APPENDIX

TABLE OF APPENDICES

APPENDIX A

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

NO. 22-10865

Non-Argument Calendar

MARTIN E. O'BOYLE,
JONATHAN O'BOYLE,
WILLING RING,

Plaintiffs-Appellants,

versus

COMMERCE GROUP, INC., et al.,

Defendants,

TOWN OF GULF STREAM,

Defendant-Appellee.

Appeal from the United States District Court
For the Southern District of Florida
D.C. Docket No. 9:19-cv-80196-AMC

PER CURIAM:

We deny the appellants' petition for rehearing but withdraw our previous opinion dated Feb. 8, 2023, *O'Boyle v. Com. Grp.*, No. 22-10865, 2023 WL 1816381 (11th Cir. Feb. 8, 2023), and substitute the following opinion in its place:

* * *

Martin O'Boyle, his son Jonathan O'Boyle, and their lawyer William Ring sued the Town of Gulf Stream for violating the First Amendment by allegedly retaliating against their extensive public records litigation. The district court granted summary judgment in Gulf Stream's favor because the town had probable cause to take the allegedly retaliatory conduct. On appeal, Ring and the O'Boyles argue that they did not need to show a lack of probable cause to show retaliation. But, under our precedent, they did. So we affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This opinion is the third in a saga that chronicles Martin O'Boyle's feud with Gulf Stream and its leadership. *See Town of Gulf Stream v. O'Boyle (O'Boyle I)*, 654 F. App'x 439 (11th Cir. 2016); *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277 (11th Cir. 2019). Most of the relevant facts are set out at greater length in *O'Boyle I* and *DeMartini*, so we tell here an abbreviated version of the story.

A.

Martin O'Boyle is a Gulf Stream resident who has long disliked town leadership. After the town denied him a building permit, he painted cartoons on his house ridiculing the town's mayor and hung signs criticizing town leadership from a truck that he parked at the town hall. He also began filing public records requests with the town, often in the name of various companies he owned. In January 2014, O'Boyle started the Citizen's Awareness Foundation, Inc., a nonprofit ostensibly dedicated to government transparency, and staffed it with his longtime employees and business associates. The Foundation also lodged public records requests against the town, overwhelming the small handful of municipal staff who had to respond to them. *See DeMartini*, 942 F.3d at 1281–82. Between 2013 and late 2014, O'Boyle and his associates filed nearly 2,000 public records requests—many for vague and hard-to-identify topics like "[a]ll email addresses created or received by the Town of Gulf Stream" or "[A]ll phone numbers in the

town's records." *Id.* at 1282 (citing *O'Boyle I*, 654 F. App'x at 441–42).

When the town failed to respond timely to a public records request, Martin O'Boyle or the Foundation would sue the town under Florida's sunshine law. *Id* at 1283. Jonathan O'Boyle and Ring—both attorneys—represented the entities related to Martin O'Boyle in these lawsuits. *Id.* Usually acting through The O'Boyle Law Firm, Jonathan O'Boyle and Ring would sue or threaten to sue the town, then demand settlements far in excess of costs and fees actually incurred. *Id.*

In April 2014, Gulf Stream's town commission elected a new mayor, Scott Morgan. Frustrated by the lawsuits and records requests that Martin O'Boyle and his team were filing, Mayor Morgan announced in a letter to Gulf Stream residents that the town would be "stepping up its defense" of the litigation and taking a "firm stance . . . to limit the detrimental effects" of the lawsuits on the town's morale and budget. The letter stated that by June 2014, the town had spent more than $160,000 in legal fees—against a legal budget of $15,000 for the whole year—defending the lawsuits and receiving advice on how to combat the O'Boyles' activities.

Gulf Stream and its outside counsel took a three-pronged legal approach to fighting the public records litigation, all starting in early 2015. First, the town filed several counterclaims in one of the state-court public records lawsuits and moved for sanctions against Jonathan O'Boyle and Ring, based partly on

their flying banners and signs that the town felt demeaned its outside counsel. Second, Mayor Morgan filed bar complaints against Jonathan O'Boyle and Ring that alleged the two had violated various legal ethics rules. Third, the town sued the O'Boyles, Ring, The O'Boyle Law Firm, and several others in federal district court under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1962(c), 1964(c).

At a town meeting in September 2015, Mayor Morgan expressed hope that the town's legal strategy was working. He stated that "[t]hings have returned, at least in physical and visual nature, to the way [the] town used to be," because the O'Boyles were no longer flying banners critical of the town. Mayor Morgan said that if the banners started flying again, "that would be deemed abusive and malicious, with legal connotation." He also told the town that the number of public records requests had decreased substantially and that the public records lawsuits were "winnowing down" in response to the motions for sanctions they had filed.

Meanwhile, in the courtroom, the town mostly saw defeat. The Florida Bar declined to discipline Ring or Jonathan O'Boyle, and the state court declined to sanction them. The state court also dismissed the town's counterclaims. The federal district court dismissed the RICO suit, and we affirmed the dismissal because the town had not alleged facts showing that Martin O'Boyle and his associates had conspired to do anything illegal. *Boyle I*, 654 F. App'x at 445.

After the town meeting in September 2015, Gulf Stream Police Sergeant John Passeggiata saw Martin O'Boyle attempting to write on a bulletin board in the lobby of the town hall. Sergeant Passeggiata and his boss, Police Chief Garrett Ward, confronted O'Boyle to get him to stop. O'Boyle and Chief Ward began arguing, and eventually the officers escorted a noncompliant O'Boyle out of the building. While O'Boyle was being driven away by ambulance—he had suffered minor injuries in the scuffle—Chief Ward told Sergeant Passeggiata that he would charge O'Boyle for the incident. The State Attorney filed an information against O'Boyle for trespass, resisting arrest, and disorderly conduct. In August 2021, a state judge dismissed the trespassing and resisting arrest charges, and a jury found O'Boyle not guilty of disorderly conduct.

B.

The O'Boyles and Ring sued Gulf Stream under section 1983 for allegedly retaliating against their First-Amendment-protected activity. The complaint identified three forms of alleged retaliation: (1) the town's RICO lawsuit, (2) the bar complaints filed against Ring and Jonathan O'Boyle, and (3) Martin O'Boyle's prosecution. After discovery closed, the parties filed cross-motions for summary judgment. The town argued that it had civil probable cause to file the RICO suit and bar complaints—and that the State Attorney had criminal probable cause to prosecute Martin O'Boyle—so the plaintiffs could not establish a First Amendment retaliation claim. The O'Boyles and Ring argued in response that they did not need to

show a lack of probable cause because their case paralleled *Lozman v. City of Riviera Beach*, where the Supreme Court allowed a false arrest claim to proceed even though probable cause existed to arrest the plaintiff. 138 S. Ct. 1945, 1955 (2018). They also argued that, even if *Lozman* did not apply, there was still a genuine dispute of material fact whether the town had probable cause to take legal action against them.

The district court initially denied summary judgment. It agreed with the town that *Lozman* did not apply, so the O'Boyles and Ring had to show the town lacked probable cause to take legal action against them. The district court relied heavily on our decision in *DeMartini.* There, we held that Martin O'Boyle's employee Denise DeMartini—not a party here—hadn't provided evidence that would bring her within *Lozman's* exception to the principle that probable cause defeats a First Amendment retaliation claim based on an allegedly retaliatory legal process. *See DeMartini*, 942 F.3d at 1306. Based on *DeMartini,* the district court concluded there was no dispute the town had probable cause to file the RICO lawsuit—and the state-court counterclaims—notwithstanding additional evidence that Ring and the O'Boyles had submitted.

The district court also concluded that the town's bar complaints against Ring and Jonathan O'Boyle were "sufficiently analogous to civil litigation" that, unless *Lozman* applied, the town would prevail if it had probable cause to file them. And the town did have probable cause, the district court explained, to

send the initial bar complaints. But there was a genuine dispute about whether the town had probable cause to file additional complaints after receiving notice that the initial complaints had been resolved.

Finally, as to the criminal charges, the district court found no genuine dispute that the state attorney had probable cause to prosecute Martin O'Boyle for trespass. But, the district court concluded, there were genuine disputes as to whether there was probable cause to charge O'Boyle with disorderly conduct and resisting arrest.

After the district court denied summary judgment, the parties filed a joint stipulation that (1) the town hadn't filed additional bar complaints against Ring or Jonathan O'Boyle after receiving notice that the initial complaints had been resolved and (2) there was probable cause to charge Martin O'Boyle with disorderly conduct and resisting arrest. The district court then entered a revised order granting summary judgment for Gulf Stream. Ring and the O'Boyles timely appealed.

STANDARD OF REVIEW

We review de novo an order granting summary judgment. *Broadcast Music, Inc. v. Evie's Tavern Ellenton, Inc.*, 772 F.3d 1254, 1257 (11th Cir. 2014). "Summary judgment is appropriate when 'there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Id.* (quoting Fed. R. Civ. P. 56(a)).

DISCUSSION

The First Amendment's free speech clause, *see* U.S. Const. amend. I, "protects 'not only the affirmative right to speak, but also the right to be free from retaliation by a public official for the exercise of that right.'" *DeMartini*, 942 F.3d at 1288 (quoting *Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 685 (4th Cir. 2000)). A person who suffers retaliation for activity the First Amendment protects can seek relief under 42 U.S.C. section 1983. *See Bennett v. Hendrix*, 423 F.3d 1247, 1249–50 (11th Cir. 2005). To do so, he must show that "(1) his speech was constitutionally protected; (2) [he] suffered adverse action such that the [government actor's] allegedly retaliatory conduct would likely deter a person of ordinary firmness from engaging in such speech; and (3) there is a causal relationship between the retaliatory action and the protected speech." *Smith v. Mosley*, 532 F.3d 1270, 1276 (11th Cir. 2008).

Here, Gulf Stream concedes that the appellants engaged in constitutionally protected speech when they made public records requests, sued to enforce Florida public records laws, and offered to settle those lawsuits. *See DeMartini*, 942 F.3d at 1288. And the town doesn't dispute that its activities could deter a reasonable person from engaging in protected speech. *Cf. id.* at 1298–99 (analyzing First Amendment retaliation cases from other circuits that involved allegedly retaliatory lawsuits). The issue we must decide is whether a reasonable factfinder could conclude that Gulf Stream's lawsuit and bar complaints—or O'Boyle's criminal charges—were causally connected

to the O'Boyles' and Ring's protected activity. *See Smith*, 532 F.3d at 1276.

To meet the causation element of a First Amendment retaliation claim, "a plaintiff must establish a causal connection between the government defendant's retaliatory animus and the plaintiff s subsequent injury." *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722 (2019) (marks and citation omitted). But where the government actor can show it had probable cause to take legal action against the plaintiff's protected activity, a retaliation claim will usually "fail[] as a matter of law." *Id*. at 1728.

We have recognized only two exceptions to this rule. The first is where the government has selectively punished the plaintiff but not others engaged in similar conduct. *Id*. at 1727. The second is in the "unique" circumstances presented in *Lozman*. *See DeMartini*, 942 F.3d at 1293.

Under the *Lozman* exception, the existence of probable cause does not defeat a First Amendment retaliation claim where several conditions are satisfied. A plaintiff must show, for example, that he suffered retaliation as the result of an "'official municipal policy' of intimidation." *Id.* (quoting *Lozman*, 138 S. Ct. at 1954). And he must also show that there was "little relation between the 'protected speech that prompted the retaliatory policy'" and the actions that triggered an allegedly retaliatory response. *Id.* at 1294 (applying *Lozman*, 138 S. Ct. at 1954–55)). In *Lozman*, the plaintiff was arrested for disorderly conduct at a town hall meeting for objecting to the arrest of a former

town official, but he alleged that the arrest was actually part of a municipal policy to intimidate him for criticizing the city's eminent domain activities. 138 S. Ct. at 1949–50. His "prior, protected speech" about eminent domain, *Lozman* explained, bore "little relation to the criminal offense for which the arrest [was] made," so his lawsuit could proceed regardless whether there was probable cause for his disorderly conduct arrest. *Id*. at 1954.

Ring and the O'Boyles argue that we should reject *Lozman's* "little relation" requirement: they claim this element will insulate government actors from liability whenever they directly target protected speech. But this argument misunderstands how the *Lozman* exception functions. True, direct retaliation against protected speech will always bear more than a "little relation" to the speech itself. But there is no question that a state official who directly violates a clearly established First Amendment right can be held liable under section 1983. *See*, *e.g.*, *Bennett*, 423 F.3d at 1255 (denying qualified immunity for officials who allegedly suppressed protected political expression).

Lozman concerned when *probable cause* for an allegedly retaliatory arrest will defeat a First Amendment retaliation claim. Where there is little relation between the protected expression and the allegedly retaliatory action—and where the other *Lozman* elements are met—the plaintiff must show only that the official act would not have occurred but-for the protected expression. *See DeMartini*, 942 F.3d at 1294. But, where the official or municipality acts in direct response to protected expression, it can be held liable

only if there was no probable cause to believe the expression was illegal. *Id.* That is what the Supreme Court held in *Lozman* and what we reaffirmed in *DeMartini*.

On appeal, Ring and the O'Boyles do not dispute the district court's conclusion that the town had probable cause to file its RICO suit and state-court counterclaims, the initial bar complaints, or the trespassing charge against Martin O'Boyle. Ring and the O'Boyles don't argue that they were selectively prosecuted. *Cf. Nieves*, 139 S. Ct. at 1727. And the parties also jointly stipulated before the district court there was probable cause to charge Martin O'Boyle with disorderly conduct and resisting arrest. The sole legal issue on appeal is thus whether the *Lozman* exception applies to the town's alleged retaliatory actions: the RICO lawsuit and state-court counterclaims, the initial bar complaints, and Martin O'Boyle's criminal charges. We address each in turn.

A.

The district court correctly found that Gulf Stream's civil litigation fell outside the *Lozman* exception. The town filed the RICO suit and state-court counterclaims as a direct response to the hundreds of public records requests, and multiple lawsuits, that were draining municipal resources and manpower. *See O'Boyle I*, 654 F. App'x at 442. Even though the litigation was ultimately unsuccessful, the town was attempting to pursue legitimate goals: preventing harassment and minimizing public expenditures on legal fees.

The appellants argue that Mayor Morgan's "firm stance" letter and the speech he gave at the September 2015 town hall show evidence of the town's retaliatory intent. But the letter actually highlights the connection between the town's legal actions, the public records requests, and the public records litigation. Mayor Morgan specifically noted the financial burden of the records requests as a reason for the town to adopt a more aggressive response. The letter thus shows that the town's litigation strategy bore more than "little relation" to the public records requests. *Cf. Lozman*, 138 S. Ct. at 1954.

B.

The district court also correctly concluded that the bar complaints the town filed against Ring and Jonathan O'Boyle were closely related to their public records litigation activity. The bar complaints included as potential ethics violations: (1) Jonathan O'Boyle's appearance in the public records litigation cases without a license from The Florida Bar; (2) The O'Boyle Law Firm's "feeder relationship" with Martin O'Boyle and the businesses he created to carry out his public records litigation; and (3) the firm's "windfall fee scheme" of threatening Gulf Stream with litigation unless it agreed to settlements in excess of The O'Boyle Law Firm's actual fees and costs. All of these bases for the bar complaints were intimately linked to Ring and the O'Boyles' protected activity—asking for public records and filing lawsuits about the requests.

