IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

RICHARD ALEXANDER MURDAUGH, JR.,	)	
Plaintiff,	)	
v.	)	Civil Action No.: 9:24-cv-04914-RMG
BLACKFIN, INC., WARNER BROS. DISCOVERY, INC., WARNER MEDIA ENTERTAINMENT PAGES, INC., CAMPFIRE STUDIOS INC., THE CINEMART LLC, NETFLIX, INC., GANNETT CO., INC. and MICHAEL M. DEWITT, JR.,	)	
Defendants.	)	

DEFENDANTS GANNETT CO., INC. AND MICHAEL M. DEWITT, JR.'S
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

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Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Gannett Co., Inc. ("Gannett") and Michael M. DeWitt, Jr. ("DeWitt") (together with Gannett, the "Gannett Defendants") respectfully move this Court to dismiss the defamation claim asserted against them in the Complaint filed by Plaintiff Richard Alexander Murdaugh, Jr. ("Buster Murdaugh" or "Plaintiff"). Plaintiff has failed to state a defamation claim against the Gannett Defendants as a matter of law and his Complaint should be dismissed as to them with prejudice.

INTRODUCTION

This case arises out of three documentary television series – one released by Discovery, another by HBO, and a third by Netflix – about the constellation of controversies surrounding the once-prominent Murdaugh family of Hampton County, South Carolina. Plaintiff Buster Murdaugh is the son of a central figure in all three series: now-disbarred attorney Richard Alexander ("Alex") Murdaugh, who is currently serving consecutive life sentences for the murders of Plaintiff's mother Maggie and Plaintiff's brother Paul, and who has also pleaded guilty to embezzling client funds. Plaintiff claims that the docuseries defamed him by allegedly implying that Plaintiff was involved in yet another death in Hampton County: the murder of Stephen Smith, which remains under investigation by the South Carolina Law Enforcement Division ("SLED").

Defendant DeWitt, editor of the *Hampton County Guardian*, did not write, direct, produce, distribute, or otherwise exercise responsibility or creative control over any of these docuseries. Instead, he briefly appears on camera in a single series (the "Netflix series"), during which he recounts the unique experience of reporting on a powerful local family caught in a miasma of scandals and investigations and becoming the subject of national attention. In those few minutes on camera, DeWitt does not say ***anything*** that amounts to or reasonably implies a false and defamatory statement of fact about Buster Murdaugh. As a result, nothing that DeWitt states in

the Netflix series could possibly give rise to a viable defamation claim under South Carolina law and the First Amendment to the United States Constitution.

Plaintiff nevertheless named DeWitt a defendant in this lawsuit. Complaint ("Compl.") ¶¶ 16-17 (ECF No. 1-1). Indeed, Plaintiff is so determined to find a way to sue DeWitt that ***he resorts to misrepresenting outright*** what DeWitt said in the Netflix series. The reason why is as obvious as it is calculating: like Plaintiff, DeWitt is a resident of Hampton County, *see id*., and Plaintiff wants to litigate this action in the same courthouse where members of the Murdaugh family served for generations as the Circuit Solicitor and where his grandfather's portrait still hangs. *See, e.g.*, S.C. H.4981 (2010) (noting that "for more than eighty-five years, anyone accused of a crime in the counties of this circuit dealt with one of these Murdaughs"). DeWitt's co-defendants therefore removed this action to this Court on the basis of fraudulent joinder, explaining that because Plaintiff has no possibility of prevailing against DeWitt based on DeWitt's actual statements in the Netflix series, DeWitt's citizenship should be disregarded for purposes of diversity jurisdiction. *See* Notice of Removal at 11-15 (ECF No. 1). The Gannett Defendants consented to, and now incorporate by reference herein, all of the arguments concerning Plaintiff's inability to prevail in this action against DeWitt.[1]

DeWitt – along with Gannett, which is the ultimate parent company of a subsidiary that publishes the *Hampton County Guardian* and is named as a defendant based solely on the allegation that DeWitt is its agent, *see* Compl. ¶¶ 15-16 – now moves to dismiss Plaintiff's

[1] Plaintiff subsequently moved (ECF No. 41) to remand this action back to the Hampton County Circuit Court. The Gannett Defendants recognize that this Court's ruling on that remand motion may render moot their motion to dismiss because they will either be dismissed from this action on the basis of fraudulent joinder (if remand is denied) or the case will be returned to state court (if remand is granted). The Gannett Defendants nevertheless submit this motion, in an abundance of caution, to ensure they will not be deemed to have waived any argument(s) that the Complaint fails to state a claim against them as a matter of law.

