IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

NICOLE WADE; JONATHAN GRUNBERG;
TAYLOR WILSON;
WADE, GRUNBERG & WILSON, LLC;

Plaintiffs,

v.

L. LIN WOOD and L. LIN WOOD, P.C.,

Defendants.

Civil Action File No: 2020-CV-339937

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION TO STRIKE COUNTERCLAIMS

COME NOW Plaintiffs Nicole Wade, Jonathan Grunberg, Taylor Wilson, and Wade, Grunberg & Wilson, LLC (collectively, "Plaintiffs"), and respectfully file this brief in support of their Motion to Strike Counterclaims pursuant to O.C.G.A. § 9-11-11.1 (the "Motion"), showing this Honorable Court as follows.

INTRODUCTION

As a well-settled matter of Georgia law, Defendant Lin Wood's ("Wood") two substantive counterclaims for defamation and false light invasion of privacy must be dismissed because they are based entirely on statements in Plaintiffs' Verified Complaint and Verified First Amended Complaint (collectively, the "Complaints" or "Compls."). The statements in the Complaints are protected by a statutory privilege, which has protected Georgia litigants since at least 1888. O.C.G.A. § 51-5-8 provides that all allegations "contained in regular pleadings filed in a court of competent jurisdiction, which are pertinent and material to the relief sought . . . are privileged."

Georgia courts hold that the privilege in O.C.G.A. § 51-5-8 is "absolute" – as opposed to

"conditional" like the privileges set forth in O.C.G.A. § 51-5-7 – which means it cannot be overcome by malice or a lack of good faith: "[h]owever false and malicious such charges, allegations, and averments may be, they shall not be deemed libelous." O.C.G.A. § 51-5-8. Under well-established Georgia law, there is no inquiry to be made regarding the motive for the publication of the allegations in the pleading – as long as the allegations are relevant to the proceeding, they are absolutely privileged. The Georgia Supreme Court has held unequivocally that "*'[a]bsolute' means at all times and without any exceptions.*" *Dixie Broad. Corp. v. Rivers*, 209 Ga. 98, 107 (1952) (emphasis added).

There is no question that under the statutory absolute privilege, the allegations contained in the Complaint are relevant to this proceeding and Plaintiffs' claim for fraud. Plaintiffs have alleged that Defendant Wood fraudulently induced Plaintiffs to enter into the subject Settlement Agreement[1] with a present intention not to perform. All of the allegations in Plaintiffs' Complaint that Defendant Wood targeted in his counterclaims provide detailed support for Wood's true motivations, explaining the circumstances and intent underlying his fraudulent refusal to pay.

Irrespective of their direct relevance to Plaintiffs' claims, Plaintiffs' allegations plainly relate to the parties' relationship giving rise to this dispute and are therefore relevant to the overall dispute. Moreover, in any case, a defendant's prior bad acts are *always* relevant evidence, especially when they are directed at the opposite party. *See Michelson v. United States*, 335 U.S. 469, 475-76 (1948).

Additionally, Wood's counterclaim for false light invasion of privacy fails because it is subsumed by the claim for defamation. Wood cannot strategically plead around defamation in a

[1] Terms that are not otherwise defined here bear the definition ascribed to them in the First Amended Verified Complaint.

vain attempt to avoid the defenses of truth and privilege. Nor can false light claims be brought in relation to a matter concerning Wood conducting his business. The law is clear that where a plaintiff seeks patronage of the public for his business, he has waived his right to be "let alone" in connection with the conduct of such business. *See Jaillett v. Georgia Television Co.*, 238 Ga. App. 885, 891 (1999). Thus, as a matter of law, Wood's false light claims fail independently of the absolute privilege.

There are numerous other bases upon which Plaintiffs could move to strike both of Wood's substantive counterclaims, including truth and lack of actual malice. Every allegation in Plaintiffs' Complaints is irrefutably true, as documented by Wood's own written word and recorded voice, with nearly all such documentary evidence having been previously provided by Plaintiffs to Wood and his counsel in March of this year prior to filing suit. The allegations in the Complaints are based solely on events that directly involved Plaintiffs. They alleged Wood's own words as demonstrative proof of his misconduct. Although Defendant Wood has opened the door and invited Plaintiffs to introduce the indisputable evidence proving the truth of their allegations and the falsity of Wood's allegations, Plaintiffs refuse to take that path at this time and thereby make this case a referendum on the truth of the objectionable lights alleged by Wood in his counterclaims. If for some reason Wood's counterclaims proceed, Plaintiffs will provide to the Court all recordings, transcripts of the recordings, voicemails, emails, and text messages evidencing Defendant Wood's behavior as described in the Complaints in support of a summary judgment motion.[2]

[2] There are a few factual points about which Plaintiffs feel compelled to advise this Court, because of the nature of Wood's counterclaims. As more specifically described in the fact section, one of the only discrete factual allegation Wood has denied in his counterclaims is that he assaulted Plaintiffs Grunberg and Wilson. The truth is that Wood has admitted to these assaults on multiple recordings. And because Wood's malicious denial of the assaults raises questions as to the truth of Plaintiffs' allegations, they must submit his admissions despite not moving on the issue of truth. Wood otherwise implicitly concedes the

Thus, no discovery is required for this motion as the Court does not have to reach any issues regarding truth or actual malice to strike the counterclaims – they should be dismissed pursuant to the absolute litigation privilege set forth in O.C.G.A. § 51-5-8. The false light claim additionally should be dismissed because it is subsumed by the defamation claim and because Wood's behavior in the conduct of his business cannot be subject to a false light claim. The attorneys' fee claim should be dismissed because it is dependent on the two substantive counterclaims. Wood's counterclaims bear all of the hallmarks of a strategic lawsuit against public participation (a "SLAPP"), in that they are a meritless and malicious attempt to drive up the costs of litigation in a continued campaign to render Plaintiffs "broke and essentially homeless." They should be stricken and dismissed by this Court.

PROCEDURAL AND FACTUAL BACKGROUND

Plaintiffs Wade, Grunberg, and Wilson were partners of Defendant L. Lin Wood, P.C. ("LLW PC"), where they worked with Defendant Wood. Plaintiffs Wade, Grunberg, and Wilson left the firm on February 14, 2020, because of Wood's outrageous behavior and unlawful misconduct, as discussed in the Complaints. (*See*, *e.g.*, Verified Compl. ("Compl." ¶¶ 3, 52, 106, 113, 1116-19, 124, 127-29; 1st Am. Ver. Compl. ("Am. Compl.") ¶¶ 3, 55, 111, 116, 119-22, 127, 130-32).

When Plaintiffs Wade, Grunberg, and Wilson left the firm, there were fees to be paid for work they had already done, including for a case that is central to this lawsuit: the Disputed Case. (Compl. 5, 89-92; Am. Compl. ¶¶ 5, 94-97). Since that time, Plaintiffs Wade, Grunberg, and Wilson have tried to resolve their dispute over fees with Defendants outside of court multiple times. (Compl. ¶¶ 85-86, 100, 104; Am. Compl. ¶ 88-89; 91, 105, 109.)

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truth of every single factual allegation in Plaintiffs' Complaint, and strains to avoid lying to the Court by simply lumping the statements into an exhibit while alleging that those true statements convey something else false about Wood.

First, three days after Plaintiffs left Defendant LLW PC, the parties entered into an agreement dividing the fees on cases for which Plaintiffs did the lion's share of the work. (Compl. ¶¶ 85, 89; Am. Compl. ¶¶ 88, 94). Two days later, on February 19, Defendants reneged. (*See, e.g.,* Compl. ¶¶ 147-49; Am. Compl. ¶¶ 150-52).

Second, on March 17, 2020, the parties executed the Settlement Agreement, which includes a mutual release of claims, Defendants' promise to refrain from disparaging Plaintiffs, and splits on fees that generally mirror the oral agreement Defendants reneged on. (Compl. ¶ 86, Ex. A; Am. Compl. ¶ 91, Ex. A). Under the Settlement Agreement, Defendants owed Plaintiffs a liquidated sum for three cases, which included the Disputed Case, minus a sum Plaintiffs were paying towards Defendants' lease obligation: "LLW PC shall pay the state portion of said fees for the [Disputed Case and two others] . . . to WGW, minus the lease amount referenced . . . below." (Compl. ¶ 4, Ex. A at § 1.B; Am. Compl. ¶ 4, Ex. A at § 1.B).

More than one month before Plaintiffs filed this lawsuit, Defendants refused to honor the written Settlement Agreement's provision for paying fees on the Disputed Case, placing the blame on the Disputed Client. Defendants pointed to Georgia Rule of Professional Conduct 1.5(e)—which requires client consent to spilt "fee[s] between lawyers who are not in the same firm." (Compl. ¶¶ 7, 96, 99-100; Am. Compl. ¶¶ 7, 101, 104-05). Incredibly, Defendants have argued they were not in the same firm with the individual Plaintiffs, (Compl. ¶ 7; Am. Compl. ¶ 7), despite the Settlement Agreement expressly acknowledging that Plaintiffs "worked as lawyers of L. Lin Wood, P.C.," (Compl. Ex. A (recitals); Am. Compl. Ex. A (recitals)), and despite holding out the individual Plaintiffs as lawyers of Defendant LLW PC on every pleading filed across the country, on engagement agreements, on Defendants' website, on business cards, and elsewhere. (*See, e.g.*, Compl. ¶¶ 10, 24-76; Am. Compl. ¶¶ 10, 27-79). Because Rule 1.5

does not "regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm," *see* Rule 1.5, cmt. 8, it is irrelevant that the Settlement Agreement was entered into one month after Plaintiffs left the firm. Defendants' rationale for refusing to honor the Settlement Agreement simply defies the law and reality: because Plaintiffs were associated with Wood as attorneys of LLW PC, the Disputed Client's consent is irrelevant.

