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DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202	
Plaintiff: ERIC COOMER, Ph.D., v. Defendants: DONALD J. TRUMP FOR PRESIDENT, INC., SIDNEY POWELL, SIDNEY POWELL, P.C., RUDOLPH GIULIANI, JOSEPH OLTMANN, FEC UNITED, SHUFFLING MADNESS MEDIA, INC. dba CONSERVATIVE DAILY, JAMES HOFT, TGP COMMUNICATIONS LLC dba THE GATEWAY PUNDIT, MICHELLE MALKIN, ERIC METAXAS, CHANEL RION, HERRING NETWORKS, INC. dba ONE AMERICAN NEWS NETWORK, and NEWSMAX MEDIA, INC.	▲ COURT USE ONLY ▲
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DEFENDANT NEWSMAX'S SPECIAL MOTION TO DISMISS UNDER C.R.S. § 13-20-1101

Pursuant to C.R.C.P. 121 § 1-15, Defendant Newsmax Media, Inc. ("Newsmax" or "Defendant"), by and through undersigned counsel, moves the Court to dismiss Plaintiff's Amended Complaint with prejudice under the Colorado Anti-SLAPP Act, C.R.S. § 13-20-1101.

INTRODUCTION

As is well-known, in the aftermath of the 2020 presidential election, President Trump, his representatives, and his followers disputed the election, alleging errors and/or fraud in vote tabulating by, among others, Dominion Voting Systems ("Dominion"). Some of these allegations involved Dominion's Director of Product Strategy and Security, Plaintiff, Eric Coomer ("Coomer"). The various allegations, made by the President and his team in lawsuits and public statements, were indisputably one of the most important stories (if not the most important) of the post-election period. As befits a dispute over who would ultimately hold the highest elected office in this country, these allegations were reported on extensively by every news organization in the United States. Newsmax was no exception, reporting on the President's claims and informing its viewers of both sides of the controversy.

Coomer seeks to make Newsmax pay for that reporting. He claims that certain persons who appeared on Newsmax made false and defamatory accusations toward him, and that Newsmax should be held responsible for reporting those accusations and for the damage Coomer alleges it caused him. Coomer's claim rests on the theory that even covering the positions of adherents to one side of a public controversy, whom he contends were making false claims, was improper. For Newsmax, the allegations, which were being covered by every major media outlet in the country, if not the world, were the story. As the supporters of the "stolen" election theory made their claims, it was critical to report that they were being made by the President's own

team, publicly and in court, including in at least one detailed sworn affidavit. Coomer's lawsuit presents a particularly dangerous threat to the First Amendment, as it suggests that Newsmax itself should have adjudged and resolved the facts (with impractical speed), and given voice to only one side of the public controversy. Expecting Newsmax to act as a gatekeeper preventing one side's views from reaching the public and foreclosing public review and assessment of controversy goes directly against long-accepted principles of journalistic freedom.

To be clear, Newsmax strongly condemns any threats or risks to safety Coomer or his family endured during this time. But Newsmax should not be held liable merely for reporting one of the most important controversies in recent history.

The United States Supreme Court has noted the important role the news media has to play and the protections granted by the First Amendment to enable it to do so. It has recognized the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open. . . ." *New York Times Co. v. Sullivan,* 376 U.S. 254, 271 (1964). Both Colorado law and the First Amendment provide special protections for such reporting and erect high hurdles to liability merely for reporting and adding to the public discourse. Colorado recently enacted the Colorado Anti-SLAPP Act, Colo. Rev. Stat. Ann. § 13-20-1101 (the "Act"), which empowers courts to promptly dismiss meritless lawsuits that target protected speech. C.R.S. § 13-20-1101. This case falls squarely within the category of meritless lawsuits subject to Anti-SLAPP dismissal.

Under the Anti-SLAPP Act, because Newsmax's activity is protected, Plaintiff must demonstrate a reasonable likelihood of prevailing on his claims for defamation, intentional infliction of emotional distress and conspiracy. Plaintiff cannot. In particular, Plaintiff cannot

show that the statements at issue contain defamatory falsehoods regarding him, and that they were made with actual malice – *i.e.*, that at the time of publication Newsmax either knew the statements its guests were making were false or subjectively harbored serious doubts as their truth. Furthermore, some of the statements are protected by the fair report privilege and the neutral report privilege. Accordingly, this Court should dismiss this action under the Colorado Anti-SLAPP Act.

BACKGROUND

In the wake of the November 2020 presidential election, President Trump and his supporters maintained that there were irregularities in the conduct of the election. The President and his legal team were not the only ones to raise questions in public and through court filings. Many in Congress and state and local election officials also questioned the election results, and supporters in several states filed lawsuits. In this context, some of these officials raised questions about Coomer and Dominion.

Newsmax, like most other media companies, regularly reported on this developing story throughout the post-election season. Newsmax provided a forum for opinion and information on the election. Guests made statements based, in part, on claims made by the President, his attorneys, other public officials, and court filings. Newsmax did not embrace the allegations as true. Rather, it sought information and commentary on the allegations from some of the individuals making them, in order to assist the public in understanding the allegations and drawing their own conclusions. Newsmax also believed the story was worthy of publication and discussion, as such information was being widely discussed in other media, such as radio, print, online, and television news.

Coomer alleges defamation, intentional infliction of emotional distress and civil conspiracy against Newsmax and all the other defendants. (Am. Compl. ¶¶ 82-94.) He does not distinguish at all between individuals and media defendants. The allegations in support of the claims are effectively all the same: Newsmax published falsehoods about Plaintiff with the objective to promote the reelection of Donald Trump for its own gain. (*Id*. ¶ 82-85.) This purportedly resulted in emotional trauma, lost earnings, and other pecuniary loss. (*Id*. ¶ 86.) Without even alleging he was terminated from his job, Coomer asserts his ability to be employed has been affected.

