DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: City and County Building 1437 Bannock Street Denver, Colorado 80202	DATE FILED: October 4, 2021 9:51 AM FILING ID: 4ADFC74BE228F CASE NUMBER: 2020CV34319
Plaintiff(s): ERIC COOMER, Ph.D. **v.** **Defendant(s): DONALD J. TRUMP FOR PRESIDENT, INC.; SIDNEY POWELL, SIDNEY POWELL, P.C.; DEFENDING THE REPUBLIC, INC.; 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 AMERICA NEWS NETWORK; and NEWSMAX MEDIA, INC.**	**▲ COURT USE ONLY ▲** Case Number: 2020 CV 034319 Courtroom/Division: 409
Attorneys for Defendant Michelle Malkin: Franklin D. Patterson, No. 12058 Gordon A. Queenan, No. 49700 Patterson Ripplinger, P.C. 5613 DTC Parkway, Suite 400 Greenwood Village, Colorado 80111 Telephone: 303/741-4539 Facsimile: 303/741-5043 E-mail: fpatterson@prpclegal.com gqueenan@prpclegal.com	

DEFENDANT MICHELLE MALKIN'S REPLY IN SUPPORT OF HER SPECIAL MOTION TO DISMISS PURSUANT TO C.R.S.A. §13-20-1101
(This Reply Contains Information Designated As Protected Under The Omnibus Protective Order)

Defendant Michelle Malkin, by and through her attorneys, Patterson Ripplinger, P.C., hereby submits the above-captioned Reply and in support thereof, states as follows:

INTRODUCTION

Ms. Malkin moved to dismiss Plaintiff's claims of defamation, intentional infliction of emotional distress, and conspiracy, and request for injunctive relief, pursuant to C.R.S. §13-20-1101. The thrust of the motion was that Plaintiff cannot show a reasonable probability of prevailing on his claims. After conducting months of discovery, the score has not changed. Plaintiff provides nothing to establish he can succeed on his claims against Ms. Malkin. Indeed, his one-hundred-and-fifty-page Response barely mentions her with specificity. When it does, Plaintiff still fails to identify any defamatory remarks she made. Rather, Plaintiff falsely contends that Ms. Malkin refused to issue a retraction of an unidentified statement. Plaintiff then points to a series of non-defamatory statements by Ms. Malkin that are based on Plaintiff misreading, or providing misleading excerpts of, what was said. Next, Plaintiff contends that any story based on one source is per se unreliable and defamatory – even though the Colorado Court of Appeals has held the opposite. Then, Plaintiff contends that Mr. Oltmann's story about Dr. Coomer was inherently unbelievable, even though every aspect of it except the specific oral statement "I made f*cking sure Trump won't win" is both believable and also true. Plaintiff also gives the Court a series of sweeping assertions regarding all Defendants about 'what courts have found in other cases.' A review of the cited authority reveals it is inapplicable to this case. Lastly, Plaintiff contends that Ms. Malkin made him a public figure. But Dr. Coomer concedes that he found out about Mr. Oltmann – and was receiving death threats – before Ms. Malkin conducted her interview.

Plaintiff's response is one hundred fifty pages, and the portions that do focus on Ms. Malkin generally allege that she should have done more in advance of her livestreamed interview of Mr. Oltmann. But requiring this to occur – or be accused of defamation – would be the death knell of live interviews and, moreover, severely limit the types of important stories that journalists could cover. Plaintiff has failed to meet his burden, his claims against Ms. Malkin should be dismissed, and Ms. Malkin should be awarded her attorney fees.

