IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA

BOWEN KOU, a Republican candidate,

Plaintiff,

v. Case No. 2024 CA 1287

FLORIDA REPUBLICAN SENATORIAL CAMPAIGN COMMITTEE, INC., and BEN ALBRITTON, in his capacity as Chairman of the Florida Republican Senatorial Campaign Committee,

Defendants.
_____/

ORDER GRANTING DEFENDANTS' SUMMARY JUDGMENT MOTION

Trial courts play a prominent role in defamation cases. In case, after case, after case, trial courts resolve these disputes at the summary judgment stage—routinely *against* the public figure plaintiff and *for* the defendant. *See, e.g.*, *Don King Prods. v. Walt Disney Co.*, 40 So. 3d 40 (Fla. 4th DCA 2010) (affirming summary judgment against public figure plaintiff); *Pullum v. Johnson*, 647 So. 2d 254 (Fla. 1st DCA 1994) (same); *Dockery v. Fla. Democratic Party*, 799 So. 2d 291 (Fla. 2d DCA 2001) (same); *Mile Marker, Inc. v. Petersen Publ'g, LLC*, 811 So. 2d 841 (Fla. 4th DCA 2002) (same); *Flynn v. Wilson*, 398 So. 3d 1103 (Fla. 2d DCA 2024) (same).

As Florida's anti-SLAPP statute notes, filing a defamation case infringes upon First Amendment rights to speak freely on public issues. Fla. Stat. § 768.295(1). (That's also why denying an anti-SLAPP summary judgment motion now allows for an interlocutory appeal. Fla. R. App. P. 9.130(a)(3)(J)).

It's not surprising, then, that Florida has a "rule that summary judgments are to be more liberally granted in defamation actions against public-figure plaintiffs." *Don King Prods.*, 40 So. 3d at 44. Not only that, the public figure plaintiff, at summary judgment, must provide evidence that establishes his defamation elements—he's "required to prove Florida's common law elements of defamation." *Dockery*, 799 So. 2d at 294. For this case, that means providing evidence for the falsity, actual malice, and damages elements.

This evidence-production requirement is even higher for the actual malice element at summary judgment. The public figure plaintiff must "present record evidence sufficient to satisfy the court that a genuine issue of material fact exists which would allow a jury to find by *clear and convincing evidence* the existence of actual malice on the part of the defendant." *Mile Marker*, 811 So. 2d at 846-47 (emphasis added).

Florida's new summary judgment rule provides ways to present such evidence. "[D]epositions, documents, electronically stored information," "stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials" can be used at summary judgment. Fla. R. Civ. P. 1.510(c)(1)(A). So can affidavits or declarations—provided that they're "made on personal knowledge," and they "set out facts that would be admissible in evidence." Fla. R. Civ. P. 1.510(c)(4). A moving defendant can also identify where the nonmoving plaintiff lacks evidence. *Briggs v. Michaels Stores, Inc.*, 8:24-cv-378, 2024 U.S. Dist. LEXIS 221879, at *2 (M.D. Fla. Dec. 9, 2024) ("A moving party discharges its burden on a motion for summary judgment by showing or pointing out to the Court that there is an absence of evidence to support the non-moving party's case."); *see also* Fla. R. Civ. P. 1.510(a) (tying the state summary judgment standard to the federal summary judgment standard).

Taken together, at summary judgment, Plaintiff Bowen Kou was required to provide evidence that establishes his defamation claim against Defendants Florida Republican Senatorial Campaign Committee and Senator Ben Albritton. Mr. Kou, however, failed to meet that burden. The only evidence he presented at summary judgment was five declarations—from himself, campaign workers, and his employees—which contained inadmissible hearsay, conclusory statements, and statements made without personal knowledge. None of them established the falsity, actual malice, or damages defamation elements, nor did they prop up Mr. Kou's main contention in this case: that FRSCC's mailer against him falsely asserted that individuals with links to China donated to his campaign. The five declarations contain no evidence on the citizenship of Mr. Kou's donors, no evidence on FRSCC's purported actual malice in creating and publishing the mailer, and no evidence on what damages Mr. Kou's alleging in this case (business, reputational, campaign donation, or otherwise).

That lack of evidence stands against the evidence produced by FRSCC and Senator Albritton, taken from interrogatory responses, admission responses, production responses, and Mr. Kou's deposition during months of discovery. Mr. Kou admitted that some of his donors were born

in China, were raised in China, and were or are Chinese citizens. Mr. Kou even disclosed that one of his donors is a Chinese citizen herself (his cousin, Lijie Zhu), and he didn't dispute that another identified donor (Jiawei Zhao) is a non-U.S. citizen. Mr. Kou even conceded that he lacks any evidence that establishes actual malice on FRSCC's part, and Mr. Kou failed to push back on evidence with evidence concerning his damages. Weeks ago, for example, he was interviewed by the Orlando Sentinel, which reported that his businesses are "booming." That refutes his uncorroborated declarations that allege business harm due to the mailer.

For these reasons, and the reasons explained below, FRSCC and Senator Albritton's summary judgment motion is **GRANTED**. Because Mr. Kou violated section 768.295, Florida's anti-SLAPP statute, FRSCC and Senator Albritton are entitled to reasonable fees and costs.