Third, after Defendants breached the Settlement Agreement, Plaintiffs negotiated with them in good faith, providing them with law on Rule 1.5 demonstrating the absurdity of their position, and sending them a draft complaint setting forth the clear breach of contract claims as well as the fraud and fraud in the inducement claims. (Compl. ¶ 100; Am. Compl. ¶ 105). Plaintiffs postponed filing this lawsuit several times to continue negotiating with Defendants, during which time Defendant Wood violated the Settlement Agreement's non-disparagement clause. *(*Am. Comp. ¶¶ 17, 225-27). He called and emailed various clients, accusing Plaintiffs of criminal extortion and other wrongdoing. **(**Am. Comp. ¶¶ 17, 225-27). Ultimately, Defendants did not offer even a "thin dime" to resolve their second breach. Instead, Defendants claimed Plaintiffs owed them hundreds of thousands of dollars. (Compl. ¶ 96; Am. Compl. ¶ 101).

I. Plaintiffs' Complaints

On August 31, 2020, Plaintiffs sued Defendants for breach of the Settlement Agreement, fraud in the inducement, bad faith, and punitive damages. (Compl. *passim*). After the Verified Complaint was filed, Defendants took to mainstream and social media to disparage Plaintiffs – continuing their bad faith breaches of the Settlement Agreement. (Am. Comp. ¶¶ 228-35). Within days, Plaintiffs then filed their First Amended Verified Complaint to add a claim for breach of the non-disparagement clause, to seek an emergency injunction to prevent further

disparagement,[3] and to clarify the fraud claim. (Am. Compl. *passim*).

Plaintiffs' fraud claim alleges that Defendants executed the Settlement Agreement while *not* intending to honor its terms, including as demonstrated by Defendants' course of conduct. (Compl. ¶¶106-84; 201; Am Compl. ¶¶ 111-88; 206-12). Under clear Georgia law, that's fraud. But like most people who commit fraud, Defendant Wood will not admit it – leaving Plaintiffs to rely on circumstantial evidence to prove it. Plaintiffs' Complaints do just that.

Plaintiffs' Complaint has a section aptly titled "Detailed Facts Pertinent to Fraud Claims," which describes the parties' course of conduct in the lead up to the dissolution of the firm and the negotiation of the Settlement Agreement. (Compl. ¶¶ 106-84; Am. Compl. ¶¶ 111-88). To peer into Wood's mind and discern his fraudulent motive and intent, Plaintiffs set out a pattern of Wood's abuse, threats, physical violence, and other outrageous conduct towards them, including his countless guarantees that he would not pay Plaintiffs "one thin dime" on the Disputed Case or otherwise. (*See, e.g.*, Compl. ¶¶ 106-84; Am. Compl. ¶¶ 111-88). The core of Plaintiffs' fraud allegations about Defendant Wood's conduct are his recorded or written quotes. (*See, e.g.*, Compl. ¶¶ 113, 117, 119, 121, 124, 133-34, 136-45, 147, 149-51, 153-56, 159, 161-62; Am. Compl. ¶¶ 116, 120, 122, 124, 127, 136-37, 139-48, 150, 152-54, 156-59, 162, 164-65). Most of these irrefutable statements form the basis for Wood's eventual frivolous counterclaim for false light. (*See, e.g.*, Countercl. Ex. D (citing Am. Compl. ¶¶ 116, 127, 137, 139-41, 144-47, 150, 154, 156, 162)).

The Complaints state that "[b]eginning in the fall of 2019 and continuing through 2020, Defendant Wood's behavior became increasingly erratic, hostile, abusive, and threatening toward Plaintiffs." (Compl. ¶¶ 106, 113; Am. Comp. ¶¶ 111, 116). The Complaints allege that

[3] On October 8, 2020, this Court issued an interlocutory injunction barring Defendants from further violations of the non-disparagement clause.

during that period, Wood committed assault and battery on both Plaintiffs Grunberg and Wilson. (Compl. ¶ 112; Am. Comp. ¶ 115).

The Complaints then describe that on February 10, 2020, Plaintiffs finally "confronted Defendant Wood about his behavior," which immediate resulted in Wood threatening to withhold payment in the Disputed Case, stating that leaving his firm would be "professional suicide," advising "that he was going to destroy Plaintiffs Grunberg and Wilson," and temporarily terminating Defendants' association with Wade, Grunberg, and Wilson—while indicating that he would only be paying Plaintiffs quantum meruit on the matters subject of the Settlement Agreement. (Compl. ¶¶ 116-19; Am. Comp. ¶¶ 119-22). In short, from the get-go, Wood threatened to do much of what he ultimately attempted to do by refusing to honor the Settlement Agreement, and he did so out of his repeatedly stated desire and threat to harm Plaintiffs personally, financially, and professionally.

The Complaints then turn to Wood rescinding his termination of Plaintiffs, leading to an unhinged 3.5-hour conference call with Plaintiffs on February 13, 2020. (Compl. ¶ 124; Am. Comp. ¶ 127). During that call, Wood repeatedly "referred to himself as Almighty; offered to fight the individual Plaintiffs to the death; demanded the Plaintiffs' undying loyalty; threatened to 'hurt' the Plaintiffs; offered to have the Plaintiffs stay in the firm; and called Plaintiff Grunberg a 'Chilean Jew' and demanded that he admit he does not look like the other lawyers in the firm." (Compl. ¶ 124; Am. Comp. ¶ 127). All such actions and statements categorically demonstrate Defendant Wood's disdain for the Plaintiffs, his belief that his actions cannot be judged, and his stated intent to destroy Plaintiffs as he later attempted to do by breaching the clear terms of the Settlement Agreement.

The next day, on February 14, 2020, Plaintiffs "determined that they could no longer

practice law with Defendant Wood and terminated their association with Defendants." (Compl. ¶¶ 52, 129; Am. Comp. ¶¶ 55, 132).

The Complaints go on to describe Wood's erratic, abusive, and outrageous behavior, as he swung wildly from vile attacks and false accusations against Plaintiffs, to saccharine pleas to get the firm back together. On February 15, 2020, at 1:42 a.m., Wood e-mailed Plaintiff Wilson and 13 others threatening to bring down "the wrath of God" and referencing punishment "at the discretion of Almighty God." (Compl. ¶ 133; Am. Comp. ¶ 136). Two hours later, Wood e-mailed Plaintiffs and 9 others, falsely accusing Plaintiffs of criminal conduct and stating that Plaintiffs "are going to be ruined financially," that they would not "**get one thin dime from** [Wood] on any case," that Wood would "**get you [Plaintiffs] back to where you belong. Broke and essentially homeless**," that Wood "will deliver a fiery judgment against you on earth," and that Wood was "going to teach you all a lesson that you are going to learn." (Compl. ¶ 134; Am. Comp. ¶ 137 (emphasis added)). Later that morning, Defendant Wood again e-mailed Plaintiffs and 9 others, stating, among other things, that he "will make sure you never practice law again ever if you do not admit your sins" and would "learn that information" from Plaintiffs "in a criminal case" and "in a civil case." (Compl. ¶ 133; Am. Comp. ¶ 139).

The Complaints allege that on February 17, 2020, Defendant Wood filed a false criminal complaint against Plaintiffs with the FBI, referring to them as "former members of my law firm of L. Lin Wood, P.C." (Compl. ¶ 139-40; Am. Comp. ¶¶ 142-43). That same morning, Wood left Plaintiff Wilson a voicemail, stating "I'm gonna burn your asses" and that Wilson is "gonna rot in hell when [Wood is] done with you." (Compl. ¶ 141; Am. Comp. ¶ 144). A few minutes later, Wood left another voicemail for Wilson stating that he is "not gonna get one thin dime" from Wood, that Wilson will soon be in jail, and that if Wood was with Wilson, he would "beat your

ass with a switch till you couldn't sit down for 20 [expletive] years." (Compl. ¶ 142; Am. Comp. ¶ 145). That same day, Wood left a voicemail for Plaintiff Grunberg stating he is "not gonna get one thin dime from" Wood, that he is going to jail, and that Grunberg better be "glad you're not with me in an elevator right now [where Wood had physically assaulted him months before]." (Compl. ¶ 143; Am. Comp. ¶ 146).

Defendant Wood then sent a series of e-mails referring to Plaintiffs as his "law partners" and "former members of" his firm. (Compl. ¶¶ 144-45; Am. Comp. ¶¶ 147-48). Clearly, such statements show that his subsequent position that Plaintiffs were not his "law partners" is the result of bad faith and show a pattern of fraud to deny facts Defendants know to be true in order to harm Plaintiffs, all taking place approximately one month before executing the Settlement Agreement.

