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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI DADE COUNTY, FLORIDA

Grant Cardone,

Plaintiff, Case No. 2024-000534-CA-01

v.

John Legere,

Defendant,

_____/

DEFENDANT JOHN LEGERE'S
MOTION TO DISMISS THE COMPLAINT

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Defendant John Legere respectfully submits this motion for an order, pursuant to Rule 1.140(b) of the Florida Rules of Civil Procedure, dismissing the complaint with prejudice for failing to state a claim.

PRELIMINARY STATEMENT

This defamation complaint is a publicity stunt that makes no effort to plead facts satisfying any, let alone all, elements of the claims. Plaintiff Grant Cardone—a self-described internet celebrity—brings defamation claims (per se, per quod, and by implication) for over 40 statements Mr. Legere allegedly made during their spirited debates on social media. Mr. Cardone fails to allege that Mr. Legere's statements were false, much less that Mr. Legere knew (or had reasons to believe) they were false. Nor could Mr. Cardone marshal such facts in the future because Mr. Legere's statements were opinions and hyperbole protected by the First Amendment. The complaint should thus be dismissed with prejudice for these and other reasons.

First, even though "[a] false statement of fact is the sine qua non for recovery in a defamation action," *Flynn v. Cable News Network, Inc.*, 2023 WL 5985193, at *3 (M.D. Fla. Feb. 22, 2023), Mr. Cardone fails to allege that Mr. Legere made any false statements of fact.[1] (For example, Mr. Cardone alleges that Mr. Legere defamed him by suggesting that he may not be a billionaire, but pleads no facts showing he actually is one.) Many of Mr. Legere's statements are also incapable of being false because they are non-actionable hyperbole, opinions, predictions, and questions. In fact, courts have recently held that statements indistinguishable from Mr. Legere's—for example, calling the plaintiff a "fraud"—cannot "be the basis for [p]laintiffs' defamation claims . . . because these statements [are] . . . rhetorical hyperbole." *Akai Custom Guns, LLC v. KKM Precision, Inc.*, 2023 WL 8449374, at *13 (S.D. Fla. Dec. 6, 2023).

[1] Unless otherwise noted, all internal quotation marks, citations, and alterations are omitted.

Second, the complaint should be dismissed because Mr. Cardone (who claims to be a worldwide celebrity) is a "public figure," and the First Amendment requires him to allege that Mr. Legere knew his statements about Mr. Cardone were false. Mr. Cardone alleges no such facts.

Third, the complaint should be dismissed because it fails to adequately allege Mr. Legere published his statements to any third party. Instead, Mr. Cardone alleges that Mr. Legere made his statements on social media where others could read or hear them, but he identifies no third party who actually read or heard them.

Fourth, Mr. Cardone's claims fail because the complaint "is devoid of allegations of actual employment loss or realized loss attributable to" Mr. Legere's statements. *Flynn*, 2023 WL 5985193, at *5. Even the complaint's conclusory allegations of supposed damages fail: These allegations refer to a republication of Mr. Legere's statements and "Florida law does not recognize defamation claims based on third-party republication." *Markle v. Markle*, 2023 WL 2711341, at *7 (M.D. Fla. Mar. 30, 2023).

Fifth, Mr. Cardone's claim for defamation per se (Count I) must be dismissed because Mr. Cardone fails to allege Mr. Legere accused him of an infamous crime or injured him in his business. Nor could he: Mr. Cardone himself clarified during the parties' debate that Mr. Legere's opinions had nothing to do with Mr. Cardone's investment business.

Sixth, Mr. Cardone's claim for defamation by implication (Count II) suffers from yet another basic—but fatal—flaw. Pleading this variant of a defamation claim requires the plaintiff to allege that the defendant made certain true statements, but Mr. Cardone, in the most conclusory way possible, alleges that all of Mr. Legere's statements were false.

Because Mr. Cardone's complaint recites a soup of more than 40 allegedly defamatory

statements, Appendix A matches dismissal grounds with each discrete statement for the Court's convenience. But this complexity bespeaks a simple result: None of the alleged statements clear the bar for pleading defamation—and the complaint should be dismissed with prejudice.

BACKGROUND

A. Grant Cardone And His Alleged Fame

According to Mr. Cardone, he is "internationally renowned" as a "marketing and branding expert." (Compl. ¶ 12.) His renown also allegedly includes being a "New York Times best selling author," a "highly acclaimed international speaker," "regularly appear[ing] on national television" and maintaining his own television network, "Grant Cardone TV." (*Id*. ¶ 13.)

As a self-described "business legend[]" (*id*. ¶ 29), Mr. Cardone attracted recent attention in the media, in the courts, and from regulators for his business practices. For instance, *The New Republic* published an article about Mr. Cardone called *The Real Estate Hustle-Culture Con That's Exploiting Investors and Wrecking the Housing Market*, identifying Mr. Cardone as a "practicing Scientologist" who has "engaged in dubious investment practices."[2] It also has been reported that "the Department of Justice's [former] most senior fraud prosecutor" opined that it "looks like" Mr. Cardone's "business is built on lies and deception."[3] In 2022, an investor in Cardone Capital alleged Mr. Cardone had committed securities fraud and the United States Court of Appeals for the Ninth Circuit held that the investor "identifie[d] actionable alleged misstatements regarding projected internal rates of return and distributions and debt obligations."

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[2] Josh Gabert-Doyon, *The Real Estate Hustle-Culture Con That's Exploiting Investors and Wrecking the Housing Market*, THE NEW REPUBLIC (Aug. 29, 2023), https://newrepublic.com/article/172775/grant-cardone-hustle-culture-real-estate.

[3] Tom Warren, *Financial Influencer Grant Cardone Says He Can Make You A Billionaire. His Investors Claim He Defrauded Them.*, HUFF POST (July 20, 2023, 5:45 AM) https://www.huffpost.com/entry/grant-cardone financialinfluencer_n_64ada368e4b0e87d65574e9b.

Pino v. Cardone Cap., LLC, No. 21-55564, 2023 WL 2158802, at *1 (9th Cir. Feb. 22, 2023).

