

**IN THE COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

MAURICIO ANDRES RUIZ “VARELA”,
an individual,

CASE NO.: 2024-007863-CA-01

Plaintiff,

CIRCUIT CIVIL DIVISION

v.

WPLG, INC., a Delaware corporation; THE DAILY
CALLER, INC., a Delaware corporation; and
YAHOO, INC., a Delaware corporation,

Defendants.

_____ /

**DEFENDANT THE DAILY CALLER, INC.’S
MOTION TO DISMISS AMENDED COMPLAINT**

The Daily Caller, Inc. (“*The Daily Caller*”) moves to Dismiss the Amended Complaint pursuant to Fla. R. Civ. P. 1.140(b).¹

1.0 INTRODUCTION AND FACTUAL BACKGROUND

This is a case about two arrestees with essentially the same name being arrested at the same time, and WPLG – a well-respected news provider – mixing up their mugshots. The Plaintiff was arrested for battery against a woman. The *other guy* was arrested for abusing a minor. The Plaintiff believes that inside the gap between these crimes lies a right to compensation. “I was accused of a horrible crime, but not *that* particular crime” is a novel argument when seeking compensation for a damaged reputation. This is not a case where the wrong person’s name was published in connection with a crime. This is not a case where an innocent bystander was mistakenly identified.

¹ This Motion is not actually necessary at this point, as Plaintiff’s First Amended Complaint is a rogue document. WPLG filed its answer to the original complaint on June 18, 2024. Fla. R. Civ. P. 1.190(a) provides that a party can amend once as a matter of course “at any time before a responsive pleading is served,” and otherwise the party may only amend “by leave of court or by written consent to the adverse party.” Since a responsive pleading has been filed, Plaintiff had to file a motion or stipulation to amend. Neither has happened, and so the Amended Complaint is not a valid amended pleading.

Two arrestees had strikingly similar names and were in the same court, and then someone selected the wrong mugshot.

Plaintiff Mauricio *Andres* Ruiz (“Ruiz”) was charged with domestic violence battery in December 2023. Amended Complaint at ¶ 10. Coincidentally, at the same time another man with an identical first and last name,² Mauricio *Alexander* Ruiz, was charged with an offense against a student by an authority figure. *Id.* at ¶ 13. Most “mistaken identity” defamation cases follow the “wrong place, wrong time,” fact pattern – someone who didn’t do anything at all to bring attention to themselves is mistakenly identified as a criminal.

This is not one of those cases. Here, Plaintiff, on his own accord and due to his own actions, inserted himself into the criminal justice system. If one were inclined to call him a “victim” – which we are not – the *only* misfortune he suffered was having the same first name, middle initial and last name of another person haled into the same criminal court on the same day for a different charge.

Due to the significant public interest regarding criminal activity and the important issue of violence against women and the abuse of minors by authority figures, Defendant WPLG published an article about Mauricio Alexander Ruiz’s arrest. *Id.* ¶ 19. There is no allegation that the written content of the article was incorrect in any way. However, WPLG erroneously included the government-provided mugshot for Plaintiff, Mauricio Andres Ruiz, instead of the mugshot for Mauricio Alexander Ruiz, presumably because the mugshots were taken at the same time and the names were quite similar. *Id.*

² While Plaintiff now claims his last name is “Varela,” that is not what the docket sheet for his battery case nor his demand for correction indicates. *See* Complaint at *Exhibit A*. Whether or not he is telling the truth about his name, there would be no reason for *The Daily Caller* to believe his name was anything other than “Ruiz.” There would be no reason for *anyone* to believe that his name was anything other than what was on the docket. This is a mystery to *The Daily Caller*.

The same day that WPLG published its article about Mauricio Alexander Ruiz, a third-party user on Twitter, @ASecondChance, tweeted the WPLG article (clearly identifying it as being sourced from WPLG) and included Plaintiff’s mugshot, as it appeared in the WPLG article. *Id.* at ¶ 28. At 4:34 p.m. ET on December 11, 2023, the same day that WPLG published its article, *The Daily Caller* published in good faith an article based on WPLG’s reporting on Mauricio Alexander Ruiz’s arrest, embedding the @ASecondChance tweet and a link to the WPLG article. *Id.* at ¶¶ 29-30 & *Exhibit D*. There is no allegation that anything in *The Daily Caller*’s article is incorrect aside from the mugshot in the embedded tweet from @ASecondChance, which itself embedded the mugshot from the WPLG article.

WPLG issued a correction to the incorrect mugshot at 5:16 p.m. ET, *after The Daily Caller* published its article. *Id.* ¶ 21. WPLG and *The Daily Caller* both issued corrections swiftly after receiving notice from Plaintiff’s counsel purportedly under Fla. Stat. § 770.01. *Id.* at ¶¶ 42-44. Despite this, Plaintiff – without a shred of factual support – asserts that *The Daily Caller* acted with *actual malice*, meaning knowledge of falsity or reckless disregard for falsity. This claim is premised on nothing but conclusory allegations. *Id.* at ¶¶ 55 & 61.

The simple and obvious explanation for what happened here is that WPLG made an innocent and understandable mistake, and *The Daily Caller* had no reason to disbelieve WPLG’s reporting and republished it. *The Daily Caller* relied on WPLG’s reporting in good faith.³ The mistake is regrettable, but it does not give rise to defamation liability. Plaintiff’s defamation *per se* claim fails because the statements at issue were on an issue of public concern and Plaintiff failed

³ WPLG is a longstanding and respectable fixture in South Florida’s media landscape, and there is no plausible basis to assert that republishing the essence of a story from WPLG represents any sort of negligence or irresponsibility, let alone the requisite quantum of “actual malice.”

to adequately allege actual malice. His defamation claims fail independently because in this context, he is libel-proof.