The Amended Complaint does not identify the exact words that purportedly provide the basis for Coomer's claim of defamation and intentional infliction of emotional distress, nor how they are false. Where statements are quoted, they lack complete context, but it is nonetheless still clear that the allegedly defamatory statements were not uttered by employees of Newsmax, but rather made by guests on various shows. It appears there are five broadcasts at issue:

- An episode of "American Agenda" that aired on November 17, 2020. The full statement, in context, made by a guest, Ken Timmerman, can be seen here: https://www.dropbox.com/s/57kb2c9c674an61/AA%2011_17_20.mp4?dl=0 (Beginning Minute 21:38) ("Timmerman Interview"). (Affidavit of Christopher Ruddy, dated April 27, 2021 ("Ruddy Aff.") ¶ 14)

- An episode of "The Howie Carr Show" that aired on November 20, 2020. The full exchange including statements about Coomer made by guest Sidney Powell, can be seen here: https://www.dropbox.com/s/i4dyta6zgyxdl00/Carr%2011_20_20.mp4?dl=0 (Beginning Minute 45:51) (the "Carr/Powell Interview") (*Id*.)

- An episode of "Sovereign Nation" that aired on November 28, 2020. The full exchange, in context, can be seen here: https://www.dropbox.com/s/hpk6l7a4oez1fka/MMSN%2011_28_20.mp4?dl=0 (Beginning Minute 10:25) (the "Malkin/Oltmann Interview") (*Id*.)

- An episode of "Greg Kelly Reports" that aired on December 5, 2020. The full exchange, including questions and statements made by guest Ken Timmerman, can be seen here: https://www.dropbox.com/s/fvoxacgmddtprim/GKR%20120420%20%28120520%29%20Replay%202.mp4?dl=0 (the "Kelly/Timmerman Interview") (*Id.*)

- An episode of "American Agenda" that aired on December 15, 2020. The full exchange can be seen here: https://www.dropbox.com/s/zda61i7evz8xu2t/AA%201215%20320p.mp4?dl=0 (the "Morris Interview") (*Id.*)

The Amended Complaint alleges that in the Timmerman Interview, Dr. Coomer was identified by name in relation to allegations of voter fraud with election equipment for Dominion and Smartmatic, a competitor of Dominion, alongside alleged conspiratorial connections with the 90-year-old Hungarian philanthropist George Soros. It alleges that "Newsmax suggested nefarious intent when noting that Dominion had "scrubbed [Dr. Coomer] from their website" when "[i]n reality, Dr. Coomer had not been on Dominion's website for years and Dominion employees' identities were removed from third party marketing sites as an essential safety precaution given the numerous death threats already targeting them." (Am. Compl. ¶ 62.)

The Amended Complaint further alleges that in the Carr/Powell Interview, Carr asked Powell "if it was true that Dr. Coomer was on a conference call with Antifa and had allegedly claimed he rigged the election." (*Id.*) It further alleges that "Carr did not ask for any proof when Powell affirmed those allegations, when she stated that she had a recording of the call (she does not), or when she went on to make further baseless allegations of connections between George Soros and Dominion." (*Id.*).

The Amended Complaint alleges that Malkin focused a segment on an interview with Oltmann to discuss his "discoveries about Dominion Vice President of Strategy and Security Eric Coomer" as well as who he is and "why it matters in these ongoing battles against election

fraud across the country." (Am. Compl. n. 70.) In the Malkin/Oltmann Interview, Plaintiff alleges, *inter alia*, "Malkin falsely claimed that Oltmann 'heard the name Eric Coomer' on [a call with Antifa organizers] (he did not)." (Am. Compl. ¶ 62.) From this, Plaintiff says, Malkin "falsely allege[d] that Dr. Coomer was part of an Antifa conspiracy to fraudulently elect the President of the United States." (Am. Compl. n. 70.) In the segment, Malkin goes on to note "It is important to make explicit that at this point . . . there is no evidence that Eric Coomer" engaged in any vote rigging. The Amended Complaint also alleges that in the Kelly/Timmerman interview, guest Ken Timmerman asked "Where is Eric Coomer? Where is Eric Coomer, the Dominion guy who is behind all of this?" (*Id*.) During the Morris Interview, Newsmax allegedly linked "Dominion with Smartmatic, alleging Smartmatic was Venezuelan-owned, and falsely alleging there was systemic fraud," though there is no allegation of any mention of Coomer. (*Id.*)

ARGUMENT

I. The Colorado Anti-SLAPP Act Applies to Plaintiff's Claims.

To "encourage and safeguard the constitutional rights of persons to . . . speak freely," Colorado recently enacted the Colorado Anti-SLAPP Act, C.R.S. § 13-20-1101 (the "Act"), which empowers courts to promptly dismiss meritless lawsuits that target protected speech. *Id*. The Act clearly applies to this matter, allowing for a thorough test of the merits at an early stage in this case. The statute provides:

> A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States constitution or the state constitution in connection with a public issue is subject to a special motion to dismiss unless the court determines that the plaintiff has

> established that there is a reasonable likelihood that the plaintiff will prevail on the claim."

C.R.S. § 13-20-1101(3)(a).

The Act sets up a two-step process for determining whether a claim challenged under its auspices must be stricken.[1] *Id.*; *Stevens v. Mulay*, No. 19-CV-01675-REB-KLM, 2021 WL 1153059, at *3 (D. Colo. Mar. 26, 2021), *citing Lefebvre v. Lefebvre*, 131 Cal. Rptr. 3rd 171, 173-74 (Cal. App. 2011). In the first step, the court determines whether a plaintiff has asserted a cause of action which arises "from any act of [defendant] in furtherance of [defendants]'s right of petition or free speech under the United States constitution or the state constitution in connection with a public issue." C.R.S. § 13-20-1101; *Stevens*, 2021 WL 1153059, at *3. Once a defendant makes a prima facie showing on this step, the burden shifts to the plaintiff, *see id.*, who, under the Colorado Act, must demonstrate a "reasonable likelihood of prevailing on the claim." C.R.S. § 13-20-1101(3)(a); *Stevens*, 2021 WL 1153059, at *3.

Discovery is stayed by the filing of an anti-SLAPP motion and the court's decision is immediately appealable. C.R.S. § 13-20-1101(6), (7). A prevailing defendant on an anti-SLAPP motion is entitled to recover its attorney fees. C.R.S. § 13-20-1101(4)(a).

[1] Although few cases have interpreted the recently enacted Colorado statute, the language of the statute is nearly identical to California's anti-SLAPP statute, Cal. Code Civ. Pro. § 425.16. The U.S. District Court for the District of Colorado recently stated that "because Colorado's anti-SLAPP law is relatively new and untested, and given that it tracks California's statute almost exactly, it is appropriate to draw from the more well-established body of authority interpreting the California law. *Stevens v. Mulay*, No. 19-CV-01675-REB-KLM, 2021 WL 1153059, at *2 (D. Colo. Mar. 26, 2021). Plaintiff has acknowledged in this case that California law is an appropriate source of guidance for interpreting the Colorado statute.

