captures everything that's in there, and I guess the question then is, under Rule 11, it would have to be without merit and/or filed for an improper reason, right.

MS. ISAAK: Yes, ma'am. Yes, ma'am.

THE COURT: Okay. So the question then to me, anyway, is, if it's primarily filed because somebody has exercised a First Amendment right, does that mean it's filed for an improper reason?

MS. ISAAK: Yes, ma'am, it would, and that would directly fall under Rule 11. The anti-SLAPP statutes covers means to dispose of cases, whether it be through a 12(b)(6), through summary judgment. It also covers how to recoup attorney's fees -- I'm sorry. The rules allow, under Rule 11, where you could recoup attorney's fees, so they're saying, they're calling it "meriless" - meritless, rather --

THE COURT: They really aren't the same thing, though, are they? So Rule 11, in saying that there's an improper purpose, is not the same thing as filing a meritless lawsuit about someone's free

speech exercise.

MS. ISAAK: But the Florida anti-SLAPP statute says that the suit was filed for the purpose of silencing free speech or infringing on a First Amendment right, so therefore it would be an improper purpose under Rule 11.

THE COURT: Well, I don't know, I just -- I guess the problem with the Rule 11 argument, in my mind, is that we've said over and over and over again, and it's just common sense with the law, that if states want to have fee-shifting statutes, then they can have fee-shifting statutes for the causes of action that state law creates and those fee-shifting statutes would apply in federal court. So why isn't the way to see this as just a fee-shifting statute that, if you file a meritless defamation lawsuit, then you have to pay the other side's fees?

MS. ISAAK: Because it's more of a procedural rule. So the Florida fee-shifting statute gives a procedure to recoup on attorney's fees. The Florida federal - I'm sorry, the federal rules already have that. Rule 11 already allows for that.

THE COURT: Okay. So, I mean, we've said in

like seven different cases that statutes for the recovery of attorney's fees apply in federal court as just a general matter, so, I mean, what would make this conflict with Rule 11 specifically if just a normal state fee-shifting statute doesn't conflict?

MS. ISAAK: Well, I think if we look at most of the states' anti-SLAPP statutes, they deal with shifting burdens, they deal with heightened pleading requirements. Florida's being just a garden variety anti-SLAPP statute really is just a mirror image of the Rule 11.

THE COURT: Isn't the answer that this attorney's fee provision is tied to a pleading standard as opposed to, well, if you win a claim for - under the deceptive trade practices act, you're entitled to attorney's fees, the prevailing party's entitled to attorney's fees?

MS. ISAAK: Yes, we would offer that Rule 11 always applies to pleading standards. I think if a pleading is considered --

THE COURT: I'm not even sure you understand my --

THE COURT: Let me ask a question to follow up --

MS. ISAAK: Okay.

THE COURT: -- on Judge Pryor's question. So he said, you know, isn't - doesn't this statute impose a pleading standard, and he's talking about the part of the statute that says, you know, merits, right?

The question is, does that part of the statute impose a pleading standard or is it just if you lose, then you pay the fees? Is there a pleading standard associated with that phrase?

MS. ISAAK: The heightened standard I think that's imposed in the Florida Statute goes along with the -- There's an evidentiary burden that has to be set.

THE COURT: Okay. When you say the heightened standard, where are you getting the idea that the Florida Anti-SLAPP Statute imposes a heightened standard?

MS. ISAAK: Because the Florida Anti-SLAPP Statute says that, prior to any fees being assessed, or prior to a case being dismissed under the Florida Anti-SLAPP Statute, that it must be set for a hearing. If it has to be set for a hearing, the parties are required to produce - to submit evidence on their respective positions. Now --

THE COURT: There's a conflict in what the - the Florida courts even say this - in how the statute works, right?

MS. ISAAK: Yes.

THE COURT: On the one hand, at least one DCA has said it does create a heightened pleading standard, right?

MS. ISAAK: Correct.

THE COURT: The other says it doesn't.

MS. ISAAK: That's correct.

