

IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA

OMAR ALI, 1800 JONESBORO RD LLC,  
AND UMMAH HOLDINGS LLC,

*Plaintiffs,*

v.

HEATHER M. GRAYBILL, ZACHARY  
MURRAY, PAULA KUPERSMITH, AND  
ANTONIO F. GLASS,

*Defendants.*

CIVIL ACTION CASE NO.:  
24EV003341

**DEFENDANTS' MOTION TO STRIKE PURSUANT TO O.C.G.A. § 9-11-11.1 AND TO  
DISMISS FOR FAILURE TO STATE A CLAIM**

Defendants Heather Graybill, Zachary Murray, Paula Kupersmith, and Antonio Glass (collectively “Defendants”) file this Motion to Strike the Amended Complaint of Omar Ali and his limited liability corporations (collectively “Plaintiffs” or “Ali”) under Georgia’s Anti-SLAPP Statute, O.C.G.A. § 9-11-11.1.<sup>1</sup> Defendants also move to dismiss the Amended Complaint as it fails to state a claim upon which relief can be granted. *See* O.C.G.A. § 9-11-12(b)(6).<sup>2</sup>

**INTRODUCTION**

Georgia’s Anti-Strategic Litigation Against Public Participation (“Anti-SLAPP”) Statute exists to prevent citizens’ constitutional rights of speech and petition from being “chilled through abuse of the judicial process,” O.C.G.A. § 9-11-11.1(a), and “to encourage participation by the

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<sup>1</sup> The Amended Complaint is not properly verified as it bears no notary seal or stamp as required by O.C.G.A. § 45-17-6(a)(1) and fails to identify the notary’s county and state of appointment.

<sup>2</sup> Filing this Motion stays all discovery until the Motion is decided. O.C.G.A. § 9-11-11.1(d).

citizens of Georgia in matters of public significance through the exercise of their right to petition government for redress of grievances.” *Neff v. McGee*, 346 Ga. App. 522, 524 (2018). Here, Ali seeks to falsely discredit and deter Defendants’ speech about matters of public concern under consideration by Atlanta Public Schools (“APS”) and the Atlanta Board of Education (“ABOE”) – namely, the preservation and future use of the historic Lakewood Heights Elementary School (“Lakewood Elementary” or “the School”).

Defendants, who are Lakewood Heights residents, advocate that APS retain the School, which is one of the last remaining public goods in their neighborhood, for use as a school or a site for other public services that will benefit the local community. Ali aspires to purchase the School (which has never been for sale) for private development and therefore villainizes Defendants’ public participation because their message does not align with his goals. He has engaged in a sustained pattern of harassment to chill and silence Defendants which now manifests in this SLAPP suit alleging defamation/slander and interference with business relations. However, Defendants speech and petitioning is fully protected under the Anti-SLAPP Statute, requiring this Court to strike the Amended Complaint unless Plaintiffs show a probability of success on their claims. O.C.G.A. § 9-11-11.1(b)(1). This they cannot do. Among other defects, Plaintiffs fail to identify any false defamatory statements of fact by Defendants, fail to allege any facts showing the exist of actual or mutually-contemplated business relations with APS, and fail to allege financial harm. The Amended Complaint should be stricken and the action dismissed, with attorneys’ fees and costs awarded to Defendants as required by O.C.G.A. § 9-11-11.1(b.1).

## **BACKGROUND**

APS’s Lakewood Elementary was constructed in or about 1915 and is identified on the National Register of Historic Places. Defs Ex. 7 - Tamara Jones Affidavit (“Jones Aff.”) at ¶ 5.

APS closed the School in 2004 and declared it a “surplus” property in 2007. *Id.* APS has never announced a plan to sell the School, the ABOE has never voted to sell the School, and the School has never been for sale. *Id.* at ¶¶ 6, 9-10; Defts Ex. 8 – Paula Kupersmith Affidavit (“Kupersmith Aff.”) at ¶ 4. In March and September 2023, APS announced that it intended to arrange for the School’s long-term lease and redevelopment, with an emphasis on historic preservation. Jones Aff. at ¶¶ 11-12; Kupersmith Aff. at ¶ 34. To date, APS has announced no process for soliciting and evaluating Requests for Proposals (“RFPs”) from interested developers. Jones Aff. at ¶ 14; Kupersmith Aff. at ¶¶ 33-34;

Defendants, who own homes and pay property taxes in Lakewood Heights, believe APS should retain Lakewood Elementary as a public (i.e., tax payer-funded) good that operates for the benefit of the local community. Defendants also strongly believe that APS’s decisions about the future of the School should be informed by broad community input. Kupersmith Aff. at ¶¶ 2, 5, 10; Defts Ex. 9 – Heather Graybill Affidavit (“Graybill Aff.”) at ¶¶ 1, 9, 10, 16; Defts Ex. 10 – Zachary Murray Affidavit (“Murray Aff.”) at ¶¶ 1, 7-8, 12, 17, 22; Defts Ex. 11 – Antonio Glass Affidavit (“Glass Aff.”) at ¶¶ 1, 5, 10. With these values in mind, Defendants have engaged in public participation including, without limitation, speaking at neighborhood association meetings, publicly commenting at APS and ABOE meetings, contacting APS and ABOE officials, organizing a neighborhood petition, giving comments to reporters, and dialoguing with community residents and others interested in the future use of the School. Graybill Aff. at ¶¶ 9-10, 16, 28; Kupersmith Aff. at ¶¶ 12-13, 20-21, 31-32; Murray Aff. at ¶¶ 12, 17, 22; Glass Aff. at ¶¶ 6-8, 10.

Plaintiff Ali does not live in Lakewood Heights but owns or otherwise has business relations with multiple Lakewood Heights properties. Graybill Aff. at ¶ 3; Glass Aff. at ¶ 5, 19;

Murray Aff. at ¶¶ 6. This includes past, if not current, relations with developer Sam Dickson, a self-proclaimed white supremacist and former lawyer for members of the Klu Klux Klan.<sup>3</sup>

Murray Aff. at ¶ 9; Glass Aff. at ¶ 21. Ali's affiliation with Dickson, which his Amended Complaint does not deny, was publicized in 2022 by a group called Atlanta Antifascists.

Defendants have no connection or involvement with this group. Am. Compl., Exs 3 & 4; Murray Aff. at ¶ 9; Glass Aff. at ¶ 22; Graybill Aff. at ¶ 6; Kupersmith Aff. at ¶ 17.

