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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

INTERNATIONAL ASSOCIATION OF
UNITED WORKER'S UNION, et al.,

Plaintiffs,

vs.

UNITED MINE WORKERS OF
AMERICA, et al.,

Defendants.

Case No. 2:04CV00901

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS ALL CLAIMS
AGAINST DEFENDANTS *THE MILITANT*
AND THE SOCIALIST WORKERS PARTY**

Judge Dee V. Benson

Defendants *The Militant* and the Socialist Workers Party¹ (collectively "Defendants"), by and through undersigned counsel, hereby submit this memorandum in support of their motion to dismiss all claims asserted against them by the plaintiffs² in the above captioned matter.

¹ The only allegation against the Socialist Workers Party is that it owns and controls *The Militant*, and is therefore derivatively liable for *The Militant's* allegedly defamatory publications. See Amended Complaint at 4, ¶ 33 ("*The Militant* is a newspaper owned and/or controlled by the Socialist Workers Party and is responsible for its content."). Even assuming (as we must for this motion) that this allegation is true (which it is not), the plaintiffs' claims against the Socialist Workers Party rise and fall with their claims against *The Militant*, and because the claims against *The Militant* should be dismissed, so too should the claims against the Socialist Workers Party.

² The plaintiffs in this case (collectively referred to herein as "Plaintiffs") are (i) the Co-op Mine, (ii) some of the Co-op Mine's officers and employees, (iii) the International Association of United Workers Union ("IAUWU") (an association currently operating at the Co-op Mine), and (iv) a number of IAUWU officials.

INTRODUCTION

For more than 75 years, *The Militant*, a socialist newsweekly published in New York, has written extensively on the labor movement, the efforts of workers to unionize and to obtain greater rights, and on issues of public health and safety particularly affecting workers. Given its interest in labor issues, *The Militant* has written extensively over the past 18 months on the contentious and very public dispute between a central Utah coal mine (the "Co-op Mine") owned by the Kingston family,³ and a number of the mine's workers. Like other newspapers, including *The Salt Lake Tribune* and *The Deseret Morning News*, *The Militant's* articles have reported extensively on the workers' allegations that they lack genuine union representation at the Co-op Mine, and that they have experienced unsafe working conditions, retaliatory and anti-union labor practices, and other egregious and unfair treatment. *The Militant* has also reported extensively on (and reprinted documents relating to) proceedings before and rulings by the National Labor Relations Board ("NLRB") regarding the labor dispute at the Co-op Mine, and the actions of the Mine Safety and Health Administration ("MSHA") with respect to unsafe working conditions at the mine.⁴

Frustrated with the negative publicity about the Co-op Mine, Plaintiffs have now sued *The Militant*, *The Salt Lake Tribune* (the "Tribune"), *The Deseret Morning News* (the "Morning News"), and numerous others for defamation. As with their allegations against the *Tribune* and the *Morning News* the plaintiffs do not attempt to allege or articulate what portions of *The Militant's* articles on the Co-op Mine dispute are actually defamatory or why. Plaintiffs have

³ The Co-op Mine is technically owned by C.W. Mining, an entity owned and controlled by the Kingstons.

⁴ Both of these governmental agencies have issued rulings and/or citations affirming claims of the Co-op Mine workers.

instead drafted their Complaint with an extremely broad brush, boldly contending that nearly *each and every* article *The Militant* published about the Co-op Mine labor dispute between October 2003 and December 2004 is defamatory.⁵ Such sweeping and conclusory allegations of defamation defy all common sense and reveal Plaintiffs' true motive to harass *The Militant* (and the other media defendants), and to deter further negative press about the Co-op Mine and the claims of its workers. *The Militant's* articles are entitled to the fullest protection of the First Amendment, however, and Plaintiffs should not be allowed to use this litigation as a means to squelch *The Militant's* constitutional rights to freedom of the press and freedom of speech.