THE COURT: If it does, it seems to me, then it conflicts with the federal rules and it doesn't apply.

MS. ISAAK: Yes, sir.

THE COURT: And if it doesn't create a heightened pleading standard, then it seems to me it's procedural and it also doesn't apply.

MS. ISAAK: Well, yes, sir --

THE COURT: But either way, it seems to me the statute just doesn't apply in federal court.

MS. ISAAK: Yes, sir, that's what we submitted, it does not apply. Between, we have Rule 8 --

THE COURT: May I ask a follow-up question on that? I'm not sure I understand that. So if it

is - if it doesn't impose a heightened pleading standard, why isn't it just a fee-shifting statute?

MS. ISAAK: Well, there is case law that says it's just a fee-shifting standard. It says that.

THE COURT: Okay. Well, if it's just a fee-shifting statute as part of the tort of defamation in Florida law, why isn't that something that applies in federal court?

MS. ISAAK: Because we're dealing I think specifically with anti-SLAPP as it pertains to this issue, so I --

THE COURT: Okay.

THE COURT: Well, I mean, here's the thing. This is the text of the statute - the court shall award the prevailing party reasonable attorney's fees and costs incurred in connection with a claim that an action was filed in violation of this section --

MS. ISAAK: Yes, sir.

THE COURT: -- right?

MS. ISAAK: Yes, sir.

THE COURT: And the section says - sets out, basically, a procedural requirement, right --

MS. ISAAK: Yes, sir.

THE COURT: -- and says you can't file it if

the suit's without merit and if it was filed because someone exercised their free speech rights.

MS. ISAAK: That's correct, so the court would have to make a finding that that's specifically why that was --

THE COURT: Filed.

MS. ISAAK: -- filed, right, which conflicts with Rule 8. The Rule 8 pleading requirements don't have that level of a standard. And also, for the Rule 11, Rule 11 covers all of these things already.

THE COURT: Okay, I think we understand your argument.

THE COURT: Can you just address the issue of certification? I know we sent you some questions to address, one is whether we should certify this question to the Florida Supreme Court. We've already talked about the split in the intermediate appellate courts. I just want to get your position on that.

MS. ISAAK: It's a quick no. I don't think that it needs to be certified to the Florida Supreme Court, because the federal rules are clear that there are other avenues for recovery and there are other avenues for dismissal of cases.

So I think, based upon the federal case law, and based upon the procedure that's in place for the federal court, I don't think this is necessarily an issue for the state court to decide. This -- Go ahead.

THE COURT: Okay. Mr. Lerner.

MR. LERNER: Thank you, Your Honors. May it please the Court, my name is Mark Lerner and I'm here with my colleague, Julian Jackson-Fannin, and we represent the appellees, Newsmax Media, Inc., Christopher Ruddy, John Bachman, and John Cardillo.

This case is a public figure's groundless attempt to punish a media outlet for engaging in classic First Amendment protected activity because he didn't like what a guest, and only the guest, said about him on a live television broadcast.

As it did in Michel v. NYP Holdings, and numerous other cases, this Court should recognize the powerful interest in ensuring that speech is not burdened by the defense of groundless litigation and affirm the decision of the District Court in its entirety.

The facts here, which I think you're familiar and discussed a little bit before --

THE COURT: We know the facts --

MR. LERNER: Okay.

THE COURT: -- and if you want to address whether the complaint plausibly alleges actual malice, you certainly can. I don't think it does.

The thing I'm most interested, at least - I can only speak for myself - is the attorney's fees issue, and I have serious doubts about whether the anti-SLAPP statute applies in federal court. And it seems to me that if it doesn't, then a suit filed in violation of it can't give rise to an attorney's fee award.

MR. LERNER: I'm certainly happy to address the actual malice issue, although we agree, obviously, with Your Honor and with some of the skepticism addressed by the panel. So if there aren't questions on the actual malice, I am happy to move on to the questions that seem to be of more interest in terms of the application of anti-SLAPP in this case.

