



M^oCRANEY | MONTAGNET | QUIN | NOBLE
ATTORNEYS AT LAW | PLLC

October 31, 2023

VIA EMAIL TO: info@mississippitoday.org &
VIA UNITED STATES CERTIFIED MAIL & HAND DELIVERY TO:

Deep South Today d/b/a Mississippi Today & Adam Ganuchean
Attn: Mary Margaret White & Adam Ganuchean
750 Woodlands Parkway, Suite 100
Ridgeland, Mississippi 39157

Re: Notice of Suit pursuant to Miss. Code Ann. § 95-1-5

Dear Ms. White & Mr. Ganuchean:

I am sending this correspondence to Mrs. White as the agent for service of process and chief executive officer of Deep South Today d/b/a Mississippi Today.¹ I am sending this correspondence to Mr. Ganuchean in his individual capacity.

This correspondence is former-Governor Phil Bryant's statutory notice that Ganuchean defamed and placed him in a false light in a Mississippi Today publication dated May 8, 2023. Bryant demands that Ganuchean apologize for making his false and libelous accusation, Ganuchean retract his false and libelous accusation, and Ganuchean correct his false and libelous accusation. Bryant further demands that Mississippi Today publish Ganuchean's full-and-fair retraction, correction, and apology for the false and libelous accusation in a manner as conspicuous as his defamatory remarks.

The apology, retraction, and correction must be made within ten (10) days of the service of this correspondence to comply with Miss. Code Ann. § 95-1-5. Your failure to fully comply will result in Bryant immediately amending his suit to add defamation and false light claims against Ganuchean and an additional respondeat superior claim against Mississippi Today in the following civil action: *Bryant v. Deep South Today d/b/a Mississippi Today & Mary Margaret White*, No. 45CI1:23-cv-238-JM (Cir. Ct. Madison Cty., MS).

A. Defamation

Bryant is a public figure. The elements of a defamation claim brought by a public figure are (1) a false and defamatory statement concerning the plaintiff; (2) an unprivileged publication to a third party; (3) fault amounting to actual malice on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused

¹ Deep South Today is referred to herein as Mississippi Today. All references to Mississippi Today should be considered references to Deep South Today.

EXHIBIT

3

Mary Margaret White & Adam Ganuchau
October 31, 2023
pg. 2

by the publication. Weems & Weems, *Miss. Law of Torts*, §§ 11-1, 11-9 (2nd ed., Dec. 2022 update). The accusations at issue satisfy these elements.

1. The false and libelous accusation

On May 8, 2023, Mississippi Today authored and published an article titled “Anna Wolfe and Mississippi Today win Pulitzer Prize for ‘The Backchannel’ investigation.” Yesterday, Ganuchau admitted that he wrote the article, *Bryant*, No. 45C11:23-cv-238-JM (Cir. Ct. Madison Cty., MS) [MEC Doc. #69-2 at 2]. The following language is contained within that article:

The investigation, published in a multi-part series in 2022, revealed for the first time how former Gov. Phil Bryant used his office to steer the spending of millions of federal welfare dollars — money intended to help the state’s poorest residents — to benefit his family and friends, including NFL Hall of Fame quarterback Brett Favre.

Bryant did not use his office to steer the spending of millions of federal welfare dollars to benefit his family and friends, and the multi-part series that Ganuchau referenced did not reveal that he did. Ganuchau’s accusation injures Bryant’s reputation; it exposes him to public hatred, contempt, and ridicule; it degrades him in society; it lessens him in public esteem; and it lowers him in the community’s confidence. *Id.* at § 11:3 (quoting *Franklin v. Thompson*, 722 So. 2d 688 (Miss. 1998), which cited *Fulton v. Mississippi Publishers Corp.*, 498 So. 2d 1215, 1217 (Miss. 1986), and quoted *Ferguson v. Watkins*, 448 So. 2d 271, 275 (Miss. 1984)). Accordingly, Ganuchau’s accusation is false and libelous.

2. Publication

“Publication requires a communication of the statement to another person or persons.” *Id.* at § 11-5. Mississippi Today published Ganuchau’s libelous statement on its website, where it continues to remain. The article is found at the following link:

<https://mississippitoday.org/2023/05/08/anna-wolfe-mississippi-today-pulitzer/>

“The author of defamation is liable for any secondary publication which is the natural consequence of his act; this rule applies both to libel and slander.” *Id.* The republication of Ganuchau’s libelous claims by anyone, including, but not limited to, traditional and social media outlets, is a natural consequence of his tortious actions. Accordingly, Ganuchau is liable for the reputational and other damage caused by any such republications.