The Complaints then allege that the very same day as Wood's false FBI report and his outrageous threatening voicemails, Defendants settled their fee dispute with Plaintiffs – the very same fees Plaintiffs would again attempt to resolve through the Settlement Agreement. (Compl. ¶ 85; Am. Comp. ¶¶ 88-89). And then the next day, February 18, Wood sent an email admitting to being a "dumb ass or worse" for filing the false FBI report, recanting his accusations against Plaintiffs, and stating "I hope and pray that my own law partners [i.e., Plaintiffs] at the present time and all of the individuals who serve me so well at my firm will be willing to forgive me and continue to practice with me in the profession I love dearly . . . ." (Compl. ¶ 144; Am. Comp. ¶ 147).

But, as the Complaints detail, the next day (February 19) Defendants reneged and stated they would "have to hold every dime of your money against your liability" and that Wood would not "pay you one thin dime in satisfaction of your legal obligations." (Compl. ¶¶ 85, 147-49;

Am. Comp. ¶¶ 89, 150-152). Again, Defendant Wood showed his intent to defraud the Plaintiffs by never paying the fees he owed to his "former partners." Wood's ire continued to build throughout February 19, as he began threatening to hurt Plaintiffs "in the court of public opinion," while again referring to himself as Plaintiffs' law partner. (Compl. ¶ 150; Am. Comp. ¶ 153).

The Complaints allege that on February 20, Wood reiterated that if Plaintiffs want to sue Defendants, "you're gonna lose" because Wood's "got ya every which way, coming and going," and Plaintiffs risk "getting crushed by me, and I got the power to do it." (Compl. ¶ 151; Am. Comp. ¶ 154). He left another voicemail for Wilson the same day, stating that Wilson has "set it up where I could destroy you," presumably referring to the February 17 agreement Wood did not intend to honor. (Compl. ¶ 153; Am. Comp.¶ 156).

The Complaints go on to allege the following conduct. Two days later, on February 22, Wood stated that the client in the Disputed Case "will only agree at best to pay to WGW quantum meruit for services … which will be very difficult for WGW to calculate." (Compl. ¶ 154; Am. Comp. ¶ 157). The same day, Wood e-mailed Plaintiffs stating that "litigation will destroy the chances [Plaintiffs] have of building a successful and financially viable law firm" and he "will not pay Nicole Wade any money on the" Disputed Case. (Compl. ¶ 155; Am. Comp. ¶ 158). On February 25, Wood again reiterated via e-mail to Plaintiffs' counsel that he "shall not voluntarily pay you or your clients one thin damn dime." (Compl. ¶ 156; Am. Comp. ¶ 159). On March 3, Wood left an ominous voicemail for Plaintiff Wilson's wife stating he loved her and her family and she's "gonna learn some things" that will "sound bad" for her and Plaintiff Wilson, but that Wood was not "gonna let anybody get hurt too badly." (Compl. ¶ 159; Am. Comp. ¶ 162). She found this terrifying. (Compl. ¶ 159; Am. Comp. ¶ 162). He reiterated on

March 4 that Plaintiffs "may rest assured that I shall never voluntarily pay . . . [them] one thin damn dime" and that Plaintiffs may "find themselves prohibited from engaging in the practice of law in the State of Georgia in the future." (Compl. ¶ 161; Am. Comp. ¶ 164).

The Complaints then allege that when Defendants "entered into the Settlement Agreement on March 17, they "were intent on forestalling a lawsuit by Plaintiffs Wade, Grunberg, and Wilson that would reveal Defendant Wood's indisputable pattern of violent, abusive, and erratic behavior supporting claims for assault, battery, intentional infliction of emotional distress, and defamation." (Compl. ¶ 164; Am. Comp. ¶ 167). The Complaints further provided indicia of Wood's motivations for defrauding Plaintiffs, stating that:

> Wood had repeatedly voiced his concerns about his misconduct being disclosed as he feared it would interfere with his imminent receipt of the Presidential Medal of Freedom and appointment as Chief Justice of United States Supreme Court. The latter belief was based, in part, on (1) a decade-plus old "prophecy" Defendant Wood heard in a YouTube video, and (2) a conspiracy theory that Chief Justice Roberts would be revealed to be part of Jeffrey Epstein's sex trafficking ring and was being blackmailed by liberals to rule in their favor.

(Compl. ¶ 164; Am. Comp. ¶ 167). Although Plaintiffs are not arguing the truth of these matters at this time as a defense, suffice to say that all such allegations are supported by Defendant Wood's own words, either in writing or recordings.

On March 17, 2020, the parties executed the Settlement Agreement, but not before Defendants attempted to plant a false recital supporting their eventual refusal to honor the agreement based on the Disputed Client's alleged refusal to consent to the division of fees. (Compl. ¶¶ 12, 165-73; Am. Comp. ¶¶ 12, 168-76). Defendants' false poison pill stated that Plaintiffs were merely "co-counsel" on "a case-by-case basis" with Defendant LLW PC rather than lawyers of the firm. (Compl. ¶ 166; Am. Comp. ¶ 169). Ultimately, the Settlement Agreement itself recited the truth at Plaintiffs' insistence, after four drafts edited solely by

Defendants: that Plaintiffs at all times "worked as lawyers of L. Lin Wood, P.C. on cases since 2018." (Compl. ¶¶ 163-73; Am. Comp. ¶¶ 166-76).

Finally, the Complaint summarized the course of conduct demonstrating Defendants' fraudulent intent and motive, leading to their refusal to honor their promise to pay Plaintiffs:

> In summary: (1) after months of repeatedly reiterating that Plaintiffs were partners and otherwise associated in Defendants' law firm LLW PC, falsely accusing Plaintiffs of various crimes, threatening them with various fantastical civil liabilities, making up various acts allegedly committed by Plaintiffs, assaulting and battering Plaintiffs Grunberg and Wilson, repeatedly reiterating that Defendants would never pay Plaintiffs "one thin dime" on the cases subject of the Settlement Agreement, repeatedly claiming Defendant Wood would destroy Plaintiffs' careers, and making repeated threats of physical harm against Plaintiffs Grunberg and Wilson, Defendants executed a Settlement Agreement promising to pay Plaintiffs a lump sum on various cases in return for which Plaintiffs made financial concessions totaling hundreds of thousands of dollars and giving Defendants a release for their conduct specifically in order to avoid filing this lawsuit; and (2) after executing the Settlement Agreement, Defendants made good on their repeated statements that they would never pay Plaintiffs "one thin dime" by claiming that the client in the Disputed Case, for whom Defendants were and remain counsel, 59 refused his consent to the compensation required by the Settlement Agreement, which Defendants claimed was required because, despite the conduct described herein, it is Defendants' position that Plaintiffs were never associated with Defendants' law firm.

(Compl. ¶ 184; Am. Comp. ¶ 188).

II. Wood's Frivolous Counterclaims

Despite being a seasoned defamation attorney, on November 9, 2020, Wood filed frivolous counterclaims against Plaintiffs for defamation and false light that should fail for many reasons – ranging from absolute privilege, to truth, to the opinion defense, to the absence of actual malice, to Wood's blatant attempt to plead around defamation by alleging a false light claim in which he does not dispute the truth of any of the discrete factual allegations. The only reasonable inference to be drawn from Wood's filing of these frivolous counterclaims – and the torrent of his other failed filings in this Court and the Court of Appeals – is that Wood is trying

to inflict undue legal expenses and delay upon Plaintiffs. This is the very conduct targeted by Georgia's Anti-SLAPP statute.

Wood's defamation counterclaim targets Plaintiffs' allegations of his documented misconduct and unlawful behavior. Paragraph 36 states Plaintiffs defamed Wood by alleging that "over the past two years, Mr. Wood's behavior has become 'increasingly erratic, hostile, abusive, and threatening toward Plaintiffs Wade, Grunberg, and Wilson, as well as many other individuals.'"[4] Paragraph 37 complains of allegations that Wood engaged in "'abusive, incoherent phone calls, voicemails, texts, and emails' in which Mr. Wood allegedly professed that 'God or the Almighty was commanding his actions.'" Paragraph 38 challenges the allegations that Wood assaulted and battered Plaintiffs Grunberg and Wilson.[5] And paragraph 39 takes issue with Plaintiffs' allegation that "Wood has an 'indisputable pattern of violent, abusive, and erratic behavior supporting claims for assault, battery, intentional infliction of emotional distress, and defamation.'" In short, Wood takes issue with Plaintiffs' accurate summaries of the evidence of Wood's misconduct and unlawful behavior and their conclusions as to what it shows.

Wood's counterclaim for false light points to all but one of the same paragraphs (and more) as the defamation counterclaim, while adding an additional gripe that Plaintiffs purportedly portrayed him as "obsessive," and attempting to support the false light counterclaim

[4] A cursory review of the Complaints show that Wood's "past two years" timeline is a fabrication, as Plaintiffs merely noted that Wood had sometimes been abusive before the Fall of 2019 (*see* Compl. ¶¶ 106-07; Am. Compl. ¶¶ 111-12) —which Wood himself admitted in an email. (Compl. ¶ 113; Am. Compl. ¶ 116).

[5] There are a few instances in which Wood openly challenges the truth of certain claims in Plaintiffs' Complaints, while tacitly admitting to the balance of them. While Plaintiffs will not challenge truth in this Motion or burden the Court with recordings or transcripts in the hopes of not publicly filing these materials, Wood has admitted to each of these assaults on recording.

by arguing that Wood's own quotes were incomplete and taken out of context. (*Compare* Countercl. defamation count citing Am. Compl. ¶¶ 111-12, 114-15, 167, 188, 216 *with* Countercl. false light count also citing Am. Comp. ¶¶ 111-12, 114-15, 167, 188, and additionally citing 21 other paragraphs).

