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

ABELARDO DE LA ESPRIELLA, Plaintiff, v. **DANIEL CORONELL,** Defendant.	Case No. 2018-004993-CA-01

DEFENDANT DANIEL CORONELL'S MOTION TO DISMISS

Daniel Coronell, defendant in the above-captioned action, by and through his undersigned counsel, hereby moves to dismiss Plaintiff's cause of action against him pursuant to Rule 1.140(b)(6) of the Florida Rules of Civil Procedure for failure to state a cause of action, and pursuant to the Florida anti-SLAPP law, Fla. Stat. § 768.295 (2014).

Dated: June 6, 2018

Respectfully submitted,

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

PRELIMINARY STATEMENT

Plaintiff Abelardo de la Espriella is a prominent and controversial attorney in Colombia. Over the course of his relatively short career, he has, *inter alia*, provided counsel to the former president of Panama, defended the head of a company at the center of a national financial scandal, and been investigated for his ties to Colombian paramilitaries. In addition to being advertised as "one of the most relevant attorneys in the [C]olombian legal field," Plaintiff is a self-described "registered trademark"—a household name—in Colombia. A "political analyst in countless talk/opinion shows, as well as a gallerist, music producer and singer, horse breeder and university professor," he has tens of thousands of social media followers, and boasts a substantial readership for his weekly opinion columns published in more than 20 Colombian media outlets.

In this textbook Strategic Lawsuit Against Public Participation ("SLAPP"), Plaintiff claims one count of alleged "defamation by implication" against Daniel Coronell based on an opinion column Mr. Coronell wrote in January 2018 for *Semana*, a Spanish-language weekly newsmagazine published in Colombia (the "Opinion"). In his column, Mr. Coronell—an award-winning journalist and President of News for Univision in the United States—provides commentary based on accurate facts about Plaintiff's famed legal career and his flamboyantly lavish lifestyle.

Plaintiff's Complaint does not—and cannot—state a cause of action for "defamation by implication" arising out of the Opinion, and it should be dismissed with prejudice. As an initial matter, Mr. Coronell's Opinion is non-actionable, protected opinion based on true statements of fact. Moreover, accurate factual statements about a public figure like Plaintiff cannot, as a matter of law, form the basis of a claim of defamation by implication. And, finally, even setting those dispositive grounds aside, the Complaint does not—and cannot—state facts sufficient to state a claim of defamation by implication. Mr. Coronell's Opinion cannot be interpreted by a

reasonable reader as implying false, defamatory facts about Mr. de la Espriella. Plaintiff's feeble assertion that Mr. Coronell's Opinion could be read to "impl[y]" that Plaintiff has engaged in "illegal activities" and/or "bribery or corrupt activities," Compl. ¶ 1, falls far short of what a public figure like Plaintiff—or, indeed, anyone—must allege to state a cognizable cause of action for defamation by implication under Florida law.

As discussed below, this lawsuit is one part of a coordinated effort by Plaintiff and others close to him to silence Mr. Coronell, who is a widely read and influential voice in Colombia; it is a quintessential SLAPP and precisely the kind of abusive lawsuit that Florida's anti-SLAPP statute, § 768.295, Fla. Stat., was amended to address. Because this lawsuit seeks to chasten the exercise of Mr. Coronell's First Amendment rights and stifle public discussion on issues of public concern, it demands close scrutiny at the motion to dismiss stage—scrutiny that it cannot survive. Mr. Coronell's Opinion is, as a matter of law, protected speech; this Court should not hesitate to dismiss Plaintiff's Complaint with prejudice for the reasons discussed herein.

STATEMENT OF FACTS[1]

A. Plaintiff

Mr. de la Espriella is the founding partner and general director of de la Espriella Lawyers Enterprise ("Lawyers Enterprise"), a law firm with offices in Colombia and Miami, Florida. Described as "the most eccentric of Bogotá's criminal lawyers," his "many appearances in the

[1] The facts herein are based on the allegations and documents referenced in the Complaint, as well as matters subject to judicial notice. The Court may take judicial notice of media coverage and public statements and other public documents offered to show public attention to Plaintiff, which are not proffered for the truth of the matters asserted therein. *See, e.g.*, *United States ex rel Osheroff v. Humana, Inc.*, 776 F.3d 805, 811 n.4 (11th Cir. 2015). Courts regularly take judicial notice of such materials in determining whether defamation plaintiffs are public figures at the motion to dismiss stage. *See Turner v. Wells*, 879 F.3d 1254, 1272 n. 5 (11th Cir. 2018).

court spotlight ... have made him a public figure of whom everything has been said." Declaration of Deanna Shullman ("Shullman Decl.") at ¶ 2, Ex. A.

Mr. de la Espriella rose to prominence in Colombia in 2006 when it was revealed that Lawyers Enterprise would represent the consortium ASA International in its bid to oversee the expansion of the El Dorado International Airport in Bogotá. Compl. Ex. 1. Mr. de la Espriella later represented David Murcia Guzmán, leader of D.M.G. Grupo Holding S.A. Mr. Guzmán was extradited and sentenced to a 9-year prison term in the United States for money laundering charges, and was involved in a financial fraud that defrauded almost 200,000 people out of $2 billion; the action has been described as "the biggest Ponzi scheme in Colombia's history." *See* Libardo Cardona, *Colombia seeks arrests in pyramid scheme*, The Associated Press, Nov. 19, 2010, *available at* https://perma.cc/L73Q-L2RE; *see also* Declaration of Daniel Coronell ("Coronell Decl.") at ¶ 12. In 2012, Mr. de la Espriella represented Dania Londoño Suarez, a Colombian prostitute who triggered a scandal in the United States after she allegedly spent the night with a Secret Service agent during a U.S. presidential trip to Cartagena. *See Secret Service Sex Scandal*, Huffington Post, June 7, 2012, *available at* https://perma.cc/7EGK-59YT.

More recently, Mr. de la Espriella has reportedly served as counsel for former Panamanian president Ricardo Martinelli, who has attempted to avoid extradition to Panama to face charges of political espionage and embezzlement. *See* Manuel Roig-Franzia, *The ongoing saga of the mysterious Madame Giselle*, Wash. Post., Jan. 8, 2018, *available at* https://perma.cc/2PSJ-EVD4. Mr. de la Espriella also serves as counsel for Alex Saab, a controversial businessman with ties to Venezuelan President Nicolás Maduro; Mr. de la Espriella's attorney in this matter, Bruce Rogow, recently represented Mr. Saab in a defamation case against Univision and journalist Gerardo Reyes; that case was voluntarily dismissed by Mr.