C.

Martin O'Boyle's criminal charges also fell outside the *Lozman* exception. As the district court explained, false prosecution claims are governed not by *Lozman* but by *Hartman v. Moore*, 547 U.S. 250 (2006). Because the State Attorney's decision to charge O'Boyle added a layer of independent judgment between a government official's alleged retaliatory motive and the criminal charges filed, *Hartman* made "showing an absence of probable cause" a necessary "element[] of the tort" of retaliatory prosecution. *Id.* at 263.

On appeal, Martin O'Boyle argues that because the Gulf Stream police chief pressed charges against him, we should apply *Lozman* rather than *Hartman*. But it was the State Attorney who filed the information against Martin O'Boyle to trigger the prosecution, and not anyone who worked for the town. *See Doe v. State*, 634 So. 2d 613, 615 (Fla. 1994) ("Florida's state attorney acts in noncapital investigations as a one-person grand jury . . . ."). Even if Chief Ward wanted to retaliate against O'Boyle, "[e]vidence of [a police officer's] animus does not necessarily show that the [officer] induced the action of a prosecutor." *Hartman*, 547 U.S. at 263. Showing the absence of probable cause is thus necessary to "bridge the gap between the nonprosecuting government agent's motive and the prosecutor's action." *Id.* In light of *Hartman*, the parties' stipulation that there was probable cause to charge Martin O'Boyle with trespass and disorderly conduct was fatal to his retaliatory prosecution claim. The district court did not err.

CONCLUSION

Because Ring and the O'Boyles either stipulated, or did not contest on appeal, that probable cause existed for the actions the complaint identified as retaliatory, and because *Lozman* doesn't apply to any of those acts, the district court did not err in granting Gulf Stream's motion for summary judgment.

AFFIRMED.

[Entered on March 21, 2023]

APPENDIX B

In the
United States Court of Appeals
For the Eleventh Circuit

NO. 22-10865

MARTIN E. O'BOYLE,
JONATHAN O'BOYLE,
WILLING RING,

Plaintiffs-Appellants,

versus

COMMERCE GROUP, INC., et al.,

Defendants,

TOWN OF GULF STREAM,

Defendant-Appellee.

Appeal from the United States District Court
For the Southern District of Florida
D.C. Docket No. 9:19-cv-80196-AMC

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: March 21, 2023

For the Court: DAVID J. SMITH, Clerk of Court

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 19-80196-CIV-CANNON/Reinhart

MARTIN E. O'BOYLE,
JONATHAN O'BOYLE, and
WILLIAM RING,

Plaintiffs,

v.

TOWN OF GULF STREAM,

Defendant.
_____/

ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT

THIS CAUSE comes before the Court upon Defendant's Motion for Summary Judgment ("Defendant's Motion") [ECF No. 127] and Plaintiffs' Motion for Summary Judgment ("Plaintiffs' Motion") [ECF No. 130]. The Court has reviewed Defendant's Motion, Plaintiffs' Motion, and the full record [ECF Nos. 128-29, 131, 136-43, 152-54, 157-60]. Upon careful review, Plaintiffs' Motion for Summary Judgment is **DENIED,** and Defendant's Motion for Summary Judgment is **DENIED.**

FACTUAL BACKGROUND

This is a First Amendment retaliation case involving a longstanding, litigious feud between Plaintiffs and leaders of the Town of Gulf Stream. The material facts are as follows.[1]

Plaintiffs Martin O'Boyle, Jonathan O'Boyle, and William Ring Plaintiff ("Plaintiffs") filed this suit against the Town of Gulf Stream alleging retaliation in violation of the First Amendment under 42 U.S.C. § 1983 based on a series of actions taken by the Town, including filing litigation and counterclaims against Plaintiffs, filing ethical violations complaints with the Florida Bar Association against Jonathan O'Boyle and William Ring, and filing criminal charges against Martin O'Boyle [ECF No. 33 ¶¶ 39–71].

The Parties

Defendant Town of Gulf Stream (the "Town") is a municipal corporation of the State of Florida in Palm Beach County [ECF No. 128 ¶ 1]. Martin O'Boyle is a resident of the Town and has lived in the Town since the early 1980s [ECF No. 128 ¶ 2]. Johnathan O'Boyle is Martin O'Boyle's son and an attorney admitted to

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[1] These facts are drawn from the parties' Joint Statement of Undisputed Facts [ECF No. 128], Defendant's Statement of Material Facts [ECF No. 129], Plaintiffs' Statement of Material Facts [ECF No. 131], Plaintiffs' Opposition Statement of Facts [ECF No. 137], Defendant's Opposition Statement of Facts [ECF No. 139], Defendant's Reply Statement of Facts [ECF No. 143], Plaintiffs' Supplemental Statement of Material Facts [ECF No. 152], Defendant's Supplemental Response Statement of Facts [ECF No. 158], Plaintiffs' Supplemental Reply Statement of Facts [ECF No. 160], and supporting exhibits.

practice law in the State of Florida [ECF No. 128 ¶ 3]. Jonathan O'Boyle also co-founded the O'Boyle Law Firm [ECF No. 131 ¶ 1; ECF No. 139 ¶ 1]. William Ring is a Florida-licensed attorney who worked in various capacities, including as in-house counsel, for companies associated with O'Boyle from 1992 to approximately July 2014 and then again from about April 2018 to present [ECF No. 128 ¶ 4]. Ring served as Florida managing member of The O'Boyle Law Firm from about July 2014 through about March 2018 [ECF No. 128 ¶ 5].

Initial Dispute

In early 2013, the Town denied Martin O'Boyle's application for a variance to construct a new front entry feature in his home [ECF No. 131 ¶ 6; ECF No. 139 ¶ 6; ECF No. 131-42; ECF No. 129-4 p. 6]. In response, O'Boyle had cartoon images painted on the side of his home depicting several Town officials in caricature (the "Political Cartoons") [ECF No. 128 ¶ 6; ECF No. 131-44]. O'Boyle also sued the Town for injunctive relief in federal court on May 23, 2013, alleging that the Town violated his First Amendment rights by threatening to punish him over the Political Cartoons (the "Cartoons Case") [ECF No. 131 ¶ 14; ECF No. 139 ¶ 14]. *See O'Boyle v. Town of Gulf Stream,* 13-cv-80530-DMM (S.D. Fla. May 23, 2013). O'Boyle also filed a state-court certiorari petition against the Town in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, arising out of the Town's rejection of his renovation variance application (the "Renovation Petition") [ECF No. 131 ¶ 13; ECF No. 139 ¶ 13]. *See Martin E.*

O'Boyle v. Town of Gulfstream Florida, 50-2013-CA-006388 (Fla. Cir. Ct. 2013).

That same year, O'Boyle began submitting public records requests to the Town in connection with the rejected variance application, both on his own behalf as well as through various companies he controlled [ECF No. 131 ¶ 9; ECF No. 139 ¶ 9; ECF No. 129 ¶ 9; ECF No. 131-42 ¶ 7]. Specifically, those companies include: Airline Highway, LLC, Commerce GP, Inc., CG Acquisition Co., Inc., CRO Aviation, Inc., Commerce Realty Group, Inc., Our Public Records, LLC, StopDirtyGovernment, LLC, Commerce Group, Inc., Asset Enhancement, Inc., and N984AC Caravan LLC (together, the "O'Boyle Companies") [ECF No. 131 ¶ 9; ECF No. 139 ¶ 9; ECF No. 131-42 ¶ 7]. O'Boyle also filed a total of 17 lawsuits that year in state court to enforce compliance with those public records requests (the "2013 Public Records Cases") [ECF No. 129 ¶ 9; ECF No. 137 ¶ 9; 129-6 p. 16].

On July 26, 2013, the Town and Martin O'Boyle entered into a global settlement agreement to resolve the Cartoons Case, the Renovation Petition, and 16 of the 2013 Public Records Cases [ECF No. 129-6; ECF No. 131 ¶ 15; ECF No. 139 ¶ 15]. According to the terms of the settlement agreement, the Town agreed to (1) enter an agreement approving the front entry renovation, (2) pay Martin O'Boyle $180,000, and (3) issue him an apology stating that the "'Town recognizes the stress and strife that the O'Boyle family has endured as a result of the Town's conduct," and that it "believes that O'Boyle's actions will ultimately result in Gulf Stream being a better and friendlier place to live" [ECF No. 129-6 ¶¶ 1-3, 6, 34; ECF No.

129 ¶ 11 ; ECF No. 137 ¶ 11]. The one remaining case out of the 2013 Public Records Cases was voluntarily dismissed in December 2013 [ECF No. 131 ¶ 15; ECF No. 139 ¶ 15].

The Public Records Litigation Continues

Following the settlement agreement, there was a temporary lull in O'Boyle's public records pursuit with no records requests or litigation for several months [ECF No. 129 ¶ 12; ECF No. 137 ¶ 12]. But beginning around September 2013, the Town began receiving a multitude of public records requests [ECF No. 129 ¶ 13; ECF No. 137 ¶ 13]. Initially, most of the requests were either requested anonymously or by Christopher O'Hare, another Gulf Stream Resident; however, Jonathan O'Boyle began requesting records starting in October 2013, and Martin O'Boyle requested further records starting in January 2014 [ECF No. 129 ¶ 13; ECF No. 137 ¶ 13; ECF No. 129-5 pp. 4–27]. In addition to the records requests, litigation between O'Boyle and the Town started up again with O'Boyle and his companies filing a total of twenty-four lawsuits (excluding this case) to date since January 1, 2014 [ECF No. 131 ¶ 16; ECF No. 139 ¶ 16]. Of those lawsuits, seventeen were related to public records requests [ECF No. 131 ¶ 19; ECF No. 139 ¶ 19].

Citizen's Awareness Foundation, Inc.

Instrumental to this new wave of public records requests and litigation was a newly formed nonprofit organization, funded by Martin O'Boyle, called Citizens Awareness Foundation, Inc. ("CAFI"), which was

incorporated on January 27, 2014 [ECF No. 129 ¶ 20; ECF No. 137 ¶ 20]. CAFI's officers—Denise DeMartini as Treasurer, William Ring as President, and Brenda Russell as Secretary—were all long-time employees of Martin O'Boyle's companies [ECF No. 129 ¶ 22; ECF No. 137 ¶ 22; ECF No. 129-10 ¶¶ 11–14]. Martin O'Boyle recruited Joel Chandler, an open government advocate, to lead CAFI [ECF No. 129 ¶ 22; ECF No. 137 ¶ 22; ECF No. 129-11; ECF No. 129-12]. Joel Chandler served as Executive Director of CAFI for approximately five months from February to June 2014 [ECF No. 129-10 ¶ 17; ECF No. 137 ¶ 46]. CAFI was responsible for many of the public records requests made of Town during 2014 [ECF No. 129-5 pp. 31–79]. CAFI was represented by the O'Boyle Law Firm and sued the Town three times to enforce public records requests [ECF No. 131 ¶¶ 22–23; ECF No. 139 ¶¶ 22–23].

O'Boyle's Public Criticism of Town Leaders

In addition to the public records requests and litigation, Martin O'Boyle publicly criticized Town leaders throughout 2014 by commissioning airplane banners and putting signs on a pickup truck, which he would park in the Town Hall public parking lot, sometimes overnight [ECF No. 131 ¶ 26; ECF No. 139 ¶ 26; *see, e.g.,* ECF No. 131-15 p. 4 (truck sign stating, "Mayor Morgan is Destroying Gulf Stream BANKRUPTCY IS COMING!"), p. 6 (airplane banner stating, "Gulfstream's Mayor Morgan is a wimpy little turd")]. Moreover, Martin O'Boyle appeared frequently throughout both 2014 and 2015 at Town Commission meetings to press the Town regarding his pending suits, and he published updates with Town

residents through a newsletter called the Gulf Stream Patriot [ECF No. 131 ¶ 27; ECF No. 139 ¶ 27].

Scott Morgan Elected to Town Commission

In early 2014, both Martin O'Boyle and Scott Morgan, another Town resident, ran in the election for a seat on the Town Commission [ECF No. 128 ¶¶ 7–8]. On March 11,2014, voters in the Town elected Scott Morgan to the Town Commission, while O'Boyle's election bid was unsuccessful [ECF No. 128 ¶¶ 7–8]. Morgan said publicly, before and after the March 11,2014, election, that the Town should take a "proactive approach" and pursue "a very strong, aggressive" defense against the lawsuits O'Boyle filed against the Town [ECF No. 131 ¶ 30; ECF No. 131-21; ECF No. 131-22 p. 4 ("I don't see any sign that those two (O'Boyle and O'Hare) are going to back off, so I really think a very strong, aggressive defense needs to be taken.")]. At Morgan's first meeting as a Commissioner, a special meeting held on March 28, 2014, the Town Commission unanimously passed Morgan's motion for the Town to retain Robert Sweetapple as special counsel to help the Town and its outside counsel of Jones Foster P.A. respond to the public records requests and lawsuits brought by O'Boyle and O'Hare [ECF No. 128 ¶ 11; ECF No. 131-22 p. 3 ("In a hastily called special meeting on March 28—a Friday afternoon—the Town Commission unanimously approved hiring Boca Raton lawyer Robert Sweetapple as special counsel for defending the town against its many lawsuits.")].

On April 11, 2014, Joan Orthwein, who was Mayor of Gulf Stream at the time, nominated Morgan to take

over as mayor because he was the "one person who has shown leadership in helping Gulf Stream navigate through some difficult and challenging times ahead" [ECF No. 131 ¶ 34; ECF No. 139 ¶ 34; ECF No. 131-12 p. 9]. During the April 11, 2014 meeting, the Town Commission also adopted new "Decorum Rules" governing residents' behavior during Town meetings [ECF No. 131 ¶ 35; ECF No. 139 ¶ 35; ECF No. 131-12 p. 3; ECF No. 131-23]. During this same meeting, the Town Commission also considered an ordinance to limit parking at the Town Hall public lot, as a response to O'Boyle's practice of displaying his truck and signs at the public parking lot and leaving the truck there overnight [ECF No. 131 ¶ 36; ECF No. 139 ¶ 36; ECF No. 131-14]. The Town passed the parking ordinance in a meeting on April 14, 2014 [ECF No. 131 ¶ 37; ECF No. 131-13 p. 5; ECF No. 131-14]. The Town later invoked the parking ordinance[2] in a letter sent on June 20, 2014 that threatened to tow O'Boyle's truck [ECF No. 131 ¶ 37; ECF No. 131-48 p. 3].

Motion to Disqualify the O'Boyle Law Firm and Motion for Sanctions

As early as April 21, 2014, the Town began investigating Jonathan O'Boyle and the O'Boyle Law Firm [ECF No. 131-37]. In particular, Sweetapple, the

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[2] O'Boyle previously sued the Town alleging First Amendment Retaliation based on the Town's passing of the parking ordinance, among other things. *See O'Boyle v. Sweetapple*, 187 F. Supp. 3d 1365, 1368-70 (S.D. Fla. 2016). That case was eventually dismissed after the parties filed a stipulation of dismissal. *O'Boyle v. Sweetapple*, No. 14-cv-81250, ECF No. 245 (S.D. Fla. August 19, 2016).

