IN THE COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR OSCEOLA COUNTY, FLORIDA

KAILYN LOWRY,

Plaintiff,

v.

BRIANA SOTO p/k/a BRIANA DE JESUS,

Defendant.

_____/

Case No. 2021-CA-001817 OC

DEFENDANT'S REPLY IN SUPPORT OF ANTI-SLAPP MOTION FOR SUMMARY JUDGMENT UNDER FLA. STAT. § 768.295

Defendant Briana Soto files this Reply in support of her Anti-SLAPP Motion.

1.0 Introduction

This case is a SLAPP suit. It is apparent that the Ms. Lowry filed it not because she had a valid defamation claim, but instead because she wished to silence public discussion of her violent attack on her ex-boyfriend, Christopher Lopez and to use the process as part of her personal vendetta against the Defendant. The problem for Ms. Lowry is that Ms. Soto's statements were truthful, or if inaccurate, were true to the best of her knowledge. The uncontroverted evidence shows that Ms. Soto made her statements without any knowledge of their falsity, nor with a reckless disregard for the truth. This case fails as a matter of law, and Ms. Soto asks this Court to grant her summary judgment under Florida's Anti-SLAPP statute and award her attorneys' fees and costs.

2.0 Factual Background

It is undisputed that on September 4, 2020, Plaintiff Kailyn Lowry entered the home Christopher Lopez's mother, and that Ms. Lowry and Mr. Lopez then engaged in a heated argument. *See* Declaration of Kailyn Lowry ["Lowry Decl."], attached to Opposition, at ¶¶ 26-33. It is undisputed that Mr. Lopez reported Ms. Lowry's battery to the police and that Ms. Lowry was arrested and charged with a crime as a result. *See id*. at ¶ 35. From there, as often happens when

strong emotions and criminal charges are involved, the stories diverge. Mr. Lopez contends that Ms. Lowry was angry and struck him during the argument. *See* Declaration of Chris Lopez ["Lopez Decl."], attached as **Exhibit 1**, at ¶¶ 4-8. Ms. Lowry claims that she did not strike Mr. Lopez, and that Mr. Lopez is lying about the battery. *See* Lowry Decl. at ¶¶ 33-34.

Ms. Soto was familiar with the incident, hearing about it both in the press and from Mr. Lopez himself. *See* Transcript of the Deposition of Briana Soto ["Soto Trans."], attached as **Exhibit 2**, at 118:7-17, 177:15-25; Declaration of Briana Soto, attached to Anti-SLAPP Motion, at ¶¶ 8-10, ¶ 12; Lopez Decl. at ¶¶ 3-10. She was also aware that Ms. Lowry had a disposition for violence, a fact that could be discerned by any viewer of the television show Teen Mom 2, on which Ms. Soto and Ms. Lowry both appear. *See* Soto Trans. at 97:18–98:13; Christina Stiehl, "'Teen Mom 2' Preview: Kailyn Hits Javi During Explosive Fight", Hollywood Life (Mar. 25, 2013),[1] attached as **Exhibit 3**; "Kailyn Lowry brawls with Briana DeJesus' sister during Teen Mom 2: Behind The Screams reunion", Daily Mail (Aug. 8, 2018)[2] ("During the episode, which aired on Monday, the 26-year-old her hair pulled by her rival's sister Brittany DeJesus."), attached as **Exhibit 4**; Transcript of the Deposition of Kailyn Lowry ["Lowry Trans."], attached as **Exhibit 5**, at 49:14-24.

Ms. Soto publishes a broadcast on the Instagram platform. *See* Soto Trans. at 30:5-31:10. While she may not have a separate network syndicated television show, she regularly broadcasts to these followers on this platform who want the 'post-game show' for Teen Mom 2 issues. *See id.* at 49:9-50:16. There is no legal distinction between this broadcast and one on YouTube, Netflix, or any other Internet based platform.

Ms. Soto discussed Lowry's criminal charges in an Instagram live broadcast. Her viewers are familiar with both Ms. Soto and Ms. Lowry through their appearances on Teen Mom 2. Ms. Soto's Complaint stems from that video, and her Complaint alleges that Ms. Soto defamed her

[1] Available at: https://hollywoodlife.com/2013/03/25/kailyn-lowry-hits-javi-marroquin-teen-mom-2-preview-video/ (last accessed Mar. 23, 2022).

[2] Available at: https://www.dailymail.co.uk/tvshowbiz/article-6038255/Kailyn-Lowry-brawls-Briana-DeJesus-sister-Teen-Mom-2-Screams-reunion.html (last accessed Mar. 23, 2022).

when she stated that Ms. Lowry assaulted Mr. Lopez and that Ms. Lowry "broke into" Mr. Lopez's mother's house in order to assault Mr. Lopez.

In opposition to Ms. Soto's Motion, Plaintiff puts on a masterclass of goalpost-shifting, essentially abandoning her claims relating to Lowry punching Mr. Lopez and instead falling back to an indefensible position – that that the *real* defamation in Ms. Soto's post relates to Ms. Soto's off-hand comment that Ms. Lowry "broke in" to the house before wildly punching her child's father. This is because she realizes that she cannot win a defamation claim relating to the battery and hopes that Ms. Soto's passing mention of breaking and entering is enough to save her case. To hold that this cherry-picked discrepancy, if it even is one, is enough to sustain a claim for defamation would be reversible error. *See Cape Publ'ns. v. Reakes*, 840 So. 2d 277, 280 (Fla. 5th DCA 2003); *Readon v. WPLG, LLC*, 317 So. 3d 1229, 1234-35 (Fla. 3d DCA 2021); *Kieffer v. Atheists of Fla., Inc.*, 269 So. 3d 656, 659 (Fla. 2d DCA 2019).

3.0 Argument

Florida's anti-SLAPP statute applies to this case because Soto exercised her Constitutional right to free speech in connection with a public issue, and this case should be dismissed as a result. Additionally, Ms. Lowry's case should be dismissed because of her failure to give pre-suit notice to Ms. Soto, as required by Fla. Stat. § 770.01.

3.1 Plaintiff failed to provide pre-suit notice required by Fla. Stat. § 770.01.

Florida law requires pre-suit notice to be served "[b]efore any civil action is brought for publication or ***broadcast***, in a newspaper, periodical, ***or other medium***, of a libel or slander…." Fla. Stat. § 770.01 (emphasis added). In recognition of the changing realities of today's media landscape, Florida courts have evolved their understanding of how a media defendant is defined and what types of media are covered under the statute. Courts will look to "whether the defendant engages in the traditional function of the media, which is 'to initiate uninhibited, robust, and wide-open debate on public issues.'" *Mazur v. Baraya*, 275 So. 3d 812, 817 (Fla. 2d DCA 2019) (quoting *Tobinick v. Novella*, No. 9:14-CV-80781, 2015 U.S. Dist. LEXIS 31884, 2015 WL 1191267, at *8 (S.D. Fla. March 16, 2015)). The "or other medium" catch-all has likewise been interpreted

broadly, finding that online journals and blogs can be mediums which warrant the protections of Fla. Stat. § 770.01. *See, e.g., Plant Food Sys., Inc. v. Irey*, 165 So. 3d 859, 861 (Fla. 5th DCA 2015) (holding that "an internet publisher of various purportedly scientific, technical, and medical journals and information" was covered by section 770.01). Since at least 2014, Florida Appellate courts have been clear (as they should be) that the drafters of the statute did not include a provision that its protections are frozen in time. In *Comins v. VanVoorhis*, 135 So. 3d 545, 559 (Fla. 5th DCA 2014), Comins attempted to argue that since VanVoorhis published on an internet blog, § 770.01 did not apply, because it was not enumerated in the statute. The Fifth DCA saw this argument for what it was and ruled in favor of a small time blogger with a small audience.