B. Mr. Legere And His Purported Relationship With Mr. Cardone

Mr. Legere is "the former CEO of T-Mobile" and is "active on social media platforms." (Compl. ¶ 18.) He uses those platforms to "regularly . . . giv[e] his view on topics ranging from business, education, diversity, and politics." (*Id*. ¶ 19.)

Mr. Cardone alleges that he "shared a positive and productive relationship" on social media with Mr. Legere (*id*. ¶ 24) and "debate[d] [him] on various social media platforms" (*id*. ¶ 25). Those "spirited" debates between Mr. Legere and Mr. Cardone supposedly covered "politics, current affairs . . . education, economic disparity, [and] the COVID-19 vaccine." (*Id*. ¶¶ 25; 28; 32.) Audiences expected to hear Mr. Legere and Mr. Cardone provide their "opinion[s] on" those hot button topics. (*Id*. ¶ 32.) At an unidentified time and for no identified reason, Mr. Legere supposedly "pivoted away from his collaborative relationship with Cardone, and instead became hostile toward Cardone" on social media. (*Id*. ¶ 32.)

C. February 2023 Tweets

Mr. Legere purportedly replied to four tweets sent by Mr. Cardone on "the social media platform X" in February 2023. (*Id*. ¶ 47.) On February 2, 2023, Mr. Cardone posted a link to his interview with Lara Trump to which Mr. Legere supposedly replied, "Wow how does it keep being live???" (*Id*.) On February 8, 2023, Mr. Cardone tweeted that one of his products was "trending on Twitter," and Mr. Legere allegedly responded "Hmmmm by tossing $ at it?" (*Id*.) Mr. Cardone tweeted "[w]ho's your President" and Mr. Legere purportedly responded on February 22, 2023: "[w]ho is yours Grant? And are you asking the people to take action here? Oh never mind that was Jan 6th . . . Back to first question. Who is your President Grant? Mine and that of all American citizens is Joe Biden." (*Id*.) One day later, Mr. Cardone tweeted about "how he saved his health at age 64" and Mr. Legere supposedly responded "Steroids?" (*Id*.)

D. March 2023 Tweets

Mr. Legere also supposedly replied to four tweets by Mr. Cardone in March 2023. On March 6, 2023, Mr. Legere allegedly replied to an unidentified tweet by Mr. Cardone by stating "[t]his is like crazy people talking about crazy investment." (*Id.* ¶ 48.) About a week later, Mr. Legere supposedly replied to unidentified tweets by Mr. Cardone by stating "after all the fear mongering the sky is falling and Grant is here to help" and "[s]o quick run out of the building and go to Grants seminar and invest in real estate." (*Id.*) On March 28, 2023, Mr. Legere purportedly "target[ed] Cardone's personal beliefs" by tweeting at him "[y]ou mean like a scientologist homophobe transphobe or is there more (besides arrogant egotist)." (*Id.*)

E. June 2023 Clubhouse Debate

Another alleged venue for "spirited" debates between the parties was Clubhouse, a platform for audio social media. Publicly available recordings show Mr. Cardone hurling various insults at Mr. Legere before Clubhouse audiences. For example, following a debate on March 10, 2023, Mr. Cardone told listeners that Mr. Legere is "such a bitch."[4] On March 29, 2023, Mr. Cardone told an audience on Clubhouse that "John Legere [is] so wound up angry, I expect he's kinda banging some psychiatric drugs."[5]

Mr. Cardone's allegations focus on a day "in or around June 2023" when the parties again "participated in a live, public chat room" on Clubhouse. (*Id.* ¶ 42.) According to the later reposting of the Clubhouse debate by unidentified third parties on other social media outlets, Mr.

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[4] The Million Marathon, *SILICON VALLEY BANK LARGEST BANK FAILURE SINCE 2008*, CLUBHOUSE, at 49:57 (Mar. 10, 2023), https://www.clubhouse.com/room/xjbOXDKA?utm_medium=ch_room_xr&utm_campaign=PVGLEn3meazVQAVpPYagDg-1092701.

[5] The Million Marathon, *7, 8, 9 Figure Real Estate Talk Late Night Pop Up*, CLUBHOUSE, at 01:37:29 (Mar. 29, 2023), https://www.clubhouse.com/room/xVLnN9K0?utm_medium=ch_room_xr&utm_campaign=PVGLEn3meazVQAVpPYagDg-1092706.

Cardone began the debate by "accusing" Mr. Legere of being an "alcoholic."[6] In return, Mr. Legere told Mr. Cardone that he considered him "the biggest bullshit artist on the planet" because Mr. Cardone "talks about being a recovering addict and if you look at his [social media] posts, they're constantly him holding wine and whiskey." (*Id.* ¶ 45.)

Mr. Legere continued by stating he thinks Mr. Cardone is a "conman" and that he "believes in the next year, Grant Cardone will be found guilty of fraud." (*Id.*) Mr. Cardone then asked Mr. Legere to specify whether he was contending that Mr. Cardone had been "fraudulent" to investors. (*Id.*) Mr. Legere declined to opine that Mr. Cardone had defrauded investors, clarifying instead: "I think you are a fake . . . somebody that says, I used to be an addict and I think you are fake. That's my opinion." (*Id.*)

Mr. Legere then provided another basis for his opinions about Mr. Cardone: he asked Mr. Cardone to confirm that his boasts about being a billionaire were true. (*Id.*) When Mr. Cardone declined to do so, Mr. Legere argued that Mr. Cardone "is not a billionaire" and is just a "big talker" and a "fraud." (*Id.*) The parties continued to debate whether Mr. Cardone was a billionaire, with Mr. Cardone replying that it would "be hard for [him] to state that." (*Id.*) Mr. Legere responded by telling the audience that Mr. Cardone "is self-promoting" but "doesn't exist" in the "world[s] of CNBC [or] CNN." (*Id.*)

The parties turned to discussing Mr. Cardone's membership in the Church of Scientology. Mr. Legere asked Mr. Cardone how much he was "paying to the church" and if he was "the biggest contributor to the church." (*Id.*) Mr. Legere also asked whether Mr. Cardone was going to "sic[] the church" on him for his opinions about Mr. Cardone. (*Id.*)

Mr. Cardone then returned to discussing Mr. Legere's opinions by asking whether Mr.

