IN THE CIRCUIT COURT OF THE TWELTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CIVIL DIVISION

Michael T. Flynn,
Plaintiff,

v. Case No.: 2023 CA 004264 NC

Jim Stewartson,
Defendant.

_____/

DEFENDANT JIM STEWARTSON'S SECOND MOTION FOR SANCTIONS

Defendant, JIM STEWARTSON, by and through undersigned counsel, hereby moves this Honorable Court to impose sanctions pursuant to Fla. Stat. § 57.105 and this Court's inherent authority, including the award of the Defendant's reasonable attorney's fees and costs, against Plaintiff, MICHAEL T. FLYNN, and his attorneys, STEPHEN FRENCH, JARED ROBERTS, and the BINNALL LAW GROUP, and in support thereof, states as follows:

1. A party may move for the award of attorney's fees under Fla. Stat. §57.105(1) when the opposing party's allegations are (1) not supported by material facts necessary to establish the claim or defense, or (2) not supported by application of then-existing law to those material facts. A party who does not have knowledge as to whether his or her claim or defense is supportable in fact and in law is required to make reasonable efforts to obtain such knowledge. See *Bowen v. Brewer*, 936 So. 2d 757 (Fla. 2d DCA 2006).
2. While the imposition of sanctions under the Court's inherent authority is discretionary and wide-ranging, the court is required to award the prevailing party its reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court was (1) not supported by material facts necessary to establish the claim or defense, or (2) not supported by application of then-existing law to those material facts.

3. On January 31, 2024, Defendant filed his initial Motion for Sanctions [DIN #77] against the Plaintiff, which asserted that the Plaintiff knew or should have known that the allegations asserted in his Second Amended Complaint were unsupported by the material facts necessary to establish the claim or defense and/or unsupported by the application of then-existing law to those material facts. That Motion still remains pending before this Court, and this Motion is intended to be supplemental to that original Motion rather than replace the original Motion.
4. On September 29, 2025, the Plaintiff appeared for his deposition. On October 2, 2025, counsel for the Plaintiff took Mr. Stewartson's deposition. This matter is set for the trial docket of October 6, 2025 through October 24, 2025, with jury selection preliminarily set for October 10, 2025 with trial the week thereafter.
5. Pursuant to the stipulation of the parties, the Court entered an Order [DIN #203] on August 28, 2025 which set forth the stipulation of fact that the "Plaintiff is a public figure."
6. At this point in time, the Plaintiff's sole remaining claims against Mr. Stewartson is for defamation, and specifically pertains to four allegedly defamatory statements.
7. As a public figure, the Plaintiff must not only prove his case for defamation but must also prove actual malice on the part of the disseminator of the information. *Saro Corp. v. Waterman Broad. Corp.*, 595 So. 2d 87, 88-89 (Fla. 2d DCA 1992), citing *Curtis Publishing Co. v. Butts,* 388 U.S. 130 (1967). The Plaintiff carries the burden of proof on this issue. See *Mastandrea v. Snow*, 333 So. 3d 326, 327-28 (Fla. 1st DCA 2022).
8. Proving "actual malice" requires the Plaintiff demonstrate that Defendant had (a) knowledge that his statements were false or (b) acted with reckless disregard as to whether his statements were false or not. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964). For the Defendant to act with reckless disregard as to whether his statements were false or not, the defendant must have entertained serious doubts as to the truth of his publications. *St. Armant v. Thompson*, 390 U.S. 727, 731 (1968).
9. Florida courts have recognized the actual malice standard to be an "almost impossible" standard which Florida and federal courts have consistently upheld for decades in spite of criticism. *Mastandrea v. Snow*, 333 So. 3d 326, 328-29 (Fla. 1st DCA 2022)

10. Any hatred, resentment, or ill will that the Defendant may have towards the Plaintiff is insufficient to demonstrate "actual malice" and is irrelevant to such a determination. The "intention to portray [a] public figure in [a] negative light, even when motivated by ill will or evil intent, is not sufficient to show actual malice unless the publisher intended to inflict harm through knowing or reckless falsehood." *Donald J. Trump for President, Inc. v. CNN Broad., Inc.,* 500 F. Supp. 3d 1349, 1357 n.4 (N.D. Ga. 2020) (quoting *Don King Productions, Inc. v. Walt Disney Co.,* 40 So. 3d 40, 50 (Fla. 4th DCA 2010)). *See also Dershowitz v. Cable News Network,* 541 F. Supp. 3d 1354, 1370 (S.D. Fla. 2021) (political motivation irrelevant to defamation claim); *cf. Harte-Hanks Communications, Inc. v. Connaughton,* 491 U.S. 657, 666-67 (1989) (profit motive behind publication does not establish actual malice).
11. While Mr. Stewartson's asserts that his statements were opinion speech because they are not provably true or false, there may be a good faith argument to debate whether Mr. Stewartson's statements are statements of fact or statements of opinion.
12. However, the record evidence at this point in time is **totally absent** of any indicia that Mr. Stewartson made any of the four allegedly defamatory statements remaining in this lawsuit with actual malice if they were in fact statements of fact. The Plaintiff knows or should know that they will be unable to meet this very difficult standard. The Plaintiff has produced no evidence that Mr. Stewartson knew his statements were false or that he had reckless disregard to whether the statements were true and false; the uncontroverted record evidence is that Mr. Stewartson never entertained doubt that
13. Attorney's fees awarded under Fla. Stat. § 57.105 are calculated from the time it was known or should have been known that the claim had no basis in fact or law. Thus, where a claim was frivolous from the outset, the fee award should consider the defense of the claim from the beginning and not from the date of the filing of the motion for attorney's fees. See *Wood v. Haack*, 54 So. 3d 1082 (Fla. 4th DCA 2011).
14. Likewise, if a party or attorney learns that a claim has no basis in fact or law after taking the depositions of the parties and completing discovery on the eve of trial, that would be the point in time fees would accrue from.

WHEREFORE, Defendant, JIM STEWARTSON, respectfully requests that this Court (1) impose sanctions against Plaintiff, MICHAEL T. FLYNN, and his attorneys, JARED ROBERTS, STEPHEN FRENCH, and the BINNALL LAW GROUP; (2) award Defendant with entitlement to his reasonable attorney's fees, costs, and pre-judgment interest from the point in time the Plaintiff and his attorneys knew or should have known that their claims had no basis in fact and law; (3) reserve jurisdiction to determine the amount of the reasonable attorney's fees, costs, and pre-judgment interest that Defendant, JIM STEWARTSON, is entitled to; and (4) grant Defendant any other relief that this Court deems proper and just.

Dated: October 3, 2025

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served upon Stephen French, Esquire and Jared Roberts, Esquire via email to Stephen@binnall.com, Jared@Binnall.com, and Shawnay@binnall.com and via USPS Certified Mail, Return Receipt Requested on this 3rd day of October, 2025.

/s/ George A.D. Thurlow
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Attorneys for Defendant, STEWARTSON

CERTIFICATE OF CONFERRAL

I HEREBY CERTIFY that pursuant to Fla. R. Civ. P. 1.202, before filing this Motion, Defendant's attorney Craig A. Whisenhunt conferred with Plaintiff's attorney Jared Roberts on February 13, 2026, and that Plaintiff is opposed to the relief requested herein. Counsel for Defendant (Craig Whisenhunt) previously attempted conferral on January 30, 2026; February 2, 2026; February 3, 2026; February 4, 2026; and February 11, 2026 without success.

/s/ Craig A. Whisenhunt
Craig A. Whisenhunt, Esquire
FBN 81745

IN THE CIRCUIT COURT OF THE TWELTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CIVIL DIVISION

Michael T. Flynn,
Plaintiff,

v. Case No.: 2023 CA 004264 NC

Jim Stewartson,
Defendant.
_____/

SUGGESTION OF DEATH OF COUNSEL

Defendant, JIM STEWARTSON, by and through undersigned counsel, hereby gives Suggestion of Death of co-counsel of record for Defendant, GEORGE K. RAHDERT, who passed away on December 8, 2025.

This Suggestion is made for the sake of transparency and disclosure, and not for any other purpose as Defendant has two other counsel of record who have handled most of the court proceedings to date in this matter and who are prepared to handle this matter as it proceeds.

Dated: February 15, 2026

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served upon Stephen French, Esquire and Jared Roberts, Esquire via Florida E-Filing Portal on this 15th day of February, 2026.

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IN THE CIRCUIT COURT OF THE TWELTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CIVIL DIVISION

Michael T. Flynn,
Plaintiff,

v. Case No.: 2023 CA 004264 NC

Jim Stewartson,
Defendant.

