IN THE SUPREME COURT OF FLORIDA

JOE ANDERSON, JR.,	)	
	)	
Petitioner,	)	**CASE NO.: 06-2174**
	)	
v.	)	
	)	**Lower Tribunal No. 1D05-2179**
GANNETT CO., INC., MULTIMEDIA HOLDINGS CORP d/b/a PENSACOLA NEWS JOURNAL and MULTIMEDIA, INC.,	)	
	)	
Respondents.	)	
	)	

RESPONDENTS' ANSWER BRIEF

On Review from the District Court of Appeal, First District
State of Florida

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STATEMENT OF THE CASE AND OF THE FACTS

The Nature of the Case

Plaintiff Joe H. Anderson, Jr. ("Anderson") is the founder of Anderson Columbia Co., Inc. ("Anderson Columbia"), a large road paving company based in Lake City, with operations throughout Florida including Escambia County.

In December 1998, defendant Pensacola News Journal ("News Journal") published a series of news articles discussing regulatory compliance problems between Anderson Columbia and Florida transportation and environmental regulators. Def. Ex. 21 A-E.[1] One article in that series, published December 14, 1998 and entitled "Company Pursues Political Clout," reported on plaintiff's and Anderson Columbia's "pattern of making and benefiting from extensive campaign contributions and political connections" (Slip Op. p. 3), and also mentioned a pending federal grand jury investigation into those political connections. Def. Ex. 21B; A. 1, A. 2.

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[1] Record citations are designated as "R. [volume] p. _;" trial exhibits as "Pl. Ex. _" or "Def. Ex. _" and Appellants' District Court Appendix as "A.__." Trial transcript pages are designated as "[volume] Tr. p. __," and are in A. 16.

Citations to the Slip Opinions of the District Court in this case (Supreme Court Record p. 1) are designated "Slip Op. p. _." References to Plaintiff's Answer Brief in the District Court (Tab E) are designated as "Pl. DCA Br. _." References to the oral argument in the District Court (http://www.1dca.org/video/2006.htm), held July 11, 2006 in Case No. 05-2179, are designated "Oral Arg. at [minute]: [second] [of elapsed time]."

The Petitioner's Initial Brief in this Court is designated "Pet. Br. _;"

The article noted that a federal grand jury had earlier indicted plaintiff Joe Anderson, charging him with bribing local government officials to obtain road work in Hillsborough County. Mr. Anderson pleaded guilty to mail fraud. The federal court sentenced him to a $384,000 fine and a three-year probation. The article explained that the court extended Mr. Anderson's probation after he killed his wife with a shotgun, the possession of which violated his probation terms. *See* § 790.23, Fla. Stat. (2005). Def. Ex. 14, A. 3; Def. Ex. 21B; A. 1. Though the article noted that law enforcement officials determined the killing was a hunting accident, Mr. Anderson claims it falsely implied that he murdered his wife and got away with it. Fourth Amended Complaint, R. XIX p. 3276-83. Plaintiff bases his claim on the portion of the article that began on the article's second page (at its seventeenth sentence):

> In 1988, while still on probation and before his conviction was reversed, Anderson shot and killed his wife, Ira Anderson, with a 12-gauge shotgun.
>
> The death occurred in Dixie County just north of Suwannee, where days before the shooting Joe Anderson had filed for divorce but then had the case dismissed.
>
> Law enforcement officials determined that the shooting was a hunting accident.
>
> A federal judge ruled that by having the shotgun, Anderson violated his probation, and the judge added two years to Anderson's probation.
>
> Captain Bob Stanley of the Florida Game & Fresh Water Fish Commission was one of the officials who went to the scene of the shooting.
>
> 'Anderson said that he and his wife were deer hunting when she walked one way down a road and he

> walked the other way,' Stanley recalls. A deer ran between them and Joe Anderson fired twice. One shot hit the deer, the other hit his wife.
>
> 'One buckshot pellet hit her under the arm and went through her heart,' Stanley said.
>
> When investigators arrived on the scene, he said, 'They found that the other people in the hunting party had taken the deer back to the hunt club and were cleaning it.'
>
> 'You have to understand, it's Dixie County,' he said. 'Back then they shut down the schools for the first week of hunting season.'
>
> He said that Anderson had stayed behind at the shooting scene, and he described Anderson as looking 'visibly upset' after the shooting.

Def. Ex. 21B. Plaintiff initially claimed that the article was a libel, but his libel complaint was not timely filed. He later re-pleaded the libel claim as one for "false light" invasion of privacy, and thereby averted a statute of limitations dismissal.

Plaintiff admits that the article was true. He made no attempt at trial to prove that the claimed murder implication – the "false light" in which he asserts the article placed him – was, in fact, false. Indeed, for his own tactical reasons he obtained an order *in limine* precluding any evidence about the circumstances of the killing. Nevertheless, the jury awarded him damages of $18.3 million.

On appeal, the District Court reversed the judgment and dismissed the case, certifying conflict and a question of great public importance. Plaintiff timely invoked the discretionary jurisdiction of this Court, which has postponed a decision on jurisdiction.

The Course of the Proceedings

Proceedings in the trial court

On March 21, 2001, Mr. Anderson and Anderson Columbia filed this action, asserting claims for libel and tortious interference with contract against the News Journal, related corporations, and individuals. Complaint, R. I p. 1-30; A. 4. Plaintiff alleged that much of the 1998 series of news articles (including the article that is now the sole focus of this case) was libelous. *Id*. at 7, 12 ¶ 22. Two months later, plaintiff filed an Amended Complaint, reasserting that the article was a libel. Amended Complaint, R. I ¶ 24 at p. 39, ¶ 26.

In January 2002, the trial court granted summary judgment, dismissing many of Anderson Columbia's libel claims because they had been filed beyond the two-year libel statute of limitations. Order, R. III p. 478-80. Plaintiff, however, had renamed his libel claim as a "false light" invasion of privacy. He admitted that the article was literally true, but contended that it placed him in a "false light" by implicitly accusing him of murder. Second Amended Complaint, Count III, R. II p. 212-27; A. 5. Plaintiff's amended pleading successfully avoided dismissal on statute of limitations grounds. Order, R. III p. 480.

In June 2003, defendants again moved for summary judgment. Defendants' Motion for Summary Judgment, R. IV p. 633-37. In September 2003, the trial court dismissed the tortious interference claim, but refused to dismiss Anderson

Columbia's remaining libel claim and Mr. Anderson's false light claim. Order, R. XX p. 3349-51.