Ali has expressed interest in purchasing the Lakewood Elementary property or being selected by APS to redevelop it. Jones Aff. at ¶¶ 6, 13-14; Murray Aff. at ¶ 7. His interest is purely aspirational as evidenced by Plaintiffs' failure to allege any facts showing any actual or mutually-contemplated contract with APS. *See* Am. Compl. at ¶¶ 13-50, 57-80; *see also* Jones Aff. at ¶¶ 6, 10, 13-15, 17. Statements by APS officials confirm the absence of any contractual relations with Ali. For instance, in February 2023, when Neighborhood Planning Unit Y ("NPU-Y") inquired about submitting a letter of support for Ali, the APS Superintendent responded:

[APS] staff is working on . . . how these ["surplus"] properties will be solicited for interest (e.g., request for proposals, broker, etc.) . . . As we have not solicited the Lakewood [Elementary] property nor any of the other 15 properties recently declared surplus, it is premature for the NPU to consider and take action on the property. . .

Defts Ex. 2. In other words, as of February 2023, APS was not soliciting bids from or accepting community input about any interested developers, including Ali.

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<sup>3</sup> *See* Mark Winne, *Inside Georgia's Alt-Right Groups*, WSB-TV (Oct. 17, 2017) (interviewing Dickson about his views on race), available at: <https://www.wsbtv.com/news/2-investigates/thursday-at-6-inside-georgias-alt-right-groups/629976682>; Jerry Schwartz, "Judge Seals Verdict as Trial In Suit Against Klan Ends," THE NEW YORK TIMES (Oct. 6, 1988) ((identifying Dickson as lawyer for former Grand Dragon of the Invisible Empire Knights of the Ku Klux Klan), available at: <https://www.nytimes.com/1988/10/06/us/judge-seals-verdict-as-trial-in-suit-against-klan-ends.html>).

By October 2023, APS had determined it would lease and redevelop Lakewood Elementary but had not announced any solicitation process for interested developers. At that point, Ali told the local media outlet SaportaReport that his plan for the School was “purely conceptual” and he fantasized that, “In a perfect world, what APS should do is say, ‘Hey, Omar, you’re gonna be the developer.’” Am. Compl., Ex. 1 at pp. 4, 5. Ali’s comments reflect the lack of any business relations between himself and APS. Meanwhile, in the same October 2023 SaportaReport article, the APS spokesperson stated, “All interested individuals, developers, and organizations will be welcome to share their ideas during the formal engagement process and will be encouraged to participate in the formal solicitations process.” *Id.* at p. 5. This comment reflects that APS had yet to call for RFPs, let alone to evaluate or select a developer for the School project. Nothing has changed since October 2023. APS has still not announced or engaged in any formal solicitation process with respect to developers. Jones Aff. at ¶ 14; Kupersmith Aff. at ¶¶ 33-34; Graybill Aff. at ¶¶ 22, 29. The notion that Defendants have thwarted Ali’s business relations with APS is therefore utterly fictitious. As the APS spokesperson noted in October 2023, Ali remains free to submit a redevelopment proposal for the School once APS’s process begins. *See also* Jones Aff. at ¶ 15.

Meanwhile, Ali has long attempted to suppress Defendants’ public participation regarding Lakewood Elementary, this lawsuit being the most recent example of his efforts to create a false narrative to discredit and intimidate them. Ali’s suppression efforts include, without limitation:

- Repeatedly challenging Defendants’ election to leadership within the Lakewood Heights Community Association (“LHCA”) and asking Defendants not to speak publicly about the School. *See* Graybill Aff. at ¶¶ 13, 17; Murray Aff. at ¶¶ 15, 18.

- Repeatedly threatening litigation against Defendants, often timed to chill them from making public comment. *See* Graybill Aff. at ¶¶ 13-15, 18, 21; Murray Aff. at ¶¶ 15-17, 19; Kupersmith Aff. at ¶ 30; Glass Aff. at ¶¶ 9, 11; Defts Ex. 1 (Cease and Desist Letter).<sup>4</sup>
- Making in-person statements of a threatening nature to Kupersmith. *See* Kupersmith Aff. at ¶¶ 24-25; Graybill Aff. at ¶¶ 11.
- Coordinating factually inaccurate, race-based attacks on Kupersmith, Murray, and Graybill in the media, in communications to Atlanta public officials, and to Graybill’s employer. *See* Kupersmith Aff. at ¶¶ 22-24, 26-29; Graybill Aff. at ¶¶ 12, 23-27; Murray Aff. at ¶¶ 14; Glass Aff. at ¶ 19; Defts Ex. 3 (Graybill Atlanta Police Department Harassment Report); Defts Ex. 4 (Email Complaint to Graybill’s Employer); Am. Compl., Ex. 10 (S.E. Region News item).
- Attempting to leverage this SLAPP action to coerce Glass to speak against Kupersmith and Graybill. *See* Glass Aff. at ¶ 20, Defts Ex. 6 (Ali email to Glass).
- And other miscellaneous forms of harassment. *See* Kupersmith Aff. at ¶ 29; Graybill Aff. at ¶¶ 27, 30, 33; Murray Aff. at ¶¶ 13, 25.

Due to the foregoing occurrences that Ali either engaged in directly or is believed to have played a part in, Defendants did not seek re-election to leadership positions within their neighborhood organizations. They remain concerned that the instant lawsuit is intended to prevent them from speaking in their capacity as neighborhood residents about the School. Murray Aff. at ¶ 23; Glass Aff. at ¶ 18; Graybill Aff. at ¶ 30; Kupersmith Aff. at ¶¶ 35-36.

### **LEGAL STANDARD**

There are two steps in the analysis of an Anti-SLAPP motion to strike. *See* O.C.G.A. § 9-11-11.1(b)(1). First, the moving defendants must make a *prima facie* showing that their challenged acts “could reasonably be construed as acts taken in furtherance of [their] constitutional rights of petition or free speech in connection with an issue of public concern” as

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<sup>4</sup> Litigation and threats thereof are Ali’s preferred means of responding to speech he does not like. *See* Graybill Aff. at ¶ 32; Defts Ex. 5 (Ali’s cease-and-desist letter to non-party Dana Farkas who publicly called him out for making unsolicited, seemingly race-based statements).

defined by O.C.G.A. § 9-11-11.1(c). *Rosser v. Clyatt*, 348 Ga. App. 40, 43 (2018). If step one is satisfied, “[t]he burden then shifts to the plaintiff to demonstrate that there is a ‘probability’ that [he] will prevail on [his] claims at trial.” *Id.* (quoting *Neff*, 346 Ga. App. at 525). This involves “a substantive, evidentiary determination of the plaintiff’s probability of prevailing,” *id.*, where the court “shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.” O.C.G.A. § 9-11- 11.1(b)(2). The court must grant the motion to strike “unless [it] determines that the [plaintiff] has established that there is a probability that [he] will prevail on the claim[s].” *Id.*

Georgia courts applying the Anti-SLAPP Statute rely on decisions interpreting California’s similar statute. *Wilkes & McHugh, P.A. v. LTC Consulting, L.P.*, 306 Ga. 252, 259 (2019). The focus of an Anti-SLAPP motion to strike “is not [on] the form of the plaintiff’s cause of action, but rather, the defendant’s *activity* that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning.” *Navellier v. Sletten*, 29 Cal. 4th 82, 92 (2002) (emphasis in original). Thus, an Anti-SLAPP motion to strike applies to any claim for which the alleged basis is speech encompassed by O.C.G.A. § 9-11-11.1(c). In this case, Defendants’ Motion to Strike applies to all claims alleged in the Amended Complaint because, as shown below, they all arise from Defendants’ protected speech and petitioning.

