UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RUGGERO SANTILLI and
CARLA SANTILLI,

Plaintiffs,

vs.

PEPIJN VAN ERP, et al.,
Defendants.
_____/

DISPOSITIVE MOTION

CASE NO. 8:17-cv-1797-T-33MAP

DEFENDANT PEPIJN VAN ERP'S MOTION FOR FINAL SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM OF LAW

Pursuant to Federal Rule of Civil Procedure 56, Defendant Pepijn van Erp ("van Erp") moves for final summary judgment on all counts against him in the Second Amended Complaint (DE 30, the "Complaint"). As the recently adopted Report and Recommendation explains (DE 71 & 74), van Erp's blog posts are non-actionable rhetorical hyperbole and opinion. Moreover, discovery has shown that Plaintiffs lack factual support for their pleaded claims. Summary judgment should be granted.

Introduction

"Professor Santilli is a weirdo. His science is not accepted by the establishment." Those are the words of Plaintiff Ruggero Santilli ("Ruggero"),[1] describing how he is perceived by other well-known professors. Ruggero stands "squarely in opposition to the godfathers of conventional wisdom," challenging a "conspiracy" of "ethnic interests" and "fanatical supporters" of Albert

[1] Because Plaintiffs share the same last name, this motion (like the Complaint) refers to them by their first names, Ruggero and Carla.

Einstein. Pushing back against critics and other scientists, Ruggero is a serial litigant who has paid to have his writings published in a journal that "everybody has called … a scam."

These undisputed facts – as well as Florida law and the First Amendment – compel summary judgment. As the adopted Report and Recommendation explains, protections of opinion and rhetorical hyperbole "preserve the breathing space which freedoms of expression require in order to survive." (DE 71 p 9 (citing Milkovich v. Lorain Journal Co., 497 U.S. 1, 19 (1990)). Accordingly, the U.S. Supreme Court and Eleventh Circuit have repeatedly recognized that the type of speech Plaintiffs challenge is not actionable, because the law allows "vehement, caustic, and sometimes unpleasantly sharp attacks," New York Times v. Sullivan, 376 U.S. 254, 270 (1964), as well as language that is "vituperative, abusive, and inexact." Watts v. U.S., 394 U.S. 705, 708 (1969). Quite simply, the law permits mockery of a YouTube video personality who admits his ideas are "not accepted by the establishment," who sees a conspiracy of "ethnic interests" against him, and who claims to have discovered "Invisible Terrestrial Entities" that "appear to conduct unauthorized surveillance of rather sensitive civilian, industrial and military installations." Consequently, and despite Plaintiffs' repeated attempts to state claims for defamation and tortious interference, the facts do not support either cause of action. This lawsuit – the latest front in Ruggero's two-decade failed litigation war against fellow scientists, universities, writers, and academics – must be dismissed.[2]

Background

This case concerns the claimed discovery of "Invisible Terrestrial Entities," which Ruggero describes in a "breaking news" YouTube video displayed on Exhibit A of the

[2] In addition to suing van Erp, Plaintiffs allege defamation and tortious interference by Defendant Frank Israel, who is filing a separate motion for summary judgment demonstrating a lack of personal jurisdiction. The arguments in van Erp's motion, however, apply equally to the claims against Israel.

Complaint. DE 30-1 p 2. "The question of what those entities are," Ruggero says in the video, "must be answered by our government, because those entities appear to conduct unauthorized surveillance of rather sensitive civilian, industrial and military installations." Van Erp Decl. Exs. 5, 6.[3] Ruggero claims to have discovered these entities using a telescope with concave lenses (opposite of a normal telescope's convex lenses) that he says reveal "antimatter-light." DE 30-1 p 2. In response to this YouTube video, van Erp wrote a blog post (DE 30-1 p 2) that dismisses "the grainy images [Ruggero] took with his Santilli-'out-of-focus'-telescope [that Ruggero] claims show *Invisible Terrestrial Entities*." Id. (emphasis in original) Ruggero's video "has gotten quite some attention on the web, mainly on sites of the paranormal." Id. Van Erp disputes the claimed discovery of "antimatter-light," saying it "might be the easiest to debunk of all the extraordinary claims [Ruggero] has made." Id. In response to the blog post, Ruggero sued.[4]

Van Erp lives in the Netherlands and holds the Dutch equivalent of master's of science degree in mathematics (a "doctorandus" degree). Van Erp Decl. ¶ 2, Ex. 1. Van Erp is the author of blog posts that are attached to the Complaint as Exhibit A (published February 2016), Exhibit B (published May 2013), and Exhibit C (published August 2016).

Carla is married to Ruggero and has about 30 years of experience in the scientific publishing industry, as president and chief executive officer of Hadronic Press, which she says is one of the world's leading physics and math publishing companies. CS p 12 lines 5-15.

[3] Declarations are cited: [last name] Decl. ¶ __; Depositions are cited [First initial.Last initial] p _ lines _.
[4] This is at least the third lawsuit by Ruggero attacking the speech of others on scientific matters. The previous two were dismissed. See Santilli v. Cardone, 8:07-CV-308-T-23MSS (M.D. Fla. 2007) (Fourth Amended Complaint (DE 94 ¶ 28) accusing Cornell University, Italian university, Italian research agency, and their presidents of "by far, the biggest scientific, financial, academic, emotional and other damages to plaintiff via the attempted fraud of the paternity of his most important scientific contributions") (case dismissed (DE 104, 2008 WL 4534138, RS Ex. V129) Oct. 7, 2008); Santilli v. Conte, 8:99-CV-1675-T-27MAP (M.D. Fla. July 16, 1999) (Complaint (DE 1 ¶ 42, RS Ex. V90) alleging "scientific frauds" in energy and physics magazines) (case dismissed (DE 133) Nov. 8, 2001).