In November 2003, plaintiff moved *in limine* to preclude evidence relating to the shooting. Plaintiff's Motion *in Limine,* R. XX p. 3448-65; A. 6, p. 11-13. Defendants opposed the motion, arguing that the plaintiff was required to prove falsity as a central element of his false light case. R. XXIII p. 3710-29. On November 26, 2003, the trial court entered a pretrial order excluding all evidence relating to the killing of plaintiff's wife. Order on Plaintiff's Motion *in Limine,* R. XXIV p. 3924-31; A. 7. The trial court thus relieved plaintiff of his burden to prove the falsity of the "light" in which the article allegedly cast him. R. XXIV p. 3931; A. 7, p. 8.

On the eve of trial, Anderson Columbia dismissed its remaining claim, and plaintiff dismissed his claims against the individual reporter defendants. The trial thus proceeded on a single false light claim by Mr. Anderson against the corporate defendants. Order on Pending Motions, R. XX p. 3349-51; Fourth Amended Complaint, R. XIX p. 3276-83.

On December 12, 2003, after a two week trial, the jury declined to award plaintiff any privacy damages (such as shame, humiliation, mental anguish, or hurt feelings). Verdict, R. XXV p. 4069-70; A. 8. Instead, it awarded him damages of $18,284,334 for reputational losses incurred by a non-party corporation in which

plaintiff had a small stock ownership interest. The jury deadlocked on punitive damages. *Id.* The trial court received the compensatory damages verdict and declared a mistrial as to the punitive damages claim. 19 Tr. p. 3344-45. On March 23, 2004, the trial judge denied defendants' post trial motions (R. XXV p. 4226-89), and ordered a new trial on punitive damages. R. XXVII p. 4467-68. Defendants appealed the new trial order. Notice of Appeal, A. 9. The District Court dismissed the appeal (A. 10) and denied rehearing in June 2004.

The punitive damages retrial began on June 21, 2004, but the trial court granted the parties' joint motion for a mistrial, based on juror misconduct. 5 Tr. (June 23, 2004) p. 908. The punitive damages trial was reset for October 2004, but Hurricane Ivan forced a continuance until May 2005.

In March 2005, defendants moved to dismiss the punitive damages claim because plaintiff had knowingly and willfully violated a court order. Memorandum in Support of Defendants' Motion to Dismiss Punitive Damages Claim, R. XXXI p. 4943; A. 11. The trial court granted that motion on April 7, 2005, as a sanction for plaintiff's "willful, contumacious disregard of the Court's orders and instructions." Order on Motion to Dismiss Claim for Punitive Damages, R. XXXII p. 5242; A. 12. The court denied rehearing on May 3, 2005 (R. XXXI p. 5274) and rendered final judgment on May 3, 2005. Final Judgment, R. XXXI p. 5276; A. 13. Defendants timely appealed (Notice of Appeal, R. XXXI p. 5278; A.

14), and plaintiff cross-appealed from the order dismissing his punitive damages claim. R. XXXI p. 5282.

Proceedings on Appeal

On appeal to the District Court, defendants raised five arguments, all of which require dismissal of this case, and most of which derive from a core principle: the First Amendment and Florida law protect newspapers that truthfully report lawfully-obtained information about matters of public interest.

1) Defendants argued that the First Amendment required plaintiff to prove that the News Journal's report of the shooting was, in fact, false. The trial court's *in limine* order, issued at plaintiff's request, excluded all evidence relating to the killing. Because there is no evidence that the alleged "light" cast by the article was false, plaintiff did not prove falsity – the core element of his "false light" claim.

The District Court disagreed with the trial court, recognizing that "the essential characteristic that false light shares with defamation is that both actions require proof that the defendant provided false information about the plaintiff." Slip Op. p. 8. The District Court thus concluded that the trial court had inappropriately eliminated plaintiff's obligation to prove falsity, "the most important element" of his case:

> The most important element (that the defendants created a false impression about the plaintiff) was overlooked in

> an effort to make sense of the law that applies to false light privacy claims.

Slip Op. p. 11. Even though the plaintiff did not prove the "essential" element of falsity, the District Court did not base its holding on this principle in light of its dispositive ruling on the statute of limitations. Slip Op. p. 24.

2) Defendants also argued that the First Amendment required plaintiff to prove, by clear and convincing evidence, that defendants published the article with constitutional "actual malice" and that he failed in that proof, as a matter of law. Plaintiff acknowledges that burden. Pet. Br. p 3. Plaintiff thus had the obligation to prove, clearly and convincingly, that the reporter and editors: (a) intended to accuse him of murder, and that they either (b) knew that accusation was false, or (c) had a high degree of awareness that the accusation was probably false. The District Court did not rule on this issue either for the same reason it did not address the falsity issue. Slip Op. p. 24.

3) In addition, defendants argued that because the News Journal article accurately reported on an official investigation, using information derived from public records, the article was privileged as a matter of constitutional and common law. Again, the District Court did not rule on this issue for the same reason. Slip Op. p. 24.

4) The defendants also argued that damages were improperly awarded to plaintiff, for two reasons. First, the jury refused to award any privacy damages to

Mr. Anderson personally, and compensated him only for economic losses purportedly suffered by a non-party corporation (which itself had no privacy interest, as a matter of law). Moreover, Mr. Anderson had no standing to recover any damages that the non-party corporation may have suffered. The District Court did not reach these issues either, because it found this case to be barred by the statute of limitations. Slip Op. p. 24.

5) Finally, defendants argued that plaintiff had literally re-pleaded a libel claim as one for "false light" in a deliberate effort to avoid dismissal based on the two-year libel statute of limitations. This avoidance of the statute of limitations, allowed by the trial court, is impermissible under Florida law.

As to this issue, the District Court unanimously agreed with defendants. The court held that plaintiff's re-pleaded "false light claim was indistinguishable in any material respect" from his libel claim. Slip Op. p. 1. Because plaintiff improperly used a false light theory "to circumvent the shorter limitations period that applies to defamation actions" (Slip Op. p. 15), the plaintiff's claim is time-barred:

> Surely the protections afforded by the statute of limitations cannot be undone by engaging in a semantic exercise such as this.

Slip Op. p. 16-17.

The concurrence agreed with this holding. The two-year defamation statute of limitations bars plaintiff's false light cause of action because:

> plaintiff simply recast his libel claim as one for false light invasion of privacy in an attempt to circumvent the two year limitations period applicable to libel actions.

Slip Op. p. 30. Plaintiff does not challenge this holding in his brief to this Court.

