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

CASE NO.: 2024-007863-CA-01

CIRCUIT CIVIL DIVISION

MAURICIO ANDRES RUIZ VARELA,

***Plaintiff*,**

vs.

WPLG, INC., et al.

Defendants.
_____/

PLAINTIFF'S OMNIBUS RESPONSE IN OPPOSITION TO AOL'S AND THE DAILY CALLER'S MOTIONS TO DISMISS

Plaintiff, MAURICIO ANDRES RUIZ VARELA, through his counsel, responds in opposition to Defendant AOL Media LLC's and Defendant The Daily Caller, Inc.'s motions to dismiss. In furtherance thereof, Plaintiff states as follows:

Brief Background

1) As brief background, Plaintiff sues three media outlets that falsely accused him of having been criminally charged with felony sexual child abuse.

2) As discussed in the Amended Complaint, Plaintiff was arrested for an alleged simple misdemeanor battery in December 2023 and his mugshot was taken. The charge against Plaintiff was dropped a few days later.

3) The same day as Plaintiff's battery arrest, another person with a similar name as Plaintiff was arrested and charged with felony sexual child abuse. This other person, also known as Mauricio Ruiz, was a public-school teacher who is alleged to have engaged in an

inappropriate sexual relationship with a child. All three Defendants published articles about the alleged pedophile, but published Plaintiff's image alongside the text, which identified the alleged culprit as Mauricio Ruiz. Plaintiff now sues for defamation.

4) The movants, who comprise two of the three Defendants, argue that they should be dismissed from this case for various alleged reasons. Defendant AOL's motion is simpler in scope. It addresses only the wire service defense to defamation. Defendant The Daily Caller's motion also asserts the wire service defense, in addition to the Communications Decency Act, an argument regarding actual malice, and an outrageous and sanctionable argument that Plaintiff is "libel-proof" by falsely accusing him of being a "wife-beater" and comparing him to murderers and kidnappers. Every one of these arguments should be denied.

The Wire Service Defense

5) AOL and The Daily Caller both assert the wire service defense in their motions to dismiss. However, the motions to dismiss must be denied on this basis.

6) Pursuant to the wire service defense, a news source has a "privilege to publish an apparently authentic news dispatch received from and attributed to a generally recognized reputable news service agency (such as the Associated Press or Universal Press) in the absence of a showing that the publisher acted in a 'negligent, reckless, or careless manner.'" *Miami Herald Pub. Co. v. Ane*, 458 So. 2d 239, 242 (Fla. 1984) (citing *Layne v. Tribune Co.*, 108 Fla. 177, 146 So. 234, 238–39 (1933)).

7) The Amended Complaint is clear that WPLG issued a correction on December 11, 2023 to its original reporting that Plaintiff was the person charged with pedophilia:

> ***Updated and CORRECTED: December 11, 2023 at 5:16pm. We have corrected this report to include the correct mugshot for the person arrested after we inadvertently had used a mugshot of another person with the same name. We apologize for any confusion.*

See Am. Compl. at ¶ 21.

8) Yet, both AOL and The Daily Caller published the Plaintiff's image in connection with their reporting and/or failed to correct their reporting, and both continued to display images of Plaintiff as the alleged pedophile well after WPLG's December 11, 2023 correction. In that regard, both The Daily Caller and AOL continued to publish Plaintiff's image as the pedophile in question, which was negligent, reckless, and/or careless under the circumstances. *See* Am. Compl. at ¶¶ 32, 38.

9) Moreover, as alleged in the Amended Complaint, "[e]specially after WPLG published its Update and Correction on the Local10.com Article," both The Daily Caller and AOL "knew, or recklessly failed to check, that its publication that identified Plaintiff's image as being that of" the pedophile in question. *See* Am. Compl. at ¶¶ 33, 39.

