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**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

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| JOHN PAUL MAC ISSAC,<br><br>Plaintiff/Counterclaim Defendant Below, Appellant/Appellee,<br><br>v.<br><br>POLITICO LLC, ROBERT HUNTER BIDEN, and BFPCC, INC.,<br><br>Defendants/Counterclaim Plaintiff Biden Below, Appellees/Appellant Biden. | Case No. 448,2024<br><br>On Cross-Appeal from the Superior Court of the State of Delaware in C.A. No. S22C-10-012 RHR |

# CROSS-APPELLANT ROBERT HUNTER BIDEN'S OPENING BRIEF

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Dated: February 4, 2025

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## NATURE OF THE PROCEEDINGS

This appeal arises out of a now-dismissed defamation claim filed by Plaintiff John Paul Mac Isaac against Cable News Network, Inc. ("CNN"), Politico LLC, Robert Hunter Biden ("Mr. Biden"), and the Biden for President Campaign Committee, Inc. On August 8, 2023, Mr. Biden answered the Second Amended Complaint in Delaware Superior Court and counter-sued Plaintiff, asserting six counterclaims: (1) invasion of privacy by intrusion; (2) invasion of privacy by publication of private facts/matters; (3) conspiracy to invade privacy by intrusion; (4) conspiracy to invade privacy by publication of private facts/matters; (5) aiding and abetting an invasion of privacy by intrusion; and (6) aiding and abetting an invasion of privacy by publication of private facts/matters. The only issue on Mr. Biden's cross-appeal is whether the statute of limitations has run on his counterclaims against Plaintiff.

As asserted in Mr. Biden's countersuit (A111–A121), Mac Isaac invaded Mr. Biden's privacy when Mac Isaac unlawfully accessed Mr. Biden's data from a laptop purportedly dropped off at Mac Isaac's computer repair shop and then published that private data by giving it to several individuals and, further, by publicly discussing its contents in his book, *American Injustice: My Battle to Expose the Truth* (Post Hill Press 2022). Mac Isaac's in-depth revelations about accessing the data, reviewing the data's contents, and what he saw were described for the first time in his book,

published on November 22, 2022. Mac Isaac continued to publish more information in 2022 and 2023 by going on a national media tour to promote his book and disclose additional contents from the laptop's data, highlighting his ongoing and continuing invasions of Mr. Biden's data and privacy. At no time did Mr. Biden grant Mac Isaac permission to review, copy, or disseminate any electronically stored data ever created, received, or maintained by Mr. Biden.

On September 7, 2023, Mac Isaac moved to dismiss Mr. Biden's counterclaims on the basis that the two-year statute of limitations on such claims had run by the time Mr. Biden filed his counterclaims in 2023. *See* A060, A140–A142. Mr. Biden opposed, arguing that until Mac Isaac's November 22, 2022 publication of his book, *American Injustice: My Battle to Expose the Truth*, Mr. Biden was blamelessly unaware of the particularity with which Mac Isaac invaded, manipulated and disseminated Mr. Biden's private data. Therefore, the statute of limitations on Mr. Biden's invasion of privacy claims by intrusion and publication of private facts could not begin to run until at least November 2022 (not to mention Mac Isaac's continuing torts and publications in the media in 2022 and 2023). *See* A162–A163.

Delaware law recognizes a two-year statute of limitations for invasion-of-privacy claims, and Delaware courts apply the "time of discovery" rule to such invasions. *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 319 (Del. 2004). Applying this standard, the Superior Court concluded that Mr. Biden knew his

privacy had been invaded and was thus on notice that the laptop's data had been revealed, compromised, and disseminated as of October 14, 2020, following a *New York Post* article discussing the laptop. *See* Sept. 30, 2024 Del. Super. Ct. Order (Dkt. 323) ("Order") at 21. Thus, the Superior Court held that the statute of limitations expired on October 14, 2022, and Biden's counterclaims initially filed in March 2023 fell outside the limitations period. *Id.* The Superior Court therefore granted Plaintiff's motion to dismiss Mr. Biden's counterclaims. In rejecting Mr. Biden's argument, the lower court did not examine the aspects of Mr. Biden's private life that Mac Isaac made public for the first time in his book in November 2022, or grapple with the new revelations Mac Isaac made about Mr. Biden for the first time in the media in 2022 and 2023, thereby extending the applicable limitations period.

After Mac Isaac elected to appeal the lower court's dismissal of his defamation claims (*the subject of the other appeal in this matter by the Plaintiff/Counterclaim Defendant below*), this cross-appeal followed.

## SUMMARY OF THE ARGUMENT

1. The Superior Court erred in granting Plaintiff's motion to dismiss Mr. Biden's counterclaims for invasion of privacy based on Delaware's "time of discovery" rule for the two-year statute of limitations, which states that the statute of limitations does not start until a plaintiff has reason to know that a wrong has been committed. If a plaintiff could have discovered the alleged wrong with due diligence, the statute of limitations will continue to run. The Superior Court erred in two ways: (1) by finding that Mr. Biden could have known of Mac Isaac's acts of intrusion when, in fact, such acts were undiscoverable prior to the publication of Mac Isaac's tell-all book in November 2022; and (2) by failing to analyze Mr. Biden's claim for invasion of privacy by publication under the appropriate standard.

2. *First*, the Superior Court dismissed all six of Mr. Biden's counterclaims based on the conclusion that the statute of limitations began to run when "Biden knew that information on his laptop was revealed on October 14, 2020, following the publication of the *New York Post* article." (Order at 21.) However, before the release of Mac Isaac's tell-all book on November 22, 2022, Mr. Biden could not have discovered Mac Isaac's acts of intrusion that were divulged *for the first time* in the book. For example, prior to the book's publication, there was no opportunity for Mr. Biden to learn that Mac Isaac: (i) created a "clone" of the data in July 2019; (ii) "sent a hard drive containing the data to his father, Steve Mac Isaac" in September 2019;

or (iii) "sent a copy of the data to Rudy Giuliani's lawyer, Robert Costello on August 28, 2020." (A140–A141.) Mac Isaac also details in his book, with painstaking specificity, previously unknown aspects about how he worked with one individual (Yaacov Apelbaum) in October 2020 to try to create a "forensic image" of the data and distributed copies to others including his father, his uncle (who sent summaries of the data to journalists and Republican members of Congress), a lawyer for Rudy Giuliani (Costello), and a close friend for safekeeping. (A098–A106.) The book offers Mr. Biden the first glimpse of the extent and manner to which Mac Isaac rummaged through Mr. Biden's financial documents, even reviewing one specific file titled, "*income.pdf*" that Mac Isaac described as "begging to be clicked open." (A092 (quoting *American Injustice* at 17).) The totality of newly disclosed details in Mac Isaac's book constitutes never-before-known intrusions into Mr. Biden's privacy that were impossible for Mr. Biden to discover prior to the book's release.

3. By contrast, relying solely on the October 14, 2020 *New York Post* article that described snippets of Mr. Biden's sensitive data, Mr. Biden could have no knowledge—and was blamelessly unaware—of the many acts of intrusion that Mac Isaac took in 2019, 2020, 2021, and 2022 with respect to Mr. Biden's private data, including the unauthorized review and copying of, and tampering with, his data prior to the book's release in 2022. (A173–A173.) Mr. Biden had no knowledge of (or any way to learn), for instance, that Mac Isaac provided Giuliani's attorney,

Robert Costello, with "instructions on how to safely access [the data] and avoid connecting it to the internet." (A166 (quoting *American Injustice* at 64.) Nor could Mr. Biden have known, based on the *New York Post*'s reporting, that Mac Isaac himself agreed to help Costello "create bootable copies of the drive" so other detractors of Mr. Biden could gain access to the data.[1] (A166, quoting *American Injustice* at 65).)