ARGUMENT

I. PLAINTIFF FALSELY CONTENDS THAT MS. MALKIN REFUSED TO RETRACT A YET-TO-BE-IDENTIFIED DEFAMATORY STATEMENT.

Plaintiff's counsel states that Ms. Malkin "recently refused to issue a retraction in response to a recent demand on August 18, 2021…."[1] This is false. On August 18, 2021, Mr. Cain sent a letter to Defendants requesting a retraction.[2] The undersigned asked Mr. Cain to identify what Ms. Malkin was being asked to retract.[3] Mr. Cain said the statements are in the Complaint,[4] but the Complaint only alleges Ms. Malkin should not have interviewed Mr. Oltmann.[5] When the undersigned inquired again, Mr. Cain responded that he was skeptical about the genuineness of the inquiry.[6] The undersigned tried a third time, but no response was received prior to Plaintiff filing his Response.[7] The request for a retraction is an attempt to fill an evidentiary void by portraying Ms. Malkin as unrepentant. But, the willingness to issue a retraction is immaterial to the issues before the Court. The issue is whether there is a defamatory statement. There is not.

[1] Resp. p.45, ¶57.
[2] Ex. V-1.
[3] Ex. A, E-mails with Counsel, p.1.
[4] *Id.* at p.2.
[5] *See, generally*, First Am. Compl.
[6] Ex. A, p.4.
[7] *Id*. at p.3.

II. PLAINTIFF HAS NOT IDENTIFIED A DEFAMATORY STATEMENT BY MS. MALKIN.

The first element of defamation is a defamatory statement. Plaintiff does not have one. Plaintiff created a "Defamatory statement spreadsheet" ("Spreadsheet") and attempted to cobble together a series of statements to allege the context of, or implications that could be drawn from, Ms. Malkin's interviews were defamatory. First, Plaintiff points to Ms. Malkin stating: "I wanted to let [Mr. Oltmann] use this platform to explain what you've discovered about Dominion, and one figure, very key figure in particular…."[8] This is not defamatory. That is a factually accurate statements about Ms. Malkin's rationale for interviewing Mr. Oltmann.

Second: JO[9]: "But Dominion is in 40 states. They handle most of the election – elections in 28 states." MM: "Yes. So people need to – I just wanted to underscore that and put an exclamation point because the market share of Dominion is why this reaches from conspiracy theory to conspiracy truth."[10] That is not a defamatory statement. It is a discussion about the importance of Dominion's market share to understanding why a vulnerability at Dominion could have far-reaching implications. Dr. Coomer confirmed Dominion's market share is significant.[11]

Third, Ms. Malkin recaps what Mr. Oltmann has stated during the interview.[12] That is not defamatory. Ms. Malkin does refer to the "unhinged rantings of this lunatic in charge at security at Dominion" [13] but that is "rhetorical hyperbole" – an "extravagant exaggeration [that is] employed for rhetorical effect." *Clifford v. Trump*, 339 F. Supp. 3d 915, 926 (C.D. Cal. 2018),

[8] Spreadsheet, p.4, Pub. 5, time 1:20.
[9] JO refers to Joe Oltmann and MM refers to Michelle Malkin.
[10] *Id.* at time 13:40.
[11] Pl.'s Resp., Ex. A, p.5, ¶9 ("Dominion provided election related services to at least thirty different states….").
[12] Spreadsheet, p.4, Pub.5, time 22:00; *id.* at p.5, Pub.5, time 31:06.
[13] *Id.*

aff'd, 818 F. App'x 746 (9th Cir. 2020). It is not defamatory, and it cannot be proven to be false. *Id.* Dr. Coomer's posts are not the model of restraint and could accurately be described as rantings.

Fourth, Ms. Malkin tweets a link to the interview and refers to Dr. Coomer as an Antifa radical, as well as tweeting a link to a story by Defendant TGP.[14] Ms. Malkin also retweets a link to a story by Defendant TGP.[15] In doing so, it "automatically populate[d] the image and the headline."[16] Retweeting a published article is not defamatory, Dr. Coomer's social media posts indicate he is anti-fascist – the shoe fits – and, again, this is rhetoric.

