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IN THE CIRCUIT CDOURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN A FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.: 502019CA013457XXXXMB AF

LARRY KLAYMAN, individually

Plaintiff,

vs.

JOSEPH ROBINETTE BIDEN, JR., individually, ROBERT HUNTER BIDEN, individually, KATE BEDINGFIELD, individually and BIDEN FOR PRESIDENT, INC, a Delaware Corporation,

Defendants,
_______________________________________/

MOTION TO DISMISS COMPLAINT

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Defendants, JOSEPH ROBINETTE BIDEN JR., individually, KATE BEDDINGFIELD, individually, and BIDEN FOR PRESIDENT, a Delaware Corporation, through undersigned counsel move the Court, pursuant to Florida Rule of Civil Procedure 1.140(f), for entry of an order striking redundant, immaterial, impertinent, or scandalous matter from the Complaint, striking the claim for punitive damages, and pursuant to Rule 1.140(b), for entry of an order dismissing the Complaint. In support of this motion, Defendants state as follows:

BACKGROUND

1. Plaintiff, Larry Klayman, has filed a one-count complaint attempting to allege a cause of action against Defendants for tortious interference with a business relationship.

2. According to the Complaint, Mr. Klayman is a lawyer and media personality, producing among other things a radio show and internet content. Compl. ¶ 3, 9. As alleged in the Complaint, Mr. Klayman "maintains a channel on YouTube named Freedom Watch TV." Compl. ¶ 9. Mr.

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Klayman maintains, without elaboration, that his YouTube channel "enhances his good will and reputation in his professional and personal capacities." Compl. ¶ 9.

3. On October 1, 2019, according to the Complaint, Mr. Klayman's YouTube channel was suspended by Google, Inc., which he alleges owns and operates YouTube. Compl. ¶¶ 10-11. Mr. Klayman has not identified any reason for the suspension communicated to him by Google or YouTube. Compl. ¶ 13. Instead, Mr. Klayman quotes his own letter to YouTube, contending that the suspension must have been because he had threatened to bring Vice President Joseph R. Biden, Jr. and his son Robert H. "Hunter" Biden "before a citizens grand jury" where Klayman would "seek their indictment." Compl. ¶ 13-14; Compl. Exhibit 1. YouTube did not respond to that letter; Mr. Klayman contends that non-response "confirm[ed], validat[ed] and effectively admitt[ed]" his assertions. Compl. ¶ 14.[1]

4. Mr. Klayman does not identify any action taken by the Campaign or anybody associated with it that: (i) was directed to YouTube or Google; or (ii) occurred before the October 1, 2019 date of his alleged suspension. *See* Compl. ¶¶ 11-23. No assertion -- detailed or otherwise -- explains how, in Mr. Klayman's view, the Campaign took any step to effectuate his suspension, which is not surprising as no such steps were taken.

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[1] Mr. Klayman's complaint suggests, but does not expressly state, that YouTube reinstated his account on or about October 3, 2019, *see* Compl. ¶ 14, which is consistent with a video post to that channel on October 4, 2019. *See* Freedom Watch, "Klayman/Corsi Confront Mueller in Court! More Biden Treachery," YouTube (Oct. 4, 2019), available at https://www.youtube.com/watch?v=LVscvm3e95g.

5. Instead, Mr. Klayman points to comments made by the Campaign following an op-ed published in the *New York Times* by Peter Schweitzer on October 9, 2019 entitled "What Hunter Biden Did Was Legal -- And That's the Problem." Compl. ¶¶ 16-20. In response to that op-ed, likewise on October 9, 2019, the Campaign's Communications Director and Deputy Campaign Manager wrote to the *New York Times* questioning its decision to run piece. Compl. ¶ 20.[2] The letter described Schweitzer as a "discredited right wing polemicist" and explained the Campaign's disappointment with "one of the most corrosive trends in modern journalism -- 'savvy' reporting that prizes the identification of disingenuous political tactics at the expense of focusing on the facts that voters need to know." Compl. ¶ 20; *see* Ex. A. Mr. Klayman's reading of the letter was that "there would be retribution if not 'hell to pay' once Biden became president if the opinion piece of Schewizer was not removed from the website of the *New York Times*." Compl. ¶ 20. The referenced letter is attached and speaks for itself; it does not contain the content Mr. Klayman attributed to it.