Ms. Lowry admits that she failed to send pre-suit notice under Section 770.01. Rather, she argues that Ms. Soto was not entitled to notice because Instagram is not an "other medium" under the statute and Ms. Soto was not acting as a "media defendant" when she published her statements. For the "other medium" argument, Lowry claims that an Instagram Live broadcast is different from blogs or other reporting because it is ephemeral and only stays published for 24 hours, thus making it impossible for a publisher to make any meaningful retraction.

Perhaps if the statute said "except for ephemeral broadcasts," this argument would have merit. It has no such limitation. Further, if this argument were to take hold, the "traditional" news media would likely be very surprised to learn that this Honorable Court has re-interpreted § 770.01 to exclude any live broadcasts – something that would be inconsistent with Florida law. *See Cousins v. Post-Newsweek Stations Fla., Inc.*, 275 So. 3d 674, 680 (Fla. 3d DCA 2019).

There do not appear to be any Florida cases directly on-point as to this issue, mostly because nobody has been so brazen as to make such an illogical argument before an appellate court. It makes no sense. Section 770.01 was passed in the 1930s, long before broadcasters even had the ability to archive and make footage available a second time. The statute specifically had ephemeral news reports in mind. There is nothing contradictory about protecting such broadcasts and requiring pre-suit notice, as there is no requirement that a retraction be part of the same publication or broadcast as the original statement. Indeed, at the time Section 770.01 was passed,

this was a technical impossibility, as the only way media defendants could issue a retraction was by making a separate, subsequent publication or broadcast. Similarly, if Ms. Lowry had provided pre-suit notice to Ms. Soto, then Ms. Soto would have had the ability to publish a new statement on Instagram and make a new Instagram Live broadcast containing a retraction. There is nothing about Instagram that makes it distinct from an airwaves broadcast that would preclude Section 770.01 from applying.

Ms. Lowry also argues that Ms. Soto's Instagram account is not an "other medium" because it is not operated for the free dissemination of information and "neutral commentary" on issues of public interest. This is related to her argument that Ms. Soto was not engaged in news reporting when she published her statements, and neither argument is availing. "Teen Mom 2" and other reality shows are not highbrow matters. Perhaps those with refined tastes would turn up their noses at an online broadcast about something so proletarian as reality TV – but the First Amendment will not abide any decision that turns on the subject matter of a broadcast to determine if it is afforded a lower form of protection. Netflix has a series that streams, over the internet, onto a computer screen, called "Is it Cake?" *See* "Is It Cake?", IMDb (accessed Mar. 25, 2022).[3] This would qualify – even if it is merely about cakes that look like other things. How about "Entertainment Tonight?" *See* "Entertainment Tonight", IMDb (accessed Mar. 25, 2022).[4] Would it not qualify? Of course it would. TMZ regularly deals with low-brow gossip about celebrities. It is entitled to the same protection as any other broadcast. *See, e.g., Bilzerian v. Dirty World, LLC*, No. A-15-722801-C, 2015 WL 10372243, at *1 (Nev. Dist. Ct. Dec. 18, 2015). However, Ms. Lowry is attempting to create a carve out just small enough to encompass an internet streaming broadcast about celebrities? Why? To sustain her argument that her physically assaulting her former romantic partner should be the subject of a defamation claim?

As reality television stars, Ms. Soto and Ms. Lowry put their personal lives at issue in the public's eyes. Their private lives are the subject of intense public scrutiny, and they are written

[3] Available at: https://www.imdb.com/title/tt18314214/
[4] Available at: https://www.imdb.com/title/tt0081857/

about and discussed *ad infinitum* by the media. *See* Lowry Trans. at 29:19-21 (Q: "Would you say that there's a lot of press attention focused on your personal life?" A: "Yes.") In her video, Ms. Soto's statements concerned publicly-known allegations against Ms. Lowry, including allegations that Ms. Lowry, a popular public figure, committed a crime. Her medium was Instagram Live, which allowed Ms. Soto to broadcast her views – not unlike public access cable. Her statements were not made to further a personal grudge,[5] but to discuss a matter of public interest, in this case the questions the public had concerning allegations that Ms. Lowry battered her ex-boyfriend and the circumstances of Ms. Lowry's disappearance from an episode of their popular television show. Ms. Soto was not merely dishing on Ms. Lowry; she was providing insight to the viewing public and her Instagram followers about why a sudden change in casting for a Teen Mom 2 episode occurred. The use of her Instagram account in this way satisfies both the purpose and the text of Fla. Stat. § 770.01. Failure to comply with this pre-suit notice requirement "requires dismissal of the complaint for failure to state a cause of action." *Mancini v. Personalized Air Conditioning & Heating*, 702 So. 2d 1376, 1377 (Fla. 4th DCA 1997). There are no exceptions.

3.2 Florida's anti-SLAPP statute applies to this action.

In opposing Ms. Soto's motion, Ms. Lowry argues that Florida's anti-SLAPP statute should not apply to this dispute because the statements evidence a private dispute between the parties and not a matter of public interest. Perhaps for Ms. Lowry, it is a personal vendetta – but for Ms. Soto, it is a matter of her right to broadcast to a wide audience on a matter of public concern.

The statements relate to criminal allegations against a public figure – allegations that have been widely reported upon by the press – and are indeed public issues which implicate the anti-

[5] Ms. Lowry argues that "neutrality" is essential to be entitled to Section 770.01's protections, but her only evidence of a lack of neutrality is a few off-hand comments that she characterizes as "taking several jabs at Lowry." (Opposition at 20.) Ms. Lowry cites no authority for the proposition that a reporter or author of a publication must be completely neutral and have no opinions about the subject of reporting to be entitled to pre-suit notice. Otherwise, the statute would afford no protection even to well-established media entities with well-known conservative or liberal biases such as FOX News or MSNBC. Were we even able, as mere mortals, to come up with a universal definition of "neutrality," the First Amendment would not abide giving protection to "neutral" statements, but not to opinionated statements. Further, if this was the intent, the drafters of the statute would have had ample time to put this requirement in it. The absence of this requirement is evidence of the intent to exclude it. *See Schoeff v. R.J. Reynolds Tobacco Co.*, 232 So. 3d 294, 304 (Fla. 2017).

SLAPP statute. This argument also fails because, as explained in the Anti-SLAPP Motion, there is no requirement that the content of the speech at issue be related to an issue of public interest or concern, but rather that it be a written or oral statement "made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report*, or other similar work*." Fla. Stat. § 768.295(2)(a) (emphasis added). Ms. Lowry ignores the broad scope of the Anti-SLAPP statute.

