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IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
IN AND FOR BAY COUNTY , FLORIDA

ZACHARY YOUNG and
NEMEX ENTERPRISES INC.,

Plaintiffs,

Case No.: 03-2022-CA-000608

v.

CABLE NEWS NETWORK, INC.,

Defendant.
_______________________________________/

DEFENDANT CABLE NEWS NETWORK, INC.'S
MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF ZACHARY YOUNG

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Pursuant to Rule 1.510, Defendant Cable News Network, Inc. ("CNN") asks the Court to enter summary judgment as to the claims brought by Plaintiff Zachary Young because no genuine issue of material fact exists regarding the dispositive issues set forth below, and CNN is entitled to judgment as a matter of law.[1]

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This entire defamation case centers on Young's accusation that CNN implied he engaged in illegal conduct when he arranged, for a substantial fee, to have women smuggled out of Afghanistan. Discovery in this case—including the deposition testimony, which has never previously been before this Court—makes clear that Young cannot premise a defamation case around that accusation, or any other accusation he makes. Young has admitted he did not even bother to find out [REDACTED] And, discovery has indicated that those activities he orchestrated and funded, which involved moving women out of Afghanistan, almost certainly *were* illegal under Taliban rule. Young cannot point to a single shred of evidence indicating otherwise that could somehow create a dispute of material fact as to that issue.

It is, accordingly, impossible for Young to meet his burden to prove that CNN's reporting was false. No reasonable jury could find that the accusation that Young engaged in criminal activity is false when Young himself [REDACTED] and the record strongly suggests it was true. While the record is also clear that CNN's reporting was not focused

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[1] This motion is directed to Counts I–III of the Second Amended Complaint ("SAC"), which are defamation claims filed on behalf of Young. A separate summary judgment motion, directed at the claim filed by Young's co-plaintiff, Nemex Enterprises Inc. (Count IV, for trade libel), is filed concurrently herewith. Because Young, as Nemex's owner, president, and only human resource, is "indistinguishable from Nemex," and because the defenses to defamation apply with equal force to trade libel claims, all arguments featured herein are incorporated by reference into the accompanying motion regarding Count IV.

on whether Young's activities were illegal—as opposed to predatory and condemnable—and that there was, accordingly, no *intent* to accuse Young of illegal conduct, even accepting Young's interpretation of the reporting, Young does not, by his own admission, raise a triable jury question of fact.

All of the journalism at issue in this case arose out of the events of August 2021, when the U.S. military withdrew from Afghanistan, leading the Taliban to take control of the country and ban women from leaving. Because thousands of women faced possible execution or enslavement at the hands of the new government, the Afghans' desperation to escape spawned a brief window—approximately two and a half months—of exploitable economic opportunity.

Young—[REDACTED], and knew somebody who knew somebody in the country—saw a chance to make some quick money. So he advertised on LinkedIn that he could evacuate Afghans for $14,500 apiece. Young's ads landed him four customers—totaling about 20 women—whom he charged more than $[REDACTED] a head. Young's company, Nemex, suddenly found itself rapidly making a ton of money, and in turn, Young—[REDACTED]—lined his pockets at an astounding rate.

Yet Young didn't personally evacuate anyone. Instead, at all relevant times, he sat at his computer in Vienna, acting as a middleman to another middleman, overseeing evacuations carried out by unknown people half a world away. Young could not guarantee the success of any evacuation because he literally did not know what the people on his payroll were doing. He even left some would-be evacuees stranded, scrambling for alternatives, and demanding refunds.

After CNN published a story about profiteers taking advantage of the chaos in Afghanistan to charge prices that Afghans could not afford, Young brought this defamation lawsuit. His central grievance concerns the term "black market," which was used in some of the publications to characterize the chaotic market for private evacuations services after the U.S.

withdrawal. Now, with the benefit of full discovery, it is clear that Young cannot prevail on his claims, and summary judgment should be entered in CNN's favor.

Contrary to what Young has asserted, the focus of CNN's journalism was never on whether what Young and other private operators were doing was illegal under Taliban law. Rather, the focus was on how bad actors—war profiteers such as Young—were taking advantage of the desperation of Afghans and the chaos in the country to demand prices for evacuations far beyond what Afghans could afford. That is what CNN journalists believed about Young and his business at the time—and still do. That is what CNN reported. And, that is what discovery in this case has proved, beyond any material question of fact, to be true.

But, even if Young is right that CNN accused him of illegal conduct—which CNN vigorously disputes—he still cannot prevail on his claims. Not only has Young [redacted]

[redacted], discovery has indicated that the activities Young directed and funded almost certainly *were* illegal under Taliban law, as the Taliban prohibited Afghans (especially woman) from exiting the country without permission and vastly restricted their movement inside the country.

Young's lawsuit fails, and summary judgment should be entered against him and in favor of CNN for that reason and several others. To summarize:

First, CNN is entitled to summary judgment on Young's defamation claims (Counts I & II) because Young cannot meet his burden to establish a genuine issue of fact as to falsity. Discovery has made clear that each of the statements/implications he complains about is true. Discovery has, likewise, made clear that the "gist," or overall message, of CNN's reporting—that bad actors in Afghanistan, including Young, were taking advantage of the chaos and desperation to demand more for evacuations than Afghans could afford—was indisputably true as well.

Second, CNN is entitled to summary judgment on Young's defamation claims (Counts I & II) for the additional reason that CNN's reporting was not defamatory to Young. The four allegedly defamatory statements/implications in this case are non-falsifiable opinions, convey no defamatory meaning, or constitute protected commentary based on known facts. And, the gist of the story also conveys no defamatory meaning as to Young.

Third, CNN is also entitled to summary judgment on Young's defamation claims (Counts I & II) because Young cannot meet his burden to prove, by clear and convincing evidence, that CNN published its reporting about him with "actual malice"—that is, with knowledge of its falsity or a subjective belief in its probable falsity. Young must make that showing because he is a limited-purpose public figure. He cannot do so because the record demonstrates that the journalists who were responsible for the story, which was based on their diligent and thorough reporting, believed every aspect of it was true.

Fourth, CNN is entitled to summary judgment on Young's group libel claim (Count III) because it fails for the three reasons set forth above and because it impermissibly duplicates his defamation claim(s).

For these reasons, no genuine issue of material fact exists, and CNN is entitled to judgment as a matter of law.

FACTUAL BACKGROUND[2]

CNN published the Segment, the primary publication at issue in this case, on November 11, 2021.[3] The essence of the Segment was that profiteers—including Young—were taking

[2] Pursuant to Rule 1.510, Defendant CNN's Statement of Material Facts in Support of Summary Judgment ("SOF") is filed contemporaneously herewith. This background section is meant to highlight and summarize key material facts contained in the SOF and is not exhaustive. Citations to the SOF are designated by "SOF" followed by the paragraph number(s).

[3] Four publications (the "Publications") are at issue in this case. The Publications include (a) the "Package," which refers to Alex Marquardt's piece—3:43 in length—that initially aired on the evening of November 11, 2021; (b) the "Segment," which collectively refers to the 5:09 video

advantage of the chaos in Afghanistan following the U.S.'s withdrawal and charging more for their services than Afghans could afford. SOF ¶¶ 215-23. The Segment, which ran a little over five minutes long, depicted the plight faced by Afghans who encountered hardship while trying to escape their country after the U.S. withdrew in August of 2021. SOF ¶¶ 215-24. To illustrate the difficulties they faced, the Segment featured the stories of two Afghans, neither of whom could afford the fees charged to escape the country because the private operators that they encountered online were charging tens of thousands of dollars for their services. SOF ¶ 217-22.

The Segment was the product of weeks of reporting by CNN about the emerging evacuation crisis in Afghanistan. SOF ¶ 253. At the time, Afghans who lacked the means to escape were left at the mercy of the Taliban, which took control of the government as soon as the U.S. withdrew and placed the country on lockdown. SOF ¶¶ 22-32. The new government had also implemented Sharia law, banning women from leaving the country and threatening execution or enslavement for anyone who had collaborated with the U.S. government. SOF ¶ 26-32.

To help women escape the new Afghan government—as described by Young and Young's expert, General James Young, Jr. ("Gen. Young")—private operators on the ground

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that includes both the Package and its lead-in (40 seconds) and anchor tag (46 seconds), featuring CNN anchor Jake Tapper; (c) the "Tweets," which are a pair of Twitter posts on November 11 and 12 related to the Segment; and (d) the "Article," which was an online article published on November 13. SOF ¶¶ 113, 213-15, 224, 235-36, 239. Not all Publications each feature all four of the allegedly actionable statements/implications (*i.e.,* advertisements, exploitation, exorbitance, and black markets). The Article proportionally discusses Young less than the Segment (and it does not mention black markets) and the Tweets essentially constitute hyperlinks to the Segment and brief commentary extracted from the Segment. SOF ¶ 235-36, 240. Because the Segment is the primary at-issue Publication—in that it discusses Young more than the others and is the only Publication to comprehensively feature all allegedly defamatory statements/implications—the instant Motion focuses on the Segment unless otherwise noted.

[REDACTED]. SOF ¶¶ 33-40. As CNN learned, such operators and their middlemen quickly formed a thriving market for clandestine evacuations, advertising their services on LinkedIn and Facebook—frequently at prices that Afghans could not afford. SOF ¶ 113-26, 133, 154.

During CNN's three-week newsgathering into the evacuation crisis, CNN's Alex Marquardt and Katie Bo Lillis gathered information from more than a dozen sources, all of whom repeated the same refrain: thousands of desperate Afghans sought to escape the Taliban, yet the private operators they encountered online were charging tens of thousands of dollars—far more than Afghans could pay—and leaving those who couldn't pay to face the Taliban. SOF ¶¶ 113-34, 154.

During an interview regarding the Afghan evacuation crisis, foreign policy expert Hazami Barmada told Marquardt, "we want to celebrate that there's life-saving efforts taking place here, but on the other hand, it doesn't have to be at the expense of the type of exploitation that's not regulated." Barmada explained that, within the private evacuation market, "[t]here's not really regulations. . . . When you hear of $20,000 with a guarantee, there's no guarantee. . . that's where the exploitation starts getting frustrating, heartbreaking. . . . We know how much it costs, and it's nowhere near what these organizations and companies are charging." SOF ¶¶ 123-26.

Young, for his part, typically advertised his services for between $14,000 and $15,000 per person. SOF ¶¶ 48, 68-69, 71. CNN obtained dozens of screenshots featuring Young promoting his evacuation services on LinkedIn, where Young aggressively advertised his business by posting promotions on his own page, interjecting into the posts of others, and communicating via private messages. SOF ¶¶ 45-55, 57-71. His advertisements frequently featured pricing as well as claims that he could provide passports, visas, or refugee status. SOF

¶¶ 48, 51, 68-69, 71, 128, 130, 137. His advertisements also claimed that his services were "[f]or anyone." SOF ¶ 58.

Afghans and non-Afghans alike responded to the advertisements. For instance, when one Afghan who was stuck in Kabul asked Young for assistance, Young asked, "Do you have a sponsor able to pay for evacuation costs?" The man responded, "Not really. But can't I pay myself?" Young replied, "$14.5k per person." SOF ¶ 68. Young responded similarly—quoting prices and services and requesting funding—to several other Afghans who responded to his advertisements, and CNN obtained several screenshots of Young ceasing communications with Afghans who said they couldn't pay his fees. SOF ¶¶ 69-71. One Afghan who spoke with Young said, "I face [sic] with [Young] and I thought a hope come to my life but unfortunately all was fakes." SOF ¶¶ 148. And another Afghan source who was stuck in Kabul showed Marquardt screenshots of her messages with Young, who had stopped communicating with her when she asked Young whether a charity existed to help defray Young's high costs. SOF ¶ 153. Another source referred to the evacuation business as "corrupt[]" SOF ¶ 153.

Young also promoted his business through private messaging—though his methods weren't always professional. American Jill Kornetsky was one such person to whom Young directly offered his services. When Kornetsky questioned Young's exorbitant costs and extreme profit margins—Young called her a "spiteful bitch" told her to "fuck off" and "[w]aste someone else's time." SOF ¶ 130. Similarly, when another potential client named David Lerner requested pricing, Young replied that a single vehicle would cost $75,000, to which Lerner responded, "What is this fee for? Just transportation?" Young replied, "Just transportation?? You can't be serious. Good luck David. Have the[Afghans] run for the border themselves and see how far they get." Lerner responded, "It's a serious question. What does this get them?" Young replied, "Waste someone else's time. Bye." SOF ¶ 137.