Fifth, Plaintiff claims "Malkin presented Oltmann as an 'eyewitness account of the fraud that's going on' in light of Oltmann being censored by Twitter for 'telling the truth.'"[17] Untrue. Ms. Malkin stated as the beginning of the interview: "so far I've experienced a limited amount of throttling as I've brought stories from independent citizen journalists and *GOP poll watchers who have eyewitness accounts of the fraud that is going on*."[18] Mr. Oltmann is not a GOP poll watcher with an eyewitness account of fraud. That statement does not relate to Dr. Coomer – it references prior interviews– and is not defamatory.

Sixth, Plaintiff takes Ms. Malkin to task for the interview she did on Newsmax of Mr. Oltmann. The only portion of the Newsmax segment that Ms. Malkin drafted regarding Dr. Coomer was: "NEXT UP: DENVER BUSINESSMAN JOE OLTMANN JOINS ME TO DISCUSS HIS SHOCKING DISCOVERIES ABOUT DOMINION VICE PRESIDENT OF

[14] *Id.* at p.5, Pub.6-7; *id.* at p.8, Pub.16 and 18; *id.* at p.10, Pub.27-28.
[15] Resp., Ex. E-3, at 1 of 11 (Denver Business Owner: Dominion's Eric Coomer is an Unhinged Sociopath).
[16] Resp., Ex. F-1, p. 22, dep. tr. p. 80:16-81:11.
[17] *Id.*
[18] Ex. F-3, p. 3, tr. p. 2:23-3:3.

STRATEGY AND SECURITY ERIC COOMER AND MUCH MORE. STAY TUNED."[19] Everything else was a "free-flow conversation and interview" with Mr. Oltmann,[20] which was prerecorded.[21] However, as Ms. Malkin testified, "[o]nce I tape the interview, I do not have control over the footage."[22] Newsmax does. Ms. Malkin had a taped interview with Mr. Oltmann, and then Newsmax elected to publish whatever portions it saw fit. If Plaintiff believes portions of the interview were defamatory, he can take it up with Newsmax. Ms. Malkin, for her part, observed that there was no publicly available evidence that Dr. Coomer had rigged the election. Plaintiff pivots to the notion that this disclaimer "impl[ies] that there is undisclosed evidence" that the election was rigged.[23] That is absurd. The retraction that Plaintiff cites to with approval[24] states that Newsmax has "found no evidence that Dr. Coomer interfered" with the election.[25] We could just as easily twist that into Newsmax 'implying' that there is unfound evidence that shows Dr. Coomer rigged the election.

Seventh, Plaintiff notes that Ms. Malkin was one of the first Defendants to interview Mr. Oltmann.[26] That does not make her statements defamatory.

Eighth, Ms. Malkin's preamble to the interview states that she is "bringing you information vital to the systemic stealing of the election."[27] Again, Ms. Malkin does not state that Dr. Coomer

[19] *Id.* at p. 125.
[20] *Id.* at p. 21, dep. tr. p. 21:7-21:11.
[21] Resp., Ex. F-1, p.19, dep. tr. p. 69:13-69:19.
[22] *Id.* at p. 21, dep. tr. p. 77:6-77:8.
[23] Resp., p.43, ¶53.
[24] *Id.* at p.45, ¶57.
[25] *Id.* at p. 45, ¶57.
[26] *Id.* at p. 41, ¶52.
[27] Resp., Ex. F-3, p.3, dep. tr. p. 2:3-2:5.

stole the election and, as she explained in her deposition, she was doing a "series of live streams" addressing "an entire umbrella of election integrity irregularities…."[28]

