IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO.: 08-CA-24573

ZENAIDA GONZALEZ,

Plaintiff/Counter Defendant,

vs.

CASEY ANTHONY,

Defendant/Counter Plaintiff.
_____/

PLAINTIFF'S PROFFER IN SUPPORT OF ADDING CLAIM FOR PUNITIVE DAMAGES AGAINST DEFENDANT CASEY ANTHONY AND INCORPORATED MEMORANDUM OF LAW

Plaintiff, Zenaida Gonzalez, by and through their undersigned counsel, pursuant to Rule 1.190(e), Fla. R. Civ. P. and § 768.72, *Fla. Stat*, files this her Proffer in Support of Adding a Claim for Punitive Damages against Defendant Casey Anthony.

I. PLAINTIFF'S PROFFER OF EVIDENCE

Defendant Casey Anthony is charged with the first degree murder of her daughter Caylee. Caylee Anthony was first reported missing to authorities on July 15, 2008. Caylee's grandmother, Cindy Anthony, called 911 when her daughter Casey Anthony, Caylee's mother, would not tell her where Caylee had been. Cindy had not seen her granddaughter for weeks and became very alarmed when she admitted that she smelled the odor of a "dead body" in the trunk of Casey's car[1].

When Detective Yuri Melich questioned Casey Anthony about the whereabouts of her daughter, she stated the child was with a babysitter. The purported babysitter, Zenaida "Zani"

[1] A recording of the 911 calls, as well as statements pertinent to the defamation of Plaintiff by Casey Anthony and subsequent authorized publishing by Cindy Anthony have been previously filed with this Court on DVD. These clips were shown in Cindy Anthony's deposition and have been identified as such in the court file.

Gonzalez[2], according to Casey, supposedly had been a caregiver for the child for over two years. In her interviews and written statement, Casey Anthony claimed specifically that she had last left Caylee with Zanny at her residence at Sawgrass Apartments on Conway Road. Plaintiff Zenaida Gonzalez had visited Sawgrass Apartments on June 17, 2008 and was shown an apartment right next to the unit where Casey Anthony claimed she last left her daughter with the "nanny". Leasing agent Harry Garcia filled out a guest card[3], including the names of two of Plaintiff's children. Ms. Gonzalez had ridden to the property in a car with New York plates. This detail, along with others, subsequently ended up in part of the ever-evolving description of the supposed kidnapper. Casey Anthony had many friends residing at one time or another at Sawgrass Apartments and has stayed at the complex. Additionally, June 17 was within 24 hours of when Caylee Anthony was last reportedly seen alive.

Detectives took Casey Anthony's account at face value, and followed up at the Sawgrass Apartments as part of their investigation. The unit identified by Casey Anthony had been unoccupied for some time. No one named Zenaida Gonzalez had ever resided at the property, but the guest card filled out by Garcia led detectives to Kissimmee to question the Plaintiff. When Zenaida Gonzalez was questioned by police on July 17, 2008, Gonzalez denied knowing either Casey or Caylee Anthony. According to police reports, Casey Anthony was shown a photo pack containing Plaintiff's photo and Casey Anthony did not identify her. When police asked the grandmother Cindy about the babysitter, Cindy said that she had no reason to doubt Casey's account of Gonzalez's caring for Caylee. However, in the nearly three years that Caylee was alive and living

[2] "Zanny", "Zany" or "Zani" are used alternatively in interviews by both Casey and her family. However, Zenaida Gonzalez was the name provided to authorities.

[3] Garcia, not Gonzalez, filled out the guest card. He started writing "G" in the first name space on the application, then apparently started over on the correct space, leaving the impression of a "G" which has been mis-interpreted by Cindy Anthony as a "C".

at Cindy Anthony's house, neither of Casey's parents nor any of her friends, boyfriends, family, or acquaintances had ever once met the alleged babysitter.[4]

A. The Jail Defamation And Subsequent Publishing

After a myriad of tales told to investigators by Casey Anthony unraveled, she ended up in the Orange County jail. On July 25, 2008 she was visited by her parents George and Cindy and the closed circuit conversation was recorded. Cindy Anthony questioned her daughter about getting a sketch artist to make a sketch of Zanny. She told her daughter that the OCSO stated that they had shown her a photo line up of Plaintiff Zenaida Gonzalez. Casey responded "they are full of shit. That girl, the one down in Kissimmee, they never showed me a photo of her."[5] Of course, this statement was completely false, as Casey Anthony had in fact been shown a photo of Plaintiff by detectives. During the conversation in the jail, Casey authorized her mother to speak to the media on her behalf. Cindy Anthony agreed to speak to the media on her daughter's behalf.[6] Not long after the jail meeting, Cindy Anthony appeared before the news media and published her daughter's false statement that she had never been shown a photograph of Plaintiff Zenaida Gonzalez[7]. This statement by Casey Anthony has never been retracted. When asked in written interrogatories to confirm or deny that the attached photograph of the Plaintiff was the person she was referring to in

