IN THE SUPERIOR COURT OF TROUP COUNTY
STATE OF GEORGIA

RICHARD CARY WOLFE,	)	
Plaintiff,	)	
	)	**CIVIL ACTION**
	)	**FILE NO. 14-CV-0379**
vs	)	
	)	**JUDGE: KIRBY**
	)	
Ron McClellan,	)	
Defendant.	)	

OPPOSITION TO PLAINTIFFS MOTION FOR SUMMARY JUDGEMENT

COMES NOW the Defendant and files this Response in Opposition to Plaintiffs Partial Motion for Summary Judgment, as follows:

INTRODUCTION

Plaintiff seeks Partial Summary Judgment against Defendant based on Plaintiffs vexatious and fatally flawed Theory of Recovery, and Plaintiffs equally flawed Statement of Material Facts which Plaintiff bizarrely asserts demonstrates there is no genuine issue left to be tried.

Defendant can not disagree more strongly. Plaintiffs claims of “no genuine issue to be tried” are in their entirety predicated on the following fatal flaws in Plaintiffs Theory of Recovery, as disputed below, followed by Defendants assertions of genuine issues of fact that remain in dispute.

1.

In response to Plaintiffs First Theory of Recovery: The record does *not* establish without dispute that Defendant has made and published libelous statements against the Plaintiff per O.G.C.A. § 51-5-1, as asserted in Plaintiffs Theory of Recovery. Plaintiffs theory falls short in that it attempts to ignore well-established jurisprudence relative to the higher benchmark of alleged libel against Public

Officials, *see New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2D 686 (1964), [*Hereafter referenced as New York Times v. Sullivan*],as well as attempting to avoid well-established jurisprudence relative to allegations of libel on matters of public interest, particularly relative to governmental activity. *See O.G.C.A. § 51-5-7(9)* in particular, as well as O.G.C.A. § 51-5-7(2)(3)(4). O.G.C.A. § 51-5-7 has also been raised by Defendant in prior pleadings as an affirmative defense as privileged communications.

2.

In response to Plaintiffs Second Theory of Recovery: The Plaintiff most certainly has not established without dispute that the opinions and concerns at issue expressed by the Defendant constitute *libel per se*, which is simply *not* the relevant benchmark, irrespective of Plaintiff falling short of the burden of demonstrating actual malice with clear and convincing evidence.

Even allowing, for the sake of argument, that if Plaintiff had reached that benchmark for a successful libel action against a private person, when such statements are made relative to the actions of a public official, and *in particular* the actions of a public official on matters in the public interest, Plaintiff *must* demonstrate clear and convincing evidence of actual malice. *See New York Times Co. v. Sullivan*,, supra *Mathis v. Cannon;* 573 S.E.2d 376 (2002) [*Hereafter referenced as Mathis 2*]

Plaintiff has failed to even adequately demonstrate common law malice, and certainly fails to even approach meeting Plaintiffs burden of demonstrating clear and convincing evidence of actual malice. Plaintiffs citation of *Mathis v. Cannon;* 252 Ga. App. 282 (2001) [*Hereafter referenced as Mathis 1*] in support of Plaintiffs Second Theory of Recovery is puzzling. The Georgia Supreme Court reversed the lower courts decision, *specifically for* applying libel per se in the same manner Plaintiff is attempting to assert as a valid theory of recovery.

The Georgia Supreme Court in Mathis v. Cannon, supra (2002) held;

" . . . the first issue in this case concerns whether the trial court and court of appeals adopted the proper standard of liability for the element of fault. If Cannon is a private figure, as both courts held, then a negligence standard applies. If he is a public figure, as the defendant contends, then the more stringent standard from the New York Times v. Sullivan case applies. …" (continued next page)

". . . In New York Times v. Sullivan, the Court held that the constitutional guarantees of free speech and free press prohibited a public official from recovering damages for defamatory criticism of his conduct unless the official proves the statement was made with "actual malice." This standard requires the public official to prove that the defendant had knowledge that the statement was false or with reckless disregard of whether it was true or false."

