UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RUGGERO SANTILLI, and
CARLA SANTILLI,

Plaintiffs,

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

v.

PEPIJN VAN ERP, FRANK ISRAEL and
HOSTING2GO,

Defendants.
_____/

PLAINTIFFS' RESPONSE AND INCORPORATED MEMORANDUM OF LAW TO DEFENDANT PEPIJN VAN ERP'S MOTION FOR SUMMARY JUDGMENT (DOC. 77)

Plaintiffs, RUGGERO SANTILLI and CARLA SANTILLI, by and through undersigned counsel, submits this response to Defendants, PEPIJN VAN ERP's Motion for Summary Judgment (Doc. 077). In support of Plaintiffs' Response, Plaintiffs state as follows:

INTRODUCTION

Defendants' Motion for Summary Judgment is misplaced and/or flawed for three main reasons; 1) it requests this Court to weigh the credibility of witnesses; 2) it mischaracterizes the facts and misapplies the law; and 3) it limits this Court's review to three statements when there are many others that are actionable. This Honorable Court is limited to questions of law and must take all facts in the light most favorable to the non-moving party.

It is well known that weighing the credibility of witnesses is for the jury as fact finders and not a question of law. Defendants' Motion for Summary Judgment asks this Court to determine who is more credible between Prof. Santilli (a world-renowned scientist) and Defendant Van Erp (a non-scientist unqualified blogger on issues such as science, seeking speaking engagements and

other employment via his blog site). Simply put, weighing the credibility of these parties belongs to the jury and should not be considered by this Honorable Court.

Defendants attempt to elicit emotion of this Court by painting Prof. Santilli as anti-Semitic and mischaracterizing the testimony and evidence in an attempt to paint him in a negative light. Because of the mischaracterization, Plaintiffs provide **Ex. A** to this Motion, which provides this Court with the mischaracterization of the testimony, the actual testimony and an explanation as to why it is mischaracterized.

Defendants wrongly believe that this cause of action is limited to only three phrases because of the pre-suit notice statute for media defendants in defamation cases and limit this Court's review of those three statements. Further, Defendants misapply the law in claiming that malicious intent is not shown, that Carla does not have a claim, and that the tortious interference claim is inappropriate. Argument by Defendants is misplaced.

Because the Defendants Motion is flawed and/or misplaced, this Honorable Court must deny Defendants' Motion for Summary Judgment.

BACKGROUND

Prof. Ruggero Santilli is a world-renowned scientist with an outstanding educational and scientific background. With regards to his academic and scientific achievements, Prof. Santilli received the highest possible education in Italy, which included a Ph.D. in 1965, emigrated to the United States with his family in 1967 following an invitation from the University of Miami, Florida, to conduct research under NASA support. *See* ***Ex. B*** (Declaration of Ruggero Santilli). From there, through the recognition of his accomplishments, Prof. Santilli became part the esteemed faculty of some of the most prestigious educational institutions in the world, to include Boston University, MIT, and Harvard University under support from NASA, USAFOSR and

DOE. *Id*. From 1985 on, Prof. Santilli has been a Professor of Physics and President of The Institute for Basic Research originally located at Harvard University and subsequently moved to Florida. *Id*. Prof. Santilli became a U.S. Citizen in 1986. *Id*. He is the author of at least 325 papers in mathematics, physics and chemistry published in refereed journals, has written 20 Ph.D. level monographs in various fields, the founder of three scientific journals and the editor of various journals. *Id*. A full-length curriculum vitae of Prof. Santilli can be found as attachment to Ex. B and at http://www.i-b-r.org/Ruggero-Maria-Santilli.htm.

Prof. Santilli also has significant accolades in the corporate world in which he has been Scientific Advisor to various U. S. companies. *Id*. From 2007 to 2013, Prof. Santilli has been Chief Scientist and Chairman of the Board of MagneGas Corporation, a U. S. company publicly traded at NASDAQ under the stock symbol MNGA, producing and selling the gaseous magnegas fuel synthesized from liquid wastes with complete combustion. *Id*. For more details, please visit the website http://www.magnegas.com. In 2014, Prof. Santilli founded and became CEO and Chief Scientist of Thunder Energies Corporation, also a publicly traded company with stock symbol TNRG, for the development of three cutting edge new technologies: the synthesis of neutrons from a hydrogen gas and its application; a new combustion of fossil fuels with complete combustion, and new telescopes for the detection of antimatter galaxies and antimatter cosmic rays. *Id*. For more details, please visit http://www.thunder-energies.com.