Ruggero believes he is a victim of "a conspiracy in the United States of America against advanced research." RS p 10 line 24 to p 11 line 2. The conspirators, he says, are "ethnic interests" that jeopardize "the security of this country" (Id. p 87 lines 12-18) and "fanatical supporters" of Albert Einstein (Id. p 92 lines 5-6). "The most fanatics are the Spanish people," Ruggero testified. "The Spanish and South America, for instance, are known to be the most fanatic." Id. p 90 lines 7-9. But "of course you cannot deny the Jews as part of it. Einstein was Jewish." Id. p 89 line 24 to p 90 line 1. These "ethnic interests," Ruggero testified, also include Defendant Frank Israel, who, "since he has the name 'Israel,' it is generally – generally known to be as – to be Jewish." Id. p 94 lines 10-13. Also part of the conspiracy against him, Ruggero testified, are "Einstein fanatics" named Arthur Rubin, David Epstein and Mark Bernstein (Id. p 322 lines 9-23), who Ruggero says commissioned an "attack" on him by another scientist (Id. p 439 lines 2-7) and edited Ruggero's Wikipedia page (Id. p 439 lines 2-12).[5]

Pushing back against this conspiracy, Ruggero uses the Internet to express skepticism of ideas such as the Big Bang theory and expansion of the universe. RS p 110 line 8 to p 111 line 14, V51. Ruggero also has written numerous articles for the American Journal of Modern Physics ("AJMP"), published by Science Publishing Group (RS p 43 line 24 to p 44 line 15; p 46 lines 10-15; Ex. V33 pp 23, 24, 26). As Carla has acknowledged, "Everybody has called [Science Publishing Group] a scam," known for accepting articles without any peer review, so long as its fee is paid. CS p 40 lines 9-11 & V61-V63. See also Womack Decl. Report p 3.

Ruggero is the chief executive officer of Thunder Energies Corporation and responsible for everything that happens at the company (RS p 188 lines 15-20). Thunder Energies falsely attributed statements concerning the Santilli telescope to Pamela Fleming, who was a secretary

[5] Apparently suspicious that defense counsel was part of the "ethnic interests" against him, Ruggero asked during his deposition whether attorney James Lake's "real name is Rosenberg." (RS p 266 lines 10-17).

for the Santillis 20 years ago. Fleming Decl. ¶¶ 2-7, Exs. 1-5; CS p 48 line 24 to p 49 line 10; RS p 114 lines 21-24. For example, Ms. Fleming's name was used in a statement claiming "Invisible Terrestrial Entities" were monitored with a Santilli telescope over a tax collector's office in Tallahassee. Fleming Decl. ¶¶ 7, Ex 5. A Thunder Energies YouTube video also makes that claim. Van Erp Decl. Ex. 4 (produced in discovery as VAN 419). A "Santilli telescope" was listed for sale on Amazon (RS p 199 lines 5-8, Ex. V96), and Thunder Energies has sold models for up to $9,000 (CS p 121 lines 15-18, V88).

Statement of Material Facts

1. Ruggero appears in a YouTube video describing his discovery of "Invisible Terrestrial Entities," which he says "appear to conduct unauthorized surveillance of rather sensitive civilian, industrial and military installations." DE 30-1 p 2; Van Erp Decl. Exs. 5, 6; RS p 187 lines 2-25.

2. Van Erp wrote a blog post linking to Ruggero's YouTube video and discussing Ruggero's claimed discovery. DE 30-1 p 2.

3. Ruggero's attorney sent van Erp a pre-suit notice letter, a copy of which is attached to Van Erp's declaration being filed with this motion. Van Erp Decl. ¶ 13, Ex. 2.

4. Ruggero has stated, "You call the famous professor and the famous professor will say, 'Oh, Professor Santilli is a weirdo. His science is not accepted by the establishment.' " RS p 151 line 17 to p 152 line 9; S. Tadsen Depo. p 36 line 17 to p 37 line 22 & Ex. V11 p 2.

5. Ruggero has stated that he is the victim of a conspiracy against advanced research. RS p 10 line 24 to p 11 line 2; p 87 lines 12-18; p 92 lines 5-6; p 90 lines 7-9; p 89 line 24 to p 90 line 1; p 94 lines 10-13; p 322 lines 9-23.

6. Ruggero has stated that the conspirators include "ethnic interests" and "Einstein fanatics" named Arthur Rubin, David Epstein and Mark Bernstein. RS p 87 lines 12-18; p 322 lines 9-23.

7. Ruggero is the author of books, articles and videos about his theories on antimatter, mathematics, Invisible Terrestrial Entities and Einstein's theories. RS p 27 line 12 to p 28 line 9, Exs. V33, V41.

8. Ruggero has written articles published in the American Journal of Modern Physics. RS p 45 lines 1 6, Ex V38, Ex V44.

9. The publisher of the American Journal of Modern Physics charges fees to publish articles, including Ruggero's articles. RS p 45 line 24 to p 46 line 25.

10. The publisher of the American Journal of Modern Physics is on "Beall's List of Predatory Journals and Publishers." RS Ex. V45, V46.

11. Ruggero may have used aliases in the past and is the founder of a committee that uses the pseudonym "Luca Petronio," and Ruggero's cell phone number is listed with that pseudonym in the committee's domain-name registration. RS p 58 line 12 to p 60 line 4, p 71 line 13 to p 73 line 19, p 241 lines 19-23, p 294 lines 12-14, Ex. V48 p 2; Ruggero's Responses to Second Set of Interrogatories.

12. Ruggero has never met J.V. Kadeisvili or spoken to him on the telephone. RS p 237 lines 8-12.

13. Ruggero is the CEO of Thunder Energies Corporation and has testified that he is responsible for everything that happens at Thunder Energies. RS p 188 lines 15-20.

14. Thunder Energies has issued news releases falsely attributing statements to Pamela Fleming, a former employee of the Santillis who did not make the statements attributed to her (and had not worked for them for many years). Fleming Decl. ¶¶ 2-8 & Ex. 1-5.

15. Carla has admitted using aliases to post on van Erp's blog and to contribute to Wikipedia. CS p 78 line 1 to p 79 line 17 & Ex. V77; CS p 80 lines 6-25; p 81 line 13 to 83 line 8, Ex. V78.

16. Van Erp's blog, available at www.pepijnvanerp.nl, is a forum for opinions and debate on "science, bad science, pseudoscience and other stuff." Van Erp Decl. ¶ 2, Ex. 2.

17. Van Erp sometimes uses loose, hyperbolic language to poke fun at claimed scientific advances that reach far beyond or conflict with generally accepted scientific opinions. Id. ¶ 3

18. The phrases "fringe scientist," "mad professor," and "cunning scam artist" are based upon facts disclosed in Van Erp's blog post containing those phrases. Id. ¶¶ 5, 6

19. Van Erp did not and does not believe that any statements appearing in Exhibits A, B, and C of the Complaint are false, and he does not doubt about the truth of his statements. Id. ¶ 4.