_____/

DEFENDANT JIM STEWARTSON'S MOTION FOR LEAVE TO FILE MOTION FOR FINAL SUMMARY JUDGMENT & SECOND MOTION FOR SANCTIONS

Defendant, JIM STEWARTSON, by and through undersigned counsel, hereby moves this Honorable Court for leave to file a Motion for Final Summary Judgment, and in support thereof states as follows:

I. PROCEDURAL BACKGROUND

1. The Defendant seeks leave of court to file the attached Second Motion for Sanctions, which has been served but not filed (**Exhibit 1**), and the attached proposed Motion for Final Summary Judgment (**Exhibit 2**).
2. This case was last set for trial for the three-week trial term set to begin October 6, 2025 [DIN # 159].
3. After several previous attempts (including two last-minute cancellations by the Plaintiff in March and April 2025), the Plaintiff's deposition occurred on September 29, 2025. The Defendant's deposition occurred on its first scheduled date, which was October 2, 2025.
4. The transcript from the Plaintiff's deposition was not received by Defendant's counsel until October 8, 2025 at 5:18pm and the transcript from the Defendant's deposition was not received by counsel until October 16, 2025 at 12:50pm.
5. On October 3, 2025, the day following the completion of depositions, counsel for Defendants served Plaintiff with a Second Motion for Sanctions (pursuant to Fla. Stat. §

57.105), which is based upon the deposition testimony of the parties.[1] A true and authentic copy of this Motion is attached as **Exhibit 1** to this Motion. However, pursuant to Fla. Stat. § 57.105, this Motion could not be filed with the Court for at least twenty-one (21) days after service.

6. After receipt of the Second Motion for Sanctions, Plaintiff, on October 7, 2025 [DIN # 224], moved this Honorable Court for a continuance of the trial that was scheduled for October 2025 (Defendant took no position on this request at DIN # 225). Judge Lee Haworth granted Plaintiff's Motion for Continuance [DIN # 232] and this Court subsequently entered orders cancelling the trial [DIN # 227] and resetting the trial [DIN #228].
7. The Order Resetting Trial [DIN # 228] prohibits the filing of additional motions without leave of court. Specifically, the Order states "A party may set for hearing motions that predate this Order. No additional motions may be filed without Court permission."
8. As it pertains to the Second Motion for Sanctions, the motion predates this order but was not filed due to a statutory prohibition on filing before the time of the Order. Given this ambiguity, in an abundance of caution, the Defendant is seeking leave of court to file this Motion while it has also filed the motion under separate cover.
9. Upon receipt of this Order, undersigned counsel emailed opposing counsel requesting conferral on the filing of a Motion for Summary Judgment on October 8, 2025. Undersigned counsel acknowledged such an email with a response on October 10, 2025.
10. Upon receipt of the deposition transcripts, Defendant's counsel began preparing its Motion for Final Summary Judgment. This preparation was unexpectedly delayed by the sudden illness and passing of undersigned counsel's law partner GEORGE K. RAHDERT (who is also counsel of record in this case) on December 8, 2025. Coincidentally, undersigned counsel's remaining co-counsel was also in the midst of a law firm transition during this period.
11. The filing of this motion was further delayed by the lack of cooperation from Plaintiff's counsel in conferring about these matters.

[1] Defendant Stewartson filed his initial Motion for Sanctions on January 31, 2024 at DIN # 77, which was before deposition testimony of the parties.

II. LEGAL ARGUMENT

12. The general rule is that pursuant to "Leave of court shall be given freely when justice so requires." Fla. R. Civ. P. 1.190(a).[2] Public policy favors granting leave of court liberally and courts should resolve all doubts in favor of allowing leave of court. *S. Developers & Earthmoving, Inc. v. Caterpillar Fin. Servs. Corp.*, 56 So. 3d 56, 62 (Fla. 2d DCA 2011).
13. As it pertains to the Second Motion for Sanctions, the motion was prepared and served before the issuance of the Order Resetting Trial but could not be electronically filed due to a statutory provision. Additionally, motions for sanctions are typically adjudicated following the disposition of the case (or the alleged position/conduct that is alleged to be sanctionable).
14. Notably, as both a practical and legal matter, the Defendant could not have sought summary judgment before the October 8, 2025 Order Resetting Trial since "Parties to a lawsuit are entitled to discovery as provided in the Florida Rules of Civil Procedure including the taking of depositions, and it is reversible error to enter summary judgment when discovery is in progress and the deposition of a party is pending." *UFF DAA, Inc. v. Towne Realty, Inc.,* 666 So. 2d 199 (Fla. 5th DCA 1995).
15. Accordingly, the Defendant could not seek summary judgment while there were outstanding depositions, and as a practical matter, the testimony elicited in those depositions is essential for the motions.
16. While little Florida case law exists on the specific circumstances that support leave of court to file a motion for summary judgment at this admittedly late stage of the proceedings, Florida has adopted the federal standard for summary judgment.[3]
17. Under the federal summary judgment rules, a court "may consider an otherwise untimely motion if, among other reasons, doing so 'would be the course of action most consistent with the interest of judicial economy.'" *Thomas v. Kroger Co.*, 24 F.3d 147, 149 (11th Cir. 1994) (quoting *Matia v. Carpet Trans., Inc.*, 888 F.2d 118, 119 (11th Cir. 1989)). Hence, in deciding whether to permit an untimely motion for summary judgment, courts must evaluate whether deciding the motion would promote judicial economy rather than

[2] Defendant is aware that this rule pertains to pleadings and that these motions are not pleadings, but there is very limited if any case law about obtaining leave of court for activity outside the pleadings.
[3] Fla. R. Civ. P. 1.510(a) states that "The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard."

proceeding to trial. *Enwonwu v. Fulton-Dekalb Hosp. Auth.*, 286 F. App'x 586, 595 (11th Cir. 2008); *Wood v. FAU Bd. of Trs.*, 432 F. App'x 812, 816 (11th Cir. 2011).

18. It would be in the interests of judicial economy to rule on part or all of the proposed motion for summary judgment. Notably, the proposed motion for summary judgment requests that the Court decide on a critical matter of law—that is, whether the four remaining purportedly defamatory statements in the lawsuit are actionable expressions of fact or nonactionable expressions of rhetorical hyperbole or opinion. *Flynn v. Wilson*, 398 So. 3d 1103, 1111 (Fla. 2d DCA 2024), citing *Hay v. Indep. Newspapers, Inc.*, 450 So. 2d 293, 295 (Fla. 2d DCA 1984) ("Whether a statement is one of fact or one of opinion is a question of law."); *Fortson v. Colangelo*, 434 F. Supp. 2d 1369, 1379 (S.D. Fla. 2006) ("It is for the Court to decide, as a matter of law, whether the complained of words are actionable expressions of fact or non-actionable expressions of pure opinion and/or rhetorical hyperbole."). Accordingly, this is not a decision that can be left to the jury. If the statements are expressions of rhetorical hyperbole or opinion, that would entitle the defendant to summary judgment as it pertains to those statements. Then, even if the Court decides that the statements are questions of fact, there are other defenses which may be adjudicated on a motion for summary judgment. This offers the Court the possibility of either resolving the case before trial or narrowing the issues that would go before a jury at trial.

WHEREFORE, Defendant, JIM STEWARTSON, respectfully requests that this Court enter an Order granting leave of court to file his Second Motion for Sanctions and proposed Motion for Final Summary Judgment, and requests that this Court grant Defendant any further relief it deems proper and just.

Dated: February 15, 2026

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960

CERTIFICATE OF CONFERRAL

I HEREBY CERTIFY that pursuant to Fla. R. Civ. P. 1.202, before filing this Motion, Defendant's attorney Craig A. Whisenhunt conferred with Plaintiff's attorney Jared Roberts on February 13, 2026, and that Plaintiff is opposed to the relief requested herein. Counsel for Defendant (Craig Whisenhunt) previously attempted conferral on January 30, 2026; February 2, 2026; February 3, 2026; February 4, 2026; and February 11, 2026 without success.

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Craig A. Whisenhunt, Esquire
FBN 81745

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/s/ George A.D. Thurlow
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Attorneys for Defendant, STEWARTSON

EXHIBIT 1

IN THE CIRCUIT COURT OF THE TWELTH JUDICIAL CIRCUIT
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DEFENDANT JIM STEWARTSON'S SECOND MOTION FOR SANCTIONS

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2. While the imposition of sanctions under the Court's inherent authority is discretionary and wide-ranging, the court is required to award the prevailing party its reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court was (1) not supported by material facts necessary to establish the claim or defense, or (2) not supported by application of then-existing law to those material facts.