The District Court majority went on to address a broader issue. It questioned the legitimacy of the false light tort, which this Court has never "directly held … cognizable in Florida" (Slip Op. p. 12) and which has been rejected in other states. Slip Op. p. 8-10. The tort generally duplicates a cause of action for defamation, and has the potential of "allowing the plaintiff to escape the strict requirements that are designed to ensure freedom of expression." Slip Op. p. 8-9. Although false light "might afford a distinct remedy in a few unique situations," any benefit is outweighed by its danger to free speech. Slip Op. p. 9. False light thus "remains the subject of a heated debate among judges and legal scholars" (Slip Op. p. 10), and "has caused confusion in the courts [that] is nowhere more evident than it is in the present case." Slip Op. p. 11. Without itself determining that false light should be recognized in Florida, the majority opinion reasoned that all false light cases are subject to the two year limitations statute. This must be so, because the false light tort "overlaps defamation, [and] must be treated the same way":

> Otherwise, the relatively short statute of limitations and other strict requirements in the law of defamation would have no effect at all. Plaintiffs would always choose the easier course of asserting a false light invasion of privacy

> claim. This concern is one that was expressed by Dean Prosser himself. He speculated that if the tort of false light invasion of privacy were not properly limited, it could eventually swallow up the law of defamation [quotation omitted].

Slip Op. p. 17.

Recognizing that other states have applied their shorter, libel statutes of limitations to false light claims, the majority explained that:

> to hold otherwise "would allow a plaintiff, in any defamation action where there has been a general publication, to avoid the otherwise applicable [shorter defamation statute of limitations] merely by phrasing the cause of action in terms of invasion of privacy." This result would render the shorter statute of limitations for defamation actions meaningless.

Slip Op. p. 18-19 (citations omitted). The majority concluded that "an invasion of privacy case based on the false light theory is governed by the two-year statute of limitations that applies to defamation actions and not the four-year statute that applies to unspecified torts." Slip Op. p. 23. It certified conflict with *Heekin v. CBS Broadcasting, Inc.*, 789 So. 2d 355 (Fla. 2d DCA 2001), and also certified the following question:

> Is an action for invasion of privacy based on the false light theory governed by the two-year statute of limitations that applies to defamation claims or by the four-year statute that applies to unspecified tort claims?

Slip Op. p. 23.

The concurring opinion would have disposed of this case on the narrower ground described above, *i.e.*, that the plaintiff's case was one for libel, recast as a false light case. It concluded that the two year statute of limitations applies where, as here, a "plaintiff attempts to avoid the two-year limitations period by recasting a libel or slander claim as one for false light invasion of privacy based on the same publication." Slip Op. p. 25. Under this more limited holding, the concurrence saw no basis upon which to certify a conflict or question. *Id.*

STATEMENT OF FACTS

1. The News Journal publishes a five-day series of news articles

Mr. Anderson bases his false light claim on one news story in a multi-article series entitled "Who's Watching Out For You." The News Journal published the series during a five day period in December 1998. Def. Ex. 21A-E. The purpose of the series was to inform News Journal readers about the performance of State regulators in Escambia County. 6 Tr. p. 987; 13 Tr. p. 2226. On December 14, 1998 (the second day of the series), the News Journal published the story at issue, entitled "Company Pursues Political Clout." Def. Ex. 21B; A. 1, 2.

The News Journal series was prompted by letters to the editor and talk in the community questioning the regulatory effectiveness of State agencies. 13 Tr. p. 2227. As the newspaper began to look into that issue, the Anderson Columbia name kept coming up. 13 Tr. p. 2227-29. For instance, Anderson Columbia's

failure to complete an Interstate 10 highway construction project caused problems during a hurricane evacuation (13 Tr. p. 2226-27; 16 Tr. p. 2825-26); its asphalt plant had spawned environmental problems in Santa Rosa County (12 Tr. p. 2011-16; 13 Tr. p. 2227); and it was the target of a federal grand jury investigation into its political connections. 13 Tr. p. 2248.

Reporter Amie Streater was the principal reporter on the series, and authored the political clout article. 16 Tr. p. 2821-22. Streater spent three to four weeks researching the project, and one to two weeks writing the articles. 16 Tr. p. 2854. Among many other sources, she spoke with Department of Transportation officials and reviewed DOT records in Pensacola, Tallahassee, and Lake City. 4 Tr. p. 755, 760-64; 16 Tr. p. 2826-28. During that research, DOT officials revealed to Streater that several years earlier plaintiff had shot and killed his wife. 4 Tr. 768-69. That led her to court records relating to Joe Anderson's federal bribery indictment, his resulting conviction for mail fraud, and his probation. Streater confirmed that the court had extended the federal probation because of the shooting. 4 Tr. p. 772-73. She thus felt that the shooting was directly connected to plaintiff's federal conviction. 4 Tr. p. 773.

Streater wrote the articles and submitted them for editorial review. 5 Tr. 792-93, 6 Tr. 977-79, 984. A project editor, the executive editor, the managing editor, and copy editors reviewed the series in collaboration with Streater. 6 Tr.

978, 997-98; 13 Tr. 2240-47; 17 Tr. 2893-98. The News Journal's lawyers also reviewed the articles. 13 Tr. 2243-47; 17 Tr. 2904-05.

2. One article in the series reports on plaintiff's political influence

The article at issue in this case reported that Anderson Columbia had contributed to political parties, and that both Anderson Columbia and plaintiff had contributed substantial sums to several individual political candidates. Def. Ex. 21B; A 1. The story examined Anderson Columbia's political connections to former legislators, and discussed plaintiff's personal history of political contributions. The article noted that several years earlier, federal authorities had investigated plaintiff's illegal political contributions and indicted him for bribing Hillsborough County officials to obtain road contracts. In 1986, plaintiff pleaded guilty to mail fraud, paid more than $380,000 in fines, and was placed on probation for three years. Under the terms of his probation, plaintiff was prohibited from possessing modern firearms.

Streater and her editors testified, without contradiction, that their purpose in including information about the shooting was to explain that plaintiff found himself back in federal criminal court because he violated his probation by using a prohibited firearm. 5 Tr. p. 782-83; 13 Tr. p. 2248-55; 6 Tr. p. 987-90. Streater mentioned the shooting in the article to explain why plaintiff's federal probation had been extended:

> … his probation was extended while he was on probation stemming from the bribery conviction.… The explanation for *why* the probation was extended is the shooting.

5 Tr. p. 783 (emphasis added).

The article appeared in the newspaper on December 14, 1998. As part of the continuing series, the News Journal printed, verbatim, Anderson Columbia's responses to the published articles. 6 Tr. p. 995; 18 Tr. 2331-32. Anderson Columbia never complained about the account of the shooting, or about any other portion of the political clout story. Def. Ex. 21C, D, E. The Scripps Howard Foundation later recognized the News Journal series with a National Public Service Reporting Award. 5 Tr. p. 791-92.

More than two years after the series was published, Mr. Anderson and Anderson Columbia commenced this litigation.

3. Plaintiff sues over a news article he concedes is true

Plaintiff admits that the political clout article is true. He nevertheless complains that the News Journal placed him in a "false light," accusing him of murder, even though the article clearly disclosed that "[l]aw enforcement officials determined the shooting [of plaintiff's wife] was a hunting accident."

