

IN THE CIRCUIT COURT OF THE
TWELFTH JUDICIAL CIRCUIT IN AND
FOR SARASOTA COUNTY, FLORIDA

CASE NO.: 2022 CA 1128 SC

JOSEPH PETITO and NICHOLE
SCHMIDT,

Plaintiffs,

vs.

CHRISTOPHER LAUNDRIE, ROBERTA
LAUNDRIE, and STEVEN BERTOLINO,

Defendants.

**DEFENDANT STEVEN BERTOLINO'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFFS' THIRD AMENDED COMPLAINT**

COMES NOW, this Defendant, STEVEN BERTOLINO (“Mr. Bertolino”), through his counsel, pursuant to this Court’s November 29, 2023 Order Granting Plaintiffs’ Motion for Leave to File Third Amended Complaint and the Florida Rules of Civil Procedure, and hereby files his Answer and Affirmative Defenses to Plaintiffs’ Third Amended Complaint, filed on November 30, 2023, and states as follows:

ANSWER

1. This Defendant admits Plaintiffs have brought the instant action and alleged that Plaintiffs’ damages exceed \$30,000.00 for jurisdictional purposes only. The remainder of paragraph 1 of Plaintiffs’ Third Amended Complaint is denied.

2. This Defendant admits the allegations contained in paragraph 2 of Plaintiffs’ Third Amended Complaint.

3. This Defendant admits the allegations contained in paragraph 3 of Plaintiffs’ Third Amended Complaint for jurisdictional purposes only.

4. Upon information and belief, this Defendant admits the allegations contained in paragraph 4 of Plaintiffs' Third Amended Complaint.

5. Upon information and belief, this Defendant admits Plaintiff NICHOLE SCHMIDT is the mother of Gabrielle Petito, deceased. This Defendant is without knowledge as to the remainder of the allegations contained in paragraph 5 of Plaintiffs' Third Amended Complaint and, therefore, denies same.

6. This Defendant admits the allegations contained in paragraph 6 of Plaintiffs' Third Amended Complaint.

7. This Defendant admits the allegations contained in paragraph 7 of Plaintiffs' Third Amended Complaint.

8. With respect to the allegations contained in paragraph 8 of Plaintiffs' Third Amended Complaint, this Defendant admits he acted as an attorney and, therefore, agent for Defendants CHRISTOPHER LAUNDRIE and ROBERTA LAUNDRIE when the statements described in the Third Amended Complaint were issued on their behalf.

9. With respect to the allegations contained in paragraph 9 of Plaintiffs' Third Amended Complaint, upon information and belief, this Defendant admits that Brian Laundrie and Gabrielle Petito became engaged.

10. With respect to the allegations contained in paragraph 10 of Plaintiffs' Third Amended Complaint, upon information and belief, this Defendant admits Brian Laundrie and Gabrielle Petito set out on a trip together in the summer of 2021.

11. With respect to the allegations contained in paragraph 11 of Plaintiffs' Third Amended Complaint, upon information and belief, this Defendant admits that prior to the trip taken by Gabrielle Petito and Brian Laundrie in the summer of 2021, Nichole Schmidt had briefly met Christopher Laundrie and Roberta Laundrie on a singular occasion in front of Ms. Schmidt's home

in New York. This Defendant is without knowledge as to the remainder of the allegations contained in paragraph 11 of Plaintiffs' Third Amended Complaint and, therefore, denies same.

12. This Defendant is without knowledge as to the allegations contained in paragraph 12 of Plaintiffs' Third Amended Complaint and, therefore, denies same.

13. This Defendant is without knowledge as to the allegations contained in paragraph 13 of Plaintiffs' Third Amended Complaint and, therefore, denies same.

14. This Defendant is without knowledge as to the allegations contained in paragraph 14 of Plaintiffs' Third Amended Complaint and, therefore, denies same.

15. This Defendant is without knowledge as to the allegations contained in paragraph 15 of Plaintiffs' Third Amended Complaint and, therefore, denies same.

