IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

MARK ANDREWS, Plaintiff, v. **DINESH D'SOUZA, *et al.*,** Defendants.	Case No. 1:22-cv-04259-SDG

DEFENDANTS TRUE THE VOTE, INC., CATHERINE ENGELBRECHT, AND GREGG PHILLIPS'S REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

A. Plaintiff Disregarded the Local Rules, and Many of TTV Defendants' SMF Are Deemed Admitted and Plaintiff's Responses Disregarded. 2

B. Summary Judgment Should be Granted on Count I (KKK Act).....3

C. Summary Judgment Should be Granted on Count III (Defamation). 6

1. The Actual Malice Standard Applies, and There is No Evidence of It. 6

2. TTV Defendants Did Not Publish Almost All the Statements. 10

3. The Statements Are Not "Of and Concerning" Plaintiff..... 11

D. Summary Judgment Should be Granted on Count IV (False Light). 13

E. Summary Judgment is Due on Count V (Misappropriation of Likeness). 15

F. Summary Judgment is Due on Count VI (Civil Conspiracy).....17

G. Summary Judgment is Due on Count VII (Punitive Damages). 19

CONCLUSION.....20

TABLE OF AUTHORITIES

Page(s)

Cases

AJC v. Jewell,
251 Ga. App. 808 (2002) 7

Alonso v. Parfet,
253 Ga. 749 (1985) 17

Archer Western – De Moya Joint Venture v. Ace Am. Ins. Co.,
713 F. Supp. 3d 1260 (S.D. Fla. 2024) 3, 7

Armscorp of Am., Inc. v. Daugherty,
380 S.E.2d 729 (Ga. Ct. App. 1989) 13

Berisha v. Lawson,
973 F. 3d 1304 (11th Cir. 2020) 7

Bollea v. World Championship Wrestling, Inc.,
610 S.E.2d 92 (Ga. Ct. App. 2005) 13

Bullard v. MRA Holding, LLC,
740 S.E.2d 622 (Ga. Ct. App. 2013) 17

Byrd v. Gwinnett Cnty. Sch. Dist.,
728 F. Supp. 3d 1257 (N.D. Ga. 2024) 2, 3

Cap. Inventory, Inc. v. Green,
2024 WL 1383228 (N.D. Ga. Feb. 29, 2024) 20

Chaney v. Harrison & Lynam, LLC,
708 S.E.2d 672 (2011) 9

Collins v. Creative Loafing Savannah, Inc.,
264 Ga. App. 675 (2003) 11, 12

Coomer v. Donald J. Trump for President, Inc.,
552 P.3d 562 (Colo. App. 2024) 19

Craig v. Holsey,
264 Ga. App. 344 (2003) 20

Dowd v. Calabrese,
589 F. Supp. 1206 (D.D.C. 1984) 18

Dresbach v. Doubleday & Co., Inc.,
518 F. Supp. 1285 (D.D.C. 1981) 9

Franchini v. Bangor Publ'g Co.,
560 F. Supp. 3d 312 (D. Me. 2021) 7

Gertz v. Robert Welch, Inc.,
418 U.S. 323 (1974) 7

Krass v. Obstacle Racing Media, LLC,
667 F. Supp. 3d 1177 (N.D. Ga. 2023) 10

League of United Latin Am. Citizens - Richmond Region Council 4614 v. Pub. Int. Legal Found.,
2018 WL 3848404 (E.D. Va. Aug. 13, 2018) 6

League of Women Voters of Fla. Inc. v. Fla. Sec'y of State,
66 F.4th 905 (11th Cir. 2023) 8

Matthews v. Mills,
357 Ga. App. 214 (2020) 11

McAndrew v. Lockheed Martin Corp.,
206 F.3d 1031 (11th Cir. 2000) 18

Mullinax v. Miller,
242 Ga. App. 811 (2000) 10

Nat'l Coal. on Black Civic Participation v. Wohl,
661 F. Supp. 3d 78 (S.D.N.Y. 2023) 4, 5, 6

Nayani v. Bhatia,
371 Ga. App. 44 (2024) 18

Pierce v. Warner Bros Ent., Inc.,
237 F. Supp. 3d 1375 (M.D. Ga. 2017) 15

Project Vote/Voting for Am. v. Long,
682 F.3d 331 (4th Cir. 2012) 15

Pub. Int. Legal Found., Inc. v. Bellows,
92 F.4th 36 (1st Cir. 2024).....15

Ramsey v. Ga. Gazette Pub. Co.,
164 Ga. App. 693 (1982).....16

Reid v. City of Atlanta,
2010 WL 1138456 (N.D. Ga. Mar. 22, 2010).....5

Reid v. Viacom Int'l Inc.,
2016 WL 11746046 (N.D. Ga. Sept. 14, 2016).....9, 11

Reid v. Viacom Int'l, Inc.,
2017 WL 11634619 (N.D. Ga. Sept. 22, 2017).....10

Scheetz v. Morning Call, Inc.,
747 F. Supp. 1515 (E.D. Pa. 1990).....19

Smith v. Stewart,
660 S.E.2d 822 (Ga. Ct. App. 2008).....13

Tanisha Systems, Inc. v. Chandra,
2015 WL 10550967 (N.D. Ga. Dec. 4, 2015).....9

Thompson v. Trump,
590 F. Supp. 3d 46 (D.D.C. 2022).....8

Thoroughbred Legends, LLC v. The Walt Disney Co.,
2008 WL 616253 (N.D. Ga. 2008).....16