Complaint under Federal Rule of Civil Procedure 12(b)(6). DeWitt's statements, accurately transcribed and viewed in context, cannot give rise to a defamation claim because (1) certain statements on their face are not defamatory of Plaintiff and also do not reasonably convey any defamatory implication as to Plaintiff; (2) Plaintiff has failed to allege that those same statements are even false; (3) other statements are non-actionable expressions of opinion rather than provable assertions of fact; and (4) Plaintiff fails to allege that any of the statements was published with sufficient fault. The Court should therefore grant the Gannett Defendants' Motion to Dismiss.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

To avoid unnecessary repetition, the Gannett Defendants incorporate by reference the Factual Background section of the Motion to Dismiss filed by Defendants Netflix, Inc. and The Cinemart LLC (the "Netflix MTD"), ECF No. 52. In addition to the information set forth therein, the Gannett Defendants note the following details specific to the claims against them in this action.

DeWitt's career is dedicated to the written word. As a journalist, he has written for dozens of newspapers and magazines, including the *August Chronicle* and *South Carolina Living*. *See, e.g.*, *Success Stories: Michael M. DeWitt, Jr.*, Univ. of S. Carolina Salkehatchie, https://sc.edu/about/system_and_campuses/salkehatchie/about/success_stories/michael_dewitt/index.php.[2] As an author, he has published, among other works, "[a] local photo history, *Images of America – Hampton County*," which "details the impressive legacy of Hampton County, where Michael was raised." *Id.* And as an editor, he oversees the *Hampton County Guardian*, his 145-year-old hometown newspaper. *Id.* "In 2014, he was named the Hampton County Chamber of Commerce's Person of the Year for his service to the community." *Id.*

[2] At the motion to dismiss stage, the Court can properly consider information on a government website. *See, e.g.*, *Hilton v. Gossard*, 702 F. Supp. 3d 425, 430 (D.S.C. 2023).

As a local journalist who reported on the various Murdaugh-related scandals and investigations discussed in the Netflix MTD, DeWitt was one of many interviewees for the Netflix series, and portions of that interview are included in Season 1, Episode 3 of the Netflix series. *See generally* Netflix Ep. 3 Tr. (ECF No. 47-3). In Paragraph 28 of the Complaint, Plaintiff challenges four specific statements that DeWitt made in that episode ("the Challenged Statements"), though as noted above, Plaintiff egregiously misquotes DeWitt's actual commentary. Because Plaintiff disputes that he has done so, *see* Pl.'s Mem. in Supp. of Mot. to Remand at 7 (ECF No. 41-1) ("Mr. Murdaugh's Complaint does not misquote DeWitt"), and for the Court's convenience, the following table illustrates the difference between the statements as they appear in the Netflix series and the same statements as they are misquoted in Paragraph 28 of the Complaint:

Challenged Statement	**DeWitt Statement in the Netflix Series**	**DeWitt Statement in the Complaint**
The "Possible Connection" Statement	Within one month of [Smith's] body being found, we were hearing all these rumors about a possible Murdaugh connection. *See* Netflix Ep. 3 Tr. at 11:14-16 (ECF No. 47-3).	We were hearing all of these rumors about a possible connection.
The "Good Rumor" Statement	I've learned as a reporter that if you hear the same rumors from different groups of people wherever you go, it's either a very good rumor or there's some truth to it. *See* Netflix Ep. 3 Tr. at 11:16-19.	There is some truth to it.