Additionally, per O.C.G.A. § 9-11-8, “[a] complaint must . . . include enough detail to afford the defendant fair notice of the nature of the claim and a fair opportunity to frame a responsive pleading.” *Bush v. Bank of New York Mellon*, 313 Ga. App. 84, 89-90 (2011) (internal citations and quotation marks omitted). While this allows for notice pleading, “when the claim alleged is a traditionally disfavored cause of action, such as . . . libel, and slander, the courts tend to construe the complaint by a somewhat stricter standard.” *Willis v. United Family Life Ins.*, 226

Ga. App. 661, 662 (1997). Where a complaint fails to state a claim upon which relief can be granted, dismissal is appropriate under O.C.G.A. § 9-11-12(b)(6).

## ARGUMENT

### I. **Defendants’ Speech is Protected by the Anti-SLAPP Statute.**

Defendants’ speech involves statements made during official proceedings authorized by law, statements about matters under consideration by a government body, and statements in public fora on matters of public concern, all of which are protected under § 9-11-11.1 (c).

#### A. Defendants spoke during “official proceedings authorized by law.”

O.C.G.A. § 9-11- 11.1(c)(1) protects “[a]ny written or oral statement or writing or petition made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law.” Local board of education ABOE “has the capacity to act as a legislative body, an executive body, and a judicial body.” *Glynn Cnty. Bd. of Educ. v. Lane*, 261 Ga. 544, 545 (1991). This includes making decisions about the disposition or renovation of public-school buildings. *See Powell v. Studstill*, 264 Ga. 109, 115 (1994). Proceedings about the identification and disposition of APS “surplus” buildings, including Lakewood Elementary, and about the processes for soliciting community input on those decisions are therefore “authorized by law.” Accordingly, Defendants’ statements relating to the foregoing topics that were made during APS or ABOE public meetings are protected under O.C.G.A. § 9-11-11.1 (c)(1). *See Padron v. Moreno*, No. F073851, 2018 WL 1582500, at \*8 (Cal. Ct. App. Apr. 2, 2018) (holding that statements made during public comment at a school board meeting were protected as statements made “before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law”).

Defendants' statements made during NPU-Y meetings are likewise protected. NPUs are created by the City of Atlanta Code of Ordinances,<sup>5</sup> and are described by the City as "the official avenue for residents to express concerns and provide input in developing plans to address the needs of each neighborhood, as well as to receive updates from City government."<sup>6</sup> NPU meetings are therefore also official proceedings authorized by law. *See RCO Legal, P.S., Inc. v. Johnson*, 347 Ga. App. 661, 668 (2018) (holding that proceedings need not be authorized by statute to still be "authorized by law").

B. Defendants spoke "in connection with an issue under consideration" in "official proceedings authorized by law."

O.C.G.A. § 9-11- 11.1 (c)(2) protects "[a]ny written or oral statement or writing or petition *made in connection with* an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." (Emphasis added.) "[M]ade in connection with" means "rationally connected to" the issue under consideration. *Wilcox v. Superior Court*, 27 Cal. App. 4th 809, 822 (2d Dist. 1994) (disapproved of on other grounds). This protection applies regardless of whether the statement is made publicly, as in a news article or at an open meeting, or privately to another citizen. *See, e.g., Morgan v. Mainstreet Newspapers, Inc.*, 368 Ga. App. 111, 116 (2023) (statements made in news article "contextualized the ongoing dispute . . . [which] originated from and concerned the numerous proceedings before the [city council], a legislative body" and thus were protected

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<sup>5</sup> *See* City of Atlanta, Code of Ordinances, Part III, Part 6, Chpt. 3, Article B, § 6-3013. Available by search at: [https://library.municode.com/ga/atlanta/codes/code\\_of\\_ordinances](https://library.municode.com/ga/atlanta/codes/code_of_ordinances) (last accessed July 5, 2024).

<sup>6</sup> *See Neighborhood Planning Units*, City of Atlanta, <https://www.atlantaga.gov/government/departments/city-planning/office-of-zoning-development/neighborhood-planning-unit-npu> (last accessed July 5, 2024).

under § 9-11- 11.1 (c)(2); affirming grant of Anti-SLAPP motion to strike); *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman*, 47 Cal. App. 4th 777, 784-85 (2d Dist. 1996) (affirming dismissal of defamation action where statements made in private letter were in connection with an official proceeding authorized by law; “that the communication was made to other private citizens rather than to the official agency does not exclude it from the shelter of the anti-SLAPP suit statute”). All of Plaintiffs’ allegations are based on speech by Defendants made in connection with the identification and disposition of APS “surplus” properties, including Lakewood Elementary, and about the processes for soliciting community input on those decisions.<sup>7</sup> These are issues under consideration by the APS and ABOE, whose proceedings are authorized by law. *See generally* Jones Aff. & Section I.A, *supra*. All of Defendants’ speech at issue in this case is thus protected under O.C.G.A. § 9-11- 11.1 (c)(2).

