

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

**PHIL BRYANT & DEBORAH BRYANT**

**PLAINTIFFS**

v.

**CASE NO. 3:24-cv-260-KHJ-MTP**

**MICHAEL ROSENBERG &  
THE ARENA GROUP HOLDINGS, INC.**

**DEFENDANTS**

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS' RESPONSE TO THE  
ARENA GROUP HOLDING, INC.'S MOTION TO DISMISS**

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**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... i

TABLE OF AUTHORITIES ..... iv

    Cases ..... iv

    Statutes & Rules ..... viii

    Legal Treatises ..... viii

    Restatement (Second) of Torts ..... viii

    Public Records ..... viii

INTRODUCTION ..... 1

STANDARD OF REVIEW ..... 2

ARGUMENT ..... 4

    I. Governor Bryant adequately alleged falsity ..... 4

        A. None of the statements at issue are rhetorical hyperbole or protected opinions ..... 4

            1. The Article states that federal prosecutors are investigating Bryant ..... 6

            2. No legitimate basis exists to report that Bryant illegally diverted welfare funds ..... 7

            3. The Article accuses Bryant of specific illegal acts ..... 7

                Paragraphs 6.1 through 6.5 (Section I) ..... 8

                Paragraphs 6.6 through 6.8 (Section II) ..... 8

                Paragraphs 6.9 and 6.10 (Section III) ..... 9

                Paragraphs 6.11 and 6.12 (Section IV) ..... 9

                Paragraphs 6.13 through 6.17 (Section V) ..... 10

                Paragraphs 6.18 and 6.19 (Section VI) ..... 10

                Paragraphs 6.20 through 6.25 (Section VII) ..... 11

                Paragraphs 6.26 and 6.27 (Section VIII) ..... 11

Paragraphs 6.28 and 6.29 (Section IX) ..... 11

Paragraphs 6.30 and 6.31 (Section X)..... 12

Paragraphs 6.32 and 6.33 (Section XI) ..... 12

Paragraphs 6.34 and 6.35 (Section XII)..... 13

Paragraphs 6.36 and 6.37 (Section XIII) ..... 13

Paragraphs 6.38 and 6.39 (Section XIV) ..... 13

Paragraphs 6.40 and 6.41 (Section XV)..... 14

Paragraphs 6.42 through 6.44 (Section XVI)..... 14

4. Readers would believe Bryant conspired to divert welfare money ..... 14

5. Readers expect genuine reporting of events from SI..... 15

B. The underlying implication of the Article is false..... 15

C. The statements addressed in sections XII and XVI are totally false,  
and the statement addressed in section XVII is partially untrue..... 17

1. Text messages do not reveal Bryant directing welfare funds to the  
USM Athletic Foundation..... 17

2. Text messages do not reveal Bryant agreeing to accept stock in Prevacus ..... 21

II. Governor Bryant adequately alleged actual malice ..... 24

A. Actual malice must be alleged generally under Fed. R. Civ. P. 9(b) ..... 24

B. The complaint alleges and incorporates indicia of actual malice ..... 27

1. Shad White told Wolfe there was no evidence that Bryant misspent  
public funds..... 27

2. Bryant and VanLandingham told Wolfe they did not have a *quid pro  
quo* agreement..... 27

3. The referenced communications do not support the Article’s accusations ..... 27

4. The Article’s accusations are inherently improbable ..... 28

5. The accusation that Bryant directed millions of welfare funds to the USM  
Athletic Foundation is based on rootless speculation ..... 28

6. The defendants knew they would harm Bryant.....	29
7. The defendants made their accusations despite Bryant’s denial.....	29
8. The accusations are sensational.....	29
9. The defendants refused to retract their accusations .....	29
10. The Article relies on obviously biased sources .....	30
11. The Article recklessly disregards that the average reader would interpret its language as false statements of fact .....	30
12. The Article does not conform to journalistic standards of care or ethics .....	31
13. The defendants were not under time constraints.....	31
D. No source identified in the Article supports its false and defamatory accusations .....	31
1. Public records .....	32
2. The quotes from Pigott and White.....	32
3. Text messages .....	32
4. <i>Mississippi Today</i> ’s reporting.....	32
III. The fair reporting privilege does not protect any statements in the Article.....	33
IV. Mrs. Bryant adequately alleged her loss of consortium claim.....	34
CONCLUSION.....	35

**TABLE OF AUTHORITIES**

**Cases**

*Hayne v. The Innocence Project*,  
No. 3:09-cv-218-KS-LRA, 2011 WL 198128 (S.D. Miss. Jan. 20, 2011).....2-4, 15-16, 25, 32

*Lormand v. U.S. Unwired, Inc.*,  
565 F.3d 228 (5<sup>th</sup> Cir. 2009) ..... 2

*Hershey v. Energy Transfer Partners, L.P.*,  
610 F.3d 239 (5<sup>th</sup> Cir. 2010) ..... 3

*Great Lakes Dredge & Dock Co. LLC v. La. State*,  
624 F.3d 201 (5<sup>th</sup> Cir. 2010) ..... 2-3

*Ashcroft v. Iqbal*,  
556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) ..... 2-3

*Rivera-Colon v. Parish of St. Bernard*,  
516 F. Supp. 3d 583 (E.D. La. 2021) ..... 2

*United States ex rel. Steury v. Cardinal Health, Inc.*,  
625 F.3d 262 (5<sup>th</sup> Cir. 2010) ..... 2

*In re Katrina Canal Breaches Litigation*,  
495 F.3d 191 (5<sup>th</sup> Cir. 2007) ..... 3

*Collins v. Morgan Stanley Dean Whitter*,  
224 F.3d 496 (5<sup>th</sup> Cir. 2000) ..... 3

*Sabal v. Anti-Defamation League*,  
No. 4:23-cv-1002-O, 2024 WL 1892303 (N.D. Tex. Apr. 30, 2024) ..... 3

*Roucchio v. Coughlin*,  
923 F. Supp. 360 (E.D. N.Y. 1996)..... 3

*Jankovic v. Inter'l Crisis Grp.*,  
429 F. Supp. 2d 165 (D. D.C. 2006),  
*aff'd* in part and *rev'd* in part, 494 F.3d 1080 (D.C. Cir. 2007)..... 3

*Agora, Inc. v. Axxess, Inc.*,  
90 F. Supp. 2d 697 (D. Md. 2000) ..... 3

*Nicosia v. De Rooy*,  
72 F. Supp. 2d 1093 (N.D. Cal. 1999)..... 3

*Cicalese v. University of Texas Medical Branch*,  
456 F. Supp. 3d 859 (S.D. Tex. 2020) ..... 3

*Van Duzer v. U.S. Bank Nat. Ass’n*,  
995 F. Supp. 2d 673 (S.D. Tex. 2014) ..... 3

*Joseph v. Bach & Wasserman, L.L.C.*,  
487 Fed. Appx. 173 (5<sup>th</sup> Cir. 2012) ..... 3

*Norris v. Hearst Trust*,  
500 F.3d 454 (5<sup>th</sup> Cir. 2007) ..... 3

*Chalk v. Bertholf*,  
980 So. 2d 290 (Miss. Ct. App. 2007) ..... 4

*Favre v. Sharpe*,  
No. 2:23-cv-42-KS-MTP, 2023 WL 7132949 (S.D. Miss. Oct. 30, 2023) ..... 4-6, 14-15

*Franklin v. Thompson*,  
722 So. 2d 688 (Miss. 1998) ..... 7

*Roussel v. Robbins*,  
688 So. 2d 714 (Miss. 1996) ..... 7

*Lawrence v. Evans*,  
573 So. 2d 695 (Miss. 1990) ..... 8

*Armistead v. Minor*,  
815 So. 2d 1189 (Miss. 2002) ..... 15, 25

*Masson v. New Yorker Magazine, Inc.*,  
501 U.S. 496, 111 S.Ct. 2419, 115 L.Ed.2d 447 (1991) ..... 15, 25

*Journal Pub. Co. v. McCollough*,  
743 So. 2d 352 (Miss. 1999) ..... 16, 24

*McCollough v. Cook*,  
679 So. 2d 627 (Miss. 1996) ..... 16

*Harte-Hanks Communications, Inc. v. Connaughton*,  
491 U.S. 657, 109 S.Ct. 2678, 105 L.Ed.2d 1562 (1989) ..... 24, 27

*St. Amant v. Thompson*,  
390 U.S. 727, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968) ..... 24

*Garrison v. Louisiana*,  
379 U.S. 64, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964) ..... 24

*Nenson v. Henry*,  
443 So. 2d 817 (Miss. 1983).....25

*Stegall v. WTWV, Inc.*,  
609 So. 2d 348 (Miss. 1992).....25

*Anders v. Newsweek, Inc.*,  
727 F. Supp. 1065 (S.D. Miss. 1989).....25

*Rich v. Cox Media Group Northeast, LLC*,  
No. 3:18-cv-68, 2019 WL 1371844 (N.D. Miss. Mar. 26, 2019)..... 25-26

*Amin v. NBCUniversal Media, LLC*,  
No. 5:21-cv-56, 2024 WL 3188768 (S.D. Ga. June 26, 2024) .....26, 28-30

*Speedway Grading Corp. v. Gardner*,  
425 S.E.2d 676 (Ga. Ct. App. 1992)..... 26-27

*Reid v. Viacom Int’l Inc.*,  
No. 1:14-cv-1252, 2017 WL 11634619 (N.D. Ga. Sept. 22, 2017).....27

*Batson v. Time, Inc.*,  
298 So. 2d 100 (La. Ct. App. 1<sup>st</sup> Cir. 1974).....27

*Airlie Foundation, Inc. v. Evening Star Newspaper Co.*,  
337 F. Supp. 421 (D. D.C. 1972) .....27

*Cape Publications, Inc. v. Adams*,  
336 So. 2d 1197 (Fla. App. 4<sup>th</sup> Dist. 1976) .....27

*Young v. Gannett Satellite Information Network, Inc.*,  
734 F.3d 544 (6<sup>th</sup> Cir. 2014) ..... 28, 32

*Doe v. Doe*,  
941 F.2d 280 (5<sup>th</sup> Cir. 1991) ..... 28, 32

*Westmoreland v. CBS, Inc.*,  
596 F. Supp. 1170 (S.D. N.Y. 1984)..... 28, 32

*Nader v. de Toledano*,  
408 A.2d 31 (D.C. 1979)..... 28, 32

*Buratt v. Capital City Press, Inc.*,  
459 So. 2d 1268 (La. Ct. App. 1<sup>st</sup> Cir. 1985) ..... 28, 32

*Davis v. Schuchat*,  
510 F.2d 731 (D.C. 1975) ..... 28, 32

*US Dominion, Inc. v. Powell*,  
554 F. Supp. 3d 42 (D. D.C. 2021).....28

*Stern v. Cosby*,  
645 F. Supp. 2d 258 (S.D. N.Y. 2009) .....28

*Khawar v. Globe Intern., Inc.*,  
965 P.2d 696 (Cal. 1998).....28

*Proxeralk v. Capital Cities Communications, Inc.*,  
626 N.E.2d 34 (N.Y. Ct. App. 1993) ..... 28-29

*Snowden v. Pearl River Broadcasting Corp.*,  
251 So. 2d 405 (La. Ct. App. 1<sup>st</sup> Cir. 1971).....29