THE COURT: Let me ask you, before you get into the legal merits of the anti-SLAPP, do you really want attorney's fees in this case? Do you want this case to continue with additional litigation? I mean, is that, I mean --

MR. LERNER: Well, certainly, as I said

before, Newsmax is hoping and the individual defendants who didn't utter any of the allegedly defamatory statements don't want to be burdened by ongoing litigation. On the other hand, they do believe it makes sense to take advantage and send the message that this kind of lawsuit chills the speech that they should be protected from.

THE COURT: Okay.

MR. LERNER: So, yeah, I mean, it makes sense here that there is this fee-shifting that the Florida legislature has determined is important in this kind of case and that they --

THE COURT: So the question, I guess -- The reason I ask that sort of practical question is that one of our options here would be to certify this question to the Florida Supreme Court, which would, if we were to do that, would continue the litigation, right? I mean, you would just - it would just be another court, come back to us, we'd rule again, go back to the District Court, all to collect some kind of attorney's fees ward against Mr. Corsi. Do you want to do that?

MR. LERNER: Well, there is a principal at stake here and we agree, frankly, what little we do agree with with Ms. Isaak in terms of her position

that this doesn't need to be --

THE COURT: That it doesn't need to be certified.

MR. LERNER: Right, it doesn't need to be certified, exactly. So there should be no continuation of litigation on that front, because all that was applied here, frankly, was Rule 12(b)(6).

THE COURT: We appreciate your confidence in the 11th Circuit. Thank you.

MR. LERNER: Well, whether it's my confidence in the 11th Circuit or a query as to whether or not there really is a material issue of law that needs to be addressed in order for the 11th Circuit to rule on this issue, in this particular circumstance, the case doesn't turn on the answer to a material state law question because Florida law doesn't directly impose, nor did the defendants seek, a higher pleading standard here.

The court only ever cited application of Rule 12(b)(6) and the federal pleading standards under Iqbal and Twombly. There was no burden shifting undertaken, there was no heightened standard applied, nor is, actually, one called for in the language of the statute.

The language of the statute simply prohibits a lawsuit brought without merit and it provides for a person or entity may move the court for an order dismissing the action or granting final judgment in favor of that person. The person or entity may file a motion for summary judgment together with supplemental affidavit.

I mean, this just repeats that, okay, the procedure that's available to you under the federal rules is available to you here. You can file a motion to dismiss, you can file a motion for summary judgment. It doesn't stay discovery like some of the other cases do, anti-SLAPP laws do, it doesn't impose --

THE COURT: But then you would agree that there's a split in authority among the DCAs about what it does and what it doesn't do, wouldn't you?

MR. LERNER: It's not a hundred percent clear to me, honestly, Your Honor, in terms of what it does or doesn't do as far as a heightened pleading standard under the federal rules, right?

There's a question in terms of burden shifting and how you determine whether or not the case at issue falls under anti-SLAPP because there is a statement of the case being related to an

abridgement of First Amendment rights. And in Gundel, there was a question of going outside the pleadings in order to determine whether or not there was a First Amendment issue.

As far as the determination of whether the case has merit, I don't think that there's really any indication that Lam and Gundel are clearly in opposition. That question ultimately wasn't answered and again here certainly there was no heightened pleading standard applied. It was a simple 12(b)(6) plausibility standard that was applied.

And as Your Honor pointed out, Judge Pryor said, it doesn't rise to that level. There's just no plausibility on the notion that a claim of actual --

THE COURT: I agree, I agree that if, obviously, if there's no actual malice under the regular pleading standards, that's it, but for purposes of our decision on the attorney's fees issue, I mean, there is a split in authority as to whether there's a heightened pleading standard, is there not?

MR. LERNER: Again, I think the question of the heightened pleading standard goes to the burden

as far as establishing that the case falls under anti-SLAPP. That's the most you could say as far as where Gundel and Lam might be in opposition. So, but, again, it's clear on its face here there wasn't any dispute in this case. There was no heightened pleading standard, there was no --

THE COURT: But if it doesn't fall under anti-SLAPP you wouldn't be entitled to your fees even in -- I mean, right?