Town's Attorney, suspected that Jonathan O'Boyle had improperly used a Pennsylvania corporation to establish a regular presence in Florida without admission to the Florida Bar and thus was engaged in the unlicensed practice of law in Florida [ECF No. 129 ¶ 48; ECF No. 137 ¶ 48; ECF No. 129-22 p. 47:1-6; ECF No. 129-20 pp. 116:25-117:18]. The Town consulted with Gerald Richman, whom it would later retain as special counsel, based on his expertise on the specific issue of unlicensed practice of law [ECF No. 129 ¶ 49; ECF No. 137 ¶ 49; ECF No. 129-20 p. 118:10-13 ("Q: And Mr. Richman Greer was brought in for its expertise on unlicensed practice of law issues only? A: Originally, yes."); ECF No. 129-42]. Based on its investigation of Jonathan O'Boyle, the Town filed a motion in a state court case[3] seeking to disqualify the O'Boyle Law Firm from representing Martin O'Boyle based on the allegation that Jonathan O'Boyle was engaged in the unlicensed practice of law in Florida [ECF No. 129 ¶ 51; ECF No. 137 ¶ 51; ECF No. 129-21]. The Town also moved for sanctions in that same case on August 24, 2014, seeking an order "prohibiting Plaintiff [Martin O'Boyle] from exploiting his right to litigate in a manner that impugns and threatens opposing counsel" based on airplane banners displayed in Gulf Stream stating, for example, "Bob Sweetapple lays smelly farts" [ECF No. 131 ¶ 43; ECF No. 131-47]. Neither motion ever reached any judicial determination [ECF No. 131 ¶ 45; ECF No. 139 ¶ 45 ("The August 20, 2014 Motion [for Sanctions] was never brought before the Court for adjudication"); ECF No. 129-20 p. 118:5-6 ("The court determined

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[3] *See O'Boyle v. Town of Gulf Stream*, No. 50-2014-CA-004474 (Fla. Cir. Ct. 2014).

that they didn't have jurisdiction [to decide the motion to disqualify]."))]. O'Boyle stopped flying airplane banners critical of Town leaders after the motion for sanctions [ECF No. 131 ¶ 75; ECF No. 139 ¶ 75].

"Firm Stance" Letter

On June 2, 2014, Morgan sent a letter to the residents of Gulf Stream regarding the ongoing litigation, in which he stated that: "[i]n response to this continuing problem, the Commission is stepping up its defense of the O'Boyle and O'Hare litigation. . . . The Commission believes strongly that a firm stance is necessary to limit the detrimental effects that these lawsuits are having on staff morale and Town reserves" [ECF No. 131-26].

Joel Chandler Quits CAFI and Provides the Town with Information

In late June 2014, Joel Chandler resigned his position as Executive Director of CAFI because he believed that Plaintiffs' conduct in connection with the public records requests and litigation was "fraudulent and unethical" [ECF No. 129-10 ¶¶ 17–18]. Following his resignation, Chandler reached out to several reporters as well as Sweetapple to announce his resignation and disassociation with Plaintiffs [ECF No. 129-10 ¶ 52]. On June 23, 2014, Chandler met with Sweetapple and provided him with documents and a sworn statement detailing what he believed to be fraudulent conduct [ECF No. 129 ¶ 57; ECF No. 137 ¶ 57; ECF No. 129-10 ¶¶ 61–62].

Town Initiates RICO Lawsuit against Plaintiffs

On October 10, 2014, the Town Commission held a regular meeting in which it considered "filing a RICO action & retaining special counsel to represent the town" [ECF No. 129-25 p. 2; ECF No. 129 ¶ 64; ECF No. 137 ¶ 64]. During the discussion that took place during the October 10, 2014 meeting, Joanne O'Connor, an attorney for the Town, discussed the "prolific" magnitude of the challenge facing the Town with regards to the public records requests, noting that the Town had received more than 1500 public records requests since August 2013, which resulted in 36 lawsuits and $370,000 in legal fees since January of 2014 [ECF No. 129-26 pp. 34-37; ECF No. 129 ¶ 65; ECF No. 137 ¶ 65; ECF No. 129-5 p. 74 (Town public records log show 1583 total public records requests received by the Town between August 24, 2013 and October 10, 2014)]. O'Connor added that the Town believed that the "overwhelming majority" of the public records requests were submitted by Martin O'Boyle, O'Hare, or other entities related to them [ECF No. 129-26 p. 35; ECF No. 129 ¶ 65; ECF No. 137 ¶ 65]. Richman, whom the Town was considering retaining as special counsel, himself spoke at the meeting, stating: "It is my opinion that the best way to counteract what the town is going through is to file a RICO action in federal court . . . ." [ECF No. 129-29 p. 40:11-17]. Following the conclusion of the October 10, 2014 meeting discussion, the Town Commission voted to retain Richman as special counsel in order to initiate the RICO suit [ECF No. 129 ¶ 71; ECF No. 129-26 p. 58]. On February 12, 2015, the Town sued Martin O'Boyle, CAFI, the O'Boyle Law Firm, and others alleging violations of RICO, 18 U.S.C. §§ 1962(c),

1964(a) and (c) [ECF No. 129 ¶ 72; ECF No. 137 ¶ 72]. *See Town of Gulf Stream, et al. v. O'Boyle, et al.*, No. 15-cv-80182, ECF No. 1 (S.D. Fla. Feb. 12, 2015). The Town also filed counterclaims against Plaintiffs and other third-party defendants in several state court cases alleging violations of Florida's public records law [ECF No. 129 ¶ 74; ECF No. 137 ¶ 74; *see, e.g.*, ECF No. 129-28].

Bar Complaints against Jonathan O'Boyle and Ring

Following the Town's investigation into Jonathan O'Boyle's Florida Bar status and related motion to disqualify the O'Boyle Law Firm from representing the public records litigation, Mayor Morgan, acting on the Town's behalf, submitted complaints to the Florida Bar on August 25, 2014, against Jonathan O'Boyle and others at the O'Boyle Law Firm ("Bar Complaints") [ECF No. 129-23; ECF No. 129 ¶ 60; ECF 137 ¶ 60]. The Bar Complaints alleged various ethical violations, including (1) that the O'Boyle Law firm shared space with non-lawyers and shared client confidences; (2) that the O'Boyle Law Firm is effectively a "captive law firm" financed by Martin O'Boyle to generate business for Jonathan O'Boyle based on improper "feeder relationship"; (3) that the O'Boyle Law Firm is engaged in a "windfall scheme" in violation of ethics rule prohibiting the collection of clearly excessive fees; and (4) that Jonathan O'Boyle was engaged in the unlicensed practice of law in Florida [ECF No. 129-23 pp. 7–8]. On December 12, 2014, the Town Commission held a meeting in which they voted to ratify Mayor Morgan's authority to submit the Bar Complaints against Plaintiffs both retroactively and

going forward [ECF No. 129-24, p. 16]. Morgan and Sweetapple sent additional Bar Complaints against Jonathan O'Boyle at least nine times between August 2014 and May 2015 [ECF No. 131-63 ¶ 9]. On May 26, 2015, the Florida Bar sent a letter to Jonathan O'Boyle's attorney notifying him that, on May 20, 2015, a Bar committee had dismissed the complaints against Jonathan [ECF No. 131-66; ECF No. 131 ¶ 49; ECF No. 139 ¶ 49; ECF No. 131-63 ¶ 11].

On December 22, 2016, Morgan submitted another new bar complaint against Jonathan O'Boyle [ECF No. 131 ¶ 50; ECF No. 139 ¶ 50]. In response, the Florida Bar sent a letter to Mayor Morgan on May 23, 2017, stating as follows: "Mr. O'Boyle himself was investigated . . . and The Florida Bar's unlicensed practice of law case was closed in May 2015. The underlying issues in your complaint have accordingly been resolved. Accordingly, continued disciplinary proceedings in this matter are inappropriate and our file has been closed" [ECF No. 131-67; ECF No. 131 ¶ 50; ECF No. 139 ¶ 50]. Nevertheless, Jonathan O'Boyle avers that in June 2017, Morgan sent yet another bar complaint with over 200 pages of exhibits [ECF No. 131-63 ¶ 10].

September 22, 2015 Town Meeting

On September 22, 2015, the Town Commission held a meeting to approve the town budget with a line item for $1 million in possible legal fees [ECF No. 131 ¶ 72; ECF No. 139 ¶ 72]. At that meeting, Mayor Morgan defended the Town's legal fees expenditure as follows:

We've spent a lot of legal fees in the last year. And many people say, "What in the world did we spend all that money for? What did we get for it?" And I would say that there were essentially **three things** that this Commission has been trying to achieve. **Number one**, and most importantly, is to bring this Town back to the way it was, that is with the character and the integrity that everyone speaking here today describes as this unique Town of Gulf Stream. You'll recall that a year ago, there were banners in the sky and trucks with obnoxious and rude statements, positioned just so the kids at Gulf Stream School could see it. There were ads in papers. . . . Those are all gone. Those are gone. We do not see the banners. We do not see the trucks. . . . Things have returned, at least in physical and visual nature, to the way this Town used to be. . . .

Second, at this time last year we were under a deluge of several thousand public records requests, overwhelming this town. I've talked about it numerous times. You all can appreciate it. We lost a staff member. We only have four dealing with it. Now, they have dealt with it: We have no more public records requests. They have disposed of every single one. . . .

Finally, there are the lawsuits. There were over 50 of them. Those cases are winnowing down. A number of them have been withdrawn as a result of our pressure for sanctions. A number of them have been won. A number of sanctions have been awarded. And over this

> year, our lawyers were able to uncover the scheme by which this was all created. And I've gone over it many times, there's nothing new. You can read about it in the articles that are out there. And that is exactly what it was: a money-making scheme involving Mr. O'Boyle, his son, the lawyers that he funded and created and directed from his office. . . . We had these cases, that have been winnowed down. And as result of everything we've uncovered, we now have the defense to defend and win these cases. And that is what we're going to do now. The rest of them will be won, and they will be over. . . .
>
> So that's what happened in the last year. That's where your money went. And that's why I say, "Drop them all. Just drop them all. And it goes away"

[ECF No. 131 ¶ 71 (emphasis added); ECF No. 139 ¶ 71; ECF 131-60].

September 22, 2015 Incident

Following the September 22, 2015 Town Commission meeting, an incident occurred at Town Hall involving an altercation between Martin O'Boyle and a police officer [ECF No. 129 ¶ 76; ECF No. 137-9]. During the meeting, the Town had placed large poster board materials in the lobby referencing Plaintiffs' public records activity, and part of that display was a poster that accused O'Boyle of using "aliases" to submit public records requests [ECF No. 152 ¶ 1; ECF No. 158 ¶ 1; ECF No. 137-11 p. 3]. After the meeting

ended, Martin O'Boyle approached the poster with a green felt-tip pen in hand, telling the police officer on duty, Officer Passeggiata, he might mark the poster to correct it [ECF No. 152 ¶ 1; ECF No. 158 ¶ 1]. Officer Passeggiata told O'Boyle not to touch the poster [ECF No. 154 ¶ 8; ECF No. 129-29 p. 333].

The parties dispute what happened next. According to Plaintiffs' account, O'Boyle asked if that was a request or demand, and then Officer Passeggiata and O'Boyle exchanged profanities [ECF No. 154 ¶ 8]. Next, O'Boyle swears that Officer Passeggiata grabbed his walker and threw it aside, put his right hand on O'Boyle's lower back above O'Boyle's belt and his left hand on O'Boyle's shoulder, and pushed O'Boyle toward the exit door [ECF No. 154 ¶ 9]. According to O'Boyle, the shove from Officer Passeggiata caused him to fall on the floor, at which point he was on the floor on his knees and unable to move without substantial back pain [ECF No. 154 ¶ 10].

According to the Town, after Passeggiata told O'Boyle not to touch the poster, O'Boyle responded, asking "What are you going to do about it?" Officer Passeggiata then told him to step back, to which O'Boyle responded "F*** you, you know, you don't tell me what to do" and puffed up his chest [ECF No. 158 ¶; ECF No. 129-29 p. 333]. Officer Passeggiata then directed O'Boyle to leave the building and attempted to escort him out, holding him by his arm "like [he] would [his] 90-year-old father to take him to the bathroom" [ECF No. 129-29 p. 229:7-9; ECF No. 158 ¶ 3]. O'Boyle then stated, "I'm not going anywhere," and held on to the wall and his walker to "gingerly" lower himself down onto his knees in a kneeling position

[ECF No. 129-29 p. 229:14-18, 333; ECF No. 158 ¶ 3]. When Officer Passeggiata attempted to help him up, O'Boyle passively resisted by "sinking his weight down" [ECF No. 129-29 p. 244:20-24, 333; ECF No. 158 ¶ 3].

Criminal Charges

Officer Passeggiata did not arrest O'Boyle [ECF No. 137-7 p. 6:9-10]. Instead, the next day, following Police Chief Ward's instruction to pursue charges [ECF No. 129-29 p. 249:14-15 ("John, I just want you to file on him.")], Officer Passeggiata filed documents with the Palm Beach State Attorney's Office, including an Arrest/Notice to Appear Form, Probable Cause Affidavit, and witness statements from William Thrasher and Serge De Laville [ECF No. 129-30]. On September 28, 2015, the Palm Beach State Attorney's Office filed an Information, charging Martin O'Boyle with two Counts: (1) resisting an officer without violence, in violation of Fla. Stat. § 843.02 and (2) disorderly conduct, in violation of Fla. Stat. § 877.03 [ECF No. 129-33; ECF No. 129 ¶ 80; ECF No. 137 ¶ 80]. Then, on December 9, 2015, the Palm Beach State Attorney's Office filed an Amended Information, added a charge for trespass, in violation of Fla. Stat. § 810.08 [ECF No. 129-34; ECF No. 129 ¶ 81; ECF No. 137 ¶ 81].

Criminal Proceedings

In the criminal proceedings arising from the September 22, 2015 incident, *State v. O'Boyle*, Case No. 50-2015-MM-012872, in the County Court of the Fifteenth Judicial Circuit in and for Palm Beach County,

Florida (the "Criminal Case"), O'Boyle moved for judgment of acquittal on all three charges after the state presented its case in chief [ECF No. 152 ¶ 5; ECF No. 158 ¶ 5]. The state court granted O'Boyle's motion for judgment of acquittal on the charge for trespass and reserved ruling as to the charges for disorderly conduct and resisting an officer without violence [ECF No. 152 ¶ 6; ECF No. 158 ¶ 6]. After the defense rested, O'Boyle renewed his motion for judgment of acquittal on the two remaining charges, and the court again reserved ruling [ECF No. 152 ¶ 6; ECF No. 158 ¶ 6; ECF No. 154 ¶ 16]. The jury then found O'Boyle not guilty of disorderly conduct and guilty of resisting without violence [ECF No. 152 ¶ 7; ECF No. 158 ¶ 7; ECF No. 154 ¶ 16]. The state court then granted O'Boyle's motion for judgment of acquittal as to the resisting arrest without violence charge, vacating the guilty verdict [ECF No. 154 ¶ 16].

PROCEDURAL HISTORY

Plaintiffs filed their complaint on February 8, 2019 [ECF No. 1]. The initial complaint raised three counts against the Town: First Amendment Retaliation (Count I), Malicious Prosecution (Count II), and Abuse of Process (Count Three) [ECF No. 1 ¶¶ 37–75]. Plaintiffs amended their complaint as a matter of course three days later by filing the First Amended Complaint [ECF No. 4]. Plaintiffs then again filed the operative Second Amended Complaint, which contains a single count for Retaliation in Violation of the First Amendment, pursuant to 42 U.S.C. § 1983 [ECF No. 33 ¶¶ 64–71]. Plaintiffs seek monetary damages, including special damages to cover the costs of the allegedly retaliatory litigation, as well attorneys' fees

and costs [ECF No. 33 pp. 21–22]. The Town moved unsuccessfully to dismiss the single count in the Second Amended Complaint for failure to state a claim [ECF No. 41; ECF No. 53].