Other individuals who wanted help with extractions also spoke with CNN about their interactions with Young. James Daniels, for instance, told source George McMillan (in a conversation shared with Marquardt) that Young's "profiteering makes me sick." SOF ¶ 138-39. And, after Young spoke with and then blocked Daniels on LinkedIn, Daniels publicly warned LinkedIn users to "beware of" Young because "[h]e always demanded 'financing.'" SOF ¶ 149.

McMillan met Young at a coffee shop in Vienna and left the encounter both dubious of Young's services and highly critical of Young's exploitative model. SOF ¶¶ 142-46. Young's apparent lack of understanding of how the Afghanistan evacuation market works and his boasting about being a NOC officer (a non-official cover direct employee of the CIA) left McMillan feeling "skeptical" of Young and like "he could be a fraud." SOF ¶¶ 143-46. Kornetsky similarly observed about Young: "NO WAY can these people afford to pay their way out of Afghanistan . . . . These people can't even afford food, much less come up with $15k and trying to fundraise takes a lot of time. I don't have money to sponsor these families, so I felt the profiteering was a disgrace." SOF ¶ 136.

CNN has since learned, through discovery in this case, that Young's operation was very different from how he publicly portrayed it. His actual work was entirely remote, and he was both indifferent toward, and ignorant of, the methods used to carry out the operations he funded and coordinated. SOF ¶¶ 82-97. Despite his many boasts, he was essentially [redacted] SOF ¶¶ 82-83, 91-93. He [redacted]. SOF ¶ 89. He never [redacted] SOF ¶ 86. And Young never communicated with any person actually conducting an evacuation other than his alleged collaborator, Iurii Lavreniuk, and

Lavreniuk's alleged operatives, whose identities Young did not and does not know.[4] SOF ¶ 92. Young had no way to physically verify what the evacuators he directed and funded were actually doing. SOF ¶¶ 93-94.

Instead, Young [redacted] services, issuing directives from his computer in Vienna. SOF ¶ 83. For those services, Young (through Nemex) was paid handsomely. SOF ¶¶ 98-100, 102. Despite advertising rates of $14,500 per person, he actually received more than $[redacted] per person and operated at a [redacted]% profit margin. SOF ¶ 98, 102. The revenue was a huge boon. Nemex's revenue in the three months between August and October 2021 was more than fourteen times what the company had brought in during the preceding four years combined. SOF ¶ 99.

The quality of Young's work was highly suspect. CivilFleet, a German non-governmental organization that was one of Young's clients, paid Young to evacuate six people, yet Young, as explained by CivilFleet volunteer Ralf Otto, "refused or was unwilling" to evacuate three of them, "despite collecting money in advance." SOF ¶ 103, 107-08. CivilFleet soon realized that half of the would-be evacuees were stranded and that, contrary to CivilFleet's understanding, Young did not actually know who was conducting the evacuations. SOF ¶ 105-09. CivilFleet then located alternative evacuation plans—for a fraction of what it paid Young. CivilFleet—requested a partial refund from Young, which Young refused to pay, despite taking CivilFleet's money, not performing his end of the bargain, and otherwise behaving unprofessionally. SOF ¶¶ 103, 109-12. In one incident, after a CivilFleet volunteer delayed responding to a message from Young because he was brushing his teeth, Young told the volunteer that he didn't "give a fuck" about the volunteer's teeth and would "come [to Afghanistan] in person and knock them

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[4] CNN uses the phrase "alleged collaborator" to refer to Lavreniuk because, due to Young destroying his phone—and, hence, all his contacts—before filing this lawsuit, SOF ¶ 261, CNN has no way to verify Lavreniuk's purported role in Young's operation, or even whether he exists.

out." SOF ¶ 103. CivilFleet further noted that Young was "very unstable," "horrible" to work with, charged "exorbitant prices," and was "exploitat[ive]." SOF ¶¶ 104, 111-12.

At the time of its reporting, CNN knew little about Young's financials, his model, or whether he'd successfully evacuated anyone because whenever anyone (including CNN) asked Young to explain his business, he obfuscated, behaved unprofessionally, lied, and hid. SOF ¶¶ 177-80, 187-88, 190-91, 194-99, 204-12.

On November 3, 2021—more than a week before the Segment ran on November 11—Young and Lillis communicated via a series of several private messages. SOF ¶¶ 169-80. During the exchange, Lillis asked Young to speak with her about his operation, whether he'd lined up sponsors for his clients, if he could point to any examples of success, how he calculated his prices, why his prices were so high, and other questions aimed at understanding Young's business model. SOF ¶¶ 171-78, 187-88. As Lillis explained to Young: "Getting it right is why I'm talking to you." SOF ¶ 179. Nonetheless, Young refused to explain his model and prices or demonstrate whether he'd successfully evacuated anyone. SOF ¶¶ 177-80. He then threatened to sue CNN for libel, stopped answering Lillis's questions, and blocked her on LinkedIn. SOF ¶¶ 176, 200-01. He also did not answer the phone when Marquardt called during that same period. SOF ¶ 192.

On November 10, the day before the Segment ran, Marquardt sent Young a message and told him that publication of the story was forthcoming, stating: "We are going to be running a piece in which we detail your interactions with people inquiring about your services and the prices to evacuate people from Afghanistan. I wanted to give you a chance to explain why they are so high." SOF ¶ 204. When Young responded the next day, Marquardt gave him additional opportunities to address what CNN planned to report, asking him directly: "Are you making money off of this? If so, how do you justify profiting from Afghans desperate to get out?" SOF

¶ 206. When Young responded by (once again) threatening to sue and asserting vaguely that "some of your facts/assertions [are] not accurate," Marquardt then gave him yet more chances to explain his business practices, sending him screen shots of social media communications in which Young advertised his prices and asking him to clarify what he claimed was inaccurate in what CNN intended to report. SOF ¶ 207-08. When Young did not respond, Marquardt messaged him three additional times, asking: "So, which facts/assertions are not accurate? I'm not accusing you of scamming, I am simply pointing out the prices are very high and i am providing your explanation that sponsors are expected and the environment is volatile." SOF ¶¶ 209-10. Young never responded to any of those communications. SOF ¶ 210. He subsequently conceded in his deposition that, had he wanted to, he [REDACTED]. SOF ¶¶ 194, 212.

At the time it was doing the reporting, not only was CNN unaware that Young's role in the evacuations was very different than he let on, CNN was also unaware that Young's advertisements and representations to Lillis and Marquardt—meager though they were—were riddled with falsehoods. SOF ¶ 74. For starters, Young claimed that he could perform next-day operations; [REDACTED]. SOF ¶ 75. He claimed he had connections with the Albanian government; [REDACTED]. SOF ¶ 76. He claimed he could obtain passports, visas, or refugee status; [REDACTED]. SOF ¶¶ 78-79, 94. He claimed he could charter aircraft; [REDACTED], and, in fact, [REDACTED]. SOF ¶ 77. He claimed that he received daily requests to evacuate journalists; [REDACTED]. SOF ¶ 196. He claimed that his sponsors made him sign non-disclosure agreements after they heard CNN was asking questions; [REDACTED]. SOF ¶ 198. And, he claimed that he arranged sponsors for his clients; yet [REDACTED]. SOF ¶¶ 87, 199.

What CNN knew, however, was that Young advertised evacuation services for $14,500 apiece, which was far more than the Afghans who encountered his advertisements could afford; CNN also knew that he justified his high prices by stating, "that's how economics works," and that he lashed out and hid whenever questioned by anyone, not just CNN. SOF ¶¶ 51, 68-69, 130, 137, 206. Thus, when the Segment aired on November 11, 2021, CNN published only what it knew to be true.

The Segment, which focused primarily on the two Afghans who couldn't pay the high prices charged by private operators, was approximately five minutes, nine seconds long and mentioned or referred to Young for about one minute, five seconds. SOF ¶ 224. The Segment did not state that Young operated within a black market, and it did not use the phrase "black market" in reference to Young, specifically. SOF ¶ 230. And, at no point did the Segment characterize any activity—of Young or anyone else—as illegal. SOF ¶ 231. CNN thrice explained that Afghans were expected to have sponsors to pay the high prices that Young was charging. SOF ¶¶ 226-28. The Segment accurately portrayed both the situation—desperate Afghans seeking to escape the Taliban—and Young's role within it—an example of an opportunist whose advertised prices far exceeded what Afghans could pay.

Young's suit, however, alleges that CNN defamed him by stating that he (a) operated on a "black market," (b) "advertised" to Afghans, (c) charged "exorbitant prices" to Afghans, and (d) "exploited" Afghans.[5] SOF ¶¶ 265-67. Yet, as shown below, summary judgment is proper because, based on the undisputed record, Young's claims fail as a matter of law.

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[5] Young employs these four alleged statements to support both his defamation and defamation by implication claims (hereinafter, the "*black market*," "*advertised*," "*exorbitant*," and "*exploited*" implications, respectively). *Compare* SAC ¶ 134, *with* SAC ¶ 144. The sole exception is that the defamation by implication claim also alleges that the Segment stated that Young was a "scam artist who made false promises" (the "*scam artist* implication"). SAC ¶ 144. The alleged *scam artist* implication is separately addressed in Section III. Otherwise, the Motion focuses only on the *black market*, *advertised*, *exorbitant*, and *exploited* implications.

ARGUMENT

I. STANDARDS AND CAUSES OF ACTION

A. Summary judgment in defamation claims

Summary judgment is proper in Florida "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Naso v. Hall*, 338 So. 3d 283, 286 (Fla. 4th DCA 2022) (quoting Fla. R. Civ. P. 1.510). When amending Rule 1.510 to comport with the federal summary judgment standard, the Florida Supreme Court explained that "summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of our rules as a whole." *In re Amends. to Fla. Rule of Civ. Proc. 1.510*, 309 So. 3d 192, 194 (Fla. 2020) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)) (cleaned up).

Rule 1.510 "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case." *Celotex*, 477 U.S. at 322. The moving party bears the initial burden of showing from the record that no genuine dispute exists as to an element of a claim. *Id*. at 322-23. In response, the nonmoving party must demonstrate a genuine dispute as to each element of his claim. If the evidence is merely colorable or not significantly probative, summary judgment is proper. *In re Amends. to Fla. Rule of Civ. Proc. 1.510*, 309 So. 3d at 193-94.

Under Florida law, suits that implicate First Amendment rights—such as the instant case—are particularly suited for pretrial disposition. In defamation cases, the court plays a "prominent function" in determining whether the case should be submitted to the jury. *Byrd v. Hustler Mag.*, 433 So. 2d 593, 595 (Fla. 4th DCA 1983). To protect public debate and safeguard freedom of the press, Florida courts have long favored dismissal of legally untenable defamation

claims at the earliest possible juncture. Indeed, "pretrial dispositions are 'especially appropriate'" in defamation cases "because of the chilling effect these cases have on freedom of speech." *Stewart v. Sun Sentinel*, 695 So. 2d 360, 363 (Fla. 4th DCA 1997) (quoting *Karp v. Miami Herald Publ'g*, 359 So. 2d 580, 581 (Fla. 3d DCA 1978)); *see also Larreal v. Telemundo of Fla.*, 489 F. Supp. 3d 1309, 1317-18 (S.D. Fla. 2020) (explaining that "summary dismissal of defamation cases is particularly appropriate because there is a powerful interest in ensuring that free speech is not unduly burdened by the necessity of defending against expensive yet groundless litigation," and that, "because of the importance of free speech, summary judgment is the rule, and not the exception, in defamation cases" (cleaned up) (citing *Michel v. NYP Holdings*, 816 F.3d 686, 702 (11th Cir. 2016)).

In addition to the First Amendment considerations, this Motion is also colored by the fact that, prior to filing suit, Young destroyed his phone, as well an unknown number of documents, including LinkedIn communications and advertisements for his services. As this Court previously held, that entitles CNN to an adverse inference that the information Young destroyed was detrimental to his position. *See* Order on Defendant's Dispositive Motion for Spoliation Sanctions (Filing No. 196608887), at 1-7. Thus, in reviewing this Motion, the Court can and should presume that the spoliated evidence was harmful to Young, and further supports the case for summary judgment. *See ACS Int'l Projects v. Barak*, 2020 WL 12754521, at *4 (Fla. 11th Jud. Cir. Feb. 27, 2020) (explaining that an adverse inference "can provide the basis for summary judgment where there is [other] corroborating evidence"); *Performance Renewable Energy v. Kinder Morgan Port Sutton Terminal*, 2015 WL 12567287, at *5 (Fla. 13th Jud. Cir. Feb. 2, 2015) (same); *Smith v. Sohaan Dev.*, 2013 WL 5720163, at *4 n.6 (M.D. Fla. Oct. 1, 2013) ("The adverse inference is also applicable as a finding of fact in any motion for summary judgment . . . .").