Plaintiff simply has not met the burden of proof that Defendant had any knowledge of falsity of any published statement at issue in the instant case. On the contrary, defendant feels more confident today that Plaintiff is in fact likely involved in unlawful activities than when this vexatious, and abusive Tort action brought by the Plaintiff commenced. Further, Plaintiff can not prove, or plausibly assert, even by lesser standards of evidence than clear and convincing, that Defendant was reckless in expressing his views, opinions, and suspicions on Plaintiffs activities as a Public Official on matters of public interest. Plaintiff does not even approach the threshold of clear and convincing evidence of Defendant having knowledge of falsity, or recklessness, and certainly does not demonstrate it is, as a matter of law, indisputable.

3.

In response to Plaintiffs Third Theory of Recovery: Defendant would like to first state as a matter of record, Plaintiff has heretofore vexatiously asserted he was suing as a private citizen, which necessitated Defendant waste many hours preparing a defense with Plaintiffs erroneous assertions made to this effect, both publicly and directly, to Defendant. Only upon Plaintiff filing Plaintiffs Motion for Partial Summary Judgment on July 27, 2015 has Plaintiff conceded this standing as a Public Official

Further, all statements made by the Defendant alleged to be libelous, as a matter of law, must be considered in the scope of Plaintiffs irrefutable standing as a Public Official, and all alleged libelous statements made by Defendant are relative to matters of public interest. Plaintiffs multiple roles in public governance sector and the private sector are inescapably intertwined for all purposes in this frivolous Tort action brought against Defendant, and as such these closely associated roles intertwined with Plaintiffs duties as a Public Official still carry with them the actual malice standards in a libel claim. See *Savannah News-Press, Division Southeastern Newspapers Corporation v. Whetsell; 254 SE2d 151 (1979). [Hereafter referenced as Whetsell]*

In Whetsell, supra, the court held the following:

" Whetsell's status as a public official is not disputed, but a question does exist as to whether his trespass onto anthers property to retrieve lost cows has sufficient connection to his role as a public official that the New York Times "actual malice" standard should apply. The American Law Institute, in considering this sort of situation, wrote: "The extent to which a statement as to his [the public official's] private conduct should be treated as affecting him in his capacity as a public official cannot be reduced to a specific rule of law. The determination depends upon both the nature of the office involved, with its responsibilities and necessary qualifications, and the nature of the private conduct and the implications that it has as to his fitness for the office." "The authority and duties of the office of mayor permit the occupier of that office to exercise a powerful role in the administration of municipal government. While the crime of criminal trespass is only a misdemeanor (and theft by taking, "cattle rustling" here, is a felony), it cannot be denied that news that a mayor has willfully violated state law, albeit in the conduct of his private affairs, bears a close connection to his fitness for public office. Thus, Savannah News-Press is entitled to the additional protection from liability guaranteed by New York Times Co. v. Sullivan, supra."

Most certainly, if an elected Mayor [*Whetsell*] trespassing in a private cow pasture unrelated to his public duties still carrys the burden of proving actual malice as a public official, and the alleged libel is deemed in the public interest as in Whetsell, supra, then it follows most certainly that the Plaintiff, an elected County Commission Chairman in a dual capacity as founder and chairman of a very public organization, former Plaintiff DASH Inc. , that also derives a substantial amount of it's revenue from the very government agency the Plaintiff, as Chairman of the governing county board was a fiduciary

of, clearly renders Plaintiff a Public Official even for the purpose of any alleged libelous statements in connection with former Plaintiff DASH Inc., or any other private entity connected to Plaintiff and/or former Plaintiff DASH. Nowhere in Plaintiffs Motion for Partial Summary Judgment, nor in the supporting documents, does Plaintiff produce even reasonably supportive evidence of actual malice, let alone the necessary “clear and convincing evidence” of such.

The Defendant does have a reasonable and demonstrable and triable basis for his stated opinions and suspicions, despite the lack of any legal necessity or mandate whatsoever to prove said opinions and suspicions. Further, as a matter of law, defendant is not bound or necessitated to meet even the relatively low standard of what a reasonably prudent person would do. See *Williams v. Trust Company of Georgia 140 Ga. App 49, to wit;*

“reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication “

Defendant's opinions may at minimum be considered speculative, and for the sake of argument even if Defendant is incorrect, that is simply not enough to demonstrate prima facie evidence of actual malice.