Challenged Statement	DeWitt Statement in the Netflix Series	DeWitt Statement in the Complaint
The "Piggly-Wiggly" Statement	[W]e could not put the Murdaugh name in a story unless we wanted to face lawsuits. We said a prominent, well-known family was rumored to be involved. Everybody knew who we were talking about. We published the story and we waited. People would come up to me in the Piggly-Wiggly, pat me on the back. We're - we're so thankful you ran that story, so proud of you to have the courage to - to do it. I mean, we did everything but put the Murdaugh name in - in the story, but the story did no good. Nobody ever came forward. *See* Netflix Ep. 3 Tr. at 11:23-12:7.	We could not put the Murdaugh name in the story unless we wanted to face lawsuits. We said a prominent well-known family was rumored to be involved. Everyone knew who we were talking about. We published the story and we waited. People would come up to me in the Piggly Wiggly and pat me on the back. We're so thankful you had the courage to run the story. We did everything but put the Murdaugh name in the story.
The "Bad Taste" Statement	I began to have a bad taste in my mouth toward members of the Murdaugh family, just like a lot of people in the community did. *See* Netflix Ep. 3 Tr. at 27:7-9.	I began to have a bad taste in my mouth about the members of the Murdaugh family as many people in the community did.

The Complaint asserts that these four Challenged Statements – referred to here as (1) the "Possible Connection" Statement; (2) the "Good Rumor" Statement; (3) the "Piggly-Wiggly" Statement; and (4) the "Bad Taste" Statement – "falsely accus[e] the Plaintiff of being involved in

the murder of Stephen Smith." Compl. ¶ 28. They are the only statements made by DeWitt that are challenged in the Complaint. *Id.*

ARGUMENT

Plaintiff's claims against DeWitt fundamentally fail as a matter of law. Because claims arising from challenged speech implicate constitutional rights, courts review their legal sufficiency with particular care. As the D.C. Circuit has noted:

> The First Amendment guarantees freedom of speech and freedom of the press. Costly and time-consuming defamation litigation can threaten those essential freedoms. To preserve First Amendment freedoms and give reporters . . . the breathing room they need to pursue the truth, the Supreme Court has [therefore] directed courts to expeditiously weed out unmeritorious defamation suits.

Kahl v. Bureau of Nat'l Affairs, Inc., 856 F.3d 106, 109 (D.C. Cir. 2017) (Kavanaugh, J.); *see also, e.g.*, *Edwards v. Schwartz*, 378 F. Supp. 3d 468, 500 (W.D. Va. 2019) ("[B]ecause the defense of baseless defamation claims imposes an additional cost, in the form of potentially deterred speech, federal courts have historically given close scrutiny to pleadings in libel actions.").

Defamation claims are also especially susceptible to early judicial action because "unlike in most litigation, in a libel suit the central event—the communication about which suit has been brought—is ordinarily before the judge at the pleading stage. He or she may assess it upon a motion to dismiss, firsthand and in context." 2 Robert D. Sack, *Sack on Defamation* § 16:2.1 (5th ed. 2017). As such, courts frequently dismiss such claims where, as here, they fail as a matter of law. *See, e.g.*, *Harvey v. CNN, Inc.*, 48 F.4th 257, 274 (4th Cir. 2022) (affirming dismissal of defamation claim because plaintiff failed to plausibly allege that challenged statements were false, unprivileged, defamatory, and/or published with sufficient fault); *Fairfax v. CBS Corp.*, 2 F.4th 286 (4th Cir. 2021) (affirming dismissal of defamation claim for failure to plausibly allege actual malice fault); *Virginia Citizens Def. League v. Couric*, 910 F.3d 780, 785-87 (4th Cir. 2018)

(affirming dismissal of defamation claim where challenged statements "cannot reasonably be understood as defaming" plaintiffs); *Biospherics, Inc. v. Forbes, Inc.*, 151 F.3d 180, 182, 186 (4th Cir. 1998) (affirming dismissal of libel claim "[b]ecause the challenged statements are constitutionally protected"); *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1091-92 (4th Cir. 1993) (same).

Under these well-settled standards, the defamation claim that Plaintiff asserts here against the Gannett Defendants likewise fails as a matter of law and cannot survive this Motion to Dismiss.