20. Van Erp's posts disclosed the factual basis for the statements challenged in the Second Amended Complaint. Id. ¶¶ 5-10

21. Van Erp did not intend to interfere with any business relationship that Plaintiffs had or have. Id. ¶ 4

22. The blog post attached to the Complaint as Exhibit B was published in May 2013. Id. ¶ 4 & Ex. 3B; DE 30-1 p 26

Argument

I. Standards Applicable to Motions for Summary Judgment in Defamation Cases.

Summary judgment is proper if the pleadings, depositions, answers to interrogatories, admissions, affidavits, or declarations or other materials show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c), (e). Once a moving party demonstrates that there are no genuine issues of material fact, the nonmoving party has the burden to demonstrate a material issue of fact that precludes summary judgment. See Clark v. Coats & Clark, Inc., 929 F.2d 604, 608 (11th Cir. 1991). "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise

properly supported motion for summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) (emphasis omitted).

Summary judgment is routinely granted in defamation cases. See Stewart v. Sun Sentinel Co., 695 So. 2d 360, 363 (Fla. 4th DCA 1997) ("pretrial dispositions are especially appropriate because of the chilling effect these cases have on freedom of speech") (citation omitted). Courts, therefore, routinely dispose of cases on the same grounds raised here. See, e.g., Turner v. Wells, 879 F.3d 1254, 1262-74 (11th Cir. 2018) (affirming dismissal on opinion and actual malice grounds). "Whether a publication is reasonably capable of conveying a defamatory meaning is a question of law, which the Court must determine by considering the publication in its entirety." Spilfogel v. Fox Broad. Co., 09-CV-80813, 2010 WL 11504189, at *4 (S.D. Fla. May 4, 2010) (case dismissed), aff'd, 433 Fed. Appx. 724 (11th Cir. 2011).

II. Florida's Pre-suit Notice Requirement Limits This Case to Three Statements.

"Before any civil action is brought for publication or broadcast, in a newspaper, periodical, or other medium, of a libel or slander, the plaintiff shall, at least 5 days before instituting such action, serve notice in writing on the defendant, specifying the article or broadcast and the statements therein which he or she alleges to be false and defamatory." §770.01, Fla. Stat. (2017) (emphasis added). Internet blog posts are a "medium" within the scope of the statute. See Comins v.Vanvoorhis, 135 So. 3d 545, 557-60 (Fla. 5th DCA 2014); Alvi Armani Med., Inc. v. Hennessy, 629 F. Supp. 2d 1302, 1307-08 (S.D. Fla. 2008). And Plaintiffs know this: That is why the Complaint alleges compliance with Section 770.01. (DE 30 ¶ 10)

Service of a pre-suit notice under Section 770.01 is a jurisdictional condition precedent to the very filing of a defamation action. See Ross v. Gore, 48 So. 2d 412, 415-16 (Fla. 1950); Gifford v. Bruckner, 565 So. 2d 887, 888 n.1 (Fla. 2d DCA 1990). If a plaintiff has not served a

proper pre-suit notice, then no cause of action exists at the time of filing the complaint. Orlando Sports Stadium, Inc. v. Sentinel Star Co., 316 So. 2d 607, 610 (Fla. 4th DCA 1975). Failure to identify specific statements in the pre-suit notice entitles the defendant to dismissal or judgment as a matter of law. See, e.g., Nelson v. Associated Press, Inc., 667 F. Supp. 1468, 1474-75 (S.D. Fla. 1987) (granting defendants summary judgment, because pre-suit notice letter described article but did not quote verbatim); Cook v. Pompano Shopper, Inc., 582 So. 2d 37, 39 (Fla. 4th DCA 1991) ("Numerous cases have affirmed dismissals for failure of the notices to 'specify with particularity' the alleged defamatory statements"; dismissal affirmed); Orlando Sports, 316 So. 2d at 610 (plaintiffs' pre-suit notice that mentioned a specific article was nevertheless deficient, because it did not specify statements alleged to be defamatory; dismissal affirmed); Gannett Fla. Corp. v. Montesano, 308 So. 2d 599, 600 (Fla. 1st DCA 1975) (notice that specified article but provided "no specification as to the statements therein alleged to be false and defamatory" was "insufficient"; judgment for plaintiff reversed with directions to enter judgment for defendant).

In this case, Plaintiffs' counsel sent a pre-suit notice letter on Ruggero's behalf referring to three phrases pleaded in the Complaint – i.e., "fringe scientist," "mad professor" and "cunning scam artist." Van Erp Decl. ¶¶ 13, 14, Ex. 3. Specifically, the letter demanded "a retraction from all allegations that Prof. Santilli is a mad fringe scientist and a scam artist." Id. Ex 3 p 2 (emphasis added). The other pleaded phrases – concerning "fake journals," Ruggero's awards, use of aliases, and paying for publication services – were not specifically identified in the notice and, therefore, are not before the Court. With regard to those statements (as well as any statements concerning Carla, who is not mentioned in the notice at all), Plaintiffs' failure to comply with Section 770.01 entitles van Erp to summary judgment.

III. The Three Statements at Issue are Rhetorical Hyperbole and Opinion.

The statements listed in Ruggero's pre-suit notice – i.e., the description of Ruggero as a "fringe scientist" and questions whether he is "mad professor" or "cunning scam artist" – are not actionable. As the adopted Report explains, such "subjective assessments" are "not readily capable of being proven true or false." DE 71 pp 10-11. Falsity, of course, is among the essential elements a defamation plaintiff must prove. Turner, 879 F.3d at 1262 (citing Jews for Jesus, Inc. v. Rapp, 997 So. 2d 1098, 1106 (Fla. 2008)). And the alleged falsehood must be a statement of fact, because "an actual assertion of fact" is "the sine qua non of a libel claim." Fortson v. Colangelo, 434 F. Supp. 2d 1369, 1383 (S.D. Fla. 2006).