B. Adjudicating the gist of defamation claims

In Florida, the torts of defamation and defamation by implication each require proof of five elements: (1) publication about the plaintiff, (2) falsity, (3) fault, (4) defamatory meaning, and (5) actual damages. *Jews For Jesus v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008). Before adjudicating the elements of falsity, defamatory meaning, or fault, the court must first determine "the substance, the gist, the sting, of the libelous charge." *Masson v. New Yorker Mag., Inc.*, 501 U.S. 496, 517 (1991); *see also Levan v. Capital Cities/ABC*, 190 F.3d 1230, 1240 (11th Cir. 1999) (explaining—because the elements of falsity, defamatory meaning, and actual malice were at issue—that "Our first job, therefore, is to determine the gist or sting of the report.").

The gist of a publication is ascertained by looking at the context of the *entire* publication in which an allegedly defamatory statement appears—not just isolated snippets identified by the plaintiff—and then determining the general impression that the publication, as a whole, leaves in the minds of readers, viewers, or listeners. *See id.* ("The gist of any statement within a publication or broadcast is found only by reference to the entire context"); *Smith v. Cuban Am. Nat'l Found.*, 731 So. 2d 702, 706 (Fla. 3d DCA 1999) (reversing and remanding because the trial court improperly considered only two minutes' worth of excerpts from a documentary and explaining that, without taking in the documentary as a whole, there was "no way to determine the 'gist' or 'sting' of the publication").[6]

[6] *See also Salazar v. Telemundo Network Grp.*, 2006 WL 1650723, at *3 (Fla. 11th Jud. Cir. May 30, 2006) (granting defendant Telemundo's motion for summary judgment because the "'gist' of the Telemundo broadcasts are accurate. [Plaintiff's] attempt to isolate a few phrases fails"); *Martin v. Heidenreich*, 2022 WL 18781716, at *4 (Fla. 10th Jud. Cir. Dec. 12, 2022) (analyzing the full context of the publication at issue—rather than the two-and-a-half-minute segment highlighted by the plaintiff—and explaining that, before analyzing the elements of falsity or actual malice, the "court must evaluate these matters of law after reviewing a publication in full; not by cherry picking excerpts from an entire publication, but by determining the 'gist' of the entire broadcast"); *CNN v. Black*, 374 So. 3d 811, 818-19 (Fla. 4th DCA 2023) (reversing a trial court for focusing only on isolated statements instead of considering the gist of the entire publication).

In this case, the First DCA described the gist of the Segment as "bad actors preying upon desperate people at a chaotic time," that is, that profiteers—including Young—took advantage of the chaos and charged more for their services than Afghans could afford. *CNN v. Young*, 2024 WL 2947726, at *2 (Fla. 1st DCA June 12, 2024).[7] Although Young, in the course of this litigation, has maintained that CNN accused him of illegality, the gist of the Segment was not that Young had committed any illegal acts (despite the fact that the evacuations appear to have been illegal). SOF ¶¶ 163-65, 230-32. Whether the activities of Young and other private operators were or were not illegal under Taliban law was simply not the focus of the reporting. SOF ¶¶ 163-65, 232.

In this regard, there are important parallels to *Rubin v. U.S. News & World Rep.*, 271 F.3d 1305 (11th Cir. 2001). There, the publication at issue included a photo of the plaintiff, the owner of a Miami-based gold-refining business, who was alleged in the article to have "conceded" that an illegal smuggling market and duplicitous bookkeeping pervaded the gold refining industry. *Id.* at 1307. After the plaintiff complained that the article implied he was personally involved in illegal activity, the publisher issued a retraction disavowing that implication. *Id.* When the plaintiff brought suit anyway, the lawsuit was dismissed, with the Eleventh Circuit rejecting the contention that the article implied the plaintiff engaged in illegal activity on the ground that a plain reading of publication's gist did not convey that implication.

The same applies here. As in *Rubin*, CNN published a retraction pursuant to Section 770, Florida Statutes, regarding the use of the phrase "black market" in the Segment once Young complained that the phrase accused him of criminality. SOF ¶¶ 263-64. And, just like in *Rubin*, CNN issued the retraction not because it agreed that the Segment accused Young of criminal

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[7] Young was one of three examples of private operators noted in the Segment who sought tens of thousands of dollars for their services. SOF ¶¶ 218, 220.

conduct. Rather, it did so because the point, or gist, of its reporting had nothing to do with whether Young's business activities were or were not illegal, and, accordingly, CNN was comfortable disavowing any implication of criminality Young claimed was perceived in the journalism. SOF ¶ 264.

II. YOUNG CANNOT MEET HIS BURDEN TO PROVE FALSITY.

"A false statement of fact is the *sine qua non* for recovery in a defamation action." *Byrd*, 433 So. 2d at 595. In this case, which involves a media defendant and publications about a matter of public concern, the First Amendment requires that Young "bear the burden of showing falsity." *Phila. Newspapers v. Hepps*, 475 U.S. 767, 776 (1986); *Applestein v. Knight Newspapers*, 337 So. 2d 1005, 1007 (Fla. 3d DCA 1976) (same). Here, the undisputed summary judgment record establishes that Young cannot meet that burden. Discovery has established beyond dispute that each statement/implication Young challenges is true. Discovery has, likewise, established that not only was the gist of CNN's reporting true, but that gist is actually more favorable to Young than the full truth about Young's activities, as revealed in the context of discovery in this case, would have been.

A. Young Cannot Meet His Burden To Prove Falsity Because Each Of The Statements/Implications He Challenges Is True.

In this case, Young challenges the same four statements/implications under both his defamation *per se* claim (Count I) and his defamation by implication claim (Count II). Those statements/implications are that private operators in Afghanistan, including Young, (1) "operated on a black market"; (2) "advertised to Afghans"; (3) "charged exorbitant prices"; and (4) "exploited Afghans." SAC ¶¶ 135, 145.[8]

[8] For his defamation-by-implication claim, Young also takes issue with the purported implication that he was a "scam artist." *See* SAC ¶ 145. That purported implication is addressed in Section III, *infra*.

As a technical matter, the law does not permit a defamation plaintiff to have it both ways in this fashion. That is because particular statements cannot simultaneously be false on their face, as required for a defamation *per se* claim, and literally true but giving rise to false implications, as required for a defamation by implication claim. *See, e.g.*, *Jacoby v. CNN*, 537 F. Supp. 3d 1303, 1313 (M.D. Fla. 2021) (explaining where, as here, the plaintiff pled count 1 as defamation and count 2 as defamation by implication, that "[t]he Court cannot accept as true Plaintiff's allegation in Count I that this statement is false, while also accepting as true Plaintiff's allegation in Count II that this same statement is true") *aff'd*, 2021 WL 5858569 (11th Cir. Dec. 10, 2021); *Peacock v. Gen. Motors Acceptance Corp.*, 432 So. 2d 142, 146 (Fla. 1st DCA 1983) (explaining that the count for defamation was "plainly contradicted by other allegations . . . that the statements relied on as defamatory were true," and that "[c]ontradictory allegations within a single count neutralize each other and render the count insufficient"). In this case, Young conceded during his deposition that he is, in fact, complaining about purported implications arising from statements that were literally true. SOF ¶¶ 254-59. Thus, the operative claim is the defamation-by-implication one.

Regardless, both Young's defamation *per se* claim and his defamation by implication claim fail as a matter of law because the record establishes there is no genuine issue of material fact about the falsity of the statements/implications he challenges. Discovery has demonstrated that those statements/implications are true. *See Marder v. TEGNA*, 2020 WL 3496447, at *5 (S.D. Fla. June 29, 2020) (noting generally that "the truth, whenever discovered, serves as a complete defense" to defamation); *Rapp*, 997 So. 2d at 1108 n.13 (explaining that no cause of action lies for a defamation by implication if "the defamatory implication is true"). Each of those statements/implications is discussed, in turn, below.

1. "Advertised to Afghans"

Young cannot meet his burden to prove that the contention that he "advertised to Afghans" is false. That is because he plainly *did* advertise to Afghans, and not just to potential third-party sponsors. SOF ¶¶ 43-55. Young posted on the social media account he used for advertising purposes that he could evacuate "anyone." SOF ¶ 54. That prompted so many responses from Afghans that Young testified that he [redacted] [redacted]—who, as demonstrated by their responses, clearly understood the plain meaning of Young's advertisements. SOF ¶¶ 66-71 (featuring Young interacting with and quoting prices with Afghans, pursuant to his LinkedIn advertisements).[9]

2. "Operated on a Black Market"

Young, likewise, cannot meet his burden to raise a jury question about the falsity of the statement/implication that he "operated on a black market." This is so regardless of how those words are interpreted. For instance, if the phrase "black market" is understood as CNN intended it to be—*i.e.*, to convey that the private market for evacuation services was unregulated, *see* SOF ¶¶ 160-62—then those words are clearly accurate as a description of the facts on the ground in Afghanistan. As foreign policy expert Barmada explained to CNN at the time of its reporting, the situation in Afghanistan with regard to the private market for evacuation services was defined by the fact that "[t]here's not really regulations. . . . When you hear of $20,000 with a guarantee, there's no guarantee. . . . [T]hat's where the exploitation starts getting frustrating, heartbreaking .

[9] Of course, CNN does not know the true extent of Young's direct advertisements to Afghans because he deleted almost his entire LinkedIn account after he was under an obligation to preserve it. This Court has determined that CNN is entitled to an adverse inference in its favor because of it. *See* Spoliation Order at 6–7. The Court should infer that there were even *more* such advertisements than CNN has uncovered, though what CNN has uncovered is certainly more than enough to make the statement literally true.

. . . We know how much it costs, and it's nowhere near what these organizations and companies are charging." SOF ¶ 125. Young does not, and cannot, deny any of that.

If, on the other hand, the phrase "black market" is understood as implying *illegal activity* on Young's part—as Young maintains—he still can't prevail. As an initial matter, despite accusing CNN of falsely depicting his activities as illegal, Young [redacted] *See* SOF ¶¶ 94-96 (summarizing testimony in which Young conceded he [redacted]). Young's own actions, in fact, indicate that he believes the evacuations he directed and funded were likely illegal. He testified that he destroyed documents in this case because he was afraid the police would come after him for human trafficking; that is, he was "[redacted]" SOF ¶ 81 (emphasis added). Thus, Young cannot meet his burden to prove that the black market implication—even understood the way he insists it be understood—was false.

In addition, the existing record all but establishes that Young's activities were, in fact, illegal under applicable law. At a minimum, Young cannot create a dispute of fact on this issue, which it is his burden to do. That is because the record contains no competent evidence capable of demonstrating that the activities he funded and directed—the whole point of which was to facilitate evacuations *from* the Taliban—were somehow permissible under Taliban rule.[10]

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[10] Young's only basis for his representation that the activities he funded and orchestrated in Afghanistan were not illegal under that country's law is his self-serving say-so. SOF ¶ 94. That is not competent evidence to create a dispute of material fact, where he himself concedes [redacted] SOF ¶¶ 94-96.

Specifically, Young testified that starting in August of 2021, which is when he began overseeing evacuations, the Taliban, operating from Kabul, was the sole, *de jure* government of Afghanistan. SOF ¶¶ 23-25, 27, 29. One of the Taliban's most prominent policy changes was to prohibit women from traveling and leaving the country. SOF ¶¶ 30-32. As Plaintiff's own expert, Gen. Young, explained, "the Taliban imposed rules on females" that made leaving Afghanistan against the law, which meant that those who tried to escape without the Taliban's permission faced "grave, grave danger." SOF ¶ 33 (explaining that when the Taliban took control, female evacuations were "against their rules."). To get women out, the operators on the ground were required either to break the law directly or to find someone to break the law for them. SOF ¶¶ 35-40.

For those reasons, the private evacuation market in which Young operated was, as Young's own expert conceded, premised on "avoiding the Taliban," "mak[ing] it past the Taliban checkpoints," and keeping "people hidden from the Taliban"—*i.e.,* all activities that were illegal in Afghanistan at the time. SOF ¶ 34; *see also*, SOF ¶¶ 31, 39 (explaining that the Taliban "did not permit evacuations without their permission," and that Afghan evacuations were, therefore, often unpredictable and dangerous, "especially for women."). And, as is typical in illegal black markets, private operators pocketed massively inflated prices in exchange for assuming the risk of being caught by the law, permitting Young to earn at a rate significantly higher than he ever had before. SOF ¶¶ 98-99, 102. All of that leads to the unmistakable conclusion that Young and the other private operators in Afghanistan *were*, in fact, operating in an illegal market.

