

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

BEAUFORT DIVISION

RICHARD ALEXANDER
MURDAUGH, JR.,
Plaintiff,

vs.

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.

Case No. 9:24-cv-04914-RMG

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS OF
DEFENDANT CAMPFIRE
STUDIOS, INC., JOINED BY
WARNER BROS. DISCOVERY,
INC. AND WARNER MEDIA
ENTERTAINMENT PAGES, INC.**

LUNA SHARK
COURTESY

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Defendant Campfire Studios, Inc. (“Campfire”), joined in full by Warner Bros. Discovery, Inc. (“WBD”) and Warner Media Entertainment Pages, Inc. (“Warner Media Entertainment”) (collectively, with the corporate entities disclosed in the Amended Answer to Local Rule 26.01 Interrogatories, “Warner Entities”) (Campfire, with the Warner Entities, “Moving Defendants”) respectfully move the Court to dismiss the Complaint (“Complaint” or “Compl.”) filed by Plaintiff Richard Alexander Murdaugh, Jr. (“Buster” or “Plaintiff”) as to the documentary “Low Country: The Murdaugh Dynasty” that the Complaint alleges Campfire produced and WBD aired on HBO Max (the “Documentary” or “Campfire Documentary”). Compl. ¶¶ 22-24.¹

PRELIMINARY STATEMENT

The Murdaugh name has been synonymous with “money, position, power” and “control of Hampton County for close to a century.” Murdaugh men held the position of solicitor uninterrupted for four decades, while also founding and running an eponymous law firm. Recently, the Murdaugh name has become synonymous with a more sinister side of privilege, wealth, and power. In 2019, Plaintiff’s brother, Paul, was charged with boating under the influence in connection with a boat accident that killed a local teenager. Shortly after, Paul was found shot dead execution style in his home, along with his and Plaintiff’s mother. At the same time, investigators began looking into the mysterious death of the Murdaugh family’s longtime housekeeper and the embezzlement of money owed to her estate. Plaintiff’s father, Alex,

¹ As explained in the Amended Answer to Local Rule 26.01 Interrogatories, Campfire is an improper party because the company that produced the Campfire Documentary is HCM, LLC, which is wholly owned by Campfire Film & TV, LLC. *See* Dkt. 44. Neither of the Warner Entities is a correct party either. *Id.* Based on the allegations of the Complaint (none of which the Warner Entities concede), Plaintiff should have identified WarnerMedia Direct, LLC, Discovery Communications, LLC, and Discovery Digital Ventures, LLC instead of WBD and Warner Media Entertainment. Notwithstanding that WarnerMedia Direct, LLC is the only Warner Entity relevant to the Campfire Documentary, all of the Warner Entities join this Motion, but reserve all rights and waive none by so doing.

eventually was charged in connection with both the financial crimes and killing his own wife and son. In the wake of the investigation of the Murdaugh double homicide, local law enforcement announced that it was reopening the investigation into the 2015 death of a local teenager, Stephen Smith.

Throughout all of this, media across the country, including national television networks like NBC, ABC, CBS, and Fox, covered Murdaugh-related events. In his lawsuit, Plaintiff singles out a handful of defendants for producing and/or distributing three separate documentaries about these criminal investigations. As to the Campfire Documentary, the lawsuit targets one portion of one episode relating to the law enforcement investigation into Smith's death, during which Plaintiff's name surfaced *more than two dozen times*, including in recorded official witness interviews that the Documentary played for viewers. That fact was, and remains, true.

It would be understandable for Plaintiff to feel anxious hearing his name mentioned to police in connection with Smith's death, or to feel aggrieved by the course of tragic events that have radically changed his life. But the law does not permit Plaintiff to sue media companies exercising their First Amendment right to fairly and accurately report on events of national significance, including the law enforcement investigation into Smith's death. Nor does the law support Plaintiff's claims. The Complaint fails to identify a single statement in the Campfire Documentary, which alone necessitates dismissal. *Infra* Argument § I. Neither of the two statements that plausibly match the one paragraph in the Complaint purportedly describing the allegedly defamatory material in the Campfire Documentary supports a claim of defamation. The First Amendment of the United States Constitution (the "First Amendment") bars Plaintiff's claims because the Campfire Documentary does not assert any defamatory facts about him. *Infra* § II. To the extent that the Campfire Documentary asserts any facts about Plaintiff, they are

demonstrably true. *Infra* § III. The Documentary fails as a matter of South Carolina law because it does not state or imply the defamatory meaning Plaintiff claims it does. *Infra* § IV. Dismissal further is warranted based on South Carolina’s robust fair report privilege (*infra* § V), and for failure to plead facts demonstrating either common law or constitutional malice—each of which Plaintiff bears the burden of demonstrating under South Carolina law (*infra* § VI). The Court should dismiss Plaintiff’s lawsuit as to the Campfire Documentary with prejudice for failure to state a claim under Rule 12(b)(6).

FACTUAL BACKGROUND

A. The Campfire Documentary Detailed The Criminal Investigations, Scandals, And Speculation Surrounding The Murdaugh Family Dynasty.

The Campfire Documentary chronicled a series of events connected to the Murdaugh family, who various individuals in the first episode described as follows: “Money, position, power. The Murdaughs have had control of Hampton County for close to a century”; “Hampton is pretty much historically dominated by one family: the Murdaughs”; “Murdaugh. That name means power”; “Kings of the Lowcountry”; and “Everyone knows that they are the lawyers in the area. The Murdaughs are the justice system.” Ex. D at 7-8.² As the Documentary explains, men in the Murdaugh family “have held the position of the prosecutor—the solicitor” of Hampton County “through four generations” with their portraits hanging in local courthouses. *Id.* at 8, 29-32. The

² This Motion submits as exhibits a video copy of all three episodes of the Documentary (*see* Exs. A-C) and official transcripts of the same (*see* Exs. D-F). The Court can consider these materials because they are integral to the Complaint. *See McLaughlin v. Darlington Cnty.*, 2021 WL 4691379, at *2 (D.S.C. Sept. 17, 2021), *report and recommendation adopted*, 2021 WL 4691055 (D.S.C. Oct. 7, 2021); *Cobin v. Hearst-Argyle Television, Inc.*, 561 F. Supp. 2d 546, 552-53 (D.S.C. 2008) (news reports “clearly central to plaintiff’s claim”). The Court also can take judicial notice of Murdaugh-related investigations and prosecutions because they are “not subject to reasonable dispute.” *See* Fed. R. Evid. 201(b) (not reasonable dispute when fact “(1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned”).

Murdaughs also launched and operated a personal injury law firm, formally titled PMPED but known simply as “the Firm.” *Id.* at 31.

But, as one local lawyer explained in the Documentary, “what took 100 years to build crumbled ... in one year.” *Id.* at 8 (ellipses in original). In February 2019, Plaintiff’s brother, then 19-year-old Paul, allegedly crashed the family boat after a night of drinking in an accident that took the life of a local teenage girl. *Id.* at 11, 15-28. Paul was charged two months later with felony boating under the influence that causes a death. *Id.* at 43. Then, on June 7, 2021, detectives found Paul and his (and Plaintiff’s) mother shot dead execution style at the family’s hunting lodge. *Id.* at 2, 8-9, 47. Three months later, in “another bizarre twist in the story of the Murdaugh family” that makes “you wonder if they just started making things up or it was a soap opera somewhere,” Plaintiff’s father, Alex, was shot in the head. *Id.* at 51-52; Ex. E at 6. South Carolina’s State Law Enforcement Division (“SLED”) investigated the shooting and charged Alex with conspiring with someone to kill him as part of a scheme to secure life insurance proceeds for Plaintiff. Ex. E at 43-44. Alex’s defense attorney publicly stated that the morning of the shooting Alex told him “that he had an opioid addiction and that he had been struggling with it for many, many years and it was very expensive.” Ex. F at 5. Alex subsequently issued a statement announcing he was “resigning from my law firm and entering rehab after a long battle that’s been exacerbated by these murders” of his wife and son. *Id.* at 24.

While leaving rehab, Alex was arrested and charged with two counts of “obtaining property by false pretense” in connection with the death of Gloria Satterfield, the Murdaugh family’s longtime housekeeper who was found dead in their home, surrounded by speculation on whether she fell or was pushed down the stairs (perhaps by Paul). *Id.* at 10-11, 13-15. Alex admitted in a confession of judgment to stealing \$4.3 million in insurance proceeds that should have but did not

go to the Satterfield family. *Id.* at 16-17, 38. Shortly thereafter, Alex was indicted for the murder of his wife and son. *Id.* at 31-32. In total, he was charged with more than 90 counts of criminal activity. *Id.* at 38.

