

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

ATLANTA DIVISION

<p>MARK ANDREWS,</p> <p>Plaintiff,</p> <p>v.</p> <p>DINESH D'SOUZA, et al.,</p> <p>Defendants.</p>	<p>Case No. 1:22-cv-04259-SDG</p>
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**PLAINTIFF'S MOTION FOR LEAVE TO FILE
SUPPLEMENTAL COMPLAINT AND
MEMORANDUM OF LAW IN SUPPORT OF MOTION**

Pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, Plaintiff Mark Andrews, through his attorneys, respectfully moves this Court for leave to file a Supplemental Complaint, attached as Exhibit A.

The proposed Supplemental Complaint describes recent events that further support Mr. Andrews' claims. It describes how, since filing their Motion to Dismiss (Dkt. 58) in February 2023, and contrary to the positions articulated therein,

Defendants Catherine Engelbrecht, Gregg Phillips, and True the Vote (collectively, “TTV Defendants”) have published multiple copies of a document on their website that includes Mr. Andrews’ personal identifying information as well as unblurred images of his face and his vehicle (with a redacted license plate, but the license plate number printed elsewhere in the document). In media appearances in recent weeks, Defendants Engelbrecht and Phillips have been directing viewers to this website, asserting that it is a repository of evidence supporting the false statements made in their film and accompanying book, including that Mr. Andrews committed ballot fraud.

The filing of the supplemental pleading will not in any way prejudice any Defendants, and for the reasons set forth below, Plaintiff respectfully submits that leave should be granted.

Background Concerning New Factual Allegations

On December 1, 2022, Mr. Andrews filed his First Amended Complaint, Dkt. 27, (“Complaint”), in which he alleged that all Defendants committed unlawful voter intimidation, defamation, and invasion of privacy by, among other actions, publishing Mr. Andrews’ image and other identifying information along with false, defamatory, and intimidating statements that he had engaged in crimes.

TTV Defendants filed a Motion to Dismiss, Dkt. 58, and accompanying Brief in Support, Dkt. 58-1, (“TTV MTD”), on February 6, 2023. In their MTD, TTV Defendants repeatedly assert that they cannot be liable for harm to Mr. Andrews because they never made any publication that identified Mr. Andrews by name, image, or in any other way; that their portrayals were of “mules” generally and not Mr. Andrews specifically; and they had not taken any steps to try to intimidate him. *See, e.g.*, TTV MTD at 4-5, 7-10. They attempt to absolve themselves of responsibility by blaming others for the publication of Mr. Andrews’ image and his vehicle and license plate number, accusing Plaintiff of improper group pleading. *See id.* at 7-12. These arguments ring particularly hollow in light of the TTV Defendants’ recent actions.

As set forth in the attached proposed supplemental pleading, open.ink is a website operated by TTV Defendants; Defendants Engelbrecht and Phillips are responsible for its content. Ex. A at ¶¶ 8-14, 17-18. In a video appearance featuring Engelbrecht and Phillips, Engelbrecht described open.ink as a “repository” for evidence in support of the *2000 Mules* theory, which she and Phillips would continue to update. Ex. A at ¶¶ 12-13.

On April 15, 2023—after TTV Defendants submitted their MTD—documents that contain Mr. Andrews’ date of birth, address, unblurred images of

his face, images of his SUV (with its license plate number redacted but listed separately in the document), and the voter registration numbers of him and four of his family members, were uploaded onto open.ink. These unblurred images of Mr. Andrews' face and SUV match the images that appeared in the film *2000 Mules*, the accompanying book, and the promotional trailer and media appearances in support, sometimes blurred and sometimes unblurred. *See* Complaint at ¶¶ 37-38, 45, 49-50, 52, 54, 56, 64-66, 74-75, 85, 139, 145, 155. The documents appear to be multiple copies of the Georgia State Elections Board file concerning the investigation into the allegation that Mr. Andrews had engaged in voter fraud. Ex. A at ¶ 16.