C. Defendants spoke “in connection with an issue of public interest or concern.”

Much of Defendants’ speech at issue in this action is additionally protected because it was made “in a place open to the public or a public forum in connection with an issue of public interest or concern.” O.C.G.A. § 9-11- 11.1(c)(3). Public meetings—such as those held by APS,

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<sup>7</sup> *See, e.g.*, Am. Compl. at ¶ 17 (accusing Defendants of trying to dissuade APS from supporting Plaintiffs’ aspirational plans for the School property); *id.* at ¶ 19 (alleging Defendants have asserted “that the community had no knowledge about the [School]’s potential sale to Plaintiffs, Plaintiffs’ procurement of the Property would not be in the community’s best interest,” and that “the community does not support Plaintiffs’ actions” regarding the School); *id.* at ¶ 20 (“Defendants allege that Plaintiffs attempt to circumvent APS’ process for disposition or lease of the [School].”); *id.* at ¶ 42 (alleging Defendants have prevented Plaintiffs from discussing potential development of the School); *id.* at ¶ 45 (alleging Defendants have stated that NPU-Y’s letter of support for Plaintiffs to redevelop the School does not reflect the opinion of the community); and *id.* at ¶ 46 (alleging that Defendants have disseminated flyers stating the Property is not for sale). *See also* Am. Compl., Ex. 5 (affiant describing alleged telephone conversation with Kupersmith and Murray about the disposition and redevelopment of the School), Ex. 6 (affiant describing telephone conversation with Glass about the same), and Ex. 7 (affiant criticizing Defendants for their expressed views about the same).

ABOE, NPU-Y, LHCA, and even Ali himself—are public fora, as are news articles. *See Nygard, Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1036 (2d Dist. 2008). And what the government (in this case APS and ABOE) decides to do with publicly-owned property is a matter of public concern. *See, e.g., Lambert v. DMRT, LLC*, 370 Ga. App. 103, 107 (2023) (statements made during public hearing by members of neighborhood association opposing developer’s permit application were “made in a public forum in connection with an issue of public interest or concern,” and were therefore covered by Anti-SLAPP Statute); *Settles Bridge Farm, LLC v. Masino*, 318 Ga. App. 576, 579-80 (2012) (Anti-SLAPP Statute applied to statements concerning development of a school in a residential area); *Metzler v. Rowell*, 248 Ga. App. 596, 599(1) (2001) (Anti-SLAPP Statute applied to letter concerning development and zoning issue); *Providence Const. Co. v. Bauer*, 229 Ga. App. 679, 680(1) (1997) (letters to county officials about development covered by Anti-SLAPP Statute). Thus, Defendants’ public speech at issue in this case is additionally protected under O.C.G.A. § 9-11-11.1(c)(3).

D. Defendants also receive the protection of the actual malice standard

In addition to being protected under the Anti-SLAPP Statute, Defendants’ speech is conditionally privileged under O.C.G.A. § 51-5-7(4).<sup>8</sup> This triggers the actual malice standard for statements “made with good faith, an interest to be upheld, a statement properly limited in its scope, a proper occasion, and publication to proper persons.” *Neff v. McGee*, 346 Ga. App. 522, 526 (2018) (internal citation omitted). Defendants satisfy each of these elements. They have spoken in good faith. *See Graybill Aff.* at ¶ 34; *Kupersmith Aff.* at ¶ 38; *Murray Aff.* at ¶ 27;

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<sup>8</sup> O.C.G.A. § 51-5-7(4) provides that “[s]tatements made in good faith as part of an act in furtherance of the right of free speech or the right to petition government for a redress of grievances . . . in connection with an issue of public interest or concern, as defined in subsection (c) of Code Section 9-11-11.1” are “deemed privileged.”

Glass Aff. at ¶ 23. Their statements were in connection with legitimate interest(s) to be upheld, specifically, the future preservation and use of a historic public good in their neighborhood and the need for broad community input about the same. *See Neff*, 346 Ga. App. at 528 (statements intended to raise public awareness were made with a legitimate interest to be upheld); *Speedway Grading Corp. v. Gardner*, 206 Ga. App. 439, 442 (1992) (privilege applied to statements on matter which “materially affect[ed] [defendant] and other members of the community”).

Defendants’ statements were properly limited in scope to topics of APS’s “surplus” property disposition process and the potential future uses of the Lakewood Elementary property, including Ali’s desire to be involved. Defendants’ statements on these same topics were also made on proper occasions and to proper persons. This included during public meetings and forums, as well as in private conversations with others who have a stake, interest, or curiosity in the matter of public concern regarding what happens with the School. *See Am. Compl.*, Exhibits 1, 2, 5-7; Graybill Aff. at ¶¶ 10, 16, 20-22, 28; Kupersmith Aff. at ¶¶ 12-13, 16, 20-21, 31-32, 37; Murray Aff. at ¶¶ 7, 12, 17, 22, 26; Glass Aff. at ¶¶ 7, 10, 12-16. *See Neff*, 346 Ga. App. at 528 (finding conditional privilege where “the public at large was the proper audience”); *Harkins v. Atlanta Humane Soc.*, 273 Ga. App. 489, 490-91 (2005) (finding privilege where “statements were related to the policies and procedures of [plaintiff] and involved issues of public concern”); *Fine v. Communication Trends, Inc.*, 305 Ga. App. 298, 302-303 (2010) (finding defendant’s statements made in private letter to clients and vendors protected by the privilege).

For Ali to overcome O.C.G.A. § 51-5-7(4)’s conditional privilege, he will have to show by “clear and convincing” evidence, not only that Defendants made a false defamatory statement of fact about him, but that they did so with knowledge of falsity or reckless disregard of the truth. *Neff*, 346 Ga. App. at 529. This is known as the actual malice standard. *Accord ACLU v. Zeh*, 312

Ga. 647, 669 (2021) (noting that proving “subjective awareness of probable falsity” by “clear and convincing evidence” is an “extremely high” standard).

## **II. Plaintiffs Cannot Show Probability of Prevailing on Defamation/Libel Claims.**

To prevail on defamation (Count IV) and libel per se (Count V), Plaintiffs must show that Defendants made a false, defamatory statement of fact about Plaintiffs with the requisite level of fault (i.e., actual malice), and that Plaintiffs suffered actual injury as a result. *See Mathis v. Cannon*, 276 Ga. 16, 21 (2002). With respect to Count IV, Plaintiffs must also plead and prove special damages. *McGee v. Gast*, 257 Ga. App. 882, 885 (2002). Plaintiffs cannot show a probability of proving any of these elements; indeed, they do not even state a claim.