National news outlets covered events relating to the Murdaugh family in real time to audiences across the country ever since. *See, e.g.*, Ex. E at 1:45:27-1:46:35 (NBC); *Id.* at 1:48:18 (CBS); Ex. F at 1:23:38 (NBC); *Id.* at 1:31:50 (People Magazine); *Id.* at 1:31:52 (Fox News). As one individual in the Documentary explained: “This case has become so convoluted, so crazy, so many twists and turns to it. Every time you think it’s finished, there’s another turn.” Ex. E at 4. Another said, “Where the Murdaughs go, death seems to follow.” Ex. D at 3.

B. Official, Publicly Released Law Enforcement Records Document The Investigation Into Stephen Smith’s Death.

In 2015, a local teenager, Stephen Smith, was found dead on the side of a road in Hampton County. Ex. 2 at 4.³ Official law enforcement records indicate that Smith’s body was found with “some sort of blunt force trauma to the head” and “no evidence to suggest the victim was struck by a vehicle.” *Id.* SLED Crime Scene notes indicate a “hole in the skull was located above the victim’s right eye” and that it was “unclear” if the “hole was caused by a projectile.” *Id.* at 57. Investigative case notes by South Carolina’s Multi-Disciplinary Accident Investigation Team (“M.A.I.T.”) indicate that a former officer who investigated the incident, Corporal Michael Duncan, believed it “appeared to be a homicide[.]” *Id.* at 9. Cpl. Duncan’s contemporaneous audio notes, which the Campfire Documentary played, reflect this theory: “There is some scrapes

³ Counsel for the Moving Defendants obtained state investigative materials via a Freedom of Information Act request. Certain of those materials are marked as joint Exhibits 1-11 and filed jointly as their own docket entry (the “Appendix in Support of Defendants’ Motion to Dismiss”) for ease of reference amongst the Defendants’ briefs. The “Court may consider the police report as a matter of public record” that is properly subject to judicial notice and to assess fair report privilege. *See Cobin*, 561 F. Supp. 2d at 550-51; *see also* Fed. R. Evid. 201(b).

and scratches on his left and right arm, on his knuckles, some across his face. But his injuries pertain to his head area. Does not appear to be, in my opinion, struck by a vehicle. There were several red flags from the start in this investigation.” Ex. E at 19. M.A.I.T. Case notes of investigator Trooper Todd Proctor illustrate his view that there was “no evidence” (other than Smith having been found in the road) to support the pathologist’s theory that Smith was “possibly struck by a motor vehicle mirror” and recalls a subsequent conversation between the two: “I asked her if someone with a baseball bat could do that and she stated ‘no.’ When I probed further saying what about someone in a moving car, with a bat she stated ‘well I guess it’s possible.’” Ex. 2 at 25.

Tpr. Proctor and Lt. Thomas Moore of the South Carolina Highway Patrol conducted law enforcement interviews between August and September 2015, including the following tape-recorded excerpts:⁴

Date (Cite)	Statement
07/17/2015* (Ex. 3B at 9; Ex. E at 26)	<p>Sandy Smith (victim’s mother): “<i>The rumors going around Hampton that everybody keeps coming up to me and it was Murdaugh boys.</i>”</p> <p>Cpl. Duncan: “The Murdaugh boys?”</p> <p>Sandy Smith: “<i>Yes, whoever they are.</i>”</p>
07/17/2015 (Ex. 4B at 21)	<p>Stephanie Smith (victim’s sister): “<i>And I went into the store and a bunch of people kept coming up to me and they’re like did you know the Murdaugh boys are behind it, you know, saying Buster Murdaugh, the one we went to school with did it and some of his friends, and I’m just sitting here like why, you know. It makes no sense. He’s never said anything bad about Stephen. He’s never been around Stephen too, you know.</i>”</p>

⁴ The Campfire Documentary played the excerpts marked with a [*]. All witnesses whose names appear in the law enforcement materials but whose names do not appear in the Documentary are referenced herein by their initials only.

<p>08/07/2015 (Ex. 5B at 3)</p>	<p>Cpl. Duncan: “Kind of tell me what you told her about that.”</p> <p>A.C.: <i>“I told her that another friend of mine had texted me asking me if Buster and Stephen and [sic] were together, and I told him no. I said not that I knew of, and then I asked him why. He said because he had heard that. And then I asked him who he heard it from, and he said he didn't know. He just heard it.”</i></p>
<p>08/11/2015 (Ex. 6B at 4)</p>	<p>Cpl. Duncan: “So the only rumor you heard is possibly Buster having some type of relationship with Stephen?”</p> <p>B.S.: “Yes, sir. Okay.”</p> <p>Cpl. Duncan: “All right. And how long ago was that? Do you recall when that was when you heard?”</p> <p>B.S.: <i>“I cannot—a few weeks ago, maybe.”</i></p> <p>Cpl Duncan: “Was it after or before his death?”</p> <p>B.S.: “After.”</p> <p>Cpl. Duncan: “Okay. So it was after Stephen had died?”</p> <p>B.S.: “Yes, sir.”</p>
<p>09/01/2015* (Ex. 7B at 7-8; Ex. E at 31-32)</p>	<p>Tpr. Proctor: “Just go ahead and tell me, you know, what you heard.”</p> <p>T.D.: <i>“Yes, sir. Not a problem. First heard, just like everybody else in our little small town, that he was—first we heard he was shot, then we heard it was a hit and run. But recently, probably a week ago, week and a half ago, I'd say something like that, I heard that these two, maybe three young men were in a vehicle. They were riding down 601, saw the car on the side of the road, I guess saw the boy walking. They turned back around. I guess they were attempting to, I don't want to say, you know, mess around with him or something like that, stuck something out of the window and it, you know, hit him in, I don't know if it hit him in the head or the back or where it hit him, and then that's pretty much all I heard. I did hear names and—or heard a name, and that name was—he goes by Buster Murdaugh.”</i></p>
<p>09/01/2015* (Ex. 7B at 14; Ex. E at 26-27)</p>	<p>Tpr. Proctor: “Yeah. Okay. And it could be a whole gamut of people that, you know, the other two people that could have been in the car with him?”</p> <p>T.D.: <i>“Really, yes, sir. I have no idea. The only name that was given to me was the Murdaugh name. And of course, everybody's kind of shy to say that out, you know what I mean, because of the, I don't want to say power, but of the name, you know, it brings a certain standard when you say Murdaugh in Hampton County.”</i></p>

09/01/2015 (Ex. 7B at 15)	T.D.: <i>“It wouldn’t surprise me just because I feel like they wouldn’t want anything happen to their reputation or name or anything like that. And it is kind of out of character to a certain extent because, I mean, I’ve known his—I’ve known the Murdaugh family, like I said, pretty much my whole life.”</i>
09/01/2015* (Ex. 7B at 24-25; Ex. E at 33-34)	T.D.: <i>“And when I originally heard this, I was thinking of the younger Murdaugh boy, Buster’s little brother Paul because Paul’s more of the I want to say troublemaker, but he’s a little more my last name is Murdaugh. I can do whatever, you know what I mean?”</i> Tpr. Proctor: “It went to his head a lot more.” T.D.: <i>“Right. Yeah. He was more that type of kid. And he’s—I don’t know how old he is now. I just remember him when he was younger. So when I first heard it was Buster kind of—it kind of caught me off guard because he’s never been that type of person. But then again, like I say, once with alcohol and drugs, I’m sure things can go way out of way out of control when you mix all that together.”</i>
09/02/2015* (Ex. 8B at 3; Ex. E at 30)	Tpr. Proctor: “Can you tell me what you heard about the Stephen Smith incident?” T.S.: <i>“I just heard a classmate that didn’t know (inaudible).”</i> Tpr. Proctor: “You heard what, I’m sorry?” T.S.: <i>“One of the classmates did it.”</i> Tpr. Proctor: “Okay. And who was that?” T.S.: <i>“Buster Murdaugh.”</i>
09/02/2015* (Ex. 8B at 5; Ex. E at 35-36)	T.S.: <i>“Some people were talking about how he died, and then everyone was like well, you heard who did it. And I was like no, I didn’t. And he was like well, Buster did it. It was a guy that told me that.”</i> Tpr. Proctor: “And did he say where he heard that from or how he was backing that up?” T.S.: <i>“No, sir.”</i> Tpr. Proctor: “So he just said, ‘oh, I heard Buster did it?’” T.S.: <i>“Yes, sir.”</i> Tpr. Proctor: “Did he say how he did it or what happened?” T.S.: <i>“No, he didn’t. Yes, he did. He said they beat him up and threw him out the truck.”</i> Tpr. Proctor: “Beat him up and threw him out of the truck?” T.S.: <i>“Yes, sir.”</i>

