SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DAVID PITTS, Plaintiff, v. WJLA et al., Defendants.	Civil Action No. 2016 CA 002054 B Judge Brian F. Holeman Next event: Initial Conference, June 17, 2016, 9:30 a.m.

DEFENDANT PATCH MEDIA'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS SPECIAL MOTION TO DISMISS PURSUANT TO ANTI-SLAPP STATUTE OR, IN THE ALTERNATIVE, FOR FAILURE TO STATE A CLAIM

Lee E. Berlik, D.C. Bar No. 458370
BerlikLaw, LLC
1818 Library Street, Suite 500
Reston, VA 20190
Tel: (703) 722-0588
Fax: (888) 772-0161
LBerlik@berliklaw.com
Counsel for Defendant Planck, LLC d/b/a Patch Media

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Defendant Planck, LLC d/b/a Patch Media ("Patch") hereby submits this memorandum of points and authorities in support of its Special Motion to Dismiss (the "Motion"), and in support thereof states the following:

INTRODUCTION

Plaintiff David Pitts has named five defendants and claimed that on March 20, 2015, "the Defendants" falsely characterized Plaintiff's 2014 arrest by reporting that Plaintiff "was sentenced to 'two years in jail for setting fires' or arson." Compl., ¶ 12. In support of an otherwise vague allegation of false reporting, Plaintiff provides a web address for a single online news article (the "NBC Article") published January 23, 2015 on the website of Defendant NBC Washington. Compl., fn.1. Plaintiff identifies no articles published by any of the other Defendants, including Patch, and does not allege that Patch or the other Defendants were responsible for publishing the NBC Article.

Patch moves to dismiss Plaintiff's lawsuit on three separate grounds. First, Plaintiff's claims should be dismissed based on the District's anti-SLAPP statute, D.C. Code §§ 16-5501 et seq., because Patch's reporting on Plaintiff's arrest was an act in furtherance of the right of advocacy on issues of public interest, and Plaintiff will be unable to prove in his response to this Motion that his claims are likely to succeed on their merits. Second, Plaintiff has failed to state a claim upon which relief can be granted based on the District's adoption of the pleading requirements set forth by the Supreme Court in *Ashcroft v. Iqbal*, 129 S. Ct. 1937. Finally, Plaintiff's claims against Patch are time-barred by the District's one-year statute of limitations at D.C. Code § 12-301(4).

FACTUAL BACKGROUND

In the early morning hours of September 4, 2014, Plaintiff David Pitts set two fires near a commercial complex known as Foxhall Square (3301 New Mexico Ave, NW, Washington, DC). Declaration of Daniel J. Bugbee ("Bugbee Decl."), Ex. 1 (Proffer of Facts).[1] In one, Plaintiff set fire to a chair and bottles near a parking attendant booth; in another, Plaintiff set fire to newspapers on the ground near a Starbucks restaurant. *Id.* Plaintiff set a third fire in a wooded area near an adjacent complex called Embassy Park. *Id.* The third fire grew, and had to be extinguished by the D.C. Fire Department, which responded to the area at the request of Montgomery County police officers. *Id.* Around 2:45 a.m. that same morning, Plaintiff gained entry into Foxhall Square, which contains both doctors' offices and a pharmacy, without permission and with no lawful purpose, with the intent to steal prescription medications, controlled substances, and prescription pads. *Id.*

Metropolitan Police Department officers responded to the scene, and Plaintiff attempted to escape but was apprehended and arrested. *Id.* After his arrest, officers recovered matches, lighters, and car keys from Plaintiff's person. *Id.* Inside Plaintiff's car, officers found multiple screwdrivers and a can of varnish. *Id.* Prior to arrest,

---

[1] The submission of evidence with this Motion is proper for the purpose of the Anti-SLAPP analysis provided below, and the materials submitted are also appropriate subjects of judicial notice. *See, e.g., Washington Post v. Robinson*, 935 F.2d 282, 291 (D.C. Cir. 1991) (judicial notice of newspaper articles); *Hamilton v. Paulson*, 542 F. Supp. 2d 37, 52 n. 15 (D.D.C. 2008) (judicial notice of website), *reversed on other grounds by Hamilton v. Geithner*, 666 F.3d 1344 (D.D.C. 2012); *Washington v. U.S.*, 760 A.2d 187, 194 (D.C. 2000) (judicial notice of court's own records).