Background

I. Mr. Kou was born in China, was raised in China, and his parents and family still live in China. **MSJ Ex.1** 21:18-22, 21:23-25, 22:17–23:4. He eventually came to the United States, studied at Michigan State University, operated grocery stores that sold Chinese goods, and obtained U.S. citizenship. **MSJ Ex.1** 13:9-16, 18:23–21:3, 23:15-17, 59:9–63:24, 66:24–67:24, 71:20–72:15, 121:5-10, 198:11-18. His grocery stores seek Chinese workers and offer them assistance with obtaining U.S. citizenship. **MSJ Ex.1** 42:1–56:19, 73:3-15; **MSJ Ex.2**; **MSJ Ex.3**. His stores make these solicitations on Chinese social media. **MSJ Ex.2**; **MSJ Ex.3**. Mr. Kou, himself, has a presence on Chinese social media. **MSJ Ex.2**.

Mr. Kou ran for state senate district 13 during the 2024 primary election. He soon after gave an interview to a Chinese news platform, in Chinese, after announcing his candidacy. **MSJ Ex.5**. Mr. Kou received only one endorsement from a public official, an endorsement from a local mayor, and none from more prominent political or community leaders. **MSJ Ex.1** 84:4–87:11.

That said, several individuals and entities donated to Mr. Kou's campaign. **MSJ Ex.6**. Between his campaign launch and March 2024, he received $196,754.22 from other individuals and entities. **MSJ Ex.6**. Only $31,872.60 came from Florida donors. **MSJ Ex.6**. The other $164,881.62 came from donors outside of Florida—including Illinois, California, Indiana, New Jersey, Michigan, Texas, North Carolina, and New York. **MSJ Ex.6**. That means that approximately 83% of Mr. Kou's donations came from outside of Florida.

There's another way to look at his donations. During that time, he received 279 donations. **MSJ Ex.6**. Only 78 donations came from donors with Florida addresses. **MSJ Ex.6**. The other 201

were outside of Florida, from places like Illinois, California, Indiana, New Jersey, Michigan, Texas, North Carolina, and New York. **MSJ Ex.6**. That means that over 70% (rounded up to 80%) of Mr. Kou's donations came from outside of Florida.

Mr. Kou admits all of this: he admits that "the number of" his "donors who reside outside of Florida *is more than* the number of donors who reside in Florida." **MSJ Ex.7** at 2.

True, Mr. Kou donated over $1,000,000 to himself during his campaign. **MSJ Ex.6**. But as he explained things, his grocery store holding company—Turbo Capital, which is incorporated in North Carolina and solely run by Mr. Kou—"loan[ed]" him that amount. **MSJ Ex.1** 32:15–33:3, 66:24–67:24, 71:20–72:15, 99:6–102:23, 193:1-13. It's therefore still fair to say that the bulk of Mr. Kou's donations came from outside of Florida.

As to the identity of his donors, Mr. Kou lacks information on this front. He doesn't know the citizenship status of most of his donors. **MSJ Ex.1** 208:19-24, 112:7-9. But he admits the following: that "at least one of" his "donors was, or is, a citizen of China"; "at least one of" his "donors has resided in China"; and "at least one of" his "donors was born in China." **MSJ Ex.7** at 1-2. He also identified that one of his donors, Lijie Zhu, who's his cousin, is from China and is only a green card holder, meaning that she's a Chinese citizen, not a U.S. citizen. **MSJ Ex.1** 206:7–211:1; **MSJ Ex.6** at 1.

II. FRSCC, who's headed by Senator Albritton, produced a mailer against Mr. Kou. On its front, the mailer asks, "why are Chinese donors (from all over the country) flooding Bowen Kou (Lake County's state senate race) with cash?" **MSJ Ex.11** at 5. Under that text, a Politico article headline reads "the 'absolute explosion' of foreign interference in U.S. politics." **MSJ Ex.11** at 5.

On the mailer's back, there are lists of Mr. Kou's donors, containing their names, date of donations, donation amounts, and addresses. **MSJ Ex.11** at 6. The addresses are from Illinois, California, Indiana, New Jersey, Michigan, Texas, North Carolina, and New York. **MSJ Ex.11** at 6. No address is from Florida. No address is from China. Mr. Kou admits that many, if not most, of his donors have Chinese-sounding names that are likely of Chinese ancestry. **MSJ Ex.1** 80:1-7, 111:23–112:9, 157:13-15. Under the donor lists, there's a graphic that states "80% of Kou's donations are from outside of Florida." **MSJ Ex.11** at 6. From that graphic, two arrows point to a map of the United States with highlights of non-Florida states (like North Carolina, New York, and Illinois) and to a map of China. **MSJ Ex.11** at 6.

Mr. Kou sued FRSCC and Senator Albritton over the mailer on June 28, 2024. **MSJ Ex.11** at 1. He contended that the mailer falsely stated that he received donations from individuals linked to China. **MSJ Ex.11** at 1-2. He further contended that he was harmed because of the mailer, and that FRSCC created and published the mailer with actual malice. **MSJ Ex.11** at 1-2. Faslity—not a false impression left by *true* statements—is how Mr. Kou pled his case. **MSJ Ex.11 ¶¶** 6-8, 11.

