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IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

CROSS-APPELLANT ROBERT HUNTER BIDEN'S REPLY BRIEF IN FURTHER SUPPORT OF HIS CROSS APPEAL

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I. Despite Claiming that "No New Information" Appeared in His Tell-All Book, Mac Isaac's November 2022 Publication Offered Mr. Biden His First Glimpse of the Extent and Manner to Which Mac Isaac Invaded Mr. Biden's Privacy

Appellant/Cross-Appellee John Paul Mac Isaac's ("Mac Isaac") seven-page regurgitation of "actual facts" in his Answering Brief—exactly the same tact he employed in his motion to dismiss Mr. Biden's counterclaims in the Superior Court (*see* Cross-Appellant Biden's Appendix, A133–A139)—does nothing to change the conclusion that the lower court erred in failing to examine the aspects of Mr. Biden's private life that Mac Isaac publicized for the first time in his book in November 2022, thereby extending the applicable limitations period. Nor does it rebut the record that demonstrates the lower court's failure to grapple with the *new* revelations Mac Isaac made about Mr. Biden for the first time in his book and in the media in 2022 and 2023, thus extending the two-year statute of limitations. As he did below, Mac Isaac now uses his appellate brief to shoehorn what he labels as "actual facts" into the pleadings, offering his own assertions about, for instance, Rudy Giuliani's role in the relevant events, Mac Isaac's "financial capitalization," and two paragraphs about "Biden's Book." (Answering Br. at 12–13.) None of these has any relevance whatsoever to the issues before this Court.

These assertions by Mac Isaac, however, highlight the new information revealed by and through his book's release—issues that the Superior Court simply

did not address or consider in dismissing Mr. Biden's counterclaims on statute of limitations grounds. Despite his dubious claim that "no new information" appears in his book, Mac Isaac offers readers—and Mr. Biden—the first glimpse of the extent and manner to which Mac Isaac rummaged through Mr. Biden's financial documents in the data. For instance, that Mac Isaac reviewed a specific file titled, "*income.pdf*" that he, *in his own words*, described as "begging to be clicked open" because it had a purple dot in the file title and because Mac Isaac was personally curious about Mr. Biden's wealth. (Cross-Appellant Biden's Appendix, A092 (quoting Mac Isaac, *American Injustice: My Battle to Expose the Truth* at 17 (2022)); *see also id.* at A169–A170 (Mac Isaac Dep. Tr. at 45:4–8 (explaining that he opened the document because it was peculiarly "out of [Mr. Biden's] folder full of faces files" and "was the only one with a purple dot. So . . . I chose to click on it.")).) In fact, as Mr. Biden emphasized to the lower court, publication of Mac Isaac's book in 2022 revealed for the first time the following key details:

(i) that Mac Isaac had created a "clone" of the data in July 2019;

(ii) that Mac Isaac had "sent a hard drive containing the data to his father, Steve Mac Isaac" in September 2019; and

(iii) that Mac Isacc had "sent a copy of the data to Rudy Giuliani's lawyer, Robert Costello on August 28, 2020."

(*See* Cross-Appellant Biden's Appendix A140–A141; Biden Opening Br. at 4–5.)

Mac Isaac's suggestion that "[n]o new information *from the data* on the laptop appeared in Mac Isaac's book" in 2022 also flies in the face of reality. (Answering Br. at 13 (emphasis added) (citing Cross-Appellant Biden's Appendix, A138–A139).) He further claims that "[t]he only information from the laptop included in the book was information that had already been publicly released by others." *Id.* Not so, and in examining the statute of limitations application here, this Court ought not be misled by Mac Isaac's hollow assertion when the record demonstrates the new revelations.

Mac Isaac's not-so-subtle attempt to suggest that there is no "new information *from the data on the laptop*" contained in his 2022 book does not save him from his invasions of Mr. Biden's privacy or prevent the statute of limitations from extending. (Answering Br. at 13 (emphasis added).) For example, Mac Isaac details in his book for the first time, with painstaking specificity, previously unknown aspects about how he worked with one Yaacov Apelbaum in October 2020 to try to create a "forensic image" *of the data*, and then distributed copies *of the data* 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 in the event *the data* was lost or compromised. (Cross-Appellant Biden's Appendix, A098–A106.) Or how, as early as July 2019, Mac Isaac created a "clone" of the laptop's data. (*Id.* at A140–A141.) That this new

information is not itself "data on the laptop" (in Mac Isaac's words) is hardly enough to save Mac Isaac or suggest the statute of limitations had run on the relevant claims here, especially where Mac Isaac engaged an outside individual—unaffiliated with The Mac Shop—to try to copy the data on the laptop left at the shop.