3. On January 31, 2024, Defendant filed his initial Motion for Sanctions [DIN #77] against the Plaintiff, which asserted that the Plaintiff knew or should have known that the allegations asserted in his Second Amended Complaint were unsupported by the material facts necessary to establish the claim or defense and/or unsupported by the application of then-existing law to those material facts. That Motion still remains pending before this Court, and this Motion is intended to be supplemental to that original Motion rather than replace the original Motion.
4. On September 29, 2025, the Plaintiff appeared for his deposition. On October 2, 2025, counsel for the Plaintiff took Mr. Stewartson's deposition. This matter is set for the trial docket of October 6, 2025 through October 24, 2025, with jury selection preliminarily set for October 10, 2025 with trial the week thereafter.
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7. As a public figure, the Plaintiff must not only prove his case for defamation but must also prove actual malice on the part of the disseminator of the information. *Saro Corp. v. Waterman Broad. Corp.*, 595 So. 2d 87, 88-89 (Fla. 2d DCA 1992), citing *Curtis Publishing Co. v. Butts,* 388 U.S. 130 (1967). The Plaintiff carries the burden of proof on this issue. See *Mastandrea v. Snow*, 333 So. 3d 326, 327-28 (Fla. 1st DCA 2022).
8. Proving "actual malice" requires the Plaintiff demonstrate that Defendant had (a) knowledge that his statements were false or (b) acted with reckless disregard as to whether his statements were false or not. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964). For the Defendant to act with reckless disregard as to whether his statements were false or not, the defendant must have entertained serious doubts as to the truth of his publications. *St. Armant v. Thompson*, 390 U.S. 727, 731 (1968).
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10. Any hatred, resentment, or ill will that the Defendant may have towards the Plaintiff is insufficient to demonstrate "actual malice" and is irrelevant to such a determination. The "intention to portray [a] public figure in [a] negative light, even when motivated by ill will or evil intent, is not sufficient to show actual malice unless the publisher intended to inflict harm through knowing or reckless falsehood." *Donald J. Trump for President, Inc. v. CNN Broad., Inc.,* 500 F. Supp. 3d 1349, 1357 n.4 (N.D. Ga. 2020) (quoting *Don King Productions, Inc. v. Walt Disney Co.,* 40 So. 3d 40, 50 (Fla. 4th DCA 2010)). *See also Dershowitz v. Cable News Network,* 541 F. Supp. 3d 1354, 1370 (S.D. Fla. 2021) (political motivation irrelevant to defamation claim); *cf. Harte-Hanks Communications, Inc. v. Connaughton,* 491 U.S. 657, 666-67 (1989) (profit motive behind publication does not establish actual malice).
11. While Mr. Stewartson's asserts that his statements were opinion speech because they are not provably true or false, there may be a good faith argument to debate whether Mr. Stewartson's statements are statements of fact or statements of opinion.
12. However, the record evidence at this point in time is **totally absent** of any indicia that Mr. Stewartson made any of the four allegedly defamatory statements remaining in this lawsuit with actual malice if they were in fact statements of fact. The Plaintiff knows or should know that they will be unable to meet this very difficult standard. The Plaintiff has produced no evidence that Mr. Stewartson knew his statements were false or that he had reckless disregard to whether the statements were true and false; the uncontroverted record evidence is that Mr. Stewartson never entertained doubt that
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14. Likewise, if a party or attorney learns that a claim has no basis in fact or law after taking the depositions of the parties and completing discovery on the eve of trial, that would be the point in time fees would accrue from.

WHEREFORE, Defendant, JIM STEWARTSON, respectfully requests that this Court (1) impose sanctions against Plaintiff, MICHAEL T. FLYNN, and his attorneys, JARED ROBERTS, STEPHEN FRENCH, and the BINNALL LAW GROUP; (2) award Defendant with entitlement to his reasonable attorney's fees, costs, and pre-judgment interest from the point in time the Plaintiff and his attorneys knew or should have known that their claims had no basis in fact and law; (3) reserve jurisdiction to determine the amount of the reasonable attorney's fees, costs, and pre-judgment interest that Defendant, JIM STEWARTSON, is entitled to; and (4) grant Defendant any other relief that this Court deems proper and just.

Dated: October 3, 2025

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960

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/s/ George A.D. Thurlow
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Attorneys for Defendant, STEWARTSON

EXHIBIT 2

IN THE CIRCUIT COURT OF THE TWELTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CIVIL DIVISION

Michael T. Flynn,
Plaintiff,

v. Case No.: 2023 CA 004264 NC

Jim Stewartson,
Defendant.

_____/

DEFENDANT JIM STEWARTSON'S MOTION FOR FINAL SUMMARY JUDGMENT PURSUANT TO FLA. STAT. § 768.295

Defendant, JIM STEWARTSON, by and through undersigned counsel, and pursuant to Fla. R. Civ. P. 1.510 and Fla. Stat. § 768.295, hereby moves this Court for entry of final summary judgment in his favor and in support thereof states as follows.

I. INTRODUCTION

Mr. Stewartson is being sued for exercising his First Amendment rights of voicing his opinions and expressing his viewpoints on Twitter/X regarding the acts of a prolific public and political figure. While highly critical, Mr. Stewartson's statements are not unusual political rhetoric, express Mr. Stewartson's opinion on issues of public importance, and were not made with either knowledge or reckless disregard as to whether the statements were true or false. Accordingly, summary judgment should be entered in Mr. Stewartson's favor.

This Court should also find that this lawsuit is a prohibited lawsuit against public participation under Fla. Stat. § 768.295 because it is without merit and was filed primarily because Mr. Stewartson exercised his constitutional right of free speech in connection with public issues, and this lawsuit is intended to silence, intimidate, or punish that speech.

II. PROCEDURAL BACKGROUND

While the Plaintiff's Second Amended Complaint contains voluminous allegations concerning Mr. Stewartson, the Court, by granting Mr. Stewartson's Motion to Dismiss under Fla. Stat. § 768.295 in part, has narrowed the Plaintiff's case against Mr. Stewartson to four

statements made by Mr. Stewartson which the Plaintiff alleges are defamatory. Those statements are as follows:

1. "Here it is on Mike Flynn's channel which makes perfect sense because Mike Flynn is a nazi." (DIN #59, ¶ 58, hereinafter referred to as the "Nazi Tweet")
2. "There is a reason Flynn surrounds himself with nazis. There is a reason he uses this language. He wants to be Hitler. He wants a second Holocaust. Truly. Not on our fucking watch. Rise up. Enough." (DIN #59, ¶ 65, hereinafter referred to as the "Second Holocaust Tweet")
3. "Mike Flynn employed Jack Posobiec to torture prisoners in Guantanamo while Flynn was head of @DefenseIntel. A few years later, Flynn employed Jack Posobiec to promote Pizzagate, a psyop to torture Hillary Clinton." " (DIN #59, ¶ 84, hereinafter referred to as the "Torture Tweet")
4. "Mike Flynn literally tried to murder Mike Pence with QAnon. #ArrestMikeFlynn" (DIN #59, ¶ 84, hereinafter referred to as the "Murder Tweet")

Each of these tweets included links to other tweets or online articles which they were seemingly in response to.

In its decision to not dismiss the claims regarding the Nazi Tweet and the Second Holocaust Tweet, the Court found that "Without further context, Mr. Stewartson's two comments cannot be conclusively determined to be statements of opinions (including rhetorical hyperbole) instead of statements of fact." (DIN # 75, pg. 10). In its Order, the Court did not analyze the Torture Tweet and whether it was a statement of fact or statement of opinion. The Court stated that it "cannot understand how [the Murder Tweet] is rhetorical hyperbole and not a statement of fact." (DIN # 75, pg. 11).

When this Court heard Mr. Stewartson's Motion to Dismiss, it also heard co-defendant Rick Wilson's Motion to Dismiss and/or for Summary Judgment. In hearing Mr. Wilson's Motion, Mr. Wilson requested judicial notice of a number of materials [DIN # 64] and this Court "accept[ed] judicial notice of the existence of, and contents of, the items requested by Mr. Wilson." (DIN # 75, pg. 5; *see also* DIN # 76, Jan. 19, 2024 Tr.). As the Court has taken judicial notice of these materials, these materials may also be applied to Mr. Stewartson if they are so relevant. As the Plaintiff unsuccessfully appealed this Court's decision concerning granting

summary judgment in Mr. Wilson's favor, this Court may also accept the case of *Flynn v. Wilson*, 398 So. 3d 1103 (Fla. 2d DCA 2024) as law of the case to apply. Specifically, the Second DCA's findings regarding Plaintiff's status as a quintessential public figure and the context in which reasonable readers interpret political commentary on Twitter are now established law in this matter.