Although plaintiff contends that the article's implication was false, *i.e.*, placed him in a "*false* light," he steered clear of proving it. For tactical reasons best known to plaintiff, he did not testify about the killing, and neither did any

other witness on his behalf. To the contrary, concerned that *defendants* would offer evidence about the shooting (19 Tr. p. 3289-95), plaintiff moved *in limine* to preclude them from doing so. Defendants opposed the *in limine* motion and consistently argued that plaintiff had the burden to prove falsity as an element of his claim. *See* 3 Tr. 407, 11 Tr. 1913-14, 17 Tr. 2990-91. Nevertheless, the trial court granted the motion. Order, R. XXIV p. 3931; A 7, p. 8. There is consequently no competent evidence in the record to show that the "light" plaintiff repeatedly *claims* to be false was, *in fact*, false.[2]

4. Plaintiff is awarded damages allegedly suffered by a non-party corporation

During the damages phase of the case, the trial court permitted Anderson to submit evidence that a non-party cement company in whose stock Anderson owned a small interest (10 Tr. p. 1755-57) had suffered $50 million in economic losses. 9 Tr. p. 1578-81. Anderson claimed that after the DEP Secretary saw the News Journal series, he delayed granting an air permit for construction of the

[2] On appeal to the District Court, plaintiff attempted to plug that gap with a tortured dissection of the article's text, arguing that because the *text* of the article was true, he did not have to prove that what he claimed the article *implied* was false. He claimed that the hearsay statement in the article about what law enforcement officials "determined," "*sans* any testimony," established the falsity of the alleged implication. Pltf. DCA Brief p. 12, 17. This circular proposition – that the article both *accused* him of murder and simultaneously *exculpated* him of the charge – was properly rejected by the District Court. If the article proves that he did not murder his wife, it never placed him in a murderous "light" in the first place.

corporation's cement plant – a delay plaintiff claimed was costly to the company. 7 Tr. p. 1196-99. The Secretary firmly denied that allegation. 7 Tr. 1143-44, 1174.

Defendants objected to evidence of those supposed damages, since this is a privacy case and a corporation has no right of privacy; moreover, the corporation was not a party to the lawsuit. The trial court nonetheless allowed the jury to consider the claimed $50 million corporate loss as damages to plaintiff personally.

The jury awarded plaintiff nothing for the privacy-based emotional injuries he claimed to have suffered. The entire $18.3 million verdict thus rewards plaintiff derivatively for reputation losses allegedly suffered by a non-party corporation which itself had no right of privacy. Verdict, R XXV p. 4069-70; A. 8.

SUMMARY OF THE ARGUMENT

Joe H. Anderson sued the defendants for libel, based on a newspaper article that truthfully reported he had shot and killed his wife. Realizing that the libel claim was barred by the two year statute of limitations, he avoided dismissal by renaming his libel claim as one for "false light" invasion of privacy. Claiming that the article implicitly placed him in a "false light" and accused him of murder, he nevertheless refused to present any evidence that the light was, in fact, false.

The First District Court of Appeal properly held that plaintiff's "false light claim was indistinguishable in any material respect from his libel claim" and was an impermissible attempt to avoid the two year statute of limitations for libel. The

claim by the plaintiff was at all times plainly one for defamation. He accused the defendants of publishing a false and defamatory statement, and recovered only damages for claimed injury to his reputation in the community – all fundamental characteristics of a libel claim.

The holding of the First District Court of Appeal was in complete conformity with decisions of this Court and other District Courts of Appeal that refuse to allow a party to avoid the two-year statute of limitations, or to avoid a defamation privilege, by simply renaming a libel cause of action and re-pleading the same facts, as the plaintiff did. Plaintiff acknowledged the validity of this principle of law in the court below, and does not challenge it in his appeal to this Court. It is a complete and adequate basis upon which to resolve this case, does not raise a question of great public importance, and does not conflict with *Heekin v. CBS Broadcasting, Inc.*, 789 So. 2d 355 (Fla. 2d DCA 2001). Thus, it is not necessary for this Court to decide the certified question concerning "false light" claims generally, since this is a libel case, not a false light case. This Court should decline to accept jurisdiction of this case.

The District Court majority also properly held, but nevertheless certified, a question and conflict arising out of a broader issue, the resolution of which is not necessary to disposition of this case. If the Court accepts jurisdiction and entertains the question certified, it should align itself with those jurisdictions that

conclude, as the District Court did, that a false light claim is properly governed by the two-year statue of limitations for libel, particularly where, as here, the alleged false light is also defamatory. Although minor distinctions between false light and libel exist in theory, there is no difference between the torts in practical application or in this case. To accept plaintiff's literal statutory argument would lead to an unreasonable statutory construction, flatly at odds with the right of free speech and the public's right to know.[3]

[3] In the event this Court does reverse the holding below, it should by no means (as plaintiff requests) affirm the trial court judgment. Rather, this case must be remanded to the District Court panel for its determination, in the first instance, of the remaining dispositive issues in this case (which were fully briefed and argued by the parties in the District Court but are not briefed to this Court). It is clear that the District Court was troubled by more than the statute of limitations issue, and it must yet determine whether the judgment should be reversed because plaintiff failed to prove falsity; because he failed to prove that defendants published the article with constitutional "actual malice;" because the article was privileged; or because damages were improperly awarded, all as a matter of law.

ARGUMENT

POINT I: A PLAINTIFF MAY NOT EVADE THE DEFAMATION STATUTE OF LIMITATIONS BY RENAMING LIBEL AS FALSE LIGHT

A. Standard of Review

Even though the District Court may have certified a conflict or question, this Court may decline jurisdiction. *Ryan v. De Gonzalez*, 921 So.2d 572, 572 (Fla. 2005). Should the Court accept jurisdiction, whether or not a claim is barred by the statute of limitations is "purely a question of law," *Galatis v. Plasman*, 80 So. 2d 918, 924 (Fla. 1955), and is reviewed *de novo*. *Armstrong v. Harris*, 773 So. 2d 7, 11 (Fla. 2000).

B. Argument on the Merits

This case can and should be resolved without reaching the conflict or question certified by the District Court. This Court should therefore decline jurisdiction or, if it accepts jurisdiction, affirm the order of the District Court.

1. Plaintiff avoided a statute of limitations dismissal by renaming his libel claim as a false light claim

In March 2001 – months after the libel statute of limitations had run – plaintiff filed this case, claiming that the political clout article was a libel because it was "false and defamatory" and "greatly injured" his reputation. Complaint, R. I p. 1-30; A. 4. Plaintiff attached his signed retraction demand to the complaint, reiterating that the political clout article was "false [and] libelous." *Id.*, Ex. A p.1.

Plaintiff reaffirmed his libel allegations in an Amended Complaint, filed a month later. Amended Complaint, R. I ¶ 24 at p. 39, ¶ 26.