III. To the extent relevant, the parties had ample time to conduct discovery. As early as June or July 2024, Mr. Kou served requests for production to FRSCC and Senator Albritton. *See* Notice of Filing (June 28, 2024). They provided a response in August 2024. *See* FRSCC and Senator Albritton's Notice of Service (Aug. 16, 2024). Mr. Kou didn't follow up on these requests, or seek additional discovery from FRSCC or Senator Albritton. Mr. Kou instead stated in November 2024 that he's ready for trial. *See* Notice of Trial (Nov. 7, 2024). Not until March 2025 did Mr. Kou follow up on the requests for production—after FRSCC and Senator Albritton filed their February 4, 2025 summary judgment motion. *See* Motion to Compel (Mar. 21, 2025).

FRSCC and Senator Albritton, for their part, engaged in many means of discovery. They served Mr. Kou with requests for admissions, requests for production, and interrogatories, and even deposed Mr. Kou. *E.g.*, **MSJ Ex.1**, **MSJ Ex.7**, **MSJ Ex.13**.

In the summary judgment briefing, FRSCC and Senator Albritton relied on the documents, responses, and deposition testimony obtained from eight months of discovery. Mr. Kou, however, only provided five declarations in his response. **Resp. Ex.1-5**. Notably, the response was filed *after* the summary judgment response deadline, and the declarations were executed *after* the deadline passed. Fla. R. Civ. P. 1.510(c)(5) (imposing a forty-day deadline for summary judgment responses).

FRSCC and Senator Albritton's summary judgment motion was filed under Florida's anti-SLAPP statute, and they seek fees and costs under that statute. Fla. Stat. § 768.295; **MSJ** at 15. A hearing was held on April 2, 2025.

Summary Judgment Legal Standard

In General. A summary judgment motion may be granted when there is no genuine issue of material fact, and the movant is entitled to judgment as a matter of law. Florida's summary

judgment standard is "construed and applied in accordance with the federal summary judgment standard." Fla. R. Civ. P. 1.510(a).

Timing. A party may move for summary judgment "at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party." Fla. R. Civ. P. 1.510(b). The rule is not contingent on pending discovery requests. Once the motion has been served, the "nonmovant" has "[n]o later than 40 days after service of the motion" to "serve a response that includes the nonmovant's supporting factual position." Fla. R. Civ. P. 1.510(c)(5).

Evidence. If a party—including a nonmoving plaintiff—does not have evidence available at summary judgment, the party can show "by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition." Fla. R. Civ. P. 1.510(d).

That said, when moving for or opposing summary judgment, a party must rely on evidence "depositions, documents, electronically stored information," "stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." Fla. R. Civ. P. 1.510(c)(1)(A).

A moving party can also identify the lack of evidence for the opposing party's claim. *Briggs*, 8:24-cv-378, 2024 U.S. Dist. LEXIS 221879, at *2 ("A moving party discharges its burden on a motion for summary judgment by showing or pointing out to the Court that there is an absence of evidence to support the non-moving party's case.").

A party may also rely on affidavits or declarations attached to its summary judgment papers, but the statements in the affidavits or declarations "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Fla. R. Civ. P. 1.510(c)(1)(4).

Conclusory and uncorroborated statements in interrogatories or depositions don't overcome a summary judgment motion. *See, e.g.*, *TocMail, Inc. v. Microsoft Corp.*, 67 F.4th 1255, 1264 (11th Cir. 2023) ("The problem is that a conclusory (and unsupported) claim won't do it."); *McKenny v. United States*, 973 F.3d 1291, 1303 (11th Cir. 2020) ("The interrogatory response is conclusory, as it contains no explanation or details as to how the McKennys arrived at their respective tax liability numbers for the years in question.").

Defamation Legal Standard

A defamation claim involving a public figure has five elements: (1) publication, (2) falsity, (3) actual malice, (4) damages, and (5) the at-issue statement must be defamatory. *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008). The plaintiff has the burden to prove these elements—even at summary judgment. *E.g.*, *Dockery*, 799 So. 2d at 294. A political candidate is a public figure, and when the plaintiff is a public figure, he is required to prove actual malice (as opposed to negligence) on the defendant's part. *Concerned Citizens for Jud. Fairness v. Yacucci*, 162 So. 3d 68, 72 (Fla. 4th DCA 2014). The falsity, actual malice, and damages elements are at issue in this case.

Discussion

Having reviewed the summary judgment papers and evidence, and having conducted a hearing, the Court concludes that Mr. Kou failed to carry his burden at summary judgment. He was required to provide evidence that establishes his defamation claim's elements, and the five declarations he provided are legally insufficient to carry that burden. What's more, Mr. Kou didn't contradict the evidence produced by FRSCC and Senator Albritton—that Mr. Kou admitted that his donors have Chinese links and that his businesses are booming, despite his conclusions to the contrary. Material facts therefore aren't in dispute, and FRSCC and Senator Albritton are entitled to judgment as a matter of law. FRSCC and Senator Albritton are also entitled to fees and costs under section 768.295, Florida Statutes.