<p>09/02/2015 (Ex. 8B at 8)</p>	<p>Tpr. Proctor: “Okay. So he’s the one that said Buster had something to do with it, but he didn’t tell you how he knew that?”</p> <p>T.S.: “<i>Yes, sir.</i>”</p> <p>Tpr. Proctor: “Because I want to get in touch with him and, you know, talk to him and find out like where he heard this from, and basically I’m having to track it down. You are the one, two, three, four, five, six, seven, eight, you’re the ninth person that I’ve talked to in reference to this rumor, okay.”</p>
<p>09/02/2015 (Ex. 9B at 3-4)</p>	<p>Tpr. Proctor: “And the information that was first given to me was that Buster Murdaugh and maybe one or two other people were out that night, and they had saw Stephen’s car or whatever, so they went down the road and they actually saw him walking, and they were going to kind of like play around with him, and they held something or swung something out of the car and accidentally hit him. Does any of that sound familiar to you?”</p> <p>D.S.: “<i>I do remember someone saying something about Buster, but they didn’t really go into details because they didn’t really know.</i>”</p>
<p>09/02/2015* (Ex. 9B at 4; Ex. E at 30-31)</p>	<p>Tpr. Proctor: “But what I’m seeing is that a lot of people seem a little hesitant to speak about Buster or the Murdaughs in general. Do you kind of see that in general?”</p> <p>D.S.: “<i>Yes, Sir.</i>”</p> <p>Tpr. Proctor: “Okay.”</p> <p>D.S.: “<i>When we were speaking about someone told me that it was Buster, I was like I was saying if it’s him, nothing was going to be done about it because of who he was.</i>”</p>
<p>09/02/2015 (Ex. 10B at 3)</p>	<p>B.S.: “<i>And we didn’t know who did it, but we just heard that Buster did it. So after that, I mean, everybody know who Buster is and like his family and all that. So it was kind of like shocking so, you know, we just kept talking about it and like I guess it spreads it around, like a lot.</i>”</p>
<p>09/02/2015 (Ex. 10B at 4)</p>	<p>Tpr. Proctor: “Okay. Now, the story that Taylor told me was that I guess the information that his understanding of it was is that Buster and either one or two other people were driving around, saw Stephen’s car, you know, looped around or whatever, saw them walking in the road, were possibly gonna, you know, kinda messed with them or something, stuck something out of the vehicle and it hit them. Is that the story that you got?”</p> <p>B.S.: “<i>Yes, sir.</i>”</p>

Names of members of the Murdaugh family also appear in the police files and related investigative materials. Ex. 2 at 19 (tip that someone asked “if Stephen and Buster Murdaugh ever had any type

of relationship”); *id.* at 28 (“stated that the reason that he was passing this information on was because Randy Murdaugh told him to call”); *id.* (detailing questioning about Buster Murdaugh). Cpl. Duncan’s case notes from December 7, 2015, state that he “received an email in reference to an anonymous tip” that one man “‘along with another black male and a white male (Murdaugh) are the ones involved in death.’ This tip is referring to Stephen Smith.” *Id.* at 24.

C. The Campfire Documentary Chronicled The Law Enforcement Investigation Into Smith’s Death.

Part of the second episode of the Campfire Documentary discussed Smith’s death, heavily relying on law enforcement investigative materials. It played various police audio recordings, such as law enforcement radio traffic from the morning of the incident reporting a “young white male lying in the roadway with severe head trauma” and Cpl. Duncan’s audio notes expressing his view that Smith did not appear to have been, “in my opinion struck by a vehicle” including because “his injuries pertain to his head area.” Ex. E at 14, 19. The Campfire Documentary also published the audio recordings of the law enforcement interviews, including one witness describing that he heard that someone “stuck something out the window and it, you know, hit” Smith “in the head or the back” and that he also did hear “a name, and that name was—he goes by Buster Murdaugh.” *Id.* at 31-32. It additionally played an interview where another witness told police that she heard that “they beat him up and threw him out the truck.” *Id.* at 35-36.

The Campfire Documentary included interviews with Cpl. Duncan and Lt. Moore discussing their investigation into the circumstances surrounding Smith’s death. Lt. Moore explained that he reported to the scene where Smith’s body was located after receiving reports from the local sheriff’s department and coroner of a “hit-and-run” but “was confident” by the time he left that “this is not a wreck. This is murder.” *Id.* at 14. Cpl. Duncan stated: “As we started the investigation, we were pretty much starting with nothing except for a body and a car. So we

started where we thought we needed to, you know, with friends, last person who talked with Stephen.” *Id.* at 25.

Both law enforcement officers explained in the Campfire Documentary that the Murdaugh name arose in connection with the investigation from the beginning. Lt. Moore recalled that an investigator from the Murdaugh Firm showed up at the scene within a few days of the death: “It was about seeing what we were doing to try to get one step ahead. It’s the only thing that makes sense to me. If you wanted pictures, you could have got those at any time. Makes you wonder, is Murdaugh involved in that?” *Id.* at 16. According to Cpl. Duncan, “the Murdaughs’ name was brought up at least a dozen times, possibly more” over the course of the investigation. *Id.* at 30. He “knew immediately” that when “their name started coming up” that investigators needed “to talk with others about this.” *Id.* at 27. Consistent with the case files, Cpl. Duncan explained that one “of the rumors that we heard was that Buster and a couple of other guys had been out, seen Stephen, and they got in some type of argument and that a 2x4 or a bat was used to strike Stephen in the head area and that’s what caused his death.” *Id.* at 36. When asked by a producer if anyone investigated whether that theory matched the bodily injuries, Cpl. Duncan confirmed that the results of Smith’s autopsy were “consistent with some type of blunt force object.” *Id.* at 36-37.

Immediately after that observation by Cpl. Duncan, and after playing the excerpted recordings of the law enforcement interviews, the Campfire Documentary disclosed to viewers via on-screen text that: “Buster Murdaugh’s name was mentioned over two dozen times in law enforcement interviews. He has not been charged with any crime and has not been interviewed by law enforcement in connection with these events.” *Id.* at 37. Lt. Moore later explained:

“There’s different stories and different versions out there. I’ve heard Paul. I’ve heard Buster. Those names have been brought up numerous times consistently by people. But there’s nothing we can point to and say, ‘Mm-hmm, that’s what happened.’”

Id. at 38 (emphasis added).

The Campfire Documentary also included interviews with Sandy Smith, Stephen's mother, and Smith family friends, George Smith and Passion Mixon. Ms. Smith explained that Randy Murdaugh (Plaintiff's uncle) called Stephen's father the morning their son's body was discovered, and before the family had spoken with the sheriff, offering to "investigate" and asking for "his electronics, his passwords, [and] his Facebook." *Id.* at 15. Ms. Smith also recalled that she saw "Randy Murdaugh and Alex Murdaugh on the scene where Stephen's body was" found later that first morning. *Id.* In the Documentary, George Smith asked why Randy Murdaugh was "there in the first place? How did he know ... that Stephen was killed?" *Id.* (ellipsis in original).

Towards the end of the second episode, the Campfire Documentary explained that six years after Smith's death, SLED announced it was reopening its investigation into Smith's death as a result of the double Murdaugh murders. *Id.* at 41. Cpl. Duncan reacted: "I found it real curious when they brought up Stephen Smith. What did they find? Did they find something on a phone? Did they find something on the property that relayed Stephen Smith's death to the Murdaugh family?" *Id.* The second episode concluded with on-screen text explaining that: "Currently no charges have been filed related to the death of Stephen Smith" and Randy Murdaugh "denies any inappropriate involvement with the investigation." *Id.* at 46.

D. Plaintiff's Lawsuit Alleges That The Campfire Documentary Defamed Him In Two Specific Ways Relating To Smith's Death.

On June 14, 2024, Plaintiff filed this lawsuit in state court in Hampton County against eight defendants arising from three separate documentaries that chronicled the events described above. In his Complaint, Plaintiff does not challenge the truth of any parts of the Documentary except as related to the death of Stephen Smith, specifically by alleging only the following: "The series publishes false statements that suggest the Plaintiff, along with others, murdered Stephen Smith

by striking him with a baseball bat. A sequence in the show accuses the Plaintiff of killing Stephen Smith because of his sexual identity and further insinuates that the Plaintiff killed Stephen Smith in relation to a romantic relationship between Plaintiff and Smith.” Compl. ¶ 22.

Based on those allegations, the Moving Defendants understand the Complaint to allege the Campfire Documentary defamed Plaintiff in only two ways: (1) by including “false statements that suggest the Plaintiff, along with others, murdered Stephen Smith by striking him with a baseball bat”; and (2) because a “sequence in the show accuses the Plaintiff of killing Stephen Smith because of his sexual identity and further insinuates that the Plaintiff killed Stephen Smith in relation to a romantic relationship between Plaintiff and Smith.” *Id.* ¶ 22. While the Complaint does not quote the specific statements, the following two statements are the only ones that match Plaintiff’s description and, thus, Moving Defendants understand these to be the *only* statements on which Plaintiff’s claims in connection with the Campfire Documentary are based:

Statement One⁵	
Cpl. Duncan:	<i>“One of the rumors that we heard was that Buster and a couple of other guys had been out, seen Stephen, and they got in some type of argument and that a 2x4 or a bat was used to strike Stephen in the head area and that’s what caused his death.”</i>
Producer:	<i>“Did anybody look at the autopsy and try to figure out if it was consistent with a bat?”</i>
Cpl. Duncan:	<i>“Yes, and we actually looked at it, and it is consistent with some type of blunt force object.”</i>

Statement Two⁶	
G. Smith:	<i>“I still remember seeing Joel in the casket. And you could just tell he wasn’t at peace, ‘cause he wanted to know what happened to his child. The day he died, he told me, ‘Them Murdaughs killed my son.’ He would tell anybody. Or you could’ve asked Joel, ‘Joel, what happened to your son?’ ‘The Murdaughs killed my son because he was gay.’ ‘How do you</i>

⁵ Ex. E at 36-37.