The gist of Wood's false light counterclaim is that Plaintiffs' "allegations were drafted to give the public the misimpression that Mr. Wood is mentally unstable, abusive, obsessive, and harbors some sort of God-complex, including delusions of grandeur," although Plaintiffs did not allege that Wood is mentally unstable, delusional, or has a God-complex, conclusions Wood arrived at of his own accord after reviewing Plaintiffs' Complaints. (Countercl. ¶ 55).

At this time, Plaintiffs will not indulge Wood's invitation to reveal the full scope of his behavior and burden the Court with these factual issues. Plaintiffs' arguments on privilege and other legal issues are sufficiently strong to set aside the issues of truth and actual malice, for now. But this is not a concession. Plaintiffs' allegations are verified and supported by all three individual Plaintiffs who actually have Wood's recorded and written statements admitting to such behavior. Wood is of course free to disclose the full recordings, emails, and text messages Plaintiffs provided to him and his counsel in March 2020.[6]

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[6] For the same reasons previously stated, including that Wood has accused Plaintiffs of falsely alleging he has a God-complex and delusions of grandeur, Plaintiffs feel compelled to advise the Court that Wood's own recorded words speak for themselves: "You're sitting with Lin Wood. Or has the second coming already started? Maybe I'm here. You want to take the risk that you might be wrong. And I might actually be Christ coming back for a second time in the form of an imperfect man, elevating Christ consciousness. That cause you to have a little bit of a chill? Who would be more eloquent to say what the will of God is, the belief of God in me. I represent Moses. I represent Ananias the believer. I'm like the power of King David. Now look you all, I told you I was going to pray tonight to my God, not to myself, because to me there's God and there's me."

[7] While there are cases stating that O.C.G.A. § 51-5-8 applies only to libel claims, *none of those cases addresses claims for false light*, and therefore none of those courts addressed the *Dixie* and *Dennis* line of cases. *See Morrison v. Morrison*, 284 Ga. 112, 113 (2008) (holding that where

ARGUMENT

I. Standard on Special Motion to Strike Pursuant to Anti-SLAPP Statute.

Commonly referred to as Georgia's Anti-Strategic Lawsuits Against Public Participation Statute (the "Anti-SLAPP"), O.C.G.A. § 9-11-11.1 provides a procedural mechanism to strike a lawsuit "at the outset of litigation" that chills a person's right to free speech. *Geer v. Phoebe Putney Health Sys., Inc.*, -- Ga. --, 849 S.E.2d 660, 663 (2020). "[W]holesale revision[s]" to the Anti-SLAPP statute were made by the Georgia legislature in 2016, strengthening the statute to combat lawsuits "filed with the intent to silence and intimidate opponents or critics by overwhelming them with the cost of a legal defense until they abandon that criticism or opposition." *Wilkes & McHugh, P.A. v. LTC Consulting, L.P.*, 306 Ga. 252, 252 (2019); *Neff v. McGee*, 346 Ga. App. 522 (2018), *cert. denied* (Apr. 1, 2019) (citing *Rogers v. Dupree*, 349 Ga. App. 777 (2019)); *cf. Barnett v. Holt Builders, LLC*, 338 Ga. App. 292, 297 (2016) (holding that irrespective of Anti-SLAPP's purpose, "a party's subjective belief" as to whether it was filed to deter speech is irrelevant, and instead "the statute applies to any claim arising from any act that could reasonably be construed as one done in furtherance of the right of free speech or the right

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"this case does not involve a claim for libel or any defamation," the trial court erred in applying the absolute privilege to a fraud claim because O.C.G.A. § 51-5-8 "explicitly applies only to libel claims"); *Renton v. Watson*, 319 Ga. App. 896, n.4 (2013) (holding that emotional distress claims were not protected by absolute privilege because "OCGA § 51-5-8 applies only to libel claims"); *Cumberland Contractors, Inc. v. State Bank & Tr. Co.*, 327 Ga. App. 121, 125 n.4 (2014) (holding that claim for public disclosure of private facts based on disclosure of social security number in an exhibit attached to the complaint was not protected by the absolute privilege in O.C.G.A. § 51-5-8). In each of these cases, the statement regarding the applicability of O.C.G.A. § 51-5-8 was not made in the context of applying it to a claim for false light, which means that those cases are not controlling in this case where the issue is squarely presented. *See, e.g.*, *Little v. Fleet Finance*, 224 Ga. App. 498, 501 (1997) ("Statements and comments in an opinion concerning some rule of law or legal proposition not necessarily involved nor essential to determination of the case in hand are obiter dicta, and lack the force of an adjudication.") (quotation omitted). The only courts in Georgia to address the applicability of O.C.G.A. § 51-5-8 specifically to a claim for *false light* have held that it bars such claims.

to petition government") (citations omitted).

Following the 2016 revisions, it is "clear that the analysis of an anti-SLAPP motion involves two steps. First, the court must decide whether the party filing the anti-SLAPP motion … has made a threshold showing that the challenged claim is one 'arising from' protected activity." *Wilkes*, 306 Ga. at 261-62 (citations omitted). "A defendant meets its burden by demonstrating that the act underlying the challenged claim 'could reasonably be construed as' fitting within one of the categories spelled out in subsection (c)" of the Anti-SLAPP." *Id.* at 262 (citations omitted). Thus, here, Plaintiffs must show that filing the Complaints can be construed as an act in furtherance of Plaintiffs' right to petition or free speech under the Constitution.

Second, once this threshold showing is made, the "burden then shifts to the plaintiff to demonstrate that there is a 'probability' that she will prevail on her claims at trial." *Neff*, 346 Ga. App. at 524-25 (citation omitted). "Unlike the former versions of the anti-SLAPP statute … the current version of the statute contemplates a substantive, evidentiary determination of the plaintiff's probability of prevailing on his claims." *Rosser v. Clyatt*, 348 Ga. App. 40, 43 (2018), *cert. denied* (Apr. 1, 2019). A "probability" of prevailing requires that "the plaintiff must demonstrate that the complaint," (here, the counterclaims), "is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited," with the plaintiff's evidence being "accepted as true." *Wilkes*, 306 Ga. at 262 (citations omitted). If the plaintiff can make such a showing, "the defendant's evidence is evaluated to determine if it defeats the plaintiff's showing as a matter of law." *Id.* (citations omitted).

In making the "probability" determination called for by the Anti-SLAPP, "the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the

liability or defense is based." O.C.G.A. § 9-11-11.1(b)(2); *Neff*, 246 Ga. App. at 525.

II. The Anti-SLAPP Statute Applies to Wood's Counterclaims.

The Anti-SLAPP statute applies to Wood's counterclaims because they are based entirely on statements made by Plaintiffs in pleadings filed in this lawsuit. The Anti-SLAPP applies to any "claim for relief against a person or entity arising from any act of such person or entity which could *reasonably be construed* as an act in furtherance of the person's or entity's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern." O.C.G.A. § 9-11-11.1(b)(1) (emphasis added). More specifically, the Anti-SLAPP applies to:

> (1) Any written or oral statement or writing or petition made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) Any written or oral statement or writing or petition made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) Any written or oral statement or writing or petition made in a place open to the public or a public forum in connection with an issue of public interest or concern; or (4) Any other conduct in furtherance of the exercise of the constitutional right of petition or free speech in connection with a public issue or an issue of public concern.

O.C.G.A. § 9-11-11-1(c).

Although all four disjunctive tests are satisfied here, the Court must look no further than the first category, in that every statement forming part of Wood's counterclaims was exclusively set forth in Plaintiffs' Complaints in this matter. *See Hawks v. Hinely*, 252 Ga. App. 510, 513 (2001) (holding that Anti-SLAPP statute encompasses statements made in a case initiating document, i.e., a complaint, as well as those made in already existing proceedings).

As Plaintiffs' Complaint constitutes written statements and petitions in a judicial proceeding, Plaintiffs have discharged their burden of demonstrating the applicability of the anti-SLAPP statute to Wood's counterclaims.

III. Wood Cannot Show a Probability of Prevailing on his Counterclaims.

There exists a litany of reasons why the counterclaims fail as a matter of law, but as discussed *supra*, Plaintiffs will address only those bases that do not require discovery or factual determinations of any nature. Thus, despite the fact that all of Plaintiffs' allegations are indisputably true and evidenced by Wood's own recorded words and writings, Plaintiffs are not moving to strike on the grounds of truth. Additionally, even though there is absolutely no basis on which Wood could show Constitutional actual malice by Plaintiffs in filing the allegations in their Complaint, Plaintiffs are not moving on the ground of lack of actual malice. Although Plaintiffs would be entitled to judgment on both of those grounds, for the sake of efficiency, Plaintiffs assert only the following bases at this time, which are sufficient for the Court to strike the counterclaims: *First,* the absolute litigation privilege in O.C.G.A. § 51-5-8 protects every statement Plaintiffs made in their Complaints and requires the dismissal of the counterclaims in their entirety. *Second*, the false light claim also fails because a) Wood's false light claims are subsumed by his defamation claim, and b) Wood has waived his right to be "let alone" in connection with his business activities..