I. Mr. Kou Didn't Establish Falsity

In defamation cases, publications must be viewed in context, as a whole. *Pullum v. Johnson*, 647 So. 2d 254, 257 (Fla. 1st DCA 1994) ("we must read the entire broadcast in context, not simply the offending words"); *Byrd v. Hustler Mag.*, 433 So. 2d 593, 595 (Fla. 4th DCA 1983) ("When words and pictures are presented together, each is an important element of what, in toto, constitutes the publication. Articles are to be considered with their illustrations; pictures are to be viewed with their captions; stories are to be read with their headlines.").

Publications don't need to be perfectly accurate. "Under the substantial truth doctrine, a statement does not have to be perfectly accurate if the 'gist' or the 'sting' of the statement is true. As long as a" publication "is substantially correct, it is not necessary that it be exact in every immaterial detail or that it conform to the precision demanded in technical or scientific reporting."

Readon v. WPLG, LLC, 317 So. 3d 1229, 1234-35 (Fla. 3d DCA 2021) (citations omitted, cleaned up).

That's especially so with political publications. "A political publication may not be dissected and judged word for word or phrase by phrase. The entire publication must be examined." *Pullum*, 647 So. 2d at 258. By that token, political publications can use rhetorical hyperbole, the "conventional give and take in our economic and political controversies." *Palm Beach Newspapers, Inc. v. Early*, 334 So. 2d 50, 53 (Fla. 4th DCA 1976). That's why, when a pastor calls a businessman a "drug pusher," the statement still isn't defamatory where the businessman offered political support for a pro-liquor county ordinance. In "the context of a hotly contested political debate, and considering the complete statement in [the pastor's] broadcast, it is not possible for a reasonable person to understand his use of the term 'drug pusher' as charging the [businessman] with the commission of a crime." *Pullum*, 647 So. 2d at 257.

The same was true when a newspaper described a real estate developer's bargaining position with a city government as "blackmail," given the developer's two concurrent real estate deals with the city. The term "blackmail" didn't have a defamatory meaning. As the Supreme Court explained: "even the most careless reader must have perceived that the word was no more than rhetorical hyperbole, a vigorous epithet used by those who considered [the developer's] negotiating position extremely unreasonable. Indeed, the record is completely devoid of evidence that anyone in the city of Greenbelt or anywhere else thought [the developer] had been charged with a crime." *Greenbelt Coop. Publ'g Assoc., Inc. v. Bresler*, 398 U.S. 6, 7-14 (1970).

Here, the mailer should be viewed as a political publication. Viewed in this context, it's accurate or, at worst, substantially true. The mailer uses rhetorical hyperbole to emphasize what Mr. Kou doesn't dispute: that most of his donors reside outside of Florida. **MSJ Ex.7** at 2.That makes the donors, in a sense, foreign. This understanding is backed up by the lists of donors on the mailer's back, which provides his donors' addresses. **MSJ Ex.11** at 6. All are from outside of Florida. None are from China.

True, the mailer contains a picture of China, the Chinese flag, and a Politico article headline about foreign interference in elections. **MSJ Ex.11** at 5-6. But the mailer can't be viewed literally. Just as "drug pusher" and "blackmail" shouldn't be taken literally, nor should the pictures, flag, arrows, and headline in the mailer. Like "drug pusher" and "blackmail," they are rhetorical hyperbole that drives home a political point.

Even so, Mr. Kou still maintains his acontextual interpretation of the mailer: that it falsely states that he received donations from donors with links to China. **Resp.** at 5. Assuming that he interprets the mailer accurately, Mr. Kou nonetheless carries the burden to present evidence at summary judgment and show that the mailer is false. *Flynn*, 398 So. 3d at 1114 (the plaintiff at summary judgment "has the burden of proving falsity").

Mr. Kou, however, fails to carry his burden. Again, he only presents and relies on five declarations in his (untimely) summary judgment response. **Resp. Ex.1-5**. He has no donor citizenship documents. No declarations from donors listed on the mailer. No immigration-related lists, charts, or sheets. Only five declarations, coming from himself, his campaign workers, and his grocery store employees. **Resp. Ex.1-5**. None of that establishes his donors' citizenship, their lack of ties to China, or his defamation claim's falsity element.

The declarations from his workers and employees don't contain any information on donor citizenship or ties to China. **Resp. Ex.2-5**. Mr. Kou's declaration, for its part, only concludes that "I have not taken a political donation from a person in China or a person who currently has Chinese citizenship." **Resp. Ex.1** ¶ 4. But this is a conclusory and uncorroborated statement in a summary judgment declaration. It's insufficient to overcome summary judgment. *See, e.g.*, *TocMail, Inc.*, 67 F.4th at 1264 ("The problem is that a conclusory (and unsupported) claim won't do it."); *McKenny*, 973 F.3d at 1303 ("The interrogatory response is conclusory, as it contains no explanation or details as to how the McKennys arrived at their respective tax liability numbers for the years in question.").

Moreover, it's already been established that Mr. Kou lacks the necessary knowledge about his donors' citizenship. He said so during his deposition:

> Q. . . . And you didn't check to see whether or not any particular individual [donor] was a U.S. citizen or a green card holder; correct? That's a no?
> A. No, I don't check individual, you know, by donors status.
> . . . .
> Q. And for any of these people on your campaign contribution list, do you know their immigration status?
> A. No.