In at least two media appearances as recently as July 24 and July 28, 2023, Defendants Engelbrecht and Phillips have actively promoted open.ink, including directing viewers/listeners to the website in response to questions about Mr. Andrews specifically and the lack of any evidence supporting Defendants' "2000 Mules" allegations of ballot fraud. Ex. A at ¶¶ 15, 17-22.

TTV Defendants' publication of Mr. Andrews' personally identifiable information on open.ink and subsequent media appearances directing

listeners/viewers to the website is at odds with the arguments made by TTV Defendants in their MTD and provide further support for Mr. Andrews' claims.¹

Legal Standard and Argument

Federal Rule of Civil Procedure 15(d), entitled "Supplemental Pleadings," provides:

On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

Fed. R. Civ. P. 15(d). "A supplemental pleading is an appropriate vehicle by which to 'set forth new facts in order to update the earlier pleading[.]'" *Lussier v. Dugger*, 904 F.2d 661, 670 (11th Cir. 1990) (citing 4 C. Wright & A. Miller, 4 Federal Practice and Procedure § 1504 at 536-37). "Courts apply the same 'freely given' standard that governs Rule 15(a) to Rule 15(d)." *Queen Virgin Remy Ltd. Co. v. Thomason*, 2016 WL 4267801, at *2 (N.D. Ga. Apr. 14, 2016) (citing *Lussier*, 904 F.2d at 670); *see also Harris v. Garner*, 216 F.3d 970, 984 (11th Cir. 2000)

¹ TTV Defendants' assertions are false and ultimately irrelevant regardless of this new factual information, as explained in Plaintiff's Opposition to TTV Defendants' Motion to Dismiss, Dkt. 70, at 6-12, 33-34, and in Plaintiff's Opposition to Salem Defendants' and D'Souza Defendants' Motions to Dismiss, Dkt. 69, at 27-30, 42-45.

(referencing “the liberal allowance of amendments or supplements to the pleading under Rule 15”).

Under that standard, leave should be “freely given” unless there is a reason “such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, [or] undue prejudice to the opposing party.” *Foman v. Davis*, 371 U.S. 178, 182 (1962); *see also Chao v. Tyson Foods, Inc.*, 2009 WL 10687920, at *2 (N.D. Ala. Jan. 6, 2009) (“No Eleventh Circuit case law provides a standard of review in analyzing the application of Rule 15(d), but looking to decisions from other district courts, it is clear that leave to supplement the complaint should be freely given, absent bad faith, undue delay, undue prejudice to the nonmovant, or dilatory motive on behalf of the movant.”).

Here, leave to supplement the complaint should be freely given. Consistent with Rule 15(d), the events in question happened after the First Amended Complaint was filed. There is no “undue delay,” “bad faith” or “dilatory motive”: Defendants Engelbrecht and Phillips’ media appearances directing listeners and viewers to the open.ink website in direct response to questions about the allegations against Mr. Andrews just **occurred on July 24 and 28, 2023.**

Moreover, there can be no prejudice to any Defendant as discovery has not yet begun and the supplemental pleading does not add any additional claims.

Conclusion

For the reasons identified above, Plaintiff respectfully requests that the Court grant his motion for leave to file the proposed Supplemental Complaint.

Dated: August 7, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1D, counsel certifies that the foregoing was prepared in Times New Roman, 14-point font, in compliance with Local Rule 5.1C.

/s/ Sara Chimene-Weiss

Sara Chimene-Weiss*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within and foregoing was electronically filed with the Clerk of Court using CM/ECF system, which will automatically send email notification of such filing to all attorneys of record.

