IN THE SUPERIOR COURT OF GWINNETT COUNTY

STATE OF GEORGIA

MARK WALTERS, Plaintiff, v. OPENAI, L.L.C., Defendant.	CIVIL ACTION NO. 23-A-04860-2

ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT OPENAI, L.L.C.

This matter coming before the Court for ruling on the motion of Defendant, OPENAI, L.L.C. ("OpenAI"), for summary judgment pursuant to O.C.G.A § 9-11-56, due notice given, and the Court having received and reviewed all pleadings filed by all parties and the entire record available to this Court, and having heard oral argument, it is hereby ordered that summary judgment is GRANTED in full to OpenAI.

BACKGROUND

Although, Plaintiff Mark Walters contends he is not a public figure in that he does not regularly appear in the media on major television networks, having been interviewed only once on Fox Business and once by the local NBC affiliate in New York (*See* Walters Second Affidavit, ¶ 3), it is undisputed fact that he is a nationally prominent radio show host who hosts two nationally syndicated radio programs and identifies himself as "the loudest voice in America fighting for gun rights." Ex. A at 3; Ex. B at 24:10–13; 85:13–86:6; *see also* Plaintiff's Opposition Brief at 7

(conceding Walters is known in the "Second Amendment Advocacy arena").[1] He can be heard six days a week, for more than ten hours per week, on radio stations and streaming services. Ex. B at 24:14–27:11, 38:16–39:2, 88:11–17. Walters estimated that 1.2 million listeners tune in to each 15-minute segment of his radio programs. *Id.* at 25:4–26:6. He is also an author of books and articles on Second Amendment rights and a media commentator. Ex. E at 3–4. He serves as a member of the Board of Directors of the Citizens Committee for the Right to Keep and Bear Arms and as the East Coast Media spokesperson for the Second Amendment Foundation ("SAF"). Ex. E at 4; Ex. D at 28:6–13; Ex. G at 29:6–14; Ex. B at 71:3–16.

Defendant OpenAI is an artificial intelligence ("AI") developer that created the AI chatbot ChatGPT. Ex. M at '234. ChatGPT is a tool that allows users to access a "large language model" or "LLM" that is "trained on vast amounts of data" to generate new text in response to a user's prompt "by predicting what words will come next." Ex. L at ¶¶ 9, 11. "Due to their generative nature, all of the major LLMs that are currently available to the public" are capable of "generat[ing] information contradicting the source material," sometimes referred to as "hallucinations." *Id.* at ¶¶ 13, 20.

On May 3, 2023, a journalist named Frederick Riehl used ChatGPT. Riehl is the editor of AmmoLand.com, a news and advocacy site related to Second Amendment rights, and in 2023 he was a member of the Board of Directors of the SAF. Ex. H at 1; Ex. G at 19:4–9, 20:2–23, 37:1–12. That day, the SAF filed a lawsuit against the Attorney General of the State of Washington in Washington federal district court, captioned *SAF v. Ferguson*. Ex. J. The *Ferguson* complaint alleged that the Washington Attorney General had "singled out" the Second Amendment

[1] Unless otherwise noted, references to "Exhibits" in this Order refer to exhibits contained in the Appendix of Exhibits to Defendant OpenAI L.L.C.'s Motion for Summary Judgment.

Foundation "for invasive and expensive harassment because of [its] political beliefs and activities, including [its] positions on gun control." *Id.* at 5. Riehl received a "press release" from the SAF about the *Ferguson* complaint and a link to a publicly available copy of the complaint. Ex. K; Ex. G at 70:7–73:6.

On May 3, Riehl was contemplating writing an article for AmmoLand.com about the *Ferguson* complaint and asked ChatGPT to summarize it. Ex. G at 68:14–17, 104:24–105:9. Riehl had past experience using ChatGPT and was familiar with past occasions on which the program had provided "flat-out fictional responses" to some of his questions. Ex. S; Ex. T; Ex. G at 54:10–21, 205:22–206:23, 214:8–12. On May 3, Riehl accepted ChatGPT's Terms of Use governing his interaction with ChatGPT, which specified, among other things:

> "Given the probabilistic nature of machine learning, use of [ChatGPT] may in some situations result in incorrect Output that does not accurately reflect real people, places, or facts. You should evaluate the accuracy of any Output as appropriate for your use case, including by using human review of the Output." Ex. U at '419; *see* Ex. G at 61:8–19; Ex. P at ¶¶ 16, 20–22, 29.

Riehl also encountered multiple other disclaimers during his use of ChatGPT, including a warning that "the system may occasionally generate incorrect or misleading information," Ex. O, and an on-screen disclaimer visible throughout Riehl's interaction with ChatGPT warning that "ChatGPT may produce inaccurate information about people, places, or facts," Ex. V.

