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**IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS
CIVIL DIVISION**

RICHARD FRIEND **PLAINTIFF**

VS. **NO. 63CV-26-601**

**RICK CROSS, KEVIN COOPER and
JOHN DOES 1-5** **DEFENDANTS**

SEPARATE DEFENDANT KEVIN COOPER'S REPLY IN SUPPORT OF HIS MOTION TO DISMISS FOR ANTI-SLAPP IMMUNITY AND PURSUANT TO RULE 12(b)(6)

INTRODUCTION

Plaintiff's Response asserts that documents publicly available on CourtConnect and elsewhere would establish the falsity of Cooper's statements. Response at 6–7. Cooper allegedly made false statements that Friend dismissed marijuana charges against college women in exchange for sexual favors—and that Friend defecated in his combat pants during the execution of a search warrant and used the homeowner's shower curtain to clean himself. Complaint ¶¶ 20, 35–40. These are Plaintiff's own allegations. Plaintiff's counsel filed a sworn verification attesting they are true. If records exist that prove these specific statements false, those records should be easy to identify and produce. Plaintiff has done neither.

Consider what those records would need to show. To refute the sexual favors allegation, Plaintiff would need a record establishing that the marijuana charges against the women were *not* dismissed—or that Friend's conduct during any such dismissal was above reproach. Where is that record? Plaintiff does not say. She does not identify a court. She does not supply a case number. She does not name the women. She does not cite a docket entry, a disposition record, or a law enforcement file. She offers nothing but the bare assertion that CourtConnect exists and that Cooper, as a law enforcement officer, knew how to use it.

The shower curtain allegation presents an even starker problem. What public record would establish that an officer did *not* defecate during a search warrant execution more than fifteen years ago? Plaintiff does not say. There is no obvious court record, no CourtConnect entry, and no public filing that speaks to whether this incident occurred. Plaintiff invokes the specter of exonerating documentation without identifying what form it would take, where it would be found, or how it would speak to the truth or falsity of this specific claim. The allegation is either true or it is not—but Plaintiff has pointed to no record that resolves that question, and none is apparent.

These two examples illustrate the fundamental defect in Plaintiff's entire theory. She tells this Court that records capable of establishing falsity were publicly available and that Cooper's failure to consult them demonstrates purposeful avoidance of the truth. But she cannot name those records because, for most of the allegations at issue, no such documentary record plausibly exists. Publicly available court records do not document whether a law enforcement officer engaged in sexual misconduct with witnesses, or soiled himself during a search warrant. The premise of the purposeful avoidance argument—that Cooper saw a specific documentary red flag and looked away—is a fiction. And the premise of the actual malice argument—that Cooper published statements he knew a simple records check would disprove—collapses the moment Plaintiff is asked to identify a single such record.

Plaintiff's Response misconstrues the legal standards governing the Anti-SLAPP immunity motion and fails to identify a single specific fact in the Complaint sufficient to establish actual malice against Kevin Cooper. Plaintiff's core theory—that Cooper's acknowledged uncertainty about some of his statements transforms his speech into knowing or reckless falsity—inverts the actual malice doctrine. It also ignores the critical legal distinction, firmly established in *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968), between a speaker who discloses the limits of his

knowledge and a speaker who publishes with subjective awareness of probable falsity. The Complaint does not plead the latter.

Plaintiff's procedural challenge to the renewed motion is likewise without merit. The prior motion was stricken as a sanction. That sanction restored the parties to their pre-filing positions; it did not strip Cooper of defenses that Arkansas law independently affords him. Plaintiff cites no authority supporting such a result because none exists.

The verification Plaintiff filed on April 5, 2026, fails to satisfy Ark. Code Ann. § 16-63-505 as interpreted by this Court's April 1, 2026 Order. That failure independently requires striking the Complaint under § 16-63-506 or, at minimum, supports dismissal on Cooper's motion.

The motion should be granted.

ARGUMENT

I. PLAINTIFF'S PROCEDURAL OBJECTION FAILS. THE ANTI-SLAPP DEFENSE IS PROPERLY BEFORE THE COURT.

Plaintiff argues that because the Anti-SLAPP immunity defense was not raised in Cooper's first motion, the Court should refuse to consider it now. Plaintiff's Response at 2. This argument has no legal support.

Plaintiff's objection begins from the wrong premise. The first motion was not denied, overruled, or decided against Cooper on the merits—it was stricken in its entirety as a Rule 11 sanction, which rendered it a legal nullity. A stricken pleading or motion has no operative legal effect; it stands as though it was never filed. Because there was no valid first motion, there is nothing to which the doctrines of waiver or issue preclusion can attach. Cooper stands in precisely the same procedural position he would have occupied before any motion was filed.