II. Plaintiff's Claims Should Be Dismissed Under the Colorado Anti-SLAPP Act.

This case merits dismissal under the Anti-SLAPP Act because (1) Plaintiff's claims arise out of protected activity; and (2) Plaintiff cannot show a reasonable likelihood of prevailing on his claims.

A. Plaintiff's Claims Arise out of Clearly Protected Activity by Newsmax.

A defendant meets its threshold burden on the first prong merely by "demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in" the Act. *Braun v. Chronicle Publ'g Co.*, 52 Cal. App. 4th 1036, 1043 (1997). News media such as Newsmax are regularly afforded the benefits of anti-SLAPP laws. *See e.g.*, *Sonoma Media Investments, LLC v. Superior Court*, 34 Cal. App. 5th 24, 34 (2019) ("[n]ewspapers and publishers, who regularly face libel litigation, were intended to be one of the '"prime beneficiaries"' of the anti-SLAPP legislation.") (citations omitted).[2]

Newsmax has been sued for the simple reason that it broadcast speech on a matter of public concern – the integrity of the 2020 presidential election. The claims thus arise precisely from Newsmax's "act[s] in furtherance of [its] right of …free speech." C.R.S. § 13-20-1101(3)(a). Specifically, Newsmax's challenged conduct falls within two or more of the categories enumerated in the Act.

Newsmax TV is available over local Colorado cable, satellite, and the internet (Ruddy Aff. ¶¶ 5-6), and thus the broadcasts at issue are a "public forum" under C.R.S. § 13-20-1101(2)(a)(III). *See, e.g.*, *Seelig v. Infinity Broad. Corp.*, 97 Cal. App. 4th 798, 807, 119 Cal.

[2] Courts have expressly rejected the assertion that the anti-SLAPP statute cannot be relied upon by a national media corporation. *See M.G. v. Time Warner, Inc.*, 89 Cal. App. 4th 623, 628-29 (4th Dist. 2001).

Rptr. 2d 108, 115 (2002) (on-air discussion between talk-radio cohosts was public forum); *Barrett v. Rosenthal*, 40 Cal. 4th 33, 41 n.4 (2006) (recognizing that websites accessible to the public are public forums for purposes of the anti-SLAPP statute and collecting cases). The Newsmax broadcasts also clearly constitute "other conduct or communication in furtherance of the exercise of the … constitutional right of free speech." *See Vogel v. Felice*, 127 Cal. App. 4th 1006, 1015 (2005) ("It is doubtful this characteristic would ever be lacking where . . . the conduct underlying the plaintiff's claims consist of pure speech.").[3]

There cannot be serious debate as to whether the interviews that were broadcast concern "an issue of public interest" – the integrity of the 2020 presidential election and claims by the President as to issues therewith. The threshold is low and the matter at issue here easily passes it. Colorado courts, in determining the scope of "public concern" for purposes of applying the actual malice requirement, have interpreted it broadly. *See Lewis v. McGraw-Hill Broad., Inc.*, 832 P.2d 1118, 1121 (Colo. App. 1992) ("a defamatory statement addresses a matter of public concern whenever it embraces an issue about which information is needed or is appropriate"). Election results and integrity are clearly such matters. *Romanoff v. State Comm'n on Judicial Performance*, 126 P.3d 182, 187 (Colo. 2006) (dispute involving contested elections for two statewide commission seats "is a matter of immediate and important public concern").

B. Plaintiff Cannot Demonstrate a Reasonable Likelihood of Prevailing on his Claims.

Since Newsmax clearly satisfies its threshold burden on the first prong of the anti-SLAPP

[3] Colorado's statute actually sweeps more broadly than California's on the "catch-all" prong four, in that the Colorado statute covers "conduct *or communication*" in furtherance of free speech. *Compare* Colo. Rev. Stat. Ann. § 13-20-1101(2)(a)(IV) *with* Cal. Code Civ. Proc. § 425.16(e)(4).

analysis, Plaintiff must demonstrate – with evidence – a "reasonable likelihood" of prevailing on his claims. C.R.S. § 13-20-1101(3)(a). To meet this burden, a plaintiff must "show[] that the complaint is legally sufficient and supported by a prima facie showing of facts that, if proved at trial, would support a judgment in the plaintiff's favor." *Fremont Reorganizing Corp. v. Faigin*, 198 Cal. App. 4th 1153, 1166 (2011).[4] Plaintiff cannot meet this burden.

1. Plaintiff Cannot Demonstrate a Reasonable Likelihood of Prevailing on his Claim for Defamation.

"In Colorado, the elements of a cause of action for defamation are: (1) a defamatory statement concerning another; (2) published to a third party; (3) with fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special damages or the existence of special damages to the plaintiff caused by the publication." *Williams v. Dist. Ct.*, 866 P.2d 908, 911 n.4 (Colo. 1993).

That the statements complained of in this case are clearly about a matter of public concern places a significantly higher burden on Plaintiff. First, Coomer must demonstrate, by clear and convincing evidence, that the allegedly defamatory statements at issue were materially false. *See Fry v. Lee*, 408 P.3d 843, 848 (Colo. App. 2013).

Second, Plaintiff must prove, again by clear and convincing evidence, that *Newsmax* (not its guests) acted with "actual malice." *See Diversified Mgmt., Inc. v. Denver Post, Inc.*, 653 P.2d 1103, 1109-10 (Colo. 1982). To prove actual malice, Plaintiff will have to prove that Newsmax either knew the allegedly defamatory statements were false, or that Newsmax "entertained

[4] In California, the nearly identical statute requires a plaintiff to show "there is a probability that the plaintiff will prevail on the claim." Cal. Code Civ. Proc. § 425.16(b)(1).

serious doubts as to the truth of the statement[s] or acted with a high degree of awareness of [their] probable falsity." *Fry*, 408 P.3d at 848.[5] He cannot make these showings.