Again referring to *Williams v Trust Company of Georgia, supra;*

“ Malice in the constitutional sense is distinguished from the common law sense of ill will, hatred, or charges calculated to injure. “

and,

Williams v Trust Company of Georgia supra,

“*Constitutional malice does not involve the motives of the speaker or publisher, though they may be wrong, but rather it is his awareness of actual or probable falsity, or his reckless disregard for their falsity “*

4.

In response to Plaintiffs Fourth Theory of Recovery: Defendant strongly objects to, and takes issue

with Plaintiffs Theory of Recovery, as addressed herein this responsive pleading in parts one, two, and three, which correspond with the enumeration of Plaintiffs Theory of Recovery. Plaintiffs wildly tenuous and prejudicially parsed "Statement of Material Facts to Which There Remains no Genuine Issue to be Tried," (Hereafter referred to as "Plaintiffs Genuine Issue Statement") and also Plaintiffs "Brief in Support of Summary Judgment, (hereafter referred to as "Plaintiffs Fact Brief") which is particularly fallacious, as follows;

TRIABLE ISSUES OF FACT OF WHICH THERE REMAINS A GENUINE ISSUE

In Response to Plaintiffs Issue #4 of Plaintiffs Genuine Issue Statement, Defendant did acknowledge that at some level, Defendants Facebook page, "Troup County Citizen" is a form of media. What is "obfuscated by omission" in Plaintiffs deceptively parsed Issue #4, inasmuch as it is a Facebook Page, no more, no less. Facebook is a popular and *very* informal form of public communication, and virtually anyone, as Defendant did, can create a page in five minutes, for free.

As such, by simple virtue of it being "just a Facebook page" no reasonable person views content "on Facebook" in the same light as they might a more formal, professional page of a formal media company. The Facebook Page "Troup County Citizen, is just "Ron McClellans [Defendant] Opinion." This is common knowledge around parts of Troup County. " Defendants Facebook page is quite informal and anecdotal, and this is immediately obvious with a simple perusal of the Troup County Citizen Facebook page.

A number of landmark cases relative to the instant case have made it clear that the informal, opinionated, and anecdotal nature of the Defendants "blog" must be considered as a factor in determining if actual malice libel, or even libel per se, took place. *See Mathis v. Cannon*(2002) supra;

" *Moreover, any person reading the postings on the message board— written entirely in lower case replete with question marks, exclamation points, misspellings, abbreviations, and dashes—could not reasonably interpret the incoherent messages as stating actual facts about Cannon, but would interpret them as the late night rhetorical outbursts of an angry and frustrated person opposed to the company's hauling of other people's garbage into the county.* "

While the Defendant in the instant case does not type in all lower-case, the Defendants statements at issue are for the most part informal, anecdotal, sometimes rhetorical, sometimes heated sometimes light and aren't proffered as anything more than Defendants opinions and concerns, valid concerns that are well considered, even if not backed with ironclad, incontrovertible proof, suitable to bring down a grand jury indictment on a public official. This being said, Defendant believed at the time, and continues to believe, that Plaintiff has performed illegal, and at absolute minimum, ethically questionable activities that are in the public interest to which Defendant, as a private resident within the jurisdiction of Plaintiffs area of influence, has a legitimate right and even duty to express critical opinion of. This is a matter of Public Interest involving elected Public Officials, and as such enjoys conditional privilege under O.G.C.A. § 51-5-7, the First, Fifth, and Fourteenth Amendments to the U.S. Constitution. In a more recent landmark case in January of 2014 the U.S. Ninth Circuit Court of Appeals, *Cox v. Obsidian Finance Group, 740 F.3d 1284 (2014)* further bolstered the same view relative to informal citizen blog pages. Further, in the case of *Cox v. Obsidian Finance*, supra, the Defendant/Appellant *Cox* almost certainly had extortion in mind, yet actual malice was still deemed by the court not proven to the clear and convincing standard necessary for a finding of actual malice. Further, the court found that Plaintiffs Obsidian nor Padrick were public figures, nor even limited public figures. In the instant case, Defendant McClellan clearly has no criminal intent, nor has Plaintiff alleged such in any pleading.

