FIRST DISTRICT COURT OF APPEAL

KLENTON T. MCLEMORE, III;

APPELLANT

V.

H.T. CASE NO. 1D22-3240
L.T. CASE NO. 19-3132CA

BARRON & REDDING, P.A.;
CLIFFORD W. SANBORN;
SCOTT H. MCLEMORE,
KLENTON L. MCLEMORE;
WILLIAM W. MCLEMORE;
DEBORAH SHOMAN ZIRBEL;
DEBORAH J. SHOMAN;
DEBORAH J. SHOMAN INC. D.B.A.
STEWART & SHOMAN REPORTING;
JOSEPH SILVA, JR.,

APPELLEES

ON APPEAL FROM THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT, IN AND FOR BAY COUNTY, FLORIDA
CASE NUMBER 2019 CA 3132

PRO SE APPELLEE SCOTT H. MCLEMORE'S RESPONSE TO APPELLANT'S INITIAL BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

OTHER AUTHORITIES

PRELIMINARY STATEMENT

Justice and judicial economy command the First District Court, to the extent it may ever be compelled by its authority, to prevent the ongoing harm of protracted litigation and presumptive damages, continuing now here in this Court, again in another new SLAPP suit filed against the undersigned and also his Texas Law Firm in March of 2023, and continuously through the past 4 years, being caused by this 2019 SLAPP suit, the trial court never made substantive ruling on it did not later fully reverse, admitting to not reading the motions for summary judgment and final judgment, ever. Fundamental rights of the undersigned, legally, urea in the wind.

The undersigned Appellee/Petitioner[1] for Certiorari cannot cease being harmed and being denied fundamental rights due to a lack of substantive review in the trial court, or this circumstance remaining true also in the appellate court.

The trial court, only ever reviewing a motion to dismiss standard, in nearly 4 years, easily made that finding and got that right. For that modicum of justice, the undersigned is thankful, but it did not remove the labor in the trial court between the parties occasioned by this suit, in any substantive way.

[1] On April 16, 2023, Appellee filed a Request for Certiorari Review and Request for Judicial Notice with this Honorable Court in Filing # 171091825

The legal rights of the Appellee/Petitioner, to be entirely free from this litigation, defamation, and to be awarded mandatory and presumed damages, deemed fundamental in replete legal precedent, has never been reviewed. Much stronger judicial medicine is mandatory for preventing the cancer of Klenton T. McLemore, III's (hereinafter "Appellant") romp of frivolous filings, intentional delays, and more than a decade long riddling of Walton, Gulf and Bay County with vexatious litigation, also against the undersigned, Scott H. McLemore. (Hereinafter "Appellee/Petitioner")

Florida, State, and Federal case law contain replete precedent, verbosely proclaiming that the rights to relief of the undersigned are "fundamental", "vital" and "sacrosanct" rights, but no time has been devoted to reading and ruling on those rights, finally, since first filed in October of 2019, and again in 2021, when the Court admitted it had signed a prior order granting the relief, never having read it, then just denying it, still never reading it.

FACTS

The underlying, instant case filed by Appellant, K. McLemore (the "2019 Case"), though instituted 3 years and 8 months ago was fully decided 10 years ago in 2013 and 13 years ago in 2010, by two trial courts, in final judgments, never appealed. *(Exhibits A & B)* The trial court has ignored Res Judicata and unless this

court enforces the integrity of prior court orders, the integrity of those orders remains violated.

Appellant altogether fails to state a cause of action in the 2019 Case, but admittedly states he sues the Appellee/Petitioner based on the fact that defense counsel in the 2013 Case, Sandy Sandborn, "…called Defendant, Scott McLemore as a surprise last witness against the Plaintiff, on October 17, 2013." *(See Index Nos. 025–053: Bay County 14th Judicial Circuit Case No. 19-3132CA Complaint, p. 8, para. 24. See also Index Nos. 112-151: Amended Complaint, p. 9, para 29; Index Nos. 646–673: Defendant, Klenton Tranum McLemore, III Answer And Affirmative Defenses To Scott H. McLemore's Counter Complaint, p. 2, para 2; Index Nos. 866–873: Amended Answer And Affirmative Defenses To Scott H. McLemore's Counter Complaint, p. 2, para 2.)*

This case was also settled in June of 2013, but the trial court has never read the settlement agreement and ruled. *(See attached Exhibit C: Index Nos. 490–645: Settlement Agreement and Release.)*

The trial court has never read evidentiary proof irrefutably establishing Petitioner's fundamental rights to relief and final judgment on matters of law. *(See Index Nos. 276–485: Motion for Final Judgment; Motion for Summary Judgment as a Matter of Law and Application for Injunctive Relief (Index Nos. 276-303); Index*

of Exhibits in Support of Motion for Summary Judgment & Motion for Summary Judgment as a Matter of Law and Application for Injunctive Relief (Index Nos. 304-306); MSJ Exhibit (Index Nos. 307-485)). See also Index Nos. 1132-1249: Motion for Summary Judgment on Breach of Contract (1132-1144); Motion for Summary Judgment on Defamation (1145-1161); Motion for Summary Judgment on Attorney's Fees Damages Under Florida's SLAPP Law (1162-1249); MSJ Exhibit (Index Nos. 307-485). The Court is requested to take Judicial Notice of these motions, and the exhibits, having been on file and denied review since October of 2019, in violation of the Appellant/Petitioners fundamental rights and also at the hearing two years later in 2021, as it is permitted to do.

In this posture, the Appellee/Petitioner suffers 3 further appeals of non-final orders, as the Plaintiff also further SLAPP targets the Petitioner by another new suit filed March 9, 2023, also in Bay County, continuing the same harm as has persisted through the three appeals of the instant case. *(See Index Nos. 1605–1637: Transcript of March 4, 2021 Hearing, p. 30, l.13-18. See also Exhibit D.)*

The 2019 Case was assigned to the Honorable Wade Mercer, a County Court Judge, *(See Index Nos. 784l–785)*, after District Court Judge Overstreet recused himself *(See Index Nos. 782–783),* after District Judge Fishel recused himself *(See Index Nos. 169–170)*.

The District Court authorized the County Court Judge to rule, but the trial court has expressed that the rights of the Petitioner at issue are "...complex, confusing", further exclaiming, "it's mind boggling..." *(See Index Nos. 2310–2370: Transcript of February 28, 2020 Hearing, p. 4, l.15-16)*, and "...befuddling..." *(Id., p. 7, l.21).*

During the pendency of this case, I have been required, as a practicing attorney in Texas, to devote in excess of 100 professional hours away from my primary law practice in Texas, throughout the pandemic, writing briefs, filing affirmative defenses, attending hearings out of State in this case, and through three appeals, to see only the issue of dismissal filed by 5 other Florida defendants receive attention in the trial court. The trial court has ignored Petitioner's rights to immunity as a testifying witness, res judicata, collateral estoppel, active defamation and a 2013 settlement agreement, fundamental to the Appellee/Petitioner's legal rights. *(See Index Nos. 2371-2381: Affidavit Of Scott H. McLemore in Support Of Summary Judgment.)*

Though the County Court Judge has expressed, "I've done the best I can, being the county court judge and reading and trying to wrap my mind around all this stuff" it has "unfortunately" never read the Petitioner's claims for relief, and entitlements to mandatory rulings. Explaining its reasoning the Court opined "You

all may do a lot of this stuff. This is a – you're talking to somebody that does misdemeanors and civil infractions." *(See Index Nos. 1605–1637: Transcript of March 4, 2021 Hearing, p. 31, l.25–p. 32, l.6.)*

Judge Mercer stated that the Court *"**simply…didn't have time to get into the details of that**"* referring to rights of the undersigned to vital relief, at the hearing scheduled for February 28, 2020, noticed for the October 29, 2019 Motions for Final Judgment and Summary Judgment filed by the Petitioner. *(See Index Nos. 2310–2370: Transcript of February 28, 2020 Hearing, p. 57, l.13-18*; *Index Nos. 276–485: Motion for Final Judgment; Motion for Summary Judgment as a Matter of Law and Application for Injunctive Relief (Index Nos. 276-303); Index of Exhibits in Support of Motion for Summary Judgment & Motion for Summary Judgment as a Matter of Law and Application for Injunctive Relief (Index Nos. 304-306); MSJ Exhibit (Index Nos. 307-485)).* Without legal standards being read and enforced in the trial court, protracted litigation rages on in another set of delayed life events and professional opportunities wasted by the SLAPP suits of Klenton T. McLemore, III without substantive ruling.