I. THE CHALLENGED STATEMENTS ARE NOT ACTIONABLE AS A MATTER OF LAW

In South Carolina, a claim for defamation can arise only from a false and defamatory statement of fact, concerning plaintiff, that was published without privilege and with sufficient fault. *Boone v. Sunbelt Newspapers, Inc.*, 556 S.E.2d 732, 737 (S.C. Ct. App. 2001). Here, Plaintiff fails to state a claim for defamation against the Gannett Defendants, and his Complaint should be dismissed as to them under Rule 12(b)(6), because he fails to sufficiently allege – and cannot ultimately prove – that any of the four Challenged Statements in the Netflix series was false, defamatory, of-and-concerning Plaintiff, and published with the requisite degree of fault (here, at least common-law malice).[3]

Moreover, as set forth in Netflix's Notice of Removal, the Challenged Statements are not even about this Plaintiff. It is for this Court to determine, as a matter of law, whether Plaintiff has pleaded facts sufficient to satisfy the "of and concerning" requirement of the defamation tort. *See, e.g.*, *AIDS Counseling & Testing Centers v. Grp. W Television, Inc.*, 903 F.2d 1000, 1005 (4th Cir.

[3] Should this action continue past the motion to dismiss stage, the Gannett Defendants expressly reserve the right to assert that Plaintiff is also required to prove, by clear and convincing evidence, that the Challenged Statements were published with constitutional "actual malice" fault.

1990); Restatement (Second) of Torts § 617 cmt. b. (1977); *Church of Scientology Int'l v. Behar*, 238 F.3d 168, 173 (2d Cir. 2001) (whether a challenged statement is "of and concerning" the plaintiff "should ordinarily be resolved at the pleading stage"); *see also Neeley v. Winn-Dixie Greenville, Inc.*, 255 S.C. 301, 308 (1971) ("We regard it as elementary that it is incumbent upon a complaining party, in an action for libel, to prove that he is the person with reference to whom the defamatory matter was written."). Because no reasonable viewer would interpret the Challenged Statements as pertaining to Plaintiff specifically, Plaintiff's defamation claim fails as a matter of law.[4]

A. The Possible Connection Statement Is Not Actionable

Plaintiff fails to state a claim over the Possible Connection Statement because it is not false, defamatory (either on its face or by implication), or published with sufficient fault.

1. Plaintiff cannot establish falsity

It is well settled that "in a case involving an issue of public controversy or concern where the libelous statement is published by a media defendant, the common law presumption that the libelous statement is false is not applied. Instead, the [defamation] plaintiff must prove the statement is false." *Erickson v. Jones St. Publishers, LLC*, 629 S.E.2d 653, 665 (S.C. 2006) (citing *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 775-79 (1986)). The U.S. Supreme Court has further explained that the "law of libel takes but one approach to the question of falsity," which "overlooks minor inaccuracies and concentrates upon substantial truth." *Masson v. New Yorker*

[4] As set forth in his Motion to Remand, Plaintiff disputes whether the Challenged Statements are of-and-concerning him. *See* ECF No. 41-1 at 18-24. Given the other Defendants will address that issue in their forthcoming opposition to the Motion to Remand, to avoid burdening the Court with duplicative briefing, this Motion focuses on the other reasons that Plaintiff's Complaint fails. While the Rule 12(b)(6) standard is different from the fraudulent joinder standard, here there is no "glimmer of hope" for the viability of Plaintiff's Complaint (ECF No. 41-1 at 9) where no claim exists as a matter of law. *See* Notice of Removal, ECF No. 1 at 9-11.

Magazine, 501 U.S. 496, 516 (1991). Thus, "[m]inor inaccuracies do not amount to falsity so long as the substance, the gist, the sting, of the libelous charge be justified." *Id.* at 517 (internal marks omitted). As a result, "[a] statement is not considered false unless it would have a different effect on the mind of the reader from that which the pleaded truth would have produced." *Id.* (internal marks omitted).

To survive a motion to dismiss, therefore, Plaintiff cannot simply "couch[] . . . allegations of falsity in vague, conclusory terms[.]" *Chapin*, 993 F.2d at 1092. Rather, Plaintiff must plead "sufficient facts to establish that the statements about him are materially false." *Harvey*, 48 F.4th at 271 (affirming dismissal as to challenged statements for failure to carry this pleading burden); *see also, e.g.*, *Sunrise Pharm., Inc. v. Vision Pharma, LLC*, 799 F. App'x 141, 142 (3d Cir. 2020) (affirming dismissal where plaintiff "failed to plausibly plead [defendant] made a false statement"); *Swindol v. Aurora Flight Scis. Corp.*, 832 F.3d 492, 494-95 (5th Cir. 2016) (same); *Tannerite Sports, LLC v. NBCUniversal News Grp.*, 864 F.3d 236, 247 (2d Cir. 2017) ("a plaintiff must plead facts demonstrating falsity to prevail on a motion to dismiss the complaint in federal court").