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[6] Aaron Smith-Levin, *T-Mobile CEO: "Grant Cardone Will Be Found Guilty Of Fraud*," YOUTUBE (May 28, 2023), https://www.youtube.com/live/L6qWUtTHhU8?app=desktop. (cited at Compl. ¶ 45.)

Legere said "in this room that I am . . . fraudulently using funds" and whether Mr. Legere "believe[d] that [Cardone] ha[s] been fraudulent with [his] investors." (*Id.*) Mr. Cardone answered for Mr. Legere by saying "no, you don't believe that"—an answer that Mr. Legere did not dispute. (*Id.*) Even though Mr. Legere had declined to contend that Mr. Cardone had defrauded investors, Mr. Cardone stated that he was "surprised that you would tell hundreds of people in a public room that I steal investors' money" when his "business depends on [his] reputation." (*Id.*) Mr. Legere responded that he believed Mr. Cardone was attempting to manufacture a "little legal issue"—that is, manufacture a defamation suit—by inviting Mr. Legere to opine about Mr. Cardone's business. (*Id.*) Mr. Legere stated that it is his "personal belief" that trying to entrap a party into a potential defamation claim is "conman 101." (*Id.*)

The debate ended with Mr. Legere providing another basis for his opinions about Mr. Cardone. Believing that Mr. Cardone would complain about Mr. Legere to his church and that the church was "going to come get" Mr. Legere for his opinions, Mr. Legere opined that "if you're that tenuous, you're a fraud." (*Id.*)

F. Mr. Cardone Files This Lawsuit After Unidentified Third Parties Republish Snippets From The June 2023 Clubhouse Debate

The complaint does not allege that there was any public reaction directly from the parties' June 2023 Clubhouse debate, nor does it identify any individual who heard that debate. Instead, the complaint alleges that unidentified third parties "re-posted" snippets of the debate "on various social media platforms, including YouTube, thereby accumulating millions of viewers." (Compl. ¶ 44.) The complaint does not allege who recorded the June 2023 debate or that any of their other debates on Clubhouse were recorded.

On January 11, 2024, Mr. Cardone commenced this suit, alleging that Mr. Legere's statements were defamation per se (Count I) and "defamation per quod and/or defamation by

implication" (Count II). He alleges that Mr. Legere's statements have harmed Mr. Cardone "and his brand in an amount believed to be no less than $100,000,000.00." (*Id*. ¶ 56.) Mr. Cardone does not allege any factual basis for the damages he seeks. Nor does the complaint distinguish supposed damage from the republication of Mr. Legere's statements from consequences of various media reports and civil litigation accusing Mr. Cardone of fraud. Since he filed this complaint, Mr. Cardone has repeatedly sought to create publicity about the lawsuit through public statements and social media.[7] By contrast, the complaint does not allege Mr. Legere made any efforts to draw any attention to his opinions about Mr. Cardone.

ARGUMENT

The complaint should be dismissed because it fails to adequately allege at least six of the essential elements of defamation claims. Florida requires fact pleading, so the complaint must allege "factual assertions that can be supported by evidence" and cannot rest on "opinions, theories, legal conclusions or argument." *Barrett v. City of Margate*, 743 So. 2d 1160, 1162-63 (Fla. 4th DCA 1999); Fla. R. Civ. P. 1.110(b). "[P]retrial dispositions are 'especially appropriate'" for defamation claims "because of the chilling effect these cases have on freedom of speech." *Stewart v. Sun Sentinel Co.*, 695 So. 2d 360, 363 (Fla. 4th DCA 1997); *accord Skupin v. Hemisphere Media Grp., Inc.*, 314 So. 3d 353, 356-57 (Fla. 3d DCA 2020). Indeed,

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[7] Grant Cardone (@grantcardone), X, (Feb. 18, 2024), https://twitter.com/GrantCardone/status/1759086497704104184; Grant Cardone (@grantcardone), INSTAGRAM, (Jan. 22, 2024), https://www.instagram.com/p/C2atndLSRFN/; Cody Sperber, *LATEST NEWS of Grant Cardone's $100M Lawsuit to John Legere @GrantCardone*, YOUTUBE, (Jan. 17, 2024), https://www.youtube.com/watch?v=prXGszekonk; Elena Cardone and Grant Cardone (@elenacardone, @grantcardone), INSTAGRAM, (Jan. 12, 2024), https://www.instagram.com/p/C2AvZ5evwlL/; Grant Cardone (@grantcardone), X, (January 11, 2024), https://twitter.com/GrantCardone/status/1745612547729056058; Grant Cardone (@grantcardone), INSTAGRAM, (Jan. 11, 2024), https://www.instagram.com/p/C1-1esZLseP/.

"[t]he costs and efforts required to defend a lawsuit through [later] stage[s] of litigation could chill free speech nearly as effectively as the absence of the actual malice standard altogether." *Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 702 (11th Cir. 2016). Florida's Anti-SLAPP statute strengthens those protections by declaring "[i]t is the intent of the Legislature that [meritless defamation] lawsuits be expeditiously disposed of by the courts" and directs courts to decide motions to dismiss those suits "at the earliest possible time." Fla. Stat. § 768.295.

Florida requires public figures bringing defamation claims to allege that the defendant: (1) published; (2) a false statement of fact; (3) with "actual malice"; and (4) general and special damages. *See Readon v. WPLG, LLC*, 317 So. 3d 1229, 1234 (Fla. 3d DCA 2021).[8] When analyzing a defamation claim, "a publication must be considered in its totality" and "consider all the words used, not merely a particular phrase or sentence." *Byrd v. Hustler Mag., Inc.*, 433 So. 2d 593, 595 (Fla. 4th DCA 1983).