On July 13, 2021, Plaintiffs and the Town each filed opposing Motions for Summary Judgment [ECF Nos. 127, 130]. On September 14, 2021, Plaintiffs filed a motion to allow supplemental briefing in light of the resolution of Martin O'Boyle's criminal case, which the Court granted [ECF Nos. 147, 150]. The Motions are ripe for adjudication [ECF Nos. 136, 138, 141–42, 153, 157, 159].

LEGAL STANDARD

Summary judgment is appropriate where there is "no genuine issue as to any material fact [such] that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); Fed R. Civ. P. 56(a). An issue of fact is "material" if it might affect the outcome of the case under the governing law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). It is "genuine" if the evidence could lead a reasonable jury to find for the non-moving party. *See id.*; *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587 (1986).

At summary judgment, the moving party has the burden of proving the absence of a genuine issue of material fact, and all factual inferences are drawn in favor of the non-moving party. *See Allen v. Tyson Foods Inc.*, 121 F.3d 642, 646 (11th Cir. 1997). The Court, in ruling on a motion for summary judgment,

"need consider only the cited materials, but it may consider other materials in the record." Fed. R. Civ. P. 56(c)(3). The non-moving party's presentation of a "mere existence of a scintilla of evidence" in support of its position is insufficient to overcome summary judgment. *Anderson*, 477 U.S. at 252.

"For factual issues to be considered genuine, they must have a real basis in the record." *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1303 (11th Cir. 2009) (internal quotation marks omitted). Speculation or conjecture cannot create a genuine issue of material fact. *Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005). The moving party has the initial burden of showing the absence of a genuine issue as to any material fact. *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). In assessing whether the moving party has met this burden, the court must view the movant's evidence and all factual inferences arising from it in the light most favorable to the non-moving party. *Denney v. City of Albany*, 247 F.3d 1172, 1181 (11th Cir. 2001). Once the moving party satisfies its initial burden, the burden shifts to the non-moving party to come forward with evidence showing a genuine issue of material fact that precludes summary judgment. *Bailey v. Allgas, Inc.*, 284 F.3d 1237, 1243 (11th Cir. 2002); Fed. R. Civ. P. 56(e).

DISCUSSION

The Town asserts that it is entitled to summary judgment on the First Amendment retaliation claim because Plaintiffs are required to plead and prove an absence of probable cause [ECF No. 127 pp. 2–17]. The Town also contends that Plaintiffs have failed to

meet this burden because the alleged retaliatory acts—the Town's RICO lawsuit, the Bar Complaints, and the criminal charges—were supported by probable cause [ECF No. 127 pp. 17–20]. Plaintiffs argue that the requirement to show an absence of probable cause does not apply here because this case falls under the exception to that rule created by the Supreme Court in *Lozman v. City of Riviera Beach, Florida*, 138 S. Ct. 1945 (2018) [ECF No. 136 pp. 13–22]. Plaintiffs alternatively argue that there are disputes of fact as to whether the Town had probable cause for its allegedly retaliatory conduct that preclude summary judgment [ECF No. 136 pp. 22–26].

Thus, the threshold issue before the Court is whether *Lozman* applies to this case as a whole, as Plaintiffs argue. Next, the Court must examine each category[4] of allegedly retaliatory conduct to determine (1) whether Plaintiffs are required to prove an absence of probable cause for that conduct and (2) if so, whether the Town adduced evidence sufficient to show that it had probable cause for that conduct or whether factual issues exist that would preclude a finding of probable cause remain.

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[4] Plaintiffs First Amendment Retaliation claim alleges three broad categories of retaliatory conduct: (1) "The Town's initiation of a meritless RICO class-action suit and related state court counterclaims against Plaintiffs;" (2) "The Town's filing of meritless complaints with the Florida Bar against William Ring, Jonathan O'Boyle, and other lawyers who represented Mr. O'Boyle; and" (3) "The Town's initiation of and continued pressing of a meritless criminal prosecution against Mr. O'Boyle" [ECF No. 33 ¶ 67].

Legal Principles for First Amendment Retaliation

"A constitutional claim brought pursuant to § 1983 must begin with the identification of a specific constitutional right that has allegedly been infringed." *Paez v. Mulvey*, 915 F.3d 1276, 1285 (11th Cir. 2019). The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech, or . . . the right . . . to petition the government for a redress of grievances." U.S. Const. Amend. I.

To state a § 1983 First Amendment retaliation claim, a plaintiff generally must show:

> (1) she engaged in constitutionally protected speech, such as her right to petition the government for redress; (2) the defendant's retaliatory conduct adversely affected that protected speech and right to petition; and (3) a causal connection exists between the defendant's retaliatory conduct and the adverse effect on the plaintiff's speech and right to petition.

DeMartini v. Town of Gulf Stream, Fla., 942 F.3d 1277, 1289 (11th Cir. 2019), *cert. denied sub nom. DeMartini v. Town of Gulf Stream, Fla.*, 141 S. Ct. 660 (2020) (citing *Bennett v. Hendrix*, 423 F.3d 1247, 1250 (11th Cir. 2005)). When reviewing an official's retaliatory conduct for adverse effect on protected speech, we consider whether the Town's alleged retaliatory conduct "would likely deter a person of ordinary firmness from the exercise of First Amendment rights." *Bailey v. Wheeler*, 843 F.3d 473, 481 (11th Cir. 2016).

"In § 1983 First Amendment retaliation cases, the Supreme Court has recognized that retaliatory animus by a governmental actor is a subjective condition that is 'easy to allege and hard to disprove." *DeMartini*, 942 F.3d at 1289 (quoting *Nieves v. Bartlett,* 139 S. Ct. 1715, 1725 (2019)). Because of this difficulty, "courts have identified two general approaches to retaliation claims against governmental actors, with the particular approach chosen dependent on the type of alleged retaliation at issue." *Id.* "One approach, typically used when a governmental employee claims that he was fired because he engaged in First Amendment activity, looks to whether the defendant governmental employer's retaliatory motivation was the but-for cause of the adverse employment decision." *Id.* "If not—that is, if the defendant would have taken the same action had there not also been a retaliatory animus motivating that conduct—then the defendant is not liable." *Id.* (first citing *Mt. Healthy City School Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 285–87 (1977); and then citing *Lozman*, 138 S. Ct. at 1955).

"The second approach—taken when the governmental defendant has utilized the legal system to arrest or prosecute the plaintiff—has been to require the plaintiff to plead and prove an absence of probable cause as to the challenged retaliatory arrest or prosecution in order to establish the causation link between the defendant's retaliatory animus and the plaintiff's injury." *DeMartini*, 942 F.3d at 1289 (first citing *Nieves*, 139 S. Ct. at 1726; and then citing *Hartman v. Moore*, 547 U.S. 250, 260–61 (2006)).

Surveying the landscape of Supreme Court precedent regarding the lack of probable cause requirement in § 1983 First Amendment retaliation cases, the Eleventh Circuit synthesized those rulings as follows:

> [T]he presence of probable cause will (1) defeat a § 1983 First Amendment retaliation claim for an underlying retaliatory criminal prosecution, *Hartman,* and also (2) will generally defeat a § 1983 First Amendment retaliation claim for an underlying retaliatory arrest, *Nieves,* except (a) when the "unique" five factual circumstances in *Lozman* exist together, or (b) where the plaintiff establishes retaliation animus and presents "objective evidence" that he was arrested for certain conduct when otherwise similarly situated individuals (committing the same conduct) had not engaged in the same sort of protected speech and had not been arrested, *Nieves.*

DeMartini, 942 F.3d 1297. Moreover, "the presence of probable cause will generally defeat a plaintiff's § 1983 First Amendment retaliation claim predicated on an underlying civil lawsuit, or counterclaim for that matter." *Id.* at 1306.

Additionally, apart from the elements of a First Amendment retaliation claim, plaintiffs who sue a municipality under § 1983 must show that execution of the municipality's policy or custom caused the alleged injury. *See Monell v. Dep't of Soc. Servs. of New York,* 436 U.S. 658, 694–95 (1978); *see also Pembaur*

v. City of Cincinnati, 475 U.S. 469, 480 (1986) (explaining that, in order to recover under § 1983, the plaintiff suing the municipality must show that the "municipality has officially sanctioned or ordered" the action causing the alleged injury).

The *Lozman* Exception Does Not Apply

Plaintiffs assert that they need not demonstrate that the Town lacked probable cause for the allegedly retaliatory actions because this case falls under the exception outlined in *Lozman v. City of Riviera Beach, Florida*, 138 S. Ct. 1945 (2018).

In *Lozman,* the Supreme Court held that probable cause would not bar a retaliatory arrest claim against a municipality that created and enforced an official policy motivated by retaliation. 138 S. Ct. at 1954. The Eleventh Circuit has since examined *Lozman* in depth, determining that this probable cause exception applies only "when the 'unique' five factual circumstances in *Lozman* exist together . . . ." *DeMartini*, 942 F.3d at 1297. Those five factual circumstances include:

> (1) plaintiff Lozman had alleged "more governmental action than simply an [officer's] arrest" because he claimed that the City "itself retaliated against him pursuant to an 'official municipal policy' of intimidation"; (2) the plaintiff had alleged that the City's retaliation plan was "premeditated" and formed months earlier (before the arrest); (3) the plaintiff had "objective evidence" of a policy motivated by retaliation, as he had a transcript of a closed-door meeting

> where a Councilmember stated that the City should use its resources to "intimidate" Lozman and others who filed lawsuits against the City; (4) there was less of a concern about the causation problem and opening the floodgates of frivolous retaliation claims because the City's official policy of retaliation was formed months earlier, there was little relation between the "protected speech that prompted the retaliatory policy and the criminal offense (public disturbance) for which the arrest was made," and "it was unlikely that the connection between the alleged animus and injury will be weakened by an official's legitimate consideration of speech"; and (5) the plaintiffs speech—the right to petition—was "one of the most precious of the liberties safeguarded by the Bill of Rights" and was "high in the hierarchy of First Amendment values."

DeMartini, 942 F.3d at 1294 (alterations in original) (quoting *Lozman*, 138 S. Ct. at 1954–55).

The Town argues that this case is factually distinguishable from *Lozman* because it does not meet the first and fourth considerations. In particular, the Town argues that the record does not show that any of the retaliatory conduct was made pursuant to an "official policy of retaliation" [ECF No. 127 pp. 9–11]. Additionally, the Town argues that Plaintiffs have failed to meet the "little relation" consideration, because Plaintiffs' protected speech (the public records requests and lawsuits) was the same speech that prompted the RICO lawsuit and Bar Complaints [ECF No. 142 p. 3]. Moreover, the Town argues that,

unlike in *Lozman*, the alleged retaliatory actions were taken in legitimate consideration of Plaintiffs' speech because the Town had a good faith basis to believe that Plaintiffs had violated RICO and Florida Bar rules [ECF No. 142 p. 3].

Plaintiffs argue that *Lozman* applies here—allowing their claim to proceed even without a showing that the Town lacked probable cause for their conduct—based on Plaintiffs' theory that the Town's allegedly retaliatory actions were made "pursuant to a broader official policy of retaliation" against Plaintiffs [ECF No. 136 p. 19]. In other words, Plaintiffs surmise, the official policy that brings this case within the purview of *Lozman* is the Town's *overarching* posture of vigorous opposition that merely "took form" through the Town's various concrete retaliatory actions [ECF No. 33 ¶ 67; ECF No. 136 p. 19]. In support of their "broader policy" theory, Plaintiffs point to a letter sent from Mayor Morgan to residents of Gulf Stream, stating, in the context of hiring a special counsel to oppose Plaintiffs' public records lawsuits, that "[t]he Commission believes strongly that a firm stance is necessary to limit the detrimental effects that these lawsuits are having on staff morale and Town reserves" [ECF No. 130 p. 9; ECF No. 131-26 p. 3].

The Court agrees with the Town that *Lozman* does not apply to this case because the facts here are distinguishable, and because Plaintiffs' theory of a "broader," overarching official policy of intimidation fails. As a preliminary matter, the Supreme Court's holding in *Lozman* is rooted in the particular facts of that case and is not susceptible to broad application. *DeMartini*, 942 F.3d at 1293–94. In *Lozman*, the

plaintiff had acquired the transcript of a closed-door city council meeting where a member said the City should "intimidate" the plaintiff and others who filed lawsuits against it months earlier. *Id.* at 1949. Subsequently, the city council explicitly ordered that the plaintiff be arrested at one of its public meetings. *Id.*

The facts in this case are materially different than in *Lozman*. First, the "firm stance" letter is not an "official policy of intimidation," because it is not an "official policy" within the meaning of *Monell*. When describing the first of the unique factual considerations in *Lozman*, the Supreme Court specifically invoked the "official municipal policy" pursuant to *Monell*. 138 S. Ct. at 1954. This requires an "official policy enacted by its legislative body (e.g., an ordinance or resolution[55] passed by a city council)." *Hoefling v. City of Miami*, 811 F.3d 1271, 1279 (11th Cir. 2016) (citing *Monell,* 436 U.S. at 661, 694–95). It is true that there are other, different ways that plaintiffs more generally may establish municipal liability under § 1983, such as by demonstrating a custom or practice. *See Hoefling*, 811 F.3d at 1279. Nevertheless, nothing in *Lozman* indicates that a mere custom or practice would be sufficient to meet the first factual prong. 138 S. Ct. at 1954 ("An official retaliatory policy is a particularly

[5] Plaintiffs list the alleged "series of retaliatory actions" as follows: "(1) passage of the ordinance to prevent O'Boyle from parking his truck and political signs at Town Hall; (2) investigations into Jonathan O'Boyle; (3) efforts to sanction and disqualify The O'Boyle Law Firm from representing Martin O'Boyle; (4) relentless pursuit of the Bar Complaint; (5) filing of the State Counterclaims; (6) efforts to leverage the RICO Action accusations into criminal charges against Plaintiffs; and (7) the initiation of criminal charges against O'Boyle" [ECF No. 136 p. 19].

troubling and potent form of retaliation, for a policy can be long term and pervasive, unlike an ad hoc, on-the-spot decision by an individual officer."). The Court also finds the "firm stance" letter distinguishable from the city policy in *Lozman* for the additional reason that it does not on its face display any malicious motive or intent to "intimidate" Plaintiffs as was the case in *Lozman*. 138 S. Ct. at 1949. Accordingly, Plaintiffs' theory of a "broader" official policy of intimidation does not meet prong one of *Lozman*.

Second, the facts in this case do not meet the fourth prong in *Lozman,* which requires that there be "little relation" between the protected speech prompting the initial policy and the offense triggering the later retaliatory action. Although Plaintiffs have not shown an overarching official policy of retaliation, Plaintiffs do adduce evidence that the Town Commission voted to hire special counsel to initiate the RICO lawsuit and counterclaims and also voted to ratify the complaints against Jonathan O'Boyle and the O'Boyle Law firm [ECF No. 129-26 p. 58; ECF No. 129-24 p. 16]. Those actions, however, fail the "little relation" consideration of *Lozman*. In order to meet that prong, "there must be little relation between the protected speech that prompted the retaliatory policy and the criminal offense for which the arrest is made." *Lozman*, 138 S. Ct. at 1956 (internal quotation marks omitted). In this case, both the RICO lawsuit and the Bar Complaints were directly related to Plaintiffs' public records requests and litigation. Thus, here, as in *Demartini*, these policies do not fit within the fourth *Lozman* factual consideration.