Cox v Obsidian, supra, to wit;

" *. . . the general tenor of Appellant Cox's blog posts negates the impression that she was asserting objective facts.* "

“ . . . Cox published blog posts on several websites that she created, accusing Padrick and Obsidian (Plaintiff/Appellees) of fraud, corruption, Money-laundering and other illegal activities in connection with the summit bankruptcy ”

“ Cox's consistent use of extreme language negates the impression that the blog posts assert objective facts. Cox regularly employed hyperbolic language in the posts, including terms such as “immoral,” “really bad,” “thugs,” and “evil doers.” Id. (quoting blog posts). *Cox's assertions that “Padrick hired a ‘hit man’ to kill her” or “that the entire bankruptcy court system is corrupt” similarly dispel any reasonable expectation that the statements assert facts.”*

“ . . . in the context of a non-professional website containing consistently hyperbolic language, Cox's blog posts are “not sufficiently factual to be proved true or false.”

Clearly, there are genuine triable issues that remain, Plaintiffs assertions otherwise can only be described as absurd, and seem predicated on some bizarre “ litigational three card monte or bait-and-switch ” tactic, whereas they make a case for a standard libel per se action against a private citizen, and then try to deceive the court into believing they have made a clear and convincing case of actual malice libel.

In Response to Plaintiffs Issue #7 of Plaintiffs Genuine Issue Statement, sub parts “A” thru “L,” Defendant must point out that Plaintiffs offered quotes attributed to Defendant have been prejudicially edited, and the actual context of the Defendants statements is lost in the omissions and contextual misrepresentation.

Notwithstanding the omissions and contextual misrepresentations of the Plaintiffs verbose but unconvincing assertions there are no triable issues as a matter of law, none of Plaintiffs quoted statements of Defendant rise to the “Clear and Convincing” standard to as a matter of law to support a finding of actual Malice. See *Cox v. Obsidian Finance Group, supra, Mathis v. Cannon, (2002), supra.*

In further clarification of Plaintiffs Material Facts statement, #7, sub part L, Defendant wants it to be clear that he did *not* admit everything Plaintiff alleged the defendant to have said was “libel,”,

but was merely acknowledging everything the plaintiff alleged incorrectly as actual malice libel was in fact written by Defendant.

While the statements attributed to the Defendant in Plaintiffs Issue Statement #7 are seemingly accurate, the Plaintiffs assertion that the mere wording alone is somehow clear and convincing evidence of Constitutional/actual malice against a public official on a matter of public interest falls woefully short; *See Miller v Woods, 180 Ga. App 486,* to wit;

" *Actual malice in the sense of libeling a public official does not necessarily extend to ill will, hatred or actions calculated to injure for this may run afoul of the freedom of speech protected by the First Amendment. Garrison v. Louisiana, 379 U.S. 64,72 (85 SC 209, 13 L.E2d 125). Moreover, knowledge of falsity or reckless disregard of the truth may not be derived solely from the language of the publication itself. Williams v. Trust Co. of Ga., Supra. "*

See also Davis et al v. Shavers, 225 Ga. App. 497(1997), to wit;

" Specifically, the trial court refused to charge that a public official cannot recover unless he or she proves with clear and convincing evidence that the defendant knew his statement was false; that the ultimate proof of falsehood is not enough without the speaker's own personal knowledge or belief; that falsehood coupled with negligence is not enough; and that subjective awareness by the speaker must be shown -- the test is not what a reasonable or ordinary person would think. These charges were correct statements of the law. "

Plaintiff is relying solely on his unilateral and disputed assertion of falsehood as if that alone somehow provides clear and convincing evidence. Plaintiff makes a tepid argument for Libel per se, and then tries to pass it off as clear and convincing proof of actual malice. Plaintiff is in no position to make declaratory judgment on Defendants state of mind.

In Response to Plaintiffs Issue #9 of Plaintiffs Genuine Issue Statement, Defendant concurs wholeheartedly, and "admits" he is still of the opinion as of the date of this document being filed that Plaintiff has engaged in unlawful activities, and likely continues to do so with impunity.

In Response to Plaintiffs Issue #10 of Plaintiffs Genuine Issue Statement, Plaintiff makes a wildly

reckless and inaccurate declaration relative to Defendants deposition (Quoting Plaintiff)as follows:

" . . . incredibly the Defendant acknowledged these statements were made with no evidence to back him up . . "

This is simply not true. Numerous times throughout the deposition, Defendant made mention of anecdotal evidence, Plaintiff supplied documents, witness testimony etc. to support his defense. Further, there is evidence that the Plaintiff already has full and unfettered access to some of which Defendant personally observed in Plaintiffs files during the deposition, including some of plaintiffs own pleadings, filings, and Discovery supplied documents.