Plaintiff effectively acknowledges this. Her own Response states that the striking of the first motion "technically permits the filing of a second Rule 12(b) motion." Response at 2. Having

conceded that a second Rule 12(b) motion is permissible, Plaintiff cannot simultaneously argue that the Court should refuse to consider the defenses asserted in it. The premise of her objection—that Cooper forfeited the Anti-SLAPP defense by not raising it in a motion that no longer legally exists—is irreconcilable with her own characterization of the procedural posture.

The immunity conferred by Ark. Code Ann. § 16-63-504 is substantive, not procedural. The legislature created it to protect citizens who engage in protected speech from the burden of litigation itself—not merely from an adverse judgment. That purpose would be substantially undermined if a defendant could be stripped of statutory immunity by a procedural misstep on a different motion, particularly one voided as a sanction. Nothing in the Act conditions immunity on the manner or sequence of how it is raised, and Plaintiff cites no authority for the proposition that it can be forfeited in this fashion. The Anti-SLAPP defense is properly before the Court.

II. THE APRIL 5, 2026 VERIFICATION IS DEFICIENT UNDER ARK. CODE ANN. § 16-63-505 AND THIS COURT'S APRIL 1, 2026 ORDER.

This Court's April 1, 2026 Order found that the verification originally filed by Plaintiff Friend failed to satisfy Ark. Code Ann. § 16-63-505 because it addressed only the factual accuracy of the Complaint and did not certify the four specific statutory statements required by the Act. Order ¶ 7. The Court gave Plaintiff ten days to file a conforming verification. Order ¶ 8. Plaintiff timely filed an Affidavit of Verification executed by Richard Friend and Jennifer Lancaster on April 3, 2026.

Section 16-63-505 requires the party and the party's attorney to verify under oath four distinct statements: (1) they have read the claim; (2) to the best of their knowledge, information, and belief formed after reasonable inquiry, the claim is well grounded in fact and warranted by existing law or a good-faith argument for its modification; (3) the act forming the basis for the

claim is *not* a privileged communication; and (4) the claim is not asserted for any improper purpose.

The April 5 Affidavit of Verification recites these requirements in summary form, but its third sworn statement—that “the acts forming the basis for the claims in the Complaint are not privileged communications within the meaning of the Citizen Participation in Government Act, A.C.A. § 16-63-503”—is a legal conclusion, not a verified fact. More importantly, it is directly contradicted by this Court’s own April 1 Order, which found that the alleged statements “potentially fall within acts made in furtherance of free speech and privileged communications as defined in A.C.A. § 16-63-503 and protected under the immunity clause within the Act.” Order ¶ 4.

A verification filed in violation of § 16-63-505—because its sworn content is false, conclusory, or contradicted by the record—is subject to sanction under § 16-63-506(b), which authorizes the Court on motion or its own initiative to impose sanctions including dismissal and an award of attorney’s fees. Ark. Code Ann. § 16-63-506(b)(1). Cooper respectfully requests that the Court find the April 5 verification deficient as to the third required statement and proceed accordingly.

III. ARKANSAS IS A FACT PLEADING STATE. THE COMPLAINT’S ACTUAL MALICE ALLEGATIONS ARE CONCLUSORY AND LEGALLY INSUFFICIENT.

Plaintiff characterizes the Complaint’s actual malice allegations as “detailed, specific, and non-conclusory.” Response at 1. Examining those allegations paragraph by paragraph reveals otherwise.

Paragraph 50: "Defendants published these accusations with knowledge of their falsity or with reckless disregard for the truth." This is a verbatim recitation of the legal standard. It alleges no fact.

Paragraph 61: "These facts demonstrate that Defendants either knew the accusations were false or acted with reckless disregard for their truth or falsity." This is a legal characterization, not a factual allegation.

Paragraph 63: "Defendants' statements were made with actual malice, including knowledge that the statements were false or with reckless disregard for whether they were true or false." A textbook conclusory recitation.

Paragraph 80: "At the time the statements were made, Defendants knew the statements were false or acted with reckless disregard as to whether they were true or false." The same bare conclusion repeated.

Under Arkansas fact pleading, a plaintiff must allege specific facts as to each element of the claim; legal conclusions and bare recitations of the standard do not suffice. *Faulkner v. Ark. Children's Hosp.*, 347 Ark. 941, 956, 69 S.W.3d 393, 402 (2002) (holding on a Rule 12(b)(6) motion that defamation plaintiff must allege specific facts as to each element of the claim, including the defendant's state of mind). Stripped of its conclusory labels, the Complaint does not plead actual malice as a fact—it pleads failure to investigate and reliance on secondhand accounts. That may be negligence (Cooper denies it); it is not actual malice.