As discussed below, as to each of the five broadcasts at issue, Plaintiff fails as to one or more of the elements discussed above, either because his claims are inadequate as a matter of law, or because he is unable to sustain his burden of proof. Newsmax also will be able to establish privileges as to one or more of the broadcasts. Accordingly, Plaintiff cannot demonstrate a reasonable likelihood of prevailing on his defamation claim.

a) Several of the Broadcasts Do Not Involve Defamatory Statements of Fact About Coomer.

The first element plaintiff must prove is that Newsmax published a statement about him that was both false and defamatory. Inherent in this requirement is that the allegedly defamatory statement must contain a provably false statement of fact. *Keohane v. Stewart*, 882 P.2d 1293, 1299 (Colo. 1994). Whether a statement could be reasonably understood as declaring or implying a provable assertion of fact depends on (1) whether it is sufficiently factual to be capable of being proven true or false, and (2) whether reasonable people would conclude that the assertion is one of fact. The second inquiry considers (a) how the assertion is phrased; (b) the context of the entire statement; and (c) the circumstances surrounding the assertion, including the medium through which the information is disseminated and the audience to whom the statement is directed. *Id*.

With respect to the second inquiry, "statements made in the midst of political debate must be considered within the usual and ordinary climate in which political candidates operate, which

[5] This requirement also follows from the fact that, as discussed below, Coomer will likely be held to be a limited purpose public figure as well.

is often composed of equal parts of bombast, hyperbole, and billingsgate." *Arrington v. Palmer*, 971 P.2d 669, 673 (Colo. App. 1998), *as amended on denial of reh'g* (Dec. 24, 1998). Viewers expect a high level of inflammatory rhetoric and heated language on a politically charged topic on cable news shows devoted to news and commentary, and are less likely to take the statements made in literal fashion. *See Pullum v. Johnson*, 647 So. 2d 254, 257-58 (Fla. 1st DCA 1994) (calling plaintiff a "drug pusher" in a political broadcast was rhetorical hyperbole); *Horsley v. Rivera*, 292 F.3d 695, 702 (11th Cir. 2002) (charge of "accomplice to homicide" during heated television interview on abortion was hyperbole).

A statement that is not "of and concerning" plaintiff is not actionable. *See Dorr v. C.B. Johnson, Inc.*, 660 P.2d 517, 519 (Colo. App. 1983). For several of the broadcasts at issue, Plaintiff cannot show that the statements were false and/or defamatory.

The Timmerman Interview. Although the complaint alleges that Timmerman stated that "Dominion had 'scrubbed [Dr. Coomer] from their website,'" Am. Compl. ¶ 62, this is simply not true. As can be seen from the video, Timmerman states that "Dominion scrubbed, uh, about half of their employees or had their employees scrub about half of, uh, their, um, profiles from LinkedIn over the past couple of days, . . . including . . . Eric Coomer." Plaintiff admits this is true, *id.*, and on its face is not defamatory. Plaintiff asserts the statement "suggested nefarious intent," *id.*, but even to the extent a reasonable listener might infer that some nefarious intent lay behind removing profiles from LinkedIn, in the context of the entire segment it is clear that Timmerman's comment is directed at *Dominion's* actions, which suggest to Timmerman that

they are "backpedaling" or trying to downplay or hide their purported prior relationship with Smartmatic. This cannot reasonably be understood as a statement concerning Coomer.[6]

But even if this statement could be understood as implying some bad motives on Coomer's part (and even if those bad motives could be characterized as defamatory), any such implication is Timmerman's interpretation of facts about social media posts that he accurately disclosed. Viewers of this segment were entitled to draw their own conclusions based on these same accurately revealed facts. Some could have agreed with Timmerman. Others may have disagreed. But Timmerman's statements about the social media facts are *not* actionable. *See NBC Subsidiary (KCNC-TV), Inc. v. Living Will Center*, 879 P.2d 6, 11-12 (Colo. 1994) (statement that product was a "scam" was based on facts disclosed to viewers who were "in a position to evaluate" and "free to form a judgment" about speaker's views, which were therefore nonactionable); *Seible v. Denver Post Corp.*, 782 P.2d 805, 809-10 (Colo. App. 1989) (basis for remarks implying plaintiff's evasion of the law was disclosed, and thus not actionable). Since the Timmerman Interview is neither of and concerning Coomer, nor capable of being proven false, it cannot serve as a basis for a claim. *See Dorr*, 660 P.2d at 519; *Keohane v. Wilkerson*, 859 P.2d 291, 297 (Colo. App. 1993) ("if the statement does contain or imply a verifiable fact, but is not reasonably susceptible to interpretation as a declaration of fact, it will receive full constitutional protection and no action for defamation will lie"), *aff'd sub nom, Keohane v. Stewart*, 882 P.2d 1293.

[6] Indeed the only statement directed at Coomer is that he posted the "Antifa manifesto," which he does not appear to contest nor claim to be defamatory; indeed, it appears he has effectively admitted it is true. (Am. Compl. ¶¶53-55).

Kelly/Timmerman Interview. In the context of a political discourse alleging a wide variety of improprieties and voter fraud in every swing state, the reference by Timmerman to Coomer as "the guy behind it all" following a question concerning Coomer's location, is too broad and vague to be interpreted as a statement of fact. *See Pullum,* 647 So. 2d at 257-58. Any claim based on this statement should be dismissed.

The Morris Interview. Morris read from an audit report concluding that Dominion's system was designed with inherent errors to create systemic fraud and influence elections. He made no mention of Coomer by name, nor did he make any reference that could conceivably be interpreted as being of and concerning Coomer. Coomer has not alleged that he is so synonymous with Dominion as to lead the public to infer that any statement about Dominion was about him. Given the absence of any such allegations or evidence, Coomer cannot establish that the Morris interview contained a defamatory statement regarding him and any claim by Coomer based on this statement should be dismissed.

b) Newsmax Did not Publish any of the Allegedly Defamatory Statements with Actual Malice.