*National Ass’n of Government Employees, Inc. v. National Fed’n of Federal Employees*,  
844 F.2d 216 (5<sup>th</sup> Cir. 1988)..... 29-30

*Golden Bear Distributing Systems of Texas, Inc. v. Chase Revel, Inc.*,  
708 F.2d 944 (5<sup>th</sup> Cir. 1983).....30

*Morgan v. Dun & Bradstreet, Inc.*,  
421 F.2d 1241 (5<sup>th</sup> Cir. 1970).....30

*Rebozo v. Washington Post Co.*,  
637 F.2d 375 (5<sup>th</sup> Cir. 1981).....30

*Sprague v. American Bar Ass’n*,  
No. Civ.A 01-382, 2003 WL 22110574 (E.D. Pa. July 21, 2003).....30

*Catalano v. Pechous*,  
419 N.E.2d 350 (Ill. 1980) .....30

*Warford v. Lexington Herald-Leader Co.*,  
789 S.W.2d 758 (Ky. 1990).....30

*Flowers v. Carville*,  
310 F.3d 1118 (9<sup>th</sup> Cir. 2002).....33

*McDonald v. Raycom TV Broadcasting, Inc.*,  
665 F. Supp. 2d 688 (S.D. Miss. 2009).....33

*Pittman v. Gannett River States Pub. Co.*,  
836 F. Supp. 377 (S.D. Miss. 1993) .....33

*Hegwood v. Community First Holdings, Inc.*,  
546 F. Supp. 2d 363 (S.D. Miss. 2008).....33



*Edmonds v. Delta Democrat Pub. Co.*,  
230 Miss. 583, 93 So. 2d 171 (1957).....33

*McMurdy v. Boston Scientific Corp.*,  
No. 2:19-cv-301-JRG, 2020 WL 6789349 (E.D. Tex. Aug. 28, 2020) .....34

**Statutes & Rules**

L.U.Civ.R.7 ..... 1

Miss. Code Ann. § 97-11-53..... 1

Fed. R. Civ. P. 12(b)(6).....2-3, 5, 26

Miss. Code Ann. § 95-1-5 ..... 3

Fed. R. Civ. P. 12(d) .....3

Fed. R. Civ. P. 10(c)..... 3

Fed. R. Civ. P. 8 ..... 8-14, 16, 34

Fed. R. Civ. P. 9(b) ..... 24, 27

**Legal Treatises**

David Elder, *Defamation: A Lawyer’s Guide* § 7:3,  
*Common Law Malice and Constitutional “Actual Malice”* (Oct. 2023 Update) ..... 25, 29

David Elder, *Defamation: A Lawyer’s Guide* § 7:17,  
*Publications After Plaintiff’s Denial or Denial by Plaintiff’s Superior* (Oct. 2023 Update).....29

David Elder, *Defamation: A Lawyer’s Guide* § 7:2,  
*A Subjective Standard* (Oct. 2023 Update)..... 30-31

**Restatement (Second) of Torts**

*Restatement (Second) of Torts* § 580A, comm. D (1977) ..... 30, 31

**Public Records**

*Mississippi Dept. of Human Services v. Mississippi Community Education Center, et al.*,  
No. 22-cv-286-EFP (Hinds Cty. Cir. Ct.):

MEC Doc. ##140, 140-1 through 140-48..... 17-20

MEC Doc. ##131-3 through 131-10, 131-17 through 131-21, 131-23, 131-27 ..... 17-20

**NOW INTO COURT**, by and through undersigned counsel and under L.U.Civ.R. 7, come former Governor Phil Bryant and former First Lady Deborah Bryant (the “Bryants”) and provide the following reasons why the motion to dismiss filed by The Arena Group Holdings, Inc. (“Arena”) [ECF Doc. #4] should be denied:

### **INTRODUCTION**

On May 18, 2023, *Sports Illustrated* (“SI”) published an article by Michael Rosenberg titled “*The Driving Force*”: *How Brett Favre’s Demands for Cash Fueled a Scandal* (the “Article”) [ECF Docs. #1-1, 1-2]. The Article is a severe and damaging piece. It alleges that Governor Bryant conspired with Mississippi Department of Human Services (“MDHS”) executive director John Davis, Mississippi Community Education Center (“MCEC”) owner Nancy New, and NFL Hall of Fame quarterback Brett Favre to unlawfully divert millions of welfare dollars to the University of Southern Mississippi (“USM”) Athletic Foundation and the pharmaceutical company Prevacus. The Article contends Bryant did this to please Favre, benefit political supporter Joe Canizaro, and, perhaps most importantly, receive Prevacus stock. These actions, if true, would subject Governor Bryant to ten years in Parchman penitentiary and as much as a \$5,000.00 fine under Miss. Code Ann. § 97-11-53.

Along the way, the Article falsely accuses Bryant of engaging in “illegal behavior,”<sup>1</sup> “outmaneuvering” and “plott[ing] against” his co-conspirators when “the scheme” “unraveled;”<sup>2</sup> instructing Davis to pay \$4 million of welfare funds to the USM Athletic Foundation;<sup>3</sup> agreeing to perform “a large, legally dubious” “favor” for Favre by instructing Davis to pay as much as \$2.2 million of welfare funds to Prevacus and a related company, PreSolMD;<sup>4</sup> agreeing with Prevacus owner Jake VanLandingham to accept company stock;<sup>5</sup> attempting to conceal his unlawful diversions of welfare

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<sup>1</sup> ECF Doc. #1-1 at 4.

<sup>2</sup> *Id.* at 5.

<sup>3</sup> *Id.* at 10.

<sup>4</sup> *Id.* at 16, 19-20.

<sup>5</sup> ECF Doc. #1-2 at 43.

funds and illegal *quid pro quo* arrangement from State Auditor Shad White;<sup>6</sup> being unable to “quit Brett Favre,”<sup>7</sup> and as a result, continuing to conspire with Favre to misdirect welfare dollars to the volleyball stadium construction project;<sup>8</sup> manipulating communications with his attorney and newly-appointed MDHS executive director Chris Freeze to make himself appear innocent;<sup>9</sup> and, setting a trap that made Davis, New, and Favre appear responsible for the unlawful expenditures of welfare funds and Bryant seem to be only an “honest occasional advisor.”<sup>10</sup>

The complaint adequately alleges these statements and their underlying implication are false and defamatory and that the defendants acted with actual malice when they published them. The court must deny the motion and uphold the Bryants' rights to proceed with their claims.<sup>11</sup>

### **STANDARD OF REVIEW**

“Motions to dismiss under Rule 12(b)(6) ‘are viewed with disfavor and are rarely granted.’” *Hayne v. The Innocence Project*, No. 3:09-cv-218-KS-LRA, 2011 WL 198128, at \*3 (S.D. Miss. Jan. 20, 2011) (quoting *Lormand v. U.S. Unwired, Inc.*, 565 F.3d 228, 232 (5<sup>th</sup> Cir. 2009)). “To survive a Rule 12(b)(6) motion to dismiss, [a plaintiff’s complaint] need only include ‘a short and plain statement of the claim showing that the pleader is entitled to relief.’” *Id.* (quoting *Hershey v. Energy Transfer Partners, L.P.*, 610 F.3d 239, 245 (5<sup>th</sup> Cir. 2010)). “However, the ‘complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.’” *Id.* (quoting *Great Lakes Dredge & Dock Co. LLC v. La. State*, 624 F.3d 201, 210 (5<sup>th</sup> Cir. 2010), which quoted *Ashcroft v. Iqbal*,

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<sup>6</sup> ECF Doc. #1-1 at 23-24.

<sup>7</sup> This statement is an allusion to *Brokeback Mountain*: <https://www.youtube.com/watch?v=KVK6yLqY54w>.

<sup>8</sup> ECF Doc. #1-2 at 26.

<sup>9</sup> *Id.* at 27, 33-34.

<sup>10</sup> *Id.* at 34.

<sup>11</sup> If the court grants the motion in whole or in part, it should grant the Bryants leave to amend their complaint to more fully state their claims. They indeed can and will. *Rivera-Colon v. Parish of St. Bernard*, 516 F. Supp. 3d 583, 591 (E.D. La. 2021) (citing *United States ex rel. Steury v. Cardinal Health, Inc.*, 625 F.3d 262, 270 (5<sup>th</sup> Cir. 2010)).

556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009)). ““A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”” *Id.* (quoting *Hershey*, 610 F.3d at 245, which quoted *Iqbal*, 129 S.Ct. at 1949). “When determining whether a plaintiff has stated a valid claim for relief, the Court must ‘accept all well-pleaded facts as true and construe the complaint in the light most favorable to the plaintiff.’” *Id.* (quoting *Great Lakes Dredge & Dock Co. LLC*, 624 F.3d at 210).

There are well-established exceptions to the general rule that Rule 12(b)(6) motions are considered on the face of the complaint. *In re Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5<sup>th</sup> Cir. 2007) (noting Rule 12(d)’s dictate that “if matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment”). Documents attached as exhibits to the complaint are appropriately considered. Fed. R. Civ. P. 10(c); *Collins v. Morgan Stanley Dean Whitter*, 224 F.3d 496, 498 (5<sup>th</sup> Cir. 2000). This includes the challenged publication, *Sabal v. Anti-Defamation League*, No. 4:23-cv-1002-O, 2024 WL 1892303, at \*3 (N.D. Tex. Apr. 30, 2024), and state court pleadings. *Roucbio v. Coughlin*, 923 F. Supp. 360, 366 (E.D. N.Y. 1996). When the challenged publication contains hyperlinks, the hyperlinked publications may be considered. *Sabal*, 2024 WL 1892303, at \*7; *Jankovic v. Inter’l Crisis Grp.*, 429 F. Supp. 2d 165, 177 fn. 8 (D. D.C. 2006), *aff’d* in part and *rev’d* in part, 494 F.3d 1080 (D.C. Cir. 2007); *Agora, Inc. v. Axxess, Inc.*, 90 F. Supp. 2d 697, 704-05 (D. Md. 2000); *Nicosia v. De Rooy*, 72 F. Supp. 2d 1093, 1103 (N.D. Cal. 1999). The court may also take judicial notice of matters of public record, *Cicalese v. University of Texas Medical Branch*, 456 F. Supp. 3d 859, 871 fn. 7 (S.D. Tex. 2020), including filings in state court actions that are not exhibits to the complaint. *Van Duzer v. U.S. Bank Nat. Ass’n*, 995 F. Supp. 2d 673, 684 (S.D. Tex. 2014) (citing *Joseph v. Bach & Wasserman, L.L.C.*, 487 Fed. Appx. 173, 178 (5<sup>th</sup> Cir. 2012); *Norris v. Hearst Trust*, 500 F.3d 454, 461 fn. 9 (5<sup>th</sup> Cir. 2007)).

The complaint attaches and incorporates the Article [ECF Docs. #1-1, 1-2], the Second Amended Complaint in the Bryants' state court defamation action against *Mississippi Today* and other related defendants [ECF Doc. #1-3], written notices sent under Miss. Code Ann. § 95-1-5 [ECF Docs. #1-4, 1-5], and responses to the notices [ECF Docs. #1-6, 1-7]. At this stage, the court may consider these exhibits, materials hyperlinked to the Article,<sup>12</sup> and other public records.