Young cannot meet his burden to establish a genuine issue of fact as to the falsity of the words "black market" or the alleged implication of illegality.

3. "Charged Exorbitant Prices" and "Exploited Afghans."

Finally, Young cannot meet his burden to prove falsity with respect to the contentions that he "charged exorbitant prices" and "exploited Afghans." As explained in Section III, *infra*, because the *exorbitant* and *exploited* implications cannot be proven true or false, they can't be defamatory as a matter of law. But even if they were falsifiable, the exorbitance and exploitation of Young's model is apparent. Young was charging $[redacted] to $[redacted] per person, which—as explained by the two Afghans in the Segment, substantiated by every source that CNN talked to, and admitted by Young himself—was far more than most Afghans could pay. SOF ¶¶ 98, 102. And if they couldn't pay, he'd stop talking to them and leave them to the Taliban. SOF ¶¶ 69-71. Under any understanding of the words *exploitation* and *exorbitance*, Young's model would qualify.

B. Young Cannot Meet His Burden To Prove Falsity As To The Overall Gist Of CNN's Reporting Either.

Not only can Young not prove falsity as to the specific statements/implications he challenges, but, more importantly, he also cannot prove falsity as to the overall gist of what CNN reported, which is what centrally matters to the analysis.

To establish falsity in the defamation context, a plaintiff must demonstrate that the subject publication was "materially false." *Smith*, 731 So. 2d at 707. A statement is not considered materially false "unless it would have a different effect on the mind of the reader from that which the pleaded truth would have produced." *Id.* (cleaned up) (quoting *Masson*, 501 U.S. at 517); *see also Readon v. WPLG*, 317 So. 3d 1229, 1235 (Fla. 3d DCA 2021) (finding—where the defendant falsely stated that the plaintiff had sent a photograph of a dead body to a federal prosecutor when, in reality, he'd sent a picture to a guardian ad litem—that the defendant's inaccuracy "did not affect the gist of the story by creating a different impression in the mind of the viewer"). As one federal court has explained, this rule is premised on a

recognition "that falsehoods which do no *incremental* damage to the plaintiff's reputation do not injure the only interest that the law of defamation protects." *Haynes v. Alfred A. Knopf, Inc.*, 8 F. 3d 1222, 1228 (7th Cir. 1993).

Under this doctrine, a "statement does not have to be perfectly accurate if the 'gist' or the 'sting' of the statement is true." *See Smith*, 731 So. 2d at 706. Rather, all that is required is that, as regards the plaintiff, the "gist" or "sting" of the publication not create a worse impression in the mind of readers or viewers than the full truth. *See Davis v. McKenzie*, 2017 WL 8809359, at *13 (S.D. Fla. Nov. 3, 2017) (granting summary judgment on based on inability to prove material falsity, and explaining that a "news report that contains a false statement is actionable *only when significantly greater opprobrium* results from the report containing the falsehood than would result from the report without the falsehood" (emphasis added)), *report and recommendation adopted*, 2018 WL 1813897 (S.D. Fla. Jan. 19, 2018).

The gist of the Segment is that bad actors or profiteers—including Young—took advantage of the chaos and charged more for their services than Afghans could afford. As set forth above, that gist is undeniably true: Afghanistan *was* beset by chaos, and Young and others *were* taking advantage of that chaos to run up substantial profits offering evacuation services. *See supra* at 5-8, 19-21. In fact, the actual truth that has emerged from the undisputed discovery record is much harsher than what CNN reported.

The truth is that, despite all the money he made, Young didn't personally perform any evacuations. He wasn't even in Afghanistan; he sat in Austria charging high fees to oversee from afar work by unknown operatives under his direction more than 3,000 miles away—without any transparency or guarantee of success. SOF ¶¶ 82-93.

The truth is that for his remote oversight of approximately 20 overland evacuations, Young charged between $ and $ per head, raking in % profits.[11] SOF ¶¶ 98, 102.

The truth is that Young was a war profiteer: his model, as he testified, was " ." SOF ¶ 85.

The truth is that Young, situated on a different continent, couldn't physically verify what happened in Afghanistan. Young was, at best . SOF ¶¶ 89-96.

The truth is that the evacuators' actions funded by Young were almost certainly illegal. Supra at 20-21.

The truth is that Young's advertisements on LinkedIn were so effective that he could have . SOF ¶ 66.

The truth is that Young either ignored or stopped talking to Afghans who couldn't pay. SOF ¶¶ 69-71.

The truth is that the at-risk Afghans whom Young ignored were left to the Taliban—and possible execution or enslavement. SOF ¶¶ 26, 33, 39.

[11] As far as the sting is concerned, Young's fuss about sponsors vs. non-sponsors (which is specious from the onset because the Segment said three times that Young expected sponsors) is a distinction without a difference. The truth is that Young left to the Taliban Afghans who couldn't pay the amount he charged. SOF ¶¶ 69-71. The moral question, in simple terms, is as follows: Which is more defamatory: (a) charging an Afghan $20,000 for an evacuation and leaving the Afghan to the Taliban if he cannot not pay, or (b) charging a third party $20,000 for an Afghan's evacuation and leaving the Afghan to the Taliban if the third party doesn't pay? There is no difference, much less a "significant" one.

The truth is that Young never explained his model to at least six people who asked; he instead obfuscated, hid, and threatened to sue.[12] SOF ¶¶ 130, 137–38, 141, 147, 149, 177-79, 183, 187–188, 190, 192 194–212.

The truth is that Young himself was *un*truthful. In his advertisements and communications, he misrepresented: his ability to perform next-day evacuations; his connections with Albania; his aircraft and chartering capabilities; his connections with governments; his ability to procure passports or visas; his connecting evacuees with sponsors; the frequency of evacuation requests; about his method of calculating prices; contracts with the evacuees' sponsors; and the types of people his contacts evacuated. SOF ¶¶ 74-79. And, in an attempt to cover his tracks, he destroyed evidence. SOF ¶¶ 80-81.

The truth is that Young's services put some evacuees at even graver risk. His operatives, whom he didn't even know, failed to pick up three would-be evacuees on behalf of his client CivilFleet, leaving CivilFleet to find alternative arrangements. SOF ¶¶ 107-09. And when CivilFleet requested a refund for the prepaid services, Young refused. SOF ¶¶ 110. CivilFleet further explained that the other operators it worked with provided services for free and/or charged significantly less and that Young's "prices were exorbitant." SOF ¶¶ 108-112.

The truth is that Young's behavior was highly unprofessional. He called Kornetsky a "spiteful bitch" and told her to "fuck off" when she asked him to explain his pricing model. SOF ¶¶ 130. He told another potential client to "waste someone else's time" and to have Afghans "run for the border themselves and see how far they get." SOF ¶ 137. And he told one of CivilFleet's volunteers that he'd knock his teeth out—the same client that called Young "horrible" to work with and "very unstable," and that said Young "exploited" them. SOF ¶¶ 103, 106, 112.

[12] Young's surreptitious behavior continued after the Segment aired, as he changed his LinkedIn username several times, blocked multiple people on LinkedIn, and destroyed significant amounts of evidence related to the case. SOF ¶¶ 200, 202, 261.

When compared to the gist of the story, *i.e.*, that profiteers—including Young—took advantage of the chaos and charged more for their services than Afghans could afford, the truth about Young is far more damning. That precludes any possible showing of material falsity. *See, e.g.*, *Marder*, 2020 WL 3496447, at *5 (statement that the government had filed a criminal complaint against the plaintiff was not materially false because it created no worse impression of the plaintiff than the truth, *i.e.*, that the plaintiff had engaged in fraudulent activity); *Haynes*, 8 F. 3d at 1228 (statements in book accusing plaintiff of abandoning children and losing jobs because of drinking were not materially false for purposes of defamation law because statements did "not exhibit [plaintiff] in a worse light than [would] a bare recitation of the uncontested facts," including the facts "in the book that [the plaintiff] does not contend are false"); *Flynn v. Stewartson*, No. 2023 CA 004264, slip op. at 9 (Fla. 12th Jud. Cir. Jan. 30, 2024) (granting summary judgment because defendant's statement that the plaintiff was a "Putin employee," though false, conveyed no worse sting for the plaintiff than the truth: that the plaintiff had "receive[d] payment from a Russian Federation-controlled entity").

Regarding the alleged implication from the words "black market" in particular, the court need look no further than the opinion in *Cape Publications, Inc. v. Reakes*, 840 So. 2d 277, 280 (Fla. 5th DCA 2003), which granted summary judgment to the defendant regarding a publication that falsely stated that the plaintiff had "committed criminal acts," when, in fact, the plaintiff was never charged with a crime. *Id*. The court explained that the statement was not materially false because the record built through discovery demonstrated that the plaintiff had taken actions that were technically illegal, and publishing the truth about the plaintiff would have created no different effect in the mind of the viewer. *Id*.; *see also Hickey v. Capital Cities/ABC*, 1993 WL 280400, at *1 (9th Cir. July 26, 1993) (use of phrase "black market" to refer to exchanges involving stolen animals was not actionable, even though the plaintiff—who purchased the

animals without knowledge of their provenance—had committed no crime). The same applies here.

Because Young cannot meet his burden to show that the gist of CNN's reporting was false—*i.e.*, created a worse impression of him than reporting what is now known to be the full truth would have—CNN is entitled to summary judgment on his defamation claims on this ground as well.

III. THE ALLEGED IMPLICATIONS AREN'T DEFAMATORY

The element of defamatory meaning requires the plaintiff to demonstrate that the allegedly defamatory statement conveys an objective statement of fact that "naturally and proximately results in injury to" the plaintiff. *Smith*, 731 So. 2d at 705. Put differently, a defamatory statement "exposes a plaintiff to hatred, ridicule, or contempt" that is significantly greater than if the defendant had published the truth. *Rapp*, 997 So. 2d at 1109; *Smith*, 731 So. 2d at 708. "The 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." *Id*. at 704 (quoting *Byrd*, 433 So. 2d at 595). *See also Reed v. Chamblee*, 2023 WL 6292578, at *14 (M.D. Fla. Sept. 27, 2023) (citing cases for the proposition that the court should rule on the matter of defamatory meaning as a matter of law).

The "fact that plaintiffs may not like the way a [publication] was written or what it says about them does not automatically provide the basis for a libel suit." *Kurtell & Co. v. Miami Trib., Inc.*, 193 So. 2d 471, 471 (Fla. 3d DCA 1967) (*per curiam*); *see also* Robert D. Sack, *Sack on Defamation*, § 2:4.1 (5th ed. 2017) ("a communication that is merely unflattering, annoying, irksome, or embarrassing, or that hurts only the plaintiff's feelings, is not actionable"); *Martin*, 2022 WL 18781716 at *8 ("statements that can be viewed as being highly insulting to the plaintiff are not actionable").

In short, statements that do not naturally cause reputational damage, opinions based on facts known to the readers or audience, and non-falsifiable statements each fail to satisfy the defamatory meaning element of the tort. Based on these principles, as explained below, the gist of the Segment is not defamatory. And, even if the four allegedly defamatory implications were considered on their own, they also convey no defamatory meaning. Lastly, Young also has not demonstrated that CNN intended to convey a defamatory meaning within the Segment.

A. The gist isn't defamatory.

As explained in Section I, *supra*, a court must determine the gist of the complete, at-issue publication before evaluating the element of defamatory meaning. Here, the gist of the Segment was that profiteers—including Young—took advantage of the chaos and charged more for their services than Afghans could afford. And, as noted in Section II, *supra*, because the gist of the story as to Young is no more defamatory than the truth as to Young, the defamatory meaning element is not satisfied. *See Bongino v. Daily Beast,* 477 F. Supp. 3d 1310, 1317–20 (S.D. Fla. 2020) (dismissing the suit because the gist of the at-issue publication was substantively true and conveyed no defamatory meaning). For this reason, no genuine issue of material fact exists as to the element of defamatory meaning, and summary judgment is proper.

B. The individual implications aren't defamatory.

Even if the Court individually contemplated each alleged implication, none of the alleged implications convey a defamatory meaning.[13]

[13] Although not formally alleged to be defamatory, the following phrase in the Article is also criticized by Young: "CNN has not confirmed whether these operators charging the high fees have successfully evacuated anyone who paid to exit the country, as Young claims." SAC ¶ 74. This statement, aside from being entirely true, *see* SOF ¶¶ 167, 251, is also not defamatory. As a matter of long-established law, being "unable to confirm" a statement does not convey any defamatory meaning. *See Mercola v. N.Y. Times*, 2024 WL 551952, at *4 (M.D. Fla. Feb. 12, 2024) (citing cases for the proposition that a publication's truthful statement regarding an inability to verify is both not defamatory and not false, as a matter of law). News reports routinely state that a publisher is unable to verify a claim, and reasonable readers understand that

1. The *advertised* implication conveys no defamatory meaning.

There's nothing inherently defamatory about the alleged implication that Young "advertised" his services to Afghans. Young cannot plausibly claim that advertising his services to Afghans would, as required to satisfy the defamatory meaning element, "subject him to hatred, distrust, ridicule, contempt or disgrace." *See Seropian v. Forman*, 652 So. 2d 490, 495 (Fla. 4th DCA 1995) (explaining that the allegation that the plaintiff was engaged in "influence peddling" conveyed no defamatory meaning). Because advertising is a necessary and irreducible function of any business (frequently reaching even to those who can't afford the advertised product or service), the alleged implication that Young advertised to Afghans is not defamatory as a matter of law.