DeMartini, 942 F.3d at 1307 ("Because the speech the Town allegedly retaliated against here—the public records requests and subsequent lawsuits—was the same protected speech for which the Town filed a civil lawsuit supported by probable cause, DeMartini's retaliation claim is precisely the type of claim that the Supreme Court in *Lozman* was concerned would prove indecipherable for purposes of proving causation and therefore would create a serious risk of "dubious" First Amendment retaliatory claims.").

Moreover, unlike in *Lozman,* where a city council member explicitly ordered that the plaintiff be arrested, Plaintiffs have not adduced any evidence directly connecting the initiation of Martin O'Boyle's criminal charges to the Town Commission. Plaintiffs attempt to connect the dots by suggestion, with Martin O'Boyle averring in a declaration that, as he was getting wheeled away on a gurney by EMS services following the September 22, 2015 incident, he "could see through a Town Hall window that Mayor Morgan and Town Attorney Skip Randolph were talking in the breakroom near the Town Hall lobby, but I could not hear what they were saying" [ECF No. 154]. The implication is that Morgan and Randolph could have directed Chief Ward to press charges [ECF No. 153 p. 6]. Such speculation is insufficient to create a genuine factual issue as to whether Town Commission officials directed Martin O'Boyle's criminal charges. *See Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005) ("Speculation or conjecture cannot create a genuine issue of material fact."). Thus, because Plaintiffs have failed to connect the criminal charges to any preexisting, official policy of intimidation, Martin O'Boyle's criminal charges are factually

distinguishable from the arrest in *Lozman*.[6] *See Hartman*, 547 U.S. at 263 ("[A]t the trial stage, some evidence must link the allegedly retaliatory official to a prosecutor whose action has injured the plaintiff.").

The considerations laid out in *Lozman* are not "balancing factors," as Plaintiffs suggest, but required elements, without which the exception will not apply. *See DeMartini*, 942 F.3d at 1297 ("[T]he presence of probable cause . . . will generally defeat a § 1983 First Amendment retaliation claim for an underlying retaliatory arrest . . . except when the "unique" five factual circumstances in *Lozman exist together . . . .")* (emphasis added). Because Plaintiffs have failed to show that the Town's alleged retaliatory actions were brought pursuant to a preexisting, official policy of intimidation, and because the facts here are materially distinguishable, the limited *Lozman* exception to the general requirement to plead and prove an absence of probable cause does not apply in this case.

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[6] The Court notes that it is not clear that the *Lozman* and *Nieves* exceptions apply outside of the retaliatory arrest context. *See DeMartini*, 942 F.3d at 1306 ("To date, the Supreme Court has not identified any exceptions to the no-probable-cause requirement in § 1983 First Amendment retaliation claims predicated on criminal prosecutions. Arguably, retaliation claims predicated on prior civil lawsuits would not be subject to exceptions either."); *but see id.* at 312. (Rosenbaum, J., concurring) ("To ensure that the government is never permitted to weaponize litigation to punish and chill protected speech, in every § 1983 First Amendment retaliation case involving the filing of a lawsuit in response to prior civil litigation, even though supported by probable cause, we must always at least evaluate the surrounding circumstances, keeping in mind the considerations the Supreme Court has identified in *Hartman* and in retaliatory-arrest cases such as *Lozman* and *Nieves*.") (internal citations omitted).

I. Alleged Retaliatory Civil Lawsuits (RICO Action and Counterclaims)

The Court now turns to the first category of alleged retaliatory conduct, the RICO case and related state counterclaims that the Town filed against Plaintiffs. Specifically, the Court must determine whether Plaintiffs are required to show that the Town lacked probable cause for these actions, and, if so to what extent that showing has been met.

The Court notes this inquiry has already been examined in depth by the Eleventh Circuit in *DeMartini v. Town of Gulf Stream*, which held that "the presence of probable cause will generally defeat a plaintiff's § 1983 First Amendment retaliation claim predicated on an underlying civil lawsuit, or counterclaim for that matter." 942 F.3d 1277, 1306 (11th Cir. 2019). Indeed, *DeMartini* concerned much of the same factual landscape as in this case. *Id.* That case involved a First Amendment retaliation claim brought by Denise DeMartini, an officer of CAFI and associate of Martin O'Boyle, against the Town of Gulf Stream. *Id.* at 1287. DeMartini alleged that the Town's RICO lawsuits and state counterclaims—the same actions at issue here—unlawfully retaliated against CAFI's protected speech and petition (public records requests and related litigation), in violation of the First Amendment. *Id.*

Ultimately, the *DeMartini* court concluded that "applying the objective, lack-of-probable-cause requirement to a § 1983 First Amendment retaliation case predicated on the filing of a civil lawsuit is ap-

propriate because it strikes the proper balance between protecting a plaintiff's important First Amendment rights while, at the same time, ensuring that the Town has a similar ability to access the courts to protect itself and its citizens from non-meritorious litigation." *Id.* at 1306. Specifically, the court noted that "[t]he involvement of counsel widens the causation gap between any alleged retaliatory animus by the Town and DeMartini's injury." *Id.* at 1304. Moreover, the court found that the Town "had a legitimate interest in considering the plaintiff's speech in the first place." *Id.* at 1305. Further, because the Town's consideration of the protected speech was legitimate, the court found that the resulting "causal complexity warrants that a plaintiff, like DeMartini, must plead and prove the absence of probable cause for her First Amendment retaliation claim to move forward." *Id.*

Plaintiffs now argue that *DeMartini* is distinguishable because it relied in part on a finding that the Town's "two separate outside attorneys, Robert Sweetapple and Gerald Richman, conducted investigations, evaluated the facts, and only then independently recommended the filing of the civil RICO lawsuit." *Id.* at 1304. Plaintiffs argue that the record here shows that Mayor Morgan in fact did not merely await advice from the Town's lawyers, but rather took an active role in directing litigation strategy [ECF No. 141 p. 3]. Specifically, Plaintiffs point to an email chain between Mayor Morgan and Bob Sweetapple immediately after the Town retained Sweetapple as special counsel to defend the public records lawsuits, in which Morgan stated: "O'Boyle is the leader of the pair . . . so we want to focus our attention on him first. . . . I believe we should have a strategy session

involving Jones Foster, you and myself. Skip and Joanne have done quite a bit of work on these cases so they are already working on a strategy involving sanctions and consolidation" [ECF No. 131-24 p. 2]. Plaintiffs also put forth an email from Morgan to Sweetapple in which Morgan weighed in on the wisdom of settling with O'Boyle [ECF No. 131-31 p. 2 ("In my opinion, we traveled the settlement route with O'Boyle once before and it would be unwise to engage him in another conference or meeting prior to re-positioning the parties with the filing of a RICO action.")]. Thus, Plaintiffs argue that Morgan "directly dictated and coordinated strategy from start to finish," thereby re-narrowing the causation gap [ECF No. 141 p. 3].

The Court disagrees that those emails are sufficient to differentiate this case from the rationale in *DeMartini.* Although the record in this case indicates that Mayor Morgan made arguably more direct remarks to the Town's attorneys regarding the case and his views of a desired strategy, the essential components on which *DeMartini* relied still remain. For example, the court stated:

> Like the prosecutor in *Hartman,* Sweetapple and Richman were obligated to exercise their own individual judgment and were bound by the Florida Rules of Professional Conduct. Specifically, they were each (1) required to "exercise independent professional judgment and render candid advice" to the Town, (2) limited to the filing of a claim having "a basis in law and fact . . . that is not frivolous," and (3) prohibited from "using the law's procedures . . . to harass and intimidate others."

DeMartini, 942 F.3d at 1304 (alteration omitted) (quoting R. Reg. Fla. Bar, 4-2.1, 4-3.1, Preamble). So too here. The record shows that the Town's attorneys conducted their own research and investigations [ECF No. 129-20 pp. 225-28, 230; ECF No. 129-22 p. 56]. As attorneys in the state of Florida, they remained subject to the same ethical rules requiring them to exercise independent professional judgment. The emails that Plaintiffs point to do not demonstrate any failure to exercise such judgment. In fact, one of the emails that Plaintiffs offer actually shows that Mayor Morgan deferred to the judgment of the Town's attorney [ECF No. 131-24 p. 2]. Thus, even accepting that Mayor Morgan took somewhat of a greater role than previously known in offering suggestions and communicating with the lawyers, this is not, in the Court's view, a sufficient basis from which to narrow the causation gap or distinguish *DeMartini* on a principled basis. As in *DeMartini*, Morgan's suggestions notwithstanding, the involvement of counsel widens the causation gap between any alleged animus and Plaintiffs' injury.

Nor is the *DeMartini* result altered here, as Plaintiffs' argue, by the fact that CAFI filed only three lawsuits against the Town or that Plaintiffs won judgments in some of their public records lawsuits. Plaintiffs argue that the Town's theory that it had probable cause to bring the RICO suit "chiefly rests" on inside information it got from Chandler as the former director of CAFI alleging that Plaintiffs' public records requests and litigation were really a fraudulent money-making scheme [ECF No. 136 p. 24]. Such information, Plaintiffs contend, could not be a sufficient basis for the RICO suit because CAFI sued the Town

only three times and those cases were voluntarily dismissed without demanding any financial settlement from the Town [ECF No. 136 p. 24]. Plaintiffs argue that these facts undercut the Town's legitimate interest, as described in *DeMartini,* in opposing the public records requests and lawsuits by filing the RICO action and counterclaims and thus preclude a finding of probable cause for those actions [ECF No. 136 p. 24]. *See DeMartini*, 942 F.3d at 1305.

Plaintiffs' arguments do not follow. The information that Chandler provided the Town did not solely concern CAFI' s litigation activity but also implicated Plaintiffs in the alleged windfall scheme as well [*see, e.g.*, ECF No. 129-10 p. 3 ("I resigned because of repeated instances of conduct perpetuated by Martin O'Boyle, Jonathan O'Boyle, William Ring, Denise DeMartini, and some of the attorneys at the O'Boyle Law Finn, P.C., Inc. . . . which I believe may be criminal, fraudulent and unethical.")]. Likewise, CAFI was not the only defendant in the Town's RICO lawsuit, which also included the Plaintiffs in this case and others such as Christopher O'Hare. The fact that only three of the dozens of public records lawsuits were brought by CAFI itself does not weaken the Town's basis for bringing the RICO action. Thus, the Eleventh Circuit's reasoning in *Demartini* applies equally here—i.e., the Town legitimately considered the substantial threat that Plaintiffs' activities posed to the Town's coffers and taxpaying citizens in filing the RICO action is not altered by this record.

The Court also finds that the Town had probable cause to initiate the RICO lawsuit and state counterclaims based on the same reasoning the Eleventh Circuit articulated in *DeMartini.*

In particular, "[p]robable cause to institute civil proceedings requires no more than a reasonable belief that there is a chance that a claim may be held valid upon adjudication." *DeMartini*, 942 F.3d at 1300-01 (alternations and internal quotations omitted) (quoting *Prof'l Real Estate Inv'rs, Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 62–63 (1993)). This standard, which requires less certainty than probable cause as defined in the criminal context, is "not a high bar to meet." *DeMartini,* 942 F.3d at 1301 (quoting *Mee Indus. v. Dow Chem. Co.*, 608 F.3d 1202, 1218 (11th Cir. 2010)).

The Town had a reasonable, good faith basis to initiate the RICO action based on the inside information it received from Joel Chandler alleging that Plaintiffs were engaged in fraudulent conduct [ECF No. 129-10 ¶¶ 61–62]. Particularly when coupled with the sheer scale of the litigation burden posed by the public records cases, the Court finds that the information received from Chandler, which the Town's attorneys independently investigated, establishes that the Town had probable cause for the RICO action and counterclaims. Accordingly, the Town is entitled to summary judgment on Plaintiffs' First Amendment Retaliation claim, which shall be dismissed to the extent it alleges the Town's civil lawsuits as the predicate retaliatory action.

II. Alleged Retaliatory Bar Complaints

The Court then turns to the next category of alleged retaliatory conduct, the Town's complaints about Jonathan O'Boyle, the O'Boyle Law Firm, and William Ring to the Florida Bar. The Court must examine whether Plaintiffs are required to show that the Town lacked probable cause for these actions, and, if so, to what extent that showing has been met.

A. Is a Lack of Probable Cause Showing Required?

Once again, although it does not answer the precise question now at issue—whether a First Amendment retaliation suit based on ethics complaints to a professional licensing organization requires a lack of probable cause showing—the Court's best guidance remains *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277 (11th Cir. 2019).

In *DeMartini,* the court determined that that "applying the objective, lack-of-probable-cause requirement to a § 1983 First Amendment retaliation case predicated on the filing of a civil lawsuit is appropriate because it strikes the proper balance between protecting a plaintiff's important First Amendment rights while, at the same time, ensuring that the Town has a similar ability to access the courts to protect itself and its citizens from non-meritorious litigation." *Id.* at 1306. The Court based its conclusion on three reasons. First, the court found that "[t]he involvement of counsel widens the causation gap between any alleged retaliatory animus by the Town and DeMartini's injury." *Id.* at 1304. Second, the court

found that the Town "had a legitimate interest in considering the plaintiff's speech in the first place." *Id.* at 1305. And third, the court found that the resulting "causal complexity warrants that a plaintiff, like DeMartini, must plead and prove the absence of probable cause for her First Amendment retaliation claim to move forward." *Id.*

Applying the same method of inquiry in this case, the Court finds that the reasoning in *DeMartini* militates strongly in favor of a lack of probable cause requirement. First, the Town's attorneys played an essential role, first in investigating the ethical complaints, then in crafting them in a motion raised in state court, and finally presenting them to the Florida Bar. More specifically, before retaining him as special counsel to bring the RICO action, the Town consulted with Gerald Richman based on his expertise regarding unlicensed practice of law issues [ECF No. 129-20 p. 118:10-13]. As in the civil litigation context, the involvement of counsel here widens the causation gap because any alleged animus from the Town Commission in making the Bar Complaints would have to be filtered and approved by counsel, who is required to ensure a factual basis for taking the subject actions. The causation gap is further widened in this context by the Florida Bar itself, which in its role of evaluating and prosecuting ethical complaints, functions similarly to the prosecutor in *Hartman*. *See Hartman*, 547 U.S. 250, 263 (2006) ("Some sort of allegation . . . is needed . . . to bridge the gap between the nonprosecuting government agent's motive and the prosecutor's action . . . ."); *DeMartini*, 942 F.3d at 1304 ("Like the prosecutor in *Hartman* who filed the criminal action, the individuals recommending and filing the

civil lawsuit here (counsel) were not the same individuals who allegedly harbored the retaliatory animus (the Town's Commissioners).").

Second, because the Bar Complaints are directly related to the Town's defense of litigation to which the Town is a party, the Town has a legitimate interest in making the Bar Complaints. The Court notes the Bar Complaints actually arose out of the Town's civil litigation with Plaintiffs and initially took form in a motion to disqualify. Unlike in other cases where the allegedly retaliatory ethical or professional complaints are collateral to the municipality's dispute with that plaintiff, here the Town has a direct interest in enforcing Florida Bar ethical requirements against opposing counsel.