Plaintiffs' claims against Defendants are meritless and should be dismissed for at least five reasons: (1) *The Militant's* publications are protected by the public interest privilege; (2) *The Militant's* allegedly defamatory statements, when taken in context, are not capable of sustaining defamatory meaning, (3) *The Militant's* allegedly defamatory statements are statements of non-actionable opinion, and not statements of fact; (4) many of *The Militant's* allegedly defamatory statements are protected by the official proceedings privilege; and (5) with few exceptions, *The Militant's* allegedly defamatory statements are not "of and concerning" the individual plaintiffs. Plaintiffs should also be required to reimburse Defendants for their reasonable attorneys' fees and costs incurred in defending this frivolous lawsuit.⁶

⁵ Copies of *The Militant's* allegedly defamatory articles are attached hereto as Exhibit A so that this Court can review them in their entirety. Because these articles are referenced and relied upon in the Amended Complaint, *see* Amended Complaint at 10-36, ¶¶ 81(a)-(ppp), they are properly before this Court on a Rule 12(b)(6) motion to dismiss. *See, e.g., GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384 (10th Cir. 1997) ("[I]f a plaintiff does not incorporate by reference or attach a document to its complaint, but the document is referred to in the complaint and is central to the plaintiff's claim, a defendant may submit an indisputably authentic copy to the court to be considered on a motion to dismiss. If the rule were otherwise, a plaintiff with a deficient claim could survive a motion to dismiss simply by not attaching a dispositive document upon which the plaintiff relied.").

⁶ In addition to the claims of defamation, Plaintiffs' Amended Complaint purports to set forth claims for intentional interference with economic relations, negligence, and civil conspiracy. *See* Amended Complaint at 67-69, ¶¶ 143-

RELEVANT FACTS

Plaintiffs initiated this lawsuit against *The Militant* and numerous other publications and news organizations on or about September 24, 2004, asserting claims of defamation in an effort to squelch negative press about the Co-op Mine and its owners. *See* Amended Complaint.⁷ On or about February 17, 2005, defendants the *Tribune* and the *Morning News*, along with individually named editors and reporters (collectively “*Tribune/Morning News Defendants*”), filed a Motion to Dismiss Plaintiffs’ claims against them, together with a supporting memorandum entitled “Memorandum in Support of Motion to Dismiss” (hereinafter “*Tribune/Morning News Memorandum*”). In that memorandum, the *Tribune/Morning News Defendants* group their allegedly defamatory statements into four categories, which categories apply equally to the allegedly defamatory statements published by *The Militant*. The four categories, and the corresponding articles from *The Militant*, are as follows:

1. ***Statements Regarding the Lockout:*** Workers and union leaders say the Co-op Mine locked them out, fired them, and/or otherwise retaliated when the workers tried to organize or support a new union;⁸
2. ***Statements Regarding the IAUWU:*** Workers and union leaders say the IAUWU does not represent workers’ interests, is a sham union controlled by the

167. Although these claims appear to be directed solely at the United Mine Workers of America (“UMWA”), and not *The Militant* (or the Socialist Workers Party), the Amended Complaint is less than clear. *See id.* To the extent Plaintiffs intended to allege these additional claims against *The Militant* (or the Socialist Workers Party), however, these claims must also fail with their defamation claims because the only allegedly wrongful conduct by *The Militant* (or the Socialist Workers Party) is the publication of the allegedly defamatory statements.

⁷ Plaintiffs filed their Amended Complaint on or about December 9, 2004.

⁸ *The Militant* Articles: 10/06/03; 10/13/03; 10/27/03; 11/03/03; 11/10/03; 11/17/03; 11/24/03; 11/24/03; 12/1/03; 12/1/03; 12/8/03; 12/15/03; 12/22/03; 12/29/03; 1/12/04; 1/19/04; 1/26/04; 2/2/04; 2/9/04; 2/16/04; 2/23/04; 3/8/04; 3/15/04; 3/22/04; 4/27/04; 5/04/04; 5/04/04; 5/11/04; 5/25/04; 5/31/04; 6/14/04; 6/28/04; 7/6/04; 7/20/04; 8/3/04; 8/17/04; 8/31/04; 9/07/04; 9/14/04; 9/14/04; 9/21/04; 9/28/04; 10/05/04; 10/12/04; 10/12/04; 10/19/04; 10/26/04; 11/02/04; 11/9/04; 11/16/04; 11/23/04; 11/30/04; and 12/7/04, true and correct copies attached hereto as Exhibit A.