Riehl pasted sections of the *Ferguson* complaint into ChatGPT and asked it to summarize those sections, which it did accurately. *See, e.g.*, Ex. N at rows 3–4, 14–15; Ex. G at 66:21–67:11, 68:14–17. Riehl then provided an internet link, or URL, to the complaint to ChatGPT and asked it to summarize the information available at the link. Ex. C at row 3. ChatGPT responded that it did "not have access to the internet and cannot read or retrieve any documents." *Id.* at row 4. Riehl provided the same URL again. This time, ChatGPT provided a different, inaccurate

summary of the *Ferguson* complaint, saying that it involved allegations of embezzlement by an unidentified SAF Treasurer and Chief Financial Officer. *Id.* at row 6. Riehl again provided the URL and asked ChatGPT if it could read it. *Id.* at row 7. ChatGPT responded "yes" and again said the complaint involved allegations of embezzlement; this time, it said that the accused embezzler was an individual named Mark Walters, who ChatGPT said was the Treasurer and Chief Financial Officer of the SAF. *Id.* at row 8. After doing other research online, Riehl asked ChatGPT to identify any news reports about the litigation it was describing; ChatGPT responded that it had a "knowledge cutoff date of September 2021," well before the *Ferguson* complaint was filed, and told Riehl that it did "not have any information on news reports about this specific case." *Id.* at row 26; *see also id.* at row 23 (ChatGPT noting it did "not have access to real-time news or media updates"). Riehl testified that "within about an hour and a half" he had established that "whatever [Riehl] was seeing" in ChatGPT's output "was not true." Ex. G at 205:2–6.

Walters has testified that he incurred no damages from ChatGPT's false claim that he was accused of embezzling funds from the SAF and "is not claiming here that [he has] been harmed." Ex. B at 169:1–170:14, 206:6–8. Walters also testified that he did not ask OpenAI to correct or retract the false claim that he was accused of embezzling funds from the SAF. Ex. B at 171:7–19.

LEGAL STANDARD

Summary judgment is appropriate if the moving party demonstrates "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." O.C.G.A. § 9-11-56(c). A defendant can meet this requirement by presenting "evidence negating an essential element of the plaintiff's claims or establishing from the record an absence of evidence to support such claims." *Prodigies Child Care Mgmt., LLC v. Cotton*, 317 Ga. 371, 373 (2023) (quotation marks and citation omitted). Therefore, "a defendant who will not bear the

burden of proof at trial need not affirmatively disprove the nonmoving party's case, but may point out by reference to the evidence in the record that there is an absence of evidence to support any essential element of the nonmoving party's case." *Giddens v. Metropower, Inc.*, 366 Ga. App. 15, 15 (2022) (quoting *Cowart v. Widener*, 287 Ga. 622, 623 (2010)). Moreover, "[w]here a defendant moving for summary judgment discharges this burden, the nonmoving party cannot rest on its pleadings, but rather must point to specific evidence giving rise to a triable issue." *Id.* (quoting *Cowart*, 287 Ga. at 623). "[S]ummary judgment procedures have been determined to be particularly appropriate in defamation actions where the First Amendment is applicable." *Williams v. Tr. Co. of Georgia*, 140 Ga. App. 49, 58 (1976).

DISCUSSION

Walters' claim fails on this record, and summary judgment will be entered in favor of OpenAI for three independent reasons.

I. THE CHALLENGED OUTPUT DOES NOT COMMUNICATE DEFAMATORY MEANING AS A MATTER OF LAW.

OpenAI argues that the challenged ChatGPT output does not communicate defamatory meaning as a matter of law. The Court agrees with OpenAI.

A defamation plaintiff must establish that the statements at issue could be "reasonably understood as describing actual facts about the plaintiff or actual events in which he participated." *Bollea v. World Championship Wrestling, Inc.*, 271 Ga. App. 555, 558 (2005); *see also Pring v. Penthouse Int'l, Ltd.*, 695 F.2d 438, 442 (10th Cir. 1982) (explaining that a defamation plaintiff must show that challenged statements "in context could be reasonably understood as describing actual facts about the plaintiff"). This objective "test . . . is not whether some actual readers were misled, but whether the hypothetical reasonable reader could be (after time for reflection)." *Farah v. Esquire Mag.*, 736 F.3d 528, 537 (D.C. Cir. 2013). Disclaimer or cautionary language weighs

in the determination of whether this objective, "reasonable reader" standard is met. *See, e.g.*, *Info. Control Corp. v. Genesis One Comput. Corp.*, 611 F.2d 781, 784 (9th Cir. 1980) (courts evaluating defamatory meaning "must give weight to cautionary terms used by the person publishing the statement"); *Pace v. Baker-White*, 432 F. Supp. 3d 495, 510–12 (E.D. Pa. 2020) (disclaimer that is "replete with 'hedging language' such as 'could,' '[w]e do not know,' 'we believe,' etc." meant that a statement did not communicate a defamatory meaning), *aff'd*, 850 F. App'x 827 (3d Cir. 2021).