⁶ *Id.* at 39-40.

	<p><i>know?’ ‘I know my son. I know he was seeing Buster.’ ‘How can you prove it?’ ‘I can’t, but I just know them Murdaugh boys killed my boy.’”</i></p>
<p>Producer:</p>	<p>“Have you ever heard that Stephen had any kind of sexual relationship with Buster Murdaugh?”</p>
<p>P. Mixon:</p>	<p><i>“There was rumors of that. I don’t know if it was true. If Buster was gay, he would have never came out about it. I don’t think his family would’ve approved of it either, so—because they are a big name.”</i></p>
<p>G. Smith:</p>	<p><i>“Joel knew 100% in his heart it was Buster.”</i></p>
<p>Producer:</p>	<p>“Why didn’t Joel go and talk to the police?”</p>
<p>G. Smith:</p>	<p><i>“There’s no need to do that. The police have got ties with them Murdaughs all the way from their great-granddad to their granddad to their daddy. They all got pull through the law. When they found Paul and his mama dead, they had everybody from Colleton County, Hampton County there investigating it. Stephen dies, they just put him in a body bag. He was hit by a car. Who cares? It’s that name. They got pull.”</i></p>

(hereinafter described as “Statement One” and “Statement Two” and, collectively, as the “Challenged Statements”).⁷

LEGAL STANDARD

Rule 12(b)(6) authorizes a motion to dismiss for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its

⁷ The Court should not permit Plaintiff to argue that he intended to plead any additional statements because the Moving Defendants are on notice only of these two and would be prejudiced by an improper attempt to amend the Complaint by opposition. *See Barclay White Skanska, Inc. v. Battelle Mem’l Inst.*, 262 F. App’x 556, 563 (4th Cir. 2008) (refusing to consider allegations in plaintiffs’ responses to the defendants’ motions to dismiss that do not appear in the complaint); *Champion v. U.S. Postal Serv.*, 2023 WL 3742294, at *2 (D.S.C. May 10, 2023), *report and recommendation adopted*, 2023 WL 3737916 (D.S.C. May 31, 2023) (rejecting plaintiff’s attempt to modify nature of damages requested in a response where plaintiff made a different argument in Complaint); *DeBarr v. Maximus Inc.*, 2022 WL 842907, at *4 (D.S.C. Mar. 22, 2022) (refusing to consider argument by Plaintiff raised for the first time on her objections as such untimely consideration “would cause Defendants unfair prejudice to consider it at this stage”); *see also Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1098 (4th Cir. 1993) (“these paragraphs were not labeled as false in the complaint, and plaintiffs may not belatedly rely on them”).

face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); accord South Carolina Rule of Civil Procedure 12(b)(6) (grounds for dismissal include “failure to state facts sufficient to constitute a cause of action”); *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991) (“our Rules of Procedure are based on the Federal Rules”). Dismissal is warranted when a complaint fails to plead any “factual content that allows the court to draw the reasonable inference” that defendants are “liable for the misconduct alleged.” *Ashcroft*, 556 U.S. at 678. A complaint that amounts to “little more than boilerplate allegations, devoid of sufficient facts to satisfy the pleading standards applicable in federal court” warrants dismissal. *Sellers v. S.C. Autism Soc’y, Inc.*, 861 F. Supp. 2d 692, 699 (D.S.C. 2012).

To state a claim for defamation under South Carolina law, Plaintiff must plead facts sufficient to demonstrate: “(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006); *Dickerson v. Albemarle Corp.*, 2016 WL 245188, at *3 (D.S.C. Jan. 21, 2016). When considering whether a plaintiff states a claim for defamation, the “inquiry is not only to assess whether the statements in the complaint ‘may constitute a sufficient basis for Plaintiffs’ defamation claim,’ but also to consider whether such a claim would comport with the First Amendment.” *Rollins Ranches, LLC v. Watson*, 2021 WL 5355650, at *4 (D.S.C. Nov. 17, 2021) (citation omitted); see also *Snyder v. Phelps*, 580 F.3d 206, 218 (4th Cir. 2009), *aff’d*, 562 U.S. 443 (2011) (“regardless of the specific tort being employed, the First Amendment applies when a plaintiff seeks damages for reputational, mental, or emotional injury allegedly resulting from the

defendant’s speech”). The Court need not accept as true allegations that contradict materials properly before the Court because they are referenced in the pleading or properly subject to judicial notice. *Mungo v. BP Oil, Inc.*, 2012 WL 13005317, at *2 (D.S.C. Dec. 21, 2012) (quoting *Veney v. Wyche*, 293 F.3d 726, 730 (4th Cir. 2002)); *supra* nn.2 & 3.

ARGUMENT

Plaintiff’s Complaint is deficient because it fails to identify a single defamatory statement. *Infra* § I. As discussed above, the Moving Defendants have identified two statements that plausibly match the description in Paragraph 22 of the Complaint—the only one purportedly describing the allegedly defamatory material in the Campfire Documentary—but neither of the Challenged Statements supports a defamation claim for multiple independent reasons. The First Amendment bars Plaintiff’s claims because neither of the Challenged Statements can be interpreted as asserting as an actual fact that Plaintiff murdered Smith with a baseball bat or that Plaintiff killed Smith because of his own sexual identity or a relationship between the two. *Infra* § II. To the extent that the Campfire Documentary asserts any facts relating to Plaintiff, those statements are demonstrably true on the face of the Campfire Documentary. *Infra* § III. The Complaint also fails to sufficiently plead, as required by South Carolina law, that the Campfire Documentary states or implies that defamatory meaning. *Infra* § IV. Liability as to Statement One is barred as a matter of law based on the fair report privilege. *Infra* § V. Finally, the Complaint warrants dismissal because it fails to demonstrate any form of malice, as he must under South Carolina law. *Infra* § VI.

I. THE COMPLAINT WARRANTS DISMISSAL BECAUSE IT DOES NOT SUFFICIENTLY IDENTIFY ANY DEFAMATORY STATEMENTS.

The Complaint does not specify a cause of action, but Plaintiff has confirmed he intends only to assert a claim for defamation as to all of the defendants. *See, e.g.*, Compl. ¶ 4 (“the cause

of action”); Dkt. 41-1 at 11 (“The Complaint clearly only advances a single cause of action for defamation as to all Defendants.”).⁸ Despite the fact that each “act of defamation is a separate tort” that a “plaintiff must specifically allege,” the Complaint does not plead any statements from the Campfire Documentary, relying only on a two-sentence characterization of the alleged defamatory content. *Supra* Factual Background § D; *Hughs v. Royal Energy Res., Inc.*, 2020 WL 6689132, at *3 (D.S.C. Nov. 12, 2020). Such pleading is “too nebulous a claim to survive a motion to dismiss.” *Dickerson*, 2016 WL 245188, at *4 (dismissal for failure to allege “sufficient factual matter” because it was not “even clear whether Plaintiff’s allegation is that coworkers used the specific term, ‘sexual advance,’ in their alleged defamatory comments about Plaintiff or whether their false reporting was something else that Plaintiff, herself, now characterizes as a ‘sexual advance’” (citations omitted)); *see also Bayne v. Smith*, 2024 WL 4277041, at *3 (D.S.C. Aug. 20, 2024), *report and recommendation adopted*, 2024 WL 4116689 (D.S.C. Sept. 9, 2024) (dismissing for failure to identify alleged defamatory statements); *Carson v. Emergency MD, LLC*, 2020 WL 5077655, at *5 (D.S.C. Aug. 25, 2020) (same); *Dombek v. Adler*, 2019 WL 459019, at *2 (D.S.C. Feb. 05, 2019) (Gergel, J.) (dismissing defamation counterclaim for failure to specify the statement at issue); *accord Sellers*, 861 F. Supp. 2d at 699 (dismissing “boilerplate allegations, devoid of sufficient facts to satisfy the pleading standards applicable in federal court”).

⁸ The Complaint’s failure to identify any cause of action qualifies as “improper shotgun pleading.” *Weiland v. Palm Beach Cnty. Sheriff’s Off.*, 792 F.3d 1313, 1323 (11th Cir. 2015); *Davis v. Coca-Cola Bottling Co.*, 516 F.3d 955, 979-80 (11th Cir. 2008) (criticizing pleading “untold causes of action, all bunched together in one count”), *abrogated on other grounds by Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). The Warner Entities waive no rights to the extent Plaintiff argues that the Complaint intends to assert any causes of action other than defamation.