Further, at the time of the deposition, I had not even finished reviewing all the plaintiffs 1700 pages (and still incomplete) of supplied documents, and the discovery process was still ongoing at the time of the deposition. So essentially, other than witness testimony, Plaintiff *already has* full and unfettered access to Defendants evidence.

Most of Plaintiffs discovery requests were essentially meant to harass and intimidate, and had virtually no remotely reasonable possibility of producing information useful to the Plaintiffs vexatious cause of action. When Plaintiff expressed dissatisfaction with Defendants response to Plaintiffs bizarre and surprisingly harassing document requests, Defendant did in fact invite Plaintiff to exercise his right to take the document demand to a hearing before this court.

Defendant did "admit" that he didn't have rock solid evidence. Again, per the Plaintiffs own pleadings and filings, this was always clear to the Plaintiff and the public and was stated publicly in the very statements on the very Websites Plaintiff has submitted as evidence.

Further, Defendant has no burden whatsoever to “prove” his statements were truth. While that would be a wonderful affirmative defense, it isn't even remotely the only defense to a libel action brought by a public official on matters in the public interest, with the Plaintiff carrying the burden of showing clear and convincing evidence of actual malice, a necessary component of Plaintiffs cause of action. What Defendant can show, and this is of course yet another triable issue, is they he did not knowingly publish false information, nor was defendant reckless in publishing his opinions and viewpoints.

Again per *Williams v Trust Company of Georgia, supra;*

“reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication “

Also see St. St. Amant v. Thompson, 390 U.S. 727 (1968 *):*

"Reckless disregard," it is true, cannot be fully encompassed in one infallible definition. Inevitably its outer limits will be marked out through case-by-case adjudication, as is true with so many legal standards for judging concrete cases, whether the standard is provided by the Constitution, statutes, or case law.

Our cases, however, have furnished meaningful guidance for the further definition of a reckless publication. In New York Times, supra, the plaintiff did not satisfy his burden because the record failed to show that the publisher was aware of the likelihood that he was circulating false information. In Garrison v. Louisiana, 379 U.S. 64 (1964), also decided before the decision of the Louisiana Supreme Court in this case, the opinion emphasized the necessity for a showing that a false publication was made with a "high degree of awareness of probable falsity." 379 U.S. at 379 U.S. 74.

MR. JUSTICE HARLAN's opinion in Curtis Publishing Co. v. Butts, 388 U.S. 130, 388 U.S. 153 (1967), stated that evidence of either deliberate falsification or reckless publication "despite the publisher's awareness of probable falsity" was essential to recovery by public officials in defamation actions. These cases are clear that reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant, in fact, entertained serious doubts as to the truth of his publication.

Defendant had, at the time of publication, and continues to have no doubt that Plaintiff has engaged in unlawful criminal activity, and likely is just arrogant and narcissistic enough to still be doing so.

Further, Defendant will again assert that he is noteven mandated to demonstrate reasonable prudence, though it is a standard Defendant *did* meet, and is very capable of demonstrating this before a jury. Virtually every theory of recovery for Plaintiffs Motion for Partial Summary Judgment is fatally flawed, and every claim of no genuine issue to be tried falls woefully short of showing knowledge of falsity or reckless publication.

An American Citizen does not and never has needed to have an ironclad and airtight criminal case ready to present before a grand jury, the FBI, GBI, or Attorney Generals office before publicly raising concerns and suspicions, and expressing viewpoints some public officials don't like, particularly when that citizen has a vested and lawful civic interest in what that Public Official is doing with Public (and commingled private) Moneys in the public interest of the community both reside in. Citizens have a right, even a duty, to be watchful and critical. And sometimes that will, by necessity, involve citizen allegations and publicly expressed suspicions of unlawful activities

As a perfect example, just a little over a month and a half ago, July 2, 2015 specifically, New Jersey Superior Court Judge Andrew Napolitano posted the following *on his own* personal Facebook page about a Public Official, Secretary of State Hillary Clinton, on a matter of Public Interest:

"What I saw has persuaded me beyond a reasonable doubt and to a moral certainty that Clinton provided material assistance to terrorists and lied to Congress in a venue where the law required her to be truthful."