More fundamentally, Plaintiff's defamation claims fail because *The Daily Caller's* publication is protected by both the "wire service defense" and Section 230 of the Communications Decency Act, 47 U.S.C. § 230 ("Section 230"). Plaintiff's Amended Complaint does nothing to cure the defects in his original Complaint, and instead puts forward an additional theory of liability that is squarely foreclosed by the single publication rule. The Court should dismiss Plaintiff's Amended Complaint in its entirety against *The Daily Caller*, with prejudice.

2.0 LEGAL STANDARD

Florida courts, like their federal counterparts, have long and proudly recognized that early dismissal of cases impacting First Amendment rights is particularly warranted "because of the chilling effect these cases have on freedom of speech." *Stewart v. Sun Sentinel Co.*, 695 So. 2d 360, 363 (Fla. 4th DCA 1997). This is the case here.

Moreover, a complaint must allege sufficient ultimate facts on its face to show that the plaintiff is entitled to relief. *Edwards v. Landsman*, 51 So. 3d 1208, 1213 (Fla. 4th DCA 2011). Florida is a fact-pleading jurisdiction, meaning a complaint must allege "ultimate facts" showing an entitlement to relief against each individual defendant. *Miami-Dade County v. Deerwood Homeowners' Ass'n*, 979 So. 2d 1103, 1104 (Fla. 3d DCA 2008) (noting that "[l]egal conclusions unsupported by ultimate facts are not enough to state a cause of action"). Conclusory allegations, such as a mere recitation of the elements of a cause of action, as is the case here, are not enough to defeat a motion to dismiss. *Id.*

3.0 ARGUMENT

Plaintiff's Amended Complaint contains three causes of action: (1) defamation; (2) defamation *per se*; and (3) a request for a declaratory judgment. Plaintiff fails to state a claim for any of them.

3.1 The Defamation Claims Fail Because of the Wire Service Defense

The Daily Caller did no more than republish content from a trusted news publication, which cannot give rise to defamation liability. This is black-letter Florida law, and in fact, the wire service defense was *invented* by Florida's courts as far back as 1933. "[A] republisher may rely on the research of the original publisher, absent a showing that the republisher had, or should have had, substantial reasons to question the accuracy of the articles or the *bona fides* of the reporter." *Nix v. ESPN, Inc.*, No. 1:18-cv-22208-UU, 2018 U.S. Dist. LEXIS 149345, *14-15 (S.D. Fla. Aug. 30, 2018) (quoting *Rakofsky v. Washington Post*, 39 Misc. 3d 1226(A) (Sup. Ct. 2013)), *aff'd* 772 Fed. Appx. 807, 813 (11th Cir. 2019) (holding that media republishers prevailed on wire service defense where "Appellants did not assert facts to show, and there is nothing else to suggest, that ESPN or USA Today were negligent, reckless, or careless in relying on AP's content"); *see Layne v. Tribune Co.*, 108 Fla. 177, 238 (1933) (articulating defense in similar fashion); *Nelson v. Associated Press, Inc.*, 667 F. Supp. 1468, 1477 (S.D. Fla. 1987) (applying defense to news periodical). The court in *Nix* found that the wire service defense precluded defamation liability because "[t]he Associated Press is a reputable news agency, and its article was a substantially accurate summary of judicial proceedings. Accordingly ... Plaintiffs' claims against the republishers ... are barred by the wire service defense." 2018 U.S. Dist. LEXIS 149345 at *15.

While New York cases are not controlling, the wire service defense in Florida is "substantially identical" to the same defense in New York, and is suitably persuasive. *Id.* at *8. The court in *Karaduman v. Newsday*, 51 N.Y.2d 531, 416 N.E.2d 557 (1980), stated that the wire

service defense establishes that “a company or concern which simply republishes a work is entitled to place its reliance upon the research of the original publisher, absent a showing that the republisher ‘had, or should have had, substantial reasons to question the accuracy of the articles or the *bonafides* of [the] reporter.’” In no articulation of the defense is there any requirement that the article being republished be “accurate,” just that there be no substantial reason to doubt its accuracy.

Nothing in Plaintiff’s Amended Complaint comes close to suggesting there were any reasons, substantial or otherwise, to query WPLG’s accuracy in reporting about Mauricio Alexander Ruiz.

WPLG operates the ABC affiliate television station in South Florida, as well as its news website <local10.com>. Amended Complaint at ¶ 7. WPLG published a story that was accurate in all respects aside from using the mugshot it obtained from local police. WPLG is local to the court where the case took place. WPLG is well-respected. Three of its reporters were runner-ups for the 2021 Esserman-Knight Journalism Awards. *See* 2021 Esserman-Knight Journalism Awards recipients, at **Exhibit 1**.⁴ Its staff includes Louis Aguirre, who received six Emmy awards for environmental reporting. *See* Dakota Hays, “2024 Porter Prize Awardee: Louis Aguirre,” *Miami Waterkeeper* (Feb. 29, 2024), at **Exhibit 2**.⁵ With respect to news reporting, WPLG would be properly considered to be worthy of complete deference and respect.