2. The *exorbitant* and *exploited* implications are subjective opinions.

Within the defamatory meaning analysis, "opinions cannot be defamatory." *Hoon v. Pate Constr. Co.*, 607 So. 2d 423, 429 (Fla. 4th DCA 1992). This concept is grounded on a very simple premise:

> Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.

Gertz v. Robert Welch, Inc., 418 U.S. 323, 339-40 (1974). *See also Morse v. Ripken*, 707 So. 2d 921, 922-23 (Fla. 4th DCA 1998); *From v. Tallahassee Democrat*, 400 So. 2d 52, 57 (Fla. 1st DCA 1981).

Whether a statement constitutes a non-actionable opinion hinges on whether it's objectively falsifiable. *See, e.g.*, *Santilli v. Van Erp*, 2018 WL 2172554 at *5–6 (M.D. Fla. Apr. 20, 2018) (calling an academic a "fringe scientist," "mad professor," and "cunning scam artist"

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the phrase means what it says: that the news organization, for whatever reason, has not independently verified an assertion. To find otherwise would subject a vast amount of reporting to liability. *Id*.

was opinion because such statements are not objective or falsifiable); *Demby v. English*, 667 So. 2d 350, 351 n.4 (Fla. 1st DCA 1995) (*per curiam*) (same as to letter accusing animal control director of being "inhumane" and "unreasonable" was pure opinion); *DeMoya v. Walsh*, 441 So. 2d 1120, 1120 (Fla. 3d DCA 1983) (same as to statement that plaintiff was a "raving maniac" and "raving idiot" were not actionable); *Reed*, 2023 WL 6292578, at *16 (explaining that the defendant's statement that the plaintiff had "align[ed] himself with a tyrannical, murderous (sportswashing) leader" was nonactionable because "whether a person 'aligns' himself with another is an amorphous expression that cannot be proven or disproven"); *Trump v. CNN*, 684 F. Supp. 3d 1269, 1276 (S.D. Fla. 2023) (explaining that calling someone "Hitler-like" cannot be defamatory because it's not objectively falsifiable).

Young's umbrage over CNN's use of "exorbitance" and "exploitation" demonstrates a philosophical disagreement about the moral propriety of war profiteering—which is not an objectively quantifiable matter.[14] The parties, for the most part, agree on the salient facts: Young charged four sponsors more than $[redacted] per person to oversee about 22 evacuations, leaving those who couldn't pay—including those who pled for Young's help but lacked resources or sponsors—to face the Taliban. SOF ¶¶ 26, 33, 66–71, 84, 98, 114. Young characterized his profiteering as a "[redacted]." SOF ¶ 101. CNN (as well as all the sources with whom CNN spoke) characterized such profiteering as morally dubious and "exploitative." SOF ¶¶ 122, 123, 125, 130, 134, 136–41, 149–50, 151, 153–54. But such disagreements are axiological, not legal, and fall far beyond the reach of defamation law. *See Keller v. Miami Herald Publ'g*, 778 F.2d 711, 718 (11th Cir. 1985) (explaining that moral and normative disagreements are not

[14] The First District noted, too, that "language like 'exorbitant' could, perhaps, be a matter of opinion." *Young*, 2024 WL 2947726, at *2.

subject to the law of defamation because "an individual's morality or immorality is not subject to empirical proof").

Young may have preferred that CNN applaud his behavior, but he cannot demand that Florida courts mandate CNN's approval of his actions. As a colleague of the Court recently explained while granting a motion for summary judgment to a set of defendants whose political morality differed dramatically from that of the plaintiffs, "[u]ltimately, 'the law of defamation is concerned with whether a publisher reports a story truthfully, not generously.'" *Hamm, Jr. v. Resilience Force*, 2023 WL 11809899, at *17 (Fla. 14th Jud. Cir. Sept. 1, 2023) (cleaned up) (quoting *Turner v. Wells*, 198 F. Supp. 3d 1355, 1371 (S.D. Fla. 2016)).

Because whether someone is "exploited" or charged an "exorbitant" amount cannot be proven true or false, no genuine issue of material fact exists as to any cause of action based on the *exploited* and *exorbitant* implications.

3. All four implications constitute opinions based on known facts.

Within the realm of nonactionable opinion, an at-issue statement, even if falsifiable, conveys no defamatory meaning if the statement constitutes commentary based on facts that the audience knows or are disclosed within the publication itself. Such commentary is called "pure opinion." *See Rasmussen v. Collier Cnty. Publ'g*, 946 So. 2d 567, 571 (Fla. 2d DCA 2006) ("Commentary or opinion based on facts that are set forth in the article or which are otherwise known or available to the reader or listener are not the stuff of libel."). For example, in *Reed*, 2023 WL 6292578, at *18, the court found that sports commentators' criticisms of a golfer's "unethical" behavior at a tournament—even where the plaintiff had not committed any rules violations—constituted nonactionable opinion because the facts supporting the defendants' charge of unethical conduct were disclosed in the at-issue publication. *See also Paylan*, 2023 WL 2581980, at *4 ("Pure opinion, which enjoys broad protection, is a comment based on facts that

are available to the reader"); *Turner v. Wells*, 879 F.3d 1254, 1262 ("Under Florida law, a defendant publishes a 'pure opinion' when the defendant makes a comment 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.").[15]

Here, the Segment provided a clear factual predicate for CNN's commentary on the Afghan evacuation problem. SOF ¶¶ 215–23. The Segment provided ample facts to support each of the alleged implications:

The *exploited* implication, to the extent it can be falsified, was supported by the disclosed or known facts that the Afghans featured in the Segment explained that they were desperate to escape and felt exploited. SOF ¶¶ 216–19.

The *exorbitant* implication, to the extent it can be falsified, was supported by the disclosed or known facts of the Afghans explaining that they couldn't pay the amount that Young was charging. One of the men said he could not pay $10,000 per person, yet Young was

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[15] Relatedly, even if a statement articulates objective, falsifiable meaning, it cannot be actionable if, in context, it constitutes loose or figurative language. In fact, courts routinely hold that even facially quite serious accusations of wrongdoing or criminality are not actionable where it is clear that the point of the language at issue is simply to express general moral disapproval of the plaintiff's conduct. *See, e.g.*, *Horsley v. Rivera*, 292 F.3d 695, 701-02 (11th Cir. 2002) (finding statement on national television that plaintiff was "an accomplice to murder" was rhetorical hyperbole because it was an expression of disapproval of plaintiff's conduct, not a specific accusation); *Pullum v. Johnson*, 647 So. 2d 254, 257 (Fla. 1st DCA 1994) (holding that calling the plaintiff a "drug pusher" was rhetorical hyperbole); *Hay*, 450 So. 2d at 295–96 (finding that statements referring to the plaintiff as a "crook" and a "criminal" were statements of opinion). Here, the implications that Young "exploited" desperate Afghans by "advertising" to them and charging "exorbitant prices" and operating within a black market constitute similar such figurative language, reacting to the conduct of Young and other operators. Even the Afghans themselves employed figurative language of illegality to describe to CNN what Young was doing, calling it [redacted] SOF ¶ 119. For this reason, too, Young's defamation by implication claim fails.

advertising prices of $14,500 per person (which, incidentally, was about $[redacted] less than what he actually charged).[16] SOF ¶¶ 218–21.

The *advertising* implication was supported by the disclosed or known facts that the Segment showed three of Young's advertisements and featured the reaction of an Afghan who encountered Young's advertisements while seeking evacuation services. SOF ¶¶ 221, 226.

The *black market* implication was supported by the disclosed or known facts that the U.S. had ceded control of the country to the Taliban; that the U.S. was no longer helping anyone evacuate; that the private market was the only option left for the Afghans who wanted to escape; and that the market was a chaotic free-for-all, where the evacuators could not guarantee the safety or success of the evacuations. SOF ¶¶ 22–23, 215–17, 222–23.

In short, the alleged implications are each commentary based on the facts presented in the Segment and/or already known to the audience. *See, e.g.*, *Flynn*, No. 2023 CA 004264, at *9 (granting summary judgment regarding the defendant's falsifiable statement of fact that the plaintiff was a "Putin employee" in part because the defendant had presented a "factual basis from which he made" his commentary); *Martin*, 2022 WL 18781716, at *5 (allegations that plaintiff had lost birds and then lied about it—falsifiable statements of fact—constituted non-actionable opinions because the plaintiff provided "facts that underlay her views"); *Zorc v.*

[16] Although Young has not sued CNN regarding any statement beyond the four statements/implications and the *scam artist* implication, the SAC repeatedly states that Young didn't take any money from any Afghan and contends, albeit informally, that CNN falsely stated that he took money from Afghans. *See* SAC at 2, ¶¶ 73, 88, 95, 136, 146. But the Segment never stated that Young took any money from any Afghan, and any implication to that effect would be wholly unreasonable because the Segment clearly stated that Afghans could not afford Young's high prices and that Young expected sponsors to pay. SOF ¶¶ 218–21, 226–228. It necessarily follows that someone who cannot afford a service cannot buy a service. Moreover, CNN earnestly sought to answer the question of whether and from whom Young had collected fees, but Young refused to answer CNN's questions on the subject, *see* Section IV, *infra*, which is why the Segment did not state that Young took fees from Afghans and made clear that Young required sponsors.

Jordan, 765 So. 2d 768, 769-70, 772 (Fla. 4th DCA 2000) (per curiam) (allegations that the plaintiff "committed acts of malfeasance and or misfeasance" and engaged in "fraudulent" and "unethical and perhaps illegal" behavior—falsifiable statements of fact—were protected opinion, based on facts disclosed in the publication).

Finally, the *scam artist* implication also fails for the reasons explained in this section. First, no reasonable viewing of the Segment suggests that Young was a "scam artist." Neither the phrase "scam artist," nor anything of the kind, appears in the Segment, and any attempt to read such an implication as directed specifically at Young is facially unreasonable. SOF ¶¶ 215–23. *See Bongino*, 477 F. Supp. 3d at 1318 (explaining that a "plain reading of the article" contradicted the plaintiff's characterizations of the publication); *Mercola*, 2024 WL 551952, at *4 ("If Defendant thought that Plaintiff lied about publishing the article, it would have just said so. It did not. And reading that meaning into [the publication] would be unreasonable."). Second—and even assuming "scam artist" is defamatory, *see Santilli*, 2018 WL 2172554 at *5-6 (finding that allegations that the plaintiff was a "scam artist" was incapable of defamatory meaning)—such an implication would constitute an opinion based on disclosed facts: *i.e.*, that Young took advantage of a desperate situation by charging far more for his services than Afghans could afford. The *scam artist* implication also fails pursuant to Section 770.01, Florida Statutes, because Young never provided CNN with any pre-suit notice regarding the alleged implication. *See Mancini v. Personalized Air Conditioning & Heating*, 702 So. 2d 1376, 1377 (Fla. 4th DCA 1997) (explaining, per Section 770.01, that a plaintiff cannot sue regarding any allegedly defamatory statement about which he failed to provide pre-suit notice).

For this reason, no issue of material fact exists regarding Young's defamation claims.

C. CNN did not intend to convey that Young was a criminal.

Unlike a plaintiff who files an ordinary defamation claim, a defamation by implication plaintiff must show that the defendant intended to convey the defamatory meaning. As the Florida Supreme Court explained, "[b]ecause the Constitution provides a sanctuary for truth . . . the defamatory language must not only be reasonably read to impart the false innuendo, but it must also affirmatively suggest that the author intends or endorses the inference." *Rapp*, 997 So. 2d at 1107 (cleaned up) (quoting *Guilford Transp. Indus. v. Wilner*, 760 A.2d 580, 596 (D.C. 2000)). Courts across the country agree. *See, e.g.*, *Nunes v. WP Co.*, 2022 WL 997826, at *3–*4 (D.C Cir. Apr. 1, 2022); *Compuware Corp. v. Moody's Investors Servs.*, 499 F.3d 520, 528–29 (6th Cir. 2007); *Howard v. Antilla*, 294 F.3d 244, 252 (1st Cir. 2002); *Newton v. NBC*, 930 F.2d 662, 681 (9th Cir. 1990); *Saenz v. Playboy Enters.*, 841 F.2d 1309, 1317–18 (7th Cir. 1988).