Plaintiff had been carrying a white cavass bag, which was later found in Foxhall Square. *Id.* The bag contained a Tupperware container that had a brown liquid inside it. *Id.* A search was also performed of Plaintiff's apartment, where over 5,300 pills (including Adderall and Cialis) were found along with blank pages from prescription pads from at least nine different doctors, some of whom had offices in Foxhall Square shopping center. *Id.* Additional blank prescription pad pages were recovered from Plaintiff's office. *Id.* Plaintiff did not have permission from the doctors to have the blank prescription pad pages, and possessed them with the intent of using them to fraudulently obtain prescription medication. *Id.*

Following his arrest, Plaintiff was charged with Second Degree Burglary, in violation of 22 D.C. Code, Section 801(b). Bugbee Decl., Ex. 2 (Criminal Complaint). All of the facts stated above were acknowledged by Plaintiff in a Proffer of Facts, signed by Plaintiff on January 8, 2015. Bugbee Decl., Ex. 1.

On September 5, 2014, Defendant Patch published an article entitled "Police Arrest American University Professor on Burglary Charges", which can be found at http://patch.com/district-columbia/georgetown/police-arrest-american-university-professor-burglary-charges-0 (the "First Patch Article"). Bugbee Decl., Ex. 3. On September 16, 2014, Defendant Patch published a second article regarding Plaintiff, entitled "American University Professor Awaits Trial in Jail", which can be found at http://patch.com/district-columbia/georgetown/american-university-professor-awaits-trial-jail-0 (the "Second Patch Article"). Bugbee Decl., Ex. 4.

Plaintiff alleges that, "On March 20, 2015, the Defendants however characterized David's arrest for 'the setting of fires,' 'admitting that he [David] set fires near campus to distract authorities' and that he was sentenced to 'two years in jail for setting fires' or arson." Compl., ¶ 12. Plaintiff goes on to claim, "None of these allegations are true and infact no where [sic] in David's court records or filings was David ever charged with arson, nor did David admit to committing arson." Compl, ¶ 13.

Patch has never published an article regarding Plaintiff David Pitts other than the First Patch Article and the Second Patch Article identified above, neither of which was published on or near March 20, 2015. In its only two articles, published well over a year prior to Plaintiff filing his Complaint, Patch reported on Plaintiff's arrest "after allegedly breaking into a building near campus and setting property on fire" (First Patch Article), which reports were accurate and do not contain the allegedly defamatory statements. Even if the Patch Articles had included such allegations, while it is technically correct to say that Plaintiff was not charged with "arson," Plaintiff *did* admit to setting the three fires described above, and was arrested and charged for committing other crimes that related to setting fires. Again, however, none of Patch's statements regarding Plaintiff's arrest or alleged activities on September 4, 2014 were incorrect. Neither the First Patch Article nor the Second Patch Article made any claims regarding Plaintiff's sentencing (both were published before Plaintiff was sentenced), and neither even used the word "arson."

ARGUMENT

Plaintiff's claims should be dismissed with prejudice pursuant to the District of Columbia's Anti-SLAPP statute and D.C. Super. Ct. R. Civ. P. 12(b)(6). For the reasons set forth below, Plaintiff is unable as a matter of law to state a claim for which relief can be granted, much less meet Anti-SLAPP's heavy burden of demonstrating that the claims are likely to succeed on their merits.

I. PLAINTIFF'S CLAIMS ARE SUBJECT TO DISMISSAL PURSUANT TO THE DISTRICT'S ANTI-SLAPP STATUTE.

A. The D.C. Anti-SLAPP Statute Calls for the Dismissal of Claims Targeting the Exercise of Free Speech on Matters of Public Interest.

The District's Anti-SLAPP statute encourages the swift and efficient dismissal of the type of claims Plaintiff brings here. D.C. Code § 16-5502. In urging the adoption of the Anti-SLAPP Act of 2010, the D.C. Council's Committee on Public Safety and the Judiciary recognized the growing use of "strategic lawsuits against public participation," or SLAPPs, "as a means to muzzle speech or efforts to petition the government on issues of public interest. Such cases are often without merit, but achieve their filer's intention of punishing or preventing opposing points of view, resulting in a chilling effect on the exercise of constitutionally protected rights." Committee Rpt. on Bill 18-893 (Nov. 18, 2010) at 1.