Dated: August 7, 2023

/s/ Sara Chimene-Weiss

Sara Chimene-Weiss*

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

ATLANTA DIVISION

<p>MARK ANDREWS,</p> <p>Plaintiff,</p> <p>v.</p> <p>DINESH D’SOUZA, et al.,</p> <p>Defendants.</p>	<p>Case No. 1:22-cv-04259-SDG</p> <p>JURY TRIAL DEMANDED</p> <p>Supplemental Complaint</p>
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Pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, Plaintiff Mark Andrews, through his attorneys, hereby supplements his First Amended Complaint (the “Complaint”), Dkt. 27, with the following “transaction[s], occurrence[s], or event[s]” that took place after the filing of the Complaint. The facts set forth below in this Supplemental Complaint are in addition to, and do not supersede or replace, the facts and claims alleged in the Complaint.

INTRODUCTION

1. This lawsuit seeks accountability on behalf of an innocent Georgia voter, Mark Andrews, whom Defendants falsely accused, and continue to accuse, of ballot fraud in their multi-million dollar-grossing film *2000 Mules*, in the accompanying book, and in related promotional appearances.

2. Defendants Dinesh D’Souza, D’Souza Media LLC, True the Vote, Inc., Catherine Engelbrecht, Gregg Phillips, Salem Media Group, Inc., Regnery Publishing, Inc., and John Does (collectively “Defendants”), are the architects and amplifiers of a widely circulated false narrative about alleged ballot fraud in the 2020 election. Through their false statements about voters, including about Mr. Andrews and using an image of Mr. Andrews’ face, they have profited financially and reputationally within certain circles while causing significant harm to Mr. Andrews.

3. Mr. Andrews supplements his Complaint to include new, relevant, factual information.

4. As alleged in the Complaint, notwithstanding findings by a law enforcement investigation that Mr. Andrews was legally voting in the video clip of him Defendants excerpted to include in the book and film, and despite Mr. Andrews repeatedly put them on notice that their allegations about him are false

and defamatory, Defendants have continued to promote and amplify their 2000 Mules narrative and the lie that Mr. Andres was a “mule” engaged in ballot fraud, via the film, book, and related appearances.

5. In recent months, Defendants have amped up their defamatory campaign against Mr. Andrews.

6. Defendants Engelbrecht, Phillips, and True the Vote (collectively, “TTV Defendants”) have recently published multiple copies of a document on their website that include Mr. Andrews’ date of birth and other personally identifying information, as well as unblurred images of his face and an image of his SUV (with the license plate redacted, but also including his printed license plate number), describing the documents as evidence and research supporting *2000 Mules*. At the same time, they have been arguing to the Court that the Complaint should be dismissed because they assert that Mr. Andrews was not identifiable in the images of him they promoted and that their portrayals were of “mules” generally and not Mr. Andrews specifically. *See generally*, TTV Defendants’ Motion to Dismiss (MTD), Dkt. 58.

7. In recent interviews, TTV Defendants have been actively promoting this website with his information in response to questions specifically about Mr.

Andrews and in connection with the false allegations of ballot fraud that they make against him.

PARTIES

8. The allegations stated in paragraphs 17 through 27 of the First Amended Complaint are adopted and incorporated by reference, pursuant to Federal Rules of Civil Procedure 10(b) and 10(c).

JURISDICTION & VENUE

9. The allegations in paragraphs 28 through 31 of the First Amended Complaint are adopted and incorporated by reference, pursuant to Federal Rules of Civil Procedure 10(b) and 10(c).

SUPPLEMENTAL FACTUAL ALLEGATIONS

Open.ink Is a Website Created and Promoted by Defendants True The Vote, Engelbrecht, And Phillips

10. Defendant TTV's primary website, [truehevote.org](https://www.truehevote.org), describes open.ink as a website that "we will roll out" and on which "we've posted all of our findings."¹

¹ True the Vote, *Another Whipsaw Week* (Aug. 15, 2021), <https://www.truehevote.org/another-whipsaw-week/>.

11. During an August 16, 2022, video interview with RSBN (Right Side Broadcast Network), an online media outlet, Defendants Engelbrecht and Phillips both identified open.ink as the website on which they would be posting the “evidence” in support of *2000 Mules*.²

12. In that RSBN interview, Defendant Phillips stated: “We are launching today something called open.ink.”³ Defendant Engelbrecht said, “that’s the place that we’re going to continue to load [documents] into.”