Here, CNN employed "black market" to describe an unregulated market, and Marquardt testified that CNN did not intend to "accus[e] anybody of doing anything illegal." SOF ¶ 232. The focus of the journalism was not on the legality or illegality of the activities chronicled, but on the extent to which the desperate and chaotic conditions on the ground in Afghanistan were permitting figures like Young to charge unconscionably high prices for a desperately needed service. SOF ¶¶ 113, 116–25, 159, 163, 165, 215–23. On its face, the Segment was focused on the high prices being charged amidst the chaos and lack of safety or guarantees faced by desperate Afghans—not criminality. SOF ¶¶ 215–23. Aside from the single word choice "black market" (which wasn't even in specific reference to Young), nothing in the Segment either explicitly stated or implied that any activity was illegal. SOF ¶¶ 215–23, 230. This understanding of what CNN intended to convey is further underscored by CNN's willingness to retract the words "black market" once Young expressed concerns that it implied criminality. It was precisely because CNN was not reporting about whether Young's activities were criminal that it

was comfortable retracting that particular turn of phrase, while otherwise standing by the journalism. SOF ¶ 264.

In short, neither the record nor the Segment itself demonstrates any intent to label Young as a criminal. For this reason, too, summary judgment is also proper under *Rapp*.

IV. CNN DID NOT PUBLISH ANY STATEMENT WITH ACTUAL MALICE.

No genuine issue of material fact exists as to Young's defamation claim(s) because the Segment was true and not defamatory. But even if the Segment were false and conveyed a defamatory meaning, summary judgment remains proper because the record precludes Young from demonstrating, by the requisite clear and convincing evidence, that CNN published the publications at issue with actual malice.

A defamation plaintiff must show that the defendant acted with the requisite degree of fault. *See Thomas v. Jacksonville Television*, 699 So. 2d 800, 803–04 (Fla. 1st DCA 1997) (outlining elements of defamation, including fault on the part of the publisher). When, as here, the plaintiff is a public figure, he must show that those responsible for the at-issue publication published the statements with actual malice, that is, with knowledge of the statements' falsity or with a reckless disregard for whether the statements were true or false. *See Gertz*, 418 U.S. at 334; *Rasmussen*, 946 So. 2d at 570; *Levan*, 190 F.3d at 1238-39. Young cannot satisfy this demanding standard.

A. Young is a limited-purpose public figure.

Two types of public figures exist: general-purpose and limited-purpose. *Turner*, 879 F.3d at 1272. General-purpose public figures "are individuals who, by reason of fame or notoriety in a community, will in all cases be required to prove actual malice." *Id*. By contrast, limited-purpose public figures are those "who have thrust themselves forward in a particular public controversy and are therefore required to prove actual malice only in regard to certain issues." *Id*.; *see also*

Gertz, 418 U.S. at 351; *Little v. Breland*, 93 F.3d 755, 757 (11th Cir. 1996). If a public controversy exists, the limited-purpose public figure analysis features two questions: (a) whether the plaintiff injected himself into the controversy, and (b) whether the challenged statements are germane to the plaintiff's role in the controversy. *Friedgood v. Peters Publ'g Co*., 521 So. 2d 236, 239 (Fla. 4th DCA 1988); *Della-Donna v. Gore Newspapers Co*., 489 So. 2d 72, 76 (Fla. 4th DCA 1986).

Young may not be a general-purpose public figure. But because, as explained below, he injected himself into public controversies regarding the U.S. withdrawal from Afghanistan and the ensuing evacuation crisis—and because the at-issue statements pertain to his injection—he is a limited-purpose public figure solely regarding these issues.

1. Young injected himself into existing controversies.

A limited-purpose public figure is "one who has thrust himself by purposeful activity into the vortex of an important public controversy." *Bair v. Clark*, 397 So. 2d 926, 927 (Fla. 4th DCA 1981). A public controversy is defined broadly as "any topic upon which sizeable segments of society have different, strongly held views." *Della-Donna*, 489 So. 2d at 76. "If the issue was being debated publicly and if it had foreseeable and substantial ramifications for non-participants, it was a public controversy." *Id*. at 77 (quoting *Waldbaum v. Fairchild Publ'ns*, 627 F.2d 1287, 1297 (D.C. Cir. 1980)); *see also Dubai World Corp. v. Jaubert*, 2011 WL 579213, at *15 (S.D. Fla. Feb. 9, 2011). "A court may not question the legitimacy of the public's concern . . . [because] such an approach would turn courts into censors of what information is relevant to self-government." *Waldbaum*, 627 F.2d at 1296-97 (internal quotations omitted).

Here, Young injected himself into two highly salient public controversies: the broad controversy surrounding the aftermath of the U.S. military's withdrawal from Afghanistan, as well as the narrower issue of the evacuation of Afghans left to the Taliban because of the

withdrawal. SOF ¶¶ 4–6, 41–71. And the record is replete with evidence that Young voluntarily thrust himself into both controversies.

The SAC avers that Young, who was one of only a handful of professionals who possessed the requisite skills, "recognized an urgent and unfilled need" after the U.S. military withdrew from the country. Seeing the urgent need then prompted Young to "step[] in" by advertising his services to extract Afghans from the Taliban. SAC at ¶¶ 8–12.

Young aggressively marketed himself on LinkedIn as a "seasoned professional in the fields of Business Development and Enterprise Risk Management" and thrust himself into both the Afghan withdrawal controversy and the evacuation crisis by promoting his "highly specialized services to Fortune 500 companies": *i.e.,* advertising to "American and European multinational corporations and NGOs [to] extract their former employees and specific high-risk Afghans trapped inside Afghanistan." SOF ¶¶ 4–6, 41–55.

He also frequently injected himself into online discussions about the controversies surrounding both the Afghan withdrawal and evacuations, commenting on others' political discussions about Afghanistan and segueing the comments into promotions for his business. SOF ¶¶ 57–65. Pursuant to his advertising, Young then leaped further into the fray by charging more than $20,000 apiece to oversee the evacuation of about 20 Afghans from Afghanistan. SOF ¶¶ 84, 98. In short, Young "voluntarily engaged in a course that was bound to invite attention and comment." *See Rosanova v. Playboy Enters.,* 580 F.2d 859, 861 (5th Cir. 1978).[17]

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[17] The attention that Young in fact received is *prima facie* evidence of his invitation for attention. Whether a plaintiff desires attention is irrelevant to the analysis. *See Friedgood*, 521 So. 2d at 239 ("[a plaintiff may] become a public figure through no purposeful action of their own"); *Jacoby*, 537 F. Supp. 3d at 1310 (rejecting the plaintiff's argument that he wasn't a limited-purpose public figure—that he wanted to avoid attention and "earns his living by being quietly effective behind the scenes"—because even though he was "relatively unknown outside of his industry," his "work on behalf of politicians *does* thrust him into the spotlight, regardless of his desire to remain behind the scenes") (citations omitted); *Turner*, 879 F.3d at 1273 (explaining that a plaintiff's association with salient public issues conveys an "inherent" mantle publicity,

Dozens of courts have found plaintiffs to be limited-purpose public figures who injected themselves much less deeply into matters far less significant. *See, e.g.*, *Mile Marker, Inc. v. Petersen Publ'g, L.L.C.*, 811 So. 2d 841, 845 (Fla. 4th DCA 2002) (finding that the plaintiff injected himself into a public controversy—"the merits of hydraulic versus electric winches"—by promoting his innovative winch product); *Friedgood v. Peters Publ'g*, 521 So. 2d 236, 241 (Fla. 4th DCA 1988) (finding that the plaintiff injected herself into a public controversy—her father's criminal investigation—by hiding evidence related to the case); *Tobinick v. Novella*, 108 F. Supp. 3d 1299, 1309 (S.D. Fla. 2015) (finding that the plaintiff had injected himself into a public controversy—the issue of "stroke and Alzheimer's disease with perispinal etanercept/Enbrel"—by advocating for the unconventional use of arthritis medication for treating Alzheimer's disease); *Jacoby v. Cable News Network, Inc.*, 21-12030, 2021 WL 5858569, at *4 (11th Cir. Dec. 10, 2021) (finding that the plaintiff injected himself into a public controversy—Kanye West's presidential candidacy—by working behind the scenes for the West campaign); *Martin*, 2022 WL 18781716, at *6 (finding that the plaintiff had injected himself into a public controversy—the issue of "weight management in training and exhibiting birds"—by speaking and publishing articles on the topic); *Thomas v. Patton*, 2005 WL 6361986 (Fla. 4th Jud. Cir. Oct. 21, 2005) (finding that the plaintiff had injected herself into a public controversy—a guardianship suit that had received local media attention—by intervening in the case); *Hamm,* 2023 WL 11809899, at *20 (finding that the plaintiffs had injected themselves into a public controversy—"[t]he use of immigrant labor to rebuild towns after natural disasters and

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regardless of the plaintiff's desire to avoid the public eye). Regardless of Young's subjective intent, he both purposefully tried to influence the outcome of the Afghan evacuations crisis and in fact impacted its resolution—actions which were "bound to invite attention and comment." *See Rosanova*, 580 F.2d at 861; *see also Rosenthal*, 2017 WL 6390102 at *5 (finding that the plaintiff was a limited-purpose public figure because the "Plaintiff should know" that his Facebook posts "would affect people beyond the immediate conversation.").

companies' failure to pay for such labor"—because they hired immigrants to rebuild houses after Hurricane Michael); *Arnold v. Taco Props.*, 427 So. 2d 216, 219 (Fla. 1st DCA 1983) (finding that the plaintiffs had injected themselves into a public controversy—the issue of a school's license—by appearing on a local TV station and promoting the school).

Plaintiffs' injection into controversies occurs frequently when, as here, the plaintiff posts online about matters of public concern. *See, e.g., Krass v. Obstacle Racing Media, LLC*, 667 F. Supp. 3d 1177, 1209-10 (N.D. Ga. 2023) (finding plaintiff injected himself into a public controversy—the plaintiff's leadership of a Facebook group for middle-aged and geriatric obstacle course racers—because he "addressed the [controversy] in multiple posts" on Facebook); *Depalma v. Kerns*, 2023 WL 6164312, at *13 (M.D. Ga. Sept. 21, 2023) (finding plaintiff injected herself into a public controversy—the matter of domestic abuse—by engaging in online activism on the subject); *Rosenthal v. Council on American-Islamic Relations, Fla., Inc.*, 2017 WL 6390102, at *5 (Fla. 17th Jud. Cir. Nov. 8, 2017) (finding plaintiff injected himself into a public controversy—Islam in the U.S.—by posting comments on Facebook about mosques and the Quran).

In contrast to these relatively innocuous injections—all of which qualified the plaintiff as a limited-purpose public figure—Young's intense, purposeful thrust into the issues of the Afghan withdrawal and the evacuation crisis doubtless satisfies the first prong of the analysis and renders him a limited-purpose public figure as to his participation in these two issues.

2. The Segment is germane to Young's role in the controversy.

Because Young injected himself into both the aftermath of the chaotic withdrawal of U.S. troops from Afghanistan and into efforts to help Afghans escape their new government, the actual malice standard applies if the at-issue Publications are "germane" to Young's role in these issues. *See Friedgood*, 521 So. 2d at 239 (citing *Gertz*, 418 U.S. at 345–47). Here, the

Publications were not only germane to Young's role in the controversies, but, as to Young, they were also focused on his role in the controversies. SOF ¶¶ 221–23. Thus, both elements of the test are satisfied.

B. Young Cannot Demonstrate Actual Malice By Clear And Convincing Evidence

To demonstrate actual malice, Young is required to show that CNN "knew the defamatory statements were false" and published them anyway, or that CNN published them "despite awareness of their probable falsity." *Mile Marker*, 811 So. 2d at 845. In other words, actual malice "is a *subjective* test, focusing on 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." *Turner*, 879 F.3d at 1273 (internal quotations omitted) (emphasis added); *see also Lam v. Univision Commc'ns*, 329 So. 3d 190, 197 (Fla. 3d DCA 2021) (same).