10) Thus, both The Daily Caller and AOL "intentionally and/or unreasonably failed to remove defamatory matter that it knew, or had good reason to know, to be exhibited on its website that was within its possession and under its control." *See* Am. Compl. at ¶¶ 34, 40.

11) Both AOL and The Daily Caller argue in their motions that their respective articles were published prior to WPLG's correction, which indicates that it was published at 5:16 p.m., and that they therefore had no duty to correct their reporting even if they knew it was false and defamatory.

12) First, although the various articles bear timestamps, it is unclear if they are accurate, warranting discovery on that issue.

13) Moreover, the argument is incorrect. The Florida Supreme Court has noted its approval of the Restatement (Second) of Torts § 577's definition of 'publication' of defamatory material, as including "[o]ne who intentionally and unreasonably fails to remove defamatory matter that he knows to be exhibited on land or chattels in his possession or under his control

is subject to liability for its continued publication." *Doe v. Am. Online, Inc.*, 783 So. 2d 1010, 1016 (Fla. 2001) (quoting *Zeran v. Am. Online, Inc.,* 958 F. Supp. 1124, 1131–37 (E.D. Va. 1997)). "Thus, a publisher is not merely one who intentionally communicates defamatory information. Instead, the law also treats as a publisher or speaker one who fails to take reasonable steps to remove defamatory statements from property under her control." *Id.*

14) *Taub v. McClatchy Newspapers, Inc.*, 504 F. Supp. 2d 74, 79–80 (D.S.C. 2007) is instructive. In that case, the court explained that "even assuming that the *Gazette* acted completely reasonably in publishing the AP article on its website, ***it is clear that at some point the Gazette learned of both the article's presence on its website and the article's inaccuracies***. It is due to this that the Court cannot in good conscience find that the wire service defense provides a complete defense for the Defendant." (emphasis added). This case demonstrates that, even if an article is posted reasonably at the time of initial publication, the publisher's subsequent knowledge of its defamatory nature will defeat the wire service defense and trigger liability. *See id.*

15) Eugene Volokh illustrates this point by explaining that "the text of § 577(2) would also apply to liability for intentionally and unreasonably failing to remove *one's own* defamatory posts . . . . And the logic of § 577(2) would as well. Say that both Earl and Donna post signs on Donna's property accusing Paul of something. And say that Donna reasonably believes that her own accusation is true (and state law declines to impose strict liability). Donna is then not initially liable for either posting. But once Donna learns about Earl's accusation and learns that it's false, she can be held liable for it under § 577(2). There's no reason why she should be less liable for her own accusation once she likewise learns that it's false. And there's no reason why she should be less liable when the accusation is available to the whole world, rather than just being posted on a restroom or factory wall." Eugene Volokh,

The Duty Not to Continue Distributing Your Own Libels, 97 Notre Dame L. Rev. 315, 327 (2021) (emphasis in original).

16) Accordingly, the motion to dismiss should be denied.

The Single Publication Rule

17) Relatedly, The Daily Caller also asserts that Florida's single publication rule conflicts with the duty to remove defamatory material discussed above. However, this argument does not account for the fact that the Florida Supreme Court has *approved* of the Restatement's proposition that the law "also treats as a publisher or speaker one who fails to take reasonable steps to remove defamatory statements from property under her control," notwithstanding Florida's longtime adherence to the single publication rule. *See Doe*, 783 So. 2d at 1016 (quoting *Zeran,* 958 F. Supp. at 1131–37).