13. In the same RSBN interview, Defendant Engelbrecht stated: “This is very much a repository” for the evidence from *2000 Mules*. “Open.ink is the site where you’re going to be able to go” to download the so-called evidence.⁴

14. This interview, and the TTV website open.ink, was widely reported on at the time and is discussed in Plaintiff’s Complaint in paragraphs 113 and 179, which are adopted and incorporated by reference pursuant to Federal Rules of Civil Procedure 10(b) and 10(c).

² Matt Shuham, *WATCH: The Moment When The ‘2,000 Mules’ Folks Admit Their Supposed Evidence Is Nonsense*, TPM (Aug. 16, 2022, 4:21 PM), <https://talkingpointsmemo.com/news/watch-the-moment-when-the-2000-mules-folks-admit-their-supposed-evidence-is-nonsense>.

³ *Id.*

⁴ *Id.*

15. More recently, in a July 28, 2023, interview on “CrossPolitic,” an online video podcast, Defendant Engelbrecht described open.ink as a website that she asked Defendant Phillips to build for Defendant TTV. Engelbrecht stated: “open.ink started out as . . . a site where True The Vote could put its research.” She then continued “I tasked Gregg and his team to build” the website.⁵

TTV Defendants Posted Mr. Andrews’ Personal Identifying Information On Open.Ink

16. Multiple copies of the document about Mr. Andrews have been posted to Defendants’ open.ink website, which they have described as a repository of their research supporting 2000 Mules. These documents, which appear to be copies of the Georgia State Elections Board file concerning the investigation into the allegation that Mr. Andrews had engaged in voter fraud, include Mr. Andrews’ image alongside his personal identifying information, namely:

- His first name, middle initial, and last name
- His home address
- His voter registration number
- The voter registration numbers of four of his family members
- His date of birth

⁵ CrossPolitic, *Thrown in Prison for not Snitching: Injustice & 2000 Mules*, Rumble (July 28, 2023, 9:00 PM), <https://rumble.com/v330nok-thrown-in-prison-for-not-snitching-injustice-and-2000-mules.html>.

- His license plate number along with a description of his car’s make, model, and color
- Multiple images of Mr. Andrews’ car, with the license plate redacted (although his full license plate number is also printed in the documents), which match the images contained in the *2000 Mules* book and/or film
- Multiple images of Mr. Andrews where his face is not blurred or redacted, which match the images contained in the *2000 Mules* book and/or film

17. Defendant Phillips recently promoted and referred viewers and listeners to this website in a July 24, 2023, interview on Stephen Bannon’s “War Room,” an online video podcast. In the interview, Bannon asked about *2000 Mules* and a recent Wall Street Journal editorial⁶ discussing how no evidence has been provided that would support the assertions made in *2000 Mules*. In response, Phillips stated, “we have so many documents,” including “the data and the research that we did for ultimately what became the movie.” The conversation then continued:

Bannon: “How do people get to find out all of the information? Because *2000 Mules* is as relevant today as it was when they first found out about it.”

⁶ The Editorial Board, ‘*2000 Mules*’ but No Evidence, WSJ (July 23, 2023, 6:15 pm), <https://www.wsj.com/articles/true-the-vote-georgia-lawsuit-subpoena-2000-mules-ballot-harvesting-2020-election-donald-trump-eb331058>.

Phillips: “We built a new platform called open.ink . . . we released all of the [data about a different lawsuit] . . . We’re going to take all of this information . . . we’re just going to dump it into open.ink.”

Engelbrecht: “. . . we’re finally now at a place where we can start posting heavy duty stuff and it’s coming.”⁷

18. At the end of the interview, both Phillips and Engelbrecht list the social media handles and websites where listeners/viewers can find more information, and Phillips identifies truethetvote.org and open.ink as their websites.