Time, Inc. v. Hill,
385 U.S. 374 (1967).....13

Toffoloni v. LFP Publ'g Grp., LLC,
572 F.3d 1201 (11th Cir. 2009).....14, 15

Tucker v. News Publishing Co.,
397 S.E.2d 499 (Ga. Ct. App. 1990).....14

Turnage v. Kasper,
307 Ga. App. 172 (2010).....17, 18

US Dominion, Inc. v. MyPillow, Inc.,
2022 WL 1597420 (D.D.C. May 19, 2022).....5

Waters v. Fleetwood,
91 S.E.2d 344 (Ga. 1956).....14

Williams v. Kroger Co.,
2023 WL 2763138 (N.D. Ga. Mar. 31, 2023).....2

Williams v. Trust Co. of Ga.,
140 Ga. App. 49 (1976).....10

Wolf v. Ramsey,
253 F. Supp. 2d 1323 (N.D. Ga. 2003).....7, 11

Woodruff v. Hughes,
58 S.E. 551 (Ga. Ct. App. 1907).....17

Zeal Glob. Servs. Priv. Ltd. v. SunTrust Bank,
508 F. Supp. 3d 1303 (N.D. Ga. 2020).....18

Zedan v. Bailey,
522 F. Supp. 3d 1363 (M.D. Ga. 2021).....20

Statutes

42 U.S.C. § 1985(3).....6
52 U.S.C. § 20507(i)(1).....15
O.C.G.A. § 9-11-11.1(c).....9
O.C.G.A. § 9-11-11.1(c)(4).....8
O.C.G.A. § 50-18-71(a).....15
O.C.G.A. § 50-18-72.....15
O.C.G.A. § 51-5-7(4).....8, 9
O.C.G.A. § 51-5-9.....9
O.C.G.A. § 51-12-5.1(g)'s.....19

Other Authorities

Fed. R. Civ. P. 56(c).....2, 9

Ga. Comp. R. & Regs. 183-1-12-.11(2)(a) 15
L.R. 56.1(B)(2)(a)(2) 2
Rule 8 9

TTV Defendants had a circumscribed role for the Film. They lacked editorial control over almost all the Statements, did not select the video in the Film, and did not know Plaintiff's identity. They were not involved whatsoever in most of the Statements, including Dinesh D'Souza's Book, the Billboard, and his podcasts, social media posts, and media appearances. There is no basis, whether through Plaintiff's erroneous conspiracy theory or otherwise, to attribute these Statements to TTV Defendants. And the subject-matter of the Film and Statements is clearly an issue of great public concern—the issue of election integrity.

Plaintiff's Consolidated Opposition (Doc. 294) ("Opp.") applies the wrong law and ignores key undisputed evidence. Plaintiff hopes the sheer volume of his Opposition and Responses to TTV Defendants' Statement of Undisputed Material Facts ("SMF") his army of lawyers produced can distract the Court. And the D'Souza Defendants, who lack a viable defense, unconvincingly attempt to re-write history and pin D'Souza's behavior on TTV Defendants.

For the few Statements involving TTV Defendants, they lacked editorial control, did not know what would be shown to them, and did not identify Plaintiff. In fact, Plaintiff was unidentifiable—many clips blurred his face completely, he only appeared for 1.8 seconds in the Film, and he was wearing a facemask covering his entire face. The Statements all involved an issue of great public concern—election integrity, with a particular focus on unmanned dropboxes. Plaintiff became a limited

purpose public figure by filing this lawsuit, the acts of third parties, and Plaintiff's wife incessantly publicizing it. The Statements are also privileged under Georgia law. Plaintiff therefore must, but is unable to show, actual malice.

For the reasons herein and in TTV Defendants' Motion for Summary Judgment (Doc. 279), summary judgment should be granted to TTV Defendants.

A. Plaintiff Disregarded the Local Rules, and Many of TTV Defendants' SMF Are Deemed Admitted and Plaintiff's Responses Disregarded.

For many of Plaintiff's Responses to TTV Defendants' SMF (*e.g.*, Doc. 294-3, ¶¶ 7, 19, 21, 56-57, 112-14, 129), Plaintiff improperly claims a statement is "disputed," but fails to provide any citations in support. These should be deemed admitted. *See* L.R. 56.1(B)(2)(a)(2) (facts deemed admitted unless the respondent "directly refutes the movant's fact with concise responses ***supported by specific citations to evidence*** (including page or paragraph number)") (emphasis added); *Williams v. Kroger Co.*, 2023 WL 2763138, at *2 n.14 (N.D. Ga. Mar. 31, 2023).

Plaintiff also repeatedly claims that for certain evidence in the record, such as TTV Defendants' affidavits, "the creditability . . . must be determined by a jury." But affidavits are competent evidence (Fed. R. Civ. P. 56(c)), and on summary judgment, "a district court must consider all the evidence before it." *Byrd v. Gwinnett Cty. Sch. Dist.*, 728 F. Supp. 3d 1257, 1286 (N.D. Ga. 2024).