Even assuming the statements at issue must be in connection with an issue of public interest, Ms. Lowry's arguments fail. Ms. Lowry tries to frame Ms. Soto's statements as a "targeted attack on her rival," saying that the statements "actually relate to Lowry as an individual, not to the Series." Nothing could be further from the truth, however. Ms. Soto's statements continuously reference the television show, and are intended to provide Ms. Soto's theory on why Ms. Lowry did not appear on a particular episode. *See* Levenson Decl. at *Exhibit A*. The statement was made on Instagram Live and was viewed by Ms. Soto's followers, most of whom are only familiar with Ms. Soto and Ms. Lowry through their appearances on Teen Mom 2. Despite Ms. Lowry's repeated unsupported assertions that Ms. Soto merely spoke out in support of some grudge or "feud," Ms. Soto was answering the viewers' questions and generally reporting about her issue with other cast-mates who paint a dishonest picture of themselves through their appearances on the show.

This characterization of Ms. Soto's statements as being part of a personal grudge is especially disingenuous because it ignores the context of the parties' very public relationship – one that has drawn mountains of media attention. They are both cast members of Teen Mom 2, and the entire premise of that show is to publicize aspects of their lives that for other people would be private. Even assuming, *arguendo*, that the grudge Ms. Soto alleges exists, such grudge is hardly private when it is repeatedly broadcast nationwide with Ms. Lowry's knowledge and consent. This is like claiming that a publicized feud between two professional wrestlers is nothing more than a "private dispute."

3.3 Ms. Soto's statements were true, or at least were not made with knowledge of their falsity.

A defamation plaintiff must show (1) the defendant's publication of an allegedly defamatory statement; (2) falsity; (3) the defendant acted with knowledge or reckless disregard as to the falsity on a matter concerning a public figure; and (4) actual damages. *Internet Solutions Corp. v. Marshall*, 39 So. 3d 1201, 1214 n.8 (Fla. 2010) (*citing Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008)). Lowry cannot satisfy these elements.

A public figure must further show that a defendant acted with actual malice in making the statement, which is "established by showing that the publication was made with knowledge that it was false or with reckless disregard of whether it was false or not." *Hoch v. Rissman, Weisberg, Barrett, Hurt, Donahue & McLain, P.A.*, 742 So. 2d 451, 460 (Fla. 5th DCA 1999). A plaintiff must show actual malice with "clear and convincing evidence." *Dockery v. Fla. Democratic Party*, 799 So. 2d 291, 294 (Fla. 2d DCA 2001). Ms. Lowry does not dispute that she is a public figure and does not dispute that the actual malice standard applies.

3.3.1 Ms. Soto's statement was literally true, and Ms. Lowry does not provide any evidence to rebut it.

Despite Ms. Lowry's sensational complaint alleging all kinds of feuds, "bad blood," and grievances, Ms. Lowry now admits that this lawsuit boils down to one precise statement:

> **Kail doesn't wanna (sic) film about breaking and entering into Chris momma (sic) house and beating him for cutting his child's hair.**

See Plaintiff's Response to Defendant's Second Set of Interrogatories, attached as **Exhibit 6**, at Response to Interrogatory No. 15 (emphasis added).

Despite the in-depth analyses of actual malice and defamation elements, this case can be decided as a matter of law by only the literal words at issue. Ms. Soto's statement does not, itself, allege that Ms. Lowry engaged in breaking or entering, and it does not allege that Ms. Lowry attacked Mr. Lopez. Instead, it asserts that Ms. Soto *did not want to film about those allegations that have been made against her*. This statement is literally true, and Ms. Lowry provides no evidence to refute it.

First, Ms. Soto has testified that she was specifically told by production that Ms. Lowry did not wish to film about her arrest. *See* Soto Trans. at 150:3-151:2 (Q: "So [production] specifically told you that [Ms. Lowry] doesn't want to film about the arrest?" A: "Yes."). Taken together with Mr. Lopez's statements to Ms. Soto alleging that Ms. Lowry broke and entered into his mother's home, it was reasonable for Ms. Soto to assume that this fear of filming about the arrest extended to the breaking and entering as well.

In rebuttal, Ms. Lowry offers that she was removed from the episode because she did not want production to film the person she was dating and posits that being removed "had nothing to do with my arrest that was expunged or the allegations that were made against me that resulted in that arrest." *See* Lowry Decl. at ¶¶ 47-48. However, she provides no evidence to rebut Ms. Soto's assertion that Ms. Lowry **did not want to film about the allegations.** The purpose of her removal from the episode may not have been explicitly because of the arrest, but that does not make Ms. Soto's statement that Ms. Lowry "doesn't wanna (sic) film about" the altercation untrue. Notably, at any time Ms. Lowry could have provided even a self-serving declaration stating that she was willing to film about the arrest, but she has failed to do so. And, logically, it is unlikely that Ms. Lowry would have willingly wanted to film a television episode which includes a recounting of an embarrassing story of allegations of domestic violence, breaking and entering, and her arrest.

Even if the statement was not literally true, and Ms. Lowry had provided evidence that she was actually willing to film about the allegations, Ms. Soto's statement that Ms. Lowry did not want to film about a subject, no matter what the subject was, is not capable of sustaining a claim for defamation and this case should be dismissed as a matter of law.

3.3.2 Ms. Lowry was arrested and charged for battery.

Ms. Soto's statements about Ms. Lowry's battery on Mr. Lopez were true, or substantially true. Ms. Soto has shown, conclusively, that there can be no defamation with respect to Ms. Lowry acting violently toward Mr. Lopez. Mr. Lopez has sworn that she did hit him. *See* Lopez Decl. at ¶¶ 4-8. Further, there is a police report that supports that conclusion. *See* partially redacted police report of September 4, 2020 incident, attached to Anti-SLAPP Motion as *Exhibit 4*. Ms. Lowry

admits that she was arrested and charged with a crime relating to her battery on Mr. Lopez. *See* Lowry Decl. at ¶ 36; Lowry Trans. at 79:6-17 (Q: "You were arrested for allegedly punching [Christopher Lopez]?" A: "Yes."). Ms. Soto reviewed the police report prior to making her statement and relied upon it to inform her statement. *See* Soto Trans. at 118:12-14.