Supplying material assistance and aid to Terrorists, and lying to Congess . . .both criminal activity.
Is there any practical difference between what Plaintiff has done, which was state his honest but critical opinions, based on reasonable anecdotal observation, of actions and activities of a public official in matters of public interest, and what Judge Andrew Napolitano also did? There is virtually no difference whatsoever. Plaintiff Wolfe is actually *counting o*n the *chilling effect* this lawsuit has had and may continue to have, intimidating citizens critical of his political and financial activities depending on the

outcome of the instant case.

Plaintiffs lawsuit is clearly intended to have a chilling effect on citizens critical of actions of powerful public men in positions of power. Defendant believes this was not just a vexatious, judicially abusive and harassing attempt at intimidation of defendant. It was meant as a warning to everyone publicly critical of Plaintiff Wolfe.

RESPONSE TO PLAINTIFFS BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

A prime example of the desperation in Plaintiffs pleadings is contained in Plaintiffs Support Brief for this Summary Judgment Motion. In what appears to be a blatant and clumsy attempt to mislead the court, on Page 7 of Plaintiffs Support Brief, Plaintiff asserts, correctly, that Defendant referred to Plaintiff as “a sleazy piece of crap” and a “Nazi piece of shit.” The problem is, Defendants statements in this instance do not even create a cause of action on the inapplicable standard in the instant case of common law malice, let alone meet the test of actual, or Constitutional malice. Not even close. Defendants dispute on this matter is supported by literally hundreds of prior court cases, in Georgia and every state in the union in all likelihood. See; *No Witness LLL v. Cumulus Media Partners, LLC (N.D.GA. 11-13-2007*) to wit;

*“ A defendant "cannot be sued for simply expressing his opinion of another person, however unreasonable the opinion or vituperous the expressing of it might be. Here, the statements that "Barnes is pathetic," "I've always known Barnes is a retard . . .," "Barnes is `captain back acne,'" "Barnes is a `****ing hack,'" "retarded child," and "****ing ***hole" are not factual in nature. They cannot generally be proven false. See id.; see, e.g., Blomberg v. Cox Enter., Inc., 491 S.E. 2d 430,433 (1997) (holding that statement referring to plaintiff as "a silver tongued devil" cannot be defamatory because it cannot be proved false). “*

“Although the statements that plaintiff is a "retard" or is "captain back acne" could seemingly be proved false, they fall under the category of hyperbolic and scatological language, which are also not actionable. See id. The law has long recognized that a statement which is based on non-literal assertions of "fact" cannot be actionable.”

In paragraph 2 on the same page 7 of Plaintiffs Support Brief, Plaintiff makes much adieu about supplying Defendant with over 1700 pages of “very detailed information on the Plaintiffs finances,” implying Plaintiff was open and forthright. That picture painted by Plaintiff is ficticious. While much of the information was detailed, it was clearly incomplete, and what *was not* contained within those 1700 pages was in some cases as telling as what was in the reams and reams, literally, of data Plaintiff did turn over.

And again in Plaintiffs Support Brief, as in other filings relative to this Summary Judgment request, Plaintiff grossly and without any clear and convincing foundation whatsoever, overstates as “undisputed ” Defendants concerns, suspicions, and opinions, which Defendant did not believe at the time were false, still believes his opinions have foundation even if not ironclad proof, which Defendant is not even remotely required to provide to defeat Plaintiffs cause of action, as a public official, and on matters of Public interest and concern. Defendant can clearly and convincingly demonstrate to a jury he was not knowingly asserting false information, nor was Defendant reckless in expressing such concerns and opinions, many of which were clearly rhetorical in nature.

With regard to Plaintiffs Affidavit asserting no wrongdoing, that is largely irrelevant in the instant case, as defendant is under no obligation whatsoever to prove otherwise, to defeat a finding of actual malice by clear and convincing evidence, as plaintiff simply has not even remotely come close to meeting that burden, and in all likelihood, in Defendants opinion, is untrue.

Plaintiffs cause of action also fails at it's foundation, on multiple levels, beyond Defendants assertion of Conditional Privilege, as well as First, Fifth, and Fourteenth Amendment Grounds.