III. STATEMENT OF UNDISPUTED FACTS ("SUF")

General Information

1. Mr. Stewartson authors a prolific and highly political Twitter/X profile and Substack page where his posts are largely if not exclusively political in nature, and are critical of prominent conservative political figures including General Flynn. (Stewartson Aff. ¶ 2-4). Mr. Stewartson also is a co-host of a podcast called "Radicalized Pod: Truth Survives." (Stewartson Depo Tr. 23:6-23:7).
2. As evidence of how prolific Mr. Stewartson is on Twitter/X, Mr. Stewartson stated he has tweeted 120,000 times in the past five years. (Stewartson Depo. Tr. 11:10-11:12; Stewartson Aff. ¶ 2).
3. As a political commentator, Mr. Stewartson's audience both understands and expects that he will utilize subjective and hyperbolic language that comport with his political beliefs and opinions. (Stewartson Aff. ¶ 5-6).
4. The use of subjective and hyperbolic language in political posts on Twitter/X and Substack is common across the ideological spectrum. (Stewartson Aff. ¶ 7).
5. As a political commentator, Mr. Stewartson expects that his readers have at their mental disposal prior widely publicized news stories that have been familiar to essentially anyone who followed the news as well as any content that I have previously posted or specifically reference within a post. (Stewartson Aff. ¶ 8).
6. General Flynn is a " quintessential public figure. As a lieutenant general in the United States Army, he played a key leadership role in the Afghanistan and Iraq wars. He is a former head of the Defense Intelligence Agency and a former National Security Adviser to President Donald Trump. Flynn has continued to maintain a high public profile, including in the aftermath of the 2020 presidential election and in the public debate

surrounding Russia's 2022 invasion of Ukraine." *Flynn v. Wilson*, 398 So. 3d 1103, 1106 (Fla. 2d DCA 2024).

7. After his retirement from the military, General Flynn chose to take on a public, high-profile role. (Flynn Depo Tr. 106:3-106:6). General Flynn voluntarily got involved in politics. (Flynn Depo Tr. 30:17:-30:19)
8. Mr. Stewartson stated that he believes all four statements are protected opinion speech. (Stewartson Depo Tr. 70:11-70:14).
9. Flynn admitted that he was the subject of a criminal investigation where he ultimately pled guilty to one count of willfully and knowingly making materially false statements and omissions to the Federal Bureau of Investigation ("FBI"),on December 1, 2017 (DIN #64, pgs. 7-12, 14-92; Flynn Depo Tr. 136:7-136:22).
10. Flynn admitted that his guilty plea in 2017 damaged his reputation. (Flynn Depo. Tr. 137:8-137:10).
11. The criminal prosecution of General Flynn was widely publicized in national media outlets. (*see* DIN #64, pgs. 167-173)
12. General Flynn alleged that Mr. Stewartson's statements, which began in 2020, caused him to lose employment opportunities with business such as Adobe, SAIC, and Booz Allen. (Flynn Depo Tr. 81:3-82:2, 83:16-83:17). However, when probed, Flynn admitted that he had not done any business for those companies since he pled guilty to a crime in 2017. (Flynn Depo. Tr. 136:24-137:7). Flynn further admitted that he never worked for Booz Allen (Flynn Depo Tr. 82:17-82:22; 138:10-138:12) and that he only did work for Adobe between 2015 and 2017 (Flynn Depo. Tr. 83:22-83:24).
13. General Flynn stated that he has a consulting and advising business consisting of not-for-profit and private clients. (Flynn Depo Tr. 10:11-10:25).
14. In spite of his criminal prosecution and Mr. Stewartson's tweets, General Flynn has served on the West Point Advisory Board as a Presidential appointee since April 2025. (Flynn Depo Tr. 11:7-11:24). General Flynn has no knowledge of Mr. Stewartson's tweets affecting his appointment. (Flynn Depo Tr. 12:8-13:2).
15. When asked whether Mr. Stewartson has the right to share his beliefs online, General Flynn's response was "I believe [Stewartson]'s lying." (Flynn Depo Tr. 104:11-104:17). However, General Flynn offered no factual support of this belief.

16. General Flynn stated that he was "brutally attacked" by his "own government," and because of that "people like Stewartson jumped on the bandwagon." (Flynn Tr. 106:13-106:17).
17. General Flynn believes that Mr. Stewartson "has said things that are so, so dangerous and attacked [him] personally." (Flynn Depo Tr. 105:13-105:15).
18. Yet, while General Flynn testified he has received death threats (Flynn Depo Tr. 32:5-32:7), General Flynn does not know whether Mr. Stewartson, and specifically the tweets in question, played any role (Flynn Tr. 31:23-32:3).
19. However, General Flynn admitted that he does not know what going through Stewartson's head in terms of determining whether Mr. Stewartson's statement is intended to be factual. (Flynn Tr. 107:6-107:10). Flynn reiterated this testimony by stating that "I don't know what [Stewartson]'s intending or what he's, you know, what he's getting at. I really don't." (Flynn Depo. Tr. 107:22-107:25).
20. General Flynn led chants of "Lock her up"—urging the imprisonment of Hillary Clinton, the political opponent of the Republican candidate for President—at the 2016 Republic National Convention. (Flynn Depo Tr. 111:19-113:9).
21. General Flynn asserts that the damages he incurred include mental and emotional harm, as well as a "real potential for physical harm." (Flynn Depo Tr. 71:21-73:6).
22. Flynn cannot attribute any reputational harm directly to Jim Stewartson. When asked for examples of whether he has dealt with someone who has believed Mr. Stewartson's statements, he prefaced one example by saying "I don't know whether it was directly related to him." (Flynn Depo. Tr. 74:1-74:5).
23. General Flynn alleges that he suffered humiliation and embarrassment as a result of Mr. Stewartson's tweets through "just the way people look at you" and people coming up to him calling him a traitor. (Flynn 75:21-76:19, 76:23-77:1). However, General Flynn admitted that he has "No idea" whether the people who have treated him this way have ever read Mr. Stewartson's tweets (Flynn Depo Tr. 76:20-76:22).
24. When asked how he knows that Mr. Stewartson's statements are false, General Flynn offered no factual support. (Flynn Depo. Tr. 70:4-71:10).
25. When asked if people who see Mr. Stewartson's tweets believe them, General Flynn responded that he did not know. (Flynn Depo Tr. 26:10-26:14).

26. When asked whether he knew that Mr. Stewartson's statements were not his genuine opinion, Flynn offered no factual support and instead made general accusations of "lying" and that the "pattern and a consistency and a duration that Stewartson has demonstrated" in making his statements somehow support Flynn's position. (Flynn Depo Tr. 85:15-86:11).
27. General Flynn declined to answer how he could isolate the damages he alleged to have incurred from the four remaining statements in this lawsuit compared to the ten (10) statements that were dismissed by this Court under Florida's anti-SLAPP statute. (Flynn Depo. Tr. 34:13-36:13).
28. General Flynn himself uses intense rhetoric on Twitter/X, including calling the American Library Association "Marxist thugs." (https://twitter.com/GenFlynn/status/1673418714052456455)

The Nazi Tweet

29. Mr. Stewartson admits that he made the Nazi tweet. (Stewartson Depo Tr. 26:22-27:5; Stewartson Aff. ¶ 9).
30. Mr. Stewartson based the Nazi Tweet on a "quote tweet [of Flynn's] channel, his Telegram channel, which was full of literal Nazis, people saying that they want death to Jews and all of the things that Nazis do. And in my opinion, and this is just this tweet allowing that and encouraging this behavior, which is demonstrated on his channel, to me, that is, if -- if you are encouraging Nazis, then that makes you a Nazi, in my opinion." [sic] (Stewartson Depo. Tr. 27:7-27:14).
31. The Nazi Tweet also included a restatement of a previous tweet Mr. Stewartson made on August 26, 2021 concerning "The Great Replacement Theory," which is a white nationalist conspiracy claim that suggests elites are intentionally replacing white and Christian populations with nonwhite and non-Christian immigrants to undermine Western societies. (Stewartson Aff. ¶ 10).
32. The August 26, 2021 tweet also referenced a post on Telegram by an individual named "White Power Wilson" who posted on the @RealGenFlynn Telegram channel in response to an article shared by that channel which compared vaccine mandates and vaccine

passports to Germany in 1938, when the Gestapo demanded papers from every German. (Stewartson Aff. ¶ 11).