Saab in May. *See* Notice of Voluntary Dismissal, *Saab v. Univision Commc'ns, Inc. et al.*, Case No. 2017-019697-CA-01 (Fla. 11th Jud. Cir. Ct. May 16, 2018); *see also* Shullman Decl. at ¶ 3, Ex. B. As a result of his high-profile representations, Mr. de la Espriella has been called the "lawyer of scandals" by the Colombian press, Shullman Decl. at ¶ 4, Ex. C, and his name is "known throughout the country." Shullman Decl. at ¶ 5, Ex. D.

In addition to his prominent legal presence in Colombia, Mr. de la Espriella authors a weekly opinion column published in KienyKe, a digital outlet, for which he claims a readership of more than 150,000; this weekly column is also published in more than 20 other Colombian publications. Shullman Decl. at ¶ 6, Ex. E. A weekly column of his published in *El Heraldo*, a Colombian newspaper, incited significant public controversy in 2017 by advocating for the assassination of the Venezuelan president, writing that the act "would not be a common murder, but rather a patriotic act" that would be "morally without reproach." Shullman Decl. at ¶ 7, Ex. F. The outcry over the column prompted an official response from Colombia's Ministry of Foreign Affairs criticizing Mr. de la Espriella's message; soon after the piece was published, Mr. de la Espriella resigned from his weekly column at the newspaper. *Id.*

Mr. de la Espriella has been profiled by lifestyle magazines, Shullman Decl. at ¶ 4, Ex. C, and, in 2012, a book about his life titled "La Pasion Del Defensor" ("The Passion of the Defender") was published in Colombia. *Id.* Mr. de la Espriella also has a significant social media presence. The Twitter handle for his law firm, @delaespriellae, boasts 96,000 followers, and his Instagram account, @delaespriella_style, has 33,700 followers. His Instagram posts display his indulgent lifestyle, including designer clothes, watches, and luxury travel on private jets; media reports have commented that his lifestyle "can also raise eyebrows among some" because "his tastes can seem extravagant, like riding around in Hummers, buying expensive

works of art or paying special attention to an expensive and refined wardrobe." Shullman Decl. at ¶ 4, Ex. C.

According to media reports, Mr. de la Espriella's ties to Colombian paramilitaries have been the subject of investigation by prosecutors. Shullman Decl. at ¶ 8, Ex. G (reporting that "[t]he controversial lawyer Abelardo de la Espriella is about to transition from a recognized defender of politicians linked to paramilitaries to a[] person of interest in an investigation."). And news outlets have long questioned how the young attorney achieved his substantial financial and professional success in such a short amount of time. Shullman Decl. at ¶ 5, Ex. D.

Though Mr. de la Espriella has appeared to publicly shrug off negative media coverage by stating that "his enemies keep him alive," Shullman Decl. at ¶ 2, Ex. A, public records indicate that this is not the first lawsuit he has filed as a plaintiff against a journalist for writing things that he disliked. Mr. de la Espriella filed a lawsuit against journalist Jorge Gómez Pinilla in Colombia for the alleged crimes of "aggravated indirect libel and direct slander" based on an opinion column Mr. Gómez Pinilla wrote for Colombian newspaper *El Espectador* regarding a website, purportedly financed by Mr. de la Espriella, that publishes material in favor of Colombia's controversial former president Álvaro Uribe. Shullman Decl. at ¶ 9, Ex. H. The Foundation for Freedom of the Press, a Colombian organization, denounced the lawsuit, stating that "the lack of clarity in the citation and its aggressive tone creates a situation of legal uncertainty that runs counter to the most basic rules of due process." *See* Inter-American Press Association Midyear Meeting 2018, *Colombia* (Apr. 12, 2018), *available* at http://en.sipiapa.org/notas/1212207-colombia.

B. Defendant's reporting and the January 6, 2018 opinion column in *Semana*

Mr. Coronell is an award-winning investigative journalist with more than 32 years of experience in print and broadcast media. He is currently the President of News for Univision in the United States, where he oversees a 250-member news team. Coronell Decl. ¶ 4. In addition to his role at Univision, Mr. Coronell writes a popular weekly opinion column for *Semana*, a weekly magazine published by Publicaciones Semana, S.A. in Bogotá, Colombia; since at least 2010 it has been voted the most-read by opinion readers in Colombia. Coronell Decl. ¶ 7.

Mr. Coronell first wrote about Plaintiff in a 2006 opinion column titled "El apoderado" ("The attorney"). Coronell Decl. ¶ 8; *see also* Compl., Ex. 1. The column described the career of Mr. de la Espriella, a young attorney and the largest shareholder of the then two-year-old law firm Lawyers Enterprise. *Id.* In the column, Mr. Coronell noted that Lawyers Enterprise had advised the consortium ASA International in its bid to oversee the expansion of the El Dorado International Airport in Bogotá. *Id.* The contract for the airport expansion was ultimately awarded to another contractor. Though Plaintiff's firm ultimately did not receive the work, the fee that Lawyers Enterprise would have received if ASA International won the bid was notable because—at $800,000—it was higher than more established, prestigious law firms in Colombia. Four years later, a member of the consortium, the Nule Group, became the subject of one of the most significant political corruption scandals in recent Colombian history; leaders of the Nule Group ultimately pled guilty to embezzling millions of dollars meant for the construction of the Transmilenio public transport system and roads in Bogotá. Coronell Decl. ¶ 9.

The Opinion that is the subject of this lawsuit is entitled "El Avion" ("The Plane"); it was published in *Semana* on January 6, 2018. *See* Compl. Ex. 1.[2] The Opinion, *inter alia*, refers to

[2] All citations to the Opinion reference the certified translation attached as Exhibit 1 to Plaintiff's Complaint.

Mr. de la Espriella's work for ASA International in connection with the bidding process for the El Dorado airport expansion in 2006, when Plaintiff was a young attorney, who was "not known at that time for his legal achievements." *Id.* The Opinion goes on to note Mr. de la Espriella's subsequent rapid "rise to fame for his intelligence and skills"—which Mr. Coronell calls "undeniable"—"but above all for his way of seeking recognition in the media and also in social networks." *Id.* The Opinion highlights Mr. de la Espriella's flamboyant displays of wealth, noting that he has posted photos of himself on his various social media accounts wearing luxury goods, including an $84,000 watch, and traveling by private jet. *Id.* It ends by stating Mr. Coronell's view that "the billionaire lifestyle of [Plaintiff] seems to be more interesting than the life he leads in Colombian courts. Or maybe not." *Id.* Several weeks before the Opinion was published, Mr. Coronell interviewed Mr. de la Espriella, inquiring about his use of the private jet and the locations he flew to—questions to which Mr. de la Espriella provided answers, which Mr. Coronell included in the Opinion. Coronell Decl. ¶ 11.