I. MR. CARDONE FAILS TO ALLEGE THAT ANY OF MR. LEGERE'S STATEMENTS WERE FALSE STATEMENTS OF FACT

A. Mr. Cardone Fails To Allege Any False Statements

The complaint should be dismissed because it identifies no statements that were false, let alone allege why they were false. "A false statement of fact is the sine qua non for recovery in a defamation action." *Flynn*, 2023 WL 5985193, at *3 (quoting *Byrd*, 433 So. 2d at 595). A defamation plaintiff must allege evidence identifying the allegedly defamatory statements and the reasons for their falsity with "sufficient particularity." *Brown Jordan Int'l Inc. v. Carmicle*, 2015 WL 6123520, at *10 (S.D. Fla. Oct. 19, 2015) (citing *Razner v. Wellington Reg'l Med. Ctr., Inc.*, 837 So. 2d 437, 442 (Fla. 4th DCA 2002)).

[8] Because New York and Florida defamation law are substantially similar, *see Michel*, 816 F.3d at 702, for purposes of this motion only, Mr. Legere relies on Florida law.

Mr. Cardone fails to adequately allege that any statements by Mr. Legere were false. Instead, Mr. Cardone offers only the boilerplate allegations that every tweet and statement identified in the complaint is "false and defamatory." (Compl. ¶¶ 1; 52; 56; 58.) A few examples highlight this fatal deficiency: Mr. Cardone claims that Mr. Legere's statements that Mr. Cardone is "not a billionaire" and that his interview with Lara Trump was "live" are false. (*Id*. ¶¶ 45; 47.) But Mr. Cardone does not plead that he is, in fact, a billionaire or that his interview was not live. And his failure to "specify what about [d]efendant's statement [were] false[] [is] alone sufficient grounds for dismissal." *Markle*, 2023 WL 2711341, at *11; *see also Klayman v. Politico LLC & John Gerstein*, 2022 Fla. Cir. LEXIS 23, at *16-19 (Fla. Cir. Ct. Mar. 22, 2022) (plaintiff failed to allege why the statements were "untruthful").[9]

In other cases, Mr. Cardone's own public statements show that statements by Mr. Legere are true. *See Hay v. Indep. Newspapers, Inc.*, 450 So. 2d 293, 295 (Fla. 2d DCA 1984) (taking judicial notice of materials "either known or readily available" to members of the public); *Colodny v. Iverson, Yoakum, Papiano & Hatch*, 936 F. Supp. 917, 924 (M.D. Fla. 1996) ("Garrick's 'fraud' statement . . . refers to [a] lawsuit against Colodny, which is a 'readily available' matter of public record . . . ."). For example, Mr. Cardone claims that Mr. Legere's tweets identifying him as a "scientologist" are false (Compl. ¶ 48), but the internet is rife with statements by Mr. Cardone identifying himself as a scientologist, including his boasts that "becoming a scientologist is the secret to my success."[10] And while he claims that Mr. Legere's

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[9] In some cases, it is hard to see how the alleged statement by Mr. Legere could be false at all: For example, Mr. Cardone claims that Mr. Legere's statements at the end of their June 2023 debate that he "can't wait to see [Mr. Cardone] leave . . . . Take your tail between your legs" is defamatory (Compl. ¶ 45), but fails to allege anything suggesting this statement was false, much less defamatory (*see also* App'x A).

[10] Djvlad, *Grant Cardone: Becoming a Scientologist is the Secret to My Success (Part 6)*, YOUTUBE (Nov. 19, 2019), https://youtu.be/q1ocR1iu5TA; *see also* Djvlad, *Grant Cardone on People Bashing* *(cont'd)*

statements describing Mr. Cardone as a "big talker" are false (*id*. ¶ 45), Mr. Cardone himself alleges that he is "a highly acclaimed international speaker" (*id*. ¶ 13). Thus, the complaint should be dismissed for failure to allege any supposed statement by Mr. Legere was false.

B. The Alleged Statements Are Non-Actionable Hyperbole And Opinions

Even if Mr. Cardone could allege that any statement identified in the complaint was false, each statement is hyperbole and opinion safeguarded by the First Amendment. "The First Amendment protections that apply in defamation claims are rooted in the 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'" *Horsley v. Rivera*, 292 F.3d 695, 701 (11th Cir. 2002) (quoting *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 27 (1964)). "Consistent with this principle . . . the Supreme Court . . . ha[s] long recognized that a defamation claim may not be actionable when the alleged defamatory statement is based on non-literal assertions of 'fact.'" *Id*. There are two types of "non-literal assertions" protected by the First Amendment: (1) "rhetorical hyperbole" and (2) "statements of pure opinion." *Reed v. Chamblee*, 2023 WL 6292578, at *14 (M.D. Fla. Sept. 27, 2023).

"It is for the Court to decide, as a matter of law, whether the complained of words are actionable expressions of fact or non-actionable expressions of pure opinion and/or rhetorical hyperbole." *Fortson v. Colangelo*, 434 F. Supp. 2d 1369, 1379 (S.D. Fla. 2006). In separating the wheat from the chaff, "context is paramount" and the court must consider "[a]ll of the circumstances surrounding the publication . . . including the medium by which it was disseminated and the audience to which it was published." *Murray v. Pronto Installations, Inc.*,

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(cont'd from previous page)

Scientology: They Bashed Jesus Too (Part 9), YOUTUBE (Apr. 23, 2020), https://youtu.be/RjfXAkqAtpM.

2020 WL 6728812, at *5 (M.D. Fla. Nov. 16, 2020) (quoting *Keller v. Miami Herald Publ'g Co.*, 778 F.2d 711, 714 (11th Cir. 1985)). The context of "internet communications, as distinct from that of print media . . . encourag[es] a 'freewheeling, anything-goes writing style.'" *Id.* at *5. Courts have therefore concluded that "[d]ue to the[ir] informal nature . . . 'reasonable readers of most [social media] pages do not understand [posts] to be conveying factual information.'" *Id.*

1. The alleged statements are rhetorical hyperbole

The views Mr. Legere purportedly delivered during a "spirited" debate on the internet telling Mr. Cardone that he "believed" he was not a billionaire, and was a "conman," "fake," "bullshit artist," "con artist," "tenuous" and a "fraud," who he "believed would be found guilty of fraud in a year" (Compl. ¶ 45) are quintessential rhetorical hyperbole (*see also* App'x A). Rhetorical hyperbole is "loose, figurative language," *Rivera*, 292 F.3d at 702, and includes "vigorous epithet[s]" to describe opponents during "heated" public debates, *Greenbelt Co-op. Pub. Ass'n v. Bresler*, 398 U.S. 6, 13-14 (1970). A telltale sign that a statement is rhetorical hyperbole is that it is not "sufficiently factual to be susceptible of being proved true or false." *Coral Ridge Ministries Media, Inc. v. Amazon.com, Inc.*, 6 F.4th 1247, 1252 (11th Cir. 2021).