In sum, many of the statements Plaintiff points to do not even relate to Dr. Coomer, and none of them are defamatory. Rather, Plaintiff is arguing that the *implications* or *conclusions* listeners *might* draw from the context of Ms. Malkin's interviews are defamatory. That is the proverbial slippery slope, as Plaintiff is trying to blame Ms. Malkin for the politically charged climate we live in – where individuals jump to conclusions based on leaps that are not supported. For example, if the undersigned claimed (he does not) that Mr. Cain was in Dallas when JFK was assassinated but there is no publicly available evidence he was involved in the assassination, Plaintiff's argument would be that this is defamatory because it could be construed as implying that Mr. Cain fired the fatal shot. If that is the case, then everything is defamatory because there is always the potential for someone to reach the wrong conclusion. Moreover, Plaintiff appears to be wanting to eat his cake and have it too. Plaintiff repeatedly argues there is no evidence he rigged the election but, when Ms. Malkin says the same thing, it is defamatory. Truth is a defense to a defamation claim and if Plaintiff is arguing that there is no evidence he rigged the election, he cannot allege Ms. Malkin defamed him by saying the available evidence supports that conclusion.

III. PLAINTIFF'S PRIMARY ARGUMENT IS CONTRARY TO COLORADO LAW AND MR. OLTMANN'S NARRATIVE IS BELIEVABLE.

Plaintiff argues that Mr. Oltmann was the only source for this story and that makes Ms. Malkin's conduct defamatory.[29] To support this, he retained Frederick W. Brown, Jr. to, again, fill

[28] Resp., Ex. F-1, p.12, dep. tr. p. 39:7-39:18.
[29] Resp, p.43, ¶55.

an evidentiary gap. Mr. Brown opines that "[a]ny reporting that relies on a single source… should be considered unreliable."[30] This is a troublesome assertion. For example, think of the number of times there is a dispute about whether sex was consensual, particularly in the MeToo era. The alleged victim accuses someone of wrongdoing. In Mr. Brown's eyes, the story does not get coverage because the accuser is "unreliable." That is stupid and wrong.[31] And how often does someone accused of wrongdoing come clean the first time a journalist comes calling? Luckily, the Colorado Court of Appeals does not agree with Mr. Brown, having held that "a reporter, without a 'high degree of awareness of their probable falsity,' may rely on statements made by a single source even though they reflect only one side of the story without fear of libel prosecution." *Fink v. Combined Commc'ns Corp.*, 679 P.2d 1108, 1111 (Colo. App. 1984). Mr. Brown knows this is true, conceding "law is what you **can** do; ethics is what you **should** do."[32] His opinions on this topic are worthless.

Circling back to the applicable standards, Plaintiff has pointed to nothing that establishes Ms. Malkin had a "high degree of awareness" that Mr. Oltmann's narrative was probably false. Dr. Coomer is, admittedly, vehemently Anti-Trump.[33] Dr. Coomer's social media posts reveal a propensity for profanity and bluster. Why is it so hard to believe that Dr. Coomer was on a call with anti-Trump activists and *said* he made "f*cking sure" Trump would not win the election? Dr. Coomer's posts – which he has time to draft, reflect on, post, and remove – are riddled with,

[30] Resp., Ex. N, p.9, ¶17(f).
[31] Indeed, in many of these cases, one person made an allegation that was covered in the news, and then, upon seeing the news, more victims came to the forefront.
[32] Resp., Ex. N, p.5, ¶9 (*emphasis in original*).
[33] OAN's Reply in Support of Motion to Dismiss, Ex. A, dep. tr., p. 70:12-70-14; *id.* at 71:8-71:10 (admitting he intensely disliked Donald Trump).

profanity-laced braggadocio. Mr. Oltmann's narrative about his observations is believable. Further, Mr. Oltmann's narrative about Dr. Coomer has been proven to be true in almost every respect.[34] Conversely, in his December 8, 2020, Denver Post op-ed, Dr. Coomer stated: "Additionally, any posts on social media channels purporting to be from me have also been fabricated. I do not have a Twitter account and my Facebook account is not active. These individuals are impersonating me."[35] Similar statements are attributed to him in the Ark Valley Voice.[36] But in his affidavit attached to his response, he concedes that the at-issue posts were made by him.[37] Dr. Coomer either lied or made a deliberately vague and misleading assertion about his social media presence.[38] Further, he confirms he tried to destroy evidence.[39] Moreover "Individual 1" has confirmed there was a call on September 25, 2020, with 15-20 "Denver activists,"[40] *the day before Mr. Oltmann began searching for Eric at Dominion*.[41]