Given the lack of any allegations regarding WPLG’s reliability, *The Daily Caller* properly relied on WPLG’s reporting, and the wire service defense and facts stated in the Complaint utterly

⁴ Available at: <https://knightfoundation.org/esserman-knight-prize/> (last accessed July 30, 2024).

⁵ Available at: <https://www.miamiwaterkeeper.org/porter-prize-2024-louis-aguirre> (last accessed July 30, 2024).

preclude defamation liability. *The Daily Caller's* article does not add a single potentially defamatory word or idea not contained in WPLG's reliable report.

With the benefit of having seen *The Daily Caller's* briefing on the wire service defense, Plaintiff attempts to plead around this in his Amended Complaint by adding allegations that *The Daily Caller* kept its article online even after WPLG issued its correction on December 11, 2023. Amended Complaint at ¶¶ 32-34. These new allegations do not help Plaintiff.

As the exhibits to the Amended Complaint show, *The Daily Caller* published its article before WPLG published its correction. Plaintiff argues that knowledge of WPLG's update should be imputed to *The Daily Caller*: there is no non-conclusory allegation that *The Daily Caller* was actually aware of it. It is wildly contrary to Florida and Constitutional law that *The Daily Caller* had some legal obligation to remove its article upon this constructive knowledge developing. While this argument is too cute by half, it has no support in the law, anywhere.

Fla. Stat. § 770.07 codifies the "single publication rule" and provides that "[t]he cause of action for damages founded upon a single publication or exhibition or utterance, as described in s. 770.05, shall be deemed to have accrued at the time of the first publication or exhibit or utterance thereof in this state." Fla. Stat. § 770.05 provides examples of a "single publication," including "any one edition of a newspaper" The purpose of the single publication rule "is to avoid continuous litigation following mass dissemination in the modern media," and establishing a single point in time to determine when the statute of limitations period has run. *Swedberg v. Goldfinger's South, Inc.*, 338 So. 3d 332, 335 (Fla. 3d DCA 2022) (citing *Musto v. Bell South Telecomms. Corp.*, 748 So. 2d 296, 298 (Fla. 4th DCA 1999)). Accordingly, "continued dissemination of a statement through the mass media will be treated as a single publication when the publisher 'does not make

a separate publishing decision as to each copy or small batch of copies.” *Id.* at 335-36⁶ (quoting *Roberts v. McAfee, Inc.*, 660 F.3d 1156, 1169 (9th Cir. 2011)). Florida’s single publication rule applies to the Internet. *Id.* at 336 (citing *Norkin v. The Fla. Bar*, 311 F. Supp. 3d 1299, 1304 (S.D. Fla. 2018)). The rule is also properly applied to dismiss multiple causes of action that are duplicative of a defamation claim. *Happy Tax Franchising, LLC v. Hill*, No. 19-24539-CIV-MORE, 2021 U.S. Dist. LEXIS 107354, *20-21 (S.D. Fla. June 7, 2021) (recommending dismissal of tortious interference claim based on same allegations as defamation claim) (recommendation adopted in 2021 U.S. Dist. LEXIS 161518 (S.D. Fla. Aug. 26, 2021)).

Under the single publication rule, Plaintiff’s defamation claims accrued at 4:34 p.m. on December 11, 2023, and Florida does not recognize any subsequent cause of action for merely keeping the article on *The Daily Caller’s* website. Amended Complaint at *Exhibit D*. At this time, WPLG had not issued its correction.

At the time of *The Daily Caller’s* publication, it had no reason to doubt the veracity of WPLG’s article or the @ASecondChance tweet containing the mugshot taken from the WPLG article. See *Basulto v. Netflix, Inc.*, No. 22-21796-CIV-MORE, 2023 U.S. Dist. LEXIS 76537, *45 n.11 (S.D. Fla. May 2, 2023) (citing *Pippen v. NBCUniversal Media, LLC*, 734 F.3d 610, 614 (7th Cir. 2013) and *Shoen v. Shoen*, 48 F.3d 412, 417 (9th Cir. 1995) for the proposition that facts

⁶ The court in *Swedberg* found that the single publication rule did not apply because the defendant made a second, subsequent tortious publication that created a new cause of action. *Id.* at 336. Here, in contrast, the only allegation is that *The Daily Caller* published a single article and did not remove it from the internet.

learned after initial publication are irrelevant to inquiries regarding knowledge of falsity, such as actual malice, under the single publication rule).⁷

Plaintiff has utterly failed to state a claim for defamation against *The Daily Caller*, and no amendment could cure this defect.

3.2 All Claims Fail Against The Daily Caller Because of Section 230 (“Communications Decency Act”)

Despite Plaintiff’s somewhat sideways reasoning, *The Daily Caller* is immune under 47 U.S.C. § 230(c)(1), which states unambiguously that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” This creates absolute immunity so long as the defendant is a provider or user of such a service and did not materially contribute to the creation or development of the allegedly tortious content. 47 U.S.C. § 230(f)(3) defines “information content provider” as “any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.”

Moreover, that immunity has been extended nationwide to news organizations like *The Daily Caller*. “The majority of federal circuits have interpreted the CDA to establish broad ‘federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service.’” *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316,

⁷ In his opposition to the pending motion to stay discovery, Plaintiff cites *Taub v. McClatchy Newspapers, Inc.*, 504 F. Supp. 2d 74 (D.S.C. 2007), for the proposition that a republisher later having reason to doubt the accuracy of an original publication may defeat the wire service defense. But *McClatchy* has no application here. That case did “not present the typical scenario whereby a newspaper publishes an article from a reputable wire service or news agency that the wire service or news agency picked up from a different source. Instead, the article at issue here originated from a *Gazette* article, and the *Gazette* then republished on its website the AP’s altered version of its original article. Therefore, the *Gazette* at least had some reason to be aware of the article’s inaccuracies.” That has no similarity to the facts here, where *The Daily Caller* had no reason to doubt the veracity of WPLG’s reporting because WPLG did not issue a correction until after *The Daily Caller* published its article.