Then, in March of 2021, seeking again for the district court to recognize guarantees to immunity from suit, settlement agreement and release, Res Judicata, and other mandatory affirmative relief for defamation, the Appellee set, again, for

hearing motions for final judgment and summary judgment, the Court again, stating ***"Unfortunately, it did not review that for this hearing. So I am not prepared to make a ruling on that."*** *(See Index Nos. 1605- 1637: Transcript of March 4, 2021 Hearing, p. 30, l.13–18.)*

In defending the dismissal in 2020, the Plaintiff judicially admitted in his oral argument on dismissal that the Petitioner had been sued for "conduct of Defendant Scott McLemore when he showed up and told some outlandish testimony", but the trial court did not read the briefing on law, while during the hearing, Plaintiff K. McLemore, judicially admits to the Court that the Appellee is sued for giving testimony in 2013, like he also judicially admitted in his pleadings filed against the undersigned. *(See Index Nos. 2310–2370: Transcript of February 28, 2020 Hearing, p. 27, l.20 – p. 28, l.3; p. 40, l.13 – p. 41, l.10; p. 42, l.4-7; p. 44, l.1 -9.)*

This Court, just like the 2009 trial court which tried and finally decided the same case in the 2013 Final Judgment issued by Judge Register, could not find reason to rule on Statute of Limitations for 4 years. In a case filed in 2009 and finally tried to verdict in 2013, Plaintiff K. McLemore lost at trial on every claim *(Exhibit A)* under Statute of Limitations grounds, and factually, on the very same damages claims, but the trial court again, here, waiting 4 years to read dispositive motions, read or review evidence in summary judgment motion practice easily establishing

the case is subject to final judgment and imposition of Statute of Limitations, projects the same time track as the only remedy for Summary Judgment review. *(Exhibits A, B; C.)*

Positing that because the briefs are thick, there must be a fact question, does not constitute judicial review. In disposing of the labor in the trial court, review must occur, or each case is repeatedly appealed to this court, on only non-final orders, which is axiomatic at this point in the docketing history of this case, if read forensically. *(See Index Nos. 1605- 1637: Transcript of March 4, 2021 Hearing, p. 30, l.13–18. See also Index Nos. 2310–2370: Transcript of February 28, 2020 Hearing, p. 57, l.13-18)*

The Plaintiff K. McLemore's claims, in the instant case, are barred under any reading of the 2010 and 2013 Final Judgments *(Exhibits A & B)* which the trial the Court has not seen or read. Res Judicata and the enforceability of prior court orders is not up for review here, just dismissal, absent the grant of Certiorari or this Court exercising its powers to correct a miscarriage of justice and opine.

Without meaningful judicial review of this SLAPP suit, the ongoing miscarriage is sanctioned by inaction.

The Petitioner's out of state law firm, which does not practice law in Florida, and did not represent the Plaintiff, must now hire a lawyer to defend the second SLAPP suit filed in 2023, while the first filed 2019 SLAPP suit rages on in the Court of Appeals, evidencing the vexatious nature of these proceedings, and also those, and the justification for sanction.

Appellant K. McLemore has maintained his hostility since that 2013 trial testimony the undersigned was forced to give by operation of a subpoena, because it would appear the trial court does not have time or reason to protect witnesses who travel from out of state to honor a subpoena to assist in the administration of justice in this case. After his resounding defeat in 2013 in the trial of the 2009 case, Appellant exclaimed: "**I do hate you**."…. " **I do hope to see you dead**" and ""**I hate your guts and I will see you dead mother f----r**". *(See Index No. 1152: December 15, 2014 Email to Petitioner from klenton66@gmail.com.)* S

Since the trial court has never reviewed the briefing, the malicious defamation and death threats of these types simply goes unchecked and remains of no moment in Florida Jurisprudence. Just yesterday, April 16, 2023, Klenton T. McLemore, III professed his desire to file still more suits and further grievances in two states against more lawyers, including Sandy Sanborn, Mel Magidson, Joe Silva, and Jonathon

Dingus, over the previously settled case already twice decided. The insanity rages on, riddling the courts with even more frivolous filings. *(See Exhibit D.)*

In 2019, the Plaintiff K. McLemore, defamed the Petitioner on his law firm's Google listing page *(See Index No. 1155)*; a fact also never heard or read in the trial court, like the settlement and release and two prior judgments. The Court disregards entirely that Appellee/Petitioner, also a practicing lawyer of 25 years, is defamed by the scurrilous statements of the Appellant, who also enjoys referencing his anticipated delight at seeing the undersigned dead and losing my law license. By never reading and judicially considering it, at all, over nearly 4 years, the frivolous lawsuit jihad of Klenton T. McLemore, III goes on and on and on, unfettered in any way by the judiciary recognizing the fundament rights of his SLAPP target.

By the trial court's not reading the two-page settlement contract and its enforceability, the Appellee is perpetually denied the right and benefit to contract and settle a legal dispute, diverging by inaction, from the well settled law that "The right to contract is one of the most sacrosanct rights guaranteed by our fundamental law." *Miles v. City of Edgewater Police Dep't/Preferred Governmental Claims Sols*., 190 So. 3d 171 (Fla. 1st DCA 2016). "The right to make contracts … is both a liberty and property right and is within the protection of the guaranties against the taking of liberty or property without due process of law." This right is continually

denied to the Appellee by the trial court's always needing more time to read the 3-page settlement contract.