Additionally, the entire armada of press on this issue that pre-dates her statement supports the conclusion that Ms. Lowry battered Mr. Lopez. *See* Teresa Roca, "JAILIN' KAILYN Teen Mom's Kailyn Lowry arrested after 'punching ex Chris Lopez several times with closed fist' over son's haircut" The U.S. Sun (Oct. 29, 2020),[6] attached as **Exhibit 7**; The Ashley, "'Teen Mom 2' Star Kail Lowry Arrested Last Month for "Domestic Incident" Against Baby Daddy Chris Lopez: Get the Details!", The Ashley's Reality Roundup (Oct. 29, 2020),[7] attached as **Exhibit 8**; "Kail Lowry ARRESTED For Hitting Chris Lopez", Champion Daily (Oct. 29, 2020),[8] attached as **Exhibit 9**; Jade Boren, "'Teen Mom 2's Kailyn Lowry Arrested For Allegedly Punching Ex Chris Lopez Over Son Lux's Haircut", Hollywood Life (Oct. 29, 2020),[9] attached as **Exhibit 10**; Nicholas Hautman, "Teen Mom 2's Kailyn Lowry Arrested for Allegedly Punching Ex Chris Lopez Over Son Lux's Haircut",[10] Us Weekly (Oct. 29, 2020), attached as **Exhibit 11**; D.Ly., "Teen Mom 2 Star Kailyn Lowry Arrested For Allegedly Punching Baby Daddy Chris Lopez", CelebrityTalker.com (Oct. 30, 2020),[11] attached as **Exhibit 12**; Lindsay Cronin, "Teen Mom 2's Kailyn Lowry Arrested, Accused of Punching Ex-Boyfriend Chris Lopez "Several Times" After He Cut Their Son Lux's Hair, What She Told Police About Dispute", RealityBlurb! (Oct. 30,

[6] Available at: https://www.the-sun.com/entertainment/1704884/teen-mom-kailyn-lowry-arrested-after-punching-ex-chris-lopez-several-times/ (last accessed Feb. 10, 2022).

[7] Available at: https://www.theashleysrealityroundup.com/2020/10/29/teen-mom-2-star-kail-lowry-arrested-last-month-for-domestic-incident-against-baby-daddy-chris-lopez-get-the-details/ (last accessed Feb. 10, 2022).

[8] Available at: https://championdaily.com/2020/10/29/kail-lowry-arrested-for-hitting-chris-lopez/21/ (last accessed Feb. 10, 2022).

[9] Available at: https://hollywoodlife.com/2020/10/29/kailyn-lowry-arrested-punched-chris-lopez-haircut-son-lux-report/ (last accessed Feb. 10, 2022).

[10] Available at: https://www.usmagazine.com/celebrity-news/news/teen-mom-2s-kailyn-lowry-arrested-for-allegedly-punching-chris-lopez/ (last accessed Feb. 10, 2022).

[11] Available at: https://celebritytalker.com/teen-mom-2-star-kailyn-lowry-arrested-for-allegedly-punching-baby-daddy-chris-lopez/ (last accessed Feb. 10, 2022).

2020),[12] attached as **Exhibit 13**; "Teen Mom 2 Star Kailyn Lowry Arrested For Allegedly Punching Baby Daddy Chris Lopez", PerezHilton (Oct. 30, 2020),[13] attached as **Exhibit 14**; Mehera Bonner, "Kailyn Lowry Was Arrested for Allegedly Punching Her Ex During Dispute Over Their Son's Haircut", Yahoo! Life (Oct. 30, 2020),[14] attached as **Exhibit 15**; Jessica Napoli, "'Teen Mom 2' star Kailyn Lowry arrested for allegedly punching son's father Chris Lopez", Fox News (Oct. 30, 2020),[15] attached as **Exhibit 16**; Mousewell, "Kail Lowry ARRESTED for "Domestic Incident" Against Ex-Boyfriend Chris Lopez", Teen Mom Madness (Nov. 2, 2020),[16] attached as **Exhibit 17**; Jeroslyn Johnson, "Teen Mom 2: Inside Kailyn Lowry's Domestic Violence Arrest", ScreenRant (Nov. 7, 2020),[17] attached as **Exhibit 18**; Ekin Karasin, "NASTY FEUD Teen Mom Kailyn Lowry's ex Chris Lopez posts about 'ugly truths' after she was arrested for 'punching him repeatedly'", The U.S. Sun (Dec. 8, 2020),[18] attached as **Exhibit 19**; Shelby Stivale, "'Teen Mom 2' Star Kailyn Lowry Arrested for Allegedly Punching Ex Chris Lopez", Radar (Feb. 26, 2021),[19] attached as **Exhibit 20**. Ms. Soto reviewed media reports about the incident prior to making her statement. *See* Soto Trans. at 120:3-11, 158:22-160:2. Accordingly, she relied not only on Mr. Lopez's statement as a first-hand victim, but she also relied in good faith on corroborating stories in press outlets that she deemed reliable. *Id*.

The fact that charges for "offensive touching" were later dropped hardly establishes that Ms. Lowry did not attack Mr. Lopez, and has no bearing on the established fact that she was

[12] Available at: https://realityblurb.com/2020/10/30/teen-mom-2-kailyn-lowry-arrested-accused-of-punching-ex-boyfriend-chris-lopez-after-he-cut-their-son-luxs-hair-what-she-told-police-about-dispute/ (last accessed Feb. 10, 2022).

[13] Available at: https://perezhilton.com/teen-mom-kailyn-lowry-arrest-punching-allegation-chris-lopez/ (last accessed Feb. 10, 2022).

[14] Available at: https://www.yahoo.com/lifestyle/kailyn-lowry-arrested-allegedly-punching-131200454.html?guccounter=1 (last accessed Feb. 10, 2022).

[15] Available at: https://www.foxnews.com/entertainment/teen-mom-kailyn-lowry-arrested-punching-chris-lopez (last accessed Feb. 10, 2022).

[16] Available at: https://teenmommadness.com/2020/11/02/kail-lowry-arrested-for-domestic-incident-against-ex-boyfriend-chris-lopez/ (last accessed Feb. 10, 2022).

[17] Available at: https://screenrant.com/teen-mom-2-kailyn-lowry-domestic-violence-arrest/ (last accessed Feb. 10, 2022).

[18] Available at: https://www.the-sun.com/entertainment/1932076/teen-mom-kailyn-lowry-chris-lopez-arrest/ (last accessed Feb. 10, 2022).

[19] Available at: https://radaronline.com/exclusives/2020/10/teen-mom-2-star-kailyn-lowry-arrested-for-allegedly-punching-ex-chris-lopez/ (last accessed Feb. 10, 2022).

arrested for this conduct. Given that Ms. Soto's statements do no more than refer back to this arrest and "domestic abuse situation," they are true as to Ms. Lowry assaulting Mr. Lopez.

All this evidence also establishes that Ms. Soto did not act with actual malice. Even if Ms. Lowry never laid a hand on Mr. Lopez, there is nothing in the record to suggest that Ms. Soto possessed the faintest doubt as to the truth of these statements. She was informed by the victim and by multiple news sources that she found reliable that this is what happened. *See* Soto Trans. at 138:9-25, 158:22-159:14, and 177:18-25. Therefore, there is no possible scenario where the statement about Ms. Lowry hitting Mr. Lopez could be defamatory under the actual malice standard. *See St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S. Ct. 1323, 1325 (1968); *Times Publ'g Co. v. Huffstetler*, 409 So. 2d 112, 113 (Fla. 5th DCA 1982).

Ms. Lowry argues that it was reckless for Ms. Soto to rely on Mr. Lopez in publishing her statements about his own personal experiences because (1) she allegedly previously accused Mr. Lopez of beating Ms. Lowry, (2) she had not met Mr. Lopez at the time she published her statements, (3) she was aware of an order of protection against Mr. Lopez, and (4) she was aware of contentious family court proceedings between Mr. Lopez and Ms. Lowry.