3. Actual Malice.

The Mississippi Law of Torts explains the actual malice requirement as follows:

In order to recover for defamation, public officials and public figures must prove by clear and convincing evidence that the defendant acted with “actual malice.”

“Actual malice,” sometimes also referred to as “*Times* malice,” is a term of art with a very precise meaning. A person’s ill will or personal spite does not constitute actual malice. Actual malice is present when a statement is made “with knowledge that it was false or with reckless disregard of whether it was false or not.” “Knowledge of falsity” needs no elaborate definition. “Reckless disregard” means that the defendant made the false publication with a high degree of awareness of probable falsity, or that he “entertained serious doubts as to the truth of his publication.” Negligence, either with regard to knowledge of the falsity or reckless disregard, is not sufficient to establish actual malice.

Id. at § 11-9 (footnoted citations omitted). Ganucheau knew his accusation was false when he made it or acted with reckless disregard for whether the accusation was false. Accordingly, the actual malice element of defamation is satisfied.

4. Libel Per Se

“Under Mississippi law, all libel is actionable per se, meaning the plaintiff need not prove special harm.” *In re Murray*, No. 20-01587-KMS, 2023 WL 310344, *5 (S.D. Miss. Jan. 18, 2023) (quoting *Brewer v. Memphis Publ'g Co.*, 626 F.2d 1238, 1245-46 (5th Cir. 1980)). “The Mississippi Supreme Court has held that, where a defamatory statement is actionable per se, damages need not be pled or proved, but are presumed to have resulted from the defamatory statement.” *Miss. Law of Torts* at § 11:16 (citing *Henry v. Collins*, 253 Miss. 34, 158 So. 2d 28, 32 (1963), judgment rev'd on other grounds, 380 U.S. 356, 85 S. Ct. 992, 13 L. Ed. 2d 892 (1965); *Travis v. Hunt*, 224 Miss. 193, 79 So. 2d 734, 735 (1955)).

Under Mississippi law, Ganucheau’s accusation is actionable per se. Accordingly, Bryant does not need to plead or prove damages to sustain his libel claim.

B. False Light

The elements of a false light invasion of privacy claim are (1) the false light in which Ganucheau placed Bryant would be highly offensive to a reasonable person, and (2) Ganucheau had knowledge of or acted in reckless disregard as to the falsity of his accusation and the false light in which Bryant would be placed. Weems & Weems, *Mississippi Law of Torts* § 13:5, *False Light Invasion of Privacy* (2nd ed., Dec. 2022 Update) (citing *Cook v. Mardi Gras Casino Corp.*, 697 So. 2d 378, 382 (Miss. 1997); *Prescott v. Bay St. Louis Newspapers, Inc.*, 497 So. 2d 77, 79 (Miss. 1986)). As with his defamation claims, Bryant must prove Ganucheau acted with actual malice to establish the fault element of his false light claim. *Time, Inc. v. Hill*, 385 U.S. 374, 87 S.Ct. 534, 17 L.Ed.2d 456 (1967).

The false light in which Ganucheau placed Bryant would be highly offensive to a reasonable person. Ganucheau had knowledge of or acted in reckless disregard of the falsity of his accusation and the light in which it placed Bryant. Accordingly, Ganucheau is liable for false light invasion of privacy.

C. Respondent Superior

Ganucheau made his false and libelous accusation while acting within the course and scope of his employment with Mississippi Today. Ganucheau had actual or apparent authority to make his false and libelous accusation. Mississippi Today is vicariously liable for the damage caused by Ganucheau's false and libelous accusation under the common law doctrine of respondeat superior. The doctrine of respondeat superior also renders Ganucheau and Mississippi Today jointly and severally liable for any judgment returned in Bryant's favor on his libel and false light claims against Ganucheau.