Appellee/Petitioner has proven and established right to mandatory relief, but because those rights are always beyond the scope of the trial court's limited ability in time to review remedies deemed fundamental, vital, and sacrosanct, consistent with liberty in American jurisprudence, they are of no moment in review before the trial court, or the Appellate Court, absent Certiorari review. *(See Exhibits A, B, C, D. See also Index Nos. 1132-1249: Motion for Summary Judgment on Breach of Contract (1132-1144); Motion for Summary Judgment on Defamation (1145-1161); Motion for Summary Judgment on Attorneys Fees Damages Under Florida's SLAPP Law (1162-1249); MSJ Exhibit (Index Nos. 307-485.))*

When the Plaintiff K. McLemore elected to sue and intentionally defame the Petitioner on McLemore Law Firm, P.C.'s Google business page, he intentionally chose to breach a Florida settlement contract and cause professional reputational harm to the undersigned practicing lawyer, also the younger brother of the Appellant, K. McLemore. *(See Index No. 1155: Plaintiff's public defamation of Petitioner on McLemore Law Firm's Google page. See also Exhibit C: Index Nos. 490–645: Settlement Agreement and Release.)*

In Florida, general damages are *conclusively presumed* to result in cases of defamation per se. *See Hartley & Parker v. Copeland,* 51 So.2d 789 (Fla.1951); *Commander v. Pedersen,* 116 Fla. 148, 156 So. 337 (1934); *Miami Herald Publishing Company v. Brown,* 66 So.2d 679, 680-81 (Fla.1953); and *Campbell v. Jacksonville Kennel Club,* 66 So.2d 495 (Fla.1953)

While the Appellee/Petitioner is defamed for being a witness, sued for being a witness, and has his law firm sued in 2023, the hope I will have to cling to is that if I can hold out for another 4-5 more years, I may get a hearing and substantive ruling. If this Court, through some operation of law, equity, or jurisdiction cannot review substantive law, the SLAPP vortex and defamatory beat down will have been also sanctioned by inaction here in the Court.

Petitioner testified at the trial Plaintiff K. McLemore lost in 2013, when Plaintiff K. McLemore was also suing two of his other brothers, Lee and Will, after settling with the undersigned, S. McLemore. Plaintiff judicially admits in oral argument that his is a SLAPP suit, and that Petitioner is a SLAPP target, but the Court will not consider damages or other relief for the Petitioner, other than simple dismissal, ignoring well settled foundational law immunizing witnesses from suit and awarding mandatory damages. *(See Index Nos. 2310–2370: Transcript of February 28, 2020 Hearing, p. 56, l.17 – 22; p. 57, l.13-25.)*

While the Appellant claims the Petitioner committed crimes, stole from him, and fraudulently transferred his property, the Bay County Judgment in 2013 found he had sold any interest in an arm's length transaction, and in addition, had also sued too late on any claim he could have ever had against the Defendants. *(Exhibit A.)*

The 2013 three-page Bay County judgment remains unread by the trial court, ignoring mandatory relief. Another separate judgment in Texas resolved any claim that any other transfer of property after the Plaintiff K. McLemore sold his interest in 2001 was not actionable and Plaintiff had no valid claims. *(Exhibit B)* The trial court has never read this two-page judgment, denying relief to the petitioner by inaction. To show how rank, stale, and rotten the Appellant's case is and allegations are, the trial court could simply refer to the judgments, settlement contract, and defamation, but it has never had time. Though Plaintiff breached and continues to breach the settlement agreement *(Index Nos. 490–645),* maliciously defames and harasses the Petitioner, and burdens Petitioner with yet another SLAPP suit *(Exhibit D)*, the undersigned is withheld from any remedy under Florida Law, other than just dismissal, diverging in even reading any relief under well settled law.

Regarding the Petitioner's vital rights to relief, the Court stated it *"...**simply did not have time to get into the details of that**"*, at the hearing scheduled for February 28, 2020, noticed for the October 29, 2019 Motions for Summary

Judgment and Final Judgment filed by the Petitioner. *(See Index Nos. 2310–2370: Transcript of February 28, 2020 Hearing, p. 57, l.13-18)* Perhaps, influence from the Appellate Court, in an opinion, could prevent this type of circumstance.

The Petitioner, who travelled from Texas, taking professional time away from law practice after first waiting for 4 months, was without ability to have motions read, or fundamental and vital rights considered in the trial court due to its time constraints. *(Id.)* Regarding the Petitioners substantive rights, the Court exclaimed, *"…we'll see what happens on the counterclaim…If you decide to dismiss it, that's up to you. If you decide to go forward with it, that's up to you." (Id., p. 58, l.1–8.)*

Just yesterday, when the undersigned again dared to trudge forward to seek relief from his defamation and SLAPP suit in a Court of law, by briefing and writing motions and providing facts and law to the tribunal, the Appellant Klenton T. McLemore, III promises he will grieve, defame, and sue the undersigned and many others well into the future. *(See Exhibit E.)* In the now second SLAPP suit he filed in March of 2023, coupled as always with a new and freshly contrived grievance strategy, Appellant makes renewed threats for more and more, exemplifying to the Court why a ruling to prevent a miscarriage of justice is warranted. The second attached email *(Exhibit E)* establishes that, Klenton T. McLemore, III knows that the basis of his suit is fake, claiming someone did something to prevent him from getting

a 2013 trial transcript. In this email, he states that he had the transcript back in 2014, when he started threatening grievance then, based on claims of things he found in those transcripts.

In his Texas State Bar complaint in February of 2017, 3 years later, he admitted to the Texas State Bar that, "I don't have anything concrete that proves that Scott H. McLemore asked or had someone ask on his behalf that the Court reporting agency make his transcript unavailable, but it does seem suspicious." Klenton T. McLemore, III swore to that under oath, in his Texas Bar Complaint 6 years ago, establishing this case is knowingly a malicious prosecution of the undersigned.

No relief to the Appellant was read or considered at the second setting and opportunity for the court to rule on the Petitioner's substantive rights. *(See Index Nos. 1605–1637: Transcript of March 4, 2021 hearing, p. 31, l. 14 – p. 32, l. 6. See Also Index Nos. 1070–1072: Order Vacating Order for Defendants Motion for Final Judgment & Motion for Summary Judgement as a Matter Of Law. See also Index Nos. 1073–1089: Order On Plaintiff's Motion For Rehearing As To Defendant Scott H. McLemore.)*

After a full 3 and a half years, without considering, reading or ruling on the Petitioners substantive claims, the Court clarified its inaction stating, "**This does not affect or dispose of any counterclaims asserted by Defendant Scott H.**

McLemore against Plaintiff Klenton T. McLemore, III." *(See Index Nos. 2390–2391: Final Judgment of Dismissal with Prejudice FOR Defendant Scott H McLemore.)* The severely limited nature of trial court's review in any hearing to date ignores res judicata, collateral estoppel, settlement and release, and defamation per-se. Meanwhile, the Appellant is forced to endure the harm of ongoing, protracted litigation over previously adjudicated and previously settled matters leaving Petitioner to suffer 3 separate appellate court cases, on mere dismissal. *(First District Court of Appeal Case No. 1D20-1465; First District Court of Appeal Case No. 1D21-1523; First District Court of Appeal Case No. 1D22-3240)*.

As a matter of adjudicated fact, in the words of the Honorable Judge Allen Register in his 2013 ruling, "…no set of facts established by Plaintiff at the trial of this matter would have allowed the filing of these claims after the applicable statutes of limitations had expired which is the case for all counts of Plaintiff's requested relief." *(Exhibit A)*

Florida has long recognized malicious prosecution claims. Long ago (1932) the Florida Supreme court in *Duval Jewelry Company v. Smith,* spelled out the requirements for bringing such a claim: (1) the commencement or continuation of an original civil or criminal judicial proceeding; (2) its legal causation by the present defendant against a plaintiff who was the defendant in the original proceeding; (3)

its bona fide termination in favor of the present plaintiff; (4) the absence of probable cause for such proceeding; (5) the presence of malice; and, (6) damages to the plaintiff. *Duval Jewelry Company v. Smith*, 136 So. 878 (Fla. 1931); *see also, Adams v. Whitfield,* 290 So.2d 49 (Fla. 1974). Other Florida law, when read, elucidates that Florida protects people from false claims, even with criminal sanction. Florida Statute Section 817.49 states that it is a criminal offense for a person to willfully and knowingly give false information or make a false police report concerning a crime that the person knows did not actually take place.