33. Mr. Stewartson believes that I the @RealGenFlynn Telegram channel is controlled by General Michael T. Flynn. (Stewartson Aff. ¶ 12).
34. Mr. Stewartson further identified that "There are thousands of things" that General Flynn said that led him to state that General Flynn is a Nazi. (Stewartson Depo. Tr. 27:15-27:18). Mr. Stewartson stated he observed General Flynn promote an eliminationist, antisemitic, racist, anti-immigrant, and authoritarian ideology, and that ideology fits within his understanding of a "national socialist" or "Nazi" ideology. (Stewartson Depo. Tr. 27:20-28:7)
35. Notably, General Flynn's understanding of what Nazi means is "National Socialism." (Flynn Depo Tr. 50:18-50:21).
36. When asked how he would prove that he is not a Nazi, General Flynn did not state any ideological reasons but rather stated the he had "taken the oath of - -office, constitution oath of office multiple times for different positions in the United States government, and - - and swore that oath and still live by it." [sic] (Flynn Depo Tr. 52:17-52:22).
37. General Flynn was identified by Professor Samuel Perry at the University of Oklahoma as being "a martyr and a mascot for the far-right contingent of the Christian nationalist movement in the United States." Professor Perry explained that "The vision of Christian nationalism is that we need to take the country back for Christian priorities, Christian values. We need to make America Christian again." (DIN # 64, pg. 215)
38. General Flynn was photographed with James Hoel, who is a member of a group known as The Proud Boys
39. It was widely reported that General Flynn suggested than a Myanmar-like coup, which resulted in a security force crackdown, take place in the United States. (DIN 64, pgs. 225-228, 297-298).
40. General Flynn admitted to using the phrase "Where we go one, we go all," which he knows to have been attached to the QAnon movement and was photographed taking what is known to be the QAnon "oath." (Flynn Depo Tr. 135:10-135:23; DIN # 64, pgs. 230-232, 294; *Flynn v. Wilson*, 398 So. 3d 1103, 1108 (Fla. 2d DCA 2024)).

41. It was widely reported that the QAnon "oath" taken by General Flynn and his family is "part of an effort to organize 'digital soldiers' for an apocalyptic reckoning, when thousands of 'deep state' pedophiles will be arrested and sent to military tribunals at Guantanamo Bay." (DIN # 64, pg. 232)
42. It was widely reported that General Flynn "became a celebrated QAnon figure." (DIN # 64, pg. 261).
43. Flynn does not dispute that "he has authorized the sale of Flynn-themed t-shirts, hats, and other merchandise affixed with highly specific slogans commonly associated with QAnon, such as WWG1WGA." *Flynn v. Wilson*, 398 So. 3d 1103, 1108 (Fla. 2d DCA 2024).
44. Mr. Stewartson's statement "Mike Flynn is a nazi" was an opinion he formed based upon the @RealGenFlynn Telegram channel (a screenshot of which was included in his tweet), the link to the article shared on that Telegram channel, and his understanding of General Flynn's relationship to Christian nationalism, hate groups like The Proud Boys, and his participation in an effort to send thousands of people to Guantanamo Bay. Mr. Stewartson provided his social media followers with the materials he formed this opinion upon. (Stewartson Aff. ¶ 13)
45. Mr. Stewartson did not intend for the Nazi Tweet to convey that General Flynn was a member of the **Nazi Party**, officially the **National Socialist German Workers' Party** (German: *Nationalsozialistische Deutsche Arbeiterpartei* or **NSDAP**), which was a far-right political party in Germany active between 1920 and 1945 that created and supported the ideology of Nazism. (Stewartson Aff. ¶ 14).
46. Mr. Stewartson's intent of the Nazi Tweet was to communicate his belief and opinion that General Flynn has a nazi ideology. (Stewartson Aff. ¶ 15).
47. It is commonplace on platforms like Twitter and X for political debates to result in comparing someone to Hitler or calling them a Nazi, and in fact, this phenomena is known as Godwin's Law. Godwin's Law is an internet adage stating that as an online discussion continues, the probability of a comparison involving Hitler or Nazis approaches one. Created by Mike Godwin in 1990, the law was intended as a warning against the tendency for debates to quickly devolve into extreme and often lazy comparisons, thereby destroying constructive dialogue. (Stewartson Aff. ¶ 16).

48. Mr. Stewartson did not know that the statement he made in the Nazi Tweet was false at the time he made it. (Stewartson Depo Tr. 67:18-67:20).
49. At the time he made the Nazi Tweet, Mr. Stewartson did not entertain serious doubts about whether the Nazi Tweet was true or false. (Stewartson Depo Tr. 67:21-67:24).

The Second Holocaust Tweet

50. Mr. Stewartson admits to having posted the Second Holocaust Tweet (Stewartson Depo Tr.; Stewartson Aff ¶ 17).
51. The Second Holocaust Tweet consisted of a retweet of a previous tweet from Mr. Stewartson dated November 15, 2021 regarding a comment General Flynn made at a public event as well as a screenshot of General Flynn's Telegram Channel and a picture of the Ku Klux Klan from the 1930s. (Stewartson Aff ¶ 18).
52. The Second Holocaust Tweet was intended to convey Mr. Stewartson's opinion that, based upon General Flynn's public comments, interactions with neo-nazis on social media, and rhetoric, General Flynn wants to be Hitler and wants a Second Holocaust. . (Stewartson Aff ¶ 19).
53. To wit, Mr. Stewartson based the Second Holocaust tweet based upon General Flynn's "own output on his Telegram channel, where he is using Nazi concepts. Nazi -- the – the entire channel was full of -- of Nazis. And the end result of this kind of rhetoric, which he is promoting, is Holocaust." [sic] (Stewartson Depo Tr. 29:5-29:9). Mr. Stewartson understands the term Holocaust to mean "A genocide of -- of humans based on fascist ideology." (Stewartson Depo Tr. 29:15-29:16). Mr. Stewartson understands the term genocide to mean "a systematic murder of a specific kind of person." (Stewartson Depo Tr. 29:19-29:20).
54. General Flynn has previously stated that "We are a faith-based society, and that's in our DNA. It's in the DNA of the United States of America." (DIN # 64, pg. 200).
55. General Flynn admitted to saying "One nation under God and one religion under God" at an event in 2021. (Flynn Depo Tr. 54:23-55:1).
56. General Flynn has previously stated that "We're in a world war against a messianic mass movement of evil people. Let us accept what we were founded upon, a Judeo-Christian ideology built on a moral set of rules and laws. Let us not fear, but instead fight those

who want to impose Sharia law and their radical Islamist views. There is no escape from this war. Our enemies will not permit that. We will either win or lose, and at present, we look like losers." (DIN # 64, pg. 206). Mr. Stewartson was aware of this statement at the time he made the Nazi and Second Holocaust Tweets, and used this statement to further corroborate his opinions in those tweets. (Stewartson Aff ¶ 20).

57. General Flynn has stated that "We must recognize that America has enemies in our homeland and abroad. Radical Islam, metastasizing throughout the world." (DIN # 64, pg. 207). Mr. Stewartson was aware of this statement and similar statements at the time he made the Nazi and Second Holocaust Tweets and used this statement to corroborate his opinion. (Stewartson Aff ¶ 21).
58. To the extent it contained any statements of fact, Mr. Stewartson did not know that the statement he made in the Second Holocaust Tweet was false at the time he made it. (Stewartson Depo Tr. 68:14-68:18).
59. At the time he made the Second Holocaust Tweet and to the extent it contained any factual statements, Mr. Stewartson did not entertain serious doubts about whether the Second Holocaust Tweet was true or false. (Stewartson Depo Tr. 68:19-68:22).

The Torture Tweet

60. On or around March 28, 2023, Mr. Stewartson tweeted "Mike Flynn employed Jack Posobiec to torture prisoners in Guantanamo while Flynn was head of @DefenseIntel. A few years later, Flynn employed Jack Posobiec to promote Pizzagate, a psyop to torture Hillary Clinton." This tweet was in response to a tweet from Jack Posobiec that said "Thanks to @GenFlynn for having my back[.] For those who don't know the backstory, I served at Guantanamo Bay with DIA many moons ago when Flynn was DIA Director." (Stewartson Aff. ¶ 22).
61. Mr. Stewartson based the Torture Tweet on "Jack Posobiec's words. Jack Posobiec brags about having, you know, worked under Flynn while he was at DIA, and he brags about interrogating detainees at Guantanamo while he was working for Mike Flynn. You can argue about whether torture happened in Guantanamo or if you -- if you want, but -- but the ACLU and numerous humanitarian organizations believe there was a lot of torture that went on in that facility." (Stewartson Depo Tr. 30:13-30:20). Stewartson was "aware

that Mike Flynn was the head of the organization that Jack Posobiec was working for." (Stewartson Depo Tr. 31:17-31:18).

