CLERK OF THE CIRCUIT COURT IN AND FOR THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 502019CA013457XXXXMB AF

LARRY KLAYMAN,

Plaintiff,

vs.

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

Defendant,
_____/

AMENDED MOTION TO DISMISS COMPLAINT

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 (the "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 purports to control a nonprofit entity known as Freedom Watch that "maintains a channel on YouTube named Freedom Watch TV." Compl. ¶ 9. Mr. Klayman maintains, without elaboration, that this YouTube channel "enhances his good will and reputation in his professional and personal capacities." Compl. ¶ 9.

3. According to the Complaint, on October 1, 2019, Mr. Klayman's YouTube channel was suspended by Google, Inc., which he alleges owns and operates YouTube. Compl. ¶¶ 10-11.[1] Mr. Klayman has not identified any reason for the suspension communicated to him by Google/YouTube. Compl. ¶ 13. Instead, Mr. Klayman quotes his own letter to Google/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. Google/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.[2]

4. Mr. Klayman does not identify any action taken by Biden for President (hereinafter, "the Campaign") or anybody associated with it that: (i) was directed to Google/YouTube; or (ii) occurred before the October 1, 2019 date of his alleged suspension. *See* Compl. ¶¶ 11-23. No

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[1] Hereafter, the entity that purportedly suspended Freedom Watch's account will be referenced as Google/YouTube.

[2] The Complaint suggests, but does not expressly state, that Google/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.

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.

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 the piece. Compl. ¶ 20.[3] 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 Google/YouTube to suspend his account. Compl. ¶¶

[3] 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.

21-23. That speculation is the only link in the complaint between the Campaign and Google/YouTube.

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. 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").[4] 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.

[4] 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.

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. Klayman 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; (3) lack of personal jurisdiction and improper venue; and (4) failure to state a cause of action.

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. *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 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; they have nothing to do with any actions allegedly taken by Defendants in relation to Plaintiff or his YouTube channel. The conclusory 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).

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,*

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.[5] These Defendants are unable to differentiate the allegations asserted against them. This type of 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). It also unsuccessfully attempts to mask the conclusory and disjointed nature of the allegation.

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 Google/You Tube with which the Defendants allegedly interfered. *See* Compl. ¶¶ 27-28. He further alleges that it was Freedom Watch whose Google/You Tube channel was allegedly suspended as a result of Defendants' actions. *See* Compl. ¶¶ 28-29. Freedom Watch is

[5] 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.

not a named Plaintiff. The allegations of the Complaint are unclear, but it appears that either the Plaintiff does not have a cause of action as an individual or he has failed to name an indispensable party, Freedom Watch, the entity that actually has the You Tube channel and alleged business relationship with Google/You Tube.[6] 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 that 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

[6] The Plaintiff's inability to claim personal money damages for actions taken against a non-profit with which he is associated is addressed further, infra § VI.

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 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. 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). 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 Google/YouTube that affords Plaintiff existing or prospective legal or contractual rights.

At its core, a claim of tortious interference with a business relationship requires that a protectable business relationship exists in the first place. The only allegations in the Complaint pertaining to an alleged business relationship between Plaintiff and Google/YouTube 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 that would, if proven, establish 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 Plaintiff of the channel and Google/YouTube (especially given that the channel is in the name of Freedom Watch, which is a non-profit

organization, as described in greater detail infra § VI). There is no allegation of any contract or business agreement of any kind.

Further, Freedom Watch's YouTube channel does not constitute a protectable "business relationship" under Florida law. Assuming, *arguendo*, that Mr. Klayman has a relationship with YouTube, that relationship cannot be the basis of recovery for tortious interference under Florida law. As a "general rule...an action for tortious interference will not lie where a party tortiously interferes with a contract terminable at will." *Perez v. Rivero*, 534 So.2d 914, 916 (Fla. 3d DCA 1988). "This is so because when a contract is terminable at will there is only an expectancy [rather than an enforceable right] that the relationship will continue." *Greenberg v. Mount Sinai Med. Ctr. of Greater Miami, Inc.*, 629 So. 2d 252, 255 (Fla. Dist. Ct. App. 1993).