4. *Second*, the Superior Court failed to separately analyze the statute of limitations for Mr. Biden's claim for invasion of privacy by *publication* (Count 2), and instead applied the statute of limitations analysis for invasion of privacy by intrusion to all claims—which the Court determined began to run on October 14, 2020 following publication of the *New York Post* article. *See* Order at 21. While the statute of limitations for invasion by intrusion began when Mr. Biden knew about (or should have discovered) Mac Isaac's intrusion into his private data, the statute of limitations for invasion by publication did not begin until Mr. Biden knew about (or could have discovered) the *publication* of such intrusions. *See* A173–A174. Invasion of privacy by publication is committed when "[o]ne who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of privacy, if the matter publicized is of a kind that (a) would be highly

[1] Robert Costello would later share a copy of the laptop data with Donald Trump associate Steve Bannon, who later passed a copy of the data to others, including Guo Wengui and Jack Maxey. (A166 n.4.)

offensive to a reasonable person, and (b) is not of legitimate concern to the public." *Barker v. Huang*, 610 A.2d 1341, 1350 (Del. 1992). Each time Mac Isaac made a new matter public, he committed an invasion by publication. *See id.* By finding that the two-year clock for such claims began on October 14, 2020, the Superior Court incorrectly concluded that the limitations period began to run *before* much of the information was even published—i.e., before Mac Isaac's torts of invasion by publication were even complete.

5. Accordingly, the Court erred in finding that the statute of limitations for each of Mr. Biden's claims expired on October 14, 2022, even before publication of Mac Isaac's tell-all book.

## STATEMENT OF FACTS

Mac Isaac, by whatever means (either, as he claims, by a person entering his shop, or by some other potentially nefarious method), came into possession of certain electronic data, at least some of which belonged to Mr. Biden, in or before April 2019.[2] (A091, ¶ 4.) Mac Isaac claims that he obtained lawful possession of data belonging to Mr. Biden because it was contained on a laptop left at his repair shop (The Mac Shop) in Delaware. His theory is that, under the terms of a repair authorization form, because Mr. Biden did not return to the repair shop to retrieve his equipment within 90 days, Mac Isaac became the rightful owner, not just of the equipment, but of all its underlying data.[3] (A135–A136.) The form states that The Mac Shop will make every effort to "secure your data" when performing any "data recovery." (A064–A065.)

Upon obtaining the equipment, Mac Isaac revealed for the first time in his book, *American Injustice: My Battle to Expose the Truth*, published on November 22, 2022, that he began viewing and accessing Mr. Biden's most sensitive, private

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[2] This is not an admission by Mr. Biden that Mac Isaac (or others) in fact possessed any particular "laptop" containing electronically stored data belonging to Mr. Biden. Rather, Mr. Biden acknowledges that at some point, Mac Isaac obtained electronically stored data, some of which belonged to Mr. Biden. (A091 n.1.)

[3] The Repair Authorization form (A064–A065) states that "*equipment* left with the Mac Shop after 90 days of notification of completed service will be treated as abandoned." ((A091– A092, ¶ 5) (emphasis added).) Regardless, the repair shop's form and its language are not the subject of the instant appeal.

data as early as April 13, 2019—the day after allegedly receiving the equipment. (A093, ¶ 9.) Mac Isaac readily admitted, in 2022, that he "dove into the laptop every evening," and that he "searched emails and files, matching places and names with dates and times," all of which left him "speechless." (A093–A094, ¶¶ 11–13 (quoting *American Injustice* at 29, 52).) For example, he examined a file titled "*income.pdf*," containing Mr. Biden's private tax-related information. (A094, ¶ 12.) The data Mac Isaac reviewed and shared, including photos and videos of Mr. Biden naked "hitting a crack pipe" and having intercourse, was of such a private nature that it made him "uncomfortable." (A093–A094, ¶¶ 10, 14 (quoting *American Injustice* at 30, 46).) In his own words, Mac Isaac admitted the data he came into possession of, and the files he directly accessed, were "none of [his] business." (A093, ¶ 10 (quoting *American Injustice* at 15).) At no time did Mr. Biden grant Mac Isaac permission to review, copy, or disseminate for Mac Isaac's own purposes—unrelated to restoring the laptop machine—any electronically stored data ever created, received, or maintained by Mr. Biden (regardless of how Mac Isaac came into possession of it). (A095, ¶ 16.)

As first revealed in his book, Mac Isaac admitted and described taking intentional and deliberate steps to distribute copies of the personal data to various people, *without* Mr. Biden's consent. (A095, ¶ 17.) For example, Mac Isaac discussed working with an individual named Yaacov Apelbaum in October 2020 (at

his home in Delaware) to attempt to create a forensic image of the data in Mac Isaac's possession, and allowed Apelbaum to retain a copy of that data thereafter. (A096, ¶ 19.) He shared copies of the data with his father, Richard Steve Mac Isaac (A096, ¶ 22); with his friend Kristen Riley, to whom he gave a "secret" copy of the drive for Rudy Giuliani, "should something happen to" Mac Isaac (A097, ¶ 26 (quoting *American Injustice* at 76)); with his uncle, Ronald J. Scott, who sent summaries of the data to journalists and Republican members of Congress (A098, ¶ 27); and with Robert Costello, with whom he "agreed" to FedEx a copy of the hard drive, knowing full well that Costello was working with then-President Trump's lawyer and ally, Rudy Giuliani, "to get the information to the right places." (A098–A099, ¶¶ 29–33 (quoting Josh Boswell, *EXCLUSIVE: Former Trump aide posts online a searchable database containing a huge trove of more than 120,000 emails from Hunter Biden's abandoned laptop, calling them 'a modern day Rosetta Stone of white and blue collar crime'*, DAILY MAIL (May 17, 2022), and Andrew Rice & Olivia Nuzzi, *The Sordid Saga of Hunter Biden's Laptop*, N.Y. MAG. (Sept. 12, 2022)).)

The copies of Mr. Biden's private data that Mac Isaac discussed in his book, *and provided to others* (in part or in full), included emails and other communications about Mr. Biden's foreign business dealings, photos of Mr. Biden using drugs and without clothes, and media content involving intimate relations with other adults. (A093.) The Superior Court, as well as Mac Isaac in his motion to dismiss the

counterclaims, seemingly ignore the fact that *none* of this was known to Mr. Biden by virtue of the *New York Post* article in October 2020 (or revealed to him thereafter). By contrast, until the book's publication in 2022, Mr. Biden did not know, and could not have known, that Mac Isaac watched videos of "Hunter [] performing a sex act while filming himself and lighting and hitting a crack pipe at the same time" (A094, ¶ 14 (quoting *American Injustice* at 30)), or that Mac Isaac rummaged through his financial documents, even reviewing a file, "*income.pdf*," that Mac Isaac described as "begging to be clicked open." (A094, ¶ 12 (quoting *American Injustice* at 17).)

As revealed for the first time in the book, Mac Isaac also conspired with his family in September 2020 to provide a copy of the data to a former Fox News executive (Ken LaCorte) to share with then-host Tucker Carlson. (A098, ¶ 28.) He also provided Costello "instructions on how to safely access it and avoid connecting it to the internet" (A100, ¶ 32 (quoting *American Injustice* at 64)), and agreed to help Costello create "bootable copies of the drive" so others could gain access. (A101, ¶ 35 (quoting *American Injustice* at 65).) As described in the book, in September 2020, Mac Isaac also informed U.S. Senator Ron Johnson's staff that he possessed data he claimed came from Mr. Biden's abandoned "laptop." (A101, ¶ 36.)