A. Both Substantive Counterclaims Fail Because of the Absolute Litigation Privilege.

The Court may dispose of Defendant Wood's Counterclaims in their entirety based upon just one well-established principle of law: the absolute privilege afforded to litigation proceedings. In Georgia, allegations in pleadings are protected by an absolute privilege under O.C.G.A. § 51-5-8:

> All charges, allegations, and averments contained in regular pleadings filed in a court of competent jurisdiction, which are pertinent and material to the relief sought, whether legally sufficient to obtain it or not, are privileged. ***However false and malicious such charges, allegations, and averments may be, they shall not be deemed libelous***.

(Emphasis added). This statutory privilege has remained virtually unchanged since at least the Georgia Civil Code of 1910. "[C]ommunications which are afforded an absolute privilege cannot form the basis of a defamation action, regardless of the falsity of the statements or the speaker's malicious intent.…" *RCO Legal, P.S., Inc. v. Johnson*, 347 Ga. App. 661, 669 (2018) (affirming grant of Anti-SLAPP motion based upon absolute privilege). "The wisdom of so broad a privilege lies in the recognition that, without it, every complaint filed could generate a counterclaim for defamation," *Stewart v. Walton*, 254 Ga. 81, 81 (1985), and "is based upon a public policy determination that the importance of one's ability to be free from restraint when engaged in legal processes outweighs a defamed party's right to seek legal redress." *RCO Legal*, 347 Ga. App. at 669-70 (internal citation omitted).

The Georgia Supreme Court has on numerous occasions dating back to 1888 expressed in clear and unequivocal terms the breadth of the ***absolute*** privilege applicable to statements in pleadings:

> [A]ll allegations made in pleadings are absolutely privileged, provided they are material and relevant to the relief sought. . . . The preceding section of the Code [predecessor to 51-5-9] declares that, if a privileged communication . . . "is used merely as a cloak for venting private malice, and not bona fide in promotion of the object for which the privilege is granted, the party defamed shall have a right of action." [T]hat section . . . was dealing with a qualified or conditional privilege, and . . . those averments in pleadings . . . did not fall in that classification, because they were absolutely privileged. ***"Absolute" means at all times and without any exceptions. This simply puts such allegations beyond the reach of any suit of what ever nature to recover damages resulting therefrom. It means that the law has decreed that there can be no damages ever for such allegations***. . . . If they are not libelous, then manifestly no one can sue and recover damages alleged to have resulted therefrom. This absolute privilege completely protects the defendant from any liability for damages in a suit for libel based thereon, and that which the law prohibits directly it will never permit indirectly. This rule means that the mere naming of a suit which seeks to recover damages resulting from such libel something other than a direct suit for libel . . . can in nowise lift the absolute bar to recovery because of libelous allegations privileged under the Code.

Dixie Broad. Corp. v. Rivers, 209 Ga. 98, 107 (1952) (emphasis added); *see also Wilson v. Sullivan*, 81 Ga. 238, 276 (1888) ("The characteristic feature of absolute, as distinguished from conditional, privilege, is that in the former the question of malice is not open; all inquiry into good faith is closed."). Thus, O.C.G.A. § 51-5-8 confers an absolute privilege, "[h]owever false and malicious" the allegations may be, and Georgia courts have roundly rejected the notion that any kind of malicious motive is relevant to an absolute privilege. It is as it sounds: absolute. *See, e.g.,Saye v. Deloitte & Touche, LLP*, 295 Ga. App. 128, 131 (2008) ("Thus, communications which are afforded an absolute privilege cannot form the basis of a defamation action, regardless of the falsity of the statements or the speaker's malicious intent; conditionally privileged statements, on the other hand, are actionable upon a showing of malice.") (citing O.C.G.A. §§ 51-5-7, 51-5-8, 51-5-9); *Garner v. Roberts*, 238 Ga. App. 738, 740 (1999) ("The privilege is absolute, 'entirely freeing the party from any liability to the person injured by the words or the publication.'").

1. Georgia's absolute litigation privilege applies to both substantive counterclaims.

The absolute litigation privilege unquestionably applies to the defamation counterclaim under the plain terms of the statute. Wood's claim for "Defamation" alleges a libel claim under Georgia law. (*See* Countercl. ¶¶ 34-51). The statute is clear that statements in pleadings "shall not be deemed libelous." O.C.G.A. § 51-5-8.

The absolute litigation privilege also applies to the false light counterclaim. Following the *Dixie* decision cited above, courts in Georgia have recognized that "***the general rule is that evidence introduced in a legal proceeding which, as against a slander or libel action, would be absolutely privileged cannot be the subject of damages for the tort of invasion of privacy***."

Dennis v. Adcock, 138 Ga. App. 425, 429 (1976) (emphasis added); *Rothstein v. L.F. Still & Co.*, 181 Ga. App. 113, 115 (1986) (addressing claims for invasion of privacy, including false light, and holding that "the counterclaim fully recites the only acts complained of by appellant. These acts consist entirely of legal process, and as such they are absolutely privileged as to libel, they cannot be the subject of a claim for invasion of privacy, no matter what proof appellant could marshal at trial.").

Applying the absolute privilege makes logical sense because, "[i]n a false light case, the interest protected is clearly that of reputation, with the same overtones of mental distress as in defamation," *Brewer v. Rogers*, 211 Ga. App. 343, 349 (1993) (citations omitted), and because plaintiffs cannot plead around defamation by alleging defamatory statements to be false light. *Bollea v. World Championship Wrestling, Inc.*, 271 Ga. App. 555, 557 (2005) ("If the statements alleged are defamatory, the claim would be for defamation only, not false light invasion of privacy."); *see also Dixie*, 209 Ga. at 107 ("[T]he mere naming of a suit which seeks to recover damages resulting from such libel something other than a direct suit for libel . . . can in nowise lift the absolute bar to recovery because of libelous allegations privileged under the Code").[7]

[7] While there are cases stating that O.C.G.A. § 51-5-8 applies only to libel claims, *none of those cases addresses claims for false light*, and therefore none of those courts addressed the *Dixie* and *Dennis* line of cases. *See Morrison v. Morrison*, 284 Ga. 112, 113 (2008) (holding that where "this case does not involve a claim for libel or any defamation," the trial court erred in applying the absolute privilege to a fraud claim because O.C.G.A. § 51-5-8 "explicitly applies only to libel claims"); *Renton v. Watson*, 319 Ga. App. 896, n.4 (2013) (holding that emotional distress claims were not protected by absolute privilege because "OCGA § 51-5-8 applies only to libel claims"); *Cumberland Contractors, Inc. v. State Bank & Tr. Co.*, 327 Ga. App. 121, 125 n.4 (2014) (holding that claim for public disclosure of private facts based on disclosure of social security number in an exhibit attached to the complaint was not protected by the absolute privilege in O.C.G.A. § 51-5-8). In each of these cases, the statement regarding the applicability of O.C.G.A. § 51-5-8 was not made in the context of applying it to a claim for false light, which means that those cases are not controlling in this case where the issue is squarely presented. *See, e.g.*, *Little v. Fleet Finance*, 224 Ga. App. 498, 501 (1997) ("Statements and comments in an opinion concerning some rule of law or legal proposition not necessarily involved nor essential

Georgia's application of the absolute litigation privilege to claims for false light invasion of privacy is in accord with the general rule that has prevailed in American law since at least 1890. *See, e.g.*, Samuel D. Warren & Louis D. Brandeis, The Right to Privacy, 4 Harvard Law Rev. 193, 216 (1890) ("The right to privacy does not prohibit the communication of any matter, though in its nature private, when the publication is made under circumstances which would render it a privileged communication according to the law of slander and libel."), *cited in Cox Broad. Corp. v. Cohn*, 420 U.S. 469 (1975); David Elder, Privacy Torts § 4.10 ("Under the general rule applicable both to libel and false light cases, the policy of the law provides for an absolute privilege for '[a]nything said or written in a legal proceeding.'") (citation omitted); Restatement (Second) of Torts § 652F ("The rules on absolute privileges to publish defamatory matter . . . apply to the publication of any matter that is an invasion of privacy."); American Law of Torts § 30:37 ("Absolute and conditional privilege defenses against defamation are also available as defenses to false light claims."); "Applicability of defamatory absolute privileges to invasion of privacy actions," Am. Jur. Privacy § 183 (2d ed.) ("The rules on absolute privileges to publish defamatory matter apply to the publication of any matter that is an invasion of privacy. The circumstances under which there is an absolute privilege to publish matter that is an invasion of privacy are in all respects the same as those under which there is an absolute privilege to publish matter that is personally defamatory.").

O.C.G.A. § 51-5-8 therefore provides an absolute privilege in cases of defamation and false light where the statements made in litigation are pertinent and material to the relief sought.

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to determination of the case in hand are obiter dicta, and lack the force of an adjudication.") (quotation omitted). The only courts in Georgia to address the applicability of O.C.G.A. § 51-5-8 specifically to a claim for *false light* have held that it bars such claims.

2. The allegations at issue are pertinent and material to this lawsuit.

The *only* limitation on the applicability of the absolute privilege to statements made in the legal process is that the statements must be "pertinent and material to the relief sought." O.G.C.A. § 51-5-8. This is a determination to be made by the court. *See, e.g.*, *Finish Allatoona's Interstate Right, Inc. v. Burrus*, 131 Ga. App. 572 (1974) (holding "that the question of whether or not the allegations of a lawsuit are pertinent and material" is a question for the court, not a question of fact for the jury).