YouTube reserves the right to terminate service at any time. *See* YouTube Terms of Service, Section 4(j). YouTube may cancel Freedom Watch's channel at any time and for any reason. If Mr. Klayman is relying on some other contractual relationship (such as a unique contract between Freedom Watch and Google/YouTube), he must specifically so plead. Otherwise, Mr. Klayman has no anticipation of an ongoing business relationship with YouTube with which the Campaign Defendants could have interfered.

In fact, the Federal District Court for the Southern District of Florida very recently dismissed a similar claim for relief brought by plaintiffs, Laura Loomer and Illoominate Media, Inc., alleging that defendants, the CAIR Foundation and John Does 1-5, tortiously interfered with a business relationship by orchestrating the ban of Loomer's Twitter account. *See Illoominate Media, Inc. v. CAIR Found.*, No. 19-CIV-81179-RAR, 2019 U.S. Dist. LEXIS 201419 (S.D. Fla.

Nov. 19, 2019). The alleged "business relationship" interfered with was Loomer's business relationship with her Twitter followers, some of whom are potential donors to her venture and Loomer's business relationship with Twitter itself as a user of the platform. The court rejected both of these relationships as the kind of actual and identifiable business relationship that is required under Florida law to establish a claim for tortious interference. The court explained as follows:

> With respect to the relationship between Loomer and her Twitter followers, the Court finds that Loomer has failed to establish an actual business relationship with identifiable customers. *See Ferguson*, 687 So. 2d at 821. As the Florida Supreme Court has made clear time and again, an action for tortious interference with a business relationship does not lie where the business relationship alleged is one with the "community at large" as opposed to one with identifiable customers. *See Ethan Allen*, 647 So. 2d at 815; *see also Ferguson*, 687 So. 2d at 821. Here, Plaintiffs fail to identify discernable customers and instead allege a business relationship with Loomer's Twitter community at large.
>
> Specifically, Loomer contends that Defendant tortiously interfered with the business relationship between Loomer and her Twitter followers by convincing Twitter to ban Loomer from its platform. While the Court accepts all well-pleaded allegations as true, Loomer's relationship with her Twitter followers—no matter how economically beneficial such a relationship may have been—is a relationship with the community at large, not with identifiable customers. *See Coach Servs., Inc. v. 777 Lucky Accessories, Inc.*, 752 F. Supp. 2d 1271, 1273 (S.D. Fla. 2010); *See also Hill Dermaceuticals, Inc. v. Anthem, Inc.*, 228 F. Supp. 3d 1292, 1301 (M.D. Fla. 2017). Given that Loomer's alleged business relationship with her followers does not sufficiently identify customers, Plaintiffs fail to satisfy the first prong of a claim for tortious interference with a business relationship.
>
> Similarly, with respect to Loomer's alleged business relationship with Twitter, Plaintiffs have pleaded nothing to suggest Loomer and Twitter had a business relationship as "evidenced by an actual and identifiable understanding or agreement which in all probability would have been completed if the defendant had not interfered." *See Ethan Allen*, 647 So. 2d at 815. For starters, Count II of Plaintiffs' Amended Complaint is devoid of any allegations suggesting the existence of a business relationship between Loomer and Twitter. Still, at the Hearing, Plaintiffs' counsel argued that Defendant interfered with Loomer's right to

> use Twitter as a platform. However, when pressed to identify the nature of the business relationship between Loomer and Twitter, and Plaintiffs' corresponding legal rights pursuant to that relationship, Plaintiffs could not do so. Put simply, no business relationship can be inferred merely from Loomer's decision to use Twitter, and Defendant cannot be found liable for tortious interference with a business relationship where no business relationship has been established.

Id. at *5-9. The federal court's sound reasoning applies equally to the claims asserted by Plaintiff here. 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 Google/YouTube.

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. Such cursory allegations are clearly insufficient and render 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 belonging to a non-profit with which he is affiliated was suspended by Google/YouTube on October 1, 2019, but Plaintiff 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 Google/YouTube, 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 Plaintiff alleges, purportedly arising from the short-term suspension of Freedom Watch's account by 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 Google/YouTube, let alone any link between the Campaign Defendants and Google/YouTube/'s purported decision to suspend Freedom Watch's account. Compl. ¶¶ 11-22.