The day after the Opinion was published, Plaintiff sent a series of Tweets to his 92,000 followers calling Mr. Coronell a "stalker" and pledging to file a lawsuit against him. Shullman Decl. at ¶ 6, Ex. E. Plaintiff also began the hashtag campaign "#lavenganzadecoronel" ("Coronell's vengeance"), which began "trending" on Twitter. Shullman Decl. at ¶ 10, Ex. I. Plaintiff then vowed to dedicate his first column of 2018, which is published in more than 20 media outlets, to "El Avion," Shullman Decl. at ¶ 6, Ex. E. And, in his January 14, 2018 weekly opinion column for KienyKe, Shullman Decl. at ¶ 3, Ex. B, Plaintiff attacked the Opinion and Mr. Coronell (whom he referred to as "Daniel the Menace"), calling the Opinion an attempt to "sow doubts about [Plaintiff's] personal wealth." *Id.* Noting that his own column has a weekly readership of "more than 150,000 persons," Mr. de la Espriella boasted that he "do[es] whatever

[he] want[s] with [his] money" and that he "ha[s] enough of it" to hire an attorney "to sue Daniel Coronell for defamation in Miami." *Id.*

C. Plaintiff's Complaint

True to his threat, Plaintiff filed his Complaint in the above-captioned action on February 16, 2018, suing Mr. Coronell in his personal capacity for one count of "defamation by implication."[3] Plaintiff's claim is allegedly "based on statements made by the Defendant and/or implying that Alberado [sic] De La Espriella has engaged in illegal activities, tax evasion, influence peddling, bribery or corrupt activities." Compl. ¶ 1.

Plaintiff's Complaint alleges that reader comments, posted on *Semana*'s website, "reflect the defamatory implications which arose from the article." Compl. ¶ 8. Plaintiff further asserts that the Opinion "juxtaposes a series of 'facts' so as to imply a defamatory connection between them and/or create a defamatory implication by omitting facts, to create a different meaning than the truth and to impart false innuendos, suggestions, impressions and implications that Plaintiff [] has engaged in illegal and/or corrupt activities." Compl. ¶ 11.

STANDARDS FOR DISMISSAL

Florida courts have long recognized that to safeguard public debate and freedom of speech special scrutiny must be given to defamation claims at the motion to dismiss stage. *See, e.g.*, *Stewart v. Sun Sentinel Co.*, 695 So. 2d 360, 363 (Fla. 4th DCA 1997) ("pretrial dispositions are 'especially appropriate' because of the chilling effect these cases have on freedom of speech") (quoting *Karp v. Miami Herald Publ'g Co.*, 359 So. 2d 580, 581 (Fla. 3d DCA 1978)). Indeed, Florida courts traditionally have performed a "prominent function" at the pleading stage

[3] Though the first paragraph of Plaintiff's Complaint states that "[t]his is a civil action for defamation and intentional infliction of emotional distress," Compl. ¶ 1, the Complaint pleads only one count for "defamation by implication."

in defamation cases by, *inter alia*, making an initial determination whether a challenged statement is actionable as a matter of law. *Byrd v. Hustler Magazine, Inc.*, 433 So. 2d 593, 595 (Fla. 4th DCA 1983) (citing *Wolfson v. Kirk*, 273 So. 2d 774, 778 (Fla. 4th DCA 1973)); *see also Smith v. Cuban Amer. Nat'l Found.*, 731 So. 2d 702, 704 (Fla. 3d DCA 1999) (if a statement is not capable of defamatory meaning, the court should dismiss it as a matter of law).

Florida requires fact pleading; a plaintiff must set forth "ultimate facts" in support of each claim alleged in the complaint. *See* Fla. R. Civ. P. 1.110(b); *Louie's Oyster, Inc. v. Villaggio Di Las Olas, Inc.*, 915 So. 2d 220, 221–22 (Fla. 4th DCA 2005) ("In order to state a cause of action, a complaint must allege sufficient ultimate facts to show that the pleader is entitled to relief.") (citations omitted). Put another way, the complaint "must set forth factual assertions that can be supported by evidence which gives rise to legal liability." *Barrett v. City of Margate*, 743 So. 2d 1160, 1162–63 (Fla. 4th DCA 1999). "It is insufficient" for a plaintiff to "plead opinions, theories, legal conclusions or argument." *Id.* at 1163.

When considering a motion to dismiss, a court must take the facts alleged in the complaint as true and draw all reasonable inferences in favor of plaintiff. *See Palm Beach-Broward Med. Imaging Ctr., Inc. v. Cont'l Grain Co.*, 715 So. 2d 343, 344 (Fla. 4th DCA 1998). Where the complaint fails to allege facts sufficient to state a claim for relief or is deficient as a matter of law, it should be dismissed. *See* Fla. R. Civ. P. 1.140(b)(6).

In 2015, the Florida Legislature expanded Florida's anti-SLAPP ("Strategic Lawsuit Against Public Participation") law to provide courts with a procedural tool to dismiss abusive lawsuits brought to chill speech at their earliest stages. *See* § 768.295, Fla. Stat. Specifically, defendants can "move the court for an order dismissing the action or granting final judgment in favor to that [defendant]" and/or "file a motion for summary judgment, together with

supplemental affidavits, seeking a determination that the ...lawsuit has been brought in violation of this section." § 768.295(4), Fla. Stat. If a motion pursuant to the Florida anti-SLAPP law is filed, a defendant "has a right to an expeditious resolution of a claim that the suit is in violation of this section," and the court must set the hearing "as soon as practicable," and hold it "at the earliest possible time after the filing of the [plaintiff's] response." *Id.*

ARGUMENT

To prevail on a claim of defamation under Florida law, a plaintiff must prove: (1) publication; (2) falsity; (3) fault; (4) actual damages; and (5) the statement must be defamatory. *See Jews for Jesus v. Rapp*, 997 So. 2d 1098, 1105–06 (Fla. 2008). "Defamation by implication arises where the publication is factually true, but conveys a false and defamatory meaning to the ordinary reader." *Spilfogel v. Fox Broad. Corp.*, 2010 WL 11504189, *4 (S.D. Fla. 2010); *see also Jews for Jesus*, 997 So. 2d at 1108. A plaintiff states a claim for defamation by implication *only* if the challenged statements: (1) can reasonably be read to convey a false, defamatory implication; and (2) on their face demonstrate that the author intends or endorses that false, defamatory implication. *See Jews for Jesus*, 997 So. 2d at 1107. Whether a publication is reasonably capable of conveying a defamatory meaning is a question of law, which must be determined by considering the publication in its entirety. *Turner v. Wells*, 879 F.3d 1254, 1269 (11th Cir. 2018) (citing *Brown v. Tallahassee Democrat, Inc.*, 440 So.2d 588, 590 (Fla. DCA 1983)); *Hallmark Builders, Inc. v. Gaylord Broad. Co.*, 733 F.2d 1461, 1464 (11th Cir. 1984) ("A trial court ... is not precluded from finding, as a matter of law, that a publication is not

defamatory"). Even if statements are defamatory by implication, "a defendant is still protected from suit if his statements qualify as an opinion." *Turner*, 879 F.3d at 1269.