Mac Isaac initially wished to keep his role in accessing Mr. Biden's data a secret, and a few days prior to the October 14, 2020 *New York Post* story, Costello reassured Mac Isaac that the *New York Post* had "agreed to keep [Mac Isaac's name]

out." No one would know he was "the source" for it all. (A102, ¶ 39 (quoting *American Injustice* at 72).) Yet, the data Mac Isaac copied, manipulated, and distributed would ultimately become the source material used by many Trump allies, including Garrett Ziegler—who uploaded troves of Mr. Biden's purported, unverified data to marcopolousa.org and BidenLaptopMedia.com, including nearly 9,000 photos and videos. (A103, ¶ 41.)

As recently as 2023, having now decided that he wanted his story out there in the public, Mac Isaac continued to unabashedly make social media and podcast appearances revealing his intrusion into, and publication of, Mr. Biden's sensitive data, even participating in a campaign rally for then-U.S. Senate candidate Jackson Lahmeyer, where attendees could purchase a thumb drive containing Mr. Biden's data. (A108–A110, ¶¶ 54–57.) In April 2023, Mac Isaac appeared alongside Giuliani to accept an honor at a Republican fundraising event, which billed him as the "Hunter Biden Laptop Repairman" and sold sponsorships for as much as $25,000. (A110, ¶ 58.) Disregarding the pain and suffering he caused Mr. Biden (Mr. Biden has been chased and harassed by people yelling "Laptop from Hell" and "pedophile" and has had to move homes three times), Mac Isaac has continued to promote and re-publish the contents of Mr. Biden's sensitive and private data that he unlawfully reviewed, copied, and disseminated. (*See* A105, A110–A111, ¶¶ 46, 57–58, 60.)

## ARGUMENT

### I. Until Mac Isaac's November 22, 2022 Publication of His Tell-All Book, Mr. Biden Was Blamelessly Unaware of the Particularity with which Mac Isaac Invaded and Disseminated His Private Data, Including the Scale and Scope of Mac Isaac's Intrusions into Mr. Biden's Most Intimate Information.

#### A. Question Presented

Whether the Superior Court erred by granting Mac Isaac's motion to dismiss Mr. Biden's counterclaims on the basis that Biden was on sufficient notice that his privacy was invaded by both intrusion and publication on October 14, 2020, following the release of a *New York Post* article, and as such the applicable statute of limitations for such claims expired on October 14, 2022.

#### B. Standard of Review

A trial court's decision to grant or deny a motion to dismiss is reviewed *de novo*. *Page v. Oath Inc.*, 270 A.3d 833, 842 (Del. 2022); *Brookfield Asset Mgmt., Inc. v. Rosson*, 261 A.3d 1251, 1262 (Del. 2021).

#### C. Merits of the Argument

Mr. Biden's counterclaims were timely brought under Delaware's two-year statute of limitations for invasion of privacy claims. Because Mr. Biden was blamelessly unaware—and had no way of knowing—the scale and scope of Mac Isaac's intrusion of Mr. Biden's private data *until* the revelations contained in Mac Isaac's tell-all book were published in November 2022, the statute of limitations on

his invasion of privacy claims could not begin before November 22, 2022 (and certainly did not begin on October 14, 2020, when the *New York Post* released one story about a purported laptop left at Mac Isaac's repair shop).

As the lower court noted, the statute of limitations for invasion of privacy claims is two years, and Delaware courts follow the "time of discovery" rule for such invasions. (*See* Order at 21.) *See also Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 319 (Del. 2004) ("the statute will begin to run only 'upon the discovery of facts constituting the basis of the cause of action *or* the existence of facts sufficient to put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery of such facts.'") (internal quotations omitted); 10 Del. C. Ann. § 8119. "This tenet, well recognized in Delaware, states that, in cases where a plaintiff is 'blamelessly ignorant' of an 'inherently unknowable injury,' that statute of limitations does not begin to run until the 'harmful affect first manifests itself.'" *White v. Riego*, 2005 WL 516850, at *2 (Del. Super. Ct. Mar. 3, 2005) (in denying motion to dismiss invasion-of-privacy claims, the court found that because defendant concealed his bad acts, "plaintiffs were blamelessly unaware of the torts until [they] discovered the pornographic images" at issue, and further that "the injury, namely shame and embarrassment, was 'inherently unknowable' until this discovery."). The statute of limitations for civil conspiracy and aiding-and-abetting is the same as the underlying tort (here, two years).

Critically, where the plaintiff "could have discovered the alleged wrong with due diligence, the statute of limitations will continue to run." (Order at 21 (citing *Shockley v. Dyer*, 456 A.2d 798, 799 (Del. 1983).) The facts must be viewed in a light most favorable to plaintiff. *Shockley*, 456 A.2d at 799.

The Superior Court erred in concluding that Mr. Biden "could have discovered" the scope or even basic details about Mac Isaac's unlawful invasion of his privacy—and dissemination thereafter—by virtue of the October 14, 2020 *New York Post* article. Most problematically, the lower court found that "[a]t that moment [of the article's publication], Biden *knew* his privacy had been invaded and was on notice that the data . . . had been compromised and disseminated." (Order at 21 (emphasis added).) But this assumption about what Mr. Biden "knew" in 2020 is wrong and contradicted by the article itself—a factor the lower court did not evaluate in its opinion.

Specifically, prior to the publication of Mac Isaac's book in November 2022, there was no opportunity for Mr. Biden to learn, for example, that Mac Isaac: (i) first accessed Mr. Biden's private data (without consent) on or around April 13, 2019; (ii) created a "clone" of the data in July 2019; (iii) "sent a hard drive containing the data to his father, Steve Mac Isaac" in September 2019; or (iv) "sent a copy of the data to Rudy Giuliani's lawyer, Robert Costello on August 28, 2020." (A172.) The book also sets out, with painstaking specificity, previously unknown details about

how Mac Isaac worked with a forensic "expert" (Apelbaum) in October 2020 to try to create a forensic image of the data that would then be distributed to others, including his father, uncle, a close friend, and Costello—who eventually provided and shared the data with the *New York Post*. (A173.) The October 2020 article fails to reveal the totality of newly disclosed details in Mac Isaac's book, which contains descriptions of intrusions into Mr. Biden's privacy that were impossible for Mr. Biden to discover prior to the book's release—regardless of how much due diligence he did (or could do) at the time.

Critically here, *no amount* of due diligence by Mr. Biden following the publication of the October 2020 article would have enabled him to discover, or become aware, that Mac Isaac had gone to extreme lengths to copy, preserve a "secret copy" with a friend, compromise, or disseminate his private data. (A166.) In fact, the *New York Post* article makes no reference to the extensive and particular details described by Mac Isaac in his book, for the first time, to create and distribute "bootable copies" of Mr. Biden's private data "so [that] other people . . . could have access." (A183.)

The lower court summarily concludes (in just one paragraph of analysis) that "information on his laptop was revealed on October 14, 2020." (Order at 21.) But that assertion significantly oversimplifies the extent to which Mac Isaac unlawfully accessed, copied, and disseminated Mr. Biden's data—and the great lengths he took

to do so—which are revealed for the first time in his tell-all book, *American Injustice: My Battle to Expose the Truth*. Mr. Biden's lack of knowledge was *not* due to a lack of diligence; in fact, Mac Isaac admitted he "provided no information about Biden to the NY Post" for its October 14, 2020 article, nor did he "confirm any of the information presented" therein. (A137.) So, of course, Mr. Biden had no way to learn the extent and severity to which Mac Isaac intruded into his privacy, or of Mac Isaac's coordinated efforts with others, like Apelbaum, Scott, Giuliani, and Costello, to disseminate the data, until publication of such facts in *American Injustice* and in subsequent national media interviews.