II. THE FIRST AMENDMENT BARS PLAINTIFF’S CLAIM BECAUSE THE CAMPFIRE DOCUMENTARY DOES NOT ASSERT AS A FACT THAT PLAINTIFF KILLED SMITH WITH A BASEBALL BAT OR IN CONNECTION WITH PLAINTIFF’S SEXUAL ORIENTATION.

Dismissal of a complaint is required when, as here, the language, “context and tenor” of the Documentary provided “subjective and speculative supposition” that cannot be “reasonably interpreted to declare or imply untrue facts.” *Biospherics, Inc. v. Forbes, Inc.*, 151 F.3d 180, 183-84, 186 (4th Cir. 1998) (“whether a statement could be reasonably interpreted as an assertion of fact” requires looking to the language, “context and general tenor” of the entire publication and warrants dismissal where statement constitutes “a subjective view, not a factual statement” (quoting *Milkovich v. Lorain J. Co.*, 497 U.S. 1, 20-21 (1990)); *Blanton v. City of Charleston*, 2014 WL 4809838, at *5 (D.S.C. Sept. 26, 2014) (dismissal where “the Court concludes as a matter of law that none of the three statements at issue can reasonably be interpreted as stating a fact about the plaintiff”); *Cf. Va. Citizens Def. League v. Couric*, 910 F.3d 780, 786 (4th Cir. 2018) (rejecting argument that “divorces the twelve-second clip from the film as a whole”). Plaintiff’s claim does not “comport with the First Amendment” because the Challenged Statements “cannot reasonably be interpreted” as having stated as a fact that Plaintiff used a baseball bat to kill Smith or killed him due to his own sexual identity or relationship with Smith. *CACI Premier Tech., Inc. v. Rhodes*, 536 F.3d 280, 293 (4th Cir. 2008); *see also Schnare v. Ziessow*, 104 F. App’x 847, 851 (4th Cir. 2004) (whether statements are actionable “depends on whether a reasonable reader would construe them as seriously asserting that” the plaintiff “committed the crime of perjury”).⁹

The Campfire Documentary as a whole “plainly” expressed what law enforcement heard and what investigative theories they pursued, which is precisely the type of “theory, conjecture, or

⁹ Whether the Challenged Statements reasonably can be interpreted as conveying actual facts about Plaintiff is a question of law for the Court and is capable of resolution based on the Campfire Documentary alone. *See CACI*, 536 F.3d at 294; *see also Biospherics*, 151 F.3d at 186.

surmise, rather than a claim to be in possession of objectively verifiable false facts,” that is not actionable under defamation law. *Biospherics*, 151 F.3d at 186 (cleaned up); *CACI*, 536 F.3d at 303. As discussed above, the Campfire Documentary presented firsthand accounts of law enforcement investigators and investigative materials to illustrate the “crazy,” “convoluted,” and “bizarre” criminal events that thrust the Murdaugh family into the national spotlight. It explained the ways in which the behavior of members of the family (Plaintiff, and his brother, father, and uncle) raised the suspicion of law enforcement and members of the community, including by being associated with tragic events, inserting themselves into criminal investigations, and engendering the perception that they were above the law. *Supra* Factual Background §§ A-B. The context as a whole reflects law enforcement theories and supposition, not facts or conclusions. *Chapin*, 993 F.2d at 1087 (affirming dismissal based on consideration of “the article as a whole”).

Same with the relevant portion of the Campfire Documentary, which chronicled law enforcement’s investigative process and theories relating to Smith’s death, including the dozens of tips speculating about the involvement of the Murdaugh family. The Campfire Documentary did not reach a conclusion that Smith *was* murdered or *how* he died or *what* killed him or *who* was responsible for his death, or *whether* any member of the Murdaugh family was involved in his death or *that* Plaintiff killed him or, if so, *why*. The Documentary drew no conclusion, at all, about Smith’s death, as evident by law enforcement expressly couching its comments as speculation, not fact. *See, e.g.*, Ex. E at 38 (Lt. Moore stating there were “different stories and different versions” with “*nothing we can point to and say, ‘Mm-hmm, that’s what happened’*” (emphasis added)); *see CACI*, 536 F.3d at 293, 303 (finding statements asking for president of the United States to “investigate and identify” contractor responsible for committing murder, including CACI, did not state “the ‘actual fact’ that CACI committed murder at Abu Ghraib”).

The specific Challenged Statements also do not reflect assertions of fact. Statement One “cannot reasonably be interpreted as stating actual facts about” Plaintiff, namely that he was, in fact, responsible for murdering Stephen Smith with a baseball bat. In Statement One, neither Cpl. Duncan nor the Campfire Documentary “Producer” asserted as a fact that Plaintiff killed Smith with a baseball bat. To the contrary, Cpl. Duncan expressly said his statement was based on “rumors” that “a 2x4 or a bat was used to strike Stephen in the head area and that’s what caused his death.” Ex. E at 36-37.¹⁰ In his response to a question about whether such a theory would be consistent with the autopsy, Cpl. Duncan did not affirmatively state that a bat was used, but rather that the autopsy “is consistent with *some type of blunt force object.*” *Id.* (emphasis added). Consistent with the Campfire Documentary as a whole, law enforcement had various theories about how Smith died (including that a baseball bat may have been used), but there was “nothing” they could “point to” to say definitively what happened.

The “sequence” that comprises Statement Two is not defamatory for similar reasons. George Smith’s recollection of his conversation with Stephen Smith’s father on his deathbed cannot reasonably be viewed as conveying that Plaintiff, in fact, murdered Stephen because of Plaintiff’s sexual identity or a romantic relationship between the two. George Smith’s statement indicated that Smith’s father, Joel, was expressing his own hunch, intuition, and speculation that the “Murdaughs” and the “Murdaugh boys” were responsible for his son’s death and, separately,

¹⁰ Cpl. Duncan does not state that Buster in particular was the one who used the bat or struck Smith, relying instead on passive voice without attributing the specific act to any individual. It, therefore, “did not communicate any false message” of and concerning him as an individual, which is another required element of defamation and a separate basis for dismissal. *Stokes v. Oconee Cnty.*, 895 S.E.2d 689, 697 (S.C. Ct. App. 2023); *see also AIDS Counseling & Testing Ctrs. v. Grp. W Television, Inc.*, 903 F.2d 1000, 1005 (4th Cir. 1990) (publication must “‘reasonably give rise to the conclusion that there is a particular reference’ to the individual” (citation omitted)); *Hughs*, 2020 WL 6689132, at *3 (failure to state a claim for defamation where alleged statement had “only a nebulous connection” to defendant).

that his son and Buster were in a relationship—i.e., the statement on its face shows that Joel did not actually know and could not actually prove his hunch that they were in a relationship but felt it to be true “*in his heart.*” The “tenor, language, and context” of George Smith’s statements, in relationship to the Documentary as a whole, reflect his “subjective view” of a grieving father’s “subjective view” and a grasping for answers and accountability, not factual statements about Plaintiff. See *Biospherics*, 151 F.3d at 186. Same with Mixon’s statement about rumors of a relationship between Plaintiff and Stephen Smith, which on its face indicates that she was merely speculating, not stating a fact about his sexual identity. In fact, Mixon’s statement cast doubt on any alleged relationship with Plaintiff and Stephen Smith and suggested that it was only “rumors.” It would be unreasonable to find that Smith family friend commentary “is really a statement of fact rather than” her “own interpretation” of what may have happened to Stephen Smith.