In assessing whether a statement is factual, context is crucial. This case concerns Internet blog posts concerning dubious scientific theories. These posts inspired readers' comments, some questioning Ruggero's claims and others (some by Carla using an alias) supporting him. Blog and social media posts necessarily "suggest to readers that they contain opinions, not facts," and consequently "an ordinary reader would understand the statements at issue to be opinion, not fact." Live Face on Web, LLC v. Five Boro Mold Specialist, Inc., No. 15:cv-4779-LTS-SN, 2016 WL 1717218, at *3 (S.D.N.Y. April 28, 2016) (statements on a blog, Twitter and Facebook were non-actionable expressions of opinion).[6] Plaintiffs know this: Ruggero testified that blog posts are distinct from "something respectable published in a credible journal" (RS p 264 lines 11-16), and he "objected" to use of the term "article" to describe van Erp's posts, insisting they

[6] See also Jacobus v. Trump, 55 Misc.3d 470, 478 (Sup. Ct. N.Y. Jan. 9, 2017) ("the culture of Internet communications, as distinct from that of print media such as newspapers and magazines, has been characterized as encouraging a freewheeling, anything-goes writing style" and "[t]hus, epithets, fiery rhetoric or hyperbole advanced on social media … are vigorous expressions of personal opinion, rather than the rigorous and comprehensive presentation of factual matter"; dismissing defamation claim on opinion grounds), aff'd, 156 A.D.3d 452 (N.Y. 1st Dept. 2017)); LeBlanc v. Skinner, 103 A.D.3d 202, 213 (N.Y. 2d Dept. 2012) ("Internet forums are venues where citizens may participate and be heard in free debate"; affirming summary judgment for defendants who posted rhetorical hyperbole on blog).

be called "blogs" Id. p 386 lines 20-21. Carla agreed, stating that "bloggers have no value" (CS p 45 lines 5-6) and, in a message she posted on van Erp's blog under the alias "Frank Stone," referred to "this type of discredited blogs." DE 30-1 p 4; CS p 80 line 6 to p 82 line 6, Ex. V78.

Van Erp's blog in particular is clearly a forum for debate. The blog's home page describes the content as "science, bad science, pseudoscience and other stuff," where van Erp and his readers debate those subjects. Van Erp Decl. ¶ 2, Ex. 2. The blog is similar to the sports column in Fortson, 434 F. Supp. 2d at 1381, which the court recognized as "a medium that fosters debate on basketball issues and that routinely uses figurative or hyperbolic language," and which a "reasonable reader is more likely to regard its content as opinion and/or rhetorical hyperbole." Id. The same is true for van Erp's blog.

A. The Three Noticed Statements are Rhetorical Hyperbole.

As the adopted Report explains, the description of Ruggero as a "fringe scientist" and questions whether he is "mad professor" and "cunning scam artist" are non-actionable rhetorical hyperbole. See also Greenbelt Co-op. Pub. Ass'n v. Bresler, 398 U.S. 6, 14 (1970) (use of "blackmail" to describe a person's negotiating position was protected rhetorical hyperbole); Horsley v. Rivera, 292 F.3d 695, 702 (11th Cir. 2002) (accusation that plaintiff was "accomplice to murder" not actionable).[7] "The constitutional protection provided rhetorical hyperbole reflects the reality that exaggeration and non-literal commentary have become an integral part of social discourse." Horsley v. Feldt, 304 F.3d 1125, 1131 (11th Cir. 2002) (citation omitted). Such

[7] See also U.S. v. Tieco, Inc., 261 F.3d 1275, 1293-94 (11th Cir. 2001) (counsel's assertion that vendor's filing of ethics complaint was "the equivalent of Jeffrey Dahmer complaining his victims got blood on the carpet" not reasonably construed to equate vendor to convicted mass murderer); Seropian v. Forman, 652 So. 2d 490, 496 (Fla. 4th DCA 1995) (describing plaintiff as "influence peddler" was non-actionable "rhetorical hyperbole, a vigorous epithet," used to convey defendants' view that plaintiff's arguments were "extremely unreasonable"); Pullum v. Johnson, 647 So. 2d 254, 257-58 (Fla. 1st DCA 1994) (calling plaintiff a "drug pusher" amounted to "exaggerated hyperbolic language" not reasonably interpreted as stating actual facts).

"loose, figurative language," the Eleventh Circuit has held, "cannot reasonably be interpreted as stating actual facts." Rivera, 292 F.3d at 701-02.

The phrases "fringe scientist," "mad professor," and "cunning scam artist" are merely hyperbolic expressions commenting on Ruggero's "Invisible Terrestrial Entities" video, the considerable attention it has received on websites about the paranormal,[8] and his "antimatter-light" theory being the easiest of his extraordinary claims to debunk. These statements were informal Internet banter in personal blog posts responding to Ruggero's claims. In this context, as the adopted Report explains, "a reasonable reader would expect zealous debate." DE 71 at 11. Indeed, as Ruggero testified, his scientific claims have "placed him squarely in opposition to the godfathers of conventional wisdom." RS p 108 lines 11-16. Debate about such theories is the type of "uninhibited, robust, and wide-open" discussion the First Amendment protects. Sullivan, 376 U.S. at 270. Van Erp's rhetoric, therefore, is not actionable.

B. The Three Noticed Statements are Matters of Pure Opinion.

Van Erp also is entitled to judgment on the defamation claim for a related reason: Stating that Ruggero is a "fringe scientist" and asking whether he is a "mad professor" or "cunning scam artist" are protected opinions. "It is well established that a 'pure expression of opinion is constitutionally protected.'" Colodny v. Iverson, Yoakum, Papiano & Hatch, 936 F. Supp. 917, 923 (M.D. Fla. 1996) (citation omitted). Whether a statement is a non-actionable opinion is a question of law for the court. Id. "Pure opinion occurs when the defendant makes a comment or opinion based on facts which are set forth in the article or which are otherwise known or available to the reader or listener as a member of the public." Id. (citation omitted). In order to decide whether a statement is fact or opinion, the Court must:

[8] See, for example, the websites identified in Carla's testimony (CS p 52 line 23 to p 68 line 8) and attached to her deposition as Exhibits V68-V73.

> Examine the statement in its totality and the context in which it was uttered or published. The court must consider all the words used, not merely a particular phrase or sentence. In addition, the court must give weight to cautionary terms used by the person publishing the statement. Finally, the court must consider all the circumstances surrounding the statement, including the medium by which the statement is disseminated and the audience to which it is published.

Id. ((allegation of "fraud" was protected opinion; summary judgment granted).

In this case, the three statements at issue are opinions, based upon these disclosed facts:

- the statement in Ruggero's Wikipedia biography (available at https://en.wikipedia.org/wiki/Ruggero_Santilli and via a link in van Erp's article) that "Mainstream scientists dismiss his theories as fringe science" (citing "Snubbed by mainstream, scrappy scientist sues," *St. Petersburg Times* (May 9, 2007));

- the video (displayed in Exhibit A) in which Ruggero describes his discovery of "Invisible Terrestrial Entities" that he says "appear to conduct unauthorized surveillance of rather sensitive civilian, industrial and military installations";

- the claim to have made this discovery of invisible entities using a telescope with concave lenses (opposite of a normal telescope's convex lenses) that Ruggero says allow him to observe "antimatter-light";

- the fact that this YouTube video has received considerable attention on the web, mainly on sites on the paranormal;

- the statement that Ruggero makes extraordinary claims that are easy to debunk;

- the grainy images that Ruggero claims show "Invisible Terrestrial Entities";

- the publication of a Ruggero article concerning "Invisible Terrestrial Entities" in the *American Journal of Modern Physics*, a journal on a list of predatory open-access publishers and that previously published another article about the concave-lens telescope;

- the fact that Ruggero's claimed inventions and discoveries have been marketed through companies with which he has been involved; and

- the fact that stock in in those companies is publicly traded.