An absolute affirmative defense to a defamation claim brought by a Plaintiff on a matter of public interest, particularly by a Public Official with the financial control possessed by a County Commission Chairman who *is also* the founder and Chairman of former Plaintiff DASH, that received a substantial amount of revenue from the Government County Commission Plaintiff was also Chairman of is contained in Mathis v. Cannon (2002) supra, the Supreme Court version of “Mathis” that Plaintiff

goes to great lengths to avoid discussing while relying on the reversed lower Appellate court versions erroneous findings, points out an essential element to Plaintiffs cause of action that Plaintiff not only lacks, but clearly, convincingly, and indisputably undermined, *with Plaintiffs own words*, ironically at a press conference announcing the instant case.

Unlike libel per se at common law, which *is not the benchmark* for a cause of action for an action requiring the elevated standard of actual malice with clear and convincing evidence thereof, Plaintiffs cause of action falls flat and fails in it's entirety because as a matter of public concern, extra elements are mandated, specifically that the Plaintiff suffer actual injury, to wit; Quoting Mathis v. Cannon (2002) supra, the "version" that was *not* reversed;

" *LIBEL PER SE*

2. At common law, libel was a strict liability tort that did not require proof of falsity, fault, or actual damages. Since the United States Supreme Court's decision in New York Times Co. v. Sullivan, the law of defamation has undergone substantial changes. The Restatement now lists four elements in a cause of action for defamation: (1) a false and defamatory statement concerning the plaintiff; (2) an unprivileged communication to a third party; (3) fault by the defendant amounting at least to negligence; and (4) special harm or the "actionability of the statement irrespective of special harm." (6) When, as here, a libel action involves a speech of public concern, a plaintiff must show that the defendant published a defamatory statement about the plaintiff, (7) the defamatory statement was false, (8) the defendant was at fault in publishing it, (9) ***and the plaintiff suffered actual injury from the statements.*** *[*Emphasis in bold added*]*

The first issue in this case concerns whether the trial court and court of appeals adopted the proper standard of liability for the element of fault. If Cannon is a private figure, as both courts held, then a negligence standard applies. (11) If he is a public figure, as the defendant contends, then the more stringent standard from the New York Times case applies. "

Plaintiffs made the following public press conference statement, that was called to directly address this s*pecific* Tort action initiated by Plaintiff against Defendant, that undermined fatally, wholly, and indisputably Plaintiffs own cause of action. This final and mandatory element to a successful prosecution of Actual Malice Libel, was made while there were *two Plaintiffs* in the instant case,

Plaintiff Richard Cary Wolfe, and former Plaintiff DASH inc.

Plaintiff Wolfe Made the following declaration: *"I see this not as a personal attack on me but it's a personal attack on this organization."* As reported on the front page, headline story in the May 14th, 2014 Edition of the LaGrange Daily News as reported by then reporter Matthew Strother.

Published independently of the LaGrange Daily News, Another area newspaper, the Troup County News, via reporter Tommy Camp, also reported and published, verbatum, word-for-word, the exact same statement Plaintiff Wolfe made publicly at this press conference he had called for the sole purpose of announcing this lawsuit against Defendant in the instant case.

Quoting the May 16th edition of the Troup County News quoting Plaintiff Wolfe: " *I see this not as a personal attack on me, but on the organization . . . "*

The Plaintiff Wolfe seems to be unwilling to accept or even acknowledge that that the only entity that arguably even had a long shot as a successful outcome for a plaintiff in this action, dismissed themselves from the instant case, less than 24 hours after Defendant published an embarrassing article that clearly and convincingly demonstrated there are some very real, potentially criminal, problems in the administration of former Plaintiff DASH Inc.

Even at the lower standard of common law malice, while libel per se can put a prima facie burden on Defendant in a libel action, Plaintiff made a clear, public, and unambiguous declaration that plaintiff does not even see his own cause of action as a personal attack. Any prima facie or per se aspect of Plaintiffs cause of action is destroyed *on Plaintiffs own declaration*. And in the instant case, when the legal standard is the much more stringent in showing clear and convincing evidence of actual malice, the plaintiff simply has no cause of action. On this well documented public declaration by Plaintiff alone, it is within the courts discretion to dismiss this abusive, chilling, and frivolous lawsuit.