Beyond his other achievements, Prof. Santilli has been the recipient of the 1982 gold medal for scientific merits from the Universite' d'Orleans, France; the 1990 nomination by the Estonia Academy of Sciences "among the most illustrious applied mathematicians of all times"; the 2009 Mediterranean Prize; the 2009 scientific prize from the U.S. Sons of Italy; the 2011 scientific prize from Kathmandu University, Nepal. *Id*. In 2011 Prof. Santilli was recognized as an invited member

of the European Society of Computational Methods; in 2016 he received the ICNPAA award at the University of La Rochelle, France; and in 2016 he received the Fray International Sustainability Award, granted at the SIPS International Conference, Hainan Island, China. Prof. Santilli has been nominated since 1987 for the Nobel Prize in Physics and, separately Chemistry. *Id*. In September 2011, Prof. Santilli was knighted a first time on September 6, 2011, by the Republic of San Marino as a member of the millenary Equestrian Order of Sant'Agata., and a second time on May 31, 2018, by the President of Italy, Sergio Mattarella. For more details, please see **Ex. B** or visit the website http://santilli-foundation.org/santilli-nobel-nominations.html.

Defendant Pepin Van Erp claims to have an equivalent of a master's degree in mathematics. *See Dec. Pepin Van Erp (Doc. 077 p. 30)*. However, what he does not mention is that, even if he does have this degree (which is disputed by Plaintiffs), the type of degree he claims to have requires only four years of college, total, at the University he claims to have attended. **See Ex. C** (Section 1.6, page 13) found on the world wide web at the following URL https://www.timeshighereducation.com/sites/default/files/institution_downloads/information_guide_0.pdf.

Further, Van Erp does not have any degree or background in Physics, Astronomy or any other traditional science or engineering and has never worked in the field. *See **Ex. B***. In fact, after searching for any peer reviewed or scientific publication, outside his own blogs and publications for Skepsis, not one publication was found and not one reputable recognition, for any contribution to science or education, could be found. *Id*. Instead, Van Erp is a puppet of Frank Israel in their attack against those that do not agree with their scientific views, and Frank Israel pulls the strings through his position with Stiching Skepsis. *Id*. This attack has now gone on for over seven years with tolerance by Plaintiffs, but once Wikipedia provided an anchored hyperlink to the attacks

waged by Defendants, action had to be taken as it was not only an attack upon Plaintiffs, but also science advancement for this country and humanity. *Id*.

Van Erp claims that he speaks at lectures from which, found pictures of those lectures indicates three or four people are in attendance. See **Ex. D**. *found at* **http://www.kritischdenken.info/pepijn-van-erp-bij-skeptics-in-the-pub-gent-4/**. Further, Van Erp solicits for part-time employment through his bio as part of his hopes for gains from his uneducated blog. **Ex. E**. found at http://www.pepijnvanerp.nl/about/

As a result of these prejudicial attacks on Plaintiffs, the Plaintiffs have suffered significant damages, to include lost opportunity for Grants, lost value from their reputation and realized significant financial harm to clean up their on-line reputation. *See* ***Ex. B***, ***Ex. F*** *(Expert Report of Chris Anderson),* ***Dep. of Scott Tadsen****,* p 58:18-25 to 60:1-7 and p 111:20-25 to 112:1-5 (*Doc. 077 @ p. 1514-1550)* and ***Dep. of Timothy Wainwright***, p 75:10-19 (*Doc. 077 @ p. 1584-1604).*

Defendants now bring this misplaced Motion for Summary Judgment and in so doing, mischaracterized the deposition testimony in a desperate attempt to mold it into language that might incite this Honorable Court's emotion with hopes of a ruling in their favor. Because outlining all the mischaracterization in the body of this Response would be exhaustive and take away from the true merits of this case by adding more complexity, Plaintiffs provide ***Ex. A***, which provides the mischaracterization of the testimony found in Defendants "Statement of Material Facts", the actual testimony with page/line citation and an explanation of the mischaracterization.

STATEMENTS OF MATERIAL FACT

1. Prof. Ruggero Santilli is an accomplished and respected scientist in the scientific community with a Ph.D. in physics since 1965 and with outstanding accomplishments, accolades and contributions to science and national security. *See* ***Ex. B.***

2. Defendant Van Erp is a self-proclaimed blogger, with no qualifying scientific background or education, in which Van Erp, with approval from Defendant Frank Israel, attacked Plaintiffs through Van Erp's personal blog with willful disregard for the truth of the attacks. *Id*.