Van Erp Decl. ¶¶ 5, 6. Having set forth these facts, van Erp is entitled to the opinion Ruggero is a "fringe scientist" and to question whether Ruggero is a "mad professor" or "cunning scam artist." Those opinions "flow[] directly and logically from the facts" set forth in the rest of the

article. Turner v. Wells, 198 F. Supp. 3d 1355, 1368 (S.D. Fla. 2016), aff'd, 879 F.3d 1254. "The notion that …any other reader…might well come to a different conclusion upon review on these facts does not make [a defendant's] evaluation of [them] anything other than opinion." Id.

The words and manner in which the blog posts express these points further indicate these are opinions. As the Eleventh Circuit explained in Turner, "cautionary statements … inform a reasonable reader that the conclusions contained [in an article] are opinions." 879 F.3d at 1263. The phrases "mad professor" and "cunning scam artist" are expressed in cautionary terms; in fact, as the Report explains, both phrases are presented as questions:

> Is Santilli just a mad professor? Or is he a cunning scam artist trying to sell his 'Santilli-ofocus-scopes' (or even better: stock in his businesses) to people who fall easily for sciency sounding nonsense? Maybe both …

DE 71 p 10-11 (emphasis added). The word "maybe" and the question marks signal that those words express opinion. See also Chapin v. Knight-Ridder, Inc., 993 F.2d 1087, 1094 (4th Cir. 1993) ("inquiry itself, however embarrassing or unpleasant to its subject, is not accusation"; dismissal of libel action affirmed). Boulger v. Woods, 2:17-CV-186, 2018 WL 527009, at *11 (S.D. Ohio Jan. 24, 2018) ("the Court has been unable to locate any cases in which a question was determined to be a defamatory statement of fact"; judgment on the pleadings granted in Internet defamation case), appeal filed (6th Cir. 2018).

Van Erp's words also are subjective – a further reason that they are not actionable. In Turner, the Eleventh Circuit found an allegation of "homophobic taunting" was "an opinion and not actionable in a defamation suit," because that statement was "the Defendants' subjective assessment of [the plaintiff's] conduct" and "not readily capable of being proven true or false." 879 F.3d at 1264, 1269-70. Calling someone a "fringe scientist" is similarly subjective. How far are Ruggero's views outside the mainstream? Such a subjective assessment is not actionable. As the adopted Report explains, "a reasonable reader would recognize van Erp's blog posts as

inviting intellectual rivals to engage in a scientific disagreement," and such labels are subjective and not readily capable of being proven true or false. (DE 71 at 10) [9] The irreverent and imprecise language in van Erp's blog posts – both the words at issue and surrounding terms such as "sciency sounding nonsense" – makes clear that the statements at issue are opinion.

C. Plaintiffs Lack Clear and Convincing Evidence of Actual Malice.

Plaintiffs' defamation claim also fails for another reason: Plaintiffs lack clear and convincing evidence of actual malice. Although the Court need not reach the issue (because the pre-suit notice, rhetorical hyperbole, and opinion issues are dispositive), a plaintiff such as Ruggero "'has the burden of showing by clear and convincing evidence that the defamatory statement was (1) a statement of fact, (2) which was false, and (3) made with 'actual malice' – that is, with knowledge that it was false or with reckless disregard of whether it was false.'" Colodny, 936 F. Supp. at 922 (quoting Sullivan, 376 U.S. at 279-80). "This constitutional requirement is examined under a subjective standard, and a plaintiff must produce evidence that the defendants 'actually entertained serious doubts as to the veracity of the published account, or [were] highly aware that the account was probably false.'" Klayman v. City Pages, 650 Fed.

[9] See also, e.g., Cook-Benjamin v. MHM Corr. Servs., Inc., 571 Fed. Appx. 944, 947 (11th Cir. 2014) (statements that plaintiff was "stupider" and "crazy" constitute opinion); Del Fuoco v. O'Neill, 2011 WL 601645, at *7 (M.D. Fla. 2011) (statements that plaintiff had "checkered history as a prosecutor," made "bizarre" accusation against his supervisor, and had a "bizarre fixation" on his supervisor were "pure opinion protected under Florida law"); Tillett v. BJ's Wholesale Club, Inc., 3:09-CV-1095-J-34MCR, 2010 WL 11507322, at *4 (M.D. Fla. July 30, 2010) (alleged insinuation of racism based upon disclosed facts was "nothing more than … commentary on the facts presented" and, thus, non-actionable opinion); Lieberman v. Fieger, 338 F.3d 1076, 1080 (9th Cir. 2003) ("no reasonable viewer" would take "colorful expressions" such as "Looney Tunes," "crazy" and "nuts" as factual); McCabe v. Rattiner, 814 F.2d 839, 842 (1st Cir. 1987) (because "scam" lacks precision, that term is "incapable of being proven true or false"); Lauderback v. ABC, 741 F.2d 193, 195 (8th Cir. 1984) (implication that plaintiff insurance agent was "unethical" and a 'crook" was protected opinion based on disclosed facts); Daniel v. City of Glendale, 2015 WL 5448562, at *9 (C.D. Cal. Mar. 19, 2015) (characterization of solicitation as "scam" expressed speaker's "subjective opinion"), R&R adopted, (C.D. Cal. Apr. 9, 2015); DeMoya v. Walsh, 441 So. 2d 1120 (Fla. 3d DCA 1983) (statements labeling plaintiff a "raving maniac" and "raving idiot" were pure opinion based upon disclosed facts).

Appx. 744, 749 (11th Cir. 2016) (quoting Michel v. NYP Holdings, Inc., 816 F.3d 686, 703 (11th Cir.2016)). This high standard is applicable at the summary judgment stage. See, e.g., Meisler v. Gannett Co., Inc., 12 F.3d 1026, 1029 & 1030 (11th Cir. 1994) (affirming summary judgment, based upon district court's conclusion that "no reasonable jury could find actual malice by clear and convincing evidence"). As a result, "summary judgments are to be liberally granted where the constitutional requirement of actual malice applies." Cronley v. Pensacola News-Journal, Inc., 561 So. 2d 402, 405 (Fla. 1st DCA 1990).