As previously noted, all of Newsmax's reporting challenged in this lawsuit was on a matter of clear "public or general concern." In these circumstances, Colorado law affords Newsmax the same level of constitutional protection as it provides in cases brought by a public official or public figure in order to ensure that "the press should not be hindered in its reporting of matter of legitimate public interest." *See Diversified Mgmt.,* 653 P.2d at 1110. To prevail on his defamation claim therefore, Coomer must prove by clear and convincing evidence that Newsmax published the allegedly false statements with actual malice, *i.e.*, that Newsmax *knew*

them to be false or "entertained subjective doubts about [their] truth." *Diversified Mgmt.*, 653 P.2d at 1109; *see Fry*, 408 P.3d at 848; *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968).[7]

Plaintiff cannot show a reasonable likelihood of meeting that burden. Actual malice is a *subjective* standard. *See Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 335 n.6 (1974). While in

[7] Aside from the matter being one of "public concern," Coomer must also meet the actual malice standard because he is a limited purpose public figure or public official. Colorado employs the definition of limited purpose public figure set out in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974) – one who "voluntarily injects himself or is drawn into a particular controversy and thereby becomes a public figure for a limited range of issues." In a clear matter of public concern, the court asks whether plaintiff's participation in the controversy invites scrutiny. *Lewis v. McGraw-Hill Broad. Co.*, 832 P.2d 1118, 1122 (Colo. App. 1992). As Director of Product Strategy and Security for Dominion, Coomer has appeared at election security forums, such as one hosted by the U.S. Cybersecurity & Infrastructure Security Agency. *See* https://us-cert.cisa.gov/sites/default/files/2019-09/2019_Cybersecurity_Summit_Agenda_S508C_13.pdf. Coomer is the interface between Dominion and local election officials. *See Curling v. Raffensperger*, No. 1:17-CV-2989-AT, 2020 WL 5994029, at *9 n.23 (N.D. Ga.2020). He regularly makes presentations to election officials in open meetings (see e.g., https://www.youtube.com/watch?v=UtB3tLaXLJE, https://www.youtube.com/watch?v=BbCmq0jPUxY&t=447s) and has provided support to state officials in the form of testimony explaining how the system works and how Dominion coordinates with election officials. *See Curling*, at *10 (noting that Georgia officials relied on Coomer's testimony on cybersecurity issues); Associated Press, "Lawyers spar over Georgia voting machine glitch, planned fix," September 29, 2020; Niesse, Mark, "Fix coming to Georgia touchscreens to restore missing Senate candidates," *Atlanta Journal Constitution*, September 28, 2020. Coomer's comments to the press on issues related to voting machine security date back to his work for Sequoia as well. *See* Zetter, Kim, "In Industry First, Voting Machine Company to Publish Source Code," *Wired*, October 27, 2009. At least at times, Coomer has plainly "injected himself" into public controversies about election security and the Dominion voting systems. Moreover, a hallmark of a public figure is their access to the press and their ability to counteract false statements. *Gertz*, 418 U.S. at 344. The fact that Coomer was quoted on issues related to election security prior to the allegedly defamatory statements weighs strongly in favor of this finding. *See Thompson v. Nat'l Catholic Reporter Pub. Co.*, 4 F. Supp. 2d 833, 838 (E.D. Wis. 1998) (executive who had access to media and was quoted on matters related to the controversy was limited purpose public figure). Coomer clearly has access to the media given the publication of his OpEd in the Denver Post on December 8, 2021, denying election fraud took place.

Dominion provides voting systems for numerous states or localities, *see Curling*, at *7, for which, as noted above, Coomer serves as primary interface. Coomer designed key voting systems and wrote the code for them. *Id.* at *9 n.23. In *Curling*, he effectively spoke on Georgia's behalf. *Id.* at *9. It is clear, therefore, that his role in elections "is likely to attract or warrant scrutiny by members of the public." *Young v. CBS Broad., Inc.*, 212 Cal. App. 4th 551, 560 (3d Dist. 2012); *Rosenblatt v. Baer*, 383 U.S. 75, 86 (1966) (actual malice applies where the plaintiff's role "has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it"). Effective supervisory authority over such a critical aspect of voting procedure certainly "warrant[s] scrutiny" by the public. The fact that Coomer and Dominion are not state employees is no bar to their being found "public officials." *See Young*, 212 Cal. App. 4th at 560; *Hodges v. Okla. Journal Pub'g Co.*, 617 P.2d 191, 194 (Okla. 1980) (rejecting argument that because plaintiff was an "independent contractor," he could not be a public official).

Plaintiff has also essentially acknowledged in the complaint that he must meet the actual malice standard, as he has alleged that Newsmax "knowingly and recklessly published false statements." (Am. Compl. ¶ 62.)

certain cases actual malice may be proven by circumstantial evidence, the circumstances as alleged by Plaintiff fall well short of carrying his burden. Furthermore, it is *Newsmax*'s state of mind that is at issue. *See New York Times*, 376 U.S. at 287 ("state of mind required for actual malice would have to be brought home to the persons in the *Times'* organization having responsibility for the publication"). It is irrelevant whether the *speakers* – the guests on Newsmax's shows, or even Newsmax's contractors – knew or were reckless as to any alleged falsity. Moreover, it is only the state of mind of Newsmax employees responsible for publication that count. Thus, the subjective knowledge of Howie Carr or Michelle Malkin, for example, who are independent contractors, (Ruddy Aff. ¶¶ 8-9), does not factor into the determination of Newsmax's state of mind. *See, e.g., McFarlane v. Esquire Magazine*, 74 F.3d 1296, 1303 (D.C. Cir. 1996); *Masson v. New Yorker Magazine*, 832 F. Supp. 1350, 1370-73 (N.D. Cal. 1993).

Because most of what Coomer complains of are statements made by guests of Newsmax presenting *their* views (not Newsmax's), Coomer cannot establish that Newsmax itself acted with actual malice. These statements were largely made in real-time on live television. Courts in such situations have held that "[t]he standard of actual malice assumes … an opportunity on the part of the publisher to evaluate the matter to be published and form some conclusion as to falsity or doubts as to truth." *Adams v. Frontier Broad. Co.*, 555 P.2d 556, 564 (Wyo. 1976). Accordingly, courts find that such circumstances "make[] it impossible for [plaintiff] to factually establish the actual malice required to show a violation of the constitutional standard." *Id.*; *see also Pacella v. Milford Radio Corp.*, 462 N.E.2d 355, 360 (1984) (host and publisher of radio show did not have actual malice with respect to statements made by live caller; "[i]t is one thing to require a newspaper to check the accuracy of an interview. But it may be another matter to

hold a TV newsperson responsible for the spontaneous live utterance of an interviewee") *aff'd*, 476 N.E.2d 595 (Mass. 1985)[8]; *Brecht v. Fisher Communications*, 160 Wash. App. 1040 (2011) ("the lack of opportunity for [radio show hosts] to evaluate the statements of [callers] prior to publication, or to form some conclusion as to the truth or falsity of those statements, precludes [plaintiff] from making the factual showing necessary to demonstrate actual malice.").