62. General Flynn does not recall whether he met Jack Posobiec before or after the time he retired from the military in 2014. (Flynn Depo Tr. 125:10-125:23). However, General Flynn did testify that he is aware that Jack Posobiec served at Guantanamo Bay in an intelligence capacity at the Defense Intelligence Agency, that he had a superior or more senior rank than Mr. Posobiec, that Mr. Posobiec would have followed any orders that General Flynn would have given him, and that General Flynn provided direct orders to 20,000 or more people under his command. (Flynn Depo. Tr. 65:9-66:10, 67:21-67:23).
63. The Torture Tweet was an opinion that Mr. Stewartson formed based upon his understanding of the activities conducted by the Defense Intelligence Agency at Guantanamo Bay during which General Flynn and Jack Posobiec had influence over the facility. Mr. Stewartson formed this understanding through consuming news reports about Guantanamo Bay and the events that transpired at that facility for many years. (Stewartson Aff. ¶ 23).
64. Mr. Stewartson had also reviewed an article published in *Philadelphia Magazine* on or around September 16, 2017 titled "How Jack Posobiec Became the King of Fake News."[1] This article stated that in 2012, Jack Posobiec "pulled a 10-month deployment at Guantanamo Bay, where he was part of the team that interrogated prisoners and rewarded the cooperative ones with hamburgers, *Lost* DVDs and Harry Potter books." Based on his understanding of what happened at Guantanamo Bay in 2012, Mr. Stewartson believes that the interrogation of prisoners during that era constituted torture. To wit, the article also discussed that Mr. Posobiec was regularly asked how many people he waterboarded while serving at Guantanamo Bay. (Stewartson Aff. ¶ 24).
65. Mr. Stewartson understands waterboarding to be a form of torture, and Mr. Posobiec's comment in the *Philadelphia Magazine* article supports that there is a widespread perception that Mr. Posobiec tortured prisoners at Guantanamo Bay under General Flynn's supervision, and that this perception existed years before Mr. Stewartson made the Torture Tweet. (Stewartson Aff. ¶ 25).

[1] https://www.phillymag.com/news/2017/09/16/jack-posobiec-trump-fake-news/

66. To the extent the tweet contained any statements of fact, Mr. Stewartson did not know that the statement he made in the Torture Tweet was false at the time he made it. (Stewartson Depo Tr. 69:7-69:10).
67. At the time he made the Torture Tweet, to the extent that his tweet contained any statements of fact, Mr. Stewartson did not entertain serious doubts about whether the Torture Tweet was true or false. (Stewartson Depo Tr. 69:11-69:14).

The Murder Tweet

68. On or around April 5, 2023, Mr. Stewartson tweeted "Mike Flynn literally tried to murder Mike Pence with QAnon. #ArrestMikeFlynn" (hereinafter referred to as the "Murder Tweet"). (Stewartson Aff. ¶ 26).
69. The Murder Tweet contained a link to an article Mr. Stewartson published on Substack titled "'Hang Mike Pence'—Mike Flynn's Plan to Become Vice President." That article is available at https://www.mind-war.com/p/hang-mike-pence-mike-flynns-plan?utm_source=publication-search and contains a video. The article contains Mr. Stewartson's opinion that "Given Mike Flynn's anger at Pence for, in Flynn's view, taking his place as VP, and the fact that the crowd on 1/6 was in a frenzy to literally hang Pence in front of the Capitol, it seems to me that Attempted First Degree Murder would be an appropriate charge to add to Flynn's indictment for Seditious Conspiracy, Espionage and Treason." (Stewartson Aff. ¶ 27).
70. Mr. Stewartson based the Murder Tweet upon his "observation." (Stewartson Depo Tr. 32:22-32:24). Those observations were "were Mike Flynn and his entire coterie around him promoting conspiracy theories about Mike Pence, leading up to January 6th. His associate, Ivan Raiklin, who calls himself a loyal digital soldier for Mike Flynn, created the Pence card, which was the strategy to pressure Mike Pence into not validating the election. And Mike Flynn's associates from Proud Boys, Oath Keepers, and QAnon were all advocating for hunting him down and ultimately hanging him. And according to reports, they came within 100 feet." (Stewartson Depo. Tr. 33:5-33:15).
71. General Flynn "has seen [Ivan] Raiklin at political/social events throughout the years and would consider him to be an acquaintance. Mr. Raiklin also serves on the board of a non-

profit organization, America's Future, with [General Flynn]." (Flynn Response to Interrogatories No. 17).

72. General Flynn was present in Washington D.C. on January 6, 2021, and attended the rally on the White House lawn. (Flynn Depo. Tr. 68:9-68:19). General Flynn is also aware that "Hang Mike Pence" was chanted (69:24-70:1).
73. At a December 2020 rally, General Flynn stated that "Inside of this barricade, we're going to knock those walls down, OK? We're going to knock those walls down. So be proud, be proud as Christians, be proud as patriots." (DIN # 64, pg. 211).
74. General Flynn was reported to have "bec[o]me a chief promoter of the 'Stop the Steal' effort, which culminated in the Jan. 6 insurrection at the Capitol." (DIN # 64, pg. 209).
75. On January 5, 2021, General Flynn stated to conservative political commentator Alex Jones that "Donald Trump will continue to be the president of the United States for the next four years. There's no doubt in my mind." (DIN # 64, pg. 211).
76. On the evening of January 5, 2021, General Flynn spoke to a large crowd at Freedom Plaza in Washington DC where he stated "In our DNA, we feel freedom, we bleed freedom and we will sacrifice for freedom. The members of Congress, those of you who are feeling weak tonight, those of you that don't have the moral fiber in your body, get some tonight, because tomorrow we the people are going to be here. And we want you to know that we will not stand for a lie!"
77. During Congressional hearings, General Flynn invoked the Fifth Amendment against self-incrimination when he was asked the questions "Do you believe the violence on Jan. 6 was justified legally?" and "Do you believe the violence on Jan. 6 was justified morally?". (DIN # 64, pg. 212).
78. *The New York Times* reported on February 6, 2021 that General Flynn "was one of the most extreme voices in Mr. Trump's 77-day push to overturn the election, a campaign that will be under scrutiny as the former president's second impeachment trial gets underway next week." (DIN # 64, pg. 290)
79. To the extent it contained any factual statement(s), Mr. Stewartson did not know that the statement(s) he made in the Murder Tweet was false at the time he made it. (Stewartson Depo Tr. 69:18-69:21).

80. At the time he made the Murder Tweet, Mr. Stewartson did not entertain serious doubts about whether the Murder Tweet was true or false. (Stewartson Depo Tr. 69:22-69:25).
81. It is indisputable that "QAnon," as loose organization of individuals with varying degrees of committed adherence to conspiracy theories, is not a tangible weapon with which a person could be murdered. Thus, the tweet's plain language signals its rhetorical hyperbole. (Stewartson Aff. ¶ 28).

IV. THE STANDARD FOR SUMMARY JUDGMENT

Under Florida's standard for summary judgment, a Motion for Summary Judgment may be granted if the pleadings, discovery, and affidavits from the parties show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law. See Fla. R. Civ. P. 1.510; *Moore v. Morris*, 475 So. 2d 666, 668 (Fla. 1985); *Celotext Corp. v. Catrett*, 477 U.S. 317, 323-324 (1986). A genuine issue of material fact is one where the evidence of the issue is probative enough that a reasonable jury could find in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

"Summary judgment is designed to bring the case to final resolution in an expedient fashion, if appropriate." *State Farm Mutual Automobile Insurance Co. v. Figler Family Chiropractic, P.A.*, 189 So. 3d 970, 974 (Fla. 4th DCA 2016). This objective comports with the mandate of *Fla. R. Civ. P*. 1.010 "to secure the just, speedy, and inexpensive determination" of disputes.

Summary judgment may be granted in whole, or by each claim or defense (or part thereof) to which these is no genuine dispute as to any material fact. Fla. R. Civ. P. 1.510(g); *Pointer Oil Co. v. Butler Aviation of Miami*, 293 So. 2d 389 (Fla. 3d DCA 1974). Even if this Court denies summary judgment in full, there are certain issues (such as whether each statement is a statement of opinion, rhetorical hyperbole, or fact) that are matters of law that should be resolved by the Court in advance of trial.