As for allegedly intentional and unjustifiable conduct, Mr. Klayman has alleged nothing with respect to Google/YouTube. Instead, he has alleged only that a Campaign Defendant criticized editorial choices of the *New York Times*, which had nothing to do with him. Compl. ¶¶ 19-23. At base, Mr. Klayman's claims are that by raising concerns with the *New York Times* about its coverage of the 2020 election, and particularly its coverage of conspiracy theories floated by

those hoping to affect the outcome of the election, the Campaign Defendants somehow injected themselves in countless relationships between conspiracy theorists, on the one hand, and internet platforms used by those conspiracy theorists, on the other hand. This type of disjointed, speculative claim is not actionable. It does not come close to alleging "intentional and unjustifiable interference" in a specific business relationship.[7]

Plaintiff may not sue the Campaign Defendants for harm allegedly caused to Freedom Watch by Google/YouTube without concrete, non-conclusory factual allegations linking the Campaign Defendants and the actions by third-parties that allegedly caused him harm. *See Barrett v. City of Margate*, 743 So.2d 1160, 1163 (4th DCA 1999) ("It is insufficient to plead opinions, theories, legal conclusions or argument"). Mr. Klayman has not made -- and, consistent with his duty of candor to the Court and Florida Rule of Civil Procedure 1.110(b), cannot make -- any such allegations. Therefore, this action should be dismissed.

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

A successful claim of tortious interference requires a showing of actual damages. *Worldwide Primates, Inc. v. McGreal*, 26 F.3d 1089, 1092 (11th Cir. 1994) ("Florida

[7] Indeed, to succeed on such a claim, Mr. Klayman must show that Defendants "manifested a *specific intent* to interfere with the business relationship." *Chicago Title Ins. Co. v. Alday-Donalson Title Co. of Fla., Inc.*, 832 So.2d 810, 814 (Fla. 2d DCA 2002) (emphasis added). "Where the allegedly wrongful act merely creates circumstances leading to the loss of a business relationship, then the element of 'direct interference' has not been satisfied," absent such specific intent. *In re Gen. Plastics Corp.*, 158 B.R. 258, 289 (Bankr. S.D. Fla. 1993) (applying Florida law). No part of the complaint contains any facts that would support an assertion of specific intent.

law . . . requires proof of damages as an essential element of a tortious interference claim"). Mr. Klayman's alleged damages--to the extent that he claims any -- are that his "good will and reputation [were] damaged" as a result of YouTube's temporary suspension of Freedom Watch's channel. *See* Compl. ¶ 26. That is markedly insufficient. He provides no specific, factual assertions to assert the conclusory claim of reputational damage; instead, he speculates that the YouTube suspension created a "false narrative and impression [that] he had done something illegal . . . ." *Id.* Rank speculation is not actionable. *See Stein v. BBX Capital Corp.*, 241 So.3d 874, 876 (Fla. 4th DCA 2018).

Plaintiff also appears to be seeking to recover damages he either did not suffer personally or cannot have incurred given the nonprofit structure of Freedom Watch. The account purportedly suspended by Google/YouTube was not Mr. Klayman's, it was that of Freedom Watch. *See* Compl. ¶¶ 9-11. Mr. Klayman describes Freedom Watch as a "non-profit government watchdog public interest group that he conceived of, founded, and for which he serves as president, chief operating officer, chairman and general counsel." Compl. ¶ 9. Settled Florida law provides that Mr. Klayman cannot bring a lawsuit personally to recover on behalf of a corporation. *E.g.*, *Palafrugell Holdings, Inc. v. Cassell*, 825 So.2d 937 (Fla. 3d DCA 2001). He has no standing to do so.

Possibly aware of this deficiency, Mr. Klayman purports to benefit personally "from his appearances on [Freedom Watch's] YouTube [channel] . . . which enhance[] his good will and reputation in his professional and personal capacities." Compl. ¶ 10. Perhaps that is true in some inchoate, if non-compensable, sense. But under applicable federal law governing Freedom Watch,

Mr. Klayman cannot use the private foundation he (purportedly) controls for his own private inurement. *See* 26 Code Fed. Regs. § 1.501(c)(3)-1(d)(1)(ii) ("An organization is not organized or operated exclusively for [a nonprofit purpose] unless it serves a public rather than a private interest. Thus . . . it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests"). In fact, among purported charitable entities, "private foundations are more closely regulated in order to prevent misuse of donor funds and to compensate for their lack of public accountability"; that a foundation was "organized for tax-exempt purposes does not redress [a later] failure to operate exclusively for tax exempt purposes." *See Educational Assistance Foundation for Descendants of Hungarian Immigrants in the Performing Arts, Inc. v. United States*, 111 F. Supp. 3d 34, 42 (D.D.C. 2015).