Because imposing liability for publishing truthful statements is at odds with protections for free speech, defamation by implication claims are subject to strict limits and demand rigorous scrutiny. *Jews for Jesus*, 997 So. 2d at 1107 (quoting *Chapin v. Knight-Ridder*, 993 F.2d 1087, 1092–93 (4th Cir. 1993) ("[B]ecause the constitution provides a sanctuary for truth, a libel-by-implication plaintiff must make an especially rigorous showing where the expressed facts are literally true."). At a minimum, a plaintiff must demonstrate that the allegedly false implication is "reasonably" derived from the words used in the publication. *Id.* at 1107 (quoting *Guilford Transp. Indus., Inc. v. Wilner*, 760 A.2d 580, 596 (D.C. 2000) (". . . [t]he [defamatory] language must [ ] be reasonably read to impart the false innuendo")); *Campbell v. Jacksonville Kennel Club*, 66 So. 2d 495, 498 (Fla. 1953) (implication must reasonably arise from the words actually spoken); *see also Dodds v. Am. Broad. Co.,* 145 F.3d 1053, 1063 (9th Cir. 1998) (plaintiff must show "the words [defendant] uttered were reasonably capable of sustaining [the alleged defamatory] meaning"); *Johnson v. Columbia Broad. Sys., Inc.*, 10 F. Supp. 2d 1071, 1075 (D. Minn. 1998) (alleged implications must be "reasonably derived" from defamatory statements).

In addition, a plaintiff must plead and prove that the defendant intended the purported defamatory implication. *Jews for Jesus,* 997 So. 2d at 1108 (citing *Guilford Transp. Indus.,* 760 A.2d at 596); *Johnson*, 10 F. Supp. 2d at 1075. A court cannot presume that a defendant knew it was making the complained-of-implication. *Kendall v. Daily News Publ. Co.*, 716 F.3d 82, 90 (3d Cir. 2013). Instead, a plaintiff must allege facts that establish the defendant's *intent* to communicate the defamatory meaning. *Id.* Put simply, "the plaintiff must 'show with clear and convincing evidence that the defendants intended or knew of the implications that the plaintiff is

attempting to draw from the allegedly defamatory material.'" *Id.* at 91 (quotations omitted); *see also Dodds,* 145 F.3d at 1064 (plaintiff must establish with "convincing clarity" subjective intent to convey the alleged defamatory meaning).

Plaintiff's Complaint fails to state a claim for defamation by implication and should be dismissed with prejudice for at least the following reasons. *First*, Mr. Coronell's Opinion is non-actionable, protected opinion. *Second*, public figures like Plaintiff cannot, as a matter of law, state a claim for defamation by implication based on accurately reported facts. *Third*, the Complaint does not and cannot allege that Mr. Coronell's Opinion, read in its entirety, "reasonably implies false and defamatory facts"; nor does the Opinion on its face demonstrate that Mr. Coronell intended or endorsed any alleged false and defamatory inference. *Fourth*, the Complaint fails to plead facts sufficient to establish actual malice. *Fifth*, Plaintiff cannot show that he has suffered any actual damages as a result of Mr. Coronell's Opinion.

I. The Opinion is, on its face, a quintessential example of protected opinion.

It is well-settled that statements of opinion are not capable of being proven true or false and, thus, are not actionable in defamation. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1999). Under Florida law, where, as here, a defendant provides commentary or opinion based on facts which are set forth in the publication, or which are otherwise known or available to the reader or listener as a member of the public, it is non-actionable "pure opinion." *From v. Tallahassee Democrat, Inc.*, 400 So. 2d 52, 57 (Fla. 1st DCA 1981); *see also Stembridge v. Mintz*, 652 So. 2d 444, 446 (Fla. 3d DCA 1995) (reversing summary judgment for plaintiff because the basis for challenged opinion was fully disclosed); *Miami Children's World, Inc. v. Sunbeam Television Corp.*, 669 So. 2d 336, 336–37 (Fla. 3d DCA 1996) (holding that reporter's

characterizations were pure opinion, the basis for which was discussed within news broadcast, and thus did not constitute actionable defamation).

"The determination of whether a statement is fact or opinion is a question of law for the court." *Morse v. Ripken*, 707 So. 2d 921, 922 (Fla. 4th DCA 1998). In making that determination, "the court must construe the statement in its totality, examining not merely a particular phrase or sentence, but all of the words used in the publication." *Keller v. Miami Herald Publ'g Co.*, 778 F.2d 711, 717 (11th Cir. 1985); *see also Morse*, 707 So. 2d at 922–23 (affirming dismissal of complaint based on opinion); *From*, 400 So. 2d at 57 (same). Further, the court "must consider the context in which the statement was published and accord weight to cautionary terms used by the person publishing the statement." *Keller*, 778 F.2d at 717.

In addition to serving as President of News for Univision, Mr. Coronell is also a well-known opinion columnist in Colombia. "El Avion"—like all of Mr. Coronell's weekly columns in *Semana*—was published under the heading "Opinion," Compl. Ex. 1, and is written in an informal, personal style that clearly conveys that Mr. Coronell is offering commentary on newsworthy subjects. *Keller*, 778 F.2d at 717. For example, Mr. Coronell refers to himself in the Opinion, *id.* ("I only know one Colombian lawyer with a private jet"), and uses informal language to describe Mr. de la Espriella's lavish lifestyle. *Id.* ("Something like 250 million pesos to decorate the wrist"). Such commentary, based on facts that are set forth in the Opinion itself, cannot give rise to a claim of defamation—let alone a claim of defamation by implication. *See, e.g. Turner*, 879 F.3d at 1265 ("[I]t is well settled in Florida that commentary or opinion based on accurate facts set forth in an article 'are not the stuff of libel.'"); *see also Zambrano v. Devanesan*, 484 So.2d 603, 606 (Fla. 4th DCA 1986); *Hay v. Independent Newspapers, Inc.*, 450 So. 2d 293, 295 (Fla. 2d DCA 1984); *Rubin v. U.S. News and World Report, Inc.*, 271 F.3d 1305,

1309 n. 11 (11th Cir. 2001) ("[W]e recognize that a First Amendment problem is encountered where a private figure complains that he has been defamed by implication in a communication containing only true facts."). Indeed, Defendant is unaware of any Florida court that has found an opinion column to be the basis for a claim of defamation by implication.