There is no allegation, and it is highly implausible that Plaintiff will be able to adduce evidence, that responsible persons at Newsmax knew in advance (and had an opportunity to evaluate) what Ken Timmerman was going to say on the Timmerman Interview or the Kelly/Timmerman Interview,[9] or what Dick Morris was going to say in the Morris Interview. (Ruddy Aff. ¶¶ 15, 17.)

The fact that the alleged defamation was spoken by guests of Newsmax, and did not represent reporting by Newsmax, or Newsmax's position, also forecloses a finding of actual malice. As the Tenth Circuit has stated (applying Colorado law), "[t]he presentation of … statements as allegations, rather than as truth, further weighs against a conclusion [defendant] published them with actual malice." *Spacecon Specialty Contractors, LLC v. Bensinger*, 713 F.3d 1028, 1047 (10th Cir. 2013); *see also Student v. Denver Post Corp.*, No. 95CA0724, 1996 WL 756965, at *4 (Colo. App. Aug. 29, 1996) (where article "did not assert that the [defamatory] allegations were true," "no corroboration or investigation was called for"); *Reddick v. Craig*, 719 P.2d 340, 343 (Colo. App. 1985) (no actual malice where paper printed defamatory

[8] The *Pacella* court further noted that "[t]o impose on the talk-show host a duty of private censorship whenever he has an insufficient basis for assessing the truth of a statement would surely result in the extinction of the public talk show." 462 N.E.2d. at 360.

[9] Indeed, it is obvious in the Kelly/Timmerman interview that Greg Kelly is caught completely unaware by Timmerman's comments about Coomer and indeed is not entirely sure who Coomer even is.

letter to editor that paper did not adopt). Newsmax allowed guests to state their views about Dominion (and Coomer), but Newsmax did not present them as "absolute truths." *Spacecon*, 713 F.3d at 1047. Indeed, as discussed *infra* at 25, Newsmax informed its readers and viewers that allegations about election fraud should not be taken as reporting or findings by Newsmax itself. For example, in the Carr/Powell Interview, Carr merely asked Powell if the allegation regarding Coomer was true. (*See* Ruddy Aff. ¶ 14.) This is always a fair question for a reporter to ask a guest. Similarly, neither Greg Kelly nor the hosts of American Agenda adopted Timmerman's claims made in the Timmerman Interview or the Kelly/Timmerman Interview.

Even if, however, plaintiff could establish that any or all of the statements he claims to be defamatory were deliberate publications of fact by Newsmax, there is still no basis for a finding of actual malice – much less by clear and convincing evidence. Actual malice is a *subjective* standard; "[t]hat a reasonably prudent person would not have published the defamatory statement or would have investigated before publishing does not suffice." *Lewis*, 832 P.2d at 1123; *see Spacecon*, 713 F.3d at 1041-42. A plaintiff "must prove more than an extreme departure from professional standards and … a newspaper's motive in publishing a story—whether to promote an opponent's candidacy or to increase its circulation—cannot provide a sufficient basis for finding actual malice." *Harte-Hanks Comms. v. Connaughton*, 491 U.S. 657, 665 (1989).

A plaintiff can potentially establish actual malice by proving one of three circumstances: (1) "[A] story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call"; (2) [T]he publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation"; or (3) [T]here are obvious reasons to doubt the veracity of the informant or the accuracy of his reports." *St. Amant*,

390 U.S. at 732. Plaintiff has not alleged and cannot provide a prima facie case of any of these circumstances.

Plainly, Newsmax did not simply fabricate the statements made (again, most were not even made by Newsmax at all); there is a clear and disclosed basis for all of them. Timmerman's statements in both segments were based on inarguably truthful and revealed facts about Coomer's removal from social media and general absence from public view. Morris's statements were based on the Antrim County audit filed in litigation there. The Carr/Powell Interview discussed the charges that former federal prosecutor Powell, as the President's lawyer, had raised in a press conference the previous day, and were based, as was the Malkin/Oltmann Interview, on Joe Oltmann's sworn statements about the "Antifa" call he claims to have heard.

Further, despite plaintiff's claims to the contrary, there is nothing "inherently improbable" about any of these statements. Timmerman's statements were actually true, and even to the extent he implied nefarious motives for Coomer's "scrubbing," it is hardly unheard of for persons to remove their social media footprints in the midst of a controversy. While widespread election fraud appears to be rare in this country, it is not *inherently* improbable that fraud might take place, or that someone might be overheard on a conference call claiming to have perpetrated it. Indeed, litigation in Georgia addressed issues with ballot marking devices and Representatives and Senators have raised concerns about the security of electronic voting.[10] Oltmann's claims are even less "improbable" given the extensive anti-Trump postings by Coomer that Oltmann uncovered.

[10] *See Curling v. Raffensperger*, No. 1:17-CV-2989-AT, 2020 WL 5994029 (N.D. Ga. Oct. 11, 2020); https://maloney.house.gov/media-center/press-releases/smartmatic-announces-sale-sequoia-voting-systems; https://www.warren.senate.gov/imo/media/doc/H.I.G.%20McCarthy,%20&%20Staple%20Street%20letters.pdf.

Nor were there "obvious reasons" to doubt the veracity of any of the sources presented or relied upon.[11] Regardless of subsequent events, at the time of the Carr/Powell interview Sidney Powell was a senior member of the legal team representing President Trump in his challenges to the election results. She had represented any number of high-profile defendants such as Roger Stone. There were no "obvious" reasons to doubt her statements about Coomer, which were based on the reporting by Oltmann (and which were incorporated in lawsuits filed by Powell). As for Oltmann, there is no allegation or evidence that he was previously known to be untrustworthy.[12] He is simply alleged to be "a politically-motivated . . . business owner, and podcast host."[13] Political motivation does not establish knowledge of falsity, and even if *Newsmax* knew of his political motivation, this fact would not be sufficient to make him inherently unreliable or not credible. *Spacecon*, 713 F.3d at 1045 ("That [defendant] knew [source] may have been biased against [plaintiff] is not evidence [defendant] had obvious reasons to doubt [source's] veracity or the accuracy of his report."). Moreover, nothing in his claim appeared to be obviously fabricated. He provided references to research he had undertaken and had sworn to his allegations in an affidavit. As alleged in the complaint, Oltmann had previously disclosed substantial anti-Trump social media postings by Coomer (the

[11] As discussed, Timmerman and Morris relied upon publicly available information; their "veracity" in reporting this information is not really in issue. But to the extent it could be deemed to be at issue, there were no obvious reasons to doubt either one. Timmerman is a published author on, among other issues, election fraud. And Dick Morris is a longtime political advisor and analyst.