3. There is no record evidence to provide the educational or scientific background of Israel other than he is a professor of astronomy, but it is known, by his own admission, that he is the Board Chairman of Skepsis and has held that position since April of 2012. *See Doc. 078*.[1]

4. On April 2, 2016, Carla Santilli sent correspondence to both Van Erp and Israel notifying them, in compliance with Florida Statute 770.01, of certain false and defamatory accusations by Defendants. *See* ***Ex. G*** *(Declaration of Carla Santilli),* and ***Composite Ex. H*** *(also found Deposition Exhibits 81 and 82 of Carla Santilli (Doc. 077 pages 1222-1227).* This correspondence specifically outlined false statements by Defendants claiming that Prof. Santilli conducted science with "continuing stupidity," that Thunder Energies and MagneGas are fraudulent and/or fake and that Defendants wrongly accuse Prof. Santilli as being anti-Semitic. *Id*. Carla made it clear that these statements were false and damaging to Plaintiffs. *Id*. However, at the time the correspondence was written, Carla did not completely realize the involvement of Frank Israel and hoped that Frank Israel would direct Van Erp to take down the defamatory content. *Id*.

5. Prof. Santilli is not anti-Semitic and has worked closely with those of the Jewish religion in the past and considers many to be very close friends. *See* **Ex. B**. Further, his son-in-law is Jewish by right. *Id*.

6. None of Plaintiffs' subject companies (Magnegas or Thunder Energies) are fraudulent, fake, a pyramid scheme and/or dubious. *Id*. In fact those companies are legitimate and

[1] Defendant Israel insinuates that he and Skepsis do not have ties to Kloptdatwel.nl or to Van Erp's personal blog. However, evidence suggests otherwise. See also **Composite Ex. N @ p 9**.

are required to comply with rigorous filings to insure legitimacy, as they require SEC compliance to maintain listing as a publicly traded company.

7. On May 20, 2016, Plaintiffs' attorney wrote a letter to Defendants notifying them, in compliance of 770.01, that their publications were defamatory and that they must be removed and retracted. *See* **Composite Ex. H.** The letter from Plaintiffs' attorney outlined portions of two different publications, the first being entitled "The Continuing Stupidity of Ruggero Santilli[2]" (hereinafter "Stupidity Blog") in which the publication states that Prof. Santilli is a "Fringe Scientist," "mad professor" and "cunning scam artists." *Id*. Further it outlines Defendants' false and defamatory statements that Prof. Santilli's "whole concept of anti-matter light is bullshit."[3] The Second publication, entitled "Finding J.V. Kadeisvili – or Mailing with Ruggero M. Santilli.[4]" (hereinafter "Kadeisvili Blog") wrongly accuses Plaintiffs as running a "pyramid scheme." *Id*.

8. The original complaint to this cause was filed on August 5, 2016, in Florida State Court from which Exhibit A and B were the Stupidity Blog and Kadeisvili Blog respectively. A First Amended Complaint (Doc.002) was filed on April 5, 2017, which included an additional exhibit C containing a blog published by Defendants, post-suit, on August 25, 2016 entitled "More Santilli Shenanigans." (hereinafter "Shenanigans Blog")[5].

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[2] As of the drafting of this Response, the entire Stupidity Blog can still be found at http://www.pepijnvanerp.nl/2016/02/the-continuing-stupidity-of-ruggero-santilli/ in which it is noted that the blog has been updated with new content on numerous occasions and continuing commentary, even after this lawsuit was filed.

[3] Although the actual language of the letter identified the quoted statement as "the whole concept of anti-matter is bullshit." The typo was recognized, and Defendants were on notice when their agent responded to the letter and corrected the typo to show that the actual quote was "the whole concept of anti-matter light is bullshit." *See Doc. 077 pp. 1228-1233).*

[4] As of the drafting of this Response, the entire Kadeisvili Blog can still be found at http://www.pepijnvanerp.nl/articles/finding-jerdsey-v-kadeisvili-or-mailing-with-ruggero-m-santilli/ in which it is noted that the blog has been updated with new content on numerous occasions and continuing commentary even after this lawsuit was filed.

[5] It must be noted that no Motion to Strike or Dismiss was filed requesting that the Shenanigans Blog be stricken from the Complaint for failure to comply with pre-suit notice.

9. Each of the three blogs continued to be updated with new content well after the filing of this subject lawsuit and/or its original publication date. *See Doc. 002, Ex. A-C*.

10. In fact, in the update of August 25, 2016, to the Kadeisvili Blog, Defendants provide new content and state that the whole point of the article was to accuse Prof. Santilli of committing "scientific fraud." *See* ***Ex. I*** *and* ***Composite Ex. N @ p 8***.