6. Mr. Klayman conclusorily contends -- without a single, supporting factual allegation -- that because the Campaign, in his view, was intending to influence its coverage in the *New York Times*, it must have also tried to pressure YouTube to suspend his account. Compl. ¶¶ 21-23. That speculation is the only link in the complaint between the Campaign and YouTube/Google

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[2] That letter is a public record and was referenced in Mr. Klayman's complaint. It is properly included as an attachment to this Memorandum under Florida law.

7. On the basis of these allegations, Mr. Klayman has sued the Biden for President Campaign, a Delaware corporation known as BFPCC, Inc., that is registered with the Federal Election Commission as the principal campaign committee for Joseph R. Biden's campaign for President (the "Campaign"). Compl. ¶ 7; see Federal Election Commission Committee No. [TK], available at [TK]. The complaint also lists Joseph R. Biden himself as a defendant, along with the Campaign's Deputy Campaign Manager and Communications Director Kate Bedingfield (the "Individual Campaign Defendants") (together with the Campaign, the "Campaign Defendants").[3] The Campaign was served with the complaint in this matter on November 1, 2020. The Individual Campaign Defendants still have not been served.

8. The Complaint asserts a single cause of action, tortious interference with business relations, against all defendants. Compl. ¶¶ 24-30. Mr. Klayman alleges that the Campaign Defendants knew of the business relationship between "YouTube and Freedom Watch," and "intentionally interfered" with that relationship by "unduly and illegally pressuring and threatening YouTube into suspending the YouTube account as a result of Mr. Klayman['s] criticism and stated intention to seek the indictment of the Bidens before a Freedom Watch's citizens grand jury." Compl. ¶¶ 27-28. Mr. Klayman then asserts that he -- not Freedom Watch -- "has been harmed and damaged" as a result of the suspension of his YouTube account. Compl. ¶¶ 28-29.

[3] Robert H. "Hunter" Biden is also named as a defendant. Hunter Biden is not represented by undersigned counsel and apparently has not yet been served by Mr. Klayman.

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9. First, because, as is clear from the discussion above, many of the allegations of the Complaint are wholly immaterial and irrelevant to any actions allegedly taken by the Defendants against Mr. Klayton or to the alleged cause of action, as well as being scandalous and impertinent, those allegations should be stricken, pursuant to Florida Rule of Civil Procedure 1.140(f).

10. Additionally, Plaintiff's claim for punitive damages must be stricken for failure to comply with the requirements of section 768.72, Florida Statutes (2019).

11. Finally, as demonstrated below, the Complaint itself should be dismissed in its entirety for (1) impermissible co-mingling of claims against multiple defendants; (2) failure to joint an indispensable party; and (3) failure to state a cause of action.

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MEMORANDUM OF LAW

Legal Standard for Motion to Dismiss

"The primary purpose of a motion to dismiss is to request the trial court to determine whether the complaint properly states a cause of action upon which relief can be granted and, if it does not, to enter an order of dismissal." *Universal Underwriters Ins. Co. v. Body Parts of Am., Inc.,* 228 So. 3d 175 (Fla. 1st DCA 2017) (quoting *Provence v. Palm Beach Taverns, Inc.,* 676 So. 2d 1022, 1024 (Fla. 4th DCA 1996)). Florida law is well settled that in order to withstand a motion to dismiss, the complaint must state "ultimate facts sufficient to indicate the existence of a cause of action." *Greenwald v. Triple D Properties, Inc.,* 424 So. 2d 185 (Fla. 4th DCA 1983); *see also* Fla. Rule Civ. P. 1.110(b)(2) ("pleading which sets forth a claim for relief must state a cause of action and shall contain "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief"). When ruling on a motion to dismiss, the trial court is limited to considering