Thus, the Anti-SLAPP Act and other similar legislation across the country are designed to ensure that defendants "are not intimidated or prevented, because of abusive lawsuits, from engaging in political or public policy debates", and to "prevent the attempted muzzling of opposing points of view, and to encourage ... civil

engagement ...." *Id.*, at 4. To achieve these ends, the Act provides defendants with "substantive rights to expeditiously and economically dispense of litigation aimed to prevent their engaging in constitutionally protected actions on matters of public interest." *Id.*

The Anti-SLAPP statute provides:

> If a party filing a special motion to dismiss under this section makes a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the responding party demonstrates that the claim is likely to succeed on the merits, in which case the motion shall be denied.

D.C. Code § 16-5502(b). The statute further provides for a stay of discovery pending an expedited hearing on the special motion to dismiss, and for the issuance of a ruling as soon as practicable after the hearing. D.C. Code § 16-5502(c)-(d). If the motion is granted, the complaint must be dismissed with prejudice, and the successful defendant may be awarded its costs and reasonable attorneys' fees. D.C. Code § 16-5502(d); § 16-5504(a).

Thus, it is the Defendant's burden on this Motion only to demonstrate that Plaintiff's claims arise from an act in furtherance of the right of advocacy on a matter of public interest. Once Defendant has made its showing, the burden shifts entirely to the Plaintiff. In response to this Motion, Plaintiff must satisfy a heavy burden of demonstrating that his claims are likely to succeed on their merits. Plaintiff cannot satisfy this burden, and thus his claims must be dismissed with prejudice.

B. *All of Plaintiff's Claims Should be Dismissed Under the Anti-SLAPP Statute Because They Target Free Speech on an Issue of Public Interest.*

Plaintiff sets forth three bases for relief against Patch and the other Defendants: (1) defamation, (2) false light & invasion of privacy, and (3) infliction of emotional distress. Compl. ¶¶ 20-30. All three claims arise from the following statements that Plaintiff alleges "the Defendants" made on or about March 20, 2015: (1) that Plaintiff was arrested for setting fires, (2) that Plaintiff admitted to setting fires in order to distract authorities, and (3) that Plaintiff was sentenced to two years in jail for setting fires. Compl. ¶ 12. While Patch has already shown that it did not make any false statements about Plaintiff's arrest, Patch meets its burden under the Anti-SLAPP statute simply by showing that the alleged statements giving rise to Patch's liability are (or would have been, had they been made) in furtherance of the right of advocacy on issues of public interest. This is easily done.

The Anti-SLAPP statute provides the following useful definitions:

> "Act in furtherance of the right of advocacy on issues of public interest" means: (A) Any written or oral statement made: (i) In connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; or (ii) In a place open to the public or a public forum in connection with an issue of public interest; or (B) Any other expression or expressive conduct that involves ... communicating views to members of the public in connection with an issue of public interest.

D.C. Code § 16-5501(1).

> "Issue of public interest" means an issue related to health or safety; environmental, economic, or community well-being; the District government; a public figure; or a good, product, or service in the market place.

D.C. Code § 16-5501(3).

Defamation and related claims against media defendants like Patch are regularly subject to anti-SLAPP protections. That both the statements complained of by Plaintiff and the statements made in Patch's actual articles regarding Plaintiff's arrest are communications to the public on a matter of public interest—here, crime—is abundantly clear. The subject of Plaintiff's arrest and prosecution is an issue related to the well-being of the D.C. community and the health and safety of the residents of the D.C. community, whom Plaintiff harmed through his act of burglary, and whom Plaintiff could have further harmed with the three fires he set.

Further, criminal justice (enforced by police and U.S. Attorneys that form part of the District's government - another statutorily enumerated "issue of public interest") is regularly considered a matter of public interest. *See, e.g., In re Taylor*, 73 A.3d 85, 102 (D.C. 2013) (describing the pursuit of justice in criminal context as a "public interest"); *United States v. Lyons*, 448 A.2d 872, 874 (D.C. 1982) (describing effective law enforcement as a "public interest").

Finally, Patch's reports all related to a pending criminal proceeding, under investigation by police and later subject to proceedings in a court of law. All of the statements were therefore "written ... statement[s] made ... [i]n connection with an issue under consideration or review by a[n] ... executive, or judicial body, or any other official proceeding authorized by law," expressly making them acts in furtherance of the right of advocacy on issues of public interest. D.C. Code § 16-5501(1)(A)(i); *Boley v. Atl. Monthly Grp.*, 950 F. Supp. 2d 249, 256 (D.D.C. 2013) (magazine's statements about

arrest, investigation, and charging of plaintiff in defamation lawsuit "plainly qualify as 'written ... statement[s] made ... [i]n connection with an issue under consideration or review by [an] ... executive ... body.' § 16–5501(1)(A)(i)").