MR. LERNER: Yes, if it didn't fall under anti-SLAPP, but, again, this is clear on its face that the allegations of the complaint stated that the basis for the defamation claim was a broadcast from a media outlet that hosted a live public forum.

There was nowhere else you had to look, there was no heightened pleading, there was no burden-shifting to say, well, plaintiffs met this burden initially, now let's go to, sorry, defendants met this burden initially, now let's go to plaintiff to determine if they can establish that in fact it doesn't fall under anti-SLAPP, because I think the dispute in-between Gundel and Lam in terms of is there that shifting, does the plaintiff have to come forward now with evidence to

show that it doesn't fall under anti-SLAPP.

None of that is an issue here. It is clear on the face of the pleadings that this falls under anti-SLAPP because it relates to the exercise of First Amendment activity. And because it falls under anti-SLAPP, it is, as Judge Brasher said, a garden variety, and then, frankly, Ms. Isaak said, a garden variety fee-shifting.

And the court's ruling I think in Showen v. Presti (phonetic) really should be controlling. There the 11th Circuit held that Rule 11 addresses punitive sanctions, not fee-shifting, and it answers a different question from what Georgia statute was there. And the Georgia statute at issue provided for compensatory damages for frivolous suits, including attorney's fees, which is much closer to Rule 11, right. There's a frivolousness question built into the Georgia law and this court still applied that Georgia law, saying that a state's law attorney's fee provision are unequivocally substantive and then there's no question that they should apply.

And this has been supported by the Supreme Court numerous times as well, it says that Rule 11 sanctions are not fee-shifting provisions.

Sanctions under Rule 11 aren't tied to the outcome of litigation. The relevant inquiry is whether a particular filing was well-founded, so the rule only calls for an appropriate sanction and attorney's fees aren't even mandated.

In Business Guides, the Supreme Court said that the main objective of Rule 11 is not to reward parties who are victimized by litigation, it's to deter baseless filings and curb abuses and it imposes an objective standard on those who sign papers. Rule 11 authorizes sanctions to prevent repeated abuses, which may or may not be monetary sanctions.

Florida, in contrast, enacted a policy to prevent anti-SLAPP suits that would, among other things, chill free speech, whether or not they're frivolous. Meritless doesn't necessarily equal frivolous. Under Florida 768.295 --

THE COURT: But there's something, right, there's something -- So I guess what you're saying, because I asked your friend on the other side this question, is you have to have without merit and primarily because the party exercised its First Amendment rights, right?

MR. LERNER: Yes.

THE COURT: And so your friend on the other side says the part that says primarily - it was filed primarily because the party exercised its First Amendment rights is necessarily the equivalent of saying that it was filed for an improper purpose. And so your position I guess has to be it's not, is that right?

MR. LERNER: That's right. I mean, you know, there may be some incidental overlap, as the courts have talked about, that where a rule is procedural if it affects a substantive right and here, you know, it's that substantive right that the Florida courts have said you can be free from a suit of defamation that impinges free speech rights and that should result in fee-shifting if it's without merit.

THE COURT: I guess, you know, a lot of, I think even your Rule 11 argument goes to the definition of the phrase without merit, right? I mean, you read without merit to say you lose the lawsuit, that's a lawsuit without merit. It seems like maybe you could also read it to be something a little bit different to impose some kind of heightened standard.

I guess, how do we answer -- It seems like we

have to answer that question before we get to the Rule 11 issue, right? We have to decide what the standard is before we can decide whether this conflicts with Rule 11?

MR. LERNER: Well, again, I mean, you know, in order to determine whether the fee-shifting applies, right, as Your Honors have pointed out, you do have to determine whether anti-SLAPP applies, and for it to apply it has to be an action that was primarily filed because a person or entity exercised the constitutional right of free speech, but that doesn't implicate a heightened pleading standard under the federal rules or Iqbal/Twombly.