18) Moreover, the argument is a red herring because the single publication rule deals with when the clock begins to run for purposes of the statute of limitations, which is not an issue in this case. *See Norkin v. The Florida Bar*, 311 F. Supp. 3d 1299, 1304 (S.D. Fla. 2018) ("There is a single publication rule in Florida involving 'any one edition of a newspaper, book, or magazine,' with a statute of limitations that accrues at the time of the first publication."); *id.* ("This Court declines Plaintiff's invitation to depart from the single publication rule for all material available on the internet because it would eviscerate the statute of limitations and expose online publishers to limitless liability. Finally, Plaintiff's claim for injunctive relief changes nothing about the applicable statute of limitations."); *Ashraf v. Adventist Health Sys./Sunbelt, Inc.*, 200 So. 3d 173, 174–75 (Fla. 5th DCA 2016) ("Florida law establishes a two-year statute of limitations for actions for 'libel and slander.'" . . . The statute of limitations begins to run at the time of publication, not when the plaintiff discovers the alleged defamatory material. . . . [T]he single publication rule, provides that a

'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 exhibition or utterance thereof in this state.' . . . The single publication rule is 'merely a convenient tool to express the rule that all causes of action for widely circulated libel must be litigated in one trial, and that each [publication] need not be separately pleaded and provided.'").

19) Eugene Volokh provides relevant commentary once again. He explains that "even applying the single publication rule, the mens rea for libel liability—under the § 577(2) theory that '[o]ne who intentionally and unreasonably fails to remove defamatory matter that he knows to be exhibited on . . . chattels . . . under his control' is liable for 'continued publication'—should be determined as of . . . when the negligence element was satisfied. Some cases do say that, under 'the single publication rule, . . . a plaintiff's cause of action accrues only once, at the time of publication,' but that's an oversimplification: the cause of action accrues only once, and that is usually the time of publication. But no cause of action should be said to accrue before all the elements are satisfied. Thus, in trade libel cases, where damages are an element of the tort, the cause of action doesn't accrue until damages arise. Likewise, in the rare ordinary libel cases where the mens rea element isn't satisfied until after publication, the cause of action shouldn't accrue until the mens rea is present. Now as a practical matter, I do think that it makes sense for the statute of limitations to run from the time of publication. Functionally, the single publication rule was designed to prevent multiple lawsuits, and to prevent long-delayed lawsuits filed after evidence may have been lost and the key events forgotten." 97 Notre Dame L. Rev. at 331-32.

The Communications Decency Act

20) The Daily Caller argues that it is immune from suit as a result of Section 230 of the Communications Decency Act ("CDA").

21) As an initial matter, "Section 230(c)(1) is an affirmative defense." *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 738 (9th Cir. 2024). Accordingly, it is improper for consideration on a motion to dismiss, especially because there are facts that are needed to determine whether the CDA applies, including as it relates to whether The Daily Caller developed any of the material in question.

22) Even assuming, *arguendo*, that this matter could be resolved at the preliminary dismissal stage, however, the argument still fails.

23) The Daily Caller produced an *original defamatory article that causes readers to believe Plaintiff is a pedophile.* The article is approximately 376 words long and it appears likely, without the benefit of any discovery, that The Daily Caller produced the article all by itself. The Daily Caller argues that the article does not defame the Plaintiff because "Nobody ever used the Plaintiff's name" in the article. This is a half-truth at best because the article expressly refers to the culprit as Mauricio Ruiz. The point that The Daily Caller tries to obscure is that only the middle name listed was different than the Plaintiff's. To borrow a turn of phrase The Daily Caller includes in its motion, this argument is too cute by half because it flies in the face of Florida defamation law.

24) Given that the reader was aware of the Plaintiff's image, the clear and unmistakable context of the actual words used in The Daily Caller article, on its face, is that the article is defamatory. Alternatively, even if the article were not facially defamatory, the clear implication based on the full context of everything The Daily Caller posted in its article is that the Mauricio Ruiz in question was the Plaintiff. *See Jews For Jesus, Inc. v. Rapp*, 997

So. 2d 1098, 1108 n.13 (Fla. 2008) (explaining that "[i]n a defamation by implication claim, the 'matter charged as defamatory' is not the literally true statement, but the false impression given by the juxtaposition or omission of facts").