Even if Mr. Biden had been trying to learn more about what Mac Isaac had done following the article's release in 2020, Mac Isaac took the spotlight off himself by refusing to confirm any information for the *New York Post*'s October 2020 piece, thereby preventing others, including Mr. Biden, from learning anything further at the time about Mac Isaac's activities. And because the civil conspiracy and aiding-and-abetting claims are based on Mac Isaac's same invasions by intrusion and publication of private facts/matters, each would have the same statute of limitations date as described above, and they too, would not have begun to run until November 2022.

## II. The Superior Court Failed to Separately Analyze the Statute of Limitations for Mr. Biden's Claim for Invasion of Privacy by Publication, Which Was Committed Upon Publication of Mac Isaac's Tell-All Book, Released in November 2022.

### A. Question Presented

Whether the Superior Court failed to analyze Mr. Biden's claim for invasion of privacy by publication of private matters under the appropriate standard.

### B. Standard of Review

A trial court's decision to grant or deny a motion to dismiss is reviewed *de novo*. *Page v. Oath Inc.*, 270 A.3d 833, 842 (Del. 2022); *Brookfield Asset Mgmt., Inc. v. Rosson*, 261 A.3d 1251, 1262 (Del. 2021).

### C. Merits of the Argument

The Superior Court failed to separately analyze the statute of limitations for Mr. Biden's claim for invasion of privacy by publication of private facts/matters (Count 2), and instead applied its finding of the invasion of privacy by intrusion (Count 1) statute of limitations, which the Court determined began upon the October 14, 2020 publication of the *New York Post* article, to the invasion by publication claim. (Order at 21.) While the statute of limitations for invasion by intrusion began when Mr. Biden knew about (or should have discovered) Mac Isaac's *intrusion* into his private data, the statute of limitation for invasion by publication did not begin until Mr. Biden knew about (or could discover) the *publication* of the facts thereof. (*See* A077–A079.)

Invasion of privacy by publication is committed when "[o]ne who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of privacy, if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public." *Barker v. Huang*, 610 A.2d 1341, 1350 (Del. 1992). Accordingly, each time Mac Isaac made a new matter public, he committed an invasion by publication. *See id*.

Critically here, Mac Isaac's tell-all book published information about Mr. Biden's private life (and discussed accessing contents thereof), obtained by virtue of Mac Isaac's intrusion into Mr. Biden's private data, that was previously unknown to the public (including Mr. Biden).[4] For example, Mac Isaac describes in his book surveying three years of Mr. Biden's taxable income, and reveals for readers the amounts Mr. Biden earned in 2013, 2014, and 2015. (*See* A178.) In another instance, Mac Isaac describes for readers, for the first time, videos that he watched

[4] Importantly, as Mr. Biden briefed below, he was (and continues to be) a private person who has never held any public office. It is reasonably conceivable that his personal photos, videos, finances, and communications are of no legitimate public concern. Mac Isaac cannot manufacture a "legitimate public concern" by injecting a private matter into the public domain and improperly giving publicity to the matter, thereby creating the public interest that he asserted below as a defense. (*See* A186 (citing *Brittingham v. Topping*, 2014 WL 4382998, at *13 (Del. Super. Ct. July 31, 2014), *aff'd*, 2015 WL 1604851 (Del. Apr. 7, 2015) (finding that something needs to be "a subject of general interest and of value and concern to the public *at the time of publication*." (emphasis added)).))

of Mr. Biden allegedly "performing a sex act while filming himself and lighting and hitting a crack pipe at the same time," or engaged in other adult activities. (A178.) Through the publication of this information in his book, Mac Isaac made the matters public, thus committing the tort of invasion of privacy by publication. *See Spence v. Cherian*, 135 A.3d 1282, 1288 (Del. Super. Ct. 2016) ("The Restatement provides that a matter has been given publicity when it is 'made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge.' It is not an invasion of privacy to communicate a fact concerning one's private life to just one person, or even to a small group.") (quoting *Atamian v. Gorkin*, 1999 WL 743663, at *3 (Del. Super. Ct. Aug. 13, 1999) (citing Restatement (Second) of Torts § 652D cmt. a).)

By finding that the two-year clock for invasion by publication of private facts/matters began on October 14, 2020, the Superior Court incorrectly concluded that the limitations period began to run *before* much of the information was even published—*i.e.*, before Mac Isaac's torts of invasion by publication had even been committed.

## CONCLUSION

For the foregoing reasons, the Court erred in finding that the statute of limitations for each of Mr. Biden's claims expired on October 14, 2022, even before the publication of Mac Isaac's book in November 2022.

Dated: February 4, 2025

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Jessica L. Needles, Esq., hereby certify that on this 4th day of February, 2025, I caused to be served *Cross-Appellant Robert Hunter Biden's Opening Brief*, the supporting documents, and this Certificate of Service via File & Serve*Xpress* upon all counsel of record.


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Case No. S22C-10-012 RHR

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

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| JOHN PAUL MAC ISAAC,<br>Plaintiff/Counterclaim<br>Defendant, | ) | |
| v. | ) | C.A. No. S22C-10-012 RHR |
| CABLE NEWS NETWORK, INC.,<br>POLITICO LLC, and BFPCC, INC.,<br>Defendants, | ) | |
| and | ) | |
| ROBERT HUNTER BIDEN,<br>Defendant/Counterclaim<br>Plaintiff. | ) | |

Submitted: April 16, 2024
Decided: September 30, 2024

*Upon Defendant Cable News Network, Inc.'s Motion to Dismiss,*
GRANTED

*Upon Defendant Politico LLC's Motion to Dismiss,*
GRANTED

*Upon Defendant BFPCC, Inc.'s Motion to Dismiss,*
GRANTED

*Upon Plaintiff/Counterclaim Defendant John Paul Mac Isaac's Motion to Dismiss Counterclaims,*
GRANTED

*Upon Defendant/Counterclaim Plaintiff Robert Hunter Biden's Motion for Summary Judgment,*
GRANTED

*Upon Defendant Robert Hunter Biden's Motion to Strike Subpoenas,*
MOOT

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ROBINSON, J.

This case began as a defamation claim filed by plaintiff against Cable News Network, Inc., Politico LLC, Robert Hunter Biden, and the Biden for President Campaign Committee, Inc. Biden countersued plaintiff, asserting invasion-of-privacy and related claims. This decision grants CNN's, Politico's, and Biden for President Campaign Committee, Inc.'s motions to dismiss, grants Biden's motion for summary judgment, and grants plaintiff's motion to dismiss Biden's counterclaims. Another pending motion—Biden's motion to strike third party subpoenas—is now moot.

## BACKGROUND

The following background is drawn from the largely undisputed facts in the pleadings and the documents they incorporate by reference. John Paul Mac Isaac ("Mac Isaac") was the owner of The Mac Shop, Inc., a computer repair store in Wilmington, Delaware (the "Mac Shop").[1] He claims that in April 2019, Robert Hunter Biden ("Biden"), the son of the former vice president, sought the recovery of information from several damaged computers and enlisted Mac Isaac's help. Mac Isaac states he had Biden sign a repair authorization that acknowledged that "[e]quipment left with the Mac Shop after ninety days of notification of completed service will be treated as abandoned and you agree to hold the Mac Shop harmless

[1] D.I. 86, Second Amend. Compl. ("Compl.") ¶ 11.

for any damage or loss of property" (the "Repair Authorization").[2] Mac Isaac claims he asked Biden to provide Mac Isaac with an external hard drive to which Mac Isaac could transfer the recovered data from a damaged laptop computer, and that Biden did so on April 13.[3] Later that day, Mac Isaac called Biden and advised Biden that he had recovered the data.[4] On April 17, Mac Isaac sent an electronic invoice to Biden for his services in the amount of $85.00.[5] Biden did not pay the invoice or return to the Mac Shop to retrieve the hard drive.