1321 (11th Cir. 2006) (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)). “The purpose of the act is ‘to promote the continued development of the Internet and other interactive computer services and to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services[.]’” *Montano v. Wash. State Dep’t of Health*, No. 1:23-23903-BECERRA/GOODMAN, 2024 U.S. Dist. LEXIS 95402, *34 (S.D. Fla. May 28, 2024) (quoting *Woodhull Freedom Found. v. United States*, 72 F.4th 1286, 1293 (D.C. Cir. 2023)).

The most common scenario where Section 230 immunity applies is when a user of a social media platform or online forum posts defamatory content, and the provider of the platform or forum is sued for it. Every court in the country is in accord that Section 230 immunity applies in that scenario, but the facts here are different: they actually *emphasize* the applicability of the Section 230 defense. *The Daily Caller* embedded a tweet published by a third-party on the X platform (formerly Twitter) to illustrate an article on *The Daily Caller’s* own website. While there does not appear to be any Florida or Eleventh Circuit case law that matches the fact pattern at bar perfectly, there are many cases from other jurisdictions across the country establishing that republishing statements from third parties, even on a different platform or website, is protected under Section 230.

The seminal case explaining this is *Barrett v. Rosenthal*, 40 Cal. 4th 33, 146 P.3d 510 (Cal. 2006). There, an individual posted a copy of an article she had received via email on two newsgroup websites and was sued for republishing defamatory information. *Id.* at 514. The court found that the term “users” included individuals using an interactive computer service, and thus the defendant’s act of republication was protected under Section 230. *Id.* at 513.

Rosenthal spawned many cases affirming and expanding this reasoning. *See Coomer v. Donald J. Trump for President, Inc.*, 2024 COA 35, 2024 Colo. App. LEXIS 448, *97-99 (Apr.

11, 2024) (finding that retweeting allegedly defamatory statements published by a third party, and including in retweet a verbatim quote from allegedly defamatory statements, was protected under Section 230); *Banaian v. Bascom*, 281 A.3d 975, 980 (N.H. 2022) (finding that students who retweeted allegedly defamatory screenshot of webpage were immune under Section 230); *Holmok v. Burke*, 2022-Ohio-2135, 2022 Ohio App. LEXIS 2015, *8-9 (Oh. Ct. App. June 23, 2022) (finding that defendant who retweeted an allegedly defamatory tweet and added a hashtag was immune under Section 230).

Courts apply this reasoning even in cases where information was provided by a third party on one online platform and republished on a different platform. *See Comyack v. Giannella*, 2020 N.J. Super. LEXIS 49, *117-18 (N.J. Super. Ct. Apr. 21, 2020) (finding that Facebook users who made Facebook posts republishing allegedly defamatory statements published by third parties on social media websites Reddit and Instagram were immune under Section 230); *Marfione v. Kai U.S.A., Ltd.*, No. 17-70, 2018 U.S. Dist. LEXIS 51066, *16 (W.D. Pa. Mar. 27, 2018) (finding defendant whose Instagram account linked to allegedly defamatory article published by third party was immune under Section 230); *Roca Labs, Inc. v. Consumer Op. Corp.*, 140 F. Supp. 3d 1311, 1320 (M.D. Fla. 2015) (finding consumer review website that published tweets quoting and linking to allegedly defamatory reviews published by third parties was immune under Section 230); *Vasquez v. Buhl*, 150 Conn. App. 117, 90 A.3d 331, 344 (2014) (finding newspaper that linked to allegedly defamatory article published by third party was immune under Section 230).

The court in *Nat'l Ass'n of the Deaf v. Harvard Univ.*, 377 F. Supp. 3d 49 (D. Mass. 2019), provided a clear explanation of the relationship between embedded content and Section 230:

By definition, embedded content is content hosted on a third-party server [here, Twitter] that is hyperlinked in its existing form to content that is hosted on [*The Daily Caller's*] platform or website. To the extent such content is not content that was created or developed in whole or in part by [*The Daily Caller, The Daily*

Caller] cannot be an information content provider as to embedded content . . . Where [*The Daily Caller*] or someone associated with [*The Daily Caller*] is embedding a third party’s content that [*The Daily Caller*] or someone associated with [*The Daily Caller*] did not create or develop in whole or in part – in other words, is publishing a third party’s content – [*The Daily Caller*] is entitled to CDA immunity

Id. at 69 (granting judgment on the pleadings on Section 230 grounds). Application of federal law, aligned with the gentle tug of the First Amendment, cannot possibly be any different in Florida.

The Amended Complaint alleges that “a user of the X social media platform ... using the handle @ASecondChance tweeted the Local10.com Article,” which tweet included “an image of Plaintiff’s mugshot” and the text “#MauricioAlexanderRuiz was arrested last week on a charge of offenses against a student by an authority figure” Amended Complaint at ¶ 28. *The Daily Caller* then published an article which “contains a link to the defamatory Local10.com Article” and “embeds the Second Chance Tweet, and contains a large image of Plaintiff, which *The Daily Caller* actively published in the middle of *The Daily Caller* Article.” *Id.* at ¶ 30.