Two recent opinions from courts in Florida have held that statements indistinguishable from those alleged here (and made in indistinguishable contexts) are non-actionable rhetorical hyperbole. In *Akai Custom Guns, LLC v. KKM Precision, Inc.*, the defendants allegedly made "social media post[s]" claiming that the plaintiffs were "perpetrating a public opinion fraud" and "perpetrating a scam." 2023 WL 8449374 at *13. The court held those statements "cannot be the basis for [p]laintiffs' defamation claims . . . because [they] represent . . . rhetorical hyperbole" and "do not have precise meanings." *Id.* Indeed, the court reasoned that describing the plaintiff as perpetuating a "scam" or a "fraud" "are not readily capable of being proven false in part due to their non-literal nature":

> For example, where Defendants say that Plaintiffs are "perpetrating a scam," Plaintiffs are left to imagine how exactly they would prove this statement to be false. Would Plaintiffs need to prove that they are not perpetrating a scam? What, precisely, is the scam?

Id.; *see also Rivera*, 292 F.3d at 702 (talk show host's statement that guest was "an accomplice to murder" was "loose, figurative language that no reasonable person would believe presented facts" because it was stated during heated television interview); *Pullum v. Johnson*, 647 So. 2d 254, 257 (Fla. 1st DCA 1994) (describing the plaintiff as a "drug pusher" could not reasonably be understood as accusing the plaintiff of dealing illegal drugs).

Similarly, in *Murray v. Pronto Installations, Inc.*, the court held that social media posts claiming that the plaintiff "mentally and physically abuse[s] people," "lie[s] to you" and "steal[s] from you" were rhetorical hyperbole, 2020 WL 6728812, at *4-5. The court highlighted that the posts were made on "freewheeling, anything-goes" social media: "When the context of [the defendant's] statements is taken into consideration, it becomes clear to this Court the statements were used on an informal social media platform in a loose, figurative sense as rhetoric or hyperbole." *Id*. at *5; *see also Santilli v. Van Erp*, 2018 WL 2172554, at *5-6 (M.D. Fla. Apr. 20, 2018) (writing on internet blogs that the plaintiff is a "'cunning scam artist' who publishes articles in 'fake' journals" is "non-actionable rhetorical hyperbole").

As in *Akai* and *Pronto*, Mr. Legere's alleged opinions about Mr. Cardone are non-actionable hyperbole. First, just as the statements that the plaintiff was "perpetrating a scam" and "fraud" in *Akai* were too imprecise because the defendant never identified "[w]hat, precisely, is the scam," 2023 WL 8449374, at *13, Mr. Legere's characterizations of Mr. Cardone as a "fake," "fraud," "bullshit artist," and a "conman" are too generic to be actionable (*see* App'x A). In fact, Mr. Legere's generic criticisms of Mr. Cardone as a "fraud" did not "accus[e] [him] of having committed a specific crime." *Colodny*, 936 F. Supp. at 925. To the contrary, Mr.

Cardone himself clarified during the parties' June 2023 debate that Mr. Legere was not accusing him of a crime because Mr. Legere "did not believe" Mr. Cardone had "been fraudulent with [his] investors." (Compl. ¶ 45.)

Second, Mr. Legere's statements are non-actionable hyperbole because they "are not readily capable of being proven false in part due to their non-literal nature." *Akai*, 2023 WL 8449374, at *13. As noted above, Mr. Cardone fails to adequately allege that Mr. Legere's statements are false, much less offer "how exactly [he] would prove [any of these] statement[s] to be false." *Id.*; *see also Phantom Touring, Inc. v. Affiliated Publ'ns*, 953 F.2d 724, 728 (1st Cir. 1992) (not only are statements calling plaintiff "a rip-off, a fraud, a scandal, a snake-oil job . . . . obviously protected hyperbole . . . we also can imagine no objective evidence to disprove it"); *Colodny*, 936 F. Supp. at 925 (describing the plaintiff as a "fraud" is "too imprecise" to be actionable).

Third, like the statements in *Akai* and *Pronto*, Mr. Legere's statements are plainly rhetorical hyperbole when placed in context. Like the defendants in those cases, Mr. Legere made each alleged statement on social media—including during a "spirited" debate (Compl. ¶ 45)—where listeners "do not necessarily attribute the same level of credence to the statements [that] they would accord to statements made in other contexts," *Pronto*, 2020 WL 6728812, at *5; *see also Greenbelt*, 398 U.S. at 13-14 (accusing plaintiff of "blackmail" during "heated" public meeting was rhetorical hyperbole). Indeed, the alleged "vigorous epithet[s]" Mr. Legere used to opine about Mr. Cardone during their "heated" public debate, *id.*, are no different from the barbs Mr. Cardone slung at Mr. Legere, including describing him as a "bitch," an "alcoholic" and a "psychiatric drug[]" user.[11]

[11] *See supra* notes 4, 5.

2. Mr. Legere's statements are opinions protected by the First Amendment

Mr. Legere's purported statements are also not actionable because he expressly couched them as his opinions. "Under Florida law, a defendant publishes a 'pure opinion' when the defendant makes a comment or opinion based on facts which are set forth in the publication or which are otherwise known or available to the reader or listener as a member of the public." *Turner v. Wells*, 879 F.3d 1254, 1262 (11th Cir. 2018). "[E]ven a provably false statement is not actionable if 'it is plain that the speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts.'" *Riley v. Harr*, 292 F.3d 282, 289 (1st Cir. 2002).