### **A. No False Defamatory Statements Identified.**

Plaintiffs’ Amended Complaint fails to identify any false defamatory statement of fact that any particular Defendant has made about Plaintiffs at any specific time. *See* Am. Compl. at ¶¶ 13-50 (“Facts Common to All Counts”), 81-92 (Counts IV & V). Rather, the Amended Complaint contains conclusory summations of Defendants’ purported speech, gesturing broadly to news articles and other materials without identifying any specific statement within them as being false or defamatory. *See, e.g.*, Am. Compl. at ¶¶ 17-20, 22-28 (generally referencing Exs. 1-4). “[M]erely attaching a copy of [an] entire article to the complaint—without identifying the specific matter that is purportedly false—is [in]sufficient to put a defendant (or a court, for that matter)” on notice of the alleged basis for a defamation claim. *Medical Marijuana, Inc. v. ProjectCBD.Com*, 46 Cal. App. 5th 869, 894-95 (4th Dist. 2020) (directing trial court to grant defendants’ Anti-SLAPP motion in its entirety). It is equally insufficient to cite to third-party affidavits containing vague, conclusory summaries of Defendants’ alleged speech to unidentified third parties at unspecified times. *See, e.g.*, Am. Compl. at ¶¶ 18, 32, 34-35 (citing Exs. 5-7). *See*

*Wylie v. Denton*, 323 Ga. App. 161, 171 n.1 (2013) (vacating trial court’s order denying motion to dismiss because “it is not fair to require [defendant] to defend based on broad allegations that lack specificity”); *Industrial Waste & Debris Box Service, Inc et al. v. Murphy*, 4 Cal. App. 5th 1135, 115 n.13 (1st Dist. 2016). (“Plaintiff’s complaint . . . asserts in the most conclusory fashion that unidentified defendants made ‘numerous’ unspecified ‘false statements’ . . . Such vague and conclusory allegations are not even minimally adequate to state a claim”).

Leaving no stone unturned, a close read of Plaintiffs’ Exhibits 1-10 still reveals no false defamatory statement of fact made by any Defendant about Plaintiffs, let alone one that could be shown by clear and convincing evidence to have been made with subjective awareness of probable falsity—*i.e.*, actual malice.

*1. Exhibits 1-4 & 8-10 Contain No Defamatory False Statements of Fact*<sup>9</sup>

Statements attributed to Defendants Murray and Graybill in Exhibits 1 and 2 (October 2023 and September 2023 SaportaReport articles) either are not about Plaintiffs at all,<sup>10</sup> or constitute statements of opinion<sup>11</sup> that cannot form the basis of a defamation/libel claim. *See*

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<sup>9</sup> Plaintiffs cite Exhibits 1-4 and 8-10 as the basis for Am. Comp. ¶¶ 19-28, 42, 44-45, 48-50.

<sup>10</sup> Exhibit 1 reports that Murray supports APS’s new disposition process for its “surplus” properties, including restoration/redevelopment for Lakewood Elementary; describes Murray as concerned about the Atlanta Urban Development Corporation’s ability to lead the School restoration project and whether affordable-housing bond funding will be available; and quotes Murray as saying, “I’ll just be happy when this is over,” and “It’s just a headache that APS could have and [now] are working to prevent for the community.” Exhibit 1 reports that Graybill helped promote a petition calling on APS to rehabilitate the School rather than put it up for sale. Both Exhibits 1 and 2 report that Graybill publicly “prais[ed]” ABOE’s “thoughtful” decision to preserve and redevelop a number of its “surplus” properties, including Lakewood Elementary. None of Defendants’ foregoing non-defamatory statements are about Plaintiffs.

<sup>11</sup> Exhibit 1 reports that Defendants expressed the following opinions:

- Murray is “skeptical” that Ali’s proposal for the School may be “premature” given that APS has not yet announced its Request for Proposal (“RFP”) process.

*North Atlanta Golf Operations, LLC v. Ward*, 363 Ga. App. 259, 261 (2022) (defamation requires a false statement of fact because “a statement that reflects an opinion or subjective assessment, as to which reasonable minds could differ, cannot be proved false”). What constitutes a “premature” proposal, or a “frustrating and backwards process,” or giving up “too much leverage,” are all subjective descriptions, incapable of being proven false. *See Rosser*, 348 Ga. App. at 47 (“The expression of opinion on matters about which reasonable people might differ is not libelous”). “[W]ithout broad community outreach” is also a matter of opinion and certainly cannot be proven to be false given Defendants’ testimony that most of the Lakewood Heights residents they spoke to during their canvassing efforts were unaware of what was potentially happening with the School property, so clearly they had not been included in community outreach. *Graybill Aff.* at ¶¶ 9-10; *Murray Aff.* at ¶ 12; *Glass Aff.* at ¶¶ 6-8; *Kupersmith Aff.* at ¶¶ 21, 31. Finally, Defendants’ foregoing opinions reported in Exhibit 1 fall miles short of anything that could fairly be described as “tending to injure the reputation of [Plaintiffs] and expose [them] to public hatred, contempt, or ridicule.” O.C.G.A. § 51-5-1 (defining libel).

Exhibits 3 and 4 to the Amended Complaint (i.e., March 2022 Atlanta Antifascists article and related flyer) do not contain any statements by Defendants, Defendants had nothing to do with this group or their materials,<sup>12</sup> and 2024 claims based on these materials are time-barred. *See* O.C.G.A. § 9-3-33 (one-year statute of limitations for defamation/libel).

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- Murray says that in a “frustrating” and “backwards process,” NPU-Y gave up too much leverage by deciding to support Ali as a prospective developer for the School before APS formalized its RFP process and before Ali submitted a formal proposal to APS.
  - Murray and Graybill reported to say that NPU-Y’s support for Ali came about without broad community outreach.

<sup>12</sup> *Graybill Aff.* at ¶ 6; *Kupersmith Aff.* at ¶ 17; *Murray Aff.* at ¶ 9; *Glass Aff.* at ¶ 22.

Exhibit 8 consists of an October 2023 email exchange between Ali and Defendants in their capacities as executive board members of LHCA. In June and October 2023, Ali wanted to be added to the agenda for LHCA meetings to discuss his ideas for Lakewood Elementary. On both occasions, Defendants informed him that the board had voted against allowing third-party presentations about the School until APS defined its process for soliciting RFPs and gathering community input. Graybill Aff. at ¶¶ 19, 25; Murray at ¶ 21. This decision was consistent with the APS Superintendent’s statement that it was “premature” for community groups “to consider and take action on the [School] property” until APS had announced those processes, which has still yet to occur. *See* Defts Ex. 2 (February 2023 email from then-APS Superintendent). Exhibit 8 contains no false or defamatory statements of fact about Plaintiffs by Defendants.

Exhibit 9 is a March 2023 letter from NPU-Y expressing support for Ali’s proposed redevelopment of Lakewood Elementary. NPU-Y’s forecasting of this letter to the APS Superintendent is what prompted the Superintendent’s email quoted above about it being “premature” for “community groups to consider and take action on” the School (Defts Ex. 2). The NPU-Y letter of support contains no statements by Defendants.