There is no allegation – and there could not possibly be one on this side of sanctionable misstatement – that *The Daily Caller* made any defamatory statements or did anything aside from linking to the <local10.com> article and embedding the @ASecondChance tweet in its article. In other words, republishing the content of others. *The Daily Caller’s* actions are thus indistinguishable from the many cases throughout the country where mere retweeting and linking to allegedly defamatory statements were immunized under Section 230. Plaintiff’s defamation claims fail, and for the same reason, its reach for declaratory judgment fails.

In an attempt to avoid this conclusion, Plaintiff alleges that neither WPLG, Twitter, or any third party had an “active role ... in supplying the material to a provider or user of an interactive computer service,” and that *The Daily Caller* “actively selected for publication the Second Chance Tweet and its photograph of Plaintiff” *Id.* at ¶ 31. Plaintiff cites *W. Sugar Coop. v. Archer-*

Daniels-Midland Co., No. CV 11-3473 CBM (AJWx), 2015 U.S. LEXIS 187740 (C.D. Cal. Aug. 21, 2015), for this proposition.

This allegation is not just a mere legal conclusion: it is incorrect. *Archer-Daniels-Midland* states that “[t]he Ninth Circuit has explained that the term ‘provided’ suggests, at least, some active role by the provider in supplying the material to a provider or user of an interactive computer service.” *Id.* at *25-26 (citing *Batzel v. Smith*, 333 F.3d 1018, 1032 (9th Cir. 2003) (superseded by statute on unrelated grounds as stated in *Breazeale v. Victim Servs.*, 878 F.3d 759 (9th Cir. 2017)). However, as the court in *Buhl* explains, *Batzel* dealt with a statement provided to the defendant by a third party *that was never intended to be published on the Internet*, and thus the court was concerned about expanding the scope of Section 230 to include such statements. 90 A.3d 331, 340. Simply put, when dealing with statements like those here, that were originally published online and then republished by the Defendant, Section 230 provides immunity. *Id.* at 340-41.

The Daily Caller is thus protected by Section 230, and all of Plaintiff’s claims against it must be dismissed. Dismissal should be with prejudice, as Plaintiff cannot allege any facts that would circumvent Section 230 immunity.

3.3 The Defamation *Per Se* Claim Fails Because There is No Alleged Actual Malice

3.3.1 *The Daily Caller’s* Article Was a Matter of Public Concern

Constitutional law has long held that when a plaintiff is a private figure⁸ but the statements at issue are about an issue of public concern, then the plaintiff can *only* recover punitive or presumed damages if he or she proves actual malice. *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 761-62 (1985); *Rabren v. Straigis*, 498 So. 2d 1362, 1363 (Fla. 2d DCA 1986). Plaintiff’s defamation *per se* claim is distinct from his defamation claim only in that

⁸ *The Daily Caller* does not concede that Plaintiff is a private figure, but that would be a question for another procedural posture, and thus takes this position solely *in arguendo*.

he claims damages are presumed. The defamation *per se* claim should thus be dismissed for lack of allegations regarding actual malice.

To determine whether there is a matter of public concern, a court considers “the statement’s content, form and context as revealed by the whole record.” *Id.* at 1363. *Straigis* is instructive here. It dealt with a defendant who was a former member of a harbor pilots’ association who left the group to form a competing association and filed a lawsuit against the pilots’ association to which he formerly belonged and some of its members. *Id.* While the lawsuit was pending, the defendant was interviewed, during which he allegedly made defamatory statements about the pilots’ association’s members. *Id.* The court found that the defendant’s statements were on an issue of public concern because “the performance of harbor pilots in guiding seagoing vessels is a matter of concern not only for the safety of the vessels but for the public in general.” *Id.*

There can be no question that a teacher being charged with sexual abuse of a student is an issue of public concern. There is a well-known public interest in the well-being of students and adults in positions of power abusing their authority to exploit minors. *See, e.g., Aguilar v. Eick*, No. AAN-CV23-6049988-S, 2024 Conn. Super. LEXIS 479, *8 (Super. Ct. Mar. 4, 2024) (noting that “Superior Courts have also held that the report of alleged sexual abuse of a minor was a matter of public concern”); *Globe Newspaper Co. v. Clerk of Middlesex County Superior Court*, 14 Mass. L. Rep. 412, 2002 Mass. Super. LEXIS 37, *9 (Super. Ct. Mar. 5, 2002) (finding there is a public concern in “the clergy’s sexual abuse of minors”); *Adams v. Metro-Goldwyn-Meyer Studios, Inc.*, 2017 Cal. Super. LEXIS 9048, *11 (Super. Ct. Dec. 15, 2017) (finding that “an industry insider’s alleged abuse of power to obtain sexual gratification from a minor” was a “topic of widespread public interest”); *E. Miss. State Hosp. v. Callens*, 892 So. 2d 800, 815 (Miss. 2004) (finding that

“the alleged odious abuse and neglect of minors in the State’s care” was “a matter of unquestionable public concern”).

Plaintiff may argue this is irrelevant, but we must remember that the Plaintiff was arrested for a rather heinous crime – battery against a woman. If he is successful in proving that the mistaken mugshot even damaged his reputation at all, that damage would be the distance between “Mr. Ruiz beats up defenseless women” and “Mr. Ruiz abuses children.” *Either* of these acts is a matter of public concern.