Accordingly, Mr. Klayman is seeking either damages he has no standing to claim or those he has no right to recover given Freedom Work's tax-exempt status. His complaint should be dismissed.

VII. Florida's Anti-SLAPP Statute independently requires dismissal of the Complaint.

Mr. Klayman's complaint also runs afoul of Florida's Anti-SLAPP statute, which provides still another independently sufficient basis for dismissal. *See* § 768.295, Fla Stat. (2019). The Anti-SLAPP statute provides that:

> A person . . . in this state may not file . . any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with

> a public issue . . . as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

§ 768.295(3), Fla Stat. (2019). The Florida Legislature declared its intent in enacting the Anti-SLAPP statute "to protect the right in Florida to exercise the rights of free speech in connection with public issues," and that a claim arising out of the exercise of those rights should be "expeditiously disposed of by the courts." § 768.295(1), Fla. Stat. (2019).

Under the Anti-SLAPP statute, the Campaign Defendants may "move the court for an order dismissing the action . . . ." § 768.295(4), Fla. Stat. (2019); *see Gundel v. AV Homes, Inc.*, 264 So. 3d 304 (Fla. 2d DCA 2019). "[T]he initial burden [is] on the SLAPP defendant to set forth a prima facie case that the Anti-SLAPP statute applies," with the burden then shifting "to the claimant to demonstrate that the claims are not 'primarily' based on First Amendment rights in connection with a public issue and not 'without merit.'" *Gundel*, 264 So. 3d at 314. The purpose of this burden-shifting is to prevent "unnecessary litigation." *Id.* at 311. In addition, where, as here, a SLAPP suit has been impermissibly brought, the court "shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section." § 768.295(4). Fla. Stat. (2019).

The Complaint does not contain any factual allegations linking the Campaign or the Individual Defendants to Google/YouTube or the suspension of Freedom Watch's account. Compl. ¶¶ 11-22. Instead, the Complaint alleges that Defendants "publicly" criticized editorial choices of the *New York Times* and the author of a *New York Times* opinion piece, which has nothing to do with Mr. Klayman, Freedom Watch, or the suspended YouTube account. Compl. ¶¶ 19-23. To the extent that the threadbare factual allegations in the Complaint can be construed

to involve any actions on the part of the Defendants, those actions (i.e., speech) plainly concern First Amendment expression in connection with a public issue (i.e., the 2020 Presidential election).

In addition, as detailed above, the Complaint is without merit. It fails to provide any concrete, non-conclusory factual allegations linking the Campaign Defendants and the actions by third-parties that allegedly caused him harm. And it fails to plead facts supporting any of the elements of a claim for tortious interference with a business relationship under Florida law. Instead, it is nothing more than an attack on First Amendment expression concerning public issues (and other expression Mr. Klayman conclusorily speculates may have happened, but did not, *see* Compl. ¶¶ 22-23). Mr. Klayman's Complaint is exactly the conduct that Florida's Anti-SLAPP statute was enacted to prohibit, and the Complaint should be dismissed, with costs and fees awarded to the Campaign Defendants under section 768.295(3), and (4), Florida Statutes (2019).

CONCLUSION

For the foregoing reasons, Mr. Klayman's Complaint should be dismissed with prejudice. This is no complaint at law; it is a publicity stunt that has run its course.[8]

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)

[8] Upon the filing of this Complaint, but weeks before he served the Campaign, Mr. Klayman published a video to YouTube (on the very channel that he claims was suspended) to discuss the filing of this action. *See* Freedom Watch, "Bidens SUED by Klayman for Illegal Interference w/ Google-YouTube!", YouTube (Oct. 12, 2019), available at https://www.youtube.com/watch?v=ByDzhFKhcBY

and/or section 768.295(4), Florida Statutes, for entry of an order dismissing the Complaint in its entirety.

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 12th day of December, 2019.

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