16. This Defendant is either without knowledge and/or is unable to admit or deny knowledge as to the allegations contained in paragraph 16 of Plaintiffs' Third Amended Complaint as to do so would violate the attorney-client privilege between this Defendant and by Brian Landrie (which Brian Landrie has not waived) and, therefore, this Defendant denies same.

17. Upon information and belief, this Defendant admits the allegations contained in paragraph 17 of Plaintiffs' Third Amended Complaint.

18. This Defendant is either without knowledge and/or is unable to admit or deny knowledge as to the allegations contained in paragraph 18 of Plaintiffs' Third Amended Complaint as to do so would violate the attorney-client privilege between this Defendant and by Brian Landrie (which Brian Landrie has not waived) and, therefore, this Defendant denies same.

19. This Defendant is either without knowledge and/or is unable to admit or deny knowledge as to the allegations contained in paragraph 19 of Plaintiffs' Third Amended Complaint as to do so would violate the attorney-client privilege between this Defendant and by Brian Landrie (which Brian Landrie has not waived) and, therefore, this Defendant denies same.

20. With respect to the allegations contained in paragraph 20 of Plaintiffs' Third Amended Complaint, this Defendant admits Defendants CHRISTOPHER LAUNDRIE and ROBERTA LAUNDRIE contacted him on or about August 29, 2021 for purposes of obtaining legal advice and counsel with respect to their son, Brian Laundrie.

21. This Defendant admits the allegations contained in paragraph 21 of Plaintiffs' Third Amended Complaint.

22. With respect to the allegations contained in paragraph 22 of Plaintiffs' Third Amended Complaint, this Defendant admits he contacted other attorneys in Wyoming to represent Brian Laundrie prior to the time Fleener Peterson LLC was retained.

23. This Defendant is either without knowledge and/or is unable to admit or deny knowledge as to the allegations contained in paragraph 23 of Plaintiffs' Third Amended Complaint as to do so would violate the attorney-client privilege between this Defendant and by Brian Laundrie (which Brian Laundrie has not waived) and, therefore, this Defendant denies same.

24. With respect to the allegations contained in paragraph 24 of Plaintiffs' Third Amended Complaint, this Defendant admits Brian Laundrie returned to the home of his parents on or about September 1, 2021. This Defendant is without knowledge, and/or is unable to admit or deny knowledge as to the remainder of the allegations contained in paragraph 24 of Plaintiffs' Third Amended Complaint as to do so would violate the attorney-client privilege between this Defendant and by Brian Laundrie (which Brian Laundrie has not waived) and, therefore, this Defendant denies same.

25. With respect to the allegations contained in paragraph 25 of Plaintiffs' Third Amended Complaint, this Defendant admits that, upon information and belief, there was no contact between Plaintiffs on the one hand and Defendants CHRISTOPHER LAUNDRIE and ROBERTA

LAUNDRIE on the other at any point in time other than a singular meeting in NICHOLE SCHMIDT'S driveway, which occurred before July 2021.

26. With respect to the allegations contained in paragraph 26 of Plaintiffs' Third Amended Complaint, this Defendant admits he became aware Plaintiffs were searching for Gabrielle Petito on or about September 11, 2021.

27. With respect to the allegations contained in paragraph 27 of Plaintiffs' Third Amended Complaint, upon information and belief, this Defendant admits Defendants CHRISTOPHER LAUNDRIE and ROBERTA LAUNDRIE went to Fort DeSoto Park with Brian Laundrie from September 6, 2021 to September 7, 2021.

28. This Defendant is without knowledge as to the allegations contained in paragraph 28 of Plaintiffs' Third Amended Complaint and, therefore, denies same.

29. With respect to the allegations contained in paragraph 29 of Plaintiffs' Third Amended Complaint, this Defendant admits he described Brian Laundrie as "grieving" during a televised interview that occurred in October 2021.