In short, all of the challenged speech indisputably concerned matters of public interest. Plaintiff's claims are all therefore subject to dismissal with prejudice under the Anti-SLAPP Act. Patch having established the applicability of the statute, the burden shifts to the Plaintiff, who must come forth in a response to this Motion with sufficient proof that he is likely to prevail on the merits. As further explained below, he cannot do so because all of the statements made by Patch are true, subject to privilege, and made outside the statute of limitations. When Plaintiff fails to meet his burden in response, his claims must be dismissed.

II. IN THE ALTERNATIVE, THE COURT SHOULD DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO STATE A CLAIM.

A. Plaintiff's Complaint Does Not Contain Sufficient Facts to Show Defendant's Liability and State a Claim for Relief that is Plausible on Its Face.

Whether or not the Court shifts the burden to Plaintiff under the Anti-SLAPP statute to prove that he is likely to prevail on the merits, the case should also be dismissed for Plaintiff's failure to even state a claim upon which relief can be granted. D.C. Super. Ct. R. Civ. P. 12(b)(6); *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). Plaintiff has failed to so much as put Patch on notice of his claims as he does not identify a single Patch statement that is allegedly defamatory or false. Plaintiff has identified only one article published by any Defendant, and it was not published by Patch.

"A court may dismiss a complaint or any portion of it for failure to state a claim upon which relief may be granted." *Parisi v. Sinclair*, 845 F. Supp. 2d. 215, 217 (D.D.C. 2012) (citing Fed. R. Civ. P. 12(b)(6)). "To survive a motion to dismiss, a complainant must 'plead [ ] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009)).

In addition, "a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is 'plausible on its face.'" *Molina-Aviles v. Dist. of Columbia*, 797 F. Supp. 2d 1, 4 (D.D.C. 2011) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "[T]he Court 'need not accept inferences drawn by plaintiff[ ] if such inferences are unsupported by the facts set out in the complaint. Nor must the court accept legal conclusions cast in the form of factual allegations.'" *Parisi*, 845 F. Supp. 2d. at 218 (quoting *Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994)). Failure to meet these tests results in a summary dismissal of a plaintiff's claims.

The D.C. Circuit has long instructed that "[i]n the First Amendment area, summary procedures are even more essential. For the stake here, if harassment succeeds, is free debate." *Wash. Post Co. v. Keogh*, 365 F.2d 965, 968 (D.C. Cir. 1966). Although *Keogh* involved summary judgment, its reasoning is equally relevant when applied to motions to dismiss. *See also Coles v. Wash. Free Weekly, Inc.*, 881 F. Supp. 26, 30 (D.D.C. 1995) ("Given the threat to the first amendment posed by nonmeritorious defamation actions, it is particularly appropriate for courts to scrutinize such actions at an early stage of the proceedings to determine whether dismissal is warranted.").

B. *Plaintiff Fails to Meet His Burden at the Pleading Stage; the Complaint Contains No Allegations Against Patch.*

Far from meeting the pleading standard set forth above, Plaintiff fails to make a single allegation specifically against Patch. To state a claim for defamation, a plaintiff must plead the following elements: "(1) that the defendant made a false and defamatory statement concerning the plaintiff; (2) that the defendant 'published' the statement without privilege to a third party; (3) that the defendant's fault in publishing the statement amounted to at least negligence; and (4) either that the statement was actionable as a matter of law irrespective of special harm or that its publication caused the plaintiff special harm." *Prins v. International Tel. and Tel. Corp.*, 757 F. Supp. 87, 90 (D.C. 1991). The Complaint fails to identify a single article published or statement made by Patch that is even alleged to be defamatory or false. Without such allegations, Patch lacks notice of the grounds upon which Plaintiff's claims are based.

Plaintiff generically alleges that "Defendants" made a variety of statements on or about March 20, 2015, while failing to identify either where or how the statements were made, or who specifically made them. Plaintiff does not allege how the "Defendants" collectively acted to jointly publish an article on March 20, 2015, or how the "Defendants" collectively acted to jointly publish the single article that Plaintiff identifies in the Complaint (the NBC Article). The bald assertion that "Defendants" defamed Plaintiff is far too conclusory to constitute a claim that is plausible on its face, thus subjecting the claims to dismissal. *Bell Atl. Corp. v. Twombly*, 550 U.S. at 570 (discussing plausibility requirement at pleading stage).