In addition, the United States Supreme Court has explained that, to survive summary judgment in a case governed by the actual malice standard, a plaintiff must be able to make that showing by "clear and convincing" evidence. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986). Thus, "the appropriate summary judgment question will be whether the evidence in the record could support a reasonable jury finding either that the plaintiff has shown actual malice by clear and convincing evidence or that the plaintiff has not." *Id.* at 255-56. Accordingly, to defeat summary judgment, a public figure plaintiff such as Young "must present *record evidence* sufficient to satisfy the court that a genuine issue of material fact exists which would allow a jury to find by clear and convincing evidence the existence of actual malice on the part of the defendant." *Mile Marker*, 811 So.2d at 846-47. Because of the stringency of the standard, and the vital constitutional interests it serves, the law provides that "summary judgment should be more liberally granted where, as in this case, the constitutional standard of actual malice applies." *Newton v. Fla. Freedom Newspapers*, 447 So. 2d 906, 907 (Fla. 1st DCA 1984); *see*

also Don King Prods. v. Walt Disney, 40 So. 3d 40, 44 (Fla. 4th DCA 2010) ("[O]ur review is guided by the rule that summary judgments are to be more liberally granted in defamation actions against public-figure plaintiffs."). The undisputed facts of record preclude Young from meeting his burden here.

1. All of the record evidence demonstrates CNN believed what it reported about the market for evacuation services in Afghanistan was true, including about Young's activities in that market.

Young cannot meet his burden to prove actual malice by clear and convincing evidence because the summary judgment record makes clear that CNN did not publish anything it did not believe was true. As the Fourth District recently explained, for a plaintiff to prove actual malice, it is necessary to show that the publisher entertained serious doubts as to the truth of the gist, or overall message, of the publication. *Black*, 374 So. 3d at 818–19; *see also Berisha v. Lawson*, 973 F.3d 1304, 1315 (11th Cir. 2020) (same). In this case, the gist of CNN's reporting was that profiteers—including Young—took advantage of the chaos and charged more for their services than Afghans could afford. The undisputed record evidence makes clear CNN believed that to be true.

a. The summary judgment record makes clear that all of the information CNN uncovered in its research supported the gist of the story it reported.

Over the course of three weeks of newsgathering, the two CNN reporters principally responsible for the journalism, Marquardt and Lillis, spoke with more than a dozen sources—including Afghans and foreign policy experts—all of whom painted the same picture that CNN later reported. In particular:

- Multiple sources told Marquardt about the high prices being demanded for evacuations, including a number of Afghan sources, as well as one source, who, summarizing what he had been told by an Afghan source, said to Marquardt: "it's big money and ordinary Afghans cannot possibly afford this." SOF ¶¶ 116-23.

- Barmada, a public affairs expert, told Marquardt in response to his questions about whether there was "price-gouging and corruption" in the market for private evacuation and

whether people "making a lot of money off this": "Yes. They absolutely are. . . . I understand why people did charge premiums, but there's no guarantee. . . . There's not really regulations. . . . When you hear of $20,000 with a guarantee, there's no guarantee. . . . [T]hat's where the exploitation starts getting frustrating, heartbreaking. . . . We know how much it costs, and it's nowhere near what these organizations and companies are charging." SOF ¶ 125.

- Marquardt communicated with multiple sources who had encountered Young or otherwise knew of his activities. SOF ¶¶ 127-48. For example, an American activist told Marquardt that Young was demanding "$15k per person for an airlift" for "people [who] can't even afford food, much less come up with $15k," and that such behavior amounted to "profiteering" and "was a disgrace," while another source expressed skepticism about whether Young had the expertise he was claiming, and yet another source told Marquardt that Young's "profiteering makes me sick." SOF ¶¶ 136, 139, 144-45.

- Marquardt communicated with a number of Afghans who had interacted with Young, who told Marquardt about Young brusquely cutting off all communications after learning they could not pay the prices he was demanding. SOF ¶¶ 152-54. One Afghan said in a post that was shared with Marquardt: "I face [sic] with [Young] and I thought a hope come to my life but unfortunately all was fakes." SOF ¶ 148.

In addition, as part of its reporting, CNN gathered multiple social media exchanges involving Young, which confirmed the accuracy of what CNN's sources were saying about his activities. Those social media exchanges showed Young (1) demanding $14.5k per person from an Afghan without a third-party sponsor who had inquired about his services; (2) rudely shutting down someone who asked the basis for his quoted fee of "$75k for one vehicle 5-6 passengers Kabul-Peshawar," with, "[h]ave them run for the border themselves and see how far they get"; and (3) calling an American activist a "spiteful bitch" and telling her to "fuck off" when she questioned his prices. SOF ¶¶ 68, 130, 137. Thus, CNN had every reason to believe in the gist of the what it reported.

b. Consistent with what CNN's research revealed, the record makes clear that the CNN journalists, in fact, believed the truth of what CNN reported.

During the course of their reporting, CNN journalists repeatedly and consistently expressed their real-time beliefs that profiteers—including Young—were taking advantage of the chaos in Afghanistan and charging more for their services than Afghans could afford. For

instance, early in his reporting, Marquardt observed that his sources were informing him that the chaos of the U.S. withdrawal "has created opportunities for profiteers to swoop in and demand amounts Afghans can't afford." SOF ¶ 122. Later, Marquardt told Kornetsky, who had been speaking to for weeks about conditions on the ground in Afghanistan, that he had "spoken with a number of people who confirm this exploitation market is growing." SOF ¶ 134.

CNN journalists also expressed such views specifically with regard to Young and his business activities. For instance, during the course of their reporting, Marquardt said the following to Lillis about Young: "at best, that the prices you are demanding are outrageous, even predatory. At worse, that you are scamming them." SOF ¶ 185. Lillis, in turn, expressed the view to Marquardt that Young was "shady as hell" and "can't or won't account for his math." SOF ¶ 193. In an exchange about how to best confront Young with the evidence CNN gathered about Young's prices, Marquardt observed to Lillis: "we need to hit him hard with it and let him know that we have many texts that he sent to people with all his outrageous prices." SOF ¶ 189. In another exchange with Lillis, Marquardt observed, about Young's contention that he was on solid moral ground because he was seeking payment from third-party sponsors, "[f]ocused on aligning corporate sponsors = telling Afghans that unless they have $$$ he won't help." SOF ¶ 177.

In fact, the record shows that the more CNN journalists learned about Young, the more persuaded they became that Young's practices were shady, and the more forcefully they expressed that sentiment. Their commentary reflects not only that they believed the truth of what CNN later reported about Young, but also that they were legitimately disgusted at what their research revealed about his conduct. For instance, in a private message to Marquardt, Lillis said with reference to Young's evasiveness about his profit model, "What a shitbag," and "he knows he's doing something shady." SOF ¶ 181. In another exchange, Lillis observed, "WOW this guy

is an a-hole" after seeing the social media exchange described above in which Young responded to a complaint about his prices by saying, "have them run for the border themselves and see how far they get." SOF ¶ 186; *see also* SOF ¶ 137 (describing social media exchange). Senior editor Fuzz Hogan, who was not involved with any of the newsgathering but conducted editorial review of the script for the Package, had the same reaction to learning about Young's escapades, saying about Young, "Yeah, he's a shit," after being informed by a researcher that Young was holding out dubious promises of "legal status or refugee status" as part of his marketing pitch. SOF ¶ 157.

In short, the record demonstrates beyond dispute that CNN journalists encountered substantial and compelling evidence supporting what CNN ultimately reported about the market for private evacuations in Afghanistan, including Young's role in that market, and that, based on that evidence, CNN journalists believed the truth of that reporting. In the face of that undisputed record, Young cannot possibly prove that CNN "entertained serious doubts about the truth of [its] publication[s]," let alone did so by the requisite clear and convincing evidence. *Lam*, 329 So. 3d at 197; *see also Dockery v. Fla. Democratic Party*, 799 So. 2d 291, 296 (Fla. 2d DCA 2001) ("Reliance upon a reliable source insulates a defendant from a finding of actual malice as a matter of law.").

2. None of Young's grab-bag of actual malice theories permit him to carry his burden.

The record does not contain any direct evidence of actual malice to counter the abundant evidence that everyone who touched the story at CNN believed exactly what CNN reported. Accordingly, when Young sought leave to amend at the Section 768.72(1) stage, he threw out multiple circumstantial theories of actual malice. CNN continues to believe that, even at that stage, those theories were insufficient to permit him to prove actual malice. There is no reason to re-litigate that here. At this stage—that is, based on the full summary judgment record, and under

the analysis that applies at summary judgment—it is abundantly clear that each of Young's theories of actual malice fails as a matter of law. Those theories are addressed, in turn, below.

a. CNN's use of the phrase "black market"

The summary judgment record makes clear that Young cannot prove actual malice through his accusation that CNN used the words "black market" in its reporting, while supposedly knowing his business activities were legal. That is so for two reasons.

First, the gist of what CNN reported had nothing to do with whether what Young and other private operators were doing was or was not illegal under Taliban law. *See supra* at 16 (identifying gist). As Marquardt explained in his deposition when asked whether he thought Young had committed a crime: "I don't know and we didn't report that." SOF ¶ 232. The focus of the reporting was on how the chaos and uncertainty in Afghanistan had created an environment rife for profiteers like Young, not on the status of such profiteering under Taliban law. SOF ¶¶ 231-32, 163-65. Young cannot prove actual malice by attributing a meaning to the published journalism inconsistent with its gist and then turning around and accusing CNN of knowing that unintended meaning was false. *See Black*, 374 So. 3d at 818–19 (explaining that the actual malice inquiry pivots entirely on defendant's belief in the truth or falsity of the gist of the publication).

Second, consistent with the gist of the journalism, the reporters who worked on it testified without contradiction that the reference to "black market" was intended to convey only that the market for private evacuation services in Afghanistan was unregulated. SOF ¶¶ 160-62 (summarizing testimony of Marquardt, Lillis, and others). That additionally precludes any showing of actual malice with respect to the use of the words "black market." Because the actual malice inquiry is subjective, hinging entirely on the state of mind of the publisher, what matters is not the objective meaning of the words chosen, but rather the meaning the publisher

subjectively intended. Even assuming that, according to most dictionary definitions, "black market" conveys illegality, in order to be capable of supporting a jury finding of actual malice by clear and convincing evidence, the record must conclusively demonstrate that CNN *intended* to imply illegality, while knowing Young's activity was not illegal. *See Coral Ridge Ministries Media v. Amazon.com*, 6 F.4th 1247, 1252-53 (11th Cir. 2021) (plaintiff could not prove "hate group" label was affixed to plaintiff with actual malice simply by noting defendant's use reflected a non-standard definition, where that was not intended meaning); *Bose Corp. v. Consumers Union*, 466 U.S. 485, 513 (1984) (poor or inapt phrasing is not actual malice since, otherwise, "any individual using a malapropism might be liable, simply because an intelligent speaker would have known that the term was inaccurate in context, even though he did not realize his folly at the time"). The record contains no such evidence, precluding any proof of actual malice based on the word choice "black market."

This conclusion is further bolstered by CNN's subsequent retraction after Young complained that the word choice "black market" implied he was a criminal. SOF ¶¶ 263-64. The retraction underscores that—consistent with the focus of the journalism and all the testimony in this case— CNN never intended to say anything about whether Young's or any operative's activities were illegal, and so could not have published that alleged implication with actual malice. *See Clark v. Fernandina Beach News-Leader, Inc.*, 1994 WL 532980, at *6 (Fla. 4th Jud. Cir. Ct. June 2, 1994) (noting that a post-publication retraction "tends to negate any inferences of actual malice"); *see also Washington Nat'l Ins. Co. v. Administrators*, 2 F.3d 192, 196 (7th Cir. 1993) (publisher's after-the-fact willingness to "dispel" alleged defamatory implication refuted imputation of actual malice as it "demonstrat[ed] that the speaker did not contemplate the defamatory reading in the first place"); *Hoffman v. Wash. Post Co.*, 433 F. Supp. 600, 605

(D.D.C. 1977) (subsequent publication of retraction "tend[ed] to negate any inference of actual malice"), *aff'd without op.*, 578 F.2d 442 (D.C. Cir. 1978).

b. CNN's alleged failure to give Young an adequate opportunity to provide comment

The full summary judgment record also makes clear that Young cannot prove actual malice based on his contention that CNN rushed the story to air without giving him an adequate opportunity to respond to the facts CNN intended to report.