Under the circumstances present here, a reasonable reader in Riehl's position could not have concluded that the challenged ChatGPT output communicated "actual facts." *Bollea*, 271 Ga. App. at 558; *Pring*, 695 F.2d at 442. In this specific interaction, ChatGPT warned Riehl that it could not access the internet or access the link to the *Ferguson* complaint that Riehl provided to it, and that it did not have information about the period of time in which the complaint was filed, which was after its "knowledge cutoff date." Ex. C at rows 1, 4, 23, 26. Before Riehl provided the link to the complaint, ChatGPT accurately summarized the *Ferguson* complaint based on text Riehl inputted. Ex. N at rows 4, 15. After Riehl provided the link, and after ChatGPT initially warned that it could not access the link, ChatGPT provided a completely different and inaccurate summary. Ex. C at rows 3–6. Additionally, ChatGPT users, including Riehl, were repeatedly warned, including in the Terms of Use that govern interactions with ChatGPT, that ChatGPT can and does sometimes provide factually inaccurate information. Ex. U at '419; Ex. P at ¶¶ 19–22, 25; Ex. V; Ex. DD. A reasonable user like Riehl—who was aware from past experience that ChatGPT can and does provide "flat-out fictional responses," Ex. T, and who had received the repeated disclaimers warning that mistaken output was a real possibility—would not have believed the output was stating "actual facts" about Walters without attempting to verify it, *Bollea*, 271 Ga.

App. at 558. As OpenAI's expert Dr. White explained—whose testimony Walters did not rebut—"the output obtained by Mr. Frederick Riehl on May 3, 2023 contained clear warnings, contradictions, and other red flags that it was not factual. In addition, Mr. Riehl's own Prompt Engineering techniques and choice to ignore ChatGPT's warnings about its limitations contributed to the non-factual output." Ex. L at ¶ 5.b. The undisputed record of Riehl's interactions make that conclusion unavoidable. These multiple indicia—ChatGPT's warnings, refusals, inconsistent responses, and the other behavior summarized above—objectively established to any reasonable reader that the challenged ChatGPT output was not stating "actual facts." *Bollea*, 271 Ga. App. at 558.

That is especially true here, where Riehl had already received a press release about the *Ferguson* complaint and had access to a copy of the complaint that allowed him immediately to verify that the output was not true. Ex. K; Ex. G at 70:7–72:21. Riehl admitted that "within about an hour and a half" he had established that "whatever [Riehl] was seeing" in ChatGPT's output "was not true." Ex. G at 205:2–6. As Riehl testified, he "understood that the machine completely fantasized this. Crazy." *Id.* at 192:12–14.

Under these circumstances, as a matter of law, no reasonable reader in Riehl's position, "after time for reflection," could have interpreted the output as communicating "actual facts," *Farah*, 736 F.3d at 536–37. Indeed, Riehl himself, "after time for reflection," *id.*—"within about an hour and a half," Ex. G at 205:2–6—had confirmed the output did not contain actual facts. Because no reasonable reader could have understood the challenged ChatGPT output as commuting "actual facts," it is not defamatory as a matter of law. *Bollea*, 271 Ga. App. at 558. *See also Farah*, 736 F.3d at 530, 537–39 (finding as a matter of law that "the reasonable reader could not, in context, understand" a challenged publication "to be conveying . . . actual facts"

because of "prominent indicia" in the context and content of the publication that it was not true and where the publisher clarified "[a]pproximately ninety minutes later" that it was not true).

Separately, it is undisputed that Riehl did not actually believe that the *Ferguson* complaint accused Walters of embezzling from the SAF. If the individual who reads a challenged statement does not subjectively believe it to be factual, then the statement is not defamatory as a matter of law. *Sigmon v. Womack*, 158 Ga. App. 47, 50 (1981) (quotation marks and citation omitted). Walters alleges here that he was defamed when ChatGPT told Riehl that the *SAF v. Ferguson* complaint alleged that Walters, the Treasurer and Chief Financial Officer of SAF, had embezzled funds from the SAF. Amended Complaint ¶¶ 14–16, 29–34; Plaintiff's Opposition Brief at 2–3. There is no genuine dispute that Riehl knew ChatGPT's output was not factual. He knew Walters was not, and had never been, the Treasurer or Chief Financial Officer of the SAF, an organization for which Riehl served on the Board of Directors. Ex. G at 116:2–20, 117:18–118:21, 123:16–125:5, 278:13–279:12, 283:4–23. He already understood "in a high-level way" what the *Ferguson* complaint alleged based on his review of the SAF's press release about it. *Id.* at 70:7–72:21, 111:3–21. Riehl had access to a copy of the complaint and could immediately review it to verify what ChatGPT said. *Id.* at 68:14–17, 72:5–73:6; Ex. K. He testified that when ChatGPT told him the *Ferguson* complaint involved allegations of embezzlement, he knew that response was "the wrong information," "not accurate," and "not what the document is about." Ex. G at 112:3–17, 113:16–21. He testified that he was "skeptical" of "the story [ChatGPT] was telling [him] about Walters being accused of financial misconduct." *Id.* at 205:22–206:2. Also he confirmed with certainty "within about an hour and a half" that "whatever [he] was seeing" in ChatGPT's output "was not true"—instead he knew "the machine completely fantasized" the output and that the

output was "crazy," *id.* at 191:8–14; 192:12–14; 205:2–6. Because Riehl did not believe the output, it did not communicate defamatory meaning as a matter of law.[2]

The Court finds that the challenged output does not communicate defamatory meaning as a matter of law. This alone is sufficient to require summary judgment in favor of OpenAI.

II. WALTERS CANNOT SHOW FAULT UNDER EITHER THE NEGLIGENCE OR THE "ACTUAL MALICE" STANDARD.

OpenAI also argues that Walters cannot meet his burden of establishing fault. The Court agrees with OpenAI on this issue as well.