However, "**[s]trict materiality or relevancy is not required to confer the privilege; and in determining what is relevant or pertinent the courts are liberal, resolving all doubt in favor of relevancy or pertinency**." *Veazy v. Blair*, 86 Ga. App. 721, 725 (1952) (citing with approval Restatement (First) of Torts) (emphasis added). Both the First (1938) and Second (1977) Restatement of Torts § 587 makes this point explicitly. The general rule is that a "party to a private litigation … is absolutely privileged to publish defamatory matter concerning another … in the institution of … a judicial proceeding … if the matter *has some relation to the proceeding*." Restatement (Second) of Torts § 587 (emphasis added); *see also id.* cmt. c (providing that "[i]t is not necessary that the defamatory matter be relevant or material to any issue before the court" so long as "it has any bearing upon the subject matter of the litigation."); *Stewart v. Walton*, 254 Ga. 81, 81 (1985) (holding that allegations of cheating, swindling, and defrauding, "however fanciful or malicious, were nonetheless 'pertinent and material to the relief sought,' i.e., the conservation of assets"). Indeed, "while a party may not introduce into his pleadings defamatory matter that is entirely disconnected with the litigation, ***he is not answerable for defamatory matter volunteered or included by way of surplusage in his pleadings if it has any bearing upon the subject matter of the litigation***." Restatement (Second)

of Torts § 587 cmt. c (emphasis added).

There is no requirement in the statute or case law that the statements at issue should be admissible or immune from a motion to strike – those tests both require more strict examination of the relevance of the statements at issue. As in *Veazy,* the disparity between the evidentiary standard of relevancy and that connoted by the absolute privilege has been specifically discussed by courts in a variety of jurisdictions. *See, e.g.*, *Schafer v. Suckle*, 21 Wis. 3d 4425, 430-32 (1963) (collecting cases from multiple jurisdictions for the proposition that "[i]n considering whether allegations in a pleading are pertinent or relevant, it does not follow that the same tests are to be applied as on motions to strike out averments as irrelevant," and "the test for relevancy in cases in [motions to strike] is more stringent than the test for determining relevancy in cases involving alleged libel in connection with a judicial proceeding"); *Mahoney & Hagberg v. Newgard*, 729 N.W.2d 302, 308 (Minn. 2007) ("Therefore, in the context of absolute privilege, relevance is defined broadly, not limiting the privilege to statements that are 'legally' relevant, but permitting all statements that have reference, relation, or connection to the case."); *Sturdivant v. Seaboard Serv. Sys., Ltd.*, 459 A.2d 1058, 1059 (D.C. 1983) (acknowledging that absolute privilege encompasses "a standard broader than legal relevance"); *Priore v. Haig*, 196 Conn. App. 675, 707 (2020) ("the test is not one of legal relevance"). Thus, although each of Plaintiffs' allegations are probative of Wood's state of mind and intent, the relevance test to be applied is not a strict "legally relevant" standard. Instead, it is a liberal test requiring only that the allegations relate to the subject matter of the litigation. Here, Plaintiffs' allegations directly relate to their claims, no matter how much Defendants dislike that fact.

Plaintiffs' Complaints allege claims for fraud, punitive damages, and bad-faith attorneys' fees. These are matters requiring proof of Defendant Wood's state of mind, intent, and motive.

Wood focuses his counterclaims on allegations in the Complaints that are plainly probative of these issues and, in any case, are pertinent in that they concern the parties' relationship and conduct giving rise to this dispute. Plaintiffs' allegations explain the "why" of Wood defrauding Plaintiffs by executing the Settlement Agreement that he intended to breach, and hence are absolutely privileged given their pertinence to the subject matter of this case. Moreover, the allegations about which Wood complains are his own prior bad acts, which are highly relevant. *Michelson*, 335 U.S. at 475-76 (1948) (discussing relevance of prior bad acts).

Plaintiffs' Complaints make it clear that Defendants' fraud in executing the Settlement Agreement was part and parcel of a larger course of conduct, including Wood's previous threats to destroy Plaintiffs, and his attempt to avoid litigation concerning his malicious, abusive, violent, and distressing behavior. (*See* Am. Compl. ¶¶ 15-16, 167, 182, 188, 208, 210, 215-17, 219). More specifically, the allegations of Wood's misconduct shortly before entering into the Settlement Agreement are a window into Wood's mind and present intent not to perform at the time he executed the Settlement Agreement. (*See id.* ¶ 217 ("All of Defendant Wood's prior conduct leads to one inescapable conclusion – that he never intended to pay Plaintiffs. That conduct includes his assault and battery … additional threats of physical harm … repeatedly reiterating that he would never pay to Plaintiffs 'one thin dime' … repeated threats to destroy Plaintiffs' careers … making repeated false, fantastical, and malicious accusations of criminal conduct … making repeated fantastical threats that Plaintiffs would spend many years or the rest of their lives in prison … repeatedly threatening [Plaintiffs'] families …")). It is beyond reason to argue that a party's prior threats to harm and destroy the other party financially, professionally, and financially is irrelevant to an intentional tort case where that party's state of

mind is at issue.[8]

First – and this cannot be sufficiently stressed – on a macro-level, Plaintiffs' Complaints and the allegations at issue center around their relationship with Wood and its deterioration. This is the conduct that precipitated the break of up of Defendant L. Lin Wood, P.C. and that led to and forms the basis of this dispute, including the signing of the Settlement Agreement. It does not just relate to but is at the heart of the dispute, irrespective of being significant evidence of Wood's fraudulent and malicious intent. On that basis alone, the allegations are absolutely privileged and not subject to claims for defamation or false light. *See, e.g.*, *Westmont Maint. Corp. v. Vance*, P.3d 1149, 1153 (Utah 2013) (applying absolute privilege to allegations of "forgery, fraud, [and] extortion" despite not making legal claims for the same because a "statement need not be relevant or pertinent to the judicial proceeding from an evidentiary point of view for the privilege to apply" and the "statements relate broadly to the overall dispute between" the parties); *Schafer v. Suckle*, 21 Wis. 2d 425, 430-32 (1963) (finding absolute privilege for allegation in medical malpractice action that plaintiff tried to enlist defendant in insurance fraud because it "relates to a professional relationship out of which [plaintiff] claimed damages," and plaintiff's "conduct in this relationship, and its motivation, are material and relevant").

[8] On multiple occasions, the parties have touched upon the issue of Plaintiffs' fraud allegations because of Defendants' Motion to Strike paragraphs 111 through 188 of Plaintiffs' Amended Complaint and Defendants' Motion for Expedited Ruling on Motion to Strike. For ease and to conserve judicial resources, Plaintiffs incorporate their oppositions to each of those motions herein – which deal with a similar standard – and will focus on expounding on and highlighting issues related to the absolute privilege. Suffice to say that if Defendants lose their Motion to Strike, Plaintiffs will have necessarily won this SLAPP Motion, because the allegations about which Wood complains will have been deemed relevant. But the inverse is not necessarily true because the relevancy standard for determining privilege is even broader than that of a motion to strike.

Second, the allegations at issue concern Wood's own prior bad acts towards these very Plaintiffs. Irrespective of admissibility, a party's prior bad acts – especially as against the opposite party – are always relevant evidence. "The inquiry [into prior bad acts] is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them . . . ." *Michelson v. United States*, 335 U.S. 469, 475-76 (1948); *see also Samra v. Johal*, 2010 WL 55856, at *1 (W.D. Wash. Jan. 5, 2010) (denying motion to strike allegation in complaint concerning defendant's alleged prior bad conduct because, contrary to being irrelevant, "the impact of this evidence can be so great that other rules of evidence narrow the circumstances in which it can be admitted. ***Evidence of prior bad acts is relevant for purposes of Rule 12(f) even if it is not admissible under Fed. R. Ev. 404 and/or 406***.") (emphasis added).

Third, despite Plaintiffs not needing to meet an admissibility standard to confer the absolute privilege (and also to deny Defendants' motion to strike), the evidence of Wood's prior conduct toward Plaintiffs should be admissible evidence. The circumstances alluded to by *Michelson* and *Samra* above are spelled out clearly by Georgia's evidence code (and the federal counterpart): "Evidence of other crimes, wrongs, or acts … may be admissible *for [non character] purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity* . . . ." O.C.G.A. § 24-4-404(b). The code even specifies that "prior difficulties between the accused and the alleged victim" are especially relevant to prove these matters. *Id.*

Here, Wood's prior conduct toward Plaintiffs is especially relevant – not as general character evidence – but to demonstrate his motive, intent, preparation, plan, and knowledge, all of which are state of mind issues that are directly relevant to Plaintiffs' claims for fraud, punitive

damages, and bad faith. *See, e.g.*, *Smiley v. S & J Investments, Inc.*, 260 Ga. App. 493, 500 (2003) ("[T]he intent to defraud … requires proof of the knowledge of the falsity of the representation and the intent to deceive."); O.C.G.A. § 51-12-5.1 (to avoid cap on punitive damages, plaintiff must prove "that the defendant acted, or failed to act, with the specific intent to cause harm").