As a purely legal matter, even if Young's criticism of CNN's reporting efforts were accurate, they would be irrelevant to the actual malice analysis, which focuses on what the publisher subjectively believed, not adherence or non-adherence to reporting standards. *See, e.g.*, *Readon*, 317 So. 3d at 1235 ("[A] failure to investigate, standing on its own, does not indicate the presence of actual malice." (quoting *Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 701-02 (11th Cir. 2016)); *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 665-66 (1989) (explaining that even "highly unreasonable conduct constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers" does not establish actual malice). Accordingly, even if CNN made no effort at all to obtain comment from Young, that would not be evidence of actual malice. *See, e.g.*, *McFarlane v. Sheridan Square Press*, 91 F.3d 1501, 1509-10 (D.C. Cir. 1996) (author's failure to contact subject of book to confirm or deny allegations provided no support for finding of actual malice); *Davis v. Costa-Gavras*, 654 F. Supp. 653, 657 (S.D.N.Y. 1987) ("plaintiff cannot prove actual malice merely by asserting that a publisher failed to contact the subject of his work"); *OAO Alfa Bank v. Ctr. for Pub. Integrity*, 387 F. Supp. 2d 20, 54-55 (D.D.C. 2005) (defendant's contention that it did not reach out to plaintiffs for comment prior to publication because there was not sufficient time was "less than compelling . . . as a matter of ethics," but did not "amount to actual malice").

But it is now clear from the full summary judgment record that Young's accusation that CNN failed to make adequate efforts to get comment from him is untrue. Instead, the record makes clear that both Marquardt and Lillis made persistent efforts to reach out to Young to get his responses to the concerns that had been raised about his business practices and the large sums he appeared to be charging for his evacuation services. Lillis communicated with Young extensively, during which she repeatedly gave him opportunities to address the concerns being raised about his pricing model and about whether he was making large profits off of the chaotic situation in Afghanistan. SOF ¶¶ 170-78, 187-88. As Lillis explained to Young: "Getting it right is why I'm talking to you." SOF ¶ 179.

Marquardt, likewise, made substantial efforts to get in touch with Young, attempting to reach him by multiple means prior the initial airing of the Segment. SOF ¶¶ 192, 204, 206-10. During one such communication, Marquardt told Young *exactly* what CNN intended to report and ask for comment: "We are going to be running a piece in which we detail your interactions with people inquiring about your services and the prices to evacuate people from Afghanistan. I wanted to give you a chance to explain why they are so high." SOF ¶ 204. When Young finally responded to Marquardt's overtures the day the Segment was slated to air, Marquardt gave Young additional opportunities to address the story's primary thrust, asking him directly: "Are you making money off of this? If so, how do you justify profiting from Afghans desperate to get out?" SOF ¶ 206.

When Young responded by threatening to sue and asserting vaguely that "some of your facts/assertions [are] not accurate," Marquardt then gave him yet more chances to explain his business practices, sending him screen shots of social media communications in which Young advertised his prices and asking him to clarify what he claimed was inaccurate in what CNN intended to report. SOF ¶¶ 207-08. When Young did not respond, Marquardt messaged him three

additional times, asking: "So, quoting prices facts/assertions are not accurate? I'm not accusing you of scamming, I am simply pointing out the prices are very high and i am providing your explanation that sponsors are expected and the environment is volatile." SOF ¶¶ 209-10. Young never responded to any of those communications. SOF ¶ 210.

Most crucially, Young has now admitted that, if CNN did not obtain his full side of the story, it was only because he refused to cooperate with CNN's information-gathering overtures, not because of anything CNN did or did not do. In his deposition, Young conceded that he did not answer any of the many questions Lillis put to him about his profit model and business, and that much of what he did tell her was simply not true. SOF ¶¶ 194-99. Likewise, Young admitted that, despite complaining that Marquardt did not give him enough time to answer his questions, he could have answered them in very little time had he chosen to. SOF ¶ 212. In other words, if CNN went to air without the complete story—and Young has never once explained what specific information CNN failed to obtain from him that would have made a difference to the reporting—the blame for that lies entirely with Young. He cannot prove actual malice by accusing CNN of failing to report information CNN never had because he refused to provide it.

c. CNN journalists' occasional use of coarse and harsh language

Young, likewise, cannot prove actual malice based on the occasional use by CNN journalists of coarse and harsh language to refer to him. In fact, courts have repeatedly held that, as a matter of law, the use of such language is not evidence of actual malice, as few things are more common in newsrooms than journalists using tough and indignant language to refer to persons whose misdeeds they believe they are in the process of exposing.

For example, in *Tavoulareas v. Piro*, 817 F.2d 762, 795 (D.C. Cir. 1987), the D.C. Circuit rejected the argument that a reporter's having bragged that he was going to "knock off" plaintiff was evidence of actual malice. As the court explained, that sort of bravado was "well

within the everyday parlance of an investigative reporter." *Id*. The Fourth DCA held the same in *Don King Productions*. There, the boxing promoter, Don King, tried to prove actual malice in a case challenging a documentary about his career by pointing to emails exchanged among the documentary's producers in which they referred to him as a "greedy conniver," "huckster," "thug," and an "evil mob connected guy," and directed that the documentary be shaped to more clearly convey that impression of him. 40 So. 3d at 44-45. The court held that, as a matter of law, such expressions of disdain toward the subject of the journalism were not evidence of actual malice, even when they clearly shaped the resulting journalism. *Id*. at 45. That is because "[a]n intention to portray a [plaintiff] 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*." *Id*. (emphasis added); *see also Donald J. Trump for President v. CNN*, 500 F. Supp. 3d 1349, 1357 (N.D. Ga. 2020) (social media posts expressing highly critical views of plaintiff—specifically, that he "cheats and lies, and when caught, lies again"—showed, at most, "ill will," but did nothing to establish that any of the statements at issue were published with knowledge of their falsity); *Markle v. Markle*, 2024 WL 1075339, at *23 (M.D. Fla. Mar. 12, 2024) (explaining that "ill-will, improper motive, or personal animosity plays no role in determining whether a defendant acted with actual malice").

This line of cases applies with particular force here. As noted above, when CNN journalists used harsh language about Young, it was because they believed the damning facts they were uncovering about Young's business activities were true, and, consistent with the journalistic vocation, they were intent on exposing those facts. *See supra* at 44-45. Marquardt explained exactly that at his deposition when asked about his boast the "we gonna nail this Zachary Young mfucker," which was stated in the context of discussing Young's high prices and false promises of visas. SOF ¶ 158. As Marquardt testified: "[n]ailing someone is a turn of

phrase for exposing, highlighting, shining a light on their activity," and "[m]y goal was to shine a light on this black market where people like Mr. Young were taking advantage of desperate Afghans. That was the goal of the story, the goal of journalism, is to shine a light and highlight issues." SOF ¶ 159. That is not actual malice. *See Margoles v. Hubbart*, 760 P.2d 324, 330 (Wash. 1988) (explaining that evidence a newspaper reporter threatened "to get" plaintiff did not demonstrate actual malice for the simple reason that "[a] reporter can 'get' someone . . . by telling the truth as well as by resorting to defamation").

d. Internal criticisms of the Segment

Finally, Young cannot prove actual malice based on the internal communications between CNN editors Thomas Lumley and Megan Trimble, in which they opined that the story left "outstanding questions" and featured "holes." SOF ¶¶ 246-51 (describing those communications). This is so for three reasons.

First, neither Lumley nor Trimble played any role with respect to the Segment. Trimble, in fact, played no role in any of the subject Publications, while Lumley worked only on the Article, which was published after the Segment went to air. SOF ¶¶ 247-48. Accordingly, their opinions about the Segment are irrelevant to the actual malice inquiry, where only the states of mind of those who actually contributed to the publication matter. As one Florida court has explained, where "the defendant in a defamation action is a publishing organization, this 'actual malice' *must be 'brought home to the persons in the [publishing] organization having responsibility for the publication*.'" *Mile Marker*, 811 So. 2d at 847 (emphasis added) (quoting *N.Y. Times v. Sullivan*, 376 U.S. 254, 287 (1964)). Thus, Young cannot prove actual malice as to the Segment based on evidence regarding Lumley's or Trimble's state of mind.

Second, the summary judgment record makes clear that any concerns Lumley had about the journalism were fully resolved to their satisfaction by the time the Article—to which he *did*

contribute—was published. SOF ¶¶ 251-52. Lumley, in fact, testified at his deposition that the Article was "strong editorially," and a "strong story that we were happy to publish." SOF ¶ 252. Accordingly, the opinions Lumley expressed about the initial reporting cannot demonstrate actual malice as to the Article either.[18]

Third, the editorial criticisms Lumley and Trimble articulated about the Segment had to do with their perception of the *quality* of the journalism—*e.g.*, its completeness—not with its accuracy. SOF ¶¶ 246-51. Beliefs as to the latter are all that matter to the actual malice inquiry. *See Turner*, 879 F.3d at 1273 (only consideration for actual malice purposes is the publisher's thoughts regarding "veracity" of the publication, not whether it is well structured or fully complete); *Hamm*, 2023 WL 11809899, at *21 (holding that incomplete story that "exclusively targeted" the plaintiffs yet "completely excluded" other examples of the discussed phenomenon was nonetheless not published with actual malice). Thus, even if, contrary to the record of this case, Lumley and Trimble's criticisms were directed at journalism to which they contributed, those criticisms would still not be evidence of actual malice.

* * * * *

CNN is entitled to summary judgment as to Young for the additional reason that the undisputed facts of record preclude him from meeting his burden to prove, by clear and convincing evidence, that CNN published the subject journalism with actual malice.

V. THE GROUP LIBEL COUNT FAILS.

Count III of the SAC is a claim for "group libel," alleging that CNN defamed Young personally by speaking ill generally about "providers of evacuations" and "private operators." SAC ¶¶ 151, 155. Yet Count III is not a viable cause of action.

[18] Trimble's views about the Article are as irrelevant to the actual malice inquiry as her views about the Segment, as she contributed to neither.

"Group libel" is not technically a discrete tort; it's a subcategory of defamation—featuring an identical elemental analysis—created to account for when a plaintiff is not named in a publication yet remains identifiable because the described group of persons is very small. Specifically, the group libel concept applies "*only* if, (a) the group or class is so small that the matter can reasonably be understood to refer to the member [of the group], or (b) the circumstances of publication reasonably give rise to the conclusion that there is particular reference to the member." *Thomas, 699 So. 2d at 804* (emphasis added) quoting RESTATEMENT (SECOND) OF TORTS § 564 (1977)); *see also Adams v. WFTV Inc.*, 691 So. 2d 557 (Fla. 5th DCA 1997) (explaining that the doctrine was created to permit individuals within small groups—numbering no more than 25—to individually sue for defamation "when there is no specific reference to a member"). In short, the group libel doctrine is a workaround—not a distinct cause of action—that exists exclusively to satisfy the of-and-concerning element of defamation when the plaintiff isn't named in the publication but is nonetheless identifiable because the described group is miniscule. *Id.*[19]

But here, CNN acknowledges that the of-and-concerning element of defamation is already met (at least as to Young). That is, the of-and-concerning element is satisfied because Young is plainly named in the Segment. Thus, the group-libel doctrine is facially inapplicable. And, in any event, Young's employment of the doctrine as a practical matter is superfluous

[19] At a hearing on CNN's motion to dismiss the first iteration of Young's complaint, the Court appeared to accept Young's allegations that the body of private operators constituted fewer than 25 persons and that all operators in the world were all above board. Yet in his amended pleading, Young now seeks to distance himself from allegedly illegitimate private operators who "squandar[ed] huge amounts of resources on expensive, dangerous and often unsuccessful" evacuations. SAC ¶ 23. And in his deposition, Young admitted that [redacted] an admission that definitively nullifies any application of the group libel theory. SOF ¶¶ 254-59. *See Adams*, 691 So. 2d at 558 (explaining that application of the group libel doctrine can be maintained only if the alleged defamation applies to every person in the group).

because the elements simply duplicate his other defamation claim(s). *See id*.; *see also Thomas,* 699 So. 2d at 803–05. Thus, because "group libel" shares the same analysis as ordinary libel (and defamation by implication), Count III fails for the same reasons as set forth elsewhere in this motion, *i.e.,* the elements of falsity, defamatory meaning, and fault.

In sum, no genuine issue of material fact exists as to Count III because group libel is not a discrete cause of action; the group libel doctrine does not apply because the Segment directly references Young; the use of the doctrine merely duplicates Young's other causes of action; and Young fails to satisfy the elements of falsity, defamatory meaning, and fault.

CONCLUSION

For the reasons set forth above, CNN is entitled to summary judgment as to the claims asserted by Young.

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of August, 2024, a true and correct copy of the foregoing has been furnished via the Florida Courts E-Filing Portal to: Velvel Freedman (vel@fnf.law), Peter Bach-y-Rita (pbachyrita@fnf.law), Richard Cipolla (rcipolla@fnf.law), Alex Potter (apotter@fnf.law) and Joseph Delich (jdelich@fnf.law) of Freedman Normand Friedland LLP, 1 SE 3d Avenue, Suite 1240, Miami, FL 33131.

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