### **ARGUMENT**

Arena argues Governor Bryant insufficiently alleged the falsity and actual malice elements of his defamation claim; the fair reporting privilege protects it from suit; Governor Bryant has improperly alleged his false light claim;<sup>13</sup> and Mrs. Bryant insufficiently alleged her loss of consortium claim. These arguments are meritless.

#### **I. Governor Bryant adequately alleged falsity.**

When assessing whether Governor Bryant adequately alleged falsity, this court should be mindful that no “state or federal court in Mississippi has gone so far as to require that a Plaintiff include specific information which demonstrates the falsity of the allegedly defamatory statement.” *Hayne*, 2011 WL 198128, at \*7. Instead, Bryant must have only alleged facts “of sufficient particularity so as to give the defendant or defendants notice of the nature of the complained-of statements.” *Id.* at \*6 (quoting *Chalk v. Bertholf*, 980 So. 2d 290, 297 (Miss. Ct. App. 2007)).

##### **A. None of the statements at issue are rhetorical hyperbole or protected opinions.**

Citing *Favre v. Sharpe*, No. 2:23-cv-42-KS-MTP, 2023 WL 7132949 (S.D. Miss. Oct. 30, 2023), Arena contends certain statements in the Article are nonactionable rhetorical hyperbole or opinion. A careful examination of *Favre* reveals how drastically different it is from this case.

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<sup>12</sup> The Article contains seven hyperlinks, including a link to an edited transcript of Wolfe's interview with Governor Bryant, which is found at: <https://mississippitoday.org/2022/04/04/phil-bryant-brett-favre-prevacus-welfare-scandal/> [ECF Doc. #1-2 at 43-44].

<sup>13</sup> Arena argues Bryant's false light claim should fail for the same reasons his defamation claim fails [ECF Doc. #5 at 23-24]. Bryant incorporates the arguments supporting his defamation claim in response.

The statements in *Favre* were made by NFL Hall of Fame tight end Shannon Sharpe during an episode of “a daily live sports talk show on cable television” titled *Skip and Shannon: Undisputed*.” *Id.* at \*3. The court explained:

Sharpe and [sports personality Skip] Bayless are the show's hosts, providing commentary regarding recent sporting events and sports-related news for two-and-a-half hours every morning. On the episode of *Undisputed* that aired the day following the *Mississippi Today* article (the “Broadcast”), the hosts discussed the welfare scandal. The segment opened with moderator Jennifer Hale briefly recapping the *Mississippi Today* news article from the day before, stating: “Yesterday, an investigation by *Mississippi Today* found that Brett Favre, along with the help of a former Mississippi Governor, obtained welfare funds to help build a new volleyball Center at the University of Southern Mississippi.” The hosts then engage in a lively discussion about Favre, the scandal, and the civil lawsuit, all of which lasts approximately eleven minutes.

On February 9, 2023, Favre filed this lawsuit in Mississippi state court, and on March 20, 2023, Sharpe removed the case to this Court. Favre brings this action solely against Sharpe based on the following three statements made during the segment, as pled in the Complaint:

- “The problem that I have with this situation, you've got to be a sorry mofo to steal from the lowest of the low.”
- “Brett Favre is taking from the underserved.”
- “[Favre] stole money from people that really needed that money.”

*Id.* Favre alleged a defamation claim against Sharpe, who moved to dismiss under Fed. R. Civ. P. 12(b)(6), arguing “his comments were nothing more than rhetorical hyperbole and figurative expressions about Favre, which are protected speech that cannot support a defamation claim.” *Id.* The court determined the dispositive question before it was “whether a reasonable factfinder could conclude that the statements Sharpe made on the air would imply an assertion that Favre actually stole money from the poor.” *Id.* at \*5. The court answered the question in the negative and dismissed the suit. Several factors guided the court’s decision: (1) the broadcast “informed viewers that Favre had not been criminally charged.” *Id.* at \*5; (2) the court “acknowledge[d] that from the reports in the public arena after government investigations, forensic audits, civil litigation, Favre’s text messages, and Favre’s own implicit admission by returning \$1.1 million to the State, it appears to be widely believed

that the money obtained by Favre for himself and USM came from welfare funds. Although the funds may have come from the State of Mississippi, such TANF funds were intended to go to poverty-stricken families, not to fund the construction of a college volleyball facility. In that context, just as the Supreme Court has held that saying a negotiator engaged in ‘blackmail’ or calling a non-union employee a ‘traitor’ is constitutionally-protected rhetorical hyperbole and loose, figurative language, the Court finds that Sharpe’s use of the words ‘steal,’ ‘taking,’ and ‘stole’ in connection with Favre’s actions is non-actionable speech.” *Id.* at \*6; (3) the court viewed Sharpe’s language within the “broad context” in which it was made and determined: “[t]he reference to ‘taking’ and ‘stole’ figuratively refers to the diverting funds from the TANF for purposes other than helping the underprivileged. Similarly, Sharpe’s use of the words ‘people that really needed the money,’ the ‘lowest of the low,’ and ‘the underserved,’ again are examples of protected, colorful speech referring to needy families in Mississippi.” *Id.* at \*6; (4) the court found “no reasonable person listening to the Broadcast would think that Favre actually went into the homes of poor people and took their money – that he committed the crime of theft/larceny against any particular poor person in Mississippi.” *Id.*; and (5) the court observed, “any reasonable viewer can tell from watching the Broadcast [that] *Undisputed* is not a news outlet where viewers expect genuine initial reporting of events. It is a debate format sports entertainment talk show with lively, pointed banter...” *Id.* None of these factors suggest the statements in the Article are rhetorical hyperbole.

**1. The Article states that federal prosecutors are investigating Bryant:** The first glaring distinction with *Favre* is that the Article suggests federal prosecutors are building a criminal case against Bryant – one domino at a time.<sup>14</sup> Unlike the statement in *Undisputed*, the underlying implication of the Article is that Bryant committed crimes for which he may be prosecuted – an

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<sup>14</sup> ECF Doc. #1-2 at 41-42.

accusation strikingly similar to defamatory statements previously made by *Mississippi Today* reporter Anna Wolfe and editor-in-chief Adam Ganucheau.<sup>15</sup>

**2. No legitimate basis exists to report that Bryant illegally diverted welfare funds:**

Unlike *Favre*, no government investigation has revealed that Bryant misdirected welfare funds; no forensic audit uncovered that Bryant misdirected welfare funds; Bryant is not a party to MDHS's civil action seeking to recoup misspent welfare funds; Bryant's texts do not reveal he misdirected welfare funds; and, Bryant has not received or returned welfare funds to the State. It is commonly understood that Bryant vehemently denies misdirecting welfare funds and that he has expended considerable resources attempting to prove it in state and federal court and, more recently, in the media.<sup>16</sup>

**3. The Article accuses Bryant of specific illegal acts:** The gist of the Article is that Bryant conspired with New, Davis, and Favre to divert welfare funds illegally; he later attempted to conceal his efforts; and federal prosecutors may still pursue charges against him by obtaining criminal pleas and cooperation from Favre and VanLandingham. *Franklin v. Thompson*, 722 So. 2d 688, 693 (Miss. 1998) (quoting *Roussel v. Robbins*, 688 So. 2d 714, 723 (Miss. 1996)) ("A statement, even if phrased as an opinion, will not enjoy constitutional protection if the court concludes that its substance or gist could reasonably be interpreted as declaring or implying a provable assertion of fact"). Bryant explicitly alleges the falsity of this implication [ECF Doc. #1 at 1-2] and the falsity of individual statements that build toward the overall message that he is a corrupt criminal mastermind.

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<sup>15</sup> See, e.g., ECF Doc. #1-3 at 43-44 (Wolfe telling former U.S. Representative Ronnie Shows that "the big questions that I have now ... [is] if the people that are investigating this and have the power to do something about it, if they're really going to go after everyone that they should, and everyone who should be held accountable, namely the former governor Phil Bryant"); at 93 (Ganucheau writing that "[t]he stink of the largest public embezzlement scheme in Mississippi history goes all the way to the Governor's Mansion. And two years after the scandal exploded, there's no evidence that those at the highest levels are being held accountable....").

<sup>16</sup> See, e.g., <https://www.nbcnews.com/investigations/anna-wolfe-pulitzer-mississippi-welfare-scandal-phil-bryant-rcna159936>; <https://www.wlbt.com/2024/07/16/frivolous-former-gov-bryants-attorney-says-news-outlets-appeal-sought-sway-potential-jurors-defamation-case-drags/>.



Paragraphs 6.1 through 6.5 (Section I): The statement addressed here contends that the “full picture”<sup>17</sup> of “the misspending of welfare funds”<sup>18</sup> in Mississippi involved Bryant working to please Farve, Davis operating on Bryant’s behalf, and New following Davis’s orders. Like all other statements, this must be read in the full context of the Article. *Lawrence v. Evans*, 573 So. 2d 695, 698 (Miss. 1990). Therefore, the statement accuses Bryant of conspiring with Davis, New, and Favre to misdirect millions of welfare dollars to the USM Athletic Foundation and Prevacus. The complaint alleges, “Bryant did not instruct anyone to use TANF funds to construct the USM volleyball facility. Bryant did not instruct anyone to invest TANF funds in Prevacus. The quoted statement is false and defamatory.”<sup>19</sup> This allegation contends that the statement is technically false, and its underlying implication is untrue, satisfying Rule 8.

Paragraphs 6.6 through 6.8 (Section II): The statement addressed here communicates that “illegal behavior was so institutionalized that some perpetrators showed no fear of getting caught.”<sup>20</sup> It identifies Bryant as one of the “perpetrators”<sup>21</sup> and explains that when the illegal, institutionalized scheme “unraveled ... the most powerful players started outmaneuvering the others. Eventually, people who plotted with one another plotted against one another – a theme that continues to play out in both ongoing civil and criminal cases.”<sup>22</sup> Within the complete narrative, Rosenberg accuses Bryant of illegally diverting welfare funds and manipulating events to make himself seem innocent, and his co-conspirators appear guilty.

The complaint alleges, “Bryant did not engage in ‘illegal behavior;’ he did not ‘outmaneuver [] the others;’ he did not plot with Davis, New, Favre, or anyone else to violate the law; and he did not

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<sup>17</sup> ECF Doc. #1-1 at 2.

<sup>18</sup> *Id.*

<sup>19</sup> ECF Doc. # 1 at ¶¶ 6.2-6.5.

<sup>20</sup> ECF Doc. #1-1 at 4-5.

<sup>21</sup> *Id.* at 5.

<sup>22</sup> *Id.*

plot against Davis, New, Favre, or anyone else regarding illegal behavior. The Article's statements to the contrary are false and defamatory." It continues, "Bryant is not a defendant in the civil action brought by [MDHS] to recoup misspent welfare funds; he is not a defendant in any criminal action; he had not been notified that he is a target of any investigation; and no civil or criminal case involves the 'theme' that Bryant plotted with or against anyone. The Article's statement to the contrary is false and defamatory."<sup>23</sup> These allegations contend the statement is technically false, and its underlying implication is untrue, satisfying Rule 8.