A. Walters Cannot Establish Negligence.

Under Georgia law, a defamation plaintiff must demonstrate at minimum that "the defendant published the allegedly defamatory statements with at least ordinary negligence." *Am. C.L. Union, Inc. v. Zeh*, 312 Ga. 647, 650–51 (2021). Even if the "actual malice" standard did not apply here—and it does, for the reasons set out below at Section II.B—Walters has not identified evidence on which the jury could rely to find that OpenAI "published the allegedly defamatory statements with at least ordinary negligence." *Id.* at 650.

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[2] Walters has suggested that, even though Riehl knew ChatGPT's output did not accurately describe the *Ferguson* complaint, Riehl did suspect that ChatGPT might have been describing some other litigation that Riehl did not ask ChatGPT to summarize. *See* April 14, 2025 Transcript at 34:14–16 ("[Riehl] testified at his deposition that when ChatGPT started talking about this *Gottlieb v. Walters* case, he thought they were talking about a different case."). Even if so, Riehl testified at his deposition that he was at most "skeptical" about whether such allegations might exist, and within an hour and a half confirmed that there was no such case and no such allegations against Walters. Ex. G. at 205:2–6, 17–21. Walters cannot establish defamatory meaning where Riehl confirmed absolutely, after a short interval, that ChatGPT's output did not state any "actual facts" about Walters, *Bollea*, 271 Ga. App. at 558. In any case, Riehl's short-lived, "skeptical" hypothesis that ChatGPT might be revealing some other litigation cannot help Walters meet the objective standard for establishing defamatory meaning, which asks what a reasonable reader would conclude about a statement after reviewing it in context and reflecting on it. *See Bollea*, 271 Ga. App. at 558; *Pring*, 695 F.2d at 442; *Farah*, 736 F.3d at 536–37. Walters has not argued and could not argue that a reasonable reader would have concluded that ChatGPT was revealing a new, different lawsuit while providing a summary of the *Ferguson* complaint.

Where a plaintiff must prove "ordinary negligence," the plaintiff must also identify an applicable standard of care and establish that the defendant did not meet it. *See Gettner v. Fitzgerald*, 297 Ga. App. 258, 264 (2009). Walters has done neither. Walters' opposition brief on this point consists of a single sentence: "[OpenAI] has not argued that it was not at least negligent, but in any event the lack of negligence is a question for the jury and ordinarily cannot be decided by this Court on summary judgment." Plaintiff's Opposition Brief at 4. Not only does that misstate the burden on a plaintiff at summary judgment, but also OpenAI did argue that Walters has not met the standard of ordinary negligence as a matter of law. *See* Defendant's Opening Brief at 24–25. The Court agrees with OpenAI.

The Court of Appeals has held that, in a defamation case, "[t]he standard of conduct required of a publisher . . . will be defined by reference to the procedures a reasonable publisher in [its] position would have employed prior to publishing [an item] such as [the] one [at issue. A publisher] will be held to the skill and experience normally exercised by members of [its] profession. Custom in the trade is relevant but not controlling." *Gettner*, 297 Ga. App. at 264 (alterations in original) (citation omitted). Walters has identified no evidence of what procedures a reasonable publisher in OpenAI's position would have employed based on the skill and experience normally exercised by members of its profession. *Id.* Nor has Walters identified any evidence that OpenAI failed to meet this standard. And OpenAI has offered evidence from its expert, Dr. White, which Walters did not rebut or even address, demonstrating that OpenAI leads the AI industry in attempting to reduce and avoid mistaken output like the challenged output here. Ex. L at ¶¶ 18–20. Specifically, "OpenAI exercised reasonable care in designing and releasing ChatGPT based on both (1) the industry-leading efforts OpenAI undertook to maximize alignment of ChatGPT's output to the user's intent and therefore reduce the likelihood of hallucination; and

(2) providing robust and recurrent warnings to users about the possibility of hallucinations in ChatGPT output. . . . OpenAI has gone to great lengths to reduce hallucination in ChatGPT and the various LLMs that OpenAI has made available to users through ChatGPT. One way OpenAI has worked to maximize alignment of ChatGPT's output to the user's intent is to train its LLMs on enormous amounts of data, and then fine-tune the LLM with human feedback, a process referred to as reinforcement learning from human feedback." *Id.* at ¶ 18–19. OpenAI has also taken extensive steps to warn users that ChatGPT may generate inaccurate outputs at times, which further negates any possibility that Walters could show OpenAI was negligent. Ex. P at ¶ 19, 25; Ex. L at ¶¶ 24–26.

In the face of this undisputed evidence, counsel for Walters asserted at oral argument that OpenAI was negligent because "a prudent man would take care not to unleash a system on the public that makes up random false statements about others. . . . I don't think this Court can determine as a matter of law that not doing something as simple as just not turning the system on yet was . . . something that a prudent man would not do." April 14, 2025 Transcript at 37:21–23, 38:13–16. In other words, Walters' counsel argued that because ChatGPT is capable of producing mistaken output, OpenAI was at fault simply by operating ChatGPT at all, without regard either to "the procedures a reasonable publisher in [OpenAI's] position would have employed" or to the "skill and experience normally exercised by members of [its] profession." *Gettner*, 297 Ga. App. at 264 (citation omitted). The Court is not persuaded by Plaintiff's argument.