Plaintiff does not challenge the accuracy of any factual statement in Mr. Coronell's Opinion. *See, generally,* Complaint. Instead, Plaintiff complains that the Opinion implies that he "has engaged in illegal activities, tax evasion, influence peddling, bribery or corrupt activities." Compl. ¶ 1. Such nebulous allegations are insufficient to state a claim for defamation by implication in any context[4]—they fall astonishingly short in the context of the Opinion. The law affords wide latitude for columnists like Mr. Coronell to do precisely what he did here: offer commentary and opinion about a public figure based on disclosed facts. *Turner*, 879 F.3d at 1265.

Mr. Coronell is entitled to scrutinize Plaintiff's rapid "rise to fame" and fortune, and to ridicule Plaintiff's ostentatious displays of wealth and "way of seeking recognition in the media and [] in social networks." Compl. Ex. 1. Such commentary is not actionable. Indeed, Mr. Coronell would have been free to use far more colorful language than he chose to use in crafting his Opinion. *Colodny v. Iverson, Yoakum, Papiano & Hatch*, 936 F. Supp. 917, 923–24 (M.D. Fla. 1996) (letter indicating that author's book is a "fraud" is pure opinion); *Demby v. English*, 667 So. 2d 350, 355 (Fla. 1st DCA 1995) (letter accusing animal control director of being "inhumane" and "unreasonable" is pure opinion); *Hay*, 450 So. at 295–96 (statements referring to the plaintiff as a "crook" and a "criminal" are statements of opinion). In fact, though nothing

[4] As discussed below, Mr. Coronell's Opinion simply cannot be read to imply defamatory facts about Plaintiff. That Plaintiff alleges a laundry list of vague possibilities for what Mr. Coronell's Opinion supposedly could be read to "impl[y]" only underscores that.

in the Opinion can be reasonably read to imply that Mr. Coronell is accusing Plaintiff of "influence peddling"—one of the purported defamatory implications alleged by Plaintiff, Compl. ¶ 1—*had Mr. Coronell used that exact language*, his Opinion would still not be actionable. *Seropian v. Forman*, 652 So. 2d 490, 495–96 (M.D. Fla. 1995) (accusing plaintiff of "influence peddling" is not defamatory).[5]

In sum, Mr. Coronell's Opinion is, on its face, non-actionable "pure opinion"; it cannot support a claim of defamation by implication. *Turner*, 879 F.3d at 1269. For that reason alone Plaintiff's Complaint should be dismissed with prejudice.

II. Plaintiff, as a public figure, cannot plead a claim for defamation by implication based on accurately reported facts.

As detailed below, *infra* Section III.C., Mr. de la Espriella is a public figure in Colombia, and as such must plead facts sufficient to show that the statements at issue were published with actual malice—meaning that the statements were published with actual knowledge of their falsity or with reckless disregard for the truth. *See Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345, 352 (1974). This stringent standard reflects our nation's "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, [although] it

[5] The First Amendment fully protects such colorful and figurative language. *Id.*; *see also Horsley v. Rivera*, 292 F.3d 695, 701 (11th Cir. 2002); *Hallmark Builders, Inc.*, 733 F.2d at 1464. It similarly protects rhetorical or hyperbolic statements, which—like opinion—cannot "reasonably be interpreted as stating actual facts." *Milkovich*, 497 U.S. at 2; *Horsley*, 292 F.3d at 701 (finding statement on national television that plaintiff was "an accomplice to murder" was rhetorical hyperbole); *Fortson v. Colangelo*, 434 F. Supp. 2d 1369 (S.D. Fla. 2006) (calling member of rival basketball team "thug," "thugged out," "a vacant lot," a "meaningless mass" and "gangstas or wankstas" is rhetorical hyperbole); *Pullum v. Johnson*, 647 So. 2d 254, 257 (Fla. 1st DCA 1994) (calling plaintiff a "drug pusher" amounted to rhetorical hyperbole, which negated impression that defendant was stating actual facts about the plaintiff).

may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

In line with this standard, numerous courts have specifically held that public figures cannot, as a matter of law, state a claim for defamation by implication based on accurate facts, recognizing that "[t]he media would be unduly burdened if, in addition to reporting facts about public officers and public affairs correctly, it had to be vigilant for any possible defamatory implication arising from the report of those true facts." *Strada v. Connecticut Newspapers*, 193 Conn. 313, 325 (Conn. 1984) ("[a] publisher cannot be responsible for every strained interpretation that a [public figure] plaintiff might attribute to its words."); *see also Schaefer v. Lynch*, 406 So. 2d 185, 188 (La. 1981) ("Where public officers and public affairs are concerned, there can be no libel by innuendo."); *Mihalik v. Duprey*, 417 N.E. 2d 1238, 1241 (Mass. Ct. App. 1981) (recovery for public figure plaintiff not available for true statements "merely because in the aggregate they have an insinuating overtone"); *Diesen v. Hessberg*, 455 N.W. 2d 446 (Minn. 1990) (allegedly false implication arising out of true statements is generally nonactionable in defamation by a public official plaintiff against a media defendant); *Pietrafeso v. D.P.I., Inc.*, 757 P.2d 1113 (Colo. Ct. App. 1988) (no libel by innuendo of public figure by newspaper where challenged communication was true).

In *Diesen*, for example, a local prosecutor sued a newspaper for defamation by implication after it published three articles that provided commentary critical of his performance in prosecuting domestic abuse cases. The court held that the prosecutor's defamation by implication claim was not valid due to his status as a public figure, noting that the scrutiny imparted by the newspaper "is considered a necessary and positive element of our democracy" and that, as a result, public figures "may suffer injury to [their] professional reputation[s] without

recovery under defamation law because of the paramount free speech and free press rights at stake." 455 N.W. at 450. Similarly, in *Mihalik*, an elected member of a local school committee brought a defamation claim after a newsletter published a series of "riddles" about the official which, when taken as a whole, gave rise to an allegedly defamatory implication; the court, noting that each statement in the riddle was true, held that recovery could not be had "merely because in the aggregate they have an insinuating overtone." 417 N.E. 2d. at 1241.

In line with these cases, as a public figure, Mr. de la Espriella cannot plead a claim for defamation by implication based upon the factually accurate statements in Mr. Coronell's Opinion, and Mr. Coronell "cannot be responsible for every strained interpretation that [Mr. de la Espriella] might attribute to [his] words." *Strada*, 193 Conn. at 326. Though the Florida Supreme Court has recognized the tort of defamation by implication, *see Jews for Jesus*, 997 So. 2d at 1108, it has not done so in the context of a public figure plaintiff asserting such a claim.[6] For that reason, Plaintiff's claim should be dismissed.

III. Plaintiff has not and cannot allege facts sufficient to plead a claim for defamation by implication under Florida law.