The actual malice standard applies in this case, because Ruggero is unquestionably a public figure. Courts recognize both limited purpose and general purpose public figures. Turner, 879 F.3d at 1272. Because Ruggero has voluntarily participated in public debate on scientific matters, he is a public figure at least for that limited purpose. Ruggero has authored many books, articles and videos about his theories on antimatter, mathematics, invisible terrestrial entities and Einstein's theories. His biography lists approximately twenty books and 300 articles. RS p 27 line 12 to p 28 line 9, Exs. V33, V41. His YouTube video claiming the discovery of invisible terrestrial entities was viewed more than 750,000 times within a few weeks after its posting. RS p 28 line 22 to p 30 line 20, Ex. V38. Ruggero has appeared, "with great pleasure," in a number of other Internet videos. Id. p 31 lines 9-24, Ex. V39. He is the subject of a Wikipedia biography. RS p 153 lines 6-8; ST Depo. Ex V15. Consequently, Ruggero cannot dispute that he is a public figure – at least for the limited purpose of discussion of his scientific claims.[10]

Because actual malice is a subjective standard, Plaintiffs must have evidence that van Erp made factual statements knowing they were false or seriously doubted their truth. Plaintiffs have

[10] Carla likewise is a limited purpose public figure. See CS p 12 lines 5-23; p 80 line 6 to p 82 line 6, Ex. V78 (testifying about her role as CEO of Hadronic Press and her participation in van Erp's blog). But because she was not mentioned in the Section 770.01 notice and the statements at issue are not of and concerning her, the Court need not reach that question.

no such evidence. Van Erp has testified: "I did not (and do not) believe any statement I wrote or posted in Exhibit A, B or C is false. I have no doubt about the truth of my statements." Van Erp Decl. ¶ 4. Rather, van Erp sets forth in detail the sources and factual basis for each of the statements at issue. Id. ¶¶ 5-10. Plaintiffs have no evidence that van Erp knew these statements were false or seriously doubted their truth. Thus, Plaintiffs cannot prove actual malice.

1. Van Erp's blog posts show an absence of actual malice.

Pepijn van Erp's writing is transparent: His blog posts detail the basis for his statements. For example, as noted on pages 12 through 13 of this Motion, van Erp had numerous sources and reasons for calling Ruggero a "fringe scientist" and questioning whether he is a "mad professor" or "cunning scam artist." The recitation of those underlying facts and Van Erp's testimony demonstrate an absence of actual malice. See Colodny, 936 F. Supp. 917 at 926 (defendants' testimony concerning their "subjective belief" demonstrated absence of actual malice; summary judgment granted). Van Erp's blog posts and affidavit also explain the basis for his other statements, thus demonstrating his belief that those statements were true and the absence of actual malice. So, even if this Court were to consider statements not in the pre-suit notice, van Erp is entitled to summary judgment with regard to those statements as well.

For example, with regard to the statement that the AJMP is "just one of those fake journals, which will probably print anything if you are willing to pay their fees," van Erp based this statement on: (1) the fact that Ruggero had an article about Invisible Terrestrial Entities in press with the AJMP, (2) the AJMP charges authors fees to publish their articles, and (3) the AJMP's publisher is on a "list of predatory scholarly open-access publishers," as shown on the webpage available via the link in van Erp's blog post to http://archive.is/CK0S6. Van Erp Decl. ¶ 7. This testimony shows the absence of actual malice in making this statement.

Similarly, van Erp believed the statement that Santilli used aliases to be true, based upon:

- another scientist's observation (in an article available at http://archive.is/J1Wpd) that Ruggero used an alias;
- the writing style of "J.V. Kadeisvili," a name van Erp suspected was an alias, sounds just like Ruggero Santilli's style;
- the fact that van Erp was for some time unable to locate any biographical information on Kadeisvili;
- the office of Ruggero's Institute for Basic Research (the "Institute"), with which Kadeisvili was said to be affiliated, is too small to house an actual research institute with labs and employees;
- in response to van Erp's requests to the Institute for Kadeisvili's CV, he received childish e-mails supposedly from people named George Weiss and Richard Anderson, but the e-mail headers revealed that the messages came from the same computer, identified as "Ruggero-Santillis-MacBook-Pro" (van Erp posted copies of this correspondence along with his blog post at http://www.pepijnvanerp.nl/wordpress/wp-content/uploads/2013/03/Mailing-with-Ruggero-Santilli-looking-for-Prof-JV-Kadeisvili-April-May-2012.pdf);
- an e-mail supposedly from Kadeisvili himself misspelled his name (included in the correspondence van Erp posted); and
- in response to van Erp's requests to the Institute for Kadeisvili's CV, van Erp received unprofessional e-mails containing angry insults and invective, including correspondence calling him a "dirty filthy puking man," claiming that former CIA operatives had bugged his computer, and referring to his "ethnic affiliation" (included in the correspondence van Erp posted).

Van Erp Decl. ¶ 8.

Finally, van Erp believed Ruggero instigated an award and asked a co-worker to organize the signatures on that award, based upon:

- correspondence to van Erp from the American Institute of Physics, a supposed sponsor of the award, stating that the organization was not a sponsor of the award, but was merely publishing the conference proceedings;
- the claim on a Ruggero-affiliated website (available at http://archive.is/4V3oR and via a link in van Erp's post) of "scientific crimes perpetrated by the Jewish control of" the American Institute of Physics;
- the fact that the award was signed by Svetlin Georgiev, a colleague of Ruggero;

- the filename for the image of the certificate on a Ruggero website is "TARPON_2," and Ruggero's office is in Tarpon Springs, Florida; and
- the use of nonsensical language in the certificate, stating: "In recognition of the participation in the professional activities and to the outstanding technical contributions in the field of engineering, aerospace and sciences and the undersigned certified present The Technical Achievement Award to Prof. Ruggero Maria Santilli."

Van Erp Decl. ¶ 10.

These disclosures and Van Erp's undisputed testimony show he had a subjective belief, at the time he posted the statements in the Complaint, that they were true. Plaintiffs have no evidence that van Erp knew they were false or he seriously doubted their truth. Because Plaintiffs are unable to prove actual malice, van Erp is entitled to summary judgment.