Mac Isaac accessed Biden's personal data on his laptop. Mac Isaac claims that he needed to review the data to preserve it and became alarmed at some of the information he found. In late July 2019 through October 14, 2020, Mac Isaac had various interactions with the Federal Bureau of Investigation ("FBI"), U.S. Congressional staff members, and Robert Costello ("Costello"), an attorney for Rudolph Giuliani, who was an associate of then-president Donald J. Trump. In December 2019, in response to a federal grand jury subpoena, Mac Isaac turned over the laptop and hard drive to the FBI. Mac Isaac kept a copy of the hard drive for himself. In August 2020—after the contents of the hard drive, which Mac Isaac believed were relevant to then-president Trump's impeachment hearing, were not

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[2] *Id.*, Ex. A.
[3] *Id.* ¶ 18.
[4] *Id.* ¶ 19.
[5] *Id.* ¶ 20.

disclosed during the hearing—Mac Isaac provided a copy of the recovered data and the Repair Authorization to Costello. Mac Isaac claims he told Costello that he wished to remain anonymous. That request was not honored.

On October 14, 2020, the New York Post published an article titled, "Smoking-gun Email Reveals How Hunter Biden Introduced Ukrainian Businessman to VP Dad."[6] The article provides many details allegedly stemming from "a massive trove of data recovered from a laptop computer."[7] That article did not name Mac Isaac, but it initially published a photograph of the Repair Authorization that included the name of the Mac Shop.

Despite his request to remain anonymous, Mac Isaac did not remain quiet. Whether he was motivated to set the record straight or to benefit from his role in a political controversy, Mac Isaac gave several media interviews, including one with defendant CNN. He claims these interviews were done under duress because he was ambushed by the media and was so intimidated by them that he gave several interviews. Several weeks later, to share his side of the story, Mac Isaac's attorney submitted an article to the Washington Post and the Wall Street Journal, neither of

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[6] *Id.* ¶ 36; *see also* Emma-Jo Morris & Gabrielle Fonrouge, New York Post, *Smoking-gun Email Reveals How Hunter Biden Introduced Ukrainian Businessman to VP Dad* (Oct. 14, 2020), https://nypost.com/2020/10/14/email-reveals-how-hunter-biden-introduced-ukrainian-biz-man-to-dad/.

[7] *Id.*

which published the article. Mac Isaac eventually published it on a website, justthenews.com.

On October 19, 2020, in response to the disclosure of the contents of the laptop, over fifty former intelligence officials released a "Public Statement on the Hunter Biden Emails" that expressed their concern that the release of the emails "has all the classic earmarks of a Russian information operation."[8] Mac Isaac claims that the defendants' reporting and comments on this statement defamed him, by, among other things, suggesting that he was a Russian agent.

Mac Isaac initially filed his complaint on October 17, 2022 and named, in addition to the current defendants, United States Representative Adam Schiff. He filed a first amended complaint on January 20, 2023 and then filed a motion for leave to file a second amended complaint. Meanwhile, several of the defendants filed motions to dismiss. Before this court could act on those motions, the United States removed the case to federal court under the Westfall Act after certifying that Representative Schiff was acting in his official capacity as a member of Congress when he made the allegedly defamatory statements. In March 2023, the District Court for Delaware granted the United States' motion to dismiss and remanded the case to this court.

[8] Compl., Ex. F.

Mac Isaac filed his second amended complaint ("SAC") on August 2, 2023 alleging defamation, defamation per se, aiding and abetting, and conspiracy against all defendants. In response, CNN and Politico filed motions to dismiss. After conducting limited discovery, Biden filed a motion for summary judgment. This court conducted oral argument with defendants CNN, Politico, and Biden. The Biden for President Campaign Committee, Inc. ("BFPCC") was delayed in receiving and responding to the SAC, but eventually also filed a motion to dismiss. With the benefit of that oral argument, and the briefing of BFPCC's motion, further oral argument on BFPCC's motion to dismiss is not necessary.

## STANDARDS OF REVIEW

### A. Motions to Dismiss

Under Superior Court Civil Rule 12(b)(6), the court will dismiss a plaintiff's complaint if it fails to state a claim upon which relief can be granted.[9] "Dismissal is warranted only when 'under no reasonable interpretation of the facts alleged could the complaint state a claim for which relief might be granted.'"[10] The court, however, need not "accept every strained interpretation of the allegations proposed by the plaintiff."[11] For defamation claims specifically, early dismissal for failure to state a claim "not only protects against the costs of meritless litigation, but provides

[9] Del. Super. Ct. Civ. R. 12(b)(6).
[10] *Murray v. Mason*, 244 A.3d 187, 192 (Del. Super. Ct. 2020) (quoting *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006)).
[11] *Id.*

assurance to those exercising their First Amendment rights that doing so will not needlessly become prohibitively expensive."[12]

## B. Motions for Summary Judgment

Summary judgment is granted only if the moving party establishes that there are no genuine issues of material fact in dispute and judgment may be granted as a matter of law.[13] Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if there is a need to clarify the application of law to the specific circumstances.[14] As such, "[t]he purpose of summary judgment is to avoid the delay and expense of a trial where the ultimate fact finder, whether judge or jury, has nothing to decide."[15] All facts are viewed in a light most favorable to the non-moving party. [16]

## DISCUSSION

A plaintiff may recover damages when a media outlet or an individual makes a statement that tends to harm the plaintiff's "reputation, diminish [the plaintiff's] esteem, respect, goodwill, or confidence…"[17] A communication is defamatory if the

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[12] *Fairbanks v. Roller*, 314 F. Supp. 3d 85, 89 (D.D.C. 2018) (cited by *Owens v. Lead Stories, LLC*, 2021 WL 3076686, at *9 (Del. Super. Ct. July 20, 2021)).
[13] *Preston Hollow Cap. LLC v. Nuveen LLC*, 2022 WL 2276599, at *1 (Del. Super. Ct. June 14, 2022); *see also* Super. Ct. Civ. R. 56(c).
[14] *Id.*
[15] *Merrill v. Crothall-Am., Inc.*, 606 A.2d 96, 99 (Del. 1992).
[16] *Preston Hollow Cap. LLC*, 2022 WL 2276599, at *1.
[17] *Spence v. Funk*, 396 A.2d 967, 969 (Del. 1978).

statement would deter third persons from associating or dealing [with the plaintiff]."[18] To successfully bring a defamation claim under Delaware law:

> Plaintiff must plead and ultimately prove that: 1) the defendant made a defamatory statement; 2) concerning the plaintiff; 3) the statement was published; and 4) a third party would understand the character of the communication as defamatory.[19]

If the statement meets these elements of defamation, the court must decide whether the plaintiff is a public or private figure. If the plaintiff is a public figure, even for a limited purpose, the "plaintiff must [also] plead and prove that the statement is false, and that the defendant made the statement with actual malice."[20] When the plaintiff is a private figure, the plaintiff will recover if the publisher negligently publishes a libelous matter.[21] The question of whether a plaintiff is a public or private figure is one of law, not fact.[22] In considering the truthfulness of a publication, the court will consider whether "the 'gist' or 'sting' of the article was true."[23]

## A. CNN's Motion to Dismiss

Mac Isaac alleges that CNN defamed him twice: (1) during an October 16, 2020 interview with Representative Adam Schiff on the CNN show, *The Situation*

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[18] *Id.*
[19] *Page v. Oath Inc.*, 270 A.3d 833, 842 (citing *Doe v. Cahill*, 884 A.2d 451, 463 (Del. 2005)).
[20] *Id.*
[21] *Gannett Co., Inc. v. Re*, 496 A.2d 553, 556–57 (Del. 1985).
[22] *Agar v. Judy*, 151 A.3d 456, 477 (Del. Ch. 2017) (citing Restatement (Second) of Torts § 580A cmt. c).
[23] *Gannett Co.*, 496 A.2d at 557 (citing *Williams v. WCAU–TV*, 555 F.Supp. 198, 202 (E.D. Pa. 1983)).