Paragraphs 6.9 and 6.10 (Section III): The statement addressed here quotes Favre asking Bryant for assistance raising private donations and sponsorships for the volleyball stadium. The Article reports that this request commenced the "scheme"—i.e., the conspiracy to divert welfare funds to the USM Athletic Foundation illegally.<sup>24</sup> The complaint alleges Bryant "did not engage in a 'scheme' to misspend public funds in constructing the USM volleyball facility. The Article implies otherwise and, accordingly, it is false and defamatory."<sup>25</sup> This allegation claims the statement is technically false, and its underlying implication is untrue, satisfying Rule 8.

Paragraphs 6.11 and 6.12 (Section IV): The statement addressed here republishes Carol Burnett's rant speculation to support the heavy-handed implication that Bryant instructed Davis to unlawfully divert \$4 million of welfare funds to the USM Athletic Foundation.<sup>26</sup> The complaint alleges, "Bryant did not have advanced or contemporaneous knowledge of Davis's commitment and did not approve of it. The defendants' publication and endorsement of Carol Burnett's baseless speculation are defamatory."<sup>27</sup> This allegation contends the statement is technically false, and its underlying implication is untrue, satisfying Rule 8.

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<sup>23</sup> ECF Doc. #1 at ¶ 6.7-6.8.

<sup>24</sup> ECF Doc. #1-1 at 6-7.

<sup>25</sup> ECF Doc. #1 at ¶ 6.10.

<sup>26</sup> ECF Doc. #1-1 at 10.

<sup>27</sup> ECF Doc. #1 at ¶ 6.12.

Paragraphs 6.13 through 6.17 (Section V): The statements addressed here accuse Bryant of directing \$1.7 million of welfare funds to Prevacus. The Article describes this action as a “large, legally dubious”<sup>28</sup> favor that Bryant performed for Favre and implies that VanLandingham repaid Bryant by offering him company stock.<sup>29</sup> The Article contends that this illicit arrangement benefited VanLandingham, Favre, Bryant, and Bryant’s political supporter, New Orleans businessman Joe Canizaro. According to the Article: “VanLandingham and Favre had their cash infusion; Bryant’s ally, Canizaro, had the inside track on a real estate deal; and Bryant had VanLandingham dangling company stock for him.”<sup>30</sup>

The complaint admits Bryant “helped arrange and attended a dinner, during which VanLandingham delivered a pitch for Prevacus.”<sup>31</sup> However, it alleges Bryant “did not perform or provide ‘a large, legally dubious’ favor for Favre or anyone else, and he did not agree to accept stock in Prevacus. The Article’s statement that Bryant provided ‘a large, legally dubious’ favor for Favre is false and defamatory.”<sup>32</sup> This allegation contends that the statement is technically false, and its underlying implication is untrue, satisfying Rule 8.

Paragraphs 6.18 and 6.19 (Section VI): The statement addressed here references the “volleyball scheme” and “the Bryant-to-Davis-to-New-to-Favre chain” that perpetuated it.<sup>33</sup> The statement explains that Bryant concealed the payments to the USM Athletic Foundation and Prevacus from State Auditor Shad White to avoid “implicat[ing] himself” in the unlawful diversion of welfare funds.<sup>34</sup>

The complaint alleges, “Bryant did not participate in a volleyball scheme, there was no Bryant-to-Davis-to-New-to-Favre chain, and he did not engage in any criminal activity. Bryant would not

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<sup>28</sup> ECF Doc. #1-1 at 16.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 20.

<sup>31</sup> ECF Doc. #1 at ¶ 6.17

<sup>32</sup> *Id.*

<sup>33</sup> ECF Doc. #1-1 at 23.

<sup>34</sup> *Id.* at 23-24.

have implicated himself in criminal activity or actions giving rise to civil liability had he told White about the volleyball facility or Prevacus. The quoted statements are false and defamatory.”<sup>35</sup> This allegation contends that the statement is technically false, satisfying Rule 8.

Paragraphs 6.20 through 6.25 (Section VII): The statement addressed here explains that Davis’s retirement narrowed the conspiracy to three principals – Bryant, Favre, and New – and describes their roles.<sup>36</sup> As “the veteran pol,” Bryant was the mastermind, whereas New, as the “naïve pleaser,” was easily duped. The statement communicates that Bryant remained involved in an illegal scheme to divert welfare funding after Davis left the scene.

The complaint alleges, “There is no competent evidence that Governor Bryant did anything corrupt or illegal. Rosenberg’s claim to the contrary is false....”<sup>37</sup> This allegation contends that the statement is technically false, and its underlying implication is untrue, satisfying Rule 8.

Paragraphs 6.26 and 6.27 (Section VIII): The statement that Bryant “should have seen it was time to end this. But the governor just wouldn’t quit Brett Favre”<sup>38</sup> communicates that Bryant continued to conspire with Favre despite knowing he should stop. The complaint alleges, “There was nothing to end and nothing for Bryant to quit. The statement implies that Bryant conspired with Favre to defraud the state of public funds, which is false and defamatory.”<sup>39</sup> This allegation contends that the statement is technically false, and its underlying implication is untrue, satisfying Rule 8.

Paragraphs 6.28 and 6.29 (Section IX): “Bryant sent a staff attorney a text that made him seem only vaguely aware of the volleyball project”<sup>40</sup> communicates that Bryant was attempting to conceal his wrongdoing. The complaint alleges, “Bryant did not send a text that made ‘him seem only vaguely

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<sup>35</sup> ECF Doc. #1 at ¶ 6.19.

<sup>36</sup> ECF Doc. #1-2 at 25.

<sup>37</sup> ECF Doc. #1 at ¶¶ 6.24 and 6.25.

<sup>38</sup> ECF Doc. #1-2 at 26.

<sup>39</sup> ECF Doc. #1 at ¶ 6.27.

<sup>40</sup> ECF Doc. #1-2 at 27.

aware of the volleyball project.’ Bryant was vaguely aware of the volleyball project. Bryant was not involved with planning the project, crafting the associated lease arrangement, or approving or directing funding for the project. This statement is false and defamatory.”<sup>41</sup>

The Article also states that Bryant and Freeze are old friends, implying that Bryant appointed a credentialed ally to assist in covering up and concealing his misdeeds. Bryant contends that the statement addressed here is technically false, and its underlying implication is false, satisfying Rule 8.

Paragraphs 6.30 and 6.31 (Section X): The statement addressed here implies Bryant had previously supported the diversion of welfare funds to construct the USM volleyball stadium but was now distancing himself from the illegal act. The complaint alleges, “Bryant did not suddenly change from openly enthusiastic to detached and cautious. Bryant was not involved with planning the project, crafting the associated lease agreement, or approving or directing funding for the project. The statement is false and defamatory.”<sup>42</sup> This allegation contends the statement is technically false, and its underlying implication is untrue, satisfying Rule 8.

Paragraphs 6.32 and 6.33 (Section XI): The statement addressed here<sup>43</sup> communicates that Bryant diverted welfare funding to construct the USM volleyball stadium while making it appear he did not. The complaint alleges, “The quoted statement implies that Bryant directed Favre during a telephone discussion to craft a funding proposal that MDHS would approve. Bryant did not direct MDHS to fund projects or instruct Favre on crafting a proposal that MDHS would approve. The statement is false and defamatory.”<sup>44</sup> This allegation contends that the statement is technically false, and its underlying implication is untrue, satisfying Rule 8.

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<sup>41</sup> ECF Doc. #1 at ¶ 6.29.

<sup>42</sup> *Id.* at ¶ 6.31.

<sup>43</sup> ECF Doc. #1-2 at 31-32.

<sup>44</sup> ECF Doc. #1 at ¶ 6.33.

Paragraphs 6.34 and 6.35 (Section XII): The statement addressed here accuses Bryant of manipulating his text messages to Freeze to make it appear that he had not diverted welfare funding to the USM Athletic Foundation and assured Favre that he would continue doing so. The complaint alleges, “Bryant did not ‘portray’ himself as forthright and proper, too busy to monitor MDHS funding, and out of the loop for years. Bryant was honest and proper; he was not involved with the USM volleyball facility’s funding; and he was out of the loop regarding the facility’s funding. Bryant never assured Favre that he would direct MDHS or TANF funds toward the construction of the volleyball facility. The statement is false and defamatory.”<sup>45</sup> This allegation contends the statement is technically false, and its underlying implication is untrue, satisfying Rule 8.

Paragraphs 6.36 and 6.37 (Section XIII): The statement addressed here accuses Bryant of directing welfare funding to construct the volleyball facility while making it appear he had not. The statement also accuses Bryant of setting a “trap”<sup>46</sup> for his co-conspirators, Favre and New, implying he attempted to make it appear that he had not been a conspiracy member. The complaint alleges, “Bryant did not set a trap; he did not make it look like New was the perpetrator; he did not make it look like Favre was an accomplice; and he did not make it look like he was the honest occasional advisor. The statement is false and defamatory.”<sup>47</sup> This allegation contends that the statement is technically false, and its underlying implication is untrue, satisfying Rule 8.

Paragraphs 6.38 and 6.39 (Section XIV): The statement addressed here accuses Bryant of selling Favre out to USM president Rodney Bennett, implying Bryant reneged on his promise to Favre to continue directing welfare funds to pay for the volleyball stadium’s construction costs and concealed his promise from Bennett. The complaint alleges, “Bryant did not sell Favre out. The

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<sup>45</sup> *Id.* at ¶ 6.35.

<sup>46</sup> ECF Doc. #1-2 at 35.

<sup>47</sup> ECF Doc. #1 at ¶ 6.37.

statement is false and defamatory.”<sup>48</sup> This allegation contends that the statement is technically false, and its underlying implication is untrue, satisfying Rule 8.

Paragraphs 6.40 and 6.41 (Section XV): The statement addressed here communicates that the “trail” of evidence leads to Bryant; White “almost certainly” did not know the trail would lead to Bryant; and “law enforcement found explosive texts implicating Bryant” in the illegal diversion of welfare funds.<sup>49</sup> The complaint alleges, “Bryant did not tell White that Davis was funneling government money to the DiBiases; no trail leads to Bryant; and law enforcement did not find ‘explosive texts implicating Bryant and Favre that eventually became public.’”<sup>50</sup> This allegation contends the statement is technically false, and its underlying implication is untrue, satisfying Rule 8.

Paragraphs 6.42 through 6.44 (Section XVI): The statement here reads: “Though the governor indicated he would accept Prevacus stock, he either ran out of time or suddenly changed his mind before the arrests.”<sup>51</sup> Within the complete narrative, the statement communicates that Bryant agreed to an illegal *quid pro quo* arrangement and reneged when arrests occurred. The complaint alleges, “Bryant never indicated he would accept Prevacus stock. He did not run out of time to do so and did not suddenly change his mind.”<sup>52</sup> This allegation contends that the statement is technically false, satisfying Rule 8.

**4. Readers would believe Bryant conspired to divert welfare money:** Whereas no reasonable person would have thought that Sharpe accused Favre of going “into the homes of poor people and [taking] their money,” readers of the Article would believe Bryant had diverted welfare money to the USM Athletic Foundation because he was infatuated with Brett Favre, diverted welfare money to Prevacus in exchange for company stock, attempted to conceal his unlawful acts when he

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<sup>48</sup> *Id.* at ¶ 6.39.

<sup>49</sup> ECF Doc. #1-2 at 40.

<sup>50</sup> ECF Doc. #1 at ¶ 6.41.