Plaintiff also purports to dispute certain of TTV Defendants' SMF by relying on unsubstantiated claims that evidence may exist even though there is none in the

record. *See, e.g.*, Doc. 294-3 ¶ 183 (despite undisputed evidence that no one recognized Plaintiff in public, claiming he "may know countless individuals who have recognized him" despite failing to identify anyone); ¶ 181 (despite undisputed evidence demonstrating no one at this current employer treated Plaintiff any differently because of the Film, Plaintiff claiming he "would not necessarily know" and others "would not necessarily know").[1] These facts should be deemed admitted. *See Byrd v. Gwinnett Cty. Sch. Dist.*, 728 F. Supp. 3d 1257, 1297–98 (N.D. Ga. 2024) ("Speculation or conjecture cannot create a genuine issue of material fact.").

B. Summary Judgment Should be Granted on Count I (KKK Act).

This is not a KKK Act case. To state a claim under the Support or Advocacy Clause, Plaintiff must show (1) a conspiracy; (2) the purpose of which is to force, intimidate, or threaten; (3) an individual legally entitled to vote who is engaging in lawful activity related to voting in federal elections. ECF 106 at 19. Plaintiff cannot overcome the undisputed evidence showing elements 1 and 2 are not satisfied.

First, there is no evidence of any conspiracy. A KKK Act conspiracy requires: "(1) an agreement between two or more persons to commit an unlawful act; (2) knowingly engaging in the conspiracy intending to commit those offenses that were the objects of the conspiracy; and (3) commission of an 'overt act' by one or

[1] Plaintiff also repeatedly adds "*additional*, but *not contrary*, fact[s]," which "do[] not generate a bona fide factual dispute." *Archer Western – De Moya Joint Venture v. Ace Am. Ins. Co.*, 713 F. Supp. 3d 1260, 1266 (S.D. Fla. 2024). *See, e.g.*, Doc. 294-3 ¶ 82 ("In addition, Mr. Trump was given the opportunity to view rough cuts of the Film and provide feedback and edits . . .").

more members of the conspiracy in furtherance of the conspiracy." *Nat'l Coal. on Black Civic Participation v. Wohl*, 661 F. Supp. 3d 78, 125 (S.D.N.Y. 2023). None of these elements are met, especially because there was no agreement to commit any unlawful act. When the Film was released, D'Souza ***admitted*** TTV Defendants had "[z]ero" editorial control of the Film. SMF ¶ 84. TTV Defendants also identified a mountain of other evidence demonstrating their lack of editorial control, including not being involved in the general marketing plan for the Film. *E.g.*, SMF ¶¶ 81-83, 85, 92-96.[2] They did not "*control*" these Statements. *See infra* at 10. TTV Defendants only entered into an agreement to provide limited information for the Film. SMF ¶¶ 29-32. TTV Defendants demonstrated the limited role they played for the Film and the limited interactions they had with the other parties. Mot. at 6-8.

Knowing he cannot overcome this evidence, Plaintiff erroneously argues that TTV Defendants' limited involvement in the Film means they should somehow become part of a conspiracy based on D'Souza Defendants' creation, development, and production of the Film.[3] However, the undisputed evidence shows TTV

[2] Although Plaintiff purports to dispute many of these facts, he does not and cannot dispute TTV Defendants' referenced sources; rather, he adds "additional, but not contrary, facts[s]." Plaintiff does not dispute that D'Souza was upset that TTV Defendants were not doing enough to promote the Film. Response to SMF ¶ 95. And TTV Defendants never even mentioned the Film in most of the Statements for which they were involved. *See* Doc. 279-4, ¶ 75; Doc. 308-1 ¶¶ 238, 245.

[3] Plaintiff misconstrues this Court's previous Order (Opp. at 31)—the Court only found Plaintiff's allegations were sufficient at the motion to dismiss stage, but explicitly found that Defendants were "free to raise these arguments again on summary judgment." Doc. 106 at 29.

Defendants did not "knowingly engag[e]" (*Wohl*, 661 F. Supp. 3d at 125) in any conspiracy regarding the numerous Statements for which they had no involvement. Plaintiff attempts to make the sweeping claim that "*even if* TTV Defendants . . . were uninvolved in certain statements," they can still somehow be subject to a conspiracy involving those statements. Opp. at 33. Plaintiff does not cite any authority that supports this proposition.[4] At best, Plaintiff identifies certain stray communications between the parties over the course of several months related to the Film. But they fail to cite any evidence (because there is none) that TTV Defendants were involved in any way with D'Souza's Statements. In fact, Plaintiff's ***own*** "undisputed" facts show that there was no such coordination. *See, e.g.*, Doc. 250-1 ¶ 73 (admitting D'Souza "did not . . . include Phillips' statement" that Plaintiff "was not a mule" on his podcast); ¶ 74 (same). Plaintiff is attempting to pin everything Dinesh D'Souza said on TTV Defendants, which is impossible because TTV Defendants did not even know about the statements.[5] *See US Dominion, Inc. v. MyPillow, Inc.*, 2022 WL 1597420, at *7 (D.D.C. May 19, 2022).

[4] Although in a conspiracy parties may be able to "divide up" the work (Opp. at 33), "partners in the criminal plan must agree to pursue the same criminal objective" (*Reid v. City of Atlanta*, 2010 WL 1138456, at *17 (N.D. Ga. Mar. 22, 2010)). There was no such objective or agreement here.