11. Also on August 25, 2016, Van Erp posted the Shenanigans Blog in which he acknowledges that Plaintiffs' pre-suit letter provides notice of the inaccurate statements about, not only the defamatory claims that Plaintiff is a "fringe scientist," "mad professor" and "cunning scam artist," but also his untrue claims that Santilli's theories on anti-matter light is bullshit and that Plaintiffs' company, Magnegas, is a pyramid scheme. With regards to the claim that Prof. Santilli is a "mad professor" and "cunning scam artist," VanErp states that he published those statements about Prof. Santilli because he thinks "it's in the public interest to warn potential buyers of these instruments that those cannot work as claimed." *See* ***Ex. J and Composite Ex. N @ p 5***. (Excerpt from Doc. 002, Exhibit C). Van Erp goes on to exclaim "[t]he funny thing about this whole episode is that the complaints of mr. S. do not address the main point of the 'Kadeisvili'-article, namely that I accuse him of scientific fraud…." *Id*.

12. On November 2, 2016, Defendants update the Shenanigans Blog to incorporate and cite to a newly published defamatory blog entitled "Sued by Santilli" (hereinafter "Sued Blog") **Ex. K and Composite Ex. N @ p 5**.

13. On September 28, 2017, Plaintiffs filed the most Second Amended Complaint (Doc. 030) and again attached the three aforementioned blogs as Exhibits A through C, which incorporates the November 2, 2016 Sued Blog. In this amended Complaint, Tortious Interference with a Business Relationship was added for both Prof. Santilli and Carla Santilli. *Id*.

14. In each of the Defendants' blogs about Plaintiffs, Van Erp points out that he controlled the commentary about the blogs and would decide what commentary was published and what commentary was kept from the public. See **Ex. L and Composite Ex. N @ p 1-2**. *See Doc. 072, pp. 13 and 15.* To go further, Van Erp admits to disallowing commentary posts that he suspects are Plaintiffs. *Id*.

15. Also, within the comments of those aforementioned blogs, a plethora of defamatory content about Plaintiffs were added well after the original complaint had been filed and the two original notices to the Defendants that complied with Florida Statute 770.01. *See* ***Ex.*** **I, J, L and Composite Ex. N**.

16. As part of the published blogs, Van Erp recognized that there would be investors and purchasers of products produced by Plaintiffs and their companies. *See* ***Ex. J*** showing language about protecting those that fall victim to sciency sounding non-sense. See also **Ex. E, M and Composite Ex. N @ p 5)**.

17. Van Erp claims that he believes it is his civic duty to warn others from buying or believing in what he perceives as bad science, even though he is not a scientist himself and has no qualifications to debunk any scientist, no matter how farfetched the science may sound to him. *See* ***Ex. I and Composite Ex. N @ p 5,*** and in which VanErp states that it is in the public interest to warn potential buyers being his duty). See **Ex. E, M and Composite Ex. N** (also found at: https://en.wikipedia.org/wiki/Pepijn_van_Erp#Personal

18. Van Erp has attempted to use his blog site to gain further speaking engagements and to find part-time employment. See **Ex. E**.

MEMORANDUM OF LAW

I. Florida Statute 770.01 does not Apply to Defendants.

Under Florida law, it has been accepted that Florida Statute 770.01 only applies to media defendants from which the one case that has considered a "blogger" as a media defendant refused to classify all bloggers as media defendants for purposes of protection under 770.01. *Comins v. Vanvoorhis*, 135 So.3d 545, (Fla. 5th DCA 2014)("We are not prepared to say that all blogs and all bloggers would qualify for the protection of section 770.01, Florida Statutes").

In *Comins*, the court provided a thorough analysis of Florida Statute 770.01 and gave reasons that, in that case, the Defendant blogger was afforded protection under the pre-suit notice provision. *Id*. The Court looked at an article published by Judge Posner that described the use of blogs as media compared to the traditional news media of the past. *Id* at 558-559. Part of the description was the recognition that the blogger usually has a specialty in the particular area of the blog. *Id* at 558 ("bloggers thus can specialize in particular topics" with "esoteric knowledge"). The largest recognition, by Judge Posner, of a blogger as belonging to modern media was the fact that a blogger provides a mechanism for almost instantaneous correction of inaccurate information through an unfiltered comments section, stating:

> Not only are there millions of blogs, and thousands of bloggers who specialize, but, what is more, readers post comments that augment the blogs, and the information in those comments, as in the blogs themselves, zips around blogland at the speed of electronic transmission. This means that corrections in blogs are also disseminated virtually instantaneously, whereas when a member of the mainstream media catches a mistake, it may take weeks to communicate a retraction to the public.