<sup>51</sup> ECF Doc. #1-2 at 43.

<sup>52</sup> ECF Doc. #1 at ¶ 6.43.

understood that investigators would uncover his involvement in the misspending, and manipulated texts with Favre, his staff attorney, and Freeze to make it appear he was not responsible for the misspending. The statements in the Article fundamentally differ from those made by Sharpe.

**5. Readers expect genuine reporting of events in SI:** SI is not “a debate format sports entertainment talk show with lively, pointed banter.” *Favre*, 2023 WL 7132949 at \*6. For most of its existence, SI was considered “the gold standard for how to be good at anything you did. SI was IBM. It was Apple. It was a rocket ship. It was a poem. It was a good political leader. It was human and warm and bold.”<sup>53</sup> SI was where readers expected to find genuine and accurate reporting of events.

In sum, the statements in the Article, individually and collectively, accuse Bryant of conspiring with Davis, New, and Favre to divert welfare funds. The statements are not vague, do not use “loose, figurative language,” and are not rhetorical hyperbole or protected opinion. Each statement builds upon the next to accuse Governor Bryant of corruption and crimes. The statements are actionable libels.

**B. The underlying implication of the Article is false.**

“The threshold question in a defamation suit is whether the published statements are false.” *Hayne*, 2011 WL 198128, at \*4 (quoting *Armistead v. Minor*, 815 So. 2d 1189, 1194 (Miss. 2002)). A statement is considered false when “it would have a different effect on the mind of the reader from that which the pleaded truth would have produced.” *Id.* (quoting *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 510, 111 S.Ct. 2419, 115 L.Ed.2d 447 (1991)). There are two types of false statements: those that are technically false and those that are substantially false. *Id.* at \*6 (“A published statement may be technically false – where the fact or facts reported therein are simply untrue ... However, a published statement may also be ‘substantially false,’ where ‘an underlying implication drawn from

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<sup>53</sup> Mike Freeman, *Sports Illustrated May Be on Life Support, But Let Me Tell You About Its Wonderful Life*, Jan. 19, 2024, published at: <https://www.usatoday.com/story/sports/columnist/mike-freeman/2024/01/19/sports-illustrated-layoffs-gold-standard/72283622007/>.



facially true statements [is] sufficient to render the statements false.”) (citing *Journal Pub. Co. v. McCullough*, 743 So. 2d 352, 360 (Miss. 1999)). Similarly, there are two types of substantially false statements: those that create an underlying false implication through the omission of material information and those that create an underlying false implication through the overall tone and structure of the publication. *Id.* (quoting *McCullough v. Cook*, 679 So. 2d 627, 632-33 (Miss. 1996)) (internal quotes omitted); *Journal Pub. Co.*, 743 So. 2d at 361. Accordingly, in the present case, Bryant adequately pleaded falsity if he alleged the underlying implication created by facially true statements is false because of the omission of crucial information or the overall tone or structure of the publication.

The complaint alleges in its introduction section, “In the Article, Rosenberg alleges a conspiracy involving ... Bryant, ... Davis, ... New, and ... Favre. As per Rosenberg, the conspiracy aimed to defraud the State of Mississippi of tens of millions of welfare dollars to construct a volleyball facility at [USM] and invest in ... Prevacus. Rosenberg claims Bryant orchestrated the scheme, and when its exposure seemed imminent, Bryant attempted to distance himself from it. The Article, in both isolated passages and as a whole, is false, defamatory, and constitutionally malicious.”<sup>54</sup> The factual background section of the complaint details the building blocks of this overarching narrative and, as previously discussed, alleges each statement is technically and substantially false. At the end of the factual background section, the complaint reiterates “the Article’s defamatory message: Bryant was part of a criminal scheme to divert TANF funds to construct the USM volleyball facility and invest in Prevacus.”<sup>55</sup> The complaint adopts all these allegations in its defamation and false light counts and explains that the “preceding statements” satisfy the elements of both claims.<sup>56</sup> Nothing more needs to be pled to satisfy the notice pleading standard of Rule 8.

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<sup>54</sup> ECF Doc. #1 at ¶ 1.2.

<sup>55</sup> *Id.* at ¶ 6.46.

<sup>56</sup> *Id.* at ¶¶ 7.1 through 7.4, 8.1 through 8.4.

**C. The statements addressed in sections XII and XVI are totally false, and the statement addressed in section XVII is partially untrue.**

Arena argues that the statements addressed in factual background sections XII, XVI, and XVII are substantially true. The first two statements are provably false, and the third is partially untrue.<sup>57</sup>

**1. Text messages do not reveal Bryant directing welfare funds to the USM Athletic Foundation:** Governor Bryant provided a detailed analysis of his communications concerning the USM volleyball stadium in *Mississippi Dept. of Human Services v. Mississippi Community Education Center, et al.*, No. 22-cv-286-EFP (Hinds Cty. Cir. Ct.) [MEC Doc. #140]. Bryant filed the relevant document and its exhibits [MEC Docs. #140-1 through #140-48] on September 23, 2022 – nearly eight months before the defendants published the Article. As illustrated, the filing irrefutably proves Bryant did not direct welfare funds to the USM Athletic Foundation:

- Governor Bryant learned Favre was attempting to raise money to construct the USM volleyball stadium on April 20, 2017. Bryant agreed to assist Favre in obtaining private sponsorships and donations. These communications stretched into July 2017.<sup>58</sup>
- New, Davis, and Favre met with USM officials on July 24, 2017. Davis offered to pay \$4 million of welfare funds during this meeting. Favre did not have advanced knowledge of Davis’s offer.<sup>59</sup> Governor Bryant was unaware of this meeting and did not know about Davis’s \$4 million commitment.

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<sup>57</sup> There is no need to address the third statement in a separate section of this brief. The Article contends that Bryant argued in a court filing that New and Davis embezzled MDHS funds “unbeknownst to Bryant” and that Bryant’s counsel “have said Bryant didn’t know the money Favre wanted came from TANF because Favre never mentioned it.” [ECF Doc. #1-2 at 43-44]. Both statements are false. As to the first, Bryant argued New and Favre pursued MDHS funds “unbeknownst” to him. *Mississippi Dept. of Human Services v. Mississippi Community Education Center, et al.*, No. 25CI1:22-cv-286-EFP (Hinds Cty. Cir. Ct.) [MEC Doc. #140 at 10]. Pursuing public funds and embezzling public funds are two very different things. As to the second, the only time Favre sought money from Bryant was when he requested \$1.5 to \$2 million of welfare funds for the volleyball facility. Bryant did not satisfy the request.

<sup>58</sup> MEC Docs. ##140 at 9-10; 140-1 through 140-6.

<sup>59</sup> MEC Docs. ##140 at 10; 131-3.

- A few days after the meeting, Favre and New discussed New paying Favre \$1.1 million of welfare funds in exchange for his recording public service announcements for New's nonprofit. Favre and New planned that Favre would redirect the \$1.1 million to the volleyball facility's construction costs.<sup>60</sup> Governor Bryant did not craft this arrangement and did not know it existed.

- On August 2, 2017, Favre texted New about an upcoming meeting with USM and expressed concern about the media discovering the \$1.1 million arrangement.<sup>61</sup> Two days later, New and Bryant had a telephone conversation, during which Bryant expressed general support for a women's volleyball facility on USM's campus. New did not tell Bryant that she and Davis had committed welfare funds to the project.

- In mid-to-late August 2017, USM professor Dr. Gordon Cannon updated New on the university's willingness to proceed with the volleyball stadium project and associated lease arrangement.<sup>62</sup>

- On October 19, 2017, the Institutions of Higher Learning ("IHL") approved a lease arrangement between USM and the USM Athletic Foundation. The board minutes and related documents clarify that the IHL knew the project would be funded with \$5 million in welfare funds and that the Attorney General's office "reviewed and approved" the arrangement before its approval.<sup>63</sup>

- USM executed the volleyball stadium lease on November 2, 2017. On that same day, Favre and New readdressed holding a fundraiser at the governor's mansion. New told Favre that she had recently discussed the fundraiser with Governor Bryant.<sup>64</sup>

- Favre notified New on March 28, 2018, that the construction bids for the facility were much higher than anticipated. He had been confident that construction costs would be fully covered by the

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<sup>60</sup> MEC Docs. ##140 at 11; 131-4, 131-5.

<sup>61</sup> MEC Docs. ##140 at 12; 131-6, 131-7.

<sup>62</sup> MEC Docs. ##140 at 12-13; 131-8; 131-9; 131-10.

<sup>63</sup> MEC Docs. ##140 at 14-15; 140-7; 140-46.

<sup>64</sup> MEC Docs. ##140 at 16-17; 140-8.

\$5 million payment and other money “we have saved.” New reminded Favre that they could still have a fundraiser “at the Governor’s mansion” and “if we need to, we will roll up our sleeves and get the rest.”<sup>65</sup>

- On May 9, 2018, Favre asked Bryant to assist with lockers for the facility. Governor Bryant paid for the locker construction with his personal funds.<sup>66</sup>

- On March 18, 2019, Favre requested an additional \$1.1 million from Davis. He asked for a similar amount from New on May 15 and 16, 2019. By the end of the month, Favre claimed to need an additional \$1.8 million for construction costs. New texted Favre, “In a meeting with John Davis now. He said we will cover much of [it] but [it] may have to be in a couple of payments. We are on board!!”<sup>67</sup>

- In June 2019, Governor Bryant confronted Davis about an odd paycheck arrangement and reported the matter to the state auditor. Davis resigned on July 8, 2019. A week later, New expressed concern to Favre that she “may not be able to assist you in Aug[ust] as we had planned.”<sup>68</sup>

- Governor Bryant learned from Favre on July 16, 2019, that New and Davis had previously committed to pay \$1.8 million toward the volleyball facility’s construction, that New’s nonprofit intended to use the facility for programming, and that New had told Favre that she could not follow through with their plan. Bryant and a staff attorney met with New on July 18, 2019, and later explained to Favre, “Working with her. Lots of challenges but we will do our best.”<sup>69</sup>

- On July 22, 2019, Governor Bryant asked a staff attorney to “check with Nancy New and see what the contract with Southern Miss is all about. Brett is asking for info on the proposed funding.” Later that day, the staff attorney wrote to Bryant, “I talked to Nancy. She said the program at usm is

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<sup>65</sup> MEC Docs. ##140 at 18-19; 131-14.

<sup>66</sup> MEC Docs. ##140 at 17-18; 140-9; 140-10.

<sup>67</sup> MEC Docs. ##140 at 20-21; 131-17; 131-18.

<sup>68</sup> MEC Docs. ##140 at 22-23; 131-19; 131-20.