25) The article included an embedded tweet, which serves as the basis of nearly the entirety of The Daily Caller's argument. But the argument is misleading. The Daily Caller is not being sued simply for posting a webpage that only contained somebody else's embedded tweet. It is being sued for publishing an extensive article that any reader would necessarily conclude is about the Plaintiff being a pedophile.

26) "The purpose of § 230 statutory immunity is to 'maintain the robust nature of Internet communication' and to avoid the 'obvious chilling effect' that would result from the specter of tort liability on service providers for millions of postings by third parties." *McCall v. Zotos*, 8:21-cv-02411-SDM-TGW, 2023 WL 3946827, at *2 (11th Cir. June 12, 2023). However, "§ 230(c)(1) does not "declare[ ] a general immunity from liability deriving from third-party content." *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 740 (9th Cir. 2024). "The Communications Decency Act was not meant to create a lawless no-man's-land on the Internet." *Id.* at 739. (quoting *Council of San Fernando Valley v. Roommates.com*, LLC, 521 F.3d 1157, 1164 (9th Cir. 2008)).

27) "If a website displays content that is created entirely by third parties, then it is only a service provider with respect to that content—and thus is immune from claims predicated on that content. But if a website operator is in part responsible for the creation or development of content, then it is an information content provider as to that content—and is not immune from claims predicated on it." *Jones*, 755 F.3d at 408 (citing *Carafano v. Metrosplash.com, Inc.,* 339 F.3d 1119, 1123 (9th Cir. 2003)).

28) Thus, the CDA is not the cure-all that The Daily Caller says it is because case law is clear that "despite the CDA, *some* state tort claims will lie against website operators acting in their publishing, editorial, or screening capacities." *Jones v. Dirty World Entm't Recordings LLC*, 755 F.3d 398, 410 (6th Cir. 2014) (emphasis in original).

29) A defendant is not immunized from "allegations that *it* created tortious content." *Anthony v. Yahoo Inc.*, 421 F. Supp. 2d 1257, 1262–63 (N.D. Cal. 2006) ("Because Anthony posits that Yahoo!'s manner of presenting the profiles—not the underlying profiles themselves—constitute fraud, the CDA does not apply"); *accord Hardin v. PDX, Inc.*, 173 Cal. Rptr. 3d 397, 407 (Ct. App. 2014) ("this is not a case in which a defendant merely distributed information from a third party author or publisher. PDX cites, and we are aware of, no case holding the CDA to have immunized a defendant from allegations that it participated in creating or altering content"); *see also Hy Cite Corp. v. badbusinessbureau.com, L.L.C.,* 418 F. Supp. 2d 1142, 1149 (D. Ariz. 2005) (ruling that § 230 did not bar claims premised on service provider's creation of its own comments and other defamatory content to accompany third-party postings on its website); *cf. Blumenthal v. Drudge,* 992 F. Supp. 44, 50 (D.D.C.1998) (acknowledging that § 230(c)(1) would not immunize AOL with respect to any information developed or created entirely by itself and that joint liability would be possible if AOL "had any role in creating or developing any of the information" in the posted material).

30) Indeed, case law is clear that "[i]f the claim is based on content that the interactive computer service developed, ***even if only in part***, then the service could be held liable." *McCall v. Zotos*, 22-11725, 2023 WL 3946827, at *2 (11th Cir. June 12, 2023) (citing *FTC v. LeakClick Media, LLC*, 838 F.3d 158, 174 (2d Cir. 2016)). The Eleventh Circuit has explained that, "[i]n other words, [the service] can be held liable for defamatory content if it was responsible for the development of that content in part." *Id.*

31) "If a website displays content that is ***created entirely by third[-]parties***, then it is only a service provider with respect to that content—and thus is immune from claims predicated on that content." *Montano v. Washington State Dep't of Health*, 1:23-23903, 2024 WL 3029155, at *14 (S.D. Fla. May 28, 2024), *report and recommendation adopted,* 23-CV-23903-JB, 2024 WL 3026528 (S.D. Fla. June 17, 2024) (citing *Am. Income Life Ins. Co. v. Google, Inc.*, 2:11-CV-4126-SLB, 2014 WL 4452679, at *14 (N.D. Ala. Sept. 8, 2014)); *see also NPS LLC v. StubHub, Inc.*, No. 06-4874-BLS1, 2009 WL 995483, at *1 (Mass. Super. Ct. Jan. 26, 2009) (holding that evidence in the record showed that the website materially contributed to its sellers' illegal "ticket scalping" and, thus, CDA immunity did not apply).