Id. at 558-559.

The Court, after considering the above criteria, stated:

> There are many outstanding blogs on particular topics, managed by persons of exceptional expertise, to whom we look for the most immediate information on recent developments and on whom we rely for informed explanations of the meaning of these developments. Other blogs run the gamut of quality of expertise, explanation and even-handed treatment of their subjects. We are not prepared to say that all blogs and all bloggers would qualify for the protection of section 770.01,

Florida Statutes….

Id.

Van Erp is unqualified, as an individual, to be considered a blogger meeting the criteria as a media defendant. He has no education or training to consider him a scientist or one that is qualified to comment on the credibility of science. Instead Van Erp is an online mercenary that attacks those that disagree with him and his cohorts' beliefs, from which he attempts to discredit science to gain notoriety for small speaking engagements and part-time employment. *See* ***Ex. E.***

Further, Van Erp picks and chooses what commentary is provided in response to his publications through control of his blog's comments section. See **Ex. B**, **Ex. G** and **Composite Ex. N @ pp. 1-2**. In fact, he admits, in his own comments to his defamatory blogs about Plaintiffs, that he has specifically omitted comments that defend the Plaintiffs. *Id*. Therefore, the two issues upon which the Court in *Comins* focused to qualify a blogger as a "media defendant," 1) expertise of the blogger and 2) open comment for readers, is defeated by Van Erp's uneducated, biased and self-censored blog. For all of the above reasons, pre-suit notice required under Florida Statute 770.01 does not apply to the Defendants as bloggers.

II. The Purpose of Florida Statute 770.01 has been met through pre-suit correspondence and post-suit defamatory content is actionable.

Even if this Honorable Court was to find that Defendants qualify as a media Defendant, Plaintiffs complied with pre-suit notice provision of Florida statute 770.01. The purpose of Florida Statute 770.01 is to put a media defendant on notice of the defamatory content and allow the media defendant an opportunity to retract and/or remove the publication in order to mitigate damages and avoid litigation. *Tobinick v. Novella*, 2015 WL 1191267 (S.D. Fla. 2015)("Florida's Supreme Court has identified the opportunity to avoid litigation entirely as an important purpose of the pre-suit notice provision…" citing *Ross v. Gore,* 48 So.2d 412, 415 (Fla. 1950). The two different

correspondences sent to Defendants, prior to this cause of action, provides specific language that notifies them of the defamatory publications with enough specificity and is the exact language in which remuneration is being requested. See **Ex. H**. After suit was filed, Defendants continued their defamatory campaign, from which pre-suite notice under the statute is not required as it would not further the purpose of the statute. See **Ex. I, J K and Composite Ex. N.**

a. Language provides the specificity needed to serve purpose of Statute

The first correspondence sent to Defendants was an e-mail from Carla Santilli in which she outlines the necessity for the removal of the content within the "Stupidity Article." See **Ex. H & L**. Carla explains accusations that Prof. Santilli is continuing in stupidity is extremely harmful to his profession as a scientist, that Van Erp's claims that their companies MagneGas Corp. and Thunder Energies, are fake and fraudulent harms Plaintiffs financially and that accusations that Prof. Santilli has a prejudice against the Jewish religion is improper. *See also, Def. Ex. 15, with attached Ex.81 and 82 to Carla Santilli's deposition*.

The second correspondence was a letter from retained counsel for the Plaintiffs in which it outlines the three statements Defendants admit are actionable under the pre-suit provision of Florida Statute 770.01 (a fringe scientist, mad professor and scam artist). *See Def. Ex. 15 with attached Ex. 84 and 85 to Carla Santilli's deposition*. However, Defendants completely gloss over the fact that the letter also specifically outlines the accusations and/or insinuations that Prof. Santilli is running a "pyramid scheme" through his companies and provides notice of the defamatory language claiming that that Prof. Santilli's theories on anti-matter light is bullshit. Ironically, in the Shenanigans Blog, Defendants point out that the pre-suit letter of the attorney not only pointed out the defamatory claims that Plaintiff is a "fringe scientist," "mad professor" and

"cunning scam artist," but also claims that Santilli's theories on anti-matter light is bullshit and that Plaintiffs' company, Magnegas, is a pyramid scheme. See **Composite Ex. N**.