Plaintiff altogether fails to state a cause of action in the 2019 Case, but admittedly bases his right to sue on the fact that defense counsel in the 2013 Case, Sandy Sandborn, "…called Defendant, Scott McLemore as a surprise last witness against the Plaintiff, on October 17, 2013." *(See Index Nos. 025–053: Bay County 14th Judicial Circuit Case No. 19-3132CA Complaint, p. 8, para. 24. See also Index Nos. 112-151: Amended Complaint, p. 9, para 29; Index Nos. 646–673: Defendant, Klenton Tranum McLemore, III Answer And Affirmative Defenses To Scott H. McLemore's Counter Complaint, p. 2, para 2; Index Nos. 866–873: Amended Answer And Affirmative Defenses To Scott H. McLemore's Counter Complaint, p. 2, para 2.)*

In *Worley v. Central Florida Young Men's Christian Association*, the Florida

Supreme Court, held that the expenses of $90,000.00 in discovery was too much harm, that could be prevented by certiorari review. Petitioner, a practicing 25-year lawyer, has spent over $24,000.00 in professional time as a pro-se defendant, and also a licensed, Texas lawyer, without a ruling from the Court, not including the now third and current appeal of previously adjudicated matters. *(See Index Nos. 2371-2381: Affidavit Of Scott H. McLemore in Support Of Summary Judgment.)* With reputational harm, the damages are legally presumed.

At some point, I hope a court in Florida will, at least once, find my time defending myself and my right to have contracted for settlement in Florida worth judicial review, including the right to prevent harm to my reputation as an officer of the Texas Court in the practice of law. It is literally a settlement release and two judgments being read that can and should, by any legal, review end this.

K. McLemore, the Plaintiff entered into a binding Settlement Agreement and Release with S. McLemore, the undersigned Petitioner. *(Exhibit C: Index Nos. 490–645: Settlement Agreement and Release.)* In the case at bar, the release language could not be more clear. Paragraph 10 of the Release provides as follows:

> "The Parties understand and agree that **this Release constitutes the entire agreement and understanding between the Parties and that this Release supersedes all prior oral and written agreements, understandings,**

statements, and representations. The Parties further understand and agree that any amendment to this release must be in writing and signed by the parties." [emphasis added].

The Release is equally unequivocal and unambiguous that S. McLemore is being released from ALL claims arising from the parties' past relationship and/or the claims asserted in the 2009 Case, as shown by paragraph 4:

" . . . KTMIII [K. McLemore] releases and discharges SHM [S. McLemore], individually and as former trustee of the McLemore Trust, **from any and all past, present, or future Claims, arising from the parties past relationship and/or the Claims made the basis of this Lawsuit** against SHM as of the Date of this Release." [emphasis added].

The Release also contains an affirmative covenant NOT to bring any further lawsuit or action against the other, as plainly stated in paragraph 7 of the Release:

"The Released Parties, for themselves and on behalf of all Releasors, **agree that they will not commence any future lawsuit, action, or complaint of any nature** against any Released Party heriin [sic] relating to Claims asserted in the Lawsuit." [emphasis added].

The court has not heard requests for injunction or any relief from defamation, nearing 4 years. Petitioner is sued anew by the Plaintiff in March of 2023 *(Exhibit D.)* for the same conduct he alleges to have occurred in 2013, related to trial testimony, settled matters and legally decided matters

AUTHORITIES AND ARGUMENT

Jurisdictional elements for certiorari are met here, when an order denying a motion means that proceedings infringing on constitutional rights will continue. *Russell v. Pasik*, 178 So. 3d 55, 58 (Fla. 2d DCA 2015). Immunity may be grounds for certiorari because immunity protects against unnecessary litigation. *James v. Leigh*, 145 So. 3d 1006, 1008 (Fla. 1st DCA 2014) ("When the trial court denies a motion to dismiss on immunity grounds, certiorari review of the non-final order is proper because absolute immunity protects a party from having to defend a lawsuit at all, renders such immunity meaningless..."). The trial court's consideration only of a non-final order of dismissal, sending the Appellant to monitor through three appeals, has rendered immunity meaningless for the undersigned. This reply brief on mere dismissal, is written, in conjunction with the undersigned having requested also Certiorari, per this Court's own standards. Relief can also be had in this Court, by this Court taking long overdue judicial notice of prior court orders and judgments that the trial court has not had time to conduct.

In *Gulf Coast Home Health Servs. of Florida, Inc. v. Department of HRS*, 503 So.2d 415, 417 (Fla. 1st DCA 1987), recognized the general rule "that it is altogether appropriate for the appellate court to take judicial notice of the existence of other cases, either pending or closed, which bear a relationship to the case at bar." This practice is being followed in other appellate courts in Florida. See *Falls v. National Products*, 665 So.2d 320, 322 (Fla.4th DCA 1995) where the court stated that "it is fitting and proper that a [appellate] court should take judicial notice of other actions filed which bear a relationship to the case at bar." The Florida Evidence Code authorizes a court to take judicial notice of its own records, the records of other Florida courts, and records from any other state or federal court of the United States. Section 90.201, Florida Statutes, lists matters that a court must take judicial notice of, including: 1. Decisional, constitutional, and public statutory law and resolutions of the Florida Legislature and the Congress of the United States. 2. Florida rules of court that have statewide application, its own rules, and the rules of United States courts adopted by the United States Supreme Court. 3. Rules of court of the United States Supreme Court and of the United States Courts of Appeal.

The First District in *Gulf Coast Home Health Services v. Department of Health Rehabilitative Services*, 503 So. 2d 415, 417 (Fla. 1st DCA 1987) has articulated some of the best guidance on this issue: stating "The general rule that we deduce from these opinions, and the one which we have applied in disposing of the

motions before us, is that it is altogether appropriate for the appellate court to take judicial notice of the existence of other cases, either pending or closed, which bear a relationship to the case at bar."

Petitioner requests this Court to take judicial notice of the now 48 actions against 48 parties in 6 separate lawsuits that vexatious litigant[2] Klenton Tranum McLemore, III has filed, the bulk of which were dismissed:

1. Cause No. 23-2009-CA-000695-CAA or 09-CA-000695, filed pro se in Gulf County in 2009 against 3 Defendants: Scott, Lee, and Will McLemore. Final judgment in 2013. K. McLemore attempted to reopen the case in 2017, but the motion to reopen was dismissed in 2018.
2. Cause No. 23-2017-CA-000077-CAA or 17-CA-000077, filed pro se in Gulf County in 2017 against 10 Defendants, including: Barron & Redding, PA, Clifford Sanborn, Home Bancshares, Inc, Donnie Gay, Jerry Gaskin, Jr., Carolyn Husband, Mel Magidson, Jr., Centennial Bank, Joseph Silva, Jr., Deborah J. Shoman. The Case was dismissed after first filed 8/18/2019.

[2] "Vexatious litigant" means:1. A person as defined in s. 1.01(3) who, in the immediately preceding 5-year period, has commenced, prosecuted, or maintained, pro se, five or more civil actions in any court in this state, except an action governed by the Florida Small Claims Rules, which actions have been finally and adversely determined against such person or entity. Fla. Stat. § 68.093 (2)(d)1.