A. The Complaint fails to allege "false and defamatory facts" that can be reasonably inferred from the Opinion's true statements.

Even if the Opinion was not protected "pure opinion" under Florida law—which it is—and even if Plaintiff, a public figure, could pursue a defamation by implication claim based on accurately reported facts—which he cannot—Plaintiff's allegations would still fail to state a

[6] Indeed, Defendant is aware of only one instance in which any court applying Florida law permitted a defamation by implication claim brought by a public figure plaintiff to proceed. *See Gottwald v. Bellamy*, 2011 WL 2446856 (M.D. Fla. June 15, 2011). That unpublished federal district court ruling is easily distinguishable from the case at bar; in *Gottwald*, the court assumed for purposes of its analysis that plaintiff was a public figure, and the case did not involve a media defendant. *Id.*

cause of action. Mr. Coronell's Opinion simply cannot reasonably be read as implying false and defamatory facts about Plaintiff.

The Complaint alleges that Mr. Coronell's Opinion "stat[es] and/or impl[ies]" that Plaintiff "has engaged in illegal activities, tax evasion, influence peddling, bribery or corrupt activities." Compl. ¶ 1.[7] This lengthy list of vague, possible meanings is a product of Plaintiff's inability to identify any specific defamatory "implication" arising from Mr. Coronell's Opinion. Courts analyzing a defamation claim "must evaluate the publication[] not by extremes, but ... in its natural sense without a forced or strained construction." *Friedgood v. Peters Publ'g Co.*, 521 F. So. 2d 236, 242 (Fla. DCA 4th 1988) (citations omitted); *Smith*, 731 So. 2d at 704. And, when read in its natural sense, Mr. Coronell's Opinion calls attention to a prominent attorney's rapid rise to fame and his penchant for ostentatious displays of wealth. The Opinion simply cannot be reasonably read as accusing Mr. de la Espriella of, for example, bribing a public official. Nor is a vague concept like "corrupt activities" a provably false, factual statement. *See Mihalik*, 417 N.E. 2d. at 1241 (plaintiff's strained interpretation of the publication impermissible where "the aggregate implications" of the publication are "too vague and uncertain, and too fragile in impact, to be the basis of a libel action by a public official, particularly when each clue viewed alone is consistent with the truth.").

Though his allegations are vague, Plaintiff appears to take issue with the following statements in the Opinion: (1) "No one could explain—and to this day it's still a mystery—what valuable service could the young lawyer be providing to the Nule bidders to pay USD 800,000 for his advice"; and (2) that "public records show" that the private jet Plaintiff travels on has

[7] Notwithstanding Plaintiff's use of the word "stat[es]" here, nowhere does the Opinion state that Plaintiff "has engaged in illegal activities, tax evasion, influence peddling, bribery or corrupt activities." *See* Compl. Ex. 1.

recently visited "the tax havens of Nassau, in the Bahamas, and George Town, in Grand Cayman." Compl. ¶ 7. Besides lacking any defamatory meaning, whatsoever, the first statement is commentary undergirded by accurate facts; Plaintiff's Complaint does not contest that Mr. de la Espriella was a young attorney in 2006 when it was revealed in public documents that his law firm, Lawyers Enterprise, was going to be paid $800,000 USD by the construction consortium ASA International for advice related to the consortium's (ultimately failed) bid for the El Dorado airport expansion. It is also uncontested that Lawyers Enterprise bid the highest fees of any of the law firms bidding to represent ASA International, even more than firms that were, at that time, more established than Lawyers Enterprise. Finally, it is uncontested that the Nule Group, which in 2010 was the subject of a significant bribery scandal in Colombia, was a member of ASA International at the time it bid on the El Dorado airport expansion. As to the second statement, noting that the private jet used by Plaintiff has visited various "tax havens" does not imply that Plaintiff "has engaged in illegal activities." Compl. ¶ 1. Plaintiff himself has admitted as much. In his opinion column published in response to Mr. Coronell's Opinion, Plaintiff wrote that "believing in this day and age than an airplane is synonymous with illegality is frankly small-town." Shullman Decl. at ¶ 3, Ex. B.

Purportedly in support of a supposed "defamatory implication," the Complaint points to a small handful of cherry-picked reader comments posted to *Semana*'s website.[8] Those five comments, which were written in Spanish, are provided to the Court without the benefit of a

[8] Plaintiff selected five comments to include in his Complaint; as of this filing, there were 119 comments posted to *Semana*'s website regarding the Opinion. *See* Daniel Coronell, *El Avion*, Semana, Jan. 6, 2018, *available at* https://perma.cc/HXL7-L2H2.

certified translation.[9] The comments were not written by Mr. Coronell; indeed, there is no information, whatsoever, about who wrote them, or what their motivations may have been for doing so. In any event, despite Plaintiff's heavy reliance on those five anonymous comments, they are legally irrelevant. Defamatory meaning is a question of law; it cannot turn on the subjective interpretation of a small number of anonymous commenters posted on a website.

The Complaint also asserts that Mr. Coronell "omit[ed] facts" to "create a different meaning than the truth." Compl. ¶ 11. In a defamation by implication case based upon the omission of facts, plaintiff must show that the false implication would be contradicted by the inclusion of the allegedly improperly omitted facts. *See Compass iTech, LLC v. eVestment Alliance, LLC*, 2016 WL 10519027 *18 (S.D. Fla. 2016); *see also Kurtell & Co. v. Miami Tribune, Inc.*, 193 So. 2d 471, 471 (Fla. DCA 3d 1967) ("The fact that plaintiffs may not like the way the article was written or what it says about them does not automatically provide the basis for a libel suit."). Here, Plaintiff does not even allege what "facts" were supposedly "omitted" that would have contradicted the purported defamatory implications in the Opinion; his failure to do so dooms this argument.

B. Plaintiff fails to establish that Mr. Coronell intended or endorsed any alleged false and defamatory implication.

In addition to failing to identify any defamatory fact that is implied by Mr. Coronell's Opinion, the Complaint also fails to state a claim for defamation by implication because it does not and cannot allege that Mr. Coronell intended or endorsed the purported false and defamatory implication. *See Jews for Jesus*, 997 So. 2d at 1108. Mr. de la Espriella "must 'show with clear

[9] The Federal Rules of Evidence makes clear that translations of the kind included in Plaintiff's Complaint lack any evidentiary value. *See* Fed. R. of Evid. 604 (stating that an "interpreter must be qualified and must give an oath or affirmation to make a true translation").

and convincing evidence that [Mr. Coronell] intended or knew of the implications that the plaintiff is attempting to draw from the alleged defamatory material.'" *Kendall*, 716 F.3d at 90. Mr. de la Espriella makes no such allegation, nor is there a good faith basis for him to do so. Indeed, as detailed above, the Complaint fails to identify any particular defamatory meaning that Plaintiff alleges is reasonably implied by the Opinion; if Plaintiff himself cannot identify with any specificity what supposedly defamatory facts are implied by the Opinion, he certainly could not allege that Mr. Coronell intended such implication.