There is a comparable public interest in violent crime and who is accused of perpetrating it. *See, e.g., Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 508-09 (1984) (stating that “[c]riminal acts, especially violent crimes, often provoke public concern, even outrage and hostility”); *Merola on behalf of People v. Bell*, 68 A.D.2d 24, 29 (N.Y. App. Div. 1st Dept. 1979) (finding that “[d]aily, the focus of the media is on violent crime and its effects, *e.g.*, desolated streets, deteriorating neighborhoods, unsafe subways, and frightened citizens. The public is concerned with violent crime because it is affected by it ...”); *Lamonaco v. CBS*, No. 93-1975(DRD), 1993 U.S. Dist. LEXIS 21744, *22 (D.N.J. July 28, 1993) (finding that crime is a matter of public interest as a matter of law).

The public has just as much of an interest in knowing the identity of people arrested for violent crimes (such as battery, for which Plaintiff was arrested) as they do in knowing the identity of people arrested for abusing minors. Plaintiff cannot reasonably expect this Court to conclude that violent battery is not a matter of public concern. Violent crime is everyone’s business, especially when that business winds up in a courts of law.

Moreover, the crime for which Plaintiff was actually arrested does not change the fact that *The Daily Caller’s* article itself was in connection with the issue of sexual exploitation. The

reasoning in *Bloom v. A360 Media LLC*, No. 23-cv-11024 (JSR), 2024 U.S. Dist. LEXIS 98286 (S.D.N.Y. June 3, 2024), applies here. That case dealt with news articles about public figure Elon Musk’s secret mistress who was revealed to have given birth to some of Musk’s children. The defendant news organization published a few articles on this revelation that inadvertently used the photo of a woman unrelated to Musk, rather than Musk’s mistress. *Id.* at *1-2. The defendant filed a motion under New York’s Anti-SLAPP law, N.Y. Civ. Rights Law § 76-a, which required the defendant to show that the plaintiff’s claims were “in connection with an issue of public interest.” The court found that this requirement was satisfied because “the relevant publications reported on an issue of public interest,” *i.e.*, Musk’s mistress and secret children, even though the plaintiff played no role in this public issue. *Id.* at *18. *The Daily Caller’s* article was invariably about an issue of public concern, and so Plaintiff’s Amended Complaint must with some degree of particularity, not mere conclusory allegations, allege actual malice. It does not.

3.3.2 Plaintiff Has Not Pleaded Actual Malice Under the Law

Plaintiff has failed to plead facts sufficient to give any reasonable inference of actual malice. *Readon v. WPLG, LLC*, 317 So. 3d 1229, 1235 (2021) (citing *Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 701-02 (11th Cir. 2016)). The Amended Complaint merely alleges that *The Daily Caller* failed to conduct its own investigation, along with the erroneous formulaic allegation that it “must have” published with actual knowledge of or reckless disregard for falsity. Assumptions are not granular facts required to be pleaded in a complaint, and no amount of discovery can change that.

The First Amendment will not allow conclusory allegations of “actual malice” to stand. *St. Amant v. Thompson*, 390 U.S. 727, 733 (1968), establishes that a failure to investigate does not establish actual malice. There are no *facts* alleged that remotely imply actual malice. Rather, this is a case of one news outlet relying on the reporting of another reputable news outlet about a

breaking story. *The Daily Caller* did not form its own independent opinion about whether the mugshot in WPLG’s article was accurate, and it had no reason or obligation to do so. Absent actual malice, Plaintiff is not entitled to presumed damages, and so his defamation *per se* claim fails.

3.4 Plaintiff is Libel-Proof

Plaintiff’s defamation claims fail because he has failed to allege they are even defamatory. The libel-proof plaintiff doctrine, related to the incremental harm doctrine, “prohibits a plaintiff from recovering for libelous statements where the plaintiff’s reputation in the community was so tarnished before the publication that no further harm could have occurred.” *Davis v. McKenzie*, No. 16-62499-CIV, 2017 U.S. Dist. LEXIS 183519, *37 (S.D. Fla. Nov. 3, 2017) (quoting *Schiavone Const. Co. v. Time, Inc.*, 847 F.2d 1069, 1073 (3d Cir. 1988)).

This doctrine is most often applied in cases of defamation plaintiffs with a criminal history. *See, e.g., Lamb v. Rizzo*, 391 F.3d 1133 (10th Cir. 2004) (finding that reputation of inmate serving life sentences for murder and kidnapping could not be further harmed by allegedly false news reporting about his criminal history); *Lavergne v. Dateline NBC*, 597 Fed. Appx. 760, 761 (5th Cir. 2015) (finding that allegedly false statements about inmate serving life sentence for murder could not, as a matter of law, further harm his reputation).

While the Florida Supreme Court has not explicitly adopted the libel-proof plaintiff doctrine, it has not disavowed the doctrine, either. The court in *McKenzie* found that the Florida Supreme Court likely would adopt the doctrine if presented with the question. *McKenzie*, 2017 U.S. Dist. LEXIS 183519 at *43-44. The Court should apply the doctrine here.

Plaintiff’s own Amended Complaint shows that his reputation could not have been damaged more by *The Daily Caller’s* article than it already had been by the *actual* crime he was charged with. Defendant does not argue that the Plaintiff could *never* recover for defamation – but a defamation claim requires damage to one’s reputation. Plaintiff was arrested for domestic

violence battery, which a reasonable person would interpret as beating one's spouse. *Amended Complaint at Exhibit A*. That is his reputational starting point (if we are charitable and do not consider the rest of his rapsheet).