Simultaneously, "Individual 1" claims that "Eric from Dominion" was not mentioned during a call a year earlier. That is a weird thing to remember. Also, Ms. Malkin notes the hypocrisy here. Mr. Oltmann is accused of being a liar because he might benefit from being famous. But Dr. Coomer has no problem believing "Individual 1" despite him/her being recently

[34] *See, generally,* Powell's Reply in Support of Anti-SLAPP Mot., at pp.1-5. Mr. Oltmann was correct about: the date of the call; the number of attendees; the medium of the call; the identities of some of the attendees; and the topics of discussion. *Id.*
[35] *Id.*, Ex. P19 at 3.
[36] OAN's Reply in Support of Motion to Dismiss, Ex. E, p. 2 of 5.
[37] Resp., Ex. A, p.8-9, ¶19.
[38] Indeed, he testified he was only aware of Defendants discussing his actual social media posts, rather than individuals impersonating him. Curious, then, that he elected to issue a disclaimer about social media impersonators no one was focused on.
[39] *He Was the 'Perfect Villain' for Voting Conspiracists*, The New York Times Magazine, available at: https://www.nytimes.com/2021/08/24/magazine/eric-coomer-dominion-election.html, last accessed 10/3/21.
[40] Resp., Ex. U, p.3, ¶10.
[41] Resp., Ex. B-2, p.20, dep. tr. p. 72:1-72:15; OAN's Reply in Support of Motion to Dismiss, Ex. H.

censured by after a lengthy investigation that concluded he/she had made unwelcome sexual comments and advances and made coercive and intimidating social media posts to witnesses.[42] Strange how the standards imposed on Defendants do not apply to Dr. Coomer's witnesses.

[42] *Tay Anderson censured by Denver school board: "There is a line and it was crossed"*, The Denver Post, available at https://www.denverpost.com/2021/09/17/tay-anderson-censured-school-board/, last accessed 10/31/21.

IV. MS. MALKIN'S CONDUCT ARISES FROM A PROTECTED ACTIVITY.

The Colorado Court of Appeals has held that, "[g]enerally, a matter is of public concern whenever "it embraces an issue about which information is needed or is appropriate," or when "the public may reasonably be expected to have a legitimate interest in what is being published." *McIntyre v. Jones*, 194 P.3d 519, 525 (Colo. App. 2008). Bias among leadership of the largest election provider in the country against one of two viable candidates in a presidential election is something the public would be expected to have a legitimate interest in, even in the absence of election fraud. Indeed, as Dr. Coomer conceded on December 8, 2020: "As we enter the final stages of the 2020 election, Americans are focused on the voting process like never before."[43] Nevertheless, Plaintiff contends that it is not enough to point out that the validity of the last two presidential elections dominated the news cycle for months and years after the ballots were cast.[44] He argues that this is a "superficial analysis [that] only identifies a general matter of public interest, one that applies to every employee of Dominion, every election worker, and every voting person in the United States – not a particular public interest in Dr. Coomer." *Id.* at 91-92, ¶160. He then tries to move the goalposts by asserting that "courts have consistently found that private individuals and their private employment are not matters of public concern." Resp. at 95, ¶165.

But look at the cases Plaintiff cites for this proposition. In *Williams v. Cont'l Airlines, Inc.*, the Court of Appeals rejected the notion that a pilot assaulting a colleague "impacted the safety of the flying public, and, thus, involved a matter of public concern." 943 P.2d 10, 17 (Colo. App. 1996). In *McIntyre v. Jones*, the Court rejected the contention that accusations of incompetence

[43] OAN's Reply in Support of Motion to Dismiss, Ex. D, p.2.
[44] Resp., p.91, ¶160.

against the bookkeeper of a twenty-five-unit condominium association were a matter of public concern. 194 P.3d at 524. In *Quigley v. Rosenthal*, the Court determined that an escalating dispute between two neighbors culminating in threats, menacing by animals, criminal and civil litigation, and a press conference with accusations of anti-Semitism was not a matter of public concern. 327 F.3d 1044, 1061 (10th Cir. 2003).