*Room* with Wolf Blitzer, and (2) in an online article.[24] During his appearance on *The Situation Room*, Blitzer asked Schiff, "Does it surprise you at all that this information that Rudy Giuliani is peddling very well could be connected to some sort of Russian Government disinformation campaign?" Schiff responded:

> **Well we know that this whole smear on Joe Biden comes from the Kremlin.** That's been clear for well over a year now that they've been pushing this false narrative about the Vice President and his son. And, you know, the idea that the President, that the White House Counsel, and others were made aware that Giuliani was being used by **Russian intelligence** and using **Russian intelligence** in the sense of meeting with **an agent of the Kremlin** and pushing out this **Kremlin false narrative. . . . But clearly, the origins of this whole smear are from the Kremlin.**[25]

And, later in the interview, after acknowledging that the intelligence community had not provided more information about these allegations, Schiff stated, "But we do know this: the Russians are once again actively involved in trying to denigrate the Vice President."[26] Mac Isaac argues that because he was well-known as the source of the laptop, Schiff's statements imputed that Mac Isaac was an agent of the Kremlin, and that CNN defamed him by publishing this interview.

The online article included a statement from the assistant FBI director, Jill C. Tyson ("Tyson"). On October 19, 2020, the then-director of national intelligence,

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[24] Marshall Cohen *et al.*, *US Authorities Investigating if Recently Published Emails are Tied to Russian Disinformation Effort Targeting Biden* (Oct. 16, 2020), CNN, https://www.cnn.com/2020/10/16/politics/russian-disinformation-investigation/index.html.
[25] Compl. ¶¶ 66, 67 (emphasis added in Compl. and reproduced here).
[26] *Id.* ¶ 69.

John Ratcliffe, stated on a national news program that there was no intelligence to support the claim that the contents of the laptop were part of a Russian disinformation campaign. The next day, Tyson wrote a letter stating that the FBI had nothing to add to that statement. When CNN published an article on these events, it mentioned "a computer repair store owner in Delaware" and wrote that "Tyson suggested that the review was continuing."[27] Mac Isaac points out that the letter did not say that the review was continuing, and argues that by publishing this statement, CNN defamed him.

CNN argues that the motion to dismiss should be granted because (1) these statements do not concern Mac Isaac, (2) they are protected by the Fair Report Privilege, and (3) because Mac Isaac does not plead facts that show CNN acted with actual malice. CNN points out that the sentence about the continuing review immediately preceded a direct quotation from Tyson's letter that stated if additional intelligence is developed, the FBI would consider the need for further briefing.

A plaintiff must show that a publication, which tends to harm his reputation, was "concerning him."[28] These publications must mention the plaintiff either directly or indirectly.[29] A reader must be able to infer from the contents of the

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[27] D.I. 89, Def. Cable News Network, Inc.'s Mot. to Dismiss Pl.'s Second Am. Compl. ("CNN's Mot. to Dismiss"), Ex. 3.
[28] *Page*, 270 A.3d at 842.
[29] *See Helicopter Helmet, LLC v. Gentex Corp.*, 2018 WL 2023489, at *4 (D. Del. May 1, 2018).

publication that the statement is referring to the plaintiff.[30] In *Helicopter Helmet, LLC v. Gentex Corp.*, the Delaware District Court found that an advertisement using the phrase "Is your helmet a dangerous counterfeit?" was not actionable because the advertisement did not mention any helicopter helmet manufacturer by name.[31] In that case, the plaintiffs argued that only a small number of companies manufacture helicopter helmets and therefore the statement must be understood as referring to the plaintiffs. The court, however, dismissed these claims because the advertisement must mention the plaintiffs "either directly or obliquely."[32]

In the present case, Mac Isaac argues he was defamed by a statement that did not mention him. In the statement, neither he nor his business is named or referenced. While the statement mentions several people, none are Mac Isaac. There are no statements or descriptions that would direct or lead a listener to understand that Mac Isaac was somehow involved in the alleged Russian disinformation campaign. Without more information or context, no reasonable person would have reason to believe that Mac Isaac was involved in Russian disinformation. Nor can it be reasonably inferred that the statements actually defame Mac Isaac. Once he turned over the laptop to the FBI, members of Congress, and Costello, the controversy over the laptop took on a life of its own and Mac Isaac's identity faded into the

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[30] *See Williams v. Howe*, 2004 WL 2828058, at *4 (Del. Super. Ct. May 3, 2004).
[31] *Helicopter Helmet*, LLC, 2018 WL 2023489, at *4.
[32] *Id.*

background. Although a CNN viewer may be aware that Mac Isaac was the person who turned over Biden's laptop, neither CNN nor its guests state that he was part of the disinformation campaign. Therefore, Mac Isaac cannot meet the burden to show that CNN's statements concerned him or were defamatory towards him.

Even if this court finds the statements concerned Mac Isaac, his defamation claim must fail because Mac Isaac is a limited public figure and must therefore plead facts that show CNN acted with actual malice. To be considered a "limited public figure" a plaintiff must "thrust [himself] to the forefront of particular public controversies[33] in order to influence the resolution of the issues involved."[34] He must "invite attention and comment."[35] Here, Mac Isaac clearly thrust himself into this controversy. He now says that he wished to remain anonymous, but he put events into motion that he surely knew would spin out of control. He argues in his briefs that the two initial interviews he gave to the media—one of which was nearly an hour long—shortly after the New York Post published the article were coerced and not voluntary because he was ambushed by the reporters. But he took many other acts that put himself into the controversy. He tried to get his version of events

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[33] *See* 50 Am. Jur. 2d Libel and Slander § 72 ("A public controversy is not simply a matter of interest to the public; rather, it must be a real dispute, the outcome of which affects the general public or some segment of it in an appreciable way.").
[34] *Gertz*, 418 U.S. at 345; *see also Page*, 270 A.3d at 843 ("The Court extended this high bar to public figures in *Curtis Publishing Co. v. Butts*, and to what are generally known as limited purpose public figures in *Gertz v. Robert Welch.*").
[35] *Gertz*, 418 U.S. at 345.

published by the Wall Street Journal and the Washington Post, and then later published the article online. He claims his motivations for getting his statement published was to "set the record straight" and to "get the true story out to people."[36] He also admits that he was frustrated that then-president Trump did not have access to the laptop's data during his impeachment trial.[37] As to his ongoing public involvement—including publishing a book about the laptop controversy and attending conferences where he sells copies of the information from the laptop—he claims he is only doing so because he needs to earn a living to replace the income he lost when he closed the Mac Shop. But, regardless of his motivations, Mac Isaac voluntarily thrust himself into the controversy, thereby making himself a limited public figure.