THE COURT: Your argument is that it also isn't about whether it's an improper purpose, it's just really an inquiry into was this a lawsuit about someone speaking?

MR. LERNER: Correct, right, that the focus of Rule 11 in terms of curbing abuses in the court and protecting the integrity of the court and making sure that pleadings that are filed are signed knowing that there are, you know, a factual and legal basis that aren't frivolous is protecting the integrity of the system, whereas the Florida Statute, as Your Honor pointed out, is simply a

question of is this what this case is about.

THE COURT: But it's got to be more than just the fact that the case involves First Amendment issues, right? Because it says it was filed primarily because of that. I mean, so there has to be - it has to mean something more, otherwise it would just say and the case involved the exercise of First Amendment rights, right?

MR. LERNER: Well, primarily, I mean, there's a standard of, you know, is the primary basis for this the exercise of First Amendment rights.

THE COURT: When I read that, I wondered whether that meant you might have joinder of a lot of claims.

MR. LERNER: Exactly, and it's --

THE COURT: And you might have some weird like consumer fraud or, you know, allegation or something like that, but the thrust of the suit was about someone just as a "but for" kind of matter was about them exercising speech rights.

MR. LERNER: That's exactly right.

THE COURT: I mean, that could certainly be the case. You know, that's certainly one reasonable way of looking at it, but could it also reasonably be the case that it means something

else; that, you know, that it was filed sort of in retaliation, which is what your friend on the other side says, which is kind of different, right? Because then, then, if that's the meaning of it, then it's assuming an improper purpose, right?

MR. LERNER: I mean, again, it depends on your notion of what an improper purpose is, which gets you to the question of Rule 11.

THE COURT: I mean, you can't -- I think it would be an improper purpose to file a suit without merit because you're trying to get back at someone for saying things you don't like. Why would that not be an improper purpose?

MR. LERNER: It may be an improper purpose but, again, not necessarily under the rubric of Rule 11, which I think is aimed at a different kind of relief. And, again, Rule 11 is kind of - the sanctions that it provides for are prospective sanctions. They're not retrospective compensatory --

THE COURT: Even so, I mean, obviously, it's just, talking off the top of my head, it seems to me like a court that finds that there is a meritless suit that's been filed and it's been filed solely because the person is trying to get

back at someone and inflict costs on someone for exercising their First Amendment rights in a way that they didn't like, that that would be an improper purpose. I mean, I can't imagine - it's hard for me to imagine that a court would find that that was a proper purpose. Do you disagree?

MR. LERNER: Yeah, I understand your position, Your Honor, that it may be an improper purpose, but that doesn't necessarily mean that the fee-shifting under anti-SLAPP, and if this is a garden variety fee-shifting, as Judge Brasher is suggesting, that this court regularly recognizes, then it still applies in federal court. I mean, it is a garden variety fee-shifting, because, unlike Rule 11, again, which is prospective --

THE COURT: I'm sorry, but that's kind of a different issue, right? I mean, you're, I mean, maybe you're saying it's not a different issue, you're saying it doesn't even matter. Let's assume it was for an improper purpose, it still doesn't cross over completely with Rule 11, because in Rule 11 we're trying to deter this kind of bad conduct, whereas with this anti-SLAPP statute, although I think that's also trying to deter this kind of bad conduct, we're trying to compensate

someone for having to have to deal with this, although I think under Rule 11 you'd find that, even though it's to deter the conduct, that oftentimes the punishments that will be imposed would be imposed in such a way that you're essentially making whole the party that had the improper purpose inflicted upon them.

MR. LERNER: I seem out of time, but I'm happy to --

THE COURT: You may continue to speak, and I've got a question for you.

MR. LERNER: I hear everything and acknowledge all of that, but I think that there's still daylight there; that, yes, it may be for an improper purpose, and it's possible that Rule 11 award in certain circumstances may have the effect incidentally of compensating somebody, but that still doesn't mean that it's, you know, the central question is the same and the compensation for having been burdened with this kind of suit, even, you know, a suit for an improper purpose, is a different question. The compensation question is --

THE COURT: Let me ask you this.