Therefore, there are more actionable defamatory content than what is requested by Defendants in their Motion for Summary Judgment. Pre-suit notice was provided the Defendants outlining that their publications stating that Santilli's scientific theories are bullshit and his company is a pyramid scheme, along with false statements about the stupidity of Prof. Santilli, that their companies are fraudulent or fake and that Prof. Santilli has a prejudice against the Jewish religion are all actionable under the pre-suit notice provision under 770.01. It is expected that Defendants did not mention this as they knew there was no argument that such language was mere opinion or hyperbole. Regardless of their reasoning, Defendants have chosen not to request Summary Judgment regarding those statements outside of their alleged deficiencies with statements that Prof. Santilli is a "fringe scientist," "mad professor" or "cunning scam artist." Therefore, Defendants cannot request dispositive relief under the current Motion on the basis that such other statements are mere opinion or rhetorical hyperbole as it would deprive Plaintiffs' ability to respond.

b. Defamatory statements by media defendant after suit has been filed does not require pre-suit notice under the statute.

Beyond just the above defamatory statements that were outlined in the pre-suit correspondence to Defendants under 770.01, Defendants also published defamatory statements after suit had been filed, which is actionable. The purpose of Fla. Stat. 770.01 is to provide a media defendant the ability to mitigate damages and avoid litigation. *Tobinick v. Novella*, 2015 WL 1191267 (S.D. Fla. 2015) ("Florida's Supreme Court has identified the opportunity to avoid litigation entirely as an important purpose of the pre-suit notice provision…" citing *Ross v. Gore,* 48 So.2d 412, 415 (Fla. 1950). Once suit has been filed, Plaintiffs are not required to send further correspondence

for continuing published defamatory content from the same parties as that would not further the purpose of the statute, would require multiple law suits between the same parties and simply does not make sense. *Id*.

The original Complaint for this cause of action was filed in state court on August 5, 2016 with allegations based on the Stupidity Blog and the Kadeisvili Blog.[6] After the original complaint was filed, on August 25, 2016, Defendants provided an update with defamatory content in the Kadeisvili Blog. Further, on August 25, 2016, Defendants published the defamatory "Shenanigans Blog" *See* ***Ex.*** **J**. Then, on November 2, 2016 Defendants published another defamatory blog (the "Sued Blog" **Ex. K**.), from which Defendants provided a link within their "Shenanigans Blog" to the "Sued Blog" (**Composite Ex. N @ p 5**).

i. The New Content that is Defamatory and Actionable.

Within the August 25, 2016 update to the Kadeisvili Blog, Defendants provide the new defamatory content while explaining that Prof. Santilli was complaining about the Kadeisvili Blog and stating: "strangely enough [Santilli's] complaint doesn't mention a word about the main point of this article, that he committed scientific fraud." **Ex. I and Composite Ex. N @ p 8**. Defendants then point the readers to the "Stupidity Blog" via a link. *Id*.

As to the August 25th "Shenanigans Blog," Defendants acknowledge and reiterate and republished the same defamatory content that was outlined in pre-suit notice and further explains that "with regards to the claim that Prof. Santilli is a 'mad professor' and 'cunning scam artist,'" he published those statements about Prof. Santilli because he thinks "it's in the public interest to warn potential buyers of these instruments that those cannot work as claimed." **See Ex. J** and **Composite Ex. N @ p (3-5, 7-8)**. (Excerpt from Doc. 002, Exhibit C). Further, within the

[6] The Kadeisvili Blog contained comments and updates that overcame any statute of limitations on the date of the original filing of the complaint.

Shenanigans Blog, VanErp exclaims "[t]he funny thing about this whole episode is that the complaints of mr. S. do not address the main point of the 'Kadeisvili'-article, namely that I accuse him of scientific fraud…."

Within the November 2nd "Sued Blog," Defendants state that Prof. Santilli is selling "telescopes which simply cannot work" and further states that "he [Santilli] does this out of a completely wrong understanding of science ('a mad professor') or perhaps, more cynical, just to make money fully aware that what he states cannot be true ('a cunning scam artist')." **Ex. K and Composite Ex. N @ p 11-12**. The blog continues from which Defendants acknowledge they had been sued and state, "it could have been worse. Other critics of Santilli have been met with antisemitic (sic) slander." *Id*. The "Sued Blog" goes on to accuse and insinuate that Prof. Santilli is anti-Semitic. *Id*. The last sentence sums up the defamatory blog by stating "I'm not bothered too much by silly complaints, empty threats, websites that slander me, or even this summons. The dark side of Santilli, which I have shown in this post, is something which upsets me much more. And it is about time this comes to an end. *Id*.