MSJ Ex.1 208:19-24, 112:7-9. Summary judgment declarations must contain statements based on "personal knowledge." Fla. R. Civ. P. 1.510(c)(4). Mr. Kou lacks the personal knowledge to make his (still) conclusory and uncorroborated declaration statement.

At the summary judgment hearing, Mr. Kou admitted, despite months of discovery, that he doesn't have evidence regarding the falsity defamation element:

> The truth is, he [Mr. Kou] doesn't know offhand in a deposition the entire life history of any person that has donated to him. But by the time of discovery being over, it's going to be clear that anybody associated with this candidate who donated to him, that their national history, where they lived, when they lived there is going to be known. It's not going to be known in the first few months of the case when we're dealing with appeals, we're dealing with motions to compel.

Tr.19:4-14. Mr. Kou is wrong on this front: he had plenty of time to conduct discovery, and he was asked during his deposition and in written discovery (both of which took place months ago) to show how the falsity element is met. At this point, Mr. Kou had every opportunity to establish the element.

What's more, Mr. Kou failed to contradict the evidence that FRSCC and Senator Albritton produced at summary judgment. They provided the following evidence:

- From Mr. Kou's request for admission response: he admits that "at least one of" his "donors was born in China." **MSJ Ex.7** at 1.

- From Mr. Kou's request for admission response: "at least one of" his "donors was, or is, a citizen of China." **MSJ Ex.7** at 1.

- From Mr. Kou's request for admission response: "at least one of" his "donors has resided in China." **MSJ Ex.7** at 1.

- From Mr. Kou's deposition: his cousin, Lijie Zhu, is a green-card holder from China, meaning that she's a Chinese citizen who donated to his campaign. **MSJ Ex.1** 208:14-18 ("Q. Okay. So your cousin has a green card, but as we discussed before, you don't know the immigration status – A. I don't know every single of the donors, but at least I know my cousin.").

- Undisputed from the summary judgment papers: Jiawei Zhao is a noncitizen who donated to Mr. Kou's campaign. **MSJ** at 3.

All of this clearly defeats Mr. Kou's defamation claim. He admitted that several donors—including one Chinese citizen—donated to his campaign. The only evidence provided at summary judgment goes against Mr. Kou's falsity contentions. He therefore can't credibly claim that (taking his contextual view of the mailer) he never took donations from donors with links to China.

One final point. In his response, Mr. Kou contends that he can make out a defamation by implication claim. **Resp.** at 5. The thrust of this claim is that true statements in a publication can

lead to "false suggestions, impressions and implications." *Corsi v. Newsmax Media, Inc.*, 519 F. Supp. 3d 1110, 1124 (S.D. Fla. 2021). The problem for Mr. Kou, however, is that he never identifies true statements in the mailer. In his complaint, he only identifies statements he alleges are false. **MSJ Ex.11**. He does not identify any true statements in the mailer that give a false impression. In fact, he identifies no true statements in his summary judgment response at all. And he still failed to provide evidence that his donors *lack* connections to China. Therefore, as a matter of law, Mr. Kou's new theory fails. *Corsi*, 519 F. Supp. 3d at 1124 (dismissing the plaintiff's defamation by implication claim, where the "Complaint pleads only that Fairbanks' [defendant] accusations were false—not that they were true and gave a false implication").

In sum, the mailer is a political publication and should be viewed as such. It's accurate and substantially true, emphasizing that most of Mr. Kou's donors are from outside of Florida. Mr. Kou doesn't dispute this. Even if the mailer is to be taken out of context, as Mr. Kou proposes, he lacks evidence to establish that his donors *lack* connections to China. It's his burden to show this. Mr. Kou also fails to contradict the evidence produced by FRSCC and Senator Albritton, showing that even an acontextual interpretation of the mailer is accurate. This makes Mr. Kou's defamation claim meritless. FRSCC and Senator Albritton are entitled to summary judgment on this basis.

II. Mr. Kou Didn't Establish Actual Malice

Actual malice is "knowledge that the statement" at issue "was false or reckless disregard of whether it was false or not." *Readon*, 317 So. 3d at 1235 (quoting *Don King Prods.*, 40 So. 3d at 43). As the U.S. Supreme Court put it:

> [R]eckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.

St. Amant v. Thompson, 390 U.S. 727, 731 (1968). In other words, to establish actual malice, a plaintiff must present evidence of what the defendant knew, evidence that the defendant "in fact entertained serious doubts as to the truth" of the at-issue statement, and evidence that the defendant published the statement anyway, despite harboring such "doubts." *Id.*

If a plaintiff fails to present *clear and convincing evidence* of actual malice, summary judgment must be granted in favor of the defendant. *E.g.*, *Don King Prods.*, 40 So. 3d at 45 ("King [the plaintiff] has not presented any evidence that ESPN [the defendant] in fact doubted [a

source's] credibility or the veracity of [a source's] statement."); *Dockery*, 799 So. 2d at 296 ("This Court finds that Plaintiff has not presented any record evidence which would clearly and convincingly demonstrate to a jury that the FDP [the defendant] *knew*, at the time of the published circulars, that [the plaintiff] *did not owe* $ 515,262.00 in taxes.").