For example, in *Hay*, someone wrote a letter to the editor calling the plaintiff a "crook" and "criminal." 450 So. 2d at 294. The *Hay* court held that those statements were pure opinions, emphasizing that they were described as "opinion" and "the fact that criminal charges had been filed against [the plaintiff] was either known or readily available to the reader as a member of the public." *Id*. at 295; *see also Turner*, 879 F.3d at 1264 (dismissing claim alleging that law firm defamed plaintiff by reporting that he "participated in 'homophobic taunting'" because the "statement is the [d]efendants' subjective assessment of [plaintiff's] conduct" and "included several cautionary statements that . . . it sets forth the [d]efendants' opinions").

Mr. Legere's opinions, including that he believed Mr. Cardone is a "fraud," "conman," "fake," "bullshit artist," "tenuous" and that he "believed that in the next year, Grant Cardone will be found guilty of fraud" (Compl. ¶ 45), are not actionable because they share the same three characteristics as the protected opinions in *Turner* and *Hay* (*see also* App'x A). First, like the statements in *Turner* claiming that the plaintiff "participated in 'homophobic taunting,'" Mr. Legere's "statement[s] [were his] subjective assessment of [Mr. Cardone's] conduct and [are] not readily capable of being proven true or false." 879 F.3d at 1264.

Second, Mr. Legere provided at least four facts underlying his opinions about Mr. Cardone during their June 2023 Clubhouse debate, including that Mr. Cardone: (1) promotes himself as a recovering addict but posts pictures drinking alcohol; (2) brags that he is a billionaire but has not offered proof; (3) was trying to incite Mr. Legere into a "legal issue"; and (4) would harness the Church of Scientology "to come get" Mr. Legere for his opinions. (Compl. ¶ 45.) And while Mr. Legere did not expressly reference the pending class action lawsuit (or media reports) accusing Mr. Cardone of fraud, listeners knew or had access to them because they are '"readily available' [as] matter[s] of public record." *Colodny*, 936 F. Supp. at 924.

Third, like the defendants' statements in *Turner*, *Hay*, and *Colodny*, Mr. Legere expressly warned listeners that he was only offering his opinions. In fact, the complaint alleges that Mr. Legere cautioned listeners that he was only providing his "beliefs" and "opinions" about Mr. Cardone no fewer than 10 times during the June 2023 Clubhouse debate. (Compl. ¶ 45.) *See Turner*, 879 F.3d at 1264 (statements were not actionable because they included "several cautionary statements" including "in our opinion"). Furthermore, Mr. Cardone concedes that audiences on Clubhouse knew the speakers were only giving their "opinion[s]." (Compl. ¶ 32.) *See Pronto*, 2020 WL 6728812, at *5 (those who listen to commentary on "social media" do not "understand [it] to be conveying factual information").

C. Many Alleged Statements Are Not Actionable As Predictions Or Questions

Many of Mr. Legere's purported statements are not actionable because they are either predictions or questions. (*See* App'x A.) Statements about future events cannot be the basis of a defamation claim because "[a] prediction cannot be false and therefore cannot be defamatory." *See Maurer v. Town of Indep.*, 45 F. Supp. 3d 535, 552 (E.D. La. 2014) (stating corporation would "dissolve . . . if plaintiff remained . . . chief is a prediction of future events"); *WCP/Fern Exposition Servs., LLC v. Hall*, 2011 WL 1157699, at *13 (W.D. Ky. Mar. 28, 2011).

("prediction about a possible future event" cannot be defamatory).

Mr. Legere's statement that "I believe that in the next year, Grant Cardone will be found guilty of fraud" (Compl. ¶ 45) fits within that categorical bar because he was giving an opinion about what he "believe[d]" would happen in a year. Thus, because Mr. Legere's "prediction cannot be false," it "cannot be defamatory." *Maurer*, 45 F. Supp. 3d at 552.

Questions are also incapable of being proved false and thus cannot be actionable because "inquiry itself, however embarrassing or unpleasant to its subject, is not accusation." *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1094 (4th Cir. 1993); *see also Tesla, Inc. v. Tripp*, 487 F. Supp. 3d 953, 974 (D. Nev. 2020) ("Musk's tweeted question to Lopez about whether she paid Tripp for the information about Tesla" was not actionable).

As shown on Appendix A, ten statements identified in the complaint are questions Mr. Legere asked on Clubhouse or on Twitter—for example, "[s]teroids?" "are you a billionaire?" and "is the top gun guy still ahead of you?" (Compl. ¶¶ 45; 47.) None of these questions are actionable because none "impl[y] an assertion of fact." *Tesla*, 487 F. Supp. 3d at 974. The Court should thus dismiss all claims that are based on Mr. Legere's predictions and questions.

II. MR. CARDONE FAILS TO ALLEGE THAT MR. LEGERE MADE ANY STATEMENT WITH ANY ACTUAL MALICE

The complaint should be dismissed in its entirety for the independent reason that Mr. Cardone is a self-proclaimed public figure, yet fails to even try to meet his burden to allege Mr. Legere made any statement with actual malice. To ensure "that liability for damages be conditioned on the specified showing of culpable conduct by those who publish damaging falsehood," the First Amendment requires "public figure" plaintiffs to plead that the defendant spoke with "actual malice." *Herbert v. Lando*, 441 U.S. 153, 159-160 (1979). The actual malice standard "places a very heavy burden of proof upon the public official or public figure who seeks

redress for defamation from one who criticizes or discusses the official or public conduct of the plaintiff." *Nodar v. Galbreath*, 462 So. 2d 803, 807 (Fla. 1984). To meet that heavy burden, public figure plaintiffs must allege that the defendant published the allegedly defamatory statement with "actual malice . . . that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *Id*.

The complaint should be dismissed because it alleges no facts even remotely suggesting that Mr. Legere made any statement with actual malice.

1. Mr. Cardone alleges he is a "public figure"

Mr. Cardone must plead actual malice because the complaint alleges he is a public figure. Public figures are "those persons 'intimately involved in the resolution of important public questions, or [who], by reason of their fame, shape events in areas of concern to society at large."' *Miami Herald Publ'g Co. v. Ane*, 458 So. 2d 239, 241 (Fla. 1984); *see also Corsi v. Newsmax Media, Inc.*, 519 F. Supp. 3d 1110, 11122 (S.D. Fla. 2021) ("There is no question that Corsi is a public figure. He describes himself as a New York Times bestselling author and political commentator."). "The determination that a person is a public figure is properly for the court." *Lampkin-Asam v. Miami Daily News, Inc.*, 408 So. 2d 666, 668 (Fla. 3d DCA 1981).