IV. <u>PLAINTIFF'S FAILURE-TO-INVESTIGATE THEORY FAILS AS A MATTER OF CONTROLLING LAW.</u>

Plaintiff's central argument is that Cooper (a) knew how to verify the allegations through publicly available records, (b) failed to do so, and (c) published anyway—and that this chain

establishes actual malice. Response at 6–7. This inference chain fails at every step under *St. Amant v. Thompson*, 390 U.S. 727 (1968).

The Supreme Court held in *St. Amant* that "failure to investigate does not in itself establish bad faith." 390 U.S. at 733. The constitutional standard of actual malice is subjective—it requires proof that the defendant harbored a personal, subjective awareness of probable falsity at the time of publication. Id. at 731. It is not satisfied by showing that a reasonable person in the defendant's position would have verified the statements before publishing, that contradicting records were publicly accessible, or that the defendant possessed professional training that would have enabled verification.

Plaintiff pleads exactly—and only—this objective failure-to-investigate theory. The Complaint alleges that Cooper is a trained law enforcement officer who knew how to check records (Complaint ¶¶ 51, 60(b)–(d)), that public records existed that would have confirmed or contradicted his account, and that he did not consult them. These facts establish, at most, that Cooper was negligent (which Cooper denies). They do not establish that he knew his statements were probably false and published them anyway.

Arkansas courts have applied this principle directly in the election context. In *Thomson Newspaper Publ'g, Inc. v. Coody*, 320 Ark. 455, 896 S.W.2d 897 (1995), the Arkansas Supreme Court reversed a jury verdict for a mayoral candidate despite evidence that the publisher was openly hostile toward the candidate, hired a private investigator, and published pre-election articles suggesting the candidate had a criminal past he was concealing. The Court held that hostility and inadequate investigation were insufficient. The standard is not whether a reasonably prudent person would have investigated further, but whether the defendant "in fact entertained serious doubts as to the truth of the publication." *Id.* at 465, 896 S.W.2d at 903. The Arkansas Court of

Appeals reached the same conclusion in *Greenberg v. Horizon Arkansas Publications, Inc.*, 2017 Ark. App. 328, 522 S.W.3d 183—a Saline County case in which the newspaper author harbored open hostility toward the plaintiff, wrote that she wanted to expose him as a liar, and was criticized for inadequate investigation. The Court of Appeals affirmed summary judgment for the defendant, holding that neither hostility nor investigative shortcomings establish the subjective awareness of probable falsity that actual malice requires. *Id.* at *7–8, 522 S.W.3d at 188–89. Plaintiff's theory here is weaker than the losing arguments in both *Coody* and *Greenberg*: those plaintiffs had concrete post-publication evidence of the defendants' hostility. Here, Plaintiff offers only the inference that because Cooper could have checked records, he must have known his statements were false—an inference the law squarely rejects.

V. **<u>COOPER'S EPISTEMIC DISCLOSURES NEGATE, RATHER THAN SUPPORT, ACTUAL MALICE.</u>**

Plaintiff advances the remarkable proposition that Cooper's on-video acknowledgment of the limits of his own knowledge—his disclosure that he lacked documentary evidence for certain claims and was not an eyewitness to every incident he described—constitutes evidence of actual malice. Response at 8. This argument turns the actual malice doctrine on its head.

A speaker who publishes while harboring *St. Amant* doubt about his statements does not typically volunteer that limitation to his audience. A speaker who says, in effect, "I don't have documents, but here is my understanding of what happened, based on what I witnessed and what I was told," is disclosing his basis of belief—not confessing that he believes his statements to be false. These are opposite mental states. The Complaint tries to use Cooper's candor as a sword; the law does not permit that inversion.

Moreover, Cooper named specific eyewitnesses on the face of the videos, including Aaron Washington and other former law enforcement officers, as the basis for several of the challenged

statements. A speaker who relies on named witnesses and discloses that reliance is not a speaker who "entertained serious doubts" about those statements. *St. Amant*, 390 U.S. at 731.

VI. <u>PLAINTIFF'S INVOCATION OF *HARTE-HANKS* IS MISPLACED.</u>

Harte-Hanks Commc'ns, Inc. v. Connaughton, 491 U.S. 657 (1989), requires proof that the defendant was subjectively aware of specific information pointing toward falsity and deliberately chose not to pursue it. 491 U.S. at 692. The decision hinged on evidence that the defendant had recordings of an interview that would have resolved a disputed factual question and deliberately declined to listen to them before publishing a materially different account.

The Complaint alleges no comparable facts. It does not identify specific information that Cooper was aware of that would have revealed the falsity of his statements. It alleges only that records existed on CourtConnect that would have been informative. That is objective availability of potentially contradicting information—it is not the subjective awareness of a specific falsity indicator that the purposeful avoidance doctrine requires.