III. THE CHALLENGED STATEMENTS ARE TRUE.

To the extent that the Challenged Statements assert facts, they are true and not actionable. *Kun v. WCSC-TV-5*, 2002 WL 34217983 (S.C. C.P. May 28, 2002) (“The truth of the matter is a complete defense to an action based on defamation.” (citation omitted)). Plaintiff does not challenge the literal truth of either of the Challenged Statements. Nor can he. The official law enforcement records properly before the Court demonstrate that law enforcement received the exact tips communicated in the Documentary. For example in the context of Statement One:

Cpl. Duncan in Statement One	T.D.’s Statement
<p>Cpl. Duncan: “<i>One of the rumors that we heard was that Buster and a couple of other guys had been out, seen Stephen, and they got in some type of argument and that a 2x4 or a bat was used to strike Stephen in the head area and that’s what caused his death.</i>”</p>	<p><i>“I heard that these two, maybe three young men were in a vehicle. They were riding down 601, saw the car on the side of the road, I guess saw the boy walking. They turned back around. I guess they were attempting to, I don’t want to say, you know, mess around with him or something like that, stuck something out of the window and it, you know, hit him in, I don’t know if it hit him in the head or the back or where it hit him, and then that’s pretty much all I heard. I did hear names and—</i></p>

	<i>or heard a name, and that name was—he goes by Buster Murdaugh.”</i>
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Compare Ex. E at 36-37, with Ex. 7B at 8. The police files corroborate that Smith’s body reflected “some sort of blunt force trauma to the head” and a working theory by investigators that “someone in a moving car, with a bat” could have caused the damage. Ex. 2 at 4. As to Statement Two, the investigative materials also reference speculation about an alleged relationship between Plaintiff and Smith. See Ex. 2 at 19 (describing mid-August 2015 tip about whether “Stephen and Buster Murdaugh ever had any type of relationship”); Ex. 5B at 3 (police interview where witness says another “friend of mine had texted me asking me if Buster and Stephen and [sic] were together”). Dismissal is warranted because publicly available records demonstrate that the Challenged Statements are literally true. See *Harvey v. Cable News Network, Inc.*, 48 F.4th 257, 270-71 (4th Cir. 2022) (affirming dismissal, including based on corroboration of truth by publicly available documents); *Chapin*, 993 F.2d at 1094 (same). To the extent Plaintiff attempts to argue that either of the Challenged Statements are literally false, he has failed to sufficiently plead falsity as he is required to state a claim for defamation in connection with a public issue. *Harvey*, 48 F.4th at 274 (affirming dismissal for failure to plead falsity).¹¹

IV. THE COMPLAINT FAILS TO STATE A CLAIM UNDER SOUTH CAROLINA LAW BECAUSE THE CHALLENGED STATEMENTS DO NOT STATE OR IMPLY THE MEANING PLAINTIFF ASCRIBES TO THEM.

The Complaint does not specify which of the two classifications of defamatory statements recognized under South Carolina law Plaintiff is attempting to assert: (1) defamation *per se* “when the meaning or message is obvious on its face” or (2) defamation *per quod* “when the defamatory

¹¹ There can be no colorable argument that ongoing criminal investigations, especially involving a high-profile family like the Murdaughs, are not a matter of public concern. See, e.g., *Butler v. Pennington*, 2019 WL 1614834, at *5 (D.S.C. Apr. 16, 2019) (alleged ethical misconduct of a local prosecutor’s office in a serious criminal matter was an issue of “significant public concern”).

meaning is not clear unless the hearer knows facts or circumstances not contained in the statement itself.” *Erickson*, 368 S.C. at 465; *Hughs*, 2020 WL 6689132, at *3; *accord Chapin*, 993 F.2d at 1092 (comparing “facts literally related” versus “falsity of implications”). The Complaint fails to state a claim based on either theory. *Chapin*, 993 F.2d at 1091 (affirming dismissal because article cannot “be reasonably read to express the libelous meanings ascribed to it by the plaintiffs”).¹²

A. The Complaint Fails To State A Claim For Defamation *Per Se*.

Plaintiff implicitly admits that he is not asserting a *per se* claim by omitting any specific statements from the Campfire Documentary and pleading only that it “insinuates” and “suggest[s]” the alleged defamatory meaning. *See* Compl. ¶ 22. The Court need not consider allegations not pleaded, and can find that the Complaint fails to allege a claim of defamation *per se* without considering the merits. *See, e.g., McNeil v. S.C. Dep’t of Corr.*, 743 S.E.2d 843, 848 (S.C. Ct. App. 2013).

But even if the Court finds that Plaintiff alleges that either of the two Challenged Statements is defamatory *per se*, they do not state what Plaintiff claims they do. Statement One did not assert, as the Complaint pleads, that “Plaintiff, along with others, murdered Stephen Smith by striking him with a baseball bat”—it asserted that law enforcement heard “rumors” that “Buster and a couple of other guys had been out, seen Stephen, and they got in some type of argument and that a 2x4 *or* a bat was used to strike Stephen in the head area and that’s what caused his death.” *Compare* Compl. ¶ 22, *with* Ex. E at 36-37 (emphasis added).¹³ Cpl. Duncan further opined that the autopsy was consistent with trauma to the head caused by “*some type* of blunt force object.”

¹² The Court need not decide which type of defamation the Complaint attempts to plead. *See Carson*, 2020 WL 5077655, at *5 n.2 (finding type of defamation irrelevant because complaint failed to “properly plead the elements of defamation required under both interpretations”).

¹³ In a conflict between how the Complaint characterizes allegedly defamatory material and the material itself, the latter governs. *See Mungo*, 2012 WL 13005317, at *2.

Id. at 36-37. Likewise, Statement Two did not assert, as the Complaint pleads, that Plaintiff killed “Stephen Smith because of his sexual identity” or “in relation to a romantic relationship between Plaintiff and Smith”—it asserted a belief by Stephen Smith’s father, Joel, that the “Murdaughs killed my son because he was gay” and, separately, that Joel believed “in his heart” that his son was in a relationship with Buster. *Compare* Compl. ¶ 22, with Ex. E at 39-40 (emphasis added). As discussed above, Plaintiff does not allege that either of the Challenged Statements is literally false, i.e., that law enforcement *did not hear* “rumors” that a “2x4 or a bat” or some other “blunt force object” caused Smith’s death (in the case of Statement One); or that there *were not* “rumors” about a relationship between Plaintiff and Smith, or that Smith’s father, on his deathbed, *did not* fervently believe that his son was in a relationship with Buster and that members of the Murdaugh family were involved in his son’s death (in the case of Statement Two). The absence of any statement that “itself” and “on its face” contains allegedly false and defamatory language is fatal to a defamation *per se* claim. *Erickson*, 368 S.C. at 465; *Rollins Ranches*, 2021 WL 5355650, at *9 (no defamation *per se* where the “defamatory meaning of Defendant’s statement is not obvious and appears to require” facts outside the statement itself); *Toussaint v. Palmetto Health*, 2017 WL 1950955, at *2 (D.S.C. May 10, 2017) (defamation by implication not *per se* where complaint made “no contention” that any statements in letter or talking points were themselves “false”); *see also* 20 S.C. Jur. Libel and Slander § 3 (statement that “Jones has borne a child” is not defamatory *per se* because “reference to a fact extrinsic to the statement itself—the fact that Jones is an unmarried woman—gives the statement its defamatory meaning”).

B. The Complaint Fails To State A Claim For Defamation By Implication.

The Complaint fails to plead a defamation-by-implication claim, which requires Plaintiff to “make an especially rigorous showing” where (as here) “the expressed facts are literally true.” *See Chapin*, 993 F.2d at 1092-93; *see supra* § II(A) and § III(A). To meet that showing, Plaintiff

must demonstrate that the Campfire Documentary can “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.* (citation omitted); *Walker v. Tyler*, 99 F.3d 1132 at *2 (4th Cir. 1996) (“For a defamation-by-implication cause of action to survive, the defamatory implication must be present in the plain and natural meaning of the words used.”). Plaintiff can do neither.

First, the Challenged Statements cannot “reasonably” be viewed to convey either of the only two meanings Plaintiff ascribes to it: that Plaintiff “murdered Stephen Smith” (1) “by striking him with a baseball bat” and/or (2) “because of his sexual identity” or “in relation to a romantic relationship between Plaintiff and Smith.” Compl. ¶ 22; *Chapin*, 993 F.2d at 1092-93. For the reasons discussed in the context of the First Amendment (*supra* § II), it would be unreasonable to view Statement One—in isolation or in the context of the Documentary as a whole—as expressing *either* that Smith was, in fact, killed with a baseball bat or that Plaintiff was the one who struck him. *See Robins v. Nat’l Enquirer, Inc.*, 1995 WL 776708, at *3 (D.S.C. Apr. 10, 1995) (“court must review the entire article”). The Campfire Documentary “does not speak in certainties” and its “words cannot be perverted to ‘make that certain which is in fact uncertain.’” *Chapin*, 993 F.2d at 1096; *Rollins Ranches*, 2021 WL 5355650, at *9 (“to the extent that Plaintiffs allege the attempted artificial insemination of a dog suffering from a pyometra is an allegation of animal abuse, the court does not find the statement capable of a defamatory meaning where Defendant clarified in the same post that the infection was unknown”). The Court should apply the same reasoning affirmed by the Fourth Circuit in *Chapin*, which analyzed an article (the “Greve article”) that questioned the finances of a non-profit organization that delivered gift packs to troops abroad, including by stating there was an apparent “‘hefty mark-up’ between the wholesale cost of the

items” in the packages “and the price charged the public.” 993 F.2d at 1091. The Fourth Circuit affirmed the district court’s dismissal of the case based on the lack of defamatory implication:

“In the Court’s view, it is a story constructed around questions, not conclusions. But the mere raising of questions is, without more, insufficient to sustain a defamation suit in these circumstances. Questions are not necessarily accusations or affronts. Nor do they necessarily insinuate derogatory answers. They may simply be, as they are here, expressions of uncertainty. The Greve article advances alternative answers to the questions it raises, presenting both favorable and unfavorable views, but does not ultimately adopt any particular answer as correct. From this, a reasonable reader would not be likely to conclude that one answer is true and the other false. Language of ambiguity and imprecision permeates the articles, significantly coloring its tone.”