The complaint leaves no doubt that Mr. Cardone is a public figure because he claims that he "is internationally renowned" and "a New York Times best-selling author." (Compl. ¶¶ 11-12.) He is also a self-described "highly acclaimed international speaker," who "regularly appears on national television." (*Id.* ¶¶ 13-14.) There is therefore "no question that [Mr. Cardone] is a public figure." *See Corsi*, 519 F. Supp. 3d at 11122; *see also Michel*, 816 F.3d at 702 (plaintiff was public figure because he alleged he was a "world-renown[ed] philanthropist").

2. Mr. Cardone fails to allege actual malice

Mr. Cardone fails to allege actual malice because he pleads no facts alleging that Mr.

Legere knew (or was nearly certain) his alleged statements were false. To meet his burden, Mr. Cardone "must allege facts that give rise to a reasonable inference" that the challenged statements were made "with knowledge that [they] w[ere] false or with reckless disregard of whether [they] w[ere] false or not." *Michel*, 816 F.3d at 702. "The test is not an objective one" and instead courts must ask "whether the defendant, instead of acting in good faith, actually entertained serious doubts as to the veracity of the published account, or was highly aware that the account was probably false." *Id*. at 702-03; *accord Mile Marker, Inc. v. Petersen Publ'g, L.L.C.*, 811 So. 2d 841, 846-47 (Fla. 4th DCA 2002).

Because "a failure to investigate . . . does not indicate the presence of actual malice," plaintiffs must "show[] that the defendant purposefully avoided further investigation with the intent to avoid the truth." *Michel*, 816 F.3d at 703. Simply alleging that the defendant acted "knowingly and recklessly" or with "malice" is insufficient because those allegations are "conclusory" and "do not allege sufficient relevant facts to support a claim of actual malice." *Turner*, 879 F.3d at 1273.

Mr. Cardone's complaint can be dismissed without much ado because it alleges nothing suggesting that Mr. Legere knew any of his statements were false or made them while purposely avoiding facts that would have shown them to be false. Indeed, he does not allege that Mr. Legere was aware of a single fact that casts any doubt on his statements. All that the complaint offers is conclusory gruel: that Mr. Legere "knew they were false," made them with "reckless disregard of their truth," or made them with "actual malice." (Compl. ¶¶ 59-60; 62; 64; 68-71; 74.) But the Court can ignore all those allegations because they fail to "set forth facts demonstrating that [Mr. Legere] acted in these ways." *Turner*, 879 F.3d at 1273.

At best, the complaint alleges Mr. Cardone and Mr. Legere "shared a positive and

productive relationship" until Mr. Legere, for reasons unexplained by the complaint, "abruptly pivoted away from his collaborative relationship with Cardone, and instead became hostile." (Compl. ¶ 32.) But even crediting that mysterious "pivot" as true, "[i]ll-will, improper motive or personal animosity plays no role in determining whether a defendant acted with 'actual malice.'" *Dunn v. Air Line Pilots Ass'n*, 193 F.3d 1185, 1198 n.17 (11th Cir. 1999).

If anything, the exchanges quoted in the complaint and public records demonstrate that Mr. Legere had ample basis for believing his statements were true. For example, Mr. Legere explained that he believed that Mr. Cardone was not a recovering addict because his social media posts showed him "holding wine and whiskey." (Compl. ¶ 45.) And there are media reports—and a class action securities complaint—claiming that Mr. Cardone engaged in fraud and may have "built" his "business . . . on lies and deception." *See supra* at 3. Accordingly, the complaint should be dismissed because it fails to allege anything suggesting that Mr. Legere knew that his statements were untrue or even entertained any doubts about their accuracy.

III. MR. CARDONE FAILS TO ADEQUATELY ALLEGE THAT MR. LEGERE PUBLISHED ANY STATEMENTS

The complaint should also be dismissed because it identifies no third parties who read or heard Mr. Legere's statements. Defamation plaintiffs must plead the "identi[ty of] the particular person to whom the remarks were made with a reasonable degree of certainty." *Buckner v. Lower Fla. Keys Hosp. Dist.*, 403 So. 2d 1025, 1027 (Fla. 3d Dist. App. 1981). Alleging that statements were made to "numerous third parties" does not suffice, *id.* at 1028, so, for example, alleging that "the Statement was put on Defendant's Facebook wall 'for all to see,' fails to identify those persons to whom the Facebook post was published with a reasonable degree of certainty," *Aflalo v. Weiner*, 2018 WL 3235529, at *4 (S.D. Fla. July 2, 2018).

Mr. Cardone parrots the failed complaint in *Buckner* by generically alleging that Mr.

Legere made his statements to "thousands" on social media. (Compl. ¶¶ 42, 47.) But because he "fails to identify" a single "person[] to whom the [social media statements were] published" his complaint should be dismissed. *Aflalo*, 2018 WL 3235529, at *4.

IV. MR. CARDONE FAILS TO ALLEGE THAT MR. LEGERE'S STATEMENTS CAUSED DAMAGES

The complaint should be dismissed because Mr. Cardone fails to allege that statements Mr. Legere published damaged him in any way. Because Mr. Cardone fails to allege that any statement was defamatory per se, *see infra* § V, he must "allege[] 'items of special as well as general damages,'" for Count II's defamation per quod and defamation by implication claims, *Flynn*, 2023 WL 5985193, at *5 (quoting *Hood v. Connors*, 419 So. 2d 742, 743 (Fla. 5th DCA 1982)). "Special damages are actual, out of pocket losses which must be proven by specific evidence as to the time, cause and amount" and "must be pled in more than 'a conclusory manner.'" *Flynn*, 2023 WL 5985193, at *5. And damages cannot be based on a third party's republication of supposedly defamatory statements because "Florida law does not recognize defamation claims based on third-party republication." *Markle*, 2023 WL 2711341, at *7.