C. Plaintiff does not and cannot allege facts establishing the requisite degree of fault.

1. Plaintiff is a public figure who must plead and prove actual malice.

A plaintiff claiming defamation by implication must allege facts sufficient to show that the defendant acted with the requisite degree of fault. Where, as here, the plaintiff is a public figure, facts establishing actual malice must be pled. *See, e.g.*, *Gertz*, 418 U.S. at 345, 352; *Rasmussen v. Collier Cnty. Publ'g Co.*, 946 So. 2d 567, 570 (Fla. 2d DCA 2006). Public figures suing for defamation by implication are required to prove—by clear and convincing evidence—that the statements at issue were published with malice, a subjective standard requiring the defendant to have published the statements with actual knowledge of their falsity or with reckless disregard of the truth. *See Gertz*, 418 U.S. at 342–43; *Mile Marker, Inc. v. Petersen Publ'g Co.*, 811 So. 2d 841, 845 (Fla. 4th DCA 2002); *Zorc v. Jordan*, 765 So. 2d 768, 771 (Fla. 4th DCA 2000); *Palm Beach Newspapers, Inc. v. Early*, 334 So. 2d 50, 51–52 (Fla. 4th DCA 1976).

Whether a plaintiff is a public figure "is a question of law to be determined by the court." *Mile Marker*, 811 So. 2d at 845. The U.S. Supreme Court has identified two categories of "public figures": "general purpose" and "limited purpose." *Saro Corp. v. Waterman Broad. Corp.*, 595 So. 2d 87, 89 (Fla. DCA 2d 1992). "General public figures are individuals who, by

reason of fame or notoriety in a community, will in all cases be required to prove actual malice." *Turner*, 879 F.3d at 1272. Plaintiff clearly meets this standard.

As detailed above, *supra* pp. 2–5, Mr. de la Espriella is a famous figure in Colombia; his name is a self-proclaimed "registered trademark" in that country. Shullman Decl. at ¶ 11, Ex. J. He has represented politicians and other public figures, and is recognized by various publications as one of the most prominent lawyers in Colombia. Shullman Decl. at ¶ 4, Ex. C.

Further, Mr. de la Espriella "chose to put himself in the public arena." *Turner*, 879 F.3d at 1272 (citing to *Silvester v. Amer. Broad Cos., Inc.*, 839 F.2d 1491, 1494–97 (11th Cir. 1988) (finding the defendants to be public figures because they "had ready access to the media for many years ... and they voluntarily placed themselves in a position and acted in a manner which invited public scrutiny and comment")). He is described as a "man of the media" who "knows what the media is for and handles it perfectly." Shullman Decl. at ¶ 4, Ex. C. And, importantly, due to his fame, Plaintiff enjoys access to channels of mass communication that private individuals simply do not have—access that he has taken full advantage of. *See Mile Marker,* 811 So.2d at 846 ("[T]he level of media access enjoyed by a particular claimant should be considered as part of the public figure calculus."). After the Opinion was published, Mr. de la Espriella published a response, titled "Coronell's Revenge." Shullman Decl. at ¶ 3, Ex. B. Mr. de la Espriella has also made public comments regarding Mr. Coronell's Opinion. Shullman Decl. at ¶ 6, Ex. E. The fact that Mr. de la Espriella has greater media access than a private person is a hallmark of public figure status. *See Mile Marker*, 811 So. 2d at 846; *Friedgood* 521 So. 2d at 241. "[P]ublic figures usually enjoy greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements [than] private individuals normally enjoy." *Gertz*, 418 U.S. at 344; *see also Mile Marker*, 811 So. 2d at

846 (plaintiff "enjoyed greater media access, consistent with public figure status"); *Friedgood*, 521 So. 2d at 241 (plaintiff "had ample 'access to channels of effective communication and hence ... a ... realistic opportunity to counteract false statements'") (quoting *Street v. Nat'l Broad. Co.*, 645 F.2d 1227, 1234 (6th Cir. 1981)) (alteration in original).

2. The Complaint fails to plead facts sufficient to establish actual malice.

Because Plaintiff is a public figure he must satisfy the "daunting" actual malice standard. *Klayman v. City Pages*, 2015 WL 1546173, *13 (M.D. Fla. Apr. 3, 2015). This requirement serves a critical and "powerful" purpose: "ensuring that free speech is not unduly burdened by the necessity of defending against expensive yet groundless litigation." *Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 702 (11th Cir. 2016). "[T]he actual malice standard is not satisfied merely through a showing of ill will or 'malice' in the ordinary sense of the term." *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 666 (1989). "An intention to portray a public figure in a negative light, even when motivated by ill will or evil intent, is not sufficient to show actual malice unless the publisher intended to inflict harm through knowing or reckless falsehood." *Don King Prod., Inc. v. Walt Disney Co.*, 40 So. 3d 40, 45 (Fla. 4th DCA 2010).

As detailed above, Mr. de la Espriella is a public figure. Accordingly, he must allege *facts* sufficient to show that Mr. Coronell acted with "actual malice"—*i.e.*, that any false, defamatory implication was intended by him "with knowledge that it was false or with reckless disregard of whether it was false or not." *New York Times Co.*, 376 U.S. at 279–80. The test is not objective; the question is whether the defendant "actually entertained serious doubts as to the veracity of the published account, or was highly aware that the account was probably false." *Id.* at 703; *see also Mile Marker*, 811 So. 2d at 846–57. In other words, Plaintiff must plead facts showing that Mr. Coronell *actually believed* that the alleged implications reasonably derived

from his statements were false, or recklessly shut his eyes to clear evidence of falsity. *See, e.g.*, *Michel*, 816 F.3d at 703 (explaining that "[a]ctual malice requires more than a departure from reasonable journalistic standards" and that "a failure to investigate, standing on its own, does not indicate the presence of actual malice").

The Complaint fails this test by a wide margin. It does not set forth facts demonstrating that Mr. Coronell "knowingly and recklessly" ignored or deliberately avoided learning information when writing his Opinion; as such, it fails to allege sufficient relevant facts to support a claim of actual malice. *Michel*, 816 F.3d at 703–04. And, indeed, it is well-settled Florida law that where, as here, a publication sets forth accurate facts and "allow[s] readers to decide for themselves what to conclude," an "allegation of actual malice [is] less plausible." *Turner*, 879 F.3d at 1274.