That said, it's important to state what isn't actual malice. As a matter of law, ill will, and an intention to portray a plaintiff in a negative light, alone, doesn't amount to actual malice. *Don King Prods.*, 40 So. 3d at 44 ("Ill will is different than actual malice under the defamation test.").

Supporting a political rival doesn't amount to actual malice, either. *Harte-Hanks Comm'ns v. Connaughton*, 491 U.S. 657, 665 (1989) ("Petitioner is plainly correct in recognizing that a public figure plaintiff must prove more than an extreme departure from professional standards and that 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.").

Here, Mr. Kou lacks any evidence to establish actual malice. He does not provide any evidence as to how FRSCC created the mailer, what FRSCC knew at that time, and whether FRSCC published the mailer while doubting its accuracy. He made this perfectly clear during his deposition:

> Q. Do you know what the committee [FRSCC] knew or did not know about your businesses when they created this mailer?
> A. I never communicate with them, so I don't know what they know or didn't know.
> Q. Okay. So you don't know what they knew or didn't know. And when they created this mailer, do you know whether they had endorsed your opponent in the primary?
> A. I'm not sure.
> Q. Okay. And when they created this mailer, do you have any way of knowing whether the FRSCC knew how much you had contributed to your campaign?
> A. How can we – how can I know what he – what they know?

MSJ Ex.1 137:23–138:12. Ill will is the *only* actual-malice basis he's asserted in this case. As Mr. Kou put it in an interrogatory response:

> Explain in detail how the at-issue mailer was made with actual malice.
>
> The sole purpose of the mailer was to destroy, defame, degrade and humiliate me; it worked and I was defeated. To this day, people inquire whether he I am [sic] an anti-American communist. The mailer was sent to injure my reputation in the campaign.

MSJ Ex.13 at 2. As explained above, that's a legally insufficient basis for actual malice. *Don King Prods.*, 40 So. 3d at 44; *Harte-Hanks Comm'ns*, 491 U.S. at 665. And as such, Mr. Kou can't—through clear and convincing evidence, or otherwise—establish actual malice.

Mr. Kou's five declarations don't change this result. **Resp. Ex.1-5**.The declarations from his workers and employees don't mention FRSCC. **Resp. Ex.2-5**. While Mr. Kou's does, it's only one sentence: "[t]he FRSCC knew these claims were false, but recklessly made them anyway, in order to defeat me in an election." **Resp. Ex.1** ¶ 4. This is, of course, a conclusory and uncorroborated statement, based on a lack of "personal knowledge," which makes it inappropriate to consider at summary judgment. Fla. R. Civ. P. 1.510(c)(4); *See, e.g.*, *TocMail, Inc.*, 67 F.4th at 1264 ("The problem is that a conclusory (and unsupported) claim won't do it."); *McKenny*, 973 F.3d at 1303 ("The interrogatory response is conclusory, as it contains no explanation or details as to how the McKennys arrived at their respective tax liability numbers for the years in question.").

Summary judgment is therefore warranted on this basis, too.

* * *

Acknowledging that he lacks evidence to establish actual malice, Mr. Kou contends that discovery is still ongoing and that FRSCC and Senator Albritton are delaying discovery responses. **Resp.** at 9. These contentions are ill taken and don't defeat summary judgment.

Florida Rule of Civil Procedure 1.510(d) provides the process for a nonmoving party to explain that facts are unavailable to him at summary judgment: he may present an "affidavit or declaration that" provides "specified reasons" why he "cannot present facts essential to justify" his "opposition" to summary judgment. Mr. Kou has not done that in this case.

Mr. Kou also had ample time to conduct discovery and raise any discovery issue with this Court. He served requests for production with his complaint, around June or July 2024. *See* Notice of Filing (June 28, 2024). FRSCC and Senator Albritton responded in August 2024. *See* FRSCC and Senator Albritton's Notice of Service (Aug. 16, 2024). Mr. Kou then filed a notice of trial in September 2024. *See* Notice of Trial (Nov. 7, 2024). He didn't follow up on the requests for production until after FRSCC and Senator Albritton filed their summary judgment motion in February 2025. *See* **MSJ** (filed February 4, 2025); Motion to Compel (Mar. 21, 2025). Florida's summary judgment rule makes clear that a summary judgment motion isn't contingent on discovery being finalized. Fla. R. Civ. P. 1.510(b) ("A party may move for summary judgment at

any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party. The movant must file and serve the motion for summary judgment consistent with any court ordered deadlines.").

During that time, however, discovery was conducted. FRSCC and Senator Albritton served Mr. Kou with requests for production and admissions, interrogatories, and even took his deposition. *E.g.*, **MSJ Ex.1**, **MSJ Ex.7**, **MSJ Ex.13**. That Mr. Kou opted not to conduct discovery, or press his discovery issues, was his decision—even though he had plenty of time to do so. That decision doesn't defeat summary judgment. In a similar case, *Gilliam v. U.S. Service Industries*, the Second Judicial Circuit Court granted the defendant's summary judgment motion, notwithstanding a plaintiff's pending motion to compel: the plaintiff "noticed the cause ready for trial" "months ago" and "had adequate time for discovery." 2019-ca-853, 2021 Fla. Cir. LEXIS 10360, at *1-2 (Fla. 2d Jud. Cir. Sept. 2, 2021). Put differently, *Gilliam* holds that "non-moving parties cannot thwart" "summary judgment" "by initiating discovery," or filing a motion to compel, after a summary judgment motion's been filed. *Smith v. Smith*, 734 So. 2d 1142, 1144-45 (Fla. 5th DCA 1999).