Kingstons, and does not have a genuine labor contract with workers; and that the Kingstons tried to stack the union vote with family members;⁹

3. **Statements Regarding Working Conditions at the Co-op Mine:** Workers and union leaders say that working conditions at the Co-op Mine are poor; that the Co-op Mine exploits, intimidates, and abuses workers; that wages are meager and workers are forced to work with injuries, work overtime, and pay for equipment and training; that workers lack adequate training and health-care benefits; that Kingston children work in the Co-op Mine; and that the Co-op Mine conditions are analogous to human rights violations and tantamount to slavery;¹⁰ and
4. **Statements Regarding the NLRB/MSHA Proceedings and Rulings:** Workers and union leaders statements regarding proceedings before and investigations of the NLRB and MSHA relating to complaints by the Co-op Mine workers and/or UMWA leaders, and reports on rulings and/or citations from the NLRB and/or MSHA ordering reinstatement and back pay, finding the firing and intimidation of workers to be illegal, finding safety violations at the Co-op Mine and/or excluding Kingston family members from the union vote.¹¹

In the interest of judicial economy, and because the arguments set forth in the *Tribune/Morning News* Memorandum apply with equal or greater force to the statements published by *The Militant*, Defendants hereby rely upon and incorporate by express reference the following portions of the *Tribune/Morning News* Memorandum:

- “Introduction,” paragraphs one thru three, see *Tribune/Morning News* Memorandum at iii-iv;

⁹ *The Militant* Articles: 10/06/03; 10/27/03; 11/03/03; 11/10/03; 11/24/03; 12/1/03; 12/1/03; 12/29/03; 1/26/04; 2/2/04; 2/9/04; 4/13/04; 5/25/04; 6/7/04; 6/14/04; 6/28/04; 7/20/04; 8/3/04; 8/10/04; 8/17/04; 8/31/04; 9/07/04; 9/14/04; 9/14/04; 9/21/04; 9/28/04; 10/05/04; 10/12/04; 10/12/04; 10/19/04; 10/26/04; 11/02/04; 11/9/04; 11/23/04; 11/30/04; and 12/7/04, true and correct copies attached hereto as Exhibit A.

¹⁰ *The Militant* Articles: 10/13/03; 10/27/03; 11/03/03; 11/10/03; 11/17/03; 11/24/03; 11/24/03; 12/1/03; 12/1/03; 12/8/03; 12/15/03; 12/22/03; 12/29/03; 1/12/04; 1/19/04; 1/26/04; 2/2/04; 2/9/04; 2/16/04; 2/23/04; 3/1/04; 3/8/04; 3/15/04; 3/22/04; 4/20/04; 5/11/04; 5/18/04; 5/25/04; 6/07/04; 6/14/04; 6/28/04; 7/6/04; 7/20/04; 8/3/04; 8/17/04; 8/31/04; 9/14/04; 9/28/04; 10/19/04; 10/26/04; 11/02/04; 11/9/04; 11/16/04; and 12/7/04, true and correct copies attached hereto as Exhibit A.

¹¹ *The Militant* Articles: 7/20/04; 8/10/04; 8/31/04; 9/14/04; 9/21/04; 9/28/04; 10/05/04; 10/12/04; 10/19/04; 10/26/04; 11/02/04; 11/9/04; 11/16/04; 11/23/04; 11/30/04; and 12/7/04, true and correct copies attached hereto as Exhibit A.

- “Relevant Allegations of the Complaint,” particularly the argument that Plaintiffs failed to plead their defamation claims in accordance with the requirements of Federal Rule of Civil Procedure 8(a), *see id.* at iv-vi & 1;
- “Argument,” Sections II-VII, *see id.* at 7-28;¹² and
- Exhibits C thru H.