Plaintiff does not and cannot carry this burden at the pleading stage as to the Possible Connection Statement, because records of which this Court may take judicial notice conclusively establish that rumors of a possible connection between the Murdaugh family and Smith's death ***were*** circulating in Hampton County. For one, official records of the law enforcement investigation into Smith's death contain numerous references to the Murdaugh family. *See* Appendix in Support of Defendants' Motions to Dismiss (ECF No. 51).[5] For another, SLED

[5] As Netflix has explained, accurate summaries of official records and proceedings are non-actionable for the additional reason that they are protected by the fair report privilege. *See* Netflix

announced that it was opening an investigation into Smith's murder based on evidence uncovered during the Murdaugh double-murder investigation. *See, e.g.*, Michael M. DeWitt, Jr., *SLED opens its own investigation into death of Stephen Smith; possible Murdaugh connection*, Hampton County Guardian (June 23, 2021), https://www.blufftontoday.com/story/news/local/hampton-county-guardian/2021/06/23/sled-opens-own-investigation-into-death-stephen-smith-maggie-paul-murdaugh-homicide-connection/5322059001/ ("In response to queries from multiple media outlets, on Tuesday, June 23, S.C. Law Enforcement Division spokesperson Tommy Crosby released the following statement: 'SLED has opened an investigation into the death of Stephen Smith based upon information gathered during the course of the double murder investigation of Paul and Maggie Murdaugh.'"). Notably, Plaintiff has not challenged this or any other reporting by DeWitt published by the *Hampton County Guardian*.

Because it is beyond dispute that a "connection" does indeed exist between the Murdaugh family and the investigation of Smith's murder, Plaintiff cannot carry his burden of establishing that it was materially false for DeWitt to state that he had heard "rumors about a possible Murdaugh connection" to Smith's murder.

2. Plaintiff cannot state a claim for defamation by implication

The First Amendment would mean little if every perceived slight could give rise to a claim. To survive a motion to dismiss, therefore, a libel plaintiff must also plausibly allege that the challenged statement conveys – expressly or by implication – a defamatory meaning. Plaintiff fails to carry this pleading burden as well as to the Possible Connection Statement.

MTD at 25-32 (ECF No. 52). The Gannett Defendants respectfully adopt and incorporate those arguments as to the Challenged Statements as well.

Plaintiff asserts that in making the Possible Connection Statement, DeWitt was "accusing the Plaintiff of being involved in the murder of Stephen Smith." Compl. ¶ 28. Because the Possible Connection Statement does not actually say that, however, Plaintiff now purports to assert an unpleaded claim for defamation-by-implication in his Motion to Remand. The Fourth Circuit has set forth clear standards for district courts to apply when evaluating the viability of such a claim. Specifically, in *Chapin* plaintiffs alleged that a newspaper report that "pointedly questioned the finances" of their charitable efforts conveyed a variety of implications, including that a statement to the effect that the program for sending holiday "'Gift Pacs' to American soldiers in Saudi Arabia" involved a "hefty mark-up" on the wholesale costs of the gifts implied that the operator was enriching himself. 993 F.2d at 1091. In other words, plaintiffs "primarily allege[d] the falsity of implications, rather than the facts literally related by the [challenged] article." *Id.* at 1092. The Fourth Circuit held that, for such a claim to proceed, the

> defamatory implication must be present in the plain and natural meaning of the words used. Moreover, because the constitution provides a sanctuary for truth, a libel-by-implication plaintiff must make an especially rigorous showing where the expressed facts are literally true. The language must not only be reasonably read to impart the false innuendo, but it must also affirmatively suggest that the author intends or endorses the inference.

Id. at 1092-93 (citations and internal marks omitted). Applying these twin standards, the Fourth Circuit affirmed the district court's order dismissing the complaint. *Id.* at 1098-99.