30. With respect to the allegations contained in paragraph 30 of Plaintiffs' Third Amended Complaint, this Defendant admits he released a statement on behalf of his clients, Defendants CHRISTOPHER LAUNDRIE and ROBERTA LAUNDRIE, on September 14, 2021, which is cited in paragraph 30 of Plaintiffs' Third Amended Complaint. The statement was made following urging and demands – some life threatening – for information and comment from Plaintiffs, law enforcement, the press, and the public. This Defendant denies that Defendants CHRISTOPHER LAUNDRIE and ROBERTA LAUNDRIE had "full knowledge" that Gabrielle Petito had been murdered by Brian Laundrie at that time and further denies that Defendants CHRISTOPHER LAUNDRIE and ROBERTA LAUNDRIE knew the whereabouts of her body.

31. This Defendant denies the allegations set forth in paragraph 31 of Plaintiffs' Third Amended Complaint, as phrased.

32. With respect to the allegations contained in paragraph 32 of Plaintiffs' Third Amended Complaint, upon information and belief, this Defendant admits that as of September 14, 2021, Plaintiff JOSEPH PETITO resided in Florida. The September 14, 2021 statement was not "intended to reach Joseph Petito." Rather, the purpose of the statement was to provide a public response to escalating pressure from Plaintiffs, law enforcement, the press, and the public who were all demanding that Defendants CHRISTOPHER LAUNDRIE and ROBERTA LAUNDRIE provide information, comment or other type of response to the events being reported worldwide and incessantly throughout each day during that time. As such, this Defendant denies the remainder of the allegations contained in paragraph 32 of Plaintiffs' Third Amended Complaint.

33. With respect to the allegations contained in paragraph 33 of Plaintiffs' Third Amended Complaint, this Defendant had no particular intent to disseminate the September 14, 2021 statement to any particular geographic location. The statement was intended for general public consumption in response to escalating pressure and demands – some life threatening – from Plaintiffs, law enforcement, the press, and the public for Defendants CHRISTOPHER LAUNDRIE and ROBERTA LAUNDRIE to comment or provide some type of response to the events being reported worldwide and incessantly throughout each day during that time.

34. To the best of this Defendant's recollection, the October 23, 2021 interview was not conducted by a reporter with WABC Channel 7 in Sarasota and, as such, paragraph 34 is denied.

35. With respect to the allegations contained in paragraph 35 of Plaintiffs' Third Amended Complaint, this Defendant does not contest personal jurisdiction. Mr. Bertolino admits he was acting as an attorney and, therefore, an agent for Defendants CHRISTOPHER LAUNDRIE

and ROBERTA LAUNDRIE who were residents of the State of Florida when the statements described in the Third Amended Complaint were issued on their behalf. Mr. Bertolino also admits he made statements on behalf of Defendants CHRISTOPHER LAUNDRIE and ROBERTA LAUNDRIE following urging and demands – some life threatening – from Plaintiffs, law enforcement, the press, and the public. Mr. Bertolino denies the remainder of paragraph 35.

36. With respect to the allegations contained in paragraph 36 of Plaintiffs' Third Amended Complaint, this Defendant does not contest personal jurisdiction. This Defendant denies the remainder of paragraph 36.

37. With respect to the allegations contained in paragraph 37 of Plaintiffs' Third Amended Complaint, this Defendant admits Plaintiffs issued a statement through their attorney, Richard Stafford, on September 16, 2021, and that the statement, as set forth in the Third Amended Complaint, appears to be the statement issued by Richard Stafford. This Defendant denies that Mr. Stafford delivered the statement to the Laundrie family, either directly or through Mr. Bertolino.

38. This Defendant denies the allegations set forth in paragraph 38 of Plaintiffs' Third Amended Complaint, as phrased.

39. This Defendant denies the allegations set forth in paragraph 39 of Plaintiffs' Third Amended Complaint.

40. With respect to the allegations contained in paragraph 40 of Plaintiffs' Third Amended Complaint, this Defendant admits that Gabrielle Petito's remains were discovered on September 19, 2021 in Bridgerton Teton National Forest in Wyoming. This Defendant also admits that, on that same day, he issued a statement on behalf of his clients, Defendants CHRISTOPHER LAUNDRIE and ROBERTA LAUNDRIE, and that the statement, as set forth in the Third

Amended Complaint, is the statement so issued by Mr. Bertolino. The statement was made following urging and demands – some life threatening – from Plaintiffs, the press, and the public.