As to Plaintiff's claims for false light invasion of privacy and the infliction of emotional distress, they must be dismissed on the same grounds. "The law in [the District of Columbia] as to the tort of false light invasion of privacy is clear, and the key difference between this tort and defamation concern the injuries a damage award is designed to redress, not the underlying act itself." *Jankovic v. Int'l Crisis Group*, 429 F. Supp. 2d 165, 179 (D.D.C. 2006). A plaintiff seeking to state a claim for intentional infliction of emotional distress must allege "(1) extreme and outrageous conduct on the part of the defendant which (2) intentionally or recklessly (3) causes the plaintiff severe emotional distress." *Duncan v. Children's Nat'l Med. Ctr.*, 702 A.2d 207, 211 (D.C. 1997). Without having made any allegations of acts taken by Patch, Plaintiff has failed to plead these claims as well.

Due to the utter lack of allegations against Patch in the Complaint, it is impossible for Patch to evaluate Plaintiff's claims and prepare a defense. The Complaint must therefore be dismissed for its failure to state any claims against Patch. "Allowing this case to proceed absent factual allegations that match the bare-bones recitation of the claims' elements would sanction a fishing expedition costing both parties, and the court, valuable time and resources." *Bissessur v. Ind. Univ. Bd. Of Trs.*, 581 F.3d 599, 604 (7th Cir. 2009). Because Plaintiff has not come close to, as required under *Twombly*, "nudg[ing] [his] claims across the line from conceivable to plausible," the Complaint should be dismissed for failure to state a claim. Further, even had the Plaintiff included allegations against Patch, for the reasons explained below, Plaintiff will not be able to

establish that his claims are likely to succeed on its merits, and thus cannot meet his burden under the Anti-SLAPP statute.

C. Plaintiff's Claims Cannot Succeed on Their Merits Because All of Patch's Statements Were Substantially True.

The burden of proving that a statement is false rests squarely on the Plaintiff. *Carpenter v. King*, 792 F. Supp. 2d 29, 34 (D.D.C. 2011), *aff'd*, 473 F. App'x 4 (D.C. Cir. 2012). It is an *absolute defense* to a defamation claim if the statements are substantially true. *E.g.*, *Masson* v. *New Yorker Magazine, Inc.*, 501 U.S. 496, 517 (1991); *Klayman v. Segal*, 783 A.2d 607, 613 (D.C. 2001).

Moreover, the law of defamation is concerned only with "material[ ]" falsity, *Weyrich* v. *New Republic, Inc.*, 235 F.3d 617, 627 (D.C. Cir. 2001), meaning that errors "effect[ing] no material change in meaning" cannot give rise to liability, *Masson*, 501 U.S. at 516. Thus, "so long as the substance, the gist, the sting, of the libelous charge [was] justified," the publication must be deemed substantially true, even if the defendant "cannot justify every word of the alleged defamatory matter." *Id.* at 516-17 (citations and internal quotation marks omitted). In other words, an alleged defamation is "not considered false unless it 'would have a different effect on the mind of the reader from that which the pleaded truth would have produced.'" *Id.* at 517 (citation omitted).

As is evident on the face of both the First Patch Article and the Second Patch Article, all of the statements made by Patch regarding the Plaintiff are substantially true; thus, they cannot give rise to defamation liability and Plaintiff's claims cannot succeed on their merits. Patch accurately reported Plaintiff's arrest following a burglary

and a series of fires that Plaintiff admitted to setting. Patch never made any of the false allegations that Plaintiff complains of, including never using the word "arson" or claiming that Plaintiff was sentenced to two years in jail. In fact, Patch never reported on any convictions or sentencing, as both of the Patch articles related only to Plaintiff's arrest. Given the lack of materially false statements made by Patch, in addition to the total lack of *alleged* false statements in the Complaint, Plaintiff will not prevail on his claim for defamation against Patch. As these same statements discussed herein serve as the basis for Plaintiff's other claims, he will likewise be unable to prevail on the merits for his claims of false light and infliction of emotional distress.