3. Cause No. 23-000276-CA, filed pro se in Bay County against 5 Defendants, including: Scott McLemore, McLemore Law Firm, Christine Phipps, Justin Troncoso on March 9, 2023. Case remains subject to dismissal.
4. Cause No. 23-000141-CA, filed in pro se Bay County against 2 Defendants: Jonathan Dingus and Johnathan Dingus, Esq, LLC, on February 7, 2023. Case remains subject to dismissal.
5. Cause no. 19-003132-CA. Filed in Bay County pro se against 21 Defendants, including: Barron & Redding, PA, Scott McLemore, Joseph Silva, Jr., Silva Law Group PA. Multiple Final Judgments entered on 9/28/2022. Notice of appeal 10/10/2022. Case remains open while case also on appeal.
6. Cause No. 19-000223-CA, filed pro se in Walton County, against 7 Defendants, including: Green & Green, PA, Klenton T. McLemore, Jr, Will and Lee McLemore. Order granting Defendants' Motion to Dismiss on 4/7/2021. Case remains open.
7. Appellate Case No: 1D21-1523, dismissed June 16, 2016.
8. Appellate Case No: 1D21-1523, dismissed July 21, 2021.
9. Appellate Case No: 1D22-3240 (L.T. No. 19 CA 3132), currently pending before the First District Court of Appeals.

Appellate courts in Florida may, when appropriate, take judicial notice of their own records in related cases. See *Hillsborough County Board of County*

Commissioners v. Public Employees Relations Commission, 424 So.2d 132, 134 (Fla. 1st DCA 1982); See also *Cabrera v. State*, 62 So.2d 1171 (Fla. 4th DCA 2011). The strength of the judicial system is recognized and realized in the doctrine of res judicata, in that a final judgment by a court of competent jurisdiction is absolute and puts to rest every justiciable, as well as actually litigated issue. *Albrecht v. State*, 444 So.2d 8, 11 (Fla. 1984).

The doctrines of res judicata and collateral estoppel, were "recognized by the Roman law, and later by the English courts, and it is said that [each] pervades, not only our own, but all other, systems of jurisprudence to this day, and has become a rule of universal law." *Cragin v. Ocean & Lake Realty Co.*, 133 So. 569, 571 (Fla. 1931); see also *Coral Realty Co. v. Peacock Holding Co.*, 138 So. 622, 624 (Fla. 1931).

The trial court, in ignoring the settlement agreement, renders this Court's holding that "the right to contract is one of the most sacrosanct rights guaranteed by our fundamental law" completely meaningless, without review ever occurring by the trial court. *Miles v. City of Edgewater Police Dep't/Preferred Governmental Claims Sols*., 190 So. 3d 171 (Fla. 1st DCA 2016).

Material injury that cannot be corrected on appeal, otherwise termed irreparable harm, is jurisdictional and present here. See *Citizens Prop. Ins. v. San*

Perdido Ass'n, 104 So. 3d 344, 351 (Fla. 2012). See also *Plantz v. John*, 170 So. 3d 822, 824 (Fla. 2d DCA 2015).

Petitioner asserted absolute defenses to the Plaintiff's claims, since listing the affirmative defenses in the answer and affirmative defenses filed on October 15, 2019. *(See Index Nos. 218–224: Original Answer and Affirmative Defenses to Amended Complaint…)*. The Petitioner moved for summary judgment based upon the rights as expressed in a Motion for Summary Judgment filed October 29, 2019, and again filed as three discrete motions, in a bit size, you pick-em, request for fundamental relief on April 7, 2021. *(See Index Nos. 276–485: Motion for Final Judgment; Motion for Summary Judgment as a Matter of Law and Application for Injunctive Relief (Index Nos. 276-303); Index of Exhibits in Support of Motion for Summary Judgment & Motion for Summary Judgment as a Matter of Law and Application for Injunctive Relief (Index Nos. 304-306); MSJ Exhibit (Index Nos. 307-485)). See also Index Nos. 1132-1249: Motion for Summary Judgment on Breach of Contract (1132-1144); Motion for Summary Judgment on Defamation (1145-1161); Motion for Summary Judgment on Attorney's Fees Damages Under Florida's SLAPP Law (1162-1249); MSJ Exhibit (Index Nos. 307-485).*

Explaining its divergence from well settled law, in its ruling, the Court opined;

> "The Court orally ruled that it was granting the Motion to Dismiss with prejudice, but it was not going to grant the Motion for Summary Judgment because more time would be needed. SCOTT H. McLEMORE could proceed with his counterclaim knowing that Plaintiff's case was over, and a hearing could be scheduled for the two remaining parties. The Court reserved jurisdiction as to damages." *(See March 8, 2021 Order Granting Scott H. McLemore's Motion To Dismiss Amended Complaint With Prejudice, Index Nos. 1067–1069, pg.2, pr. 5)*

The Court diverges from the general principle that, "settlements are highly favored and will be enforced whenever possible." *Bateski v. Ransom,* 658 So. 2d 630, 631 (Fla. 2d D.C.A. 1995); *see also, Robbie v. City of Miami,* 469 So. 2d 469 1384, 1385 (Fla. 1985); *Prestige Valet v. Mendel,* 14 So. 3d 282, 283 (Fla. 2d D.C.A. 2009); *Dorson v. Dorson,* 393 So. 2d 632, 633 (Fla. 4th D.C.A. 1981).

The Court fails to rule on the existence and applicability of the contract, which is subject to the usual rules of contract interpretation, but only if judicially reviewed. *Robbie v. City of Miami,* 469 So. 2d 469 1384, 1385 (Fla. 1985); *Dorson,* 393 So. 2d at 633. The Court diverges from well settled law in refusing to read the documents comprising the contract between the parties over these matters. The settlement agreement *(Index Nos. 490–645)* is specific and represents the mutual agreement of the parties, ending this suit, 10 years ago, and it is subject to enforcement and review. *Bateski,* 658 So. 2d at 631; *Don L. Tullis & Associates, Inc. v. Benge,* 473 So. 2d 1384, 1386 (Fla. 1st D.C.A. 1985).

In the case at bar, the release language could not be more clear. Paragraph 10 of the release provides fundamental relief from this meritless suit, as follows:

> "The Parties understand and agree that **this Release constitutes the entire agreement and understanding between the Parties and that this Release supersedes all prior oral and written agreements, understandings, statements, and representations**. The Parties further understand and agree that any amendment to this release must be in writing and signed by the parties." [emphasis added].

The release is equally unequivocal and unambiguous in that S. McLemore is being released from ALL claims arising from the parties' past relationship and/or the claims asserted in the 2009 Case, as shown by paragraph 4:

> " . . . KTMIII [K. McLemore] releases and discharges SHM [S. McLemore], individually and as former trustee of the McLemore Trust, **from any and all past, present, or future Claims, arising from the parties past relationship and/or the Claims made the basis of this Lawsuit** against SHM as of the Date of this Release." [emphasis added].

This suit, in addition to targeting the Appellee/Petitioner with a SLAPP suit, is already settled; but the Court will not review or rule on the applicability of the settlement release and agreement at all disfavoring entirely its significance in Florida law. The release contains an affirmative covenant NOT to bring any further lawsuit or action against the other, as plainly stated in paragraph 7 of the Release:

> "The Released Parties, for themselves and on behalf of all Releasors, **agree that they will not commence any future lawsuit, action, or complaint of any nature** against any Released Party heriin [sic] relating to Claims asserted in the Lawsuit." [emphasis added].