Walters has not identified any case holding that a publisher is negligent as a matter of defamation law merely because it knows it can make a mistake, and for good reason. Such a rule would impose a standard of strict liability, not negligence, because it would hold OpenAI liable for injury without any "reference to 'a reasonable degree of skill and care' as measured against a

certain community." *S K Hand Tool Corp. v. Lowman*, 223 Ga. App. 712, 714 (1996) (comparing strict liability with negligence). The U.S. Supreme Court and the Georgia Supreme Court have clearly held that a defamation plaintiff must prove that the defendant acted with "at least ordinary negligence," *Zeh*, 312 Ga. at 650, and may not hold a defendant liable "without fault," *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 347 (1974). And based on the testimony of OpenAI's expert Dr. White, which Walters did not refute, "[d]ue to their generative nature, all of the major LLMs that are currently available to the public are capable of hallucinating." Ex. L at ¶ 20. In other words, based on the undisputed facts, Walters' argument would mean that an AI developer like OpenAI could not operate a large language model like ChatGPT at all, no matter the care it took to reduce the risk of errors, without facing liability for any mistaken output the model generated. That is not a negligence standard, and both Georgia law and federal constitutional law prohibit applying it to Walters' defamation claim.

In sum, Walters has offered no evidence—no deposition testimony, no documents, and no expert report—showing that OpenAI was negligent. Summary judgment is therefore warranted in OpenAI's favor on this separate ground, as well.

B. Walters Is A Public Figure Who Must, But Cannot, Establish "Actual Malice."

Even if Walters could establish that OpenAI acted with "at least ordinary negligence," *Zeh*, 312 Ga. at 650, summary judgment should still issue to OpenAI because Walters is a public figure and must, but cannot, establish "actual malice" to hold OpenAI liable.

1. Walters Is A Public Figure.

The U.S. Supreme Court has held that defamation plaintiffs will qualify as public figures if the plaintiffs have "significantly greater access to the channels of effective communication and . . . a more realistic opportunity to counteract false statements than private individuals normally enjoy," and have "assumed roles of especial prominence in the affairs of society" and

"voluntarily exposed themselves to increased risk of . . . defamatory falsehood." *Gertz*, 418 U.S. at 344–45. Whether a defamation plaintiff qualifies as a public figure is a question of law for the court to decide. *Zeh*, 312 Ga. at 664–65; *Mathis v. Cannon*, 276 Ga. 16, 21 (2002). In evaluating whether a plaintiff qualifies as a public figure, courts consider "[p]revious coverage of the plaintiff in the press," "the voluntariness of the plaintiff's prominence[,] and the availability of self-help through press coverage of responses." *Riddle v. Golden Isles Broad., LLC*, 275 Ga. App. 701, 704 (2005) (citation omitted).

Walters qualifies as a public figure given his prominence as a radio host and commentator on constitutional rights, and the large audience he has built for his radio program. He admits that his radio program attracts 1.2 million users for each 15-minute segment, Ex. B at 25:4–26:6, and calls himself "the loudest voice in America fighting for gun rights," Ex. A at 3. Like the plaintiff in *Williams v. Trust Company of Georgia*, Walters is a public figure because he has "received widespread publicity for his civil rights . . . activities," has "his own radio program," "took his cause to the people to ask the public's support," and is "outspoken on subjects of public interest." 140 Ga. App. at 54 (quotation marks omitted). *See also, e.g.*, *Celle v. Filipino Rep. Enters., Inc.*, 209 F.3d 163, 177 (2d Cir. 2000) (finding the plaintiff a public figure based on the plaintiff's "own characterization of himself as a 'well known radio commentator' within the Metropolitan Filipino-American community"); *Chapman v. J. Concepts, Inc.*, 528 F. Supp. 2d 1081, 1095 (D. Haw. 2007) (holding that the plaintiff, who was a prominent surfer, was a public figure due to his prominence in the surfing community). Additionally, Walters qualifies as a public figure because he has "a more realistic opportunity to counteract false statements than private individuals normally enjoy," *Gertz*, 418 U.S. at 344; he is a radio host with a large audience, and he has actually used his radio platform to address the false ChatGPT statements at issue here. Ex. B at 224:7–14, 226:14–22.

As the Court of Appeals has observed, figures as widely varying as "a college athletic director, a basketball coach, a professional boxer and a professional baseball player, among others, have all been held to be 'public figures.'" *Williams*, 140 Ga. App. at 53.

2. Walters Is A Limited-Purpose Public Figure.

Notwithstanding the above analysis, at a minimum, Walters qualifies as a limited-purpose public figure here because these statements are plainly "germane" to Walters' conceded "involvement" in the "public controvers[ies]" that are related to the ChatGPT output at issue here. *Mathis*, 276 Ga. at 23. The challenged ChatGPT output relates to the public controversy and national debate over the Second Amendment and gun rights. ChatGPT provided the output in response to prompts Riehl submitted regarding a lawsuit filed by the Second Amendment Foundation in Washington federal district court alleging unconstitutional retaliation against its efforts to advocate for Second Amendment rights. Ex. J at 5, 22–24. And the output itself, though false, described allegations that Walters, a prominent Second Amendment rights activist and media figure, had embezzled money from a Second Amendment rights advocacy organization for which he served as the East Coast Media spokesperson.