Dr. Coomer is not a random pilot accused of workplace violence, the bookkeeper of a tiny HOA, or a family who was growled at by a neighbor's dog and then accused of being racist. Dr. Coomer is the *Director of Product Strategy and Security for a company that "provided election related services to at least thirty different states during the 2020 Presidential election.*"[45] The election involved two viable candidates and Dr. Coomer not only thinks one of them is a fascist but feels the need to share that with hundreds and thousands of people.[46] That is newsworthy. The public is interested in who the watchmen are and where their loyalties lie. That is why the new normal in journalism is for every story covering a judicial decision to be prefaced by 'Judge So and So, appointed by President X.' The jury wants to know where the biases may be. Of course the public is interested in the fact that a Dominion leader hates Donald Trump and is posting about it online. To claim that this would be equally true of everyone at Dominion is absurd. No one would care if a janitor at Dominion hated Donald Trump.

Plaintiff also claims that "courts have found a private individuals' private acts to be of public interest only when the individual invited public scrutiny."[47] Setting aside the fact that posting on social media invites public scrutiny, Plaintiff's assertion is false. Other courts have held

[45] Pl.'s Resp., Ex. A, p.5, ¶9.
[46] *See* OAN Resp. to Mot. for Sanctions, Ex. G at 10.
[47] Resp., p.96, ¶166.

that "[i]njection is not the only means by which public-figure status is achieved." *Dameron v. Washington Mag., Inc.*, 779 F.2d 736, 741 (D.C. Cir. 1985). Rather, "[p]ersons can become involved in public controversies and affairs without their consent or will." *Id.* In *Dameron*, the court noted that an air traffic controller "who had the misfortune to have a tragedy occur on his watch, is such a person." *Id.* The President of the United States claimed that the 2020 election was stolen from him. Dr. Coomer was a leader at one of the major election services provider. Dr. Coomer was very vocal about how much he hated the then-President. Dr. Coomer may not have wanted to be in the public eye, but his consent is not required to embroil him in public affairs.

V. MS. MALKIN DID NOT MANUFACTURE A STORY.

Plaintiff contends that Ms. Malkin 'manufactured' an issue of public concern, precluding her from claiming he is not a private individual. This is false. Plaintiff relies on *Hutchinson v. Proxmire* but, there, a U.S. Senator initiated a monthly award "to publicize what he perceived to be the most egregious examples of wasteful governmental spending." 443 U.S. 111, 114 (1979). He provided the 'award' to entities that funded the plaintiff's research, plaintiff sued, and the Court held that the senator could not make the plaintiff a public figure in this fashion and then try to use that public figure status to insulate himself from liability. *Id.*

Here, Plaintiff admits that "[o]n or about November 9, 2020, I became aware that… Joe Oltmann… had begun making false statements about me on the Conservative Daily podcast."[48] Dr. Coomer was aware of this – before Ms. Malkin interviewed Mr. Oltmann on November 13, 2020 – because this story was in the public domain. It reached Dr. Coomer and, based on his political leanings and Mr. Oltmann's relative anonymity, it is unlikely that he was following Mr.

[48] Resp., Ex. A, pp.6-7, ¶15.

Oltmann's podcasting career with great interest. Dr. Coomer goes on to state that "[t]he threats against my life became *immediately* apparent, and I had to go into hiding."[49] The fact that Dr. Coomer learned of Mr. Oltmann's comments and was receiving death threats before Ms. Malkin's interview confirms that Ms. Malkin did not inject him into the public domain. Indeed, Plaintiff concedes that The Gateway Pundit published a story regarding Dr. Coomer before Ms. Malkin's interview and that Mr. Oltmann had provided Dr. Coomer's social media posts to OAN and Chanel Rion as early as November 10, 2020.[50] Ms. Malkin did not inject Dr. Coomer into the public domain.