the four corners of the complaint along with the attachments incorporated into the complaint. *Landmark Funding, Inc. v. Chaluts*, 213 So. 3d 1078, 1079 (Fla. 2d DCA 2017). In other words, "[t]he question for the trial court to decide is simply whether, assuming all the allegations in the complaint to be true, the plaintiff would be entitled to the relief requested." *Id.* (quoting *Cintron v. Osmose Wood Preserving, Inc.*, 681 So. 2d 859, 860-861 (Fla. 5th DCA 1996). All allegations of the complaint must be taken as true and all reasonable inferences drawn therefrom must be construed in favor of the nonmoving party. *Greene*, 926 So. 2d at 1199. However, while the court is to view the complaint in the light most favorable to the pleader, conclusory allegations are insufficient to survive a motion to dismiss. *Stein v. BBX Capital Corp.*, 241 So. 3d 874, 876 (Fla. 4th DCA 2018) (emphasis added).

Florida Rule of Civil Procedure 1.110(b)(2) requires that "[a] pleading which sets forth a claim for relief ... must state a cause of action and shall contain ... a short and plain statement of the ultimate facts showing that the pleader is entitled to relief." "In Florida, every cause of action, whether derived from statute or common law, is comprised of necessary elements which must be proven for the plaintiff to prevail. . . . The complaint must set out the elements and the facts that support them so that the court and the defendant can clearly determine what is being alleged." *Barrett v. City of Margate*, 743 So. 2d 1160, 1162 (Fla. 4th DCA 1999) (citations omitted). A complaint that fails to allege ultimate facts supporting each element of a cause of action should be dismissed. Conclusory allegations are insufficient. See *Stein,* 241 So. 3d at 876; *see also Davis v. Bay County Jail*, 155 So. 3d 1173, 1177 (Fla. 1st DCA 2014) ("a complaint that simply strings

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together a series of sentences and paragraphs containing legal conclusions and theories does not establish a claim for relief." (citations omitted)).

Legal Standard for Motion to Strike

Under rule 1.140(f): "A party may move to strike . . . redundant, immaterial, impertinent, or scandalous matter from any pleading at any time." Fla. R. Civ. P. 1.140(f). "A motion to strike matter as redundant, immaterial or scandalous should only be granted if the material is wholly irrelevant, can have no bearing on the equities and no influence on the decision." *Pentecostal Holiness Church, Inc. v. Mauney*, 270 So. 2d 762, 769 (Fla. 4th DCA 1972); *see also Rice-Lamar v. City of Fort Lauderdale*, 853 So. 2d 1125, 1133 (Fla. 4th DCA 2003).

I. Paragraphs 15 through 22 of the Complaint should be stricken pursuant to Florida Rule of Civil Procedure 1.140(f).

Paragraphs 15 through 22 of the Complaint pertain to alleged actions taken by Defendants in response to an article written by someone completely unrelated to Plaintiff and published in the New York Times. These allegations are wholly irrelevant to the cause of action Plaintiff attempts to allege in his Complaint, have nothing to do with any actions allegedly taken by Defendants in relation to Plaintiff or his YouTube channel. Additionally, these allegations are impertinent and scandalous and, as explained above, misrepresent the content of the communications referenced. Accordingly, they should be stricken from the Complaint.

II. Plaintiff's claim for punitive damages must be stricken for failure to comply with the requirements of section 768.72, Florida Statutes (2019).

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Plaintiff's claim for punitive damages must be stricken, because ender Florida law a party must obtain leave of court before asserting a claim for punitive damages. Florida Statute § 768.72(1) provides as follows:

> (1) In any civil action, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure.