Notably, the procedure for Summary Judgment provided for under Fla. Stat. § 768.295 differs from that under the Florida Rules of Civil Procedure. Under Fla. Stat. § 768.295(4) a hearing for summary judgment shall be set by the Court "as soon as practicable." That differs

from Fla. R. Civ. P. 1.510, which requires that a Motion for Summary Judgment be served at least forty (40) days before the scheduled hearing time without leave of Court.

V. THE LEGAL STANDARD FOR PLAINTIFF'S CASE

1. This Court must first determine whether Mr. Stewartson's statements are actionable expressions of fact or nonactionable expressions of rhetorical hyperbole or opinion.

A threshold issue of law exists as to whether Mr. Stewartson's statements are actionable expressions of fact or nonactionable expressions of rhetorical hyperbole or opinion. *Flynn v. Wilson*, 398 So. 3d 1103, 1111 (Fla. 2d DCA 2024), citing *Hay v. Indep. Newspapers, Inc.*, 450 So. 2d 293, 295 (Fla. 2d DCA 1984) ("Whether a statement is one of fact or one of opinion is a question of law."); *Fortson v. Colangelo*, 434 F. Supp. 2d 1369, 1379 (S.D. Fla. 2006) ("It is for the Court to decide, as a matter of law, whether the complained of words are actionable expressions of fact or non-actionable expressions of pure opinion and/or rhetorical hyperbole."). This analysis of whether Mr. Stewartson's statements are rhetorical hyperbole, opinion, or fact should take place for each of the four remaining statements in this lawsuit. If the Court finds that Mr. Stewartson's statements are either opinion or rhetorical hyperbole as a matter of law, this Court need not conduct further analysis as such statements will be deemed non-actionable and protected.

To conduct this analysis, the Court must:

> construe the statement in its totality, examining not merely a particular phrase or sentence, but all of the words used in the publication. The court must consider the context in which the statement was published . . . . All of the circumstances surrounding the publication must be considered, including the medium by which it was disseminated and the audience to which it was published.

Hay v. Indep. Newspapers, Inc., 450 So. 2d 293, 295 (Fla. 2d DCA 1984), citing citing *Info. Control Corp. v. Genesis One Comput. Corp.*, 611 F.2d 781, 784 (9th Cir. 1980). As Mr. Stewartson's statements are inherently political, it is necessary to read the entire publication in context, not simply the offending words. *Dockery v. Fla. Democratic Party*, 799 So. 2d 291, 295 (Fla. 2d DCA 2001), citing *Pullum v. Johnson*, 647 So. 2d 254, 258 (Fla. 1st DCA 1994). The publications that are in question are "not to be dissected and judged word for word or phrase by

phrase, the entire publication must be examined." *Dockery v. Fla. Democratic Party*, 799 So. 2d 291, 295 (Fla. 2d DCA 2001), citing *Desert Sun Publishing Co. v. Superior Court for Riverside County*, 158 Cal. Rptr. 519, 521, 97 Cal. App. 3d 49, 52 (1979).

Statements on matters of public concern must be provable as false before there can be liability under state defamation law. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19-20 (1990). In *Milkovich*, the Court held that a statement that a public figure showed "abysmal ignorance" by "accepting the teachings of Marx and Lenin" was found to not be actionable. *Id*.

"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 v. Tallahassee Democrat, Inc.*, 400 So. 2d 52, 57 (Fla. 1st DCA 1981); see also Restatement (Second) of Torts § 566 (1977) (describing pure opinion as "a comment as to the plaintiffs conduct, qualifications or character").

"Pure opinion is [also] based upon facts that the communicator sets forth in a publication, or that are otherwise known or available to the reader or the listener as a member of the public." *Zambrano v. Devanesan*, 484 So. 2d 603, 606-07 (Fla. 4th DCA 1986). "Commentary or opinion based on facts that are set forth in the article or which are otherwise known or available to the reader or listener are not the stuff of libel." *Rammsen v. Collier County Publ'g Co.*, 946 So. 2d 567, 571 (Fla. 2d DCA 2006). Based upon the law of this case, a reasonable reader encountering tweets subject to this litigation would also have had at their mental disposal prior widely publicized news stories that have been familiar to essentially anyone who followed the news, and thus statements concerning these matters are matters of opinion. *Flynn*, 398 So. 3d at 1113. Pure opinion is protected free speech under the First Amendment to the U.S. Constitution, and is not actionable under a cause of action of defamation. *Zambrano*, 484 So. 2d at 606-07.

"Rhetorical hyperbole" and "imaginative expression," which the U.S. Supreme Court has held to have "traditionally added much to the discourse of our Nation," is also protected as opinion. *Pullum v. Johnson*, 647 So. 2d 254, 256-57 (Fla. 1st DCA 1994), citing *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990). Rhetorical hyperbole may "at first blush appear to be factual." *Fortson v. Colangelo*, 434 F. Supp. 2d 1369, 1378-79 (S.D. Fla. 2006), citing *Standing Comm. on Discipline of U.S. Dist. Court for Cent. Dist. of Cal. v. Yagman*, 55 F.3d 1430, 1438 (9th Cir. 1995). The legal protection of rhetorical hyperbole recognizes "the reality that

exaggeration and non-literal commentary have become an integral part of social discourse." *Levinsky's, Inc. v. Wal-Mart Stores, Inc.*, 127 F.3d 122, 128 (1st Cir. 1997). By protecting speakers of such statements, courts "provide[ ] assurance that public debate will not suffer for lack of 'imaginative expression' or the 'rhetorical hyperbole' which has traditionally added much to the discourse of our Nation." *Milkovich v. Lorain J. Co.*, 497 U.S. 1, 20 (1990), citing *Hustler Mag. V. Falwell*, 485 U.S. 46, 53-55 (1988). The forum and context of the speech also contributes to whether a statement may be considered rhetorical hyperbole. *Herring Networks, Inc. v. Maddow*, 445 F. Supp. 3d 1042, 1050 (S.D. Cal. 2020); *Flynn*, 398 So. 3d at 1113. This is because audiences expect political commentators to use subjective language that comport with their political opinions. *Herring Networks, Inc.*, 445 F. Sup 3d at 1050. Based upon the law of this case, partisan political disagreements underscore that reasonable readers of a particular Twitter feed will expect the author of those posts to be hyperbolic and highly subjective. *Flynn*, 398 So. 3d at 1113.

In the context of political debates, the deference to finding that speech is protected is strong. Florida courts have found that "the frequent use of ill-considered, name calling attacks" is protected even if such attacks were impolite, unfair, and should elicit an apology. *Pullum v. Johnson*, 647 So. 2d 254, 258 (Fla. 1st DCA 1994). Specifically, in *Pullum v. Johnson*, the First DCA concluded that speaking on broadcast radio and calling a prominent citizen in the community a "drug pusher" and stating that the individual was "trying to push drugs" in the context of a political debate cannot be reasonably interpreted as stating "actual facts" subject to a defamation claim. *Id.* Likewise, publicly tweeting that someone is a "Nazi" who "wants a second holocaust" when directed at a quintessential public figure based on the subject's own public rhetoric and personal associations cannot be reasonably interpreted as stating "actual facts" subject to a defamation claim.

2. **If the Court finds that any of Mr. Stewartson's statements are actionable statements of fact, this Court must then determine whether Mr. Stewartson made any of the statements with "actual malice."**

If this Court finds that any of Mr. Stewartson's statements are statements of fact, the next analysis this Court must undertake is whether Mr. Stewartson made such statements with **actual malice.** Before a "public figure" may recover damages in a defamation action, **the public figure must prove actual malice on the part of the disseminator** of the information. *Saro*

Corp. v. Waterman Broad. Corp., 595 So. 2d 87, 88-89 (Fla. 2d DCA 1992), citing *Curtis Publishing Co. v. Butts,* 388 U.S. 130 (1967). The Plaintiff carries the burden of proof on this issue. See *Mastandrea v. Snow*, 333 So. 3d 326, 327-28 (Fla. 1st DCA 2022).

The Plaintiff's standard of proof on this issue is by clear and convincing evidence. Clear and convincing evidence requires that a witness to a fact be credible, that the facts to which the witness testifies be remembered in distinct detail, and that the details of the transaction about which the witness is testifying be narrated in their order of occurrence. Moreover, the testimony must be of such clarity, directness, and weight as to produce in the mind of the fact-finder a clear conviction, without hesitancy, of the truth of the facts asserted. Entry of summary judgment is appropriate where the Plaintiff has provided no evidence that the Defendant made their statements with actual malice. *Id.* at 328.