[5] Plaintiff incorrectly claims TTV Defendants' Motion does not address conspiracy among TTV Defendants (Opp. at 36 n.8), but TTV Defendants explicitly showed the relationship between TTV Defendants was only that of a company hiring an independent contractor. Mot. at 8.

Second, there is no evidence that "***the purpose***" of any alleged conspiracy was to "force, intimidate, or threaten." 42 U.S.C. § 1985(3); ECF 106 at 19 (citing *Wohl*, 498 F. Supp. 3d at 486–87). The purpose was to raise awareness about election integrity, which was an issue of great public concern. SMF ¶¶ 19-22. Plaintiff only appears in 1.8 seconds of the Film, along with many other surveillance video clips, and Plaintiff was blurred. SMF ¶ 77. TTV Defendants have never spoken with Plaintiff, did not know Plaintiff was in the Film until he filed this lawsuit, have no connection to him, and never identified him by name. SMF ¶¶ 6, 17, 175-76.[6]

C. Summary Judgment Should be Granted on Count III (Defamation).

1. The Actual Malice Standard Applies, and There is No Evidence of It.

Plaintiff incorrectly argues that the negligence standard applies.[7] *First*, Plaintiff must show actual malice by clear and convincing evidence because Plaintiff is a limited purpose public figure and the Statements involve issues of public concern. Although Plaintiff claims he "made no effort to thrust himself into the

[6] Plaintiff's cited cases are readily distinguishable. In *Wohl*, the defendant's prospectus described its plans to "suppress voter turnout among 'important Demographics of Democrat voters,' which included Black voters" and outlined the defendant's strategy which included "making sh** up" and "misdirecting with details aimed to confuse, leading to more inquiry." *Id.* at 91. Moreover, the defendant wrote that "we must HIJACK this boring election." *Id.* at 92. Defendants' robocall "was a calculated attempt to deter Black voters by exploiting fears and stereotypes." *Id.* at 115. Nothing similar happened here. *See also League of United Latin Am. Citizens - Richmond Region Council 4614 v. Pub. Int. Legal Found.*, 2018 WL 3848404 (E.D. Va. Aug. 13, 2018) (on a motion to dismiss, accepting the allegations as true, and noting defendants' publication included the names, home addresses, and telephone numbers of individuals they claimed were felons).

[7] Contrary to Plaintiff's argument, this Court only previously held that negligence was the standard ***on the defendants' motions to dismiss*** because defendants did not raise the public figure argument at the time. (Doc. 106 at 32-33). Here, all Defendants claim Plaintiff was a public figure.

public eye" (Opp. at 18), he concedes that individuals can become limited purpose public figures involuntarily. *See Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974) (recognizing that "it may be possible for someone to become a public figure through no purposeful action of his own"); *AJC v. Jewell*, 251 Ga. App. 808, 820 (2002) ("Persons can become involved in public controversies and affairs without their consent or will."); *Berisha v. Lawson*, 973 F. 3d 1304, 1311 (11th Cir. 2020). That is why a limited public figure includes someone who "voluntarily injects himself ***or is drawn into a particular public controversy***." *Wolf*, 253 F. Supp. 2d at 1352 (emphasis added). That is exactly what happened here—third parties, including David Cross[8] and the SEB, thrust Plaintiff into the public eye, Plaintiff filed this lawsuit and his wife publicized and incessantly Tweeting about it, and that is when Plaintiff became recognized and discussed in the media. *See* SMF ¶¶ 58-60, 179-80, 61-74; Doc. 308 at 19-20; Doc. 308-1, ¶¶ 228-31[9]; *Franchini v. Bangor Publ'g Co.*, 560 F. Supp. 3d 312, 330 (D. Me. 2021) (plaintiff voluntarily achieved limited public figure status including by filing pro se filings in FTCA cases).

[8] Plaintiff implies that because TTV thanked David Cross for his civic involvement, this somehow means he was affiliated with TTV. (Responses to SMF ¶¶ 58-60). That is not the case, and these facts should be deemed admitted. *See Archer Western*, 713 F. Supp. 3d at 1266 ("if a party argue[s] that a purported fact [is] disputed but provided record evidence which actually [does] *not* establish the argument that a fact is disputed, then [the court] deem[s] the fact to be *undisputed*.").

[9] ***Plaintiff admits*** that one of the reporters reached out to him due to the state investigation into him. SMF ¶ 65. And a second reporter specifically stated that her inquiry was regarding the SEB investigation. SMF ¶ 74.

Second, the actual malice standard applies because the Statements are privileged under Georgia law as involving issues of public interest or concern. Privileged communications include "[s]tatements made in good faith as part of an act in furtherance of the person's or entity's right of petition or free speech . . . in connection with an issue of public interest or concern" (O.C.G.A. § 51-5-7(4)), which includes "[a]ny 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)(4)).

