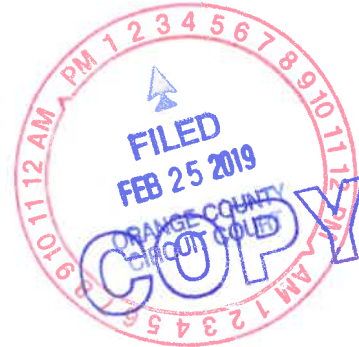


VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ORANGE

The Miller Firm, LLC,)
)
 Plaintiff, Counterclaim Defendant,)
 v.)
)
 Timothy Litzenburg,)
 Defendant, Counterclaim and)
 Crossclaim Plaintiff,)
)
 Roundup Cancer Firm, LLC,)
 Defendant,)
 v.)
)
 Michael Miller)
)
 Crossclaim Defendant.)
 _____)

Case No. CL 18001118



**DEFENDANT LITZENBURG AND THE ROUNDUP CANCER FIRM LLC'S
 MOTION TO STRIKE IRRELEVANT, SCANDALOUS AND SUPERFLUOUS
ALLEGATIONS FROM THE FIRST AMENDED COMPLAINT**

COME NOW, Defendants Timothy Litzenburg (“Litzenburg”) and Roundup Cancer Firm, LLC (“Roundup Firm”) by and through its undersigned counsel, and move this Honorable Court to Strike certain allegations and exhibits in the First Amended Complaint that are clearly irrelevant, scandalous, impertinent and surplusage and are highly prejudicial to Defendant Litzenburg. As set forth below, Defendants asks the Court to strike 41 paragraphs of the First Amended Complaint and Exhibits 1-3, which are entirely unrelated to any element of any of the six Causes of Actions alleged by Plaintiff, The Miller Firm, and are interposed for the improper purpose of embarrassing and harassing Litzenburg.¹

¹ Under §8.01-271.1 an attorney filing any pleading, motion or other paper has an affirmative duty to ensure that “the Pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” If a pleading, motion,

**The Ad Hominem Attacks on Mr. Litzenburg are Irrelevant
to Plaintiff's Causes of Action**

Plaintiff's claims against its former employee Timothy Litzenburg and his new law firm, Roundup Firm comprise a business dispute. Although essentially axiomatic in litigation, a First Amended Complaint is a pleading that institutes causes of action. A Complaint is not a responsive pleading nor is it a tabloid for mudslinging. Here, the specific causes of action alleged by TMF in its First Amended Complaint are as follows: (1) breach of fiduciary duty; (2) tortious interference with contract and business relations, (3) statutory conspiracy under §18.2-499; (4) common law conspiracy; (5) misappropriation of trade secrets and (6) computer trespass. Plaintiff's First Amended Complaint further sets out the nature of the case in the first two paragraphs of the FAC. As alleged in paragraph 1 of the First Amended Complaint filed by TMF as the Plaintiff in this action, it is alleged that "while still employed by TMF, Litzenburg stole valuable information, diverted business from TMF, engaged in self-dealing, usurped corporate opportunity and conspired with others to undermine TMF's reputation and its client relationships," all of which are strenuously denied by Defendants.

In his parting words to Mr. Litzenburg, Mr. Miller vowed to use every penny at his disposal to destroy Mr. Litzenburg.² Plaintiff apparently intends to make good on that threat. In

or other paper is made in violation of this rule, the Court shall impose "an appropriate sanction". The rule expressly permits the Court to order the "other party to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper or making of the motion, including a reasonable attorney's fee." An appropriate sanction is not limited to reasonable attorney fees and can include the Court striking the pleading, motion or other paper that was filed in violation of this section. Clearly, at a minimum, striking the irrelevant, scandalous and highly prejudicial allegations in Plaintiff's moving papers, the First Amended Complaint, would be part of an appropriate sanction.