MR. LERNER: -- different than a deterrence

question.

THE COURT: Let me ask you, is there anything in the text of this statute that requires a court to determine the purpose or motive behind why a lawsuit was filed?

MR. LERNER: Well, only if Your Honors read --

THE COURT: Well, let's just read the words and -- I mean, is there anything in the words that says that a court has to determine the purpose behind a lawsuit to apply the anti-SLAPP?

MR. LERNER: The word purpose is not in there, right. The question is whether it was filed against another person or entity without merit and primarily because such person has exercised the constitutional right of free speech.

THE COURT: Yeah, and it's really whether that is - that primarily "because of" language is just "but for" kind of stuff, right, or whether it's imposing some kind of retaliatory standard, right? And it's just -- The question I was going to ask you about that is are you aware of any Florida case law that addresses that question?

MR. LERNER: I am not, Your Honor.

THE COURT: Okay. Is that another reason why we ought to certify it?

MR. LERNER: I don't think so, Your Honor.

I appreciate your time this morning, Your Honors.

THE COURT: How much money are you trying to get in attorney's fees?

MR. LERNER: Well, that's the subject of a separate appeal, actually, already.

THE COURT: Okay.

MR. LERNER: I mean, right now there is a judgment for $50,000.

THE COURT: Fifty thousand dollars?

MR. LERNER: I mean, approximately. It's a little bit less than that.

THE COURT: Are you sure you want to go to the Florida Supreme Court, come back here, maybe go back to the District Court, do all that just to try to get $50,000?

MR. LERNER: Well, again, no, we don't want to go to the Supreme Court to do all that because we're hoping Your Honors will affirm the decision in its entirety as we've requested today.

THE COURT: All right.

MR. LERNER: We thank you for your time.

THE COURT: Ms. Isaak, you've got five minutes.

MS. ISAAK: Yes, sir. In the Carbone case, I think the court properly referenced the Abbas case, and in the Carbone case the court said that Federal Rules of Civil Procedure 12 and 56 answer the same question about the circumstance under which a court must dismiss a case before trial.

The Abbas case talks about an order granting a special motion to dismiss under the anti-SLAPP act. The court may grant attorney's fees and costs to the prevailing party. The act does not purport to make attorney's fees available to parties who obtained dismissal by other means, such as Federal Rule 12(b)(6), such as what we have in this case. Therefore we conclude that the case should be dismissed under 12(b)(6), attorney's fees under the anti-SLAPP statute are not available to the defendants in this case. It's our position that anti-SLAPP does not apply, period - does not apply.

And as far as the argument, Your Honors, that the statute says that it was filed primarily because of someone exercising the First Amendment rights, this case was filed because Jerome Corsi was in fact injured by statements that he could prove to be false. This case was not filed, nor was there a finding that this case was filed,

primarily for the purpose of infringing on someone's First Amendment rights.

THE COURT: Now, don't say purpose; it's because of, right?

MS. ISAAK: Because of, yes.

THE COURT: Because of someone's exercise of First Amendment rights --

MS. ISAAK: Yes.

THE COURT: -- right?

MS. ISAAK: Yes.

THE COURT: I mean, you filed it because of the exercise of First Amendment rights, right?

MS. ISAAK: Filed it because he was damaged by a provable - provably false, because the statements --

THE COURT: Well, you filed it because of speech, someone's speech on a news show on TV.

THE COURT: I mean, defamation is speech.

MS. ISAAK: Defamation is speech, but defamatory statements are not protected speech and that is why this was filed. There was nothing --

THE COURT: If you find that the claim of defamation is without merit, then you're left with it being speech and it is protected, right?

MS. ISAAK: Well, I understand that, sir, but

if this - we believe if this case was allowed to go to the discovery phase, perhaps we would have had a different result.

THE COURT: I understand that.

MS. ISAAK: But I don't think that there can be --

THE COURT: Let's assume for just the sake of the argument you're going to lose on whether there was a plausible allegation of actual malice.