Plaintiff could not possibly plead facts sufficient to establish that Mr. Coronell published his Opinion with actual malice. As explained above, *supra* Sections I, II, the Opinion consists of commentary based on true factual statements; Plaintiff himself is unable to identify any specific false, defamatory facts implied by Mr. Coronell's Opinion.

3. Plaintiff fails to allege that defendant acted negligently.

Even if Mr. de la Espriella were deemed not to be a public figure, the Complaint should nonetheless be dismissed because it fails to allege facts demonstrating that Mr. Coronell acted negligently. Indeed, Mr. de la Espriella does not allege *any* facts, whatsoever, that would show that Mr. Coronell failed to use ordinary care when writing his Opinion, which is based on true statements of fact and an interview with Mr. de la Espriella himself. *See Hakky v. Wash. Post.*

Co., 2010 WL 2573902, at *6 (M.D. Fla. June 24, 2010) (dismissing claim for failure to allege sufficient facts demonstrating negligence).

IV. Plaintiff has not suffered actual damages.

Under Florida law, a plaintiff asserting a claim of defamation by implication must plead and prove that he sustained actual damages, regardless of whether the plaintiff is a public figure or private person. *See, e.g., Mid-Fla. Television Corp. v. Boyles*, 467 So. 2d 282, 283 (Fla. 1985); *Edelstein v. WFTV, Inc.*, 798 So. 2d 797 (Fla. 4th DCA 2001). Moreover, the plaintiff must also demonstrate that the alleged defamation by implication was a proximate cause of that injury. *See, e.g., Smith*, 731 So. 2d at 705 (citing *Byrd*, 433 So. 2d at 595). In other words, a defamation by implication plaintiff is required to prove that "but for the statement, the damage would not have occurred." *In re Standard Jury Instructions In Civil Cases-Report No. 09-01*, 35 So. 3d 666, 726 (Fla. 3d DCA 1981); *see also Borenstein v. Raskin*, 401 So. 2d 884, 886 (Fla. 3d DCA 1981) (proximate cause requires "such a natural, direct and continuous sequence between the negligent act and the injury that it can be reasonably be said that but for the act, the injury would not have occurred"); *Fellows v. Citizens Fed. Sav. & Loan Ass'n of St. Lucie Cty.*, 383 So. 2d 1140, 1141 (Fla. 4th DCA 1980) ("Proximate cause means that the alleged wrong of the defendant caused the damage plaintiff claims.").

The question of whether the defamation by implication plaintiff's claimed injuries were caused by the allegedly tortious conduct can be resolved by the court as a matter of law "where the facts are unequivocal, such as where the evidence supports no more than a single reasonable inference." *McCain v. Fla. Power Corp.*, 593 So. 2d 500, 504 (Fla. 1992). Mr. Coronell respectfully submits that this is such a case. No reasonable person assessing the Complaint could conclude that the Opinion caused Plaintiff harm "in his personal, social, legal, business and

personal reputations." Indeed, Plaintiff has said so himself; in his public response to Mr. Coronell's Opinion, he wrote that "[s]omething wonderful has come out of" the Opinion; in particular, an "overwhelming" outpouring of support that, he opined, showed that "Colombians are not as envious and resentful of other people's success as [he] thought[.]" Shullman Decl. at ¶ 3, Ex. B.

V. Defendant is entitled to fees and costs pursuant to Florida's anti-SLAPP law.

Florida's anti-SLAPP law "provides a substantive right to immunity from abusive lawsuits that suppress First Amendment rights." *Rosenthal v. Council on Am.-Islamic Relations, Fla., Inc.*, 45 Media L. Rep. 2664, 2667 (Fla. 17th Jud. Cir. Ct. Nov. 8, 2017). To that end, the law prohibits anyone from bringing a lawsuit (a) that is "without merit," and (b) because the defendant "has exercised the constitutional right of free speech in connection with a public issue," which the statute defines as any written or oral statement "made in or in connection with a . . . news report, or other similar work." § 768.295(2)(a), (3), Fla. Stat. Florida prioritizes the "expeditious resolution" of anti-SLAPP motions and instructs that "[t]he court shall award the prevailing party reasonable attorneys' fees and costs incurred in connection with a claim that an action was filed in violation of this section." § 768.295(4), Fla. Stat. "Effective anti-SLAPP statutes" exist to "make it easier and cheaper to terminate such lawsuits at early stages." Samuel Morley, *Florida's Expanded Anti-SLAPP Law: More Protection for Targeted Speakers*, 90 Fla. B.J. 17-18 (Nov. 2016).

This case easily satisfies both requirements of Florida's anti-SLAPP law. First, for the reasons detailed herein, Plaintiff's lawsuit is meritless. § 768.295(3), Fla. Stat. Second, this lawsuit plainly arises out of Mr. Coronell's exercise of his "constitutional right of free speech in connection with a public issue," *id.*, because the challenged Opinion constitutes a "written or oral

The May 19, 2018 column referred to in Mr. Rogow's recent demand letter repeated many of the facts detailed in the September 24, 2016 column, but provided an update: an official statement from the Office of the Prosecutor had formally accused three judicial officers of manipulating the system meant to randomly allocate cases to judges. Coronell Decl. ¶ 20. Though Mr. Mattos took no legal action against Mr. Coronell after the publication of the earlier, September 24, 2016 column, he is now threatening Mr. Coronell with his own purported "defamation by implication" lawsuit. Indicative of the merits of the claims in that demand letter, the same day it was sent, a Colombian judge issued an arrest warrant against Mr. Mattos in connection with the Hyundai case. Coronell Decl. ¶ 22; *see also* Shullman Decl., ¶ 13, Ex. L.

In light of Mr. Rogow's most recent demand letter, it appears, as Mr. Coronell believes, that this case is "part of a targeted attack in an attempt to stop [him] from writing about these powerful individuals." Coronell Decl. ¶ 23. It is clear, at a minimum, that this lawsuit is precisely what the Florida anti-SLAPP law was amended in 2015 to stop: abusive litigation intended to burden and harass a journalist whose commentary about a public figure on matters of public concern the plaintiff simply does not like. This meritless case should be dismissed with prejudice without delay.

CONCLUSION

For the reasons set forth above, Defendant Coronell respectfully requests that the claim against him be dismissed with prejudice for failure to state a claim pursuant to Rule 1.140(b)(6) of the Florida Rules of Civil Procedure and pursuant to the Florida anti-SLAPP law, Fla. Stat. § 768.295 (2014).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of June, 2018, a true and correct copy of the foregoing is being forwarded via electronic service from the Florida Court E-Portal to counsel for Plaintiff, Andres Daza (info@counselordaza.com), Bruce Rogow (brogow@rogowlaw.com), and Tara Campion (tcampion@rogowlaw.com).

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