In January 2002, the trial court granted summary judgment dismissing most of Anderson Columbia's libel claims because they had been filed beyond the two-year libel statute of limitations. Order, R. III p. 478-80. Mr. Anderson, however, had strategically re-pleaded his libel claim to avoid a similar fate. In a Second Amended Complaint, he abandoned the assertion that the report of the shooting was a libel. Instead, he renamed his claim as one for false light invasion of privacy and admitted that the *text* of the article was true, but claimed that it falsely *implied* he was a murderer and thus placed him in a "false light." *See e.g.*, Second Amended Complaint ¶ ¶21-22 at p. 15; R. II p. 212-27; A. 5. Plaintiff's tactical renaming of his cause of action successfully avoided a limitations dismissal by the trial court. Order, R. III p. 480. [4]

[4] Anderson Columbia could not similarly rename its libel claim because it is a legal entity incapable of emotional suffering and thus has no right of privacy. *Browning-Ferris Indus. v. Kelco Disposal, Inc.*, 492 U.S. 257, 284 (1989); *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) ("corporations can claim no equality with individuals in the enjoyment of a right to privacy"); *Nestor v. Posner-Gerstenhaber*, 857 So. 2d 953, 955 (Fla. 3d DCA 2003) ("an action for invasion of privacy can be maintained only by a living individual"); *Warner-Lambert Co. v. Execuquest Corp*., 691 N.E. 2d 545, 548 (Mass. 1998) (courts "unanimously deny a right of privacy to corporations"); *Restatement (Second) of Torts* § 652I cmt. c (1977) ("A corporation … has no personal right of privacy. It has therefore no cause of action for any of the four forms of invasion [of privacy].").

2. Plaintiff's case is, and always was, a libel case

The elements of a libel claim include: (a) a false and (b) defamatory statement which causes (c) reputation injury. *Restatement (Second) of Torts* §§ 558, 621 (1977). Despite renaming his libel claim as one for false light, plaintiff's case did not change: he persisted in attempting to prove libel, i.e., a false and defamatory statement that caused him reputation injury.

Thus, although he conceded that the *text* of the article is literally true, plaintiff's cause of action continued to depend entirely upon a claim of falsity. He contended the article *implied* a fact that was *false*, namely that he had murdered his wife. From his opening argument (where he insisted that the article contained a "half truth … no better than a lie" (3 Tr. p. 474)) through his brief in the District Court ("the article … was literally true but portrayed him in a false light as having murdered his wife" (Pl. DCA Br. p. 2)), plaintiff's claim has been based entirely on the proposition that the asserted implication was, indeed, false.[5]

Moreover, it is incontrovertible that the implication claimed by plaintiff – murder – is defamatory. A defamatory statement is one which "tends so to harm the reputation of [plaintiff] as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Restatement (Second)*

[5] At oral argument in the District Court, plaintiff acknowledged that he was obliged to prove falsity: he accepted "the notion that we had to prove that [the impression] was false in the first place." Oral Arg. at 19 min., 25 sec.

of Torts § 559 (1977). *See also Barry College v. Hull*, 353 So. 2d 575, 578 (Fla. 3d DCA 1977). One can conjure few statements, literal or implied, that could be *more* defamatory than "wife murderer."

Finally, plaintiff consistently sought, and eventually recovered, damages for reputation injury.[6] His false light complaint explicitly claimed "damage to … his reputation in the community." Second Amended Complaint ¶ 23 at p. 15; R. II p. 212-27; A. 5. He posed *voir dire* questions about "reputation" injury (2 Tr. p. 318-19), and in his opening urged that the News Journal had "ruined reputations with the stroke of a pen." 3 Tr. p. 475. The article allegedly put a "cloud over" plaintiff (8 Tr. p. 1434), and that "cloud followed … Anderson and the company around" (7 Tr. p. 1259) causing the corporate damages. The purported "cloud," of course, is but a euphemism for reputation injury. 11 Tr. p. 1915-19. The only damages awarded plaintiff were economic losses allegedly suffered by a corporation (Verdict, R. XXV p. 4069-70; A. 8), all of which derived from a purported injury to plaintiff's reputation, on the theory that government officials read the news

[6] The District Court properly noted that libel "protects against harm to the plaintiff's reputation, whereas false light was designed to protect against emotional injury." Slip Op. p. 20. *Accord* Robert D. Sack, *Sack on Defamation: Libel, Slander, and Related Problems* § 12.3 (3d ed. 2006) [hereinafter *Sack on Defamation*]; Rodney A. Smolla, *Law of Defamation* § 10:10 (2d ed. 1999) [hereinafter *Law of Defamation*]; William L. Prosser, *Law of Torts* § 113, at 766-67 (4th ed. 1971). The jury awarded plaintiff nothing for emotional injury. Verdict, R. XXV p. 4069-70; A. 8.

article and, as a result, thought less of plaintiff and denied the company an environmental permit.

Plaintiff's case was therefore at all times premised on his claim (a) that a false and (b) defamatory publication (c) injured his reputation. That is a libel claim. A plaintiff may not evade the two-year libel statute of limitations by the linguistic expedient of calling a libel claim by a different name.

3. The District Court properly held that plaintiff's re-pleaded libel claim was barred by the libel statute of limitations

The District Court unanimously, and correctly, held that plaintiff's re-labeling of his libel claim as a false light claim did not change the fact that it was still a libel claim, and the new name did not avoid the preclusive effect of the libel statute of limitations. Because plaintiff's "false light claim was indistinguishable in any material respect" from his libel claim (Slip Op. p. 1), the majority held that plaintiff's "semantic exercise" was of no effect:

> [T]he false light theory … cannot be used, as it was in the present case, to circumvent the shorter limitations period that applies to defamation actions. Because the plaintiff's false light claim is not distinguishable from an action for libel, it is subject to the two-year statute that applies to defamation actions.
>
> * * *
>
> The difference between the original libel claim, which was barred by the two-year statute, and the subsequent false light claim, which was not, was nothing more than the change in the way in which the plaintiff characterized the article.… Surely the protections afforded by the

> statute of limitations cannot be undone by engaging in a semantic exercise such as this.

Slip Op. p. 15-17. The concurring opinion agreed with this holding. The two-year defamation statute of limitations barred plaintiff's false light cause of action because:

> plaintiff simply recast his libel claim as one for false light invasion of privacy in an attempt to circumvent the two year limitations period applicable to libel actions.

Slip Op. p. 30 (concurring opinion).