K. McLemore's claims in the 2019 Case that S. McLemore agreed to never testify in the trial of the 2013 Case and that it was part of an oral agreement he made related to the release is frivolous, disingenuous, barred by the parol evidence rule and absolute immunity from suit. A reading of the unambiguous release and Settlement Agreement *(Exhibit C)* reveals that no such language exists in the Release. The parol evidence rule precludes the admissibility of extrinsic "verbal agreements [evidence] between the parties to a written contract which are made before or at the time of execution of the contract." *Pavolini v. Williams*, 915 So.2d 251, 254 (Fla. 5th DCA 2005). But here, the Court will not consider its application. "Parol evidence is inadmissible to contradict, vary, or modify terms which are unambiguously contained within a written agreement." *Prime Homes, Inc. v. Pine Lake, LLC,* 84 So.3d 1147, 1152 (Fla. 4th DCA 2012).

Any application of the parol evidence rule precludes the admissibility of claimed extrinsic "verbal agreements [evidence] between the parties to a written contract which are made before or at the time of execution of the contract", but referring to it here shows the underlying claims are frivolous and subject to summary judgment as well as monetary sanction and SLAPP damages. *Pavolini v. Williams*, 915 So.2d 251, 254 (Fla. 5th DCA 2005).

Emboldened by the trial court's unwillingness to even consider or read any relief requested by the Appellee/Petitioner, in continuance of the ongoing pattern of

frivolous and vexatious litigation, on March 9, 2023, the Plaintiff has filed **another lawsuit**[3] against Petitioner and 22 others, urging the same previously decided damages claims that the Petitioner is not afforded a hearing on.

The following factors are fundamental and deserve review by this Court of the District Court rulings and its stated reasons for not ruling in this instance, extending the miscarriage of justice for the Appellant: a) SLAPP Suit; b) Immunity from Suit for Testifying Witness; c) Written Settlement Agreement; d) Res Judicata; and, e) Statute of Limitations. f) Defamation With Malice, Per-Se.

a. SLAPP Suit

This case presents the type of miscarriage of justice under Florida's general anti-SLAPP law, providing a defendant can file a motion to dismiss or for summary judgment, which the court will hear "at the earliest possible time." § 768.295(4). The Petitioner, by the trial court's inaction, is denied SLAPP Act Damages and a Final Judgment, indefinitely, in favor of further litigation and lunacy from the admittedly bi-polar, hypomanic Plaintiff, who has now named 22 parties in the instant suit, just this year, and plainly intends to continue.

[3] Cause No. 23000276CA; in the Fourteenth Judicial Circuit In and For Bay County, Florida, a copy of which is attached as Exhibit D.

The SLAPP Act, applicable here, supports a basis for Certiorari review and is well established in *Gundel v. AV Homes, Inc.*, 264 So. 3d 304 (Fla. 2d DCA 2019 There the Court held that certiorari was appropriate, because "[i]n the context of the Anti-SLAPP statute, the harm that results from the court's improper denial of a motion to dismiss . . . *is precisely the harm that the Anti-SLAPP statute seeks to prevent–unnecessary litigation*." *Id*. at 311 (emphasis supplied).

Likewise, under the same analysis of "meaningless litigation on appeal" being a basis for certiorari review, never permitting a hearing on breach of a settlement contract creates the same painful irony of making the settlement contract and concept of settlement legally meaningless and of no moment under Florida law for the undersigned Texas lawyer, here, now a Pro-Se Appellee and also a pro-se petitioner requesting Certiorari review.

Breach of contract requires simple proof; it does not require waiting 4 years to be heard, particularly when it involves a settlement agreement of the underlying claims and suit. *Knowles v. C.I.T.*, 346 So. 2d 1042, 1043 (Fla. 1st DCA 1977) ("It is elementary that in order to recover on a claim for breach of contract the burden is upon the claimant to prove by a preponderance of the evidence the existence of a contract, a breach thereof and damages flowing from the breach."); *see also A.R. Holland, Inc. v. Wendco Corp.*, 884 So. 2d 1006, 1008 (Fla. 1st DCA 2004) ("In the

proceeding below, it was Holland's burden to prove that (1) a contract existed, (2) the contract was breached, and (3) damages flowed from that breach."); *Capitol Envtl. Services v. Earth Tech,* 25 So. 3d 593, 596 (Fla. 1st DCA 2009) ("The injured party is entitled to recover all damages that are causally related to the breach so long as the damages were reasonably foreseeable at the time the parties entered into the contract.") Petitioner met his burden on summary judgment, twice establishing that the Plaintiff breached his settlement agreement by suing the Petitioner for the settled matters.

Florida's SLAPP laws contain expeditious resolution requirements and damage and attorneys' fee award provisions for prevailing defendants. §718.1224(3); §720.304(4)(c). Specifically, defendants can "move the court for an order dismissing the action or granting final judgment in favor to that [defendant]" and/or "file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the…lawsuit has been brought in violation of this section." Never granting a hearing for the Petitioner's motions ignores this statute.

If a §768.295(4) motion is filed, defendant "has a right to an expeditious resolution of a claim that the suit is in violation of this section" and the court must set the hearing "as soon as practicable," and hold it "at the earliest possible time after the filing of the [plaintiff's] response." Florida's anti-SLAPP statute prohibits

meritless lawsuits aimed at those exercising "rights of free speech in connection with public issues, and the rights to peacefully assemble, instruct representatives, and petition for redress of grievances." § 768.295(1), Fla. Stat. (2021). Petitioner, as a testifying witness, is perpetually denied any relief by these stated protections due to the trial courts inability to schedule hearings and make rulings on the Petitioners substantive claims for affirmative relief.

These rights are also already protected by the United States and Florida constitutions. § 768.295(3), Fla. Stat. The statute makes three substantive changes to Florida law. First, it entitles a defendant that prevails under the statute to an award of attorney fees and costs. § 768.295(4), Fla. Stat. The Petitioner has proved $24,480.00 in professional time, defending and seeking relief from this suit. *(See Index Nos. 2371-2381: Affidavit Of Scott H. McLemore in Support Of Summary Judgment.)* Second, it provides a defendant like the Petitioner, sued in violation of the statute to an "expeditious resolution." *Id*. See also *Lamont v. State*, 610 So. 2d 435 (Fla. 1992) ("[E]ven where a court is convinced that the legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity.") *Lamont quoting St. Petersburg Bank & Trust Co. v. Hamm,* 414 So. 2d 1071, 1073 (Fla. 1982) (quoting *Van Pelt v. Hilliard,* 78 So. 693, 694 (1918)).

b. Immunity from Suit for Testifying Witness

Immunity may be grounds for certiorari because immunity protects against unnecessary litigation. *See James v. Leigh*, 145 So. 3d 1006, 1008 (Fla. 1st DCA 2014) ("When the trial court denies a motion to dismiss on immunity grounds, certiorari review of the non-final order is proper because absolute immunity protects a party from having to defend a lawsuit at all and waiting until final appeal would render such immunity meaningless...").

Failing to rule erroneously deprives a party of immunity from suit as a matter of law, because it requires the party to defend the suit, and effectively deprives them of that immunity. See, e.g., *Miccosukee Tribe of Indians v. Lewis Tein, P.L.*, 227 So. 3d 656, 660 (Fla. 3d DCA 2017) (order denying motion to dismiss based on tribal immunity causes irremediable harm and supports certiorari jurisdiction); *Tucker v. Resha*, 648 So. 2d 1187, 1189 (Fla. 1994) (order denying qualified immunity as a matter of law merits interlocutory review); see also *Bd. of Regents of State of Fla. v. Taborsky*, 648 So. 2d 748, 755 (Fla. 2d DCA 1994) (refusal to grant summary judgment based on collateral estoppel causes irremediable harm by requiring party to face second trial that should have been prohibited). In this case, the trial court's order causes irremediable harm for the same reason: It strips the Petitioner of the protection and immunity Petitioner has to engage in protected conduct.