There is no fundamental difference in severity, heinousness, or unacceptability between wife-beating and the actions Mauricio Alexander Ruiz is alleged to have committed. Furthermore, before *The Daily Caller* published its article, WPLG and third parties had already published Plaintiff's mugshot and allegedly defamatory publications, meaning any reputational harm had already been done. Plaintiff is *situationally* libel-proof here. "I'm a wife beater, not a child abuser" is not the kind of reputational repair that entitles a plaintiff to relief.⁹

4.0 CONCLUSION

A local ABC News affiliate used the wrong mugshot in a news article on an issue of public concern, and *The Daily Caller* relied on the affiliate's reporting when it republished the affiliate's article on this topic. Both newspapers immediately issued corrections when Plaintiff brought this mistake to their attention. Nobody ever used the Plaintiff's name. The First Amendment provides significant latitude to news organizations in these circumstances, and Congress – with the approval of courts nationwide – has immunized *The Daily Caller's* conduct with Section 230. The Court should dismiss Plaintiff's Amended Complaint in its entirety against *The Daily Caller*.

This dismissal should be issued with prejudice, as there is no possible amendment that could cure the problems with Plaintiff's claims, as already demonstrated by Plaintiff's inability to do so in his Amended Complaint.

⁹ It bears noting that the fact that the abuse charges against Ruiz were eventually dropped is of no moment. Law enforcement had probable cause to charge him, and thus, he found himself in the mechanics of the criminal justice system: as public a record as anyone could imagine.

Dated: July 30, 2024.

Respectfully submitted,

/s/ Marc J. Randazza

Marc J. Randazza

Florida Bar No. 625566

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CERTIFICATE OF SERVICE

I hereby certify that, on July 30, 2024, a copy of the foregoing was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Florida E-Filing Portal, or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Florida E-Filing Portal.

/s/ Marc J. Randazza
Marc J. Randazza

Exhibit 1

Esserman-Knight Journalism Awards
2021



**KNIGHT
FOUNDATION**



Esserman-Knight Journalism Awards 2021



The 2024 Esserman-Knight Journalism Awards are accepting nominations from January 12 – February 12. [Learn more!](#)



2021 Esserman-Knight Awards

Knight Foundation

59:36

The Esserman family and Knight Foundation created these awards to highlight the local journalists whose work has demonstrated the power to change laws and lives.

Nominations for the Esserman-Knight Journalism Awards, honoring the best public service reporting in South Florida, are closed for 2021. The recipients were announced in May.

2021 ESSERMAN-KNIGHT JOURNALISM AWARDS FOR PUBLIC SERVICE REPORTING

Congratulations

TO THIS YEAR'S WINNERS

WINNER \$7500

ICE detainees say that detainees with coronavirus are being housed with the healthy



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MONIQUE O. MADAN, THE IMMIGRATION PANDEMIC



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Monique O. Madan, who began her reporting for the Immigration Pandemic while she battled COVID, interviewed more than 370 ICE detainees behind bars during the course of a year. She chronicled some of their living conditions as cases climbed in facilities. Her reporting also revealed major gaps in immigration procedures, including concerning a man detained for 11 years — so long other inmates called him “abuelo.” Another piece uncovered that ICE was coercing detainees to self-deport, a process that was halted after the story was published.

WINNER \$7500

Stranded at sea during a global pandemic



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11:55

TAYLOR DOLVEN, EMILY MICHOT, SARAH BLASKEY, NICK NEHAMAS, ALEX HARRIS, FORREST MILBURN AND JANE WOOLDRIDGE, COVID CRUISES



A Herald team, led by tourism reporter Taylor Dolven, unveiled the extent of COVID-19 cases on cruise ships at a time when executives insisted ship-board infections were few. To determine the truth, the Herald created and published a database of outbreaks, finding at least 3,908 COVID-19 cases and 111 deaths linked to 87 cruise ships. In addition, the team told the story of crew members forced to stay at sea

during the pandemic, creating a WhatsApp newsletter and serving, for many, as their only link to news from the outside world.

RUNNER-UP \$5000

Miami-Dade State Senate candidate actually shill funded by dark mo...



GLENN MILBERG, MARIO ALONSO AND NATALIE DE VARONA OF WPLG LOCAL 10 NEWS FOR “THE SHILL SCHEME”

Last fall, incumbent State Senator Jose Javier Rodriguez lost his senate seat by just 34 votes. When Milberg probed further, she ultimately uncovered that someone planted a shill candidate who shared Rodriguez’s last name to siphon off votes, a pattern she also found in another Florida senate district. Milberg tracked down the “shill” candidate Alex Rodriguez, revealing he actually lives two counties away in Palm Beach. The story continues as both Alex Rodriguez and the man accused of masterminding his run, a former Republican state senator, have been arrested for campaign finance violations.

HONORABLE MENTIONS (\$1,000)

Jacqueline Charles, The Miami Herald: Charles' work, in part, explored the impact of COVID-19 on Miami's Haitian-American community, where the stigma of the disease aided in its spread. Charles also conducted an exclusive interview with former President Bill Clinton on Haiti, and wrote about the impact of the earthquake in Port-au-Prince on its ten-year anniversary.

Dan Christensen, the Florida Bulldog: Christensen uncovered Broward Sheriff Gregory Tony's startling secret – that as a teenager growing up in Philadelphia, he'd been arrested and charged with murder after he shot and killed a man. Gov. Ron DeSantis had rushed to appoint Tony as sheriff after the Parkland massacre, leading to an incomplete background check that did not find the Philadelphia murder nor additional troubles.