VI. PLAINTIFF'S CONSPIRACY CLAIM FAILS.

In reviewing Plaintiff's response, he appears to have largely abandoned his conspiracy claim, at least regarding Ms. Malkin. Rather, he generally alleges that Defendants were all interviewing Oltmann, he was the sole source, and they published or republished the allegedly defamatory statements.[51] But, again, the Colorado Court of Appeals has held that Plaintiff's position is wrong. *Fink*, 679 P.2d at 1111. If interviewing a single source and publishing a story without a high degree of awareness that the story is false is not defamatory, it cannot also give rise to a civil conspiracy to defame. *Id.* Also, the chilling effect of such an interpretation of the law is staggering. Plaintiff is arguing that every media outlet that covers a story and everyone who posts on social media is in a conspiracy with the original source to commit defamation. So if the New York Times runs an article saying that Newsmax is reporting a story, the New York Times is

[49] *Id.* at p.9, ¶20 (*emphasis added*).
[50] Ex. A, Spreadsheet, p.5, Pub. 10.
[51] Resp., p.131, ¶211.

conspiring with Newsmax to spread that story. There is value in the sharing of information and sharing information in this matter is not evidence of a civil conspiracy.

Also, Plaintiff bizarrely argues that Ms. Malkin "advance[d] a blanket immunity for defamation by media defendants under the First Amendment that does not exist."[52] Ms. Malkin made no such argument.[53] Rather, Ms. Malkin argued that, based on this set of facts – a live interview by a journalist with someone claiming to have personal knowledge about an issue of public interest backed up by a treasure trove of social media posts – Ms. Malkin is not liable for defamation.[54] Ms. Malkin never argued that journalists cannot be liable for defamation and Plaintiff's misrepresentation to the Court on this front is disappointing.

CONCLUSION

C.R.S. §13-20-1101 was enacted to prevent the filing of lawsuits targeting discussions about matters of public importance. Plaintiff has filed suit against a journalist for interviewing someone who provided a narrative that, one, is not unbelievable and, two, has been proven to almost certainly be true. Plaintiff has failed to meet his burden of showing he can prevail on his claims against Ms. Malkin. He has not identified a defamatory statement by Ms. Malkin. He just generally argues that someone watching the interviews could jump from what was being presented to the ultimate conclusion that Dr. Coomer did rig the 2020 election. But Ms. Malkin did not say that, and Ms. Malkin said the evidence did not support that.

This lawsuit has been about abuse. Dr. Coomer and his attorneys are retaliating against Ms. Malkin because she was 'one of the first people to interview Mr. Oltmann.' And now, by the time

[52] Resp., p.135, ¶217.
[53] Malkin Mot., pp.10-11.
[54] *Id.*

this hearing rolls around, she will have incurred almost $100,000 in attorney fees just so the Court can evaluate whether Dr. Coomer has a viable claim. He does not and five months of discovery has not changed that. Ms. Malkin is entitled to her attorney fees.

DATED this 4th day of October 2021.

Respectfully submitted,

PATTERSON RIPPLINGER, P.C.
s/ Gordon A. Queenan
Franklin D. Patterson, No. 12058
Gordon A. Queenan, No. 49700
Attorneys for Defendant Michelle Malkin

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2021, a true and correct copy of the above and foregoing **DEFENDANT MICHELLE MALKIN'S REPLY IN SUPPORT OF HER SPECIAL MOTION TO DISMISS PURSUANT TO C.R.S.A. §13-20-1101** was served upon all counsel of record via Colorado Courts E-Filing.

s/ Terri A. Taylor (for GAQ)
Terri A. Taylor