Id. at 1098 (emphasis added). Like in *Chapin*, the Campfire Documentary raised questions and theories about how Stephen died and who may have been involved based on first-hand police investigative sources. Questions and theories are not accusations and, like in *Chapin*, the Documentary raises alternative possibilities of *who* did it (including Plaintiff’s brother, Paul) and *how* it happened (including whether someone “beat him up” or hit him with “some type of blunt force object” or with a bat).

It is the same with Statement Two, in which none of the individuals “speak in certainties” about Plaintiff killing Smith at all, let alone due to Plaintiff’s sexual identity or in relation to a romantic relationship. *Chapin*, 993 F.2d at 1096. The sequence presented theories of Stephen Smith’s father, and then presented questions pushing back on them: “Have you heard that Stephen had any kind of sexual relationship with Buster Murdaugh” and “Why didn’t Joel go and talk to police.” The “mere raising of questions is, without more, insufficient to sustain a defamation suit” and there is no “more” where, as here, the context of the Documentary reflects that law enforcement was investigating multiple theories and tips but did not reach any conclusion. *See Id.* at 1098; *see Hughs*, 2020 WL 6689132, at *4 (no defamation by implication where letter “only

provides notice” of the existence of an investigation and “specifically notes that ‘there has been no suggestion to this point of any wrongdoing’” by the plaintiff’s company or its directors).¹⁴

Second, even if it were reasonable to ascribe Plaintiff’s defamatory implication to the Challenged Statements, the claim still would fail because there is nothing to “affirmatively suggest” that any of the Moving Defendants “intend[ed] or endorse[ed] the inference.” *Chapin*, 993 F.2d at 1092-93; *Walker*, 99 F.3d 1132 at *2 (dismissal where no factual allegations); *Agbapuruonwu v. NBC Subsidiary (WRC-TV), LLC*, 821 F. App’x 234, 238 (4th Cir. 2020) (“the court noted that the Complaint did not allege facts suggesting that NBC intended or endorsed either implication”). Plaintiff ostensibly targets the two Challenged Statements because they include questions from a “Producer” but the questions reflect doubt about, not endorsement of, the theories—for example, would the baseball bat theory comport with the autopsy? Was there knowledge of a romantic relationship between Plaintiff and Stephen Smith? Why, if Joel Smith was convinced that the Murdaughs were responsible for his son’s death, did he not talk to police? Such questions evince an effort to present the statements as theories, not conclusions.

Other courts in this Circuit have exercised their gate-keeping roles and dismissed cases with prejudice where it is apparent on the face of a Complaint that the allegedly offending conduct does not reasonably convey the meaning ascribed to it by plaintiffs. *See, e.g., Rollins Ranches*, 2021 WL 5355650, at *11 (dismissal with prejudice where statements were not capable of the defamatory meaning alleged by plaintiffs); *Toussaint*, 2017 WL 1950955, at *2 (dismissal with

¹⁴ *Cf. Faltas v. State Newspaper*, 928 F. Supp. 637, 650 (D.S.C. 1996), *aff’d*, 155 F.3d 557 (4th Cir. 1998) (letter explaining that “plaintiff *was not* terminated due to the publication of her piece on homosexuality” was “not reasonably susceptible to an inference that the newspaper believed plaintiff *was* terminated for cause” (emphasis in original)); *Conway v. S.C. Vocational Rehab. Dep’t*, 2018 WL 2301849, at *5 (D.S.C. Jan. 31, 2018), *report and recommendation adopted*, 2018 WL 2301848 (D.S.C. Feb. 26, 2018) (summary judgment on defamation by implication claim).

prejudice where it would be “objectively unreasonable” to find communications to patients that doctor is no longer at practice implied “Plaintiff abandoned his patients”); *Robins*, 1995 WL 776708, at *3 (dismissal with prejudice lawsuit claiming article implied plaintiff was “‘partially’ responsible for the murder” of two boys because the “article contains no words which reasonably could be construed to defame Plaintiff”); *accord Agbapuruonwu*, 821 F. App’x at 241 (affirming dismissal of defamation by implication lawsuit where “no explicit statement” said plaintiff “was involved” in murder and such an inference would not be reasonable); *Walker*, 99 F.3d 1132 at *1 (affirming dismissal based on finding “that the statements of Defendants cannot reasonably be interpreted to express defamatory meanings”); *Boykin v. Prisma Health*, 2023 WL 5488448, at *6 (D.S.C. Aug. 8, 2023), *report and recommendation adopted*, 2023 WL 5487118 (D.S.C. Aug. 24, 2023) (dismissal based on failure to plead defamation by implication); *Hughs*, 2020 WL 6689132, at *4 (dismissal because letter accusing plaintiff of engaging in corporate misconduct “only provides notice” of the existence of an investigation and “specifically notes that ‘there has been no suggestion to this point of any wrongdoing’”).

V. THE FAIR REPORT PRIVILEGE PROTECTS STATEMENT ONE.

Plaintiff cannot state a claim for defamation in connection with Statement One because it is protected by the fair report privilege under the law of South Carolina or California, where Campfire, which “created and produced” the Documentary, is incorporated and has its principal place of business. Compl. ¶¶ 7, 24.¹⁵ The Court can apply the same analysis under each state’s

¹⁵ “Generally, whether a publication gives rise to a qualified privilege is a question of law for the courts.” *McLaughlin*, 2021 WL 4691379, at *3 (citation omitted). Moving Defendants do not concede, and affirmatively reject, that any part of the Campfire Documentary is defamatory as a matter of law for the reasons discussed herein. But regardless, they are not actionable under the fair report privilege. The Moving Defendants also reserve the right to argue that South Carolina law does not apply to the substantive claims in this lawsuit even though this motion only asserts the point for the purposes of fair report.

law to determine that the fair report privilege attaches to Statement One because the information conveyed is derived from official governmental investigative records and actions. *See infra* § V(A). The inquiry is over and dismissal required if the Court applies California law, but the same outcome results under South Carolina law because Plaintiff has not and cannot sufficiently pleaded actual malice. *See infra* § V(B).

A. The Fair Report Privilege Applies To Statement One.

Statement One is protected by the Fair Report Privilege. As discussed above, the information Cpl. Duncan conveyed was derived entirely from and in some cases nearly verbatim of content in the investigative records. He accurately described “rumors” that “Buster and a couple of other guys” were out when they saw Smith and then a “2x4 or a bat was used to strike” him, which is nearly identical to a witness statement explaining rumors that “two, maybe three young men” including Buster “saw” Smith while they were “riding around” and “stuck something out the window and it, you know, hit him[.]” *Compare* Ex. E at 36-37, *with* Ex. 7B at 8, 14, 31-32. His statement about Smith’s injuries being caused by “*some type of blunt force object*” is nearly verbatim of police notes reflecting “*some sort of blunt force trauma to the head*” and which convey a working theory by investigators that “someone in a moving car, with a bat” could have killed Smith. *Compare* Ex. E at 36-37, *with* Ex. 2 at 4. The fair report privilege unquestionably applies to such statements. *Reuber v. Food Chem. News, Inc.*, 925 F.2d 703, 713-14 (4th Cir. 1991) (applying fair report privilege to a letter from the National Cancer Institute that was “invoking the prestige of a government agency” and the “factual predicate” of which was a “governmental” decision to investigate and discipline plaintiff); *Chapin*, 993 F.2d at 1097 (applying fair report privilege to “‘unofficial’ public statements of” a congressman in a newspaper interview because such remarks will be more “newsworthy and of concern than will the countless ‘official’ documents generated by quasi-public agencies”); *Cobin*, 561 F. Supp. 2d at 554-56 (“The

privilege does not require that the published report be verbatim of the official report but it must only be substantially correct” even if it uses “‘shorthand’ to summarize the contents”); *White v. Wilkerson*, 328 S.C. 179, 186, 493 S.E.2d 345, 349 (1997) (affirming fair report protection of local news station for statements made on air about lawsuit); *McLaughlin*, 2021 WL 4691379, at *4 (dismissing defamation lawsuit based on Fair Report Privilege because “the news article and televised news story are based on facts as stated by the AG’s office”); *Smith v. Santa Rosa Democrat*, 2011 WL 5006463, at *7 (N.D. Cal. Oct. 20, 2011) (allegedly defamatory statements absolutely shielded by the fair and accurate report privilege); *see also Harvey*, 48 F.4th at 274 (affirming application of fair report to statements that a lawyer told a CNN reporter what “his client would say in response to the subpoena and summarized” official documents). Moreover, all of the underlying rationales for the fair report privilege—public supervision, the public’s right to information, and agency, meaning “a reporter acts as an agent for members of an otherwise preoccupied public which could, if it possessed the time, energy, or inclination, inform itself about a government report or action,” *Reuber*, 925 F.2d at 713—favor its application here. Because Statement One is based on official government actions or sources, the fair report privilege applies, and the Court need not engage in any further analysis if the Court applies California law.