[12] It is clear from the Malkin interview that she is concerned that the claims may well be true and she explores the potential ramifications with Mr. Oltmann. There is nothing in the interview that suggests that she harbors serious doubts as truth of the matters asserted by Dr. Oltmann. Nonetheless, she is careful to note the lack of evidence that Coomer engaged in any rigging of the election.

[13] References to his partisan posts and solicitations to join the "Army for Trump" post-date his appearance on "Sovereign Nation." Compl. fn 51.

authenticity of which Coomer effectively admits), providing at least some evidence bolstering the likelihood that Oltmann's account was true. The same claims he made when speaking to Malkin were also included in complaints filed by the President's legal team in Michigan (*King v. Whitmer*) and Georgia (*Pearson v. Kemp)*, the former of which was subsequently amended to include Oltmann's affidavit.

Absent some "obvious" red flags, the mere failure to investigate Oltmann's story cannot establish actual malice – even if Plaintiff could suggest obvious sources Newsmax should have investigated to corroborate Oltmann's account. Newsmax was entitled to rely on Oltmann, even if he might have had political motives, and even notwithstanding Plaintiff's claims that Newsmax itself was motivated to push the story. *See Spacecon*, 713 F.3d at 1043-45 (no actual malice even though publisher had motive to harm plaintiff and relied entirely on a source also known to be biased); *St. Amant*, 390 U.S. at 733 (no actual malice where political candidate relied solely on testimony of single source without investigation). There are no facts alleged nor likely to be uncovered that can possibly establish that Newsmax acted with actual malice, and all of Plaintiff's claims will fail for that reason.

c) Some of the Statements Are Protected by the Fair Report Privilege.

Plaintiff also cannot establish a reasonable likelihood of success on his defamation claim because many of statements are protected by the fair report privilege. The fair and substantially accurate reporting of actions in judicial and other proceedings is privileged under the common law in Colorado. *Tonnessen v. Denver Pub. Co.*, 5 P. 3d 959, 964 (Colo. App. 2000). This is so even if the reporter knows or believes the reported statements to be false. *Id.* The Malkin/Oltmann and Morris Interviews are covered by this privilege. Morris read or

paraphrased from an audit report filed in court. The Malkin/Oltmann Interview largely concerned allegations made in the complaint filed in *Pearson v. Kemp* (N.D. GA), which, the day after the interview, were submitted in an affidavit from Oltmann in *King v. Whitmer* (E.D. MI). The interviews were effectively "courthouse-steps" repetition of allegations in judicial proceedings, which are protected by the fair report privilege. *See Tonnessen* 5 P. 3d at 964-965 (*citing Rosenberg v. Helinski,* 328 Md. 664, 682-83 (1992)) (fair and accurate report privilege applied to testifying doctor's own out-of-court recounting of the gist of his testimony; requirement of fair and accurate reporting did not require that such reports are comprehensive; accounts focusing more narrowly on important parts of such proceedings enjoy the privilege).

d) Some of the Statements Are Protected by the Neutral Report Privilege.

Plaintiff further cannot demonstrate a reasonable likelihood of prevailing on his defamation claim because the statements at issue are protected by the neutral report privilege. Newsmax reported on and provided a forum for discussion of a major news story of extreme public interest and it presented allegations without adopting them as true, so that the public could draw its own conclusions. Guests such as Timmerman were given an opportunity to state their impressions, which were not adopted by the hosts. As to statements about Coomer that been made by Powell at a press conference the previous day, Howie Carr asked "Is that true?," and "You have that?" And Malkin makes clear there is no evidence that Coomer rigged the vote.

In *Edwards v. National Audubon Soc., Inc.*, 556 F.2d 113 (2d Cir. 1977), the court found that to secure a robust an unintimidated press, the media must have immunity from defamation when a journalist is merely accurately conveying allegations. Indeed, the court went beyond the protections granted by requiring a showing of actual malice, noting that even in a case in which a

journalist has serious doubts regarding the truth of allegations, she need not suppress newsworthy statements, "nor take up cudgels against dubious charges" in order to publish them without fear of liability of defamation. The public interest in being fully informed about controversies that often rage around sensitive issues demands that the press be afforded the freedom to report such charges without assuming responsibility for them. *Id.* at 120.

Recognizing this underlying policy, courts that have adopted the neutral report privilege have, at times, gone even further than *Edwards*. While federal courts in Florida, California, and D.C. that have recognized the privilege require the reporting of charges to be accurate and disinterested, not all require equal time to be given to both sides of an issue, nor that the allegations be levied by a public figure. *Compare Edwards*, 556 F.2d 113, with *Price v. Viking Penguin, Inc.*, 881 F.2d 1426, 1433-34(8th Cir. 1989) (as long as the particular accusation is reported disinterestedly and dispassionately, the neutral reportage privilege would apply even if the report was one-sided); *In re United Press Intern.*, 106 B.R. 323, 330 (D.D.C. 1989) (neutral reportage doctrine does not require reportage of "both sides" when the report itself is essentially factual, neutral, and accurate); *Rendon v. Bloomberg, L.P.*, 403 F. Supp. 3d 1269, 1278 (S.D. Fla. 2019) (neutral reportage recognized even in circumstances where the source was not reliable); *Barry v. Time, Inc.*, 584 F. Supp. 1110, 1126 (N.D. Cal. 1984) ("the neutral reportage privilege does not depend solely upon the 'trustworthiness' of the individual or organization making the allegedly defamatory statements"). Evidence of general disposition does not establish lack of neutrality in a particular circumstance. *Price*, 881 F.2d at 1434. Thus the allegations that Newsmax generally has put forward allegations of voter fraud – pre-dating the presidential

election results in 2020 – to favor certain candidates, does not establish lack of neutrality in reporting the allegations made by President Trump, his surrogates, and followers.