41. This Defendant denies the allegations set forth in paragraph 41 of Plaintiffs' Third Amended Complaint.

42. This Defendant denies the allegations set forth in paragraph 42 of Plaintiffs' Third Amended Complaint.

43. This Defendant denies the allegations set forth in paragraph 43 of Plaintiffs' Third Amended Complaint.

COUNT I
JOSEPH PETITO v. CHRISTOPHER LAUNDRIE

44. Count I, paragraphs 44 through 45 of Plaintiffs' Third Amended Complaint, does not pertain directly to this Defendant and, therefore, he is without knowledge as to the allegations contained therein. To the extent the allegations contained therein may apply to this Defendant in any respect, the allegations in paragraphs 44 through 45 are specifically denied in their entirety.

45. Count I, paragraphs 44 through 45 of Plaintiffs' Third Amended Complaint, does not pertain directly to this Defendant and, therefore, he is without knowledge as to the allegations contained therein. To the extent the allegations contained therein may apply to this Defendant in any respect, the allegations in paragraphs 44 through 45 are specifically denied in their entirety.

COUNT II
JOSEPH PETITO v. ROBERTA LAUNDRIE

46. Count II, paragraphs 46 through 47 of Plaintiffs' Third Amended Complaint, does not pertain directly to this Defendant and, therefore, he is without knowledge as to the allegations contained therein. To the extent the allegations contained therein may apply to this Defendant in any respect, the allegations in paragraphs 46 through 47 are specifically denied in their entirety.

47. Count II, paragraphs 46 through 47 of Plaintiffs' Third Amended Complaint, does not pertain directly to this Defendant and, therefore, he is without knowledge as to the allegations contained therein. To the extent the allegations contained therein may apply to this Defendant in any respect, the allegations in paragraphs 46 through 47 are specifically denied in their entirety.

COUNT III
JOSEPH PETITO v. STEVEN BERTOLINO

48. With respect to the allegations contained in paragraph 48 of Plaintiffs' Third Amended Complaint, this Defendant hereby restates and realleges his responses to paragraphs 1 through 40 above as though fully set forth herein.

49. This Defendant denies the allegations set forth in paragraph 49 of Plaintiffs' Third Amended Complaint.

COUNT IV
NICHOLE SCHMIDT v. CHRISTOPHER LAUNDRIE

50. Count IV, paragraphs 50 through 51 of Plaintiffs' Third Amended Complaint, does not pertain directly to this Defendant and, therefore, he is without knowledge as to the allegations contained therein. To the extent the allegations contained therein may apply to this Defendant in any respect, the allegations in paragraphs 50 through 51 are specifically denied in their entirety.

51. Count IV, paragraphs 50 through 51 of Plaintiffs' Third Amended Complaint, does not pertain directly to this Defendant and, therefore, he is without knowledge as to the allegations contained therein. To the extent the allegations contained therein may apply to this Defendant in any respect, the allegations in paragraphs 50 through 51 are specifically denied in their entirety.

COUNT V
NICHOLE SCHMIDT v. ROBERTA LAUNDRIE

52. Count V, paragraphs 52 through 53 of Plaintiffs' Third Amended Complaint, does not pertain directly to this Defendant and, therefore, he is without knowledge as to the allegations

contained therein. To the extent the allegations contained therein may apply to this Defendant in any respect, the allegations in paragraphs 52 through 53 are specifically denied in their entirety.

53. Count V, paragraphs 52 through 53 of Plaintiffs' Third Amended Complaint, does not pertain directly to this Defendant and, therefore, he is without knowledge as to the allegations contained therein. To the extent the allegations contained therein may apply to this Defendant in any respect, the allegations in paragraphs 52 through 53 are specifically denied in their entirety.

COUNT VI
NICHOLE SCHMIDT v. STEVEN BERTOLINO

54. With respect to the allegations contained in paragraph 54 of Plaintiffs' Third Amended Complaint, this Defendant hereby restates and realleges his responses to paragraphs 1 through 40 above as though fully set forth herein.