The first and second points are irrelevant; in an unstable household, it is entirely possible for both members of a couple to assault one another. Even if Ms. Soto believed that Mr. Lopez attacked Ms. Lowry, that does not make Ms. Lowry's assault of Mr. Lopez any less likely – if anything, it makes it *more* logically likely. The second point is false; Mr. Lopez and Ms. Soto have both provided sworn testimony that they met and spoke about the September 4, 2020 incident prior to Ms. Soto publishing the statements at issue. *See* Soto Trans. at 138:7-25; Lopez Decl. at ¶¶ 2-13 and Ms. Lowry has no competing evidence. The fourth point is also irrelevant, as there is no explanation of how the existence of contentious family court proceedings makes it less likely that Ms. Lowry assaulted Mr. Lopez.

Presumably, the gist of this argument is that Mr. Lopez is an unreliable witness because he has a dispute with Ms. Lowry. If Mr. Lopez were Ms. Soto's sole source of information, this argument might make some hypothetical sense, but it is not. Ms. Lowry was arrested for attacking

Mr. Lopez. His statements to law enforcement were believable enough to warrant an arrest. *See* Police Report, attached to Anti-SLAPP Motion as *Exhibit 4*. The police report also mentions corroborating witnesses. Ms. Soto was aware of the exhaustive media coverage of this incident. *See* Soto Decl. at ¶¶ 8-10; Soto Trans. at 118:12-22, 120:5-11, 158:22-159:14. And Ms. Soto was aware of Ms. Lowry's reputation for attacking her significant others. *See* Soto Trans. at 158:22-159:14; 177:18-25. There was thus external verification of Mr. Lopez's statements to Ms. Soto, and so it was reasonable (and certainly not reckless) to rely on Mr. Lopez as a source.

Aside from not proving her point, Ms. Lowry's evidence supporting these assertions is inadmissible. As to point 1, Ms. Lowry does not claim to have personal knowledge of Ms. Soto's online statements, instead referring only to a third-party article that purports to quote Ms. Soto without attaching a screenshot of the alleged statement. This is inadmissible hearsay within hearsay; while the quoted statement could perhaps be admissible as a statement of a party opponent, the media report referring to the statement is hearsay and does not enjoy this exception. *See* Fla. Stat. §§ 90.801–90.805. As for point 2, Ms. Lowry's affidavit only establishes a lack of her personal knowledge as to whether Ms. Soto and Mr. Lopez met. She does not claim to be intimately familiar with either person's schedule and there is no reason to believe that her lack of knowledge of something happening equates to evidence that it did not happen. As for points 3 and 4, Ms. Lowry provides no basis for her allegation that Ms. Soto was aware of the order of protection and the family court dispute. She only claims in her Affidavit that "My Order of Protection against Chris, and his subsequent arrests for violating that order, are also public knowledge." Lowry Aff. at ¶ 44. To the extent Ms. Lowry is competent to establish what is public knowledge (she is not), her affidavit only establishes what information was *available* to the public, not what Ms. Soto actually knew. Due to a lack of admissible evidence, the Court should ignore each of Ms. Lowry's arguments as to Mr. Lopez's unreliability as a witness. If the Court would prefer to entertain them, they are of no effect nor persuasive use anyway.

Regardless of the reliability of Mr. Lopez as a witness, Ms. Soto's reliance on the police report is privileged as a matter of law. Under Florida law, reports based on official public records

are privileged so long as they are reasonably accurate and fair, even if those reports contain erroneous information. *See Rasmussen v. Collier Cty. Publ'g Co.*, 946 So. 2d 567, 570-71 (Fla. 2d DCA 2006); *Ortega v. Post-Newsweek Stations, Fla., Inc.*, 510 So. 2d 972 (Fla. 3d DCA), rev. denied, 518 So. 2d 1277 (Fla. 1987); *Woodard v. Sunbeam Television Corp.*, 616 So. 2d 501, 502 (Fla. 3d DCA 1993); *Larreal v. Telemundo of Fla., LLC*, 489 F. Supp. 3d 1309, 1318 (S.D. Fla. 2020). Whether the privilege applies is a question of law. *See Larreal*, 489 F. Supp. 3d at 1318. Further, "[i]t is not necessary that [the publication or broadcast] be exact in every immaterial detail or that it conform to the precision demanded in technical or scientific reporting. It is enough that it conveys to the persons who read it a substantially correct account of the proceedings." *Woodard*, 616 So. 2d at 502-03.

The protections are not lost by editorialization, either. As the Middle District of Florida summarized in *Folta v. N.Y. Times Co.*,

> Protection of the privilege is not lost, for example, by colorful language or a failure to look beyond the government documents for verification. Editorial style is expected, and news media can phrase their coverage to "catch … the readership's attention." *Alan v. Palm Beach Newspapers, Inc.*, 973 So. 2d 1177, 1180 (Fla. 4th DCA 2008). They can also select the focus of a piece and have no duty to further investigate or verify government-produced information. *See Jamason v. Palm Beach Newspapers, Inc.*, 450 So. 2d 1130, 1133 (Fla. 4th DCA 1984) ("The newspaper, had it wished, could have devoted the entire issue to the statement without any effort to neutralize the accusation by giving the accused the opportunity to deny."); *Woodard*, 616 So. 2d at 503 (holding reporter did not need to "determine the accuracy of the information" in government records). In addition, a publication's language does not have to be "technically precise" in discussing legal proceedings. *Rasmussen*, 946 So. 2d at 570.

Folta v. N.Y. Times Co., No. 1:17cv246-MW/GRJ, 2019 U.S. Dist. LEXIS 34533, at *11-12 (N.D. Fla. Feb. 27, 2019). Here, as discussed *supra*, Ms. Soto was discussing the allegations against Ms. Lowry in the context of a broadcast about the Teen Mom TV show. Her reporting was based upon an official report, the police report charging Ms. Lowry with a crime, and her reporting was substantially true. That she editorialized or added color to the public report does not affect the application of the privilege here, and Ms. Soto's statements cannot accordingly be the basis of a claim for defamation.

Finally, if there is any doubt as to whether Ms. Lowry attacked Mr. Lopez, it should be resolved in favor of Ms. Soto. The only copy of the police report related to Ms. Lowry's arrest states that two witnesses supported Mr. Lopez's claim. *See* Anti-SLAP Motion at *Exhibit 4*. The report states that one witness saw Ms. Lowry punch Mr. Lopez multiple times and states that this witness attempted to pull Ms. Lowry away from Mr. Lopez. *See id*. at ¶ 4. The report recounts the statement of another witness who likewise said that she saw Ms. Lowry punch Mr. Lopez several times. The police report that Ms. Soto has access to is redacted, however, and the names of the witnesses are not legible. Ms. Soto believes that the discovery of the names of these witnesses would lead to relevant, discoverable evidence, namely testimony that supports the truthfulness of Ms. Soto's statements. To that end, Ms. Soto requested an unredacted copy of the police report from Ms. Lowry in discovery. Ms. Lowry has refused to provide such a copy. *See* Plaintiff's Response to Defendant's Second Request for the Production of Documents, attached as **Exhibit 21**, at Response to Request No. 12. At the very least, Ms. Soto asks that should the Court be inclined to deny her Motion on the basis of the existence of material issues of fact, that the Court make such a denial without prejudice to be refiled after limited discovery to include identifying the two unnamed witnesses and taking their depositions. However, doing so would only delay the inevitable.