Here, it is evident on the face of the Possible Connection Statement that Plaintiff cannot make out both of these elements for his claim. On the first prong, DeWitt's remark that he was "hearing all these rumors about a possible Murdaugh connection" does not reasonably convey, on its face, that Plaintiff is personally to blame for Smith's death. To the contrary, a "possible" and tenuous connection of an indeterminate nature is the definition of nonactionable "theory,

conjecture or surmise," not a verifiable assertion of guilt, and cannot be the basis for a claim under the First Amendment. *Biospherics*, 151 F.3d at 186 (affirming dismissal). Indeed, DeWitt immediately goes on to explain in the Good Rumor Statement that he had ***not*** formed a conclusion as to whether the rumors of a "possible Murdaugh connection" were true, which directly refutes Plaintiff's alleged implication. *See, e.g.*, *Deripaska v. Associated Press*, 282 F. Supp. 3d 133, 148 (D.D.C. 2017) (defamation-by-implication fails where challenged report includes language "that negate[s] the implication[] that [Plaintiff] conjures up"); *see also Fairfax v. CBS Broad. Inc.*, 534 F. Supp. 3d 581, 594 (E.D. Va. 2020) (reporting on the existence of accusations against plaintiff did not, to a reasonable viewer, "sufficiently imply that the accusations [were] true or accurate"), *aff'd on other grounds*, 2 F.4th 286.

Likewise, on the second prong of the *Chapin* test, nothing about the language of the Possible Connection Statement "affirmatively suggest[s]" that DeWitt "intend[ed] or endorse[d]" the alleged implication that Plaintiff had in fact murdered Smith. 993 F.2d at 1092-93. Indeed, the Good Rumor Statement that follows immediately after the Possible Connection Statement shows that DeWitt did ***not*** endorse the implication that Plaintiff had, in fact, murdered Smith. *See, e.g.*, *Fairfax*, 534 F. Supp. 3d at 594 (challenged reporting also did not reasonably imply that defendants "endorsed the veracity of [plaintiff's] accusers"). Plaintiff thus fails to carry his burden on either prong of the *Chapin* test, and as a result he fails to state a claim for defamation-by-implication over the Possible Connection Statement as a matter of law.

B. The Good Rumor Statement Is Not Actionable

The "Good Rumor" Statement cannot give rise to a defamation claim for an even more basic reason: it is a non-actionable expression of opinion rather than a provable assertion of fact. As the Fourth Circuit has held, when "a speaker plainly expresses a subjective view, an

interpretation, a theory, conjecture, or surmise," rather than claiming "to be in possession of objectively verifiable facts, the statement is not actionable." *Biospherics*, 151 F.3d at 186. Whether a challenged statement is a non-actionable expression of opinion is a question of law before the court on a motion to dismiss. *Id.*

Here, disregarding Plaintiff's misquotation and looking at the actual language used in the Netflix series, DeWitt stated, "I've learned as a reporter that if you hear the same rumors from different groups of people wherever you go, it's either a very good rumor or there's some truth to it." *See* Netflix Ep. 3 Tr. at 11:16-19. The Good Rumor Statement thus expresses nothing more than DeWitt's subjective views about the nature of gossip – namely, that a story may spread widely within a community not because it is true but because it is captivating. As a result, there is simply nothing "objectively verifiable" about this statement, and "a statement not subject to objective verification is not likely to assert actual facts." *Snyder v. Phelps*, 580 F.3d 206, 219 (4th Cir. 2009), *aff'd*, 562 U.S. 443 (2011). Plaintiff therefore cannot state a claim over the Good Rumor Statement as a matter of law.

C. The Piggly-Wiggly Statement Is Not Actionable

Plaintiff fails to state a claim over the Piggly-Wiggly Statement for the exact same reasons that he failed to state a claim over the Possible Connection Statement.

First, Plaintiff does not and cannot establish that the Piggly-Wiggly Statement is materially false. *Harvey*, 48 F.4th at 271. For one, given this lawsuit, Plaintiff can hardly deny DeWitt's assertion that putting the Murdaugh name in print increases the risk of drawing a libel claim. For another, as discussed above and as records of which this Court may take judicial notice conclusively show, a prominent, well-known family ***was*** rumored to be involved in Smith's death. *See supra* at 9-10. And given Plaintiff's insistence that there is, in fact, no connection between the

Murdaugh family and Smith's death, *see* Compl. ¶ 18, Plaintiff cannot dispute DeWitt's assertion that "[n]obody ever came forward" to establish such a connection. In sum, Plaintiff cannot meet his burden on falsity as to the Piggly-Wiggly Statement as a matter of law.