Mario Ariza, Cindy Goodman and David Fleshler, South Florida Sun Sentinel: As Florida fought COVID-19, the Sun Sentinel looked at Gov. Ron DeSantis' efforts to suppress information that would threaten his popularity or the re-election of President Trump. The reporters found that state health departments were ordered to stop issuing public statements about the pandemic until after the Nov. 3 election, the administration sidelined mainstream scientists and that a major source of scientific disinformation on COVID-19 was from the governor's own spokesman.

**In addition, the following nominations were named finalists
for their outstanding public service journalism:**

- Trevor Aaronson, Florida Center for Investigative Reporting
- Christina Boomer Vazquez, WPLG Local 10
- Louis Aguirre, WPLG Local 10
- Ana Claudia Chacin, El Nuevo Herald
- Jim DeFede, CBS 4 Miami
- Daniel Ducassi, Florida Bulldog
- Connie Fossi, NBC 6 Miami
- Nora Gamez Torres, The Miami Herald

- Amy Green, Florida Center for Investigative Reporting
- Samantha J. Gross and Ana Ceballos, The Miami Herald
- Isheka N. Harrison, Miami Times
- Michael Lewis, Miami Today News
- Nicholas Nehamas, The Miami Herald
- Romina Ruiz-Goiriena, The Miami Herald
- Susan Stocker, Ben Crandell and Mike Stocker, South Florida Sun Sentinel

Meet the 2020 Winners

Photo (top): first responders evacuate sick crew members from two cruise ships, the Costa Favolosa and Costa Magica at the U.S. Coast Guard station at the Port of Miami in Miami, Fla., March 26, 2020. Carlos Barria

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Exhibit 2

2024 Porter Prize Awardee
Louis Aguirre

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PORTER PRIZE

2024 PORTER PRIZE AWARDEE: LOUIS AGUIRRE

DAKOTA HAYS - FEBRUARY 29, 2024

WPLG LOCAL 10 ANCHOR & ENVIRONMENTAL ADVOCATE

A longtime and staunch defender of the planet, Louis Aguirre brings awareness of environmental issues in South Florida with the purpose of seeking solutions. Louis has received numerous accolades for WPLG Local 10's station-wide campaign *Don't Trash Our Treasure*, including six Emmy awards for environmental reporting, an Esserman-Knight Foundation Journalism award for the primetime series *Saving Biscayne Bay* and the "Good 2 Green" award from the South Florida Hispanic Chamber of Commerce. He's also been recognized with a commendation from the Miami-Dade County Board of Commissioners, a commendation from the City of Miami Beach for efforts involving International Coastal Cleanup Day and induction into the Boys and Girls Club Hall of Fame. A native of Miami, Louis also enjoys the resources he works to protect by spending time at the beach with his two rescue dogs.

**WE ARE PROUD TO ANNOUNCE LOUIS AS 2024'S PORTER PRIZE
AWARDEE IN HONOR OF HIS DEDICATED SERVICE TO THE
ENVIRONMENT.**



In September 2017, WPLG-Local 10 welcomed multiple Emmy-award winning journalist Louis Aguirre back home to South Florida and the Local 10 family. Louis co-anchors the station's weekday 3:30 p.m., 4:30 p.m. and 5:30 p.m. newscasts. He also anchors the 10 p.m. Local 10 newscast on WSFL.

On Earth Day 2021, Louis became WPLG Local 10's Environmental Advocate and the face of a new station-wide campaign called *Don't Trash Our Treasure*. A longtime and staunch defender of the planet, Louis brings awareness of environmental issues in South Florida with the purpose of seeking solutions. Louis has received numerous accolades for *Don't Trash Our Treasure*, including six Emmy awards for environmental reporting, an Esserman-Knight Foundation Journalism award for the primetime series *Saving Biscayne Bay* and the "Good 2 Green" award from the South Florida Hispanic Chamber of Commerce. He's also been recognized with a commendation from the Miami-Dade County Board of Commissioners, a commendation from the City of Miami Beach for efforts involving International Coastal Cleanup Day and induction into the Boys and Girls Club Hall of Fame.

Beginning his television career at Telemundo in 1989, as a Spanish-language reporter, Louis eventually made the jump to Local 10 as a reporter and then weekend anchor. Louis worked at Local 10 from 1989 to 1992, during which time he became one of the few American journalists allowed into Cuba to cover the 30th anniversary of the Cuban missile crisis.

Louis would later spend 14 years at WSVN in Miami before relocating to Los Angeles in 2014 to anchor the nationally syndicated program "The Insider."

Louis has worked for "Extra," served as lead correspondent for "A Current Affair" and as co-host of "Fox and Friends."

In addition, Louis has guest starred on "Sex and the City," "JAG," "Burn Notice," "Guiding Light" and "All My Children."

A native of Miami, Louis is a graduate of the University of Miami and the Universite de Paris at La Sorbonne. In his free time, Louis enjoys spending time at the beach with his two rescue dogs.

ABOUT THE PORTER PRIZE

The Miami Waterkeeper Porter Prize is named in honor of Miami Waterkeeper's longtime attorney, Jim Porter. With a deep and abiding love for Biscayne Bay, Porter dedicated thousands of hours of service to Miami Waterkeeper's mission to protect our environment. In 2021, Porter lost a long battle with cancer. The Miami Waterkeeper Porter Prize is now awarded annually to a member of the community who, like Jim, has gone above and beyond in service of the environment.

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