3.3.3 Ms. Soto's statements about the breaking and entering were truthful, or at least were based upon a reasonable belief.

Having lost her ability to find liability relating to the alleged battery, Ms. Lowry has retreated to the position that Ms. Soto defamed her simply by off-handedly mentioning the means by which she entered Mr. Lopez's mother's house to carry out her assault of Mr. Lopez. Plaintiff claims she had every right to enter the home. This is disputed, but even if we accept this as established fact, this is insufficient to support a claim for defamation.

"Under the substantial truth doctrine, a statement does not have to be perfectly accurate if the 'gist' or the 'sting' of the statement is true." *Cape Publ'ns. v. Reakes*, 840 So. 2d 277, 280 (Fla. 5th DCA 2003) (quoting *Smith v. Cuban Am. Nat'l Found.*, 731 So. 2d 702, 706 (Fla. 3d DCA

1999).) Further, "[a] statement is not considered false unless it would have a different effect on the mind of the reader from that which the pleaded truth would have produced." *Smith v. Cuban Am. Nat'l Found.*, 731 So. 2d 702, 706 (Fla. 3d DCA 1999) (cleaned up). "As long as a report is substantially correct, it is not necessary that it be exact in every immaterial detail or that it conform to the precision demanded in technical or scientific reporting." *Readon v. WPLG, LLC*, 317 So. 3d 1229, 1234-35 (Fla. 3d DCA 2021) (cleaned up).

A Court has a "prominent function in determining whether a statement is defamatory, and if a statement is not capable of a defamatory meaning, it should not be submitted to a jury." *Smith v. Cuban Am. Nat'l Found.*, 731 So. 2d 702, 704 (Fla. 3d DCA 1999) (citing *Byrd v. Hustler Magazine*, 433 So. 2d 593, 595 (Fla. 4th DCA 1983); *Owner's Adjustment Bureau, Inc. v. Ott*, 402 So. 2d 466, 468 (Fla. 3d DCA 1981); *Wolfson v. Kirk*, 273 So. 2d 774, 778 (Fla. 4th DCA 1973); *Valentine v. C.B.S., Inc.*, 698 F.2d 430, 432 (11th Cir. 1983); *Nelson v. Associated Press, Inc.*, 667 F. Supp. 1468, 1477 (S.D. Fla. 1987).)

The real question, therefore, is: if someone states that a public figure broke in and physically attacked her child's father, and we strike out everything about her acting in a violent and abusive manner, we are left with "did she have permission or not to enter the house at that precise moment?" as the basis for defamation. Such a statement is not sufficient to state a claim for defamation, and the case must be dismissed.

Here, it was Ms. Soto's understanding that Ms. Lowry engaged in breaking and entering related to her battery on Ms. Lopez. While Mr. Lopez now denies telling Ms. Soto that Ms. Lowry did so, it is Ms. Soto's recollection that he did. *See* Soto Decl. at ¶ 12; Soto Trans. at 138:7-25. Accordingly, she very well may have made a mistake, rising to the level of negligence (although she does not admit that). Negligence, however, is not enough to sustain a defamation claim brought by a public figure. In the foundational case *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), the publication at issue, which related to the treatment of civil rights protestors in Montgomery, Alabama, contained many more inaccuracies than this, including the number of times Martin Luther King, Jr. had been arrested, the song protesters had sung, and whether or not students had

been expelled for participating. *See Sullivan*, 376 U.S. at 258-59. Accordingly, even if Ms. Soto was negligent in making this one grain of a statement, she cannot be liable for claims brought by Ms. Lowry, a public figure. It is doubly so, given Ms. Lowry's already-tarnished reputation as someone who has a significant behavioral deficiency when it comes to crossing boundaries. *See, e.g.,* Christina Stiehl, "'Teen Mom 2' Preview: Kailyn Hits Javi During Explosive Fight", Hollywood Life (Mar. 25, 2013),[20] attached as **Exhibit 3**; Teresa Roca, "Javi Marroquin Goes On Tirade Over Stolen Property – Did Kailyn Lowry Steal From Him?", Radar (Sep. 5, 2017),[21] attached as **Exhibit 22**; Emily Hingle, "WTF: Babby Daddy Calls Out Kailyn For Stealing From His Home", Teen Mom Talk Now (Sep. 6, 2017),[22] attached as **Exhibit 23**; Lindsay Cronin, "Kailyn Lowry Comes Clean About 'Teen Mom 2' Reunion Fight: 'Brittany Pulled My Hair But I Did Not Get Beat Up!'", Reality Blurb! (Jun. 1, 2018),[23] attached as **Exhibit 24**.

Ms. Soto understood the basic facts of the situation when Ms. Lowry allegedly battered Mr. Lopez – at that time, Ms. Lowry entered the home of Mr. Lopez's mother, engaged in an argument with Mr. Lopez, and ultimately struck Mr. Lopez. Ms. Soto did not have knowledge that Ms. Lowry had permission to enter the home on her own, and reasonably presumed that someone would not have permission to enter a home for the purposes of punching the home's occupants, as that would be beyond the scope of any reasonable permission. When Mr. Lopez discussed the encounter with Ms. Soto, he told her that Ms. Lowry "stormed into" the home and began attacking him, and that his mother immediately told Ms. Lowry to leave. Lopez Decl. at ¶¶ 8, 10. Armed with these facts, it would have been unreasonable for Ms. Soto to believe that Ms. Lowry politely asked for permission and then entered the home, and then proceeded to assault Mr. Lopez. It was reasonable for her to believe that Ms. Lopez forcefully entered the home.

[20] Available at: https://hollywoodlife.com/2013/03/25/kailyn-lowry-hits-javi-marroquin-teen-mom-2-preview-video/ (last accessed Mar. 25, 2022).

[21] Available at: https://radaronline.com/videos/javi-marroquin-rant-stolen-property-kailyn-lowry-teen-mom-2/ (last accessed Mar. 25, 2022).

[22] Available at: https://www.teenmomtalknow.com/g/kailyn-lowry-accused-of-theft/ (last accessed Mar. 25, 2022).

[23] Available at: https://realityblurb.com/2018/06/01/kailyn-lowry-comes-clean-about-teen-mom-2-reunion-fight-brittany-pulled-my-hair-but-i-did-not-get-beat-up/ (last accessed Mar. 25, 2022).