Given that undisputed context, the challenged output related to the public controversies regarding Second Amendment rights. Walters' counsel conceded at oral argument that Walters is involved in public controversies including "the Second Amendment debate and gun rights generally and things like that." April 14, 2025 Transcript at 39:2–3. The undisputed facts establish the same. *See supra* at 1–2, 12–14. The challenged ChatGPT output is "germane" to those controversies; "[a]nything which might touch on the controversy is relevant," and "a publication is germane to a plaintiff's participation in a controversy if it might help the public decide how much credence should be given to the plaintiff." *Atlanta J.-Const. v. Jewell*, 251 Ga. App. 808,

819–20 (2001). ChatGPT's challenged output, describing false allegations that Walters had embezzled from a prominent Second Amendment rights advocacy organization, is "germane" because it might affect how much credence the public gave Walters on Second Amendment issues.[3] All this establishes that Walters is, at minimum, a limited-purpose public figure here.

Walters argues that "the topic of the defamatory statements was Walters' alleged malfeasance regarding SAF's funds, and related fraud. There is nothing in the record indicating that this was a public controversy. [OpenAI] points to nothing showing that there was public discussion, debate, and dissent about Walters' (nonexistent) involvement in the (nonexistent) controversy." Plaintiff's Opposition Brief at 9. In other words, Walters argues that the only controversies related to the challenged ChatGPT output are the literal words of the output itself.

The Court is not persuaded by Plaintiff's argument. Courts have regularly rejected attempts to define the relevant controversy so narrowly, including in *Jewell*. There, the Court of Appeals approved of the trial court's decision to reject the plaintiff's attempt to "define[] the controversy" "too narrowly" and instead to identify the "broader question" related to the challenged statement as the relevant controversy. *Jewell*, 251 Ga. App. at 817. "By definition, defamation involves an allegation that a plaintiff did something which they did not actually do. If the controversy [were] drawn as the action which [the] plaintiff did not take, then the plaintiff [would] never be involved in the controversy." *Bostic v. Daily Dot, LLC*, 2023 WL 2317789, at *7 n.3 (W.D. Tex. Mar. 1, 2023); *see also, e.g.*, *Jankovic v. Int'l Crisis Grp.*, 822 F.3d 576, 586 (D.C. Cir. 2016) ("courts often define the public controversy in expansive terms"). For that reason, the controversies related

[3] In reality, the public's assessment of Walters' credibility and Walters' reputation generally were unchanged by the challenged ChatGPT output, meaning Walters was not harmed and has no damages—an independent reason to grant summary judgment in favor of OpenAI. *See infra* Part III.

to the challenged ChatGPT output are the "broader question[s]" that provide the context for the output. *Jewell*, 251 Ga. App. at 817. Those relevant controversies are the same controversies for which, as Walters' counsel conceded, Walters is a public figure: "the Second Amendment debate and gun rights generally and things like that." April 14, 2025 Transcript at 39:2–3.

3. ***Walters Cannot Meet The "Actual Malice" Standard.***

Because Walters qualifies as a public figure, he must meet the "actual malice" standard, meaning he must "prove by clear and convincing evidence" that OpenAI either "knew that the allegedly defamatory statements were false" or "was aware of the likelihood [it] was circulating false information." *Zeh*, 312 Ga. at 650–52, 668. In other words, Walters must prove OpenAI actually had "a subjective awareness of probable falsity when the material was published." *Jones v. Albany Herald Publ'g Co.*, 290 Ga. App. 126, 132 (2008) (quotation marks and citation omitted). This is an "extremely high" burden. *Zeh*, 312 Ga. at 669 (quotation marks and citation omitted); *Stange v. Cox Enters., Inc.*, 211 Ga. App. 731, 733 (1994). "Unless the [C]ourt finds, on the basis of pretrial affidavits, depositions or other documentary evidence, that the plaintiff can prove actual malice in the [*New York Times Co. v. Sullivan*] sense, [the Court] should grant summary judgment for the defendant." *Williams*, 140 Ga. App. at 58.

There is no genuine dispute that Walters has no evidence OpenAI acted with "actual malice." To the contrary, the undisputed evidence establishes that OpenAI did not act with "actual malice." As OpenAI's expert Dr. White explained—whose evidence Walters did not attempt to rebut—"OpenAI has gone to great lengths to reduce hallucination in ChatGPT and the various LLMs that OpenAI has made available to users through ChatGPT." Ex. L at ¶ 19. Furthermore, "[a]t all times that ChatGPT has been available to the public, OpenAI has included multiple warnings directly to ChatGPT users regarding the possibility that ChatGPT may generate factually inaccurate output."

Id. at ¶ 24.b. OpenAI's "industry-leading efforts," *id.* at ¶ 18, to reduce errors of this kind and its extensive warnings to users that errors of this kind could occur negate any possibility that a jury could find OpenAI acted with actual malice here.