2. Additional evidence confirms van Erp had no reason to doubt the truth of the challenged statements.

Van Erp's testimony is not the only evidence demonstrating an absence of actual malice. In fact, discovery has shown ample, additional reasons why van Erp had good reason to believe the challenged statements were true, and that the Santillis have no evidence that the statements at issue were false or written with actual malice. For example, as noted above, Ruggero essentially admits he is a fringe scientist, saying his investigations have "placed him squarely in opposition to the godfathers of conventional wisdom" and "put him at a grave disadvantage in the scientific world." RS p 108 lines 11-16. He also admits to being called a "fringe scientist" "[m]any times," and that "mainstream scientists" have disrespected him. RS p 124 lines 13-15; p 149 lines 8-10, 16-18. In fact, Ruggero believes he is a victim of "a conspiracy in the United States of America against advanced research" (RS p 10 line 24 to p 11 line 4), which consists of "fanatical supporters" of Albert Einstein (p 92 lines 5-6) and "ethnic interests" that jeopardize "the security of this country" (p 87 lines 12-18). Thus Ruggero's own testimony shows van Erp had no reason to believe the "fringe scientist" description was false.

With regard to questions whether Santilli is a "mad professor" or "cunning scam artist," USF Professor Maria Womack has explained why those are appropriate questions. She states:

> It is legitimate for a blog that reviews dubious scientific claims to question whether Santilli is a "mad professor" or "cunning scam artist," because all of the work presented for the Santilli Telescope is based on an incorrect foundation with incompetent observations.

Womack Decl. Report p 3. Similarly, Plaintiffs' own witnesses essentially admit such questions are warranted. Scott Tadsen, who sought investors in Thunder Energies, testified that Ruggero's claimed discovery of Invisible Terrestrial Entities "doesn't look good… I will admit that. It doesn't look good[]" and that he "wish[es] there wasn't such a thing as ITEs." ST p 116 lines 14-17; p 122 lines 15-17. Tadsen admits Ruggero "is one of the crazy ones." Id. p 138 lines 13-14. Scott Wainwright, former president of a Santilli company, testified that the Thunder Energies video allegedly depicting an ITE over the tax collector's office in Tallahassee "should be erased immediately" because it "definitely [would] not" help in the sale of Santilli telescopes. SW p 52 lines 4-6. Wainwright also admitted that the idea of Invisible Terrestrial Entities could be called "stupid," and that a person learning of this idea would reasonably be reluctant to invest in Thunder Energies. SW p 55 lines 2-4; p 56 lines 10-15.

With regard to the statement that Ruggero publishes articles in "fake journals," Carla admits that "everybody has called" the publisher of numerous Ruggero articles "a scam." CS p 40 lines 9-11. Dr. Womack agrees, saying the AJMP may correctly be described as a "fake journal that is not selective about whether the science in an article is accurate so long as the author is willing to pay the publisher's fees." Womack Report p 3, 8. Demonstrating this lack of selectivity, the AJMP received a Ruggero article on Christmas Eve and accepted it on Christmas Day, without any time for peer review. RS p 47 line 17 to p 48 line 4. The publisher lists a New

York City street address where it does not have an office and cannot be found. See Affidavit of Non-Service. Van Erp, therefore, had no reason to doubt that AJMP is a "fake journal."

Regarding the statement that Ruggero has used aliases,[11] Ruggero has admitted to as much. In an interrogatory answer, Ruggero testified that he "may have used pseudonyms in the past." See Ruggero's Responses to Second Set of Interrogatories ¶ 1. In deposition he went further, admitting he founded a committee that uses the made-up name "Luca Petronio," and that Ruggero's cell phone number is listed with that pseudonym in the committee's domain-name registration. RS p 58 line 5 to p 60 line 4, p 71 line 13 to p 73 line 19, p 241 lines 13-22, p 294 lines 12-14, Ex. V48 p 2. The committee also uses the alias "William Pound." Id. p 345 lines 20-22 & V121. The name of former Santilli employee Pamela Fleming has been used falsely in Thunder Energies news releases without her knowledge or consent, and Ruggero says he is responsible for "everything" that happens at Thunder Energies. Fleming Decl. ¶¶ 2-8 & Ex. 1-5; TE p 4 lines 22-24; RS p 188 lines 15-20. Finally, Ruggero admits he has never met or even talked on the telephone to J.V. Kadeisvili (RS p 237 lines 8-12), the supposed author of a pro-Ruggero article published with the e-mail address luca54321@verizon.net, which corresponds to the "Luca Petronio" pseudonym. Id. p 238 line 5 to p 239 line 6; V101. Ruggero also admitted the name "Richard Anderson" is a pseudonym, used to identify the author of articles about Ruggero in the AJMP. RS p 268 lines 8-11. This evidence shows van Erp had good reason to believe Ruggero uses aliases, and no reason to believe saying so was false.

[11]The defamation claim regarding this statement is time-barred by Florida's two-year statute of limitation. See § 95.11(4)(g), Fla. Stat. The statute runs from the time of publication (see § 770.07, Fla. Stat.; Wagner, Nugent, Johnson, et al. v. Flanagan, 629 So. 2d 113 (Fla. 1993), and internet articles are no different (see Chinnici v. WBI, Inc., 8:14-CV-1357-T-33-TBM, 2015 WL 1525785, at *2 (M.D. Fla. Apr. 2, 2015)). The article explicitly states that it was first published on May 30, 2013. (DE 30-1 p 26; Ex. 2 to Van Erp Decl. p 2) Van Erp never republished Exhibit B. (Van Erp Decl. ¶ 9) A link to the article does not constitute a republication. In re Philadelphia Newspapers, LLC, 690 F. 3d 161, 174-75 (3rd Cir. 2012); Klayman, 650 Fed. Appx. at 751.

Finally, as to the statement that Ruggero pays for publication services, Ruggero admits that statement is true: The publisher of the AJMP charged fees to print his articles. RS p 46 lines 10-25. Thus van Erp had no reason to doubt the truth of these statements either.

In sum, Ruggero is a public figure for purposes of discussing his claimed scientific discoveries, and Plaintiffs lack clear and convincing evidence of actual malice. The facts show van Erp did not doubt his posts and had no reason to doubt the truth of his statements. Consequently, van Erp is entitled to summary judgment.

IV. Carla Lacks Standing to Sue for Defamation.

To the extent that Carla is a party to the Plaintiffs' defamation claims, van Erp is entitled to summary judgment against her as well. A cause of action for libel "cannot be maintained unless it is shown that the libelous statements are 'of and concerning' the plaintiff." Thomas v. Jacksonville Television, Inc., 699 So. 2d 800, 805 (Fla. 1st DCA 1997) (citing cases). In fact, if a challenged statement is not "of and concerning" the plaintiff, the defamation claim is "constitutionally defective." Sullivan, 376 U.S. at 288.