Defendant Wood's subjective state of mind at the time of entering into the Settlement Agreement that he breached is directly at issue in this case, and "[t]he issue being one of fraud, the range of circumstances [of proof] ought to be very wide. Fraud may not be presumed, but being in itself subtle, slight circumstances may be sufficient to carry conviction of its existence." *John W. Rooker & Assocs., Inc. v. Wilen Mfg. Co., Inc.*, 211 Ga. App. 519, 520 (1993) (cleaned up). As alleged by Plaintiffs' Complaint, Wood's prior conduct explains why he defrauded Plaintiffs, his motive for doing so, his intent to do so, and his knowledge that his claims for avoiding the Settlement Agreement are false (the Plaintiffs were not lawyers associated with his firm). Wood's prior conduct even lays out a plan to do so; i.e., to never pay Plaintiffs "one thin dime," to obtain a release from Plaintiffs for his prior conduct, and to avoid scrutiny as he was expecting to receive significant public accolades in the immediate future. Georgia cases have specifically found prior conduct between the parties relevant and material in the context of absolutely privilege cases. *See, e..g*, *Jasarevic v. Foster*, 335 Ga. App. 528, 529 (2016) (holding defendant doctor's allegation in answer that plaintiff "had made threatening statements during an appointment and he considered Jasarevic a threat to him and his staff" relevant to plaintiff's worker's compensation claim and therefore absolutely privileged); *Bennett v. Bellinger*, 40 Ga. App. 557 (1929) (holding "pertinent and material to the relief sought" "allegations as to the defendant's character … in that they indicated a continuance of the alleged false and malicious

statements to the plaintiff's clients, and furnished ground for the necessity and propriety of the injunction sought").

There is settled Georgia case law clarifying that while "similar transaction" evidence involving other parties is relevant, "prior difficulties" between the very parties in the case is even more so:

> Withers simply misses the mark when he refers to the encounters between him and Flowers as "similar transactions." Unlike similar transactions, prior difficulties do not implicate independent acts or occurrences, ***but are connected acts or occurrences arising from the relationship between the same people involved in the prosecution and are related and connected by such nexus***. Thus, the admissibility of evidence of prior difficulties does not depend upon a showing of similarity to the crime for which the accused is being tried. ***Evidence of the defendant's prior acts toward the victim, be it a prior assault, a quarrel, or a threat, is admissible*** when the defendant is accused of a criminal act against the victim, ***as the prior acts are evidence of the relationship between the victim and the defendant and may show the defendant's motive, intent, and bent of mind in committing the act against the victim*** … being prosecuted. ***Evidence of the prior belligerent transactions between Withers and Flowers were clearly admissible as prior difficulties.***

Withers v. State, 282 Gag. 656, 658-59 (2007) (internal citations omitted); *see also Todd v. State*, 230 Ga. App. 849, 851 (1998), *overruled on other grounds by Johnson v. State*, 272 Ga. 486 (2000) (holding prior difficulties between parties admissible to show "state of mind, i.e., intent" and noting that "evidence concerning prior difficulties [the parties] have experienced in their relationship is relevant" because it is a "whole cloth woven of the many threads of dependent, connected actions and incidents that occurred between them").

The types of intentional tort cases in which prior bad acts evidence has been held not only relevant, but admissible, is far and wide. *See, e.g.*, *Demers v. Adams Homes of Nw. Fla., Inc.*, 321 Fed. App'x 847, 853-54 (11th Cir. 2019) (holding in a discrimination case that "wide evidentiary latitude must be granted to those attempting to prove discriminatory intent … thus, discriminatory intent may be proven by direct or circumstantial evidence, such as that admitted

under 404(b)"); *Wycoff v. Metro. Life Ins. Co.*, 2006 WL 3087690, at *2 (W.D. Pa. Oct. 27, 2006) ("Defendants' intent, for example, is relevant to a claim of deception; prior wrongs may be relevant to demonstrate intentional conduct."); *Troncalli v. Jones*, 237 Ga. App. 10, 16 (1999) (holding admissible in a sexual assault case testimony by a third party regarding a similar alleged sexual assault "to show bent of mind or course of conduct"); *John W. Rooker & Assocs., Inc.,* 211 Ga. App. at 520 (holding in fraud cause evidence of unrelated contractual disputes admissible to prove defendant entered into contract with plaintiff with fraudulent intent); *Kilburn v. Patrick*, 241 Ga. App. 214, 217 (1999) (holding in a breach of fiduciary duty case that defendant's "treatment of the only other minority shareholder arguably demonstrated a course of conduct").

Wood, himself, has never actually argued that the allegations at issue are irrelevant to Plaintiffs' fraud claim, instead seemingly conceding the point by asserting only that they are irrelevant to Plaintiffs' breach of contract claim. For instance, in his Motion to Strike, Wood argues that "Wood's prior statements and conduct are not relevant to Plaintiffs' *breach of contract claim*" and that "intent is irrelevant to Plaintiffs' *breach of contract claim*." (Br. at 22-23 (emphasis added)). In his counterclaim, he alleges that Plaintiffs "may contend these allegations are relevant to their fraud claim" but that "claim fails for a variety of separate and independent reasons." (Countercl. ¶ 45). It is patently irrelevant whether or not the fraud claim fails. *Cf.* O.C.G.A. § 51-5-8 (allegations are privileged irrespective of whether they are "legally sufficient to obtain [relief] or not").

In summary, Plaintiffs have alleged that Wood's prior bad acts towards Plaintiffs reveal his fraudulent and malicious intent, motive, and plan at the time he entered into the Settlement Agreement. The allegations at issue are not only relevant to the litigation generally but are

relevant to the specific issues raised by Plaintiffs' Complaints, including Wood's state of mind. Moreover, a defendant's prior bad acts and his character are always relevant. Thus, the statements in Plaintiffs' Complaints are absolutely privileged under O.C.G.A. § 51-5-8.

B. The False Light Counterclaim Fails Because It Is Subsumed by the Defamation Claim.

Wood cannot plead around defamation and assert, instead, a false light invasion of privacy claim for a statement that is defamatory. "In order to survive a separate cause of action, a false light claim must allege a nondefamatory statement. If the statements alleged are defamatory, the claim would be for defamation only, not false light invasion of privacy." *Bollea v. World Championship Wrestling, Inc.*, 271 Ga. App. 555, 557 (2005) (affirming summary judgment to defendant).

Here, Wood explicitly alleges nearly identical defamatory meanings and objectionable false lights. In each of his claims, he alleges it was both defamatory and an objectionable light to say that he is "abusive," and in both claims he makes reference to allegations concerning Plaintiffs' allegations pertaining to "God" or his "God complex." (*Compare* Countercl. ¶¶ 36-39 *with* 55). His defamation claims also rely on the terms "hostile," "threatening," and "violent," but those are simply synonyms for "abusive." So, too, is the alleged false light of "mentally unstable" synonymous with the alleged defamatory term "erratic." The only truly distinct false light he alleges is that he is "obsessive," which itself is not capable of a false light claim.

Revealing the extent to which Wood's claims are truly the same, in several instances Wood explicitly relies on the same paragraphs of Plaintiffs' Complaints to support both claims. (*Compare* Countercl. ¶¶ 36-39 *with* ¶ 53, Ex. D).[9] Moreover, the statements he sues for false light convey the same meanings he complains of as being defamatory. (*Compare* Countercl.

[9] The Counterclaim, paragraph 38, mentions paragraph 216 but the quote is from paragraph 217.

¶¶ 36-39 ("erratic, hostile, abusive, . . . threatening," "incoherent," "assault and battery," "God or the Almighty was commanding his actions," and indisputable pattern of violent, abusive, and erratic behavior") *with* ¶ 55 ("mentally unstable, abusive, obsessive, and harbors some sort of God-complex, including delusions of grandeur").

Wood apparently thinks he can somehow avoid the defense of truth (or maybe privilege) to his false light claim (he cannot), and he has thus decided to separately pursue the defamatory statements as false light claims. He cannot do so. He is not permitted to sue defamatory statements as a false light claim, especially where he himself asserts the statements themselves and the meanings derived from them are defamatory. *See Bollea*, 271 Ga. App. 555, 557 ("Bollea argues that the statements made by Russo were defamatory. Consequently, the false light claim is subsumed in his defamation claim."); *Smith v. Stewart*, 291 Ga. App. 86, 100-01 (2008) ("If the statements alleged are defamatory, the claim would be for defamation only, not false light invasion of privacy. Having reviewed Stewart's claims, we conclude that her false light invasion of privacy claim is encompassed by her defamation claim, which is based upon the same allegations."); *Dougherty v. Harvey*, 317 F. Supp. 3d 1287, 1292-93 (N.D. Ga. 2018) (same principal of law and granting summary judgment to defendant on false light claim).

As an initial matter, Wood openly alleges that the allegations that he is erratic, hostile, abusive, threatening, violent, and acting according to God's commandments are defamatory *per se*. (Countercl. ¶¶ 36-39, 41-42). Indeed, *any* statement which makes "charges against another in reference to his trade, office, or profession" constitutes defamation. O.C.G.A. § 51-5-4; *see also Lucas v. Crenshaw*, 289 Ga. App. 510, 515 (2008) ("the definition of slander in Georgia has been incorporated into the definition of libel."). It is patently unclear how Wood could articulate that some allegations of Plaintiffs' Complaints go to his profession while others do not. Indeed,

Wood's Counterclaims specify that Plaintiffs' Complaints were an intentional effort to "damage his professional reputation," (Countercl. ¶ 23), contain allegations which concern his "capacity to practice law," (*id.* ¶ 27), and caused damage to "his longstanding reputation," (*id.* ¶ 59), which he refers to as being one of national prestige as a lawyer. (*id*. ¶¶ 9-10).