Walters' two arguments that he has shown actual malice fail. First, he argues that OpenAI acted with "actual malice" because OpenAI told users that ChatGPT is a "research tool." Plaintiff's Opposition Brief at 14. But this claim does not in any way relate to whether OpenAI subjectively knew that the challenged ChatGPT output was false at the time it was published, or recklessly disregarded the possibility that it might be false and published it anyway, which is what the "actual malice" standard requires. Walters presents no evidence that anyone at OpenAI had any way of knowing that the output Riehl received would probably be false. *See Zeh*, 312 Ga. at 669 ("actual malice" standard requires proof of the defendant's "subjective awareness of probable falsity"). Only such evidence could meet Walters' burden of showing "actual malice." Walters has identified none. Again, the undisputed evidence in the record establishes the opposite: OpenAI made substantial efforts—which OpenAI's expert, in unrebutted testimony, characterized as "industry-leading"—to avoid errors of this kind and to warn users that such errors might occur and that users should evaluate output to identify any errors that might exist. Ex. L at ¶¶ 18–28. OpenAI also provides what OpenAI's expert described as "robust and recurrent warnings" to users, cautioning them that errors might occur and advising users that they should evaluate output to identify any errors that might exist. *Id.* at ¶ 18; *see also id.* at ¶¶ 24–28. All this, which OpenAI's expert testified demonstrated "reasonable care" on OpenAI's part, *id.* at ¶ 18—testimony that Walters did not address or refute—negates the possibility that OpenAI acted with "actual malice" here.

Second, Walters appears to argue that OpenAI acted with "actual malice" because it is undisputed that OpenAI was aware that ChatGPT could make mistakes in providing output to users. Plaintiff's Opposition Brief at 13. The mere knowledge that a mistake was *possible* falls far short of the requisite "clear and convincing evidence" that OpenAI actually "had a subjective awareness of probable falsity" when ChatGPT published the specific challenged output itself. *Jones*, 290 Ga. App. at 130, 132 (quotation marks and citation omitted). The undisputed evidence demonstrates that OpenAI warned users that errors could exist and that users—including Riehl himself—were aware that errors could occur. Ex. L at ¶¶ 24–28; Ex. T (Riehl was aware from past experience that ChatGPT could provide "flat-out fictional responses").

Walters has not identified evidence on which the jury could rely to find that he has met the "actual malice" standard. Even if the "actual malice" standard did not apply here, Walters has identified no evidence on which a jury could rely to find that he had carried the burden of showing that OpenAI acted with "at least ordinary negligence." *Zeh*, 312 Ga. at 650. The absence of evidence of fault is also an independent reason to grant summary judgment in OpenAI's favor.

III. WALTERS CANNOT RECOVER DAMAGES.

Finally, OpenAI argues that there are no damages Walters could recover at trial. The Court also agrees with OpenAI on this final issue.

A. Walters Conceded He Has No Actual Damages.

Walters conceded at his deposition that he did not incur actual damages and is not seeking actual damages here. *See* Ex. B at 169:1–170:7 (conceding he is "not claiming any" "economic injury"); *id.* at 206:6–8 (confirming he is "not claiming here that [he has] been harmed"); *see also* Plaintiff's Opposition Brief at 16 (Walters conceding "he has no evidence of [actual] damages").

B. Walters Cannot Recover Punitive Damages Under O.G.C.A. § 51-5-2.

"[A]ll libel plaintiffs who intend to seek punitive damages [must] request a correction or retraction before filing their civil action against any person for publishing a false, defamatory statement." *Mathis*, 276 Ga. at 28 (citing O.G.C.A. §§ 51-5-2, -3, -11). Walters conceded that he did not request that OpenAI correct or retract the challenged ChatGPT output. Ex. B at 171:7–19. He is therefore prohibited by statute from obtaining punitive damages here.

Walters argues that a retraction or correction request would have been "useless and meaningless" and that "it is unclear what a retraction would look like or if one were possible." Plaintiff's Opposition Brief at 18. Those arguments are both speculative and irrelevant to whether Walters is eligible to seek punitive damages. The statute, and the Georgia Supreme Court's *Mathis* decision, are unambiguous: a plaintiff who does not request that the defendant correct or retract a challenged statement may not obtain punitive damages. *Mathis*, 276 Ga. at 25–28. Whether OpenAI could have satisfied that request is irrelevant.

C. Walters Cannot Recover Presumed Or Punitive Damages Under The First Amendment.

Last, Walters argues that "he is entitled to 'presumed' damages because the defamation in this case was defamation *per se*, which requires no showing of actual damages." Plaintiff's Opposition Brief at 16. Walters is not entitled to recover presumed damages here.