Exhibit 10 is a December 22, 2022 puff-piece titled, *Swift Action By Lakewood Heights Community Planning Leaders Confronts Elementary School “Protest Petition” Efforts as “Personal Agenda,” “Divisive.”* It criticizes Defendants’ petition urging APS to retain the School, editorializes that “some [unidentified] black residents are now voicing their concerns that . . . Kupersmith, a white female, is leading the charge to disrupt hard-earned community progress,” *id.* at p. 2, and extensively quotes Ali, who is the only identified source. The item

contains no statements of fact by Defendants about Plaintiffs, and any defamation/libel claim based on this 2022 item would be time-barred.<sup>13</sup>

2. *Exhibits 5-7 Recount Statements of Opinion*<sup>14</sup>

Defendants dispute the veracity of much of the content of the non-party affidavits attached to the Amended Complaint from Duwon Robinson (Exhibit 5), Anthony Wilson (Exhibit 6), and Gloria Hawkins-Wynn (Exhibit 7).<sup>15</sup> Yet taking them at face value for purposes of this Motion, they fail to allege any false defamatory statements of fact about Plaintiffs, recounting only Defendants' alleged statements of opinion.

The affidavits recount that Defendants expressed opposition to Ali buying the School, and that Graybill said she would not set foot in Ali's building and hates him. Ex. 5 ¶¶ 6, 9, 12; Ex. 6 ¶¶ 13, 15, 16; Ex. 7 ¶¶ 6, 13-14. Defendants' opinions about the merits of Ali's contemplated purchase of the School are not actionable. *See Kendrick v. Jaeger*, 210 Ga. App. 376, 377 (1993) (“[t]he expression of opinion on matters with respect to which reasonable men might entertain differing opinions is not libelous”). Graybill's feelings about Ali similarly are not statements of fact capable of being proven false and provide no basis for a defamation or libel claim. *See Evans v. Sandersville Georgian, Inc.*, 296 Ga. App. 666, 670 (2009) (“[I]mposing

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<sup>13</sup> *See* Kupersmith's Affidavit at ¶¶ 22-27 and Murray's Affidavit at ¶ 14 regarding how this piece came to be written. It incorrectly states that ABOE voted 8-1 “to sell the school for Lakewood community repurposing.” Ex. 10 at p. 2. However, the referenced vote was about whether to approve the designation of Lakewood Elementary and 15 other APS properties as “surplus,” not about whether to sell the School. *See* Kupersmith Aff. at ¶ 28; Jones Aff. at ¶ 9.

<sup>14</sup> Plaintiffs cite Exhibits 5-7 as the basis for Am. Compl. ¶¶ 30-41.

<sup>15</sup> Kupersmith Aff. at ¶ 37; Graybill Aff. at ¶¶ 20-22; Glass Aff. at ¶¶ 12-16. Most egregiously, Defendant Murray never spoke by phone or otherwise to Duwon Robinson. Murray Aff. at ¶ 26.

[defamation] liability on the basis of the defendant’s hatred, spite, ill will, or desire to injure is clearly impermissible.”).

The affidavits recount that Defendants allegedly urged affiants and unidentified others to boycott Ali or his tenants’ Lakewood Heights businesses.<sup>16</sup> These are not statements of fact capable of being proven false and create no basis for a reputational claim. *See Elder v. Cardoso*, 205 Ga. App. 144, 144 (1992) (“no viable claim for slander can be predicated upon the fact that appellees had merely attempted to ‘dissuade’ or ‘discourage’ [others] from selecting appellant [doctor as their provider]”); *Caruso v. Loc. Union No. 690*, 107 Wash. 2d 524, 533 (1987) (“Since a request would logically not be considered a factual statement, the request not to patronize could not be interpreted as a defamatory statement.”). *Cf. Lam v. Ngo*, 91 Cal. App. 4th 832, 848 (2001) (reversing denial of Anti-SLAPP motion where defendants’ boycott of plaintiff’s business was constitutionally-protected “peaceful political activity”).

Defendant Murray’s allegedly expressing a desire to remove Ali from a position of influence and prevent his further development efforts (Ex. 5 ¶ 11) is an aspirational statement about possible future events, and not false statements of fact. *See, e.g., Bebo v. Delander*, 632 N.W.2d 732, 740 (Minn. Ct. App. 2001) (“[R]emark that appellant was going to ‘f--- [other drivers] over’ is a prediction of a future event and is not a fact capable of verification. . . [T]he statement is one of opinion.”); *Chicago City Day School v. Wade*, 297 Ill. App. 3d 465, 475, 477 (1998) (affirming dismissal of defamation claim for statement that an individual “should be fired”); *see also Alaskasland.Com, LLC v. Cross*, 357 P.3d 805, 822 (Alaska 2015) (“The possibility that something will occur in the future cannot be verified . . . A statement is not a fact if it cannot plausibly be verified.”); *Collins v. Cox Enterprises*, 215 Ga. App. 679, 680 (1994)

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<sup>16</sup> Ex. 5 ¶ 10, Ex. 6 ¶ 10-11, 16; Ex. 7 ¶¶ 11, 13-14.

(speculative statements that cannot be proven as absolutely true or false are “the sort of opinion that is not actionable as libel”).

Plaintiffs’ affidavits recount that Defendants voiced the following opinions:

- Murray, Kupersmith and Glass allegedly described Ali as motivated by self-interest and profit. Ex. 5 ¶ 16; Ex. 6 ¶ 14.
- Murray, Kupersmith and Glass variously referred to Ali as “unreputable, dishonest and deceitful in its [sic] profession,” “a terrible man with terrible motives,” and a “nefarious and inferior developer.” Ex. 5 ¶ 17; Ex 6 ¶¶ 11, 14.
- Defendants made “false statements about Ali’s character, veracity, morality, and reputation, track record, and ability as a real estate developer” without specifying who said what, or when. Ex. 7 ¶ 10.
- Defendants have made statements “which imply or explicitly state that one or more Plaintiffs are such things as, but not limited to, dishonest, incompetent, racist, a thief, and conman” without specifying who said what, or when. Am. Compl. ¶ 73.