For a limited public figure to maintain an action for defamation, he or she must plead actual malice. Although Mac Isaac uses the term "actual malice" in his SAC, those words in and of themselves are not sufficient to meet the pleading burden. As the Delaware Supreme Court noted, "[i]n a case where the defendant is an institution, the state of mind must be 'brought home' to the person or persons in the 'organization having responsibility for the publication....'"[38] Here, Mac Isaac

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[36] D.I. 121, Pl.'s Ans. Br. in Opp'n to Def. Politico LLC's Mot. to Dismiss Pl.'s Second Am. Compl. ("Pl.'s Ans. Br. to Politico's Mot. to Dismiss") at 26.
[37] Compl., Ex. D.
[38] *Page*, 270 A.3d at 844 (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 287 (1964)).

does not name any person or persons at CNN who were responsible for any false statements; his general allegations of a wide-ranging conspiracy are insufficient to demonstrate actual malice. For these reasons, CNN's motion to dismiss is GRANTED.

## B. Politico's Motion to Dismiss

Mac Isaac claims the following headline Politico published on October 19, 2020 defamed him: "Hunter Biden story is Russian disinfo, dozens of former intel officials say."[39] In the body of the article, the only reference to Mac Isaac is to a "Mac shop owner in Delaware."[40] Mac Isaac admits in his briefing that the Politico article is substantially true, but takes issue with the headline, and argues that many readers browse headlines only.[41] He points out that the headline is false because it states that the story *is* Russian disinformation, while the letter signed by the national security experts only states that they *suspected* disinformation. Mac Isaac claims that the headline is "propaganda" and is used to "deliberately spread false allegations for the purpose of injuring a cause…or a person (Plaintiff and others)."[42] Further, Mac

[39] Pl.'s Ans. Br. to Politico's Mot. to Dismiss at 13.
[40] Compl. ¶ 108.
[41] Pl.'s Ans. Br. to Politico's Mot. to Dismiss at 11–12.
[42] *Id.* at 15.

Isaac admits if the court deems the headline as non-defamatory, he does not have a claim.[43]

Regardless of whether the headline is true or false, it does not mention Mac Isaac, either directly or indirectly. Furthermore, the sub-headline states, "More than 50 former intelligence officials signed a letter casting doubt on the provenance of a New York Post story on the former vice president's son," which clarifies the headline. As with CNN's motion to dismiss, even if the statements were defamatory or concerned Mac Isaac, he is a limited public figure and he has not adequately pled actual malice. Therefore, Politico's motion to dismiss is GRANTED.

## C. BFPCC's Motion to Dismiss

Mac Isaac claims that he was defamed by BFPCC officials and by candidate-Joseph Biden himself in five separate statements, each of which is quoted in the SAC. The statements all claim the contents of the laptop are Russian disinformation but do not mention Mac Isaac or his business. The SAC provides a date for only one of these statements, October 14, 2020, but it also provides hyperlinks to various articles that supposedly include the defamatory statements. These hyperlinks are problematic. The one paragraph with a date in this count alleging defamation by BFPCC, Paragraph 136, has a link to a lengthy Politico article dated October 14,

[43] *Id.* ("Had Politico used a different (accurate) headline or if they had changed it once it came to light that the headline clearly did not match the message of the Article, Plaintiff may not have a valid claim against them.").

2020 that contains a quotation from a Biden campaign official. The court will *assume* the statement was made the same day the article was published, since that was the date of the New York Post article. Paragraphs 136 and 137 provide a link to an article dated November 12, 2020 on Substack written by Glenn Greenwald that mentions the two supposedly defamatory statements, but does not say when they were made. Paragraph 139 contains a link to an article on the National Review website titled, "Sure Seems Joe Biden Knowingly Lied about the Hunter Biden Laptop Story." When the court visited that website, it displayed a date of March 17, 2022. The article contains the quotation cited in the SAC, but it only says that Joseph Biden made that statement in 2020. Finally, the link in Paragraph 140 does not work, and Paragraph 140 does not otherwise provide the date the statement was supposedly made. Simply put, the SAC—and the initial complaint and first amended complaint—does not set forth the exact dates these statements were made. And, to the extent Mac Isaac relies on the hyperlinks to advance substantive claims, they do not provide further clarity.

Clarifying the specific dates when the allegedly defamatory statements were made is important because one of arguments BFPCC raises in its motion to dismiss is that the claims were filed outside the two-year statute of limitations. In their briefing, the parties seem to agree all five statements were made between October 14, 2020 and October 24, 2020. Mac Isaac filed the initial complaint on October 17,

2022, which was more than two years after the only date mentioned in the count against BFPCC. That complaint, however, did not name BFPCC in the caption, but did claim defamation and defamation per se against BFPCC in the body of the complaint in Count 5. BFPCC was not served with that complaint. Mac Isaac concedes he made a clerical error by omitting BFPCC in the caption. Mac Isaac filed a first amended complaint on January 20, 2023 and the SAC on August 2, 2023, both of which properly named BFPCC in the caption.

The court is well within its purview to grant BFPCC's motion to dismiss because Mac Isaac filed the initial complaint—the one that does not properly name BFPCC in the caption—two years after the only date alleged in the initial complaint, October 14, 2020. But, the motion to dismiss should also be granted because Mac Isaac filed the first amended complaint—that fixed the "clerical" problem that omitted BFPCC from the caption—on January 20, 2023, well more than two years after the last defamatory statement (as agreed to by the parties in their briefing) on October 25, 2020. Mac Isaac argues that Superior Court Civil Rule 15(c) allows him to relate back to the initial complaint. This Rule allows an amendment if three criteria are met. In this case, Mac Isaac cannot meet the third requirement in 15(c)(3) because he cannot establish that BFPCC knew or should have known of his clerical error. This situation was not one where there was a mistake as to the identity of the party—Mac Isaac's initial complaint sets out a claim against BFPCC in the body, so

he clearly knew the party he intended to sue. He also failed to request a praecipe to issue a summons to BFPCC of the flawed initial complaint, which would have put BFPCC on notice that it was intended to be included in this litigation.

Finally, even if the claim against BFPCC were decided on the merits, this court would grant the motion to dismiss because—consistent with the rulings on the other defendants' motions to dismiss—the statements, even considered in the light most favorable to Mac Isaac, are not defamatory and are not about Mac Isaac. And Mac Isaac, as a limited public figure, has not shown actual malice. Therefore, BFPCC's motion to dismiss is GRANTED.

## D. Mac Isaac's Motion to Dismiss Biden's Counterclaims

Biden initially filed counterclaims against Mac Isaac on March 17, 2023 while this case was briefly in federal court. After the federal court remanded this case to this court, Biden filed six counterclaims against Mac Isaac: (1) invasion of privacy by intrusion, (2) invasion of privacy by publication of private facts/matters, (3) conspiracy to invade privacy by intrusion, (4) conspiracy to invade privacy by publication of private facts/matters, (5) aiding and abetting an invasion of privacy by intrusion, and (6) aiding and abetting an invasion of privacy by publication of private facts/matters.

Biden claims that Mac Isaac invaded his privacy when Mac Isaac accessed the laptop's data and that he published that private data when he gave it to several

people, and that he continues to do so. Biden points out that while some contents were shared in 2019 and 2020, Mac Isaac continued to share more information later in 2022 and 2023. For example, Mac Isaac's initial disclosures contained details about Biden's financial matters and ties to Ukraine. But in later articles and interviews, Mac Isaac disclosed additional content, including videos of Biden engaging in sexual acts while allegedly under the influence of drugs.[44]

Mac Isaac filed a motion to dismiss Biden's counterclaims arguing that Biden is outside the statute of limitations for these types of claims. Mac Isaac argues that the statute of limitations for the invasion of privacy by intrusion and related claims ran on either April 12, 2021—two years after he first accessed the laptop's contents—or, in the alternative, on August 28, 2022—two years after Mac Isaac gave the data to Costello. For the invasion of privacy by publication and related claims, Mac Isaac argues the statute of limitations expired on October 14, 2022—two years after the New York Post published the article about the laptop.