Second, the Piggly-Wiggly Statement does not imply that Plaintiff was involved in Smith's murder. As with the Possible Connection Statement, neither prong of the *Chapin* test is satisfied as to the Piggly-Wiggly Statement. For one, on its face, nothing about the Piggly-Wiggly Statement reasonably conveys to viewers that Plaintiff was involved in Smith's murder. *Chapin*, 993 F.2d at 1092-93. For another, the plain language of the Piggly-Wiggly Statement does not affirmatively suggest that DeWitt *intended* to imply or *endorsed* the implication that Plaintiff was involved in Smith's murder. *Id.* Indeed, as with the Possible Connection Statement, the language of the Piggly-Wiggly Statement negates this alleged implication because it notes that no one has come forward to link Smith's death to the Murdaugh family – let alone to Plaintiff specifically. *See Deripaska*, 282 F. Supp. 3d at 148.

D. The Bad Taste Statement Is Not Actionable

The Bad Taste Statement, like the Good Rumor Statement, cannot possibly give rise to a defamation claim, as a matter of law, because it is a non-actionable expression of opinion rather than a provable assertion of fact. Whether DeWitt had "a bad taste in [his] mouth toward members of the Murdaugh family" is precisely the type of subjective, unverifiable observation that courts have consistently found to be protected opinion. *See Biospherics*, 151 F.3d at 186; *Lapkoff v. Wilks*, 969 F.2d 78, 82 (4th Cir. 1992) (defendant's comment that he "wouldn't trust [plaintiff] as far as [he] can throw him" was "clearly [defendant's] opinion" and "by any standard . . . protected speech"); *see also, e.g.*, *Trump v. Chicago Trib. Co.*, 616 F. Supp. 1434, 1438 (S.D.N.Y. 1985)

("The words of the Latin proverb are particularly appropriate here: *De gustibus non est disputandum*, there is no disputing about tastes.").

E. Plaintiff Does Not Allege DeWitt Made The Challenged Statements With Sufficient Fault

Plaintiff does not and cannot plausibly allege that ***any*** of the four statements challenged in the Complaint amounts to a false and defamatory statement of fact capable of giving rise to a defamation claim under South Carolina law and the First Amendment. Moreover, even if Plaintiff had plausibly alleged that the Challenged Statements are false and convey a defamatory meaning by implication (he does not), the defamation claim would still fail because Plaintiff does not allege – let alone plausibly allege – that DeWitt made these statements with the requisite degree of fault. Here, because DeWitt's statements relate to a matter of public concern,[6] South Carolina law requires that Plaintiff "plead and prove common law malice." *Erickson*, 629 S.E.2d at 664. Common law malice requires acting "with ill will toward the plaintiff, or act[ing] recklessly or wantonly, *i.e.*, with conscious indifference of the plaintiff's rights." *Id*. Because Plaintiff *never* alleges that DeWitt made the Challenged Statements (or any other statement) with ill will toward him, his Complaint fails to plausibly allege a defamation claim against DeWitt for this independent reason as well.

Plaintiff fails to state a claim for defamation against DeWitt for which relief can be granted. The Court should dismiss the Complaint as to him accordingly.

II. PLAINTIFF FAILS TO STATE A DEFAMATION CLAIM AGAINST GANNETT

[6] *See, e.g.*, *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 492 (1975) ("The commission of crime, prosecutions resulting from it, and judicial proceedings arising from the prosecutions . . . are without question events of legitimate concern to the public and consequently fall within the responsibility of the press to report the operations of government.").

Plaintiff has named Gannett as a defendant in this case solely in its role as the alleged principal to DeWitt's agent. *See* Compl. ¶¶ 15-16. Because Plaintiff fails to state a defamation claim against DeWitt, it is hornbook law that he necessarily also fails to state a defamation claim against Gannett. *See, e.g.*, 3 C.J.S. Agency § 513 ("[U]nder the doctrine of respondeat superior, if the agent is not liable, the principal cannot be held liable for the acts of the agent."). This Court should therefore dismiss the Complaint as to Gannett as well.

CONCLUSION

For the foregoing reasons, the Gannett Defendants respectfully request that the Court grant their Motion and dismiss Plaintiff's Complaint, as to them, with prejudice.

Dated: October 16, 2024

Respectfully submitted,

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