Ms. Lowry rests much of her argument on the assertion that Ms. Soto specifically accused her of committing the felony of breaking and entering under Fla. Stat. § 810.02. Ms. Lowry strongly embraces hyper-technicality when it suits her. For example, she somehow believes that under Delaware law, her "offensive touching" charge could not constitute "domestic violence." *See* Lowry Trans. at 88:14-91:6; 115:25-116:9.[24]

This strict adherence to legal pedantry only lasts as long as it is useful to continue the SLAPP suit. Lowry neglects to mention that "breaking and entering" is not a separate crime in Florida. Rather, Section 810.02 defines the crime of burglary, which is "[e]ntering a dwelling … with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter." Fla. Stat. § 810.02(1)(b)(1). Doing so and then assaulting a person is a first-degree felony. Fla. Stat. § 810.02(2)(a). If Ms. Lowry's argument is that Ms. Soto accused her of the crime of burglary, then her claim is especially weak. Ms. Soto had more than enough evidence in the public record to conclude that Ms. Soto entered the dwelling of Mr. Lopez's mother with the intent of committing the offense of assault and/or battery, which satisfies the elements of burglary. This crime only requires unauthorized entry to commit a crime, not breaking and entering, and there was not a single fact available to Ms. Soto to suggest that Ms. Lowry was authorized to enter the home when she attacked Mr. Lopez, and especially not for the express purpose of punching Mr. Lopez.

But this discussion is unnecessary because Ms. Soto did not accuse Ms. Lowry of committing any crime. She is not an attorney, she does not have legal training, and no one views her broadcasts for her analysis of legal issues. She off-handedly mentioned in a live broadcast that Ms. Lowry engaged in "breaking and entering" after hearing from multiple sources that she entered a home for the specific purpose of attacking Mr. Lopez, and then attacked him. Even if forcible entry were an element of a crime, there is nothing to suggest that Ms. Soto was stating that Ms.

[24] Her analysis is incorrect. Under Delaware law, "domestic violence" includes "[i]ntentionally or recklessly causing or attempting to cause physical injury" between "persons living separate and apart with a child in common." Del. Code tit. 10 § 1041.

Lowry's conduct met every element of this crime. In a similar case, a SLAPP plaintiff sued a woman for saying that he committed "sexual assault" because he slapped her buttocks and grabbed various parts of her body, without her consent. *See* Anti-SLAPP Order, *Wilhelmy v. Haueter*, Case No. A-21-837173-C (Nev. Dist. Ct., Jan. 18, 2022), attached as **Exhibit 25**, at 5-6. However, the legal definition of the crime of "sexual assault" required actual penetration. Since there was no penetration, the SLAPP plaintiff claimed that this was defamatory. He lost, of course. *See id.*; *see also Fortson v. Colangelo*, 434 F. Supp. 2d 1369, 1384-85 (S.D. Fla. 2006) (when a basketball player elbowed another in the face, calling it "attempted murder" was not defamatory).

People use terms with flexible or colloquial definitions and meanings. Any viewer of Ms. Soto's Instagram Live video would interpret it as meaning that Ms. Lowry entered a home to attack Mr. Lopez. Ms. Lowry denies that this happened, but there is *nothing* even suggesting that Ms. Soto believed this statement to be false or had any doubt whatsoever that it was true. That is the standard under Florida law and under the First Amendment – she must harbor objective doubts in order for a defamation claim to survive. *See St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S. Ct. 1323, 1325 (1968); *Times Publ'g Co. v. Huffstetler*, 409 So. 2d 112, 113 (Fla. 5th DCA 1982).

3.4 Ms. Soto's broadcast consisted of expressions of opinion and was not taken by viewers literally, and a reasonable viewer would not have expected it to be 100% factual.

Opinion or hyperbole cannot sustain an action for defamation.[25] "To determine whether a statement is actionable, the court must examine it in the context in which it was published," meaning that a court should "consider all of the circumstances surrounding the statement, including the medium by which the statement is disseminated and the audience to which it is published." *Morse v. Ripken*, 707 So. 2d 921, 922 (Fla. 4th DCA 1998). "[E]ven when a statement is verifiable as false, it does not give rise to liability if the 'entire context in which it was made'

[25] While Ms. Soto's statements were expressions of opinion, the Court need only focus on the issue of whether the challenged statements, and any implications therefrom, were made with actual malice. *See Secord v. Cockburn*, 747 F. Supp. 779, 783 (D.D.C. 1990) (although court expressed doubt as to whether the challenged statements were even defamatory, court only reached issue of whether the statements were published with the requisite degree of fault).

discloses that it is merely an opinion masquerading as fact." *Dallas Morning News, Inc. v. Tatum*, 554 S.W.2d 614, 639 (Tex. 2018) (quoting *Bentley v. Bunton*, 94 S.W.3d 561, 581 (Tex. 2002).

A "statement is pure opinion, as a matter of law, when it is based on facts which are otherwise known or available to the reader or listener." *Razner v. Wellington Reg'l Med. Ctr., Inc.*, 837 So. 2d 4.7, 442 (Fla. 4th DCA 2002). "Pure opinion occurs when a 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." *Hoch v. Rissman, Weisberg, Barrett, Hurt, Donahue & McLain, P.A.*, 742 So. 2d 451, 459 (Fla. 5th DCA 1999).

> Whether a statement is one of pure or mixed opinion is an issue of law. In determining whether the statement is one of pure or mixed opinion, the court must examine the statement in its totality and the context in which it was uttered or published. The court must consider all of the words used, not merely a particular phrase or sentence. In addition, the court must give weight to cautionary terms used by the person publishing the statement and consider all of the circumstances surrounding the statement, including the medium by which the statement is disseminated and the audience to which it is published.

Id.

Disclosure of facts upon which a statement is based makes a statement one of pure opinion. *See Stembridge v. Mintz*, 652 So. 2d 444, 447 (Fla. 3d DCA 1995) (finding that statements in Florida Bar complaint form were not actionable because "the bar inquiry form, when read as a whole, cannot be reasonably interpreted to imply 'the allegation of undisclosed defamatory facts as the basis for the opinion'") (quoting Restatement (Second) of Torts § 566). Publication of the predicate facts upon which the writer's subjective surmise is based transforms what may otherwise be an allegation of defamatory fact into nothing more than the writer's pure opinion with which the reader is free to agree or disagree. *See id*. at 4-52 ("Once the facts are correctly stated, an author's views about them are neither provably true nor provably false and therefore are protected[.]"). *Young v. Wilham*, 2017-NMCA-087, 22, 406 P.3d 988, 997, 2017 N.M. App. LEXIS 37, *21, 45 Media L. Rep. 2112, 2017 WL 2302593. "When a speaker outlines the factual basis for his conclusion, his statement is protected by the First Amendment." *Partington v. Bugliosi*, 56 F.3d 1147, 1156 (9th Cir. 1995). That is because when "the bases for the conclusion

are fully disclosed, no reasonable reader would consider the term anything but the opinion of the author drawn from the circumstances related." *Id*.

Context is important in determining whether a listener will view a statement as one of fact, as opposed to opinion or rhetorical hyperbole. "A publication must be considered in its totality." *Smith v. Cuban Am. Nat'l Found.*, 731 So. 2d 702, 705 (Fla. 3d DCA 1999). "To determine whether a statement is defamatory, it must be considered in the context of the publication." *Id*. "Florida law recognizes a difference between statements presented as fact and statements presented as an opinion or rhetorical hyperbole. The key distinction is whether the incorrectly reported material would have had a different effect on the mind of the viewer by affecting the gist of the story." *Readon v. WPLG, LLC*, 317 So. 3d 1229, 1235 (Fla. 3d DCA 2021) (cleaned up).