Plaintiff does not seriously dispute that election fraud and dropbox security are issues of public concern, and involved an interest to be upheld. *See, e.g.*, Doc. 294-3 ¶ 19 (not providing any record evidence to dispute the "issue of public concern"); *see also League of Women Voters of Fla. Inc. v. Fla. Sec'y of State*, 66 F.4th 905, 928 (11th Cir. 2023) (recognizing "concerns respecting unmanned drop boxes were valid."); *Thompson v. Trump*, 590 F. Supp. 3d 46, 79 (D.D.C. 2022) (statements "addressed matters of public concern: the outcome of the 2020 Presidential Election and election integrity. . . they plainly were matters of public concern."). TTV Defendants acted in good faith—they worked with an attorney to assist with the drafting, reviewing, and providing feedback on its complaints, reasonably believed individuals dropping off multiple ballots had to be assistors, and there were no assistor signatures in Gwinnett County. *See* Mot. at 23-25 (citing SMF

¶¶ 48-57). There is no record evidence to contradict the fact that TTV Defendants believed Georgia law required individuals not depositing their own ballots to require the signature of an assistor. SMF ¶¶ 56-57.[10] Although Plaintiff claims the fact that TTV Defendants did not identify Plaintiff by name is not necessarily "fatal" (Opp. at 23), it shows TTV Defendants had no malice towards Plaintiff.[11]

The Film and the Statements all relate to free speech issues that are protected under Georgia law. *See* O.C.G.A. § 51-5-7(4); O.C.G.A. § 9-11-11.1(c). The proper audience is the public at large, as TTV Defendants wanted to raise awareness about election integrity. There is no evidence that these privileged communications were "used merely as a cloak for venting private malice and not bona fide in promotion of the object for which the privilege is granted." O.C.G.A. § 51-5-9; *see also Chaney v. Harrison & Lynam, LLC*, 708 S.E.2d 672 (2011) (trial court erred in denying defendant's motion for summary judgment on defamation claims, including re-posting of public signs, because they "were a proper exercise of [defendant's] right to free speech"); *Dresbach v. Doubleday & Co., Inc.,* 518 F. Supp. 1285 (D.D.C.

[10] Plaintiff claims to "dispute" these facts, but does not include any evidence in response, so these facts should be deemed admitted. *See supra* at 1. TTV Defendants' declarations, and the deposition testimony and documents TTV Defendants cite, are all probative evidence. Fed. R. Civ. P. 56(c).

[11] Plaintiff's cited cases are easily distinguishable. In *Tanisha Systems, Inc. v. Chandra*, 2015 WL 10550967 (N.D. Ga. Dec. 4, 2015), a disgruntled former employee and employee conspired to create an online smear campaign "targeting" the company, with the "intent to tarnish the company's reputation." *Id.* at *1. Even then, the complaint "only barely" satisfied Rule 8. *Id.*; *see also Reid*, 2016 WL 11746046 (related to an entire movie specifically targeting a known band).

1981) ("[Courts] tread on dangerous ground deciding exactly what matters are sufficiently relevant to a subject of legitimate public interest to be privileged.").

Because TTV Defendants established that they "lacked knowledge that the defamatory matter was false or did not publish it with reckless disregard as to whether it was false or not," "it becomes the duty of the defamation plaintiff to come forward with evidence of malice so as to create a jury issue on this claim." *Krass v. Obstacle Racing Media, LLC*, 667 F. Supp. 3d 1177, 1210 (N.D. Ga. 2023); *see also Williams v. Trust Co. of Ga.*, 140 Ga. App. 49, 62 (1976). Plaintiff failed to do so.

2. TTV Defendants Did Not Publish Almost All the Statements.

Plaintiff does not dispute that he must prove TTV Defendants published ***each*** of the Statements. Mot. at 11-12 (citing cases); *Reid v. Viacom Int'l, Inc.*, 2017 WL 11634619, at *7 (N.D. Ga. Sept. 22, 2017) (actual malice must be considered "as it relates to ***each*** of the allegedly defamatory [statements]") (emphasis added).

TTV Defendants had no involvement in the Book, Billboard, and Dinesh D'Souza's podcasts, news appearances, and social media posts. (SMF ¶¶ 153-74). Desperately trying to get around this undisputed fact, Plaintiff wrongly claims that these were all "part of the overall marketing plan for the Film." *See generally id.* In addition to not being true, Plaintiff completely ignores clear law that "publication entails the ability to *control* the libel." *Mullinax v. Miller*, 242 Ga. App. 811, 814 (2000) (no liability for campaign manager who provided information to a candidate

who used it in a flyer because manager did not control the verbiage of the writing); *Wolf v. Ramsey*, 253 F. Supp. 2d 1323, 1364 (N.D. Ga. 2003) (granting summary judgment where defendant had no control over NBC's editing decisions); *Matthews v. Mills*, 357 Ga. App. 214, 216 (2020) (affirming summary judgment where no evidence defendant had any role in or control over the drafting or content of a report). And Plaintiff has no evidence showing TTV Defendants had any "control" over any of these statements that were all made by different parties.