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[4] The depositions of Lee Anthony, George Anthony and Cindy Anthony are all consistent in that none of the family members have met nor spoken to "Zani" or "Zanny". Curiously, Cindy Anthony reported in her deposition that she had in her possession phone numbers and addresses of the alleged nanny. However, she never attempted to contact the "nanny", even when her granddaughter had been missing for a month. Cindy Anthony contends the addresses and phone numbers were turned over to authorities, yet the evidence has not appeared in the thousands of documents released thus far.

[5] This clip is included in the court file on the DVD referenced above. The identification of the person down in Kissimmee is significant, as Zenaida Gonzalez was from Kissimmee.

[6] Q. So it's fair to say that she was giving you the authority to speak for her by passing along messages?
A. Correct.
Q. So when you were talking to the media...you were speaking for her, is that right?
A. Correct.
Depo of Cindy Anthony, page 79 line 1-11.

[7] This news clip is included in the above mentioned DVD.

her conversations with detectives, Casey Anthony refused to answer, citing the protections of the Fifth Amendment.

II. PROCEDURAL REQUIREMENTS TO SUPPORT A CLAIM FOR PUNITIVE DAMAGES

Section 768.72, *Fla. Stat.* allows a claim for punitive damages when there is a reasonable showing by evidence in the record or proffered by a party, which would provide a reasonable basis for recovery of punitive damages. Punitive damages are appropriate when a Defendant engages in conduct, which is intentional, fraudulent, malicious, deliberately violent, or oppressive, or committed with such gross negligence as to indicate a wanton disregard for the rights of others. *W.R. Grace & Company v. Waters*, 638 So.2d 502 (Fla. 1994). More importantly, the statute specifically provides for the imposition of punitive damages in the case of the intentional torts pled in the instant case, defamation and intentional infliction of emotional distress. The statute provides, in pertinent part:

> (2) A defendant may be liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of *intentional misconduct* or gross negligence. As used in this section, the term:
>
> (a) "Intentional misconduct" means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result, and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.
>
> Fla. Stat. § 768.72 (emphasis added).

For purposes of the instant proffer, the trial court is not required to weigh the evidence or make judgment on the veracity of any witness. Further, in determining whether the proffer meets the substantive requirements of Florida Statute §768.72, it should not entertain a counter-proffer from the defendant. Rather, the trial court should apply a motion to dismiss standard and treat all

allegations raised by the proffer as true. *See Despain v. Avante Group, Inc.*, 900 So.2d 637 (Fla. 5th DCA 2005).

In *Despain,* Florida's Fifth District Court of Appeal analyzed the procedural requirements of a proffer for punitives and found the following standard applied:

> We are of the view that the standard that applies to determine whether a reasonable basis has been shown to plead a claim for punitive damages should be similar to the standard that is applied to determine whether a complaint states a cause of action. *See Holmes* (holding that the analysis to determine whether a claimant has established a reasonable basis to plead a claim for punitive damages is similar to the analysis applied to determine whether the allegations of a complaint are sufficient to state a cause of action). Within the framework of this standard, we will view the record evidence and the proffer in the light most favorable to Despain and accept it as true. Sobi v. Fairfield Resorts, Inc., 846 So.2d 1204 (Fla. 5th DCA 2003).

Despain, 900 So.2d at 644.

Accordingly, based upon the allegations set forth in the proffer, Casey Anthony engaged in intentional misconduct in defaming Plaintiff and intentionally inflicting emotional distress upon her. Both actions are by their nature intentional torts, thus the intent requirement of 768.72 is met from a procedural standpoint. *See e.g., Rowell v. Holt* 850 So.2d 474 (Fla. 2003) (defamation and intentional infliction of emotional distress are intentional torts).

III. SUBSTANTIVE LAW ON THE IMPOSITION OF PUNITIVE DAMAGES.

As stated above, the requisite intent to commit an intentional tort satisfies the intent requirement of the statue. Casey Anthony cannot escape the operation of the statute by claiming she did not intend the consequences. As a practical matter, she cannot claim anything at this point as she has sought the protection of the Fifth Amendment when asked questions about her intent. Nonetheless, her not meaning to cause harm to Plaintiff does not prevent recovery. For example, in the drunk-driving context the Courts have found intent by holding that the driver acted purposefully

in getting drunk in the first place, even though he may have lacked the capacity to form an intention at the time he was drunkenly driving. See *Ingram v. Pettit*, 340 So.2d 922, 925 (Fla. 1976) ("Drinking to the point of intoxication is a voluntary act. Driving in an intoxicated condition is an intentional act which creates known risks to the public"). Accordingly, Casey Anthony new that her false statements would likely be disseminated to the media and in fact authorized her mother to do that exact thing.