See also, Simeon, Inc. v. Cox, 671 So. 2d 158 (Fla. 1996)(holding that a plaintiff must obtain leave from trial court to amend complaint before punitive damages may be asserted and trial court must make determination that there is reasonable basis for recovery of punitive damages before allowing the amendment).

III. The Complaint should be dismissed for impermissible co-mingling of claims against multiple defendants.

Plaintiff has named four Defendants in his lawsuit: (1) the Biden for President Campaign, a Delaware corporation, (2) Joseph R. Biden, individually, (3) Hunter Biden, individually, and (4) the Campaign's Deputy Campaign Manager and Communications Director Kate Bedingfield; yet he has included in his complaint only one count of tortious interference with business relations. This is impermissible under Florida law, and his Complaint could and should be dismissed in its entirety on this ground alone.

A plaintiff is required to state separate causes of action in separate counts. See *Fla. R. Civ. P.* 1.110(f). A party should plead each distinct claim in a separate count of the complaint, rather than plead claims against multiple defendants together. See *K.R. Exchange Services, Inc. v. Fuerst,*

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Humphrey, Illteman, PL, 48 So. 3d 889, 893 (Fla. 3d DCA 2010). See also *Aspsoft Inc. v. WebClay*, 983 So. 2d 761, 768 (Fla. 5th DCA 2008)(holding that the plaintiff's complaint set forth defective claims by "impermissibly comingling separate and distinct claims" in a single count); and *Pratus v. City of Naples*, 807 So. 2d 795, 797 (Fla. 2d DCA 2002)(when asserting similar claims against three different defendants, the plaintiffs were required to plead each claim in a separate count, instead of lumping all defendants together).

Plaintiff has impermissibly commingled claims of tortious interference against three (3) separate and distinct named defendants.[4] These Defendants are unable to differentiate the allegations asserted against them. Generally, commingling claims against multiple defendants warrants dismissal of a complaint. *Collado v. Baroukh*, 226 So. 3d 924, 927-28 (Fla. 4th DCA 2017). *See also Aspsoft, Inc.*, 983 So. 2d at 768 (concluding that the commingling of separate and distinct claims against multiple defendants warrants a dismissal of the complaint).

IV. The Complaint should be dismissed for failure to joint an indispensable party.

Plaintiff has brought this action for intentional interference with a business relationship on behalf of himself individually. Yet he alleges that it is Freedom Watch who had a business relationship with You Tube with which the Defendants allegedly interfered. *See* Compl. ¶¶ 27-28. He further alleges that it was Freedom Watch whose You Tube channel was allegedly suspended as a result. *See* Compl. ¶¶ 28-29 Freedom Watch is not a named Plaintiff. The allegations of the Complaint are unclear, but it appears that either the Plaintiff does not have a

[4] As previously noted, Robert H. "Hunter" Biden is also named as a defendant. Hunter Biden is not represented by undersigned counsel and apparently has not yet been served by Mr. Klayman.

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cause of action as an individual or he has failed to name an indispensable party, Freedom Watch, the entity which actually had the You Tube channel and alleged business relationship with You Tube. Under Florida law, "an indispensable party is one whose legal or beneficial interest in the subject matter makes it impossible to completely adjudicate the matter without affecting that party's interest." *See Carbon Capital II v. Estate of Tutt*, 107 So. 3d 1239, 1245 (Fla. 3d DCA 2013).

V. The Complaint should be dismissed for lack of personal jurisdiction and improper venue.

The Complaint is completely devoid of any allegations or facts which establish that this Court has personal jurisdiction over the Defendants. Personal jurisdiction in Florida is controlled by Florida Statutes Section 48.193. Florida courts must apply a two part analysis in determining whether jurisdiction exists over a nonresident defendant. *Am. Fin. Trading Corp. v. Bauer*, 828 So. 2d 1071, 1073-1074 (Fla. 4th DCA 2002) (citing *Venetian Salami Co. v. Parthenais,* 554 So. 2d 499, 502 (Fla. 1989); *see also Woods v. Nova Co. Belize Ltd.,* 739 So. 2d 617, 620 (Fla. 4th DCA 1999)). The court must first determine whether the party has alleged facts sufficient to fall within the scope of Section 48.193, Florida Statutes, and second, whether the federal constitutional due process requirements of minimum contacts have been met. *Id.* at 1074 (citing *Woods,* 739 So. 2d at 619-620).