32) "[I]nstances of development *may* include some functions a website operator may conduct with respect to content originating from a third party." *Jones*, 755 F.3d at 410 (citing *Doe v. SexSearch.com,* 551 F.3d 412, 415 (6th Cir. 2008). "[A] website helps to develop unlawful content, and thus falls within the exception to section 230, if it *contributes materially* to the alleged illegality of the conduct." *In re BitConnect Sec. Litig.*, 18-CV-80086, 2019 WL 9104318, at *12 (S.D. Fla. Aug. 23, 2019) (quoting *Roommates.com*, LLC, 521 F.3d at 1167. "A website operator who edits user-created content—such as by ... trimming for length—retains his immunity ... provided that the edits are unrelated to the illegality." *Roommates.com,* 521 F.3d at 1169.

33) Conversely, defendants will not be immune under Section 230 where the defendants themselves create, develop, and post original, defamatory information. *MCW, Inc. v. Badbusinessbureau.com, L.L.C.*, CIV.A.3:02-CV-2727-G, 2004 WL 833595, at *9–10 (N.D. Tex. Apr. 19, 2004) (holding there was no immunity under the CDA where "MCW's claims are clearly based on the disparaging titles, headings, and editorial messages that MCW alleges the defendants created. . . . the CDA does not distinguish between acts of creating or

developing the contents of reports, on the one hand, and acts of creating or developing the titles or headings of those reports, on the other. The titles and headings are clearly part of the web page content").

34) Moreover, The Daily Caller actively—not passively—sought out the tweet that was embedded in the article. This is a more deliberate action than simply retweeting another person. But even "[t]he act of retweeting can fall outside of the immunity provided by the CDA when a user couples the retweet with his or her own added speech." *Holmok v. Burke*, 2022 WL 2256413, *3 (Ohio Ct. App. June 23, 2022) (citing *US Dominion, Inc. v. Byrne*, 600 F. Supp. 3d 24, 36 (D.D.C. 2022)).

35) Accordingly, "[w]hile § 230 may provide immunity for someone who merely shares a link on Twitter, . . . it does not immunize someone for making additional remarks that are allegedly defamatory." *US Dominion, Inc.*, 600 F. Supp. 3d at 36. Thus, the court in *US Dominion* held that the CDA did not immunize the defendants where they tweeted that they "vouch[ed] for" the defamatory evidence contained in the accompanying retweet. *See id.* (citing *La Liberte v. Reid*, 966 F.3d 79, 90 (2d Cir. 2020)).

36) Similarly, in *La Liberte*, 966 F.3d at 90, the Second Circuit held that the CDA did not protect a media defendant, Joy Reid, "because she authored both Posts at issue." The court explained that "[a]s sole author of the June 29 Post, Reid alone was 'responsible ... for [its] creation or development,' which makes her the sole 'information content provider.'" *Id.* (quoting 47 U.S.C. § 230(f)(3)). "Moreover, she went way beyond her earlier retweet of Vargas in ways that intensified and specified the vile conduct that she was attributing to La Liberte. She accordingly stands liable for any defamatory content." *Id.*

37) Against this background, it is clear that because The Daily Caller wrote and published its own defamatory article, it cannot be immune pursuant to the Communications

Decency Act. Similarly, its decision to embed a tweet containing an image of the Plaintiff served to give context to the defamatory article. Even still, its decision to embed the tweet was an active, not passive, decision, which is another factor cutting against immunity.