55. This Defendant denies the allegations set forth in paragraph 55 of Plaintiffs' Third Amended Complaint.

56. This Defendant denies each and every other allegation of Plaintiffs' Third Amended Complaint not specifically admitted herein and demands strict proof thereof.

DEMAND FOR JURY TRIAL

57. This Defendant demands a trial by jury on all issues so triable as right by jury.

AFFIRMATIVE DEFENSES

1. The damages set forth in Plaintiffs' Third Amended Complaint were caused by or contributed to by individuals or entities over whom this Defendant has no control. As such, this Defendant is not liable, or alternatively, only liable for his pro rata share of damages.

2. Plaintiffs have failed to set forth a cause of action recognizable under Florida law. The deficiencies with Plaintiffs' cause of action include, but are not limited to:

a. Plaintiffs' severe emotional distress was preexisting prior to the alleged conduct of this Defendant and, as such, is not actionable.

b. Plaintiffs' claims that this Defendant failed to lessen or reduce their preexisting emotional distress are not actionable.

c. Plaintiffs have failed to allege facts demonstrating intentional or reckless conduct by this Defendant.

d. Plaintiffs have failed to identify how the alleged outrageous conduct by this Defendant is a legal cause of their damages.

e. This Defendant did not make the alleged outrageous statements directly to Plaintiffs and Plaintiffs were not the targeted recipients of the statements.

3. Plaintiffs' claims are barred because they are based upon statements that are protected by the litigation immunity privilege. See Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. U.S. Fire Ins. Co., 639 So. 2d 606, 608 (Fla. 1994); see also Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole, 950 So. 2d 380, 384 (Fla. 2007); Fridovich v. Fridovich, 598 So. 2d 65, 68 (Fla. 1992); DelMonico v. Traynor, 116 So. 3d 1205, 1218 (Fla. 2013).

4. Plaintiffs' claims against this Defendant are barred based upon Plaintiffs' failure and inability to establish conduct on the part of this Defendant that is outrageous enough, as a matter of law, to support such a claim. See Gandy v. Trans World Computer Tech. Group, 787 So. 2d 116, 119 (Fla. 2d DCA 2001) (citation omitted) (“[w]hether alleged conduct is outrageous enough to support a claim of intentional infliction of emotional distress is a matter of law, not a question of fact”); see also Clemente v. Horne, 707 So. 2d 865, 867 (Fla. 3d DCA 1998).

5. Plaintiffs' claims are barred because they are based upon the Defendants' assertion of their legal rights in a legally permissible way. See Canto v. J.B. Ivey and Company, 595 So. 2d 1025, 1028 (Fla. 1st DCA 1992); Metropolitan Life Insurance Co. v. McCarson, 467 So. 2d 277, 279 (Fla. 1985).

6. Plaintiffs' claims against this Defendant fail on the basis that this Defendant was acting within the course and scope of his agency relationship with his clients and the alleged wrongful statements were issued on behalf of this Defendant's clients.

7. Plaintiffs have not identified a sufficient statutory or contractual basis for recovery of attorneys' fees claimed in Plaintiffs' Third Amended Complaint and, therefore, all such requests must be denied. See State Farm Fire & Cas. Co. v. Palma, 629 So. 2d 830, 832 (Fla. 1993) (Florida courts follow "the 'American Rule' that attorneys' fees may be awarded by a court only when authorized by statute or by agreement of the parties").

8. This Defendant adopts any and all affirmative defenses raised by any Co-Defendant in this matter, whether expressly mentioned herein or not, to the extent that they are applicable and consistent with Mr. Bertolino's interests.

9. This Defendant reserves the right to amend his affirmative defenses and allege additional affirmative defenses.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 8, 2023, the foregoing was electronically filed with the Court, which will give electronic notice to: **Patrick J. Reilly, Esquire** at [e-service@snyderandreilly.com](mailto:service@snyderandreilly.com), pat@snyderandreilly.com, valerie@snyderandreilly.com [counsel for Plaintiffs]; and **Ryan L. Gilbert, Esquire** at ryan@ryangilbertlaw.com, office@ryangilbertlaw.com [counsel for Christopher and Roberta Laundrie].

/s/ Charles J. Meltz

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