The last two bulleted allegations are too generalized and vague to identify any false statement of fact made by Defendants about Plaintiffs within the one-year statutory period. *See Murphy*, 4 Cal. App. 5th at 115 n.13 (holding that “conclusory” allegations “that unidentified defendants made ‘numerous’ unspecified false statements” fail to state a claim). Moreover, all of the foregoing bulleted allegations describe only expressions of opinion that cannot form the basis for a defamation or libel claim, even when referring to Ali’s profession or trade. *See Elder*, 205 Ga. App. at 144(1) (expressing “general negative opinions regarding [someone]’s professional abilities . . . with respect to which reasonable [people] might entertain differing opinions is not slanderous”) (cleaned up). *See, e.g., Turner v. Wells*, 879 F.3d 1254 (11th Cir. 2018) (statements that a coach engaged in “unprofessional conduct,” “poor judgment,” and “homophobic taunting” were not actionable); *Cottrell v. Smith*, 299 Ga. 517, 529 (2021) (statements that the plaintiff was “not trustworthy,” “a scam artist,” and “a sly one” who conned women out of money were pure opinion and not actionable); *Gast v. Brittain*, 227 Ga. 340, 341 (2003) (statements that the plaintiff was “immoral” were not actionable); *Jaillett v. Ga. TV Co.*, 238 Ga. App. 885, 887

(1999) (statement that a businessman was perpetrating “a ripoff” was non-actionable opinion). Moreover, “[a] [speaker] cannot be sued for simply expressing his opinion of another person, however unreasonable the opinion or vituperous the expressing of it may be.” *Bergen v. Martindale-Hubbell, Inc.*, 176 Ga. App. 745, 746 (1985) (citations omitted) (dismissing libel claim based on publication of directory containing subjective ratings of different lawyers’ legal abilities). “However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.” *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974). Thus, the laundry-list of alleged negative opinion statements recounted in Exhibits 5-7 do not bring Plaintiffs any closer to showing a probability of prevailing on their defamation/libel claims.

Finally, allegations that Kupersmith and Murray identified Ali and his father as affiliated with a developer (Sam Dickson) who is a known racist<sup>17</sup> with ties to the Klu Klux Klan,<sup>18</sup> and indicated that Ali and his father share those beliefs also do not advance the ball for Plaintiffs. *See* Am. Compl. ¶¶ 22, 31 & Ex. 5 ¶¶ 13-15. First, Plaintiffs do not claim it to be a false statement that Ali has or had a business affiliation with Dickson. Indeed, Ali acknowledged this affiliation to Murray. *See* Murray Aff. at ¶ 9. Second, Defendants’ personal experience with Ali could reasonably cause them to believe that he may harbor racist beliefs, making the alleged statements incapable of being proven false.<sup>19</sup> But ultimately, imputations of perceived racism are matters of

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<sup>17</sup> Dickson publicly states that the United States should be divided into “racial zones,” and that “[i]t’s unnatural for people to live among people who are radically different from them. . . My people have a right to their own homeland.” *See* Winne at FN3, *supra*.

<sup>18</sup> Lance Williams, “The KKK apologists and anti-Semites who helped build the alt-right,” REVEAL (blog published by the Center for Investigative Reporting) (July 26, 2017) (identifying Dickson as former lawyer for Klan leader David Duke), available at: <https://revealnews.org/blog/the-kkk-apologists-and-anti-semites-who-helped-build-the-alt-right/>.

opinion that cannot form the basis of a defamation claim. *See Collins*, 215 Ga. App. at 680 (speculative statements that cannot be proven as absolutely true or false are “the sort of opinion that is not actionable as libel”); *see, e.g., Coral Ridge Ministries Media, Inc. v. Amazon.com*, 2019 U.S. Dist. LEXIS 159685 (M.D. Al. Sept. 19, 2019) (thoroughly surveying defamation jurisprudence and concluding that the label of racist “hate group” is too indefinable to be falsified, and thus cannot undergird a defamation claim); *Tillett v. BJ’s Wholesale Club, Inc.*, 2010 U.S. Dist. LEXIS 79443, at \*19 (M.D. Fla. July 30, 2010) (accusation of racism is “pure opinion that cannot support an action for defamation.”). In sum, Plaintiff’s non-party affidavits (Exhibits 5-7) and the portions of the Amended Complaint citing to them fail to state a defamation/libel claim or to show that Plaintiffs have a probability of success on such claims.

B. Plaintiffs fail to allege special damages.

Plaintiffs fail to state a claim for “Defamation: Libel and Slander” (Count IV) because they have not alleged any special damages. *McGee*, 257 Ga. App. at 885 (“By failing to plead special damages with particularity as required by O.C.G.A. § 9-11-9(g), [plaintiff] has not stated a claim for defamation.”) Special damages require a plaintiff to prove “loss of money or some other material temporal advantage capable of being assessed in monetary value.” *Id.* Nowhere in the Amended Complaint do Plaintiffs allege specific economic harm, stating only that Defendants have “caused damage to Plaintiffs in an amount to be determined at trial in this matter.” Am. Compl. ¶ 88. This fails to state a claim and certainly does not show probable success for Plaintiffs with respect to defamation. *See Garner v. Acad. Collection Serv., Inc.*, No. CIV.A.3:04-CV-93-JTC, 2005 WL 643680, at \*4 (N.D. Ga. Mar. 11, 2005) (dismissing Georgia

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<sup>19</sup> *See* Kupersmith Aff. at ¶¶ 23-27 & Am. Compl., Ex. 10; Graybill Aff. at ¶¶ 24, 26-27, 32 & Defs Exs. 3 & 4; Murray Aff. at ¶ 14; Glass Aff. at ¶ 19.

defamation claim because plaintiff “has not alleged, and it cannot be reasonably inferred from her Complaint, that she has suffered any special damages”).

### **III. Plaintiffs Cannot Show Probability of Prevailing on Tortious Interference Claims.**

Plaintiffs claim Defendants tortiously interfered with Ali’s current and prospective business relations with APS regarding Lakewood Elementary (Counts II and III). Plaintiffs fail to state a claim and cannot show probability of prevailing. Tortious interference requires: “(1) improper action or wrongful conduct by the defendant without privilege; (2) the defendant acted purposely and with malice with the intent to injure; (3) the defendant induced a breach of contractual obligations or caused a party or third parties to discontinue or fail to enter into an anticipated business relationship with the plaintiff; and (4) the defendant’s tortious conduct proximately caused damage to the plaintiff.” *Parnell v. Sherman & Hemstreet, Inc.*, 364 Ga. App. 205, 214 (2022).

Fundamentally, Plaintiffs cannot show the existence of any actual or mutually-anticipated business relations with APS. While Ali pleads his desire to purchase the School or be awarded a contract to redevelop it,<sup>20</sup> he does not allege even a single communication from APS/ABOE indicating their shared desire or intent to engage in contractual relations with him. That is because there have been no such communications on account that APS has never put Lakewood

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<sup>20</sup> *See, e.g.*, Am. Compl. at ¶ 14 (“Plaintiffs have been attempting to procure [the School] property”); *id.* at ¶ 15 (“Plaintiffs have . . . planned the development of the Property”); *id.* at ¶ 21 (“Plaintiffs’ plans for the Property coincide with APS’ goals”); *id.* at ¶¶ 41-42 (alleging Defendants have prevented Ali from “discussing the Property and/or potential development of the Property”); *id.* at ¶ 44 (“the NPU wrote a letter . . . in support of Plaintiffs’ development plans for the Property”); *id.* at ¶ 46 (alleging Defendants urged APS to retain the School “despite their knowledge of Plaintiffs’ efforts to acquire the Property”).