The unanimous holding of the District Court on this point is wholly consistent with settled precedent. A libel plaintiff may not circumvent the shorter defamation statute of limitations by asserting a cause of action for false light invasion of privacy. *See Ovadia v. Bloom*, 756 So. 2d 137, 141 (Fla. 3d DCA 2000) (false light claim time barred because it "[arose] from the same publication upon which [the] failed defamation claim [was] based"); *Orlando Sports Stadium, Inc. v. Sentinel Star Co.*, 316 So. 2d 607, 609 (Fla. 4th DCA 1975) (courts will "look for the reality, and the essence of the action and not its mere name"). *See also Trujillo v. Banco Cent. Del Ecuador*, 17 F. Supp. 2d 1334, 1339-40 (S.D. Fla. 1998). "A contrary result would allow [plaintiff] to circumvent the statute of limitations by simply re-describing the [libel] action to fit a different category of intentional wrong." *Callaway Land & Cattle Co. v. Banyon Lakes C Corp.*, 831 So. 2d 204, 208 (Fla. 4th DCA 2002); *Heekin*, 789 So. 2d at 358 (a "plaintiff may not

avoid the two-year statute of limitations for defamation actions by simply renaming the defamation action as one for false light invasion of privacy").[7]

In *Fridovich v. Fridovich*, 598 So. 2d 65, 69-70 (Fla. 1992), this Court rebuffed a similar attempt to circumvent a defamation privilege when a plaintiff asserted a cause of action for intentional infliction of emotional distress in lieu of libel. In words directly applicable here, this Court stated: "It is clear that a plaintiff is not permitted to make an end-run around a successfully invoked defamation privilege by simply renaming the cause of action and repleading the same facts." *Id.* at 69. The District Court properly refused to permit a similar "end-run" around the statute of limitations by means of such a "semantic exercise." Slip Op. 17.

4. Plaintiff does not challenge the District Court's holding on this issue

Plaintiff has not challenged this holding in his brief to this Court, nor could he legitimately do so, since he has conceded this issue. Thus, in his District Court Brief (at 36-37), plaintiff acknowledged that dismissal is appropriate when libel claims are re-pleaded as another tort:

> The cases cited by [defendants] are situations where a plaintiff seeks to recast an actual defamation action into another tort in order to avoid the statute of limitations. *See Callaway Land & Cattle Co.* [citation and quotation omitted]. *Callaway* cites *Trujillo* [citation and quotation

[7] On this dispositive issue, defendants submit that, as recognized by the concurring opinion below, there is no conflict with *Heekin*. Slip Op. p. 29-31.

> omitted], and that principle is consistent with *Orlando Sports Stadium, Inc.* [citation and quotation omitted].

Plaintiff conceded the point again during oral argument:

> The Court: … is there not some case law around the country that suggests that, *if a false light case is simply a repackaged libel case, that you have to use the two year statute?*
>
> Mr. Rogow: *Absolutely*, and that's why I say we threaded the needle. I accept all that. I accept all the First Amendment arguments. This case is unique…. (emphasis added).

Oral Arg. 33 min. 38 sec. Plaintiff also admitted that if a murder accusation is defamatory, his case would fall "into the trap" of the statute of limitations:

> The Court: I understand that but my question to you is, is it your position that [the impression he murdered his wife] was not also defamatory?
>
> Mr. Rogow: *It is my position that it was not defamatory as a matter of law*, the way we understand defamation, which requires falsity, *because if I answered yes to your question Judge Benton I would fall into the trap* …
>
> The Court: The statute of limitations.
>
> Mr. Rogow: …*that this is a defamation case and the statute of limitations*, but this is not that.

Oral Arg. at 17 min., 45 sec. It is, of course, beyond doubt that a murder accusation is indeed defamatory.

Plaintiff re-pleaded a libel claim as one for false light invasion of privacy in order to avoid the two-year statute of limitations that applies to defamation claims.

He admits that a plaintiff may not do so consistent with the statute of limitations. This case was properly dismissed**.**

5. This Court should decline jurisdiction in this case or affirm the Order of the District Court

This appeal therefore can be disposed of on the well-established legal principle unanimously applied by the District Court and conceded by the plaintiff – a principle that is narrower than the issue raised by the certified question and is not in conflict with *Heekin*. Accordingly, defendants respectfully urge this Court to decline jurisdiction in this case or, in the alternative, affirm the Order of the District Court.

Moreover, there is no compelling reason for this Court to address the broader certified question, since it necessarily raises another issue, the resolution of which is similarly unnecessary to the disposition of this case. In that regard, the District Court concluded that this Court has never directly held that false light is cognizable in Florida courts (Slip Op. p. 12) and, with the exception of *Heekin*, no Florida appellate court has upheld a false light complaint. Slip Op. p. 15.[8] As the

[8] The unique holding in *Heekin* was short-lived. On remand, Heekin argued (as plaintiff does in this case) that the literally true broadcast "falsely created the impression" that he was a spouse batterer. As a consequence, the court held that the claim was barred by the two-year statute of limitations for defamation. *Heekin v. CBS Broad., Inc.*, No. 99-5478-CA (Fla. Sarasota County Ct. July 7, 2003) at p. 2, aff'd 892 So. 2d 1027 (Fla. 2d DCA 2004). The complete trial court order is reproduced in an Appendix to this Brief.

District Court recognized, the false light cause of action brings no real benefit to the law because it overlaps defamation in all but a "few unique situations" (Slip Op. p. 9), poses a real threat to free speech, and injects confusion and uncertainty in the law of defamation. Slip Op. p. 7-11. First identified by Prosser in a 1960 law review article, William L. Prosser, *Privacy*, 48 Cal. L. Rev. 383, 398-401 (1960), in reality the tort existed "only in Prosser's mind." J. Clark Kelso, *False Light Privacy: A Requiem*, 32 Santa Clara L. Rev. 783, 785 (1992). There is "not even a single good case in which false light can be clearly identified as adding anything distinctive to the law." *Id.* at 785-86. There are, accordingly, ample reasons for this Court not to recognize it. *See, e.g., Denver Publ'g Co. v. Bueno*, 54 P.3d 893, 902 (Colo. 2002) (rejecting tort of false light); *Cain v. Hearst Corp.*, 878 S.W. 2d 577, 579 (Tex. 1994) (same).

Despite this uncertainty, the certified question in this case does not posit the viability of the false light tort. That broader question has, however, been certified in *Rapp v. Jews for Jesus, Inc.*, 31 Fla. L. Weekly D2973 (Fla. 4th DCA Nov. 29, 2006). The statute of limitations question certified in this case is intertwined with, and ancillary to, the question certified in *Rapp*. It is more appropriately addressed and resolved in that case, not in this case.

POINT II: THE TWO YEAR LIBEL STATUTE OF LIMITATIONS GOVERNS ACTIONS FOR FALSE LIGHT INVASION OF PRIVACY

A. Standard of Review

The standard of review for statutory interpretation is *de novo*. *See, e.g.*, *State v. Burris*, 875 So.2d 408, 409 (Fla. 2004).