19. In addition to acknowledging that they operate open.ink and are responsible for its content, Defendants Engelbrecht and Phillips also continue to direct listeners/viewers to the website for more information about the so-called evidence in support of their allegations specifically against Mr. Andrews.

20. In the July 28, 2023, video interview on CrossPolitic, the hosts discussed *2000 Mules* and the recent WSJ editorial that noted the lack of any evidence to support the allegations of the film, including those made against

⁷ Bannon’s War Room, *Gregg Phillips And Catherine Engelbrecht: "That (WSJ) article is end to end inaccurate"*, Rumble (July 24, 2023), <https://rumble.com/v324ki6-gregg-phillips-and-catherine-engelbrecht-that-wsj-article-is-end-to-end-ina.html>.

Mr. Andrews. In response, Defendant Phillips said, “We have just short of two petabytes of data” in support of the theories in *2000 Mules*.

21. Later in the same interview, the hosts specifically referenced Mr. Andrews by name and asked about the evidence against him. Defendant Phillips then said, “There’s a lot more to that story than just what they published here.” Later, as part of a continued discussion about the so-called evidence, he said, “We have all of this data and there’s nothing they can do about it,” and “we built a platform called open.ink.” He then said, “We dropped all of our information” about a different case into open.ink and “we may just do that in Georgia.”⁸

TTV Defendants Posted This Information After They Filed Their Motion to Dismiss Arguing that They Had Not Specifically Targeted Mr. Andrews or Published Identifying Information About Him

22. Upon information and belief, based on the metadata available on open.ink, the documents containing Mr. Andrews’ image and personally identifying information were posted on open.ink on or about April 15, 2023, at 12:37 PM Eastern Time.

⁸ CrossPolitic, *Thrown in Prison for not Snitching: Injustice & 2000 Mules*, Rumble (July 28, 2023, 9:00 PM), <https://rumble.com/v330nok-thrown-in-prison-for-not-snitching-injustice-and-2000-mules.html>.

23. April 15, 2023, is more than two months after TTV Defendants filed their Motion to Dismiss, Dkt. 58, on February 6, 2023.

24. In their Motion to Dismiss, TTV Defendants repeatedly assert that they never made any publication that identified Mr. Andrews by name, image, or in any other way; that their portrayals were of “mules” generally and not Mr. Andrews specifically; and they had not taken any steps to try to intimidate him, specifically. *See, e.g.*, TTV MTD at 4-5, 7-10. They tried to absolve themselves of responsibility by blaming others for publication of Mr. Andrews’ image and his vehicle with its license plate visible and by accusing Mr. Andrews of improper group pleading. *See* TTV MTD at 7-12.

25. The TTV Defendants’ most recent actions described in this Supplemental Complaint—namely, posting documents with Mr. Andrews’ unblurred image and personal identifying information on their website and directing listeners/viewers to that website in response to questions about their “evidence” regarding Mr. Andrews—provide further support for Mr. Andrews’ claims as stated in the Complaint.

26. The allegations stated in Paragraphs 32 through 257 of the First Amended Complaint are adopted and incorporated by reference, pursuant to Federal Rules of Civil Procedure 10(b) and 10(c).

CLAIMS FOR RELIEF & PRAYER FOR RELIEF

27. Plaintiff does not bring any additional claims for relief in this Supplemental Complaint. Rather, the allegations and claims for relief stated in Paragraphs 258 through 322, and the subsequent Prayer for Relief, of the First Amended Complaint are adopted and incorporated by reference, pursuant to Federal Rules of Civil Procedure 10(b) and 10(c).

Dated: August 7, 2023

Respectfully submitted,

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/s/ Sara Chimene-Weiss

Sara Chimene-Weiss*

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The undersigned hereby certifies that a true and correct copy of the within and foregoing was electronically filed with the Clerk of Court using CM/ECF system, which will automatically send email notification of such filing to all attorneys of record.

Dated: August 7, 2023

/s/ Sara Chimene-Weiss

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