Though there are no cases in Colorado directly addressing the privilege, it is likely that Colorado would recognize a neutral report privilege, given Colorado's consistent history of recognizing the need to protect the news media from the chilling effect of defamation suits. As previously discussed, the Colorado Supreme Court has held that actual malice must be proven in all cases of "public concern," despite there being no First Amendment requirement to do so, "in order to honor the commitment embodied in the first amendment and to ensure sufficient scope for first amendment values." *Diversified Mgmt.*, 653 P.2d at 1106. Colorado courts have effectively recognized a news organization's right to publish even admittedly false charges by another in the good-faith effort to inform the public of a controversy. *See Reddick*, 719 P.2d at 343.

The neutral report privilege applies here. Newsmax reported in a fair and impartial manner, and provided a forum for guests to discuss the issues subject to questioning. During the period of the election contest, Newsmax also published to its website numerous stories that presented Dominion's responses to the President's allegations, such as:

- Jeffrey Rodack, *Trump: 'Will Never Concede' Despite Transition Process OK* (Nov. 24, 2020), available at https://www.newsmax.com/politics/trump-concede-tweet-gsa/2020/11/24/id/998486/ (noting Dominion representative has called Trump's claims "crazy").

- *Dominion CEO Disputes Team Trump's Claims of Vote Switching, Foreign Influence* (Nov. 30, 2020), available at https://www.newsmax.com/politics/Dominion-Voting-Systems/2020/11/30/id/999334/.

- *Georgia Elections Official Urges Trump to Rein in Supporters* (Dec. 1, 2020), available at https://www.newsmax.com/politics/Election-2020-Georgia/2020/12/01/id/999585/.

- Theodore Bunker, *Dominion Chief Decries 'Disinformation Campaign'* (Dec. 15, 2020), available at https://www.newsmax.com/newsfront/dominion-voting-systems-john-poulos-voting-machines/2020/12/15/id/1001681/.

* * *

For the reasons explained above – that the statements are not false and defamatory, that Plaintiff cannot show actual malice and that the fair report and neutral report privileges apply – Plaintiff cannot demonstrate a reasonable likelihood of prevailing on his claim for defamation. Accordingly, Plaintiff's defamation claim should be dismissed under the Colorado Anti-SLAPP Act.

2. Plaintiff Cannot Demonstrate a Reasonable Likelihood of Prevailing on his Claim for Intentional Infliction of Emotional Distress.

To establish a claim for intentional infliction of emotional distress in Colorado, plaintiff must prove that "(1) the defendant(s) engaged in extreme and outrageous conduct, (2) recklessly or with the intent of causing the plaintiff severe emotional distress, and (3) causing the plaintiff severe emotional distress." *Mackall v. JPMorgan Chase Bank, N.A.*, 356 P.3d 946, 955 (Colo. 2014).

The first element requires conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Id.* Where claims are not defamatory, as is the case here, they cannot be sufficiently outrageous to state a claim for intentional infliction of emotional distress. A fortiori, lawful conduct cannot be outrageous conduct. *See e.g.*, *Id.* ("Because [the defendant] was within its rights to [enforce a promissory note against the plaintiffs], we conclude

that this conduct was not extreme and outrageous."). Even *per se* defamation is not itself sufficient to establish outrageous conduct that can support an intentional infliction of emotional distress claim. *See Gordon v. Boyles*, 99 P.3d 75, 79, 82 (Colo. App. 2004) (a radio host's allegation that a Denver police officer stabbed another officer outside of a bar was defamatory per se, but did not constitute outrageous conduct). As discussed above, Newsmax was engaged in the quintessential free speech activity of reporting on a matter of public concern.

Indeed, given that the claim arises out of the exact same speech that is the basis for the defamation claim, it is subject to the same standards as the defamation claim. Plaintiff is unable to show a reasonable likelihood that he will prevail on the claim given that the constitutional privilege applies not merely to defamation but to "ancillary tort claims which might arise from the publication of an allegedly defamatory statement." *Lewis*, 832 P.2d at 1124–25.

3. Plaintiff Cannot Demonstrate a Reasonable Likelihood of Prevailing on his Claim for Conspiracy.

Conspiracy is not an independent basis for a claim absent an underlying wrong. *See Colorado Cmty. Bank v. Hoffman*, 338 P.3d 390, 397 (Colo. 2013). Even if plaintiff were able to support one of his underlying claims as to one of the other purported co-conspirators, the claim is lacking. A conspiracy requires proof of (1) two or more persons, (2) an object to be accomplished; (3) a meeting of the minds on the object or course of action; (4) an unlawful overt act; and (5) damages as the proximate result thereof. *Nelson v. Elway*, 908 P.2d 102, 106 (Colo. 1995). Evidence of the agreement must be presented by the plaintiff and will not be inferred. *Id.*

Here, Plaintiff has not alleged a single overt act in furtherance of the conspiracy, nor a meeting of the minds beyond mere speculation and conclusory statements. Newsmax's own purported "history of advancing varying allegations of voter fraud to support specific political

beliefs," Am. Compl. fn 96, does not constitute a meeting of the minds between two or more persons or an overt unlawful act. Moreover, his bald conclusory allegation that all the "Defendants agreed, both expressly and implicitly, to create a false narrative that in the event President Trump lost his reelection bid it could have only occurred because of fraudulent election activities" does not include any factual detail regarding any communications among or between defendants, many of whom are competing media outlets, and is pure speculation that cannot support a claim. The conspiracy claim is further undercut by Newsmax's clear reporting of Dominion's responses to the allegations. Accordingly, Plaintiff cannot demonstrate a reasonable likelihood of prevailing on his claim for conspiracy.

CONCLUSION

For the foregoing reasons, pursuant to the Colorado Anti-SLAPP Act, C.R.S. § 13-20-1101, Defendant Newsmax Media, Inc. respectfully requests Plaintiff's claims against it be dismissed in their entirety with prejudice and pursuant to C.R.S. § 13-20-1101(4)(a), this Court award Newsmax its attorneys' fees and costs for this motion.

DATED: April 27, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2021 the foregoing **DEFENDANT NEWSMAX'S SPECIAL MOTION TO DISMISS UNDER C.R.S. § 13-20-1101** was filed and served via Colorado Courts E-Filing on the following:

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