The complaint "is devoid of allegations of actual employment loss or realized loss attributable to" Mr. Legere's statements. *Flynn*, 2023 WL 5985193, at *5. In fact, like the plaintiff in *Flynn*, Mr. Cardone "relies on conclusory allegations to support h[is] claim for special damages" *id*., by claiming that "[a]s a proximate result of the maliciously false and defamatory publication of statements to third parties by Legere, Cardone has been damaged" by "$100,000,000" (Compl. ¶¶ 56, 64). If anything, the complaint suggests that Mr. Cardone was not harmed when Mr. Legere supposedly made his statements in the June 2023 Clubhouse debate because these statements received attention only when an unidentified third-party "re-posted" them on other "social media platforms." (Compl. ¶ 44.) *See Markle*, 2023 WL 2711341, at *7

(plaintiff could not recover where alleged losses occurred when alleged defamatory statements were "later published by someone else"). The complaint also claims Mr. Legere "was aware or should have been aware of the potential future damage that could result if others reposted the defamatory statements being made by Legere on other social media platforms." (Compl. ¶ 43.) But "Florida law does not recognize defamation claims based on third-party republication" even where "the republication was reasonably foreseeable" by the defendant. *Markle*, 2023 WL 2711341, at *7 (collecting cases). And even if it did, the complaint fails to allege any facts suggesting Mr. Legere could reasonably foresee that the Clubhouse chat would be re-publicized.

In addition, the complaint does not even try to allege that Mr. Cardone's purported damages are attributable to Mr. Legere's statements rather than the other media reports or the investor lawsuit that, unlike Mr. Legere's statements, accuse Mr. Cardone of engaging in fraud.

V. MR. CARDONE FAILS TO ALLEGE THAT ANY STATEMENT WAS DEFAMATORY PER SE

Count I also should be dismissed because Mr. Cardone fails to allege that any statement was defamatory per se. A statement "rises to the level of defamation per se if, when considered alone and without innuendo, it (1) charges that a person has committed an infamous crime; (2) tends to subject one to hatred, distrust, ridicule, contempt, or disgrace; or (3) tends to injure one in his trade or profession." *Flynn*, 2023 WL 5985193, at *4; *accord Barry Coll. v. Hull*, 353 So. 2d 575, 578 (Fla. 3d DCA 1977). At bottom, the plaintiff must allege that "the statements are so egregious and reputation shattering that there can be no question that the defamed party's reputation suffered as a result." *Flynn*, 2023 WL 5985193, at *5.

Mr. Cardone fails to allege that any statement falls into one of those defamation per se categories, but instead rests on the conclusory allegation that Mr. Legere "impute[d] to Cardone conduct . . . incompatible with the proper exercise of his lawful business, trade, profession or

office." (Compl. ¶¶ 54-55.) Mr. Cardone pleads no facts supporting these conclusory assertions. In any event, the alleged statements cannot be defamatory per se because they are "made in a loose, figurative sense as rhetoric or hyperbole." *Pronto*, 2020 WL 6728812, at *6. Nor does the complaint allege that Mr. Legere accused Mr. Cardone of committing an infamous crime or that Mr. Legere's statements "shattered" his reputation.

Instead, Mr. Cardone suggests only that Mr. Legere's statements would tend to injure his business, but the alleged statements defy that characterization. During the June 2023 Clubhouse debate, Mr. Cardone clarified whether Mr. Legere was accusing him of being "fraudulent" in his business, and Mr. Legere responded that he was using "fraud" much more generally: "somebody that says, I used to be an addict and I think you are fake." (Compl. ¶ 45.) Indeed, Mr. Cardone expressly stated that he "did not believe" that Mr. Legere was stating that Mr. Cardone had "been fraudulent with [his] investors." (*Id.*) After eliciting these clarifications from Mr. Legere and confessing that he believed them, Mr. Cardone cannot allege that a reasonable listener would have believed otherwise. *Murray*, 2020 WL 6728812, at *3 ("[S]tatement should not be interpreted in the extreme, but as the 'common mind' would normally understand it."). Accordingly, Count I should be dismissed because Mr. Cardone fails to allege any category of defamation per se.

VI. MR. CARDONE FAILS TO ALLEGE DEFAMATION BY IMPLICATION

The defamation by implication claim in Count II should also be dismissed because Mr. Cardone makes no effort to allege its most basic elements. To plead defamation by implication, the plaintiff must allege that "'the defendant juxtaposes a series of facts so as to imply a defamatory connection between them,' even though the particular facts stated are true." *Parekh v. CBS Corp.*, 820 F. App'x 827, 835 (11th Cir. 2020) (quoting *Jews for Jesus, Inc. v. Rapp*, 997

So. 2d 1098, 1108 (Fla. 2008)). Therefore, "a defamation by implication claim must rest on true statements." *Jacoby v. Cable News Network, Inc.*, 537 F. Supp. 3d 1303, 1313 n.4 (M.D. Fla. 2021), *aff'd*, 2021 WL 5858569 (11th Cir. Dec. 10, 2021).

Mr. Cardone's defamation by implication claim fails because he denies that any statement made by Mr. Legere was true. Rather, Mr. Cardone conclusory alleges that every statement was "false." (Compl. ¶¶ 46; 48; 52; 56; 58; 59; 64; 67; 68; 73.) *See Corsi*, 519 F. Supp. 3d at 1123-24 (dismissing defamation by implication claim because plaintiff alleged statements were "false"). And "[t]he [c]ourt cannot accept as true [p]laintiff's allegation . . . that this statement is false, while also accepting as true [p]laintiff's allegation . . . that [it] is true." *Jacoby*, 537 F. Supp. 3d at 1313. In addition, "[a]ll of the protections of defamation law that are afforded to . . . private defendants are . . . extended to the tort of defamation by implication." *Jews for Jesus*, 997 So. 2d at 1108. Thus, Mr. Cardone's claim for defamation by implication should be dismissed because he fails to allege any statements were true, and even if he did, the statements are not actionable for the same reasons his other claims for defamation fail.

CONCLUSION

For all these reasons, Mr. Legere's motion to dismiss the complaint should be granted with prejudice.

Dated: February 21, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via the Florida Court E-Portal this **21st day of February, 2024,** which will send a notice of electronic filing to all counsel of record listed below.

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