It is undisputed that TTV Defendants had no editorial control over the Film, Trailer, and interviews in which they participated (everything except the one TTV Video). Mot. at 7-8, 12-13. TTV Defendants were interviewed for and appeared in the Film, but those interviews occurred months ***before*** any video surveillance of Plaintiff was obtained. Doc. 302-1 ¶ 82. Any alleged limited feedback TTV Defendants provided did not amount to "control[ling]" it as is required.[12]

3. The Statements Are Not "Of and Concerning" Plaintiff.

To be actionable, the Statements must be "of and concerning" Plaintiff, and they must "refer to some ascertained or ascertainable person, and that person must be the plaintiff." *Collins v. Creative Loafing Savannah, Inc.*, 264 Ga. App. 675, 678 (2003). It is undisputed that: (i) there are no known news reports published before

[12] Plaintiff cites *Reid v. Viacom Int'l Inc.*, 2016 WL 11746046 (N.D. Ga. Sept. 14, 2016), but that case was only brought against the company that controlled the cable network and the screenwriter. *Id.* at *1. It was not brought against everyone who contributed to the movie in any way.

the filing of Plaintiff's lawsuit that identified him by name; (ii) Plaintiff never spoke with any of the TTV Defendants; and (iii) in the Statements, TTV Defendants never identified Plaintiff by name. (Doc. 294-3, ¶¶ 6, 17, 90, 109, 117, 125, 141, 149, 152, 179). As a matter of law, Plaintiff is unidentifiable because: (i) in the blurred images, his face is blurred and unrecognizable; and (ii) for the unblurred images, Plaintiff is wearing a face mask that covers his face and is also unrecognizable, and in some of those clips, he only appears for a fraction of a second. *See* Mot. at 15-16.

None of the information Plaintiff points to helps his argument. Under Georgia law, there must be evidence that an individual recognized the individual in the image "***simply by viewing it***." *Collins*, 264 Ga. App. at 678 (emphasis added). Plaintiff claims that he recognized himself (Opp. at 7), but Georgia courts have found that the plaintiff identifying himself is insufficient. *See Collins*, 264 Ga. App. at 677 (granting summary judgment to defendant even though plaintiff was "extremely disturbed" that a cartoon image favoring her likeness was used in a publication). Plaintiff identifies his wife, daughter, and others who allegedly recognized him (Opp. at 7), but the evidence shows they only recognized him because Plaintiff or his wife told them about it first. *See, e.g.*, Doc. 252-18, ¶ 12 (Plaintiff's daughter stating "probably my mom told me about [the Film]"); Doc. 264-5, at Supp. Response No. 21 (identifying individuals that recognized Plaintiff, and that they learned about his appearance in the Film through conversations with Plaintiff or his

wife).[13] Plaintiff also identifies two reporters, but the evidence shows they identified him through the SEB investigation. *See supra* at 7. Finally, Plaintiff identifies the Cross Complaint (Opp. at 7), but that too does not identify Plaintiff. Doc. 303-9. These are all insufficient as a matter of law.

D. Summary Judgment Should be Granted on Count IV (False Light).

Although Plaintiff cites it elsewhere, Plaintiff ignores *Smith v. Stewart*, where the court granted summary judgment to the defendants on a false light claim, finding the plaintiff's "false light invasion of privacy claim is encompassed by her defamation claim, which is based upon the same allegations." *Smith v. Stewart*, 660 S.E.2d 822, 834 (Ga. Ct. App. 2008) ("In order to survive as a separate cause of action, a false light claim must allege a nondefamatory statement."); *see also Bollea v. World Championship Wrestling, Inc.*, 610 S.E.2d 92, 96 n.1 (Ga. Ct. App. 2005) (affirming summary judgment where false light claim was subsumed in defamation claim). Plaintiff does not claim his false light allegations are any different than his allegations for defamation.

This claim also fails because all the Statements involved issues of public interest, and Plaintiff cannot show actual malice. Mot. at 28-29; *Time, Inc. v. Hill*,

[13] *See also Armscorp of Am., Inc. v. Daugherty*, 380 S.E.2d 729, 730 (Ga. Ct. App. 1989) ("The testimony of appellant's president that others told him that they knew the advertisement referred to appellant, even if it were not hearsay, would not create a jury issue as to whether the publication referred to appellant.").

385 U.S. 374 (1967); *Toffoloni v. LFP Publ'g Grp., LLC*, 572 F.3d 1201, 1208 (11th Cir. 2009) ("where the publication is newsworthy, the right of publicity gives way to freedom of the press"). Plaintiff gets the scope wrong in claiming that the issue is Andrews being a ballot mule. The Film and Statements were about the issues of election integrity and dropbox security generally; these are legitimate matters of public interest. Plaintiff only appears in the Film for a matter of seconds. There is no actionable right because the Statements involve issues of public interest. *See Waters v. Fleetwood*, 91 S.E.2d 344, 348 (Ga. 1956) ("where an incident is a matter of public interest, or the subject matter of a public investigation, a publication in connection therewith can be a violation of no one's legal right of privacy"); Tucker v. News Publishing Co., 397 S.E.2d 499 (Ga. Ct. App. 1990) (victim of a sexual attack by fellow students became the object of public interest "through no fault of his own").

Finally, the undisputed evidence shows Plaintiff was not depicted as something which he is not. Mot. at 27-28. TTV Defendants had nothing to do with most of the Statements, and Plaintiff is unrecognizable in all the clips. That TTV Defendants provided surveillance footage (Opp. at 52) does not change that they did not have editorial control over the Statements. And, although TTV Defendants were interviewed for and appeared in the Film, those interviews occurred months ***before*** any video surveillance of Plaintiff was obtained. Doc. 302-1 ¶ 82. Thus, they could not have been referring to him when making any statements in the Film.