Not only is Mac Isaac factually incorrect about the data as described above from his own book and statements (e.g., discussing his opening "*income.pdf*"), but his house of cards legal argument comes crashing down with the first pick of the deck. Under Delaware's "time of discovery" rule (*see* Biden Opening Br. at 2–3), Mr. Biden had absolutely no way of knowing what Mac Isaac had done with the data, how he had accessed or copied it, or the lengths to which Mac Isaac went through to invade Mr. Biden's privacy and seclusion, until *at least* November 2022. *See White v. Riego*, 2005 WL 516850, at *2 (Del. Super. Ct. Mar. 3, 2005) (denying motion to dismiss invasion-of-privacy claims because where the 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."); *see also* Cross-Appellant Biden's Appendix, A171–A172. If the time of discovery rule is properly applied here, Mr. Biden's counterclaims filed on August 8, 2023 were well within and timely brought under Delaware's two-year statute of limitations for invasion of privacy claims because until the November 22, 2022 release of Mac

Isaac's book, Mr. Biden did not know and could not have known the extent to which Mac Isaac invaded and trampled his privacy. *See Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 319 (Del. 2004).

Mac Isaac claims, without a shred of proof, that Mr. Biden knew of the unauthorized review, copying, and tampering of his data before the release of Mac Isaac's book.[1] (Answering Br. at 17.) That hypothesis ignores the fact that until Mac Isaac described his violative conduct in his tell-all book published in 2022, Mr. Biden, like the plaintiff in *Riego*, had no knowledge and was "blamelessly unaware" of the many private actions Mac Isaac took in 2019, 2020, 2021, and most of 2022 with respect to his private data. *See* 2005 WL 516850, at *2

[1] According to Mac Isaac, by October 14, 2020 when the *New York Post* published its article, "the injury alleged by Biden, had already been sustained and it would be reasonable to determine that Biden was put on notice of Mac Isaac's actions on October 14, 2020, and that, by exercising due diligence, he could have determined the extent to which Mac Isaac accessed his data." (Answering Br. at 17.)

II. Mac Isaac's Factual Allegations and Irrelevant Arguments as to Any Perceived Inconsistencies in the Lower Court Briefing Carry No Merit in Evaluating the Appellate Issues Before This Court

Mac Isaac casts his Answering Brief as a vehicle, albeit improperly, to try to litigate other factual disputes (e.g., whether it was Hunter Biden who dropped off a laptop, or what role others played in accessing or publishing Mr. Biden's data) that are neither in the record nor relevant to the Questions Presented on this cross-appeal. Such allegations have no significance in this cross-appeal, which is only about *when* Mr. Biden first learned of Mac Isaac's violations of his privacy and whether his counterclaims were timely brought under Delaware's two-year limitations period[2] because he was without sufficient notice that his privacy had been invaded by both intrusion and publication on October 14, 2020, following the release of a *New York Post* article. (Biden Opening Br. at 13.)

Mac Isaac's question presented in Section II—"[w]hether Biden's inconsistent statements in his answer to the Second Amended Complaint and his counterclaims undermine the credibility of his allegations, particularly regarding his knowledge and actions related to the laptop" (Answering Br. at 19)—is in fact irrelevant. The true issue presented is when Mr. Biden first discovered or became aware of Mac

[2] Mac Isaac principally accuses Mr. Biden of having "obfuscate[d] the facts" as between Mr. Biden's Answer and Counterclaims below. (Answering Br. at 20.) Mac Isaac even devotes an entire section to challenge "Inconsistencies Between Answers to Amended Complaint and Allegations in [the] Counterclaim"—an allegation that has nothing to do with statute of limitations issue currently on appeal.

Isaac's invasions; Mac Isaac's question is just a pretext for him to once again publish his theories that he believes justify his claim that it was Mr. Biden who dropped off a laptop at his shop in April 2019. He did it in the lower court, and he has done it once again here. (*See* Cross-Appellant Biden's Appendix, A142–A144.) Neither time does Mac Isaac address the real issue in this challenge and appeal.