The two Fifth District Court of Appeal cases that Mr. Kou referenced during the summary judgment hearing (and not in his summary judgment response) are on different footings. Tr.15:25–16:9. In both *Arguelles v. City of Orlando*, 855 So. 2d 1202 (Fla. 5th DCA 2003), and *Smith v. Smith*, 734 So. 2d 1142 (Fla. 5th DCA 1999), scheduled deposition dates were pending, and summary judgment motions were used to thwart those deposition dates. In *Arguelles*, the plaintiffs served a notice to depose a defense witness, and in response, the defense filed a summary judgment motion and set the summary judgment hearing eight days *before* the deposition date. 855 So. 2d at 1203. A similar thing happened in *Smith*: a deposition was noticed, a summary judgment motion was filed, and the motion hearing occurred five days *before* the deposition date. 734 So. 2d at 1144. It's also worth noting that in *Smith*, the summary judgment motion was filed three months after the complaint was filed. *Id.* at 1143-44. In both cases, the trial court granted the summary judgment motions, and in both cases, the Fifth District reversed—it was improper to grant the motions with scheduled depositions pending. *E.g.*, *id.* at 1145.

That's not this case, though. Here, there's no scheduled deposition dates pending. The discovery that Mr. Kou served on FRSCC and Senator Albritton has been answered—since August 2024. That makes *Arguelles* and *Smith* not on point for Mr. Kou. But that makes *Gilliam*

applicable—Mr. Kou can't respond to a summary judgment motion with a motion to compel. He can't raise a discovery issue to "thwart" summary judgment.

What's more, Mr. Kou was also aware that FRSCC and Senator Albritton were proceeding under section 768.295, Florida's anti-SLAPP statute. *See* FRSCC and Senator Albritton's Answer and Affirmative Defenses at 3. It affords them an "expeditious resolution" of defamation cases, and a "summary judgment" "hearing" "at the earliest possible time." Fla. Stat. § 768.295(4). That makes Mr. Kou's self-imposed discovery delay even that much more inexplicable.

Finally, it bears noting the discovery matter that Mr. Kou complains of: requests for production to FRSCC, asking for documents and communications concerning Mr. Kou. The requests go only to one defamation element: actual malice. It doesn't go to falsity or damages—elements that only Mr. Kou knows about and can provide evidence about. Therefore, even assuming that Mr. Kou should obtain the documents he's requesting, summary judgment would still be appropriate on the other elements of Mr. Kou's defamation claim.

III. Mr. Kou Didn't Establish Damages

"In order to recover for defamation, a plaintiff must show that the damages were proximately caused by the defamatory statements." *Cape Publ'ns v. Reakes*, 840 So. 2d 277, 281 (Fla. 5th DCA 2003). Under Florida law, a proximate cause "stands next in causal relation to the effect," it "produces the result in continuous sequence, and without which the result would not have occurred." *Tampa Elec. Co. v. Jones*, 190 So. 26, 27 (Fla. 1939).

Moreover, at this stage of the litigation, a plaintiff must produce *evidence* of damages—not just conclusory statements. *Nunes v. Lizza*, 126 F.4th 1361, 1367 (8th Cir. 2025) (affirming grant of summary judgment, in favor of the defendants, in a defamation case). If a plaintiff alleges that individuals and entities "stopped doing business with" him, he must "produce evidence that the suggested business relationship existed, let alone that the other party discontinued the association. Th[e] bare assertion of lost business is insufficient" to overcome a summary judgment motion. *Id.* at 1366.

And if a plaintiff alleges reputational harm, he "must show that" he "had a particular reputation before" the defamatory publication "and that people thought worse of" him "after reading" the publication. *Id.* Simply "point[ing] to evidence" of "threatening phone calls" and "negative" online "comments," following the defamatory publication, is insufficient to overcome summary judgment. *Id.*

Here, Mr. Kou failed to produce any evidence establishing damages due to the mailer. During his deposition, he explained that his damages stem from the approximate amount of money he put into his failed campaign:

> Q. Okay. So the majority of the damages you're seeking are based off of the money you yourself contributed to the campaign?
> A. Yes.

MSJ Ex.1 169:20-23. Mr. Kou has provided no legal basis for this contention—that he's entitled to recover some guesstimated amount of campaign donations.

To the extent that Mr. Kou is alleging business or reputational harm, he failed to produce evidence that establishes the harm. He produced no business documents, profit sheets, revenue charts to establish his businesses' financial wellbeing before and after the mailer. He didn't identify a single business who stopped working with him because of the mailer, or a single named customer who decided not to frequent his stores because of the mailer. He doesn't provide any evidence about his pre-mailer reputation in the community, either. The only evidence on these fronts come from FRSCC and Senator Albritton: an Orlando Sentinel interview with Mr. Kou published on January 13, 2025, where his stores are described as "booming," **MSJ Ex.15** at 2, and the fact that only one public official endorsed Mr. Kou during his campaign, **MSJ Ex.1** 84:4–87:11, a sign of a not-so-good reputation before the mailer's publication.