There is a true conflict between the laws of California and South Carolina on the issue of the fair report privilege because the former is *absolute* and the latter is *qualified* (i.e., vitiated by showing of actual malice). *Compare* Cal. Civ. Code § 47(d); *Healthsmart Pac., Inc. v. Kabateck*, 7 Cal. App. 5th 416, 431 (2016), *with Cobin*, 561 F. Supp. 2d at 550. While dismissal is warranted no matter which law applies, the Court should apply California law under the “depechage

principle”¹⁶ because that state has the most significant interest in ensuring that its own citizen, and conduct occurring within its borders, are protected by the full scope of its codified fair report privileges. *See Sarver v. Chartier*, 813 F.3d 891, 897, 899 (9th Cir. 2016) (applying California law to multistate defamation action where California had strong interest in enforcing its defamation laws). The Court would be well within its discretion to apply California fair report law and dismiss the Complaint in its entirety.

B. If South Carolina Law Applies, The Fair Report Privilege Still Necessitates Dismissal Of Statement One Because The Complaint Does Not And Cannot Plead Facts Demonstrating Actual Malice.

The Fourth Circuit has explained that while it is theoretically “possible that a possessor of a qualified privilege could nonetheless be acting with reckless disregard of truth, the existence of a privilege diminishes the likelihood of that occurrence” and “makes it more difficult for a reviewing court to conclude that a news report on government functions was published in reckless disregard of the truth.” *Reuber*, 925 F.2d at 712-14. Plaintiff cannot overcome the fair report privilege here “because the Complaint makes no plausible allegation” of actual malice, which “requires ‘factual allegations’ that ‘raise a right to relief above the speculative level.’” *Agbapuruonwu*, 821 F. App’x at 240 (quoting *Mayfield v. Nat’l Ass’n for Stock Car Auto Racing, Inc.*, 674 F.3d 369, 377 (4th Cir. 2012)). That means Plaintiff must allege *facts* (not conclusory allegations) that the Moving Defendants “knowingly uttered a falsehood or ‘in fact entertained serious doubts as to the truth of’” the publication. *Harvey*, 48 F.4th at 273-74 (citation omitted).

The sole paragraph of the Complaint relating to actual malice lumps together the states of mind of all eight defendants and is comprised of conclusory recitations of law incapable of

¹⁶ *See Kozel v. Kozel*, 299 F. Supp. 3d 737, 751 (D.S.C. 2018) (“[b]ecause choice of law analysis is issue-specific, different states’ laws may apply to different issues in a single case, a principle known as ‘depeceage’”).

plausibly alleging actual malice:

“The statements were made with reckless indifference to the truth. In publishing these statements Defendants purposefully ignored information demonstrating their falsity that was readily available to and within the Defendants’ knowledge, including information indicating that individuals unrelated to Plaintiff were responsible for Mr. Smith’s death. Defendants’ publications and republications of the defamatory statements are unfair and biased in that Defendants deliberately chose to omit from the series information contradicting the above-described defamatory statements.”

Compl. ¶ 29; *Agbapuruonwu*, 821 F. App’x at 240 (“conclusory allegation of knowledge of falsity or reckless disregard thereof—that is, ‘a mere recitation of the legal standard’—does not constitute a plausible allegation of actual malice”); *Mayfield*, 674 F.3d at 378 (same). The pleading fails to provide any factual allegation as to the state of mind of the Moving Defendants *in particular* or in connection with the information conveyed in Statement One *in particular*. See *Sigler v. Black River Elec. Coop., Inc.*, 2020 WL 9209285, at *5 (D.S.C. July 24, 2020), *report and recommendation adopted*, 2021 WL 856879 (D.S.C. Mar. 8, 2021) (plaintiff “failed to allege actual malice, beyond stating without elaboration that the alleged statements were published to ‘unprivileged employees’ and that ‘Defendant’s actions were willful, mean-spirited, and intentional’”); *Harvey*, 48 F.4th at 273-74 (affirming dismissal where complaint “did not add any new facts regarding the state of mind of the reporters who published the statements, and still does not plausibly allege that” they “knew the information was false, or that it was subjectively false”). Conclusory allegations of being “unfair” and “biased” fail to establish fault as a matter of law. See *Sigler*, 2020 WL 9209285 (finding that plaintiff cannot rely on conclusory allegations such as “Defendant’s actions were willful, mean-spirited, and intentional” to satisfy actual malice standard); *Reuber*, 925 F.2d at 715 (“the Supreme Court consistently has held that ‘the actual malice standard is not satisfied merely through a showing of ill will or ‘malice’ in the ordinary sense of the term’” (citation omitted)).

Even if the Court overlooks those fatal aspects of Plaintiff's pleading, none of the allegations in the Complaint demonstrates actual malice. Plaintiff's claim that the defendants *en masse* "ignored" purported "contradicting" information demonstrating the "falsity" of statements in the publication does not save his pleading. The allegation is too vague and conclusory to support a finding of actual malice, including because it fails to demonstrate the existence of any "information" that created "*obvious* reasons to doubt the veracity" of Statement One (or Statement Two, either). *See Harvey*, 48 F.4th at 274 (claim that defendant "ignored information that would have demonstrated the falsity" of the statements is a "naked assertion" that does not plausibly allege actual malice); *Horne v. WTVR, LLC*, 893 F.3d 201, 211-12 (4th Cir. 2018) (affirming lack of evidence to support actual malice because "within the context of the story's creation from trusted sources, the email from the anonymous source does not provide '*obvious* reasons to doubt the veracity of the informant or the accuracy of his reports'" (emphasis in original)).¹⁷ The Complaint's vague and conclusory allegations about the defendants *en masse* fail to assert or provide the Court with any basis to infer actual malice.

VI. PLAINTIFF MUST BUT FAILS TO SUFFICIENTLY PLEAD FAULT.

The Complaint fails to plead any facts demonstrating fault, which Plaintiff must do irrespective of whether he is a public or private figure (an inquiry that the parties agree the Court need not, should not, and lacks sufficient information to make at this point, *see* Dkt. 41-1 at 34). If he is a public figure, Plaintiff must plead facts demonstrating actual malice, which he failed to do for the reasons discussed above. If he is a private figure (which the Moving Defendants do not

¹⁷ As the Campfire Documentary explained, at no point prior to its November 2022 publication did Plaintiff make any attempt to "try to dispel the rumors" about his purported involvement in Smith's death, and he declined to comment when "members of the Murdaugh family were asked for comment on the death of Stephen Smith[.]" Ex. 2 at 37, 46. The lack of any effort by Plaintiff to address the publicly known speculation undermines his conclusory assertion about the existence of contradictory information.

concede), and because this lawsuit involves an issue of public concern, binding South Carolina law establishes that he “must plead and prove common law malice.” *Erickson*, 368 S.C. at 466; *McGlothlin v. Hennelly*, 2021 WL 2935372, at *1 (4th Cir. July 13, 2021).

Common law malice means that the defendant “acted with ill will toward the plaintiff, or acted recklessly or wantonly, i.e., with conscious indifference of the plaintiff’s rights.” *Erickson*, 368 S.C. at 466; *see Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 581, 556 S.E.2d 732, 737-38 (S.C. Ct. App. 2001) (common law malice “refers to feelings of ill-will, spite, or desire to injure”); *McGlothlin*, 2021 WL 2935372, at *2 (no evidence that the plaintiff “harbored serious doubts about the accuracy of his statements”); *Floyd v. Knight*, 2023 WL 4409037, at *13 (D.S.C. Apr. 27, 2023), *report and recommendation adopted*, 2023 WL 4013520 (D.S.C. June 15, 2023) (no common law malice where defendant “reasonably believed” statements to be true); *Kelley-Moser Consulting, LLC v. Daniels*, 2012 WL 554643, at *13 (D.S.C. Feb. 21, 2012) (common law standard “considers the motivation of the alleged wrongdoer” and whether defendant demonstrated “ill will” with “the design to causelessly and wantonly injure”). The Complaint fails to plead a single factual allegation relating to any of the Moving Defendants’ states of mind, including any indication that any of the Moving Defendants acted out of “ill-will, spite, or desire to injure” Plaintiff or “harbored serious doubts” about the accuracy of the Documentary. *Boone*, 347 S.C. at 581; *Kelley-Moser Consulting*, 2012 WL 554643, at *13. Nor will Plaintiff be able to meet that burden because it would be contrary to law to find that the Moving Defendants acted with any form of malice by accurately describing official law enforcement reports and sources.

CONCLUSION

For the reasons discussed herein, the Moving Defendants respectfully request the Court dismiss Plaintiff’s claim of defamation as to the Campfire Documentary with prejudice.

Respectfully submitted,
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