ARGUMENT

I. *THE MILITANT IS ENTITLED TO THE SAME FIRST AMENDMENT PROTECTIONS AS THE TRIBUNE/MORNING NEWS DEFENDANTS, AND PLAINTIFFS’ CLAIMS AGAINST THE MILITANT SHOULD BE DISMISSED FOR THE SAME REASONS SET FORTH IN ARGUMENT SECTIONS II-VI OF THE TRIBUNE/MORNING NEWS MEMORANDUM.*

Sections II-VI of the *Tribune/Morning News* Memorandum contain persuasive analyses regarding the nature of the labor dispute between the Co-op Mine and its workers as an important public controversy, and a thorough explanation as to why the statements made by the press regarding this highly-publicized dispute, and the proceedings before the NLRB and/or MSHA, are not, as a matter of law, defamatory. *See Tribune/Morning News* Memorandum at iii-iv & 1-28.

Like the statements published by the *Tribune/Morning News* Defendants, and for the same reasons set forth in their memorandum, the statements published in *The Militant*:

1. concern matters of significant public interest and inform the public about the contentious labor dispute between the Co-op Mine and its workers and the serious claims of mistreatment by the Co-op Mine workers, and are thus

¹² *The Militant* does not incorporate, adopt, or rely upon Argument, Section I of the *Tribune/Morning News* Memorandum regarding the “neutral reporting” privilege at this time, but expressly reserves the right to invoke the privilege as appropriate in the future. *The Militant* nonetheless agrees with the *Tribune/Morning News* Defendants that the “neutral reporting” privilege is an important privilege that should be recognized under the First Amendment for all members of the press. The privilege is satisfied by accurately reporting what was said or done by participants in the course of a newsworthy public controversy, *Price v. Viking Penguin, Inc.*, 881 F.2d 1426, 1434 (8th Cir. 1989), *cert. denied*, 493 U.S. 1036 (1990), and where the reporter or publication refrains from “in fact espous[ing] or concur[ring] in the charges made by others.” *Edwards v. National Audubon Soc’y*, 556 F.2d 113, 120 (2d Cir. 1977).

protected by Utah's "public interest" privilege, *see Tribune/Morning News Memorandum at 7-12, Argument, Section II; and*

2. were published in the context of a very public, heated and well-publicized labor dispute, by a publication with a history of covering workers' rights and organizing labor drives, and thus, by their very nature and context, do not convey a defamatory meaning to a reasonable reader, *see id.* at 12-16, Argument, Section III; and
3. report the point of view and opinions of the Co-op Mine workers regarding their working conditions and their treatment at the Co-op Mine, by a publication historically interested in labor disputes and issues of public health and safety as they relate to workers, and thus constitute statements of opinion which are not capable of being objectively verified as true or false, *see id.* at 16-20, Argument, Section IV; and
4. report on the administrative proceedings of the NLRB and/or MSHA to investigate and review the Co-op Mine workers' complaints about lack of genuine union representation, deplorable and unsafe working conditions, and retaliatory and unlawful anti-labor practices at the Co-op Mine, and are thus privileged under Utah law as reports of governmental proceedings, *see id.* at 20-23, Argument, Section V; and/or
5. are directed at the Co-op Mine and/or the International Association of United Workers' Union ("IAUWU"), and are not "of and concerning" the individual plaintiffs. *See id.* at 23-25, Argument, Section VI.

All of the arguments set forth in Sections II-VI of the *Tribune/Morning News Memorandum* apply with equal or greater force to statements published by *The Militant*, and likewise require the dismissal of all of claims asserted against Defendants.¹³

¹³ *The Militant* acknowledges that not all of the statements it published fall within each of the identified categories. By way of nonexclusive example, a small handful of articles do contain statements about some of the individually named plaintiffs. *See, e.g., The Militant* Articles 1/12/04; 4/20/04; 8/3/04; 8/10/04; 8/17/04; 8/31/04; 9/21/04; 10/05/04; 11/9/04; and 12/7/04, true and correct copies attached hereto as Exhibit A. Likewise, only about one-third of the articles report on the proceedings before the NLRB and/or MSHA. *See infra* note 11. However, because all of *The Militant's* articles fall into at least one of the identified categories, it is appropriate for this Court to entirely dismiss Plaintiffs' claims against *The Militant* (and the Socialist Workers Party), with prejudice.

II. THIS COURT SHOULD EXERCISE ITS POWER TO NOT ONLY DISMISS PLAINTIFFS' CLAIMS, WITH PREJUDICE, BUT TO AWARD DEFENDANTS THEIR REASONABLE ATTORNEYS' FEES AND COSTS IN DEFENDING THIS FRIVOLOUS ACTION.