In *Paterson v. Deeb*, 472 So.2d 1210 (Fla. 1st DCA 1985), rev. den. 484 So.2d 8 (Fla. 1986), allegations of a residential landlord's willful violation of its statutory duty to provide locks and keys and maintain common areas in a safe condition was held sufficient to state a claim for punitive damages in a case arising from a sexual assault upon a tenant in an area prone to criminal activities. The Plaintiff had complained to the landlord of missing and defective locks, which had permitted trespassers to enter the premises on prior occasions, but the landlord willfully refused because they planned to demolish the building and did not want to "waste" the money. See *Id.*

In *American Motors Corp. v. Ellis*, 403 So.2d 459, 467 (Fla. 5th DCA 1981), *review denied*, 415 So.2d 1359 (1982), "the jury could have found that AMC was aware of the catastrophic results of fuel tank fires in its vehicles from its own crash tests, and that AMC chose not implement the recommendation of its engineers to relocate the fuel tank in order to maximize profits." Although such knowledge was not based on what actually happened in the crash tests, but only on the "reasonable inference" to be drawn from the test results, 403 So.2d at 468, the district court took pains to base its affirmance on the conclusion that "AMC was aware" of the danger.

Similarly, in *Toyota Motor Co. v. Moll*, 438 So.2d 192 (Fla. 4th DCA 1983), Toyota conducted tests in which "the gas cap remained on," *id.* at 195 n.3, but those tests nevertheless "indicated that the gas cap would be pried off as the filler neck rotated forward," because it rotated

even in low-speed tests. *Id.* at 195. That alone may not have been enough, see discussion *infra*, but there was also evidence that Toyota had "changed the [dangerous] configuration" in every one of its other models; and "for reasons that were never satisfactorily explained at trial...the '73 Corona was the only vehicle in the entire line" which was not changed. *Id.* That aided the district court's conclusion that the evidence permitted a finding that "Toyota knew of the defects..." *Id.*

Likewise, in *Piper Aircraft Corp. v. Coulter*, 426 So.2d 1108 (Fla. 4th DCA), *review denied*, 436 So.2d 100 (Fla. 1983), Piper's test pilot had specifically informed Piper of the faulty door latch on the aircraft, and Piper's actual knowledge was reinforced not only by its redesign of future models of the aircraft, but by its instructions that the test pilot destroy any records evidencing the problem. This was more than enough to show that "Piper knew of the substantial threat of danger posed by the accidental door openings and failed to warn purchasers or to modify the airplane." Note that the theory of recklessness in *Piper* was not in the original design of the aircraft, but in the post-design and post-sale failure to warn or correct.

In *Dorsey v. Honda Motor Co., Ltd.*, 655 F.2d 650, 656 (5th Cir. 1981) (Florida law), *cert. denied*, 459 U.S. 880, 103 S. Ct. 177, 74 L. Ed. 2d 145 (1982), there was "substantial evidence that tests carried out by Honda demonstrated that, apart from being small, the AN 600 had serious design deficiencies creating an unreasonable risk of harm to passengers." For example, in tests conducted at 30 m.p.h., a pillar of the car had deformed inward, and the dummy's head had struck it. *Id. at 653.* Since the actual dangerous condition--not just the likelihood of that condition--had manifested itself in the tests, a punitive damages award was appropriate.

Finally, in *Domke v. McNeil-P.P.C., Inc.*, 939 F.Sup 849, (M.D. Fla. 1996), the court found that a reasonable basis for claiming punitive damages existed when the defendant manufacturer had actual knowledge that liver damage could occur when casual alcohol consumption combined with

acetaminophen and, failed to convey the risk of liver damage or alcohol/acetaminophen interaction to consumers. *Id. at 939.* Further, the defendant intended to `muddy the waters' in the event of negative publicity. *Id.*

V. CONCLUSION

Based upon the above proffer, Casey Anthony has engaged in intentional misconduct and a reasonable basis for recovery of punitive damages exists. Accordingly, the Plaintiff is entitled to amend her complaint to add a count for punitive damages.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail and facsimile this 29th day of April, 2009 to Jonathan Kasen, Esq., 633 S.E. 3rd Avenue, Suite #203, Ft. Lauderdale, FL 33301.

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