Third, as before, the Town's legitimate interest in the Bar Complaints creates a causal complexity that necessitates a lack of probable cause showing. Otherwise, it would be virtually impossible to determine whether or not the Bar Complaints emanate from the Town's legitimate interest in enforcing ethical rules in a litigation to which it is a party. Because municipalities do not normally pursue bar rules enforcement, if the Court were to apply a "but-for" causation standard, as in *Mt. Healthy*, it is improbable that the Town could ever prevail, its legitimate interests notwithstanding.

For these reasons, because the bar complaints are sufficiently analogous to civil litigation, and applying the reasoning laid out in *DeMartini*, the Court finds that, to the extent Plaintiffs base their First Amend-

ment retaliation claim on alleged retaliatory bar complaints arising out of civil litigation to which the Town is a party, Plaintiffs must show an absence of probable cause for such retaliatory conduct.

B. Probable Cause

Next, the Court must decide whether the Town had probable cause to send complaints to the Florida Bar about regarding the ethical standing of Jonathan O'Boyle, the O'Boyle Law Firm, and William Ring. Because the Court finds that initiating a bar complaint is a form of civil proceeding analogous to civil litigation, a finding of probable cause supporting such complaint "requires no more than a reasonable belief that there is a chance that [the complaint] may be held valid upon adjudication." *Pro. Real Est. Inv., Inc.*, 508 U.S. at 62–63 (alterations, internal quotations marks, and citation omitted); *see also Wright v. Yurko,* 446 So. 2d 1162, 1166 (Fla. 5th Dist. App. 1984) ("To establish probable cause, it is not necessary to show that the instigator of a lawsuit was certain of the outcome of the proceeding, but rather that he had a reasonable belief, based on facts and circumstances known to him, in the validity of the claim.").

Plaintiffs argue that a lack of probable cause for the bar complaints is evident in the record based on documents showing the complaints against Jonathan O'Boyle were dismissed without any disciplinary action, and that the complaints against William Ring were dismissed by the Florida Bar pursuant to a letter finding "no probable cause" to proceed [ECF No. 136 p. 23; ECF No. 131-66; ECF No. 131-62]. Defendants

argue that the Florida Bar's disposition of the complaints cuts in favor of finding probable cause because it shows that they advanced beyond initial screening to the committee levels of consideration and thus were nonfrivolous [ECF No. 142 p. 11].

Upon review of the record, the Court concludes that the Town had probable cause to send the bar complaints, at least initially, based on the facts and circumstances known to it at the time, as gleaned from information the Town received from Joel Chandler as well as its own investigation. In particular, the Town's investigation into Jonathan O'Boyle ascertained that he had significant ties to Pennsylvania but lacked membership with the Florida Bar despite frequently conducting litigation in Florida [ECF No. 131-37; ECF No. 129-20 pp. 116:25-117:18]. The Town also possessed information from Joel Chandler, given in the form of a sworn affidavit, alleging that the O'Boyles were using CAFI as a fraudulent "profit-generating scheme" to produce fees for the O'Boyle Law Firm [ECF No. 129-10 ¶ 66]. Moreover, the committee-level dispositions of the complaints, while certainly not dispositive, do further support that the Town had a good faith basis for the Bar Complaints. *See Wright*, 446 So. 2d at 1167 ("The fact that the case went to the jury and survived motions for summary judgment and directed verdict (which were most surely made), while not conclusively proving probable cause, is a strong indication of a substantial case.").

Because the information available to the Town supported a reasonable belief that the initial complaints—those that the Town sent prior to receiving notice that Florida Bar had closed the file [ECF No.

129-23]—were valid, the Court finds that probable cause for these initial Bar Complaints existed.

Nevertheless, an issue of material fact remains as to whether the Town had probable cause to file additional complaints with the Florida Bar after receiving notice that the issue had been resolved. According to Plaintiffs, the Town persisted in sending Bar complaints even after the Bar had closed the file. Specifically, in May 23, 2017, the Florida Bar sent a letter to Morgan stating: "The underlying issues in your complaint have accordingly been resolved. Accordingly, continued disciplinary proceedings in this matter are inappropriate and our file has been closed" [ECF No. 131-67]. Jonathan O'Boyle also avers that, "Mater, around June 2017," "Morgan sent another letter to the Bar that included more than 200 pages of 'exhibits A through AG' in further effort to convince the Bar to discipline the firm's lawyers" [ECF No. 131-63 ¶ 10]. The Town disputes that Mayor Morgan submitted the additional Bar Complaint in June 2017 [ECF No. 139 ¶ 51].

As the court in *DeMartini* pointed out, even if there is probable cause to pursue a proceeding initially, there may not be probable cause to pursue that same proceeding later after the identical issue has been decided and found to lack merit. 942 F.3d at 1303 n.19 ("We note that our prior panel decision now having decided that a civil RICO claim does not lie here based on the facts of this case, the Town would presumably lack probable cause should it seek again to file another civil RICO lawsuit against persons filing public records requests and related lawsuits . . .").

Accordingly, there remains a genuine issue of material fact as to whether the facts and circumstances available to the Town support a reasonable belief that its complaints against Jonathan O'Boyle and William Ring were valid following notice from the Florida Bar regarding the disposition of previous complaints.

III. Criminal Charges Against Martin O'Boyle

The Court now turns to the third category of alleged retaliatory conduct, Martin O'Boyle's criminal prosecution for the following charges in Case No. 50-2015-MM-012872 (County Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida): (1) resisting without violence, in violation of Fla. Stat. § 843.02; (2) trespass, in violation of Fla. Stat. § 810.08(1), (2)(b); and (3) disorderly conduct, in violation of Fla. Stat. § 877.03 [ECF No. 129-34 (criminal information)]. Because the Town did not arrest O'Boyle but merely initiated his prosecution, O'Boyle's criminal charges fall squarely within the purview of *Hartman*, which held that a viable retaliatory prosecution claim requires the plaintiff to plead and prove the absence of probable cause. *See Hartman v. Moore*, 547 U.S. 250, 265–66 (2006) ("Because showing an absence of probable cause will have high probative force, and can be made mandatory with little or no added cost, it makes sense to require such a showing as an element of a plaintiffs case, and we hold that it must be pleaded and proven."). Thus, if the Town had probable cause for the criminal charges, such probable cause would defeat Plaintiffs' retaliation claim and entitle the Town to summary judgment to the extent that Plaintiffs' claim is predicated on O'Boyle's criminal charges. *See DeMartini*, 942 F.3d

at 1297 ("[T]he presence of probable cause will (1) defeat a § 1983 First Amendment retaliation claim for an underlying retaliatory criminal prosecution . . . .") (citing *Hartman*, 547 U.S. 250). Accordingly, the sole question at issue regarding O'Boyle's criminal charges is whether the Town had probable cause to initiate their prosecution.

"Probable cause means facts and circumstances sufficient to warrant a prudent man in believing that the suspect had committed . . . an offense." *Black v. Wigington*, 811 F.3d 1259, 1267 (11th Cir. 2016) (internal quotation marks omitted); *see also Lee v. Geiger*, 419 So. 2d 717, 719 (Fla. 1st Dist. App. 1982) ("Probable cause exists when the circumstances are sufficient to cause a reasonably cautious person to believe that the person accused is guilty of the offense charged."). "The test is an objective one, i.e. a probable cause determination considers whether the objective facts available to the officer at the time of arrest were sufficient to justify a reasonable belief that an offense was being committed." *Lozman v. City of Riviera Beach*, 39 F. Supp. 3d 1392, 1409 (S.D. Fla. 2014) (citing *United States v. Gonzalez*, 969 F.2d 999, 1003 (11th Cir. 1992)).

A. Probable Cause for Trespass

Under Florida law, a person commits the offense of trespass in a structure or conveyance when he "willfully enters or remains in any structure or conveyance" without having been "authorized, licensed, or invited," or refuses to leave after having been asked to do so by "a person authorized by the owner or lessee." Fla. Stat. § 810.08(1). "If [a] potential trespasser

receives a warning and remains on the property . . . he becomes an actual trespasser under the plain language of the statute." *Henning v. Walmart Stores Inc.*, 738 F. App'x 992, 997 (11th Cir. 2018) (citing Fla. Stat. § 810.08(1)).

The Town argues that probable cause to charge Martin O'Boyle with trespass existed based on record evidence showing that Officer Passeggiata ordered O'Boyle to leave the building, but that O'Boyle refused to comply [ECF No. 157 p. 6]. Plaintiffs argue that they need not show a lack of probable cause for the trespass charge because trespass was subsequently added by the state attorney and not included among the charges Officer Passeggiata recommended [ECF No. 136 p. 25]. Plaintiffs also argue that O'Boyle was not sufficiently warned because neither Officer Passeggiata nor Chief Ward told him that he might be arrested or charged if he did not leave Town Hall [ECF No. 153 p. 6]. Further, Plaintiffs contend that a finding of probable cause as to two of the three charges (trespass and resisting an officer) is undermined by the state court's grant of judgment of acquittal on those charges under a standard similar to the standard for determining probable cause [ECF No. 153 p. 5].

The Court agrees with the Town that probable cause existed to charge O'Boyle with trespass based on the September 22, 2015 incident. Officer Passeggiata's affidavit records that he "then directed Mr. O'Boyle to leave the building," to which O'Boyle responded with profanities [ECF No. 129-29 p. 333]. The affidavit also states that Police Chief Ward "engaged Mr. O'Boyle in an attempt to have him comply

with my direction to leave the building," prompting further profanity from O'Boyle [ECF No. 129-29 p. 333]. Plaintiffs do not dispute that Officer Passeggiata and Chief Ward told O'Boyle to leave. Rather, Plaintiffs instead rely[7] on Martin O'Boyle's declaration, which states that he was not specifically warned that he would be arrested or charged if he did not leave [ECF No. 154 ¶ 12]. But on that point, the statute requires merely that the person be "warned . . . to depart." Fla. Stat. § 810.08(1). Thus, because Martin O'Boyle did not comply with Officer Passeggiata and Chief Ward's trespass warning, there was probable cause to believe that Martin O'Boyle committed trespass on September 22, 2015. *See Henning v. Walmart Stores Inc.*, 738 F. App'x 992 (11th Cir. 2018) (finding probable cause for trespass under Florida law where law enforcement officers provided customer with an oral trespass warning by asking him to leave, but customer was noncompliant and attempted to remain in the store). Plaintiffs' retaliatory prosecution claim cannot proceed to the extent it is based on the trespass charge.[8]

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[7] Plaintiffs do not cite any authority for their implicit assertion that a trespass warning is not valid unless it is accompanied by an ultimatum of arrest or criminal charges [ECF No. 153 p. 6].

[8] The Court disagrees with the Town's argument [see ECF No. 142 p. 11] that a finding of probable cause for one charge will defeat the entire retaliatory prosecution claim, regardless of whether there was probable cause for the other charges. In this case, O'Boyle was not arrested; rather, Plaintiffs alleged that the Town retaliated by initiating O'Boyle's criminal prosecution. While it is well established that the "any-crime rule" applies in cases of false arrest, the same is not true for wrongful prosecution cases under § 1983. *See Williams v. Aguirre*, 965 F.3d 1147,

B. No Probable Cause for Disorderly Conduct

The Court turns next to the disorderly conduct charge. Florida's disorderly conduct statute states:

> Whoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Fla. Stat. § 877.03. To avoid finding this statute unconstitutional, the Florida Supreme Court has construed it narrowly. *See State v. Saunders*, 339 So. 2d 641, 643–44 (Fla. 1976). Consequently, the Florida Supreme Court has stated that "no words except 'fighting words' or words like shouts of 'fire' in a crowded theatre fall within its proscription." *Id.* at

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1162 (11th Cir. 2020) ("Regardless of its applicability to warrantless arrests, the any-crime rule does not apply to claims of malicious prosecution under the Fourth Amendment. Centuries of common-law doctrine urge a charge-specific approach . . . ."). Although Williams was decided in the Fourth Amendment context, the Court finds its reasoning applicable here and notes in addition that, as in Williams, Plaintiffs' claim against the Town for First Amendment retaliation based on a retaliatory prosecution is a § 1983 cause of action where the most analogous common law tort is malicious prosecution. *See Id.* at 1159 (citing *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 920 (2017)) ("In defining the contours and prerequisites of a § 1983 claim . . . courts are to look first to the common law of torts.").

644. "Fighting words" are "those likely to cause an average person to whom they are addressed to fight." *A.S.C. v. State*, 14 So. 3d 1118, 1119 (Fla. 5th Dist. App. 2009) (citing *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)). "For example, mere boisterous behavior, even if it disrupts the operations of a business and draws onlookers' attention, is not by itself enough to sustain a disorderly conduct conviction." *St. Fleury v. State*, 244 So. 3d 330, 332 (Fla. 4th Dist. App. 2018). Thus, to violate the statute, "there must be evidence of something more than loud or profane language or a belligerent attitude." *Miller v. State*, 667 So. 2d 325, 328 (Fla. 1st Dist. App. 1995). While most speech alone is protected, when coupled with actions, the speech and actions together may not be protected and may amount to disorderly conduct. *See C.L.B. v. State*, 689 So. 2d 1171, 1172 (Fla. 2d Dist. App. 1997) (finding that appellant's additional physical actions rendered his otherwise protected speech unprotected).

Here, a dispute of facts precludes summary judgment on whether there was probable cause for the disorderly conduct charge. According to Officer Passeggiata's account, in addition to shouting profanities and generally acting in a "disruptive" manner, O'Boyle also "moved directly in front of Chief Ward at a very close, distance from him, puffed up his chest and shoulders and glared at the Chief in a threatening manner" [ECF No. 129-29 p. 333]. Furthermore, "Chief Ward asked O'Boyle, 'What is that a combat stance?", to which "O'Boyle responded, 'Yeah, it's a combat stance" [ECF No. 129-29 p. 333]. Although Plaintiffs do not dispute that O'Boyle used profane language, according to Plaintiffs, Officer Passeggiata

initiated the exchange of profanities [ECF No. 153 p. 6]. Thus, the basis of the disorderly conduct charge is limited to O'Boyle's loud and profane words, which by themselves do not support a finding of probable cause for disorderly conduct. *See Olson v. Stewart*, 737 F. App'x 478, 482–83 (11th Cir. 2018) ("[A]ny reasonable officer would have known that probable cause for disorderly conduct could not be based on mere words . . . ."); *see also Miller v. State*, 667 So. 2d 325, 328 (Fla. 1st Dist. App. 1995) (reversing a conviction for disorderly conduct based solely on evidence of "loud or profane language or a belligerent attitude"). A genuine issue of material fact precludes summary judgment on the issue of probable cause for the disorderly conduct charge.

C. No Probable Cause for Resisting an Officer Without Violence

Finally, the Court considers whether there was probable cause to charge O'Boyle with resisting an officer without violence. As relevant here, Florida law makes it a crime to "resist, obstruct, or oppose any officer . . . in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer." Fla. Stat. § 843.02. "A conviction for resisting an officer without violence under Florida Statute § 843.02 requires that '(1) the officer was engaged in the lawful execution of a legal duty; and, (2) the actions of the defendant obstructed, resisted or opposed the officer in the performance of that legal duty.'" *Alston v. Swarbrick*, 954 F.3d 1312, 1319 (11th Cir. 2020) (quoting *V.L. v. State*, 790 So. 2d 1140, 1142 (Fla. 5th Dist. App.