Defendants join in and adopt in full the arguments and analyses set forth in Section VII of the *Tribune/Morning News* Memorandum, *see id.* at 25-28, and urge this Court to not only dismiss all of Plaintiffs' claims, with prejudice, but to require Plaintiffs' to fully reimburse Defendants the reasonable attorneys' fees and costs incurred in defending this frivolous action. Defendants specifically agree with the *Tribune/Morning News* Defendants that (i) the Kingston family has demonstrated a disturbing trend of using improper and frivolous "defamation" actions as a powerful tool in their attempts to silence the press and their critics, (ii) the current lawsuit constitutes yet another attempt by the Kingstons to chill the constitutional rights of the press, and deter political opponents from fully exercising their freedom of the press and speech in order to avoid further public scrutiny of their business practices at the Co-op Mine, and (iii) Plaintiffs should not be allowed to abuse the legal system in this way.

This Court has the power under both federal procedural law and Utah substantive law to require Plaintiffs to pay Defendants' reasonable attorneys' fees and costs in this case.¹⁴ *See* Fed. R. Civ. P. 11(c)(1) & (c)(2) (allowing Court, upon motion or on its own initiative, to award "monetary sanctions" where it determines that a lawsuit has been filed for "any improper purpose, such as to harass," or lacks a good faith basis in the law); U.C.A. § 78-27-56(1) (requiring the court to "award reasonable attorney's fees to a prevailing party if the court determines that the action . . . was without merit and not brought or asserted in good faith.").

¹⁴ Should this Court determine that an award of reasonable attorneys' fees and costs is appropriate in this case, counsel for Defendants will submit the appropriate affidavits to support such an award.

The exercise of such power is particularly appropriate in this case given the clear policy of the State of Utah against using claims for defamation as tools to chill public participation in the processes of government, a policy which is clearly reflected in the Citizen Participation in Government Act, Utah Code Ann. § 78-58-101 *et seq.* (the “Anti-SLAPP Statute”).

As set forth more fully in the *Tribune/Morning News* Memorandum, the Anti-SLAPP Statute is specifically designed to deter the potential for unscrupulous litigants to abuse the legal system and use it as a means of interfering with a party’s First Amendment rights (including freedom of the press), to engage in free and full debate on matters of public importance. *See id.* at 26-27. The very public and contentious labor dispute between the Co-op Mine and its workers raises important issues of workers’ rights, health and safety in the coal mines, and social justice—issues of particular interest to *The Militant* and its readers. *The Militant’s* coverage raises public awareness about these important issues, and constitutes active participation in a highly publicized and public debate. *The Militant’s* coverage of the Co-op Mine dispute is thus particularly ripe for protection under the Anti-SLAPP Statute.¹⁵

CONCLUSION

For all of the foregoing reasons, as well as those set forth in the incorporated portions of the *Tribune/Morning News* Memorandum, Defendants respectfully request that their Motion to Dismiss be granted, that Plaintiffs’ claims against them be entirely dismissed, with prejudice, and

¹⁵ Because *The Militant* has filed a motion to dismiss under Rule 12(b)(6), rather than an Answer, it has not filed a counterclaim against Plaintiffs under the Anti-SLAPP Statute. *The Militant* firmly believes that it has a stand alone claim against Plaintiffs under Section 105 the Anti-SLAPP statute, however, and expressly reserves the right to assert a substantive claim in a separate proceeding, after Plaintiffs’ claims are dismissed in this case. Any subsequent action would necessarily include a claim for the same attorneys’ fees and costs sought through this motion to dismiss (along with other compensatory damages). *See* U.C.A. § 78-58-105. By awarding *The Militant* its fees and costs now, this Court will avoid the necessity for this subsequent action, which would involve additional needless expense and time, and constitute a waste of judicial resources.

that Defendants be awarded all of the reasonable attorneys' fees and costs they have incurred in defending this frivolous lawsuit.

DATED this 8th day of February, 2005.


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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February, 2005, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS ALL CLAIMS AGAINST DEFENDANTS *THE MILITANT AND THE SOCIALIST WORKERS PARTY***, to:

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