III. The defamatory language used by Defendants is not Hyperbole or Opinion

It is agreed that the Courts recognize when one uses language that is mere hyperbole or pure opinion it is not actionable in a defamation case. "Pure opinion is sometimes characterized as 'rhetorical hyperbole.'" *Fortson v. Colangelo*, 434 F.Supp.2d 1369, 1378 (S. Dist. Fla 2006). In Fortson the Court stated:

> Where rhetorical hyperbole is employed, the language itself "negate[s] the impression that the writer was seriously maintaining that [the plaintiff] committed the [particular act forming the basis of the alleged defamation]…." The distinction between fact and pure opinion/rhetorical hyperbole is a critical one; to be actionable, a defamatory publication must convey to a reasonable reader the impression that it describes actual facts about the plaintiff or the activities in which he participated.

Id at 1379 (citations omitted). "As the law recognizes, reasonable people read words contextually." *Id* at 1385. The Court in *Fortson* went on to recognize that context of the statements is paramount and cited Florida case precedent as the following:

> [T]he test to be applied in determining whether an allegedly defamatory statement constitutes an actionable statement of fact requires that the court 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 of the circumstances surrounding the statement, including the medium by which the statement is disseminated and the audience to which it is published.

Id at 1379 (citing *From v. Tallahassee Democrat, Inc*., 400 So.2d 52, 57 (Fla. 1st DCA 1981)).

In the case at bar, although one might be able to interpret calling one a "fringe scientist" or a "mad professor" as being hyperbole, when looking at the body of work in its entire context, there is no doubt that Defendants are conveying to the reader that Prof. Santilli is a fraud, his science is easy to debunk and that he is trying to defraud potential buyers through products of his companies.

"Under Florida law, the distinction between fact and pure opinion and rhetorical hyperbole is a critical one, for purpose of analyzing a defamation claim; to be actionable, a defamatory publication must convey to a reasonable reader the impression that it describes actual facts about the plaintiff or the activities in which he participated. *Id*. Defendants refer to Plaintiffs as a "Scam Artist" and as running a "pyramid scheme" within the Stupidity Blog in **Ex L;** the Defendants specifically accuse the Plaintiffs of committing scientific fraud in the August 25, 2016 update to the Kadiesvili Blog in **Ex. I;** and Defendants admitted that they are warning readers not to invest in or by products from the Plaintiffs different business interests in **Ex. J.** Further, throughout <u>each</u> of the blogs there is commentary, controlled by the Defendants, that indicate that Prof. Santilli is anti-Semitic when it is not true. Prof. Santilli's son-in-law is Jewish by right and he has made it

clear in his testimony and in his Declaration that he does not have any prejudice against those that practice the Jewish religion, but instead that it is his belief that there is a small fanatical group that believes that Santilli is in contradiction of Einstein and that small group is made up of primarily those that are Jewish. See **Composite Ex. N** and Ruggero Santilli deposition testimony at p. 87:9-25 through p. 94:1-25. See also **Ex. B** and **Ex. A**

IV. A Question of Fact Exists as to Actual Malice

It is admitted that Prof. Santilli is a "public figure," as defined by case precedent, that requires a showing of actual malice, as first determined by *N.Y. Times v. Sullivan* 376 U.S. 254 (1964). The threshold to show actual malice has been met in the case at bar. The Courts have provided that, in order to show actual malice, Plaintiff must show that Defendants either had actual knowledge that the statements published were false or published with reckless disregard for the truth. *Id.* There is no doubt that Defendants have published these defamatory attacks with reckless disregard for the truth.

Defendants wage attacks on Prof. Santilli's reputation as a scientist on two fronts. First, Defendants recklessly state that Prof. Santilli has committed scientific fraud by using fake journals and also using pseudonyms to publish articles that support his own published work. See **Ex. I, L and Composite Ex. N @ p 16 and 17**. Second, Defendants attack the science behind products Prof. Santilli has designed, which are used by his companies. See **Ex. J, I and Composite Ex. N @ p 3, 9 and Ex. O**. With regard to the attacks claiming that Prof. Santilli commits scientific fraud, Defendants have made these allegations out of thin air and then created their own evidence to support their baseless allegations. It is evident that Defendants turn a blind eye to the truth by claiming that Prof. Santilli publishes in fake journals, but then tries to justify it on the second front, Defendants publish baseless attacks regarding Plaintiffs' telescope and magnecules. Not one

person has done any research or provided qualified findings to debunk the science behind those products that would substantiate the false allegations by Defendants. **Ex. B**.

Similarly, with regards to attacks upon Plaintiffs' companies or their profession in running pyramid schemes or fraudulent companies, the SEC requires very significant compliance with federal guidelines and regulations and Plaintiffs have complied with those guidelines throughout to insure their companies are legitimate. *Id*. Defendants have not provided any credible source or evidence that Plaintiffs' companies are fraudulent, fake or a pyramid scheme and if such did exist, you could be assured that a criminal investigation would be instituted by the SEC. In fact, Van Erp admitted that he was not qualified to label Defendants' companies as a "pyramid scheme." As such, Defendants' blanket allegations that Plaintiffs are running a pyramid scheme, and/or fake or fraudulent companies is published with reckless disregard for the truth.