The Florida Supreme Court in *Echevarria*, 950 So.2d at 384, extended the litigation privilege, holding that "[t]he litigation privilege applies across the board to actions in Florida, both to common-law causes of action, those initiated pursuant to a statute, or some other origin. Absolute immunity must be afforded to any act occurring during the course of a judicial proceeding . so long as the act has some relation to the proceeding." *Debrincat v. Fischer*, 217 So.3d 68 (Fla. 2017).

In his pleading, Plaintiff admits that his damages claims are identical to his previous trial loss in December of 2013 over a claim to assets in a Trust he claims in his current pleading are valued at $350,000.00, a case the Plaintiff had settled with the Petitioner, and later lost at trial, both subject to res judicata and collateral estoppel, never read. (See *Dade Eng'g Corp. v. C. Hunt Enters., Inc*., 972 So. 2d 1096 (Fla. 2d D.C.A. 2008)). Plaintiff contends the Petitioner's trial testimony harmed the outcome of his case, so the Petitioner owes him the same damages, despite res judicata, settlement agreement and release, all while Plaintiff defames the Petitioner and the Court has no time to consider the law preventing this miscarriage of justice.

c. Written Settlement Agreement

Plaintiff seeks identical damages from Petitioner as he did in the previously settled case regarding a claimed interest in trust property. Now, however, the

Plaintiff alleges that witness testimony of the Petitioner caused him to have a bad outcome, despite the fact that the Petitioner is immune from suit, and in addition to the Plaintiff being subject to collateral estoppel and res judicata. *(See Exhibit C)*

d. Res Judicata and Collateral Estoppel

A judgment decided against Plaintiffs' claims and "[c]ollateral estoppel precludes re-litigating an issue where the same issue has been fully litigated by the parties or their privies, and a final decision has been rendered by a court." *Pearce v. Sandler*, 219 So.3d 961, 965 (Fla. 3d DCA 2017) quoting *Mtge. Elec. Registration Sys., Inc. v. Badra*, 991 So.2d 1037, 1039 (Fla. 4th DCA 2008). Also, preclusive of the need to relitigate these matters, **res judicata applies when the following four identities are satisfied: "(1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of persons and parties to the action; and (4) identity of the quality of the persons for or against whom the claim is made."** *Professional Roofing and Sales, Inc. v. Flemmings*, 138 So.3d 524, 527 (Fla. 3d DCA 2014) quoting *Topps v. State,* 865 So.2d 1253, 1255 (Fla. 2004).

In addition to losing that trial over his claims related to a former trust and his sold interest in it, a declaratory judgment action in Texas precluded by judgment any interest in the property interest Plaintiff stills claims as a basis for his newest now

almost four-year-old lawsuit, after losing his first 4 year old lawsuit, leaving me in this vexatious SLAPP trap, now for 8 years.

e. Statute of Limitations

Judge Register, in 2013, after four years and a full bench trial, found substantively that in 2001, Plaintiff sold, in an arm's length transaction to his brother, Lee, Plaintiff's interest in a former trust, and that his claims were also barred by the Statute of Limitations, since he waited eight years from the date of his sale to contest the terms of the sale. Taking a similar approach, the trial court here, has not read the statute of limitations issues determining the case here, for nearing 4 years.

Under Florida's general anti-SLAPP law, a defendant can file a motion to dismiss or for summary judgment, which the court will hear "at the earliest possible time." § 768.295(4). The trial court has failed to follow and has diverted from the law in sending the Petitioner forward into the appellate courts, "without d[el]ay" or ruling on affirmative SLAPP motions and awarding SLAPP damages, to which the Petitioner has shown himself justly entitled, by the dismissal of the SLAPP suit, in part. The SLAPP statute provides: "It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts." § 768.295(1). To that end, section 768.295(4) provides that a "person or entity sued … in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation

of this section" and "may move the court for an order dismissing the action or granting final judgment in favor of that person" or "file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the claimant's … lawsuit has been brought in violation of this section." § 768.295(4).

As this Court has already ruled, in this case, the March 17, 2020 Joint Order Granting Defendant's Motion to Dismiss Amended Complaint merely grants a motion to dismiss and does not actually dismiss the action as to the parties concerned. (See Fla. R. App. P. 9.1100); *Dedge v. Crosby*, 914 So. 2d 1055,1056 (Fla.1st DCA 2005) ("[A]n order granting a motion to dismiss with prejudice is no more final than an order granting a motion to dismiss without prejudice."); *Johnson v. First City Bank of Gainesville*, 491 So. 2d 1217,1218 (Fla.1st DCA 1987) (finding that an order that granted a motion to dismiss "with prejudice" without dismissing the case is not final and not appealable). The trial court ignored the mandatory provisions contained within the SLAPP act, while the SLAPP-Plaintiff/Appellant, was judicially admitting the basis for the mandatory relief on the record, in open court and in pleadings he had filed.

Petitioner is trapped, without any affirmative relief, in now the third appeal of a non-final order of dismissal entered in this case, while always having established

claims for relief presented upon summary judgment, without a reading or substantive hearing. The SLAPP statute provides: "It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts." § 768.295(1). To that end, section 768.295(4) provides that a "person or entity sued … in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section" and "may move the court for an order dismissing the action or granting final judgment in favor of that person" or "file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the claimant's … lawsuit has been brought in violation of this section." § 768.295(4).

This case warrants Certiorari review, which has been requested in separate filings I am fearful will also be ignored due to busy dockets, so to seek judicial review, I have also outlined them here, hoping to get eyes on them and a Judicial ruling, in any forum, in any way, including a Petition for Certiorari to the Florida Supreme Court, if further enforcement of mandatory, fundamental, sacrosanct and vital rights of the undersigned are denied judicial review in this and also the trial Court.

BREACH OF SETTLEMENT AGREEMENT ENFORCEMENT WARRANTED

By its time constraints, the Court ignores the legal principle that, "settlements are highly favored and will be enforced whenever possible." *Bateski v. Ransom,* 658 So. 2d 630, 631 (Fla. 2d D.C.A. 1995); *see also, Robbie v. City of Miami,* 469 So. 2d 469 1384, 1385 (Fla. 1985); *Prestige Valet v. Mendel,* 14 So. 3d 282, 283 (Fla. 2d D.C.A. 2009); *Dorson v. Dorson,* 393 So. 2d 632, 633 (Fla. 4th D.C.A. 1981). The Court ignores that a settlement remains a contract subject to the usual rules of contract interpretation. *Robbie,* 469 So. 2d at 1385; *Dorson,* 393 So. 2d at 633. As long as a settlement agreement is sufficiently specific and represents the mutual agreement of the parties, it is subject to enforcement. *Bateski,* 658 So. 2d at 631; *Don L. Tullis & Associates, Inc. v. Benge,* 473 So. 2d 1384, 1386 (Fla. 1st D.C.A. 1985).