<sup>69</sup> MEC Docs. ##140 at 23-25; 140-12 through 140-16; 131-21; 131-23.

a health and fitness program. The contract is with usm to rent buildings to put on this program. Brett volunteers his time. Nancy is getting a one pager.” Bryant responded, “Can we get [the] Auditor to tell [us] if the USM Contract is proper? ... If it [is] proper then we should move ahead since they are planning it to happen.” Following this discussion, Bryant explained to Favre, “[t]he State Auditor is reviewing all Contracts at DHS which [fund] [] Families First. Hope we get legal clearance soon. Don’t want anyone to get in trouble for improper expenditures. Should know soon.”<sup>70</sup>

- Chris Freeze became MDHS executive director on July 25, 2019. On that same day, Favre and New hatched a plan to press Governor Bryant to fund remaining construction costs with MDHS money. Bryant explained to Favre that MDHS funds are “tightly controlled” and that improper usage could violate federal law. Bryant discussed New and Favre’s funding request with Freeze, explaining that he had told Favre that the request “would be reviewed just like all other projects.” Freeze notified Bryant that he was “not inclined to approve at this time.” Bryant indicated that he was “not going to interfere” and that Freeze had “a better understanding” than he did “of these projects.”<sup>71</sup>

- After Bryant left office and MDHS stopped funding New’s nonprofit, Favre sought Bryant’s assistance obtaining a legislative appropriation or bond bill to cover his debt. Bryant reached out to USM president Rodney Bennett, who explained that “[t]he bottom line is [Favre] personally guaranteed the project, and on his word and handshake we proceeded. It’s time for him to pay up – it really is just that simple.”<sup>72</sup>

No fair-minded individual can review Bryant’s texts and conclude he directed welfare funds to construct the USM volleyball stadium. The messages reveal that Davis and New made a \$5 million commitment; USM agreed to accept the payment; and, the IHL approved the payment. When Favre learned that an additional \$2 million may be needed, he returned to New and Davis for more funds.

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<sup>70</sup> MEC Docs. ##140 at 25-28; 140-17 through 140-19.

<sup>71</sup> MEC Docs. ##140 at 28-42; 140-19 through 140-42; 140-48; 131-27.

<sup>72</sup> MEC Docs. ##140 at 42-45; 140-39 through 140-42.

They agreed to provide the funding, but Davis resigned before directing the payment. Without Davis in place to authorize the expenditure, Favre and New pressed Bryant to do so. Bryant refused. This is the undeniable, well-documented truth – and it is why the state auditor, criminal authorities, and MDHS have never accused Bryant of misdirecting welfare funds to the USM Athletic Foundation.

**2. Text messages do not reveal Bryant agreeing to accept stock in Prevacus:** The Second Amended Complaint in the Madison County defamation action documents the communications between Bryant and VanLandingham, which were publicly available at [www.bryanttexts.com](http://www.bryanttexts.com) when the defendants published the Article – a fact the Article acknowledges.<sup>73</sup>

The first text from VanLandingham occurred on December 6, 2018. It reads:

Good evening, Governor – Following up my friend on FDA connections. Also wanted to say Brett and I are hopeful to get a group of investors together perhaps with your help and come up to Jackson. We want you to know we want you on the team and can offer stock. We don't know the rules but are willing to do what is needed to bring you on board. Grateful for your help!!!”

Favre responded, “Amen to that!!” Bryant replied, “Just let me know and we will call a team meeting at the Governor’s Mansion.” VanLandingham did not offer stock to Bryant. He wrote that Prevacus “can offer stock” and admitted that he did not “know the rules.” Bryant did not respond to the stock overture.<sup>74</sup>

The next communication occurred at the governor’s mansion before Favre, VanLandingham, Canizaro, Bryant, and several others attended a dinner meeting. The Second Amended Complaint explains, “In the early evening of December 26, 2018, representatives from the governor’s office picked up Favre and VanLandingham from the airport and drove them to the Governor’s Mansion. Favre, VanLandingham, and Bryant discussed Prevacus in the mansion. VanLandingham asked Bryant if he could accept stock in Prevacus during this meeting. Bryant immediately informed

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<sup>73</sup> ECF Doc. #1-2 at 43.

<sup>74</sup> ECF Doc. #1-3 at 138-39.

VanLandingham that he could not and would not accept stock in Prevacus for anything he may do while in office. Favre, VanLandingham, and Bryant subsequently traveled together in a motor vehicle to Walker's Drive-In for a dinner meeting.”<sup>75</sup>

VanLandingham next raised the company stock issue with Bryant on December 2, 2019. The text reads: “Governor, can we bring you onboard with ownership now?” Bryant responded, “Cannot till January 15<sup>th</sup>. But would love to talk then. This is the type of thing I love to be a part of. Something that saves lives...”<sup>76</sup> *Mississippi Today* reporter Anna Wolfe interviewed Bryant for nearly three hours on April 2, 2022. Bryant told Wolfe that he “didn’t talk to anybody about anything in business until [he] left office.” According to Bryant, “[p]eople would come up to me and say, ‘We want you to be a part of our business. We want you to come [join our] board. We want you to come in and join our firm.’ And I would say, ‘I can’t talk to you until after I leave office. I don’t even want to talk about it.’”<sup>77</sup>

On January 16, 2020 (over a year later and after Bryant had left office), VanLandingham next raised the issue of company stock with Bryant: “Now that you’re unemployed, I’d like to give you a company package for all your help. Let me know when you come up for air, but know we want and need you on our team!!!” Bryant replied: “Sounds good. Where would be the best place to meet[?] I am now going to get on it hard.”<sup>78</sup> The Second Amended Complaint alleges several points arising from this exchange:

6.251 ... First, VanLandingham did not offer “a company package” in his text. Instead, he wrote that he would “like to give” Bryant a company package. This message suggests Bryant had not previously accepted stock or ownership and that Bryant could reject whatever VanLandingham may offer.

6.252 Second, VanLandingham did not specify the terms of the “company package” he would “like to give” Bryant. The absence of specifics suggests a lack of agreement or

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<sup>75</sup> *Id.* at 139.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 47-48.

<sup>78</sup> *Id.*

understanding of the proposed terms. The phrase “company package” is vague, and its meaning is ambiguous.

6.253 Third, VanLandingham did not specify the “help” he referenced and certainly did not say that he was offering Bryant “a company package” in exchange for services he had already performed. The most reasonable interpretation of the text message is that VanLandingham is attempting to entice Bryant or BSS<sup>79</sup> to accept Prevacus as a client.

6.254 Fourth, Bryant did not agree to accept a “company package.” He instead indicated he would like “to meet” with VanLandingham to discuss further details. The “get on it hard” language is rhetorical hyperbole.

6.255 Fifth, as for whether Bryant or BSS could ethically or legally assist Prevacus after Bryant left office, Bryant explained to Wolfe in his three-hour interview that “[b]efore any agreement (with Prevacus hypothetically made), it would have had to go through our internal review here with lawyers, and then we would have asked (Ethics Commission director) Tom Hood, ‘Can you review it?’ We hired an attorney at Butler Snow to begin to review anything that we were doing so that we made sure. So yeah, it wouldn’t have just been, ‘OK, let’s go to work.’ It’s just not that easy.”<sup>80</sup>

The final communication between VanLandingham and Bryant about company stock occurred in a telephone conversation on January 22, 2020. The Second Amended Complaint alleges, “Wolfe knows Bryant participated in a telephone call with VanLandingham and [Favre’s friend] Poncho James on January 22, 2020. Toward the end of the call, VanLandingham mentioned offering stock in Prevacus to Bryant in exchange for BSS’s future services. Bryant told VanLandingham that they could address the matter at a later time. Bryant told Wolfe about this telephone discussion in his interview with her: ‘At the end of the conversation, [VanLandingham] said, ‘And oh by the way we need to talk about some stock.’ And I just said, ‘Well, you know, we’ll get together later on.’ And I never called him back.”<sup>81</sup>

Like the complaint in this action, the Second Amended Complaint alleges that “Bryant did not accept stock, ownership, or a company package from VanLandingham or Prevacus.”<sup>82</sup> Further, it

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<sup>79</sup> “BSS” is an acronym the Second Amended Complaint uses for BSS Global, a consulting firm founded by Bryant, his former chief of staff Joey Songy, and his daughter Katie Snell, after his second term concluded.

<sup>80</sup> ECF Doc. #1-3 at 140-141 and 48-49 (Wolfe-Bryant interview allegations).

<sup>81</sup> *Id.* at 141.

<sup>82</sup> *Id.* at 142.



alleges that “Bryant’s summary is consistent with what VanLandingham told Wolfe about his dealings with Bryant.” It quotes verbatim VanLandingham’s comments to Wolfe on his dealings with Bryant: “The governor was always straight up. There was never any stock exchanged. There was never any money exchanged. He just wanted to help. And we never did a deal for him to come on with his consulting firm and that could be because this (the arrests) happened. We were probably working towards having the governor, post-governorship, help us, and I think that would have been great.”

The careful review of communications reveals that, at most, Bryant was willing to meet with VanLandingham later to hear a proposal – precisely what Bryant and VanLandingham told Wolfe in separate interviews available to the defendants when they published the Article.<sup>83</sup>

## **II. Governor Bryant adequately alleged actual malice.**

### **A. Actual malice must be alleged generally under Fed. R. Civ. P. 9(b).**

Governor Bryant must prove the defendants published their false and defamatory statements with actual malice. This standard requires proof that the defendants knew the statements were false at publication or published them in reckless disregard of whether they were untrue. *Journal Pub. Co.*, 743 So. 2d at 361. The Mississippi Supreme Court has observed:

A reckless disregard for the truth requires more than a departure from reasonably prudent conduct. “There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.” *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 688, 109 S.Ct. 2678, 105 L.Ed.2d 1562 (1989) (quoting *St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968)). The standard is a subjective one – there must be sufficient evidence to permit the conclusion that the defendant actually had a “high degree of awareness of ... probable falsity.” *Id.* (quoting *Garrison v. Louisiana*, 379 U.S. 64, 74, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964)).

*Id.* at 361-62. A wide variety of evidence can sustain an actual malice determination. For instance, the country’s leading treatise on defamation law explains that decisions from state and federal courts –

generally hold that almost any evidence of common law malice may be *relevant and admissible* evidence on the constitutional actual malice issue – anger; hostility; retaliation or threats to “get” the plaintiff; political partisanship; participation in a scheme to injure plaintiff; personal

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<sup>83</sup> *Id.* at 47-48.

ill will; coercive purposes or blackmailing attempts; motive to suppress information or intimidate an opponent critical of defendant; economic motivation; sensationalism or “muckraking;” publication with full cognizance of the harm to the plaintiff or heedless of the consequences; prior attempts at deliberate falsification or omissions; prior attempts to harm plaintiff; a preconceived plan to discredit plaintiff; a preconceived view or slant. In the words of the Restatement (Second) of Torts such factors “assist in the drawing of an inference that the publisher knew his statement was false or acted in reckless disregard of its falsity.” Another thoughtful recent opinion, citing the probative value of motivation, concluded: “[a] newspaper cannot publish an accusation that it knows has no evidence behind it as a fact to fit its desired storyline and then cloak it all in the First Amendment.”

David Elder, *Defamation: A Lawyer’s Guide* § 7:3, *Common Law Malice and Constitutional “Actual Malice”* (Oct. 2023 Update) (emphasis in original). Mississippi courts have followed this standard for decades. See, e.g., *Newson v. Henry*, 443 So. 2d 817, 823 (Miss. 1983); *Stegall v. WTVV, Inc.*, 609 So. 2d 348, 352 (Miss. 1992); *Anders v. Newsweek, Inc.*, 727 F. Supp. 1065, 1067-68 (S.D. Miss. 1989).