Mr. Kou's five summary judgment declarations don't change this conclusion. All were executed after the summary judgment response deadline, and are full of hearsay, conclusory, and speculative statements, none of which can be considered at summary judgment. Fla. R. Civ. P. 1.510(c)(4). Consider the following examples:

- **Speculation. Resp. Ex.2** ¶ 7 ("On multiple occasions, the individuals who made these remarks have left the store without making a purchase, clearly indicating that their statements were tied to assumptions about the owner's ethnicity or background."); **Resp. Ex.3** ¶ 6 ("She was referencing the recently circulated mailout sent by the Florida Republican Senatorial Campaign Committee."); **Resp. Ex.5** (a store manager from "Lincon, Nebraska [sic]" testifying about "local" central Florida stores).

- **Hearsay. Resp. Ex.2** ¶ 6 ("These remarks have included statements such as, 'This owner is a communist,' 'We shouldn't come to this store anymore,' and 'He needs to go back to China.'"); **Resp. Ex.3** ¶ 6 ("Specifically, on one occasion, a woman approached me and, in a confrontational tone, asked, 'How could you work for a traitor?'"); **Resp. Ex.4** ¶ 6 ("Several customers and acquaintances made remarks referencing the mailer, including questions like, 'Isn't he backed by the Chinese

government?' or statements such as, 'I don't trust that guy. He's Chinese spy.'"); **Resp. Ex.1** ¶ 6 ("Before the dissemination of this defamatory mailer, internal polling showed that I was leading the race and in a strong position to win the election. See attached poll. [The poll is not attached.]").

- **Statements That Don't Tie Back to the Mailer. Resp. Ex.3** ¶ 9 ("I witnessed multiple other negative interactions and saw campaign signs painted saying Mr. Kou was 'China Bowen' or paid for by China.").

These declarations don't overcome the summary judgment motion. And during the summary judgment hearing, Mr. Kou admitted that he doesn't have any evidence of damages beyond these declarations:

> It would be nice if we had more detail on how that [damages] could be quantified, and I think that's appropriate for an expert later in the case to create a report on before a motion for—a future Motion for Summary Judgment . . . .

Tr.18:18-22. If Mr. Kou himself can't describe or quantify his damages at this stage of the litigation, even when prompted in interrogatories and during his deposition, an expert can't do it for him.

As with the other defamation elements, Mr. Kou's lack of evidence on damages makes summary judgment appropriate.

IV. FRSCC and Senator Albritton Are Entitled to Fees and Costs

Under section 768.295, a party that prevails on a "summary judgment" motion "shall" be "award[ed]" "reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section." Fla. Stat. § 768.295(4).

Mr. Kou violated Florida's anti-SLAPP statute. His complaint makes clear that he filed this lawsuit because FRSCC exercised its First Amendment rights by endorsing his primary opponent and distributing a political publication against him: "Defendant FRSCC has previously endorsed Mr. Kou's primary election opponent, Keith Truenow, and it has stated that it is working to defeat Mr. Kou in the election." **MSJ Ex.11** ¶ 9. Mr. Kou also alleged that "FRSCC is a dark money political committee financed by special interests in Tallahassee, Florida that specializes in false and defamatory 'attack ads' against conservative Republicans in primary elections." **MSJ Ex.11** ¶ 4.

Mr. Kou's lawsuit is meritless. After all, Mr. Kou contends that no Chinese-linked individual or entity donated to his campaign. Yet, he knew that a Chinese citizen (his cousin)

donated to his campaign, knew that a number of his donors were born, resided, and were citizens of China, and failed to produce any contrary evidence that shows his donors' lack of connection to China.

During the summary judgment motion hearing, however, Mr. Kou made several representations about the anti-SLAPP statute. He contended that: (1) there needs to be "a special preliminary hearing" around "the first 45 days," (2) that defamations case "get[]" "slapped away, usually with the Motion to Dismiss," not at the summary judgment stage, and (3) the statute was enacted because "people that were speaking out against development or something like that at a commission meeting and then they got hit by a special interest for the lawsuit to get them to shut up." Tr.24:20–27:20.

These are incorrect representations. The statute makes no mention of any special preliminary hearings or any relevant timing requirement. The statute applies equally to motions to dismiss and summary judgment motions. Fla. Stat. § 768.295(4). And Mr. Kou provides no basis or evidence for his account of the statute's legislative history.

Under these circumstances, FRSCC and Senator Albritton are entitled to reasonable fees and costs. Within thirty days of the rendition of this order, they may move for an assessment of fees and costs against Mr. Kou.

Conclusion

For the foregoing reasons, it is:

ORDERED that FRSCC and Senator Albritton's summary judgment motion is **GRANTED**. This Court also **HOLDS** that Mr. Kou violated section 768.295, Florida Statutes. FRSCC and Senator Albritton are therefore **ENTITLED** to fees and costs under that statute. They may move for fees and costs within **THIRTY DAYS** of the rendition of this order.

DONE AND ORDERED on 17th day of April 2025 in Lake County, Florida.

Judge Mosley, Circuit Court Judge

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document has been served this Thursday, April 17, 2025 via U.S. Mail and/or the Florida Courts E-Filing Portal to the following:

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