² Upon his termination from TMF, Mr. Litzenburg asked TMF to meet and confer, as required by Rule 5.8 of the Rules of Professional Conduct when an attorney separates from employment from his law firm. Mr. Litzenburg proposed a joint letter, consistent with the obligations

the FAC, Plaintiff has chosen to include a section entitled “**E. Mr. Litzenburg’s Erratic and Troubling Behavior**” containing 41 paragraphs alleging totally irrelevant, scandalous and prejudicial actions by Litzenburg regarding his alleged sexual activities, his alleged use of drugs and former use of alcohol, his alleged attendance of rock and roll concerts, his alleged purchase of cars, instances where TMF now claims they felt Mr. Litzenburg was “erratic” or underperformed at work, and even one TMF employee’s opinion that Mr. Litzenburg once needed to take a shower. (FAC ¶¶ 39-80). None of these factual allegations are relevant to any of the six causes of action pled by Plaintiff in the FAC. It is a nearly 8-page mudslinging detour in the pleading intended to prejudice and harass Mr. Litzenburg and force Defendants to incur additional expenses by, among other things, having to file this Motion. Plaintiff TMF does not even attempt to make a connection between the scandalous and impertinent allegations in section E of the FAC and any of the causes of action.

Notably however, Mr. Miller’s actions revealed the true purpose for including the salacious and often purely fictitious 41-paragraph personal attack on Mr. Litzenburg. Upon information and belief, Mr. Miller alerted Virginia Lawyers Weekly about the First Amended Complaint shortly before filing and serving it. Recognizing it for what it is, Virginia Lawyers Weekly titled its February 11, 2019 article on the litigation, “Allegations get personal in law firm split.” The article referenced the allegations of erratic behavior in the completely superfluous section of the FAC.

imposed by Rule 5.8, to notify the TMF/Litzenburg clients of their right to choose counsel. Michael Miller and TMF refused to send the letter. Instead, as the evidence will show, they offered Mr. Litzenburg \$1,000,000 to ignore that ethical requirement to apprise the clients of his departure. When Mr. Litzenburg declined the offer, Mr. Miller threatened Mr. Litzenburg that he would use “every penny at my disposal to destroy you.”

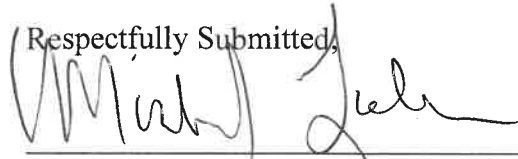
The Irrelevant Personal Attacks Should be Struck

This Court should strike paragraphs 39-80 of the FAC, which are probative of none of the six counts alleged by Plaintiff and merely intended to harass and embarrass. Virginia is a notice pleading state. Rule 1.4(d) of the Rules of the Supreme Court provides that a Plaintiff should include only the “facts on which the party relies” in its claim. While it is rare that a litigant so flagrantly disregards pleading requirements by including irrelevant factual allegations to prejudice and harass a Defendant, authority to strike such improper portions of the FAC has existed in Virginia law for decades. In *Carwile v. Richmond Newspapers*, 196 Va. 1, 4 (1954), the Supreme Court stated that the “trial court should require Plaintiff to delete from his motion for judgment the phrase describing the editorial as a ‘malicious lie.’ The language is improper and its use in pleadings should not be permitted.” Likewise, in *The Federal Land Bank of Baltimore v. Birchfield*, 173 Va. 200 (1939), the Supreme Court explained that a motion to strike superfluous matters should have been granted by the trial court. See also Va. Code § 8.01-271.1 as discussed in footnote 1 *supra*, which further allows this Court to strike the offending 41 paragraphs and accompanying exhibits.³ There is no proper purpose for “Section E” of the FAC and this Court should strike it in its entirety.

For the foregoing reasons, and for additional reasons later set forth in Defendants’ forthcoming Memorandum in Support of this Motion and through oral argument, Defendants ask this Court to Strike Section E comprised of ¶¶ 39- 80 and Exhibits 1-3 from the FAC.

³ Defendants reserve the right to fully brief this matter before argument.

February 25, 2019

(Respectfully Submitted,


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CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2019 a true and correct copy of the foregoing was emailed, and mailed, U.S. Mail, first-class, postage pre-paid to:

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