Biden responds that he was "blamelessly unaware of the particularity with which Mac Isaac handled his private data, including the scale and scope of Mac Isaac's repeated strategic and intentional disclosures of his most intimate information" until Mac Isaac published a book on November 22, 2022 that provided

[44] D.I. 88, Def. Robert Hunter Biden's Ans. to Pl.'s Second Am. Compl. ("Biden's Ans. and Countercl.") ¶ 55.

additional details of how he accessed the laptop.[45] Biden also points out that Mac Isaac continues to publish and re-publish private facts about him.[46] Therefore, Biden argues, his counterclaims are not barred by the statute of limitations.

The statute of limitations for each of the above referenced causes of actions is two years.[47] Delaware follows the "time of discovery rule" which states that the statute of limitations does not start until a plaintiff has reason to know that a wrong has been committed.[48] If a plaintiff could have discovered the alleged wrong with due diligence, the statute of limitations will continue to run. [49]

The statute of limitations is not tolled when a defendant continues to publish and republish. In the present case, Biden knew that information on his laptop was revealed on October 14, 2020, following the publication of the New York Post article. At that moment, Biden knew his privacy had been invaded and was on notice that the data on his laptop had been compromised and disseminated. As such, the statute of limitations expired on October 14, 2022—that is, Biden was well outside the statute of limitations when he filed his counterclaims in federal court on March

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[45] D.I. 124, Def./Countercl. Pl. Robert Hunter Biden's Ans. Br. in Opp'n to Pl./Countercl.-Def. John Paul Mac Isaac's Mot. to Dismiss Countercls. ("Biden's Ans. to Pl's. Mot. to Dismiss Countercls.") at 1.
[46] *Id.* at 12.
[47] *Clark v. Delaware Psychiatric Ctr.*, 2011 WL 3762038, at *1 (Del. Super. Ct. Aug. 9, 2011); *see also* 10 *Del. C.* § 8119.
[48] *Pack & Process, Inc. v. Celotex Corp.*, 503 A.2d 646, 651 (Del. Super. Ct. 1985).
[49] *Shockley v. Dyer*, 456 A.2d 798, 799 (Del. 1983).

17, 2023. For these reasons, Mac Isaac's motion to dismiss Biden's counterclaims is GRANTED.

## E. Biden's Motion for Summary Judgment

Mac Isaac alleges Biden defamed him during a CBS interview on April 4, 2021. During this interview, Biden said:

> There could be a laptop out there that was stolen from me. It could be that I was hacked. It could be that it was the—that it was Russian intelligence. It could be that it was stolen from me. Or that there was a laptop stolen from me.

Mac Isaac claims that this statement was defamatory, and that the defamation continued when CNN later published an article containing a video with clips of the CBS interview, cited above, and a second CBS interview.[50] Mac Isaac argues that Biden's statements were slander per se because they maligned Mac Isaac's business and profession, and that they fall into the category of defamation-by-implication. He claims that through discovery he can prove that Biden was lying because Biden knew the laptop they were discussing was indeed the one Biden left with Mac Isaac.

[50] D.I. 171, Pl./Countercl. Def. John Paul Mac Isaac's Ans. Br. in Opp'n to Def./Countercl. Pl. Robert Hunter Biden's Mot. for Summ. J. ("Pl.'s Ans. Br. to Biden's Mot. for Summ. J.") at 6; Paragraph 155 of the Compl. includes Biden's statement, but it also contains—prefaced by a "*See*"—a website link to a CNN article about the interview that also contains a video of excerpts of similar statements made by Biden. Until argument and briefing, it was not obvious to the court that the linked interviews were intended to be part of his defamation claim. Whether information contained in the link is part of Mac Isaac's claim does not affect this court's analysis.

Biden argues the above statement is not defamatory because it is a protected expression of opinion incapable of being defamatory.[51] Biden focuses on the use of "could" throughout his statement, arguing that the usage shows that he was making a statement of possibilities. [52]

First—as with the rulings on the other defendants' motions to dismiss—these statements cannot be understood to be defamatory by a reasonable listener. The above statement and similar statements made by Biden do not name or reference Mac Isaac or his business directly or indirectly. A reader must be able to infer from the contents of the publication that the publication is referring to the plaintiff.[53] A reasonable listener would need additional information to link Mac Isaac to the laptop and its contents. If Biden had said that Mac Isaac was the one who stole or hacked the laptop, or was acting as a Russian agent, the statements might be defamatory, but that is far from what Biden said. Biden's statements to CBS News and repeated by CNN are not defamatory towards Mac Isaac, even by implication. Furthermore, as

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[51] For this argument, Biden relies on the Delaware Supreme Court ruling in *Riley v. Moyed*, 529 A.2d 248 (Del. 1987). More recently, however, in *Cousins v. Goodier*, 283 A.2d 1140, 1158 (Del. 2022), the Court acknowledged that there are occasions where an opinion can be defamatory. In *Cousins*, unlike the facts of this case, the Court found that the defendant's statements defamed the plaintiff.

[52] In his briefs, Biden also argues that because he had other laptops that he lost track of, he could have been referring to one of those laptops, not the one he left with Mac Isaac. He quotes extensively from Mac Isaac's deposition to show that even Mac Isaac was confused about what other computers to which Biden could have been referring. From the context of the entire interview, however, it was clear he was being asked about the laptop he left at the Mac Shop, so this argument is unavailing.

[53] *See Howe*, 2004 WL 2828058, at *4.

discussed above, Mac Isaac is a limited public figure, and he cannot show that Biden's statement was malicious. Therefore, Biden's motion for summary judgment is GRANTED.

## F. The Aiding and Abetting and Conspiracy Claims Against All Defendants

In the SAC, Mac Isaac alleges that all defendants conspired to hide information obtained from the laptop because they supported the election of now-President Joseph Biden and to oppose the re-election of President Trump. Mac Isaac asserts that if voters had known more about the laptop, Donald Trump would have won the election. At oral argument, Mac Isaac asserted that the discovery process will allow him to expose the conspiracy between the defendants. Because Mac Isaac's defamation claims against all the defendants fail, the derivative claims he raises of civil conspiracy to defame (count 5) and aiding and abetting defamation (count 6) cannot survive.

## G. Biden's Motion to Strike Subpoenas

While these motions were pending, Mac Isaac filed numerous subpoenas directed at non-parties. Those receiving the subpoenas included members of Biden's family (including his father, uncle, and daughters), numerous government officials (including the Secretary of State of the United States, advisors to President Biden, and the former Acting Director of the CIA), and various business associates of Biden. The subpoenas requested extensive information. For example, the subpoenas

typically sought all communications between the non-parties and Biden, and any documents or communications about Biden from January 1, 2019 to present. Because of the broad and burdensome nature of the subpoenas, and because of the dispositive nature of the pending motions, the court stayed the subpoenas until these motions could be decided. Because this decision terminates this litigation, the motion to strike is MOOT.

## CONCLUSION

As explained above, CNN, Politico, and BFPCC's motions to dismiss are GRANTED. Biden's motion for summary judgment is also GRANTED. Mac Isaac's motion to dismiss Biden's counterclaims is GRANTED. Because these rulings terminate this litigation, Biden's motion to strike the subpoenas is MOOT.

**IT IS SO ORDERED.**