It is correct that where a statement is defamatory "per se by imputing the commission of a crime to another, the law infers an injury to the reputation without proof of special damages. . . . Such an injury falls within the category of general damages, 'those which the law presumes to flow from any tortious act . . . .'" *Riddle v. Golden Isles Broad., LLC*, 292 Ga. App. 888, 891 (2008) (quoting O.C.G.A. § 51-12-2(a)). As the U.S. Supreme Court has explained, the doctrine of presumed damages exists because "those forms of defamation that are actionable *per se* are

virtually certain to cause serious injury to reputation," but such injuries are "extremely difficult to prove," so the law assumes that damage has occurred without requiring plaintiffs to prove it. *Carey v. Piphus*, 435 U.S. 247, 262 (1978). However, as counsel for OpenAI argued at oral argument, the evidence can "rebut the presumption of damages." April 14, 2025 Transcript at 32:16; *see, e.g.*, *Williams v. MMO Behav. Health Sys., L.L.C.*, 818 F. App'x 355, 359 (5th Cir. 2020) (presumption of injury "can be rebutted by the defendant"); *see also Williams v. Allen*, 15 So.3d 1282, 1288 (La. App. 2009) ("[E]ven if we assume that [defendant] published a statement that was defamatory per se, any presumption of damages was rebutted by the evidence" showing no pecuniary or reputational harm); *Wilson v. Wilson*, 2007 WL 127657, at *3 (Oh. Ct. App. Jan. 19, 2007) (presumed damages were rebutted where plaintiff admitted that the only people who heard the challenged statement "had not believed it" and that he "had suffered no adverse consequences at work"); *Knight v. Chi. Trib. Co.*, 385 Ill. App. 3d 347, 356 (2008) (rejecting argument that "stat[ing] a cause of action for defamation *per se* . . . entitles every such plaintiff to an irrebuttable presumption of damages").

Here, any presumption of damage to Walters has been rebutted by Walters' own admissions. Walters conceded that he is "not claiming here that [he has] been harmed." Ex. B at 206:6–8; *see id.* at 169:1–170:7. That concession is consistent with the undisputed evidence. Riehl, the only person who received the challenged ChatGPT output, was "always skeptical" about ChatGPT's output, established after approximately an hour and a half that the output was not true, and did not republish it. Ex. G at 205:2–6, 17–21. It is undisputed that Walters could not have sustained any injury of any kind, whether a quantifiable economic loss or any "injury to the reputation" that "flow[ed]" from the challenged ChatGPT output, *Riddle*, 292 Ga. App. at 891. Where the undisputed facts establish that no injury of any kind could have occurred, and where the plaintiff

admits under oath that he is not claiming he was harmed, no presumed damages are appropriate. Such damages would constitute compensation for injuries that do not exist.

Regardless, even if presumed damages were available on this record—they are not—Walters is also foreclosed from obtaining presumed damages here under the First Amendment to the U.S. Constitution. (The same rule independently prohibits Walters from recovering punitive damages, even if punitive damages were not statutorily barred under O.G.C.A. § 51-5-2.) As the Georgia Supreme Court has held, "even a private-figure plaintiff is required to prove actual malice in order to recover presumed or punitive damages if the defamatory statement was about a matter of public concern." *Zeh*, 312 Ga. at 652 n.5; *see also Gertz*, 418 U.S. at 350 ("[T]he private defamation plaintiff who establishes liability under a less demanding standard than that stated by *New York Times* may recover only such damages as are sufficient to compensate him for actual injury.").

The challenged statements here involve a "matter of public concern." *Zeh*, 312 Ga. at 652 n.5. They were elicited by Riehl, a reporter, who was considering writing an article about a publicly filed lawsuit brought by a constitutional rights advocacy organization against a state attorney general relating to freedom of speech. Ex. G at 66:15–67:11, 70:18–71:5, 71:20–72:16. Because they involve "a matter of public concern," Walters cannot recover presumed damages—or punitive damages—unless he can meet the "actual malice" standard. And for the reasons set out above in Section II.A of this Order, he cannot do so.

Walters argues that the challenged statements do not qualify as a "matter of public concern" because they were "wholly in the interest of the speaker and the specific audience," relying on the U.S. Supreme Court's decision in *Dun & Bradstreet, Inc. v. Greenmoss Buildings, Inc.*, 472 U.S. 749, 762 (1985). In *Dun & Bradstreet*, the plaintiff sued over a credit report, provided to five

subscribers who were contractually forbidden from sharing it with others, that falsely reported the plaintiff had filed for bankruptcy, a matter of "purely private concern." *Id.* at 751, 759. The challenged output here was not, like the credit report in *Dun & Bradstreet*, about the private business concerns of a company and its creditors, nor was it provided under a requirement of confidentiality. Riehl, a journalist, was using ChatGPT as part of preparing a contemplated article for public distribution about the *Ferguson* complaint and the issues of public importance that were involved in that lawsuit, and he was permitted to share output he received from ChatGPT. Unlike the credit report in *Dun & Bradstreet*, these challenged statements involve "a matter of public concern." Therefore Walters, regardless of whether he qualifies as a public figure or a private figure, cannot obtain either presumed or punitive damages unless he can show "actual malice," *Zeh*, 312 Ga. at 652 n.5, which, for the reasons set out above, Walters cannot do.

Walters cannot recover any damages—actual, punitive, or presumed—as a matter of law. This, too, is an independently sufficient basis to grant summary judgment in favor of OpenAI.

CONCLUSION

For the reasons stated above, the Court hereby GRANTS Defendant OpenAI's Motion for Summary Judgment. The Court ENTERS JUDGMENT in favor of Defendant OpenAI and against Plaintiff Walters and directs Defendant OpenAI to complete the civil case disposition form.

SO ORDERED, this 19th day of May, 2025.

Tracie H Cason

Honorable Tracie Cason
Superior Court of Gwinnett County

As edited by the Court,

Order Proposed by:

/s/ *Stephen T. LaBriola*

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