Elementary up for sale<sup>21</sup> and APS has not yet solicited RFPs for the School’s redevelopment.<sup>22</sup> See also Jones Aff. at ¶¶ 2, 17 (stating there were no business relations between Plaintiffs and APS during her tenure on the Atlanta Board of Education from January 2022 to January 2024).

Plaintiffs allege that Defendants’ public participation caused APS to “reevaluate its purposes for the [School] Property.” Am. Compl. ¶ 48. This is conjecture and comes nowhere close to establishing that, absent Defendants’ protected speech, APS would have decided to sell the School and would have sold it to Plaintiffs, as opposed to some other interested buyer. See *Camp v. Eichelkraut*, 246 Ga. App. 275, 283 (2000) (holding that interference with prospective business relations “cannot be based on speculation that a relationship would develop”). Cf. *Trilink Saw Chain, LLC v. Blount, Inc.*, 583 F. Supp. 2d 1293, 1324-25 (N.D. Ga. 2008) (granting summary judgment to defendant on tortious interference claim where plaintiff provided no “direct, probative evidence that any of the vendors were likely to enter into a business relationship with [plaintiff] in the absence of” the defendants’ speech, and rejecting “speculative, evidence that—at best—only allows the trier of fact to hypothesize as to the likelihood of future business relationships”).

In addition to being unable to prove business relations with APS, Plaintiffs’ tortious interference claims also fail because they are based wholly on Defendants’ protected speech and petitioning under the Anti-SLAPP Statute and the federal and state constitutions, including Defendants’ protected expression of opinion. See *Bird v. Weis Broad. Corp.*, 193 Ga. App. 657,

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<sup>21</sup> Jones Aff. at ¶¶ 6, 9-10; Kupersmith Aff. at ¶ 4.

<sup>22</sup>Defts Ex. 2 (Feb. 2023 APS Superintendent email stating no RFP process in place); Am. Compl., Ex. 1 at p. 5 (APS’s Oct. 2023 statement that there will eventually be an RFP process); Jones Aff. at ¶ 14 (to date, APS has not announced its RFP process); Kupersmith Aff. at ¶¶ 33-34 (same); Graybill Aff. at ¶¶ 22, 29 (same).

658 (1989) (constitutionally “[p]rivileged opinion cannot support a claim even for an intentional tort”); *see, e.g., Metzler*, 248 Ga. App. at 598-99 (affirming dismissal of tortious interference claim because statements by neighborhood residents opposing developer’s project were privileged under the Anti-SLAPP Statute); *Caruso*, 100 Wash. 2d at 346 (finding “do not patronize” message was protected by the First Amendment and dismissing business interference claim). Thus, Plaintiffs cannot prove that Defendants engaged in any “improper action or wrongful conduct . . . without privilege” as required to prove tortious interference. *See Parnell*, 364 Ga. App. at 214.

Finally, Plaintiffs fail to state claims for business interference and have no probability of prevailing on those claims because they do not allege and cannot prove any financial injury caused by Defendants’ speech. This is due to the wholly speculative nature of Plaintiffs’ so-called business or contractual relations with APS. *See Kemp v. Green*, 337 Ga. App. 108, 109, 786 (2016) (“Financial injury is an essential element of a tortious interference claim.”); *see, e.g., Tribeca Homes, LLC v. Marathon Inv. Corp.*, 322 Ga. App. 596, 598 (2013) (affirming summary judgment for defendants on tortious interference due to plaintiff’s “inability to show that [the defendants’] misdeeds w[ere] the proximate cause of its damage because it cannot show that independent of those actions it would have secured the [sought after] property”; plaintiff “was merely an applicant for grant of the property” who “was not assured of receiving the property”).

#### **IV. Claims for Injunctive Relief, Costs, & Punitive Damages Must Be Dismissed.**

Plaintiffs’ request to enjoin Defendants from making any “defamatory, disparaging, libelous, or slanderous” statements about Plaintiffs (Count I) must be denied because Plaintiffs fail to demonstrate likelihood of success on the merits. *See* Sections I-III, *supra*; *Jansen-Nichols v. Colonial Pipeline Co.*, 295 Ga. 786, 787 (2014) (enumerating factors that determine

appropriateness of interlocutory injunctive relief). Additionally, the requested injunction would constitute a prior restraint. “[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.” *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 559 (1976). They are particularly suspect in defamation cases. *Cohen v. Advanced Med. Grp. of Georgia, Inc.*, 269 Ga. 184, 184 (1998) (“Consistent with this Court’s firm policy to protect the right of free speech, we apply the general rule that equity will not enjoin libel and slander.”). Thus, enjoining Defendants’ speech would be decidedly against the public interest. *See Jansen-Nichols*, 295 Ga. at 787. Plaintiffs likewise are not entitled to punitive damages or litigation costs (Counts VI and VII) where they have failed to adequately plead, let alone prove, any violation of law by Defendants.

### CONCLUSION

The foregoing analysis establishes that Plaintiffs’ meritless action is nothing more than a shoddily constructed vehicle for Plaintiffs to intimidate and further harass and malign Defendants within their own community. This abuse of the judicial process infringes Defendants’ constitutional and statutory right to speak and petition on matters of public concern that directly affect them and the neighborhood where they live. Under these circumstances, Georgia’s Anti-SLAPP Statute mandates that Plaintiffs’ Amended Complaint be stricken, or in the alternative, dismissed, in its entirety with attorneys’ fees awarded to Defendants.<sup>23</sup>

Respectfully submitted this 5th day of July, 2024.

[signature on following page]

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<sup>23</sup> Under O.C.G.A. § 9-11-11.1(b.1), “a prevailing moving party on a motion to strike shall be granted the recovery of attorney’s fees and expenses of litigation related to the action in an amount to be determined by the court based on the facts and circumstances of the case.”

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the within and foregoing **DEFENDANTS’ MOTION TO STRIKE PURSUANT TO O.C.G.A. § 9-11-11.1 AND TO DISMISS FOR FAILURE TO STATE A CLAIM** was electronically filed with the Court using the Odessey eFileGA filing system which caused Plaintiffs to be served via email.

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