VII. <u>MOTIVE DOES NOT SUBSTITUTE FOR ACTUAL MALICE.</u>

Plaintiff argues that Cooper's alleged political motivation—his support for Friend's opponent and his possible future interest in the Sheriff's office—supports an inference of actual malice. Response at 7. It does not.

The Supreme Court has explicitly held that "actual malice" is a term of art referring to the defendant's subjective awareness of probable falsity; it has nothing to do with ill will, spite, or improper motive. *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 510 (1991). Plaintiff's motive theory is therefore legally irrelevant to the Anti-SLAPP analysis. That Cooper allegedly supported Friend's opponent does not establish, even inferentially, that Cooper published statements he believed to be false. Arkansas courts have repeatedly applied this principle. In

Coody, the Arkansas Supreme Court acknowledged that the publisher's hostility toward the candidate was circumstantial evidence of ill will—but held it insufficient to establish actual malice because hostility is "not actionable unless there are material facts in evidence tending to show that [the defendant] published a statement about him with the knowledge that it was false or with reckless disregard of whether it was false." 320 Ark. at 465, 896 S.W.2d at 903. In *Greenberg*, the author's emails revealed that she found the plaintiff so personally repugnant that she called him a liar, said he "brings shame to the name of Christ," and declared it her "mission to expose him"—yet the Court of Appeals found no actual malice. 2017 Ark. App. 328, at *7, 522 S.W.3d at 188. If that level of documented animus does not establish actual malice under Arkansas law, Cooper's alleged political preference for a rival candidate plainly does not either.

VIII. <u>COLLECTIVE PLEADING AS TO "DEFENDANTS" IS INDEPENDENTLY DEFICIENT AS TO COOPER.</u>

Actual malice is a subjective, individualized inquiry. The Complaint's actual malice allegations repeatedly attribute the relevant mental state to "Defendants" collectively, without distinguishing Cooper's individual state of mind from Rick Cross's. Because each defendant's state of mind at the time of publication must be pleaded and proven separately, the collective pleading on this element is independently deficient as to Cooper.

IX. <u>NO DISCOVERY IS WARRANTED.</u>

Plaintiff requests, in the alternative, limited discovery directed to malice and verification. Response at 10. The Act provides that all discovery is stayed upon the filing of a motion to dismiss, Ark. Code Ann. § 16-63-502(a)(f), as this Court recognized in its April 1, 2026 Order. Order ¶ 12. The Court may authorize specified discovery upon a motion requesting same and for good cause shown. Ark. Code Ann. § 16-63-507(b); Order ¶ 12.

Good cause has not been shown. The Complaint's actual malice deficiency is not a gap in the evidentiary record—it is a pleading deficiency. The specific facts necessary to allege actual malice under Arkansas law are either in the plaintiff's possession or they do not exist. Neither circumstance justifies lifting the statutory discovery stay to allow Plaintiff to search for facts that should have been pleaded before filing.

CONCLUSION

Plaintiff's April 5, 2026 verification fails to satisfy the requirements of Ark. Code Ann. § 16-63-505 as construed by this Court's April 1, 2026 Order. Its sworn statement that Cooper's acts are "not privileged communications" within the meaning of the Act is a legal conclusion directly contradicted by this Court's own finding that the alleged statements "potentially fall within acts made in furtherance of free speech and privileged communications." That deficiency is independently sufficient to strike the Complaint under § 16-63-506.

Independently, the Complaint fails to plead actual malice. Its dedicated actual malice allegations are bare legal conclusions entitled to no weight. Its supporting factual theory—that Cooper, as a trained law enforcement officer, failed to verify his statements through available public records—establishes negligence at most, not the subjective awareness of probable falsity that controlling constitutional law requires. Cooper's on-video acknowledgment of the limits of his knowledge is consistent with, and affirmatively negates, the subjective doubt that actual malice requires. Motive does not fill this gap. And collective pleading against "Defendants" is independently insufficient as to Cooper.

The motion to dismiss should be granted. The stay of discovery should remain in effect.

WHEREFORE, Separate Defendant Kevin Cooper respectfully requests that this Court grant his Motion to Dismiss, dismiss all claims against him with prejudice, maintain the statutory

stay of discovery, find the April 5, 2026 verification deficient and impose appropriate sanctions under Ark. Code Ann. § 16-63-506, and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this 8th day of **April, 2026**, I hereby certify that a true and correct copy of this document has been served in accordance with the Arkansas Rules of Civil Procedure on counsel of record, *via electronic mail:*

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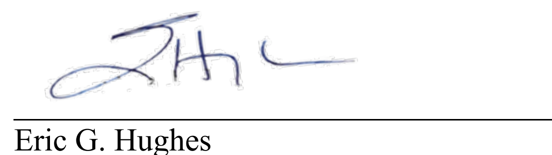

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