The facts remain that Ms. Soto is a reality television star and her followers on social media expect a certain extent of hyperbole and flair in Ms. Soto's social media content. Ms. Lowry has a bad reputation as someone violent, who has an issue with remaining behind reasonable boundaries. *See* **Exhibits 3**, **22**, **23** and **24**. Viewers of Ms. Soto's broadcast would not expect to take every word literally and would understand that there is a certain degree of exaggeration and nuance injected in Ms. Soto's postings. *See Ford v. Rowland*, 562 So. 2d 731, 736-37 (Fla. 5th DCA 1990)

Here, the gist of Ms. Soto's statements was a recounting of her understanding of the story Ms. Lowry attacking Mr. Lopez – the thrust of the story in any viewer's mind would certainly be Lowry attacking Lopez and not any incidental details about whether she had a printed invitation or whether she just stormed in without permission to hit Lopez. Because a claim based upon Ms. Soto's statements concerning the alleged battery must fail, so must any claim based upon alleged breaking and entering. *See Cuban Am. Nat'l Found.*, 731 So. 2d at 705 (cherry-picked falsehoods do not sustain a defamation claim when the gist of the publication is true).

The Ninth Circuit in *Gardner v. Martino*, 563 F.3d 981, 988-89 (9th Cir. 2009) found that statements made on a radio "shock jock" program were not statements of fact, noting that the show "contains many of the elements that would reduce the audience's expectation of learning an objective fact: drama, hyperbolic language, an opinionated and arrogant host, and heated

controversy." Here, Ms. Soto is a reality television star who is recounting, in dramatic fashion, her understanding of the dispute between Mr. Lopez and Ms. Lowry to her audience of reality television show viewers. Accordingly, this Court should find that any statements made by Ms. Soto in this setting must account for the context of such expected rhetorical hyperbole.

The Southern District of New York *in McDougal v. Fox News Network, LLC*, 489 F. Supp 3d 174 (S.D.N.Y. 2020) found that, when viewed in context of Fox News's "The Tucker Carlson Show," Carlson's claim that plaintiff was an extortionist was a protected expression of opinion and rhetorical hyperbole. The court noted that statements are especially likely to be viewed as rhetorical hyperbole "in the context of commentary talk shows like the one at issue here, which often use 'increasingly barbed' language to address issues in the news." *Id*. at 182-83. It also noted that Carlson had a reputation for partisan, non-literal commentary, and thus "any reasonable viewer 'arrive[s] with an appropriate amount of skepticism about the statements he makes. Whether the Court frames Mr. Carlson's statements as 'exaggeration,' 'non-literal commentary,' or simply bloviating for his audience, the conclusion remains the same – the statements are not actionable." Id. at 183-84 (quoting *600 W. 115th Corp. v. Von Gutfeld*, 80 N.Y.2d 130, 141, 603 N.E.2d 930, 936 (1992)). This is a bipartisan analysis; the Ninth Circuit came to the same conclusion regarding Rachel Maddow. *See Herring Networks, Inc. v. Maddow*, 8 F.4th 1148, 1160 (9th Cir. 2021) (finding that "[i]n comparison to the undisputed facts that Maddow reports, the contested statement was particularly emphatic and unfounded: Maddow went from stating that OAN employs a Sputnik employee to stating that OAN reports Russian propaganda. A reasonable person would understand Maddow's contested statement as an 'obvious exaggeration … ."). If Tucker Carlson and Rachel Maddow's viewers do not expect literal reporting on their respective television shows, then surely Ms. Soto's Instagram audience does not expect factual news reporting with legal definitions used with a lawyer's precision.

Florida courts have also found that a statement which, on its face, accuses someone of criminal activity is not actionable when the surrounding context shows it to be rhetorical hyperbole. *See Pullum v. Johnson*, 647 So. 2d 254, 258 (Fla. 1st DCA 1994) (finding that radio

broadcast calling plaintiff a "drug pusher" was not actionable because, when viewed in context, a reasonable audience would not view it as an assertion the plaintiff was actually dealing drugs). We "conclude that a person of ordinary intelligence would perceive these words as nothing more than rhetorical hyperbole." *Rehak Creative Servs. v. Witt*, 404 S.W.3d 716, 729 (Tex. App. 2013). The reasonable listener would interpret this expression as an "expression of outrage." *Schnare v. Ziessow*, 104 F. App'x 847, 852 (4th Cir. 2004) citing *Horsley v. Rivera*, 292 F.3d 695, 701-02 (11th Cir. 2002); *see also Fortson v. Colangelo*, 434 F. Supp. 2d 1369, 1378-79 (S.D. Fla. 2006).

Ms. Lowry places importance on a statement in Ms. Soto's broadcast that she is "just stating facts," as though this conclusively establishes that she was not expressing her opinion. (Opposition at 12.) But just as a defamation defendant cannot transform a factual statement into one of opinion merely by prefacing it with "in my opinion" (*see Florida Medical Center, Inc. v. New York Post Co.*, 568 So. 2d 454, 458 (Fla. 4th DCA 1990)), referring to "stating facts" does not magically transform statements of opinion into fact. For example, if Ms. Soto had said "Kailyn Lowry is a moron, that's a fact," it would not make the statement actionable. At most, it is one factor for the Court to consider in determining whether a statement is capable of being defamatory, and it does not counteract the surrounding context showing the statements to be of opinion or rhetorical hyperbole.

4.0 Conclusion

In light of the foregoing, Defendant Briana Soto asks this Court to grant her summary judgment and dismiss this action with prejudice while awarding the Defendant her costs and attorneys fees.

Dated: March 26, 2022.

Respectfully Submitted,

/s/ Marc J. Randazza

Marc J. Randazza
Florida Bar No. 625566
RANDAZZA LEGAL GROUP, PLLC
P.O. Box 5516
Gloucester, MA 01930
Tel: 702-420-2001
ecf@randazza.com

Trey A. Rothell (*pro hac vice* pending)
RANDAZZA LEGAL GROUP, PLLC
2764 Lake Sahara Drive, Suite 109
Las Vegas, NV 89117
Tel: (702) 420-2001
ecf@randazza.com

Attorneys for Defendant
Briana Soto p/k/a Briana De Jesus.

Case No. 2021-CA-001817 OC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email through the Florida E-Filing Portal to counsel for the Plaintiff, Yadhira Ramirez-Toro, Steven G. Hurley, Hubert G. Menendez, TREMBLY LAW FIRM, 9700 South Dixie Highway, PH 1100, Miami, Florida 33156, yadhira@tremblylaw.com, steven@tremblylaw.com, service@tremblylaw.com, and Nicole Haff, ROMANO LAW PLLC, 55 Broad Street, 18th Floor, New York, NY 10004, nicole@romanolaw.com, on this 26th day of March 2022.

/s/ Marc J. Randazza
Marc J. Randazza