E. Summary Judgment is Due on Count V (Misappropriation of Likeness).

Plaintiff's appropriation of likeness claim fails. Plaintiff does not dispute that that which is "open to public observation" cannot be misappropriated. Mot. at 30; *Toffoloni*, 572 F.3d at 1207; *Pierce v. Warner Bros Ent., Inc.*, 237 F. Supp. 3d 1375, 1381 (M.D. Ga. 2017) (dismissing misappropriation claim where television show displaying plaintiff's image from a sign was clearly "open to public observation").

The video of Plaintiff voting at a public dropbox plainly fits that criteria. The video was obtained from Gwinnett County via an open records request, which anyone is free to obtain or use. SMF ¶¶ 23, 33, 44. In fact, the Georgia Open Records Act explicitly provides that only "***public*** records" can be produced. O.C.G.A. § 50-18-71(a). The statute provides dozens of exceptions to public disclosure, none of which includes public drop box surveillance footage. *See generally* O.C.G.A. § 50-18-72. The video surveillance of Plaintiff ***necessarily*** was a public record.

Plaintiff attacks a strawman. The Opposition generally discusses "voting" being private (Opp. at 56-57), but although ***who*** a voter votes for is private, ***the fact that a voter voted*** is not. *See, e.g.*, Ga. Comp. R. & Regs. 183-1-12-.11(2)(a) (voters names entered on numbered list of voters); *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36, 54 (1st Cir. 2024) (52 U.S.C. § 20507(i)(1) "evinces Congress's believe that public inspection, and thus public release, of Voter File data is necessary"); *Project Vote/Voting for Am. v. Long*, 682 F.3d 331, 339 (4th Cir. 2012) ("[w]ithout

[the] transparency [afforded by public disclosure], public confidence in the essential workings of democracy will suffer."). Plaintiff has no privacy interest in merely appearing at a public polling place and depositing ballots. *See* Mot. at 30-31.

Plaintiff also tacitly admits that when an individual "albeit unwittingly, become[s] an actor in a public drama," "[d]issemination of information pertaining to this drama is not violation of the plaintiff's right of privacy." Mot. at 30 (citing *Ramsey v. Ga. Gazette Pub. Co.*, 164 Ga. App. 693, 695 (1982)). Plaintiff became a public figure (*supra* at 6-10), and there was no violation of his privacy. Plaintiff again misconstrues the argument regarding the matter of public interest—the Statements all relate to the issue of election integrity, particularly regarding dropboxes. *See Thoroughbred Legends, LLC v. The Walt Disney Co.*, 2008 WL 616253, at *11 (N.D. Ga. 2008) (finding First Amendment protection restricted plaintiffs' appropriation claim, noting "commercial advantage from an otherwise permitted use of another's identity does not render the appropriation actionable").

Finally, Plaintiff was completely unrecognizable. *Supra* at 11-13. The video was ***not*** blurred or redacted in any way by the County—D'Souza Defendants blurred Plaintiff's face, which TTV Defendants supported. In almost all the Statements, Plaintiff's entire face was blurred, rendering him unrecognizable. *See* Mot. at 15-16. Even for those where Plaintiff's face was not technically blurred, he was still

unrecognizable because a face mask covered his face. *See id.*[14] Moreover, the undisputed facts show that although Plaintiff claims others recognized him, those individuals were either (1) first told by Plaintiff or his wife of their existence in the Film, or (2) able to identify him because of the public SEB investigation. *See supra* at 12-13. Indeed, Plaintiff's wife Tweeted ***thousands of times*** about Plaintiff and this case, thereby raising his profile. *See* Doc. 308 at 18-20.

F. Summary Judgment is Due on Count VI (Civil Conspiracy).

Plaintiff makes several legal errors trying to salvage his civil conspiracy claim. First, Plaintiff misstates Georgia law on whether a party must be present when slanderous words are uttered. Plaintiff does not dispute that the Georgia Court of Appeals held that, for a person who has not spoken slanderous words to be liable, "there must be a showing that (1) ***both parties were present*** when the slanderous words were uttered, and (2) the slanderous words spoken by one party was ***done with the consent of the other party*** and in furtherance of a common design and purpose." *Turnage v. Kasper*, 307 Ga. App. 172, 185 (2010) (emphasis added). Plaintiff desperately relies on a 118-year-old case that has nothing to do with defamation. *See* Opp. at 61 (citing *Woodruff v. Hughes*, 58 S.E. 551 (Ga. Ct. App. 1907)). And he

[14] Plaintiff's cited cases are easily distinguishable. *See Bullard v. MRA Holding, LLC*, 740 S.E.2d 622, 626-27 (Ga. Ct. App. 2013) (allegations only stated a claim for motion to dismiss, and plaintiff's image was used to endorse a product); *Alonso v. Parfet*, 253 Ga. 749, 749 (1985) (company continued to use plaintiff's name and former title on many documents after he had left).

has no answer for the plain language in *Turnage*.[15] Plaintiff baselessly claims *Turnage* somehow misread earlier cases. But his analysis is wrong—the underlying cases similarly set forth the elements for a conspiracy claim in such circumstances. For the numerous Statements made solely by Dinesh D'Souza, there is no evidence TTV Defendants were "present," or that D'Souza had TTV Defendants' "consent."