The offer and acceptance of the settlement binds the parties to its conditions and terms. *Martinez v. South Bayshore Tower, LLLP,* 979 So. 2d 1023, 1024 (Fla. 3d D.C.A. 2008), *citing McGehee v. Mata,* 330 So. 2d 248 (Fla. 3d D.C.A. 1976). The continuation of this suit, denying summary judgment relief, staying the Petitioners case indefinitely for now over three and a half years, meets the standards for Certiorari review, preventing manifest injustice.

Testifying as a witness is a protected right under the United States and Florida Constitutions, but not observed in the trial court by any ruling. *See FLA. STAT.*

768.295 (2022) (stating that the purpose of the anti-SLAPP statute is not only to protect First Amendment rights under the United States Constitution, but also to protect the freedoms afforded by Section 5, Article I of the Florida Constitution.)

In analyzing the mere dismissal, for the six Defendants dismissed by the Court's February 28, 2020 Order, the Court found that "…Plaintiff's Amended Complaint impermissibly commingles separate and distinct causes of action…and asserts multiple bare legal conclusions…and fails to allege an actionable underlying tort or wrong or unlawful act or a lawful act by unlawful means". *(See Index Nos. 884- 889: Joint Order On Barron & Redding, P.A., Clifford W. Sanborn, Clifford W. Sanborn, P.A., Deborah Shoman Zirbel, Deborah J. Shoman, And Deborah J. Shoman, Inc. D.B.A. Stewart & Shoman Reporting's Motions To Dismiss Amended Complaint.)* Though the same facts apply here to the undersigned, I was not included in the Order.

The trial court also noted that, "Plaintiff previously sued these Defendants in a Gulf County action alleging the same or similar causes of action. In this Court, Plaintiff has proceeded to file an original and Amended Complaint. Plaintiff's proposed Second Amended Complaint fails to cure the deficiencies identified by the parties making further amendment futile." *(Id., p. 3, para 3.)*

The Supreme Court reflects the Court's policy choices as to which types of non-final orders may be appealed to the district courts. *See Citizens Prop. Ins. Corp. v. San Perdido Ass'n, Inc.*, 104 So. 3d 344, 348 (Fla. 2012) ("In delineating which categories of non- final orders are appealable to the district courts, this Court makes policy determinations…and then weighs the importance of having interlocutory review in light of potential drawbacks, such as increased appellate workload and concomitant delay in the resolution of the case."). Here, the appellate court has handled 3 appeals, but the trial court has only considered a motion to dismiss, never more substantive matters, due to its time constraints.

Witness immunity from suit is commanded by statute, the Florida Constitution and the US Constitution. Florida's SLAPP law commands the Court to award damages for attorney's fees to successful SLAPP defendants, but the Court has not considered them. The Settlement Contract also provides direct remedies for breach which the Court has not considered. *Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole,* 896 So.2d 773 (Fla. 1st DCA 2004).

A few years later, the Florida Supreme Court reviewed the First District Court of Appeal's decision of *Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole* , 950 So. 2d 380 (Fla. 2007). Also, the Southern District of Florida recently held that Florida's Anti-SLAPP statute can entitle a defendant to attorney's fees in federal

court when the defendant demonstrates: (1) the plaintiff filed claims that were "without merit", and (2) the lawsuit was filed "'primarily' because the person against whom the suit was filed exercised the constitutional right of the speech in connection with a public issue." *Bongino v. The Daily Beast Co., LLC*, No. 19-14472-CV-Martinez-Maynard (S.D. Fla. Aug. 6, 2020). In 2002, the Third District Court of Appeal decided in *Boca Investors Group, Inc. v. Potash,* 835 So. 2d 273 (Fla. 3d DCA 2002) — as *Ange* did before — that "'the privilege arises upon the doing of any act necessarily preliminary to judicial proceedings'[and that a]ccordingly, those acts must be afforded absolute immunity."

Dismissal based only on the pleadings is appropriate when plaintiff fails to allege enough facts to state a claim that is plausible on its face and that conclusory allegations or legal conclusions masquerading as facts are not entitled to an assumption of truth. *Tillet v. BJ's Wholesale Club, Inc*., 2010 U.S. Dist. LEXIS 79443 at *8-9 (M.D. Fla. 2010).

Continuing without the requested rulings continues to impose additional litigation on the Petitioner—the very harm the SLAPP statute seeks to avoid and settlement agreements contractually avoid—for which res judicata and collateral estoppel also, when acknowledged, avoid. Not only does the SLAPP act aim to limit protracted litigation, so do settlement agreements, which are favored. Further, as a

general principle, "settlements are highly favored and will be enforced whenever possible." *Bateski v. Ransom,* 658 So. 2d 630, 631 (Fla. 2d D.C.A. 1995); *see also, Robbie v. City of Miami,* 469 So. 2d 469 1384, 1385 (Fla. 1985); *Prestige Valet v. Mendel,* 14 So. 3d 282, 283 (Fla. 2d D.C.A. 2009); *Dorson v. Dorson,* 393 So. 2d 632, 633 (Fla. 4th D.C.A. 1981).

A mere reading of the 2013 contract *(Exhibit C)* has not occurred due to the trial court's stated lack of time. Although the Florida Supreme Court has recognized for well over a century that defamation per se statements are so powerful in their ability to hurt the targeted person, Florida deems them to be presumed harmful as a matter of law, no review occurs. See *Montgomery v. Knox,* 23 Fla. 595, 3 So. 211, 217 (1887).

Defamatory per se statements include those that:

- Hurt someone's profession, office, business or trade; or
- Falsely state a person has been involved in some kind of criminal activity.

Florida esteems an unusually high protection of personal reputation, derived from the common practice of mankind and ancient roots: a value as old as the Book of Exodus and the Ten Commandments, proclaiming that "Thou shall not bear false witness against thy neighbor." *Lawnwood Medical Center, Inc.v. Sadow*, 43 So. 3d

710, 729 (Fla. 4th DCA 2010). The trial court has never had time to read the law on the esteem Florida law gives to a human being's reputation, because of a lack of time. Meanwhile, the per-se defamatory statements of the Plaintiff remain unchecked by any judicial review or ruling, simply denied as if they never existed and were never proven, even though they have been, for more than 3 years.

CONCLUSION

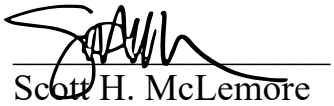
Klenton Tranum McLemore, III is a vexatious litigant. Though the Appellee/Petitioner's rights exist in the law, ignoring claims for summary judgment and final judgment duly supported by evidence, while for years and years no Court will read them, exacerbates and exponentiates the harm suffered by the Petitioner.

The Appellant who bought a settlement for $2,500.00, has now expended more than 20 times that amount defending and prosecuting rights the law provides as **mandatory**, but no Court in Florida has yet found reason to read.

This Court should dismiss this appeal and reinstate the Order of the trial court dated May 20, 2020, Index Number 929, and remand the case for prompt and final rulings and findings on mandatory damages, attorney's fees damages, presumed damages for defamation per-se, breach of contract damages, compensatory damages,

costs of Court and all other relief, to which the Appellant has shown himself to be justly entitled, now nearing 4 years in the trial court.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I CERTIFY that on April 17, 2023, a true and correct copy of the foregoing has been served by E-Mail through the Florida Court E-filing Portal to:

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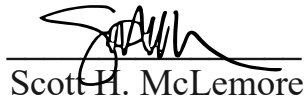
CERTIFICATE OF COMPLIANCE WITH FONT STANDARDS

I CERTIFY that this petition was prepared using Times New Roman 14-point font.



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