D. Plaintiff's Claims are Defective Because All of Patch's Statements Were Privileged.

A plaintiff in a defamation action must plead (and subsequently prove) that a defendant's statements were not privileged. *Prins*, 757 F. Supp. at 90. Media articles concerning a public proceeding are subject to the District of Columbia's fair reporting privilege. *Dameron v. Washington Magazine, Inc.*, 779 F.2d 736, 739 (D.C. Cir. 1985) ("There is no question that, as a matter of District of Columbia law, publications do enjoy a conditional fair report privilege."). The privilege applies to shield media outlets from liability so long as (1) their summary of the official report is fair and accurate, and (2) it is "apparent either from specific attribution or from the overall context that the article is quoting, paraphrasing, or otherwise drawing upon official documents or proceedings." *Id.*

Here, the Patch articles satisfy both elements. First, the summaries of Plaintiff's arrest contained in both the First and Second Patch Articles are fair and accurate based upon a review of the actual arrest affidavit. *Compare* Bugbee Decl. Exs. 3 and 4 with Ex. 5 (Police Affidavit). Second, not only is it apparent from the overall context of the Patch articles that they are paraphrasing from an official document, but the arrest affidavit (called an arrest report in one instance) is expressly cited. Bugbee Decl. Exs. 3 and 4. Thus, both Patch articles are entitled to the protection of the fair report privilege. Plaintiff's failure to address this privilege in the Complaint requires the dismissal of his claims against Patch. Further, given Plaintiff's unavoidable inability to avoid this privilege, it is impossible for Plaintiff's claims to succeed on their merits.

III. ANY CLAIM AGAINST PATCH WOULD BE BARRED BY THE STATUTE OF LIMITATIONS

To the extent Plaintiff attempts to base any claims on either the First Patch Article or the Second Patch Article—the only statements made by Patch concerning Plaintiff—all such claims are time-barred. The applicable statute of limitations period for defamation, including related false light and infliction of emotion distress claims, is one year. *See* D.C. Code § 12-301(4) (setting one-year limitations period for libel and slander); *Mittleman v. U.S.*, 104 F.3d 410, 415-16 (D.C. Cir. 1997) (holding that false light claims thoroughly intertwined with defamation claims are subject to the one-year statute of limitations for defamation); *Thomas v. News World Communications,* 681 F.Supp. 55, 72–73 (D.D.C.1988) (one-year limitation period applies to intentional infliction of emotional distress claim that is intertwined with claims for libel,

defamation, assault and battery). Plaintiff filed his Complaint on March 19, 2016, a full six months after the limitations period for claims arising under either of the Patch articles. Once again, Plaintiff has not and cannot state any claim against Patch for which relief can be granted, as all of Patch's relevant actions were taken more than a year prior to the filing of the Complaint. This final deficiency is fatal to Plaintiff's claims under either a 12(b)(6) and an Anti-SLAPP analysis.

CONCLUSION

Plaintiff has named five separate Defendants in a Complaint designed to silence accurate reporting by media outlets on a matter of public interest—Plaintiff's criminal activity. Lawsuits brought to silence such reporting are against long-standing public policy in favor of free speech. The District of Columbia, along with many other jurisdictions, has adopted legislation specifically designed to swiftly dispose of such litigation. Moreover, Plaintiff has failed in his Complaint to identify even a single statement made by Defendant Patch, and thus has failed to state any claim upon which relief can be granted. Finally, any claim that Plaintiff could potentially bring against Patch would be barred by the one-year statute of limitations applicable to defamation and related claims for false light and infliction of emotional distress. Plaintiff therefore can never hope to state any claim against Patch for which this Court can grant relief, much less establish than any of his claims are likely to succeed on their merits. For all of these reasons, Patch respectfully asks the Court to dismiss all of Plaintiff's claims against it with prejudice.

/s/Lee E. Berlik

Lee E. Berlik, D.C. Bar No. 458370
BerlikLaw, LLC
1818 Library Street, Suite 500
Reston, VA 20190
Tel: (703) 722-0588
Fax: (888) 772-0161
LBerlik@berliklaw.com
Local Counsel for Defendant Planck, LLC d/b/a Patch Media

Daniel J. Bugbee
DBS | Law
155 NE 100th Street, Suite 205
Seattle, WA 98125
Tel: (206) 489-3819
Fax: (206) 973-8737
dbugbee@lawdbs.com
Counsel for Defendant Planck, LLC d/b/a Patch Media