Moreover, Plaintiff's attempt to read out the intent element for conspiracy is erroneous. A conspiracy requires "a purpose, express or implied, to do something unlawful, oppressive, or immoral." *Nayani v. Bhatia*, 371 Ga. App. 44, 52 (2024) (affirming summary judgment on claim); *Zeal Glob. Servs. Priv. Ltd. v. SunTrust Bank*, 508 F. Supp. 3d 1303, 1314 (N.D. Ga. 2020); *McAndrew v. Lockheed Martin Corp.,* 206 F.3d 1031, 1036 (11th Cir. 2000) (requiring "a meeting of the minds between two or more persons to accomplish a common and unlawful plan").

Plaintiff has no viable response to the numerous authorities TTV Defendants cited finding that "in this sensitive First Amendment area," a "joint purpose to publish" is insufficient, and that there must be a "**specific evidence of a joint purpose to defame**," which is perfectly consistent with Georgia law. Mot. at 33-34. Plaintiff identifies one case, *Scheetz*, but it only distinguishes one of those cases, *Dowd v. Calabrese,* 589 F. Supp. 1206 (D.D.C. 1984), because instead of

[15] Plaintiff also cites a portion of the case that has nothing to do with relevant claims. *See* Opp. at 62-63 n.13. The relevant portion holds that the trial court erred in denying Penton's motion for directed verdict on the defamation claim because he was not present, and did not direct or consent to a co-defendant making slanderous remarks. *Turnage*, 704 S.E.2d at 855.

defamation, in *Scheetz* "the primary claim [was] for a violation of civil rights" where a confidential police report was published. *Scheetz v. Morning Call, Inc.*, 747 F. Supp. 1515, 1520 n.6 (E.D. Pa. 1990) (recognizing the "very wide latitude given media defendants in defamation actions"). And in *Scheetz*, the court granted summary judgment to the defendants. *Id.* at 1535 (finding article was protected under the First Amendment, and that "courts have not granted privacy rights the same deference as First Amendment rights."). Plaintiff also misconstrues *Coomer v. Donald J. Trump for President, Inc.*, 552 P.3d 562 (Colo. App. 2024), where the court actually determined that "[b]ecause Coomer alleges a conspiracy to defame him and inflict emotional distress upon him, he must show an ***agreement as to that objective*** or the course of action to achieve it," and "what is required in this sensitive First Amendment area is ... proof not merely of a joint purpose to publish, but ***specific evidence of a joint purpose to defame***." *Id.* at 601-02 (emphasis added).

TTV Defendants did not enter any agreement to engage in any defamation or unlawful activity. There is no evidence TTV Defendants intended to defame Plaintiff. There is no evidence of any underlying tort. And there is no evidence TTV Defendants knew Plaintiff or were aware of Dinesh D'Souza's Statements.

G. Summary Judgment is Due on Count VII (Punitive Damages).

Plaintiff does not dispute the high bar for punitive damages or the even higher bar to show "specific intent to cause harm" to overcome O.C.G.A. § 51-12-5.1(g)'s

statutory cap of $250,000. *See* Mot. at 37-40. Plaintiff also ignores TTV Defendants' cases where courts have reduced punitive damages to the statutory cap, including at summary judgment, in scenarios significantly more serious than here. *See id.* at 40.

Plaintiff's arguments are specious. Again, that at the motion to dismiss stage the Court held Plaintiff sufficiently pled a claim (Opp. at 64) has no bearing on whether summary judgment is appropriate. TTV Defendants nowhere try to "read new elements" into the statute. Opp. at 65. Rather, that TTV Defendants did not know Plaintiff is relevant to showing no actual malice and no specific intent. In the one case Plaintiff cites, the Court amended the judgment by ***reducing*** the total punitive damages award on the tort claims to the statutory cap. *Cap. Inventory, Inc. v. Green*, 2024 WL 1383228, at *5 (N.D. Ga. Feb. 29, 2024). And the cases Plaintiff cites regarding punitive damages are easily distinguishable. *See Craig v. Holsey*, 264 Ga. App. 344, 348–49 (2003) (only awarding $200,000 where defendant caused physical harm, acted recklessly by drinking and driving and using drugs and fleeing the scene, and admitted he was aware of the deleterious effect of doing so); *Zedan v. Bailey*, 522 F. Supp. 3d 1363, 1380 (M.D. Ga. 2021) (assessing only $30,000 even though plaintiff published defamatory statements for several months).

CONCLUSION

For the foregoing reasons, the Court should enter summary judgment in TTV Defendants' favor on all counts of Plaintiff's Complaint and dismiss the case.

Filed this 28th day of March, 2025.

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CERTIFICATE OF COMPLIANCE WITH L.R. 5.1

I HEREBY CERTIFY that the foregoing document was prepared in Times New Roman, 14-point font, as approved by Local Rule 5.1.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within and foregoing **Defendants True the Vote, Inc., Catherine Engelbrecht, and Gregg Phillips' Reply Brief in Support of Their Motion for Summary Judgment** was electronically filed on the Court's ECF filing system, which will automatically serve a copy on all counsel of record.

This 28th day of March, 2025.

GREENBERG TRAURIG, LLP

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