B. Argument on the Merits

1. False light claims do not meaningfully differ from libel claims

At the heart of the District Court's decision is its refusal to be misled by form over substance. It concluded that a plaintiff cannot evade the libel statute of limitations – one of the many protections afforded to free speech in Florida – through the expedient of calling a libel action by a different name:

> To the extent that false light invasion of privacy overlaps defamation, it must be treated the same way. Otherwise, the relatively short statute of limitations and other strict requirements in the law of defamation would have no effect at all. Plaintiffs would always choose the easier course of asserting a false light invasion of privacy claim.

Slip Op. p. 17. Indeed, as a practical matter, false light completely overlaps defamation and adds nothing meaningful to the law. It is a "conceptually empty tort, and … states with a commitment to freedom of speech" may ultimately either restrict the doctrine or reject it altogether. Diane Zimmerman, *False Light Invasion of Privacy: The Light That Failed*, 64 N.Y.U. L. Rev. 364, 365 (1989).

There are at most two distinctions between false light and defamation, both of which are theoretical and minor, and neither of which pertained in this case.

First, the damages recoverable in false light hypothetically differ from those recoverable in defamation: defamation protects against injury to reputation, while false light invasion of privacy protects against emotional injury. Slip Op. p. 20. However, "in practice, nearly all false light cases involve a claim that the false impression harmed the plaintiff's reputation." *Id.* Certainly that was so in this case, where plaintiff recovered *only* reputation damages.

Second, false light claims can, theoretically, be based on "statements that are offensive to a reasonable person" even though they are not "defamatory." Slip Op. p. 22. This is a distinction without a difference that "is largely academic." *Id.* (citation omitted). *See also Law of Defamation* §10:10. In contrast to that theoretical construct, *this* case, like the overwhelming majority of false light cases, complains of a false light that is defamatory as well as offensive to a reasonable person.

Thus, the dissimilarities between libel and false light are fundamentally abstract. As a practical matter, as they are applied in the trial courts of this State – and most certainly in this case – there is no distinction between the torts at all.

2. Plaintiff's effort to distinguish libel from false light is flawed

Plaintiff attempts to conjure up a further divergence between libel and false light. He argues that his false light claim is based on true "statements." Pet. Br. p. 7. He urges that, because the statements in the article are true, he could not have brought a libel claim. *Id.* at 5. And, he maintains that a false light claim, as distinct from libel, may be based upon a true publication. *Id.* at 22. His argument overlooks the factual premise of his own case, misperceives the law of libel, and disregards the law of false light and of privacy generally.

First, there can be no question that plaintiff's "literal truth" argument focuses on a tree and denies the forest. His tort claim is not based upon the (literally true) "statements" *contained* in the article. Rather, it is premised entirely upon the "statement" allegedly *implied* by the article, which plaintiff maintains is false (though he did not prove it so). Accordingly, falsity is the "essence" of plaintiff's claim, as the District Court correctly recognized:

> Whether the claim is based on the publication of false facts or the publication of true facts that are stated in such a way as to create a false impression is a distinction of no consequence. In either case, the falsity of what the publication communicates is the essence of the claim.

Slip Op. p. 16.

In addition, plaintiff's effort to distinguish libel from false light, on the theory that the former requires proof of falsity while the latter does not, is equally incorrect.

Defendants agree that the "touchstone" of a libel claim is the falsity of a communication. Pet. Br. p. 9. Yet falsity is also the benchmark of a false light claim: at the heart of *both* torts is "proof that the defendant provided false information about the plaintiff." Slip Op. p. 8. Plaintiff correctly observes that "[i]f there is no false statement of fact there is no action for defamation" (Pet. Br. p. 9), but his observation applies with equal force to a false light claim. *Time, Inc. v. Hill*, 385 U.S. 374, 386 (1967) ("Material and substantial falsification is the test."); *Cantrell v. Forest City Publ'g. Co.*, 419 U.S. 245, 249 (1974) (same); *Florida Publ'g. Co. v. Fletcher*, 340 So. 2d 914, 918 (Fla. 1976) ("*There, is no contention that the … news story [was] in any way false or inaccurate.* There could, therefore, be no recovery under the 'false-light' doctrine of invasion of privacy.") (dictum); *Restatement (Second) of Torts* § 652E cmt. a (1977) ("[I]t is essential…that the matter published concerning the plaintiff is not true").

Conversely – and just as incorrectly – plaintiff contends that a libel claim cannot be based on a false implication arising from true facts. Pet. Br. p. 13. Relying upon Black's Law Dictionary, plaintiff argues that "there is no suggestion … that literally true facts can ever be the subject of … defamation." Pet. Br. p. 15,

n. 3. Plaintiff both misperceives libel law and overlooks his own dictionary authority, which explicitly recognizes libel-by-implication and cross-references it to false light:

> ***false-implication libel***. Libel of a public figure in a news article that creates a false implication or impression even though each statement in the article, taken separately, is true. See FALSE LIGHT; INVASION OF PRIVACY.

Black's Law Dictionary 927 (7th ed. 1999). Indeed, though rare, a libel claim can be made out when a false implication is created by literally true statements: "Statements literally true may be actionable if they imply false and defamatory statements of fact." *Sack on Defamation* § 3.8, at 3-24.[9] *Accord* Slip. Op. p. 23; *Brown v. Tallahassee Democrat, Inc.*, 440 So.2d 588, 589 (Fla. 1st DCA 1983).

Finally, plaintiff contends that the United States Supreme Court has "left open" the question of whether true statements may be actionable in privacy, and suggests therefore that his claim of "false light based on truth" is constitutionally sanctioned (or, at least, not constitutionally proscribed). To that end he relies on *Florida Star v. B. J. F.*, 491 U.S. 524 (1989), and *Bartnicki v. Vopper*, 532 U.S. 514 (2001). His argument wrenches both opinions out of context.

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[9] Premising a libel claim on false implications from truly stated facts poses an obvious danger to free speech. Thus, "courts have increasingly imposed limitations on recovery for libel by implication," including requirements, for example, that the defendant specifically intended the implication and omitted a specific, material fact that rendered the implication false. *Sack on Defamation* § 2.4.5.

Neither *Florida Star* nor *Bartnicki* concerned a false light claim. In *Florida Star*, the Court held unconstitutional a Florida statute punishing a newspaper's disclosure of the name of a rape victim. *Florida Star*, 491 U.S. at 526. In *Bartnicki*, the Court concluded that the First Amendment prohibited punishing a radio commentator for disclosing the contents of communications illegally wiretapped by someone else. *Bartnicki*, 532 U.S. at 517-18. The Court did not foreclose sanctioning truthful publications, but only in the context of a "private facts" privacy claim (a tort completely different from false light, which is based upon publicity given to matters that *are not of legitimate concern* to the public). Nothing in *Florida Star* or *Bartnicki* undercuts the requirement that in false light cases, proof of falsity is constitutionally mandated. *See Time, Inc.*, 385 U.S. at 386; *Cantrell*, 419 U.S. at 249. Indeed, contrary to plaintiff's contention, the Supreme Court explicitly reaffirmed that truthful publications about *matters of public interest* – such as the article about political clout in this case – are protected by the First Amendment and are *not* susceptible to a privacy claim:

> [Punishing truthful speech] implicates the core purposes of the First Amendment because it imposes sanctions on the publication of truthful information of public concern. *…[P]rivacy concerns give way when balanced against the interest in publishing matters of public importance.…* "*The right of privacy does not prohibit any publication of matter which is of public or general interest.*" … "Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is

> needed or appropriate to enable the members of society to cope with the exigencies of their period."