MS. ISAAK: Okay.

THE COURT: Okay?

MS. ISAAK: Okay.

THE COURT: Then where are we?

MS. ISAAK: Well, if we lose that there was a plausible allegation of actual malice, then I guess we're stuck with the 12(b)(6) dismissal. However, the attorney's fees provision in the District Court was awarded pursuant to the Florida anti-SLAPP statute, does not apply in this case, it does not apply in federal court, and that is our position there.

I think the federal courts have been clear, even though there's been a split in the circuit, there's - that it does not, it does not apply in federal court. And we go to the case, the Georgia

case, the Carbone case, Georgia's anti-SLAPP statute --

THE COURT: I mean, none of these cases, not Carbone, none of them have to do with an award of attorney's fees.

MS. ISAAK: I understand that, but it has to do with the applicability of the anti-SLAPP --

THE COURT: We apply state laws that provide for an award of attorney's fees for claims that arise under state law --

MS. ISAAK: Yes, sir.

THE COURT: -- or fail under state law all the time, right?

MS. ISAAK: Yes, sir.

THE COURT: So why wasn't the District Court to award -- Why was the District Court wrong to award the fees here?

MS. ISAAK: Because they awarded the fees pursuant to the anti-SLAPP statute, the Florida anti-SLAPP statute, and that's why this is wrong.

Not only -- Of course, we contend that the anti-SLAPP statute has no place in federal court, it should not be applied in federal court, but, even if it was, they did not follow their own statute, which says it required a hearing. So

there is a higher evidentiary burden for the Florida SLAPP statute that is not - that does not apply in federal court.

THE COURT: And where do you get the idea -- I mean, where in the text of the statute does the idea that there's a higher evidentiary burden come from?

MS. ISAAK: Because upon the filing of a dismissal under the Florida anti-SLAPP statute, and before the assessment of attorney's fees, a hearing must be scheduled. It says "shall". That is not something that is optional, so --

THE COURT: Yeah, but, I mean, but wouldn't you have to have a hearing to assess the attorney's fees? I mean, couldn't you apply 12(b)(6) for a motion for summary judgment, Rule 56, whatever, to the issue of merit?

Of course you have to have a hearing to assess attorney's fees. I mean, you can't, you know, just magic come out of the air, you have to determine what the attorney's fees are, that kind of stuff. Why does that impose -- The idea of having a hearing, why does that say that there's a heightened evidentiary standard on the issue of whether there's merit or not?

MS. ISAAK: I guess because the statute -- The statute, there has to be a showing that there is a violation of the anti-SLAPP statute, that this was filed primarily for - because someone exercised free speech.

And I understand what you're saying, Judge, I do. I think there's a difference here that there has to be a showing of that, but also --

THE COURT: It seems to me it's just uncontested that this is a speech case.

MS. ISAAK: Well, I would say it's --

THE COURT: I mean, the suit's about someone --

MS. ISAAK: A defamation?

THE COURT: -- speaking, right? It's a defamation suit, that's all it's about, and if it's without merit, if the claim of defamation is without merit, it was filed primarily because someone exercised their right to speak.

MS. ISAAK: I understand what you're saying, Judge, and Dr. Corsi was in fact damaged by provably false statements and it's his position that they are defamatory and at the very least he should have been allowed to go to the discovery phase and I don't even think there was an

opportunity to amend pleadings.

THE COURT: Okay. I think we understand your case, MS. ISAAK. And you've gone over, but you've been answering questions from us, so we're going to move to our last case.

MS. ISAAK: Okay.

THE COURT: Thank you.

(The audio concluded.)

C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

I, Gail Hmielewski, Court Stenographer, do hereby certify that the foregoing transcript, Pages 1 to and including 40, is a true and correct transcript of an audio recording that was provided to me of court proceedings.

The audio recording was provided to me by Larry E. Klayman, Esquire, and transcribed to the best of my ability.

Dated this 2nd day of June, 2022.

Gail Hmielewski, Court Stenographer