2001)). "An essential element of the offense of resisting a law enforcement officer without violence is that the arrest must be lawful." *Id.* (internal quotation marks omitted).

In this case, the Court finds that a dispute of fact precludes summary judgment on whether the resisting charge was supported by probable cause. According to the Town's account, after directing O'Boyle to leave the building, Officer Passeggiata attempted to escort him out, holding him by his arm "like [he] would [his] 90-year-old father to take him to the bathroom" [ECF No. 129-29 p. 229:7-9; ECF No. 158 ¶ 3]. O'Boyle then stated "I'm not going anywhere," and "gingerly" lowered himself down onto his knees in a kneeling position [ECF No. 129-29 p. 229:14-18, 333; ECF No. 158 ¶ 3]. When Officer Passeggiata attempted to help him up, O'Boyle passively resisted by "sinking his weight down" [ECF No. 129-29 p. 244:20-24, 333; ECF No. 158 ¶ 3].

According to Plaintiffs' account, Officer Passeggiata grabbed O'Boyle's walker and threw it aside, put his right hand on O'Boyle's lower back above O'Boyle's belt and his left hand on O'Boyle's shoulder, and pushed O'Boyle toward the exit door [ECF No. 154 ¶ 9]. O'Boyle further avers that the shove from Officer Passeggiata caused him to fall on the floor, at which point he was on the floor on his knees and unable to move without substantial back pain [ECF No. 154 ¶ 10].

Because the substantial difference in these factual accounts is material to the issue of whether Martin O'Boyle resisted Officer Passeggiata's order to leave

the building, the Court concludes that this factual dispute should be resolved by a jury. A genuine issue of material fact precludes summary judgment on the issue of probable cause for the resisting an officer without violence charge.

CONCLUSION

For the foregoing reasons, it is **ORDERED** AND **ADJUDGED** as follows:

1. Defendant's Motion for Summary Judgment [ECF No. 127] is **DENIED**.

2. Plaintiffs' Motion for Summary Judgment [ECF No. 130] is **DENIED**.

3. This case shall proceed to trial consistent with this Order.

4. On or before **February 4, 2022**, the parties shall file a joint exhibit list and a joint trial plan in accordance with the Court's templates available at https://www.flsd.uscourts.gov/content/judge-aileen-m-cannon (under "Civil Procedures" tab).

5. On or before **February 4, 2022**, the parties shall also file—in light of this Order—a renewed joint pre-trial stipulation pursuant to Local Rule 16.1(e) and a renewed joint proposed jury instructions and verdict form.

DONE AND ORDERED in Chambers at Fort Pierce, Florida this 24th day of January 2022.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 19-80196-CIV-CANNON/Reinhart

MARTIN E. O'BOYLE,
JONATHAN O'BOYLE, and
WILLIAM RING,

Plaintiffs,

v.

TOWN OF GULF STREAM,

Defendant.
_____/

AMENDED ORDER ON SUMMARY JUDGMENT

THIS CAUSE comes before the Court *sua sponte*. On January 25, 2022, the Court entered an order denying the parties' cross motions for summary judgment [ECF No. 176].

In the summary judgment order, the Court found that genuine issues of material fact remained as to the following: (1) whether the facts and circumstances available to the Town support a reasonable belief that its complaints against Jonathan O'Boyle and William Ring were valid following notice from the Florida Bar regarding the disposition of previous complaints;

(2) whether the Town had probable cause to charge Martin O'Boyle with disorderly conduct; and (3) whether the Town had probable cause to charge Martin O'Boyle with resisting an officer without violence [ECF No. 176 pp. 34, 39-40].

Subsequently, on January 28, 2022, the parties entered a joint stipulation and request for final order, which stipulated the following facts:

1) The Town and/or any and all agents of the Town, did not file any additional bar complaints against Plaintiff Jonathan O'Boyle after being informed in May of 2017 of the disposition of the bar complaints made against Jonathan O'Boyle, and any materials submitted to the Florida bar by the Town and/or any agents of the Town after May 2017 were directed to open and undetermined bar complaints against members of the O'Boyle Law Firm other than Jonathan O'Boyle.

2) The Town and/or any and all agents of the Town did not file any additional bar complaints against Plaintiff William Ring after being informed in December of 2017 that there was no probable cause to proceed with the bar complaints made by the Town and/or any and all agents of the Town against William Ring.

3) There was probable cause to charge Martin O'Boyle with disorderly conduct; and

4) There was probable cause to charge Martin O'Boyle with resisting an officer without violence.

[ECF No. 177 ¶ 2].

The Court previously found that, "to the extent Plaintiffs base their First Amendment retaliation claim on alleged retaliatory bar complaints arising out of civil litigation to which the Town is a party, Plaintiffs must show an absence of probable cause for such retaliatory conduct" [ECF No. 176 p. 31]. The Court also found, after a thorough review of the record, that "[b]ecause the information available to the Town supported a reasonable belief that the initial complaints—those that the Town sent prior to receiving notice that Florida Bar had closed the file [ECF No. 129-23]—were valid, . . . probable cause for these initial Bar Complaints existed" [ECF No. 176 p. 33]. In light of the parties' stipulation that the Town did not make any additional bar complaints after those initial complaints [ECF No. 177 ¶2], the Court now determines that the Town had probable cause to send all of the complaints at issue to the Florida Bar regarding the ethical standing of Jonathan O'Boyle, the O'Boyle Law Firm, and William Ring.

The Court also found that, "if the Town had probable cause for the criminal charges, such probable cause would defeat Plaintiffs' retaliation claim and entitle the Town to summary judgment to the extent that Plaintiffs' claim is predicated on O'Boyle's criminal charges" [ECF No. 176 p. 35]. In light of the parties' stipulation, the Court determines that there was probable cause for all of the criminal charges at issue.

Accordingly, because probable cause as now stipulated existed for each of the allegedly retaliatory actions including the RICO lawsuit, state counterclaims, bar complaints, and criminal charges against Martin O'Boyle, the Town is entitled to summary judgment on Plaintiffs' First Amendment Retaliation claim.

For the foregoing reasons, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant's Motion for Summary Judgment [ECF No. 127] is **GRANTED.** Summary judgment is hereby **ENTERED** in favor of the Defendant.

2. The Court will enter a separate final judgment pursuant to Federal Rule of Civil Procedure 58.

DONE AND ORDERED in Chambers at Fort Pierce, Florida this 16th day of February 2022.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 19-80196-CIV-CANNON/Reinhart

MARTIN E. O'BOYLE,
JONATHAN O'BOYLE, and
WILLIAM RING,

Plaintiffs,

v.

TOWN OF GULF STREAM,

Defendant.
_____/

FINAL JUDGMENT

THIS MATTER comes before the Court on Defendant's Motion for Summary Judgment [ECF No. 127] and Plaintiffs' Motion for Summary Judgment [ECF No. 130]. The Court granted summary judgment in favor of Defendant in a separate order [ECF No. 180], which is to be considered in combination with the Court's Order Denying Motions for Summary Judgment [ECF No. 176] and the parties' Joint Stipulation and Request for Final Order [ECF No. 177]. In accordance with Federal Rule of Civil Procedure 58, the Court hereby

ORDERS AND ADJUDGES as follows:

1. Judgment is entered in favor of Defendant Town of Gulf Stream and against Plaintiffs Martin O'Boyle, Jonathan O'Boyle, and William Ring.

2. The Clerk of Court is directed to **CLOSE** this case. Any pending motions are **DENIED AS MOOT**.

DONE AND ORDERED in Chambers at Fort Pierce, Florida this 17th day of February 2022.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record

APPENDIX F

Martin O'Boyle, Jonathan O'Boyle and William Ring

vs.

Town of Gulf Stream

Deposition of:

John Passeggiata

April 21, 2021

Vol 2

…

[Page 194:6-24]

Q. So he put his right hand on the door-frame?

A. I believe so. From the best of my recollection. And he still had the marker in his hand.

Q. In his left hand or his right hand?

A. I think it was in his right hand.

Q. And what happened next?

A The chief -- the chief walked over to him and -- and he -- he told me to come on over, and said, let's try – let's try to get him up. Let's try to lift him.

And he wasn't cooperating. And then he just said, you know, leave it alone. And then I signaled to the chief, you know, "handcuffs." And he waved me off. So I just stuck -- stood back.

And then Mr. O'Boyle called one of his friends -- I don't know if that was Mr. Ring or not -- to come over and "give me a phone," and, you know, I learned later that he called 9-1-1.

…

[Page 205:11-17]

Q. Did you talk with Chief Ward about this incident afterwards?

A. No, he just whispered in my ear a little later, he said, "John, I just want you to file on him."

And I said, "okay." And that's what I did.

…

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 9:19-CV-80196-CANNON/BRANNON

MARTIN E. O'BOYLE,
JONATHAN O'BOYLE, AND
WILLIAM RING,

Plaintiffs,

v.

TOWN OF GULF STREAM,

Defendant.
_____/

VIDEO TAPED WEB CONFERENCE DEPOSITION
OF SCOTT MORGAN

Thursday, April 1, 2021
9:59 a.m. - 6:24 p.m.

(via web conferencing)

STENOGRAPHICALLY REPORTED VIA WEB
CONFERENCE

BY: STEPHANIE NARGIZ, FPR, RPR

…

[Page 34:11-20]

Q. Why did you decide to seek that office?

A. It may not have been six – I'm not sure how long it was, but I felt I could contribute to the commission. I had been on an architectural review board for quite some time. I was chairman. That's a natural launching point for someone to go on the commission, and I felt that I not only could contribute based on that experience, but with the issues involving the O'Boyles and the assault on the town, I felt I could contribute with my legal background. I could help. I think that's the primary motivation.

…

[Page 252:7-253:19]

Q. But my question right now for the mayor is, you referenced banners in the sky and newspaper ads, and you told the town that we don't see those anymore; is that right?

A. That's correct.

Q. And as I understood you, you're explaining that the reason that they don't see those anymore is because of the aggressive approach you and the town had taken toward my clients and Mr. O'Hare?

A. Well --

MR. GILL: Object to the form.

A. -- I think it was -- I think it was the exposure of the fraudulent and extortionate scheme through the RICO action, possibly the counterclaims, but the public recognition of what the O'Boyle law firm and the O'Boyle cabal was doing was exposed. I believe that the fact that it was transpiring over the entire state involving, I don't know how many other municipalities and agents, that the exposure stopped it. It made it no longer profitable for O'Boyle. He was not going to be able to shake down the municipalities again. I think he recognized -- that was my interpretation of it -- that the exposure of his scheme shedding light on it was what caused him to stop the O'Boyle law firm's actions throughout the state, which I think happened, to stop the -- the other things that he was doing that upset residents. They didn't like seeing the banners and the signs, that sort of thing. He returned -- it returned more to the normal way that our town had operated. The law, the lawsuits, the public records requests seemed to slow down and then stop for a period of time.

Now, O'Boyle has continued to file public records requests, and I think there's been some lawsuits since then, but the actual scheme that I've described for you probably 10 times in this deposition, and which was outlined in the RICO and the counterclaim statements, he seemed to pull back from that as a result of the exposure. And that was the point I was making.

…

[Page 256:13-25]

Q. It was a warning to Mr. O'Boyle what would happen if he continued in that course of conduct?

A. No. He had stopped -- he had stopped the -- what I have described numerous times here, and I don't need to keep repeating it, so we'll just call it the scheme. Okay. He had stopped that. The public records requests eventually whittled down. It was the occasional request, because there was still a few cases ongoing and whatnot, but that he had stopped. My understanding is that the firm was no longer advancing these spurious and abusive requests for the purpose of seeking windfall profits, and all of the ethical and other legal violations that I've identified up to this point.

…

[Page 277:15-22]

Q. Do you consider that a good accomplishment by not having those lawsuits filed any further?

A. I think that our victories on the cases were supportive of our aggressive defense of them, and the goal here was to end the scheme. I don't know how many more times I can say it to you. And if that is reflected in no more extortionate activity, then that's a success, that's good. It's a good thing.

APPENDIX H

MINUTES OF THE REGULAR MEETING AND PUBLIC HEARING HELD BY THE TOWN COMMISSION OF THE TOWN OF GULF STREAM ON **FRIDAY, OCTOBER 10, 2014 AT 9:00 A.M.**, IN THE COMMISSION CHAMBERS OF THE TOWN HALL, 100 SEA ROAD, GULF STREAM, FLORIDA.

…

2. Consideration of Filing RICO Action & Retaining Special Counsel to Represent the Town.

Attorney Randolph welcomed Attorney Gerald F. Richman via conference line and then introduced Attorney Joanne O'Connor from the Jones, Foster Office who is the one that has been primarily involved in regard to defending the Town in relation to the several public records suits that have been filed against the Town. He said that by way of background, before hearing from Mr. Richman in regard to this, he has asked Attorney O'Connor, with the permission of the Commission, to give some background in relation to this matter.

Attorney O'Connor advised she is the litigation partner with the firm and wanted to bring everyone up to date on the status of the public records suits and the public records requests that have been made to the Town. She focused on the public records requests over the 13 months that have passed since the end of August 2013 as there is a good log on how many have been made, more than 1,500, and that the overwhelming majority of those have been made by two town residents, Mr. Christopher O'Hare and Mr. Martin

O'Boyle and/or entities with which they are affiliated. Attorney O'Connor said more than 400 have been made by Mr. O'Hare in his name individually and another 300 made by him using fictitious names and email addresses, including someone who has sued the town related to those requests. Several hundred more have been made by Mr. O'Boyle and entities with which he's affiliated as indicated by records thru the Florida Department of State. The records requests have barraged the town's staff, she said, adding that Mr. O'Hare on October 8, 2013 made 89 requests in one day and another day in September 2013 on a Sunday he made 40 records requests over a 4 hour time period. Thirty Six public records law suits have been filed by Mr. O'Hare, Mr. O'Boyle and/or their entities with whom they are affiliated, out of these requests. She stated that three of those have been dismissed and 33 are pending, and that she had provided a listing of all suits that have been filed. With regard to the three that have been dismissed, two were voluntarily dismissed by Mr. O' Hare and one was voluntarily dismissed by an entity called the Citizens Awareness Foundation which Mr. O'Boyle has testified is an entity funded by him. Attorney O'Connor stated that of those law suits, 20 were brought by Mr. O'Hare, seven of which relate to those public records requests that were made on that Sunday, September 29th, one was brought by Mr. O'Boyle and Mr. O'Hare that relates to public records requests and purported sunshine law violations, about one dozen law suits filed by Mr. O'Boyle or entities with which he is affiliated, and in fact in a recent law suit he filed against Mayor Morgan, Attorney Sweetapple and the Town she said he referred to being engaged in 12 public records law suits against the Town.

Addressing the financial aspect of these matters, Attorney O'Connor began by explaining that they track all of the general advice and counsel that is provided to the Town and then specific matters for each individual law suit. She said that since January 2014 the Town has spent, for the specific law suits, approximately $220,000.00 or an average of $24,000.00 per month and there are related costs such that the total spent with Jones, Foster is $370,000.000. Attorney O'Connor explained that figure included the cost for the law suits and time spent working with town staff helping to navigate the public records act as many requests are very broad.