Florida has adopted the federal test for "actual malice" that was first announced by the U.S. Supreme Court in *N.Y. Times Co. v. Sullivan*, 376 U.S. 254 (1964). Proving actual malice requires the Plaintiff demonstrate that Defendant had (a) knowledge that his statements were false or (b) acted with reckless disregard as to whether his statements were false or not. *Id*. at 280. Such requirement to prove actual malice is in addition to proving the other elements of defamation. Statements that are not perfectly accurate are protected under the "substantial truth" doctrine if the "gist" or "sting" of the statement is true. *Readon v. WPLG, LLC*, 317 So. 3d 1229, 1234 (Fla. 3d DCA 2021), citing *Masson v. New Yorker Mag*., 501 U.S. 496, 517 (1991).

The actual malice standard is famously "daunting." *McFarlane v. Esquire Magazine*, 74 F.3d 1296, 1308 (D.C. Cir. 1996). Critics state that it is an "almost impossible" standard for public figure plaintiffs to meet and that "anyone who might enter the public arena knows that they may be injured by defamation for which there is effectively no legal recourse." *Mastandrea* 333 So. 3d at 328, 334 (Fla. 1st DCA 2022).

VI. ARGUMENT

a. All of Mr. Stewartson's Tweets are protected opinion speech.

On a platform like Twitter/X, which Mr. Stewartson's audience knows is a forum for 'prolific and highly political' commentary, statements such as those subject to this suit are ubiquitous. These sorts of remarks and expressed views are understood to not be factual and

literal declarations, but rather as the unfortunate 'subjective and hyperbolic language' expected and prevalent amongst partisan political commentators. See SUF ¶ 1, 3-5.

When viewed in their totality, each of Mr. Stewartson's statements are statements of opinion. None of Mr. Stewartson's statements are provably false. Mr. Stewartson's statements were expressly intended to be his opinions and were framed as such. See SUF ¶ 8, 44-46, 52-53, 63, 69-70. Both the Nazi and Second Holocaust tweets concern ideological labels and moral judgments, which are inherently not provable. See SUF ¶ 34-37, 39-43, 44-47.

Mr. Stewartson's tweets were made in relation to facts and circumstances that Mr. Stewartson made known to his audience and expected that his audience would understand. The Nazi Tweet included screenshots and references to General Flynn's Telegram channel. See SUF ¶ 30-33. The Second Holocaust Tweet included images, prior tweets, and references to General Flynn's own public statements. See SUF ¶ 44, 51-53. The Torture Tweet is based upon Jack Posobiec's own statements, widely reported practices at Guantanamo Bay, and a published article in *Philadelphia Magazine*. See SUF ¶ 61-65. The Murder Tweet linked to a Substack article which explains Mr. Stewartson's reasoning and relates to a well-known public event which General Flynn attended. See SUF ¶ 68-72.

b. All of Mr. Stewartson's Tweets are protected rhetorical hyperbole.

All of Mr. Stewartson's tweets are protected rhetorical hyperbole. While one could argue that Mr. Stewartson's tweets may contain factual statements, the context under which his tweets were made all support a finding that his statements are protected rhetorical hyperbole. Mr. Stewartson's tweets all generally concern politics and political figures such as General Flynn. Mr. Stewartson's audience both understands and expects that he will utilize subjective and hyperbolic language that comport with their political beliefs and opinions. See *Herring Networks, Inc.*, 445 F. Sup 3d at 1050. Accordingly, Mr. Stewartson's audience understands his posts to be hyperbolic and highly subjective. *Flynn*, 398 So. 3d at 1113.

The Nazi Tweet could not have referred to literal Nazi Party membership but rather employed a commonplace rhetorical device combined with an opinion of ideological resemblance. See SUF ¶ 34-35, 44-47. The Second Holocaust Tweet also employed a commonplace rhetorical device and figurative warning as a moral condemnation. See SUF ¶ 47,

52-53. Torture is also a commonplace rhetorical device and value-laden term describing interrogation practices rather than specific acts. See SUF ¶ 61-65. And, notably the Murder Tweet alleges that General Flynn "literally tried to murder" Vice President Pence not with a specific act or weapon, but rather with the QAnon movement. See SUF ¶ 69.

c. General Flynn has failed to make a showing that Mr. Stewartson made any of his tweets with actual malice.

In the event that this Court finds that any of Mr. Stewartson's statements are in fact actionable statements of fact, this Court must then determine whether such statements were false and made with actual malice. Ultimately, this Court need not weigh into whether Mr. Stewartson's statements are true or false but rather this Court can adjudicate this matter based upon the issue of whether Mr. Stewartson made any of the statements with actual malice.

There is a complete absence of any record evidence to support the contention that Mr. Stewartson made any of the statements with either knowledge that the statements were false or with reckless disregard to whether the statements were true or false. See SUF ¶ 19, 24-26, 48-49, 48-59, 66-67, 79-80. This complete absence of record evidence supports the entry of summary judgment in favor of Mr. Stewartson.

d. This lawsuit is a prohibited lawsuit against public participation, and this Court should award Mr. Stewartson his attorney's fees and costs.

Fla. Stat. § 768.295(3) states that "A person or governmental entity in this state may not file or cause to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue."

As a journalist and commentator, Mr. Stewartson has exercised his constitutional right of free speech by publishing content critical of a public figure in connection with public issues. The Plaintiff appears to be attempting to silence Defendant's journalistic endeavors through the filing of this lawsuit. Thus, this lawsuit would appear to be prohibited under Fla. Stat. § 768.295(3).

Mr. Stewartson's statements that remain subject to this lawsuit concern are issues of public importance such as Christian nationalism, QAnon, the treatment of prisoners at Guantanamo Bay, the January 6, 2021 insurrection, and extremist movements. See SUF ¶ 37-43,

54-57, 73-78. They concern a quintessential public figure who voluntarily entered public life. See SUF ¶ 6-7. These statements were made by a prolific commentator on an overtly political platform. See SUF ¶ 1-5.

General Flynn is well aware that his lawsuit is without merit; he readily admits that he does not know Stewartson's intent, cannot show falsity or that Mr. Stewartson made the tweets with actual malice, and lacks evidence that readers believed the statements as facts. See SUF ¶ 19, 24-26. General Flynn cannot link any damages directly to Mr. Stewartson's conduct.

VII. CONCLUSION

For the reasons set forth above, Defendant Jim Stewartson respectfully requests that this Court enter final summary judgment in his favor and against Plaintiff on all remaining claims. The undisputed record establishes that the four challenged tweets were made in the context of heated political commentary about a quintessential public figure and concern matters of public importance. When construed in their full context and totality, the statements are nonactionable pure opinion and rhetorical hyperbole, including ideological labels and moral condemnation that are not provably true or false, and were accompanied by or linked to the underlying materials from which Mr. Stewartson drew his views. See SUF ¶¶ 1–8, 30–33, 44–47, 51–53, 61–65, 68–72.

Even assuming arguendo that any portion of the statements could be construed as asserting fact, Plaintiff—who bears the burden of proof—cannot meet the "daunting" constitutional requirement to show actual malice by clear and convincing evidence. There is no record evidence that Mr. Stewartson published any statement with knowledge of falsity or reckless disregard for truth; to the contrary, Mr. Stewartson testified he did not know any statement was false and did not entertain serious doubts as to its truth, and Plaintiff admits he cannot establish Stewartson's intent, cannot substantiate falsity, and cannot show that third parties believed the tweets as fact. See SUF ¶¶ 19, 24–26, 48–49, 58–59, 66–67, 79–80. Plaintiff likewise cannot attribute cognizable damages to these tweets. See SUF ¶¶ 12, 14, 22–27.

This lawsuit is a textbook example of a public figure using expensive litigation to silence dissenting views. The Plaintiff is attempting to utilize the courts as a weapon to evade public criticism in perversion of the Court's obligation to protect the cherished right to free speech that

the Plaintiff himself took an oath to safeguard and protect. It is precisely the kind of meritless, bully tactic that Florida's anti-SLAPP statute was designed to prevent and summarily terminate, and Mr. Stewartson is entitled to judgment in his favor and an award of his reasonable attorney's fees and costs as authorized by Fla. Stat. § 768.295(4).

WHEREFORE, Defendant Jim Stewartson respectfully requests that the Court (1) enter final summary judgment in Defendant's favor; (2) award Defendant his reasonable attorney's fees and costs pursuant to Fla. Stat. § 768.295(4); and (3) grant such other and further relief as the Court deems just and proper.

Dated: February _____, 2026

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served upon Stephen French, Esquire and Jared Roberts, Esquire via Florida E-Filing Portal on this ____ day of February, 2026.

/s/ George A.D. Thurlow
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