Defamation also includes "any disparaging words productive of special damage," O.C.G.A. § 51-5-4, and Plaintiffs do not dispute that *any* of the complained of words are disparaging (while acknowledging that they are subject to various other defenses). It is obviously disparaging to accuse someone of being "mentally unstable," "abusive," and having "delusions of grandeur" or a "God complex," especially where Wood asserts and has cultivated a reputation as a Godly man.

That leaves only one alleged false light for Wood's counterclaim: "obsessive." But, this simply cannot constitute defamation or false light, as it "would [not] be highly offensive to a reasonable person." *Cf. Thomason v. Times-Journal, Inc.*, 190 Ga. App. 601, 604 (1989) (an "essential element of the 'false light' tort … is that 'the false light in which the other was placed would be highly offensive to a reasonable person,' and 'the hypersensitive individual will not be protected.'").

Nor can Wood attempt to sue for false light for an alleged objectionable light Plaintiffs did not accuse him of, but which might be surmised from true conduct alleged in the Complaints. Thus, Wood simply cannot pursue a claim for false light for being "mentally unstable" or having a "God complex" or "delusions of grandeur," because in a false light claim, "falsity cannot be based on mere innuendo." *Monge v. Madison Cty. Record, Inc.*, 802 F. Supp. 2d 1327, 1336 (N.D. Ga. 2011) (granting motion to dismiss and holding that "Monge is complaining about innuendo" because "the article does not explicitly state that Monge was unethical" but "simply

disclosed Monge's actual behavior"). Plaintiffs did not state that Wood was "mentally unstable," had a "God complex," or had "delusions of grandeur." Plaintiffs merely described his conduct and words, and Wood apparently read about his actual conduct and decided it conveyed that he is those things, which "is a matter of individual thought processes" for which Plaintiffs cannot be held liable. *See Zarach v. Atlanta Claims Ass'n*, 231 Ga. App. 685, 690 (1998).

Thus, Wood's only claim – if he had a viable one – would be for defamation, not false light.

C. The False Light Counterclaim Fails Because It Concerns Matters for Which Wood Has Waived the Right to Be Let Alone.

The Georgia Court of Appeals has recognized "the need for pragmatism in deciding the extent to which the right of privacy should be protected. . . The right of privacy is not absolute, but is qualified by the rights of others. No individual can live in an ivory tower and at the same time participate in society and expect complete non-interference from other members of the public." *Cox Comm'ns, Inc. v. Lowe*, 173 Ga. App. 812, 813 (1985). Accordingly, in Georgia, the "right of privacy … like every other right that rests in the individual, may be waived by him." *Jaillett*, 238 Ga. App. 885, 891. More specifically, "any person who engages in any pursuit or occupation or calling which calls for the approval or patronage of the public submits his private life to examination by those to whom he addresses his call, to any extent that may be necessary to determine whether it is wise and proper and expedient to accord to him the approval or patronage which he seeks." *Id.* (internal citation omitted). The court in *Jaillett* held that "any publicity from WSB's broadcast related solely to the operation of Jaillett's business," and "[a]ccordingly, the broadcast did not violate Jaillett's right to be let alone, and the trial court did not err in granting summary judgment on his claim." *Id.* (citing *S & W Seafoods Co. v. Jacor Broad. of Atlanta*, 194 Gag. App. 233, 237 (1989) (holding that "the plaintiffs waived their right

to be 'let alone' in regard to the operation of their restaurant by inviting and advertising for public patronage.").

Here, as Wood himself has acknowledged, his conduct is a matter of public interest and he, himself, is a public figure. Indeed, his conduct has produced significant scrutiny in the media and on social media in years past and this year, in particular. His counterclaim explicitly asserts that the media has covered this lawsuit and that his Twitter followers, which numbered 175,000 when the Amended Complaint was filed, have "also taken notice." (Countercl. ¶¶ 28-31; Am. Compl. ¶ 18). According to Wood's own counsel, "Mr. Wood is a public figure. He's well known not just because of his successful career, but he's become active socially and politically." (Trans. Inj. Hearing, pp. 33-34 (Sept. 23, 2020)). He asserted in his brief opposing Plaintiffs' motion for injunction that an injunction would "disserve the public interest" because the "public has a right to know the truth," and that "as a public figure, Mr. Wood has an inherent interest … in defending himself . . . ." (Br. at 43-44).

Moreover, Wood also advertises to the public via his website and via social media. *See, e.g.*, https://www.linwoodlaw.com; https://bit.ly/2WwxM3H (web archive of linwoodlaw.com as of August 24, 2020); https://bit.ly/37xElJD (web archive of Wood's Twitter page as of August 31, 2020, showing 130,000 followers, linking to his firm website and marketing "#fightback," the name of his foundation). He even founded and runs a 501(c)(4) not-for-profit foundation, #Fightback Foundation, Inc., through which he has publicly solicited millions of dollars in donations to support various causes, including legal causes. https://bit.ly/2KFuAjk (Wood tweet claiming to have raised more than $2 million dollars for Kyle Rittenhouse, the teenager accused of killing protestors in Kenosha, Wisconsin). According to the #Fightback website, https://fightback.law/about/, #Fightback works "to protect individual rights and stop those who

would use political power to attack constitutional rights," "for forgotten America," against "big tech executives," *Id.*

The version of Wood's #Fightback website the day before the Verified Complaint was filed stated, *inter alia*, "[w]e bring lawsuits to check the lies of the left," the "radical left has taken over mainstream media and they don't care about truth. They will lie, cancel, and defame anyone who stands in their way … And that's why we bring lawsuits to stop the left's lies. To defend the truth. To defend freedom." *See* https://bit.ly/2Wsn5yS (web archive of fightback.law as of August 30, 2020). It further provided that "[s]ince 2016, the deep state has spied [sic] and harassed President Trump and his officials with illegal wiretaps and interrogations… What's worse, instead of checking the deep state for this abuse of power, the fake news media peddled Trump-Russia conspiracy theories based on lies and hysteria." *Id.* Both the current and prior iterations prominently solicited donations both at the top of bottom of the home page. *See id.*; https://fightback.law.

Moreover, as he has conceded, he represents important people on important issues concerning matters of speech. Whether he still represents these individuals or not, Wood has represented and spoken very publicly regarding clients such as Richard Jewell (1996 Olympic bombing), the family of JonBenét Ramsey (1996 murder of young girl), Kyle Rittenhouse (present issue concerning accused Kenosha shooter, politics, and rioting), Mark and Patricia McCloskey (present issue concerning pointing guns at protestors), Rep. Marjorie Taylor Greene (present issues concerning congress woman and QAnon), Nicholas Sandmann (present issue concerning politics), Dr. Carter Page (present issues concerning allegations of Trump's collusion with Russia), Dr. Simone Gold (present issue concerning COVID-19). *See, e.g.*, Wood's website at https://www.linwoodlaw.com/attorney/l-lin-wood/.

Indeed, Wood has specifically alleged in his Counterclaims that Plaintiffs' Complaints were an intentional effort to "damage his professional reputation," (Countercl. ¶ 23), contain allegations which concern his "capacity to practice law," (*id.* ¶ 27), were "intended to injure Mr. Wood in his trade, office, or profession," (*id.* ¶ 41), and caused damage to "his longstanding reputation," (*id.* ¶ 59), which he refers to as being one of national prestige as a lawyer. (*Id.* ¶¶ 9-10). As it pertains to the conduct of his business, Wood has plainly waived his right to be "let alone" and simply cannot file a false light invasion of privacy claim for allegations bearing on such conduct. He must, instead, pursue defamation claims, which he has expressly avoided doing on these claims because they are patently meritless.

D. Wood's Claims for Punitive Damages and Attorneys' Fees Fail.

Wood's third counterclaim seeking attorneys' fees is dependent upon his other two substantive counterclaims, as is his request for punitive damages. A prerequisite to these awards is the award of relief on the underlying claims. Because they both fail, so too must his counterclaims for fees and punitive damages. "[A]wards of punitive damages and attorney fees are derivative of underlying claims, where those claims fail, claims for punitive damages and attorney fees also fail." *Popham v. Landmark Am. Ins. Co.*, 340 Ga. App. 603, 612 (2017) (internal citations omitted).

CONCLUSION

For the reasons set forth herein, Wood's Counterclaims should be stricken pursuant to Georgia's Anti-SLAPP statute with an accompanying award of fees and expenses to Plaintiffs. Should the Court grant Plaintiffs' Motion, they request thirty days in which to submit a fee application pursuant to the terms of O.C.G.A. § 9-11-11.1(b)(1).

Respectfully submitted this 23rd day of December, 2020.

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

NICOLE WADE, JONATHAN GRUNBERG, TAYLOR WILSON, and WADE, GRUNBERG & WILSON, LLC.

Plaintiffs,

v.

L. LIN WOOD and L. LIN WOOD, P.C.,

Defendants.

Civil Action File No: 2020-CV-339937

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that on this day, the foregoing *Brief in Support of Motion to Strike Counterclaims* was filed through the Court's electronic filing system, which will deliver a service copy to all parties as follows:

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This 23rd day of December, 2020.

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