Bartnicki, 532 U.S. at 533-34 (citations omitted) (emphasis added). *Accord Cape Publ'ns, Inc. v. Hitchner*, 549 So.2d 1374, 1378-79 (Fla. 1989).

Thus, there is no meaningful difference between libel and false light in theory, and absolutely no difference between the torts in practical application.

3. The District Court correctly held that the two year libel statute of limitations applies to false light claims based on defamatory statements

The District Court correctly concluded that, at least to the extent a false light claim (as here) is based on a defamatory statement, it is no different from a libel claim. Slip. Op. p. 23. Thus there is no reason to favor one cause of action with a four-year limitations period, and the other with a two-year limitations period, merely because a plaintiff chooses to call them by different names:

> There is no difference between a libel by implication claim and a false light invasion of privacy claim if the statements are defamatory in both cases. Consequently, we perceive no reason to apply a longer statute of limitations to false light claims.

(Slip Op. p. 23.)

In *Old Plantation Corporation v. Maule Industries, Inc.*, 68 So. 2d 180, 181 (Fla. 1953), this Court addressed an analogous question as to whether a claim for "disparagement and impairment of the vendibility of the title to real property" was governed by the two-year libel limitations statute or the four-year statute for

unenumerated torts. Noting that the claim was also known as an action for "slander of title," this Court assessed its underlying nature and concluded that "[r]egardless of what may be the proper name for this kind of action, we think it clear that it is based on false and malicious statements" even though it is "distinguishable from ordinary libel or slander." *Id.* (citation omitted). Relying as well on compelling authority from other states, the Court concluded that the claim was governed by the shorter libel statute of limitations. *Id.* at 182-83.

The analytical approach taken in *Old Plantation* is entirely consistent with the scholarly analysis undertaken by the District Court in this case, the results of which are confirmed, as was the holding in *Old Plantation*, by well-reasoned authority throughout the country.[10]

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[10] *See, e.g., Mittleman v. United States*, 104 F.3d 410, 415-16 (D.C. Cir. 1997); *Gashgai v. Leibowitz*, 703 F.2d 10, 13 (1st Cir. 1983); *Shipley v. Dep't of Educ.*, 2006 U.S. Dist. LEXIS 60643, *8-9 (D. Haw. 2006); *Nichols v. Moore*, 334 F.Supp. 2d 944, 949 (S.D. Mich. 2004); *Grunseth v. Marriott Corp.*, 872 F.Supp. 1069, 1075 (D.D.C. 1995); *Mize v. Harvey Shapiro Enter., Inc.*, 714 F.Supp. 220, 224 (N.D. Miss. 1989); *Wagner v. Campbell County*, 695 F.Supp. 512, 517 (D. Wyo. 1988); *Robinson v. Vitro Corp.*, 620 F.Supp. 1066, 1070 (D. Md. 1985); *Smith v. Esquire, Inc.*, 494 F.Supp. 967, 970 (D. Md. 1980); *Jensen v. Sawyers*, 130 P.3d 325, 336 (Utah 2005); *West v. Media Gen. Convergence, Inc.*, 53 S.W.3d 640, 648 (Tenn. 2001); *Sullivan v. Pulitzer Broad. Co.*, 709 S.W.2d 475, 481 (Mo. 1986); *Eastwood v. Cascade Broad. Co.*, 722 P.2d 1295, 1299 (Wash. 1986); *McClandliss v. Cox Enter., Inc.*, 593 S.E.2d 856, 859 (Ga. Ct. App. 2004); *Meyer Land & Cattle Co. v. Lincoln County Conservation Dist.*, 31 P.3d 970, 974 (Kan. Ct. App. 2001); *Magenis v. Fisher Broad., Inc.*, 798 P.2d 1106, 1109 (Ore. Ct. App. 1990). *See also Fellows v. Nat'l Enquirer, Inc.*, 721 P.2d 97, 108 (Cal. 1986); *Morrison v. Nat'l Broad. Co.*, 227 N.E. 2d 572, 574 (N.Y. 1967).

Contrary to the reasoned analyses engaged in by *Old Plantation* and by the District Court, plaintiff would rigidly confine this Court to a literal reading of the libel limitations statute, with no substantive analysis whatever. However, crediting plaintiff's "literal adherence" thesis would lead to an absurd result. If plaintiff's argument were accepted, the statutes of limitations would provide *greater* protection (*i.e.*, a shorter, two-year limitations period) for *false* and *defamatory* speech (that is, libel), than they would for what plaintiff claims is *truthful, non-defamatory* speech (plaintiff's characterization of the false light tort). Such a result would fly in the face of freedom of speech and the public's right to know. *Cape Publ'ns, Inc. v. Hitchner*, 549 So.2d at 1378-79 ("Florida courts have long recognized the restriction placed upon the general right to privacy by the public's right to know. . . . The right of the general public to the dissemination of news and information must be protected and conserved. Freedom of speech and of the press must be protected") (quoting *Cason v. Baskin*, 20 So.2d 243, 251 (Fla. 1944)). *See also Cape Publ'ns, Inc. v. Bridges*, 423 S.2d 426, 427 (Fla. 1982); *Ross v. Gore*, 48 So.2d 412, 415 (Fla. 1950). This Court should not countenance such an absurdity. *See Maddox v. State*, 923 So.2d 442, 446 (Fla. 2006) ("[A] literal interpretation of the language of a statute need not be given when to do so would lead to an unreasonable or ridiculous conclusion."); *Weber v. Dobbins*, 616 So.2d 956, 958 (Fla. 1993) (rejecting plain meaning of statute when it would lead to an

unreasonable result); *State v. Perez,* 531 So.2d 961, 962 (Fla. 1988) (rejecting plain meaning of statute when it would lead to an illogical result). The District Court properly applied the two year libel statute of limitations to false light claims.

CONCLUSION

For the aforementioned reasons, this Court should decline jurisdiction or affirm the Order of the District Court.

In the alternative, the Court should answer the certified question as follows:

> An action for invasion of privacy based on the false light theory is governed by the two-year statute of limitations that applies to defamation claims.

In the event that the Court disagrees with the holding of the District Court, it should remand this case to the District Court panel, with instructions that it consider the additional arguments raised by defendants on the appeal below.

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I HEREBY CERTIFY that this brief complies with the font requirements of rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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