The first prong of the aforementioned two prong test involves a determination of whether the complaint alleges sufficient jurisdictional facts to bring the action within the ambit of Florida's long arm statute. *See Venetian Salami Co.*, 554 So. 2d at 502. Indeed, the plaintiff bears the initial burden of alleging sufficient jurisdictional facts in his or her complaint to establish the basis for

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the court's long-arm jurisdiction. See *Sampson Farm Ltd. P'ship v. Parmenter*, 238 So. 3d 387 (Fla. 3rd DCA 2018); *Fincantieri-Cantieri Navali Italiani S.p.A. v. Yuzwa*, 241 So. 3d 938, 941–42 (Fla. 3rd DCA 2018).

Similarly, the Complaint is devoid of any allegations or facts which establish that venue is appropriate in Palm Beach County, other than the conclusory statement that "the actions pled below arose and were perpetrated in this Circuit and the County of Palm Beach. The Complaint itself does not identify any actions taken by the Defendants in Palm Beach County or even the state of Florida for that matter. Defendants are aware that Florida's general venue provision, § 47.011, Florida Statutes (2019), provides that it shall not apply to actions involving nonresidents. However, Courts have noted that venue is still subject to challenge based on the doctrine of forum non conveniens. *See Metnick & Levy, P.A. v. Seuling*, 123 So.3d 639, 642 (Fla. 4th DCA 2013). The absence of any substantive allegations or fact concerning venue, has made it impossible for Defendants to appropriately respond with respect to the doctrine of forum non conveniens.

VI. The Complaint should be dismissed for failure to state a cause of action.

In order to state a cause of action for tortious interference with a business relationship, a Plaintiff must allege the following elements:

> (1) existence of a business relationship that affords the plaintiff with existing or prospective legal or contractual rights; (2) defendant's knowledge of that relationship; (3) an intentional and unjustified interference with that relationship by the defendant; and, (4) damage to the plaintiff resulting from the breach of that relationship.

Ferris v. S. Fla. Stadium Corp., 926 So. 2d 399, 401-02 (Fla. 3d DCA 2006); *see also Volvo v. Aero Leasing, LLC v. VAS Aero Servs.*, LLC, 268 So. 3d 785, 789 (Fla. 4th DCA 2019) (same).

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Further, the general rule is that an action for tortious interference will not lie where a party interferes with an at will contract. *Ferris*, 926 So. 2d at 402; *Greenberg v. Mount Sinai Medical Ctr. Of Greater Miami, Inc.*, 629 So. 2d 252, 255 (Fla. 3d DCA 1993) (noting that "[t]he general rule is that an action for tortious interference will not lie where a party tortiously interferes with a contract terminable at will"). It is only where interference with an at will relationship is direct and unjustified that such interference is actionable. *See Perez v. Rivero*, 534 So. 2d 914, 916 (Fla. 3d DCA 1988).

A. The Complaint fails to allege a business relationship between Plaintiff and YouTube/ Google, Inc. that affords Plaintiff existing or prospective legal or contractual rights.

The only allegations in the Complaint pertaining to an alleged business relationship between Plaintiff and YouTube/Google, Inc. are that Plaintiff maintains a YouTube Channel named Freedom Watch TV and a conclusory allegation that Plaintiff, through Freedom Watch, has had a "long-time business relationship with YouTube." Compl. ¶ 9, 25. There are no factual allegations to support the necessary showing of a business relationship that affords Plaintiff existing or prospective legal or contractual rights. There are no allegations that even attempt to explain how simply maintaining a YouTube channel is or could constitute a business relationship between the host of the channel and YouTube. There is no allegation of any contract or business agreement of any kind. Accordingly, the Complaint is deficient and should be dismissed.