D. Punitive Damages, Attorneys' Fees, and Costs

"The Supreme Court has stated that '[i]t is rarely the case that the compensatory damages to which the plaintiff is entitled . . . can be adequately measured by the extent of his pecuniary loss and, when malice is shown . . . exemplary damages may be awarded.'" *Miss. Law of Torts* at § 11-18 (quoting *Henry v. Pearson*, 253 Miss. 62, 158 So. 2d 695, 703 (Miss. 1963), judgment rev'd on other grounds, 380 U.S. 356, 85 S. Ct. 992, 13 L. Ed. 2d 892 (1965)).

"The Mississippi Supreme Court has, in at least one decision, endorsed the awarding of punitive damages for defamation even in the absence of an award of actual damages." *Id.* The Court explained:

Where the defamation complained of is actionable per se, it is generally held that punitive damages may be awarded even though the amount of actual damages is neither found nor shown, for in such a case the requirement of showing actual damages as the basis of an award of exemplary damages is satisfied by the presumption of injury which arises from a showing of libel or slander that is actionable per se.

Id. (quoting *Newson v. Henry*, 443 So. 2d 817, 824 (Miss. 1983), which quoted 50 Am. Jur. 2d, *Libel and Slander* § 352 (1970)). Considering the malicious nature of Ganucheau's publication and that it is only one of a barrage of false and defamatory accusations that Mississippi Today personnel have made about Bryant, Bryant will likely recover punitive damages in a civil action against Ganucheau and Mississippi Today.

Bryant will likely recover attorneys' fees and costs in a civil action against Ganucheau and Mississippi Today. *Cronier v. ALR Partners, L.P.*, 309 So. 3d 556, 559 (Miss. Ct. App. 2020). As the Mississippi Court of Appeals observed, "an actual award of punitive damages is not a prerequisite for an award of attorney's fees; rather, attorney's fees are warranted where 'the awarding of punitive damages would have been justified,' even if punitive damages are not awarded." *Id.* (quoting *Tunica County v. Town of Tunica*, 227 So. 3d 1007, 1029 (Miss. 2017)).

Mary Margaret White & Adam Ganuchean
October 31, 2023
pg. 5

E. Insurance Coverage

Bryant has discovered that Mississippi Today only carries \$1 million of liability coverage for the claims asserted in the Madison County litigation. \$1 million of insurance coverage is woefully inadequate to pay for the compensatory and punitive damages, attorneys' fees, costs, and pre-and post-judgment interest that Bryant seeks against the defendants in the Madison County action and will seek against Ganuchean and Mississippi Today should Bryant amend his suit to assert additional claims. Each defendant should strongly consider demanding that Mississippi Today's insurance carrier attempt to settle the case within policy limits. Each defendant should also consider obtaining independent counsel to defend their interest in avoiding an excess verdict and jeopardizing their assets.

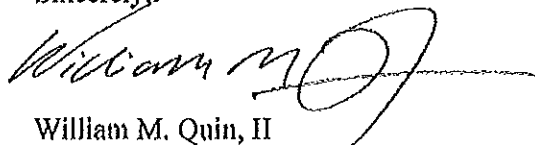
CONCLUSION

The Mississippi Supreme Court has explained that "[w]hile a newspaper publishing company is granted some leeway in its reporting, they may not misstate the facts or otherwise misconstrue the truth." *Whitten v. Commercial Dispatch Pub. Co., Inc.*, 487 So. 2d 843, 846 (Miss. 1986). Ganuchean's libelous statements misstate the facts and misconstrue the truth. Moreover, they are integral to a malicious and concerted years-long scheme within Mississippi Today to harm former-Governor Bryant with a steady stream of lies, factual errors, baseless speculation, and irresponsible innuendo.

Bryant demands that Ganuchean fully and fairly (1) apologize for making the false and libelous accusation, (2) retract the false and libelous accusation, and (3) correct the false and libelous accusation. Bryant further demands that Mississippi Today publish Ganuchean's apology, retraction, and correction of the false and libelous accusations in a manner as conspicuous as the false and defamatory remarks.

Your failure to timely comply with this demand will result in Bryant immediately seeking written consent of the defendants or leave of court to amend his suit against White and Mississippi Today to add defamation and false light claims against Ganuchean and an additional respondeat superior claim against Mississippi Today. Leave of court is "freely given when justice so requires." Miss. R. Civ. P. 15(a). In this instance, considering the circumstances, the court will likely grant leave to amend if Bryant requests.

Sincerely,



William M. Quin, II

*Attorney for the Honorable Phil Bryant,
64th Governor of the State of Mississippi*