Finally, Defendants make baseless allegations that Prof. Santilli is anti-Semitic in almost all blogs and articles. These allegations are completely unfounded and, even the most cursory of investigating would have revealed that Prof. Santilli has worked closely with persons of the Jewish faith, have good friends and has a son-in-law that all have Jewish ties. **Ex. B**. Prof. Santilli has explained that there is a fanatical group that believes that he is in contradiction to theories of Einstein and have attacked his work on that basis. *Id*. Prof. Santilli has explained that a large percentage of that small fanatical group is Jewish that Defendants take out of context to claim that he is anti-Semitic. *Id*.

If Defendants could simply make defamatory comments about public figures and then use creative and false information from which they claim to rely upon, it would basically bar all defamatory action against a public figure when that public figure would have to show reckless disregard for the truth. That is in derogation of the intent of the law.

V. Tortious Interference Should Survive as a Separate Count

It must be noted that Carla Santilli is not bringing a claim for defamation in this action, which makes Defendants argument regarding same moot along with their misplaced claim that this cause of action is barred by the "single cause of action" rule. Carla Santilli, along with Prof. Santilli, are bringing a claim for tortious interference with a business relationship. *See Doc 030*, (Second Amended Complaint). Plaintiffs have been successful in showing (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). The evidence provides support for each of the elements necessary to bring this cause of action. The first element is met as VanErp has dissuaded investors from investing in the Plaintiffs' companies and interfered with the purchase of products sold by their companies. **See Ex B and G**. The second and third element are met as Van Erp states that he is purposely attempting to warn people away from products that Santilli is attempting to sell through his companies. See **Composite Ex. N, Ex. J, M and E**. Finally, the fourth element is met as the Plaintiffs have realized financial damage as a result of Defendants' intentional interference with the known business relationships. **See Ex. B and G**.

VI. Conclusion and Request for Oral Argument

As can be seen, Defendants' Motion for Summary Judgment is misplaced and/or flawed because it requests this Court to weigh the credibility of the sworn testimony between a world-renowned scientist and Defendants that are not qualified to attack the credibility of Plaintiff. Further, the facts of the case does not support a dispositive motion when applied to the law. Finally, even if this Honorable Court was to agree with Defendants in this Motion for Summary

Judgment, they have limited their argument to only three statements that Prof. Santilli is a "fringe scientist" "mad professor" and/or "scam artist." Those are just three of many statements that are alleged to be actionable as Defendants do not provide any motion before this Court regarding noticed defamatory statements that Prof. Santilli's theories on antimatter light is bullshit, that Plaintiffs' companies are a pyramid scheme, that Prof. Santilli's theories are stupid, that their companies are fake or fraudulent and that Prof. Santilli is anti-Semitic. Further, even beyond these pre-suits noticed defamatory statements, Defendants provide defamatory content, post-suit, that would not require pre-suit notice, to include statements that Prof. Santilli commits scientific fraud, publishes in fake journals, accepts fake awards and is anti-Semitic. Because Defendants do not argue these points, they are outside consideration of this Honorable Court and Summary Judgment on those issue is improper. Because the issues within this Defendant's Motion are complex and fact intensive, it is Plaintiffs' belief that oral argument would help this Honorable Court come to a just decision and request same.

WHEREFORE, Plaintiffs request this Honorable Court to provide oral argument on these matters but if this Honorable Court Denies such request in the alternative this Court Deny Defendant Israel's Motion for Summary Judgment based on written submissions.

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Respectively Submitted,

/s/Joseph E. Parrish

Joseph E. Parrish
THE PARRISH LAW FIRM, P.A.
Fla. Bar No. 0690058
P.O. Box 1307
Brandon, FL 33509
Telephone: (813) 643-4529
Facsimile: (813) 315-6535
E-mail: jparrish@theparrishfirm.com
admin@theparrishfirm.com

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Court's CM/ECF filing Portal to counsel for Defendant Van Erp and Frank Isreal: James J. McGuire, Esquire and James B. Lake, Esquire, Thomas & Locciero, PL, 601 South Boulevard, Tampa, Florida 33606 at jmcguire@tlolawfirm.com, jlake@tlolawfirm.com; on this 28th day of June, 2018.

*/s/Joseph E. Parrish*_____
Attorney