Plaintiffs have not pleaded any statements mentioning Carla. Instead, the Complaint alleges defamatory statements were made about Ruggero only. DE 30 ¶¶ 26-30. Outside the pleadings, Plaintiffs accused van Erp of stating that Carla uses aliases. DE 41 p 13. Carla has admitted using aliases to post on van Erp's blog and to contribute to Wikipedia. CS p 78 line 1 to p 79 line 17 & Ex. V77; CS p 80 lines 6-25; 81 line 13 to 83 line 8, Ex. V78, Thus, even if this unpleaded statement is considered, van Erp is entitled to summary judgment against Carla.

V. Plaintiffs' Tortious Interference Claims Fail for Numerous Reasons.

As this Court noted in adopting the Report, this is a defamation case. DE 74. Plaintiffs "only nominally sue for tortious interference with a business relationship." DE 71 p 6. To prove

tortious interference, Plaintiffs must demonstrate (1) the existence of a business relationship; (2) knowledge of the relationship on the part of the opposing party; (3) an intentional and unjustified interference with the relationship by the opposing party; and (4) damage to Plaintiffs as a result of the breach of that relationship. Ethan Allen, Inc. v. Georgetown Manor, Inc., 647 So. 2d 812, 814 (Fla. 1994). There must be an understanding between Plaintiffs and a prospective customer or client that would have been consummated but for the defendant's interference. Id. A mere offer to sell, standing alone, cannot support a tortious interference claim. Id. "The requisite showing of causation cannot be supported by mere supposition that defendant's interference caused the cessation of the business relationship." Realauction.com, LLC v. Grant Street Grp., Inc., 82 So. 3d 1056, 1059 (Fla. 4th DCA 2011).

In alleging tortious interference, Plaintiffs offered an affidavit of Timothy Scott Wainwright, who testified that he has sought investors in a Thunder Energies product called the Directional Neutron Source ("DNS") (DE 64-1, Ex. C). As the adopted Report explains, Wainwright's affidavit falls short of demonstrating "the proximate cause contemplated by Florida law," because he did not identify any existing business relationships. DE 71 pp. 7-8. Instead, Wainwright's deposition testimony reveals, he contacted 10 to 12 individuals in 2017, seeking to make "introductions" of those potential investors to Thunder Energies, "trying to get a business off the ground." SW p 29 line 6 to page 30 line 5, p 33 lines 1-9. Thus Wainwright's testimony shows no existing business relationship with which van Erp could have interfered. "Speculative hope of future business is not sufficient to sustain the tort of interference with a business relationship." Realauction.com, 82 So. 3d at 1060. In addition, Wainwright testified that none of these potential investors mentioned van Erp's article (SW p 26 lines 19-24; p 45 lines 6-9). Thus there is no evidence that the speech at issue had any impact at all.

Testimony of Scott Tadsen, who was involved in seeking funding for the DNS this year, is similarly deficient. Tadsen identified three people he said are "on the fence" about investing in the DNS. ST p 78 line 15 to p 80 line 4. Thus none of the people described is part of an existing business relationship with Plaintiffs. And of course van Erp could not have known of these non-existent, potential future relationships or intended to interfere with them when he wrote his blog posts long before the Wainwright and Tadsen marketing efforts. In fact, Van Erp attests that he "did not intend to interfere with any business relationships that [the Santilli's] had or have." Van Erp Decl. ¶ 4. Thus the evidence fails to establish tortious interference.

Plaintiffs also are the wrong parties to bring the tortious interference claims, which concern relationships between "businesses owned by the Plaintiffs" (DE 30 ¶¶ 47, 56, 65, 74, 83, 92) and unnamed third parties (DE 30 ¶¶ 48, 57, 66, 75, 84, 93). Under Florida law (and as a jurisdictional matter), stockholders are not entitled to bring direct actions for tortious injuries to their corporations, as this Court has recognized. See In re Martino, 8:16-cv-2105-T-33, 2017 WL 1519797, at *5 (M.D. Fla. April 27, 2017) (half-owner of corporation could not sue diminution in value of corporation, because such damages were not a direct harm to the half-owner). Because the business relationships alleged in this case are between "businesses owned by the Plaintiffs" (DE 30 ¶¶ 47, 56, 65, 74, 83, 92) and third parties (DE 30 ¶¶ 48, 57, 66, 75, 84, 93), Plaintiffs have not established their individual standing to sue for such injuries.

Finally, Plaintiffs' interference claims are barred because they unlawfully duplicate their defamation claim. This Court has found that Florida's single cause of action rule bars a tortious interference claim based upon statements at issue in a defamation claim. Roca Labs, Inc. v. Consumer Op., Corp., 8:14-cv-2096-T-33EAJ, 2014 WL 6389657 at *6-7 (M.D. Fla. Nov. 16,

2014).[12] The single cause of action rule applies in this case. As the adopted Report explains, "[m]ost of the complaint alludes to van Erp's allegedly 'false,' 'malicious,' and 'disparaging' statements about R. Santilli on his blog." DE 71 at 7. Plaintiffs assert that these statements tortiously interfered with business relationships. These allegations cannot stand alongside Plaintiffs' defamation claims based upon the same statements; summary judgment must be granted in favor of van Erp on the tortious interference claims.

Conclusion

This case is a meritless attempt to challenge protected speech. As the adopted Report explains, the protections of rhetorical hyperbole and opinion are dispositive. In addition, the evidence does not support claims for defamation or tortious interference. Summary judgment should be granted.

[12] See also Kazal, 8:17-CV-2945-T-23AAS, 2017 WL 6270086, at *3 ("Although the plaintiffs nominally sue for intentional infliction of emotional distress and for tortious interference with a business relation, the crux of the plaintiffs' claims is defamation."); Hill v. Allianz Life Ins. Co. of N. Am., 6:14-CV-950-ORL-41KRS, 2016 WL 872936, at *8 (M.D. Fla. Feb. 17, 2016) (dismissing tortious interference claim where the claim was "based on the same publication and underlying facts as [plaintiff's] failed defamation claim"), aff'd, 693 Fed. Appx. 855 (11th Cir. 2017).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing will be served by electronic service through the Clerk of the Court's CM/ECF filing system on Joseph E. Parrish, Esq., The Parrish Law Firm, P.A., PO Box 1307, Brandon, FL 33509-1307 (jparrish@theparrishfirm.com).

Dated: May 18, 2018.

/s/ James B. Lake
Attorney