38) One final point. Although it is clear that The Daily Caller developed actionable and defamatory materials within the meaning of the existing case law, many of the Section 230 cases to date have likely construed the statute too broadly and have therefore provided defendants with immunity when they should not have received it, which further compels the conclusion that this motion must be denied.

39) This is evidenced by *Malwarebytes, Inc. v. Enigma Software Group USA, LLC*, 141 S. Ct. 13, 16 (2020), in which the United States Supreme Court denied a petition for writ of certiorari. Respecting the denial of certiorari, Justice Thomas wrote separately to explain that many courts have interpreted Section 230 immunity much too broadly. According to Justice Thomas, "[c]ourts have long emphasized nontextual arguments when interpreting § 230, leaving questionable precedent in their wake." *Id.* at 14. Justice Thomas explained that "from the beginning, courts have held that § 230(c)(1) protects the 'exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or *alter* content.' . . . Only later did courts wrestle with the language in § 230(f)(3) suggesting providers are liable for content they help develop 'in part.' To harmonize that text with the interpretation that § 230(c)(1) protects 'traditional editorial functions,' courts relied on policy arguments to narrowly construe § 230(f)(3) to cover only substantial or material edits and additions." *Id.* Justice Thomas explained that "[t]o say that editing a statement and adding commentary in this context does not "creat[e] or develo[p]" the final product, even in part, is dubious." *See id.* Justice Thomas continued, clarifying that "[t]he decisions that broadly

interpret § 230(c)(1) to protect traditional publisher functions also eviscerated the narrower liability shield Congress included in the statute." *Id.*

40) More recently, in July 2024, Justice Thomas, now joined by Justice Gorsuch, dissented from the denial of certiorari in *Doe Through Roe v. Snap, Inc.*, 144 S. Ct. 2493, 2494 (2024), reiterating Justice Thomas's statements in *Malwarebytes.*

Actual Malice

41) The Daily Caller next argues that Plaintiff's claim for defamation *per se* should be dismissed because the actual malice standard is required.

42) Specifically, The Daily Caller asserts that "[t]here can be no question that a teacher being charged with sexual abuse of a student is an issue of public concern." But of course, Plaintiff has never been charged with any such conduct or crime so this argument is nonsensical.

43) Acknowledging the absurdity of its own argument, The Daily Caller then writes that "Plaintiff may argue that 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.'"

44) The argument is nonsensical because The Daily Caller's reporting was not about Plaintiff's arrest. And the argument is malicious because Plaintiff did not "beat up defenseless women," nor would anyone have any reason to think so. There was no media reporting on his misdemeanor arrest, and the charge against Plaintiff was quickly dropped.

45) A plaintiff who is neither a public official nor public figure in a defamation action is not required under Florida law to establish as an element of his cause of action that

the defendant published the alleged false and defamatory statements sued upon with "actual malice." *Miami Herald Pub. Co. v. Ane*, 458 So. 2d 239, 240 (Fla. 1984).

46) As The Daily Caller concedes, presumed damages may be appropriate on a showing of actual malice. "Actual malice is defined as 'knowledge that the statement was false or reckless disregard of whether it was false or not.'" *Reardon v. WPLG, LLC*, 317 So.3d 1229, 1235 (Fla. 3d DCA 2021). There is already a good faith reason to believe The Daily Caller acted with actual malice because they had at least constructive notice that WPLG had included the wrong photograph of Plaintiff in its reporting, and therefore the conduct was reckless. This will be subject to further proof and possibly future amendment to the pleadings as the case develops.

47) In any event, "for purposes of pleading in a negligence action against the media, labeling an action libel per se remains a useful shorthand for giving a media defendant notice that the plaintiff is relying upon the words sued upon as facially defamatory, and therefore actionable without resort to innuendo." *See Mid-Florida Television Corp. v. Boyles*, 467 So. 2d 282, 283 (Fla. 1985). For this reason alone, dismissal is inappropriate.