Ms. O'Connor advised that there are eight cases that are not public records related that have been filed by Mr. O'Hare and Mr. O'Boyle, one of which has been dismissed and the insurance company is handling all but one of those. She said there are two recent cases, one is a slander case that has been filed by Mr. O'Boyle against the Mayor, Mr. Sweetapple and the Town. The other is a case Mr. O' Boyle has filed against the Town, Mr. Thrasher and Chief Ward relating to an incident that occurred a week or two previously when he came in to make a public records request.

Mayor Morgan noted that public record law suits are not covered by the Town's liability insurance and the Town must pay counsel from the Town's Reserves.

Attorney Randolph called attention to the curriculum vitae of Gerald Richman that was included with the

agenda and advised he is on the phone if the Commission would like to hear from him in regard to the action that is proposed.

Mayor Morgan asked Attorney Richman to introduce himself and to give his opinions regarding the Town's advancing this action.

Mr. Richman stated that he would not go into detail but that he is a past president of the Florida Bar and he is a very active trial lawyer that has been involved in RICO Cases. He believed the best way to counteract what the town is going thru is to file a RICO action in Federal Court. The purpose of the action would be to seek an injunctive relief and damages against the enterprise they have now which would include the law firm, individuals and the Citizens Awareness Foundation where they are involved in bringing this series of actions is believed to have no merit. He explained the scope of the litigation would be to include all of the action that have taken place over in excess of a year to a year and a half. He said he has spoken at length with Attorneys O'Connor and Sweetapple and had become involved because he had a client who is a contractor that contracts with the South Florida Water Management District and had been drawn into a public records request where they simply made a request for an insurance certificate and did it in a way where the company would not have been aware or had personnel available to go ahead and even answer the request. Attorney Richman said he is well aware of their tactics and is prepared to go ahead and aggressively pursue them.

Mayor Morgan asked what type of damages can be obtained thru filing a RICO action.

He answered that, if successful, it provides for attorneys fees and triple damages that you would not be able to recover. In this case the damages to be sought would be damages related to the cost and expense of defending all of these spurious actions supporting a racketeering enterprise. In addition there is a possibility the action could include other municipalities joining in as well and possibly supporting the expense of the litigation, he said.

Mayor Morgan asked if Gulf Stream would then be supporting a class action suite which Mr. Richman confirmed. Mr. Richman advised that only one plaintiff is needed to head this type of action. Mayor Morgan then asked what Mr. Richman's fee schedule would be to handle this action. Mr. Richman advised that they have proposed a partial contingency agreement. He said the customary rates for his law firm range from $250 to $750 per hour and they would be willing to go forward on either a two-thirds of their hourly rate with a 25% contingency or 50% of their hourly rate with a 35% contingency. He emphasized his firm does not take cases on a contingent basis unless they believed the case has merit and a reasonable chance of being successful or what could be a substantial amount of damages to be recovered.

Commissioner Stanley inquired if there would be costs involved over and above what has been mentioned and Mr. Richman advised there would be the usual expenses incurred such as witness and filing fees, etc. that would be billed on a monthly basis.

Commissioner Orthwein asked if there is any way to estimate how much overall this would cost and he replied that on the reduced hourly rate an estimate would be $20,000 to $25,000 the first few months but it's hard to say beyond that as you would not know what the other side would be doing.

On a question from Mayor Morgan, Mr. Richman confirmed that the prevailing party would get attorney fees in addition to approvable triple damages.

Mayor Morgan asked the Town Clerk to read the note that had been received earlier this morning from Mr. O'Boyle.

Mrs. Taylor read the note in its entirety and which was made a part of the official record and is attached hereto.

Commissioner White asked Mr. Richman if he could give an estimate of how long this case could stretch out to which Mr. Richman replied that this is a very difficult question. He said very few law suits filed in civil court ultimately end up in trial, most are settled along the line. He added that cases in Federal Court such as this usually move quickly, faster than state courts. He said the unknown is which of the several federal judges gets the case and how fast they move their docket.

Mayor Morgan believed the town has suffered enough with expending funds, times, resources, morale and the difficulties of retaining and hiring employees as a result of the scandalously malicious law suits and public records requests filed by Mr. O'Hare and Mr. O'Boyle and their related entities. He added it is time

for the madness to stop. He then asked if there is a motion on the recommendation by counsel.

Attorney Randolph commented that if in the event it was decided to move forward you would want to specify which of the two options you choose. Mayor Morgan stated his preference would be to reduce the hourly rate as much as possible because of the unseen nature of those costs and would therefore recommend the 50% hourly rate with the higher contingency of 35%.

Commissioner Orthwein stated she agreed that the 50% is the more prudent way to go.

Commissioner Stanley pointed out after lowering the upfront costs by the hourly rate not only is the objective to get damages and recovery but also to cease expenditures by current actions.

The Mayor observed that the town can either take the approach of defending the individual cases as they come in and bleed to death or we can take steps necessary to stop those cases by advancing this case which shows from the evidence to date a conspiracy of sorts to advance actions that essentially do nothing other than to shake down municipal agencies and related contractors for funds and with all the talk about public access, helping the common man is nonsense and has all been about money. He believed by putting a stop to it by this RICO action we then put a stop to the individual law suits on the public records requests.

Commissioner Orthwein agreed and pointed out that the Town tried settling with them once and it's important that we protect ourselves.

Mr. O'Hare was recognized and stated he understood the purpose of the RICO is to get rid of the public records request and stated he had a question about the RICO. He recognized Mr. Richman as a great attorney and well respected and indicated that he is going to be indicted in the RICO action. He said that 3 months ago Mr. Sweetapple said to his attorney that if he dismissed all of his charges Mr. O'Hare would not be included in the RICO action. He expressed his dislike for law suits, citing how expensive they are and stated that because he is innocent this will go to a jury trial. He believed the cost will then go to bills of $100,000 or $200,000 a month till the trial takes place, and then there would probably be a settlement prior to the start of the trial. He said this could costs millions of dollars and it is not the Commissions money, it's the tax payer's money. He also said these cases could be resolved by admitting guilt and paying attorney's fees. He noted that Joel Chandler's case was settled for $1,500.00 and yet the Town pays $20,000 saying the Town is not guilty and is not going to cooperate. He encouraged the Town to reconsider.

Mr. Tony Graziano, a town resident, was recognized and stated he didn't usually agree with Mr. O'Hare but that he had said something to which he did agree. Mr. Grazino stated that "it is our money and we would like to see you spend it fighting these gentlemen".

Commissioner Stanley moved to retain special counsel, Richman Greer, P.A., specifically Gerald F. Richman, based on a fee structure of 50% reduction of the standard hourly rate with a 35% contingency fee on any recovery. Commissioner Orthwein seconded the motion and all voted AYE at roll call.

APPENDIX I

March 2014 The COASTAL STAR Elections

Gulf Stream

Six candidates vie for five seats

Gulf Stream will have its first election since 1993 as six candidates are running to fill five at-large seats. Voters can cast their votes for up to five candidates. The five with the highest votes will be elected. The winners will serve three-year terms.

[image omitted in printing; columns for other candidates omitted in printing]

Scott Morgan

Personal: 56; bachelor's degree, Pennsylvania State University; law degree, Pennsylvania State's J.D. Dickinson School of Law; married, three children.

Professional: Practiced law in Florida for 25 years; president Humidifirst Co., Boynton Beach, household appliance manufacturing company.

Political experience: No elective office; member of the Gulf Stream Architectural Review and Planning Board for five years, currently serving as chairman.

Position on issues: Take a proactive approach to dealing with residents' court cases against the town; supports staggered elections to allow for more continuity to the commission and "less disruption in its deliberative processes"; backs use of ad hoc committees

of residents to review rules, problems and finances; make ending the delays to the underground utilities project a priority; address the town's issues "in a creative, positive and civil manner."

Quote: "The most important problem facing Gulf Stream is the onslaught of litigation brought by two of its residents, which is depleting the town's finances and is undermining the effectiveness and morale of the town staff. I believe a proactive approach to these lawsuits is necessary to prevent further harm to our town."

APPENDIX J

MINUTES OF THE REGULAR MEETING AND PUBLIC HEARING HELD BY THE TOWN COMMISSION OF THE TOWN OF GULF STREAM ON **FRIDAY, JULY 10, 2015 AT 9:00 A.M.** IN THE COMMISSION CHAMBERS OF THE TOWN HALL, 100 SEA ROAD, GULF STREAM, FLORIDA.

…

C. Items by Mayor and Commissioners

There were no items from any of the Commissioners but Mayor Morgan said he had a few comments to make about a subject that is on every ones mind, the Rico action. Those comments are as follows: "There should be no misunderstanding of the Rico decision. The judge did not condone, he did not excuse the sort of behavior the town has been suffering. Instead, he said that the behavior, in his opinion, did not rise to the level of racketeering under the Federal Statute. The judge is a trial judge. Trial judges do not make law, they try to adopt whatever law is in existence and fit it to the facts before them. And, that's what this judge tried to do. This is a case of first impression. That means there is no other case like this, not in Florida, not in the entire United States. This is a case of first impression that individuals using requests and litigation and threats to intimidate and to extort by means of misleading and fraudulent behavior. Money and changes and actions from municipalities rises to the level of Rico racketeering. Our lawyers recommended that we appeal that decision to get to appellate courts where such law is expanded,

where the Rico law could be more fully addressed to these facts under first impression. The trial judge suggested in his opinion these cases move forward in State court and I think you all know it, but I will repeat it. We have not put all eggs in the Rico basket. Our defenses and our actions have been ongoing in the State cases, pre- dating the Rico action where we have had success. We will continue those actions. The allegations in the Rico action, although a class action addressing many other municipalities and contractors are in their essence the same allegations we make in the State cases. So, I want there to be no misunderstanding, whether it's in State court or whether it's in Federal court, or whether it's in State or Federal court, both of them, these people will be held to account for their actions should those cases not be withdrawn and a resolution met to prevent that from happening.

A couple of days ago I received a letter from Martin O'Boyle to me, not from counsel but from him to me, requesting a sit down to discuss settlement of the actions. Of course I have given it to our counsel and I think a review of history is important. We've done this before with Mr. O'Boyle. It cost the town an awful lot of money and embarrassment. Immediately after settling with Mr. O'Boyle the last time he did this he immediately turned around and began the law suits again and expanded his scheme to include other people and other lawyers and other cases and runners across the State. And so, if we raise an eyebrow at these sorts of letters, you can understand. But, we didn't just stop there. We've met with Mr. O'Boyle before, similarily, getting together as, I forget the gentleman's name, but as he suggested that we just sit

down and talk, that's how you begin settlement negotiations. Well, we tried that and that turned into threats and banners and more litigation. And so, a correct way to settle cases is where the attorneys for a party making proposal of settlement to the attorneys to the other party. And, if such were to come in we would certainly give it consideration. But, until such resolution occurs, where these cases are all withdrawn and this town is protected, these cases in State court and Federal court will continue. Any other comments?"

Attorney Randolph asked Mayor Morgan if he is requiring a motion to authorize the appeal of the Rico act to which the Mayor stated he didn't believe it necessary but would happy to do it if it is felt necessary. He then asked if there is any discussion on the appeal of the Rico action.

Commission Orthwein said no, that she fully supports his taking charge of this and that he is handling it the right way. She believed that with the history in this matter the town could never settle again.

Commissioner Ganger said, Amen!

Patsy Randolph, a town resident, was recognized and remarked to the Mayor that he made the residents very proud and they do support him. She was hopeful that his remarks would be put into a letter to the residents so they will fully understand all of the ramifications that he had just explained.

Mr. Graziano spoke in support of the Mayor's action with regard to the Rico action and said that the residents are also in support. With regard...., to settling

the current actions, he believed if this were to be done, there is no way to prevent them from bringing a new series of actions the next day.

Mayor Morgan said that the lawyers are discussing whether or not something could be written in to prevent that.

Mr. Graziano said he understood there is a State Rico action and that perhaps the State courts would be a little more understanding of a local municipality being held captive by these kinds of actions than would the Federal courts to which Mayor Morgan said this is being looked at.

Christopher O'Hare believed that Federal court trumps State court and reminded that there is a U.S. and a State constitution and local ordinances. He believed it would be a folly to now file the Rico in State court and spend more money. He stated that all the appellate court does is review the actions of the first judge. He said he can see the millage rate going to 7.5%. He questioned if it is wise to spend all of this money and he recommended that, if Jones, Foster & Mr. Richman recommend an appeal, the town should seek other opinions as this is his money too.

Mayor Morgan thanked Mr. O'Hare for his legal advise and said there is not a Plan A and Plan B, this is all trying to defend the town from his actions as he is part of this conspiracy to harm the residents and the town and create a high millage rate. The Mayor pointed out that the expenses that are being incurred and the diminishing reserves are all on Mr. O'Hare.

Mr. O'Hare reminded of all the money that has been spent on undergrounding and said he took umbrage at putting all the blame on him to which the Mayor replied that he could share it with O'Boyle.

Commissioner Orthwein moved to go forward with the appeal of the Rico action and Vice Mayor Ganger seconded with all voting AYE at roll call.

APPENDIX K

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:19-CV-80196-CANNON/REINHART

MARTIN E. O'BOYLE; JONATHAN O'BOYLE; WILLIAM RING,

Plaintiffs,

v.

TOWN OF GULF STREAM,

Defendant.

DECLARATION OF MARTIN E. O'BOYLE IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

I, Martin E. O'Boyle, declare:

…

15. From January 2014 through the present, 24 lawsuits against the Town, excluding this case, have been filed on my behalf or on behalf of certain of the O'Boyle Companies.

16. One of those 24 lawsuits arose from my 2014 campaign for election to the Town Commission. In the weeks before the election, supporters and I placed campaign signs throughout Town, and I also occasionally hung large campaign signs and signs

critical of Town officials on a white pickup truck that I arranged to have parked at Town Hall. The Town started removing many of my campaign signs before the election and threatened to tow the truck from the public parking lot, and on March 5, 2014, I filed a complaint in this Court pursuant to 42 U.S.C. § 1983 seeking to enjoin the Town from further removing my signs based on its unlawful content-based restrictions against my speech (the "Signs Case").

17. The Town and I settled the Signs Case in July 2016, with the Town paying me $145,000, after the U.S. Court of Appeals for the Eleventh Circuit remanded the case back to the district court to determine whether the ordinance the Town invoked to justify removal of my campaign signs was unconstitutional.

. . .

40. I also attended the Town Commission meeting held July 11, 2014. During that meeting, I spoke during a public comment period to discuss, among other things, Mayor Morgan's statements that my public records lawsuits against the Town were "frivolous." During a brief exchange, Mayor Morgan acknowledged that "some of" my public records lawsuits had merit but said that "whether or not the actual claim has or has not merit is not the point; it's the lawsuits being brought" at all, and he again improperly accused me of trying to harass the Town.

41. The Town's video of the entire July 11, 2014, meeting is available on its YouTube channel,

and specifically at this link, which directs to the relevant portion of my exchange with Mayor Morgan and which shows me at the lectern (Mayor Morgan can be heard but is off screen): https://youtu.be/_f010wVBLEI?t=4114. In addition, a true and correct excerpt of the Town-produced video showing that exchange is also being submitted in support of Plaintiffs' Motion for Partial Summary Judgment as Plaintiffs' MSJ Exhibit 53.