Additionally, Mac Isaac's response at times wades into irrelevant tangents. It is difficult to understand if his raising these besides-the-point assertions is to create a narrative for his version of events (e.g., how did he get the data he possessed), or rather to try to distract this Court from the legal issues presented. For instance, according to Mac Isaac, "on April 12, 2019, Mac Isaac knows exactly where [Mr. Biden] was. . . . financial records show frequent uses of Wells Fargo ATMs where significant withdrawals were made – all within a few miles of Mac Isaac's shop." (Answering Br. at 20.) This allegation is of no consequence on this cross-appeal. Similarly, Mac Isaac's hypothesis that "Biden had a very clear picture of his comings and goings in his book yet failed to remember details like bringing Mac Isaac his laptop and returning another time with an external hard drive" (Answering Br. at 13 (citing Cross-Appellant Biden's Appendix, A139)), has literally no bearing on Mr. Biden's claim as to *when* he first came to learn (sometime after November 22, 2022) what Mac Issac had done, such that the statute of limitations did not run before he filed his counterclaims.

If not already clear, Mr. Biden's counterclaims in this case are about what Mac Isaac did to invade Mr. Biden's privacy, and have *nothing* to do with any "coming and goings" described "in [Mr. Biden's] book." Mr. Biden has made abundantly clear since bringing his counterclaims that Mac Isaac, by whatever means (either, as he claims, by a person entering his shop, or by some other potentially improper method), came into possession of certain electronic data, at least some of which *belonged to Mr. Biden*, in or before April 2019. (Cross-Appellant Biden's Appendix, A091, ¶ 4; *see also* Biden Opening Br. at 8.)

How exactly Mac Isaac came into possession of that data does not matter here. Rather, it is undisputed that Mac Isaac obtained electronically stored data that belonged to Mr. Biden, and took steps thereafter that clearly violated Mr. Biden's privacy by publication, including Mac Isaac's actions in 2022 to release his tell-all book, *American Injustice: My Battle to Expose the Truth*. (Cross-Appellant Biden's Appendix, A091 n.1.) Invasion of privacy by publication is committed when "[o]ne who gives publicity to a matter concerning the private life of another … 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). Critically here, Mac Isaac's tell-all book published information about Mr. Biden's private life (and discussed accessing contents thereof), such as discussions of surveying three years of Mr. Biden's tax information, and revealing

for readers the amounts that Mr. Biden earned in 2013, 2014, and 2015. (Biden Opening Br. at 19 (citing Cross-Appellant Biden's Appendix, A178).)

Mac Isaac claims in a footnote—in an effort to minimize and ignore his violations of privacy law—that he merely "discussed the information on the Mac [laptop] with his father and his uncle in order to seek advice and assistance from them" because "[t]he Biden family is very powerful" and out of concern "about what the Biden's would/could do to him." (Answering Br. at 28 n.5.) Not so. Mac Isaac knows full well and wrote in his book that he, in concert with others he tasked, did much more than what he rewrites in his appellate papers. He describes in detail in his book, for example, asking someone *outside* his family for assistance to "forensically image" or "clone" the data, and giving a copy of Mr. Biden's data (one of several copies he made, as revealed in his book) to his close friend for "safekeeping." (Biden Opening Br. at 5, 9–10, 19–20; Cross-Appellant Biden's Appendix, A098–A106.) That Mac Isaac tries to gloss over these invasions of privacy by publication as only mere "concern" for his safety due to the "powerful" Biden family is either a red-herring or a distraction tactic that, either way, contradicts the record of what he actually did and why—which only came to light in November 2022.

Accordingly, each time Mac Isaac made a new matter public, he committed a separate instance of invasion of privacy by publication. *See Barker*, 610 A.2d at

1350. By publishing this and other information for the first time in his book in 2022, Mac Isaac made the matters public, thus committing the tort of invasion of privacy by publication. (*See* Biden Opening Br. at 20 (citing *Spence v. Cherian*, 135 A.3d 1282, 1288 (Del. Super. Ct. 2016)).)

CONCLUSION

For these 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 tell-all book in November 2022.

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Respectfully submitted,

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