The Daily Caller's Argument Regarding the "Libel-Proof Plaintiff Doctrine" is Made in Bad Faith and Warrants Admonishment

48) Finally, The Daily Caller outrageously argues that Plaintiff is 'defamation proof.' If it were not for the litigation privilege, this argument would itself be defamatory. The Court should not tolerate this bad faith argument, which is offensive and sanctionable.

49) Plaintiff was arrested for an alleged simple misdemeanor battery in December and the charge was dropped a few days later. The Daily Caller does not allege—nor can it—that Plaintiff is a notorious criminal to which the 'defamation proof plaintiff' doctrine would apply. Nevertheless, The Daily Caller refers in bad faith to Plaintiff having a 'rap sheet,' and

calls him a 'wife-beater' (even though he is not married and does not have a girlfriend) whose alleged conduct is of the same "severity, heinousness, or unacceptability" *as a schoolteacher being engaged in a felony sexual relationship with a child.* Even assuming, *arguendo*, that the misdemeanor battery charge against Plaintiff had not been dropped, and even assuming, *arguendo*, that he had been convicted of such a thing—none of which happened—this argument is still absurd. "It requires no citation to authority for the proposition that acts of sexual abuse committed against children are considered among the most heinous of crimes." *State v. Carlisle*, 961 N.E.2d 671 (Ohio Ct. App. 2010).

50) This argument is an outrageous smear, which is evidenced by the fact that The Daily Caller compares Plaintiff in case citations to an "inmate serving life sentences for murder and kidnapping" and an "inmate serving life sentence for murder."

51) What is more, in *Lamb v. Rizzo*, 391 F.3d 1133, 1136 (10th Cir. 2004), cited by The Daily Caller, the plaintiff had "been imprisoned for more than a quarter of a century." The case makes clear that for the libel-proof plaintiff doctrine to apply, "the criminal behavior" must be "widely reported to the public," causing "his reputation [to] diminish[] proportionately" because "[d]epending upon the nature of the conduct, the number of offenses, and the degree and range of publicity received, there comes a time when the individual's reputation for specific conduct, or his general reputation for honesty and fair dealing is sufficiently low in the public's estimation that he can recover only nominal damages for subsequent defamatory statements." *Id.* (citing *Wynberg v. Nat'l Enquirer, Inc.,* 564 F. Supp. 924, 927–28 (C.D. Cal. 1982)). The Daily Caller knew or should have known that this standard is inapplicable to the Plaintiff.

52) Perhaps most disgustingly, The Daily Caller writes that "'I'm a wife beater, not a child abuser," is not the kind of reputational repair that entitles a plaintiff to relief." If The

Daily Caller had done any research, it would know that Plaintiff was not charged with 'beating his wife,' much less was he convicted of anything of the sort. The Daily Caller desires instead to vindictively drag the Plaintiff's name through the mud. *Cf. The Florida Bar v. Norkin*, 132 So. 3d 77, 89 (Fla. 2013) ("The Court is profoundly concerned with the lack of civility and professionalism . . . . The Court has repeatedly ruled that unprofessional behavior is unacceptable.").

53) This doctrine is reserved for cases involving well-known, hardened criminals. The Daily Caller knows or should have known the argument is wholly inapplicable and offensive, yet raised it anyway in order to embarrass the Plaintiff and cause him further distress. It should be summarily rejected and warrants admonishment.

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that Defendants AOL Media LLC's and The Daily Caller, Inc.'s, motions to dismiss be denied. Alternatively, if the Court is inclined to dismiss any claims against one or both of these Defendants, Plaintiff requests leave to amend his complaint. Plaintiff also requests that The Daily Caller be admonished for its argument at Section 3.4 of its motion regarding the libel-proof plaintiff doctrine. Further, Plaintiffs requests any other relief the Court deems just and proper.

Respectfully submitted,

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