B. The Complaint fails to allege any facts showing Defendant's knowledge of any business relationship between Plaintiff and YouTube.

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Similarly, the Complaint is devoid of any factual allegations showing Defendant's knowledge of any business relationship between the Plaintiff and YouTube. The Complaint simply states, in a conclusory fashion, that "Defendants knew of the business relationship between YouTube and Freedom Watch and Plaintiff Klayman's role at Freedom Watch and other professional endeavors." Compl. ¶27. This is clearly insufficient and renders the Complaint subject to dismissal.

C. The Complaint fails to allege any facts showing an intentional and unjustified interference by Defendants.

The complaint fails to plausibly identify any action taken by the Campaign Defendants that resulted in harm to Mr. Klayman. The Plaintiff's purported concern is that a YouTube channel was suspended by YouTube and/or Google, Inc., on October 1, 2019, but he has not identified any action by the Campaign before that date that he believes caused that suspension; nor has he identified any interaction at any time between the Campaign, on the one hand, and YouTube/Google, on the other hand.

To plead an actionable complaint, a plaintiff must make factual allegations relating to conduct by the defendants that has allegedly caused him harm. *See* Fla. R. Civ. P. 1.110(b) ("A pleading which sets forth a claim for relief ... must state a cause of action and shall contain ... a short and plain statement of the ultimate facts showing that the pleader is entitled to relief."). The Complaint fails to meet that baseline standard, as there is a disconnect between: (i) the harm he alleges, purportedly arising from the short-term suspension of Freedom Watch's account by

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YouTube; and (ii) any action taken by the Campaign or the Individual Campaign Defendants alleged to have brought about that harm.

The complaint is skeletal, identifying Plaintiff's harm as the suspension of Freedom Watch's YouTube account. *See* Compl. ¶¶ 11-12. Plaintiff has made no factual allegation concerning why that suspension occurred; instead, he quotes himself asserting that it must have been suspended because of his threat to use a "citizens grand jury" to indict Vice President Biden and others. Compl. ¶ 13. Nor does the complaint identify any action linking the Campaign or the Individual Defendants to YouTube/Google, let alone any link between the Campaign Defendants and YouTube/Google's purported decision to suspend Freedom Watch's account. Compl. ¶¶ 11-22.

To put it very simply, Plaintiff may not sue the Campaign Defendants for harm allegedly caused to Freedom Watch by YouTube/Google without concrete, non-conclusory factual allegations linking the Campaign Defendants and the actions by third-parties that allegedly caused him harm. Mr. Klayman has not -- and, consistent with Florida Rule of Civil Procedure 1.110(b), cannot -- make any such allegations. This action therefore should be dismissed.

D. The Complaint fails to sufficiently allege damage to the Plaintiff resulting from the breach of any business relationship.

Plaintiff appears to claim personal damages for actions taken by YouTube relating to the account of Freedom Watch, a nonprofit entity organized under 501(c)(3) of the Internal Revenue Code; the Complaint contains no allegation explaining how Mr. Klayman purports to be able to recover personally for damages that allegedly befell a non-profit entity, nor has Mr. Klayman

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explained how such personal recovery can be squared with federal law which bars him from benefiting privately from a nonprofit in which he is an officer or director.

WHEREFORE, Plaintiff respectfully requests that this Court, pursuant to Florida Rule of Civil Procedure 1.140(f), enter an order striking redundant, immaterial, impertinent, or scandalous matter from the Complaint, striking the claim for punitive damages, and pursuant to Rule 1.140(b), for entry of an order dismissing the Complaint.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via E-Serve to all Counsel on the attached list, this 20th day of November, 2019.

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