This court addressed what is required to sufficiently plead actual malice in *Hayne*. In that case, Dr. Steven Hayne brought defamation claims against The Innocence Project, its co-director, and one of its staff attorneys arising from representations made in a letter to the Mississippi State Board of Medical Licensure. 2011 WL 198128, at \*1. The defendants moved to dismiss the action, arguing Hayne failed to plead actual malice sufficiently. *Id.* Judge Starrett rejected this argument as follows:

Defendants first argue that Plaintiff’s First Complaint does not contain sufficient factual allegations to show actual malice. “Actual malice is defined as a statement made ‘with knowledge that it was false or with reckless disregard of whether it was false or not.’” *Armistead*, 815 So. 2d at 1193 (quoting *Masson*, 501 U.S. at 510, 111 S.Ct. 2419, 115 L.Ed.2d 447). Plaintiff alleged that Defendants knew the statements at issue were “inaccurate, misleading, and/or patently false.” Plaintiff further alleged that Defendants published the statements “in reckless disregard for the truth or falsity of said allegations.”

According to Plaintiff, Defendants “edited and distorted the actual facts ... so as to maximize the damage and harm to [him], his reputation, and his ability to earn a living in his chosen profession.” Plaintiff also alleged that Defendants exhibited actual malice “by ignoring all contrary evidence and/or by editing their publications in such a way as to maximize the false light that was cast on [him].” These allegations – if true – are sufficient to state a plausible claim that Defendants published the statements with actual malice.

*Id.* at \*5. The Northern District faced a similar situation in *Rich v. Cox Media Group Northeast, LLC*, No. 3:18-cv-68, 2019 WL 1371844, at \*3 (N.D. Miss. Mar. 26, 2019). In that case, the plaintiffs were

police officers employed by the Southaven Police Department (SPD). WHBQ TV was a local television station in Memphis that Cox Media Group Northeast LLC owned. On September 29, 2017, WHBQ TV posted an article on its Facebook page regarding the shooting of Ismael Lopez by the SPD. “The article stated that –

WHBQ TV had obtained a list of officers purportedly on duty at the time of the shooting. The article then stated that, of the officers named on the list, “two snakes stand out – Todd Baggett and Joel Rich,” and that they had been involved in a previous police incident involving Troy Good in 2015. The article further stated that “Baggett and Rich are not accused of being the ones who shot Lopez.” The morning after the article was posted, WHBQ TV was alerted about the “snake reference.” WHBQ TV responded by removing the reference to “snakes” and included a note that read:

Update: in a previous version of this story, an error was made describing two Southaven police officers in an unflattering manner. It was never our intent to misrepresent these officers. We have corrected the body of this story to reflect that. We apologize for the error.

The updated article is still accessible on WHBQ TV’s website. WHBQ TV stated that the reference to the plaintiffs as “snakes” was a typographical error – which was made by a reporter who typed the words on her phone.

*Id.* at \*1. The officers sued WHBQ TV for defamation, and it moved to dismiss under Rule 12(b)(6). *Id.* at \*2. Judge Mills found that the officers had alleged sufficient facts to overcome a motion to dismiss, reasoning: “The plaintiffs allege that the defendants acted with reckless disregard for the truth because the defendant had reason to doubt the veracity of the list of officers. As evidence of the defendant’s knowledge, the plaintiffs assert that the list of officers had been ‘pitched’ to other news agencies and those agencies had refused to publish the information because they could not verify the list. Therefore, the defendant should have been put on notice to further investigate the list to determine its trustworthiness. Given these facts, a reasonable jury could find that the defendant acted with malice. Thus, this Court finds that the use of the term ‘snakes,’ coupled with a disregard of the truth of the statements, is sufficient to survive a motion to dismiss.” *Id.* at \*3; see also, *Amin v. NBCUniversal Media, LLC*, No. 5:21-cv-56, 2024 WL 3188768, at \*25 (S.D. Ga. June 26, 2024) (“The existence of actual malice is generally a question for the jury.”) (citing *Speedway Grading Corp. v. Gardner*,

425 S.E.2d 676, 678 (Ga. Ct. App. 1992); *Reid v. Viacom Int'l Inc.*, No. 1:14-cv-1252, 2017 WL 11634619, at \*7 fn. 6 (N.D. Ga. Sept. 22, 2017) (“Because the question of actual malice involves subjective evaluations, the Court is reluctant to take the malice determination from a jury.”).

**B. The complaint alleges and incorporates indicia of actual malice.**

The complaint alleges and incorporates numerous indicators of actual malice, all supported by detailed facts. These allegations exceed the relevant pleading requirement. Fed. R. Civ. P. 9(b) (“Malice ... may be alleged generally”).

**1. Shad White told Wolfe there was no evidence that Bryant misspent public funds:** The Article accuses Bryant of public corruption and criminal conduct despite the state auditor explaining in a detailed, publicly available interview that there is no evidence to support those claims.<sup>84</sup> The defendants’ disregard of this interview proves their actual malice. *Batson v. Time, Inc.*, 298 So. 2d 100 (La. Ct. App. 1<sup>st</sup> Cir. 1974); *Airlie Foundation, Inc. v. Evening Star Newspaper Co.*, 337 F. Supp. 421 (D. D.C. 1972).

**2. Bryant and VanLandingham told Wolfe they did not have a *quid pro quo* agreement:** The Article reports that Bryant agreed to accept stock in Prevacus after diverting \$2.2 million of welfare funds to Prevacus and a sister company, PreSolMD. Bryant and VanLandingham publicly denied this arrangement, and Rosenberg did not obtain a comment from Favre.<sup>85</sup> A publisher’s failure to adequately consider the denials of involved parties proves its actual malice. *Harte-Hanks*, 491 U.S. at 682-683; *Cape Publications, Inc. v. Adams*, 336 So. 2d 1197, 1199-1200 (Fla. App. 4<sup>th</sup> Dist. 1976).

**3. The referenced communications do not support the Article’s accusations:** The Article communicates that Bryant had an illegal *quid pro quo* arrangement with Prevacus and directed

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<sup>84</sup> ECF Doc. #1-3 at 38-43.

<sup>85</sup> *Id.* at 138-140.

millions of welfare dollars to the USM Athletic Foundation. No competent evidence supports these accusations. A publisher acts with actual malice when it knowingly or recklessly misstates evidence to make it seem more convincing or condemnatory than it is. *Young v. Gannett Satellite Information Network, Inc.*, 734 F.3d 544, 547-48 (6<sup>th</sup> Cir. 2014); *Doe v. Doe*, 941 F.2d 280, 291-92 (5<sup>th</sup> Cir. 1991); *Westmoreland v. CBS Inc.*, 596 F. Supp. 1170, 1174 (S.D. N.Y. 1984); *Nader v. de Toledano*, 408 A.2d 31, 52-54 (D.C. 1979); *Buratt v. Capital City Press, Inc.*, 459 So. 2d 1268,1270-71 (La. Ct. App. 1<sup>st</sup> Cir. 1985); *Davis v. Schuchat*, 510 F.2d 731, 735-36 (D.C. 1975).

**4. The Article's accusations are inherently improbable:** The state auditor's office investigated and evaluated the welfare scandal for months and did not conclude Bryant had misspent public funds.<sup>86</sup> Davis, New, and several others pleaded guilty to state and federal crimes years ago and immediately began cooperating with criminal authorities, yet no state or federal criminal authority has accused Bryant of wrongdoing. MDHS is pursuing a civil suit against numerous individuals and entities seeking to recoup misspent welfare funds but has not brought a claim against Bryant. The notion that the defendants uncovered crimes and corruption that the state and federal authorities failed to detect in years of detailed investigation is inherently improbable. *Amin*, 2024 WL 3188768, at \*25; *US Dominion, Inc. v. Powell*, 554 F. Supp. 3d 42, 60 (D. D.C. 2021); *Stern v. Cosby*, 645 F. Supp. 2d 258, 279 (S.D. N.Y. 2009); *Khawar v. Globe Intern., Inc.*, 965 P.2d 696, 710 (Cal. 1998).

**5. The accusation that Bryant directed millions of welfare funds to the USM Athletic Foundation is based on rootless speculation:** The Article bases its statement that Bryant directed millions of welfare funds to the USM Athletic Foundation on Carol Burnett's rootless speculation.<sup>87</sup> A publisher's reliance on baseless speculation evidences its actual malice. *Prozeralik v.*

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<sup>86</sup> *Id.* at 38-43 (Wolfe-White interview).

<sup>87</sup> ECF Doc. #1 at ¶¶ 6.11-6.12; ECF Doc. #1-1 at 10.

*Capital Cities Communications, Inc.*, 626 N.E.2d 34, 39-40 (N.Y. Ct. App. 1993); *Snowden v. Pearl River Broadcasting Corp.*, 251 So. 2d 405, 411 (La. Ct. App. 1<sup>st</sup> Cir. 1971).

**6. The defendants knew they would harm Bryant:** Given the severity of the accusations, Arena and Rosenberg knew their remarks would harm Bryant or were heedless of the consequences to Bryant. Defamation: A Lawyer's Guide § 7:3, *Common Law Malice and Constitutional "Actual Malice"* ("publication with full cognizance of the harm to the plaintiff or heedless of the consequences" is evidence of actual malice) (citing cases).

**7. The defendants made their accusations despite Bryant's denial:** The defendants published their false and defamatory statements despite Bryant's adamant denials of wrongdoing in a detailed interview<sup>88</sup> and public statements.<sup>89</sup> David Elder, Defamation: A Lawyer's Guide § 7:17, *Publications After Plaintiff's Denial or Denial by Plaintiff's Superior* (Oct. 2023 Update) (denials "are at least evidence to be considered on the issue of constitutional actual malice and may, together with other factors, be highly probative of actual malice.") (citing cases).

**8. The accusations are sensational:** The defendants accused Bryant of conspiring to illegally divert millions of welfare dollars and manipulating events to make himself appear innocent of wrongdoing when, in fact, he was the ringleader. Accusations of this nature against the state's highest-ranking government official are wildly sensational. Defamation: A Lawyer's Guide § 7:3, *Common Law Malice and Constitutional "Actual Malice"* ("sensationalism or 'muckraking'" supports actual malice finding) (citing cases).

**9. The defendants refused to retract their accusations:** The defendants refused to retract their false and defamatory statements.<sup>90</sup> The Fifth Circuit has long recognized that refusals to retract can prove actual malice. *National Ass'n of Government Employees, Inc. v. National Fed'n of Federal*

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<sup>88</sup> ECF Doc. #1-3 at 47-55.

<sup>89</sup> ECF Doc. #1-2 at 43-44.

<sup>90</sup> ECF Doc. #1 at ¶ 3.12.

*Employees*, 844 F.2d 216, 221 (5<sup>th</sup> Cir. 1988); *Golden Bear Distributing Systems of Texas, Inc. v. Chase Revel, Inc.*, 708 F.2d 944, 950 (5<sup>th</sup> Cir. 1983) (quoting *Restatement (Second) of Torts* § 580A, comm. D (1977)); *Morgan v. Dun & Bradstreet, Inc.*, 421 F.2d 1241, 1243 (5<sup>th</sup> Cir. 1970).

**10. The Article relies on obviously biased sources:** As the complaint alleges, “[i]t is apparent that in crafting the Article, Rosenberg relied on information provided to him by Nancy New or individuals aligned with her... Rosenberg opted to believe a disgraced felon with an axe to grind and uncorroborated stories to tell...”<sup>91</sup> Numerous cases have found that reliance on a furious and biased source proves actual malice. *Amin*, 2024 WL 3188768, at \*26 (reliance on a source who “has a whole separate agenda” and “a beef” can prove actual malice); David Elder, *Defamation: A Lawyer’s Guide* § 7:2, *A Subjective Standard* (Oct. 2023 Update) (citing cases).

**11. The Article recklessly disregards that the average reader would interpret its language as false statements of fact:** There is no proof that Bryant told Davis to offer \$4 million of welfare funds to construct the USM volleyball stadium, yet Rosenberg wrote that “[i]t was as though Davis knew he would deliver the money before the meeting.”<sup>92</sup> There is no proof that Bryant told Davis to offer \$1.7 million of welfare funds to Prevacus, yet Rosenberg spun a tale of criminal conspiracy in which Bryant must have done so.<sup>93</sup> There is no proof that Bryant agreed to accept Prevacus stock, yet Rosenberg wrote just that.<sup>94</sup> The Article interprets events in the most damaging light for Bryant, evidencing the defendants’ actual malice. *Rebozo v. Washington Post Co.*, 637 F.2d 375, 382 (5<sup>th</sup> Cir. 1981); *Sprague v. American Bar Ass’n*, No. Civ.A 01-382, 2003 WL 22110574, at \*1, \*4 (E.D. Pa. July 21, 2003); *Catalano v. Pechous*, 419 N.E.2d 350, 359-60 (Ill. 1980); *Warford v. Lexington Herald-Leader Co.*, 789 S.W.2d 758, 772-73 (Ky. 1990).

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<sup>91</sup> *Id.* at ¶ 6.24-6.25.

<sup>92</sup> ECF Doc. #1-1 at 10.

<sup>93</sup> *Id.* (republishing Burnett’s remark, “The head of DHS doesn’t make those decisions without the governor’s knowledge and approval. That is just unfathomable to me.”).

<sup>94</sup> ECF Doc. #1-2 at 43.

**12. The Article does not conform to journalistic standards of care or ethics:** The complaint accuses Rosenberg and Arena of publishing false statements about Bryant willfully and recklessly without regard to whether they were true.<sup>95</sup> This action violates applicable standards of care and ethics in journalism.<sup>96</sup> Courts routinely allow evidence that reporters have violated journalistic and ethical standards to show actual malice and permit qualified experts to testify. David Elder, *Defamation: A Lawyer's Guide* § 7:2, *A Subjective Standard*.

**13. The defendants were not under time constraints:** Considering the absence of civil and criminal charges against Bryant and the state auditor's findings,<sup>97</sup> Rosenberg and Arena should have allowed pending criminal and civil cases to conclude. The defendants were not under a deadline; additional evidence would have made the story more complete. Publication of a story based on an inadequate investigation without a deadline is evidence of actual malice. David Elder, *Defamation: A Lawyer's Guide* § 7:2, *A Subjective Standard*; *Restatement (Second) of Torts* § 580A, comm. D (1977) (time and opportunity to investigate "may have some relevance" on the reckless disregard issue).

**D. No source identified in the Article supports its false and defamatory accusations.**

Arena contends Bryant inadequately pleaded actual malice because the Article identifies public records, texts, quotes from Pigott and White, and *Mississippi Today's* reporting as information sources.<sup>98</sup> This argument is easily dispensed.

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<sup>95</sup> ECF Doc. #1 at ¶¶ 7.3, 8.3.

<sup>96</sup> ECF Doc. #1-3 at 160, 162, 164, 166 (quoting the Society of Professional Journalists' Code of Ethics: "Journalists should ... [t]ake responsibility for the accuracy of their work. Verify information before releasing it... Provide context. Take special care not to misrepresent or oversimplify in promoting, previewing, or summarizing a story... Gather, update, and correct information throughout the life of a news story... Consider the long-term implications of the extended reach and permanence of the publication. Provide updated and more complete information as appropriate.").

<sup>97</sup> ECF Doc. #1 at ¶¶ 6.8, 6.25, 6.41 ("There is a reason why Bryant is not a party to any criminal or civil case arising out of the MDHS fraud. He did nothing illegal.").

<sup>98</sup> ECF Doc. #5 at 13.



1. **Public records:** None of the statements from public records<sup>99</sup> accuse Bryant of wrongdoing. Accordingly, the public record sourcing is irrelevant to the actual malice inquiry.

2. **The quotes from Pigott and White:** None of the quotes attributed to Pigott<sup>100</sup> and White<sup>101</sup> accuse Bryant of wrongdoing. Accordingly, the quotes are irrelevant to the actual malice analysis.

3. **Text messages:** This court has previously explained that reliance on a large volume of documents “is of no consequence” when they do not support the false and defamatory statements at issue. *Hayne*, 2011 WL 198128, at \*5. Bryant’s texts do not reveal that he misdirected welfare funds to Prevacus or agreed to accept Prevacus stock, nor do they reveal that he misdirected welfare funds to the USM Athletic Foundation. A fact finder could determine that the defendants acted with actual malice because they intentionally or recklessly misconstrued the texts. *Young*, 734 F.3d at 547-48; *Doe*, 941 F.2d at 291-92; *Westmoreland*, 596 F. Supp. at 1174; *Nader*, 408 A.2d at 52-54; *Buratt*, 459 So. 2d at 1270-71; *Davis*, 510 F.2d at 735-36.

4. **Mississippi Today’s reporting:** The Article references *Mississippi Today*’s reporting four times.<sup>102</sup> These statements are primarily accurate.<sup>103</sup> Wolfe won the Pulitzer Prize; Bryant made the quoted statements; and Favre’s attorneys produced a donor agreement. However, the Article repackages several false and defamatory statements published by *Mississippi Today* over the last few years<sup>104</sup> and recklessly disregards the conflicting proof previously discussed in this filing.<sup>105</sup> This willful

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<sup>99</sup> ECF Doc. #1-1 at 3, 9, 10, 12-14, 18-20; ECF Doc. #1-2 at 30, 36-37, and 41-43.

<sup>100</sup> ECF Doc. #1-1 at 4 and 15.

<sup>101</sup> *Id.* at 20; ECF Doc. #1-2 at 40.

<sup>102</sup> ECF Doc. #1-1 at 5; ECF Doc. #1-2 at 43 and 44.

<sup>103</sup> Bryant takes issue with characterizing Wolfe’s reporting as “exemplary.” Bryant illustrated the false and defamatory statements in Wolfe’s reporting, including articles submitted for Pulitzer Prize consideration in the Second Amended Complaint [ECF Doc. #1-3].

<sup>104</sup> ECF Doc. #1 at ¶ 1.3.

<sup>105</sup> *Id.* at ¶ 6.24 (Rosenberg “disregarded a mountain of objective evidence proving Bryant did not direct TANF funding to the USM volleyball facility or Prevacus.”).

neglect evidences actual malice. *Flowers v. Carville*, 310 F.3d 1118, 1130 (9<sup>th</sup> Cir. 2002) (“One who repeats what he hears from a reputable news source, with no individualized reason external to the news report to doubt its accuracy, has not acted recklessly. But if someone knows that the news story is false, he can’t sanitize his republication by purporting to rely on the news source. Nor can he claim immunity if he has conflicting information from another source and recklessly disregards it.”).

### **III. The fair reporting privilege does not protect any statements in the Article.**

The fair report privilege protects the “publication of defamatory matter concerning another in a report of an official action or proceeding or of a meeting open to the public that deals with a matter of public concern ... if the report is accurate and complete or a fair abridgment of the occurrence reported.” *McDonald v. Raycom TV Broadcasting, Inc.*, 665 F. Supp. 2d 688, 690 (S.D. Miss. 2009) (quoting *Pittman v. Gannett River States Pub. Co.*, 836 F. Supp. 377, 382 (S.D. Miss. 1993)). For the privilege to apply, specific defamatory statements must be supported by information in particular public records. *McDonald*, 665 F. Supp. 2d at 689 (broadcast based on a press release issued by the Jackson Police Department); *Hegwood v. Community First Holdings, Inc.*, 546 F. Supp. 2d 363, 366 (S.D. Miss. 2008) (statement in newspaper article based on a press release issued by the sheriff’s office); *Pittman*, 836 F. Supp. at 383 (statements were gleaned from plaintiff’s indictments and sentencing hearing); *Edmonds v. Delta Democrat Pub. Co.*, 230 Miss. 583, 93 So. 2d 171, 174 (1957) (statements related to a liquor referendum).

Arena generically references “legal filings and records,” text messages, and “multiple civil and criminal litigation cases, subpoenas, pleadings, and plea deals”<sup>106</sup> but does not tie any specific statement to any particular public record. Its argument is the equivalent of a half-hearted handwave toward a stack of papers, communicating, “It’s in there somewhere.” This nonspecific gesture is woefully

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<sup>106</sup> ECF Doc. #5 at 28.

insufficient to be taken seriously – and, as previously explained, it is untrue. No public record supports the Article’s accusations about Bryant. The privilege does not apply.

#### **IV. Mrs. Bryant adequately alleged her loss of consortium claim.**

In *McMurdy v. Boston Scientific Corp.*, No. 2:19-cv-301-JRG, 2020 WL 6789349, at \*5 (E.D. Tex. Aug. 28, 2020), the plaintiff alleged “that ‘[a]s a direct and proximate result of the above-described injuries sustained by’ his spouse, he ‘has suffered a loss of his wife's consortium, companionship, society, affection, services, and support.’” The district court determined that “accepting Plaintiffs’ allegations as true, the Plaintiff’s loss of consortium claim is adequately pleaded and establishes a plausible claim for relief.” *Id.*

Here, Mrs. Bryant alleged she “is the wife of Phil Bryant”<sup>107</sup> and that “[s]he is entitled to society, companionship, love, affection, aid, services, support, sexual relations, and the comfort of her husband, which are special rights and duties growing out of the marriage covenant.”<sup>108</sup> Mrs. Bryant concluded her claim by alleging “[t]he defendants have caused [her] to suffer recoverable losses of consortium” and demanding “to recover monetary damages for these losses in this action.”<sup>109</sup> These allegations are at least as descriptive as those in *McMurdy*. Accordingly, Arena’s argument should be rejected. Mrs. Bryant’s loss of consortium claim satisfies Rule 8’s liberal notice pleading standard.

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<sup>107</sup> ECF Doc. #1 at ¶ 2.2.

<sup>108</sup> *Id.* at ¶ 9.2.

<sup>109</sup> *Id.* at ¶ 9.3.

**CONCLUSION**

The Article accuses Governor Bryant of conspiring with Davis, New, and Favre to unlawfully misdirect millions of welfare funds to please Favre and enrich himself. The complaint adequately alleges that this implication and many other statements leading to it are false, defamatory, and constitutionally malicious. Therefore, the court should deny the motion to dismiss and allow Governor Bryant to continue vindicating his reputation.

**RESPECTFULLY SUBMITTED**, on this 23<sup>rd</sup> day of July 2024.

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Bryant**

**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the preceding pleading or other paper with the Clerk of the Court using the ECF system, which sent notification of such filing to all counsel of record in this proceeding.

**SO CERTIFIED**, this 23<sup>rd</sup> day of July, 2024.

*/s/ William M. Quin II*